

**Fourth Session Fourth Parliament Republic of Trinidad  
and Tobago**

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**REPUBLIC OF TRINIDAD AND TOBAGO**

**Act No. 32 of 1995**

[L.S.]

AN ACT to repeal and replace the Securities Industry Act, Chap. 83:02 to establish a Securities and Exchange Commission in Trinidad and Tobago, to provide for the regulation of the security market in Trinidad and Tobago and for connected matters.

*[Assented to 6th October, 1995]*

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

## PART I

## PRELIMINARY

- Short title            1. This Act may be cited as the Securities Industry Act, 1995.
- Commencement        2. This Act comes into operation on a date to be fixed by the President by Proclamation.
- Interpretation        3. (1) In this Act—  
“associate”, where used to indicate a relationship with any person, means—  
    (a) an issuer of which the person beneficially owns or controls, directly or indirectly, voting securities entitling him to more than ten per cent of the voting rights attached to outstanding securities of the issuer—  
        (i) under all circumstances; or  
        (ii) by reason of the occurrence of an event that has occurred and is continuing;  
    (b) a partner of the person acting on behalf of the partnership of which they are partners;  
    (c) a trust or estate in which the person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;  
    (d) a spouse or child of the person; and  
    (e) any other relative of the person or of his spouse if that relative has the same residence as the person;  
“association of securities companies” means an organization of securities companies that—  
    (a) supervises its members to ensure compliance with this Act;

(b) regulates the conduct of its members or of any other person in the securities market; or

(c) regulates the entry of any person into, or the prices for services in, the securities market;

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

“broker” means a person engaged in the business of effecting transactions in securities for the account of others;

“by-law” means a by-law made by the Commission under section 131;

“call” means an option to demand delivery of a specified number or amount of securities at a fixed price within a specified time, but does not include an option or right to acquire securities of the issuer, or an affiliate of the issuer, that granted the option or the right to acquire;

“clearing agency” means a person that—

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

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

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

(d) performs any combination of two or more functions referred to in paragraphs (a) to (c), but does not include a securities company or financial institution acting exclusively in the ordinary course of its customary business unless the Commission prescribes otherwise;

“Commission” means the Trinidad and Tobago Securities and Exchange Commission established under section 4;

“control” in relation to an issuer means the power of a person, or persons acting in concert by virtue of an agreement, arrangement, commitment or understanding, to secure by means of—

(a) the holding of shares or the possession of voting power in or in relation to that issuer; or

(b) any other power conferred by the articles of incorporation or other document regulating the issuer, that the business and affairs of the issuer are conducted in accordance with the wishes of such person or persons;

“Court” means the High Court;

“dealer” means a person engaged in the business of buying and selling securities for his own account who holds himself out, at all normal times, as willing to buy and sell securities at prices specified by him;

“distribution”, where used in relation to trading in securities, means—

- (a) a sale of a security by or on behalf of the issuer of the security that has not been previously issued;
- (b) a sale of a previously issued security purchased from the issuer or an underwriter of the security, other than a security of a reporting issuer that was purchased by a seller less than one hundred and eighty days before the sale, or such other period as the Commission may prescribe;
- (c) a sale of a previously issued security from the holdings of a person or prescribed group of persons if the aggregate holding of the securities of that class by that person or group—
  - (i) enables the person or group to exercise control over the management and policies of the issuer in any manner; or
  - (ii) exceeds twenty per cent of the outstanding voting securities of the issuer;
- (d) a sale of previously issued securities from the holdings of a sophisticated purchaser as defined in section 67 or of a prescribed group of persons if the aggregate number or amount of securities exceeds the number or amount prescribed by the Commission,

and includes a trade involving a purchase and sale, or repurchase and resale, of a security in the course of, or incidental to, a sale of securities mentioned in paragraphs (a) to (d);

“equity security” means a security carrying voting rights—

(a) under all circumstances; or

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

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

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

“file” means file with the Commission;

“filing” means the submission of a document or instrument to the Commission pursuant to a requirement of this Act, other than the submission of a document or instrument pursuant to an investigation;

“financial institution” means a company licensed under the Financial Institutions Act, 1993;

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

“former Stock Exchange” means the Trinidad and Tobago Stock Exchange established under the former Act;

“free capital” means capital which is unencumbered and which is separately held in such form, and only for such purposes, as the Commission may prescribe;

“insider” means—

- (a) an issuer in respect of its securities;
- (b) an affiliate of an issuer;
- (c) a director, officer or employee of an issuer;
- (d) a person who beneficially owns more than ten per cent of the equity securities of an issuer or who exercises control or direction over more than ten per cent of the votes attached to the securities of an issuer;
- (e) any other person whose relationship to the issuer gives him access to a material confidential fact; and
- (f) a person who is informed of a material confidential fact by a person described in paragraphs (a) to (e) and who has knowledge that the informant is an insider;

“investment adviser” means a person engaging in, or holding himself out as engaging in the business of advising another with respect to investment in, or the purchase or sale of, securities;

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

“market actor” means a person registered or deemed to be registered under section 53;

“material change”, where used in relation to the affairs of an issuer, means a change in the business operations, assets or ownership of the issuer that would reasonably be expected to have a significant effect on the market price or value of the securities of the issuer and includes a decision to implement such a change made by the directors of the issuer;

“material fact”, where used in relation to securities issued or proposed to be issued, means a fact that significantly affects or could reasonably be expected to significantly affect the market price or value of those securities;

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

“misrepresentation” means—

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

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

“offer to the public”, in relation to any security, means any offer to the public at large or to any section of the public, whether selected as clients of persons issuing the prospectus or in any other manner by way of advertisement or other form of solicitation, but does not include an offer by an offeror who is not a registered issuer under this Act where the offer is made to fewer than thirty-five persons and the offer can be regarded as not being calculated to result directly or indirectly in

the securities becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or otherwise as being a matter of domestic concern of the persons making and receiving it;

“order” means, unless a contrary intention appears, an order of the Commission or a self-regulatory organization;

“participant” means a person who receives services from a clearing agency other than exclusively—

(a) through another person who is a participant; or

(b) as a—

(i) pledgee;

(ii) judgement creditor; or

(iii) beneficial owner,

for whom a blocked account has been established;

“prescribe” means prescribe by by-laws of the Commission;

“public company” means a company any of whose issued shares or debentures are or were part of a distribution, or an offer, to the public;

“public information” means information which is disclosed—

(a) in a filing;

(b) by means of a press release; or

(c) by means of another form of publicity that is likely to bring it to the attention of a reasonable investor, within a reasonable time for it to be generally disseminated to investors or within such time as the Commission may prescribe;

“purchase” includes—

- (a) any purchase or acquisition of a security for valuable consideration, whether the terms of payment are on margin, instalment or otherwise;
- (b) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing,

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

“put” means an option transferable by delivery to deliver a specified number or amount of securities at a fixed price within a specified time;

“records” means—

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

“registrant” means a person registered under this Act;

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

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

“reporting issuer” means an issuer that has filed a registration statement under section 64 and has not been the subject of an order of the Commission altering its status as a reporting issuer;

“right to acquire a security” means—

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

“sale” includes—

- (a) any sale or disposition of a security for valuable consideration, whether the terms of payment are on margin, installment, or otherwise;
- (b) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing,

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

“Secretary” means the Secretary appointed under section 24;

“securities company” means a company which carries on a business of trading in securities on behalf of others and, without limiting the generality of the foregoing, includes a company which carries on business as—

- (a) a broker;
- (b) a dealer;
- (c) an underwriter;

- (d) an adviser as to the value of securities or as to investing in purchasing or selling securities; or
- (e) any combination of two or more of the foregoing;

“securities exchange” means a person who maintains or provides—

- (a) physical facilities where persons may meet to execute trades in securities; or
- (b) a mechanical, electronic or other system that facilitates execution of trades in securities by matching offers of purchase and sale and includes a securities exchange, a clearing agency and an association of securities companies, and includes the Stock Exchange;

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

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

“security” means any document evidencing ownership or any interest in the capital or debt, property, profits, earnings or

royalties of any enterprise or proposed enterprise and, without limiting the generality of the foregoing, includes any—

- (a) bond, debenture, note or other evidence of indebtedness;
- (b) share, stock, unit, unit certificate, participation certificate or certificate of share or interest;
- (c) instrument commonly known as security;
- (d) instrument or document constituting evidence of any interest or participation in—
  - (i) a profit sharing agreement;
  - (ii) a trust;
  - (iii) an oil, natural gas or mining lease, claim or royalty or other mineral right; or
- (e) right to acquire or dispose of anything specified in paragraphs (a) to (d),

but does not include—

- (f) currency;
- (g) a cheque, bill of exchange or bank letter of credit;
- (h) a certificate or document constituting evidence of any interest in a deposit account with—
  - (i) a financial institution;
  - (ii) a credit union within the meaning of the Co-operative Societies Act;
  - (iii) an insurance company;

- (i) a contract of insurance issued by an issuer;

“self-regulatory organization” means an association of securities companies, a clearing agency or a securities exchange and includes the Stock Exchange;

“senior officer” means—

- (a) the chairman or vice-chairman of the Board of Directors, the managing director, the deputy managing director, the president, the vice-president, the secretary, the treasurer, the financial controller, the general manager or the deputy general manager of a company or any other individual who performs functions for an issuer similar to those normally performed by an individual occupying any such office; and

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

“Stock Exchange” means the Trinidad and Tobago Stock Exchange Limited being a company incorporated under the Companies Ordinance;

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

“trade” or “trading” includes—

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

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

“underwriter” means a person who—

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

but does not include—

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

“voting security” means a security carrying voting rights—

- (a) under all circumstances; or

- (b) by reason of the occurrence of an event that has occurred and is continuing,  
and includes a right, other than a call, to acquire such a security.
- (2) For the purposes of this Act—
- (a) an issuer is affiliated with another issuer if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; and
- (b) if two issuers are affiliated with the same body corporate at the same time, they are affiliated with each other.

## PART II

### THE SECURITIES AND EXCHANGE COMMISSION

#### *Division 1—Establishment, Functions and Powers*

Establishment of the Commission

4. There is hereby established a body corporate to be known as “the Trinidad and Tobago Securities and Exchange Commission”.

Functions of the Commission

5. The functions of the Commission are to—

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

- (d) protect the integrity of the securities market against any abuses arising from the practice of insider trading;
- (e) create and promote such conditions in the securities market as may seem to it necessary, advisable or appropriate to ensure the orderly growth and development of the capital market.

6. For the purpose of the discharge of its functions Powers of the Commission the Commission has power, subject to this Act, to—

- (a) deal with such matters as may be referred to it by any person registered with the Commission under this Act, from time to time;
- (b) formulate principles for the guidance of the securities industry;
- (c) monitor the solvency of the registrants and take measures to protect the interest of customers where the solvency of any such registrant is in doubt;
- (d) adopt measures to supervise and minimize any conflict of interests that may arise in the case of brokers or dealers;
- (e) review, approve and regulate take-overs, 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;
- (f) approve the contents of prospectuses, offering circulars or any form of solicitation, advertisement or announcement by which securities are offered for sale to the public;
- (g) take action against persons registered under this Act for failing to comply therewith;
- (h) undertake such other activities as are necessary or expedient for giving full effect to this Act;

(i) do all things which may be necessary or expedient or are incidental or conducive to the discharge of any of its functions and powers under this Act.

(2) Where the Commission takes any disciplinary action against a financial institution or an employee of any such institution, the Commission shall forthwith inform the Inspector of Banks of the disciplinary action so taken.

Delegation of  
powers

7. (1) The Commission may, by Order, delegate any power or function conferred on it by this Act, except the powers to make by-laws and to hear appeals, to any self-regulatory organization registered with the Commission under this Act or to any senior officer of the Commission.

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

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

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

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

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

(7) Within seven days of the receipt of an application under subsection (6), the Commission shall notify the applicant and the delegatee of the date, time and venue of the hearing to review the decision.

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

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

8. (1) The seal of the Commission shall be kept in the custody of the Chairman or the Secretary, as the Commission may determine, and may be affixed to instruments in the presence of the Chairman and of the Secretary. <sup>Custody and use of seal</sup>

(2) The seal of the Commission shall be attested by the signature of the Chairman and the Secretary.

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

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

(5) Subject to section 9(4), the functions of the Chairman under this section may, in the event of his absence or inability, be performed by a Commissioner authorized by the Commission to act in that behalf.

### *Division 2—Membership*

9. (1) The Commission shall consist of, not more than five nor less than three individuals (hereafter referred to as "Commissioners") who shall be appointed by the President. <sup>Constitution of Commission</sup>

(2) The Commissioners shall be selected from among persons who appear to the President to have wide experience and ability in legal, financial, business or administrative matters, one of whom shall be an attorney-at-law of at least ten years standing.

(3) Upon the commencement of this Act, the President shall appoint all the Commissioners and shall appoint one of their number to be its Chairman.

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

(5) A temporary Commissioner shall have qualifications similar to those of the Commissioner for whom he is appointed to act.

Disqualification for  
appointment

10. (1) 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 pecuniary or proprietary interest in—
  - (i) a securities company; or
  - (ii) a self-regulatory organization.

(2) If an interest mentioned in subsection (1)(b) vests in a Commissioner by gift or will or succession for his own benefit, he shall forthwith disclose the interest to the Chairman and shall within three months thereafter absolutely dispose of the interest.

(3) A person who is appointed Commissioner or General Manager under this Act shall, forthwith after the appointment, declare every interest he has in any security and thereafter he shall not, while holding office as Commissioner or General Manager, as the case may be—

- (a) in the case of the General Manager, engage in any other business, vocation or employment other than that of serving as General Manager; or

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

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

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

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

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

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

- (a) becomes a person of unsound mind;
- (b) is absent from three consecutive meetings of the Commission without the permission of the Minister or reasonable cause;
- (c) is guilty of misconduct in relation to his duties as a Commissioner;
- (d) is sentenced to imprisonment without the option of a fine or is convicted of an offence involving dishonesty;
- (e) is declared bankrupt in accordance with the law of Trinidad and Tobago or any other country;

- (f) in the case of a person possessed of professional qualifications, is disqualified or suspended, otherwise than at his own request, from practising his profession in Trinidad and Tobago or in any other country by an order of any competent authority made in respect of him personally;
- (g) is unable to perform his functions because of illness or for any other reason;
- (h) contravenes this Act or any by-law.

Remuneration of  
Commissioner

12. A Commissioner shall be paid such remuneration and allowances in respect of his office as the President may determine from time to time.

Protection of  
Commissioners,  
employees or agents

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

Confidentiality

14. (1) No Commissioner and no person employed or retained by the Commission shall make use of any confidential information obtained as a result of his relationship with the Commission for his own benefit or advantage.

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

- (a) an official or employee of the Government of Trinidad and Tobago; or
- (b) the duly authorized representative of the Government of another country,

in connection with the enforcement of this Act or similar legislation.

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

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

*Division 3—Proceedings of the  
Commission*

15. (1) The Commission shall ordinarily meet for <sup>Meetings</sup> despatch of business at such times and places as the Chairman may decide but shall meet at least once in every two months.

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

(3) Subject to subsection (4), the Chairman shall preside at every meeting of the Commission and in his absence Commissioner designated by the Chairman shall preside at the meeting.

(4) Where no Commissioner is so designated the members of the Commission present shall elect one of their number to preside at the meeting.

(5) The quorum at every meeting of the Commission shall be three.

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

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

## Committees

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

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

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

## Minutes

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

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

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

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

18. (1) A Commissioner who is in any way, whether directly or indirectly, interested in a matter before the Commission shall declare his interest to the Commission. Declaration of interest

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

(3) In the event that the Commission finds that the interest is such as to constitute a conflict of interest the Commissioner shall not take part in any deliberations on that matter, and shall leave the room during such deliberations.

(4) For the purposes of this section, a Commissioner shall be deemed to have an interest in a matter if he, or his spouse, or his nominee, is a shareholder or partner in, or an officer of, a company or other body of persons having an interest or being involved in a matter before the Commission.

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

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

(2) The Commission may co-operate with an agency of a foreign government in connection with the investigation of a contravention of this Act or any similar written law whether the activities in question occurred in or outside of Trinidad and Tobago.

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

Annual report

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

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

Regulation of  
business

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

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

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

#### *Division 4—Staff*

22. (1) The Commission shall appoint a General Manager who shall hold office on such terms and conditions as the Minister shall approve. Appointment of General Manager and Chief Executive Officer

(2) The Commission may, with the approval of the Minister, appoint the Chairman or the General Manager as its Chief Executive Officer.

23. (1) The Commission may appoint, on such terms and conditions as the Minister shall approve, an expert to assist it in any manner that it considers necessary. Appointment of experts

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

24. The Commission may appoint, at such remuneration and on such terms and conditions as the Minister shall approve, a Secretary and such other officers and employees as it considers necessary or appropriate for the efficient performance of its functions. Appointment of other staff

25. (1) An officer in the public service or in the service of a statutory authority may, with the approval of the appropriate Service Commission and the Commission, consent to be appointed on transfer to the service of the Commission. Transfer of officers to the public service and vice versa

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

Transfer on  
secondment

26. (1) An officer or employee in the public service, a statutory authority, any public or private body, national or international or the Commission may, with the consent of the Commission and with the approval of the appropriate Service Commission or the relevant body, consent to be transferred on secondment to the service of the Commission, or from the service of the Commission to the public service or a statutory authority or other body, as the case may be.

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

#### *Division 5—Financial Provisions*

Funds and  
resources of the  
Commission

27. The funds and resources of the Commission shall consist of—

- (a) such sums as may be appropriated by Parliament;
- (b) all fees and other sums from time to time falling due to the Commission in respect of its operations;
- (c) all other sums or property that may in any manner become payable in any matter incidental to its functions and powers.

Financial powers

28. For the purpose of carrying out its functions, the Commission may, with the prior approval, in writing, of the Minister—

- (a) charge fees for any service provided; or
- (b) charge registration fees; or
- (c) charge fees for transactions effected on a self-regulatory organization.

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

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

**30.** (1) All moneys of the Commission accruing from Cash deposits and payments its operations under the Act shall be paid into a bank appointed by the Commission, and such money shall as far as practicable be paid into the bank from day to day.

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

**31.** (1) The Commission shall keep proper books of Accounts and audit accounts of—

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

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

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

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

- (a) an account of the revenue and expenditure of the Commission;
- (b) a balance sheet;
- (c) a report setting out the activities of the Commission; and
- (d) such other accounts as the Commission may require.

(5) Accounts prepared in accordance with this section shall—

- (a) be audited by an auditor who is a member of, and in good standing with, the Institute of Chartered Accountants of Trinidad and Tobago and who is appointed by the Commission with the approval of the Minister; and
- (b) be signed by the Chairman and not less than two other Commissioners.

(6) The Secretary shall cause copies of the signed accounts to be sent to every member of the Commission, the auditor and the Minister and the Minister shall cause copies thereof to be laid before Parliament.

(7) The Minister may at any time request the Commission to provide him with information concerning any aspect of its administration of this Act, and the Commission shall provide the information requested within fourteen days.

## PART III

THE TRINIDAD AND TOBAGO STOCK EXCHANGE AND OTHER  
SELF-REGULATORY ORGANIZATIONS*Division 1—The Stock Exchange*

**32.** (1) Upon the commencement of this Act, all the property, assets and rights and all the liabilities and obligations to which the former Stock Exchange was, immediately before the commencement of this Act, entitled or subject, are transferred to, vested in and conferred or imposed upon, as the case may be, the Stock Exchange. Transfer of property, assets, etc.

(2) A reference in any written law, deed, contract or other document to the former Stock Exchange shall, upon the commencement of this Act, be construed as a reference to the Stock Exchange.

**33.** Legal proceedings pending immediately before the commencement of this Act by or against the former Stock Exchange may be continued on and after that day by or against the Stock Exchange as the party to the proceedings instead of the former Stock Exchange. Continuation of legal proceedings

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

**35.** (1) The rules of the Stock Exchange (hereafter in this section referred to as “the existing rules”) shall upon the commencement of this Act be deemed to be approved by the Commission under this Act subject to such amendments as the Commission may direct in order to bring the existing rules in conformity with this Act. Rules of the Stock Exchange

(2) The existing rules shall be reviewed by the Commission within two years after the commencement of this Act, to determine whether they are in conformity with this Act.

(3) Subject to subsection (1), the Stock Exchange shall not change or amend the existing rules except in accordance with this Act.

*Division 2—Self-Regulatory  
Organizations*

Registration of self-regulatory organization

**36.** (1) No person shall carry on business as a securities exchange or clearing agency or carry on activities as an association of securities companies unless registered as a self-regulatory organization under this Act.

(2) Application for registration pursuant to subsection (1) shall be made to the Commission in such form as may be prescribed.

Characteristics of self-regulatory organization

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

- (a) proposes to engage in the securities business;
- (b) is a body corporate with its own corporate seal which can sue and be sued;
- (c) is incorporated in Trinidad and Tobago or incorporated in any other State and registered in Trinidad and Tobago;
- (d) has a body of rules for the governance of its members.

Processing of applications

**38.** (1) Forthwith after receipt of an application for registration, the Commission shall publish in a daily newspaper circulating in Trinidad and Tobago, a notice inviting any interested person to submit written comments on the application.

(2) Subject to subsections (3) and (4), the Commission shall grant an application for registration.

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

- (a) the applicant is not organized in a manner or does not have the capacity and resources that enable it to comply with this Act and to enforce compliance by its members and their employees with its rules; or
- (b) the rules of the applicant do not comply with section 39.

(4) The Commission may refuse an application for registration if the applicant or a director or officer of the applicant would be refused registration under Part IV.

(5) Where the Commission grants an application for registration, it may require a change in the rules of the applicant to ensure its fair administration or to make the rules conform to the requirements of, or otherwise further the purposes of, this Act.

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

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

(7) The Commission may, subject to any conditions it may impose, accept a voluntary surrender of a registration.

Obligatory rules

**39.** (1) The rules of an applicant for registration shall contain provisions—

- (a) for the protection of investors and the public interest;
- (b) for fostering co-operation and co-ordination among persons who clear, settle, regulate, process information about and facilitate trades in securities;
- (c) ensuring fair representation of its members in the administration of its affairs;
- (d) for an equitable allocation of reasonable fees and charges among persons who use its facilities;
- (e) relating to the disciplining of a member or employee of a member who contravenes its rules or this Act and without prejudice to the generality of the foregoing, may provide for censure, fine, suspension, expulsion, limitation of activities, functions or operations, suspension of or exclusion from employment; and
- (f) specifying the procedure required by section 43 for disciplinary proceedings, denial of membership, exclusion from employment or denial or limitation of access to services furnished by it or its members.

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

- (a) to prevent deceptive and manipulative acts and practices and to promote fair trading practices and to facilitate an efficient market; and

(b) to ensure, subject to section 38(3)(a), that a securities company may become a member of the exchange or association.

(3) The rules of an applicant for registration as a clearing agency shall contain provisions designed—

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

(b) to safeguard money and securities in its custody or under its control or for which it is responsible; and

(c) to provide, subject to section 43, that a securities company, a financial institution, another clearing agency or a person or class of persons designated by the Commission may become a participant in the clearing agency.

(4) The rules of an applicant for registration shall not—

(a) permit unfair discrimination among persons who use its facilities; or

(b) restrain competition to an extent not necessary to achieve the objectives specified in subsections (1) to (3).

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

Procedure on  
proposed amendment  
to rules

(2) Forthwith after receipt of a proposed amendment under subsection (1) the Commission shall, subject to subsection (5), publish in a daily newspaper a notice inviting any interested person to submit written comments on the amendment and the cost of the publication shall be borne by the self-regulatory organization.

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

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

- (a) the organization is not organized in a manner and would not have the capacity and resources to enforce compliance with its rules as amended;
- (b) the amended rules would not comply with section 39; or
- (c) the amended rules would be inconsistent with this Act.

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

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

it may approve the amendment without providing an opportunity for a hearing pursuant to section 134.

Power of Commission to require change in rules

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

(2) Where the Commission proposes to make an order pursuant to subsection (1), it shall publish and send to the organization a notice that complies with section 134(1).

Restriction on imposition of fees schedule

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

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

43. (1) Subject to subsections (2) and (3), a self-regulatory organization shall grant an application for membership or for approval as an employee of a member. <sup>Conditions for membership</sup>

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

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

but it shall not refuse membership or impose conditions on membership to a person who carries on the type of business required by its rules on the basis of the volume of the required business or any other business that the person carries on.

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

- (a) lacks the training, experience or competence required by its rules; or
- (b) contravenes this or another similar Act or a rule of a self-regulatory organization registered under this or another similar Act.

(4) A self-regulatory organization shall, before refusing membership or imposing conditions on such membership or before approving employment by a member and before disciplining a member or an employee of a member, comply with the procedures specified for orders under section 134(1), (4) to (7) and (8)(a) and (b).

(5) A self-regulatory organization shall publish a decision disciplining a member or an employee of a member unless the Commission directs otherwise.

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

(a) suspend—

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

(ii) an employee of a member who has been excluded or is under suspension from employment by the member by,

another self-regulatory organization that is registered under this or another similar Act;

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

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

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

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

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

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

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

(2) On an appeal or review of a decision made pursuant to section 43(2) or (3), the Commission shall affirm the decision if it finds that—

- (a) the decision is in accordance with the rules of the organization or this Act; and
- (b) the rules or this Act were or was applied in a manner that furthers the objectives specified in section 39,

but if it does not so find or finds that the decision restrains competition to an extent not necessary to achieve the objectives specified in section 39(1) to (3), it may set aside the decision or require the organization—

- (c) to admit the person affected to membership;

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

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

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

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

(5) An order made by the Commission under subsection (3) or (4) setting aside or modifying a sanction does not affect the validity of any action taken by the organization as a result of the sanction before the order was made, unless the action contravened this Act or the rules of the organization.

De-listing of  
securities

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

(2) The Commission shall not refuse to authorize the de-listing of a security, unless the de-listing is in breach of—

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

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

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

- (a) examine the member's financial affairs in accordance with the rules of the organization; and
- (b) report the results of the examination to the auditor of the organization.

(3) An auditor appointed under subsection (1) or (2) shall be a member, in good standing, of the Institute of Chartered Accountants of Trinidad and Tobago.

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

47. (1) A self-regulatory organization shall—

- (a) make and keep such records in such form and for such periods as the Commission may prescribe;
- (b) file with the Commission any prescribed report in the prescribed form; or
- (c) disseminate to the public a report referred to in paragraph (b),

Keeping and inspection of records, etc.

and shall upon request, in writing, furnish the Commission with a copy of, or an extract from, any prescribed record.

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

- (a) inspect the records of a self-regulatory organization and to examine the financial affairs of that organization or any of its members;
- (b) prepare such financial or other reports as the Commission requires.

(3) A self-regulatory organization shall—

- (a) produce and furnish a person authorized by the Commissioner under subsection (2) with a copy of any record referred to in subsection (1) or any other record that he reasonably requests; and
- (b) answer any question he asks concerning those records.

Contingency fund

**48.** (1) A self-regulatory organization shall maintain a contingency fund, in the manner prescribed by the Commission, to compensate customers for losses resulting from the insolvency, bankruptcy or default of a member of the organization or of a registrant who contributes to the fund.

(2) A self-regulatory organization shall file with the Commission in the manner prescribed every document that relates to the creation, administration and operations of the contingency fund.

(3) Where after consultation with the administrator of the contingency fund and the organizations referred to in subsection (1)—

- (a) the Commission reasonably believes that the contingency fund does not contain sufficient assets to meet claims which may be made against the fund; and

- (b) the organizations fail to contribute or cause their members to contribute to the fund an increased amount sufficient to maintain the fund's assets at a level that the Commission believes to be reasonably necessary to pay claims against the fund,

the Commission may make an order requiring the organizations to contribute or collect from their members and other registrants who contribute to the fund such amount required to attain the level that the Commission believes necessary to pay the claims.

(4) The administrator of the contingency fund shall at any time—

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

(5) A self-regulatory organization shall, subject to the approval of the Commission, appoint an auditor to audit the financial affairs of its contingency fund and, as soon as practicable after the end of its financial year, the administrator of the fund shall file with the Commission a report on the operations and financial conditions of the fund in such form and containing such information as the Commission may prescribe.

(6) Monies held in the contingency fund in accordance with this section shall not be made available for payment of the debts or expenses of the self-regulatory organization or its members, or be liable to be paid or taken in execution under an order or process of any court.

Sanctions *re* rules

49. (1) Where a self-regulatory organization—
- (a) contravenes its rules or this Act;
  - (b) is unable to comply with its rules or this Act;
  - (c) fails or is unable to enforce its rules or a provision of this Act that it is required to administer or enforce, or fails to comply with an order of the Commission under section 41(1) or 48(3);
  - (d) fails to observe standards of solvency prescribed by the Commission; or
  - (e) or any of its members is guilty of gross negligence or fraud,

the Commission may make an order—

- (f) censuring the organization;
- (g) limiting its activities, functions or operations; or
- (h) suspending or revoking its registration.

(2) Where a director, officer or employee of a self-regulatory organization contravenes the rules of the organization or this Act, the Commission may make an order censuring him or suspending or removing him from office or employment with the organization.

Complaints

50. (1) Subject to subsection (3)—

- (a) any person who is aggrieved by an act or dealing by a member of a 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
- (c) section 138 shall have effect in relation to such investigation and adjudication.

(2) The Commission may upon such adjudication make such order as it thinks just, including an order for the payment by the member of the self-regulatory organization or the registered market actor, as the case may be, of any sum by way of restitution or as compensation for any loss suffered by the complainant.

(3) Subject to subsection (4), where a person aggrieved as mentioned in subsection (1)(a) makes any complaint against a member of a self-regulatory organization or registered market actor he shall, if the Commission proceeds to an adjudication upon it, be thereafter debarred and precluded from pursuing the complaint or making it the basis of any suit, action or proceeding in any court of law.

(4) A person shall not be debarred or precluded under subsection (3), unless he has, before the Commission proceeds to any hearing of and adjudication upon the complaint, been informed in writing to that effect.

51. (1) Where a dispute involving transactions in securities arises between members of a self-regulatory organization, such dispute shall be referred to the Board of the self-regulatory organization, and the Board shall investigate the dispute, and shall make such order for the resolution of the dispute as it thinks fit. Dispute between member companies

(2) It shall be the duty of each of the parties to the dispute forthwith to inform the Commission in writing of the existence of the dispute and to deliver or cause to be delivered to the other party or parties to the dispute, within twenty-four hours of such notice to the Commission, a copy of the notice given to the Commission of the dispute.

(3) Where a member is aggrieved by the decision of the Board under subsection (1), the member may, within fourteen days of the receipt of such decision, appeal to the Commission.

(4) Where the Commission adjudicates in a matter referred to it under subsection (3), the decision of the Commission shall be final and no appeal shall be brought in respect thereof.

(5) The Commission may, by any adjudication under this section, order the payment by any party to the dispute of any sum of money, including a sum to cover costs, as the justice of the case may in the opinion of the Commission require.

## PART IV

### REGISTRATION OF MARKET ACTORS

Registration required  
for membership or  
licensing

**52.** No self-regulatory organization registered under this Act may admit to membership or grant a licence to any person who is not registered with the Commission under this Act.

Registration to carry  
on business

**53.** (1) Subject to this Act, no person shall carry on business, or hold himself out, as—

- (a) a broker;
- (b) an investment adviser;
- (c) a dealer in securities;
- (d) a trader in securities;
- (e) an underwriter of securities;
- (f) a securities company,

unless registered as such with the Commission in accordance with this Act and, except in the case of an underwriter or an investment adviser, that person is the holder of a valid licence issued by a self-regulatory organization.

(2) Where an applicant—

- (a) is considered by the Commission to be suitable for registration in the capacity applied for; and
- (b) pays the prescribed fee,

the Commission shall register the applicant and issue him a certificate of registration in the prescribed form.

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

(4) The Commission shall maintain a register of all persons registered with the Commission.

(5) The Commission shall—

(a) by the 31st March of every year prepare a list of all valid registrants, by class of registration, which shall be published in the *Gazette*;

(b) permit any person upon the payment of the prescribed fee to inspect and to make extracts of any entry in the register referred to in subsection (4).

(6) Notwithstanding section 54 but subject to section 55, persons who immediately before the commencement of this Act were licensed as stockbrokers under the former Act are deemed to be registered as brokers under this Act.

(7) Notwithstanding section 58(1) to (4) but subject to section 58(5), persons who immediately before the commencement of this Act were licensed as dealers under the former Act are deemed to be registered as traders under this Act.

(8) Notwithstanding section 60(1) and (2) but subject to section 60(3), persons who immediately before the commencement of this Act were registered as members of the Stock Exchange under the former Act are deemed to be registered as securities companies under this Act.

(9) A person who is deemed to be registered under subsection (6), (7) or (8) shall, within six months of the commencement of this Act, comply with the requirements of this Act and upon failure to do so shall cease to be registered, but shall be entitled to apply for registration whenever he is able to meet those requirements.

(10) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for two years.

Application for  
registration as  
broker

54. (1) Every application for registration as a broker shall be made to the Commission in the prescribed form and shall be accompanied by such fees as are prescribed.

(2) Every applicant for registration as a broker shall—

- (a) be of good character;
- (b) not have had a bankruptcy order made against him which remains undischarged;
- (c) not have interests direct or indirect which may conflict with or be likely to affect the conduct and integrity of his business as a broker;
- (d) not be a person who has been suspended from dealing on or expelled from the Stock Exchange or any other securities exchange;
- (e) be a person who—
  - (i) has been awarded a degree or professional qualification in economics, banking, law, accountancy, business administration or chartered secretaryship from a university or other educational institution recognized by the Commission;

- (ii) has at least two years' experience of work as a trader or in some other capacity in which he was actively associated with and involved in the stockbroking activities of a member company or member firm of a securities exchange in any country within the Commonwealth or the United States of America; and
- (iii) has such other qualification as the Commission may from time to time prescribe.

(3) Whether or not the university or other educational institution from which the applicant has obtained any degree or professional qualification is recognized for the purposes of this section shall be within the discretion of the Commission.

(4) Where an applicant wishes to be registered as a broker in—

- (a) equity securities only, he shall have such minimum free capital as may be prescribed;
- (b) equity securities and other securities, or, as the case may be, other securities only, he shall have such minimum free capital as may be prescribed.

(5) Subsection (4) does not apply to an applicant who is a director or officer of a securities company registered under Part IV.

**55.** (1) The Commission may suspend or revoke the registration of a broker—

- (a) if he ceases to carry on the business of a broker;

Suspension or  
revocation of  
registration as  
broker

- (b) if he had obtained his registration under this Act or the former Act by the concealment or misrepresentation of any fact which is, in the opinion of the Commission, material to his application for registration or to his suitability to be registered;
- (c) if his registration under this Act or the former Act has been made by mistake, whether the mistake was that of the broker himself or of the Commission or of the former Stock Exchange or of any other person;
- (d) if he had defaulted in the payment of any moneys due to a self-regulatory organization, the Commission, or to any other market actor;
- (e) if a levy of execution in respect of him has not been satisfied;
- (f) if he fails to maintain the prescribed level of capitalization;
- (g) if he is convicted of an offence involving fraud or dishonesty;
- (h) if he contravenes, or fails to comply with, any condition or restriction applicable in respect of his registration or this Act;
- (i) if he fails adequately to supervise or to conduct the activities of any person acting on his instructions or on his behalf;
- (j) if he ceases to meet a requirement of section 54(2).

(2) Where a broker is charged with an offence involving fraud or dishonesty or where it is alleged that he has defaulted in the payment of moneys due to a self-regulatory organization or to any other market actor, the Commission may, if it considers that it is in the public interest to do so, suspend the registration of the broker pending the final determination of the charge or allegation.

**56.** (1) Every application for registration as a dealer in securities shall be made to the Commission in the prescribed form and shall be accompanied by such fees as are prescribed.

Application for  
registration as  
dealer

(2) Every applicant for registration as a dealer shall—

- (a) be an individual of good character;
- (b) if a company, be incorporated in Trinidad and Tobago or incorporated in any other Caricom State and be registered in Trinidad and Tobago;
- (c) not have had a receiving or bankruptcy order made against him which remains undischarged;
- (d) if a company, not have a receiver or receiver manager appointed in respect of its undertaking;
- (e) not have interests direct or indirect which may conflict with or be likely to affect the conduct and integrity of his business as a dealer in securities;
- (f) not be a person who has been suspended from dealing on or expelled from the Stock Exchange or any other securities exchange;
- (g) be an individual, or a company which has in its full time employment an individual, who—
  - (i) has been awarded a degree or professional qualification in economics, banking, law, accountancy, business administration or chartered secretaryship from a University or other educational institution recognized by the Commission; and

- (ii) has such other qualification as the Commission may from time to time prescribe.

(2A) Where a company is registered as a dealer, the individual described in subsection (2)(g) shall be responsible for the discharge of the company's obligations in relation to its operations as a dealer.

(3) Where an applicant wishes to be registered as a dealer in—

(a) equity securities only, he shall have—

- (i) in the case of a company, such minimum paid up capital;
- (ii) in the case of an individual, such minimum free capital,

as may be prescribed;

(b) equity securities and other securities, or, as the case may be, other securities only, he shall have—

- (i) in the case of a company, such minimum paid up capital; or
- (ii) in the case of an individual, such minimum free capital,

as may be prescribed.

Suspension or  
revocation of  
registration as  
dealer

**57.** The Commission may suspend or revoke the registration of a dealer—

- (a) if he ceases to carry on the business of a dealer;
- (b) if he had obtained his registration as such by the concealment or misrepresentation of any fact which is in the opinion of the Commission material to his application for registration or to his suitability to be registered;

- (c) if the registration has been made by mistake, whether the mistake was that of the dealer himself or of the Commission or of any person in its employ or of any other person;
- (d) if he had defaulted in the payment of any moneys due to a self-regulatory organization, the Commission, or to any other market actor;
- (e) if a levy of execution in respect of him has not been satisfied;
- (f) if he fails to maintain the prescribed level of capitalization;
- (g) if he is convicted of an offence involving fraud or dishonesty;
- (h) if he contravenes, or fails to comply with, any condition or restriction applicable in respect of his registration or this Act;
- (i) if he fails adequately to supervise or to conduct the activities of any person acting on his instructions or on his behalf.

**58.** (1) Every application for registration as a trader in securities shall be made to the Commission in the prescribed form and be accompanied by such fee as may be prescribed. Application for registration as trader

(2) Every such application shall be signed jointly by the applicant and by a broker of the securities company under whose direction and supervision it is proposed that the applicant operate as a trader.

(3) Section 54(2)(a) to (d) shall apply to all applications for registration as a trader in securities.

(4) The Commission may decline to register any person as a trader unless it is satisfied that he is a fit and proper person to be registered and may make such inquiries and may require the applicant and the broker who joins with him in making the application to produce such information as it may deem necessary for the purpose.

(5) The Commission may suspend or revoke the registration of a trader—

- (a) if his registration under this Act or the former Act was obtained by the concealment or misrepresentation of any fact which in the opinion of the Commission is material to his application for registration or to his suitability to be registered;
- (b) if his registration under this Act or the former Act had been made by mistake, whether the mistake was that of the trader himself or of the Commission or of the former Stock Exchange or of any other person;
- (c) if he is convicted of any offence involving fraud or dishonesty.

Application for  
registration as  
underwriter or  
investment adviser

**59.** (1) Every application for registration as an underwriter or investment adviser shall be made to the Commission in the prescribed form and shall be accompanied by such fee as shall be prescribed.

(2) Every such application shall contain such information as may be prescribed.

(3) Every applicant for registration as an underwriter or investment adviser shall—

- (a) if an individual, shall be at least twenty-one years of age and of good character;
- (b) if a company, be incorporated in Trinidad and Tobago or incorporated in any other Caricom State and registered in Trinidad and Tobago;
- (c) not have had a receiving or bankruptcy order made against him which remains undischarged;

(d) either—

- (i) be a financial institution which is licensed under the Financial Institutions Act, 1993 to carry on the business of floating and underwriting securities; or
- (ii) meet the capital requirements as prescribed by the Commission; and

(e) in the case of an investment adviser, be an individual or a company which has in its full time employment an individual, who—

- (i) has been awarded a degree or professional qualification in economics, banking, law, accountancy, business administration or chartered secretaryship from a University or other educational institution recognized by the Commission; and
- (ii) has such other qualification as the Commission may from time to time prescribe, except that paragraph (e) shall not apply to an applicant for registration as an investment adviser, who is a director or officer of a securities company registered under Part IV.

(3A) Where a company is registered as an investment adviser, the individual described in subsection (3)(e) shall be responsible for the discharge of the company's obligations in relation to its operations as investment adviser.

(4) The Commission may suspend or revoke the registration of any underwriter or investment adviser—

- (a) if he fails to maintain the prescribed level of capitalization;
- (b) if his registration was obtained by the concealment or misrepresentation of any fact which in the opinion of the Commission is material to his application for registration or to his suitability to be registered;
- (c) if he was registered by mistake however such mistake arose;
- (d) if he is convicted of any offence involving fraud or dishonesty.

(5) Where a person is registered under this Act as an underwriter, then notwithstanding the Financial Institutions Act, 1993, that person is not required to obtain a licence under that Act in relation to the business of floating and underwriting securities, unless that person is a company registered as a financial institution under that Act.

(6) For the purposes of this section, “accountant” means an individual who is a member in good standing of the Institute of Chartered Accountants of Trinidad and Tobago.

(7) Subject to subsection (8), the following persons may act as investment advisers without registration under this Act:

- (a) an insurance company registered under the Insurance Act;
- (b) a financial institution;
- (c) an attorney-at-law or an accountant;
- (d) a registered broker;
- (e) a registered dealer;

- (f) a publisher of, or writer for, a *bona fide* newspaper, news magazine, or business or financial publication that is of general and regular paid circulation, distributed only to subscribers to it for value or to purchasers of it, who—
- (i) gives advice as an adviser either as such publisher or writer only or as such publisher or writer and as an attorney-at-law or an accountant;
  - (ii) discloses in the publication any direct or indirect interest which he has in any of the securities in respect of which he gives advice; and
  - (iii) receives no commission or other consideration for giving the advice other than for acting in his capacity as a publisher or writer;
- (g) a person or class of persons prescribed.

(8) A person is exempted under subsection (7) so long as the performance of the services as an investment adviser is solely incidental to his principal business or occupation as stated in that subsection.

**60.** (1) Every application for registration as a securities company shall—

Application for  
registration as  
securities company

- (a) be made to the Commission in the prescribed form;
- (b) clearly indicate the class or classes of business to be undertaken by the company; and
- (c) be accompanied by such fees as are prescribed.

(2) Every applicant for registration as a securities company shall—

- (a) be incorporated in Trinidad and Tobago or incorporated in any other Caricom Member State and registered in Trinidad and Tobago;
- (b) not have a receiver or receiver manager appointed in respect of its undertaking;
- (c) not have interests direct or indirect which may conflict with or be likely to affect the conduct and integrity of its business as a securities company;
- (d) have the prescribed level of capitalization;
- (e) have as a director or in its full time employment, a person registered as a broker under this Act or holding a degree or professional qualification in economics, banking, law, accountancy, business administration or chartered secretaryship from a university or other educational institution recognized by the Commission, or any other combination of qualifications and experience to the satisfaction of the Commission; and
- (f) if it desires to carry on the business of trading in securities on behalf of others, have in its full time employment an individual who is registered as a broker.

(2A) Where a company is registered as a securities company, an individual described in subsection (2)(e) or, where appropriate, in subsection (2)(f), shall be responsible for the discharge of the obligations of the securities company in relation to each class of business for which it is registered.

(3) The Commission may suspend or revoke the registration of a securities company—

- (a) if it fails to maintain the prescribed level of capitalization;
- (b) if it defaults in any obligation undertaken in its capacity as a securities company;
- (c) if a receiving order is made against it;
- (d) if its registration was obtained by the concealment or misrepresentation of any fact which in the opinion of the Commission is material to its application for registration or to its suitability to be registered;
- (e) if it is convicted of any offence involving fraud or dishonesty.

**61.** Where any registered market actor is prosecuted for breach of this Act, the Commission may suspend the registration of such market actor from the date of the institution of such prosecution or at any time thereafter, but such suspension shall automatically cease upon the dismissal of the charge or the withdrawal thereof or, if there is more than one charge, upon the dismissal or withdrawal of all the charges.

Suspension of registration on prosecution of market actor

**62.** Where the Commission has cancelled, suspended or revoked the registration of any person that person shall forthwith cease activities in the area of activity for which he was registered, and, any licence issued by a self-regulatory organization or membership in any such organization shall forthwith become invalid.

Effect of cancellation, suspension or revocation

**63.** Every registrant under this Part, other than a trader or broker acting in the employment of a securities company shall effect policies of insurance on terms prescribed by the Commission for the purpose of indemnifying such registrant against any liability that may be incurred as a result of any act or omission of the registrant or any of its officers or employees.

Indemnity insurance

Contribution to  
contingency fund

**63A.** (1) Every registrant under this Part, other than a trader or broker acting in the employment of a securities company shall participate in and contribute to a contingency fund approved by the Commission and established by—

- (a) a self-regulatory organization; or
- (b) a financial institution.

(2) The amount contributed by the registrant to a fund referred to in subsection (1) shall, subject to subsection (3), be the amount required by the self-regulatory organization or, where the fund is established by a financial institution, the Commission.

(3) The Commission may vary the amount required to be contributed by any participant in a fund under subsection (1) if it considers that it would not be prejudicial to the public interest to do so.

## PART V

### REGISTRATION OF ISSUERS AND SECURITIES

Registration  
statements of  
issuers

**64.** (1) From the date of commencement of this Act, all public companies shall become reporting issuers and shall, within ninety days from that date, file with the Commission a registration statement in the prescribed form.

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

(3) A reporting issuer shall amend its registration statement annually so that the information contained therein is current as of the end of its most recent financial year.

(4) An issuer in its registration statement shall amend any information that is of a type prohibited by by-law.

(5) An issuer may include in its registration statement any information that is not of a type prohibited by by-law.

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

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

(8) In subsection (7) and in section 65(2)(b), "government entity" means the Government of Trinidad and Tobago, the Tobago House of Assembly, the Central Bank and municipal corporations.

**65.** (1) Subject to subsection (1A), no security shall be offered to the public or listed with any self-regulatory organization unless it is registered with the Commission. Registration of securities

(1A) A unit issued by a unit trust scheme, or a mutual fund, in accordance with the terms of a prospectus for which a receipt has been issued by the Commission, is deemed to be registered with the Commission.

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

- (a) by the principal executive officer of the issuer and at least two members of the board of directors of the issuer; or
- (b) in the case of a government entity, by the underwriter or designated agent.

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

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

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

(6) The filing with the Commission of a registration statement or any amendment thereto under this section shall be deemed to have taken place upon receipt thereof, but the filing of a registration statement shall not be deemed to have taken place unless accompanied by the amount of the fee required under subsection (5).

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

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

(9) Securities which were issued before the commencement of this Act by companies that were listed on the Stock Exchange shall be deemed to be registered with the Commission.

Annual reports

**66.** (1) A reporting issuer shall, within four months after the end of its financial year—

- (a) file with the Commission, a copy of its annual report containing the information prescribed by the Commission and any other information that is not of a type prohibited by by-law; and
- (b) send to each of its security holders such financial statements as the Commission may prescribe.

(2) A reporting issuer shall file such other reports in such form as may be prescribed.

(3) Subject to subsection (4), where a material change occurs in the affairs of a reporting issuer, the reporting issuer shall, as soon as practicable but in any event no later than seven days after the change occurs, file with the Commission and issue a press release that is authorized by a senior officer and that discloses the nature and substance of the change.

(4) Subject to subsection (5), subsection (3) shall not apply where—

- (a) the reporting issuer is of the opinion that the disclosure required by subsection (3) would be unduly detrimental to its interests and advises the Commission in writing within seven days of the change and the reasons why it is of the opinion that there should not be a press release; or
- (b) the material change in the affairs of the reporting issuer consists of a decision to implement a change made by the directors of the issuer and the directors and senior management of the issuer have no reason to believe that any person with knowledge of the material change has made, or intends to make use of that knowledge in purchasing or selling securities of the issuer.

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

## PART VI

## DISTRIBUTIONS

Definition and  
construction

**67.** (1) For the purpose of this Part, an advertisement offers securities if—

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

(2) In this Part—

“distribution” in relation to any securities includes an offer to sell securities;

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

“registrant” in relation to any securities, means the person who issues or is to issue securities to which this Part applies;

“sophisticated purchaser” means—

(a) a person who participates as principal in any trade the consideration for which is no less than one hundred thousand dollars;

(b) a person who—

(i) has access to substantially the same information concerning the issuer that is required in a prospectus under section 72(1) and ( 2 );

- (ii) is able to evaluate a security as an investment on the basis of information provided to him by the seller by virtue of his net worth and advice which may be available to him from an investment adviser who receives no remuneration from the issuer or selling security holder in connection with the distribution; or
- (c) an officer or director of the issuer or his spouse, parent, brother, sister or child.

**68.** In this Part “block distribution circular” means a <sup>Block distribution circular</sup> prospectus required in connection with a distribution of previously issued securities acquired under a distribution exempted from the prospectus requirements under section 75(2).

**69.** Subject to section 70, no person shall distribute a <sup>Prospectus required</sup> security unless a prospectus or a block distribution circular has been filed with and a receipt therefor has been issued by the Commission.

**70.** (1) No person shall offer to sell a security in <sup>Offers to sell a security</sup> connection with a distribution unless the offer is made by means of—

- (a) a prospectus or block distribution circular for which a receipt has been issued by the Commission; or
- (b) an advertisement—
  - (i) identifying the security distributed, a person from whom a document specified in paragraph (a) may be obtained, and a person through whom orders will be executed; and

(ii) containing whatever other information the Commission permits or may prescribe.

(2) Notwithstanding subsection (1), a registrant may solicit expressions of interest from prospective purchasers with respect to a proposed distribution if he notifies the Commission in writing that he intends to do so and identifies the issuer and the security proposed to be distributed.

Delivery of  
prospectus

71. (1) No registrant shall sell a security of a class that is the subject of a filing pursuant to section 69 and for which a receipt has been issued by the Commission, within ninety days of the date of the receipt, unless he sends or delivers to the purchaser of the security a prospectus or block distribution circular within two business days after the agreement of sale is made.

(2) The Commission may, in respect of reporting issuers, prescribe a shorter period than that specified in subsection (1).

(3) An agreement referred to in subsection (1) is not binding on the purchaser if the registrant receives not later than two business days after the purchaser received the prospectus or block distribution circular written notice that the purchaser intends not to be bound by the agreement.

(4) A person who files a prospectus or block distribution circular pursuant to section 69 shall provide copies during the period specified in subsection (1) upon request and shall furnish to a registrant a reasonable number of copies of it without charge.

(5) For the purposes of this section, the receipt of a prospectus or block distribution circular by a person who acts solely as agent of the purchaser with respect

to the purchase of a security referred to in subsection (1) is deemed to be a receipt by the purchaser as of the date on which the agent received the prospectus or block distribution circular.

72. (1) A prospectus shall contain such information and comply with such other requirements as may be prescribed. <sup>Contents of prospectus</sup>

(2) In addition to the information required to be included in a prospectus by virtue of subsection (1) a prospectus shall contain such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of—

(a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and

(b) the rights attaching to those securities,

being information which is within the knowledge of any person responsible for the prospectus or which it would be reasonable for him to obtain by making enquiries.

(3) In determining what information is required to be included in a prospectus by virtue of this section regard shall be had also—

(a) to the nature of the securities and the issuer of the securities;

(b) to the nature of the persons likely to consider their acquisition;

(c) to the fact that certain matters may reasonably be expected to be within the knowledge of professional advisers of any kind whom those persons may reasonably be expected to consult; and

- (d) to any information available to investors or their professional advisers by virtue of any written law or by virtue of requirements imposed by the Commission.

Supplementary  
prospectus

73. (1) Where a prospectus has been filed under section 69 in respect of any proposed distribution or any offer of securities and at any time during which an agreement in respect of those securities can be entered into in pursuance of that offer—

- (a) there is a material change affecting any matter contained in the prospectus the inclusion of information in respect of which is required by virtue of section 72(1) and (2);
- (b) a material fact occurs the inclusion of information in respect of which would have been so required if it had arisen when the prospectus was prepared,

then the person who delivered the prospectus for registration to the Commission shall deliver to it for registration a supplementary prospectus containing particulars of that material change or fact as the case may be.

(2) Where the person who delivered the prospectus for registration is not aware of the material change or fact in question he shall not be under any duty to comply with subsection (1) unless he is notified of it by a person responsible for the prospectus, but any person responsible for the prospectus who is aware of that material change or fact shall be under a duty to give him notice of it.

(3) Section 71(1) applies also as respects matters contained in a supplementary prospectus filed under this Part in respect of the securities in question.

74. (1) A prospectus that invites subscription for, <sup>Expert's consent</sup> or the purchase of securities of an issuer, and that includes a statement purporting to be made by an expert shall not be issued unless—

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

and accordingly, a person is not to be deemed to have authorized or caused the issue of a prospectus by reason only of his having given the consent required by paragraph (a) to the inclusion in the prospectus of a statement purporting to be made as an expert.

75. (1) Sections 69 to 71 do not apply to a <sup>Exemptions</sup> distribution—

- (a) by an issuer where the purchaser is an issuer acting as principal;
- (b) where the purchaser is an underwriter of the security being distributed;
- (c) by an issuer of a security that is distributed to holders of its securities as a dividend;
- (d) by an issuer of a security to holders of its securities as incidental to a reorganization or winding up or to a distribution of its assets for the purpose of winding up its affairs;

- (e) by an issuer of a security pursuant to the exercise of a right to acquire the security, which right was previously granted by the issuer, if no commission or other remuneration is paid or given in respect of the distribution except for administrative or professional services or for services, other than the solicitation of investors, performed by a registrant;
- (f) by an issuer of a right, transferable or otherwise, granted by it to holders of its securities to purchase additional securities of its own issue, and of securities pursuant to the exercise of such a right—
  - (i) if the issuer files with the Commission a notice in the prescribed form that is to be sent to its security holders; and
  - (ii) the Commission does not inform the issuer in writing within ten days of the filing that it objects to the offer; or
  - (iii) the issuer files with the Commission and sends to its security holders information relating to the securities that is satisfactory to the Commission;
- (g) by an issuer of a security that is exchanged by or for the account of the issuer with another issuer or the security holders of another issuer pursuant to—
  - (i) a statutory amalgamation or arrangement; or
  - (ii) a statutory procedure by which one issuer takes title to the assets of another issuer that loses its existence by operation of law or by which the existing issuers merge into a new issuer;

- (h) by an offeror pursuant to a take-over bid;
- (i) by or for the issuer or owner by means of an isolated sale that is not made in the course of continued or successive sales of the same security;
- (j) by an issuer of securities of its own or an associate's issue to its employees, if—
  - (i) the employees are not induced to purchase the securities by expectation of employment or continued employment with the issuer; and
  - (ii) no commission or other remuneration is paid or given in respect of the distribution except for professional services or for services other than the solicitation of employees, performed by an issuer;
- (k) where the Commission makes an order declaring that the cost of providing a prospectus outweighs the resulting protection to investors, but in such circumstances the Commission may make the order subject to any conditions it considers appropriate including conditions determining the standards of civil liability applicable to the offer;
- (l) issued or guaranteed by the Government, a municipal corporation or statutory body in Trinidad and Tobago;
- (m) by a person declared an exempt purchaser by order of the Commission who purchases as principal or as trustee for accounts fully managed by it; or
- (n) in such other circumstances as the Commission may prescribe.

(2) Sections 69 to 71 do not apply to a distribution to fewer than fifty purchasers each of whom is a sophisticated purchaser if—

- (a) the distribution is previously notified in writing to the Commission and is not accompanied by an advertisement other than an announcement, as prescribed by the Commission, of its completion; and
- (b) no selling or promotional expenses are paid or incurred in connection with the distribution except for professional services or services performed by an issuer.

(3) Sections 69 to 71 do not apply to a limited offering.

(4) For the purposes of this section “limited offering” means an offer within such time as may be prescribed by the Commission to not more than thirty-five purchasers of the securities distributed where—

- (a) the issuer or selling security holder obtains an agreement from each purchaser that is filed with the Commission under which each purchaser agrees to file or cause to be filed with the Commission a prospectus with respect to the securities if a sale of the securities purchased by him results in there being more than thirty-five owners of the distributed securities within two years of the completion of the distribution or such other time as the Commission prescribes; and
- (b) no selling or promotional expenses are paid or incurred in connection with the distribution except for professional services or services other than the solicitation of investors by an issuer.

(5) For the purposes of this Act, a person who purchases a security pursuant to an exemption under subsection (3) from a person whom he knows to have acquired the security in a trade referred to in this section is in the same position as his seller for the remainder of the period specified in the definition of a limited offering with regard to the security.

(6) The Commission may, by proceedings in the Court, seek an order against any person who has entered into any such agreement as is referred to in subsection (4)(a) and upon proof of the filing of such agreement with the Commission, shall be entitled to an order accordingly.

(7) The Commission may prescribe—

- (a) further conditions for a limited offering;
- (b) that such statement as it thinks fit shall be printed on a certificate for a security sold pursuant to this section; and
- (c) that a person who makes a limited offering and a purchaser of a security of such an offering shall file such report as it thinks fit.

(8) Sections 69 to 71 do not apply to a trading transaction.

(9) For the purposes of this section “trading transaction” means a distribution of a security of a reporting issuer executed through a registrant where—

- (a) the issuer has been registered under Part V for at least one year, or such other period as the Commission may prescribe, immediately preceding the distribution and the issuer has complied with the filing requirements of this Act;
- (b) no selling or promotional expenses are incurred in connection with the distribution except for services customarily performed by a registrant in connection with a trade in the market; and

- (c) the sales by or on behalf of the issuer or selling security holder do not during a prescribed period exceed—
- (i) an amount in dollars;
  - (ii) a percentage of trading volume;
  - (iii) a percentage of outstanding securities of the class; or
  - (iv) any combination of the limits referred to in subparagraphs (i) to (iii),

prescribed by the Commission.

(10) Where trades made pursuant to this section result in an increase in the trading activity of securities of an issuer, the Commission may make an order—

- (a) requiring the issuer to file and disseminate such information as it believes necessary for the protection of investors; and
- (b) reducing the number of securities of the issuer that may be distributed in trading transactions during a period prescribed pursuant to subsection (9)(c).

(11) A person who sells a security pursuant to an exemption under this section shall file a report in the prescribed form with the Commission within ten days of the completion of the sale.

Receipt for  
prospectus

**76.** (1) Subject to subsections (2), (3) and (5), the Commission shall issue a receipt for a prospectus within a reasonable time after the date of the original filing of a prospectus filed pursuant to section 69 or 77(1).

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

- (a) if the prospectus—
  - (i) contains a misrepresentation;
  - (ii) fails to disclose any material fact which may be required under this Part; or
  - (iii) the distribution in connection with which it is filed is deceptive;
- (b) if an unconscionable consideration has been or is intended to be given for promotional purposes or for the acquisition of the security;
- (c) if the past conduct of the issuer or of a person who exercises or is reasonably considered by the Commission likely to exercise influence over its management or policies suggests to the Commission that the business of the issuer is likely to be conducted in a manner that is not honest or financially responsible or that may be unfair to holders of its securities;
- (d) if the proceeds that the issuer will receive from the distribution, together with its other resources, are not sufficient to accomplish the purpose of the distribution stated in the prospectus;
- (e) if an expert who has prepared or certified a part of the prospectus or report used in connection with it is not acceptable to the Commission; or
- (f) if the Commission considers that the distribution would be prejudicial to the public interest.

(3) The Commission may refuse to issue a receipt for a block distribution circular in the circumstances specified in subsection (2)(a) to (d) or (f).

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

(5) The Commission may impose on a distribution in connection with which it issues a receipt for a prospectus any condition which in the opinion of the Commission is necessary for the protection of investors including, without limiting the generality of the foregoing—

- (a) a condition that outstanding securities of the issuer be held in escrow upon such terms as the Commission may specify;
- (b) a condition that the proceeds of a distribution which is payable to the issuer may be held in trust until such amount as may be specified is received for the issuer;
- (c) a condition that no sales pursuant to the distribution may be completed before such time as may be specified by the Commission.

Cessation of  
distribution

77. (1) Where a distribution of securities does not commence within ninety days of the date on which a receipt for the prospectus is issued by the Commission, the distribution shall cease until such time as a new prospectus is filed with a receipt therefor issued by the Commission.

(2) For the purposes of this section, a distribution commences when twenty-five per cent of the securities proposed to be distributed are sold and paid for.

(3) Subject to subsections (4) and (5), a distribution shall not continue longer than one year and twenty days from the date of the receipt for the

prospectus or block distribution circular relating to it unless the Commission issues a new receipt for a current prospectus or block distribution circular in which case the period runs from the date of the latter receipt.

(4) The Commission may prescribe that the period specified in subsection (3) shall be reduced to not less than six months.

(5) Subsection (3) does not apply to a distribution by a unit trust scheme or a mutual fund.

**78.** Where a material fact that relates to an issuer or to a security being issued occurs while a distribution is in progress, an amendment to the prospectus shall be filed forthwith with the Commission and every prospectus thereafter sent or delivered to any person shall include the amendment. Amendment of prospectus

## PART VII

### MARKET CONDUCT AND REGULATION

**79.** Notwithstanding the Stamp Duty Act, no stamp duty shall be payable in respect of the transfer of any security in accordance with the rules of any self-regulatory organization. Exemption from stamp duty

**80.** No person shall, directly or indirectly, effect a series of transactions in any security on any securities market thereby creating actual or apparent active trading in such security for the purpose of inducing the purchase or sale of such security by others. Market rigging transactions

**81.** No member of a self-regulatory organization or dealer or person who is selling or offering for sale, or purchasing or offering to purchase, any security in consideration or anticipation of any reward or benefit or otherwise, shall induce a purchase or sale of such Inducement to purchase or sell securities by dissemination of information

security on any securities market by the circulation or dissemination, in the ordinary course of business, of information to the effect that the price of any such security will or is likely to rise or fall because of market operations by any one or more persons, conducted for the purpose of raising or depressing the price of such security.

Employment of  
deceptive device,  
etc.

**82.** No person shall, directly or indirectly, in connection with the purchase or sale of any security—

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

Restrictions on  
recommendation

**83.** (1) A registrant shall not recommend a trade in a security to a customer unless he has reasonable grounds to believe that the recommendation is suitable for the customer on the basis of—

- (a) information furnished by the customer after reasonable inquiry as to his investment objectives, financial situation and needs; and
- (b) any other information known to the registrant.

(2) Subsection (1) does not apply to a registrant in respect of the—

- (a) execution of an unsolicited order for a customer; or
- (b) publication of a research report that recommends generally a trade in a security.

Excessive trading

**84.** (1) No registrant or employee of a registrant shall effect trades that are excessive in volume or frequency with or for a customer in respect of whose

trading he is in a position to exercise determinative influence by reason of the customer's willingness to accept his recommendations.

(2) No person who has discretionary authority over or is a trustee for an account of another shall effect trades that are excessive in volume and frequency.

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

**85.** (1) The Commission may prescribe standards for the conduct of a registrant in relation to a customer to prevent— Commission may prescribe standards of conduct for registrants

(a) a conflict of interest; or

(b) any other conduct that would enable a registrant to treat a customer unfairly.

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

**86.** A registrant who recommends in writing a trade in a specific security shall include with the recommendation a prescribed statement of any direct or indirect financial or other interest in the security or a trade in the security, held by the registrant. Disclosure of interests by registrant

**87.** The Commission may prescribe that a registrant who exercises investment discretion with respect to a customer's account, shall make such disclosure as may be prescribed to the customer as to his policies and practices relating to the payment of commissions for trades in securities. Disclosure of policies and practice

## Trust accounts

87A. (1) A securities company or a broker who is not acting in the employment of a securities company shall establish and keep in a financial institution in Trinidad and Tobago one or more trust accounts designated as such into which it shall pay—

- (a) all amounts (less any commission and other proper charges) that are received from or on account of any person, other than another broker or securities company, for the purchase of securities not delivered to the broker or securities company within such time as prescribed by the Commission;
- (b) all amounts (less any commission and other proper charges) that are received on account of any person, other than a broker or securities company, from the sale of securities and not paid to that person or as that person directs within such time after receipt of such amounts as may be prescribed by the Commission.

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

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

(4) Every director of a securities company or broker that fails to comply with, or contravenes, any of the provisions of this section is guilty of an offence and is liable, on summary conviction, to a fine of fifty thousand dollars and to imprisonment for one year.

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

Registrant to send documents to beneficial owner

(2) A person who sends a document to registered security holders pursuant to this Act shall furnish to a registrant forthwith upon request sufficient copies of the document to enable him to comply with subsection (1) and, subject to section 114(6), shall indemnify him for the reasonable costs of doing so.

89. (1) Subject to subsection (2), a registrant who trades in security with or for a customer shall send him immediately after the completion of the trade a written confirmation containing the information prescribed by the Commission.

Confirmation to be sent to customer

(2) The Commission may prescribe that a registrant who provides a service of a continuous nature may send, instead of a confirmation as referred to in subsection (1), a periodic statement at such times and containing such information as may be prescribed.

90. (1) A securities exchange shall keep a record of each trade made through its facilities showing the time when it took place and any other information prescribed by the Commission.

Records of transactions

(2) On the request of a person who produces a written confirmation of a trade executed through its facilities, a securities exchange shall furnish to him—

(a) forthwith, if the trade was executed within thirty days of the request; and

(b) within a reasonable time if the trade was executed more than thirty days before the request,

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

Notification to  
Commission

**91.** A registrant who has acted as a broker in connection with a trade in a security shall on the request of the Commission disclose to it the name of the person with or through whom the security was traded.

Restriction on  
trading at  
residence

**92.** (1) In this section, "residence" includes a building or part of a building in which the occupant resides permanently or temporarily and any appurtenant premises.

(2) No person shall—

- (a) attend at any residence without being invited by an occupant of the residence; or
- (b) make an unsolicited telephone call to any residence,

within Trinidad and Tobago for the purpose of trading in a security.

(3) Subsection (2) shall not apply where the person calls at or telephones the residence—

- (a) of a close personal friend, a business associate or a client with whom or on whose behalf the person calling or telephoning has been in the habit of trading securities; or
- (b) of a person who has received a copy of a prospectus filed under this Act and has requested that information respecting a security offered in that prospectus be furnished to him by the person calling or telephoning.

Control of  
advertisement

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

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

(3) In this section "advertisement" includes any material designed to make a sales presentation to a purchaser whether or not it is published or presented to a purchaser but does not include a prospectus, summary prospectus, preliminary prospectus or block distribution circular.

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

Seller of security to declare non-ownership

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

Declaration as to short position

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

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

(2) Subject to this Act and the by-laws, for the purposes of subsection (1), a security which is not owned by a person includes, but is not limited to, a security that—

- (a) has been borrowed by that person;
- (b) is subject to any restriction on its sale; or
- (c) may be acquired by that person on the exercise of a right to acquire the security by purchase, conversion, exchange or any other means.

Standards of conduct  
for persons trading

**96.** (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 of all trades executed by him other than through the facilities of a securities exchange and shall file with it a report of the trades in the prescribed form.

(3) The Commission may prescribe standards governing trading in a security that has been distributed and is not listed on a securities exchange.

Information to be  
filed with the  
Commission

**97.** (1) The Commission may prescribe that a registrant shall—

(a) file with it such information about a missing, lost, counterfeit or stolen security as may be prescribed; and

(b) submit an inquiry to it for information filed pursuant to paragraph (a) in relation to a security—

(i) which is in the registrant's custody or control;

(ii) for which he is responsible; or

(iii) in respect of which he is effecting, clearing or settling a trade.

(2) Information filed with the Commission pursuant to subsection (1)(a) shall be made available forthwith on request to a registrant, financial institution or other prescribed person.

(3) A failure to comply with subsection (1)(b) does not affect a person's status as a *bona fide* purchaser of a security.

Prohibition on use of  
name of another  
registrant

**98.** A registrant shall not use the name of another registrant on letterheads, forms, advertisements or signs, as a correspondent or otherwise, unless he is a partner, officer or agent of, or is authorized in writing by, the other registrant.

**99.** A person shall not represent that he or any other person is registered under this Act unless— Representation as to registration

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

**100.** A person who is not registered shall not, directly or indirectly, hold himself out as being registered. Holding out by unregistered person

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

## PART VIII

### SIMPLIFIED CLEARING FACILITIES

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

**103.** In this Part— Definitions

“blocked account” means an account of a participant over which a person other than the participant exercises control pursuant to procedures established under section 107;

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

“in writing” includes production in machine readable form;

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

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

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

Use of clearing  
agency as registered  
owners of security

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

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

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

- (a) the issuer has written authorization signed by or on behalf of the beneficial owner of the security;
- (b) the issue is further evidenced by a written confirmation executed by the clearing agency and sent at once to the beneficial owner of the security or his agent; and
- (c) the issue is recorded at once in the securities register of the issuer and the records of the clearing agency.

(3) A written confirmation referred to in subsection (1)(b) or (2)(b) is, in the absence of evidence to the contrary, proof that the person named in the confirmation is the beneficial owner of the securities described therein.

(4) A clearing agency shall not make an entry in its records under this section in respect of a security that is not fully paid.

**105.** (1) Immediately after receipt of a security certificate from a participant, a clearing agency shall deliver the certificate to the issuer and request the transfer of the securities evidenced by the certificate to the clearing agency. Transfer of securities through clearing agency

(2) Where a clearing agency presents a security certificate in proper form to an issuer and requests a transfer to it of the securities evidenced by the certificate, the issuer shall, if it has a duty to register the transfer, immediately enter the transfer in its securities register and deliver to the clearing agency a security certificate representing the securities and showing the clearing agency as registered owner.

(3) An issuer may, instead of issuing a security certificate under subsection (2), transfer a security to a clearing agency as the registered owner by means of record entries if—

- (a) the issuer has written authorization signed by or on behalf of the beneficial owner of the security;
- (b) the transfer is further evidenced by a written confirmation executed by the clearing agency and sent at once to the beneficial owner of the security or his agent; and

(c) the transfer is recorded at once in the securities register of the issuer and the records of the clearing agency.

(4) A written confirmation referred to in subsection (3)(b) is, in the absence of evidence to the contrary, proof that the person named in the confirmation is owner of the securities described therein.

Transfer by record entry

**106.** On receipt of instructions in writing from a participant and, if the participant's account is blocked, from the person who exercises control over it, a clearing agency shall in accordance with those instructions, effect a transfer of a security from the participant to another participant by an entry in its records.

Blocked account

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

(a) the interested person is, in relation to a security in the participant's account a beneficial owner, a pledgee, or a judgment creditor of the beneficial owner; or

(b) a security in the participant's account is subject to a lien in favour of its issuer or to a restriction or constraint on its transfer.

(2) Subject to section 116(3), a clearing agency shall not transfer, deliver or otherwise deal with a security in a blocked account without instructions in writing from the person who exercises control over it.

Effecting pledge by record entry

**108.** (1) On receipt of instructions in writing from a participant and if the participant's account is blocked from the person who exercises control over it, a clearing agency shall in accordance with the instructions effect a transfer by way of pledge of a security from the participant to a pledgee by making an entry in its

records to block an account in the name of the participant in favour of the pledgee for the amount of the debt or other obligation or the number of securities pledged.

(2) On receipt of instructions in writing from a pledgee in whose favour an account is blocked under subsection (1) stating that he is entitled to realize the securities in the blocked account, a clearing agency shall in accordance with the instructions transfer the securities unless—

- (a) it knows that the pledgee is not entitled to realize the securities; or
- (b) its procedure established pursuant to section 107(1) specifies otherwise.

(3) A clearing agency is not liable for any loss resulting from compliance with the instructions of a pledgee under subsection (2) unless the clearing agency knows before the transfer that the pledgee is not entitled to the securities.

**109.** On receipt of instructions in writing from a participant and a beneficial owner of a security, a clearing agency may in accordance with the instructions make an entry in its records to block an account in the name of the participant in favour of the beneficial owner or in favour of a person who acts on his behalf.

Effecting blocked account by record entry

**110.** (1) A clearing agency may refuse to open an account in respect of a security that is subject to—

Security subject to restriction

- (a) a lien in favour of its issuer; or
- (b) a restriction or constraint on its transfer.

(2) A clearing agency may, with respect to a security referred to in subsection (1), make an entry in its records to block an account in the name of a participant in favour of the clearing agency or an interested person.

Blocking account  
by Court order

**111.** (1) On the application of a creditor who has a judgment against a beneficial owner of a security held by a clearing agency, the Court may order the clearing agency to make an entry in its records to block an account in the name of the beneficial owner or his agent in favour of the judgment creditor for the amount or number of securities mentioned in the order.

(2) On receipt of an order of, or instructions in writing from the Court or an officer thereof stating that a judgment creditor in whose favour an account is blocked under subsection (1) is entitled to realize a security in the blocked account, a clearing agency shall transfer the security in accordance with the order or instructions.

(3) On the application of a person who in an action or an application under section 118 claims to be entitled to a security held for a beneficial owner in a clearing agency, the Court may order the clearing agency to make an entry in its records to block the account in the name of the beneficial owner or his agent in favour of the claimant for the amount or number of securities mentioned in the order.

(4) A clearing agency is not liable for any loss resulting from compliance with an order or instructions received under subsections (1) to (3).

Limitation on rights  
of participants

**112.** A participant has no right to pledge, transfer or otherwise deal with a security held for him by a clearing agency except through the facilities of the clearing agency.

Withdrawal of  
security

**113.** (1) On the receipt of a demand in writing from a participant for whom a security is held other than in a blocked account, for withdrawal of that security, a clearing agency shall within a reasonable time, subject to any proceedings under section 118, obtain and deliver to the participant a security certificate in his name or a name designated by him evidencing the security.

(2) On receipt of instructions in writing from a clearing agency that is the registered owner of securities to deliver a security certificate to it, the issuer of the security shall immediately deliver the certificate to the clearing agency in accordance with its instructions.

114. (1) Where a clearing agency holds a class of securities of an issuer that proposes to close its securities register or fix a record date in respect of the class for the purpose of determining security holders entitled—

- (a) to receive notice of or to vote at a meeting of security-holders;
- (b) to receive payment of a dividend or interest; or
- (c) to participate in a liquidation distribution,

or for any other purpose, the issuer shall give the clearing agency such notice as may be prescribed of its intention to close its securities register or fix a record date.

(2) The notice referred to in subsection (1) shall request from the clearing agency a list of the names of the participants for whom the clearing agency holds securities of the class mentioned in that subsection made up as of the date on which it proposes to close its register or fix a record date.

(3) On receipt of a demand in writing from an issuer for a list of the names of participants for whom it holds securities of a class issued by the issuer, a clearing agency shall within seven days provide the issuer with a list setting out—

- (a) the names and addresses of; and
- (b) the number or amount of securities of the class held for,

each such participant made up as of the date specified in the demand.

Incorrect entry by  
clearing agency

**116.** (1) Subject to subsection (3), an incorrect entry made in the records of a clearing agency in connection with a transfer or pledge of a security by reason of its error has the same effect as a correct entry.

(2) Subject to subsection (3), a clearing agency is liable to compensate a person who incurs a loss as a result of an incorrect entry made in its records by reason of its error.

(3) Where a clearing agency by reason of its error makes an incorrect entry in its records transferring a particular class of security to a participant's account, the clearing agency may, to the extent that there are securities of that class in the account, correct the entry in whole or in part without the participant's consent.

Liability in  
extraordinary  
circumstances

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

Application to Court  
to rectify records

**118.** (1) Where an entry is alleged to have been incorrectly made or retained in or omitted or deleted from the records of a clearing agency, other than in the circumstance outlined in section 116(3), the clearing agency or an interested person may apply to the Court for an order that the records be rectified.

(2) On an application under subsection (1), the Court may make any order it thinks fit including, without limiting the generality of the foregoing, an order—

- (a) determining who is an interested person and the notice to be given to such a person;
- (b) dispensing with notice to any person;

- (c) determining the right of a party to the proceedings to have his name entered or retained in or deleted or omitted from the records of a clearing agency;
- (d) directing that the records of a clearing agency be rectified;
- (e) directing that a clearing agency make an entry in its records to block an account; or
- (f) compensating any person.

**119.** (1) A clearing agency may hold securities for a Participation by financial institution financial institution that is authorized under the law applicable institutions to it to deliver or transfer any securities held by it into the custody of a clearing agency.

(2) The Commission may prescribe that a corporation incorporated by or under an Act of Parliament may deliver or transfer any securities held by it into the custody of a clearing agency.

(3) The Commission may make an order approving any aspect of the operating system of a clearing agency that is not inconsistent with this Part.

## PART IX

### DEALING BY PERSONS CONNECTED WITH ISSUERS

**120.** (1) Any reference in this Act to price sensitive Definitions information in relation to any securities of an issuer is a reference to specific unpublished information which, if generally known, might reasonably be expected to affect materially the price or value of the securities.

(2) For the purposes of this Act, a person is connected with an issuer only if—

- (a) he is a director of that issuer or a related issuer; or
- (b) he occupies a position as an officer (other than a director) or employee of that issuer or a related company or a position involving a professional or business relationship between himself (or his employer or a company of which he is a director) and the issuer or a related company which, in either case, may reasonably be expected to have given him access to information which, in relation to securities of either company is price sensitive information and which it would be reasonable to expect a person in his position not to disclose except for the performance of his functions.

(3) In this section, “related company” in relation to a company, means a body corporate which is the subsidiary or holding company of that company or the subsidiary of that company’s holding company.

(4) In this Part, “take-over bid” means an offer made by an offeror to shareholders of an offeree company to acquire all the shares of any class of issued shares of the offeree company, and includes every offer by an issuer to repurchase its own shares.

Prohibition of buying  
or selling of  
securities by certain  
persons

**121.** (1) Subject to section 124, 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 information which—

- (a) he holds by virtue of being connected with the first mentioned issuer;
- (b) it would be reasonable to expect a person so connected and the position by virtue of which he is so connected not to disclose except for the proper performance of the functions attaching to that position; and
- (c) he knows is price sensitive information in relation to those securities.

(2) Subject to section 124, an individual who is, or at any time in the preceding six months has been knowingly connected with an issuer shall not buy, sell or participate in any transaction on a securities exchange or any other registered self-regulatory organization in securities of any other issuer if he has information which—

- (a) he holds by virtue of being connected with the first mentioned issuer;
- (b) it would be reasonable to expect a person so connected, and in the position by which he is so connected, not to disclose except for the proper performance of the functions attaching to that position; and
- (c) he knows is price sensitive information in relation to those securities of that other issuer; and
- (d) relates to any transaction (actual or contemplated) involving both the first issuer and that other issuer, or involving one of them and the securities of the other, or to the fact that any such transaction is no longer contemplated.

(3) Subsection (4) shall apply where a person (hereafter in this section referred to as "the recipient") has information which he knowingly obtained, directly or indirectly, from another person who—

- (a) is connected with a particular issuer, or was at anytime in the six months preceding the obtaining of the information so connected; and
- (b) the first mentioned person knows or has cause to believe that, because of the latter's connection and position, it would be reasonable to expect him not to disclose the information except for the proper performance of the functions attaching to that position.

(4) Subject to section 124, the recipient—

- (a) shall not buy, sell or participate in any transaction on any securities exchange or any other self-regulatory organization in securities of that issuer if he knows that the information is price sensitive information in relation to those securities;
- (b) shall not buy, sell or participate in any transaction on any securities exchange or any other self-regulatory organization in securities of any other issuer if he knows that the information is price sensitive information in relation to any transaction, actual or contemplated, involving the first mentioned issuer and the other issuer, or in relation to the fact that any such transaction is no longer contemplated.

(5) Subject to section 124, where a person is contemplating, or has contemplated, making (whether with or without another person) a take-over bid for an issuer in a particular capacity, that person shall not

buy, sell or participate in any transaction on any securities exchange or any other self-regulatory organization in another capacity if he knows that information that the offer is contemplated, or is no longer contemplated, is price sensitive information in relation to those securities.

(6) Subject to section 124, where a person who knowingly obtained, directly or indirectly, from a person to whom subsection (5) applies, information that the offer referred to in that subsection is being contemplated or is no longer contemplated, the first mentioned person shall not himself buy, sell or participate in any transaction on any securities exchange or any other self-regulatory organization in securities of that issuer if he knows that the information is price sensitive information in relation to those securities.

(7) Subject to section 124, a person who is for the time being prohibited by this section from buying, selling or participating in any transaction on any securities exchange or any other self-regulatory organization in any securities shall not counsel or procure any other person to buy, sell or participate in any transaction in those securities, knowing or having reasonable cause to believe that the other person would buy, sell or participate in a transaction in them on any securities exchange or any other self-regulatory organization.

(8) Subject to section 124, a person who is for the time being prohibited pursuant to this section from buying, selling or participating in any transaction on any securities exchange or any other self-regulatory organization in any securities by reason of his having any information, shall not communicate that information to any other person if he knows or has reasonable cause to believe that that person or some other person will make use of the information for the

purpose of buying, selling or participating in any transaction on any securities exchange or any other self-regulatory organization in those securities.

Disclosure of  
beneficial interest in  
share capital

**122.** (1) An issuer may by notice in writing require any member of the issuer within such reasonable time as is specified in the notice—

- (a) to indicate in writing the capacity in which he holds any shares comprised in relevant share capital of the issuer; and
- (b) if he holds them otherwise than as beneficial owner, to indicate in writing so far as it lies within his knowledge, the person who has an interest in them (either by name and address or by other particulars sufficient to enable that person to be identified) and the nature of that person's interest.

(2) Where an issuer is informed in pursuance of a notice given to any person under subsection (1) or paragraph (b), that any other person has an interest in any shares comprised in relevant share capital of the issuer, the issuer may by notice in writing require that other person within such reasonable time as specified in the notice—

- (a) to indicate in writing the capacity in which he holds that interest; and
- (b) if he holds it otherwise than as beneficial owner, to indicate in writing so far as it lies within his knowledge, the person who has an interest in it (either by name and address or by other particulars sufficient to enable him to be identified) and the nature of that person's interest.

(3) Any issuer may by notice in writing require any member of the issuer to indicate in writing, within such reasonable time as is specified in the notice, whether any of the voting rights carried by any shares

comprised in the relevant share capital of the issuer held by him are the subject of an agreement or arrangement under which another person is entitled to control his exercise of those rights and, if so, to give so far as it lies within his knowledge written particulars of the agreement or arrangement and the parties to it.

(4) Where an issuer is informed in pursuance of a notice given to any person under subsection (3) or this subsection that any other person is a party to such agreement or arrangement as is mentioned in subsection (3), the issuer may by notice in writing require that other person within such reasonable time as is specified in the notice to give, so far as it lies within his knowledge, written particulars of the agreement or arrangement and the parties to it.

(5) Whenever an issuer receives information from a person in pursuance of a requirement imposed on him under this section it shall inscribe in the prescribed record—

- (a) the fact that the requirement was imposed and the date on which it was imposed; and
- (b) the information received in pursuance of the requirement.

(6) For the purposes of this section, the expression “relevant share capital” means issued share capital of a class carrying the right to vote in all circumstances and at all general meetings.

**123.** Any person who commits a breach of any <sup>Offences</sup> section in this Part, other than section 121, or who, in complying with any other section, makes a statement which he knows to be false, or recklessly makes a statement which is false, or fails to supply any particulars which he is required to supply shall be guilty of an offence and liable—

- (a) on summary conviction to a fine of ten thousand dollars and to imprisonment for three months;

- (b) on conviction on indictment to a fine of twenty thousand dollars and to imprisonment for six months.

Exceptions to  
section 121

124. (1) Section 121 does not prohibit a person by reason of his having any information from—

- (a) doing any particular thing otherwise than with a view to the making of a profit or the avoidance of a loss, whether for himself or another person, by the use of that information;
- (b) entering into a transaction in the course of the exercise in good faith of his functions as liquidator, receiver or trustee in bankruptcy;
- (c) doing any particular thing if the information—
  - (i) was obtained by him in the course of business as a broker or trader in which he was engaged or employed; and
  - (ii) was of a description which it would be reasonable to expect him to obtain in the ordinary course of that business, and he does that thing in good faith in the course of that business; or
- (d) acquiring shares, stocks, unit certificates, participation certificates or certificates of shares of interest through—
  - (i) employee profit sharing plans and employee stock ownership plans established to provide for the ownership of such securities by all permanent employees;
  - (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.

(2) A person is not, by reason only of his having information relating to any particular transaction prohibited—

- (a) by section 121(2), (4)(b), (5) or (6) from buying or selling or participating in any transaction on any securities exchange or on any other self-regulatory organization in any securities; or
- (b) by section 121(7) or (8) from doing any other thing in relation to securities which he is prohibited from buying or selling or causing to be traded on any securities exchange or any other self-regulatory organization by any of the provisions mentioned in paragraph (a),

if he does that thing in order to facilitate the completion or carrying out of the transaction.

**125.** Where a person is accused of an offence under section 121, it shall not be a defence to the charge that the information in respect of which the acquisition has been made came to his knowledge without having been solicited by him or that he made no effort to procure the acquisition of such information. Defence not available

**126.** (1) Where a person referred to in subsection (2) buys, sells or participates in any transaction in any securities or counsels or procures any other person to buy, sell or participate in any transaction on any securities exchange or any other self-regulatory organization, he is presumed to have acted with propriety if he acted on the advice of a person who— Application to trustees and personal representatives

- (a) appeared to him to be an appropriate person from whom to seek such advice; and

(b) did not appear to him to be prohibited by section 121, from buying, selling or participating in any transaction on any securities exchange or any self-regulatory organization in those securities.

(2) Subsection (1) applies to a person who is a trustee or personal representative or, where a trustee or personal representative is a body corporate, a person acting on behalf of that trustee or personal representative who, apart from section 124(1)(a) would be prohibited by section 121 from buying, selling or participating in any transaction on any securities exchange or any other self-regulatory organization, or counselling or procuring any other person to buy, sell or participate in any transaction on any securities exchange or any other self-regulatory organization.

(3) In subsection (1) "with propriety" means otherwise than with a view to making a profit or the avoidance of a loss, whether for himself or another person, by the use of the information in question.

#### Penalties

**127.** (1) A person who contravenes section 121 is liable—

- (a) on conviction on indictment to a fine of two hundred thousand dollars and to imprisonment for two years; and
- (b) on summary conviction to a fine of fifty thousand dollars and to imprisonment for six months.

(2) No transaction is void or voidable by reason only that it was entered into in contravention of section 121.

## PART X

### CIVIL LIABILITY

Persons liable for damage re untrue statement, etc., in prospectus

**128.** (1) Subject to this section, each of the following designated persons is, for any loss or damage sustained by other persons who, on the faith of a prospectus,

subscribe for, or purchase any securities, liable for any loss or damage sustained those other persons by reason of any untrue statement in the prospectus, or by reason of the willful non-disclosure in the prospectus of any matter of which the designated person had knowledge and that he knew to be material, namely—

- (a) a person who is a director of an issuer at the time of the issue of the prospectus;
- (b) a person who authorized or caused himself to be named, and is named, in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time;
- (c) a person who was involved in the incorporation of the issuer; or
- (d) a person who authorized or caused the issue of the prospectus.

(2) Notwithstanding subsection (1), where the consent of an expert is required to the issue of a prospectus and he has given that consent, he is not, by reason only of the consent, liable as a person who has authorized or cause the issue of the prospectus, except in respect of an untrue statement purporting to be made by him as an expert; and the inclusion in the prospectus of a name of a person as a trustee for debenture holders, auditor, banker, attorney-at-law, transfer agent or stockbroker may not, for that reason alone, be taken as an authorization by him of the issue of the prospectus.

(3) No person is liable under subsection (1)—

- (a) who, having consented to become a director of the issuer, withdrew his consent before the issue of the prospectus and the prospectus was issued without his authority or consent;

- (b) who, when the prospectus was issued without his knowledge or consent, gave reasonable public notice of that fact forthwith after he became aware of its issuer;
  - (c) who, after the issue of the prospectus and before allotment or sale under it, became aware of an untrue statement in it and withdrew his consent, and gave reasonable public notice of the withdrawal of his consent and the reasons for it; or
  - (d) who, as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, had reasonable ground, to believe and did, up to the time of the allotment or sale of the securities, believe that the statement was true.
- (4) No person is liable under subsection (1)—
- (a) if, as regards every untrue statement purporting to be a statement made by an expert or to be based on a statement made by an expert, the untrue statement fairly represented was a correct and fair copy of, or extract from, the report or valuation and that person had reasonable grounds to believe and did, up to the time of the issue of the prospectus, believe, that the expert making the statement was competent to make it, and had given his consent as required under section 74 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration, nor had the expert, to the person's knowledge, withdrawn that consent before allotment or sale under the prospectus; or

- (b) if, as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of, or extract from, a public official document, the untrue statement was a correct and fair representation of the statement or a copy of, or extract from, the document.

(5) Subsections (3) and (4) do not apply in the case of a person liable, by reason of his having given a consent required of him by section 74, as a person who has authorized or caused the issue of the prospectus in respect of an untrue statement purporting to have been made by him as an expert.

(6) A person who, apart from this subsection, would be liable under subsection (1), by reason of his having given a consent required of him by section 74, as a person who has authorized or caused the issue of a prospectus in respect of an untrue statement purporting to be made by him as an expert, is not liable—

- (a) if, having given his consent under that section to the issue of the prospectus, he withdrew his consent in writing before a copy of the prospectus was lodged with the Commission;
- (b) if, after a copy of the prospectus was lodged with the Commission and before allotment or sale under the prospectus, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal; or
- (c) if he was competent to make the statement and had reasonable grounds to believe, and did, up to the time of the allotment or sale of the shares or debentures, believe that the statement was true.

## (7) When—

- (a) a prospectus contains the name of a person as a director of the issuer, or as having agreed to become a director, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus and has not authorized or consented to its issue; or
- (b) the consent of a person is required under section 74 to the issue of a prospectus and he either has not given the consent or has withdrawn it before the issue of the prospectus,

any person who authorized or caused the issue of the prospectus and the directors of the company, other than those directors without whose knowledge or consent the prospectus was issued, are liable to indemnify the person so named, or whose consent was so required, against all damages, costs and expenses to which he might be liable by reason of his name having been inserted in the prospectus, or of the inclusion of a statement purporting to be made by him as an expert, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(8) The liability of all persons referred to in subsection (1) is joint and several as between themselves with respect to the same cause of action.

(9) A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all the circumstances of the case, the Court is satisfied that it would not be just and equitable.

Action by security holders for rescission of allotments or repayment of issue price

**129.** (1) A security holder may bring, against an issuer that has allotted securities under a prospectus, an action for the rescission of the allotment and the

repayment to him of the whole or part of the issue price that has been paid in respect of the security, if—

- (a) the prospectus contained a material statement, promise or forecast that was intentionally false, deceptive or misleading; or
- (b) the prospectus did not contain a statement, report or account required under this Act or the by-laws to be contained in it.

(2) In this section “security holder” means a holder of any of the securities allotted under the prospectus, whether the original allottee or a person deriving title under him.

(3) For the purposes of this section—

- (a) a prospectus contains a material statement, promise or forecast if the statement, promise or forecast was made in such a manner or context, or in such circumstances, as to be likely to influence a reasonable man in deciding whether to invest in the securities offered for subscription; and
- (b) a statement, report or account is omitted from a prospectus if it is omitted entirely, or if it does not contain all the information required by this Act or the by-laws to be given in the statement, report or account.

(4) In an action brought under this section, the plaintiff need not prove that he, or the person to whom the securities he holds were allotted, was in fact influenced by the statement, promise or forecast that he alleges to be intentionally false, deceptive or misleading, or by the omission of any report, statement or account required to be contained in the prospectus.

(5) No action may be brought under this section more than two years after the first issue of the

prospectus under which securities were allotted to the plaintiff or the person under whom the plaintiff derives title.

(6) Subject to subsection (9), it is a defence to an action under this section for the issuer to prove that—

- (a) the plaintiff was the allottee of the securities in right of which the action was brought and that at the time they were allotted to him he knew that the statement, promise or forecast of which he complains was intentionally false, deceptive or misleading, or that he knew of the omission from the prospectus of the matter of which he complains; or
- (b) the plaintiff has received a dividend or payment of interest, or has voted at a meeting of shareholders or debenture holders since he discovered that the statement, promise or forecast of which he complains was intentionally false, deceptive or misleading, or since he discovered the omission from the prospectus of the matter of which he complains.

(7) An action may not be dismissed if there are several plaintiffs, when the issuer proves that it has a defence under subsection (8) against each of them; and in any case in which the issuer proves that it has a defence against the plaintiff or all the plaintiffs, the Court may, instead of dismissing the action, substitute some other security holder of the same class as plaintiff.

(8) Where a issuer would have a defence under subsection (8) but for the fact that the allottee of the securities in right of which the action is brought has transferred or renounced them, the issuer may bring an action against the allottee for an indemnity against any sum that the Court orders it to pay to the plaintiff in the action.

(9) This section applies to securities allotted pursuant to an underwriting contract as if they had been allotted under the prospectus.

(10) This section applies to securities issued under a prospectus that offers them for subscription in consideration of the transfer or surrender of other securities, whether with or without the payment of cash by or to the issuer, as though the issue price of the securities offered for subscription were the fair value, as ascertained by the Court, of the securities to be transferred or surrendered, plus the amount of cash, if any, to be paid by the issuer.

(11) The right of action for damages conferred by section 128 is in addition to and not in derogation of any other right the purchaser may have.

**130.** (1) The Commission may apply to a Judge of the Court for leave to bring an action under this Part in the name and on behalf of an issuer and the Judge may grant leave on any terms as to security for costs or otherwise that he considers proper if he is satisfied that—

Commission may seek leave to bring action or appear or intervene in an action

- (a) the Commission has reasonable grounds for believing that a cause of action exists under this Part; and
- (b) the Commission gave reasonable notice to the issuer who refused or failed to commence an action.

(2) The Commission may apply to a Judge of the Court for leave to bring an action under this Part in the name and on behalf of a security holder and the Judge may grant leave on any terms as to security for cost or otherwise that he considers proper if he is satisfied that—

- (a) the Commission has reasonable grounds for believing that a cause of action exists under this Part; and

(b) the security holder has failed or is unable to commence the action.

(3) The Commission may apply to a Judge of the Court for leave to appear or intervene in an action under this Part and the Judge may grant leave on such terms as he considers appropriate.

(4) The Commission may publish a summary of the terms of any settlement of an action commenced or intervened in by it in a regular periodical published by it, or in a daily newspaper.

## PART XI

### ENFORCEMENT

#### *Division 1—By-laws*

By-laws

**131.** (1) The Minister may, on the recommendation of the Commission, make by-laws—

- (a) classifying persons, securities, trades, distributions, registration under Part III, IV or V, filings, applications and other matters and prescribing requirements appropriate to each class;
- (b) respecting registration under this Act including but not limited to prescribing conditions to be met by persons registered in each category;
- (c) prescribing the method of record keeping and the type and form of records to be kept by each category of person registered under this Act;
- (d) prescribing the format and contents of filings and applications and the filing of copies of documents filed with any government agency;
- (e) prescribing the accounting principles and standards used in the preparation of financial statements;

- (f) requiring examination of and reporting on financial statements by independent accountants;
- (g) establishing standards of independence for accountants in relation to financial statements;
- (h) prescribing the form and content of an independent accountant's report;
- (i) prescribing fees for any filing with or other application to the Commission;
- (j) governing conflicts of interests for Commissioners, the General Manager and other employees of the Commission and other persons engaged by the Commission to act as advisers or to perform duties under this Act;
- (k) prescribing any matter or thing required by this Act to be prescribed; and
- (l) respecting any other matter authorized by or required to carry out the purposes of this Act.

(2) The Minister may, on the recommendation of the Commission, make by-laws governing take-overs in respect of public companies.

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

(4) Without prejudice to the generality of subsection (2), by-laws made thereunder may include—

- (a) the level of acquisition of voting rights by a person or persons acting in concert at which an offer to all shareholders of the relevant shares shall become mandatory and the conditions applying to such offers;
- (b) the requirements of the offeror and offeree companies in respect of information to be disclosed to shareholders of both companies;

- (c) the requirements as regards equitable treatment of shareholders of the same class or cash alternatives in offers or both;
- (d) the timing of offer procedures and circulation of documentation;
- (e) conditions observable in the dealing of shares by the offeror or by persons in concert during the offer period and the reporting to the Commission of dealings in the shares of the offeree company during the take-over period;
- (f) the minimum period within which an unsuccessful offer may not be renewed;
- (g) the requirements to protect minority interests.

(5) The Commission may establish a committee under section 16 to administer the by-laws made under subsection (2) and may make rules for the conduct of the business of that committee.

(6) By-laws may provide that a contravention thereof shall be punishable on summary conviction by a fine of one hundred thousand dollars and imprisonment for two years.

(7) Notwithstanding subsections (1) and (2), the first by-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.

Publication of  
proposed laws

**132.** (1) The Commission shall publish in the *Gazette*, in a daily newspaper and in any regular periodical published by the Commission at least sixty days before the proposed effective date thereof—

- (a) a copy of any by-law that it proposes to recommend to the Minister;
- (b) a concise statement of the substance and purpose of the proposed by-law; and
- (c) a reference to the authority under which the by-law is proposed.

(2) After a proposed by-law is published in accordance with subsection (1), the Commission shall afford a reasonable opportunity to interested persons to make representations in writing with respect to the proposed by-law.

(3) The Commission, where it considers it necessary, may convene a hearing for the presentation of oral argument or the submission of evidence orally and may permit cross-examination by interested persons in order to determine an issue of specific fact that is material to its consideration of a proposed by-law.

(4) The Commission is not required to comply with subsections (1) and (2) if—

- (a) all persons who will be subject to the by-law are named and the information required by subsection (1)(a) to (c) is sent to each of them;
- (b) the by-law only grants an exemption or relieves a restriction and is not likely to have a substantial impact on the interests of persons other than those who benefit under it;
- (c) the by-law makes no material substantive change in an existing by-law; or
- (d) the Commission for good cause finds that compliance with subsections (1) and (2) is impracticable or unnecessary and publishes the finding and a concise statement of the reasons for it.

(5) Any person may petition the Commission to recommend the making, amendment or revocation of a by-law.

### *Division 2—Orders of Commission*

**133.** (1) The Commission may make an order on its own motion or on application by an interested person—

- (a) classifying a person, security, trade, distribution, registration under Part III, IV

Power to make orders

or V, filing, application or other matter and imposing requirements appropriate to the class;

- (b) permitting or requiring in a filing or application the filing of copies of documents filed with another government agency; and
- (c) respecting any other matter authorized by or required to carry out the purposes of this Act.

(2) A declaratory order or an order granting an exemption is effective against all persons, but the Commission shall make an order revoking or modifying, such an order when it finds that a determination reflected in it is no longer consistent with the facts.

Conduct of hearings

134. (1) The Commission shall, before making a final order, provide a reasonable opportunity for a hearing to each person directly affected and shall give reasonable notice to each such person and to any interested self-regulatory organization including—

- (a) a statement of the time, place and purpose of the hearing;
- (b) a reference to the authority under which the hearing is to be held;
- (c) a concise statement of the allegations of fact and law; and
- (d) a statement that if the person fails to attend at the hearing, the Commission may proceed without giving him further notice.

(2) The Commission may—

- (a) issue a subpoena or other request or summons requiring a person to attend at a hearing, to testify to all matters relating to the subject of the hearing and to produce all records relating to the subject of the

hearing that are in his possession or under his control, whether they are located in or outside Trinidad and Tobago; and

- (b) compel a person to give evidence on oath, affirmation or otherwise as it thinks necessary, orally or in writing.

(2A) Notwithstanding subsection (2), no person giving evidence before the Commission shall be compellable to criminate 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.

(3) A hearing under subsection (1) shall be open to the public unless the Commission directs otherwise in order to protect the interests of the persons affected, but if all persons directly affected and appearing so request, a hearing shall be open to the public.

(4) A person who is entitled to notice of a hearing under subsection (1) may be represented by counsel and, subject to rules made under section 21, may present evidence and argument and may cross-examine witnesses at the hearing.

(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 that it considers relevant to the subject matter of the proceedings and may take notice of any fact that may be judicially noticed and of any generally recognized scientific or technical fact, information or opinion within its area of expertise.

(7) The Commission shall make provision for all oral evidence presented at a hearing under subsection (1) to be transcribed.

(8) The Commission shall—

- (a) make a final order in writing and state the findings of fact on which it is based and the reasons for it;
- (b) send a copy of the order and reasons to each person entitled to notice under subsection (1) and to each person who appeared at the hearing; and
- (c) publish a copy of the order and reasons or a summary thereof in a periodical published by it or in a daily newspaper but the Commission may omit the name of an affected person from an order so published.

(9) Subsection (1) does not apply to an order that—

- (a) is made under section 138(1) or 139(1);
- (b) is essentially procedural; or
- (c) does not adversely affect the rights or interests of any person.

### *Division 3—Appeals*

Appeals for review *re*  
section 7 or 43

**135.** (1) A person directly affected by a final order made pursuant to authority delegated under section 7, or by an order of a self-regulatory organization under section 43, may appeal the order to the Commission.

(2) The Commission may of its own motion review an order made pursuant to authority delegated under section 7 or made by a self-regulatory organization under section 43 and shall provide a reasonable opportunity for a hearing and give reasonable notice to each person, including a self-regulatory organization, directly affected by the order.

(3) On an appeal or review under this section the Commission may, subject to section 44, confirm the order or make such orders as it considers appropriate.

(4) An order that is subject to appeal or review under this section takes effect immediately, but the Commission or the person who made the order may grant a stay pending the decision of the Commission.

**136.** (1) A person directly affected by a final order of the Commission may appeal the order to the Court of Appeal.  
Appeal to Court of Appeal against final order

(2) No appeal may be made under this section unless the person affected has taken all reasonable steps available to appeal or obtain review of the order pursuant to section 135.

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

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

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

(6) On an appeal under this section against a cease trading order under section 141 or an order under section 142, the Court of Appeal may confirm the order or may, if the order is arbitrary, capricious or an abuse of discretion, revoke it.

**137.** (1) A person affected by a by-law of the Commission may appeal to the Court of Appeal against the application of that by-law to him.  
Appeal to Court of Appeal against by-law

(2) A by-law that is subject to appeal under this section takes effect at the time specified by the Commission, but the Commission or the Court of Appeal may grant a stay pending review.

(3) The Commission is entitled to appear and be heard on the merits on an appeal under this section.

(4) On an appeal under this section, the Court of Appeal may confirm or revoke a by-law or may remand the matter to the Commission or further proceedings subject to any conditions that Court considers proper, but the Court of Appeal may revoke a by-law only if—

- (a) it is arbitrary, capricious or an abuse of discretion;
- (b) it is in excess of the Commission's jurisdiction;
- (c) it was made in contravention of section 132; or
- (d) a specific material fact found by the Commission after an evidentiary hearing convened pursuant to section 135 is not supported by the evidence.

(5) For the purposes of this section, an order of the Commission under section 40 or 41 is a by-law.

#### *Division 4—Investigations*

Investigation of  
contraventions

**138.** (1) The Commission may appoint a person to conduct an investigation to ascertain whether any person has contravened, is contravening or is about to contravene this Act.

(2) A person appointed by the Commission pursuant to subsection (1) may issue a subpoena or other request or summons requiring a person to attend at a specified time and place, to testify to all matters relating to the subject of an investigation and to produce all records relating to the subject of the investigation that are in his possession or under his control.

(3) A person appointed by the Commission pursuant to subsection (1) may compel a person to give evidence on oath, affirmation or otherwise as he thinks necessary, orally or in writing, and may administer an oath or affirmation at any place.

(4) A person who gives evidence in an investigation under this section may be represented by counsel.

(5) Where a person who is required by the Commission to give evidence or attend a hearing in the course of an investigation fails or refuses to—

(a) attend; or

(b) give evidence on oath, or with affirmation, the Commission may make an application to the Court to so compel the person.

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

(7) A person appointed by the Commission pursuant to subsection (1) shall provide the Commission with a full and complete report of the investigation including any transcript of evidence and any material in his possession relating to the investigation.

(8) The Commission may publish a report or other information concerning an investigation under this section, but if it intends to do so it shall—

(a) provide a person against whom an adverse finding is to be made with fourteen days notice of the finding and an opportunity to be heard in person or by counsel; and

(b) if practicable, provide a person who is likely to receive adverse publicity with advance notice of the publication and a reasonable opportunity to prepare a response prior to publication.

Conduct of inquiry re  
proposed by-laws

139. (1) The Commission may conduct an inquiry to aid in the prescription of by-laws under this Act or to obtain information as a basis for recommending legislation relating to the Act or its subject matter.

(2) The Commission may exercise the powers specified in section 138(2) and (3) in relation to an inquiry under this section.

(3) A person who gives evidence in an inquiry under this section may be represented by counsel.

(4) An inquiry under this section may be conducted in public, but a person who is likely to receive adverse publicity as a result of the inquiry being public shall be afforded, if practicable, a reasonable opportunity to state his position for the record in the inquiry.

(5) The Commission may publish a report or other information concerning an inquiry under this section but a person who is likely to receive adverse publicity as a result of such publication shall be afforded, if practicable, advance notice of the publication and a reasonable opportunity to prepare a response prior to publication.

Investigation of  
financial affairs of  
registrants and  
others

140. (1) The Commission may at any time, where it is of the view that a registrant may be in breach of this Act, appoint a person in writing to examine the records and financial affairs of a registrant and to prepare such financial or other reports as the Commission requires.

(2) Where, upon the application *ex parte* of the Commission, the Court is satisfied that a person other than a registrant may be in breach of this Act, the Court may make an order authorizing the Commission to examine the records and financial affairs of that person.

(3) A person appointed by the Commission pursuant to subsection (1) or (2) may examine all the records, books of account, securities, cash, bank accounts and other data of the registrant or person whose affairs are to be examined.

(4) No person shall withhold, conceal, destroy or refuse to produce any information or record reasonably required for the purpose of the examination by a person appointed pursuant to subsection (1) or (2).

(5) The Commission may charge a registrant a prescribed fee for an examination made under this section.

141. (1) Where the Commission considers that—

Power to order  
cessation of trading

- (a) a security is being traded in connection with a distribution contrary to Part VI;
- (b) a prospectus, summary prospectus, preliminary prospectus, block distribution circular or any other document used in connection with a distribution contains a misrepresentation or omits a material fact required to be included;
- (c) any of the circumstances specified in section 76(2) as the basis for a refusal to issue a receipt for a prospectus exists; or
- (d) an issuer, selling security holder or underwriter fails to provide information, including financial statements relating to the issuer or the distribution that is reasonably requested by the Commission,

the Commission may order that all trading in connection with the distribution cease.

(2) Where the Commission considers that—

- (a) a material fact relating to an issuer of a security has not been disclosed and become public;
- (b) trading in a security or fluctuations in the price of a security requires or require explanation; or
- (c) it is otherwise in the public interest or necessary for the protection of investors,

the Commission may order, subject to such conditions as it considers appropriate, that trading cease in respect of any security for a period specified by it.

(3) Where the Commission considers that it is in the public interest or necessary for the protection of investors, it may make an order prohibiting, subject to such conditions as it considers appropriate, a person who contravenes this Act from trading in securities or from trading a specified security.

(4) The Commission may make an order under subsection (1) or (3) without holding a hearing as required by section 134, but it shall provide an opportunity for such a hearing within fifteen days of the making of the order and the order remains in effect until the hearing is completed.

(5) The Commission may make an order under subsection (2) without holding a hearing as required by section 134, but it shall provide an opportunity for such a hearing within fifteen days of the making of the order and the order remains in effect until the hearing is completed, unless the order was made pursuant to subsection (2)(a), in which case the Commission may extend it until the material fact is disclosed and becomes public.

(6) The Commission shall forthwith give notice of an order under this section to—

- (a) each person named in the order;
- (b) the issuer of a security specified in the order;
- (c) any other person the Commission believes is directly affected by the order; and
- (d) if the order is made pursuant to subsection (1) or (2) every person registered under Parts IV and V,

and shall include notice of the order in a regular periodical published by it, or in a daily newspaper.

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

142. (1) Where the Commission, after a hearing, considers it to be in the public interest, it may order—

Protection of investors re dealers in money, etc.

(a) that a person comply with or cease contravening, and that the directors and senior officers of the person cause the person to comply with or cease contravening—

(i) this Act or the by-laws;

(ii) an order of the Commission;

(iii) a rule, direction, decision or order made under a rule of a self-regulatory organization;

(b) that a person resign any position that the person holds as a director or officer of a registered issuer;

(c) that a registrant or registered issuer—

(i) is prohibited from disseminating to the public, or authorizing the dissemination to the public of, any information or record of any kind described in the order;

(ii) is required to disseminate to the public, by the method described in the order, any information or record relating to the affairs of the registrant or issuer that the Commission considers must be disseminated;

(iii) is required to amend, in the manner specified in the order, any information or record of any kind described in the order before disseminating the information or record to the public or authorizing its dissemination to the public; or

(d) that a registrant be reprimanded or that person's registration be suspended, cancelled or restricted.

(2) The Commission shall send written notice of every order made under this section to any person that is directly affected by the order.

Order for penalty

143. (1) Where the Commission after a hearing determines that a person has contravened this Act or any by-law or an order of the Commission and considers it to be in the public interest to make the order, the Commission may order the person to pay to the State a penalty of not more than fifty thousand dollars.

(2) Where the Commission makes an order under subsection (1) the Commission shall file in the registry of the Court a copy of the order certified by the Chairman of the Commission and on being filed the order shall have the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Court, unless an appeal has been filed pursuant to section 136.

(3) Every penalty imposed by the Commission in the exercise of its powers under this Act shall be payable into the general revenue and may be recovered by the State as a civil debt and for the purposes of the proof of such debt a certificate under the hand of the Chairman or the Chief Executive Officer of the Commission shall be receivable in evidence as sufficient proof of such debt.

#### *Division 5—Orders of Court*

Court orders for enforcing compliance

144. (1) Where the Commission considers that a person has failed to comply with or is contravening this Act or any by-law or an order, the Commission may, in

addition to any other powers it may have, apply to the Court for a permanent or temporary injunction directing—

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

(2) On application under subsection (1), the Court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing—

- (a) an order requiring restitution or disgorgement of profits;
- (b) an order restraining the conduct complained of;
- (c) an order requiring compliance with this Act or the by-laws or an order;
- (d) an order requiring disclosure of any information;
- (e) an order setting aside a transaction relating to trading in securities; or
- (f) an order requiring the issuance or cancellation of a security or the purchase, disposition or exchange of a security.

(3) An order may be made under this section notwithstanding that a penalty has already been imposed on that person in respect of the same non-compliance or contravention.

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

- (a) a person who has contravened this Act or any by-law; or

Appointment of  
receiver, etc.

(b) a person whose registration under this Act has been suspended or revoked, from dealing with property under his control or direction, it may apply to the Court and the Court may appoint a receiver or receiver-manager of the property if it is satisfied that it is in the interests of investors or persons whose property is controlled by that person, creditors or security holders of that person, or members of that person to do so.

(2) Where the Commission intends to apply to the Court to appoint a receiver or receiver-manager in respect of the property of a financial institution, the Commission shall, before making the application, consult with the Inspector of Banks with regard to the proposed application.

(3) The Court may make an order under subsection (1) on an *ex parte* application by the Commission for a period not exceeding fifteen days.

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

Disqualification of directors

146. (1) When, on the application of the Commission, the Court is satisfied that an individual is unfit to be concerned in the management of an issuer, the Court may order that that individual shall not, without the prior leave of the Court, be a director of the issuer, or be in any way, directly or indirectly, concerned with the management of the issuer for such period—

(a) beginning—

- (i) with the date of the order; or
- (ii) if the individual is undergoing, or is to undergo a term of imprisonment and the Court so directs, with the date on which he completes that term of imprisonment or is otherwise released from prison; and

(b) not exceeding five years, as may be specified in the order.

(2) In determining whether or not to make an order under subsection (1), the Court shall have regard to all the circumstances that it considers relevant, including any previous convictions of the individual in Trinidad and Tobago or elsewhere for an offence involving fraud or dishonesty or in connection with the promotion, formation or management of any body corporate.

(3) Before making an application under this section in relation to any individual, the Commission shall give that individual not less than ten days' notice of its intention to make the application.

(4) On the hearing of an application made by the Commission under this section or an application for leave under this section, the Commission and any individual concerned with the application may appear and call attention to any matters that are relevant, and may give evidence, call witnesses and be represented by an attorney-at-law.

### *Division 6—Offences*

147. (1) A person who—

Offences

- (a) knowingly or recklessly makes a misrepresentation in contravention of this Act or any by-law;
- (b) knowingly or recklessly makes a misrepresentation to any person appointed to conduct an investigation under section 138 or to the Commission in connection with an inquiry under section 139; or
- (c) knowingly or recklessly contravenes section 36, 52, 53, 64, 65 or 69,

is guilty of an indictable offence and is liable to a fine of one hundred thousand dollars and to imprisonment for two years.

(2) A person who knowingly or recklessly contravenes a provision of this Act or any by-law that is not specified in subsection (1) or an order of the Commission, is guilty of an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for one year.

(3) A person who fails without reasonable excuse to comply with an order of the Commission or a subpoena or other request or summons under section 138(2) or (3), 139(2) or 140(4) or to permit entry under section 47(3) or 141(4) is guilty of an offence and is liable on summary conviction to a fine of twenty-five thousand dollars and to imprisonment for three months.

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

(a) this Act or any by-law;

(b) a judicial judgment or opinion; or

(c) an order or official release of the Commission,

is a defence in a proceeding under this section.

Liability of directors,  
etc.

**148.** (1) Where a person has been convicted of an offence under section 147 then, any director, officer, or supervisor of the person who knowingly or recklessly authorized, permitted or acquiesced in the offence is also guilty of the offence and liable to the penalty specified for it.

(2) Wherever in this Act it is provided that any act or omission of any person is unlawful or is an offence and no penalty or sanction is specified in respect of that offence, that act or omission shall be punishable on summary conviction by a fine not

exceeding one hundred thousand dollars and three months' imprisonment and when the person accused in respect of such act or omission is a issuer, the issuer shall be liable to such fine.

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

(4) The Commission may prepare a certificate setting out the costs of the investigation of an offence, including the time spent by its staff and any fees paid to an expert, investigator or witness.

(5) The Commission may apply to a Master or Registrar of the Supreme Court to review the certificate under the Rules of the Supreme Court, 1975 as if the certificate were a bill of costs, and the Master or Registrar shall review the cost and may vary them if he considers them unreasonable or not related to the investigation.

(6) The scales of costs in Order 62 of the Rules of the Supreme Court, 1975 do not apply to a certificate reviewed under this section.

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

149. Notwithstanding any other written law, an officer of the Commission may, in relation to an alleged offence against this Act or any by-law institute and conduct criminal proceedings in a summary court. Prosecution of summary offences

## PART XII

### TRANSITIONAL PROVISIONS

150. The Securities Industry Act is repealed.

Repeal Chap. 83:02

Passed in the House of Representatives this 22nd day of September, 1995.

J. SAMPSON  
*Clerk of the House*

Passed in the Senate this 3rd day of October, 1995.

D. DOLLY  
*Acting Clerk of the Senate*

Senate amendments agreed to by the House of Representatives this 6th day of October, 1995.

J. SAMPSON  
*Clerk of the House*