

SECURITIES BILL, 2009

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No. 11 of 2009

Second Session Ninth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to provide protection to investors from unfair, improper or fraudulent practices; foster fair and efficient capital markets and confidence in the capital markets in Trinidad and Tobago and to reduce systemic risk; to co-operate with other jurisdictions in the development of fair and efficient capital markets, and for other related matters

THE SECURITIES BILL, 2009

Explanatory Notes

(These notes form no part of the Bill but are intended only to indicate its general purport)

The purpose of the Securities Bill, 2009, *inter alia*, is to provide protection to investors from unfair, improper or fraudulent practices; foster fair and efficient capital markets and confidence in the capital markets in Trinidad and Tobago; reduce systemic risk; foster co-operation with other jurisdictions in the development of fair and efficient capital markets; and for other related matters.

Clauses 1 to 4 would provide for the short title, commencement, the Act's inconsistency with the Constitution and the interpretation provisions, respectively.

Clause 5 seeks to establish the Securities and Exchange Commission as a body corporate.

Clause 6 would outline the functions of the Commission.

Clause 7 would address the powers of the Commission.

Clause 8 would address the delegation of powers by the Commission.

Clause 9 would provide for the custody and use of the seal.

Clause 10 would address the constitution of the Commission.

Clause 11 would treat with the issue of disqualification for appointment as a Commissioner.

Clause 12 would provide for the term of office.

Clause 13 would provide for the protection of the Commissioner, employees or agents against legal action.

Clause 14 would provide a confidentiality provision.

Clause 15 would provide for meetings.

Clause 16 would provide for committees.

Clause 17 would provide for minutes.

Clause 18 would provide for declaration of interest by Commissioners.

Clause 19 would require the Commission to consult with Central Bank and other agencies.

Clause 20 would provide for the annual report.

Clause 21 would provide for the Commission's regulation of its own business.

Clause 22 would provide for the appointment of the General Manager and Chief Executive Officer.

Clause 23 would provide for the appointment of experts.

Clause 24 would provide for the appointment of other staff to the Commission.

Clause 25 would address the transfer of officers to the public service and *vice versa*.

Clause 26 would address the transfer on secondment.

Clause 27 would identify the funds and resources of the Commission.

Clause 28 would highlight the financial powers of the Commission.

Clause 29 would outline how the Commission should apply funds to defray expenditure.

Clause 30 would address the use of cash deposits and payments.

Clause 31 would deal with accounts and audit.

Clause 32 would provide for filing of documents with the Commission.

Clause 33 would provide for the availability of filed documents to the public.

Clause 34 would provide for the registration of the Stock Exchange.

Clause 35 would provide for rules of the Stock Exchange.

Clause 36 would provide for the registration of self-regulatory organizations.

Clause 37 would outline the registration requirements for self-regulatory organizations.

Clause 38 would outline the application for registration procedure.

Clause 39 would require all applicants for registration as self-regulatory organizations to have obligatory rules of governance.

Clause 40 would outline the procedure to be adopted by self-regulatory organizations to amend its rules of governance.

Clause 41 would provide for the Commission to require a self-regulatory organization to change its rules of governance in certain circumstances.

Clause 42 would impose a restriction on the imposition of a fee schedule by self-regulatory organizations on its members.

Clause 43 would provide for membership to a self-regulatory organization.

Clause 44 would require a self-regulatory organization to file a copy of any decision it makes under section 43.

Clause 45 would provide for the delisting of securities.

Clause 46 would provide for the appointment of an auditor.

Clause 47 would provide for the keeping and inspection of records by a self-regulatory organization.

Clause 48 would provide for a contingency fund to be maintained by the securities exchange.

Clause 49 would provide for sanctions against self-regulatory organization.

Clause 50 would provide for complaints to be lodged with the Commission against a self-regulatory organization.

Clause 51 would provide for the resolution of disputes between members of self-regulatory organizations.

Clause 52 would outline the registration requirements under the Act.

Clause 53 would require the Commission to register market actors under the Act.

Clause 54 would provide for a transitional period of one year from the date of proclamation of this Act, after which all market actors are required to be registered under this Act.

Clause 55 would impose certain restrictions on substantial share-holders of market actors.

Clause 56 would provide that the termination of employment of an individual by a market actor will also act as a suspension of the registration of that individual.

Clause 57 would outline the process for the application for registration.

Clause 58 would provide for suspension of registration, warning and censure.

Clause 59 would provide for the revocation of registration.

Clause 60 would provide for the surrender of registration.

Clause 61 would create an offence for misrepresentation in filing any document with the Commission.

Clause 62 would provide for the registration statements of issuers.

Clause 63 would provide for the registration of securities.

Clause 64 would provide for collective investment schemes to comply with disclosure obligations under the Act.

Clause 65 would require reporting issuers to file annual reports with the Commission.

Clause 66 would subject reporting issuers to timely disclosure of material changes.

Clause 67 would require reporting issuers to file annual financial statements with the Commission.

Clause 68 would also require reporting issuers to file interim financial statements.

Clause 69 would provide for the filing and delivery of financial statements.

Clause 70 would provide for annual management discussion and analysis.

Clause 71 would provide for proxy solicitation.

Clause 72 would provide exemptions for certain foreign issuers.

Clause 73 would create an offence.

Clause 74 would provide for the Commission to order that a reporting issuer cease to be a reporting issuer.

Clause 75 would provide definition sections and construction of Part VI.

Clause 76 would provide for the filing of the prospectus.

Clause 77 would prohibit advertising.

Clause 78 would deal with the delivery of the prospectus.

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Clause 84 would stipulate resale restrictions.

Clause 85 would provide for the receipt for the prospectus.

Clause 86 would provide for the cessation of distribution.

Clause 87 would create an obligation to file a distribution statement with the Commission.

Clause 88 would create an exemption from stamp duty.

Clause 89 would require that a report be filed of all trades conducted through the Securities Exchange.

Clause 90 would provide for record keeping by market actors and self-regulatory organizations.

Clause 91 would require self-regulatory organizations to provide the Commission with information.

Clause 92 would provide for compliance reviews.

Clause 93 would outline the powers of the General Manager, employees and agents of the Commission.

Clause 94 would deal with false trading and artificial prices in a securities market.

Clause 95 would address the issue of price rigging.

Clause 96 would deal with the dissemination of information containing a misrepresentation.

Clause 97 would deal with securities market manipulation.

Clause 98 would deal with the use of fraudulent or deceptive devices.

Clause 99 would address excessive trading.

Clause 100 would prescribe the standard of conduct for market actors.

Clause 101 would impose restrictions on recommendations.

Clause 102 would create an offence.

Clause 103 would prohibit the sale or purchase of securities by certain persons.

Clause 104 would prohibit the disclosure of price-sensitive information.

Clause 105 would create an offence.

Clause 106 would declare transactions not void or voidable.

Clause 107 would create exceptions to sections 103 and 104.

Clause 108 would limit defences in certain instances.

Clause 109 would outline certain presumptions in this Part.

Clause 110 would deal with trust accounts.

Clause 111 would require market actors to send documents to beneficial owners.

Clause 112 would require confirmation to be sent to customers.

Clause 113 would require notification to the Commission.

Clause 114 would restrict trading at residences.

Clause 115 would seek to control advertising.

Clause 116 would require the seller of a security to declare ownership.

Clause 117 would require a declaration as to short position where a person who places an order for the sale of a security is not the beneficial owner.

Clause 118 would prohibit the use of the name of another registrant.

Clause 119 would provide for representation as to registration.

Clause 120 would provide that approval by the Commission not be advertised.

Clause 121 would provide for the application of Part VIII.

Clause 122 would provide for definitions of terms used in Part VIII.

Clause 123 would provide for the use of a clearing agency as registered owner of security.

Clause 124 would provide for the transfer of securities through a clearing agency.

Clause 125 would provide for transfer by record entry participants.

Clause 126 would provide for blocked accounts.

Clause 127 would provide for effecting pledges by record entry.

Clause 128 would provide for effecting blocked accounts by record entry.

Clause 129 would treat with situations where a security might be subject to a restriction.

Clause 130 would provide for blocking an account by order of the Court.

Clause 131 would outline limitations on the rights of participants.

Clause 132 would provide for the withdrawal of security.

Clause 133 would outline the issuer's duty to request the list of participants and beneficial owners.

Clause 134 would treat with access to clearing agency records.

Clause 135 would treat with the eventuality of an incorrect entry by a clearing agency.

Clause 136 would deal with liability in extraordinary circumstances.

Clause 137 would provide for an application to be made to the Court to rectify records.

Clause 138 would provide for the participation by financial institutions to deliver securities held into the custody of clearing agencies.

Clause 139 would provide for connected persons to report to the Commission.

Clause 140 would provide for the disclosure of beneficial interest in share capital.

Clause 141 would provide for offences.

Clause 142 would highlight liability for misrepresentation in a prospectus and damages.

Clause 143 would treat with action by purchasers for rescission where there has been misrepresentation in a prospectus.

Clause 144 would outline the liability for misrepresentations in other offerings.

Clause 145 would set certain limitations in respect of sections 142, 143, 144.

Clause 146 would impose civil liabilities for trading contrary to section 103.

Clause 147 would impose civil liabilities for market misconduct offences.

Clause 148 would allow for the Commission to seek leave of the Court to intervene in an action.

Clause 149 would provide for the Minister to make by-laws on the recommendation of the Commission.

Clause 150 would provide for the publication of proposed by-laws.

Clause 151 would outline the power of the Commission to order cessation of trading or distributions.

Clause 152 would provide for the Commission to make orders in the public interest.

Clause 153 would provide for the Commission to order that penalties be paid to the state.

Clause 154 would provide for market misconduct proceedings.

Clause 155 would provide for conduct of hearings by the Commission.

Clause 156 would provide for appeals for review *re*: section 8 or 43.

Clause 157 would provide for appeals to Court of Appeal.

Clause 158 would provide for investigations by the Commission.

Clause 159 would provide for the examination of financial affairs of market actors and reporting issuers.

Clause 160 would provide for the Court to make orders for enforcing compliance.

Clause 161 would deal with the appointment of receivers.

Clause 162 would prescribe general offences.

Clause 163 would indicate the liability of directors.

Clause 164 would provide for repeal and transition.

BILL

AN ACT to provide protection to investors from unfair, improper or fraudulent practices; foster fair and efficient capital markets and confidence in the capital markets in Trinidad and Tobago and to reduce systemic risk; to co-operate with other jurisdictions in the development of fair and efficient capital markets, and for other related matters

[, 2009]

WHEREAS it is enacted *inter alia* by subsection (1) of 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, 2009. |
| 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— “affiliate” means an affiliated body corporate or affiliated person within the meaning of subsection (2); “approved foreign issuer” means a foreign issuer— (a) that is at the relevant date a reporting issuer (or equivalent) under the securities laws of a designated foreign jurisdiction; |

(b) that has been for the three years immediately preceding the relevant date a reporting issuer (or equivalent) 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 stock exchange in a designated foreign jurisdiction;

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

“approved rating organization” means an organization as prescribed in the General By-laws made under this Act;

“asset-backed security” means any security that is primarily serviced by the cash flows of a discrete 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) a body corporate 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—

- (i) under all circumstances;
 - (ii) by reason of the occurrence of an event that has occurred and is continuing; or
 - (iii) a currently exercisable option or right to purchase such shares or such convertible securities;
- (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 or of his spouse if that relative has the same residence as that person;

“beneficial owner” means the beneficial owner of a security;

“beneficial ownership” includes ownership through a trustee, legal representative, agent or other intermediary;

“blocked account” means an account of a participant over which a person other than the participant exercises control pursuant to procedures established under section 126 of this Act;

“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; or

(b) buying and 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;

“business day” means any day on which banks are open for the conduct of business in Trinidad and Tobago;

“by-law” means any by-law made by the Minister on the recommendation of the Commission pursuant to section 149 of this Act;

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

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

(a) maintain records of trades of securities for the purpose of settling claims for money and securities;

(b) maintain records of transfers and pledges of securities for the purpose of permitting securities to be transferred by record entry;

(c) hold security certificates deposited with it for the purpose of permitting securities to be transferred by record entry; or

(d) perform any combination of two or more functions referred to in paragraphs (a) to (c), but does not include a broker-dealer or financial institution acting exclusively in the ordinary course of its customary business;

“Chairman” means the Chairman of the Commission appointed under this Act;

“collective investment scheme” means—

(a) an issuer—

(i) that was established for the principal purpose of investing property of any description, including money provided by its security holders; and

(ii) securities of which entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the issuer;

(b) any scheme or fund including, but not limited to, a closed-end fund.

“Commission” means the Trinidad and Tobago Securities and Exchange Commission established under this Act;

“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;

“designated foreign jurisdiction” means a jurisdiction that is prescribed in the General By-laws;

“director” includes the trustees 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;

“expert” means a lawyer, 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 or by-law;

“financial institution” means a company licensed under the Financial Institutions Act, 2008;

“financial reporting standards” means the International Financial Reporting Standards (IFRS) or such other financial or accounting standards as may be prescribed in the by-laws;

“foreign disclosure requirements” means the requirements to which a foreign issuer is subject concerning disclosure made to a competent securities regulatory authority, securities commission or securities exchange in a designated foreign jurisdiction which disclosure is made publicly available;

“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, 1995;

“General Manager” means the general manager of the Commission appointed under Part II;

“government entity” means—

(a) the Government of the Republic of Trinidad and Tobago or any department or agency thereof; and

(b) the Central Bank of Trinidad and Tobago;

“IFRS” means International Financial Reporting Standards adopted by the International Accounting Standards Board and applied in Trinidad and Tobago;

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

“interim period” means a completed three, six or nine-month period in a financial year;

“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; or
- (e) any other entity that is prescribed in by-laws made under this Act;

“investment advice” means advice with respect to an investment in, or the purchase, sale or holding of, a security, whether or not provided by an investment adviser;

“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 or portfolio management services to a collective investment scheme or to the manager of a collective investment scheme;

“investment contract” includes any contract, transaction, plan or scheme, whether or not evidenced by any document, 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, hold or sell securities;

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

“management discussion and analysis” means a management discussion and analysis on comparative financial statements;

“market actor” means a person registered or required to be registered under Part IV of this Act;

“material change” means a change in the business, operations, assets or ownership of an issuer, the disclosure of which would be likely to 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;

“material fact” means, if 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 likely to be considered important to a reasonable investor in making an investment decision;

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

“misrepresentation” means—

(a) an untrue statement of a material fact; or

(b) an omission to state a material fact 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;

“order”, unless a contrary intention appears, means an order of the Commission;

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

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

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

“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;

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

“publication” includes, without limitation, 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;

“purchase” includes—

- (a) any acquisition of a security for valuable consideration, whether the terms of payment are on margin, instalment 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;

“records” means—

- (a) accounts, correspondence, memoranda and any other 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;

“relative” in relation to a person, means a—

- (a) spouse;
- (b) child or grandchild;
- (c) parent, grandparent, brother, sister or the spouse of such person; or
- (d) step-child;

“reporting issuer” means an issuer—

- (a) that was a reporting issuer on January 1, 2009;
- (b) that has filed a prospectus and obtained a receipt for it under this Act;
- (c) that is required to be registered under this Act as a reporting issuer;
- (d) any of whose securities are listed on the Stock Exchange; or
- (e) whose existence continues following the exchange of securities of an issuer by or for the account of such issuer with another issuer or the holders of securities of that issuer in connection with a statutory amalgamation or arrangement, or where existing issuers merge into one issuer, that continuing issuer, where one of the amalgamating or merged companies or the continuing company has been a reporting issuer for at least twelve months,

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, instalment, 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 this Act;

“securities exchange” means a person who 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 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, or enterprise, 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) an interest in the whole, or in part of, the net assets of a collective investment scheme; or

- (i) any right to acquire or dispose of anything specified in paragraphs (a) to (h),

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;
 - (C) an insurance company; or
- (iv) a contract of insurance;

“self-regulatory organization” means a clearing agency or a securities exchange registered or required to be registered under this Act in order to carry out its business or function;

“senior officer” means—

- (a) the chairman or vice-chairman of the board of directors of an issuer, the managing director, the chief executive officer, the deputy managing director, the president, the vice-president, the secretary, the treasurer, the chief financial officer, the financial controller, the general manager or the deputy

general manager of an issuer or any other individual who performs functions for an issuer similar to those normally performed by an individual occupying any such office; and

- (b) each of the five highest paid employees of an issuer, including any individual referred to in paragraph (a);

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

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

“take-over bid” means an offer to acquire outstanding voting or equity securities of a class made to any securityholder 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;

“trade” includes—

- (a) any sale or purchase of a security;
- (b) any participation as a market actor 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;

“unpublished price-sensitive information” means, in relation to securities of a reporting issuer, any material fact or material change that has not been published; 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, to acquire such a security.

(2) For the purpose of this Act, “affiliate” includes—

- (a) a business relationship where—
 - (i) one body corporate is a subsidiary of another body corporate;
 - (ii) two or more bodies corporate are subsidiaries of the same body corporate;
 - (iii) two or more bodies corporate are controlled by the same person; or
 - (iv) two bodies corporate are affiliated with the same body corporate at the same time;
- (b) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary; and
- (c) a person 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 director or senior officer of the reporting issuer;
- (b) is a director or 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 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 contemplating or proposing, whether alone or with any other person, to make a take-over bid for any securities of the reporting issuer, or is contemplating or proposing, whether alone or with any other person, to become a party to any amalgamation, merger or similar business combination with the reporting issuer, or is contemplating or proposing 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 unpublished price sensitive 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 within in the meaning of paragraph (*d*).

(4) Subject to 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), paragraphs (*a*) to (*c*), (*e*) and (*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), paragraph (*d*), until the time any transaction described in paragraph (*d*) is published; and
- (*c*) in the case of subsection (3), paragraph (*f*), until such unpublished price-sensitive 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 e-mail correspondence, where the recipient of the e-mail correspondence is in Trinidad and Tobago, and the sender has knowledge that the recipient of such e-mail 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; 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 and the by-laws; 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 correspondence by e-mail, for the purpose of offering or providing investment advice, where the recipient of the e-mail correspondence is in Trinidad and Tobago, and the sender has knowledge that the recipient of such e-mail 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.

PART II

The SECURITIES AND EXCHANGE COMMISSION

Division 1—Establishment, Functions and Powers

Establishment of the
Commission

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

Functions of the
Commission

6. The functions of the Commission are to—

- (a) advise the Minister on all matters relating to the securities industry and marketplace;
- (b) maintain surveillance over the capital markets and ensure orderly, fair and equitable dealings in securities;
- (c) register, authorize or regulate, in accordance with this Act, self-regulatory organizations, broker-dealers, traders, 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 investing public, the securities industry and the capital markets;
- (e) conduct such inspections and examinations of self-regulatory organizations, broker-dealers, traders, underwriters, issuers and investment advisers and reporting issuers as may be necessary for giving full effect to this Act;
- (f) protect the integrity of the capital market against any abuses arising from market manipulating practices, insider trading, conflicts of interest and other unfair and improper practices;
- (g) promote an understanding by the public of the capital markets, 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; and
- (i) create and promote such conditions in the capital markets and the securities industry as may seem to it necessary, advisable or appropriate to ensure the orderly growth and development of the capital markets and securities industry and to further the purposes of this Act.

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

- (a) formulate principles for the guidance of the securities industry and capital markets;
- (b) deal with such matters as may be referred to it by any person from time to time;
- (c) register and regulate self-regulatory organizations and market actors with a view to maintaining proper standards of conduct and professionalism in the securities industry;
- (d) monitor the solvency of market actors and self-regulatory organizations and take measures to protect the interest of customers where the solvency of any such person is in doubt;
- (e) regulate reporting issuers, including reporting issuers which are collective investment schemes;
- (f) adopt measures to supervise and minimize any conflict of interests that may arise in the case of market actors or reporting issuers;
- (g) 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;
- (h) 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;
- (i) take enforcement action against any person for failing to comply with this Act or any by-law;

- (j) prepare and recommend by-laws to the Minister;
- (k) formulate, prepare and publish notices, guidelines, bulletins and policies describing the views of the Commission regarding the interpretation, application, or enforcement of this Act or any by-law;
- (l) make orders;
- (m) undertake such other activities as are necessary or expedient for giving full effect to this Act and the by-laws; and
- (n) do all things, and take all actions, which may be necessary or expedient or are incidental or conducive to the discharge of any of its functions and powers under this Act and the by-laws.

(2) The Commission may in writing require a self-regulatory organization, market actor or reporting issuer to furnish it with such information as it may reasonably require for the exercise of its functions within such reasonable time and verified in such manner as it may specify.

(3) A self-regulatory organization, market actor or reporting issuer 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.

(4) Where the Commission takes any enforcement action against a financial institution or an employee of a financial institution for failing to comply with this Act or any by-law, the Commission shall forthwith notify the Inspector of Banks of the enforcement action so taken.

8. (1) The Commission may, by order, delegate any responsibility, power or function conferred on it by this Act or the by-laws to any—

- (a) senior officer of the Commission; or
- (b) 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.

(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 be recorded in writing.

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

(6) 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.

(7) Any person aggrieved by a decision of a delegatee may, within fourteen days of the decision, apply to the Commission for a review of that decision.

(8) Within seven days of the receipt of an application under subsection (7), the Commission shall notify the applicant and the delegatee of the date, time and venue of the hearing to review the decision.

(9) Pending the review of a decision, the Commission may, on the application *ex parte* of the applicant, grant a stay of the decision under review and shall notify the delegatee forthwith of any stay so granted.

(10) Upon reviewing the decision of a delegatee, the Commission may vary or confirm the decision under review or make such other decision as it considers proper.

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 may be affixed to instruments in the presence of the Chairman and the Secretary. ^{Custody and use of seal}

(2) The seal of the Commission shall be attested by the signature of the 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 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

10. (1) The Commission shall consist of—

(a) a Chairman; and

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

Constitution of
Commission

business, investment or administrative matters, one of whom shall be an attorney-at-law of at least ten years standing,

appointed by the President; and

(c) a General Manager, appointed in accordance with section 22.

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

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

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

(5) Subject to the terms of his appointment, a person appointed in accordance with subsection (4) may exercise any of the functions and powers exercisable by a Commissioner under this Act.

Disqualification for
appointment

11. (1) A person shall not be appointed or continue as Commissioner if, directly or indirectly, as owner, securityholder, director, senior officer, partner, employee or otherwise, he—

(a) is engaged in the securities business;

(b) has a material pecuniary or proprietary interest in—

(i) a market actor; or

- (ii) a self-regulatory organization; or
- (c) has beneficial ownership of, or control or direction over more than five per cent of the outstanding equity or voting securities of a reporting issuer.

(2) 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 forthwith disclose the interest to the Chairman and shall within three months thereafter absolutely dispose of the interest or resign.

(3) A person who is appointed General Manager 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 General Manager—

- (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 General Manager.

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

12. (1) Subject to this section, the Chairman and the other Commissioners, except the General Manager, shall hold office for three years and shall be eligible for reappointment. Term of office

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

(3) A Commissioner, other than the Chairman and the General Manager, 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 the permission of the Minister 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;
- (e) is declared bankrupt in accordance with the law of Trinidad and Tobago or any other country;
- (f) 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;
- (g) is unable to perform his functions because of illness or for any other reason; or
- (h) contravenes this Act.

Protection of
Commissioners,
employees or agents

13. No action or other proceeding for damages 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.

14. (1) No Commissioner nor any person employed or retained by the Commission shall make use of any confidential information obtained as a result of his relationship with the Commission for his own benefit or advantage, or for the benefit or advantage of any relative.

(2) No person specified in subsection (1) shall disclose confidential information obtained as a result of his relationship with the Commission to any person other than—

- (a) a Commissioner or employee of the Commission;
- (b) an official or employee of the Government;
- (c) an expert hired or retained by the Commission; or
- (d) a duly authorized representative of the government of another country, or an agency of a government of another country, in connection with the enforcement of this Act, the by-laws or similar legislation of any foreign jurisdiction.

(3) A person who receives confidential information from a person specified in subsection (1) is subject to the provisions of this section as if he were a person specified in subsection (1).

(4) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for twelve months.

Division 3—Proceedings of the Commission

15. (1) The Commission shall ordinarily meet for despatch 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) Subject to subsection (4), the Chairman shall preside at every meeting of the Commission and in his absence a Commissioner designated by the Chairman shall preside at the meeting.

(4) Where no Commissioner is designated pursuant to subsection (3), the members of the Commission 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 three.

(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.

Committees

16. (1) Subject to subsection (3), where under this Act, the by-laws, or any other written law, the Commission is empowered or required to perform any function, the Commission may, by resolution appoint, for the purpose of doing any thing required or deemed expedient or necessary for the purpose of performing such function, a committee of the Commission and the performance by the committee of any such thing shall be deemed to be done and performed by the entire Commission.

(2) Without prejudice to the generality of subsection (1) and subject to subsection (3), 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 or the by-laws 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.

(3) A committee appointed under this section shall, upon the completion of the power or function for which it was so appointed, report in writing to the Commission thereon and the performance by the committee of that power or function and any act or thing done by it in relation thereto shall be complete and shall be a decision or due exercise by the Commission of the power or function in question when, and not before the Commission by resolution adopts the recommendation or the decisions by the committee, whereupon that power or function shall be deemed to have been performed by the Commission itself.

17. (1) Minutes, in proper form, of each meeting of ^{Minutes} 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 who is in any way, whether directly or indirectly, interested in a matter before the Commission shall declare his interest to the Commission.

(2) The Commission, excluding the Commissioner whose interest is being considered, shall determine whether this interest is sufficiently material 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 shall not take part in any deliberations or vote on that matter, and shall leave the room during such deliberations.

(4) For the purposes of this section, a Commissioner shall be deemed to have an interest in a matter if he, or his relative that resides in the same dwelling as the Commissioner, or his nominee, is a securityholder or partner in, or an officer or director of an issuer 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 indictment to a fine of five hundred thousand dollars, 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.

Consultation with
Central Bank and
other agencies

19. (1) The Commission shall consult and co-operate with and provide information to the Central Bank or any other agency that exercises regulatory authority under a written law over a financial institution, insurance company or other body in order to minimize duplication of effort and to maximize the protection of investors.

(2) The Commission may co-operate with and provide information to a government entity or an agency of a foreign government in connection with the investigation or prosecution of a contravention of this Act, the by-laws or any similar written law of Trinidad and Tobago or another jurisdiction whether the activities in question occurred in or outside of Trinidad and Tobago.

(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 or any by-law.

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

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

20. (1) The Commission shall within four months of ^{Annual Report} the end of the financial year send an annual report to the Minister who shall cause it to be laid in Parliament within thirty days after he receives it or, if Parliament is not then sitting, on any of the first thirty days thereafter that Parliament is sitting.

(2) Copies of an annual report shall be available to the public on or before the expiration of fourteen days after it is required to be laid in Parliament under subsection (1).

Regulation of
business

21. (1) Subject to subsection (2), the Commission may make rules—

- (a) respecting the calling of and conduct of business at meetings of the Commission;
- (b) respecting procedures for the initiation and holding of hearings by the Commission;
- (c) prescribing the procedure for appeals and review of decisions of a delegate and self-regulatory organizations;
- (d) 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; and
- (e) respecting any other matter, whether or not required by this Act, relating to the organization, procedure, administration or practice of the Commission.

(2) As soon as practicable after the making of any rule or amendment under subsection (1), the Commission shall forward a copy to the Minister and where the Minister objects, the Commission shall revoke or further amend the rule in accordance with the directions of the Minister.

Division 4—Staff

Appointment of
General Manager
and Chief Executive
Officer

22. (1) The Commission shall appoint a General Manager who shall hold office on terms and conditions approved by the Minister.

(2) The Commission may, with the approval of the Minister, appoint the Chairman or the General Manager as its chief executive officer.

23. (1) The Commission may appoint, hire or retain, ^{Appointment of experts} 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.

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

25. (1) An officer in the public service or in the service of a statutory authority may, with the approval ^{Transfer of officers to the public service and vice versa} 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 statutory authority, any public or private body, national or international, or 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 ^{Transfer 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

Funds and resources
of the Commission

27. The funds and resources of the Commission shall 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 the by-laws; and
- (c) all other sums or property that may in any manner become payable in any matter related to its functions and powers.

Financial powers

28. For the purpose of carrying out its power or functions, the Commission may, with the prior approval in writing of the Minister, charge, vary, waive or suspend fees for—

- (a) any function performed by the Commission under this Act or the by-laws;
- (b) the filing of any document or instrument with the Commission;
- (c) obtaining registration as a reporting issuer, market actor or self-regulatory organization under this Act; and
- (d) transactions effected on a self-regulatory organization.

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.

30. (1) All moneys of the Commission received Cash deposits and payments under the Act or the by-laws 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.

31. (1) The Commission shall keep proper books of Accounts and audit 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, the by-laws, 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.

(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, at the expense of the Commission, to attend and be heard thereat, and, if so requested by the Chair of the audit committee, shall attend every meeting of the committee held during the term of office of the auditor.

Division 6—Filing of Documents

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

33. (1) Unless the Commission determines that disclosure would not be in the public interest, the Commission shall make all documents or instruments required to be filed with it under the Act or the by-laws available for public inspection during the normal business hours of the Commission. Public availability of filed documents

(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.

PART III

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

Division 1—The Stock Exchange

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

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

(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.

Division 2—Self-Regulatory Organizations

Registration of
self-regulatory
organization

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.

(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.

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;
or
- (ii) conduct activities as a clearing agency or securities exchange;

(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—

(a) its financial condition and solvency;

(b) its ability to perform its proposed activities efficiently, honestly and fairly;

(c) its ability to comply with the requirements of the Act and the by-laws applicable to self-regulatory organizations; and

(d) the character and integrity of the persons that are the directors of the applicant.

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

(2) Forthwith after receipt of an application for registration as a self-regulatory organization under this Part, the Commission shall publish in a daily newspaper circulating 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 or the by-laws 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 section 39; 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 director or officer of the applicant would be refused registration as a market actor under Part IV.

(5) Where the Commission grants an application for registration as a self-regulatory organization, it may 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.

(6) 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 market 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.

(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.

39. (1) The rules of governance of an applicant for registration as a self-regulatory organization shall ^{Obligatory rules of} _{governance} 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 fair representation of its members in the administration of its affairs;
- (d) for an equitable allocation of reasonable fees and charges among persons who use its facilities;
- (e) relating to the disciplining of a member or employee of a member who contravenes its rules of governance or this Act or the by-laws 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; and

(f) specifying the procedure required to implement section 43 for disciplinary proceedings, denial of membership, exclusion from employment, or denial or limitation of access to services furnished by it or its members.

(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).

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

(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 a daily newspaper circulating in Trinidad and Tobago a notice inviting any interested person to submit written comments on the amendment and the 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 section 39; or
- (c) the amended rules of governance would be inconsistent or conflict with this Act or the by-laws.

(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 providing an opportunity for a hearing pursuant to section 153.

Power of
Commission to
require change in
rules of governance

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.

(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 153(1) prior to making the order.

Restriction on
imposition of fees
schedule

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.

(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), 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 responsibility 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,

but it 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 the volume of the required business or any other business that the person carries on.

(3) 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, the by-laws, a rule of a self-regulatory organization registered under this Act, or any other law in Trinidad and Tobago.

(4) 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, comply with the procedures specified for hearings of the Commission in section 153(1), (4) to (7) and (9).

(5) A self-regulatory organization shall publish in a daily newspaper circulating in Trinidad and Tobago any notice disciplining a member or an employee of a member unless the Commission directs otherwise.

(6) Subject to subsection (7), a self-regulatory organization may, without holding a hearing as required by subsection (4)—

(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 by,

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.

(7) Where a self-regulatory organization acts in accordance with subsection (6), the organization shall provide an opportunity for such a hearing within fifteen days of its order and the suspension, prohibition or limitation shall remain in effect until the hearing is completed.

44. (1) Where a self-regulatory organization makes a decision under section 43(2) or (3) 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.

Filing of documents
with Commission

(2) A person aggrieved by an order of a self-regulatory organization made under section 43(2) or (3) 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) or (3), 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, this Act and the by-laws; and
- (b) the rules of governance of the self-regulatory organization, this Act and the by-laws 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 or the by-laws;
- (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 by-laws 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.

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

(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 the Institute of Chartered Accountants of Trinidad and Tobago.

(4) The auditor of a self-regulatory organization shall deliver to the Commission on request a copy of a report made by him under subsection (2).

47. (1) A self-regulatory organization shall— Keeping and inspection of records, etc.

(a) make and keep such records in such form and for such periods as—

- (i) is required by this Act and the by-laws;
 - (ii) may be prescribed; and
 - (iii) are reasonably necessary in the conduct of its business and operations, including to document compliance with this Act and the by-laws;
- (b) file with, or deliver to, the Commission any prescribed document, instrument, writing or report; and

- (c) disseminate to the public any report referred to in paragraph (b),

and shall, upon request in writing, deliver to the Commission a copy of, or an extract from, any record kept under this subsection.

(2) In addition to subsection (1), a self-regulatory organization that is a securities exchange shall keep a record of each trade effected through its facilities showing the time when it took place and any other prescribed information.

(3) On the request of a person who produces a written confirmation of a trade executed through its facilities, a securities exchange 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 exchange acquired knowledge in the ordinary course of its business.

(4) The Commission may at any time authorize a person in writing to—

- (a) examine or review the books, records and other documents of a self-regulatory organization and to examine the financial affairs of that organization, including at the place of business of the self-regulatory organization, or any of its members;
- (b) examine or review the books, records and other documents of a fund established under section 48 and to examine the financial affairs of that fund, including at the place of business of the fund; and

(c) prepare such financial or other reports as the Commission requires,

whether or not the Commission is of the view that the self-regulatory organization or fund may be in breach of this Act, the by-laws or the rules of governance of the self-regulatory organization or fund.

(5) A self-regulatory organization or fund shall permit any person authorized under subsection (4) to enter the place of business of the self-regulatory organization or fund for the purpose of examining or reviewing the books, records and documents of the self-regulatory organization or fund during normal business hours.

(6) A person authorized by the Commission pursuant to subsection (4) may examine and make copies of all the records, books of account, securities, cash, bank accounts and other data of the self-regulatory organization or fund whose books, records and affairs are to be examined.

(7) No person shall withhold, conceal, destroy or refuse to produce any document, instrument, writing, information or record required for the purpose of the examination by a person authorized pursuant to subsection (4).

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

48. (1) A self-regulatory organization that is a securities exchange, shall maintain a contingency fund, as prescribed in the General By-laws.

Contingency fund of securities exchange

(2) A self-regulatory organization that is a clearing agency shall 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 every document that relates to the creation, administration and operation of a fund required by this section.

(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

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

- (a) contravenes its rules, this Act or any by-law;
- (b) is unable to comply with its rules, this Act or any by-law;
- (c) fails or is unable to enforce its rules of governance or a provision of this Act or any by-law 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,

Sanctions re: self-regulatory organizations

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; or
- (c) suspend or revoke the registration of the self-regulatory organization.

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

Complaints re: self-regulatory organizations and market actors

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

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

(3) Section 158 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.

51. (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 each of the parties to the dispute forthwith to inform the Commission in writing of the existence of the dispute and to deliver or cause to be delivered to the party or parties to the dispute, within seventy-two hours of such notice to the Commission, a copy of the notice of the dispute to the Commission.

(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 to the Commission.

(4) The Commission may, by any adjudication 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 MARKET ACTORS, ISSUERS AND SECURITIES

52. (1) Subject to this Act and the General By-Laws, no person shall 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) 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 the by-laws, and, except for persons deemed registered, the person has received written notice of the registration from the Commission.

(2) Subject to section 54(2), an individual who is a director or senior officer or employee of a person that is required to be registered under subsection (1) in order to carry on its business activities shall register in accordance with this Act and the by-laws, 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 that 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 an employee performing functions which are solely administrative in nature, including without limitation, technology support, facilities support, human resources management and clerical support.

(5) Notwithstanding subsections (1) and (2), a person 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 person is not registered under subsection (1) or (2), provided such person is registered under this subsection in the manner prescribed in the General By-laws.

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

53. (1) Subject to subsections (1) and (3), where an applicant for registration under this Part—

Registration by
Commission

- (a) is considered by the Commission to be fit and proper for registration or reinstatement of registration in the category applied for;
- (b) complies with the prescribed registration 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 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 market actor that is a broker-dealer to establish and maintain a compliance committee, which shall be responsible for ensuring that the broker-dealer complies with this Act and the by-laws.

(5) Where the registration of a market actor under this Part is subject to terms and conditions, the registered market actor 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 the—

- (a) financial condition and solvency;

- (b) educational and other qualifications;
- (c) ability to perform his proposed business efficiently, honestly and fairly;
- (d) ability to comply with the requirements of the Act and the by-laws applicable to the category of registration for which he is applying; and
- (e) character, financial integrity and reliability,

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 31st day of March of each year prepare a list of all registered market actors, by class of registration, which shall be published in the *Gazette*, one daily newspaper of general circulation in Trinidad and Tobago or the annual report of the Commission under section 19.

(9) The Commission shall maintain a register of all market actors registered with the Commission under this Part.

(10) Every market actor shall prepare and file an annual return with the Commission in the prescribed form within the prescribed time.

54. (1) For the period of one year from the date of proclamation of this Act, a person registered or deemed registered under the former Act as—

- (a) a broker, 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) an investment adviser, is deemed to be duly registered under this Act as an investment adviser;
- (d) a trader, is deemed to be duly registered under section 54(1) as a registered representative of a market actor registered under this Act;
- (e) an underwriter, is deemed to be duly registered under this Act as an underwriter; and
- (f) a securities company, is deemed to be duly registered under this Act as a broker-dealer.

(2) An individual required to obtain registration under section 52(2) is required to comply with the registration requirements of section 52(2) within twelve months from the date of proclamation of this Act.

55. (1) Subject to subsection (2) a person shall not become a substantial shareholder of a market actor required to obtain registration under section 52(1) in order to carry on its business activities without first being approved by the Commission as being fit and proper.

Restrictions on substantial shareholders of market actors

(2) A financial institution and a person duly registered as a market actor under section 52(1) or (2) are deemed approved by the Commission for purposes of subsection (1).

(3) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, approve the applicant to become a substantial shareholder of a market actor required to obtain registration under section 52(1).

(4) The Commission shall refuse to approve an applicant to become or continue to be a substantial shareholder of the market actor concerned unless the applicant satisfies the Commission that the market actor will remain a fit and proper person to be registered if the application is approved.

(5) In this section, “substantial shareholder” means any person who beneficially owns, or has control or direction over, or proposes to own or acquire control or direction over voting securities of a market actor representing more than ten per cent of the outstanding voting securities of the market actor.

(6) A person that is a substantial shareholder of a market actor on the date of the enactment of this section is deemed approved by the Commission for purposes of subsection (1).

Termination of
employment

56. (1) The termination of the employment of an individual with a market actor that is registered under section 52(1) shall operate as a suspension of the registration of such individual under section 52(1), with effect from the date of termination of the employment, until notice in writing has been received by the Commission from another market actor registered under section 52(1) of the employment of such individual by the other registered market actor.

(2) If notice in writing of the employment of an individual referred to in subsection (1) by another market actor registered under section 52(1) is not received by the Commission within ninety days of the suspension of the registration of such individual, the Commission shall revoke the registration of such individual.

(3) An individual whose registration is revoked under subsection (2) may apply for registration under section 52(1) upon employment of such individual by a market actor.

57. (1) An application for registration under this Part Application for registration 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.

(2) If at any time between the date of the filing of an application and the date that a notice of registration is received by the applicant, the applicant becomes aware of a material change in the information contained in the application, then 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 or a market actor within a specified time and may require verification by affidavit or otherwise of any information or material fact then or previously submitted, or may require the applicant or the market actor or any partner, officer, director, or trustee of, or any person performing a like function for, or any employee of, the applicant or of the market actor, to submit to examination under oath by a person designated by the Commission.

(4) Subject to the by-laws, every market actor registered under section 52(1) shall, within five business days of the event, deliver to the Commission notice of—

(a) Any change in—

- (i) address for service in Trinidad and Tobago, or any business address;
- (ii) the directors or senior officers of the market actor and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefore;

- (iii) the information required under section 55; or
- (iv) the name or address of the person in charge of any branch office in Trinidad and Tobago;
- (b) the commencement and termination of employment of every individual registered under section 54(2) and, in the case of termination of employment, the reason therefor;
- (c) the opening or closing of any branch office in Trinidad and Tobago and, in the case of the opening of any branch office in Trinidad and Tobago, the name and address of the person in charge thereof; and
- (d) the failure by the market actor, at any time, to maintain the prescribed levels of capitalization.

(5) A person opening a branch office shall apply to the Commission for registration of the branch office in the prescribed form and shall pay the prescribed fee.

Suspension of
registration,
warning, censure

58. (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 market actor registered under section 52(1), (2) or (5) if—

- (a) such market actor ceases to carry on the business of a market actor;
- (b) such market actor 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 market actor to be registered;

- (c) the registration of such market actor under this Act or the former Act has been made by mistake, however such mistake arose;
- (d) such market actor has defaulted in the payment of any moneys due to a self-regulatory organization or to the Commission;
- (e) in the case of a market actor that is not an individual, a levy of execution in respect of such person has not been satisfied;
- (f) in the case of a market actor that is not an individual, such market actor fails to maintain the prescribed level of capitalization;
- (g) such market actor is charged or convicted of an offence involving fraud or dishonesty;
- (h) such market actor contravenes, or fails to comply with, any term, condition or restriction applicable in respect of his registration, or with a provision of this Act or the by-laws;
- (i) in the case of a market actor that is not an individual, such market actor fails adequately to supervise or to conduct the activities of any other person acting for, or on behalf of, such market actor;
- (j) such market actor is prosecuted for breach of this Act or the by-laws;
- (k) such market actor is charged with an offence involving fraud or dishonesty;
- (l) such market actor ceases to meet a registration requirement, or a term or condition of registration, applicable to such person; or
- (m) such market actor is guilty of misconduct or is no longer fit and proper for registration.

(2) In considering at any time whether a registered market actor is no longer fit and proper for registration under section 58(1)(m), the Commission shall have regard to the criteria set forth in section 53(4).

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

- (a) a contravention of any provision of the Act or by-laws;
- (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 market actor under this section without giving the person an opportunity to be heard.

(5) Notwithstanding subsection (4), the Commission may suspend the registration of a market actor 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 any registered market actor is prosecuted for breach of this Act, the Commission may suspend the registration of such market actor 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, revoke or rescind any suspension it has made of the registration of a market actor under this section, whether on its own determination or on application by a market actor.

(8) Where the Commission has suspended the registration of any market actor, or the registration otherwise expires, that market actor 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 market actor under this Part is revoked or rescinded by the Commission for any reason, the registration of such market actor and any licence issued by a self-regulatory organization or membership in any such self-regulatory organization held by the market actor, shall be reinstated with the full terms, conditions, rights, privileges and obligations of such registration, licence or membership.

59. (1) The Commission may, where it considers it to be in the public interest, revoke the registration of a market actor registered under section 52(1), (2) or (5) for any reason set out in section 58 other than section 58(1)(j) or (k). Revocation of registration

(2) Where the Commission has suspended the registration of a market actor for a reason set out in section 58(1)(j) or (k), the Commission may revoke the registration of such market actor following the conviction of such market actor for an offence involving fraud or dishonesty, or of a breach of this Act or the by-laws.

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

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

(5) Where the Commission has revoked the registration of any market actor that market actor shall forthwith cease activities in the area of activity for which such market actor 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

60. On application by a market actor, the Commission may accept, subject to such terms and conditions as it may impose, the voluntary surrender of the registration of the market actor if the Commission is satisfied that the financial obligations of the market actor to the clients of such market actor have been discharged and the surrender of the registration would not be prejudicial to the public interest.

Offence

61. (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 one year.

(2) A person who contravenes section 52(1) or (2) commits an offence and is liable on conviction on indictment to a fine of two million dollars and to imprisonment for two years.

Registration
statements of
issuers

62. (1) A person who proposes to distribute securities to the public shall register with the Commission as a reporting issuer and file a registration statement in the prescribed form within the prescribed time and pay the prescribed fee.

(2) A reporting issuer shall amend its registration statement in the prescribed form annually, within fourteen days of the end of its financial year and pay the prescribed fee.

(3) Where a reporting issuer ceases to be a public company, the Commission may on its own motion or on application by the issuer or another interested person make an order declaring, subject to such conditions as it considers appropriate, that the issuer is no longer a reporting issuer.

(4) This section shall not apply to any issuer which is a government entity.

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

(2) Any security may be registered with the Commission by filing a registration statement signed—

(a) by the principal executive 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, by the underwriter or designated agent.

(3) Signatures appearing on the registration statements shall be presumed to have been affixed to that statement by authority of the person whose signature is so affixed unless the contrary is proved by the person denying the validity of the signature.

(4) A registration statement shall be deemed effective only as to the securities specified therein proposed to be offered.

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

(6) The filing with the Commission of a registration statement or any amendment thereto under this section shall be deemed to have taken place upon

receipt thereof, but the filing of a registration statement shall not be deemed to have taken place unless accompanied by the amount of the fee required under subsection (5).

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

(8) The effective date of a registration statement shall be determined by the Commission.

(9) Securities which were issued prior to the commencement of this Act and in accordance with the former Act, shall be deemed to be registered under this Act.

PART V

DISCLOSURE OBLIGATIONS OF REPORTING ISSUERS

Application to
collective
investment
schemes

64. A reporting issuer that is a collective investment scheme shall comply with this Part and such other disclosure obligations as may be prescribed.

Annual reports

65. A reporting issuer shall, within the prescribed time 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.

Timely disclosure of
material changes

66. (1) Subject to subsection (2), where a material change occurs in the affairs of a reporting issuer, the reporting issuer shall forthwith, and in any event within one day of the material change, issue a press notice that is authorized by a senior officer and that discloses

the nature and substance of the material change, and, within seven days 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.

(2) Subject to subsection (3), subsection (1) shall not apply where the reporting issuer is of the opinion that the disclosure required by subsection (1) would be unduly detrimental to its interests and forthwith after 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 press release.

(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 provided such non-disclosure does not continue beyond the time set forth in subsection (4).

(4) Where a reporting issuer has not published a material change which is required to be published under subsection (1) as a result of the application of subsections (2) and (3)(b), the reporting issuer shall, notwithstanding such subsections, comply with subsection (1) in respect of such material change no later than thirty days after the date on which the reporting issuer would have been required to issue a press notice in respect of the material change under subsection (1).

Annual financial
statements

67. (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 next 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 of the reporting issuer, without reservation of opinion, prepared as prescribed.

(3) No person shall act as the auditor of a reporting issuer unless such person is a member in good standing of the ICATT or such other professional accounting body as may be prescribed.

(4) Subject to subsection (5), at the time a reporting issuer files comparative financial statements with the Commission under this section it shall concurrently file a certificate in the prescribed form and signed by—

- (a) its chief executive officer and its chief financial officer;
- (b) any other two senior officers if the reporting issuer does not have a chief executive officer or chief financial officer; or
- (c) any two directors of the reporting issuer shall certify the accuracy of the comparative financial statements in the prescribed manner.

(5) 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 senior officers or employees of the reporting issuer or any of its affiliates.

(6) The audit committee of a reporting issuer shall review the comparative annual financial statements of the reporting issuer before such financial statements are approved by the directors of the reporting issuer.

(7) The auditor of a reporting issuer is entitled to receive notice of every meeting of the audit committee of the reporting issuer and, at the expense of the reporting issuer, to attend and be heard thereat, and, if so requested by the Chairman of the audit committee, shall attend every meeting of the committee held during the term of office of the auditor.

68. (1) Every reporting issuer shall prepare and file ^{Interim financial statements} with the Commission within the prescribed time period interim financial statements—

- (a) where the reporting issuer has not completed its first financial year, for the periods commencing with the beginning of that year and ending nine, six and three months respectively, before the date on which that financial year ends, but no interim financial statement is required to be filed for any period that is less than three months in length; and
- (b) where the reporting issuer has completed its first financial year, to the end of each of the three-month, six-month and nine-month periods of the current financial year

that commenced immediately following the last financial year, including a comparative statement to the end of each of the corresponding periods in the last financial year,

made up and certified as prescribed and prepared in accordance with financial reporting standards for each interim period of each financial year beginning on or after January 1, 2009.

(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

69. (1) Subject to subsection (2), every financial statement required to be prepared and filed with the Commission pursuant to section 67 or 68, shall be concurrently sent by the reporting issuer to each holder of its securities, other than debt securities, to the latest 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 in subsection (1) with respect to interim financial statements by publishing the financial statements in a daily newspaper of general circulation in Trinidad and Tobago or in any other prescribed manner.

Management
discussion and
analysis

70. (1) A reporting issuer shall prepare and file with the Commission annually within the prescribed time after the end of its financial year, a management discussion and analysis for each financial year ending on or after January 1, 2009.

(2) A management discussion and analysis of a reporting issuer shall contain and discuss such matters as may be prescribed.

(3) A reporting issuer shall send the management discussion and analysis to each holder of its securities, other than debt securities, to the latest address as shown on the securities register of the reporting issuer, concurrently with the sending to those securityholders of its annual comparative financial statements to which the management discussion and analysis relates.

71. (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 who is entitled to receive notice of the meeting, to the latest address as shown on the securities register of the reporting issuer. Proxy solicitation

(2) A person shall not solicit proxies under subsection (1) unless there is sent to each such securityholder whose proxy is solicited and to the reporting issuer if the solicitation is not by or on behalf of the management of the reporting issuer, concurrently with the solicitation a—

- (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 the management of the reporting issuer; or
- (b) dissident's proxy circular in the prescribed form stating the purpose of the solicitation when the solicitation is not by the management of the reporting issuer.

(3) A person sending a proxy circular or dissident's proxy circular shall file a copy of such document with the Commission together with the form of proxy concurrently with the mailing thereof.

(4) Where a reporting issuer is complying with the—

- (a) requirements of the law of the jurisdiction under which it is incorporated, organized or continued and the requirements are substantially similar to the requirements of this section;
- (b) comparable requirements of the Companies Act; or
- (c) requirements of any designated foreign jurisdiction,

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the requirements of this section shall not apply.

(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 securityholder 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 securityholder under subsection (1),

but does not include—

- (i) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a securityholder;
- (ii) the performance of administrative acts or professional services on behalf of a person requesting a proxy;

- (iii) the sending by a broker-dealer of documents to a beneficial owner; or
- (iv) the request by a person in respect of securities of which he is the beneficial owner.

72. (1) A reporting issuer that is an approved foreign issuer is exempt from the requirements of this Part, other than section 71 where the reporting issuer—

- (a) had a market capitalization of no less than the prescribed amount on the date it became a reporting issuer under this Act calculated in the prescribed manner;
- (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;
 - (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 a management discussion and analysis 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 in respect of the items described in subsection (1)(b); and

Exemptions for certain foreign issuers

(d) delivers to each securityholder, resident in Trinidad and Tobago, at the last address shown on the securities register of the reporting issuer, the documents that such securityholder would be entitled to receive under securities laws of the designated foreign jurisdiction if such securityholder 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 ten per cent of the number of voting securities outstanding of the issuer on such date.

(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.

(4) The condition in subsection (1)(a) does not apply to a collective investment scheme that is an approved foreign issuer.

Offence

73. (1) Subject to subsection (2), a reporting issuer who—

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

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

(2) Where a reporting issuer is convicted of an offence under subsection (1), each director and senior officer of the reporting issuer, who knowingly 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 or to imprisonment for two years.

(3) Notwithstanding subsection (2), the defence available to a director or senior officer under section 163(3) is also available to a director or senior officer in respect of this section.

(4) Where a director or 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 director or senior officer be prohibited from being a director or senior officer of a reporting issuer for a period not exceeding five years.

(5) An auditor of a reporting issuer which knowingly makes or provides a false or misleading audit report in respect of the comparative financial statements of a reporting issuer commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars.

(6) Where an auditor is convicted of an offence under subsection (5), 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 reporting issuer for a period not exceeding five years.

74. (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.

Ceasing to be 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 suspend the reporting issuer from its register until such time as the outstanding report or statement is filed.

PART VI

DISTRIBUTIONS

Definition and
construction

75. (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) an officer or director 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 registered market actor;
- (e) a government entity or international agency;

- (f) an individual who has net financial assets of no less than one 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 five million dollars or such higher amount as may be prescribed; and
- (h) any person outside of Trinidad and Tobago that is analogous to persons referred to in paragraphs (c), (d), (f) and (g).

“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;

“limited offering” means a distribution where—

- (a) following the completion of such distribution, the number of securityholders of the issuer is not greater than thirty-five persons exclusive of directors, officers and employees or former directors, 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 registered market actor;

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

Prospectus required **76.** (1) Subject to section 82, no person shall trade in a security where such trade would be a distribution 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 82, unless such security has received an approved rating.

Advertising **77.** 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 **78.** (1) An issuer, or a market actor not acting as agent for the purchaser, 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 market actor not acting as agent for the purchaser, 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 76, during the period of distribution determined in accordance with section 86, shall provide copies upon request and shall furnish to a market actor a reasonable number of copies of the prospectus 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.

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

(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 by the Collective Investment Scheme By-Laws.

80. (1) Where a prospectus has been filed with the Commission under section 76 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,

then the issuer shall file with the Commission an amended prospectus containing particulars of that material change or material fact as the case may be, 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) An issuer, or a market actor not acting as agent for the purchaser, who sends a prospectus to a purchaser under section 78(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

81. (1) A prospectus that includes a report, opinion, valuation or statement purporting to be made by an expert shall not be accepted by the Commission 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

82. (1) Subject to subsection (2), section 76 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;
- (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 registered market actor;
- (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 files with the Commission—
 - (i) a notice that is to be sent to its securityholders, and the Commission does not inform the issuer in writing within ten days of the filing that it objects to the distribution; or
 - (ii) and sends to its securityholders 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 directors, officers or employees, or directors, 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 or 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 an accredited investor 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 registered market actor; 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 registered market actor;
or

(B) any prescribed person,

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

(m) in a limited offering by a reporting issuer;
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 76 does not apply to a distribution by a person within the meaning of paragraph (c) 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 registered market actor;

- (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 registered market actor;
- (d) the distribution takes place through the facilities of a securities exchange;
- (e) at the time of the distribution, the selling securityholder does not have knowledge or possession of any unpublished price sensitive information in respect of the reporting issuer;
- (f) if the securities being distributed have been acquired by the selling securityholder 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 press release and filed with the Commission no less than three and no more than ten business days prior to the first sale by the selling securityholder.

(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 press release 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 press release required by subsection (5)(g).

83. (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 76, 78, 79, 80 and 81 of this Part by—

(a) filing with the Commission—

- (i) a certificate 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;
- (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, true and plain disclosure 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 ten per cent 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 in by-laws 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 the English language.

(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.

84. (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 82(1), other than a further trade exempted by this Act or by any by-law, is deemed to be a distribution, unless—

- (a) the issuer 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 (c) 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 or the by-laws; and
- (f) at least six months have elapsed from the date of the initial distribution.

(2) A person who purchases a security pursuant to an exemption from the prospectus requirement of section 76(1), that is available under this Act or the by-laws 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 such paragraph as if such conversion or exchange had not occurred.

Receipt for
prospectus

85. (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 any by-law; or
 - (iv) fails to comply with any requirement of this Act or any by-law;
- (b) the distribution in connection with which it is filed is deceptive;
- (c) an unconscionable consideration has been or is intended to be given for promotional purposes or for the acquisition of the security;
- (d) the past conduct of the issuer, or any director, senior officer, promoter, or person holding securities sufficient to affect materially the control of the issuer, or any other person who exercises or is reasonably considered by the Commission likely to exercise influence over its management or

policies, suggests to the Commission 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 the Act or the by-laws, or under any other written law by or under which it is incorporated or organized;
- (h) an underwriter named in the prospectus is not registered under Part IV as a market actor;
- (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.

Cessation of
distribution

86. (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 subsections (5) and (6), 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) and (3) do not apply to a distribution of securities by a collective investment scheme.

87. (1) A person who distributes a security, other than a security which is issued by a collective investment scheme—^{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 and obtain a receipt therefor,

shall within ten days of the completion of the distribution file a 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 distribution statement with the Commission in respect of the remaining securities distributed within ten days of the completion of the distribution.

(3) A distribution statement shall be signed by a senior officer of an issuer and at least two directors of the issuer, or where the issuer does not have a senior officer or board of directors, by any two persons authorized to sign on behalf of such issuer.

PART VII

MARKET CONDUCT AND REGULATION

Division 1—Stamp Duty

Exemption from
stamp duty
Chap. 76:01

88. 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 through a Securities Exchange

Trades conducted
through a securities
exchange

89. (1) 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.

(2) A person who, whether acting on his own behalf or through a person that is not a registrant, executes a trade other than through the facilities of a securities exchange, shall file with the Commission a report of the trade in the prescribed form.

Division 3—Record-keeping and Compliance Reviews

Record-keeping

90. (1) Every market actor and every registered self-regulatory organization shall keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others and shall keep such other books, records and documents as may otherwise be required under this Act.

(2) Without limiting the generality of sub section (1), every registered self-regulatory organization shall keep a record of the time at which each transaction on a registered self-regulatory organization took place and shall supply to a client of a member of the registered 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.

91. Every market actor or registered self-regulatory organization shall deliver to the Commission at such time as the Commission or any member, employee or agent of the Commission may require-

Provision of information to the Commission

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

92. (1) The General Manager or any employee or agent of the Commission so authorized in writing by the General Manager, may review the books, records and documents that are required to be kept by a market actor or registered self-regulatory organization under section 90 for the purpose of determining whether the provisions of this Act or any by-law are being complied with.

Compliance reviews

(2) A person conducting a compliance review under this section may, on production of his authorization—

- (a) enter the business premises of any market actor or registered self-regulatory organization during normal business hours; and

(b) inquire into and examine the books, records and documents of the market actor or registered self-regulatory organization that are required to be kept under section 90, and make copies of the books, records and documents.

(3) A market actor or registered self-regulatory organization in respect of which a compliance review is conducted under this section shall pay the Commission such fees as may be prescribed.

Powers of General
Manager, employee
or agent of the
Commission

93. (1) In the performance of the functions of the Commission under this Act, the General Manager and any employee or agent of the Commission so authorized in writing by the General Manager shall at all reasonable times have access to all books, records, accounts, vouchers, sales contracts, minutes of meetings, securities and any other documents of any market actor or registered self-regulatory organization for any information or explanation as they consider necessary for the due performance of their duties.

(2) If an inspection reveals that a market actor or self-regulatory organization is conducting its business in a manner that is in contravention of this Act or any by-law, the General Manager may require the market actor or self-regulatory organization within such time as may be specified, to take all such measures as he may consider necessary to rectify the situation.

(3) Any person who fails to take measures required pursuant to subsection (2) commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for one year.

Division 4—Market Manipulation Offences

94. (1) No person shall do anything, take part False trading and artificial prices in a securities market 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 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 a level that is artificial a price, for a security on a securities market.

(3) Without limiting the generality of sub sections (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;
- (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 them,

then, the person shall, for the purposes of subsections (1) and (2) be regarded as doing something or causing something to be done, with the intention that, or being reckless that 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.

Price rigging

95. No person shall—

- (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 that 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 that 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

96. 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.

97. A person shall not enter into or carry out, Securities market manipulation directly or indirectly, two or more transactions in securities of an issuer that by themselves or in conjunction with any other transaction—

- (a) increase or are likely to increase the price of any securities traded on a securities market, with the intention of inducing another person to trade, or to refrain from trading, in the same class of securities;
- (b) reduce, or are likely to reduce, the price of any securities traded on a securities market, with the intention of inducing another person to trade, or to refrain from trading, in the same class of securities; or
- (c) maintain or stabilize, or are likely to maintain or stabilize, the price of any securities traded on a securities market, with the intention of inducing another person to trade, or to refrain from trading, in the same class of securities.

98. A person shall not, directly or indirectly, in Use of fraudulent or deceptive devices 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.

99. (1) No market actor or employee of a market actor Excessive trading shall effect trades that are excessive in volume or frequency with or for a customer 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 market actor, employee or other person in relation to the size of the customer's account, the needs and objectives of the customer as ascertained on reasonable inquiry and the pattern of trading in the account.

Standard of conduct
for market actors

100. (1) The Commission may prescribe standards for the conduct of a market actor in relation to a customer to prevent—

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

(2) The Commission may prescribe standards for the conduct of a market actor in relation to the custody or lending of any money or security held for a customer.

Restrictions on
recommendation

101. (1) A market actor shall not recommend a trade in a security to any customer unless—

- (a) he has reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry as to his investment objectives, financial situation and needs, or on any other information known to the market actor; 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 immediately preceding years; or
 - (iv) any direct or indirect financial or other interest in the security or the issuer of the security held by the market actor.

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

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

102. A person who contravenes section 94, 95, 96, 97, ^{Offence} 98, 99 or 101 commits an offence and is liable on conviction on indictment to a fine of two million dollars or imprisonment for two years.

Division 5—Insider Trading

103. No person that is connected to a reporting issuer shall, directly or indirectly, buy, sell, or otherwise trade in securities of such reporting issuer, whether in a ^{Prohibition on buying or selling of securities by certain persons}

transaction on a securities exchange or otherwise, with knowledge or possession of unpublished price sensitive information, however obtained, until such information is published.

Prohibition on disclosing price-sensitive information

104. (1) 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 a reporting issuer, whether in a transaction on a securities exchange or otherwise, during the time such person has knowledge or possession of unpublished price-sensitive information until such information is published.

(2) A person connected to a reporting issuer shall not, directly or indirectly, communicate or otherwise disclose any unpublished price-sensitive information to any person until such information is published, unless in the necessary course of business.

Offence

105. (1) A person who contravenes section 103 or 104 commits an offence and is liable on conviction on indictment to a minimum fine equal to the profit made or loss avoided by him and a maximum fine equal to the greater of triple the profit made or the loss avoided by him and two million dollars and to imprisonment for two years.

Transaction not void or voidable

106. No transaction is void or voidable by the person who has knowledge or possession of unpublished price-sensitive information, by reason only that it was entered into in contravention of section 103 or 104.

Exceptions to sections 103 and 104

107. (1) Sections 103 and 104 do not prohibit a person by reason of his having knowledge or possession of any unpublished price-sensitive information from—

- (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 unpublished price-sensitive 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 unpublished price-sensitive information relating to any particular transaction prohibited by section 103 or 104—

- (a) from buying or selling or participating in any transaction on any securities exchange or otherwise; 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 exchange or otherwise,

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 unpublished price-sensitive information and the transaction is completed on the same terms.

(3) A person who buys, sells or otherwise trades in securities of a reporting issuer with knowledge or possession of unpublished price-sensitive information that has not been published is exempt from section 103, where the person proves that—

- (a) no director, senior officer, partner, employee or agent of the person that made or participated in making the decision to

buy, sell or otherwise trade the securities of the reporting issuer had actual knowledge of the unpublished price-sensitive information; and

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

provided that this exemption is not available to an individual who had actual knowledge of the unpublished price-sensitive information.

(4) In determining whether a person has met the requirements under subsection (3), it shall be relevant whether and to what extent the person has implemented and maintained reasonable policies and procedures to prevent contraventions of section 103 by persons making or influencing investment decisions on its behalf, and to prevent transmission of unpublished price-sensitive information contrary to section 104.

Defence not
available

108. Where a person is accused of an offence under section 103 or 104, it shall not be a defence to the charge that the unpublished price sensitive 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.

109. In this Part—

Presumptions

- (a) a person who trades in a security at a time when he has knowledge or possession of unpublished price-sensitive information is presumed to have traded in the security as a result of his knowledge or possession of the unpublished price-sensitive information unless shown to the contrary by him; and
- (b) persons other than individuals are deemed to have knowledge or possession of unpublished price-sensitive information at and from the time such unpublished price-sensitive information comes to the knowledge or possession of any director, senior officer, partner or employee of such person.

Division 6—Market Practices

110. (1) A broker-dealer shall establish and keep in a ^{Trust accounts} financial institution one or more trust accounts designated as such into which it shall upon receipt pay—

- (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 not delivered to the broker-dealer, within the prescribed time; 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, within the prescribed time after receipt of such amounts.

(2) No money shall be withdrawn from a trust account established under subsection (1), except for the purpose of making 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 a trust account, or against or upon any monies received for the purchase of securities, or from the sale of securities, before such monies are paid into a trust account.

(4) Every broker-dealer that fails to comply with, or contravenes any of the provisions of this section commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars or to imprisonment for six months.

Market actor to send documents to beneficial owner

111. (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 shall send to the beneficial owner of the securities a copy of any document sent to him or his nominee as registered securityholder 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 securityholders pursuant to this Act or the by-laws shall furnish to a market actor forthwith upon request sufficient copies of the document to enable him to comply with subsection (1) and shall pay or reimburse the reasonable costs of him doing so.

Confirmation to be sent to customer

112. (1) Subject to subsection (2), a market actor who trades in any security with or for a customer shall send to that customer within two business days after the completion of the trade, a written confirmation of the trade containing the prescribed information.

(2) The Commission may order that a market actor 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 times and containing such information as may be prescribed.

113. A market actor who has acted as a broker-^{Notification to Commission} dealer in connection with a trade in a security shall on the request of the Commission forthwith disclose to it the name of the person with or through whom the security was traded.

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

(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 e-mail communication,

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 communicates to any residence—

- (a) of a close friend, a business associate or a client with whom or on whose behalf the person 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 communicating to the residence.

Control of
advertisement

115. (1) The Commission may order a market actor or reporting issuer 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 days before it is used, if the Commission reasonably believes that the past conduct of the market actor or reporting issuer 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.

Seller of security to
declare non-
-ownership

116. A person who places an order with a market actor 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.

Declaration as to
short position

117. A person who places an order for the sale of a security through a market actor acting on his behalf and who—

- (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 market actor that he or his principal, as the case may be, does not beneficially own the security, and that fact shall be published by the market actor in the written confirmation of sale.

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

119. (1) A person shall not represent that he or any other person is registered in any capacity under this Act or the by-laws 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 or the by-laws.

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

120. A person shall not represent, orally or in writing, that the Commission or a person authorized by the Commission, has in any way approved the financial standing, fitness or conduct of any market actor or evaluated the merits of any security or issuer. Approval by Commission not to be advertised

PART VIII

SIMPLIFIED CLEARING FACILITIES

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

122. In this Part—

Definitions

“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.

Use of clearing
agency as registered
owner of security

123. (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 registered market actor, 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.

124. (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. Transfer of securities through 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 registered market actor, 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.

Transfer by record
entry participants

125. (1) On receipt of instructions in writing from a participant and, if the participant's account 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.

(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 sections 123(2) or 124(3),

then on receipt of instructions in writing from a participant and, if the participant's account 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.

126. (1) A clearing agency shall establish a Blocked account procedure whereby it or an interested person may exercise control over a participant's account in the clearing agency where—

- (a) the interested person is, in relation to a security in the participant's account, a beneficial owner, a pledgee, or a judgment creditor of the beneficial owner; or
- (b) a security in the participant's account is subject to a lien in favour of its issuer or to a restriction or constraint on its transfer.

(2) Subject to section 135(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.

127. (1) On receipt of instructions in writing from a Effecting pledge by record entry participant and, if the participant's account 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 126 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.

Effecting blocked
account by record
entry

128. On receipt of instructions in writing from a participant and a beneficial owner of a security, a clearing agency may, 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.

Security subject to
restriction

129. (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.

130. (1) On the application of a creditor who has a Blocking account by Court order 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 137 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).

131. A participant has no right to pledge, transfer or Limitation on rights of participants otherwise deal with a security held by a clearing agency except through the facilities of the clearing agency.

132. (1) On the receipt of a demand in writing from a Withdrawal of security 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 137, 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

133. (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 securityholders;
- (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 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 days—

(a) furnish to the clearing agency a list containing the name and address 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.

Access to clearing
agency records

134. 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 133(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.

Incorrect entry by
clearing agency

135. (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.

(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.

136. Where a clearing agency is unable to effect a pledge or transfer of a security on its records because of an extraordinary event, it is not liable to compensate a person who incurs a loss as a result of a delay in effecting the pledge or transfer to the extent that it proves that it took reasonable corrective action.

137. (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 135(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

138. (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

Reports by certain
connected persons

139. (1) A person who is connected to a reporting issuer as a result of section 4(3)(a), (b) 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 and his associates.

(2) A person who has filed or is required to file a report under this section and 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 the person under this section, 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,

in each case whether or not such securities are securities issued by the reporting issuer.

(6) For purposes of this section, “derivative securities” means an instrument, agreement or security, the market price, value or payment obligations of which are derived from, referenced to, or based on, an underlying security, interest, benchmark or formula.

(7) 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

140. (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

141. (1) Any person who commits a breach of any section in this Part, or who, in complying with any other 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 or to imprisonment for six months.

PART X

CIVIL LIABILITY

Liability for
misrepresentation
in prospectus,
damages

142. (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 time 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 or after an interval of time;
- (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 81 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)—

- (a) who, having consented to become a director of the issuer, withdrew his consent before the filing of the prospectus and the prospectus was filed without his authority or consent;
- (b) who, when the prospectus was filed without his knowledge or consent, gave reasonable public notice of that fact forthwith after becoming aware of it;
- (c) who, after the filing of the prospectus and before the sale of securities under it, 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) who, as regards every misrepresentation, not purporting to be made on the authority of an expert or a public official document or statement, 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, 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 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, and had given his, her or its consent as required under section 81 and had not withdrawn that consent before delivery of a copy of the prospectus for filing, nor had the expert, to the person's knowledge, 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) The right of action for damages conferred by this section shall not be in derogation of any other right the purchaser may have.

143. (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 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 142.

Action by purchasers
for rescission for
misrepresentation in
a prospectus

(2) In an action brought under this section or section 143, 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

144. (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.

Limitation on
sections 142,
143, 144

145. (1) In no case shall the amount recoverable under section 142, 143 or 144 exceed the price at which the securities were sold.

(2) No action shall be brought under section 142, 143 or 144 more than 180 days after the date that the purchaser bringing the action learned of the misrepresentation.

146. (1) Subject to this section, a purchaser of a security has— Civil liability for trading contrary to section 103

- (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 103.

(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 103.

(3) No action may be brought under this section more than two years after the date of the trade.

(4) 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.

(5) Every person who is a director, senior officer or employee of a reporting issuer that trades contrary to section 103 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 104, unless the person proves that he reasonably believed that the price-sensitive information had been published.

(6) No person shall be liable under this section if the person bringing the action violated section 103 in respect of the trade that is the subject of the action.

(7) The rights in this section shall not be in derogation of any other right a purchaser, or seller, as the case may be, may have.

Civil liability for
market misconduct
offences

147. (1) Subject to this section—

(a) a person who contravenes section 94, 95, 96, 97, 98, 99 or 101, 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 94, 95, 96, 97, 98, 99 or 101, 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 for damages 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
intervene in an
action

148. The Commission may apply to a judge of the High Court for leave to appear or intervene in an action under this Part.

PART XI

GENERAL PROVISIONS AND ENFORCEMENT

Division 1—By-laws

149. (1) The Minister may, on the recommendation ^{By-laws} 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 market actors and self-regulatory organizations;
- (b) prescribing categories or sub-categories of market actors, classifying market actors into categories or sub-categories and prescribing the conditions of registration, or other requirements for market actors or any category or sub-category, including—
 - (i) standards of practice and business conduct of market actors in dealing with their customers and clients and prospective customers and clients;
 - (ii) standards of conduct in relation to a customer of a market actor to prevent conflicts of interest or ensure the fair treatment of customers;
 - (iii) standards for the conduct of a market actor in relation to the custody or lending of any money or security held for a customer;
 - (iv) requirements in respect of membership by a market actor in a self-regulatory organization;

- (v) standards of conduct of a market actor who is not a member of a self-regulatory organization;
- (vi) the making, keeping and retention of books and records by a market actor, including the keeping and filing of a record of trades executed by the market actor through the facilities of a securities exchange;
- (vii) requirements for a market actor to obtain and maintain indemnity insurance, the terms and conditions of indemnity insurance, and the amount of indemnity insurance to be obtained and maintained;
- (viii) requirements and standards of conduct for market actors to document and record cash transactions, and to comply with money laundering laws;
- (ix) standards for the conduct of a market actor who exercises investment discretion with respect to a customer account, including disclosure to the customer of the policies and practices relating to the payment of commissions for trades in securities;
- (x) minimum and ongoing capital requirements for market actors; and
- (xi) filing information in respect of missing, lost, counterfeit or stolen securities or securities which are in the custody or control of the market actor, or are his responsibility;

- (c) prescribing the terms and conditions of policies of insurance and the amount of such insurance which market actors shall be required to obtain and maintain indemnifying such market actor against any liability that may be incurred as a result of any act or omission of the market actor or any of its officers or employees;
- (d) extending any requirements prescribed for market actors to unregistered directors, partners, salespersons, employees, and senior officers of market actors;
- (e) prescribing requirements in respect of the residence in Trinidad and Tobago of market actors;
- (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 market actors or providing for exemptions from or varying the requirements under the Act or the by-laws in respect of the disclosure or furnishing of information to the public or the Commission by market actors;
- (h) providing for exemptions from the registration requirements under the Act or the by-laws or for the removal of exemptions from those requirements;
- (i) prescribing requirements in respect of the books, records and other documents required to be kept by market actors and self-regulatory organizations, including the form in which and the period for which the books, records and other documents are to be kept;

- (j) regulating all aspects of the listing or trading of securities on a securities exchange 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 the by-laws and classifying issuers into categories or sub-categories;
- (o) varying the by-laws 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 market actors 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 the by-laws and for the removal of exemptions from those requirements;
- (r) prescribing the circumstances in which the Commission must 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 and the by-laws, including requirements in respect of—
 - (i) an annual information form; and
 - (ii) supplemental analysis of financial statements;
- (t) exempting reporting issuers from any requirement of the Act or the by-laws under circumstances that the Commission considers justify the exemption including that the reporting issuer is subject to oversight in an appropriate jurisdiction;
- (u) requiring issuers or other persons to comply, in whole or in part, with continuous disclosure requirements under the Act or by-laws 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 and the by-laws, including—
 - (i) defining accounting principles and auditing standards acceptable to the Commission;
 - (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 reporting issuer or a market actor; 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 and the by-laws 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 securityholders of both issuers;
 - (iii) the requirements as regards equitable treatment of securityholders 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;
- (z) prescribing time periods under or varying or providing for exemptions from any requirement related to trading on unpublished price sensitive 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 or the by-laws 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 scheme;
- (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 securityholders of the collective investment scheme or Commission, including, in the case of securityholders, 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 market actor to act as an investment adviser to a collective investment scheme;
- (cc) varying the by-laws 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 other jurisdictions that the Commission considers are adequate in light of the purposes of the Act;
- (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 or the by-laws and all documents, instruments or information determined by the by-laws 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 and the by-laws, 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 the securities law of Trinidad and Tobago;
- (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 or the by-laws; and
 - (ii) documents, instruments or information determined by the by-laws to be ancillary to documents required under or governed by the Act or the by-laws;
 - (iii) varying the by-laws 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 the by-laws, or determined by the by-laws to be ancillary to such documents, instruments or information;

- (jj)* prescribing the circumstances in which persons or companies shall be deemed to have signed or certified documents on an electronic or computer-based system for any purpose of the Act or the by-laws;
- (kk)* specifying the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution;
- (ll)* varying the by-laws to permit or require methods of filing or delivery, to or by the Commission, issuers, market actors, security holders or others, of documents, information, notices, books, records, things, reports, orders, authorizations or other communications required under or governed by the securities laws of Trinidad and Tobago;
- (mm)* providing for exemptions from or varying the requirements under the Act or the by-laws in respect of amendments to prospectuses, or prescribing circumstances under which an amendment to a prospectus must be filed;
- (nn)* regulating trading in securities that have been distributed but are not listed on a securities exchange;
- (oo)* providing for standards in respect of the governance of market actors and reporting issuers including requirements for directors;

- (pp)* establishing requirements for reporting issuers 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 time periods in the Act or the by-laws; and
- (rr)* prescribing requirements in respect of a fund to be maintained by a self-regulatory organization under the 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,

in addition to any other matter which may be prescribed under this Act.

(2) In addition to subsection (1), the Minister may, on the recommendation of the Commission, make by-laws in respect of any matter necessary for carrying out the purposes of this Act.

(3) In addition to subsection (1), 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, which by-laws shall be effective for ninety days, unless re-issued or replaced by permanent by-laws.

(4) By-laws made under this Act shall be subject to negative resolution of Parliament.

(5) 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.

Publication of
proposed by-laws

150. (1) The Commission shall publish in the *Gazette*, a daily newspaper 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 necessary, may convene a hearing for the presentation of oral argument or the submission of evidence orally and may permit cross-examination by interested persons in order to determine an issue of specific fact that is material to its consideration of a 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.

Division 2—Orders of Commission

- 151.** (1) Where the Commission considers that—
- (a) a security is being traded in connection with a distribution contrary to this Act or the by-laws;
 - (b) a prospectus contains a misrepresentation;
 - (c) any of the circumstances specified under this Act or the by-laws as the basis for a refusal to issue a receipt for a prospectus exists; or
 - (d) an issuer, selling security holder or market actor fails to provide information, including financial statements relating to the issuer or the distribution, that is reasonably requested by the Commission,

Power to order
cessation of trading
or distributions

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 contravenes any provision of this Act or the by-laws; 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 or the by-laws from trading in securities or from trading a specified security.

(4) The Commission may make an order under subsection (1) or (3) without holding a hearing as required by section 154, but it shall provide an opportunity for such a hearing within fifteen days of the making of the order, and the order remains in effect until the hearing is completed.

(5) The Commission may make an order under subsection (2) without holding a hearing as required by section 154, but it shall provide an opportunity for such a hearing within fifteen days of the making of the order and the order remains in effect until the hearing is completed, 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) if the order is made pursuant to subsection (1) or (2), every market actor registered under section 52(1),

and shall include the text of the order in a regular periodical published by it, or in a daily newspaper of general circulation in Trinidad and Tobago.

(7) No person shall trade in contravention of an order under this section.

152. (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 directors and senior officers of the person cause the person to comply with or cease contravening—
 - (i) this Act or the by-laws;
 - (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 director or senior officer of a reporting issuer;

- (c) a market actor or reporting issuer—
 - (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 market actor or issuer that the Commission considers must be disseminated;
 - (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 market actor be reprimanded or that the registration of a market actor be suspended or revoked in accordance with sections 58 and 59;
- (e) any exemption contained in the Act or the by-laws 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, market actor, self-regulatory organization or issuer be exempted from any requirement of this Act or the by-laws; 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 a daily newspaper of general circulation in Trinidad and Tobago.

153. (1) Subject to subsection (3), and notwithstanding any other provision of this Act or the by-laws, where the Commission after a hearing determines that a person has contravened this Act or any by-law or an order of the Commission and considers it to be in the public interest to make the order, the Commission may order the person to pay to the State a penalty of not more than five hundred thousand dollars. Order for penalty

(2) Where the Commission makes an order under subsection (1) the Commission shall file in the registry of the Court a copy of the order certified by the Chairman of the Commission and on being filed the order shall have the same force and effect, and all proceedings may be taken on it as if it were a judgment of the Court, unless an appeal has been filed pursuant to section 156.

(3) Notwithstanding subsection (1), a person who contravenes this Act or the by-laws solely by reason of his failure to file a document or instrument with the Commission within the time prescribed shall be liable to a penalty of one thousand dollars per day for each day that the document or instrument remains outstanding after the expiration of the time prescribed.

(4) Notwithstanding subsection (1), the Commission may, without conducting a hearing, make an order imposing a penalty under subsection (3) for the period beginning on the day following the expiration of the prescribed period and ending on the day that the penalty is paid.

(5) A person who files a document or instrument with the Commission after the expiration of the time prescribed may in writing request the Commission to conduct a hearing in accordance with the requirements of subsection (1).

(6) Every penalty imposed by the Commission in the exercise of its powers under this Act or the by-laws shall be payable into the general revenue 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.

Division 3—Market Misconduct Proceedings

Market misconduct
proceedings

154. (1) If it appears to the Commission that market misconduct is taking place, has or may have taken place, the Commission may appoint an investigator pursuant to section 158(1) to ascertain whether any person has contravened, is contravening, or is about to contravene this Act or the by-laws.

(2) For the purposes of the Part, “market misconduct” means—

- (a) breaches of sections 94, 95, 96, 97, 98, 99 and 101, respectively;
- (b) trading with knowledge of undisclosed price-sensitive information contrary to section 103;
- (c) disclosure of undisclosed price sensitive information contrary to section 104;
- (d) failure of a person to be registered in a category of market actor contrary to section 52;
- (e) failure of an issuer to prepare, file and have receipted a prospectus in connection with a distribution of securities contrary to section 76;
- (f) the inclusion in a prospectus of a misrepresentation of the failure of a prospectus to comply with section 79(1);
- (g) failure of a reporting issuer to comply with Part V of the Act, or making a misrepresentation in any document filed or required to be filed under Part V of the Act, contrary to section 73; and
- (h) a breach of any provision under Part VII of this Act.

(3) Where an investigator appointed pursuant to section 158(1) reports to the Commission in accordance with section 158(8) that based on his investigation he has reasonable grounds to believe that any person has contravened, is contravening or is about to contravene the Act or the by-laws, the Commission may conduct a hearing in accordance with section 155.

(4) Without limiting the generality of subsection (3), the object of a hearing 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 the market misconduct; and
- (c) the amount of any profit gained or loss avoided as a result of the market misconduct.

(5) Where market misconduct is proven, the Commission may order that a person identified as having engaged in market misconduct be subject to one or more of the following:

- (a) pay a penalty of not more than five hundred thousand dollars to the State;
- (b) be censured, through the publication of a written notice;
- (c) compensate or pay restitution to any person on such terms as the Commission may direct;
- (d) account for, in such form and on such terms as the Commission may direct, such amounts as the Commission determines to be profits arising from the market misconduct or any other form of unjust enrichment determined by the Commission;
- (e) cease and desist from such activity as the Commission may stipulate;
- (f) be prohibited from being, or becoming a senior officer or director or a reporting issuer or market actor;
- (g) pay a specified amount, being all or part of the costs of the proceedings, including those of any other party to the proceedings; or
- (h) do any other act or thing that the Commission deems necessary.

(6) The Commission may publish a report or other information concerning proceedings 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.

(7) The standard of proof required to determine any question or issue before the Commission shall be on a balance of probability.

(8) Nothing in subsection (1) prevents the Commission from referring any matter to the Director of Public Prosecutions if it appears to the Commission that market misconduct is taking place, or has or may have taken place.

Division 4—Hearings

155. (1) The Commission shall, before making a final 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 or self-regulatory organization 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 on oath, affirmation or otherwise as it thinks necessary, orally or in writing.

(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 Court is entitled in respect of evidence given by him before the 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 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 oral testimony or documentary 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 a final 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 final 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 final 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 appointment that is made under section 158 or 159(1);
- (b) an order that is essentially procedural;
- (c) an order that does not adversely affect the rights or interests of any person; or
- (d) an interim order or other order that the Commission may make under this Act without holding a hearing under this section.

Division 5—Appeals

Appeals for review
re:section 8 or 43

156. (1) A person directly affected by a decision made pursuant to authority delegated under section 8, or 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 for a hearing 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.

Appeals to Court of
Appeal

157. (1) A person directly affected by an order of the Commission may appeal to the Court of Appeal.

(2) No appeal of a decision made pursuant to authority delegated under section 8, or by 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 156.

(3) An order that is subject to appeal under this section takes effect immediately, but the Court of Appeal may grant a stay pending the hearing of the appeal.

(4) The Commission is entitled to appear and be heard on the merits on an appeal under this section or on any other application to the Court of Appeal relating to the exercise by the Commission of its powers.

(5) On an appeal under this section, the Court of Appeal may make or may direct the Commission to make any order that the Commission is authorized to make and which the Court of Appeal considers just and proper, or it may remand the case to the Commission for further proceedings subject to any conditions which the Court of Appeal thinks fit.

Division 6—Investigations

158. (1) The Commission may appoint a person to Investigations by the Commission make such investigations as it considers expedient—

- (a) to ascertain whether any person has contravened, is contravening, or is about to contravene, this Act or the by-laws; or
- (b) for the due administration of this Act or the by-laws.

(2) A person appointed under subsection (1) may investigate and inquire into—

- (a) the affairs of a person in respect of which the investigation is being made, including any trades, communications, 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 behalf of such person; 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) A person appointed by the Commission pursuant to subsection (1) may issue a subpoena or other request or summons or may require a person to attend at a specified time and place, to give evidence on all matters relating to the subject of an investigation and to produce all records relating to the subject of the investigation that are in his possession or under his control within the scope of subsection (2).

(4) A person appointed by the Commission pursuant to subsection (1) may require a person to give evidence within the scope of subsection (2) on oath, with affirmation or otherwise, or orally or in writing, and may administer an oath or affirmation at any place.

(5) A person who gives evidence in an investigation 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 evidence during an investigation fails or refuses to attend or give evidence on oath, with affirmation or otherwise, the Commission may make an application to the Court to so compel the person to do so.

(7) An investigation under this section shall be held in camera.

(8) 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 evidence and any material in his possession relating to the investigation.

(9) 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.

159. (1) The Commission may at any time appoint a person in writing—

- (a) to examine or review the books, records and documents of a market actor or reporting issuer, including at the place of business of the market actor or reporting issuer; or
- (b) to examine or review the financial affairs of a market actor or reporting issuer,

Examination of
financial affairs of
market actors and
reporting issuers

and to prepare such financial or other reports as the Commission may require, whether or not the Commission is of the view that the market actor or reporting issuer may be in breach of this Act or the by-laws.

(2) A market actor or reporting issuer shall permit any person appointed under subsection (1) to enter the place of business of the market actor or reporting issuer for the purpose of examining or reviewing the books, records and documents of the market actor during normal business hours.

(3) Where, upon the application *ex parte* of the Commission, the Court is satisfied that a person other than a market actor or a reporting issuer may be in breach of this Act or the by-laws, the Court may make an order authorizing the Commission to examine the records and financial affairs of that person.

(4) A person appointed by the Commission pursuant to subsection (1) or (2) may examine and make copies of all the records, books of account, securities, cash, bank accounts and other data of the market actor, reporting issuer or person whose books, records and affairs are to be examined.

(5) No person shall withhold, conceal, destroy or refuse to produce any document, instrument, writing, information or record required for the purpose of the examination by a person appointed pursuant to this section.

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

Division 7—Orders of Court

Court orders for
enforcing compliance

160. (1) Where the Commission considers that a person has failed to comply with or is contravening this Act or any by-law or an order of the Commission, the Commission may, in addition to any other powers it may have, apply to the Court for an order—

- (a) directing the person to comply with or to cease contravening this Act, the by-law or the order;
- (b) directing the directors and senior officers of the person to cause the person to comply with or to cease contravening this Act, the by-law or the order; or
- (c) to freeze the assets of the person or a portion of the assets of the person.

(2) On application under subsection (1), the Court may make any order it thinks fit including an order—

- (a) requiring restitution or disgorgement of profits;
- (b) restraining the conduct complained of;
- (c) requiring compliance with this Act or the by-laws 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 notwithstanding that a penalty has already been imposed on that person in respect of the same non-compliance or contravention.

161. (1) Where the Commission considers that it is necessary in the public interest or for the protection of investors to prevent—

- (a) a person who has contravened this Act or any by-law; or
- (b) a market actor or self-regulatory organization whose registration under this Act has been suspended or revoked,

from dealing with property under his control or direction, it may apply to the Court and the Court may appoint a receiver or receiver-manager of the property if it is satisfied that it is in the interests of investors or persons whose property is controlled by that person, creditors or securityholders of that person, or members of that person to do so.

(2) Where the Commission intends to apply to the 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 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 provisions of Division 3 of Part IV of the Companies Act shall apply to a receiver or receiver-manager appointed under this section.

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Division 8—Offences

General Offences

162. (1) A person who—

- (a) makes a misrepresentation in contravention of this Act or any by-law;
- (b) makes a misrepresentation to any person appointed to conduct an investigation under section 158 or 159;
- (c) contravenes section 36 or 76; or
- (d) contravenes a provision of this Act or the by-laws for which no penalty or sanction is specified in respect of that contravention, whether by action or omission,

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

(3) Reasonable reliance, including reliance in good faith on advice of an expert upon a statement of the law contained in—

- (a) this Act or any by-law;
- (b) a judgment or declaration by the Court; or
- (c) an order or publication of the Commission,

is a defence in a proceeding under this section.

163. (1) Notwithstanding any other provision of this Act or the by-laws, where a person has been convicted of an offence under this Act or any by-law, then any director, senior officer, or supervisor of the person 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. Liability of directors, etc.

(2) A person convicted of an offence against this Act or any by-law is liable, after the review and filing of a certificate under this section, for the costs of the investigation of the offence.

(3) Reasonable reliance, including reliance on advice of counsel, in good faith upon a statement of the law contained in—

- (a) this Act or any by-law;
- (b) a judgment or declaration by the Court; or
- (c) an order or publication of the Commission,

is a defence in a proceeding under this section.

(4) 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.

(5) The Commission may apply to a Master or Registrar of the Supreme Court to review the certificate under the Rules of the Supreme Court, 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.

(6) The scales of costs in Order 62 of the Rules of the Supreme Court, 1998 do not apply to a certificate reviewed under this section.

(7) After review the certificate may be filed in the Court and may be enforced against the person convicted as if it were an order of the Court.

PART XII

REPEAL AND TRANSITIONAL PROVISIONS

Repeal and
transition

164. (1) The Securities Industry Act, 1995, is repealed.

(2) By-laws made under the Securities Industry Act, 1995, in force at the commencement of this Act, remain in force until replaced by new by-laws made pursuant to this Act.

Passed in the House of Representatives this
day of _____, 2009.

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 _____ members of the House.

Clerk of the House

I confirm the above.

Speaker

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 Senators.

Clerk of the Senate

Passed in the Senate this day of , 2009.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 11 of 2009

SECOND SESSION
NINTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to provide protection to investors from unfair, improper or fraudulent practices, foster fair and efficient capital markets and confidence in the capital markets in Trinidad and Tobago and to reduce systemic risk; to co-operate with other jurisdictions in the development of fair and efficient capital markets, and for other related matters

Received and read the

First time.....

Second time.....

Third time.....