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Third Session Tenth Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 17 of 2012

[L.S.]

AN ACT to provide protection to investors from unfair, improper or fraudulent practices; foster fair and efficient securities markets and confidence in the securities industry in Trinidad and Tobago; to reduce systemic risk, to repeal and replace the Securities Industry Act, Chap. 83:02 and for other related matters

[Assented to 24th December, 2012]

WHEREAS it is enacted *inter alia* by subsection (1) of ^{Preamble} section 13 of the Constitution that an Act to which this

section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall have effect accordingly:

And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:

PART I
PRELIMINARY

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| Short title | 1. This Act may be cited as the Securities Act, 2012. |
| Commencement | 2. This Act comes into operation on a date to be fixed by the President by Proclamation. |
| Act inconsistent with Constitution | 3. This Act has effect even though inconsistent with sections 4 and 5 of the Constitution. |
| Interpretation | 4. (1) In this Act unless the context otherwise requires— <ul style="list-style-type: none"> “<i>ad hoc</i> Commissioner” means a person appointed under section 10(7); “affiliate” means an affiliated body corporate or affiliated person within the meaning of subsection (2); “Alternative Trading System” or “ATS” means a securities market that— <ul style="list-style-type: none"> (a) is not a quotation and trade reporting system or a securities exchange; and |

(b) does not—

- (i) require an issuer to enter into an agreement to have its securities traded on the securities market;
- (ii) provide, directly or through one or more subscribers, a guarantee of a two-sided market for a security on a continuous or reasonably continuous basis;
- (iii) set requirements governing the conduct of subscribers, other than conduct in respect of the trading by those subscribers on the securities market; and
- (iv) discipline subscribers other than by the exclusion from participation in the securities market;

“approved foreign issuer” means a foreign issuer—

- (a) that is at the relevant date the equivalent of a reporting issuer under the securities laws of a designated foreign jurisdiction;
- (b) that has been for the three years immediately preceding the relevant date the equivalent of a reporting issuer under the securities laws of a designated foreign jurisdiction;

(c) that is subject to foreign disclosure requirements; and

(d) that has a class of securities listed for trading on a recognized securities exchange in a designated foreign jurisdiction;

“approved rating” means an investment grade rating or higher from a designated rating organization;

“asset-backed security” means any security that is primarily serviced by the cash flows of a distinct pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, together with any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders;

“associate”, when used to indicate a relationship with any person, means—

(a) an entity of which that person beneficially owns or controls, directly or indirectly, either shares or securities currently convertible into shares, carrying more than twenty per cent of the voting rights;

(b) a partner of that person acting on behalf of the partnership of which they are partners;

(c) a trust or estate, in which that person has a substantial beneficial interest or in respect of which he serves as a trustee, legal

representative or in a similar capacity;

(d) a spouse or child of that person; or

(e) a relative of that person if that relative has the same residence as that person;

“bank” has the meaning assigned to it in the Financial Institutions Act;

Chap. 79:09

“beneficial owner” in relation to a security, means a person who has beneficial ownership of the security although that person may not be the registered owner of the security;

“beneficial ownership” in relation to a security, means entitlement to the benefits of ownership of the security and includes direct ownership, ownership through a trustee, legal representative, agent or other intermediary, and a person shall be deemed to have beneficial ownership of a security, including an unissued security, if the person is the beneficial owner of a security convertible into the underlying security, or an option or right to purchase the underlying security or securities convertible into the underlying security—

(a) under all circumstances; or

(b) by reason of the occurrence of an event that has occurred and is continuing;

“blocked account” means an account of a participant over which a person other than the participant exercises control pursuant to procedures established under section 123;

“broker-dealer” means a person engaging in, or holding himself out as engaging in, the business of—

- (a) effecting transactions in securities for the account of others;
- (b) buying or selling securities for his own account and who holds himself out at all normal times, as willing to buy and sell securities at prices specified by him; or
- (c) such other activities as may be prescribed;

“business combination” means an amalgamation, merger, arrangement, or similar transaction;

“business day” means any day on which institutions licensed under the Financial Institutions Act are open for the conduct of business in Trinidad and Tobago;

“By-law” means any by-law made under section 148;

“Central Depository” means the Trinidad and Tobago Central Depository Limited;

“Chairman” means the Chairman of the Commission appointed under section 10;

“clearing agency” includes the Central Depository and any entity that—

- (a) maintains records of trades of securities for the purpose of settling claims for money and securities;
- (b) maintains records of transfers and pledges of securities for the purpose of permitting securities to be transferred by record entry;

- (c) holds security certificates deposited with it for the purpose of permitting securities to be transferred by record entry;
- (d) acts as an intermediary in paying funds or delivering securities, or both, in connection with trades and other transactions in securities;
- (e) provides centralized facilities for the clearing of trades and other transactions in securities, including facilities for comparing data in respect of the terms of settlement of a trade or transaction; or
- (f) provides centralized facilities as a depository of securities,

but does not include a broker-dealer or financial institution acting exclusively in the ordinary course of its business;

“cohabitant” has the meaning assigned to it in the Cohabital Relationships Act;

Chap. 45:55

“collective investment scheme” means any arrangement with respect to property of any description including money—

- (a) the purpose or effect of which is to enable persons taking part in the arrangement, whether by becoming owners of the property or any part of it, or otherwise to participate in or receive profits or income arising from the acquisition, holding, management

or disposal of the property or sums paid out of such profits or income; and

(b) that does not invest—

(i) for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is itself a collective investment scheme; or

(ii) for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is itself a collective investment scheme;

“Commission” means the Trinidad and Tobago Securities and Exchange Commission established under section 5;

“Commissioner” means any person appointed under section 10 as a Commissioner or temporary Commissioner;

“commodity” in relation to a contract, means any produce, item, goods or article and includes an index, right or interest in such commodity of any nature as may be prescribed;

“communications” has the meaning assigned to it in the Interception of Communications Act, 2010;

“contingency fund” means a fund established by a self-regulatory organization under section 47 created for the purpose of

compensating customers for losses resulting from the insolvency, bankruptcy or default of a member of the Stock Exchange;

“control” in relation to an issuer, means the power of a person, or persons acting jointly or in concert, by virtue of the holding of securities of the issuer, or by virtue of any agreement, arrangement, commitment or understanding with any person or persons, to direct that the business and affairs of the issuer be conducted in accordance with the wishes of such person or persons, and is—

- (a) deemed to exist where the person or persons exercise control or direction over more than fifty per cent of the voting power in, or in relation to, that issuer; and
- (b) presumed to exist where the person or persons exercise control or direction over more than thirty per cent of the voting power in, or in relation to, that issuer;

“control” in relation to a security, is deemed to exist where—

- (a) the person, directly or indirectly, directs the trading or voting of the security;
- (b) the security is owned by an issuer that the person controls; or
- (c) the security is owned by an affiliate of the person or by an issuer that the person controls;

“derivative” means an option, swap, futures contract, forward contract, or other financial or commodity contract or instrument whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from reference to or based on an underlying interest (including a value, price, rate, variable, index, event, probability or thing), but does not include any contract or instrument that is prescribed not to be a derivative or that by reason of By-law under section 148(1)(*tt*) is not a derivative;

“designated foreign jurisdiction” means a jurisdiction that is declared to be a designated foreign jurisdiction under subsection (9);

“designated rating organization” means a rating organization that is declared to be a designated rating organization under subsection (9);

“director” means a director of a company or an individual performing a similar function or occupying a similar position for or in relation to an entity, including the trustee of a trust;

“distribution” means a trade—

- (a) in securities of an issuer that have not previously been issued;
- (b) in previously issued securities of an issuer that have been redeemed, repurchased or otherwise re-acquired by the issuer;

- (c) by an underwriter, acting as underwriter, in previously issued securities which were purchased from the issuer by such underwriter less than six months prior to such trade;
- (d) in previously issued securities of an issuer from the aggregate holdings of any person, or combination of persons acting jointly, where the number of securities of that class held by the person, or combination of persons acting jointly—
 - (i) enables or permits the person, or combination of persons acting jointly, to elect or appoint a majority of the board of directors, or exercise control or direction over the management or policies of the issuer; and
 - (ii) is equal to or exceeds thirty per cent of the outstanding voting securities of the issuer,

whether or not in the course of any transaction or series of transactions;

“entity” means a body corporate, trust, partnership, collective investment scheme, fund or other unincorporated enterprises or organizations;

“expert” means an attorney-at-law, engineer, accountant, valuator or any other person whose profession or reputation gives authority to a statement made by him;

“filing” means the submission of a document or instrument to the Commission pursuant to a requirement under this Act;

“financial group” means a group of companies under common control comprising a registrant and any other entity which conducts material activities in at least one sector regulated by the Central Bank of Trinidad and Tobago;

“financial institution” means a company licensed under the Financial Institutions Act;

“Financial Intelligence Unit” means the Financial Intelligence Unit established under section 3 of the Financial Intelligence Unit of Trinidad and Tobago Act, 2009;

Act No. 11 of 2009

“financial reporting standards” means IFRS or such other accounting standards that are declared to be financial reporting standards under subsection (9);

“foreign disclosure requirements” means the public disclosure requirements to which a foreign issuer is subject by a securities regulatory authority, securities commission or securities exchange in a designated foreign jurisdiction;

“form of proxy” means a written or printed form that, upon completion and signature by or on behalf of a security holder, becomes a proxy;

“former Act” means the Securities Industry Act, repealed by this Act;

Chap. 82:03

“government entity” means the Government of the Republic of Trinidad and Tobago, the Tobago House of Assembly, the Central

Bank of Trinidad and Tobago or any department or agency thereof that is otherwise prescribed;

“ICATT” means the Institute of Chartered Accountants of Trinidad and Tobago;

“IFRS” means International Financial Reporting Standards issued by the International Accounting Standards Board and as adopted by ICATT;

“Inspector” means the Inspector of Financial Institutions appointed under the Financial Institutions Act, and includes any person appointed to act temporarily for him;

“interim period” means a period commencing on the first day of the financial year and ending three, six or nine months after the start of the financial year or as otherwise prescribed;

“international agency” means—

- (a) the International Bank for Reconstruction and Development;
- (b) the Inter-American Development Bank;
- (c) the Caribbean Development Bank;
- (d) the Asian Development Bank;
- (e) the African Development Bank;
- (f) the European Bank for Reconstruction and Development;
- (g) the International Finance Corporation; or
- (h) any other person declared to be an international agency under subsection (9);

“investment advice” means advice with respect to an investment in, or the purchase, sale or holding of, a security;

“investment adviser” means a person engaging in, or holding himself out as engaging in, the business of providing investment advice, and includes a person that provides investment advice to a manager of a collective investment scheme;

“investment contract” includes any contract, transaction, plan, scheme, instrument or writing, whereby a person invests money or other property in a common enterprise with the expectation of profit or gain based on the expertise, management or effort of others, and such money or other property is subject to the risks of the common enterprise;

“investment decision” means a decision to purchase, transfer, hold or sell securities;

“issuer” means a person that has securities outstanding or issues, or proposes to issue or distribute, a security;

“issuer bid” means an offer to acquire or redeem securities of an offeree issuer made by the offeree issuer to any security holder of the offeree issuer and includes a purchase, redemption or other acquisition of securities of the offeree issuer by the offeree issuer from any such person, but does not include an offer to acquire or redeem debt securities that are not convertible into securities other than debt securities;

“limited offering” means a distribution by a private issuer where—

- (a) following the completion of such distribution, the number of security holders of the issuer is not greater than thirty-five persons exclusive of senior officers and employees or former senior officers and employees of the issuer and its affiliates; and
- (b) no selling or promotional expenses are paid or incurred in connection with the distribution except for professional services or services provided by a registrant under section 51(1),(2), or (5);

“management discussion and analysis” means a discussion and analysis of the comparative financial statements by senior officers of a registrant;

“manager of a collective investment scheme” means a person who directs the business, operations or affairs of a collective investment scheme;

“market actor” means—

- (a) a registrant;
- (b) a person exempted under this Act from the requirement to be registered;
- (c) senior officer, or promoter of a reporting issuer;
- (d) a custodian of assets, shares or units of a collective investment scheme;
- (e) a self-regulatory organization;

- (f) a designated rating organization;
- (g) a transfer agent for securities of a reporting issuer;
- (h) a registrar for securities of a reporting issuer;
- (i) the partner of a market actor;
- (j) a contingency fund required under Part III of this Act;
- (k) a settlement assurance fund required under Part III of this Act;
- (l) a securities market;
- (m) a clearing agency; or
- (n) any other person or member of a class of persons prescribed to be a market actor;

“material change” means—

- (a) when used in relation to an issuer other than a collective investment scheme, a change in the business, operations, assets or ownership of an issuer, the disclosure of which would be considered important to a reasonable investor in making an investment decision and includes a decision to implement such a change made by the directors of the issuer or other persons acting in a similar capacity; or
- (b) when used in relation to an issuer that is a collective investment scheme, a change in the business, operations or affairs of the issuer, the disclosure which would be considered important by a reasonable investor in determining whether to purchase, sell or

transfer or continue to hold securities of the issuer, and includes a decision to implement such a change made by the directors of the issuer or the directors of the manager of the issuer or other persons acting in a similar capacity;

“material fact” means, when used in relation to the affairs of an issuer or its securities, a fact or a series of facts, the disclosure of which would be considered important to a reasonable investor in making an investment decision;

“material non-public information” means, in relation to securities of a reporting issuer, any material fact or material change that has not been published;

“Minister” means the Minister to whom responsibility for finance is assigned;

“misrepresentation” means—

- (a) an untrue statement of a material fact or material change; or
- (b) an omission to state a material fact or material change that is required to be stated or is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it is made;

“offeree issuer” means an issuer—

- (a) whose securities are the subject of a take-over bid, an issuer bid or an offer to acquire; and

- (b) who has at least one security holder resident in Trinidad and Tobago, whether or not the take-over bid, issuer bid or offer to acquire is made to a security holder resident in Trinidad and Tobago;

“offer to acquire” includes—

- (a) an offer to purchase, or a solicitation of an offer to sell securities;
- (b) an acceptance of an offer to sell securities, whether or not such offer to sell has been solicited,

or any combination thereof, and the person accepting an offer to sell shall be deemed to be making an offer to acquire from the person that made the offer to sell;

“participant” means a person who receives non-exclusive service from a clearing agency or through another person who acts as—

- (a) a pledgee;
- (b) a judgment creditor; or
- (c) a beneficial owner,

for whom a blocked account in a clearing agency is established;

“prescribed” means as prescribed in the By-laws;

“person” includes an entity;

“private issuer” means an issuer—

- (a) that is not a reporting issuer;
- (b) whose securities, other than non-voting debt securities—
- (i) are subject to restriction on transfer; and

- (ii) are beneficially owned by no more than thirty-five persons, not including employees and former employees of the issuer;
- (c) that does not engage in the business of trading in securities or raising money in the securities market on a frequent basis; and
- (d) that meets such other requirements as may be prescribed;

“promoter” means a person that takes the initiative in founding, organizing or substantially reorganizing an issuer;

“proxy” means a completed and signed form of proxy by means of which a holder of voting securities of an issuer appoints a proxy holder to attend and act on his behalf at a meeting of security holders;

“publication” includes any information disclosed, circulated or disseminated, whether—

- (a) by any visit in person;
- (b) in a newspaper, magazine, journal or other publication;
- (c) by the display of posters or notices;
- (d) by means of circulars, brochures or pamphlets;
- (e) by way of sound or broadcasting, including television or radio broadcasting;
- (f) by any information system or electronic device; or

(g) by any other means, whether mechanically, electronically, magnetically, optically, manually or by way of production or transmission of light, image or sound, or by any other medium;

“published” when used in relation to the disclosure of a material fact or material change, means—

(a) published in two daily newspapers of general circulation in Trinidad and Tobago; or

(b) made available to the public in such manner as approved by the Commission;

“purchase” includes—

(a) any acquisition of a security for valuable consideration, whether the terms of payment are on margin, installment or otherwise; and

(b) any act, advertisement, conduct or negotiation, directly or indirectly, done in furtherance of paragraph (a),

but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a *bona fide* debt;

“quotation and trade reporting system” means a facility that disseminates price quotation for the purchase and sale of securities and reports of completed transactions in securities for the exclusive use of subscribers, but does not include a securities exchange, ATS or a registrant;

“rating organisation” means an organisation that issues ratings in relation to the creditworthiness of an entity or the financial obligations issued by an entity by employing either a quantitative or qualitative model or both;

“records” means—

- (a) books of account, bank accounts and other bank records, correspondence, notes, memoranda and any other books, accounts, documents, data or information relating to the property or affairs of a person; or
- (b) data or information prepared or maintained in a bound or loose leaf form or in a photographic film form or entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written or other visual form, within a reasonable time;

“registered representative” means an individual required to be registered under section 51(2);

“registrant” means a person registered or required to be registered under Part IV;

“relative” in respect of any person means the spouse, a cohabitant as defined in the Cohabital Relationships Act, parent, grandparent, brother, sister, children, the children of a cohabitational relationship, adopted children and step-children of the person;

“reporting issuer” means an issuer—

- (a) that was immediately before the coming into force of this Act, a reporting issuer under the former Act;
- (b) that is registered or is required to be registered under this Act as a reporting issuer;
- (c) any of whose securities are listed on a registered securities market; or
- (d) whose existence continues or who comes into existence following a takeover, business combination or other reorganization involving an exchange of securities in which one of the parties was a reporting issuer at the time of the transaction,

but does not include a government entity or international agency;

“right to acquire a security” means—

- (a) a security convertible or exchangeable into another security;
- (b) a security carrying a warrant or right to acquire another security; or
- (c) a currently exercisable option, warrant or right to acquire another security or security specified in paragraph (a) or (b);

“sale” includes—

- (a) a disposition of a security for valuable consideration, whether

the terms of payment are on margin, installment, or otherwise; and

- (b) any act, advertisement, conduct or negotiation directly or indirectly done in furtherance of paragraph (a),

but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a *bona fide* debt;

“Secretary” means the Secretary of the Commission appointed under section 24;

“securities exchange” means an entity which maintains or provides—

- (a) physical facilities where persons may meet to execute trades in securities; or
- (b) a mechanical, electronic or other system that facilitates execution of trades in securities by matching offers of purchase and sale,

and includes the Stock Exchange;

“securities market” means—

- (a) a securities exchange, quotation and trade reporting system, ATS; or
- (b) any other person that—
 - (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities;
 - (ii) brings together the orders for securities of multiple buyers and sellers; and

- (iii) uses established, non-discretionary methods under which the orders interact with each other and buyers and sellers entering the orders agree to the terms of a trade;

“securities register” means a record or records maintained by or on behalf of an issuer in which the securities issued by the issuer are recorded showing with respect to each class or series of securities—

- (a) the name and address of each registered security holder of the issuer;
- (b) the number of securities held by each security holder; and
- (c) the date and particulars of the issue and transfer of each security;

“security” includes any document, instrument or writing evidencing ownership of, or any interest in, the capital, debt, property, profits, earnings or royalties of any person and without limiting the generality of the foregoing, extends to—

- (a) any bond, debenture, note or other evidence of indebtedness;
- (b) any share, stock, unit, unit certificate, participation certificate, certificate of share or interest;
- (c) any document, instrument or writing commonly known as a security;
- (d) any document, instrument or writing evidencing an option, subscription or other interest in or to a security;
- (e) any investment contract;

- (f) any asset-backed security;
- (g) any document, instrument or writing constituting evidence of any interest or participation in—
 - (i) a profit-sharing arrangement or agreement;
 - (ii) a trust; or
 - (iii) an oil, natural gas or mining lease, claim or royalty or other mineral right;
- (h) any agreement under which the interest of the purchaser is valued for the purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets;
- (i) any derivative; or
- (j) any right to acquire or dispose of anything specified in paragraphs (a) to (i),

but does not include—

- (i) currency;
- (ii) a cheque, bill of exchange, or bank letter of credit;
- (iii) a certificate or document constituting evidence of any interest in a deposit account with—
 - (A) a financial institution;
 - (B) a credit union within the meaning of the Co-operative Societies Act; Chap. 81:03
 - (C) a registrant under the Insurance Act; or Chap. 81:04
- (iv) a contract of insurance;

“self-regulatory organization” means—

- (a) a clearing agency;
- (b) securities exchange;
- (c) an association of market actors registered or required to be registered under this Act; or
- (d) such other entity, that sets standards for or monitors the conduct of its members or participants relating to, trading in, or advising on securities;

“senior officer” means the members of the board of directors of an entity, the managing director, the chief executive officer, chief operating officer, the deputy managing director, the president, the vice-president, the secretary, the treasurer, the chief financial officer, the financial controller, the general manager, the deputy general manager, corporate secretary, chief accountant, chief auditor, chief investment officer, chief compliance officer and chief risk officer of an entity or any other individual who performs functions for an entity similar to those normally performed by an individual occupying any such office;

“settlement assurance fund” means a fund established by a self-regulatory organization under section 47 to ensure continuity in securities clearing and settlement in the event of the failure to settle a transaction by a participant of a clearing agency;

“sponsored broker dealer” means an individual who is registered under section 51(5) to conduct business in securities in Trinidad and Tobago on behalf of a broker-dealer (or the equivalent or similar) under the

securities legislation of a designated foreign jurisdiction;

“sponsored investment adviser” means an individual who is registered under section 51(5) to provide investment advice in Trinidad and Tobago on behalf of an investment adviser (or the equivalent or similar) under the securities legislation of a designated foreign jurisdiction;

“Stock Exchange” means the Trinidad and Tobago Stock Exchange Limited;

“subsidiary” means an entity that is controlled by another entity;

“take-over bid” means an offer to acquire outstanding voting or equity securities of a class made to any security holder of the offeree issuer where the securities, subject to the offer to acquire, together with the offeror’s security, constitute in the aggregate thirty per cent or more of the outstanding securities of that class of securities at the date of the offer to acquire;

“temporary Commissioner” means a person appointed under section 10(4) or (6);

“trade” includes—

- (a) any sale or purchase of a security;
- (b) any participation as a registrant or agent in any transaction in a security; or
- (c) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any activity referred to in paragraph (a) or (b);

“trader” means an individual employed by a broker-dealer to participate in any transaction in securities;

“underwriter” means a person who—

- (a) as principal, agrees to purchase a security for the purpose of a distribution;
- (b) as agent, offers for sale or sells a security in connection with a distribution; or
- (c) participates directly or indirectly in a distribution described in paragraph (a) or (b) for valuable consideration,

but does not include—

- (i) a person whose interest in the transaction is limited to receiving the usual and customary distribution or sales commission payable by an underwriter or issuer; or
- (ii) a company that purchases shares of its own issue and resells them; and

“voting security” means a security carrying voting rights—

- (a) under all circumstances; or
- (b) by reason of the occurrence of an event that has occurred and is continuing,

and includes a right, other than a call option, to acquire such a security.

(2) For the purposes of this Act—

- (a) one entity is affiliated with another entity if one of them is the subsidiary of the other or

- both are subsidiaries of the same entity, or each of them is controlled by the same person;
- (b) if two entities are affiliated with the same entity at the same time, they are affiliated with each other;
 - (c) an entity is the holding entity of another if that other entity is its subsidiary; and
 - (d) a person that is not a body corporate or an individual is considered to be an affiliated person of another person, including a body corporate, if it is controlled by that other person, provided that a person is controlled by another person where—
 - (i) in the case of a partnership, the second-mentioned person owns or holds more than fifty per cent of the interest in the partnership; and
 - (ii) in the case of the first-mentioned person other than a body corporate, an individual, or a partnership, securities of the first-mentioned person carrying more than fifty per cent of the interests in such person, are held or owned, by or for the benefit of the second-mentioned person.
- (3) For the purposes of this Act, a person is connected to a reporting issuer if the person—
- (a) is a senior officer of the reporting issuer;
 - (b) is a senior officer of—
 - (i) an affiliate of the reporting issuer; or
 - (ii) any person who beneficially owns, directly or indirectly, or exercises control or direction over voting securities of the reporting issuer, or a

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- combination of both, carrying more than ten per cent of the votes attached to all voting securities of the reporting issuer outstanding;
- (c) beneficially owns, directly or indirectly, or exercises control or direction over, voting securities of the reporting issuer, or a combination of both, carrying more than ten per cent of the votes attached to all voting securities of the reporting issuer outstanding;
- (d) is engaging in or is proposing to engage in, whether alone or with any other person—
- (i) a take-over bid for any securities of the reporting issuer;
 - (ii) any amalgamation, merger or similar business combination with the reporting issuer; or
 - (iii) any other material transaction with or including the reporting issuer;
- (e) is engaging in or is proposing to engage in any business or professional activity with or on behalf of the reporting issuer or any person identified in paragraph (d), or is an employee of any such person or of the reporting issuer or any affiliate;
- (f) learns, directly or indirectly, of material non-public information with respect to a reporting issuer from any person and knows, or ought reasonably to have known, that the other person is connected to the reporting issuer; or
- (g) is an expert retained or hired by—
- (i) a reporting issuer; or
 - (ii) a person described in paragraph (d); or

(*h*) is a relative of a senior officer of the reporting issuer; or

(*i*) is an entity that is controlled by a person referred to in paragraph (*a*), (*b*) or (*h*).

(4) Notwithstanding subsection (3), a person connected to a reporting issuer is deemed to have continued to be connected to a reporting issuer—

(*a*) in the case of subsection (3)(*a*), (*b*), (*c*), (*e*) or (*g*), six months after the day that the person otherwise ceases to be connected to a reporting issuer;

(*b*) in the case of subsection (3)(*d*), until the time any transaction described in that subsection is published; and

(*c*) in the case of subsection (3)(*f*), until such material non-public information is published.

(5) For the purposes of this Act, a trade shall be presumed to occur in Trinidad and Tobago in the absence of evidence to the contrary where—

(*a*) in the case of an act, advertisement, solicitation, conduct or negotiation in furtherance of a purchase or sale of a security, whether direct or indirect, such act, advertisement, solicitation, conduct or negotiation is—

(i) made by mail or courier, telephone or facsimile transmission, with or to a person in Trinidad and Tobago, whether or not solicited by such person;

(ii) made by electronic correspondence, where the recipient of the e-mail correspondence is in Trinidad and Tobago, and the sender has knowledge that the recipient of such

electronic correspondence is in Trinidad and Tobago, or after reasonable inquiry, should have known, that the recipient of such electronic correspondence is in Trinidad and Tobago, whether or not solicited by such person; or

- (iii) in the case of securities offerings made available on the Internet, the web pages and documents in respect of that offering, may be accessed by persons resident in Trinidad and Tobago, unless the document or web page contains a prominent disclaimer that expressly identifies the jurisdictions in which the offering is qualified to be made, and reasonable precautions are taken to ensure that no actual sales occur to persons in Trinidad and Tobago unless done in compliance with this Act; or

(b) the purchaser of the security is in Trinidad and Tobago.

(6) For the purposes of this Act, a person shall be presumed to be providing investment advice in Trinidad and Tobago in the absence of evidence to the contrary where—

- (a) such person contacts or solicits by telephone or facsimile a person in Trinidad and Tobago for the purpose of offering or providing investment advice, whether or not solicited by such person;
- (b) such person sends electronic correspondence, for the purpose of offering or providing investment advice, where the recipient of the electronic correspondence is in Trinidad and Tobago, and the sender has knowledge that the recipient of such electronic

correspondence is in Trinidad and Tobago, or after reasonable inquiry, should have known that the recipient of such e-mail correspondence is in Trinidad and Tobago, whether or not solicited by such person;

- (c) such person sends correspondence by mail or courier for the purpose of offering or providing investment advice to an address in Trinidad and Tobago, whether or not solicited by any person resident at such address; or
- (d) such person provides investment advice to a person in Trinidad and Tobago.

(7) For the purposes of this Act, “futures contract” means rights under a contract for the sale or purchase of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed upon when the contract is made, other than a contract made for commercial and not investment purposes and for the purposes of this definition—

- (a) a contract is to be regarded as made for investment purposes if it is made or traded on a recognised securities exchange, or is made otherwise than on a recognised securities exchange, but is expressed to be traded on such an exchange or on the same terms as those on which an equivalent contract would be made on such an exchange;
- (b) the following are indications that a contract is made for commercial purposes—
 - (i) the terms of the contract delivery is made within seven days;

- (ii) one or more of the parties is a producer of the commodity or other property or uses it in business; or
- (iii) the seller delivers or intends to deliver the property or the purchaser takes or intends to take delivery of it,

and the absence of them is an indication that it is made for investment purposes;

- (c) it is an indication that a contract is made for commercial purposes that the prices, the lot, the delivery date or other terms are determined by the parties for the purposes of the particular contract and not by reference, or not solely by reference, to regularly published prices, to standard lots or delivery dates or the standard terms;
- (d) the following are indications that a contract is made for investment purposes:
 - (i) it is expressed to be as traded on a securities exchange;
 - (ii) performance of the contract is ensured by a securities exchange or a clearing house; or
 - (iii) there are arrangements for the payment or provisions of margin.

(8) For the purposes of subsection (7), a price is taken to be agreed on when a contract is made—

- (a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into at a time and place specified in the contract; or
- (b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is

made for a variation in the price to take account of any variation in quantity or quality on delivery.

(9) For the purposes of this Act, the Commission may, by Order, declare—

- (a) a foreign jurisdiction to be a designated foreign jurisdiction;
- (b) a rating organization to be a designated rating organization;
- (c) a person to be an international agency; or
- (d) any accounting standards to be financial reporting standards.

PART II

THE SECURITIES AND EXCHANGE COMMISSION

Division 1—Establishment, Function and Power

5. There is hereby established a body corporate, which shall be known as the Trinidad and Tobago Securities and Exchange Commission. Establishment of the Commission

6. The functions of the Commission are to— Functions of the Commission

- (a) advise the Minister on all matters relating to the securities industry;
- (b) maintain surveillance over the securities industry and ensure orderly, fair and equitable dealings in securities;
- (c) register, authorize or regulate, in accordance with this Act, self-regulatory organizations, broker-dealers, registered representatives, underwriters, issuers and investment advisers, and control and supervise their activities with a view to maintaining proper standards of conduct and professionalism in the securities industry;

- (d) regulate and supervise the timely, accurate, fair and efficient disclosure of information to the securities industry and the investing public;
- (e) conduct such inspections and examinations of self-regulatory organizations, broker-dealers, registered representatives, underwriters, issuers and investment advisers as may be necessary for giving full effect to this Act;
- (f) protect the integrity of the securities market against any abuses arising from market manipulating practices, insider trading, conflicts of interest, and other unfair and improper practices;
- (g) educate and promote an understanding by the public of the securities industry and the benefits, risks, and liabilities associated with investing in securities;
- (h) co-operate with and provide assistance to regulatory authorities in Trinidad and Tobago, or elsewhere;
- (i) ensure compliance with the Proceeds of Crime Act, any other written law in relation to the prevention of money laundering and combating the financing of terrorism or any other written law that is administered or supervised by the Commission;
- (j) create and promote such conditions in the securities industry as may seem to it necessary, advisable or appropriate to ensure the orderly growth, regulation and development of the securities industry and to further the purposes of this Act; and
- (k) co-operate with other jurisdictions in the development of a fair and efficient securities industry.

7. (1) For the purpose of the discharge of its functions,^{Powers of the Commission} the Commission has power to—

- (a) formulate principles for the guidance of the securities industry;
- (b) treat with such matters as may be referred to it by any person from time to time;
- (c) register and regulate market actors in accordance with this Act;
- (d) monitor the solvency of registrants, securities markets and self-regulatory organizations and take measures to protect the interest of investors where the solvency of any such person is in doubt;
- (e) adopt measures to supervise and minimize any conflict of interest that may arise in the case of registrants or self-regulatory organizations and where appropriate other market actors;
- (f) review, approve and regulate takeovers, amalgamations and all forms of business combinations in accordance with this Act or any other written law in all cases in which it considers it expedient or appropriate to do so;
- (g) review the contents of prospectuses and issue receipts therefor, and review any form of solicitation, advertisement or announcement by which securities are proposed to be distributed;
- (h) take enforcement action against any person for failing to comply with this Act;
- (i) recommend By-laws to the Minister;
- (j) formulate, prepare and publish notices, guidelines, bulletins and policies describing the views of the Commission regarding the interpretation, application, or enforcement of this Act;
- (k) make orders;

(l) undertake such other activities as are necessary or expedient for giving full effect to this Act; and

(m) do all things, and take all actions, which may be necessary, expedient, incidental or conducive to the discharge of any of its functions and the exercise of its powers under this Act.

(2) The Commission may, in writing require any market actor to furnish it with such information as it may require for the exercise of its functions within such time and verified in such manner as it may specify.

(3) A market actor that is required to furnish information to the Commission in accordance with subsection (2) shall furnish the required information, within the time specified and verified in the manner specified by the Commission.

Delegation of
powers

8. (1) For the purposes of the administration of this Act, the Commission may, by order, delegate any responsibility, power or function conferred on it by this Act to any—

(a) Commissioner;

(b) senior officer of the Commission; or

(c) self-regulatory organization registered under this Act.

(2) Notwithstanding subsection (1), the Commission shall not delegate its powers to—

(a) make By-laws; or

(b) hear appeals under section 160.

(3) A delegation pursuant to subsection (1) shall not preclude the exercise by the Commission of any power, duty, function or responsibility so delegated.

(4) All decisions made, and minutes of all meetings held by a delegatee under subsection (1) shall as soon as practicable be recorded in writing.

(5) A delegatee shall forthwith notify the Commission of every decision made by him.

(6) Any minutes recorded under subsection (4) shall as soon as practicable be forwarded to the Commission.

(7) The Commission may, on its own motion, review a decision made by a delegatee and where it intends to do so, the Commission shall, within thirty days of the decision, notify the delegatee and the person directly affected by the decision of the date, time and venue of the hearing to review the decision.

(8) For the purposes of this section, “senior officer of the Commission” means a person holding or acting in the office of—

- (a) chief executive officer;
- (b) deputy chief executive officer;
- (c) General Counsel; or
- (d) director,

of the Commission.

9. (1) The seal of the Commission shall be kept in the custody of the Chairman or the Secretary, as the Commission may determine, and shall be affixed to instruments in the presence of the Chairman or in the Chairman’s absence of the Deputy Chairman, or the Secretary. ^{Custody and use of seal}

(2) The seal of the Commission shall be attested by the signature of the Chairman or in the Chairman’s absence the Deputy Chairman, and the Secretary.

(3) All documents, other than those required by law to be under seal, and all orders and decisions of the Commission may be signified under the hand of the Chairman or in the Chairman’s absence of the Deputy Chairman, or the Secretary.

(4) Service upon the Commission of any notice, order or other document shall be effected by delivering the same, or by sending it by registered post addressed to the Secretary at the office of the Commission.

Division 2—Membership

Constitution of
Commission

10. (1) Subject to subsection (6) the Commission shall consist of no more than nine nor fewer than five individuals, including—

- (a) an attorney-at-law of at least ten years standing; and
- (b) a representative from the Ministry of Finance.

(2) The President shall appoint all the Commissioners and shall appoint one of their number to be its Chairman.

(3) The Commissioners, other than those referred to in subsection (1)(a) and (b), shall be selected from among persons who have—

- (a) been awarded degrees or professional qualifications; and
- (b) have a minimum of five years post-graduation experience,

in law, finance, business, economics, accounting, securities, investment or management.

(3A) The Minister shall appoint a Deputy Chairman.

(4) Where a Commissioner is unable to perform his functions as Commissioner, by reason of illness, absence from Trinidad and Tobago, or otherwise, the President may appoint a temporary Commissioner to act in place of that Commissioner during his illness, absence or incapability, as the case may be.

(5) A temporary Commissioner appointed in accordance with subsection (4) shall have qualifications or experience similar to those of the Commissioner for whom he is appointed to act.

(6) Subject to subsection (3), where an office of Commissioner is vacant, the President may appoint a temporary Commissioner for a period not exceeding one year.

(7) In addition to the Commissioners appointed in accordance with subsection (2) the President may, on the advice of the Minister in consultation with the Commission, appoint not more than three persons with such expertise as may be required by the Commission, as *ad hoc* Commissioners for a period not exceeding one year.

(8) Subject to the terms of his appointment, a person appointed as a temporary or as an *ad hoc* Commissioner may exercise any of the functions and powers exercisable by a Commissioner under this Act.

(9) An appointment made under this section shall be published in the *Gazette*.

11. (1) A person shall not be appointed or continue as Commissioner if he— Disqualification for appointment

- (a) is an employee or senior officer of a registrant or self-regulatory organization;
- (b) directly or indirectly, as owner, security holder, director, senior officer, partner, employee or otherwise has a material pecuniary or proprietary interest in—
 - (i) a registrant; or
 - (ii) a self-regulatory organization;
- (c) is sentenced to imprisonment or is convicted of an offence involving fraud or dishonesty, whether in Trinidad and Tobago or elsewhere;
- (d) is declared bankrupt in accordance with the law of Trinidad and Tobago or any other country;
- (e) is a professional and is disqualified or suspended from practising his profession in Trinidad and Tobago or in any other country by an order of any competent authority made in respect of him personally;

(f) is unable to perform his functions because of illness or for any other reason; or

(g) contravenes this Act.

(2) For the purposes of subsection (1)(b) a pecuniary or proprietary interest is material where—

(a) it may reasonably be expected to have a significant influence on the ability of the member to make an unbiased decision; or

(b) the person has beneficial ownership of, or control or direction over more than ten per cent of the outstanding equity or voting securities of a registrant except as a trustee of a trust.

(3) If an interest referred to in subsection (1)(b) vests in a Commissioner by gift or will or succession for his own benefit, he shall—

(a) forthwith after the vesting of the interest comes to his knowledge, disclose the interest in writing to the Commission; and

(b) within three months or as soon as practicable of the vesting of the interest coming to his knowledge absolutely dispose of the interest or resign.

(4) A person who contravenes subsection (3) is liable on conviction on indictment to a fine of five hundred thousand dollars and imprisonment for two years.

Term of office
and remuneration

12. (1) Subject to this section, a Commissioner other than a temporary Commissioner, shall hold office for a period not exceeding three years and shall be eligible for reappointment.

(2) The Chairman may resign his membership by notice in writing addressed to the President.

(3) A Commissioner, other than the Chairman, may at any time resign his membership by notice in writing addressed to the President and transmitted through the Chairman.

(4) A Commissioner may be removed from membership of the Commission by the President, where he—

- (a) becomes a person of unsound mind;
- (b) is absent from three consecutive meetings of the Commission without leave of the Commission or without reasonable cause;
- (c) is guilty of misconduct in relation to his duties as a Commissioner;
- (d) is sentenced to imprisonment or is convicted of an offence involving fraud or dishonesty, whether in Trinidad and Tobago or elsewhere; or
- (e) becomes disqualified for appointment under section 11.

(5) The Chairman and the other Commissioners shall be paid such remuneration and allowances in respect of their office as the President may determine from time to time.

13. No action or other proceeding shall be instituted against a Commissioner or an employee or agent of the Commission for an act done in good faith in the performance of a duty or in the exercise of a function or power of the Commission under this Act. Protection of Commissioners, employees or agents

14. (1) Subject to subsection (3) no person shall make use of or disclose any confidential information other than for the administration or enforcement of this Act. Confidentiality

(2) Notwithstanding subsection (1) or any other written law, the Commission or any duly authorized person or entity may disclose the information referred to in subsection (1)—

- (a) pursuant to an order of the Court; or

(b) to—

- (i) a Commissioner, or an employee of the Commission;
- (ii) a representative of the government of Trinidad and Tobago duly authorized by the Minister;
- (iii) a duly authorized representative of the Central Bank, the Financial Intelligence Unit or a regulatory agency in Trinidad and Tobago;
- (iv) an expert hired or retained by the Commission; or
- (v) a duly authorized representative of a securities or financial regulatory authority outside of Trinidad and Tobago,

in connection with the administration and enforcement of this Act or similar legislation of any foreign jurisdiction if the Commission is satisfied that the information will be treated as confidential by the person or agency to whom it is disclosed and used strictly for the purpose for which it is disclosed.

(3) Subsection (1) applies to a person who receives information under subsection (2).

(4) For the purposes of this section, “confidential information” means any information obtained as result of a person’s relationship with the Commission in the course of his duties in the exercise of the Commission’s functions under this Act or any other written law that is administered by the Commission but does not include information that is or has already been made available to the public.

(5) A person who contravenes subsection (1) commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for two years.

Division 3—Proceedings of Commission

15. (1) The Commission shall ordinarily meet for ^{Meetings} dispatch of business at such time and place as the Chairman may decide but shall meet at least once in every two months.

(2) The Chairman shall, at the request in writing of not less than two Commissioners, call an extraordinary meeting of the Commission within seven days of the receipt of such request.

(3) Where the Chairman is absent from a meeting, the Deputy Chairman shall preside at the meeting.

(4) Where the Chairman and Deputy Chairman are both absent from a meeting, the Commissioners present shall elect one of their number to preside as Chairman at the meeting.

(5) The quorum at every meeting of the Commission shall be a majority of the Commissioners.

(6) All questions proposed at a meeting of the Commission shall be determined by a simple majority of the Commissioners present and voting, and where the votes are equal, the Chairman or the Commissioner presiding shall have a casting vote.

(7) The Commission may request the attendance of any person at any of its meetings, but such person shall not vote on any matter for decision by the Commission.

16. (1) Subject to subsection (3), where under this Act ^{Committees} or any other written law, the Commission is empowered or required to perform any function, the Commission may, by resolution, appoint a committee of the Commission to submit recommendations with respect to the performance of that function, or for the purpose of doing anything required or deemed expedient or necessary for the purpose of performing such function.

(2) The Commission may co-opt such persons as are required to assist in the performance of the functions of a committee appointed under subsection (1).

(3) Without prejudice to the generality of subsection (1) and subject to subsection (4), where any power or function which requires an investigation, hearing, adjudication or decision which might lead to the taking of any disciplinary measure against any person or the imposition of any penalty or order for the payment of any money by or to any person, is by this Act assigned to the Commission, such investigation or hearing may be conducted by a committee appointed under this section and shall be fully, duly and validly conducted as if conducted by the entire Commission.

(4) The Commission may by resolution, adopt the recommendations of a committee appointed under subsection (1).

Minutes

17. (1) Minutes, in proper form, of each meeting of the Commission, or a committee thereof, shall be kept under the direction of the Secretary.

(2) All decisions, resolutions, orders, or rules made, and By-laws recommended by the Commission or a committee thereof, as the case may be, shall be recorded in the minutes.

(3) The minutes shall be confirmed at the next meeting of the Commission, or the committee, as the case may be, and a copy of the minutes when prepared and confirmed shall, in the case of a committee, be forwarded to the Commission.

(4) 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.

Declaration of interest

18. (1) A Commissioner or any other person attending a meeting of the Commission who is in any way, whether directly or indirectly, interested in a

matter before the Commission shall declare his interest to the Commission and absent himself during the deliberations concerning his declaration of interests.

(2) The Commission, excluding the Commissioner whose interest is being considered, shall determine whether this interest is sufficiently material so as to constitute a conflict of interest.

(3) In the event that the Commission finds that the interest is such as to constitute a conflict of interest, the Commissioner or any other person attending a meeting of the Commission shall not take part in any deliberations or vote on that matter, and shall absent himself during such deliberations.

(4) For the purposes of this section, a Commissioner or any other person attending a meeting of the Commission shall be deemed to have an interest in a matter if he, or his nominee, is a security holder or partner in, or a senior officer of an entity having an interest or being involved in a matter before the Commission.

(5) Any person who fails to comply with subsection (1) is liable on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for two years, unless he proves that he did not know that he had an interest in the matter which was the subject of consideration at the meeting.

19. (1) The Commission may consult, co-operate with and provide information to the Central Bank of Trinidad and Tobago, the Financial Intelligence Unit, any other regulatory agency in Trinidad and Tobago or any other entity in Trinidad and Tobago in order to minimize duplication of effort and to maximize the protection of investors.

Co-operation with
Central Bank and
other agencies

(2) The Commission may co-operate with, provide information to and receive information from any of the following entities, whether in Trinidad and Tobago or elsewhere:

(a) other securities or financial regulatory authorities, exchanges, clearing agencies,

self-regulatory bodies or organizations, law enforcement agencies and other government agencies or regulatory authorities; and

(b) any person, other than an employee of the Commission, who acts on behalf of, or provides services to the Commission.

(3) The Commission may enter into a memorandum of understanding with the Stock Exchange or any other agency referred to in subsection (1) in furtherance of the purposes of this Act or any matter under this Act.

(4) The Commission may enter into a memorandum of understanding with any agency of a foreign government, foreign securities regulator, other regulatory body which regulates the financial services industry or any international association of securities regulators in furtherance of the purposes of this Act or any matter under this Act.

(5) The Commission may co-operate and participate in the work of national, regional or international organizations dealing with the regulation of the securities industry.

(6) Any information provided and received by the Commission pursuant to this section shall be confidential and shall not be disclosed except in accordance with section 14.

(7) Where the Commission takes any enforcement action against an entity, senior officer or an employee of an entity regulated by the Central Bank of Trinidad and Tobago for failing to comply with this Act, the Commission shall notify the Inspector of the enforcement action so taken.

20. (1) The Commission shall within four months of ^{Annual Report} the end of its financial year send an annual report of its activities which shall include its annual audited financial statements to the Minister who shall cause it to be laid in Parliament.

(2) Copies of the annual report under subsection (1) shall be available to the public within fourteen days after it has been laid in Parliament.

21. The Commission may, with the approval of the ^{Regulation of business} Minister, make rules—

- (a) respecting the calling of and conduct of business at meetings of the Commission;
- (b) prescribing the procedure for appeals of decisions of self-regulatory organizations and reviews of decisions of a delegatee;
- (c) establishing a code of conduct governing the activities of Commissioners and the officers and employees of the Commission in order to avoid conflicts of interest and other practices that the Commission considers undesirable;
- (d) respecting any other matter, whether or not required by this Act, relating to the organization, procedure, administration or practice of the Commission; and
- (e) respecting procedures for the initiation and holding or hearings by the Commission.

Division 4—Staff

22. (1) The Commission may, with the approval of ^{Appointment of chief executive officer} the Minister, appoint its chief executive officer who shall not be a Commissioner.

(2) The Minister shall approve the terms and conditions of appointment of the chief executive officer.

(3) The chief executive officer shall perform such functions as may be conferred on him by the Commission.

(3A) The chief executive officer is subject to the direction of the Commission and is responsible to the Commission for the execution of its policy and management of its affairs.

(4) A person who is appointed chief executive officer under this Act shall, forthwith after the appointment, declare every interest he has in any security and thereafter he shall not, while holding office as chief executive officer—

(a) participate, directly or indirectly, in any securities market operation transaction in which he has a material interest and which is subject to regulation by the Commission pursuant to this Act; or

(b) engage in any other business, vocation or employment other than that of serving as chief executive officer.

Appointment of
experts

23. (1) The Commission may appoint, hire or retain, on such terms and conditions as it may determine, an expert to assist it in any manner that it considers necessary.

(2) Where the Commission appoints an expert to advise it on the development of specific policies, By-laws or other regulatory proposals of the Commission or a self-regulatory organization, the expert shall formulate and report his views to the Commission in writing and the Commission may, if it thinks fit, make it available to the public.

Appointment of
other staff

24. The Commission shall appoint a Secretary and such other officers and employees as it considers necessary or appropriate for the efficient performance of its functions.

Transfer of officers
to the public service
and *vice versa*

25. (1) An officer in the public service or in the service of a statutory authority may, with the approval of the appropriate service commission and the Commission, consent to be transferred to the service of the Commission.

(2) The officer shall, upon transfer, have preserved his superannuation or pension rights accruing at the time of the transfer.

26. (1) An officer or employee in the public service, a ^{Transfer on secondment} statutory authority, any domestic or foreign public or private body, or of the Commission may, with the consent of the Commission and with the approval of the appropriate service commission or the relevant body, consent to be transferred on secondment to the service of the Commission, or from the service of the Commission to the public service or a statutory authority or other body, as the case may be.

(2) Where a transfer on secondment is effected, such arrangements as may be necessary, shall be made to preserve the rights of the officer or employee transferred to any pension, gratuity or other allowance for which he would have been eligible had he not been transferred.

Division 5—Financial Provisions

27. The funds and resources of the Commission shall ^{Funds and resources of the Commission} consist of—

- (a) such sums as may be appropriated by Parliament;
- (b) all fees and other sums from time to time paid, or otherwise payable, to the Commission under this Act; and
- (c) all other sums or property that may in any manner become payable in any matter related to its functions and powers.

28. For the purpose of carrying out its power or ^{Financial powers} functions, the Commission may, with the prior approval in writing of the Minister, waive or suspend any prescribed fees.

29. The funds of the Commission shall be applied in ^{Application of funds} defraying the following expenditure:

- (a) the remuneration, fees and allowances of the members of the Commission;

- (b) the salaries, fees, allowances, advances, loans, gratuities, pensions and other payments to the officers and employees of the Commission;
- (c) the capital and operating expenses, including maintenance and insurance of any property of the Commission; and
- (d) any other expenditure authorized by the Commission in the discharge of its functions and contractual obligations.

Cash deposits and
payments

30. (1) All monies of the Commission received under this Act shall be paid into a bank appointed by the Commission.

(2) All payments made out of the funds of the Commission shall be made by any person appointed to do so by the rules made under section 21.

Accounts and
audit

31. (1) The Commission shall keep proper books of accounts of—

- (a) all monies received and expended by the Commission and shall record the matters in respect of which such monies have been received and expended; and
- (b) the assets and liabilities of the Commission.

(2) Where assets are held upon any special trust, the receipts and expenditure relating to such trust shall be kept in an account separate and apart from all other receipts and expenditure.

(3) All accounts shall be kept in the principal office of the Commission for a period of six years after the last entry therein, and shall be open to inspection by Commissioners and by the auditors of the Commission.

(4) Within four months after the end of each financial year, the Commission shall cause to be prepared in respect of that year, financial statements which include—

- (a) an account of the revenue and expenditure of the Commission;

- (b) a balance sheet;
 - (c) a report setting out the activities of the Commission; and
 - (d) such other accounts as the Commission may require.
- (5) Accounts prepared in accordance with this section shall—
- (a) be audited by an auditor who is a member of, and in good standing with the ICATT and who is appointed by the Commission with the approval of the Minister; and
 - (b) be signed by the Chairman and not less than two other Commissioners.
- (6) The Secretary shall cause copies of the signed accounts to be sent to every member of the Commission, the auditor and the Minister.
- (7) The Minister may at any time request the Commission to provide him with information concerning any aspect of its administration of this Act and the Commission shall provide the information requested within fourteen days.
- (8) The Commission shall have an audit committee composed of not less than three Commissioners which shall not include temporary or *ad hoc* Commissioners.
- (9) The audit committee shall review the annual financial statements required under subsection (4) before such financial statements are approved by the Commission.
- (10) The auditor of the Commission is entitled to receive notice of every meeting of the audit committee and, if so requested by the chairman of the audit committee, shall at the expense of the Commission, attend and be heard at such meeting of the committee.

Division 6—Filing of Documents

Filing of documents
with Commission

32. All documents or instruments required to be filed with the Commission shall be filed in the prescribed manner.

Public availability of
filed documents

33. (1) The Commission shall make all documents or instruments required to be filed with it under the Act available for public inspection during the normal business hours of the Commission unless—

- (a) the Commission determines that disclosure would not be in the public interest; or
- (b) the Court directs otherwise.

(2) Subject to subsection (1), the Commission may also make all documents or instruments filed with it available to the public by posting such documents to the Commission's website.

(3) Notwithstanding subsections (1) and (2) the Commission may hold in confidence all or part of a document or instrument referred to in subsection (1) if it considers that—

- (a) a person whose information appears in the document or instrument would be unduly prejudiced by disclosure of the information; and
- (b) the privacy interest of the person outweighs the public interest in having the information disclosed.

PART III

THE TRINIDAD AND TOBAGO STOCK EXCHANGE AND
OTHER SELF-REGULATORY ORGANIZATIONS

*Division 1—The Stock Exchange and the Central
Depository*

Registration of
Stock Exchange and
Central Depository

34. (1) The Stock Exchange is deemed to be duly registered under this Act as a self-regulatory organization.

(2) The Central Depository is deemed to be duly registered under this Act as a self-regulatory organization.

35. (1) The rules, regulations and listing requirements of the Stock Exchange (hereafter referred to as “the existing rules”) approved or deemed approved by the Commission under the former Act shall be deemed to be approved by the Commission under this Act. Rules of the Stock Exchange and Central Depository

(2) Within two years after the commencement of this Act, the Stock Exchange shall review and, where necessary, amend the existing rules to ensure conformity with this Act.

(3) The Stock Exchange shall not change or amend the existing rules except in accordance with this Act.

(4) The rules, regulations and listing requirements of the Central Depository (hereinafter referred to as “the existing rules”) approved or deemed approved by the Commission under the former Act shall be deemed to be approved by the Commission under this Act.

(5) Within two years after the coming into force of this Act, the Central Depository shall review and, where necessary, amend the existing rules to ensure conformity with this Act.

(6) The Central Depository shall not change or amend the existing rules except in accordance with this Act.

Division 2—Self-Regulatory Organizations

36. (1) No person shall carry on business or activities as a self-regulatory organization unless registered as a self-regulatory organization under this Part. Registration of a self-regulatory organization

(2) Application for registration pursuant to subsection (1) shall be made to the Commission in the

prescribed form and shall be accompanied by such fees as may be prescribed.

(3) The registration of a person as a self-regulatory organization shall be valid for a period of one year from the date of registration, and subject to this Act, the Commission may renew the registration of a person annually on the payment of the prescribed fee and upon compliance with such other conditions as the Commission may determine.

(4) A person who is registered under this Part shall report to the Commission such information as may be prescribed.

Registration
requirements

37. (1) A person shall not be registered as a self-regulatory organization unless that person—

(a) proposes to—

- (i) engage in the securities industry;
- (ii) conduct activities as a clearing agency or securities exchange; or
- (iii) conduct any other activities as may be prescribed;

(b) is a body corporate—

- (i) under the laws of Trinidad and Tobago; or
- (ii) under the laws of any other jurisdiction and is registered in Trinidad and Tobago;

(c) has a body of rules for the governance of its members that comply with the requirements of this Part; and

(d) is fit and proper for registration as a self-regulatory organization.

(2) An association of market actors may apply to the Commission for registration as a self-regulatory

organization provided it satisfies the requirements of paragraphs (b) to (d) of subsection (1).

(3) In considering whether an applicant for registration as a self-regulatory organization under this Part is fit and proper for registration, the Commission shall consider the financial condition, proficiency, integrity, and competency of such applicant and any additional requirements as may be prescribed.

38. (1) Subject to subsections (3), (4) and (6), the Commission shall grant an application for registration as a self-regulatory organization.

(2) Forthwith after receipt of an application for registration as a self-regulatory organization under this Part, the Commission shall publish in two daily newspapers of general circulation in Trinidad and Tobago, a notice inviting any interested person to submit written comments on the application.

(3) Subject to subsection (5), the Commission shall refuse an application for registration where—

- (a) the applicant is not organized in a manner or does not have the capacity and resources that enable it to comply with this Act and to enforce compliance by its members and their employees with its rules of governance;
- (b) the applicant does not meet the requirements set out in section 37(1);
- (c) the rules of governance of the applicant do not comply with this Act; or
- (d) the Commission determines that it would not be in the public interest to grant registration as a self-regulatory organization to the applicant.

(4) The Commission may refuse an application for registration if the applicant or a senior officer of the applicant would be refused registration as a registrant.

(5) In considering whether to grant an application for registration, the Commission shall, in particular, take into account the rules of governance of the applicant that relate to—

- (a) prices, fees or rates charged by members of the applicant for services;
- (b) conditions of entry into the securities industry through membership in the applicant or otherwise;
- (c) the structure or form of a member or participant;
- (d) the quantity or quality of services furnished by a member or participant; and
- (e) any type of restraint on competition.

(6) Where the Commission grants an application for registration as a self-regulatory organization, it shall, where necessary, require a change in the rules of governance of the applicant to ensure its fair administration or to make the proposed rules of governance conform to the requirements of, or otherwise further the purposes of, this Act.

(7) On application by a registered self-regulatory organization, the Commission may accept, subject to such terms and conditions as it may impose, the voluntary surrender of registration of a self-regulatory organization, if the Commission is satisfied that the voluntary surrender of registration of the self-regulatory organization would not be prejudicial to the public interest.

Obligatory rules of
governance

39. (1) The rules of governance of an applicant for registration as a self-regulatory organization shall contain provisions—

- (a) for the protection of investors and the public interest;
- (b) for fostering co-operation and co-ordination among persons who clear, settle, regulate, process information about, and facilitate trades in securities;

- (c) ensuring representation of its members on the board of the applicant;
- (d) for the imposition of reasonable fees and charges for the use of its facilities and services;
- (e) relating to the disciplining of a member or employee of a member who is in breach of its rules of governance or this Act and without prejudice to the generality of the foregoing, may provide for censure, fine, suspension, expulsion, limitation of activities, functions or operations, suspension of, or exclusion from employment;
- (f) specifying the procedure required to implement section 43 for disciplinary proceedings, refusal of membership, prohibition from employment, or prohibition or limitation of access to services furnished by it or its members; and
- (g) for such other matters as may be prescribed.

(2) Without prejudice to subsection (1), the rules of governance of an applicant for registration as a securities exchange shall also contain provisions designed to—

- (a) prevent deceptive, fraudulent and manipulative acts and practices;
- (b) promote fair trading practices and to facilitate an efficient market; and
- (c) ensure that a broker-dealer may become a member of the securities exchange.

(3) Without prejudice to subsection (1), the rules of governance of an applicant for registration as a clearing agency shall also contain provisions designed to—

- (a) develop and operate a prompt and accurate clearance and settlement system;

- (b) safeguard money and securities in its custody or under its control or for which it is responsible; and
- (c) provide, subject to section 43, that a broker-dealer, a financial institution, another clearing agency or a person or class of persons designated by the Commission may become a participant in the clearing agency.

(4) The rules of governance of an applicant for registration as a self-regulatory organization shall not—

- (a) permit unfair discrimination among persons who use its facilities; or
- (b) restrain competition to an extent not necessary to achieve the objectives specified in subsections (1) to (3).

Procedure on
proposed
amendment to rules
of governance

40. (1) A self-regulatory organization may only amend its rules of governance in accordance with this section.

(2) Where a self-regulatory organization proposes to amend its rules, it shall file with the Commission a copy of the proposed amendment and a concise statement of its substance and purpose.

(3) Forthwith after receipt of a proposed amendment under subsection (2) the Commission shall publish in two daily newspapers of general circulation in Trinidad and Tobago a notice inviting any interested person to submit written comments on the amendment and the reasonable cost of the publication shall be borne by the self-regulatory organization.

(4) Subject to subsection (5), the Commission may make an order approving a proposed amendment to the rules of governance of a self-regulatory organization.

(5) The Commission may make an order refusing a proposed amendment to the rules of governance of a self-regulatory organization if—

- (a) the organization is not organized in a manner and would not have the capacity and resources to enforce compliance with its rules of governance as amended;
- (b) the amended rules of governance would not comply with this Act;
- (c) the amended rules of governance would be inconsistent or conflict with this Act; or
- (d) the Commission determines that the proposed amendment would not be in the public interest.

(6) Where the Commission determines that a proposed amendment filed pursuant to subsection (1)—

- (a) makes no material substantive change in an existing rule; or
- (b) relates exclusively to the administration of the self-regulatory organization,

it may approve the amendment without a hearing.

41. (1) The Commission may make an order requiring a change in the rules of governance of a self-regulatory organization to ensure its fair administration or to make the rules of governance conform to the requirements of, or otherwise further the purposes of this Act.

Power of Commission to require change in rules of governance

(2) Where the Commission proposes to make an order pursuant to subsection (1), it shall publish and send to the self-regulatory organization a notice that complies with section 157(1) prior to making the order.

42. (1) A self-regulatory organization shall not require its members to comply with a schedule of commissions or other fees for their services or limit in any way the income of a member.

Restriction on imposition of fees schedule

(2) Nothing in this section shall prevent a self-regulatory organization from issuing, from time to time, a notice to its members indicating what, in its opinion, is the market price, fee or rate charged for any particular service.

Membership

43. (1) Subject to subsections (2) and (3) and section 51(6), a self-regulatory organization shall grant an application for membership or for approval as an employee of a member.

(2) A self-regulatory organization may refuse membership or impose conditions on membership or prohibit or limit access to services furnished by it or its members to a person who—

- (a) lacks the financial resources or operational capability required by its rules;
- (b) does not meet the criteria for membership specified in its rules; or
- (c) does not carry on the type of business that its rules of governance require a member to carry on.

(3) A self-regulatory organization shall not refuse membership or impose conditions on membership to a person who carries on the type of business required by its rules of governance on the basis of—

- (a) the volume of the required business; or
- (b) any other business that the person carries on.

(4) A self-regulatory organization may refuse membership to, impose conditions of membership on, prohibit or limit access to services furnished by it or its members, or prohibit employment by a member or impose conditions on such employment of, a person who—

- (a) lacks the training, experience or competence required by its rules; or
- (b) contravenes this Act, a rule of a self-regulatory organization registered under this Act, or any other law in Trinidad and Tobago.

(5) A self-regulatory organization shall, before refusing membership or imposing conditions on such membership or before approving employment by a member and before disciplining a member or an employee of a member, give any person directly affected by its decision, an opportunity to be heard.

(6) A self-regulatory organization shall publish in two daily newspapers of general circulation in Trinidad and Tobago any notice disciplining a member or an employee of a member unless the Commission directs otherwise.

(7) Subject to subsection (8), a self-regulatory organization may, without giving an opportunity to be heard as required by subsection (5)—

(a) suspend—

(i) a member who has been expelled or is under suspension from; or

(ii) an employee of a member who has been expelled or is under suspension from employment by the member of, another self-regulatory organization that is registered under this Act;

(b) suspend a member if the self-regulatory organization reasonably believes it necessary for the protection of investors, creditors, members or the self-regulatory organization because of financial or operational difficulties of the member;

(c) suspend a participant who is in default of delivery of money or securities to a registered clearing agency; and

(d) prohibit or limit access to services furnished by it or its members to a person—

(i) to whom paragraph (a), (b) or (c) applies;

- (ii) who does not meet the criteria for access specified in its rules; or
- (iii) where such action is necessary for the protection of investors, creditors, members or the self-regulatory organization.

(8) Where a self-regulatory organization acts in accordance with subsection (7), the organization shall provide an opportunity to be heard and make a determination within twenty business days of its order and the suspension, prohibition or limitation shall remain in effect until the determination is made.

Filing of copy of
decision with
Commission

44. (1) Where a self-regulatory organization makes a decision under section 43(2), (3) or (4) refusing membership or imposing conditions on membership or prohibiting employment by a member or imposing conditions on the employment by a member, it shall at once file with the Commission a copy of the decision, the reasons therefor and any other information requested or prescribed.

(2) A person aggrieved by an order of a self-regulatory organization made under section 43(2), (3) or (4) may appeal to the Commission any such decision within fourteen days of receipt of the decision.

(3) On an appeal or review of a decision of a self-regulatory organization made under section 43(2), (3) or (4) the Commission shall affirm the decision if it finds that—

- (a) the decision is in accordance with the rules of governance of the self-regulatory organization and this Act; and
- (b) the rules of governance of the self-regulatory organization and this Act

were applied in a manner that furthers the objectives specified in section 39 and the purposes of this Act.

(4) Where the Commission finds that the decision restrains competition to an extent not necessary to achieve the objectives specified in section 39(1), (2) or (3), it may set aside the decision or require the self-regulatory organization to—

- (a) admit the person affected to membership;
- (b) permit the person to become an employee of a member;
- (c) grant the person access to services furnished by it or its members; or
- (d) take any other action or make any other order not inconsistent with the objectives specified in section 39.

(5) On an appeal or review of an order of a self-regulatory organization disciplining a member or an employee of a member, the Commission may—

- (a) affirm or modify the sanction imposed if it finds that the person disciplined contravened the rules of governance of the self-regulatory organization or this Act;
- (b) set aside the sanction imposed if it does not so find; or
- (c) remand the matter to the self-regulatory organization for further proceedings.

(6) On an appeal or review referred to in subsection (5), the Commission may set aside or modify the sanction imposed if it finds that it restrains competition to an extent not necessary to achieve the objectives specified in section 39(1), (2) or (3).

(7) An order made by the Commission under subsection (5) or (6) setting aside or modifying a sanction does not affect the validity of any action taken by the self-regulatory organization as a result of the sanction before the order was made, unless the action

contravened this Act or the rules of governance of the self-regulatory organization.

De-listing of securities

45. (1) No securities exchange shall de-list a security admitted for quotation by it, unless it obtains an order from the Commission, authorizing the de-listing and imposing, for the protection of investors, such conditions as the Commission thinks fit.

(2) The Commission may refuse to authorize the de-listing of a security where the de-listing is in breach of—

- (a) the rules of governance of the self-regulatory organization;
- (b) an agreement entered into by the issuer of the security with the self-regulatory organization; or
- (c) the rights of investors.

Appointment of auditor

46. (1) A self-regulatory organization shall, subject to the approval of the Commission, appoint an auditor to audit its financial affairs.

(2) A self-regulatory organization shall require each of its members to appoint an auditor who shall—

- (a) examine the financial affairs of the member in accordance with the rules of governance of the self-regulatory organization; and
- (b) report the results of the examination to the self-regulatory organization.

(3) An auditor appointed under subsection (1) or (2) shall be a member, in good standing, of ICATT.

(4) A self-regulatory organization or a member of a self-regulatory organization shall deliver to the Commission on request a copy of a report made under subsection (2).

47. (1) A self-regulatory organization that is a Contingency fund of securities exchange securities exchange, shall establish and maintain a contingency fund in the prescribed manner.

(2) A self-regulatory organization that is a clearing agency shall establish and maintain a settlement assurance fund, in the prescribed manner, to address the failure by any of its participants to deliver securities or monies required by the rules of governance of the clearing agency.

(3) A self-regulatory organization shall file with the Commission the constituent documents of a fund required by this section and such other documents as may be prescribed.

(4) Where, after consultation with the self-regulatory organization referred to in subsection (1) or (2)—

- (a) the Commission reasonably believes that a fund established under this section does not contain sufficient assets to meet claims which may be made against the fund or to meet its purpose; and
- (b) the self-regulatory organization fails to contribute or cause its members to contribute to the fund established under this section an increased amount sufficient to maintain the assets of the fund at a level that the Commission believes to be reasonably necessary to pay claims against the fund,

then the Commission may make an order requiring the self-regulatory organization to contribute to such fund such amount required to attain the level that the Commission believes to be reasonably necessary to pay the claims.

(5) A self-regulatory organization shall at any time—

- (a) permit a person authorized by the Commission in writing, to inspect the records and assets of any fund referred to in this section;
- (b) produce and furnish to the person authorized by the Commission in writing, any document or record which he reasonably requests; and
- (c) answer any questions that the person authorized by the Commission in writing, may ask concerning those records or assets.

(6) A self-regulatory organization shall appoint an auditor to audit the financial statements of a fund established under this section.

(7) A self-regulatory organization that establishes a fund under this section shall, within one hundred and twenty days of the end of the financial year of the fund, file with the Commission the report of the auditors appointed under subsection (6) together with the financial statements of the fund in such form and containing such information as may be prescribed.

(8) Monies held in a fund in accordance with this section shall not be made available for payment of the debts or expenses or other obligations of the self-regulatory organization or its members.

Sanctions *re*:
self-regulatory
organizations

48. (1) Where a self-regulatory organization—

- (a) contravenes its rules or this Act;
- (b) is unable to comply with its rules or this Act;
- (c) fails or is unable to enforce its rules of governance or a provision of this Act that it is required to administer or enforce, or fails to comply with an order of the Commission made under this Part;
- (d) fails to observe the prescribed standards of solvency;

- (e) no longer satisfies the requirements for registration as a self-regulatory organization set out in section 37; or
- (f) is, or any of its members are, guilty of negligence or fraud,

the Commission may make an order in accordance with subsection (2).

(2) Subject to subsection (1), the Commission may make one or more of the following orders to:

- (a) censure the self-regulatory organization;
- (b) limit the activities, functions or operations of the self-regulatory organization;
- (c) suspend or revoke the registration of the self-regulatory organization; or
- (d) impose an administrative fine pursuant to section 156.

(3) In addition to any penalties under this Act, where a senior officer or employee of a self-regulatory organization contravenes the rules of governance of the self-regulatory organization or this Act, the Commission may make an order censuring him or suspending or removing him from office or employment with the self-regulatory organization.

49. (1) Subject to subsection (4), any person who is aggrieved by any act or omission of a self-regulatory organization, the board or a member of a self-regulatory organization, or any other market actor, may lodge a written complaint in respect thereof with the Commission.

Complaints re:
self-regulatory
organizations and
market actors

(2) The Commission may investigate and adjudicate upon the complaint lodged pursuant to subsection (1).

(3) Section 150 shall have effect in relation to any investigation and adjudication conducted by the Commission pursuant to subsection (2).

(4) The Commission may, following receipt of a complaint made under subsection (1), make such order as it thinks just, including an order for the payment by the self-regulatory organization, the member of the self-regulatory organization or the market actor, as the case may be, of any sum by way of restitution or as compensation for any loss suffered by the complainant.

Dispute between
members

50. (1) Where a dispute arises between members of a self-regulatory organization, such dispute shall be referred to the board of the self-regulatory organization, and the board shall investigate the dispute, and shall make such order for the resolution of the dispute as it thinks fit.

(2) It shall be the duty of the self-regulatory organization to notify the Commission forthwith in writing of the existence of a dispute between its members.

(3) Where a member of a self-regulatory organization is aggrieved by the decision of the board under subsection (1), the member may, within fourteen days of the receipt of such decision, appeal in writing to the Commission and send a copy to all parties to the appeal.

(4) Where an appeal is filed under subsection (3) the self-regulatory organization shall forward to the Commission the reasons for its decision within seven days of its receipt of the notice of appeal.

(5) The Commission may, on reviewing an appeal under this section, make any order it thinks just, including an order for the payment by any party to the dispute of any sum of money, including a sum to cover costs, as the justice of the case may in the opinion of the Commission require.

PART IV

REGISTRATION OF REGISTRANTS

51. (1) Subject to this Act, no person shall carry on ^{Registration} business or hold himself out as, or engage in any act, ^{requirement} action or course of conduct in connection with, or incidental to, the business activities of—

- (a) a broker-dealer;
- (b) an investment adviser; or
- (c) an underwriter,

unless the person is registered, or deemed to be registered, as such, in accordance with this Act, and except for persons deemed registered, the person has received written notice of the registration from the Commission.

(2) Subject to section 53(2), an individual who is a senior officer or employee of a person required to be registered under subsection (1) and who engages in any act, action or course of conduct in connection with, or incidental to, the class of business activities for which a person registered under subsection (1) is engaged, shall register as a registered representative in the prescribed category, subject to such terms and conditions as the Commission may determine.

(3) An individual who is not registered under subsection (2) shall not perform any of the functions or engage in any act, action or course of conduct in connection with, or incidental to, the business activities of the person who is required to be registered under subsection (1) in order to carry on its business activities.

(4) Subsections (2) and (3) do not apply to—

- (a) an employee performing functions which are solely administrative in nature, including without limitation, technology support, facilities support, human resources management and clerical support; and
- (b) any other person as may be prescribed.

(5) Notwithstanding subsections (1) and (2), a sponsored broker-dealer or sponsored investment adviser may carry on business, or hold himself out as, or engage in any act, action or course of conduct in connection with, or incidental to, the business activities of a broker-dealer or investment adviser for a period not exceeding thirty days in any one calendar year, where such sponsored broker-dealer or sponsored investment adviser is registered in the manner prescribed.

(6) No self-regulatory organization registered under this Act shall admit to membership or grant a licence to any person who is not a registrant under subsection (1) or (2).

(7) The registration of a person as a registrant under subsection (1) or (2) shall be valid for a period of one year from the date of registration, and subject to this Act, the Commission may renew the registration of a person annually on the payment of the prescribed fee and on compliance with such other requirements as may be prescribed.

Registration by the
Commission

52. (1) Subject to subsections (2) and (3) where an applicant for registration under section 51(1) or for renewal or reinstatement of such registration—

- (a) is considered by the Commission to be fit and proper for registration, renewal or reinstatement in the category applied for;
- (b) complies with the prescribed requirements; and
- (c) pays the prescribed fee,

the Commission shall register, renew or reinstate the registration of the applicant and issue to such applicant a certificate of registration in the prescribed form.

(2) The Commission may refuse to register, renew or reinstate the registration of an applicant where such registration, renewal or reinstatement is not in the public interest.

(3) The Commission may in its discretion restrict a registration by—

- (a) imposing such terms and conditions as it thinks necessary;
- (b) limiting the duration of a registration; and
- (c) limiting the trading to certain securities or a certain class of securities.

(4) The Commission may require—

- (a) a registrant under section 51(1) to establish and maintain a compliance committee, which shall be responsible for ensuring that the registrant complies with this Act; and
- (b) a registrant under section 51, other than a person required to be registered under section 51(2), to effect policies of insurance on terms as may be ordered by the Commission for the purpose of indemnifying such registrant against any liability that may be incurred as a result of any act or omission of the registrant or any of its officers or employees.

(5) Where the registration of a registrant under this Part is subject to terms and conditions, the registrant shall comply with such terms and conditions.

(6) In considering whether a person is fit and proper for registration under this Part, the Commission shall consider—

- (a) the financial condition and solvency of the person;
- (b) the educational and other qualifications and experience of the person;

- (c) the ability of the person to perform his proposed business efficiently, honestly and fairly;
- (d) the ability of the person to comply with the requirements of this Act applicable to the category of registration for which he is applying;
- (e) the character, financial integrity and reliability of the person; and
- (f) additional requirements as may be prescribed,

and for the purpose of this subsection, the Commission may have regard to any information in its knowledge or possession whether furnished by the applicant or not.

(7) The Commission shall not refuse to register, renew or reinstate the registration of an applicant without giving the applicant an opportunity to be heard and where the Commission refuses to register, renew or reinstate the registration of an applicant, it shall notify the applicant in writing of the reasons for so doing.

(8) The Commission shall, by the 30th day of April of each year, publish by class of registration a list of all registrants and self-regulatory organizations as of the 31st day of March in that year in the *Gazette* and two daily newspapers of general circulation in Trinidad and Tobago.

(9) The Commission shall maintain a register of all registrants and self-regulatory organizations with the Commission under this Part.

53. (1) For the period of one year from the coming into force of this Act, a person registered or deemed registered under the former Act as—

- (a) a broker, excluding a broker in the employ of a securities company under the former Act, is deemed to be duly registered under this Act as a broker-dealer;

- (b) a dealer, is deemed to be duly registered under this Act as a broker-dealer;
- (c) a securities company, is deemed to be duly registered under this Act as a broker-dealer;
- (d) an underwriter, is deemed to be duly registered under this Act as an underwriter;
- (e) an investment adviser, is deemed to be duly registered under this Act as an investment adviser;
- (f) a broker in the employ of a securities company under the former Act is deemed under section 51(2) as a registered representative of a registrant registered under section 51(1) of this Act; and
- (g) a trader, is deemed to be duly registered under section 51(2) as a registered representative of a registrant registered under section 51(1) of this Act.

(2) A person who is deemed to be registered under subsection (1) shall comply with the registration requirements of section 51(1) or (2) as the case may be, within twelve months from the date of the coming into force of this Act and shall, until the earlier of the expiry of such twelve-month period and the date such person obtains registration under section 51(1) or (2) as the case may be, be permitted to continue performing the functions that such person was authorized to perform under the former Act.

54. (1) Subject to subsection (2) a person shall not become a substantial shareholder without first being approved by the Commission as being fit and proper.

Requirements for
substantial
shareholders of
registrants

(2) Where a person becomes a substantial shareholder under a will or by intestacy, such a person shall apply to the Commission for approval within one month of this fact coming to his knowledge.

(3) A financial institution or a registrant under section 51(1) is deemed approved by the Commission for the purposes of subsection (1).

(4) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve a person to become a substantial shareholder.

(5) The Commission shall refuse to approve an applicant to become or continue to be a substantial shareholder of a registrant registered under section 51(1) if—

- (a) the applicant is not fit and proper at the time of the application; or
- (b) the applicant does not remain fit and proper after the approval of its application.

(6) Where a substantial shareholder is no longer fit and proper or where a person under subsection (2) is not granted approval to be a substantial shareholder, such person shall—

- (a) be notified in writing by the Commission of this fact; and
- (b) not exercise voting rights in relation to more than ten per cent of the outstanding securities of the registrant under section 51 (1).

(7) In this section, “substantial shareholder” means any person who directly or indirectly, whether alone or with another person, beneficially owns, or has control or direction over, or proposes to own or acquire control or direction over more than ten per cent of the outstanding voting securities of the registrant under section 51 (1).

(8) A person who is a substantial shareholder of a registrant under section 51(1) on the coming into force of this Act is deemed approved by the Commission for purposes of subsection (1).

55. (1) The registration of a registered representative is suspended on the date that the registration of the registrant under section 51(1) that sponsored his registration is suspended until such time that an application for reinstatement of the employer's registration on the prescribed form has been approved by the Commission.

Termination and
suspension of
registered
representative status

(2) The registration of a registered representative is terminated on the date that—

- (a) the registered representative ceases to act on behalf of the registrant under section 51(1) that sponsored his registration; or
- (b) the registration of the registrant under section 51(1) that sponsored his registration is terminated.

(3) A registered representative shall not carry on securities business for any person unless such representative is employed by a registrant under section 51(1) whose registration status is active.

56. (1) An application for registration, renewal or reinstatement of registration under this Part shall be made in writing in the prescribed form and shall be accompanied by the prescribed fee and such other prescribed documents or information requested by the Commission.

Application for
registration and
continuing disclosure

(2) If at any time between the date of the filing of an application and the date that a notice of registration, renewal or reinstatement of registration is received by the applicant, the applicant becomes aware of a material change in the information contained in the application, the applicant shall forthwith inform the Commission in writing of such material change.

(3) The Commission may require any further information or material to be submitted by an applicant

within a specified time and may require verification by affidavit of any information or material fact then or previously submitted.

(4) Subject to the By-laws, an applicant under this Part or a registrant shall provide the Commission notice in writing of the occurrence of any prescribed event within the prescribed period.

(5) Upon receipt of a notice under subsection (4), the Commission may take any action that it deems appropriate.

(6) A person opening a branch office where the class of business for which the person is registered under section 51(1) is intended to be conducted, shall apply to the Commission for registration of the branch office in the prescribed form and shall pay the prescribed fee and the Commission may grant such application subject to such conditions as it considers appropriate.

Suspension of
registration, warning,
censure

57. (1) The Commission may, where it considers it to be in the public interest, issue a warning, private reprimand or public censure or may suspend the registration of a registrant under section 51(1), (2) or (5) if—

- (a) such registrant ceases to carry on the business of a registrant;
- (b) such registrant had obtained registration under this Act or the former Act by the concealment or misrepresentation of any fact which is, in the opinion of the Commission, material to the application for registration or to the suitability of the registrant to be registered;
- (c) the registration of such registrant under this Act or the former Act has been made by mistake, however such mistake arose;

- (d) such registrant has defaulted in the payment of any monies due to a self-regulatory organization or to the Commission;
- (e) in the case of a registrant that is not an individual, a levy of execution in respect of such person has not been satisfied;
- (f) in the case of a registrant that is not an individual, such registrant fails to maintain the prescribed level of capitalization;
- (g) such registrant is charged or convicted of an offence involving fraud or dishonesty whether in Trinidad and Tobago or elsewhere;
- (h) such registrant contravenes, or fails to comply with, any term, condition or restriction applicable in respect of his registration, or with a provision of this Act;
- (i) in the case of a registrant that is not an individual, such registrant fails adequately to supervise or to conduct the activities of any other person acting for, or on behalf of, such registrant;
- (j) such registrant is prosecuted for breach of this Act, the Proceeds of Crime Act, any other written law in relation to the prevention of money laundering and combating the financing of terrorism or any other written law which may be administered or supervised by the Commission which may be in force from time to time;
- (k) such registrant ceases to meet a registration requirement, or a term or condition of registration, applicable to such person; or
- (l) such registrant is guilty of misconduct or is no longer fit and proper for registration.

(2) In considering at any time whether a registrant registered under section 51(1), (2) or (5) is no longer fit and proper for registration under section 57(1)(l), the Commission shall consider the financial condition, proficiency, integrity, and competency of the registrant and any additional requirements as may be prescribed.

(3) In this section, “misconduct” means—

- (a) a contravention of any provision of the Act;
- (b) a contravention of the terms and conditions of any registration or licence; or
- (c) any act or omission relating to carrying on the business requiring registration which in the opinion of the Commission, is or is likely to be prejudicial to the interest of the investing public or to the public interest.

(4) Subject to subsection (5), the Commission shall not suspend the registration of a registrant under this section without giving the registrant an opportunity to be heard.

(5) Notwithstanding subsection (4), the Commission may suspend the registration of a registrant for a period of thirty days where it considers that immediate suspension is in the public interest or that any delay may be prejudicial to the public interest.

(6) Where the registration of a registrant is suspended under subsection (1)(g) or (j), the Commission may suspend the registration from the date of the institution of such prosecution or at any time thereafter, but such suspension shall automatically cease upon the dismissal of the charge or the withdrawal thereof or, if there is more than one charge, upon the dismissal or withdrawal of all the charges.

(7) The Commission may, where it considers it to be in the public interest, rescind any suspension it has made of the registration of a registrant under this section, whether on its own determination or on application by a registrant.

(8) Where the Commission has suspended the registration of any registrant registered under section 51(1), (2) or (5), or the registration otherwise expires, that registrant shall forthwith cease activities in the area of activity for which he was registered, and any licence issued by a self-regulatory organization or membership in any such self-regulatory organization shall forthwith be suspended.

(9) Where a suspension of the registration of any registrant under section 51(1), (2) or (5) is rescinded by the Commission for any reason, the registration of such registrant and any licence issued by a self-regulatory organization or membership in any such self-regulatory organization held by the registrant, shall be reinstated subject to such terms and conditions as the Commission may require.

58. (1) The Commission may, where it considers it to be in the public interest, revoke the registration of a registrant registered under section 51(1), (2) or (5) for any reason set out in section 57 other than section 57(1)(g), (j) or (k). Revocation of registration

(2) Where the Commission has suspended the registration of a registrant for a reason set out in section 57(1)(g), (j) or (k), the Commission may revoke the registration of such registrant if the registrant—

- (a) has been convicted by a court for an offence involving fraud or dishonesty, whether in Trinidad and Tobago or elsewhere;
- (b) has been convicted by a court for a contravention of the Proceeds of Crime Act, any other written law in relation to the prevention of money laundering and combating the financing of terrorism or any other written law which may be administered or supervised by the Commission which may be in force from time to time; or
- (c) has breached this Act.

(3) The Commission shall not revoke the registration of a registrant under this section without giving the registrant an opportunity to be heard.

(4) The Commission shall not revoke the registration of a registrant unless it is satisfied that the financial obligations of the registrant to the clients of such registrant have been discharged to the extent possible.

(5) Where the Commission has revoked the registration of any registrant, that registrant shall forthwith cease activities in the area of activity for which such registrant was registered, and any licence issued by a self-regulatory organization or membership in any such self-regulatory organization shall forthwith become invalid.

Surrender of
registration

59. On application by a registrant registered under section 51(1), (2) or (5), the Commission may accept, subject to such terms and conditions as it may impose, the voluntary surrender of the registration of the registrant if the Commission is satisfied that the financial obligations of the registrant to the clients of such registrant have been discharged and the surrender of the registration would not be prejudicial to the public interest.

Offence

60. (1) A person who makes a misrepresentation in any filing, application, notification, or other document required to be filed, delivered or notified to the Commission under this Part commits an offence and is liable on conviction on indictment to a fine of one million dollars and to imprisonment for three years.

(2) A person who contravenes section 51(1) or (2) commits an offence and is liable on conviction on indictment to a fine of two million dollars and to imprisonment for five years.

Registration
of reporting
issuers

61. (1) A person, who is not a reporting issuer, and who proposes to make a distribution shall first apply to the Commission to be registered as a reporting issuer by filing a registration statement in the prescribed form and paying the prescribed fee.

(2) A reporting issuer shall update its registration statement annually and shall for that purpose file a revised registration statement in the

prescribed form, within fourteen days of the end of its financial year and pay the prescribed fee.

(3) This section shall not apply to any issuer which is a government entity, international agency or such other person as may be prescribed.

(4) Subsection (1) shall not apply to—

(a) a limited offering provided that the issuer files a post distribution statement in accordance with section 84; or

(b) a limited offering made to a person who—

(i) is a senior officer or partner of the issuer;

(ii) is directly involved in the business of the issuer;

(iii) is an associate or relative of the issuer;

(iv) is a shareholder of the issuer; or

(v) meets such other conditions as may be prescribed.

(5) Notwithstanding subsection (4), the Commission may determine that it is in the public interest that the requirements of subsection (1) be met by the issuer.

62. (1) No security shall be distributed or listed with any self-regulatory organization unless it is registered with the Commission. Registration of securities

(2) An application for registration of a security may be made by filing a distribution statement with the Commission in the prescribed form signed—

(a) by the chief executive officer or other duly authorized senior officer of the issuer and at least two members of the board of directors of the issuer; or

(b) in the case of a government entity or international agency, by the underwriter or designated agent.

(3) Signatures appearing on the distribution statement shall be presumed to have been affixed to that statement by authority of the person whose signature is so affixed unless the contrary is proven.

(4) A distribution statement shall be deemed effective only as to the securities specified therein proposed to be offered or as otherwise prescribed.

(5) At the time of filing a distribution statement pursuant to subsection (2), the applicant shall pay to the Commission such fees as may be prescribed.

(6) The information contained in or filed with any distribution statement shall be made available to the public in such manner as may be prescribed.

(7) The effective date of a distribution statement shall be determined by the Commission.

(8) Securities which were registered under the former Act and outstanding immediately before the coming into force of this Act, shall be deemed to be registered under this Act.

(9) Subsection (1) shall not apply to—

(a) a limited offering provided that the issuer files a post distribution statement in accordance with section 84; or

(b) a limited offering made to a person who—

(i) is a senior officer or partner of the issuer;

(ii) is directly involved in the business of the issuer;

(iii) is an associate or relative of the issuer;

(iv) is a shareholder of the issuer; or

(v) meets such other conditions as may be prescribed.

(10) Notwithstanding subsection (9), the Commission may determine that it is in the public interest that the requirements of subsection (1) be met by the issuer.

PART V

DISCLOSURE OBLIGATIONS OF
REPORTING ISSUERS

63. A reporting issuer shall, within the prescribed ^{Annual reports} period, after the end of its financial year—

- (a) file with the Commission, a copy of its annual report containing the prescribed information; and
- (b) send the annual report to each holder of its securities, other than debt securities, addressed to the latest address as shown on the securities register of the reporting issuer.

64. (1) Subject to subsection (2), where a material ^{Timely disclosure of} change occurs in the affairs of a reporting issuer, the ^{material changes} reporting issuer shall—

- (a) within three days of the occurrence of the material change, file with the Commission the prescribed report disclosing the nature and substance of the material change, the contents of which shall be certified by a senior officer;
- (b) forthwith, and in any event within seven days of the occurrence of the material change, publish a notice in two daily newspapers of general circulation in Trinidad and Tobago or as otherwise prescribed and such notice shall be authorized by a senior officer and shall disclose the nature and substance of the material change; and
- (c) within seven days of the occurrence of the material change file a copy of the notice published in subsection (1) with the Commission.

(2) Subject to subsection (3), subsection (1) shall not apply where the reporting issuer is of the opinion that—

- (a) the disclosure required by subsection (1) would be unduly detrimental to its interests; or
- (b) the disclosure required by subsection (1) would be unwarranted,

and the reporting issuer shall forthwith but in any event no later than three days after the occurrence of the material change advise the Commission in writing of the material change and of the reasons why it is of the opinion that there should not be a notice as contemplated in subsection (1)(a).

(3) Where the Commission is of the opinion that the disclosure of the material change would not be unduly detrimental to the interests of a reporting issuer, it may, after giving the reporting issuer an opportunity to be heard—

- (a) require disclosure to the public of the material change in accordance with subsection (1); or
- (b) permit non-disclosure of the material change by the reporting issuer until such time as the Commission may order.

Annual financial
statements

65. (1) Every reporting issuer shall within the prescribed time prepare and file with the Commission annually comparative financial statements relating separately to—

- (a) the period that commenced on the date of incorporation or organization and ended as of the close of the first financial year or, if the reporting issuer has completed a financial year, the last financial year; and
- (b) the period covered by the financial year immediately preceding the last financial year, if any, made up and certified as

prescribed and prepared in accordance with financial reporting standards.

(2) Every financial statement referred to in subsection (1) shall be accompanied by a report of the auditor.

(3) The Commission may, where the report of the auditor required by subsection (2) is qualified in any respect, take any action that it deems necessary until the matters giving rise to the qualified audit report are resolved.

(4) The auditor shall, where he in the course of performing the duties required by subsection (2) is of the opinion that a matter could give rise to a qualification in the audit report on the financial statements, provide notice to the Commission immediately and deliver a copy of the notice promptly to the reporting issuer.

(5) The notice required by subsection (4) shall contain complete details about the circumstances giving rise to the notice.

(6) No person shall be appointed to act as the auditor of a reporting issuer unless such person is a member in good standing of ICATT and meets any other requirements as may be prescribed.

(7) The board of directors of a reporting issuer shall have an audit committee composed of not less than three directors of the reporting issuer, a majority of whom are not employees of the reporting issuer or any of its affiliates.

66. (1) Every reporting issuer shall prepare and file ^{Interim financial statements} with the Commission interim financial statements within sixty days of the end of the interim period to which they relate or within such other period as may be prescribed—

(a) where the reporting issuer has not completed its first financial year, for the periods commencing with the beginning of

that year and ending three, six and nine months respectively, after the beginning of that year, but no interim financial statement is required to be filed for a period that is less than three months; and

- (b) where the reporting issuer has completed its first financial year, for the periods commencing with the beginning of the current financial year and ending three, six and nine months respectively, after the beginning of that year, including a comparative statement to the end of each of the corresponding periods in the previous financial year,

prepared in accordance with financial reporting standards and certified as prescribed for each interim period of each financial year beginning on, or after the coming into force of this Act.

(2) An interim financial statement prepared and filed under subsection (1) need not include an auditor's report, but if an auditor has been associated with that statement, his audit report or his comments on the unaudited financial information shall accompany the financial statement.

Filing and delivery
of financial
statements

67. (1) Subject to subsection (2), every financial statement required to be prepared and filed with the Commission pursuant to section 65 or 66, shall be concurrently sent by the reporting issuer to each holder of its securities, other than debt securities, to the address as shown on the securities register of the reporting issuer at the time such financial statements are filed with the Commission.

(2) A reporting issuer satisfies the obligation under this Part with respect to the sending and delivery of any document, report or statement to its security holders by—

- (a) sending the document, report or statement to its security holders by—
- (i) way of compact disc or other external memory device addressed to the

latest address as shown on the securities register; or

(ii) electronic mail,

where the security holder has given written consent for delivery in such a format and the reporting issuer posts the document, report or statement on its website;

- (b) publishing the document, report or statement in two daily newspapers of general circulation in Trinidad and Tobago;
- (c) posting the document, report or statement on the website of the reporting issuer and issuing a press release to be approved by the Commission, notifying the security holders about the availability of such document, report or statement; or
- (d) making the document, report or statement available in such other manner as may be prescribed.

(3) Notwithstanding subsection (2), a security holder to whom the subsection applies may make a written request for a hard copy of any document, report or statements and the reporting issuer shall, as soon as practicable, send such document, report or statements addressed to the latest address as shown on the securities register of the reporting issuer.

68. (1) A reporting issuer shall, concurrently with the giving of notice of a meeting of its security holders, send a prescribed form of proxy to each holder of voting securities entitled to receive notice of the meeting, to the address as shown on the securities register of the reporting issuer.

(2) A person shall not solicit proxies under subsection (1) unless concurrently with the solicitation, there is sent to—

- (a) each security holder whose proxy is solicited a proxy circular in the prescribed form, either as an appendix to, or as a

separate document accompanying the notice of the meeting, when the solicitation is, by or on behalf of the management of the reporting issuer; and

- (b) each security holder whose proxy is solicited and to the reporting issuer a dissident's proxy circular in the prescribed form stating the purpose of the solicitation when the solicitation is not by, or on behalf of the management of the reporting issuer.

(3) A person who sends a proxy circular or dissident's proxy circular shall forthwith file with the Commission a copy of the circular and the form of proxy.

(4) This section shall not apply where a reporting issuer is complying with—

- (a) comparable requirements of the Companies Act; or
- (b) the requirements of any designated foreign jurisdiction.

(5) In this section, "solicit" means—

- (a) a request for a proxy, whether or not accompanied by, or included in a form of proxy;
- (b) a request to execute or not to execute a form of proxy or to revoke a proxy;
- (c) the sending of a form of proxy or other communications to a security holder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy; and
- (d) the sending of a form of proxy to a security holder under subsection (1),

but does not include—

- (e) the sending of a form of proxy in response to an unsolicited request made by, or on behalf of a security holder;

- (f) the performance of administrative acts or professional services on behalf of a person requesting a proxy;
- (g) the sending by a broker-dealer of documents to a beneficial owner;
- (h) the request by a person in respect of securities of which he is the beneficial owner; or
- (i) publicly announcing, by a security holder, how the security holder intends to vote and the reasons for that decision, and that public announcement is made by—
 - (i) a speech in a public forum; or
 - (ii) a press release, an opinion, a statement or an advertisement provided through a broadcast medium or by a telephonic, electronic or other communication facility, or appearing in a newspaper, a magazine or other publication generally available to the public.

69. (1) A reporting issuer that is an approved foreign issuer is exempt from the requirements of this Part, where the reporting issuer—

Exemptions for
certain foreign issuers

- (a) has a market capitalization, calculated in the prescribed manner, of no less than the prescribed amount on the date it became a reporting issuer under the Act;
- (b) complies in all respects with the foreign disclosure requirements of a designated foreign jurisdiction regarding—
 - (i) the disclosure of material changes on a timely basis;

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- (ii) the preparation, filing and delivery of annual comparative financial statements and an auditor's report thereon;
 - (iii) the preparation, filing and delivery of interim financial statements; and
 - (iv) the preparation, filing and delivery of an annual report, a management discussion and analysis or other similar document on the reporting issuer's annual comparative financial statements;
- (c) files with the Commission all such documents which it files with the securities regulatory authority in a designated foreign jurisdiction where it is registered in respect of the items described in subsection (1)(b) as soon as possible but in any event within seven days after such filing is required to be made with the foreign regulatory authority; and
- (d) delivers to each security holder, resident in Trinidad and Tobago, at the address shown on the securities register of the reporting issuer, the documents that such security holder would be entitled to receive under the securities laws of the designated foreign jurisdiction if such security holder were resident in that jurisdiction and such documents shall be sent within seven days after such documents would be required to be sent to the security holder if such security holder were resident in that jurisdiction.
- (2) Subsection (1) is not available to an approved foreign issuer if, as at the end of the last financial year

of the approved foreign issuer, the number of voting securities of the issuer held beneficially and of record, directly or indirectly, by residents of Trinidad and Tobago exceeded twenty per cent of the number of voting securities outstanding of the issuer on such date or such other per cent as may be prescribed.

(3) A reporting issuer which is an approved foreign issuer shall certify annually to the Commission in writing, concurrently with the filing of its annual comparative financial statements, that it is an approved foreign issuer and is permitted to rely on the exemption provided by this section.

70. (1) Subject to subsection (2), a reporting issuer ^{Offence} who—

- (a) contravenes this Part; or
- (b) makes a misrepresentation in any document required to be filed with the Commission or delivered to security holders under this Part,

commits an offence and is liable on conviction on indictment to a fine of one million dollars and to imprisonment for three years.

(2) Where a reporting issuer is convicted of an offence under subsection (1), each senior officer of the reporting issuer, who knowingly or recklessly authorized, permitted or acquiesced in the offence is also liable on conviction on indictment for such offence to a fine of five hundred thousand dollars and to imprisonment for two years.

(3) Notwithstanding subsection (2), the defence available to a senior officer under section 165(3) is also available to a senior officer in respect of this section.

(4) Where a senior officer is convicted of an offence under subsection (2), the Commission may order, if it is in the public interest, and in addition to any other order that the Commission may make, that the senior officer be prohibited from being a senior officer of a registrant or self-regulatory organization for a period not exceeding five years.

Ceasing to be a reporting issuer

71. (1) The Commission may on its own motion or on application by a reporting issuer, make an order declaring, subject to such conditions as it considers appropriate, that the issuer is no longer a reporting issuer.

(2) Where a reporting issuer fails to file a report or statement required to be filed under this Part for more than six months following the prescribed date by which the report or statement is required to be filed, the Commission may impose such conditions on a reporting issuer as it sees fit including suspension and cessation of trading until such time as the outstanding report or statement is filed.

PART VI

DISTRIBUTION

Definition and construction

72. (1) For the purpose of this Part, an advertisement solicits the purchase or sale of securities if—

- (a) it invites a person to enter into an agreement for, or with a view to subscribing for, or otherwise acquiring or underwriting any securities; or
- (b) it contains information reasonably calculated to lead, directly or indirectly, to a person entering into such an agreement.

(2) In this Part—

“accredited investor” means—

- (a) a person who has access to substantially the same information concerning the issuer that is required in a prospectus under this Part;
- (b) a senior officer of the issuer, or a spouse of any such person;
- (c) a bank, insurance company, loan or trust company incorporated, governed, or regulated under the laws of Trinidad and Tobago;
- (d) a registrant under section 51(1), (2) or (5);

- (e) a government entity, international agency or any foreign government;
- (f) an individual who has net financial assets of no less than five million dollars or such higher amount as may be prescribed;
- (g) any person other than an individual, including a collective investment scheme, that has net financial assets of no less than ten million dollars or such higher amount as may be prescribed;
- (h) any person outside of Trinidad and Tobago that is analogous to persons referred to in paragraphs (c), (d), (f) and (g); or
- (i) a person who meets such other requirements as may be prescribed;

“financial assets” means cash, securities, or any contract of insurance, or deposit or evidence thereof that is not a security for purposes of the Act;

“offer to sell” includes an attempt or offer to dispose of, or a solicitation of an offer to buy, a security.

73. (1) Subject to section 79, no person shall trade in a security that would be required to be registered pursuant to section 62(1), unless a prospectus has been filed with the Commission with the prescribed fee and a receipt therefor has been issued by the Commission.

(2) Notwithstanding subsection (1), no person shall trade in an asset-backed security where such trade would be a distribution, except under an exemption provided for in section 79, unless such security has received an approved rating.

Advertising

74. A person shall not solicit the purchase or sale of a security by way of advertisement in connection with a distribution of a security, unless a receipt has been issued by the Commission under this Act for a prospectus offering the security and the advertisement—

- (a) identifies the security distributed;
- (b) states that a receipt has been issued;
- (c) identifies a person from whom a document specified in paragraph (a) may be obtained, and identifies a person through whom orders will be executed; and
- (d) contains any other prescribed information.

Delivery of prospectus

75. (1) An issuer, or a registrant under section 51(1) acting as agent for the issuer, who receives an expression of interest, order or subscription for a security offered in a distribution, shall send or deliver to such person a prospectus, or amended prospectus, as the case may be, within two business days after the expression of interest, order or subscription is received.

(2) An agreement of purchase and sale is not binding on a purchaser if the issuer or the registrant under section 51(1) acting as agent for the issuer, receives not later than two business days after the day the purchaser received a prospectus or an amended prospectus under subsection (1), written notice that the purchaser intends not to be bound by the agreement.

(3) A person who files a prospectus with the Commission pursuant to section 73, during the period of distribution determined in accordance with section 83, shall furnish to a registrant under sections 51(1), (2), and (5) a reasonable number of copies of the prospectus upon request and without charge.

(4) For the purposes of this section, the receipt of a prospectus by a person who acts solely as agent of the purchaser with respect to the purchase of a security

referred to in subsection (1), is deemed to be a receipt by the principal purchaser as of the date on which the agent received the prospectus.

76. (1) A prospectus shall contain full and true disclosure in plain language of all material facts^{Contents of prospectus} concerning the issuer and the securities to be distributed, and shall comply with the prescribed requirements.

(2) In addition to subsection (1), a prospectus distributing securities of a collective investment scheme shall comply with such additional requirements as may be prescribed.

77. (1) Where a prospectus has been filed with the Commission under section 73 in respect of any proposed distribution of securities and at any time during which an agreement in respect of those securities can be entered into in pursuance of that offer, or during the period of distribution thereunder—^{Amended prospectus}

- (a) there is a material change; or
- (b) a material fact occurs,

the inclusion of information in respect of which would have been required to be included in the prospectus if it had arisen when the prospectus was prepared, the issuer shall file with the Commission an amended prospectus containing particulars of that material change or material fact as the case may be, together with the prescribed fee and every prospectus thereafter sent or delivered to any person shall include such amended prospectus.

(2) Where an amended prospectus is required to be prepared and filed with the Commission under subsection (1), the distribution of securities under the prospectus shall cease until such time as the Commission has issued a receipt for the amended prospectus.

(3) Subject to section 75(2), an issuer, or a registrant under section 51(1) acting as agent for the issuer, who sends a prospectus to a purchaser under

section 75(1) shall send to each such purchaser an amended prospectus forthwith after a receipt is issued by the Commission in respect of such amended prospectus.

Expert's consent

78. (1) A receipt shall not be issued by the Commission for a prospectus that includes a report, opinion, valuation or statement purporting to be made by an expert unless—

- (a) that expert has given, and has not before delivery of a copy of the prospectus is withdrawn, his written consent to the inclusion of the statement in the form and context in which it is included in the prospectus; and
- (b) there appears in the prospectus a statement that the expert has given and has not withdrawn his consent.

(2) The written consent of an expert under subsection (1) shall be filed in the prescribed manner.

Exemptions

79. (1) Subject to subsection (2), section 73 does not apply to a distribution—

- (a) by an issuer where the purchaser is an affiliate of the issuer acting as principal;
- (b) by an issuer of a security that is distributed to holders of its securities as a dividend or a distribution out of earnings, surplus, capital or other sources;
- (c) by an issuer of a security to holders of its securities incidental to a reorganization or winding up or to a distribution of its assets for the purpose of winding up its affairs;
- (d) by an issuer of a security pursuant to the exercise of a right to acquire a security of its own issue, which right was previously

granted by the issuer, if no commission or other remuneration is paid or given in respect of the distribution except for administrative or professional services or for services, other than the solicitation of investors, performed by a registrant;

- (e) by an issuer of a right, transferable or otherwise, granted by it to holders of its securities to purchase additional securities of its own issue, and of securities pursuant to the exercise of such a right if the issuer—
 - (i) files with the Commission a notice that is to be sent to its security holders and the Commission does not inform the issuer in writing within ten days of the filing that it objects to the distribution; and
 - (ii) sends to its security holders any information relating to the securities that is satisfactory to the Commission;
- (f) by an issuer of a security that is exchanged by or for the account of the issuer with another issuer or the security holders of another issuer pursuant to—
 - (i) a statutory amalgamation or arrangement; or
 - (ii) a statutory procedure by which one issuer takes title to the assets of another issuer that loses its existence by operation of law or by which the existing issuers merge into a new issuer;
- (g) by an issuer pursuant to a take-over bid;

-
- (h) by an issuer of securities of its own issue or that of an affiliate to its senior officers or employees, or senior officers or employees of an affiliate, if—
- (i) in the case of employees, the employees are not induced to purchase the securities by expectation of employment or continued employment with the issuer; and
 - (ii) no commission or other remuneration is paid or given in respect of the distribution except for professional services or for services other than the solicitation of employees, performed by an issuer;
- (i) where the Commission makes an order declaring that the cost of providing a prospectus outweighs the resulting protection to investors, but in such circumstances the Commission may make the order subject to any conditions it considers appropriate;
- (j) of securities issued or guaranteed by a government entity, a government of a designated foreign jurisdiction or an international agency;
- (k) by a person declared an exempt purchaser by order of the Commission who purchases as principal or as trustee for accounts fully managed by it;
- (l) by a reporting issuer to fewer than fifty accredited investors where—
- (i) the distribution is not accompanied by an advertisement other than an

announcement, on prescribed terms, of its completion;

(ii) no selling or promotional expenses are paid in connection with the trade except for professional services or services performed by a registrant under section 51(1); and

(iii) where the accredited investor is an individual, other than an individual described in paragraph (b) or (d) of the definition of accredited investor, the individual has obtained investment advice in respect of the distribution from—

(A) a registrant under section 51(1), (2) or (5); or

(B) any prescribed person,

who receives no remuneration from the issuer or selling security holder in connection with the distribution;

(m) in a limited offering; or

(n) in such other circumstances as may be prescribed.

(2) An asset-backed security may only be distributed pursuant to an exemption in subsection (1) where a risk disclosure statement in the prescribed form has been delivered to each purchaser of the asset-backed security.

(3) The certificate for any security distributed under an exemption in subsection (1)(a), (k), (l) or (m) shall contain a legend in the prescribed form.

(4) Subject to subsection (6), section 73 does not apply to a distribution by a person within the meaning of paragraph (d) of the definition of distribution if the distribution is a trading transaction.

(5) For purposes of subsections (4) and (6), a distribution is a trading transaction where—

- (a) the distribution is conducted by, or through a registrant under section 51(1);
- (b) the issuer of the security being distributed has been a reporting issuer for at least twelve months immediately preceding the date of commencement of the distribution;
- (c) no selling or promotional expenses are incurred in connection with the distribution except for services customarily performed by a registrant under section 51(1);
- (d) the distribution takes place through the facilities of a securities exchange;
- (e) at the time of the distribution, the selling security holder does not have knowledge or possession of any material non-public information in respect of the reporting issuer;
- (f) if the securities being distributed have been acquired by the selling security holder under a prospectus exemption, at least six months have elapsed from the date of the initial exempt distribution; and
- (g) notice of the intention to distribute securities in a trading transaction is published by a notice in two daily newspapers of general circulation in Trinidad and Tobago and filed with the Commission no less than three and no more than ten business days prior to the first sale by the selling security holder.

(6) Subsection (4) is not available in a distribution that is a trading transaction unless—

- (a) the first sale takes place no less than three business days and no more than ten business days after the date of issuance of the notice required by subsection (5)(g); and
- (b) the final sale takes place no later than the sixtieth day after the date of issuance of the notice required by subsection (5)(g).

80. (1) In connection with a distribution of securities, Exemptions for approved foreign issuers an issuer that is an approved foreign issuer may satisfy the requirements of sections 73, 75, 76, 77 and 78 of this Part by—

- (a) filing with the Commission—
 - (i) a certificate in the prescribed form signed by a senior officer of the issuer certifying that it is an approved foreign issuer;
 - (ii) a copy of the receipt or other evidence that the prospectus or offering document to be used in connection with a distribution of securities has become final for purposes of a distribution of securities in a designated foreign jurisdiction;
 - (iii) a copy of all documents incorporated or deemed incorporated by reference in the prospectus or offering document;
 - (iv) a copy of all reports or valuations filed in the designated foreign jurisdiction in connection with the distribution;

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- (v) a form of submission to jurisdiction and appointment of agent for service of process of the issuer in the prescribed form; and
 - (vi) a copy of the prospectus or offering document, and each supplement or amendment thereto, including a certificate of a senior officer of the issuer certifying that the prospectus or offering document constitutes full and true disclosure in plain language of all material facts relating to the issuer and the securities being distributed; and
- (b) delivering to each purchaser in Trinidad and Tobago—
- (i) the offering document or prospectus, and each supplement or amendment thereto; and
 - (ii) an addendum to the offering document or prospectus containing the prescribed information.
- (2) Subsection (1) does not apply to an approved foreign issuer where—
- (a) following the distribution, the number of voting securities of the issuer held, beneficially and of record, directly or indirectly, by residents of Trinidad and Tobago would exceed twenty per cent in the aggregate of the total number of voting securities outstanding of the issuer;
 - (b) the approved foreign issuer is a collective investment scheme;
 - (c) the approved foreign issuer has a market capitalization of less than the amount as

prescribed on the date the documents required to be filed under subsection (1) are filed with the Commission; or

- (d) the documents required to be filed by the issuer under subsection (1) are not filed in English.

(3) Subject to subsection (2), where an approved foreign issuer files with the Commission the documents and material required under subsection (1), the Commission shall issue a receipt for such prospectus or offering document unless the Commission determines it is not in the public interest to do so.

81. (1) The first trade in securities previously Resale restrictions acquired pursuant to an exemption contained in paragraph (a), (d), (k), (l) or (m) of section 79(1), other than a further trade exempted by this Act, is deemed to be a distribution, unless—

- (a) the issuer whose securities are being traded is and has been a reporting issuer for the twelve months immediately preceding the date of the trade;
- (b) the trade is not a distribution within the meaning of paragraph (d) of the definition of distribution;
- (c) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;
- (d) no extraordinary commission or consideration is paid to a person in respect of the trade;
- (e) if the seller is a person connected to a reporting issuer within the meaning of Part IX, such seller has no reasonable grounds to believe that such issuer is in default under the Act; and
- (f) at least six months have elapsed from the date of the initial distribution with the exception of securities previously acquired pursuant to an exemption contained in section 79(1)(d).

(2) A person who purchases a security pursuant to an exemption from the prospectus requirement of section 73(1), that is available under this Act at a time when the condition set forth in subsection (1)(f) has not been satisfied, shall be in the same position as the seller for the remainder of the period specified in subsection (1)(f).

(3) Where a security of an issuer is distributed on conversion or exchange of another security of the same issuer at a time when the condition set forth in subsection (1)(f) has not been satisfied in respect of the convertible or exchangeable security, a person who takes such security distributed on conversion or exchange shall be in the same position for the remainder of the period specified in subsection (1)(f) as if such conversion or exchange had not occurred.

Receipt for
prospectus

82. (1) Subject to subsections (2), (3) and (4), the Commission shall issue a receipt for a prospectus within a reasonable time after the date of the filing of the prospectus.

(2) The Commission shall refuse to issue a receipt for a prospectus if—

(a) the prospectus or any document filed therewith—

(i) contains a misrepresentation;

(ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive;

(iii) fails to disclose any material fact which may be required under this Act; or

(iv) fails to comply with any requirement of this Act;

(b) the distribution in connection with which it is filed is deceptive;

(c) an extraordinary commission or consideration has been or is intended to be

given for promotional purposes or for the acquisition of the security;

(d) in the opinion of the Commission, the past conduct of-

(i) the issuer;

(ii) any senior officer of the issuer;

(iii) the promoter of the distribution;

(iv) a person holding securities sufficient to materially affect the control of the issuer; or

(v) any other person who exercises or is reasonably considered by the Commission likely to exercise influence over its management or policies,

suggests that the business or affairs of the issuer are likely to be conducted in a manner that is not honest or financially responsible or that may be unfair to holders of its securities;

(e) the proceeds that the issuer will receive from the distribution, together with its other resources, are not sufficient to accomplish the purpose of the distribution stated in the prospectus;

(f) an expert who has prepared or certified a part of the prospectus or report used in connection with it, or who has filed a consent with the Commission, is not acceptable to the Commission;

(g) the issuer is in default in filing or delivering any document with the Commission required under this Act or under any other written law by or under which it is incorporated or organized;

- (h) a broker-dealer, underwriter or investment adviser named in the prospectus is not registered under section 51(1) or authorized to perform equivalent functions under the laws of a designated foreign jurisdiction;
- (i) where a minimum amount of funds is required by an issuer, the prospectus does not indicate that the distribution will cease if the minimum amount of funds is not subscribed within ninety days of the commencement of the distribution; or
- (j) the Commission considers that the distribution would be prejudicial to the public interest.

(3) The Commission shall not refuse to issue a receipt for a prospectus without giving the person who filed the prospectus an opportunity to be heard.

(4) The Commission may, in connection with the issuance of a receipt for a prospectus, impose any condition which in the opinion of the Commission is necessary for the protection of investors including a condition that—

- (a) outstanding securities of the issuer be held in escrow upon such terms as the Commission may specify;
- (b) the proceeds of a distribution which are payable to the issuer be held in trust until such amounts, as may be specified by the Commission, are to be released to the issuer; and
- (c) no sales pursuant to the distribution may be completed before such time as may be specified by the Commission.

Commencement and
cessation of
distribution

83. (1) For the purposes of this Part, a distribution commences on the date on which a receipt for a prospectus is issued by the Commission.

(2) Where in the first ninety days following the commencement of a distribution, less than twenty-five per cent of the securities proposed to be distributed and sold under the prospectus are actually sold and paid for, the distribution shall cease and the funds shall be returned to subscribers until such time as a new prospectus is filed and a receipt therefor issued by the Commission.

(3) Where a minimum amount of funds is required by an issuer, and such minimum amount of funds is not raised by the issuer in the first ninety days following the commencement of the distribution, the distribution shall cease and the funds shall be returned to subscribers until such time as a new prospectus is filed and a receipt therefor issued by the Commission.

(4) Subject to subsection (5), a distribution shall not continue longer than one year and twenty days from the date of the receipt for the prospectus relating to it unless the Commission issues a new receipt for a current prospectus in which case the period runs from the date of the latter receipt.

(5) The Commission may order that the period specified in subsection (4) be reduced to not less than six months.

(6) Subsections (2), (3) and (4) do not apply to a distribution of securities by a collective investment scheme.

84. (1) A person who distributes a security, other than a security which is issued by a collective investment scheme—^{Post-distribution statement}

- (a) under a prospectus which has been filed with the Commission and receipt obtained therefor under this Act; or
- (b) pursuant to an exemption from the requirement to file a prospectus with the Commission,

shall within ten days of the completion of the distribution, file a post-distribution statement in respect of the securities distributed with the Commission in the prescribed form.

(2) Where the period of distribution of securities exceeds ten days in length, an issuer shall comply with subsection (1) within ten days of the first distribution of securities thereunder, notwithstanding that such distribution may not be complete, and thereafter shall file a post-distribution statement with the Commission in respect of the remaining securities distributed within ten days of the completion of the distribution.

(3) A post-distribution statement shall be signed by three senior officers of the issuer at least two of whom shall be members of the board of directors of the issuer, or persons performing equivalent functions.

PART VII

MARKET CONDUCT AND REGULATION

Division 1—Stamp Duty

Exemption from
stamp duty
Chap. 76:01

85. Notwithstanding the Stamp Duty Act, no stamp duty shall be payable in respect of the transfer of any security in accordance with the rules of governance of any registered self-regulatory organization.

Division 2—Transactions conducted other than through a Securities Exchange

Trades conducted
other than through a
securities exchange

86. Where a registrant under section 51(1)(a) participates in trades other than through the facilities of a securities exchange, such a registrant shall keep a record of all trades executed by any person other than through the facilities of a securities exchange and shall file with the Commission a report of the trades in the prescribed form and within the prescribed period.

Division 3—Record-keeping and Compliance Reviews

87. (1) Every market actor shall—

Record-keeping

(a) make and keep such books, records and other documents in such form and for such periods as—

(i) are reasonably necessary in the conduct of its business and operations, including documentation of compliance with this Act and the proper recording of its business transactions, financial affairs and the transactions that it executes on behalf of others;

(ii) are required by this Act;

(iii) are required by the Proceeds of Crime Act, any other written law in relation to the prevention of money laundering and combating the financing of terrorism or any other written law that is administered or supervised by the Commission, which may be in force from time to time; and

(iv) otherwise prescribed;

(b) file with, or deliver to, the Commission any prescribed document, instrument, writing or report; and

(c) make available to a person any report referred to in paragraph (b) upon request.

(2) Without limiting the generality of subsection (1), every self-regulatory organization that is a securities exchange shall keep a record as prescribed of the time at which each transaction on a self-regulatory organization took place and any other prescribed information and shall supply to a client of a member of the self-regulatory organization, on production of a written confirmation of a transaction with the member, particulars of the time at which the

transaction took place and verification or otherwise of the matters set forth in the written confirmation.

(3) On the request of a person who produces a written confirmation of a trade on his behalf through its facilities, a securities market shall furnish to him—

- (a) forthwith, if the trade was executed within thirty days of the request; and
- (b) within a reasonable time, if the trade was executed more than thirty days before the request,

details of when the trade took place and of any other matter contained in the confirmation of which the securities market acquired knowledge in the ordinary course of its business.

(4) Any book, record or other document required to be kept under this Act shall be kept for a period of at least six years or as otherwise prescribed.

Provision of
information to the
Commission

88. Every market actor shall deliver to the Commission at such time as the Commission or any duly authorized member, employee or agent of the Commission may request in the performance of its or his functions under this Act—

- (a) any of the books, records or documents that are required to be kept by the market actor under this Act or copies or extracts thereof; and
- (b) any filings, reports or other communications made to any other regulatory agency whether required under this Act or any other written law or copies or extracts thereof.

Compliance
reviews

89. (1) In the performance of the functions of the Commission under this Act, the chief executive officer or any duly authorized employee or agent of the

Commission so authorized in writing by the chief executive officer, shall be permitted to review the books, records or documents that are required to be kept under section 87 by a registrant or self-regulatory organization for the purpose of determining whether the provisions of this Act, the Proceeds of Crime Act, any other written law in relation to the prevention of money laundering and combating the financing of terrorism or any other written law that is administered or supervised by the Commission are being complied with.

(2) A person conducting a compliance review under this section shall, on production of his authorization, be permitted to—

- (a) enter the business premises of any registrant or self-regulatory organization during normal business hours upon providing reasonable written notice to such registrant or self-regulatory organization;
- (b) inquire into and examine the books, records or documents of the registrant or self-regulatory organization that are required to be kept under section 87, and make copies of, or take extracts from, the books, records or documents; or
- (c) request any information or explanation as he considers necessary for the due performance of his duties.

(3) References to books, records, or documents in this section include all books of account, tangible or intangible securities or other instruments, cash or cash equivalents, vouchers, sales contracts, minutes of meetings or other records, accounts or data.

(4) The Commission may charge a fee as prescribed for a compliance review conducted under this section.

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him in criminal proceedings.

Compliance directions

90. (1) Notwithstanding any other action or remedy available under this Act, if a compliance review conducted under section 89 or any other inspection reveals that a registrant or self-regulatory organization—

- (a) is committing, or is about to commit an act or is pursuing or is about to pursue any course of conduct, that is an unsafe or unsound practice in conducting the business of securities;
- (b) is committing, or is about to commit an act, or is pursuing or is about to pursue a course of conduct, that may directly or indirectly be prejudicial to the interest of investors;
- (c) is contravening or is about to contravene any of the provisions of this Act or By-laws or Guidelines made thereunder or the Proceeds of Crime Act, any other written law in relation to the prevention of money laundering and combating the financing of terrorism or any other written law that is administered or supervised by the Commission which may be in force from time to time; or
- (d) has breached any requirement or failed to comply with any measure imposed by the Commission in accordance with this Act or By-laws or Guidelines made thereunder,

the chief executive officer, upon notifying the Chairman, may direct the registrant or self-regulatory organization within such time as may be specified, to take all such measures as he may consider necessary to remedy the situation or minimize the prejudice.

(2) For the purposes of this section, “unsafe or unsound practices” includes without limitation, any action or lack of action that is contrary to generally accepted standards or prudent operation and behaviour, the possible consequences of which, if continued, would

be a risk of loss or damage to a registrant or self-regulatory organization, its investors or the general public.

(3) Subject to subsection (6), before a direction is issued, the person to whom the direction is to be issued shall be served with a notice specifying—

- (a) the facts of the matter;
- (b) the directions that are intended to be issued; and
- (c) the time and place at which the person served with the notice may make representations to the chief executive officer.

(4) If the person served with the notice referred to in subsection (3) fails to attend at the time and place stipulated by the said notice, the chief executive officer, upon notifying the Chairman, may proceed to issue directions in his absence.

(5) Where after considering the representations made in response to the notice referred to in subsection (3), the chief executive officer determines that the matters specified in the notice are established, the chief executive officer, upon notifying the Chairman, may proceed to issue directions to the person served with the notice.

(6) Notwithstanding subsection (3), if in the opinion of the chief executive officer, the length of time required for the representations to be made might be prejudicial to investors or to the stability of the securities industry, the chief executive officer may, upon notifying the Chairman, make an interim direction with respect to the matters referred to in subsection (1) having effect for a period of not more than twenty business days.

(7) A direction made under subsection (6) continues to have effect after the expiration of the twenty-day period referred to in that subsection if no representations are made to the chief executive officer

within that period, or if representations have been made, the chief executive officer notifies the person to whom the direction is issued that he is not satisfied that there are sufficient grounds for revoking the direction.

(8) A person who fails to take measures directed pursuant to subsection (1) commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for two years.

(9) All directions issued under this section shall be referred to as “compliance directions”.

Division 4—Market Manipulation Offences

False trading and artificial prices in a securities market

91. (1) No person shall do anything, take part, carry out, or cause anything to be done, whether directly or indirectly, in one or more related transactions, with the intention that or being reckless as to whether such transaction has or is likely to have the effect of creating a false or misleading appearance of trading activity on a securities market.

(2) No person shall do anything, take part in, carry out, or cause anything to be done, whether directly or indirectly, in one or more related transactions, with the intention that or being reckless that such transaction has or is likely to have the effect of creating an artificial price, or maintaining at an artificial level a price, for a security on a securities market.

(3) Without limiting the generality of subsections (1) and (2), where a person—

- (a) enters into or carries out, directly or indirectly, any transaction which purports to be a transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of the securities;
- (b) offers to sell securities at a price that is substantially the same as the price at which he has made or proposes to make or knows that another person acting jointly or in

concert with him has made or proposes to make an offer to purchase the same or substantially the same number of the securities; or

- (c) offers to purchase securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that another person acting jointly or in concert with him has made or proposes to make, an offer to sell the same or substantially the same number of the securities,

the person is presumed, for the purposes of subsections (1) and (2) to be doing something or causing something to be done, with the intention that, or being reckless as to whether such transaction has, or is likely to have, the effect of creating a false or misleading appearance of trading activity on a securities market, or creating or maintaining at a level that is artificial, a price for a security on a securities market unless the contrary is proven by him.

92. No person shall—

Price rigging

- (a) enter into or carry out, directly or indirectly, any transaction or sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, with the intention that, or being reckless as to whether such transaction has, or is likely to have, the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a securities market; or
- (b) enter into or carry out, directly or indirectly, any fictitious or artificial transaction or device, with the intention that, or being reckless as to whether, such

transaction has, or is likely to have, the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in the price of securities traded on a securities market.

Dissemination of information containing a misrepresentation

93. No person shall disclose, circulate or disseminate, or authorize the disclosure, circulation or dissemination of information to induce another person to buy, sell or otherwise trade in securities, whether or not such purchase, sale or trade is with such person, where the information contains a misrepresentation, and the person knows, or is reckless as to whether, the information contains a misrepresentation.

Securities market manipulation

94. A person shall not, directly or indirectly, enter into, carry out or participate in any transaction in securities of an issuer by itself or in conjunction with any other transaction that the person knows or reasonably ought to know will result in or contribute to a misleading appearance of trading activity in, or an artificial price for, a security.

Use of fraudulent or deceptive devices

95. A person shall not, directly or indirectly, in connection with a trade in securities—

- (a) employ any device, scheme or artifice with the intent to defraud or deceive;
- (b) engage in any act, practice or course of business which is fraudulent or deceptive, or would operate as a fraud or deception; or
- (c) make any untrue statement of a material fact or omit to state a material fact with the intention to mislead.

Excessive trading

96. (1) No registrant under section 51(1)(a) or employee of such a registrant shall effect trades that are excessive in volume or frequency with or for a client in respect of whose trading he is in a position to control or direct.

(2) No person who has discretionary authority over, or who is a trustee for an account of another, shall effect or cause to be effected trades that are excessive in volume and frequency for the person whose account he has discretionary authority over or is a trustee for.

(3) For the purposes of this section, whether trades are excessive in volume or frequency shall be determined on the basis of such factors as the amount of profits or commissions of the registrant, employee or other person in relation to the size of the account of the client or the pattern of trading in the account, or the needs and objectives of the client as ascertained on reasonable inquiry.

97. (1) The Commission may prescribe standards for the conduct of a registrant in relation to a client or investor to prevent— Standard of conduct for registrants

- (a) a conflict of interest; or
- (b) any other conduct that would enable a registrant to treat a client or investor unfairly.

(2) The Commission may prescribe standards for the conduct of a registrant under section 51(1)(a) and (c) in relation to the custody or lending of any money or security held for a client or investor.

98. (1) A registrant under section 51 shall not recommend a trade in a security to any client unless— Restrictions on recommendation

- (a) he has reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry as to his investment objectives, financial situation and needs, or on any other information known to the registrant; and
- (b) he discloses in writing to any such person all conflicts of interest or potential conflicts of interest that he has, or may have, in respect of the security or the issuer of the

security, including any conflict or potential conflict of interest arising from—

- (i) his holding of securities of the issuer as beneficial owner;
- (ii) any compensation arrangement with any person;
- (iii) his acting as underwriter in any distribution of securities of the issuer in the three years immediately preceding; or
- (iv) any direct or indirect financial or other interest in the security or the issuer of the security held by the registrant.

(2) Where a registrant publishes a research report which is not prepared for a specific client and which recommends generally a trade in security, that research report—

- (a) shall contain the information required in subsection (1)(b); and
- (b) is exempt from the requirement outlined in subsection (1)(a).

Offence

99. A person who contravenes section 91, 92, 93, 94, 95, 96 or 98 commits an offence and is liable on conviction on indictment to a fine of two million dollars and imprisonment for five years.

Division 5—Insider Trading

Prohibition on use of material non-public information

100. (1) No person connected to a reporting issuer shall, directly or indirectly, buy, sell, or otherwise trade in any securities of such reporting issuer, on a securities market, during any time that such person has knowledge or possession of material non-public information, however obtained, until such information has been published.

(2) No person connected to a reporting issuer shall, directly or indirectly, counsel, procure or otherwise advise any person to buy, sell, or otherwise trade in any securities of such reporting issuer, on a securities market, during any time that such person has knowledge or possession of material non-public

information, however obtained, until such information has been published.

101. A person connected to a reporting issuer shall not, directly or indirectly, communicate or otherwise disclose any material non-public information to any person until such information has been published, unless in the necessary course of business. Prohibition on the disclosure of material non-public information

102. A person who contravenes section 100 or 101 commits an offence and is liable on conviction on indictment to a fine of five million dollars and to imprisonment for seven years. Offence

103. No transaction is—

(a) void; or

(b) voidable by the person who has knowledge or possession of material non-public information,

Transaction not void or voidable

by reason only that it was entered into in contravention of section 100 or 101.

104. (1) Sections 100 and 101 do not prohibit a person by reason of his having knowledge or possession of any material non-public information from— Exceptions to sections 100 and 101

(a) entering into a transaction in the course of the exercise in good faith of his functions as liquidator, receiver, receiver-manager or trustee in bankruptcy; or

(b) acquiring securities through any employee profit-sharing plans or employee stock ownership plan established to provide for the ownership of such securities by all employees where—

(i) the participation of the person in such plan is established prior to the time that the person acquired knowledge or possession of the material non-public information; and

(ii) the plan provides for the automatic acquisition of securities by participants in such plan.

(2) A person is not, by reason only of his having knowledge or possession of material non-public information relating to any particular transaction, prohibited by section 100 or 101—

(a) from buying or selling or participating in any transaction on any securities market; or

(b) from doing any other thing in relation to securities which he is prohibited from buying or selling or causing to be traded on any securities market,

if he does that thing only in order to facilitate the completion or carrying out of a transaction that was agreed to before the time that the person acquired knowledge or possession of the material non-public information and the transaction is completed on the same terms.

(3) An entity who buys, sells or otherwise trades in securities of a reporting issuer with knowledge or possession of material non-public information that has not been published is exempt from section 100(1), where the entity proves that—

(a) no senior officer, partner, employee or agent of the entity that made or participated in making the decision to buy, sell or otherwise trade the securities of the reporting issuer had knowledge of the material non-public information; and

(b) no investment advice was given with respect to the purchase, sale or other trade of the securities to the senior officer, partner, employee or agent of the entity who made or participated in making the decision to buy, sell or otherwise trade the securities by a senior officer, partner, employee or agent of the entity who had knowledge of the material non-public information,

provided that this exemption is not available to an individual who had knowledge of the material non-public information.

(4) In determining whether an entity has met the requirements under subsection (3), it shall be relevant whether and to what extent the entity has implemented and maintained reasonable policies and procedures to prevent contraventions of section 100 by persons making or influencing investment decisions on its behalf, and to prevent transmission of material non-public information contrary to section 101.

105. Where a person is accused of an offence under section 100 or 101, it shall not be a defence to the charge that the material non-public information in respect of which the accusation has been made came to his knowledge or possession without having been solicited by him or that he made no effort to procure the acquisition of such information. Defence not available

106. In this Part—

Presumptions

- (a) a person who trades in a security at a time when he has knowledge or possession of material non-public information is presumed to have traded in the security as a result of his knowledge or possession of the material non-public information unless the contrary is proven by him; and
- (b) an entity is deemed to have knowledge or possession of material non-public information at and from the time such material non-public information comes to the knowledge or possession of any senior officer, partner, employee or agent of such entity.

Division 6—Market Practices

107. (1) A broker-dealer shall establish and keep in a financial institution one or more trust accounts or such other accounts as may be prescribed into which it shall, upon receipt pay— Client accounts

- (a) all amounts, less any commission and other proper charges, that are received from or on

account of any person, other than another broker-dealer, for the purchase of securities; and

- (b) all amounts, less any commission and other proper charges, that are received on account of any person, other than a broker-dealer, from the sale of securities and not paid to that person or as that person directs.

(2) No money shall be withdrawn from an account established under subsection (1), except for the purpose of making a payment on behalf of or to the person lawfully entitled thereto or for any other purpose duly authorized by law.

(3) Nothing in this section shall be construed as affecting in any way any lawful claim or lien which any person may have against or upon any monies held in an account established under subsection (1), or against or upon any monies received for the purchase of securities, or from the sale of securities, before such monies are paid into such account.

(4) A broker-dealer that contravenes this section commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for two years.

Market actor to send documents to beneficial owner

108. (1) Where securities of an issuer are registered in the name of, but not beneficially owned by, a market actor or his nominee, the market actor or his nominee shall send to the beneficial owner of the securities a copy of any document sent to him as registered security holder forthwith after receipt thereof, unless the beneficial owner instructs him in writing that the document need not be sent.

(2) A person who sends a document to registered security holders pursuant to this Act shall furnish to a market actor or his nominee forthwith upon request, sufficient copies of the document to enable him to comply with subsection (1) and the market actor or his nominee shall pay or reimburse the person the reasonable costs of doing so.

109. (1) Subject to subsection (2), a broker-dealer who trades in any security with or for a client shall send to that client within two business days after the completion of the trade, a written confirmation of the trade containing the prescribed information. Confirmation to be sent to client

(2) The Commission may order that a broker-dealer who provides a service of a continuous nature may send, instead of a confirmation as referred to in subsection (1), a periodic statement at the end of each three-month period or at such other shorter period and containing such information as may be prescribed.

(3) A broker-dealer satisfies the obligation under subsections (1) or (2) by sending the confirmation or statement to its client by—

- (a) way of compact disc or other external memory device addressed to the latest known address as shown on the securities register; or
- (b) electronic mail,

where the client has given written consent for delivery in such a format.

(4) Notwithstanding subsection (3), a client of a broker-dealer may make a written request for a hard copy of any confirmation or periodic statement and the broker-dealer shall, as soon as practicable, send such statement to the latest known address of the client.

110. A broker-dealer shall on the request of the Commission forthwith but in any event no later than seven business days from the date of the request disclose to the Commission the name of a person with or through whom the security was traded. Notification to Commission

111. (1) In this section, “residence” includes a building or part of a building in which the occupant resides permanently or temporarily and any appurtenant premises. a Restriction on trading at residence

(2) No person shall—

- (a) attend at any residence without being invited by an occupant of the residence; or

(b) make an unsolicited communication to any residence including by telephone, facsimile or mail delivered to the residential address, within Trinidad and Tobago for the purpose of trading in a security, or providing investment advice.

(3) Subsection (2) shall not apply where the person attends at or communicates to any residence—

(a) of a close friend, a business associate or a client with whom or on whose behalf the person attending or communicating has been in the habit of trading securities; or

(b) of a person who has received a copy of a prospectus for which a receipt has been obtained under this Act and who has requested that information respecting a security offered in that prospectus be furnished to him by the person attending at or communicating to the residence.

Control of
advertisement

112. (1) The Commission may order a registrant to send to it a copy of each advertisement that he proposes to use in connection with a trade in a security at least seven business days before it is used, if the Commission reasonably believes that the past conduct of the registrant in connection with such advertisements makes such review by it necessary for the protection of investors.

(2) The Commission may order that the use of an advertisement sent to it pursuant to subsection (1) be prohibited or require that it be altered before it is used if the Commission is of the view that the advertisement is likely to mislead the public.

(3) In this section, “advertisement” includes any material designed to make a sales presentation to a purchaser whether or not it is published or presented to a purchaser but does not include a prospectus.

113. A person who places an order with a broker-dealer to sell a security that he does not beneficially own or, if acting as agent, that he knows his principal does not beneficially own, shall, when he places the order, declare that he or his principal, as the case may be, does not beneficially own the security.

Seller of security
to declare
non-ownership

114. (1) A person who places an order for the sale of a security through a broker-dealer acting on his behalf and who—

Declaration as to
short position

- (a) does not beneficially own the security; or
- (b) if he is acting as agent knows his principal does not own the security,

shall, at the time of placing the order to sell, declare to the broker-dealer that he or his principal, as the case may be, does not beneficially own the security, and that fact shall be published by the broker-dealer in the written confirmation of sale.

(2) For the purposes of subsection (1), a security which is not owned by a person includes, but is not limited to, a security that—

- (a) has been borrowed by that person; or
- (b) is subject to any restriction on its sale.

115. A registrant shall not use the name of, or hold himself out as, another registrant on letterheads, forms, advertisements or signs, on correspondence or otherwise, unless he is a partner, senior officer or agent of, or is authorized in writing by, the other registrant.

Prohibition on use of
name of another
registrant

116. (1) A person shall not represent that he or any other person is registered in any capacity under this Act unless—

Representation as to
registration

- (a) the representation is true; and
- (b) in making the representation, he specifies his or the other person's category of registration under this Act.

(2) A person who is not registered under this Act shall not, directly or indirectly, hold himself out as being registered.

Approval by
Commission not
to be advertised

117. (1) Subject to subsection (2), a person shall not represent, orally or in writing, that the Commission or a person authorized by the Commission, has in any way approved or endorsed the financial standing, fitness or conduct of any person or evaluated the merits of any security or issuer.

(2) Subsection (1) shall not be construed as preventing a person who is duly registered under this Act from holding himself out as being so registered.

PART VIII

SIMPLIFIED CLEARING FACILITIES

Application of Part

118. Notwithstanding any other written law, this Part shall have effect in relation to securities registered with the Commission.

Definitions

119. In this Part—

“interested person” means a person who has an interest in a security in an account of a participant in a clearing agency;

“in writing” includes production in machine readable form;

“pledge” means a contractual interest in a security that is delivered to, retained by, or deemed to be in the possession of, a creditor to secure payment of a debt or other obligation and includes a mortgage and pledge of a security;

“registered owner” means a person who is shown on the securities register of an issuer as the owner of a security or security certificate issued by it; and

“security certificate” means an instrument issued by, or on behalf of an issuer that is evidence of a security.

120. (1) On the issue of a security, an issuer may deliver a security certificate directly to a clearing agency as registered owner of the security if—

- (a) the issuer has written authorization signed by, or on behalf of the beneficial owner; and
- (b) the delivery of the certificate is evidenced by a written confirmation signed by the clearing agency and sent at once by the issuer to the beneficial owner or his agent.

(2) On the issue of a security, an issuer may, instead of delivering a security certificate, issue a security to a clearing agency as registered owner by means of record entries if—

- (a) the issuer has written authorization signed by or on behalf of the beneficial owner of the security;
- (b) the issue is further evidenced by a written confirmation executed by the clearing agency and sent at once by the issuer to the beneficial owner of the security or his agent; and
- (c) the issue is recorded at once in the securities register of the issuer and the records of the clearing agency.

(3) The requirement to obtain the written authorization of a beneficial owner required by subsection (1)(a) or (2)(a) is satisfied if the beneficial owner acknowledges in any agreement or document entered into with a registrant, participant or clearing agency, that securities owned by the beneficial owner may be kept by means of record entries with a clearing agency, whether entered into before or after the issue of a security contemplated in this section.

(4) A written confirmation referred to in subsection (1)(b) or (2)(b) is, in the absence of evidence to the contrary, proof that the person named in the confirmation is the beneficial owner of the securities described therein.

Transfer of securities
through clearing
agency

121. (1) Immediately after receipt of a security certificate from a participant, a clearing agency shall deliver the certificate to the issuer and request the transfer of the securities evidenced by the certificate to the clearing agency.

(2) Where a clearing agency presents a security certificate in proper form to an issuer and requests a transfer to it of the securities evidenced by the certificate, the issuer shall, if it has a duty to register the transfer, immediately enter the transfer in its securities register and deliver to the clearing agency a security certificate representing the securities and showing the clearing agency as registered owner.

(3) An issuer may, instead of issuing a security certificate under subsection (2), transfer a security to a clearing agency as the registered owner by means of record entries if—

- (a) the issuer has written authorization signed by or on behalf of the beneficial owner of the security;
- (b) the transfer is further evidenced by a written confirmation executed by the clearing agency and sent at once by the issuer to the beneficial owner of the security or his agent; and
- (c) the transfer is recorded at once by the issuer in the securities register of the issuer and the records of the clearing agency.

(4) The requirement to obtain the written authorization of a beneficial owner required by subsection (3)(a) is satisfied if the beneficial owner

acknowledges in any agreement or document entered into with a registrant, participant or clearing agency, that securities owned by the beneficial owner may be kept by means of record entries with a clearing agency, whether entered into before or after the issue of a security contemplated in this section.

(5) A written confirmation referred to in subsection (3)(b) is, in the absence of evidence to the contrary, proof that the person named in the confirmation is the beneficial owner of the securities described therein.

122. (1) On receipt of instructions in writing from a participant and, if the account of the participant is blocked, from the person who exercises control over it, a clearing agency shall in accordance with those instructions, effect a transfer of a security or any interest therein from the participant to another participant by making an entry in its records. Transfer by record entry participants

(2) Where—

- (a) a security shown in the records of a clearing agency is evidenced by a security certificate identifying the clearing agency as the registered owner and that security certificate is in the custody of the clearing agency; or
- (b) the clearing agency is the registered owner of the security by means of record entries contemplated by section 120(2) or 121(3),

then, on receipt of instructions in writing from a participant and, if the account of the participant is blocked, from the person who exercises control over it, a clearing agency shall in accordance with those instructions, effect a transfer of a security or any interest therein from one beneficial owner to another beneficial owner by making an appropriate entry in its records in addition to any other method permitted by law, and such transfer shall have the effect of transferring all rights, title and interest in such security to the beneficial owner.

Blocked account

123. (1) A clearing agency shall establish a procedure whereby it or an interested person may exercise control over an account of the participant in the clearing agency where—

- (a) the interested person is, in relation to a security in the account of the participant, a beneficial owner, a pledgee, or a judgment creditor of the beneficial owner; or
- (b) a security in the account of the participant is subject to a lien in favour of its issuer or to a restriction or constraint on its transfer.

(2) Subject to section 132(3), a clearing agency shall not transfer, deliver or otherwise deal with a security in a blocked account without instructions in writing from the person who exercises control over it.

Effecting pledge by record entry

124. (1) On receipt of instructions in writing from a participant and, if the account of the participant is blocked, from the person who exercises control over it, a clearing agency shall, in accordance with the instructions, effect a transfer by way of pledge of a security from the participant to a pledgee by making an entry in its records to block an account in the name of the participant in favour of the pledgee for the amount of the debt or other obligation or the number of securities pledged.

(2) On receipt of instructions in writing from a pledgee in whose favour an account is blocked under subsection (1) stating that he is entitled to realize the securities in the blocked account, a clearing agency shall, in accordance with the instructions, transfer the securities unless—

- (a) it knows that the pledgee is not entitled to realize the securities; or
- (b) its procedure established pursuant to section 123 specifies otherwise.

(3) A clearing agency is not liable for any loss resulting from compliance with the instructions of a pledgee under subsection (2) unless the clearing agency knows before the transfer that the pledgee is not entitled to the securities.

125. On receipt of instructions in writing from a participant and a beneficial owner of a security, a clearing agency shall, in accordance with the instructions, make an entry in its records to block an account in the name of the participant in favour of the beneficial owner or in favour of a person who acts on his behalf.

126. (1) A clearing agency may refuse to open an account in respect of a security that is subject to—

- (a) a lien in favour of its issuer; or
- (b) a restriction or constraint on its transfer, whether statutory or otherwise.

(2) A clearing agency may, with respect to a security referred to in subsection (1), make an entry in its records to block an account in the name of a participant in favour of the clearing agency or an interested person.

127. (1) On the application of a creditor who has a judgment against a beneficial owner of a security held by a clearing agency, the Court may order the clearing agency to make an entry in its records to block an account in the name of the beneficial owner or his agent in favour of the judgment creditor for the amount or number of securities mentioned in the order.

(2) On receipt of an order of, or instructions in writing from the Court or an officer thereof stating that a judgment creditor in whose favour an account is blocked under subsection (1) is entitled to realize a security in the blocked account, a clearing agency shall transfer the security in accordance with the order or instructions.

(3) On the application of a person who in an action or an application under section 134 claims to be entitled to a security held for a beneficial owner in a clearing agency, the Court may order the clearing agency to make an entry in its records to block the account in the name of the beneficial owner or his agent

in favour of the claimant for the amount or number of securities mentioned in the order.

(4) A clearing agency is not liable for any loss resulting from compliance with an order or instructions received under subsections (1) to (3).

Limitation on rights of participants

128. A participant has no right to pledge, transfer or otherwise deal with a security held by a clearing agency except through the facilities of the clearing agency.

Withdrawal of security

129. (1) On the receipt of a demand in writing from a participant for whom a security is held, other than in securities held in a blocked account, for withdrawal of that security, a clearing agency shall, within a reasonable time, subject to any proceedings under section 134, obtain and deliver to the participant a security certificate in his name or a name designated by him evidencing the security.

(2) On receipt of instructions in writing from a clearing agency that is the registered owner of securities to deliver a security certificate to it, the issuer of the security shall immediately deliver the certificate to the clearing agency in accordance with its instructions.

Issuer's duty to request list of participants and beneficial owners

130. (1) Where a clearing agency is the registered owner of a class of securities of an issuer that proposes to close its securities register or fix a record date in respect of the class for the purpose of determining security holders entitled—

(a) to receive notice of, or to vote at, a meeting of security holders;

(b) to receive payment of a dividend or interest;
or

(c) to participate in a liquidation distribution,

or for any other purpose, the issuer shall give the clearing agency notice of its intention to close its securities register or fix a record date.

(2) The notice referred to in subsection (1) shall request from the clearing agency a list of the names of the participants and beneficial owners for whom the clearing agency and the participants hold securities of the class mentioned in that subsection made up as of the date on which it proposes to close its register or fix a record date.

(3) On receipt of a demand in writing from an issuer for a list of the names of participants and beneficial owners for whom it and the participants hold securities of a class issued by the issuer, a clearing agency shall within ten business days provide the issuer with a list setting out—

(a) the names and addresses of; and

(b) the number or amount of securities of the class held for,

each such participant and beneficial owner made up as of the date specified in the demand.

(4) On receipt of a demand from an issuer under subsection (3), a clearing agency shall send notice of the demand to each participant.

(5) A participant that receives a notice sent pursuant to subsection (4) shall within five business days—

(a) furnish to the clearing agency a list containing the names and addresses of all beneficial owners for whom the participant holds the securities and the number or amount of securities of the class so held; and

(b) instruct the clearing agency to furnish the list to the issuer.

(6) Where a participant receives a notice sent pursuant to subsection (4), but does not provide a clearing agency or the issuer with a list of all the beneficial owners for whom it holds securities referred to in the notice, the participant shall at its own expense obtain from the issuer and send to each beneficial owner, who is not included in the list and who has not instructed it otherwise in writing, any dividend or interest or any document that the issuer wishes to send to its security holders.

(7) A clearing agency that receives lists of participants and beneficial owners under subsection (5) shall, before it furnishes the lists to the issuer, consolidate them into one list in a form that does not disclose any connection between a beneficial owner and a participant, and the clearing agency may charge participants a reasonable fee for the consolidation.

(8) A clearing agency shall treat as confidential any information it receives under subsection (5) concerning the beneficial ownership of securities.

(9) After receipt of a demand in writing from an issuer that has received a list of participants and beneficial owners under subsection (3), a clearing agency shall provide the issuer with a current list made up as of a date subsequent to the demand showing any change in respect of the securities held for any participant or beneficial owner since the date as of which the list under subsection (3) was made up.

(10) An issuer is entitled to obtain free of charge from a clearing agency in any one calendar year four lists of participants and beneficial owners under subsection (3) with respect to each class of securities held by the clearing agency, and the issuer shall pay the clearing agency a reasonable amount for—

(a) any additional cost attributable to a demand for a list made after the date when

the issuer closed its securities register or fixed a record date; or

(b) any additional list.

(11) An issuer is entitled to presume that a person named in a list obtained under this section is the beneficial owner of the securities of the issuer referred to in the list.

131. After submitting a request in writing to a clearing agency, a beneficial owner of a security of an issuer and the beneficial owner's agent may during usual business hours, examine a list delivered to an issuer under section 130(9) that relates to any securities of the issuer held by it and may also make extracts therefrom without charge, and any other person may do so upon payment of a reasonable fee. Access to clearing agency records

132. (1) Subject to subsection (3), an incorrect entry made in the records of a clearing agency in connection with a transfer or pledge of a security by reason of its error has the same effect as a correct entry. Incorrect entry by clearing agency

(2) Subject to subsection (3), a clearing agency is liable to compensate a person who incurs a loss as a result of an incorrect entry made in its records by reason of its error.

(3) Where a clearing agency by reason of its error makes an incorrect entry in its records transferring a particular class of security to a participant's account, the clearing agency may, to the extent that there are securities of that class in the account, correct the entry in whole or in part without the participant's consent.

133. (1) Where a clearing agency is unable to effect a pledge or transfer of a security on its records because of an extraordinary event beyond its reasonable control, it is not liable to compensate a person who incurs a loss as a result of a delay in effecting the pledge or transfer. Liability in extraordinary circumstances

(2) For the purposes of this section, an extraordinary event shall include, but not be limited to acts of God (including fire, explosion, flood, earthquake, tidal wave, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, riot, commotion, strike, go-slow, lockout or other industrial action leading to disorder.

Application to Court
to rectify records

134. (1) Where an entry is alleged to have been incorrectly made or retained in, or omitted or deleted from, the records of a clearing agency, other than in the circumstance outlined in section 132(3), the clearing agency or an interested person may apply to the Court for an order that the records be rectified.

(2) On an application under subsection (1), the Court may make any order it thinks fit including an order—

- (a) determining who is an interested person and the notice to be given to such a person;
- (b) dispensing with notice to any person;
- (c) determining the right of a party to the proceedings to have his name entered or retained in, or deleted or omitted from the records of, a clearing agency;
- (d) directing that the records of a clearing agency be rectified;
- (e) directing that a clearing agency make an entry in its records to block an account; or
- (f) compensating any person.

Participation by
financial institution

135. (1) A clearing agency may hold securities issued by the Central Bank of Trinidad and Tobago, a financial institution or a collective investment scheme that is authorized under the law applicable to it to deliver or transfer any securities held by it into custody of a clearing agency.

(2) The Commission may prescribe that a corporation incorporated by or under an Act of Parliament may deliver or transfer any securities held by it into the custody of a clearing agency.

(3) The Commission may make an order approving any aspect of the operating system of a clearing agency that is not inconsistent with this Part.

PART IX

REPORTING BY PERSONS CONNECTED WITH ISSUERS

136. (1) A person who is connected to a reporting issuer as a result of section 4(3)(a) or (c) shall, within five business days of the day that he becomes connected to the reporting issuer, file a report in the prescribed form with the Commission disclosing any direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer by him. Reports by certain connected persons

(2) A person under this section—

(a) who has filed or is required to file a report; and

(b) whose direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer by him and his associates changes from that shown or required to be shown in the report or in the latest report filed by him,

shall within five business days from the day on which the change takes place, file a report of direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer by him and his associates as of the day on which the change took place and the change or changes that occurred, giving such details of each transaction as may be prescribed.

(3) No person to whom this section applies shall transfer or cause to be transferred any securities of the reporting issuer to which he is connected into the name of an agent, nominee or custodian, other than a clearing agency, without filing with the Commission a

report in the prescribed form of such transfer except for a transfer for the purpose of giving collateral for a genuine debt.

(4) Notwithstanding subsection (1), a person is not required to file a report under this section where the person does not beneficially own, or exercise control or direction over, any securities of the reporting issuer.

(5) For purposes of this section, a person has beneficial ownership of, or control or direction over securities of a reporting issuer including—

- (a) securities which are third-party derivative securities related to the reporting issuer;
- (b) securities that are convertible or exchangeable for securities of a reporting issuer, whether or not on condition; or
- (c) rights to acquire or to subscribe for, or otherwise receive securities of a reporting issuer,

whether or not such securities are securities issued by the reporting issuer.

(6) Any person who files a report with the Commission under this section shall forthwith thereafter deliver a copy of the report that he has filed with the Commission under this section to the reporting issuer.

Disclosure of
beneficial interest in
share capital

137. (1) A reporting issuer may by notice in writing, require any holder of its securities within such reasonable time as is specified in the notice being not less than ten days—

- (a) to indicate in writing the capacity in which he holds any securities of the reporting issuer; and
- (b) where he holds them otherwise than as beneficial owner, to indicate in writing so far as it lies within his knowledge, the

person who has an interest in them, either by name and address or by other particulars sufficient to enable that person to be identified, and the nature of that person's interest.

(2) Where a reporting issuer is informed in pursuance of a notice given to any person under subsection (1) or paragraph (b) of this subsection, that any other person has an interest in any securities of the reporting issuer, the reporting issuer may, by notice in writing, require that other person within such reasonable time as specified in the notice being not less than ten days—

- (a) to indicate in writing the capacity in which he holds that interest; and
- (b) where he holds that interest otherwise than as beneficial owner, to indicate in writing so far as it lies within his knowledge, the person who has an interest in it, either by name and address or by other particulars sufficient to enable him to be identified, and the nature of that person's interest.

(3) Any reporting issuer may, by notice in writing, require any holder of its securities to indicate in writing, within such reasonable time as is specified in the notice being not less than ten days, whether any of the voting rights carried by any securities of the issuer held by him are the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to give so far as it lies within his knowledge, written particulars of the agreement or arrangement and the parties to it.

(4) Where a reporting issuer is informed in pursuance of a notice given to any person under subsection (3) or this subsection that any other person is a party to such agreement or arrangement as is

mentioned in subsection (3), the reporting issuer may, by notice in writing, require that other person within such reasonable time as is specified in the notice being not less than ten days, to give so far as it lies within his knowledge, written particulars of the agreement or arrangement and the parties to it.

(5) Whenever a reporting issuer receives information from a person in pursuance of a requirement imposed on him under this section, it shall keep a record of—

- (a) the fact that the requirement was imposed and the date on which it was imposed; and
- (b) the information received in pursuance of the requirement.

(6) The Commission may request that a reporting issuer deliver to it a copy of the record kept by the reporting issuer under subsection (5).

Offences

138. Any person who contravenes any section in this Part, or who, in purporting to comply with any section of this Part, makes a statement or files a report which he knows to be false, or recklessly makes a statement or files a report which is false, or fails to supply any particulars which he is required to supply, commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for two years.

PART X

CIVIL LIABILITY

Liability for
misrepresentation
in prospectus,
damages

139. (1) Subject to this section, a purchaser who purchases a security distributed under a prospectus has a right of action for damages against each of the following persons for any loss or damage sustained by him by reason of any misrepresentation in the

prospectus and each such person shall be liable for any such loss or damage, namely:

- (a) the issuer or the selling security holder on whose behalf the distribution is made;
- (b) a person who is a director of the issuer at the date of the filing of the prospectus;
- (c) a person who authorized or caused himself to be named, and is named, in the prospectus as a director or as having agreed to become a director, either immediately preceding the date of filing of the prospectus or after an interval of time thereafter;
- (d) where the issuer is not a reporting issuer prior to the distribution, any person who was a promoter of the issuer within the twenty-four month period immediately preceding the date of filing of the prospectus;
- (e) a person whose consent has been filed as required by section 78 but only with respect to misrepresentations in a prospectus derived from, or based on, reports, opinions, valuations or statements that have been made by such person; and
- (f) any other person who signed a certificate in the prospectus other than a person referred to in paragraphs (a) to (e) of this subsection.

(2) No person, other than the issuer or the selling security holder on whose behalf the distribution is made, is liable under subsection (1) if—

- (a) having consented to become a director of the issuer, he withdrew his consent before the filing of the prospectus and the prospectus was filed without his authority or consent;
- (b) when the prospectus was filed without his knowledge or consent, he gave reasonable public notice of that fact forthwith after becoming aware of it;

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- (c) after the filing of the prospectus and before the sale of securities under it, he became aware of a misrepresentation and withdrew his consent, and gave reasonable public notice of the withdrawal of the consent and the reasons for it; or
 - (d) as regards every misrepresentation, not purporting to be made on the authority of an expert or a public official document or statement, he had conducted such reasonable investigation as to provide reasonable grounds to believe and did believe, up to the time of the distribution of the securities, that the prospectus did not contain a misrepresentation.
- (3) No person is liable under subsection (1)—
- (a) where, as regards a misrepresentation in a prospectus made by an expert or based on a report, opinion, valuation, or statement made or prepared by an expert—
 - (i) the misrepresentation fairly represented and was a correct and fair copy of, or extract from, the report, opinion, valuation or statement of the expert; and
 - (ii) that person had reasonable grounds to believe and did believe, up to the time of the filing of the prospectus, that the expert making the statement or preparing the report, opinion or valuation was competent to make it, had given his consent as required under section 78 and had not withdrawn that consent before delivery of a copy of the prospectus for filing, nor had the expert, to the

knowledge of the person, withdrawn that consent before the sale of any securities under the prospectus;

- (b) if the purchaser bringing the action knew of the misrepresentation at the time of the purchase; or
- (c) if, as regards a misrepresentation purporting to be a statement made by a public official or contained in what purports to be a copy of, or extract from, a public official document, the misrepresentation was a correct and fair representation of the statement or a copy of, or extract from, the document.

(4) The liability of all persons referred to in subsection (1) is joint and several as between themselves with respect to the same cause of action.

(5) A person who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all the circumstances of the case, the Court is satisfied that it would not be just and equitable.

(6) Notwithstanding subsections (4) and (5), no underwriter is liable for more than the total public offering price represented by the portion of the distribution of securities underwritten, sold by, or to the underwriter.

(7) In this section, a purchaser who purchases a security distributed under a prospectus shall be deemed to have relied on the prospectus at the time of making the purchase.

140. (1) Subject to this section, a purchaser who purchases a security distributed under a prospectus has a right of action against the issuer or the underwriter that has sold securities to such purchaser under such Action by purchasers for rescission for misrepresentation in a prospectus

prospectus for the rescission of the sale and the repayment to such purchaser of the price that has been paid in respect of the security if the prospectus contained a misrepresentation, provided that if the purchaser elects to exercise a right of action for rescission against the issuer or underwriter under this section, such purchaser shall have no right of action for damages against such issuer or underwriter under section 139.

(2) In an action brought under this section or section 139, the purchaser bringing such action need not prove that he was in fact influenced by the misrepresentation or that he relied on the misrepresentation in purchasing the security.

(3) No person shall be liable under subsection (1) if the purchaser bringing the action knew of the misrepresentation at the time of the purchase.

(4) This section applies to securities sold under a prospectus that offers them for subscription in consideration of the transfer or surrender of other securities, whether with or without the payment of cash by, or to the issuer, as though the issue price of the securities offered for subscription were the fair value, as ascertained by the Court, of the securities to be transferred or surrendered, plus the amount of cash, if any, to be paid by the issuer.

Liability for
misrepresentation in
other offering
document

141. (1) Subject to this section, where an offering document, other than a prospectus, contains a misrepresentation, a purchaser who purchased a security in reliance on the offering document has a right of action for damages against the issuer and the selling security holder on whose behalf the distribution is made.

(2) For the purposes of this section, “offering document” means any document purporting to describe the business and affairs of an issuer which has been prepared primarily for delivery to and review by a prospective purchaser so as to assist such purchaser in making an investment decision, but does not include a prospectus or general advertisement.

(3) In this section, a purchaser who receives an offering document whether prior to or following the purchase of a security shall be deemed to have relied on the offering document in making his investment decision.

142. (1) Subject to this section, a purchaser of a security has—

Civil liability for trading contrary to section 100

- (a) a right of action for damages against the seller and such seller shall be liable for any losses or damages sustained; or
- (b) a right of action for rescission against the seller for rescission of the transaction,

where the seller has made the sale to the purchaser contrary to section 100.

(2) Subject to this section, a seller of a security has—

- (a) a right of action for damages against the purchaser and such purchaser shall be liable for any losses or damages sustained; or
- (b) a right of action for rescission against the purchaser for rescission of the transaction,

where the purchaser has made the purchase from the seller contrary to section 100.

(3) A person may bring an action under subsection (1) or (2) in respect of a contravention referred to in subsection (1) or (2) even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of the contravention.

(4) Every person who is a director, senior officer or employee of a reporting issuer that trades contrary to section 100 is accountable to the reporting issuer for any benefit or advantage received or receivable by the person or company as a result of the contravention of section 100, unless the person proves that he reasonably believed that the material non-public information had been published.

(5) No person shall be liable under this section if the person bringing the action violated section 100 in respect of the trade that is the subject of the action.

Civil liability for
market misconduct
offences

143. (1) Subject to this section—

- (a) a person who contravenes section 91, 92, 93, 94, 95, 96 or 98, whether or not he also incurs any other liability, shall be liable to pay compensation by way of damages to any other person for any loss sustained by the other person as a result of the contravention, whether or not the loss arises from the other person having entered into a transaction or trading at a price affected by the contravention; and
- (b) each person who sustained a loss as a result of the contravention by a person of section 91, 92, 93, 94, 95, 96 or 98, whether or not the loss arises from the other person having entered into a transaction or trading at a price affected by the contravention, has a right of action under paragraph (a) against the contravening person.

(2) A person may bring an action under subsection (1) in respect of a contravention set forth in subsection (1)(a) even though the person against whom the action is brought has not been charged with or convicted of an offence by reason of the contravention.

Commission may
seek leave to appear
or intervene in an
action

144. (1) The Commission may apply to a judge of the High Court for leave to bring an action under this Part in the name and on behalf of an issuer or security holder and the judge may grant leave on any terms that he considers proper if the judge is satisfied that—

- (a) the Commission has reasonable grounds for believing that a cause of action exists under this Part;

- (b) the issuer or security holder has failed or is unable to commence an action; and
- (c) the Commission has given sixty days written notice to the issuer or security holder who has refused or failed to commence an action.

(2) The Commission may apply to a judge of the High Court for leave to appear or intervene in an action under this Part and the judge may grant leave on such terms as he considers appropriate.

(3) The Commission may publish a summary of the terms of any settlement of an action commenced or intervened in by it in a regular periodical published by it, or in two daily newspapers of general circulation in Trinidad and Tobago.

145. The right of action for damages conferred by this Part shall not be in derogation of any other right a person may have. Non-derogation of rights

PART XI

GENERAL PROVISIONS AND ENFORCEMENT

Division 1—Guidelines and By-laws

146. (1) The Commission may, in consultation with the Minister, issue guidelines on any matter it considers necessary to— Guidelines

- (a) give effect to this Act;
- (b) enable the Commission to perform its functions;
- (c) aid compliance with the Proceeds of Crime Act, any other written law in relation to the prevention of money laundering and combating the financing of terrorism or any other written law which may be

administered or supervised by the Commission which may be in force from time to time; and

(d) regulate the market conduct of market actors.

(2) Guidelines issued under this section shall not be regarded as a statutory instrument.

(3) Contraventions of a Guideline referred to in subsection (1) shall not constitute an offence, but this shall not prevent the Commission from taking action under section 90.

Consultation
on proposed
Guidelines

147. (1) Before making or amending Guidelines referred to in section 146, the Commission shall, in consultation with the Minister issue draft Guidelines or draft amendments thereof and shall consult with the market actors and other relevant stakeholders who may be affected by the draft Guideline or amendment.

(2) Where, in the opinion of the Commission, any matter proposed to be dealt with in Guidelines or by an amendment thereof has become urgent, the Commission shall proceed to issue the Guidelines or amendment thereof, without following the process referred to in subsection (1), which Guidelines shall be effective for ninety days, unless replaced by Guidelines issued pursuant to subsection (1).

By-laws

148. (1) The Minister may, on the recommendation of the Commission, make By-laws—

(a) prescribing requirements in respect of applications for registration and the renewal, amendment, expiration or surrender of registration and in respect of the suspension, revocation, cancellation or reinstatement of registration of registrants and self-regulatory organizations;

- (b) prescribing categories or sub-categories of registrants, classifying registrants into categories or sub-categories and prescribing the conditions of registration, or other requirements for registrants or any category or sub-category, including—
- (i) standards of practice and business conduct of registrants in dealing with their clients and prospective clients;
 - (ii) standards of conduct in relation to a client of a registrant to prevent conflicts of interest or ensure the fair treatment of clients;
 - (iii) standards for the conduct of a registrant in relation to the custody or lending of any money or security held for a client;
 - (iv) requirements in respect of membership by a registrant in a self-regulatory organization;
 - (v) standards of conduct of a registrant who is not a member of a self-regulatory organization;
 - (vi) the making, keeping and retention of books and records by a registrant, including the keeping and filing of a record of trades executed by the registrant through the facilities of a securities market;
 - (vii) requirements for a registrant to obtain and maintain indemnity insurance, the terms and conditions of indemnity insurance, and the amount of indemnity insurance to be obtained and maintained;

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- (viii) requirements and standards of conduct for registrants to document and record cash transactions, and to comply with the Proceeds of Crime Act, any other written law in relation to the prevention of money laundering and combating the financing of terrorism or any other written law which may be administered or supervised by the Commission which may be in force from time to time;
 - (ix) standards for the conduct of a registrant who exercises investment discretion with respect to a client account, including disclosure to the client of the policies and practices relating to the payment of commissions for trades in securities;
 - (x) minimum and ongoing capital requirements for registrants; and
 - (xi) filing information in respect of missing, lost, counterfeit or stolen securities or securities which are in the custody or control of the registrant, or are his responsibility;
- (c) prescribing the terms and conditions of policies of insurance and the amount of such insurance which registrants shall be required to obtain and maintain against any liability that may be incurred as a result of any act or omission of the registrant or any of its officers or employees;

- (d) extending any requirements prescribed for registrants to unregistered partners, salespersons, employees, and senior officers of registrants;
- (e) prescribing requirements in respect of the residence in Trinidad and Tobago of registrants;
- (f) prescribing requirements for persons in respect of calling at, telephoning or delivering correspondence to, or otherwise communicating by any means, including electronic means, at residences for the purposes of trading in securities or providing investment advice;
- (g) prescribing requirements in respect of the disclosure or furnishing of information to the public or the Commission by registrants or providing for exemptions from or varying the requirements under this Act in respect of the disclosure or furnishing of information to the public or the Commission by registrants;
- (h) providing for exemptions from the registration requirements under this Act or for the removal of exemptions from those requirements and prescribing when an issuer of securities may be required to register as a broker-dealer;
- (i) prescribing requirements in respect of the books, records and other documents required to be kept by registrants, self-regulatory organizations and other market actors, including the form in which and the period for which the books, records and other documents are to be kept;

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- (j) regulating all aspects of the listing or trading of securities on a securities market including requiring reporting of trades and quotations;
 - (k) regulating self-regulatory organizations, including prescribing requirements in respect of the review or approval by the Commission of any By-law, rule, regulation, policy, procedure, guideline, interpretation or practice of the self-regulatory organization;
 - (l) regulating all aspects of the operation in Trinidad and Tobago of self-regulatory organizations which are organized under the laws of another jurisdiction;
 - (m) regulating trading or advising in securities to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors;
 - (n) prescribing categories or sub-categories of issuers for purposes of the prospectus requirements under the Act and classifying issuers into categories or sub-categories;
 - (o) to facilitate, expedite or regulate the distribution of securities or the issuing of receipts for prospectuses, including by establishing—
 - (i) requirements in respect of distributions of securities by means of a prospectus incorporating other documents by reference;
 - (ii) requirements in respect of distributions of securities by means of a simplified or summary prospectus or other form of disclosure or offering document;
 - (iii) requirements in respect of distributions of securities on a continuous or delayed basis;

- (iv) provisions for the incorporation by reference of certain documents in a prospectus and the effect, including from a liability and evidentiary perspective, of modifying or superseding statements;
- (v) requirements for the form of a prospectus certificate, including providing for alternative forms;
- (vi) provisions for eligibility requirements to obtain a receipt for, or distribute under, a particular form of prospectus and the loss of that eligibility; and
- (vii) provisions for rights of investors;
- (p) designating activities, including the use of documents or advertising, in which registrants or issuers are permitted to engage or are prohibited from engaging in connection with distributions;
- (q) providing for exemptions from the prospectus requirements under the Act and for the removal of exemptions from those requirements;
- (r) prescribing the circumstances in which the Commission shall refuse to issue a receipt for a prospectus and prohibiting the Commission from issuing a receipt in those circumstances;
- (s) prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act, including requirements in respect of—
 - (i) an annual report; and

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- (ii) supplemental analysis of financial statements;
 - (t) exempting reporting issuers from any requirement of the Act under specified circumstances, including that the reporting issuer is subject to oversight in a designated foreign jurisdiction;
 - (u) requiring issuers or other persons to comply, in whole or in part, with continuous disclosure requirements under the Act made in respect thereof;
 - (v) regulating the distribution, sale and trading of asset-backed securities;
 - (w) prescribing requirements in respect of financial accounting, financial reporting and auditing for purposes of the Act, including—
 - (i) defining acceptable accounting principles and auditing standards;
 - (ii) financial reporting requirements for the preparation and dissemination of future-oriented financial information and *pro-forma* financial statements;
 - (iii) standards of independence and other qualifications for auditors;
 - (iv) requirements respecting a change in auditors by a self-regulatory organization or a registrant; and
 - (v) requirements respecting a change in the financial year of an issuer or in an issuer's status as a reporting issuer under the Act;
 - (x) regulating take-over bids and related party transactions including issuer bids, insider

bids, and going-private transactions and varying the requirements of the Act in respect thereof, including—

- (i) the level of acquisition of voting rights by a person or persons acting in concert at which an offer to all holders of securities of the class shall become mandatory and the conditions applying to such offers;
 - (ii) the requirements of the offeror and offeree issuers in respect of information to be published to security holders of both issuers;
 - (iii) the requirements as regards equitable treatment of security holders of the same class or cash alternatives in offers or both;
 - (iv) the timing of offer procedures and circulation of documentation;
 - (v) conditions observable in the dealing of securities by the offeror or by persons in concert during the offer period and the reporting to the Commission of dealings in the shares of the offeree issuer during the take-over period;
 - (vi) the minimum period within which an unsuccessful offer may not be renewed; and
 - (vii) requirements to protect minority interests;
- (y) prescribing standards or criteria for determining when a material fact or material change has occurred or has been published;

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- (z) prescribing periods under or varying or providing for exemptions from any requirement related to trading on material non-public information or market manipulation;
 - (aa) regulating collective investment schemes and all aspects of the distribution and trading of the securities of collective investment schemes, including—
 - (i) varying the prospectus requirements in the Act by prescribing additional disclosure requirements in respect of collective investment schemes and requiring or permitting the use of particular forms or types of prospectuses or additional offering or other documents in connection with the collective investment schemes;
 - (ii) prescribing permitted investment policy and investment practices for collective investment schemes and prohibiting or restricting certain investments or investment practices for collective investment schemes;
 - (iii) prescribing requirements governing the custodianship of assets of collective investment schemes;
 - (iv) prescribing minimum initial capital requirements for any collective investment schemes making a distribution and prohibiting or restricting the reimbursement of costs in connection with the organization of collective investment schemes;
 - (v) prescribing matters affecting collective investment schemes that

- require the approval of security holders of a collective investment scheme or the Commission, including, in the case of security holders, the level of approval;
- (vi) prescribing requirements in respect of the calculation of the net asset value of collective investment schemes;
 - (vii) prescribing requirements in respect of the content and use of sales literature, sales communications or advertising, relating to the securities of collective investment schemes;
 - (viii) regulating sales charges imposed on purchasers of securities of collective investment schemes, and commissions or sales incentives to be paid to market actors in connection with the securities of collective investment schemes;
 - (ix) prescribing procedures applicable to collective investment schemes and any other person in respect of sales and redemptions of collective investment scheme, securities and payments for sales and redemptions; and
 - (x) prescribing requirements in respect of, or in relation to, promoters, managers, advisers or persons and companies who administer or participate in the administration of the affairs of collective investment schemes;
- (bb) prescribing requirements relating to the qualification of a registrant to act as an investment adviser to a collective investment scheme;

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- (cc) with respect to foreign issuers to facilitate distributions, compliance with requirements applicable or relating to reporting issuers, and the making of take-over bids, issuer bids, insider bids, going-private transactions and related party transactions where the foreign issuers are subject to requirements of the laws of a designated foreign jurisdiction;
 - (dd) requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents, instruments or information required under or governed by the Act and all documents, instruments or information determined to be ancillary to the documents;
 - (ee) respecting the designation or recognition of any person, or jurisdiction if advisable for purposes of the Act, including self-regulatory organizations;
 - (ff) respecting the conduct of the Commission and its employees in relation to duties and responsibilities and discretionary powers under the Act, including the conduct of investigations and examinations and the conduct of hearings;
 - (gg) prescribing the fees payable to the Commission, including those for filing, for applications for registration or exemptions, for trades in securities, in respect of audits made by the Commission, and in connection with the administration of this Act;
 - (hh) establishing requirements for, and procedures in respect of the use of an electronic or computer-based system for the

filing, delivery, furnishing or deposit of—

- (i) documents, instruments or information required under or governed by the Act; and
 - (ii) documents, instruments or information determined to be ancillary to documents required under or governed by the Act;
- (ii) to permit or require the use of an electronic or computer-based system for the filing, delivery, furnishing or deposit of documents, instruments or information required under, or governed by, the Act, or determined to be ancillary to such documents, instruments or information;
- (jj) prescribing the circumstances in which persons shall be deemed to have signed or certified documents on an electronic or computer-based system for any purpose of this Act;
- (kk) specifying the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution;
- (ll) to permit or require methods of filing or delivery, to or by the Commission, issuers, registrants, security holders or others, of documents, information, notices, books, records, things, reports, orders, authorizations or other communications required under or governed by this Act;
- (mm) providing for exemptions from or varying the requirements under this Act in respect of amendments to prospectuses, or prescribing circumstances under which an amendment to a prospectus shall be filed;

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- (nn) regulating trading in securities that have been distributed but are not listed on a securities market;
 - (oo) providing for standards in respect of the governance of market actors including requirements for directors;
 - (pp) establishing requirements for registrants and self-regulatory organizations to appoint audit committees and prescribing requirements relating to their functions, responsibilities, composition, the independence of their members, the qualifications of their members and their review of an audit;
 - (qq) prescribing, providing for exemptions from, or varying any or all of the periods in this Act;
 - (rr) prescribing requirements in respect of a fund to be maintained by a self-regulatory organization under this Act, including the—
 - (i) participants in a fund;
 - (ii) contributors to a fund;
 - (iii) amount of contributions to a fund;
and
 - (iv) claimants, or class of potential claimants, in a fund;
 - (ss) prescribing requirements in respect of preparation and dissemination of continuous disclosure or other documents or information to holders of debt securities of a reporting issuer;
 - (tt) prescribing requirements in respect of derivatives including determining when a contract or an instrument is or is not a derivative;

(*uu*) prescribing requirements in respect of the establishment, recognition, registration and regulation of securities markets; and

(*vv*) prescribing requirements in respect of the registration and regulation of financial groups.

(2) In addition to subsection (1), the Minister may, on the recommendation of the Commission, make By-laws in respect of any other matter necessary for carrying out the purposes of this Act.

(3) By-laws made under this Act shall be subject to negative resolution of Parliament.

(4) The Commission may establish a committee under section 16 to administer the By-laws made under subsections (1) and (2) and may make rules for the conduct of the business of that committee.

149. (1) The Commission shall publish in the *Gazette*, Publication of proposed by-laws two daily newspapers of general circulation in Trinidad and Tobago, or any regular periodical published by the Commission, at least thirty days before the proposed effective date thereof—

(*a*) a copy of any By-law that it proposes to recommend to the Minister;

(*b*) a concise statement of the substance and purpose of the proposed By-law; and

(*c*) a reference to the authority under which the By-law is proposed.

(2) After a proposed By-law is published in accordance with subsection (1), the Commission shall afford a reasonable opportunity to interested persons to make representations in writing with respect to the proposed By-law.

(3) The Commission, where it considers it appropriate, may afford a reasonable opportunity to interested persons to make oral representations with respect to the proposed By-law.

(4) The Commission is not required to comply with subsections (1) and (2) if—

- (a) all persons who will be subject to the By-law are named and the information required by subsection (1)(a) to (c) is sent to each of them;
- (b) the By-law only grants an exemption or relieves a restriction and is not likely to have a substantial impact on the interests of persons other than those who benefit under it;
- (c) the By-law makes no material substantive change in an existing By-law; or
- (d) the Commission for good cause finds that compliance with subsections (1) and (2) is impracticable or unnecessary and publishes the finding and a concise statement of the reasons for it.

(5) Any person may petition the Commission to recommend the making, amendment or revocation of a By-law.

(6) The Minister may, on the recommendation of the Commission, make urgent By-laws to regulate conditions in the market that require regulation as a matter of urgency, without following the process referred to in subsections (1) to (3), which By-laws shall be effective for ninety days, unless replaced by By-laws issued pursuant to subsections (1) to (3).

Division 2—Investigations

Investigations by the
Commission

150. (1) The Commission may appoint a person to conduct such investigations as it considers expedient—

- (a) to ascertain whether any person has contravened, is contravening or is about to contravene this Act; or

(b) to assist in the administration of securities laws or the regulation and supervision of the securities industry in another jurisdiction.

(2) A person appointed under subsection (1) may examine and inquire into—

(a) the affairs of a person in respect of which the investigation is being conducted, including any trades, communications, financial affairs, negotiations, transactions, investigations, loans, borrowings or payments to, by, or on behalf of, or in relation to, or connected with, the person and any property, assets or things owned, acquired, or alienated in whole or in part by the person or by any other person acting on its behalf; and

(b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the person and any relationship that may at any time exist or have existed between the person and any other person by reason of investments, commissions promised, secured or paid, interest held or acquired, the loaning or borrowing of money, stock or other property, the transfer, negotiation or holding of securities or any other relationship.

(3) Notwithstanding any other written law a person appointed by the Commission pursuant to subsection (1) may examine and make copies of, or

remove from the premises, all such books, records and documents or other things relating to the subject of the investigation within the scope of subsection (2) whether or not they are in the possession or control of the person in respect of which the investigation is ordered or of any other person.

(4) Notwithstanding any other written law, a person appointed by the Commission pursuant to subsection (1) may, for the purposes of the examination to be conducted under subsection (3), enter the place of business of any person or entity, for the purpose of examining or reviewing books, records, documents or other things relating to the subject of the investigation within the scope of subsection (2) during normal business hours if the occupier of the place of business consents or pursuant to an order under subsection (5).

(5) Notwithstanding subsection (4), the Commission may, at any time if the circumstances so require, apply to a judge of the High Court for an *ex parte* order authorizing a person appointed under subsection (1) to enter the premises of a person at any time to conduct an examination under subsection (3).

(6) A person appointed by the Commission pursuant to subsection (1), shall provide the Commission with a full and complete written report of the investigation including any transcript of statements and any material in his possession relating to the investigation.

(7) The Commission may publish a report or other information concerning an investigation under this section, but if it intends to do so, it shall—

- (a) provide a person against whom an adverse finding is to be made with fourteen days notice of the finding and an opportunity to be heard in person or by counsel; and

(b) if practicable, provide a person who is likely to receive adverse publicity with advance notice of the publication and a reasonable opportunity to prepare a response prior to publication.

(8) Any book, record or document removed under subsection (3) shall be returned to the person from whom or to the premises from which it was removed as soon as practicable.

(9) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him in criminal proceedings.

151. (1) Notwithstanding any other written law, if the Commission considers it necessary or desirable for the purposes of performing or exercising its functions, powers, or duties under this Act or to assist in the administration of securities laws or the regulation and supervision of the securities industry in another jurisdiction it may, by written notice, served on any person, require the person—

Power to obtain
information and
documents

- (a) to supply to the Commission, within the time and in the manner specified in the notice, any book, record, document, information or class of information specified in the notice;
- (b) to produce to the Commission, or to a person specified in the notice acting on its behalf in accordance with the notice, any book, record, document, information or class of information specified in the notice (within the time and in the manner specified in the notice);
- (c) if necessary, to reproduce, or assist in reproducing, in usable form, information recorded or stored in anyh book, record, document or class of documents specified in

the notice (within the time and in the manner specified in the notice); or

(d) to appear before the Commission, or a specified person, at a time and place specified in the notice to provide information, either orally or in writing, and produce any book, record, document or class of documents specified in the notice.

(2) Information supplied in response to a notice under subsection (1)(a) shall be—

(a) given in writing; and

(b) signed in the manner specified in the notice.

(3) If a book, record or document is produced in response to a notice under subsection (1), the Commission, or the person to whom the book, record or document is produced may examine and make copies of the book, record or document or extracts thereof.

(4) The Commission may require a person to give, orally or in writing, information on oath or affirmation and may administer an oath or affirmation at any place.

(5) A person who provides information under this section may be represented by counsel and may claim any privilege to which the person is entitled.

(6) Where a person who is required to attend or give information fails or refuses to attend or provide information, the Commission may make an application to the High Court to compel the person to do so.

(7) Proceedings under this section shall be held *in camera*.

(8) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him in criminal proceedings.

152. No person shall withhold, conceal, destroy or refuse to produce any document, instrument, writing, Restrictions on withholding or concealing

information or record required for the purpose of an examination or investigation under this Act.

153. Notwithstanding any other written law, no duty to which a person may be subject shall be regarded as breached by reason of his communication in good faith to the Commission, of any information or opinion on a matter which is relevant to any function of the Commission under this Act, whether or not in response to a request made by the Commission.

Division 3—Orders of the Commission

- 154.** (1) Where the Commission considers that—
- (a) a security is being traded in connection with a distribution contrary to this Act;
 - (b) a prospectus contains a misrepresentation;
 - (c) any of the circumstances specified under this Act as the basis for a refusal to issue a receipt for a prospectus exists; or
 - (d) an issuer, selling security holder or registrant fails to provide information, including financial statements relating to the issuer or the distribution, that is reasonably requested by the Commission,

the Commission may order, subject to such conditions as it considers appropriate, that all trading in connection with the distribution, cease at the time and for the period specified by the Commission.

- (2) Where the Commission considers that—
- (a) a material change relating to an issuer of a security has not been published;
 - (b) trading in a security or fluctuations in the price of a security requires explanation;
 - (c) a reporting issuer has failed to comply with, or is in breach of, any provision of this Act; or

(d) it is otherwise in the public interest or necessary for the protection of investors,

the Commission may order, subject to such conditions as it considers appropriate, that trading cease in respect of any security at the time and for the period specified by it.

(3) Where the Commission considers that it is in the public interest or necessary for the protection of investors, it may make an order prohibiting, subject to such conditions as it considers appropriate, a person who contravenes this Act from trading in securities or from trading a specified security.

(4) The Commission may make an order under subsection (1) or (3) without giving a person directly affected by the order an opportunity to make representations, but it shall provide an opportunity to make such representations within fifteen days of the making of the order, and the order shall remain in effect until a decision is made.

(5) The Commission may make an order under subsection (2) without giving a person directly affected by the order an opportunity to make representations, but it shall provide an opportunity to make such representations within fifteen days of the making of the order and the order remains in effect until a decision is made, unless the order was made pursuant to subsection (2)(a), in which case, the Commission may extend it until the material change is published and becomes public.

(6) The Commission shall forthwith give notice of an order under this section to—

- (a) each person named in the order;
- (b) the issuer of the security specified in the order;
- (c) any other person, the Commission believes is directly affected by the order; and

- (d) every registrant under section 51(1) if the order is made pursuant to subsection (1) or (2),

and shall include the text of the order in a regular periodical published by it, or in two daily newspapers of general circulation in Trinidad and Tobago.

(7) No person shall trade in contravention of an order under this section.

155. (1) Where the Commission, on its own motion or on application by an interested person considers it to be in the public interest, it may order, subject to such conditions as it considers appropriate that—

- (a) a person comply with or cease contravening, or that the senior officers of the entity cause the entity to comply with or cease contravening—
- (i) this Act;
 - (ii) an order of the Commission; or
 - (iii) a rule, direction, decision or order made under a rule of a self-regulatory organization;
- (b) a person not act as a senior officer of a registrant or self-regulatory organization;
- (c) a person—
- (i) be prohibited from disseminating to the public, or authorizing the dissemination to the public of, any information or record of any kind described in the order;
 - (ii) be required to disseminate to the public, by the method described in the order, any information or record relating to the business or affairs of the person that the Commission considers should be disseminated; or

- (iii) be required to amend, in the manner specified in the order, any information or record of any kind described in the order before disseminating the information or record to the public or authorizing its dissemination to the public;
- (d) a registrant be reprimanded or that the registration of a registrant be suspended or revoked in accordance with section 57 or 58;
- (e) any exemption contained in the Act not apply to any person permanently or apply for such period as specified in the order;
- (f) a market actor submit to a review of his practices and procedures and institute such changes as may be ordered by the Commission;
- (g) any person be reprimanded;
- (h) a person security, trade, distribution, or registration be classified under Part III, IV or VI, and the requirements appropriate to the class be applied;
- (i) any person be exempted from any requirement of this Act; and
- (j) any documents filed with another government agency be filed with the Commission.

(2) An order granting an exemption is effective against all persons but the Commission shall make an order revoking or modifying such an order when it finds that a determination reflected in it is no longer consistent with the facts.

(3) The Commission shall forthwith give written notice of an order under this section to—

- (a) each person named in the order; and

(b) any other person the Commission believes is directly affected by the order,

and shall include the text of the order in a regular periodical published by it, or in two daily newspapers of general circulation in Trinidad and Tobago.

156. (1) Subject to subsection (2), and notwithstanding any other provision of this Act, where the Commission, after giving a person the opportunity to make oral or written representations, determines, that a person is in breach of this Act or an order of the Commission and considers it to be in the public interest, the Commission may order the person to pay an administrative fine not exceeding five hundred thousand dollars.

Order for
administrative fine

(2) Notwithstanding subsection (1), a person who is in breach of this Act solely by reason of his failure to file or publish a document or instrument required under this Act within the period prescribed shall be liable to pay an administrative fine of one thousand dollars per day for each day that the document or instrument remains outstanding after the expiration of the time prescribed.

(3) The Commission may make an order imposing an administrative fine under subsection (2) for the period beginning on the day following the expiration of the prescribed period and ending on the day that the fine is paid.

(4) A person who files a document or instrument with the Commission after the expiration of the period prescribed, may in writing request an opportunity to make representations to the Commission in accordance with subsection (1).

(5) Every administrative fine imposed by the Commission in the exercise of its powers under this Act shall be payable into the general revenue of Trinidad and Tobago and may be recovered by the State as a civil debt and for the purposes of the proof of such debt a certificate under the hand of the Chairman of the

Commission shall be receivable in evidence as sufficient proof of such debt.

Procedure for orders
of the Commission

157. (1) The Commission shall before making an adverse decision, finding or order provide a reasonable opportunity for each person or entity adversely affected to make either oral or written representations and shall give reasonable notice to each such person or entity including a—

- (a) statement of the time within which representations shall be made;
- (b) reference to the authority under which the order may be made;
- (c) concise statement of the case; and
- (d) statement that if the person fails to make representations within the time referred to in paragraph (a), the Commission may proceed without giving him further notice.

(2) Subsection (1) does not apply to—

- (a) an order that is administrative or procedural;
- (b) an order that does not adversely affect the rights or interests of any person; or
- (c) an interim order or other order that the Commission may make under this Act without giving an opportunity to make representation under this section.

(3) The standard of proof required to determine any question or issue before the Commission shall be on a balance of probability.

Division 4—Market Misconduct Proceedings

Market misconduct
proceedings

158. (1) If it appears to the Commission that market misconduct is taking place or has or may have taken place, the Commission may conduct an investigation under section 150.

(2) For the purposes of this Part, “market misconduct” means—

- (a) breaches of sections 91, 92, 93, 94, 95, 96 and 98, respectively;
- (b) trading with knowledge of material non-public information contrary to section 100;
- (c) disclosure of material non-public information contrary to section 101;
- (d) failure of a person to be registered in accordance with Part IV;
- (e) failure of an issuer to prepare, file and receive a receipt from the Commission for a prospectus in connection with a distribution of securities contrary to section 73;
- (f) the inclusion in a prospectus of a misrepresentation or the failure of a prospectus to comply with section 76(1);
- (g) failure of a reporting issuer to comply with Part V, or making a misrepresentation in any document filed or required to be filed under Part V, contrary to section 70; and
- (h) a breach of any provision under Part VII.

(3) Where an investigator appointed pursuant to section 150(1) reports to the Commission in accordance with section 150(6) that based on his investigation he has reasonable grounds to believe that any person has committed, is committing or is about to commit a breach of this Act, the Commission may conduct a hearing in accordance with section 159.

(4) Without limiting the generality of subsection (3), the purpose of proceedings instituted under that subsection is for the Commission to determine—

- (a) whether any market misconduct has taken place;

(b) the identity of any person who has engaged in market misconduct; and

(c) the amount of any profit gained or loss avoided as a result of market misconduct.

(5) Subject to subsections (6) and (7) the Commission may publish a report or other information concerning proceedings under this section.

(6) A person against whom an adverse finding is made under this section may, within fourteen days of being notified of the finding, file with the Commission an objection to the publication of the report or other publication concerning the finding.

(7) Where an objection is filed under subsection (6), the Commission shall provide the person with an opportunity to be heard.

(8) The Commission may publish a report or other information concerning proceedings under this section, but if it intends to do so it shall if practicable, provide a person who is likely to receive adverse publicity with advance notice of the publication and a reasonable opportunity to prepare a response prior to publication.

(9) Where a response has been prepared under subsection (8) the Commission may publish the response.

Division 5—Hearings

Conduct of hearings

159. (1) The Commission shall, before making an order, provide a reasonable opportunity for a hearing to each person directly affected and shall give reasonable notice to each such person and to any interested market actor including a—

(a) statement of the time, place and purpose of the hearing;

(b) reference to the authority under which the hearing is to be held;

(c) concise statement of the allegations of fact and law; and

(d) statement that if the person fails to attend at the hearing, the Commission may proceed without giving him further notice.

(2) The Commission may—

(a) issue a *subpoena* or other request or summons requiring a person to attend at a hearing, to testify to all matters relating to the subject of the hearing, and to produce all records relating to the subject of the hearing that are in his possession or under his control, whether they are located in or outside Trinidad and Tobago; and

(b) require a person to give evidence orally or in writing on oath or affirmation as it thinks necessary.

(3) Notwithstanding subsection (2), no person giving evidence before the Commission shall be compellable to incriminate himself, and every such person shall, in respect of any evidence given by him before the Commission, be entitled to all privileges to which a witness giving evidence before the High Court is entitled in respect of evidence given by him before the High Court.

(4) A hearing under subsection (1) shall be open to the public unless the Commission directs otherwise in order to protect the interests of the persons affected, but if all persons directly affected and appearing so request, a hearing shall not be open to the public.

(5) A person who is entitled to notice of a hearing under subsection (1) may be represented by counsel and, subject to rules made under section 21, may present evidence and cross-examine witnesses at the hearing.

(6) A witness at a hearing under subsection (1) may be advised by counsel.

(7) The Commission may admit as evidence at a hearing any testimony or exhibit that it considers relevant to the subject matter of the proceedings and may take notice of any fact that may be judicially noticed and of any generally recognized scientific or technical fact, information or opinion within its area of expertise.

(8) The Commission shall make provision for all oral evidence presented at a hearing under subsection (1) to be transcribed.

(9) The Commission shall—

- (a) make an order in writing and state the findings of fact on which it is based and the reasons for it;
- (b) send a copy of the order and reasons to each person entitled to notice under subsection (1) and to each person who appeared at the hearing; and
- (c) publish a copy of the order and reasons or a summary thereof in a periodical published by it or in at least two daily newspapers of general circulation in Trinidad and Tobago but the Commission may omit the name of an affected person from an order so published.

(10) Subsection (1) does not apply to—

- (a) an order that is essentially procedural;
- (b) an order that does not adversely affect the rights or interests of any person;
- (c) an interim order or other order that the Commission may make under this Act without holding a hearing under this section; or
- (d) an appointment that is made under section 150.

Division 6—Appeals

160. (1) A person directly affected by a decision made ^{Appeals for review} by a self-regulatory organization under section 43 may appeal the decision to the Commission.

(2) The Commission may of its own motion review any decision made pursuant to authority delegated under section 8 or made by a self-regulatory organization under section 43 and shall provide a reasonable opportunity to make representations and give reasonable notice to each person, including a self-regulatory organization, directly affected by the decision.

(3) On an appeal or review under this section, the Commission may, subject to sections 44(3), (4) and (5) in the case of an appeal of any decision of a self-regulatory organization made under section 43, confirm the decision or make such orders as it considers appropriate.

(4) A decision that is subject to appeal or review under this section takes effect immediately, but the Commission may grant a stay pending an order of the Commission.

161. (1) A person directly affected by an adverse ^{Appeals to the High Court} decision, finding or order of the Commission may appeal to the High Court.

(2) No appeal of a decision of a self-regulatory organization under section 43 may be made under this section unless the person affected has taken all reasonable steps available to appeal or obtain review of the decision pursuant to section 160.

(3) An order that is subject to appeal under this section takes effect immediately, but the High Court may grant a stay pending the hearing of the appeal.

(4) The Commission is entitled to appear and be heard on the merits of an appeal under this section or on any other application to the High Court relating to the exercise by the Commission of its powers.

(5) On an appeal under this section, the High Court may make or may direct the Commission to make any order that the Commission is authorized to make and which the High Court considers just and proper, or it may remand the case to the Commission for further proceedings subject to any conditions which the High Court thinks fit.

(4) The Rules Committee under the Supreme Court of Judicature Act may, subject to negative resolution of Parliament, make Rules governing appeals to the High Court.

Division 7—Orders of the High Court

Court order for enforcing compliance

162. (1) Where the Commission considers that a person has failed to comply with or is in breach of this Act or an order of the Commission, the Commission may, in addition to any other powers it may have, apply to the High Court for an order—

- (a) directing the person to comply with or to cease the conduct which constitutes the breach;
- (b) directing senior officers of the entity to cause the entity to comply with or to cease the conduct which constitutes the breach; or
- (c) to freeze the assets of the person or a portion of the assets of that person or entity.

(2) On application under subsection (1), the Court may make any order it thinks fit including an order—

- (a) for restitution or disgorgement of profits;
- (b) restraining the conduct complained of;
- (c) requiring compliance with this Act or an order;
- (d) requiring disclosure of any information;
- (e) setting aside a transaction relating to trading in securities; or

(f) requiring the issuance or cancellation of a security or the purchase, disposition or exchange of a security.

(3) An order may be made under this section in respect of a person, notwithstanding that a penalty has already been imposed on that person in respect of the same non-compliance or breach.

163. (1) Where the Commission considers that it is in the public interest or necessary for the protection of investors to prevent—

- (a) a person is or has been in breach of or has contravened this Act; or
- (b) a registrant or self-regulatory organization whose registration under this Act has been suspended or revoked,

from dealing with property under his or its control or direction, the Commission may apply to the High Court and the High Court may appoint a receiver or receiver-manager in respect of the property of the person, registrant or self-regulatory organisation if it is satisfied that it is in the interests of investors or persons whose property is controlled by that person, registrant or self-regulatory organisation, creditors or security holders of that person, registrant or self-regulatory organisation, or members of that person, registrant or self-regulatory organization to do so.

(2) Where the Commission intends to apply to the High Court to appoint a receiver or receiver-manager in respect of the property of a financial institution, the Commission shall, before making the application, consult with the Inspector of Financial Institutions with regard to the proposed application.

(3) The High Court may make an order under subsection (1) on an *ex parte* application by the Commission for a period not exceeding fifteen days.

(4) The High Court may order a receiver or receiver-manager appointed under this section to receive such remuneration to cover its charges and expenses from the registrant or self-regulatory organization and such remuneration shall be in such order of priority, in relation to existing charges as the High Court sees fit.

(5) The receiver or receiver-manager shall conduct its duties with the greatest economy compatible with efficiency and as soon as possible after its appointment, file with the High Court, with a copy to the Commission, a report stating its recommended course of action in the circumstances.

(6) The receiver or receiver-manager, the Commission or any interested person may at any time apply to the High Court for the cancellation of an order made under subsection (1) or (3).

(7) The provisions of the Companies Act relating to a receiver or a receiver-manager shall apply to a receiver or receiver-manager appointed under this section.

Appointment of
liquidator

164. (1) The High Court may order the winding up of a registrant or self-regulatory organization and appoint a liquidator in accordance with the Companies Act subject to the modification that the registrant or self-regulatory organization may also be ordered to be wound up on the petition of the Commission.

(2) A petition under subsection (1) shall not be presented except by leave of the High Court, and such leave shall not be granted unless—

- (a) a *prima facie* case has been established to the satisfaction of the High Court; and
- (b) security costs for such amounts as the High Court may think reasonable is given.

(3) In any case where a petition is made by the Commission to the High Court for the winding up of a registrant or self-regulatory organization—

- (a) the registrant or a self-regulatory organization shall remain in suspension and shall not carry on business during the pendency of the petition unless it is authorized to do so by the High Court and except in accordance with conditions, if any, as may be specified by the High Court; and
- (b) the High Court, if it is of the opinion, after such inquiry as it may consider necessary, that the registrant or self-regulatory organization—
 - (i) is not insolvent;
 - (ii) is able to meet the requirements for registration under this Act; and
 - (iii) its continuation in business is not likely to involve a loss to its clients, investors or members,

may permit the registrant or the self-regulatory organization to resume business either unconditionally or subject to such conditions as the High Court may consider necessary in the public interest or the interests of the clients, investors and other creditors of the registrant or self-regulatory organization but shall otherwise order that the registrant or self-regulatory organization be wound up.

(4) In any case where an order of the High Court is made, whether in pursuance of any petition made under this section or otherwise, for the winding up of any registrant or self-regulatory organization or for the appointment of a receiver or a receiver-manager then, notwithstanding the provisions of any other law, such person as may be nominated by the Commission shall be

appointed as liquidator, receiver or receiver-manager, as the case may be.

(5) A registrant or self-regulatory organization shall not pass a resolution for a voluntary winding up or commence a voluntary winding up without first applying for the written approval of the Commission and shall submit such documents and information as may be prescribed.

(6) The Commission shall not provide the approval referred to in subsection (5) unless it is satisfied that the voluntary winding up will be affected in a manner that would not pose undue risks to clients, investors or members of the registrant or self-regulatory organization or adversely affect public confidence in the securities industry in Trinidad and Tobago, and such approval may be subject to terms and conditions as may be prescribed.

(7) Where the Commission intends to apply to the High Court to appoint a liquidator in respect of the property of a financial institution, the Commission shall, before making the application, consult with the Inspector of Financial Institutions with regard to the proposed application.

(8) The provisions of the Companies Act relating to a liquidator shall apply to a liquidator appointed under this section.

Division 8—Offences

General offences

165. (1) A person who—

- (a) makes a misrepresentation in contravention of, or otherwise in relation to, this Act;
- (b) makes a misrepresentation to any person appointed to conduct an investigation or an examination under section 150 or 151; or

(c) contravenes section 36 or 73,

commits an offence and is liable on conviction on indictment to a fine of two million dollars and to imprisonment for five years.

(2) A person who contravenes an order of the Commission commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for two years.

(3) Reasonable reliance, including reliance in good faith on the advice of an expert upon a statement of the law contained in—

(a) this Act;

(b) a judgment or declaration by a Court; or

(c) an order or publication of the Commission,

is a defence in a proceeding under this section.

(4) An auditor who knowingly or recklessly makes or provides a false or misleading audit report in respect of financial statements which are required to be filed under this Act commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars and imprisonment for two years.

(5) Where an auditor is convicted of an offence under subsection (4), the Commission may order, if it is in the public interest, and in addition to any other order that the Commission may make, that the auditor be prohibited from being the auditor of a market actor for a period not exceeding five years.

166. (1) Notwithstanding any other provision of this Act, where a company has been convicted of an offence under this Act, then any senior officer who knowingly or recklessly authorized, permitted or acquiesced in the offence is also guilty of the offence and liable to the penalty specified for it.

(2) Notwithstanding any other provision of this Act, where a person has been convicted of an offence under this Act, then any supervisor of the individual who knowingly or recklessly authorized, permitted or

acquiesced in the offence is also guilty of the offence and liable to the penalty specified for it.

(3) Reasonable reliance, including reliance on the advice of counsel, in good faith upon a statement of the law contained in—

(a) this Act;

(b) a judgment or declaration by a Court; or

(c) an order or publication of the Commission,

is a defence in a proceeding under this section.

(4) The appointment of a liquidator, receiver or receiver-manager does not absolve any senior officer of a company or supervisor of an individual convicted of any offence under this Act from liability arising from wilful neglect, fraudulent transactions, misuse of client or investor funds or from any breach of the provisions of this Act.

Costs

167. (1) A person convicted of an offence under this Act is liable, after the review and filing of a certificate under this section, for the costs of the investigation of the offence.

(2) The Commission may prepare a certificate setting out the costs of the investigation of an offence, including the time spent by its staff and any fees paid to an expert, investigator or witness.

(3) The Commission may apply to a Master or Registrar of the Supreme Court to review the certificate under the Civil Proceedings Rules, 1998 as if the certificate were a bill of costs, and the Master or Registrar shall review the costs and may vary them if he considers them unreasonable or not related to the investigation.

(4) The scales of costs in Part 67 of the Civil Proceedings Rules, 1998 do not apply to a certificate reviewed under this section.

(5) After review, the certificate may be filed in the High Court and may be enforced against the person convicted as if it were an order of the High Court.

168. Subject to section 169, nothing in this Act prevents the Commission from referring any matter to the Director of Public Prosecutions.

169. No report concluding that a person to whom this Act applies has failed without reasonable justification to fulfil a duty or obligation under this Act shall be made until reasonable notice has been given to such person of the alleged failure and the person has been allowed full opportunity to be heard either in person or by an Attorney-at-law.

PART XII

REPEAL AND TRANSITIONAL PROVISIONS

170. (1) On the date of coming into force of this Act, the Commissioners of the former Commission shall be deemed to be appointed under section 10 of this Act and shall continue as Commissioners of the Commission under and for the purposes of this Act for a term expiring on the day on which their respective appointments would have expired under the former Act and—

- (a) all the property, assets and rights and all the liabilities and obligations to which the former Commission was entitled or subject are transferred to, vested in and conferred or imposed upon, as the case may be, the Commission, without further assurance and the Commission shall have all powers necessary to take possession of, recover, and deal with such property and assets and discharge such liabilities and obligations;
- (b) every agreement, whether in writing or not, and every deed, bond or other instrument to which the former Commission was a party

or which affected the former Commission, whether the rights, liabilities and obligations under it could be assigned, shall have effect as if the Commission were a party to it or affected by it instead of the former Commission and as if for every reference in it to the former Commission there were substituted in respect of anything to be done on or after such date of coming into operation, a reference to the Commission;

- (c) any legal proceedings and investigations pending immediately before the coming into force of this Act to which the former Commission was a party may be continued as if the Commission was a party to those legal proceedings and investigations instead of the former Commission;
- (d) any orders of the former Commission made under the former Act shall remain valid and in force under this Act;
- (e) all funds and resources of the former Commission which stand to the credit of the Government under the former Act or the former Commission are transferred to and vest in the Commission;
- (f) all officers and employees, whether permanent or temporary, of the former Commission become the corresponding officers and employees of the Commission and continue in office for the period for which they were appointed by the former Commission; and
- (g) all superannuation benefits, pension rights, gratuities or other allowances which have accrued to an officer or employee, whether

permanent or temporary, of the former Commission shall be preserved and shall continue to accrue under the Commission.

(2) By-laws, guidelines and rules made under the Securities Industry Act, in force at the commencement of this Act, remain in force until replaced by new By-laws made pursuant to this Act.

(3) For the purposes of this section, “former Commission” means the Trinidad and Tobago Securities Exchange Commission established under the former Act.

171. The Securities Industry Act, is repealed.

Chap. 83:02 repealed

172. (1) Section 2 of the Proceeds of Crime Act is amended in the definition of “financial institution” by deleting the word “dealer” and substituting the words “broker-dealer, underwriter”.

Consequential amendment
Chap. 11:27

(2) The Financial Institutions Act, 2008 is amended—

Act No. 26 of 2008

(a) in section 2(1)—

- (i) in the definition of “business of securities”, by deleting the words “broker and dealer respectively, as defined in the Securities Industry Act” and substituting the words “broker-dealer as defined in the Securities Act, 2012”;
- (ii) in the definition of “relative” insert after the word “parent” the words “grandparent,”; and
- (iii) by deleting the definition of “security” and substituting the following:

“ “security” has the meaning assigned to it in the Securities Act, 2012;”: and

(b) in Part II of the Third Schedule by deleting the second item and substituting the following:

“The following persons registered under the Securities Act, 2012:

- | | |
|-------------------------------|---|
| (a) a broker-dealer; | (a) the business of purchase agreements; |
| (b) an investment adviser; or | (b) lending and borrowing against securities as defined in the Securities Act, 2012; |
| (c) an underwriter | (c) providing advice with respect to an investment in, or the purchase, sale or holding of, a security; and |
| | (d) the business of an underwriter as defined under the Securities Act, 2012.”. |

Passed in the House of Representatives this 17th day of December, 2012.

J. SAMPSON-MEIGUEL
Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say by the votes of 37 members of the House.

J. SAMPSON-MEIGUEL
Clerk of the House

Passed in the Senate this 19th day of December, 2012.

N. ATIBA-DILCHAN
Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say by the votes of 22 Senators.

N. ATIBA-DILCHAN
Clerk of the Senate