

Leave of Absence

Monday, October 02, 1995

SENATE

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The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave to the following Senators to be absent from today's sitting: Sen. Daniel Teelucksingh; Sen. Hydar Ali and Sen. Kamla Persad-Bissessar, who is absent because of the death of her sister. This is the second member of her family who died, I believe, in 1995. Her mother died earlier this year.

I ask the Clerk of the Senate to send an appropriate letter of condolence on behalf of the Senate.

LATE ARRIVAL

Mr. President: Hon. Senators, I do not normally announce excuses for lateness, but Sen. Diana Mahabir-Wyatt has three questions on the Order Paper and has indicated she will be a little late, so I believe we shall pass that item. By the time she arrives we shall see what we can do to accommodate her.

COMMONWEALTH DEVELOPMENT CORPORATION

(PRIVILEGES AND IMMUNITIES) BILL

Bill to confer certain privileges and immunities on the Commonwealth Development Corporation, brought from the House of Representatives [*The Minister of Finance and Minister of Tourism*]; read the first time.

Motion made, That the next stage be taken at the next sitting. [*Hon. W. Mottley*]

Question put and agreed to.

PAPER LAID

The Privileges and Immunities (Caribbean Telecommunications Union) Order, 1995. [*The Minister of Foreign Affairs (Sen. The Hon. Gordon Draper)*]

QUESTIONS TO MINISTERS

The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith): Mr. President, we are prepared to take these at a later stage.

Mr. President: Is it the wish of the Senate that these questions be taken at an appropriate stage of the proceedings?

Assent indicated.

Mr. President: Proceed.

ARRANGEMENT OF BUSINESS

The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith): Mr. President, I would like to have the Senate consider proceeding with Item 1 under "Private Business," before we move on to "Government Business."

Question put and agreed to.

GREATER MALABAR CHRISTIAN CENTRE (INC'N) BILL

Sen. John Rahael: Mr. President, I beg to move,

That a Bill for the incorporation of the Greater Malabar Christian Centre and for matters incidental thereto, be now read a second time.

Question proposed.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 to 9 ordered to stand part of the Bill.

Preamble ordered to stand part of the Bill.

Question put and agreed to, That the Bill be reported to the Senate.

Senate resumed.

Bill reported, without amendment; read the third time and passed.

SECURITIES INDUSTRY BILL

Order for second reading read.

The Minister of Finance and Minister of Tourism (Hon. Wendell Mottley): Mr. President, I beg to move,

That the Securities Industry Bill, 1995, be now read a second time.

Sir, first let me say that this Bill has been before a joint select committee of both Houses and, as Chairman of that committee, I can report that the Bill received very prolonged and detailed deliberations by the Members of the committee, assisted by expert evidence. I am satisfied that this Bill is a workable and practical document, and I am particularly grateful for the efforts made by members of the committee as well as those experts.

The Bill is part of the general restructuring of the economy and its liberalization that has been taking place, and its importance must therefore be understood in that context. We do not go about reforming an economy piecemeal, and when we put companies—through liberalization, reductions of tariffs, and so forth—into a situation where they have, in very short order, to bring themselves up to the standards of international competition, and forsake the easy ways of hot house internal marketing and the ease which that provided, these companies, all of a sudden, will find it necessary to invest heavily in marketing as software, but also in the hardware of international success, that is in new plant and equipment—and sometimes on quite a large scale—as they have to drive to get the economies of scope and scale, and this can be an expensive business.

1.40 p.m.

So that as we go about doing these things, as we remove exchange controls, we must also put in place, within the financial sector, the necessary infrastructure for there to be proper regulation of the financial sector, such as with the Central Bank Act, as well as the banking legislation which we passed. Also, we must use the infrastructure of the financial world to channel the necessary funding in support of those companies which must now be retooled for the real world that they face. They must forsake the traditional recourse to bank overdraft to finance heavy capital expansion and do it properly with equity investments, and so forth. Obviously, the securities market is an important avenue for funding business in the new mode. For this reason, we also earlier introduced the venture capital legislation that has the same rationale. Therefore, now before us is a very important arrow in our quiver, the new Securities Industry Bill.

There has been very wide consensus among the market actors and investors that the present capital market system is in need of very serious reform. The urgency of this reform has been voiced all over the country. We have done a lot, as I mentioned, in terms of partial reform, but now the two aspects that are most in need of reform are the Companies Bill and this particular one, the Securities Industry Bill.

Over the last ten years it has become increasingly evident that the local securities market and the provisions of the old 1981 Act were inadequate to meet the needs of a growing economy and to deal with companies, market actors and investors who are prepared to exploit the weaknesses of the present system in the interest of perceived short-term gains. I have already spoken on this matter concerning insider trading, which is a matter that will be dealt with as I move on to deal with the details of the Bill.

This situation has led to a quite serious erosion of confidence in the operations of the securities market and, therefore, it impacts us in both ways. It is not mobilizing the necessary savings that we ought to, neither is it channelling those savings into the desired areas. Though there had been some recovery in the stock market this year, largely based on certain economic conditions, we view that fact as still pointing that the market could have done a lot better; there should be a lot more activity than there is even at present.

Let me point to some of the deficiencies. Firstly, under the existing Act the responsibility for both the management and the regulation of the capital market lies with the Trinidad and Tobago Stock Exchange. There are obvious problems inherent in this. There is one body having a dual role. This situation has been compounded by the fact that there are only a few stockbroking companies competing for limited business, and a board of directors of the Stock Exchange on which representatives of these stockbroking companies form the majority. This has obviously led to the situation in which we have had numerous complaints in which there is a perception of the complainant going from Caesar to Caesar.

As a result, this Bill that is now before us seeks to establish a Securities and Exchange Commission which will assume the responsibility for regulation of the securities market. The Stock Exchange will continue to be responsible for managing the trading in securities on the Exchange. Further, the Bill introduces the concept of the self-regulatory organization which includes the Stock Exchange, an association of securities companies, a clearing agency or any other securities exchange which may be established. This means that the market operators belonging to a self-regulatory organization will have the opportunity and obligation to develop their own rules and regulations, subject to the approval of the Commission and to enforce these rules and regulations. In other words, they will have direct oversight responsibility for management and regulation over their respective areas of competence and activities.

The Securities and Exchange Commission, however, will have an overall responsibility for the regulation of the market, with the power to intervene should

any self-regulatory organization fail to enforce its rules and regulations. In this framework, the Commission has the obligation and power to regulate the market but can do so with a minimal interference in the day-to-day operations of the market institutions. The new Bill also makes provision for the possibility of more than one self-regulatory organization or securities exchange to exist simultaneously, and for the Commission to adjudicate in any dispute that may arise between such organizations and its members.

The second area in which the existing legislation has been criticized strongly is in relation to its scope of trading activity which is permitted. The existing Act confines transactions in the securities of all companies to the floor of the Trinidad and Tobago Stock Exchange. This has led to a continuing breach of the Act with regard to the trading activity in the securities of public companies which are unable to meet the listing requirements of the Stock Exchange, or which, for other reasons, chose not to be listed.

This Bill proposes to remove this restriction and to provide for the possibility of the establishment of an over-the-counter market in which securities could be traded off the floor of the Stock Exchange but be subject to the regulations promulgated by, and the supervision of, the Commission. All securities which are offered for sale to the public will have to be registered with the Commission and information concerning the business activities of the issuers of those securities will have to be filed with the Commission at regular intervals and would be made available to the investing public. The Bill and the regulations which will accompany it also make provision for safeguarding the value of securities which are listed on the Stock Exchange and which may also be traded on the over-the-counter market.

Then there is a third area of deficiency and that is the breaches of the Act and the penalties that go with it. The existing Act fails to sufficiently clearly define offences, such as insider trading, and contains inadequate provisions for dealing with offences. Quite often the only way to deal with an offence was to prosecute under criminal law, and as a result, there have been very few, if any, such prosecutions. This has led to widespread evasion and avoidance of the provisions of the existing Act.

The new Bill would empower the Commission itself, in many cases, to determine matters and to impose penalties for breaches thereby reducing the necessity for recourse to the courts, except in cases of appeal to the Court of Appeal. The new Bill also more clearly defines breaches and the procedures for dealing with such.

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The fourth area of deficiency in the existing market arrangements relates to the methods of trading and clearance and the ability to link up with other regional and international markets. It is well known that the present system of trading takes place physically on the floor by very old Dickensian methods. We are in an era of electronic transfers and trades and, clearly, there is need to play "catch-up."

1.50 p.m.

It is necessary, in this age of electronic trading and clearance, that we quickly move in this direction, especially since only a few days ago there was a harmonization of the stock exchanges of the region, which is being strongly directed by the members of the region, but assisted and financed by the IDB. It is clear that this is a significant area under their jurisdiction and concern, on which there will be regional recommendations. Therefore, the Bill before this Senate anticipates those recommendations and we are hoping in this regard to permit the kinds of registration, trading and clearance that are required in a modern electronic system.

Mr. President, the joint select committee undertook an indepth examination of the Securities Industry Bill and agreed on several amendments, which I would refer to in the course of my presentation. Many of them were intended to simplify the definitions of some of the terms in the Bill, and to correct inaccuracies which were drawn to the attention of the committee. In other areas, some of the changes proposed by the committee were more fundamental and were accepted by the Government.

Part II of the Bill governs the establishment and function of the Securities and Exchange Commission. In clause 5 the functions of the Commission are set out. That is, to advise the Minister on matters relating to the securities industry; maintain surveillance; registers and regulates the organizations; protects the integrity of the securities market; and the creation and promotion of conditions in the securities market to ensure orderly growth and development of the market.

Clause 7 of the Bill enables the Commission to delegate its powers to a self-regulatory organization. The Commission would consist of between three and five persons, appointed by the President, from among persons with ability in law, finance and business. The joint select committee recommended an amendment to require one of the members of the Commission to be an attorney-at-law of at least 10 years' standing. The intention is that the Commission should be an independent body consisting of highly competent persons who have developed expertise in this area.

The committee also recommended that rather than prohibiting commissioners from having a material pecuniary interest in an issuer of securities registered with the Commission, a commissioner and the general manager should be required to declare his or her interest in securities and should be prohibited from participating in any stock market transaction in which he or she has a material interest. It was felt that if one prohibits them altogether, then more than likely, one would exclude some possibly very good candidates from recruitment.

The committee has also recommended an amendment to clause 17 to require that minutes of all meetings of committees of the Commission, as well as those of the Commission itself, be kept under the direction of a secretary. A further amendment has been recommended to allow the Minister, upon request, to have access to the minutes of the Commission.

Under clause 18 of the Bill, a commissioner is required to declare his interest in any matter under consideration by the Commission. At clause 20, the Commission is required to submit an annual report to the Minister, who is under an obligation to lay the report in Parliament. The Commission is empowered, under clause 21, to make rules governing its procedure. The joint select committee has recommended that the Minister should be empowered to direct the Commission to revoke or amend a rule or amendment to rules.

Division 4 of Part II deals with the staffing of the Commission. The Commission would be funded primarily by appropriations from Parliament, but would be supplemented by fees which it charges for registration for its other functions. The joint select committee has recommended the deletion of a power for the Commission to borrow funds with the approval of the Minister. The committee felt very strongly on this matter and it has also recommended that the Commission should be empowered to charge fees for transactions effected on a self-regulatory organization.

We hope that as the capital market develops, the Securities and Exchange Commission would be in a position to generate a larger proportion of its revenue through charging fees.

The Commission is required to keep proper books of accounts which must be laid in Parliament, and the Committee has recommended that these accounts be audited annually by an auditor who is a member, in good standing, of the Institute of Chartered Accountants of Trinidad and Tobago, and who is appointed by the Commission with the approval of the Minister.

It is envisaged that between the enactment and proclamation of the new Securities Industry Bill, the Trinidad and Tobago Stock Exchange would register

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as a private company and would make rules binding on its members. Upon the proclamation of the Bill as an Act, the Trinidad and Tobago Stock Exchange would be deemed to be registered as a self-regulatory organization under the Act and its rules would be deemed to be approved by the Commission. The Commission would then review the rules and may direct that changes be made to bring them into conformity with the Act.

Any further changes in the rules of the Stock Exchange after this, would require the prior approval of the Commission. In clause 41 of the Bill one sees that where a self-regulatory organization proposes to change its rules, these must be submitted for the approval of the Commission, which would publish an invitation to the public to submit written comments on the proposed amendment.

The joint select committee has recommended that this publication be in a daily newspaper and at the expense of the self-regulatory organization. A hearing would then be conducted and the Commission would make a ruling on the proposed change. The Commission can also require a self-regulatory organization to change its rules in order that they conform to the Act, or to ensure the fair administration of the organization.

The Commission can review a decision of the self-regulatory organization refusing membership or prohibiting employment by a member, or disciplining a member or an employee of a member and may set aside a decision of a self-regulatory organization. The Act will provide for the Commission to prescribe the records which a self-regulatory organization is required to keep; and to file with the Commission and for the Commission to authorize a person to inspect the records of the self-regulatory organization.

The joint select committee has again recommended an amendment to require the authorization of the Commission for the delisting of securities from quotation on a self-regulatory organization, subject to such conditions for the protection of investors as the Commission shall see fit. This was intended to address the concern expressed by the committee about the possibility of investors suffering financial loss if listed companies were to attempt to delist now that the requirement for all trading in shares of public companies to be on the stock exchange has been removed.

The Bill requires each self-regulatory organization to maintain a contingency fund for compensating customers for losses which they may suffer from the insolvency of members or registrants who contribute to the fund. The committee has recommended that this be extended to cover default of members.

Clause 50 of the Bill makes provision for members of the public who are aggrieved by any dealing of a self-regulatory organization or any other person registered under the Act to lodge a complaint for investigation by the Commission which will have the power after adjudicating on the matter, to offer compensation for loss suffered. This is intended to provide an independent avenue for redress which would help foster public confidence in the integrity of the securities market.

2.00 p.m.

Mr. President, the Bill further requires the Commission to register all brokers, investment advisers, securities dealers, securities traders, underwriters, and securities companies; and prohibit registered self-regulatory organizations from admitting to membership or granting licences to persons who will not be registered under the Act. The obligation for registration of dealers, underwriters and investment advisers is a new feature of this Bill, but we consider it appropriate at this stage in the development of our financial sector that these categories of activities should be regulated for the protection of the investing public.

In the case of the investment advisers, however, there are exemptions from the registration requirement for insurance companies, financial institutions, attorneys, accountants, brokers, dealers or writers in newspapers and other financial publications who write regular feature columns of this nature. In all cases, the Commission may suspend or revoke registration for failure to comply with the requirements of the Act.

As I mentioned earlier, another new feature which is introduced in this Bill is the requirement for the Commission to register all securities which are to be issued to the public. All public companies will be classified as reporting issuers and will be required to file a registration statement with the Commission. This will have to be updated annually and will provide basic information which will be made available to the investing public. In addition, public companies will be required to issue press releases relating to all important changes in the affairs of the company unless the Commission agrees the disclosure of these matters will be detrimental to the company.

The Securities Industry Bill does not contain special rules for the regulation of Unit Trust and mutual funds, although, you will notice that units are defined as securities for purposes of the Bill. They will be required to register with the

Commission and to file a prospectus. Later on, we propose to introduce further legislation that will govern the operation of mutual funds.

The Bill prohibits the distribution of a security to the public unless a prospectus or block distribution circular in connection with the distribution has first been prepared by the issuer and approved by the Commission. The idea behind this is to ensure that issuers of securities make full disclosure to the investing public of all relevant information concerning the security. These prospectuses will be closely scrutinized to ensure that they contain adequate information set out in a manner that the investor can clearly understand.

There are exemptions from the prospectus requirement for certain types of distribution of securities. These are set out in clause 75 of the Bill. For example, in the case where a security is being distributed as a dividend by a company, the holders of the securities, or where distribution is incidental to a reorganization or winding up of a company, or where the securities are issued by the Government, there are provisions in clause 77(3) requiring a new prospectus to be issued where distribution continues for more than one year and 20 days from the first approval of the prospectus.

Part VII of the Bill deals with the operation of the securities market. The exemption from stamp duty for trading and securities on the stock exchange will remain. One important new provision is clause 83 of the Bill which prohibits a registrant from recommending a trade on a security to a customer, unless he has reasonable grounds to believe that the recommendation is suitable for the customer in relation to his investment objectives, financial situation, and needs.

Clause 86 is also an important feature for the protection of the investor. It requires the registrant recommending a trade to disclose to the customer any direct or indirect interest which he may have in the security. The committee has recommended that the requirement to disclose interest which may be held by associates of the registrant be deleted as being unreasonably wide.

Another noteworthy new provision is clause 92, which is intended to prevent brokers from harassing potential investors by visiting their homes or making unsolicited telephone calls in order to persuade them to trade securities. The joint select committee has recommended the deletion of clause 3(b) and (4) as being overly restrictive.

Clause 93 of the Bill empowers the Commission to prohibit the use of certain advertisements where it considers that they are likely to mislead the public.

Part VIII of the Bill governs clearance and settlement. It is intended to make provision for the future when the Stock Exchange may be automated as it is in more developed securities markets. Paperless transfers of shares, by record entry only, are envisaged. This is in keeping with what I mentioned earlier.

Part IX of the Bill deals with the issue of insider trading. Extensive provisions have been included here to regulate trading by persons who are connected with issuers and who possess information likely to influence the price of securities, and which has not yet been made available to the public. Basically, these persons are prohibited from participating in any transaction on a securities exchange in relation to securities of that issuer. Mr. President, especially in a small community like Trinidad and Tobago, this is a most important provision. As is well known, directors serve on multiple boards within a small market and, if anything, this is probably one of the most abused sections of the old arrangement.

The joint select committee has recommended the inclusion of a definition of the term "connected with an issuer" to limit the application of the section to directors, officers, employees and persons in a professional or business relationship with either the issuer company or a subsidiary or holding company of the issuer.

Clause 122 imposes severe penalties of up to \$100,000 and two years imprisonment on conviction on indictment or \$50,000 and six months imprisonment on summary conviction for insider trading offences.

Part X of the Bill creates civil liability in respect of false statements made in prospectuses, and makes provision for a security holder to bring an action for the rescission of an allotment of shares made to him in circumstances where the prospectus is false or misleading. The joint select committee has recommended extensive amendments to clauses 129 and 130 in order to limit the rescission of the allotment to the security holder who brings the action rather than to the entire allotment.

Part X1 of the Bill deals with the enforcement powers of the Commission. At clause 132 the Commission is empowered to make bye-laws for various matters to carry out the purposes of the Act. The joint select committee has recommended that these bye-laws be made by the Minister on the recommendation of the Commission and that bye-laws be subject to negative resolution of Parliament. In addition, it has been recommended that the Minister make bye-laws governing conflicts of interests for members of the Commission and employees and advisers.

The joint select committee has also recommended the deletion of the Schedule setting out principles upon which bye-laws governing takeovers are to be based, as there appears to be a possible conflict between clauses 132 (4) and the Schedule. It is our intention that takeovers will no longer be governed by a code, but that the rules governing takeovers will be contained in the bye-laws under the Act thereby preventing any dispute on the question of their enforceability.

Clause 133 of the Bill governs the procedure which the Commission will follow before it recommends any bye-laws to the Minister. They will be published for public comment and a hearing may be convened if this is considered necessary.

The Securities and Exchange Commission will have wide powers to ensure that the Act is enforced. The enforcement powers of the Commission include the power to make orders under the Act, after conducting hearings to allow persons affected a reasonable opportunity to be heard. In relation to these hearings, the Commission has been given power to issue subpoenas and summonses and to compel persons to give evidence on oath. The joint select committee has recommended the inclusion of a provision similar to that in the Commissions of Enquiry Act, giving recognition to the right of witnesses not to incriminate themselves.

The proceedings of the Commission will be similar to those in a Court of Law. Evidence will be transcribed and orders of the Commission must be in writing. Appeals from the Commission will be to the Court of Appeal.

The Commission is also empowered to appoint persons to conduct investigations of contraventions of the Act and to report to the Commission on the investigations. It will also order the cessation of trading in a particular security for a specified period where this is necessary for the protection of investors. Alternatively, the prohibition may be directed against a particular person who has contravened the Act. At clause 143 the Commission, after conducting a hearing, has a range of alternative enforcement powers which include, requiring the resignation of an officer or director of an issuer, requiring information to be disseminated to the public or to be amended, or reprimanding, suspending or cancelling the registration of a registrant.

Clause 144 empowers the Commission to impose penalties payable to the state of up to \$50,000. The Commission may apply to the court to enforce an order where a person fails to comply with an order of the Commission.

Finally, clause 148 creates offences for knowingly or recklessly making a misrepresentation in contravention of the Act, or any bye-law or in connection with an investigation or inquiry under the Act. Maximum fines for these offences are \$100,000 and imprisonment for two years. Directors, officers or supervisors who knowingly or recklessly authorize, permit or acquiesce in an offence under the Act are also treated as guilty of the offence and liable to the same penalty, together with the costs of the investigation of the offence.

2.10 p.m.

Clause 150 empowers an officer of the Commission to conduct criminal proceedings in summary courts for breaches of the Act. This will enable the Commission's own attorneys to develop expertise in this area of prosecution without having to rely on the department of the Director of Public Prosecutions that is generally very busy with other criminal prosecutions.

This Bill is not just a matter to decorate the law books. It is a matter of extremely pragmatic import and, therefore, the necessity to have the accompanying bye-laws almost simultaneously ready with this Bill's passage has been understood. In fact draft bye-laws have now been prepared and we were able to share some of them with the Members of the joint select committee from the Senate and the other place.

The other matter of great importance is the establishment of the Commission. We have not been sleeping. A number of public officers have been exposed to training in developed countries in these matters, and, of course, we are contemplating early recruitment of officers to establish the Commission. My own view is that in the first instance, since the country lacks indepth experience in this area, as happened when we established the Central Bank, initially we will recruit someone from overseas to work with bright young people from Trinidad and Tobago and properly establish the Commission.

One final matter is that there has been some criticism that we have a relatively thin market and this depth of legislation represents a bomb to crack a nut. I do not share this view. The legislation is designed not so much to deal with what we have, but for the potential that may be out there, not only in Trinidad and Tobago, but also in the regional markets and ultimately for these regional markets to link with the international markets.

With these few words, I beg to move.

Question proposed.

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Sen. Wade Mark: Mr. President, the Bill under consideration seeks to establish a Securities and Exchange Commission as a main feature, as well as to establish other affiliated organizations. It simultaneously repeals and replaces the existing Securities Act, 1981.

The Securities Industry Bill 1995 as well as the Companies Bill is not being introduced in a vacuum as the hon. Minister has indicated. It is consistent with the Government's misguided drive and policy to engage in free trade and trade liberalization, and of course, its feeble efforts to attract foreign investors, as well as to boost its possibilities or chances of entering the North American Free Trade Agreement.

Let us make no mistake about it that these Bills are not being introduced lightly. The Government has an agenda and it is proceeding apace to implement it. In its haste to attract foreign investment and gain vitally needed foreign exchange, the PNM regime seems to be even closing its eyes to the violation of our air space by foreign aircraft reportedly transporting radio active waste material to Brazil. We would like to find out if that is all part of the liberalization process with the opening up of the economy. The Minister of Foreign Affairs remains silent on this matter. It appears that these are some of the effects of the tranquilizing drug of economic liberalization.

I would like to indicate from the very outset that there is a report of the joint select committee appointed to consider and report on the Companies Bill and the Securities Industry Bill. Initially, I was part of that committee before I became ill so I could not have participated as I would have liked to in many of the remaining sessions of that committee's work. However, it is our firm view that legislation brought to this Parliament should seek, at all times, to promote the interest, welfare and well being of the citizenry of our Republic.

Our Parliament must never be used as anybody's plaything in order to secure some loan advantage or to draw down on existing contractual obligations. We made these observations to record our strongest objections at the apparent undue haste in which the PNM Government is seeking to force the Senate to debate and approve two vitally important pieces of legislation which will impact very heavily on the future development of our twin-island Republic.

In the report of the joint select committee, you would realize that the committee indicated that they were having some difficulty in actually addressing the complex and technical nature of this piece of legislation, and as a result it was very difficult for them to do justice to their deliberations.

2.20 p.m.

Mr. President, I quote from page 4 of this joint select committee's report:

"Your Committee wishes to report that it has completed its deliberations on the Securities Industry Bill, 1995 and the Companies Bill, 1995 and recommends that these Bills be accepted by the House of Representatives and the Senate subject to the amendments listed in Appendix I and Appendix II respectively. The Committee further recommends that in a period of no longer than 9 months from the Bill's passage, the Government bring amendments to Parliament that would arise from practical concerns in its implementation."

Mr. President, it is this kind of high-handedness that worries our side. That is why we could not have been party to signing this report. I have all the documentation which was made available to the committee during its deliberations. I would like to indicate here that one of the reasons why these Bills are being rushed through this Parliament is essentially two-fold. One: the Parliament is supposed to be prorogued on or before October 15, by law, so the Government is seeking to railroad us to make sure that these Bills are passed before the prorogation of the fourth session of the life of this Parliament. Secondly, the Government, of course, needs to secure access to the second tranche of its Investment Sector Loan which it has with the Inter-American Development Bank, even though the Junior Minister of Finance boasted recently that money was no problem and that it constituted little constraint on Government's activity.

We wish to state categorically that the PNM Government deliberately and calculatedly hoodwinked this Parliament by having these Bills referred to a joint select committee of Parliament, conscious of the fact that they would not comprehensively debate the issues, as they have admitted in this report. Indeed, the PNM Government has given a commitment—and I have it in writing—to an administration mission team of the IADB, some time in 1994, where it indicated that it would not be bringing these Bills for any further consideration by any joint parliamentary committee of both Houses of our Parliament. It was for this reason that the Government attempted to hoodwink the Parliament into believing that by referring these Bills to a joint select committee, comprehensive and detailed work would have been executed so that at the end of the day we would have gotten the best product for our economy, country and society.

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The reason they can treat us with such contempt is that the very loan conditionality that governs the arrangement that I mentioned did not specifically call for effectiveness of all provisions of the respective Bills. In other words, the Government could have implemented some elements of the Securities Industry Bill as well as the Companies Bill in an effort to get its second tranche on the Investment Sector Loan.

When I talk about the committee, I talk about the Hon. Keith Sobion, Sen. Ainsley Mark, Hon. Ken Valley, Sen. Camille Robinson-Regis, Sen. Michael Mansoor and Mr. Andrew Casimire. This is the committee. These are the people who have signed the report. The point I am making is that the Government was conscious that the Securities Industry Bill, which is now before Parliament, even though the Government recognized that some work was done, the haste with which it proceeded to complete their work is evidenced by their recommendation that to get this Bill through rapidly, they would need to get this Bill back within the hallowed walls of this Chamber within a period no longer than nine months in an effort to bring about amendments that they know are crucial to make this Bill work.

This is why I disagreed with the hon. Minister when he said that this Bill was not about decoration. It is precisely about decoration. This is precisely why we are debating it right now. In nine months' time they will attempt to complete the picture. So Mr. President, it is about decoration. So the Government is using the parliamentarians and the Parliament to achieve its objectives, and one of its main objectives is to access this loan of US \$80 million which is divided into tranches.

Mr. President, I would like to bring to your attention further evidence of the hoodwinking that has taken place involving this Government. I have in my possession a copy of a loan contract between the Republic of Trinidad and Tobago and the Inter-American Development Bank entitled, *Investment Sector Reform Programme*, August 5, 1993. On page 3 of this document, it states:

"Special Conditions Precedent to the Disbursement of the Second Tranche. The Bank shall initiate the disbursement of the Second Tranche of the Financing only when the conditions set forth in this Section have been fulfilled to the Bank's satisfaction."

And among those areas or conditions is what I shall quote for you. On page 4, subsection (d) says:

- "(d) Reforms for the legislation governing the establishment and operation of companies, which ensure consistency between said legislation and legislation governing the securities industry and which strengthen: (i) minority shareholders' rights; (ii) regulation of directors' duties; and (iii) disclosure requirements to issuers of securities, have entered into effect.
- (e) The following measures have been taken in respect of a securities oversight agency,"

that is the Securities and Exchange Commission, which we are now debating, hereinafter referred to as the Securities Agency—

- "(i) The Securities Agency has been established and has commenced operations, including the issuance of regulations in the areas of, inter alia, registration, distribution, disclosure and enforcement; and
- (ii) The borrower has presented to the Bank an operating plan for the securities agency which includes activities in the areas of issuance and enforcement of regulations, staff training and management information systems."

2.30 p.m.

So, Mr. President, when we come to this Parliament and we are asked to deliberate on matters, even though surreptitiously referred to a joint select committee, we have to understand the basis behind that kind of deliberation. The Government has set up the entire Parliament in an effort to obtain their own final objective at the end of the day. We have great difficulty in being used in that kind of devious way. It is our view that the Government recognized that that was the whole purpose behind this exercise. But, Mr. President, as you know, we are quite competent and capable of deliberating on these matters and in spite of the diabolical machinations executed by this regime to hoodwink the Parliament, we, on this side, would like to express some views and observations on this particular Bill before us.

This Bill, as the hon. Minister indicated, is essentially designed to separate the function of management and regulation of the securities industry. This, of course, is a philosophy that we do not fundamentally object to. We believe, because of what the hon. Minister himself has indicated, the level of insider trading, the erosion of confidence in the capital market that has contributed to a lack of

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savings and to the poor levels of investment, and consequently, to the continued high levels of unemployment that persist and rage in this Republic—in spite of all the propaganda that the PNM would attempt to advance to the contrary—we know that the unemployment rate in this country is closer to 25 per cent, representing some 150,000 citizens, which would include many persons who are underemployed, working for five days a week, but unable to earn sufficient money to keep bread and butter in sufficient quantities on their tables. We know that is a lot of hogwash, a lot of hoodwinking by the PNM to "mamaguy" the population to make them feel that unemployment has been reduced from 25 per cent to 16.5 per cent, a myth that we would blow to bits when the campaign begins next week. We understand that on Sunday the PNM is going to declare the day for local government elections, so we are going to be prepared.

The United National Congress, the alternative government of the Republic of Trinidad and Tobago, believes it is necessary and that the regulation of the industry should be placed in the hands of an independent, autonomous agency or body. In this instance, the Government has established, under this legislation, the Securities and Exchange Commission. We believe it is very healthy, because people need to have confidence in the market place. Although we do not subscribe—as a party or as the alternative government—fully and completely to the kind of open, uncontrolled approach to development taking place under the market, we certainly would seek to promote the market mechanism as an instrument for the efficient allocation of resources in our Republic. It will go side by side with the state having a direct interventionist role in directing development and transformation.

Mr. President, serious questions abound in respect of the Commission. The Securities and Exchange Commission, as you know, would require a great deal of resources to carry out its functions. At least the Minister could have told the Parliament what estimated amount would be required to get this Commission off the ground and functioning, and not transforming it into some white elephant; some still-born arrangement. Mr. President, it is going to be very costly.

This SEC as I would call it, for short, requires a certain kind of personnel to manage its operations. We are doubtful that we can find that quality personnel at this time because of our lack of experience, as admitted by the Minister, in our country. Not only this, Sir, but when we come to examine the kind of strictures that have been placed on personnel who are going to be attracted to this SEC, we would realize that in a small republic where the market is thin, it is not trusted, it is not sophisticated, so the Government's intention is to import foreigners to run the Trinidad and Tobago Securities and Exchange Commission.

We are concerned with the vigorous implementation of its many provisions as it is necessary to have vigorous implementation to safeguard the interest of investors when they part with their hard-earned money. If there is no confidence in that market place we are going to continue to face a threat to the viability of the securities market.

As far as we are concerned, the passage of this Bill is one thing, the real test would come when we establish the relevant, appropriate and proper mechanisms to make this Bill work. That is going to be a very serious task because we know about the Venture Capital Bill, which was a still-born arrangement. We were asked to pass that Bill in haste, but nothing of substance or consequence has happened since that Bill has been passed. They are now asking us to hastily pass this Securities Industry Bill and we are sure that nothing will happen, at least for nine months, because it has to come back for major amendments to be made. *[Interruption]* Well, you should be aware about that; they have put you in the Ministry of Social Development so you are supposed to be au courant with that.

The UNC is concerned about the proper structuring of the Commission. We on this side are concerned with the establishment of sound and proper rules and regulations under which the Commission will operate. We have not seen any accompanying regulations. We hear, Sir, that the existing rules and regulations that currently govern the Stock Exchange shall continue to rule the securities market place until such time as the Commission can put its act together. Those regulations are very weak. There is so much corruption, insider trading and the passing on of sensitive information to companies and individuals because of the weakness in the existing rules and regulations of the Stock Exchange.

Going back to these rules and regulations is almost to continue the same kind of arrangement. Take my word, Sir, it would take some time before this Government is able to put that SEC into full operation. What will happen in the meantime? It will be business as usual. The Government does not engage in thorough planning sufficiently. It does not work out these things in detail, get its resources organized so that when it brings a Bill to Parliament and it is proclaimed by the President, it can be translated into action immediately. It wants the second tranche of its US \$80 million loan from the IADB; that is why it is rushing through this Bill. It does not care if the Bill works or if it does not work, it wants money for the elections and we are being used as playthings in the Government's whole objective.

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2.40 p.m.

We know the hon. Minister of Finance is under pressure and the Government has isolated him since the rating shows that he outperformed the Prime Minister and he is now a sad, lonely animal, but if he had the authority he would have brought accompanying regulations to this Parliament

I tell you, Sir, the 1996 Budget will not be written by the Minister of Finance because the leader of the party and Prime Minister of this country wants to run down the place. Mr. President, we believe that this is a glaring omission and we hope that the hon. Minister would tell this Parliament when he is going to bring these regulations.

As the hon. Minister indicated as well, in some of these rules and regulations, bye-laws, particularly the take-over code, we saw some elements of what the Government had in mind when it brought some bye-laws. Again, these bye-laws were just made available to the members of the committee but they have not been brought to this Parliament. We would like to know why. What has happened to these bye-laws?

Let me indicate very clearly that when we look at the Securities Industry Bill 1995 we see that clause 6 *[Interruption]* just remember hon. Senator, the Prime Minister had you as a virtual prostitute at one time. I withdraw the word "prostitute" because you are not that. *[Interruption]*

Mr. President: Senator!

Sen. W. Mark: He is provoking me, Sir.

Mr. President: No, no, unprovoked from the very beginning of this speech you have made little excursions to things that are totally irrelevant. I think you should try to stick to the Bill before us. You have gone into the elections and into the budget next year.

Sen. W. Mark: Those are asides, Sir, picong as you know.

Mr. President: You seemed to be reading it from the script that you have there. *[Laughter]*

Sen. W. Mark: No, Sir, it is picong. Whenever I make statements it is as a result of picong, Sir. You cannot follow my eyes carefully because they move rapidly, sometimes they are there and then somewhere else. Mr. President, I take your guidance.

Mr. President, if we go to page 21 of this Bill and we look at clause 6 paragraph (e) we would see where one of the responsibilities of the Commission

is to 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.

We believe that there is need for some form of harmonization of the functions of the different regulatory authorities in the economy. If one looks at Division 3, clause 19, one would see a section focussing on consultation with the Central Bank and other agencies. This is a very important aspect.

Under the Financial Institutions Act of 1993 the Central Bank has certain authority and powers in relation to the financial institutions of this country. Recently, there was the takeover bid, or confusion, involving a number of local companies such as Viveka Holdings, Republic Bank and Clico. Do you recall that, Sir, how Republic Bank sought to get some intervention from the Central Bank on this particular matter? What we want to ensure is that there is harmony among the various actors involved in the regulation of the different institutions that they would have responsibility for. Here it is, the SEC are going to be responsible and they would have the authority to regulate takeovers, amalgamations and all forms of business combinations.

It means to say that you will see the Registrar of Companies coming into this arrangement at some stage or the other; the Supervisor of Insurance would be called upon at some time or the other to play a role. Therefore, it is vitally important that there is some kind of harmony among the various forces and the regulatory authorities in this particular area. It is very important. If one does not have that kind of consultation and co-operation as to whether it is going to be reciprocal, is another question. It is a very complex area that we are entering into and we have to ensure that there is continuity and harmony involved in the various parties that are responsible for this particular exercise.

We believe that it is necessary that the Government take into account some of the points that we have expressed. We also believe that the credibility and effectiveness of the Securities and Exchange Commission will depend upon a few factors, but there are two which we would like to emphasize at this time. The first is the quality and character of the chairman of this Commission. If he or she is a vigorous person of standing who commands respect, who is beyond reproach and who is not afraid to implement a programme of sound regulations including enforcement in particular, he or she will be able to establish a foundation upon which the Commission will be able to grow as the domestic market matures and expands.

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On the other hand, initially, a weak chairman will create many impediments to effective securities regulation for years to come. We have to recognize that if this Commission is to perform and if it is to be efficient and effective in its operations—it is a new area of operations that we are entering into—the role, quality and character of the chairman are vitally important.

The second critical factor we would like to address here is the issue of enforcement. This country is lawless; we had a Minister of National Security at one time and he, too, became lawless. Mr. President, we have a history of virtual lawlessness in the country where we pass laws and we do not enforce them. Therefore, we believe that it is vitally important and critical that we address this question of enforcement.

2.50 p.m.

The entire credibility of the Commission will be firmly rooted when it has brought to a successful conclusion its first enforcement proceedings, and penalties would have to be imposed on those lawbreakers if this SEC is to work and if investors' interests are to be protected. There cannot be "friends" in this business. If one is wrong, one goes to jail. This is one of the reasons why the PNM are so corrupt: they do not send their Ministers to jail. When they know these persons have done wrong, they do not take action against them. We cannot allow the SEC to become a paper tiger; not at all.

Mr. President: If certain persons do not take action, others can. Why do you not initiate?

Sen. W. Mark: Mr. President, we are eagerly awaiting the call. When they call the election on Sunday, we shall take action, because when we take power in the country, then we shall be able to institutionalize certain things. At the present time, we cannot; our hands are tied; I take your advice, Sir. I take your advice very seriously, we shall initiate action.

All we are saying to the hon. Minister of Finance is that we have to ensure that this SEC does not emerge as a paper tiger. Therefore, the director of enforcement must be experienced in law enforcement, able to conduct, or direct and investigate and present the case completely before the proper tribunal. We are saying, in this connection, it will be well for early enforcement actions to be brought before the Commission so that we do not have long drawn out appeals and so forth that take place at times when things are not properly organized.

There are some provisions in this Bill which require some explanation, or clarification. I want to refer to Division IV of this Bill, clauses 22 to 26 which deal with staff. The question of workers' rights is something we have to address in this matter. As I understand it, we are establishing a statutory body or authority here, and the taxpayers of this country, as one would have recognized, would have to contribute in a serious way towards its maintenance and sustenance.

Therefore, I would like the hon. Minister to indicate to this House, why under Division IV clauses 22 to 26, there is not a provision to deal with the establishment of a pension scheme for workers who are going to be employed by this agency. This is a statutory agency, some persons are going to be seconded, some are going to be transferred from the public service into this new arrangement called the SEC. The Commission has the authority under this legislation to employ persons.

What I am arguing is that these persons whom they are going to employ will be paid from taxpayers' money and they are also going to enjoy benefits, through the collection of fees and other charges, subject to the approval of the Minister of Finance, which will also help to boost the finances. There are provisions in this section, to compel the Commission to establish an appropriate pension scheme for the workers. It has been the practice, and my experience is, that when one is establishing these statutory boards and authorities, to have that provision established, unless these workers are going to be falling under the Pensions Ordinance of the Central Government. That is an area we would like the hon. Minister to address.

There is another area on which we would like to get some clarification. We go on to clause 31 and we look at subclause (5) on page 34. I do not know what is the link between the Institute of Chartered Accountants of Trinidad and Tobago and the Government, but there were many drafts before this final Bill came, and I looked through one of them and saw where in clause 30, for instance, the Government had agreed that an auditor must be appointed. We have no problem with that, but in the previous draft they indicated that a duly appointed auditor be appointed. In this Bill, there is an amendment where the Government is now proposing that:

"31(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 Institute of Chartered Accountants of Trinidad and Tobago and who is appointed by the Commission with the approval of the Minister;"

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If we start to institutionalize institutions into our laws, then we would have to insert many pieces in of legislation or laws, the Law Association of Trinidad and Tobago.

I suggest that we delete that completely. I suggest that the Auditor General is competent enough to conduct the affairs of the Republic of Trinidad and Tobago, once the Government intends to provide that independent agency with the necessary resources and staff. We do not support institutionalizing into this legislation the Institute of Chartered Accountants of Trinidad and Tobago. The Government has been appointing auditors all over the place, but it is the first time in the history of this Parliament that I have seen institutionalized into legislation, a particular institute. I have never seen it before. We suggest that the Auditor General of the Republic of Trinidad and Tobago be responsible for the auditing of the accounts for the SEC. I am certain that the hon. Minister would not have an objection to the Auditor General being responsible, since he is supposed to be a man of integrity. We want to ensure that there is room, as far as possible, for manoeuvring.

If we go on to clause 50 of this Bill, we see where:

- "(a) any person who is aggrieved by an act or dealing by a member of the self-regulatory organization, or by any other registered market actor, may lodge a complaint in respect thereof to the Commission in writing addressed to the Chairman;
- (b) the Commission may investigate and adjudicate upon the complaint;"

And it goes on.

3.00 p.m.

We would like the hon. Minister to look at this section and provide us with some timeframe, because if one lodges a complaint with the Commission, through its Chairman—and we are talking about confidence and justice—there ought to be some mechanism within this legislation that would compel the Commission to expedite those matters within a timeframe. There ought to be some period in order to get this matter executed.

Mr. President: Your speaking time has expired.

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

Question put and agreed to.

Sen. W. Mark: Mr. President, I would like to suggest, Sir, that the hon. Minister examine this section and determine whether a timeframe could not have been slotted in to ensure that the Commission is given some kind of mandate to address this question and to expedite it, so that people would not feel cheated in any way.

Mr. President, if we go on to clause 138--before we go on to 138, let us go to clause 68—

"In this Part "block distribution circular" means a prospectus required in connection with a distribution of previously issued securities acquired under..."

And it goes on, Mr. President, in clause 72 (1)—

"A prospectus shall contain such information and comply with such other requirements as may be prescribed."

The regulations are important in this area because investors ought to be very clear, when they are parting with their hard-earned income—they ought to know and it ought to be appended to this legislation—what the prospectus ought to contain, and it cannot be included in the substantive part of this Bill. It will have to come in the regulations. This is why it is mentioned, "as may be prescribed." So regulations are needed to deal with issues that are not sufficiently developed in this Bill and I really believe the hon. Minister will have to address this matter.

Mr. President, if we go on to clause 96 we see—

- "(1) The Commission may prescribe standards for the conduct of a registrant who is not a member of a self-regulatory organization;
- (2) The Commission may prescribe that a registrant shall keep a record...
- (3) The Commission may prescribe standards governing trading in a security that has been distributed and is not listed..."

There are no regulations here to indicate what are some of the actual conditions that would govern the operations of these agents that are going to form part of the Securities Industry.

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Again, Sir, the absence of regulations is going to hamper this effort in a very severe and serious way, and we would like the hon. Minister to address this question. It is a pity that the joint select committee of Parliament did not insist. If I were there, I would have insisted that regulations be brought along with this Bill, so the Government has escaped.

Hon. W. Mottley: Mr. President, the hon. Member should complete his sentence. If he were there he would have been present when the draft bye-laws were presented to Members of the committee.

Sen. W. Mark: If I was there when what? I got those things, you know, but anyway, we will not haggle over these peripheral matters at this time.

I shall proceed. I would like to say that there are some provisions in this Bill that give us some cause for worry. We question the constitutionality of this Bill. First of all, the Commission has sweeping and powers of investigation. I have no difficulty with that. This Commission must be given the necessary wherewithal to do its job and get the job completed, but if this is going to violate the rights of the citizens of this country—it appears to us that there are some provisions in this legislation that are very inconsistent with sections 4 and 5 of the Constitution.

When one looks at clauses 138-143 in terms of the authority granted to this agency, one will realize that it is extremely wide. They have the power to subpoena people or to issue orders. This is a very serious matter. We have no difficulty with the Commission having the authority, but if this Bill is passed, and we do not examine its constitutionality carefully, some investor at some point will challenge it—like the Maxi-Taxi Act—and we will have to come back here and do the necessary work. I hope that the hon. Minister of Finance has received proper advice on this matter, because we know the Government is going around in circles when it comes to legislation that requires a special majority. It realizes that when a Bill requires a special majority it needs our support and what it is doing is flouting the provisions of the Constitution to get Bills passed through this Parliament. Mr. President, I want to refer to clause 10 in an effort to amplify this point. Clause 10 (1) reads—

"A person shall not be appointed or continue as Commissioner if directly or indirectly, as owner, security holder, director, officer, partner, employee or otherwise, he—

- (a) is engaged in the securities business; or
- (b) has a material interest...in—
 - (i) a securities company; or
 - (ii) a self-regulatory organization;..."

It goes on to stipulate, in a very detailed way, directly or indirectly that persons such as the commissioner or general manager should not engage, in any business, vocation, or employment other than that of serving as commissioner or general manager.

Nothing is wrong with that. I am saying, for instance, that we have some concern about the constitutionality of the Bill. If somebody is there, the question of conflict of interests and wearing three and four hats is a problem. We know this. That is why the Stock Exchange has virtually collapsed. That is why, for instance, the volume of trade is so low. It grows very lazily, because the confidence is not there, because of the very conflict of interest that we are trying to avoid here, which I support. I have no difficulty with that. All I am saying is that we would want to advise the Government to tread very warily. I hope it has received expert legal opinion on this matter because it is a serious one and it could end up in the courts.

We have some reservations about the Bill before us. We have suggested certain areas that the Government ought to consider for amendment. We believe that if the Government does not put in place the necessary machinery, provide the relevant and appropriate resources to make this Securities Exchange Commission work, we are going to experience another still-born institution in our country, after nine months. What it would, in fact, reveal to us here, nine months hence, is that the Government sought to abuse this Parliament by seeking to rush legislation through, conscious of the fact that it had no intention of translating this legislation into worthwhile action.

I tell you today that the reason this Bill is before this House is not that the Government wants to attract investors; it is not because the Government cares about the kind of rip-off that has taken place on the Stock Exchange; it is because the Government wants to draw down second tranche loans from its Investment Sector Loan arrangement with the IADB. That is why it is rushing this Bill today, and that is why it will rush the Companies Bill tomorrow, as well, fully conscious that the work of the committee was not completed and therefore what we have here is a half-baked kind of arrangement. But the Government does not care. It just wants action. We are in the minority today, but tomorrow we shall be in the majority.

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We have no doubt that we need to update our financial regulations; we need to update, for instance, all the laws that are relevant to the capital market place; to the financial sector, so that we can make the economy of our country, particularly the financial environment, more hospitable and more encouraging. We have no difficulty with that, but it is not what you do; it is how you do it, and this Government has continually proved its inability to do things correctly so that the people at the end of the ladder would benefit. This Government is about itself and itself and itself. It is not concerned about the population. Our responsibility is to point out weaknesses, deficiencies and to present ourselves as the alternative government of the Republic of Trinidad and Tobago. We have done that and I think it is a matter of time before the masses of people decide on the UNC being the next government of the Republic of Trinidad and Tobago.

Thank you very much, Mr. President.

Sen. Michael Mansoor: Mr. President, it is perhaps sobering to note that despite his sojourn, perhaps because of his sojourn, from this Parliament, Sen. Wade Mark has lost none of his capacity for ample contributions, or, indeed, combative, political pugnaciousness, if one were to use that word. We welcome him back, for better or for worse.

It is somewhat difficult to comment on a bill when one has sat on a joint select committee that carried on its deliberations over such a long period. In many ways one almost adopts the bill and, perhaps, loses a sense of independence, if you will, because of the familiarity which one would have acquired during the joint select committee process.

In response to Sen. Wade Mark's comments, I think that the remarks that he made when he quoted from the joint select committee report with respect to the need for amendments, perhaps applies more to the Companies Bill rather than to the Securities Industry Bill. I think that the level of complexity in the Companies Bill is a lot greater than it is here and I believe that—certainly it is not my understanding—the Government is, sort of, bringing this Bill with a definite agenda of bringing amendments within a nine-month period. It is not this Bill; it is the Companies Bill.

So that I think that the committee was able, by and large, to do more justice, if you will, to this particular piece of legislation than it did to the Companies Bill. I shall not talk about that, except to say that those of us who sat on this committee, were left with a residual feeling of, perhaps, almost impotence in dealing with complex legislation of this nature because of the way parliamentarians operate under

our Constitution, in the sense that most people are part-time participants and really, when one is dealing with very complex work like this, one perhaps needs a lot more time for deliberation.

Be that as it may, I believe that with respect to this Bill, we were very fortunate in having expert assistance from some brokers and some other persons with a knowledge of these matters. So that I do not share the degree of concern that the previous speaker expressed, because I think that this legislation is essentially sound, notwithstanding the fact that it is not perfect. There will always be concerns about any piece of legislation which essentially contemplates a dramatic change in our economic activities, because this is what it is all about.

So what I thought I would do today is, perhaps, just make a few remarks about what the Bill seeks to do that is different from what we have today. Essentially the Bill creates a Commission that, if you will, sits on top of the Stock Exchange as such. Basically there is a Commission with all kinds of powers and below that Commission, there is, what is called a self-regulatory organization, which is essentially the Stock Exchange as we know it now. The legislation gives the Commission much power in dealing with all the kinds of issues that heretofore have been dealt with by the Stock Exchange, and as we know, perhaps not too well, because of all the limitations that exist in the legislation which is now in the books—the old legislation.

So that whatever criticism may be levelled against this Bill, I do not believe it can be said that the Commission is a toothless tiger. In fact, I think the opposite. If anything could be said, if one looks at the enforcement provisions at clause 131 of the Bill, one would see that from clause 131 onwards, the Commission has all kinds of powers to deal with deviations in behaviour, to set rules and to do all kinds of things that effectively empower it to do the regulatory job that is required.

The first very important power it has is to make bye-laws. What really happens is the Minister makes the laws but the Commission makes the recommendations, and therefore, I expect that the bye-laws, of which I have copies—I do not know if all Senators have, to deal with the bye-laws themselves and the takeover and merger code—will be implemented very soon after the passage of the Bill on the approval of the Minister.

So the Commission can basically set its own bye-laws and get the Minister to approve. We did this in order to ensure that the Commission did not become a runaway horse, if you will; that it was subject to some sort of ministerial discretion.

3.20 p.m.

Mr. President, another very important power of the Commission is to make orders, and that resides in clause 133—

"The Commission may make an order...

- (c) respecting any other matter authorized by or required to carry out the purposes of this Act."

The Commission is a very powerful entity. It could make its own laws and by-laws; and get ministerial approval. It could also make orders to make sure that the Act is being followed.

The Commission has power to deal with appeals against the self-regulatory organization, because of its decision, for example, not to accept a person into membership—as a market actor, as it is called. The Commission could deal with those appeals.

Mr. President—very important—in clause 141, the Commission could stop trading in a security. It could essentially delist a security. The Commission cannot do this without reason, but it has the power to essentially stop trading in a particular security.

This Commission, unlike many of the other kinds of institutions, which we have in this country, has teeth—if anything, perhaps, too much power—but that is necessary. I believe that in the future, one would not be able to say that one cannot act because a particular matter is beyond one. In this legislation, the Commission has, in my respectful view, all the power it needs to grapple with the realities of the day and deal with circumstances as they arise.

The Commission could stop people, for example, from issuing a prospectus and from advertising. Basically, the Commission could even demand, in its own discretion, that a director of a public company resign. Just think about it. The Commission, can basically say to a public company that director "X" or "Y", must resign because of bad conduct, or whatever. This Commission is an extremely powerful entity. We should, therefore, not have the difficulties which so many of us have had in recent years in this area of economic activity.

The question arises: If the Commission is so powerful, is it properly constituted? We have to go back to the earlier part of the legislation to see how the Commission is constituted. Essentially, the legislation makes provision for five Commissioners, with a quorum of three. I do not believe I would be breaking any of the conventions, but I have had some difficulty with the relatively small size of the number of commissioners.

If one looks at the number of activities and different duties that this Commission has to perform, with five commissioners, and a quorum of three, one has to wonder whether or not there is enough manpower to do all of these things that the Commission is supposed to do.

We discussed this at the committee and the consensus was that five was adequate, with three as a quorum. I remain with some reservations about this matter, but I note—and it is important for us to realize—that these commissioners are essentially full-time officers.

I draw Members' attention to clause 10(3)(a), which basically says that commissioners must not—

"engage in any other business, vocation or employment other than that of serving as a Commissioner or General Manager;"

Paragraph (b) says that commissioners must not participate in market operations.

So that commissioners would be full-time experts, perhaps, lawyers and others, and they would not, under normal circumstances, be allowed to participate in market activities; and they would be appointed for three years. There is a reservation, but I suppose that in these matters the experience of the next few years would tell us whether or not we have enough manpower here to do the job.

Of course, there is another consideration which occurred to me over the weekend when I was looking at this Bill for the second time. I wondered whether or not there was anybody with the independence and distance from the issues of the day, that could inform the decisions of the Commission. The commissioners are not operating as a board of directors. They are really full-time. That is a concern that occurred to me over the weekend and would this relatively small number of people have the breadth of vision to deal with all the kinds of matters that would come for their scrutiny and for their decision making?

Given the fact that commissioners must essentially not participate in market activity and given the fact that they must have a certain professional experience, I believe that on balance, one could live with the present arrangement. Although I rather suspect that in the fulness of time, we may wish to revisit the composition of the Commission.

I would just like to make a few comments about the treatment accorded to the matter of insider trading in the Bill. I believe that clauses 121 and 122 are the clauses that are important here, in particular, clause 122 which says—

- "(1) Subject to section 125, a person who is or at any time in the previous six months has been knowingly connected with an issuer shall not buy or sell or participate in any transaction on any securities exchange or other self-regulatory organization relating to securities of that issuer if he has..."

sensitive—

"information."

Mr. President, nothing could gainsay the fact that this is very desirable legislation. Insider trading is an evil. However, when one looks at the broad provisions of this Bill, one has to worry as to whether or not it could be implemented to the letter in the immediate future. I am not so sure that there is the jurisprudence in this jurisdiction that would be able to sort of define in what circumstances a person, who is a director of an issuing company, or an employee for that matter, would be able to buy or sell securities. It would seem to me that at all material times, those persons are likely to be or could have sensitive information.

Now, I believe this is good, and I think this should remain, but I sense that the Commission would have to set out very clear provisions in its bye-laws as to how people are going to deal with this matter. There is no point having it there if it is not going to be followed. As we discussed in the committee, it seems to me, almost impossible for employees to fully participate in the trading of the securities of the employer under these circumstances.

I suggest to the commissioners, whoever they are, that this is an area for which they would, perhaps, have to provide detailed guidance as to what can and cannot be done. This set of rules for insider trading is absolutely necessary, but it has to be done in such a way that it is not flouted because of lack of pragmatism.

3.30 p.m.

The Minister in piloting of the Bill talked about the difficulties under which the market now operates. I would just like to refer Senators to clause 105 which deals with the matter of clearing agencies and, perhaps, to speak a bit about what is likely to happen, or what could happen, to our market with the establishment of clearing agencies.

At the present time, to the best of my knowledge, in order to buy or sell a security, that share has to be in the form of a certificate. In other words, if a person in Trinidad and Tobago wishes to sell securities he would have,

essentially, to provide his broker with certificates which he would like to sell. The broker can either demand that he get the securities before he sells or if he trusts the person, he can sell and then get the certificate later. The reality is, in order for a transaction to go through, the proposed vendor must have in his hand a certificate which he is going to sell.

It is not hard to imagine how limiting this is when one trades three, four or five days a week. Under this set of circumstances, it is almost impossible to buy a security on Monday and sell it on Wednesday. The present arrangements are really very limiting, and very debilitating because the market is slowed down by this paper flow. Similarly, and perhaps of more importance, let us imagine if a person were in Boston, London, or Toronto or wherever, and he wished to buy shares in one of our public companies, how does he do it? Does it mean that he must have the securities sent up by DHL or Federal Express to wherever he is? Is he going to have a broker here whom he can trust to be the custodian of those securities in the interim? Similarly, if he wanted to sell those securities, it would be very difficult for him having those securities in London or wherever, because he would have to get them back to Trinidad and Tobago before he could sell them.

What is being proposed here, the existence of clearing agencies would allow people to trade without the necessity of paper certificates moving around. This would be able to trade much more efficiently and much more effectively. I think that, in itself, is good reason for this legislation. There are difficulties with it, make no mistake about it, because people can now effect transfers just by making entries. The Commission has the power to deal with examinations and audits to ensure that these matters go well. It is a good provision. Also, what I think is a new development—I am not a broker—is now provision under clauses 94 and 95 to sell short. There is a new kind of activity here where people can start selling short. In other words, someone can sell securities on the basis that he expects he can buy at a lower price at a later date. This is a development, an ability which would foster trading on the exchange. I do not believe it exists under our present arrangements because we are tied down to the securities.

There are very real and new provisions embodied in clauses 94 and 95, and also in setting up of the clearing agencies that would essentially facilitate expansion of and intensify activity in the market. It is not only the fact that we do not have expert commissioners and people who know about these matters. The other very real difficulty is that the market is so thin and there is so little trading because of the difficulties that we have had in manning the existing arrangements.

The Bill also makes very good provision for prospectuses in the sense that it sets out very clearly—and this is not new—I think both in the legislation and in the proposed bye-laws, it gives very detailed provision as to what should happen when a prospectus is issued.

Clause 69 is the most important clause in this area. This clause basically says that before persons can start buying pursuant to a prospectus, the Commission must issue a receipt for the prospectus. To be precise, clause 69 says:

"Subject to clause 70, no person shall distribute a security unless a prospectus or a block distribution circular has been filed with, and a receipt therefore has been issued by, the Commission."

The Commission is not just going to issue a receipt for a prospectus. It is going to review the prospectus and ensure that it contains all the necessary information that a normal average decision-maker would need in terms of buying the shares that are being offered. Also, the Commission has the power to look at the advertisements that would go out in this situation.

So in this area where small investors could, perhaps, be fooled, if you will, the Commissioner has some very real responsibilities to ensure that the small investor has enough information to make a rational decision. The legislation also contains some very punitive provisions for directors of companies who issue false prospectuses.

If one looks at clauses 128 and 129, directors are essentially liable. Any other person who is involved in the preparation of a prospectus is, in fact, liable if persons contribute money that they would not have contributed or if they contributed money pursuant to fraudulent information and so forth.

The Bill contains and gives the Commission the power to act and to deal with these matters as they arise and, hopefully, that would create confidence in the market place; and it would also widen the market place. I believe it lays the foundation for foreign investors to become involved in our market.

There is much statistical data to suggest that in most merging economies, much of the growth has come from issues on a local and an emerging market, the money coming from the more developed parts of the world so that the broker in London, Toronto or wherever, can basically have the confidence that SHARES that are issued, sold and traded in Trinidad and Tobago, are being done under a rational set of circumstances. This legislation paves the way for the participation of foreign investors in our market and that would, I believe, expand the amount of activity there is in the market place, which would, in fact, be good.

However, one must accept the fact that with the good sometimes comes some bad, and it is very clear, given the small size of the issues in this country, that foreign investors would, perhaps, be tempted to take very large positions in public companies here, and they can do so relatively cheaply, given the fact that our dollar is worth, perhaps, 16 or 17 US cents. Hence, the importance of the takeover code and the importance of the Commission doing what it actually is supposed to do to ensure that these kinds of developments do not take place in an uncontrolled and chaotic fashion.

3.40 p.m.

One cannot blame the framers of this particular piece of legislation for not giving the Commission power to deal with market realities. That is a real concern not so much because of people's ability to work the legislation. I am not worried about that. Maybe we would need some help from abroad initially and we can do that relatively quickly. I am really concerned about the volume of activity and trading on the local market because in the end that is what would make this legislation or break it. It is virtually impossible for me to imagine that this legislation would work well if we continue to have fewer than 50 publicly traded securities, simply because the cost of administering this legislation is so high. Unless we increase the volume of activity, we would just be unable to afford the cost of administering and implementing this legislation.

One has to ask: Will it work? Clearly you can take the position that we are too small and it would never work. I do not think that is a sustainable position. I believe that we have to make a start and attempt to have a market that would work in a logical and rational fashion. The only way to do it is by having a commission that has the power to deal with market realities. The concern remains: Will Government, as I suppose it has committed themselves to doing in one of the clauses which makes provision for the Commission to be funded by Government revenues, always provide the amount of money that would be needed to make this legislation work?

I think it will be totally wrong for us to walk into a situation where Government revenues alone will sustain the organization. We should try to create a set of circumstances where fees from the self-regulatory organizations and other revenue earning activities of the Commission will be able to pay, at least, part of the cost of making this Commission work. It is a real concern and one that I believe would only be settled if we get a certain volume of activity. That is an inescapable part of what we have already started in this country.

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When we liberalized our currency and we basically allowed—and it is a pity that it took us so long to do it—our citizens to use their money and spend it in whatever currency they will, it meant that in order to have the amount of capital that is needed in this country to sustain business and our competitive advantage, business essentially needed the ability to raise capital, not only from local sources but also from the world. By giving Trinidadians and Tobagonians the ability to invest the money wherever they wish, if we are to sustain the capital formation in this country, a necessary concomitant of that is that the stock market has to be opened up so that people from abroad could participate in it, otherwise the private sector will never have the capital that it needs to sustain companies and operations which have the amount of equipment and technology to enable them to have competitive advantage.

If we are going to be consistent with all the things that we have been doing over the last four or five years—even perhaps before that, in terms of opening up this market, reducing tariff barriers, and liberalizing trade and currency—and the philosophy that the world is our market place—we must also enable businesses in Trinidad and Tobago to access capital from all over the world. This legislation is one of the necessary building blocks, if you will, which will allow us in the private sector to access capital in the quantities that we need, in order to have competitive advantage in our various businesses.

The work has now started. Passing the Bill, as we found out when we very hurriedly passed the Export Processing Zones Bill, I think in 1987 or 1988, is the beginning of the race. We already have a start. It is not as bad as it was in the case of the Export Processing Zones Bill. We did not know anything about that when we passed the legislation. In this case we have a market, however badly it works. We have a good start, but let no one believe that that is the end of the matter. A lot of work has to be done in order to create the volume and confidence in the market to get the Commission, the Stock Exchange and the self-regulatory organizations working well.

I sincerely hope that the work which was started by this joint select committee on this Bill results in a stock market of which we can all be proud.

Thank you.

Sen. Martin Daly SC: Mr. President, I am one of those who did not sign the joint select committee report on these two Bills. If what has been reported in the newspapers is accurate and these two Members of the Government have purported to tell people why I did not sign these reports, that is a matter for them.

The exercise which has taken place in relation to the Securities Industry Bill was a very worthwhile one. My reasons for not signing the report have to do entirely with the Companies Bill. Today is not the day to deal with that. The exercise in relation to this Securities Industry Bill was a worthwhile one in that we appointed a joint select committee by resolutions passed on March 24 and 29, in the other place and the Senate respectively. The committee then met twice in May, June and August to deal with the Securities Industry Bill. During those meetings under the chairmanship of the Minister of Finance, members of the committee were able to have dialogue with the persons directly responsible for the formulation of the legislation. That was a very useful exercise.

I wish that more of our legislation, not only what is voluminous or complex, but also where we are making radical changes, broadly speaking, in the way that we do business, could be subjected to that process. I recognize that there are limitations which are expressed in the report about the part-time nature of parliamentarians and the lack of facilities. Although the parliamentary staff is overwhelmingly helpful, there are few of them to help us. If we all rush them at the same time for material, they would be unable to service our requirements, and this would be through no fault of their own.

As far as I am concerned, this Securities Industry Bill has received a proper vetting by the joint select committee. Therefore, both members of the Committee and colleagues who were not members of the committee could feel comfortable with the passage of this Bill because their various representatives have taken part in the technical work on the Bill.

3.50 p.m.

An essential feature of that exercise was the opportunity to deal directly, under the chairmanship of the Minister, with those responsible for the formulation of the Bill. That is what made it such a good exercise and, indeed, Mr. President, I would take the opportunity to pay tribute to the Treasury Solicitor and her department, to those persons who are connected with the Stock Exchange, and other experts who gave us assistance. Indeed, when I reread some of the notes in preparation for this debate, I recognized that they were extremely tolerant of some of the aggression with which we pursued our concerns over this Bill.

I mention these things because sometimes people in the pursuit of self-interest, lose all perspective on what goes on in the Parliament and who is responsible for what. Therefore, much of the controversy that has been generated about this joint select committee ought not fairly to rub off on the process with

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regard to the Securities Industry Bill. As far as I am concerned the proper exercise of parliamentary supervision and dialogue has taken place in relation to this Bill. It most certainly has not in relation to the Companies Bill, but, as I indicated, that will be for tomorrow, if God spare life.

Indeed, the Minister is to be complimented on this. I believe that this type of dialogue began when we had the very difficult debate on the Financial Institutions Act, where, although we did not have the formalities of a select committee, memoranda had been submitted and there was dialogue, albeit informally and not under the aegis of a joint select committee, on the provisions of that equally important piece of legislation. I therefore think that this is the occasion for us to reflect very deeply on how this type of exercise can take place more frequently instead of us coming here and trying to amend this—to use an expression I heard Dr. Rowley use—"on the hoof." I do not think that that is a good idea.

I am making a brief contribution to this debate for two reasons. One: that it will certainly become known and, I hope, accepted, that the parliamentary process worked well in relation to this Bill and that it is an objective for which we should strive more frequently. No one should have the impression that any deficiencies in relation to the Companies Bill infected this Bill. I do not think that has been brought out publicly and it does not help when people talk about the surreptitious nature of the committee and so forth. There was nothing surreptitious about this.

Mr. President, I have no need to sing the virtues of the Parliament staff to you, but these are the minutes of a meeting that we had on June 12—unfortunately the pages are not numbered sequentially—but we received about 50 pages of verbatim report of a meeting in time for a meeting on June 21—10 days. I think in Trinidad that is very good going. When one goes to a meeting and is able to review these notes even if it is the day before, then it definitely contributes to making proper legislation. To those who think any of this interesting, I would ask them to consider how many Bills we have passed in a much more *vaille-que-vaille* fashion. This was, therefore, a good exercise. So my not signing the report has everything to do with the Companies Bill and we will get to that in due course.

My other reason for making a contribution, is that I always try to see whether there is anything that can be usefully said about the policy which the Government is pursuing or the policy of the legislation. There is something which is disturbing me and I think it is relevant to the work we will be doing over the next two days. I will try to say it in the calmest tone of voice that I can muster.

We are spending the next two days dealing with business legislation and it really is legislation that affects mostly big business as opposed to medium-sized or small business. I do not say big business pejoratively. I am a commercial lawyer. It is not in my interest to say it pejoratively. One can argue that certainly the companies legislation has a wider reach than the Securities Industry legislation. We are spending the next two days giving extra time and attention to business legislation. The Minister has made it plain, and I quote him in his presentation today, that this is part of the general reconstruction of the economy.

As someone doing public service in the Senate, this is something I try not to lose sight of. For whom is this legislation—which is part of the general restructuring of the economy—receiving all of this attention? I have indicated that this legislation affects a certain type of business, which is vital to the economy, but I become concerned when with the success which the Government claims to have had in the restructuring of the economy in terms of the balance of payments, the fall in unemployment and so forth, it is simply not being understood that the restructuring of the economy in this way is not yet, regardless of the statistics, making any impact on the poor and dispossessed in this country.

In last Sunday's *Express*, it is stated that Dunn and Bradstreet did a survey on the country and talked about the rising concerns at the strong growth in 1994 which has so far had little positive impact on marked inequalities in the society.

So I do not like us to be in any kind of self-congratulatory mood when we are approaching these largely economic questions because then we lose sight of these considerable difficulties in our society which are directly related to the restructuring of the economy. If these marked inequalities and the levels of violence in the society continue or increase, then I think it is important to remind the Government that all of this work will be a waste of time. All that will happen is that those in the society whom this does not reach will not respect it, and we will have a level of discomfort in the society which will make much of this work unproductive.

I want to make it very plain that I have a very real problem with this constant reference, by reason of the economic statistics, good as they may be, and by reason of this restructuring of the economy, to this supposed mood of optimism in the country. If that is what politicians have to say outside the Parliament to get elected, well that is their business, but inside the Parliament, Mr. President, as we spend an extra day today, and tomorrow, in intense activity reforming business

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legislation, we have to ask constantly: For whom are we restructuring the economy?

I want to record again that it is my consistent position—and this provides me with a relevant opportunity to say it—that this mood of optimism in the country simply is unrealistic. There cannot be optimism, whatever the economic indicators, if the performance of the country is stained with the blood of domestic violence, and if overall the country is racked by fear of crime. A poll in Sunday's *Guardian* indicated that 64 per cent of the population is concerned about it. I feel very strongly about it.

4.00 p.m.

I know that it will cause discomfort and I know it will cause people's tongues to reach their teeth, but as I told Minister Mottley, my support for this legislation—and some qualified support which I will give to the Companies Bill—is in no way to be taken as any indication that I am simply going to accept all this restructuring without asking, for whom we are restructuring the economy. I totally reject, and I have a very real problem hearing people talk about, optimism on the same day on which we see the bodies of a family dismembered in circumstances of which we are all aware. I have a very real problem with that. I think it is insensitive and I think it is carrying politics to a ridiculous extreme.

It is necessary to say these things for another reason. When we on these Benches support the Government's endeavours—sometimes we do so with greater reservations than at other times, sometimes we seek to get certain amendments and certain checks and balances—people sometimes, foolishly, take it upon themselves to construe constructive support for the Government as something that it is not. Therefore, against that background—and I have done it consistently and the record would show it—I am reminding the Government, as we deal with this legislation, and as some of us give it our support because we were happy to participate in a meaningful exercise about it, that we are not doing so blindly and we are not doing so in any mood of optimism. I simply want to record that, because I think it is very insensitive in the present circumstances for people to be talking about optimism when we are facing the kind of problems to which I have referred.

Mr. President, at the risk of your leaning forward in the Chair, I will say no more on that subject. But I think it is very important to keep asking the question: For whom are we restructuring the economy? For whom are we passing the Securities Industry Bill? For whom will we be giving special attention with all this business legislation? For whom?

Sen. Surendranath Capildeo: Mr. President, I almost feel we have six Senators on the Opposition Benches here.

In my short stay here, I have described legislation brought by the People's National Movement as legislative trivia, legislation by "vaps", legislative obesity. This Bill, for example, suffers from bibliobesity, but today we could call this one 'tranche legislation'. I want to echo Sen. Daly: for whom are we bringing this legislation? While I am echoing Sen. Daly, I want to take issue with my friend, Sen. Mansoor. I want to read from this joint select committee report on page 3, paragraph 6.2. It says:

"Your Committee undertook a clause by clause examination of this Bill and during this process concerns held by Members were dispelled. However, your Committee agreed that it was necessary that a number of amendments be made to this Bill to give effect to its purpose."

A quick perusal of the amendments, a rough calculation, in a Bill with 150 clauses, I went down to at least 122 amendments. Here we have a select committee looking at a Bill with 150 clauses, suggesting at least 123 amendments, and goes on in the report to say: "Your Committee wishes to report that it has completed its deliberations on the Securities Industry Bill, 1995 and the Companies Bill, 1995 and recommends that these Bills be accepted by the House of Representatives and the Senate subject to the amendments listed in Appendix I and Appendix II respectively."

Appendix I, deals with the 150-clause Securities Industry Bill. Appendix II, deals with the Companies Bill which is exceeding 500 clauses but has only 10 amendments.

So we have the joint select committee with this "tranche legislation," putting in 120 odd bits of amendments for the 150 clauses and 10 amendments for the 500 clauses in the other Bill. It goes on to say:

"The Committee further recommends that in a period no longer than 9 months from the Bill's passage, the Government bring amendments to Parliament that would arise from practical concerns in its implementation."

So I now have to support Sen. Wade Mark that this is cosmetic 'tranche legislation' to drawdown money. I will now tell Sen. Daly that this Bill has no effect on big business, little business, big man, small man; this is a PNM Bill for PNM people.

Mr. President, Sen. Daly said a while ago that "this Bill is for big men, not little boys. When one looks at the Securities and Exchange Commission of the

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United States of America, one sees that the President appoints. How does he appoint? This is an agency created in 1934 in the United States of America and it performs legislative, judicial and executive functions. The President names the SEC's five commissioners, with the advice and consent of the Senate of the United States of America. He selects one of the five members to serve as chairman. That document states, that no more than three commissioners may be members of the same political party. So we come to the question here, when we appoint our five members, who will be the chairman and who will be the five members. If this "tranche legislation" is being passed in its present incomplete form to be completed nine months hereafter, will it be too wrong to assume that we would have to look very carefully at the chairman and the other members of this Commission who are appointed? As Sen. Carol Mahadeo said, when the Local Regional Health Board was being appointed in the East, the names to crop up were only PNM hacks.

4.10 p.m.

Let us get back to the reasoning behind this kind of legislation. This reasoning originated, as the hon. learned Minister would tell you in his Olympian style—I noticed he has a style that is a cut above the rest of the PNM: he would not wear the balisier at all. The man is a cut above them.

This kind of legislation comes from panic. It is when there is panic in business and finance, a panic situation as opposed to a depression or a recession, and the banks collapse, that there is need for this kind of legislation. Or, if there is a situation where people want to borrow funds to do development and investment and the funds are not available. Mr. President, I keep hearing indistinct murmurings coming from the Back Bench—let us get back to the background of this legislation. The legislation is meant to cushion the finance industry in this country. That is the meaning and purpose of this legislation, Sir.

What it tries to do is to have a constant surveillance on people who are experts in fraud and manipulation—the big boys, the white collar boys—and who have gotten away in this country for the last 200 years by way of controlling the banking industry, the legal system and with interlocking directorates with the small man, who has no voice in that at all. The question has been asked: For whom is this legislation, the small man? In fact, how is this thing going to work? To make a stock exchange work, one must have money and for a securities and

exchange commission, to have control over a stock exchange, there must be money to invest in that stock exchange. Where is the money going to come from? Who is going to invest in this thing? Only the people who are putting up the kind of construction that we are seeing today are going to invest? Not the man who has to slaughter his three children and his wife, he is not going to invest; not the fellow who was found hanging at Laventille; not the poor lady who was found with a telephone cord around her neck this morning. They are not going to invest.

The question is asked: What is happening in this country? How come there could be this kind of dynamism in the financial sector and this disaster amongst the people? It is quite obvious that something is wrong in the economics; something is wrong in the figures they are giving us and until we get into office and find out and prosecute the relevant people, the country will never know the truth.

In America—and as good mimic men we ape the Americans to the nth degree—the Securities and Exchange Commission was set up because of corruption in the public utilities. The Government passed Public Utility Holding Company Act of 1935 and the Investment Company Act of 1940 because of evils that a federal trade study revealed in electricity and gas holding companies. We have had here in the Senate repeated requests for the truth—the truth in the T&TEC deal and the truth in the natural gas deal; we do not know. By coincidence that is what led to the SEC in America. It seems to me that a UNC Government is going to have to revise this piece of legislation drastically to deal with what took place with T&TEC and the natural gas deal.

In this entire Bill we are seeing advertisements with respect to mutual funds in this country. Where is the protection for the investor in some mutual funds? In countries mutual funds—and the hon. Minister of Finance will tell you—have led to total disaster for some investors. In fact, the mutual fund market is dying slowly across there. Where is the protection? In fact, this particular piece of legislation is meant to control fraud, the intentional misrepresentation of a material fact resulting in damage to the victim. There are so many different kinds of fraudulent schemes, but I dare not try to enumerate them here at all.

One of the earliest fraud schemes that led to the creation of this kind of legislation was done by a man called Ponzi. Do you know what he did? He did what used to go on in the days when the PNM had control of foreign exchange through the EC forms. Ponzi developed a scheme of trading for people by telling

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them he could invest in foreign exchange and make money for them; and by the time they caught up with him, poor people's money, millions of it had gone. Then there is the kind of white-collar fraud which is going to take place in this country unless we do something about it.

In America as early as 1963, there was a case called SEC v. Capital Gains Bureau. That was a group of geniuses who told the small people in America that they were going to publish investment magazines for them; and they were going to buy investments according to how they were told in the magazines. What did they do? They went and published their magazines and the poor trusting people invested in what was recommended; the owners of the magazine promptly sold their shares, pocketed the money and the investment collapsed. This kind of legislation is supposed to stop that kind of bobol and corruption. America, in their wisdom, passed the Investment Advisors Act.

There is talk that this is all part of a package of liberalization; this is all part of the new economic thrust in the country; this is all part of the opening up of this community and country to the new economic horizon that the world is showing us, then do not come with this alone, because a perusal of American history will show that from 1930 onwards there was a series of legislation that had to be passed contemporaneously or concomitantly with this legislation in order to make it work.

4.20 p.m.

We have a problem in this country, and it is a very real problem, it is the problem of being a mere 1.169 million people. It is the problem where big business could be counted on the fingers of one's hands. The research has been done by UWI—

Hon. Senator: Capildeo and Capildeo.

Sen. S. Capildeo: We are larger than big. When you look at me, you look at large.

The research has been done by UWI, it is somewhat dated now, but the hon. Minister in his Olympian wisdom, I am sure, will recall it. The interlocking directorates permeate all big business and banking in this system, all, without exception. When one looks at the legal firms which work for these businesses, one would see that the interlocking directorates are not only lodged with the banking and the business enterprises, but with the legal firms too. From where is the small man going to get his protection, and where are we going to find the five

independent persons to run this SEC? How are we going to restore confidence in the people that we can actually run such an institution? That is the problem.

When one looks at the operation of the Central Bank in this country over the last 20 to 25 years, one sees a monolith. It is made of granite without any windows where nobody knows what goes on. No one has, up to now, found out what happened in the boom years. No one knows what has happened and what did take place when there was foreign exchange; up to now no one can understand how we have the most secured currency in the world. This is the only currency in the world that is floating and yet so fixed—we are not moving. No other financial genius in the world exists as we have here.

Sen. Barrack: They are floating on top of a raft.

Sen. S. Capildeo: All over the world, currency is going up and down, people are speculating on currencies but this People's National Movement Government has put a currency that is fixed and final.

Mr. President, the Government has not only fixed the currency; it has fixed the people of Trinidad and Tobago too. Because while it has said things are good, and we are making money and our Prime Minister—what is wrong with that man? He is saying crime is a thing of the past—no, that was my Friend there.

Sen. Barrack: Manning is a psychologist.

Sen. S. Capildeo: Manning gets up and he says unemployment will be over with; then he revises it and says, we are going to bring it down a bit to 16 per cent. Even in the face of that, even if unemployment is brought down, from where is the money going to come to generate a Stock Exchange that will make the SEC a viable institution and proposition? From where is it going to come?

Dr. Saith: Wait and see.

Sen. S. Capildeo: I am being told by the hon. Minister of Development to wait and see. You see me, I do not wait to see, I get up and get, so call the election date and then we will go and we will see.

If in the face of what is taking place—

Mr. Mottley: On what seat are you going up?

Sen. S. Capildeo: Do you want to know on what seat I am going up?

Sen. Barrack: What kind of irrelevance is that? Were you sleeping or what?

Sen. S. Capildeo: Do you see the fear? You all are scared of this man. I do not need a seat, brother.

Sen. Barrack: How can you ask a question like that?

Sen. S. Capildeo: I understand that Barry Sinanan is going to be chairman of this Stock Exchange and he is no longer interested in San Fernando West.

A Securities Exchange Commission is meant to work where one has a financial industry that is flourishing—and this country does not have a flourishing financial industry. There is a set of mimic men running some banking industries where all the businesses have been sold to persons outside who are not going to be part and parcel of the development here. All the industries which have been sold, do you think the people are going to bring their money here to invest in this country so that the SEC could regulate them? Do you think that is going to take place? Do you seriously believe that is going to happen? In fact, the Government is so busy divesting that it bought AVM. Could the Government explain that to me?

Dr. Saith: Propaganda!

Hon. Senator: Propaganda boy, the Minister of Information.

Sen. S. Capildeo: The Government is so busy divesting. It is divesting T&TEC, WASA, and it goes and buys a television station that is losing money. Explain that to me. How is that possible?

In this system that the Government is trying to regulate, a bank which had as its client a man in transport, turns around, buys out the man, goes into competition with him and almost puts him out of business—I am told actually put him out of business.

When we come to the Securities Bill, the guard—we are going to have some real fun talking about that because our Prime Minister is saying unemployment is falling and we are talking about 40,000 persons earning "dog" wages.

I want the Minister to explain to this country which industries he expects will come into Trinidad and Tobago to boost this Stock Exchange to make the SEC a worthwhile institution that is capable of working. Or will it be a white elephant, a Bill that is passed in Parliament, becomes law so the Government could draw down on the tranche? Tell us how it is going to work, and which local and foreign companies he expects to make the Stock Exchange work so he would give the SEC something on which to chew.

I heard the Minister say—and I am not sure whether I heard correctly—that he is going to import some foreigners to run this SEC, and he is going to put bright, young Trinidadians alongside them. I take objection to that. If we have bright, young Trinidadians, put them to run it.

Dr. Saith: We will put Indera Sagewan.

Sen. S. Capildeo: She left your work and you are vexed with the girl.

Now let us come to something serious which has been occupying my mind. The Minister says the proceedings of the Commission will be similar to those in a court of law. Evidence will be transcribed, orders of the Commission must be in writing, and appeals from the Commission will be to the Court of Appeal. Section 134 (1) says:

"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 self-regulatory organization including...

(2) The Commission may-

(a) issue a subpoena or other request or summons.....

(b) compel a person to give evidence on oath,.....

(2A) ...no person giving evidence before the Commission shall be compellable to incriminate himself, and every such person shall, in respect of any evidence given by him before the Commission, be entitled to all privileges to which a witness giving evidence before the High Court is entitled in respect of evidence given by him before such Court."

4.30 p.m.

Further down:

"(5) A witness at a hearing under subsection (1) may be advised by counsel.

(6) The Commission may admit as evidence at a hearing any oral testimony or documentary exhibit...

(7) The Commission shall make provision for all oral evidence presented at a hearing...to be transcribed."

What you have here, Sir, under section 134 is a full-blooded High Court. It is a full court, and so a question I want to ask the Minister—and I am waiting with

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bated breath for the new Chief Justice's address for the term. For 30-something years Chief Justices at the Opening of Term complain about the deficiency in the legal system and the problems they are having over there with getting matters heard, and getting the system to work. You tell me, Sir, when this parallel court is set up, how are we going to get it to work?

Mr. President, this is a Bill which, really, should have been completely finished by this—what do they call themselves?—Joint Select Committee, and all that should happen, in practice, under what the parliamentary system intended, is that the Bill should have been presented and the Senate would have said, "Yes, go ahead."

Instead, we have to get up and voice our objections to a Bill which has 123 amendments, and which has to be brought back in nine months' time to be further amended, and then there are all the different questions which will arise and which cannot be dealt with; one cannot do justice to it, Mr. President. I will not say it is a farce. I will just add it to the list and repeat the list for the honourable Minister:—legislative trivia; legislation by "vaps"; legislative obesity, and tranche legislation. We should try to stop that. We should try to grow up in the Senate and have perfect legislation.

I thank you, Mr. President.

Sen. Carol Mahadeo: Mr. President, please, may I be allowed one minute to make a correction before Sen. Capildeo takes his seat? Kindly. While I enjoy listening to him—and I must say straight out I did not want to interrupt him at that point even though I heard comments from the other side—when I spoke on the Regional Health Authorities Bill some time ago, and it came up that membership of the Eastern Division had already been determined and so forth, after hearing the eight names that the then Minister, Minister Eckstein called out, I rose and said in answer to him that although he said that no appointment would be politically motivated, I did know, for a fact, because I come from the East, that at least five members of the eight-Member Board had some political suasion. This is what I actually said—

Mr. Draper: Not PNM.

Sen. C. Mahadeo:—and *Hansard* will support me on that. As to what political suasion, particularly, I did not go on to say.

Sen. Capildeo: Mr. President, Sir, I accept what the honourable lady said. Five out of eight had political persuasion.

Mr. Draper: You never understood facts.

Mr. President: The Sitting is suspended for approximately half-an-hour. The Senate will resume at 5.05 p.m.

Earlier in the proceedings, we said we would do the questions on the Order Paper at a convenient time, and I believe when we resume would be a convenient time to answer the questions before continuing with the debate.

4.35 p.m.: *Sitting suspended.*

5.06 p.m.: *Sitting resumed.*

ORAL ANSWERS TO QUESTIONS

National Lotteries Control Board Funds (Accreditation to Government)

44. Sen. Diana Mahabir-Wyatt asked the Minister of Finance:

Could the hon. Minister of Finance please state:

- (a) How much money has been collected by the National Lotteries Control Board since the new Play Whe and Lotto schemes began?
- (b) How much of this has been accredited to the Government?
- (c) How has the money accredited to the Government from the National Lotteries Control Board been spent?

The Minister of Finance and Minister of Tourism (Hon. Wendell Mottley): Mr. President, revenue collected to June 1995, was \$935,145,552. Revenue accredited to Government from the Play Whe and Lotto schemes in respect of the period July 1994 to June 1995 was \$160 million. A breakdown of this total is as follows:

July to December, 1994	\$70 million
January to June, 1995	\$90 million

It should be noted that before moneys are paid over to the Treasury, the following deductions are made out of the total sales. There is prize money payout of \$496,873,408 for Play Whe and \$83,161,846 for Lotto. Then there are commissions to agents, of \$56,108,773. The balance are other payments and the remittance to the Treasury is \$160 million.

The money accredited to Government from the National Lotteries Control Board is deposited into the Consolidated Fund in accordance with the Audit and

Exchequer Act, Chap. 69:01. From this fund expenditure relating to the Appropriations Act as approved by Parliament is met.

Sen. Mahabir-Wyatt: Mr. President, can the hon. Minister tell us if there are any plans by the Government to specifically allocate some of the moneys won from the National Lotteries into the social safety net?

Hon. W. Mottley: Mr. President, at this stage there is no specific plan by the Government, but the National Lotteries Control Board has made such a proposal to the Government, that some of the moneys that go into the Consolidated Fund be earmarked for certain specific purposes, especially social purposes, and the Government is, at this time, considering this matter. If it so decides, then that would have to be a budget matter, because the proceeds of the lottery for 1995 have already been allocated to the Consolidated Fund and therefore if there is to be a change, it would have to be applicable for 1996.

Foster Care Pilot Programme

45. Sen. Diana Mahabir-Wyatt asked the Minister of Social Development:

Could the hon. Minister please state:-

- (a) How far has the pilot programme for placing children in foster care progressed; and
- (b) How much has been allocated for its implementation?

The Minister of Social Development (Hon. Russell Huggins): Mr. President, hon. Senators are advised that a foster care committee comprising three persons and three foster care officers was recently appointed. The sum of \$232,540.00 has been provided to facilitate implementation of the foster care system.

The foster care committee will be required, inter alia to:

- advise the Minister of Social Development on policies and programmes relating to the foster care system;
- oversee the development and implementation of the system;
- develop appropriate criteria and guidelines for the selection of children for foster care.

Various consultants will be engaged, as required during the course of the programme, to provide advice and technical expertise to the committee on issues relating to the conduct of its business. The foster care officers will be required to manage and implement the foster care system.

Accreditation Under Domestic Violence Act

46. Sen. Diana Mahabir-Wyatt asked the Minister of Social Development:

Has the hon. Minister accredited any counsellors, agencies or individuals under section 5(1)(k) of the Domestic Violence Act?

The Minister of Social Development (Hon. Russell Huggins): Mr. President, hon. Senators are advised that the Probation Division of the Ministry of Social Development has been providing interim counselling services to victims of domestic violence under section 5(1)(k) of the Domestic Violence Act. The Ministry of Social Development, having provided the opportunity for staff to acquire relevant training to provide counselling services, is now employing such staff in the National Family Services Division. It is anticipated that within the next three months these officers will be authorized by the Minister of Social Development to provide services under section 5(1)(k) of the Domestic Violence Act.

SECURITIES INDUSTRY BILL

Sen. Dr. Eric St. Cyr: Mr. President, I just want to make a few very brief remarks. I agree that this piece of legislation is necessary to update the practical aspects of the capital market, but as I look at the length and complexity of the document and the many areas we try to cover, I am reminded of the Word which says, "the heart is deceitful above all things and desperately wicked." It seems we are really trying our best to control the behaviour of people in this area.

The one comment I want to make of substance is that when in the late 1970s there was concern about the development of capital markets, one of the issues then was that trading in securities seemed to have been restricted to a very small circle of people, largely behind closed doors and that it was important to open up this area for the entire country to participate. That was the reason that the existing legislation had all trading cross the Stock Exchange floor. I really wonder whether this new legislation is going back on that, and whether there is good and sufficient reason for us to change. Because one of the consequences could be that companies might withdraw their listing if they could trade large blocks outside the floor of the Stock Exchange, and we should be doing everything to encourage all companies to list and to broaden the market.

I really would wish, in the hon. Minister's reply, to know whether this matter had been looked at. If I am wrong, well I stand corrected. If not, could we look at that particular aspect again?

With those very brief remarks, I thank you, Mr. President.

5.15 p.m.

The Minister of Finance and Minister of Tourism (Hon. Wendell Mottley): Mr. President, before I proceed any further, I draw attention to certain amendments which I have circulated for consideration; one of which, in particular, is the subject of some debate here—I know Sen. Mansoor made specific reference to it.

The Government has done some canvassing and it is the strong opinion of the professionals in the field that if we seek to make the commissioners full-time, we are not going to get any quality. That is, the kinds of weight of people we require to sit on the SEC, for whatever salaries we are likely to pay them, if we make them full-time and tell them that they are to sit on the Commission and cannot practise law, or whatever profession, we are not going to get them. Obviously it would be best if we could have full-time quality people, but the practical situation in Trinidad and Tobago is causing us to retreat, and I put that before the Senate.

In the existing clause, as well, I want to read one correction in the amendments I proposed. That is the inclusion of a new subclause (7):

"Notwithstanding subsections (1) and (2), the first set of bye-laws made under those subsections may be made by the Minister without the recommendation of the Commission and for the purpose of this subsection, section 132..."

not 133

"...shall not apply."

So, we are moving amendments in first the column, clause 10, the existing 131 and 132, and they have been circulated.

Mr. President, I would now move on to deal with the contributions of hon. Senators. The first one was from Sen. W. Mark who asked specifically, why is there no specific legislative provision in the SEC for a pension plan? We have chosen not to legislate it. There is nothing prohibiting the establishment of a pension plan, and Sen. W. Mark, I would imagine, with his privileged information—his insider trading—would proceed from his union to do what probably would be necessary.

Draft bye-laws have been drawn up and specifically we are asking, in the first instance, that the Minister be allowed to draft and provide the initial set of draft bye-laws, so as to get it quickly off the ground.

Sen. Mansoor: Mr. President, would the hon. Minister state if those are the bye-laws with respect to the takeover code?

Hon. W. Mottley: Yes, specifically, so we are off, hopefully, on a good footing to start with.

In that respect, let me deal right away with one of the criticisms from Sen. Capildeo, who talked about the SEC setting up an almost parallel court system and asked how this is going to work, especially after the long history of problems in other jurisdictions.

The Government hopes to benefit from that experience by setting it up well, and recruiting good personnel, but the major issue is that, hopefully, the number of conflicts would not be all that great, and, in any event, it would start on a clean slate. The major problem of the present legal system is the huge backlog. At least we would be starting with a clean slate.

The other matters, if I could proceed, yes, as Sen. Capildeo correctly pointed out, even the United States of America with its vast and complex machinery, has only five commissioners. We believe that to find five solid commissioners we would really have to scour to find the people with the expertise who are prepared to give of their time. We believe that five is a good model to follow with three as a quorum. More than that, it again brings us up against the pragmatic limitations of how many people have the time and capacity to deal with these matters in Trinidad and Tobago.

Sen. Mahadeo: Hon. Minister, on the heels of the contribution of Sen. Capildeo, who asked the question, since the Government wants to bring young minds, does the Government want the chairman to be a foreigner giving the expertise and experience necessary? Is the Government still maintaining that, or would it change its mind on that aspect?

Hon. W. Mottley: Mr. President, I was merely expressing a personal opinion, but the recruitment would be thrown open to nationals as well as to people from abroad. The ideal situation would be to find a national who has a vast amount of experience abroad and who is prepared to return, but as we go about this business of recruitment—especially in areas where the expertise and experience are abroad—I know from our own recruitment systems how difficulty it is to find people of such calibre.

I know, for instance, that only recently I met the former President of the Republic of Trinidad and Tobago attempting to recruit people for the staffing of

the EMA. It is a difficult matter. He has scoured applications here and he felt that he also had to seek and meet people overseas—hopefully some Trinidadians and Tobagonians as well. It was only that which caused me to make that statement. That was the history of how we set up the Central Bank many years ago and it worked for us. We did not then have any experience in central banking and we do not have many people here in Trinidad—because the stock market is so thin—who would be back in Trinidad waiting on jobs, not as a broker, but to be in a situation where they are overseeing the operations of an SEC.

Therefore, if I have overlooked such persons, I make an apology, but it is only my own experience in other related matters that has caused me to say that. I can give the Senate the absolute assurance that if such talent does exist, it would be most welcome.

There is the broad question that is put by Sen. Daly, and echoed by Sen. Capildeo; for whom are we passing this legislation and, what is the benefit in the restructuring of the economy for the ordinary citizen? This is a very profound question, and deserves an equally staid answer.

The fact is that we have not set about the restructuring of the Trinidad and Tobago economy because of some fad. We met a situation that was not at all good and, certainly, not working to the advantage of the ordinary citizen of Trinidad and Tobago. Poverty and hunger have not been visited on Trinidad and Tobago because of the restructuring of the economy. Poverty, hunger and crime have come about because of the breakdown of the old economic order, which could not subsist in the modern world, as we have found it today.

5.25 p.m.

When the oil economy broke down the other aspects of that economy, the economy that subsisted on import substitution and so forth—when there was no oil dollar to feed the local market, that sector also broke down. At the same time there was the double calamity of the main drive of the economy broken down, and because the main drive could not feed all of the subsidiary drives that broke down as well. And that is what caused a PNM Government in 1981 to 1986 to go out there and use up its savings and then a subsequent NAR Government to come in and borrow and hugely increase our debt, all in an attempt to sustain a standard of living that we had got accustomed to during the heady oil days, but which could not be sustained when the oil economy and the subsidiary drive broke down. Those are the facts.

When we could not borrow anymore and we were up in debt, then poverty, crime and everything else started to rise. The Government had to restructure. It could not wait until every last thing collapsed. I have to be careful about calling the names of other countries which felt that even beyond that, they could continue to over-borrow and do everything else and then go back to populist policies. Today, they are in a situation where the exchange rate has crossed 100 per cent and the difference between the official rate and the black market rate is the difference of 50 or 60 bolivars—I should not have said it. There are riots and there are all kinds of problems. We could not wait until or hope that we were going to be bailed out by a price increase in oil, or figure that we could borrow and get people to forgive our debts. Certain actions had to be taken to rebuild the foundations of this economy on which we could then proceed to see jobs being created on the strength of wealth. It takes wealth to construct a social safety net. A social safety net is not a cobweb. It is a web of money and resources built and structured underneath the poor. That is the answer I give the Senate today.

When we restructure the economy there are different elements of that restructuring, this being one, and we restructure the economy to rebuild a foundation for growth because growth will deliver wealth, and at least with wealth in one's hands, one has the option as to where one spends it. Without wealth there is no option whatsoever. I will say again, for the benefit of this Senate, that in the absence of wealth, good intentions are worthless. That is the basis on which this Government has proceeded and this restructuring of the economy is part of that.

Mr. President, on the question of mutual funds, the Senator is absolutely right. Mutual funds are a very important element of a financial system and as of this time there is no mutual fund legislation for the protection of persons investing in mutual funds. There is a memorandum of understanding between the Central Bank and certain operatives in this area within the financial system. That is working satisfactorily, pending the introduction of mutual funds legislation that will regulate these areas of financial activity.

Sen. Capildeo: Is that memorandum of understanding binding in any way, or is it a moral understanding?

Hon. W. Mottley: Mr. President, it is a moral understanding and, therefore, it is unsatisfactory. The Government, therefore, would like as soon as possible to bring proper legislation before this Senate. At least there is an understanding and regular meetings and discussions go on as to what can and cannot be done. That is not a satisfactory way of proceeding in the long term, and I give this Senate the assurance that this legislation policy framework is being worked on at present.

Sen. Barrack: How many years will it take?

Hon. W. Mottley: I do not want to say, but I imagine that would be before this Senate next year.

On the question of the lack of supply to the local stock market, which makes this Bill, in the eyes of some Senators, worthless, the Government has been moving strongly in other areas to promote the listing of companies on the stock market through changes in tax legislation and so forth.

The Government is strongly encouraging the listing of companies both in terms of this legislation, and other means so to do. In addition, the Government is directly impacting that through the divestment procedure. The last company coming onto the market was the National Flour Mills and there is every intention of bringing further issues of Government-held shares to the market—TSTT is certainly one of them.

I think these were some of the major matters raised by Senators on the other side.

Sen. Prof. Spence: I wonder if the hon. Minister would address the point made by Sen. Prof. St. Cyr. That question was the one that bothered me most.

Hon. W. Mottley: Could Sen. Prof. St. Cyr repeat the point, please?

Sen. Prof. St. Cyr: I said prior to the establishment of the existing Stock Exchange, most of the trading in shares was done in a small closed circle without an opportunity for the wider public so interested to participate. In the new Bill trading is permitted off-market, as it is called. I wondered whether it is good reason to change what now exists and whether that is not likely to cause people to have a disincentive to list and probably go as private companies again.

Hon. W. Mottley: Mr. President, that is a real concern. We discussed that during the committee stage and the technicians felt that we had to proceed in the manner in which we are now proceeding. I do not remember the exact reasons advanced at that stage—if Senators could excuse me a minute, let me see if I could get some advice on this.

The way we had decided to deal with that is, off-the-market would be subject to stamp duty and that would be a powerful incentive for listing.

Thank you, Mr. President.

5.35 p.m.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Mr. Chairman: Before we start, I take it that everybody has a copy of the cyclostyled Bill. This, I am advised, contains all the amendments recommended by the joint select committee. There are amendments to three clauses proposed by the Minister of Finance and another proposed by Sen. Daly. This Bill and the other Bill, which I believe will be done tomorrow, are conveniently divided into sections. I will deal with it section by section. We will do the clauses in groups section by section. If there is an amendment in the middle of a section, I will deal with the clauses up to the one before that amendment, deal with the amending one, and then the subsequent ones in the rest of the group.

Does everybody understand that?

We are dealing with Part I.

Clauses 1 to 3 ordered to stand part of the Bill.

Part II.

Mr. Chairman: In Part II there is a proposed amendment to clause 10.

Clauses 4 to 9 ordered to stand part of the Bill.

Clause 10.

Question proposed, That clause 10 stand part of the Bill.

Sen. Huggins: Mr. Chairman I beg to move that clause 10(3)(a) be amended by inserting before the word "engage" the words "in the case of the General Manager" and delete the words "Commissioner or".

Sen. Mansoor: I thought that the fact that the commissioners were full time had dealt with the difficulty which we have been expressing over time, but now they are back to being part-time operators. I think it is an experiment so we have to go on with it. Let us see how it works.

Sen. Daly: Is it that the general manager cannot but the commissioners can? Is that the effectiveness?

Sen. Huggins: Yes.

Sen. Daly: Thank you.

Question put and agreed to.

Clause 10, as amended, ordered to stand part of the Bill.

Sen. W. Mark: You are just mentioning the clause and you are moving on. I have some reservation about clause 31. I would like the hon. Minister to give me an explanation for clause 31(5). I did not submit it in an amended form, but I wanted him to clarify it for me.

Mr. Chairman: I hope you all understand what I said I was doing.

Sen. W. Mark: Yes. I think I appreciate it but you were moving so rapidly, I got lost.

Mr. Chairman: To make it clear, if you have any particular clause in mind, when we come to that Part, please say that you want to raise an amendment to that particular clause. I said that I have notice of amendments proposed to clauses 10, 124, 131 and 132. Those are all the amendments I have notice of, so I am only going to stop for those. If you have amendments to propose to any other clause please identify them early.

Sen. W. Mark: I wanted the hon. Minister to give me an explanation as to why we are putting into law the Institute of Chartered Accountants and why not leave it broadly.

Mr. Mottley: Mr. Chairman we want to leave it to the Commission. The history of this Parliament is to have stuff coming years later quite often. The Auditor General is overworked. We would like to leave it to the Commission to get proper accounting and auditing services. The joint select committee focussed on this and this is the result. In going outside of the Auditor General because of constraints of work, time and responsibility to the Central Government, let the Commission try to find the best people. We want to ensure that in selecting an auditor at least there is some professional-

Sen. Mansoor: Mr. Chairman, if I may, to the best of my knowledge the Auditor General is a member of the institute and maybe most of his professional staff are members of the Institute, which is created pursuant to an Act of Parliament. I think it would be a very strange circumstance if the Auditor General was not a member of the Institute.

Clauses 11 to 31 ordered to stand part of the Bill.

Part III.

Mr. Chairman: We now move on to Part III. There are no proposed amendments.

Sen. Dr. St. Cyr: Clause 54.

Mr. Chairman: That is in Part IV.

Sen. Dr. St. Cyr: I am terribly sorry.

Mr. Chairman: Part III consists of clauses 32 to 51.

Sen. W. Mark: I had asked the hon. Minister to indicate why we were not establishing a timeframe for hearing in clause 50. Once a complaint is lodged with the Commission, how it is structured here, it could almost be a never-ending kind of exercise. Because of the sensitivity of the securities market, and the need to imbue confidence, I am suggesting that a timeframe should be established for determining these matters.

I did not put it in the form of an amendment, but I thought the Minister would have looked at it and judged it on its merits to determine if it would be a useful suggestion. I think it is important to establish a timeframe for these complaints. If you leave it open, people could begin to lose confidence in this system rapidly. There must be some rapidity in determining matters. I do not have a specific recommendation but I am saying that is a matter we can look at.

5.45 p.m.

Sen. Mansoor: I see the merit in what Sen. Mark is saying, but I would suggest that maybe the better place to do that would be in the rules rather than in the main legislation. It is hard to tell a Commission that it has to do something by a certain time. The rules should take care of that.

Mr. Chairman: Does anyone else have anything on the clauses in Part III?

Clauses 33 to 51 ordered to stand part of the Bill.

Part IV.

Clauses 52 to 63.

Question proposed, That clauses 52 to 63 stand part of the Bill.

Sen. Dr. St. Cyr: I think there is a typographical error in clause 54(2)(e)(i). I think that should be "in economics, banking". What it says here is "economic banking".

Mr. Mottley: Agreed.

Question put and agreed to.

Clause 54, as amended, ordered to stand part of the Bill.

Clauses 52, 53, and 55 to 63 ordered to stand part of the Bill.

*Part V.**Clauses 64 to 66.*

Clauses 64 to 66 ordered to stand part of the Bill.

*Part VI.**Clauses 67 to 78.*

Question proposed, That clauses 67 to 78 stand part of the Bill.

Sen. Dr. St. Cyr: I have a question on clause 75(4). I wondered why it states "not more than thirty-five purchasers" rather than any other number. Is there a special reason? Similarly, in clause 77(3), it says "one year and twenty days". Is there any significance to those numbers?

Sen. Mansoor: Mr. Chairman, I think 50 is a very important number. Fifty at trust is public. There is a smaller number of persons and perhaps by definition more sophisticated investors, so there is a smaller offering and therefore the requirements are less rigorous. I think that is the general drift of this.

Sen. Dr. St. Cyr: Why not 25?

Sen. Mansoor: I think it is a convenient cut-off point between one and 50.

Sen. Dr. St. Cyr: And in 77(3) it says, "continue longer than one year and twenty days from the date". Is there special significance to that?

Sen. Mansoor: I think so. Under clause 69 a prospectus is presented to the Commission which has an option to issue a receipt which basically says "Go ahead". After 120 days circumstances could have changed quite dramatically. I think the purpose is not to carry it on forever.

Mr. Mottley: It has to do with the one-year reporting and then 20 days gives you a period after that to catch up.

Sen. Dr. St. Cyr: Thank you very much.

Mr. Chairman: Any other proposed amendment to Part VI?

Clauses 67 to 78 ordered to stand part of the Bill.

*Part VII.**Clauses 79 to 101.*

Question proposed, That clauses 79 to 101 stand part of the Bill.

Sen. W. Mark: In clauses 96 and 97 the Commission prescribes standards of conduct of a registrant. We have the existing rules of the Stock Exchange being effective once this Bill is passed. When will we get the regulations to put this Bill in effect? The existing rules are severely limited.

Mr. Mottley: We have the bye-laws and they are asking permission to have the Minister of Finance issue the initial set of bye-laws.

Sen. W. Mark: So the regulations and the bye-laws are one and the same?

Mr. Mottley: Yes.

Clauses 79 to 101 ordered to stand part of the Bill.

Part VIII.

Clauses 102 to 119.

Clauses 102 to 119 ordered to stand part of the Bill.

5.55 p.m.

Part IX.

Clauses 120 to 123 ordered to stand part of the Bill.

Clause 124.

Question proposed, That clause 124 stand part of the Bill.

Sen. Daly: Mr. Chairman, I beg to move the following amendment:

"In section 124:

Add a subsection 1(d) to read as follows:

- (d) acquiring shares, stocks, unit certificates, participation certificates or certificates of shares or interest through:
 - (i) employee profit sharing plans and employee stock ownership plans established to provide for the ownership of such securities by all permanent employee;
 - (ii) sale or purchase of such securities by an employee or director not exceeding one half of one per cent of the issued share capital of his employer over a period of one year."

Mr. Huggins: Mr. Chairman, we have no problems with the amendment.

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Question put and agreed to.

Clause 124, as amended, ordered to stand part of the Bill.

Clauses 125 to 127 ordered to stand part of the Bill.

Part X.

Clauses 128 to 130 ordered to stand part of the Bill.

Part XI.

Clause 131.

Question proposed, That clause 131 stand part of the Bill.

Sen. Huggins: Mr. Chairman, I beg to move the following amendment for the reasons put forward by the Minister in his winding up:

"Existing 131 Insert after subclause (6), the following subclause:

'(7) Notwithstanding subsections (1) and (2), the first set of bye-laws made under those subsections may be made by the Minister without the recommendation of the Commission and for the purposes of this subsection, section 132 shall not apply.'"

Sen. Daly: Mr. Chairman, I think this is a well-intended amendment, particularly as we agitated in committee for the takeover code to be promulgated almost immediately. This is a small point but small points cause big trouble.

I wonder why in the second line it did not simply say, the first bye-laws made under those subsections. I am not a parliamentary draftsman but my concern is, first of all "set of" is not necessary because clause 131(1) talks about bye-laws and "set of" might suggest that the Minister has to make them as a set; that is to say, he has to make all the bye-laws under clause 8(1) in one promulgation. I do not know whether that point has any merit, but that is how the drafting strikes me. Why can we not simply say, 'the first bye-laws' because clause 131(1) talks about bye-laws?

Mr. Chairman: With regard to the proposed amendment by the Minister to the existing section 131 to add a new subclause (7), there are two corrections. In line 2, delete the words 'set of' and in the penultimate line "133" should read "132."

Sen. Daly: Mr. Chairman, I am sorry, I am still concerned about clause 131(7). I am wondering whether it is necessary to make it plain that the bye-laws

may be made, so to speak, one at a time. Taking out "set of" has helped with the problem, but does it mean that bye-laws can be made only once or can he make them at different times, under A, B, C and so forth? If the draftsman thinks it is clear enough, that is fine, but I am concerned.

Sen. Dr. Saith: Are you saying, to add "each subsection" instead of "those subsections"?

Sen. Daly: It might be better so. The problem is that we do not want someone to come along and argue that you must do all at the same time.

Sen. Dr. Saith: Okay, "made under each of those subsections".

Sen. Daly: Yes, I think that is better.

Mr. Chairman: Are there any further corrections or amendments to the proposed amendment?

The proposed new subclause (7) will now read:

"Notwithstanding subsections (1) and (2), the first bye-laws made under each of those subsections may be made by the Minister without the recommendation of the Commission and for the purposes of this subsection, section 132 shall not apply."

Question put and agreed to.

Clause 131, as amended, ordered to stand part of the Bill.

Sen. W. Mark: Mr. Chairman, could the hon. Minister say what timeframe he has in mind in terms of having those bye-laws formulated?

Mr. Mottley: The problem is to have the Commission up and running and from where I stand at the moment [*Interruption*] Early next year.

6.05 p.m.

Clause 132.

Question proposed, That clause 132 stand part of the Bill.

Mr. Chairman: There is an amendment proposed to clause 132.

Sen. Huggins: Mr. Chairman, I beg to move that clause 132 be amended as follows:

"A. In subclause (1) (a), delete the word 'make' and substitute the words 'recommend to the Minister'.

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[SEN. R. HUGGINS]

Monday, October 02, 1995

- B. In subclause (5), delete the words 'make, amend or revoke' and substitute the words 'recommend the making, amendment or revocation of'."

Mr. Chairman, that is just to make it clear that it is the Minister who makes the regulations.

Mr. Chairman: We will leave it as it is.

Question put and agreed to.

Clause 132, as amended, ordered to stand part of the Bill.

Clauses 133 to 149 ordered to stand part of the Bill.

Part XII.

Clause 150 ordered to stand part of the Bill.

Question put and agreed to, That the Bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment; read the third time and passed.

Motion made, That the Senate do now adjourn to Tuesday, October 03, 1995 at 1.30 p.m. [Sen. Dr. The Hon. L. Saith]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.07 p.m.