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No. 6 of 2013

Fourth Session Tenth Parliament Republic of
Trinidad and Tobago

Senate

BILL

AN ACT to amend the Securities Act, 2012

THE SECURITIES (AMENDMENT) BILL, 2013

Explanatory Note

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

The Bill seeks to amend the Securities Act, 2012.

Clauses 1 and 2 would provide for the short title and the interpretation provision respectively.

Clause 3 would amend section 4 of the Act by revising existing definitions including the definitions of “limited offering” and “market actor”, inserting a new definition of “branch office”, as well as amending subsections (5) and (6) which will now require the registration of foreign persons where those persons are soliciting investment advisory or brokerage services in Trinidad and Tobago.

Clause 4 would amend section 6 of the Act. This amendment would include the addition of a new function of the Commission to assess, measure and evaluate risk exposure in the securities industry.

Clause 5 would amend section 7 of the Act. This amendment would include the addition of a new power of the Commission to monitor the risk exposure of registrants and self-regulatory organizations and to take measures to protect the interest of investors, clients, members and the securities industry where necessary.

Clause 6 would amend section 8 of the Act to allow an aggrieved person to request a review of a decision made by a delegate of the Commission.

Clause 7 would amend section 10 of the Act by clarifying the selection process of the Commissioners including the Deputy Chairman and ensuring that a senior officer of the Ministry of Finance is one of the persons appointed as a Commissioner.

Clause 8 would amend section 11 of the Act to provide for additional criteria that must be met by persons who are to be appointed as Commissioners as well as to clarify what constitutes a material pecuniary or proprietary interest in a registrant where that interest is held by a Commissioner.

Clause 9 would amend section 18 of the Act to clarify the procedure to be followed where a Commissioner declares an interest in a matter that is before the Commission.

Clause 10 would amend section 20 of the Act to require that the annual report of the Commission be laid in Parliament within three months of its receipt by the Commission.

Clause 11 would amend section 33 of the Act to clarify what documents should be provided for public inspection in order to be consistent with the Freedom of Information Act, Chap. 22:02.

Clause 12 would amend section 36 of the Act.

Clause 13 would amend section 43 of the Act to provide for the publication of a notice of any disciplinary action taken against a member of a self-regulatory organization or an employee of such a member within thirty days of that decision.

Clause 14 would amend section 44 of the Act to revise the process for review of decisions made by a self-regulatory organization.

Clause 15 would amend section 45 of the Act to clarify the process for de-listing a security.

Clause 16 would amend section 48 of the Act to limit liability to senior officers who are accountable for the actions of employees.

Clause 17 would amend section 49 of the Act to limit the applicability of this section to persons required to be registered under the Act.

Clause 18 would amend section 51 of the Act to extend the period of time that certain registrants may operate in the local market and to clarify the process for the renewal of a registrant's registration.

Clause 19 would amend section 52 of the Act.

Clause 20 would amend section 53 of the Act to increase the time limits for the transitional provisions and new registration requirements.

Clause 21 would amend section 54 of the Act to insert a written notification requirement and to provide clarity on the operation of the section.

Clause 22 would amend section 55 of the Act.

Clause 23 would amend section 56 of the Act.

Clause 24 would amend section 57 of the Act.

Clause 22 would repeal and substitute the existing Schedule.

Clause 25 would amend section 60 of the Act.

Clause 26 would amend section 61 of the Act. This amendment would provide for the clarification of persons who may benefit from the limited offering exemption with respect to registration and the exemption procedure to be followed.

Clause 27 would amend section 62 of the Act to clarify the process for the registration of collective investment schemes.

Clause 28 would amend section 64 of the Act to clarify the procedure to be followed with respect to the timely disclosure of material changes in the affairs of a reporting issuer.

Clause 29 would amend section 65 of the Act.

Clause 30 would amend section 67 of the Act to clarify the different methods that can be employed by reporting issuers to deliver financial statements to their shareholders.

Clause 31 would amend section 68 of the Act to clarify the persons who are required to receive proxy circulars.

Clause 32 would amend section 69 of the Act to widen the base of persons who may qualify to be “approved foreign issuers”.

Clause 33 would amend section 70 of the Act.

Clause 34 would amend section 71 of the Act.

Clause 35 would amend section 72 of the Act by deleting and substituting a new definition of “financial assets”.

Clause 36 would amend section 73 of the Act by providing that asset-backed securities can benefit from a prospectus exemption only where the asset-backed security has an approved rating.

Clause 37 would amend section 74 of the Act to clarify the process of soliciting expressions of interest for securities offerings.

Clause 38 would amend section 75 of the Act.

Clause 39 would amend section 79 of the Act.

Clause 40 would amend section 80 of the Act.

Clause 41 would amend section 81 of the Act.

Clause 42 would amend section 83 of the Act. This amendment would provide that a formal order of the Commission is not needed to approve the reduction of time contemplated at section 84(4).

Clause 43 would amend section 84 of the Act. This amendment would repeal subsection (2) as this provision is no longer necessary given the provisions included at section 62(9) which clearly identify when a distribution commences.

Clause 44 would amend section 86 of the Act.

Clause 45 would amend section 89 of the Act. This amendment would allow compliance reviews to cover all books and records, and to assess any risk in respect of a registrant or self-regulatory organization that could prejudice its financial viability or the interests of its clients, members, investors or the securities industry.

Clause 46 would amend section 98 of the Act to ensure that registrants take their client's investment experience into account prior to providing investment advice.

Clause 47 would amend section 104 of the Act.

Clause 48 would amend section 108 of the Act to clarify that the section applies to registrants who are registered with the Commission in accordance with section 51(1).

Clause 49 would amend section 109 of the Act to provide that a formal order of the Commission is not needed to approve requests from registrants to send periodic statements to clients.

Clause 50 would amend section 112 of the Act to provide that a formal order of the Commission is not needed to direct registrants to not use or alter proposed advertisements.

Clause 51 would amend section 120 of the Act to clarify that this section only applies to registrants registered under section 51(1).

Clause 52 would amend section 121 of the Act to clarify that this section only applies to registrants registered under section 51(1).

Clause 53 would amend section 135 of the Act.

Clause 54 would amend section 136 of the Act to provide for the categories of persons who are required to file reports of direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer.

Clause 55 would amend section 139 of the Act.

Clause 56 would amend section 148 of the Act. This amendment would provide for the Commission to recommend that the Minister make By-Laws in respect of compliance reviews.

Clause 57 would amend section 149 of the Act to clarify the process to be followed when publishing proposed By-Laws. It also allows the Commission to satisfy the requirement for publication of the proposed By-Laws, by posting the document on its website and publishing a notice indicating that the document is available.

Clause 58 would amend section 150 of the Act. This amendment was made to ensure that investigations were conducted "*in camera*" which is consistent with the Securities Industry Act, 1995.

Clause 59 would amend section 151 of the Act. This amendment was made to specify that statements under oath are required to be held "*in camera*".

Clause 60 would amend section 152 of the Act to clarify that the provision would be applicable to all types of proceedings and to make it an offence to withhold, conceal, destroy or refuse to provide information to the Commission.

Clause 61 would amend section 155 of the Act to limit the types of orders that can be made in the public interest and would also provide for a list of orders that are more administrative in nature and optional publication of the orders. This amendment also provides for the publication of a summary of the orders to cater for instances where the orders are lengthy and where the publication of the entire text of those orders may be onerous.

Clause 62 would amend section 157 of the Act to clarify the process for making adverse decisions or findings.

Clause 63 would amend section 158 of the Act to clarify that the document referred to is not a required filing or a mandatory filing under the Act.

Clause 64 would amend section 159 of the Act to provide that the entire order does not need to be published and to make this section consistent with the publication requirements for By-Laws and orders.

Clause 65 would amend section 160 of the Act to clarify and streamline the process for reviews of decisions of self-regulatory organizations or delegates by the Commission.

Clause 66 would amend section 163 of the Act.

Clause 67 would amend section 164 of the Act.

Clause 68 would amend section 165 of the Act to provide that this section apply to compliance reviews that are conducted by the Commission and would also provide that the Commission may make orders under section 155 in relation to an auditor.

THE SECURITIES (AMENDMENT) BILL, 2013

Arrangement of Clauses

Clause

1. Short title
2. Interpretation Act No. 12 of 2013
3. Section 4 amended
4. Section 6 amended
5. Section 7 amended
6. Section 8 amended
7. Section 10 amended
8. Section 11 amended
9. Section 18 amended
10. Section 20 amended
12. Section 33 amended
11. Section 36 amended
13. Section 43 amended
14. Section 44 amended
15. Section 45 amended
16. Section 48 amended
17. Section 49 amended
18. Section 51 amended
19. Section 52 amended
20. Section 53 amended
21. Section 54 amended
22. Section 55 amended
23. Section 56 amended
24. Section 57 amended
25. Section 60 amended
26. Section 61 amended
27. Section 62 amended
28. Section 64 amended
29. Section 65 amended
30. Section 67 amended
31. Section 68 amended
32. Section 69 amended

33. Section 70 amended
34. Section 71 amended
35. Section 72 amended
36. Section 73 amended
37. Section 74 amended
38. Section 75 amended
39. Section 79 amended
40. Section 80 amended
41. Section 81 amended
42. Section 83 amended
43. Section 84 amended
44. Section 86 amended
45. Section 89 amended
46. Section 98 amended
47. Section 104 amended
48. Section 108 amended
49. Section 109 amended
50. Section 112 amended
51. Section 120 amended
52. Section 121 amended
53. Section 135 amended
54. Section 136 amended
55. Section 139 amended
56. Section 148 amended
57. Section 149 amended
58. Section 150 amended
59. Section 151 amended
60. Section 152 amended
61. Section 155 amended
62. Section 157 amended
63. Section 158 amended
64. Section 159 amended
65. Section 160 amended
66. Section 163 amended
67. Section 164 amended
68. Section 165 amended

BILL

An Act to amend the Securities Act, 2012

[, 2014]

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

1. This Act may be cited as the Securities Short title
(Amendment) Act, 2013.

2. In this Act, “the Act” means the Securities Act, Interpretation Act
2012. No. 12 of 2012

Section 4 amended

3. Section 4 of the Act is amended—*(a)* in subsection (1)—

(i) in the definition of “approved foreign issuer”—

(A) by inserting the words “; and” at the end of paragraph *(b)*;(B) by deleting the words “; and” at the end of paragraph *(c)*; and(C) by deleting paragraph *(d)*;

(ii) in the definition of “associate” in paragraph (a), by deleting the words “more than twenty per cent” and substituting the words “twenty per cent or more”;

(iii) by inserting after the definition of “blocked account” the following definition:

“branch office” means an office or place of business, whether in Trinidad and Tobago or elsewhere, where a registrant registered under section 51(1) conducts all or any part of its business for which registration is required under this Act, other than its principal place of business in Trinidad and Tobago, but does not include an office established solely for the purpose of—

(a) promoting the services of the registrant; or

(b) performing functions which are solely administrative in nature, including without limitation, technology support,

facilities support,
human resources
management and
clerical support;”;

(iv) in the definition of “control”—

(A) in paragraph (a), by deleting the words “more than fifty per cent” and substituting the words “fifty per cent or more”; and

(B) in paragraph (b), by deleting the words “more than thirty per cent” and substituting the words “thirty per cent or more”;

(v) in the definition of “distribution”—

(A) by deleting paragraph (c) and substituting the following paragraph:

“(c) by an underwriter, acting as underwriter, in previously issued securities where such securities—

(i) were not registered pursuant to this Act; and

(ii) were purchased from the issuer by such underwriter less than six months prior to such trade; or”; and

(B) in paragraph (d)(ii), by

deleting the words “exceeds thirty per cent” and substituting the words “thirty per cent or more”;

- (vi) by deleting the definition of “filing”;
- (vii) by deleting the definition of “limited offering” and substituting the following definition:

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

- (a) following the completion of such distribution, the number of security holders of the issue is thirty-five or less persons exclusive of senior officers and employees or former senior officers and employees of the issuer and its affiliates;
- (b) the constituent documents of the distribution contain provisions restricting the aggregate number of security holders of the issue to thirty-five persons or less exclusive of senior officers and employees or former senior officers and employees of the issuer and its affiliates;

(c) no selling or promotional expenses are paid or incurred in connection with the distribution except for professional services or services provided by a registrant under section 51(1), (2) or (5); and

(d) no general solicitation or advertising to market the securities is used;”;

(viii) in the definition of “market actor”,
by—

(A) deleting paragraph (d) and substituting the following paragraph:

“(d) a custodian, trustee, sponsor, manager, administrator or such other persons performing similar functions for a collective investment scheme;”;

(B) deleting the word “or” at the end of paragraph (m);

(C) renumbering paragraph (n) as paragraph (p);

(D) inserting after paragraph (m) the following paragraphs:

“(n) an auditor of a registrant or self-regulatory organization; or

- (o) a substantial shareholder of an entity registered under section 51(1); or”;
 - (ix) in the definition of “Minister” by inserting after the word “assigned” the words “and “Ministry” shall be construed accordingly”;
 - (x) in the definition of “private issuer”, in paragraph (c), by deleting the words “engage in the business of trading in securities or raising” and substituting the words “distribute securities”;
 - (xi) in the definition of “self-regulatory organization”, by deleting paragraph (d) and substituting the following paragraph:
 - “(d) such other entity that sets standards for, or monitors the conduct of its members or participants relating to, trading in, or advising on securities;”;
 - (xii) in the definition of “sponsored broker dealer” by inserting after the words “(or the equivalent or similar)” the words “who is registered”; and
 - (xiii) in the definition of “sponsored investment adviser” by inserting after the words “(or the equivalent or similar)” the words “who is registered”;
- (b) in subsection (2)(d)(ii), by deleting the words “more than fifty per cent” and substituting the words “fifty per cent or more”;

(c) in subsection (3)—

- (i) in paragraph (c), by deleting the words “more than ten per cent” and substituting the words “ten per cent or more”; and
- (ii) by deleting paragraphs (g), (h) and (i) and substituting the following paragraph:

“(g) an entity that is controlled by—

- (i) a person referred to in paragraph (a) or (b); or
- (ii) a relative of a senior officer of the reporting issuer.”;

(d) by deleting subsections (5) and (6) and substituting the following sections:

“(5) For the purposes of this Act, a person carries on an activity regulated under this Act in Trinidad and Tobago if such person is—

- (a) an entity which is incorporated, established or registered under any law in Trinidad and Tobago and is carrying on an activity regulated under this Act; or
- (b) an individual who carries on the regulated activity from within Trinidad and Tobago.

(6) For the purposes of this Act, an activity regulated under this Act shall be presumed to occur in Trinidad and Tobago in the absence of evidence to the contrary where, in the case of a

distribution or an act, advertisement, conduct or negotiation in furtherance of a purchase or sale of a security, whether direct or indirect, such act, advertisement, distribution, conduct or negotiation is not solicited and—

- (a) is made by mail or courier, telephone or facsimile transmission, with or to a person in Trinidad and Tobago; or
- (b) in the case of distributions made available on the Internet, the web pages and documents in respect of that offering, may be accessed by persons resident in Trinidad and Tobago, unless the document or web page contains a prominent disclaimer that expressly identifies the jurisdictions in which the distribution is qualified to be made, and reasonable precautions are taken to ensure that no sales occur to persons in Trinidad and Tobago unless done in compliance with this Act.”.

Section 6 amended

4. Section 6 of the Act is amended—

- (a) in paragraph (e), by inserting after the word “inspections” the words “, reviews”;
- (b) in paragraph (j), by deleting the word “and” at the end of the paragraph;

- (c) in paragraph (*k*), by deleting the fullstop at the end of the paragraph and substituting the words “; and”; and
- (d) by inserting after paragraph (*k*), the following paragraph:

“ (*l*) assess, measure and evaluate risk exposure in the securities industry.”.

5. Section 7(1) of the Act is amended—

Section 7 amended

- (a) in paragraph (d), by inserting after the word “registrants” the words “that are entities”; and
- (b) by inserting after paragraph (*k*), the following paragraph:

“ (*l*) monitor the risk exposure of registrants and self-regulatory organizations and take measures to protect the interest of investors, clients, members and the securities industry where necessary;” and

- (c) by renumbering paragraphs (*l*) and (*m*) as paragraphs (*m*) and (*n*) respectively.

6. Section 8 of the Act is amended by repealing subsection (7) and substituting the following subsection:

Section 8 amended

“ (7) Subject to section 160, 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. Section 10 of the Act is amended—

Section 10 amended

- (a) in subsection (1)—
 - (i) by inserting after the word “individuals” the words “(hereinafter referred to as “Commissioners”)”; and

(ii) by deleting paragraph (b) and substituting the following paragraph:

“ (b) a senior officer from the Ministry.” ;

(b) in subsection (2), by inserting after the word “Chairman” the words “and another Commissioner to be its Deputy Chairman”;

(c) in subsection (3), by deleting the words “, other than those referred to in subsection (1)(a) and (b),”; and

(d) by repealing subsection (3A).

Section 11 amended

8. Section 11 of the Act is amended—

(a) in subsection (1)—

(i) in paragraph (a), by inserting before the words “an employee” the words “a registrant,”; and

(ii) by repealing paragraph (g) and substituting the following paragraphs:

“(g) has been a senior officer of a company in the ten years immediately preceding—

(i) the making of a winding-up order being made by a court in respect of that company; or

(ii) the date that the company has been placed in receivership;

(h) has been a senior officer of a former registrant

or self-regulatory organization whose registration has been revoked, unless such revocation was due to its—

(i) amalgamation with another registrant; or

(ii) voluntary winding-up; or (i) has contravened this Act.”; and

(b) by repealing subsection (2)(b) and substituting the following paragraph:

“(b) the person has beneficial ownership of, or control or direction over—

(i) ten per cent or more of the outstanding equity or voting securities of a registrant registered under section 51(1); or

(ii) five per cent or more of the outstanding equity or voting securities of a reporting issuer,

except as a trustee of a trust.”.

9. Section 18 of the Act is amended—

Section 18 amended

(a) in subsection (1), by deleting the words “declaration of interests” and substituting the word “interest”;

(b) by repealing subsection (2) and substituting the following subsection:

“(2) The Commission shall, in the absence of the Commissioner or other person whose interest is being considered, determine whether the

interest declared in subsection (1) is sufficiently material so as to constitute a conflict of interest.”;

- (c) by repealing subsection (3) and substituting the following subsection:

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

- (d) in subsection (4), by deleting the words “having an interest or being involved in a matter” and substituting the words “that is directly or indirectly involved in that matter”.

Section 20 amended **10.** Section 20(1) of the Act is amended by inserting after the word “Parliament” the words “within three months of receipt of the report”.

Section 33 amended **11.** The Act is amended by repealing section 33 and substituting the following section:

33. (1) Subject to subsection (2), the Commission shall make all documents or instruments which are expressly required to be filed with it under this Act available for public inspection during the normal business hours of the Commission, subject to such conditions as the Commission may require.

(2) The Commission shall not make any information in a document or instrument available for public inspection under subsection (1) if—

- (a) the Commission determines that

the disclosure of the information would not be in the public interest;

(b) the court so directs;

(c) the Commission determines that—

(i) a person whose information appears in the document or instrument would be unduly prejudiced by disclosure of the information; and

(ii) the privacy interest on the person outweighs the public interest in having the information disclosed; or

(d) the disclosure of the documents or instruments would be exempt under the Freedom of Information Act.”;

(3) Subject to subsections (1) and (2), the Commission may also make all documents or instruments which are expressly required to be filed with it available to the public by posting such documents or such instruments to the Commission’s website.”.

12. Section 36(2) of the Act is amended by deleting the Section 36 amended words “in the prescribed form” and substituting the words “in such form as the Commission may determine”.

13. Section 43 of the Act is amended by repealing Section 43 amended subsection (6) and substituting the following subsection:

“ (6) A self-regulatory organization shall publish in two daily newspapers of general circulation in Trinidad and Tobago a notice of any disciplinary action taken against a member or an employee of a member within thirty days of decision to take such disciplinary action unless the Commission directs otherwise.”.

Section 43 amended **14.** Section 43 of the Act is amended by repealing subsection (6) and substituting the following subsection:

“ (6) A self-regulatory organization shall publish in two daily newspapers of general circulation in Trinidad and Tobago a notice of any disciplinary action taken against a member or an employee of a member within thirty days of decision to take such disciplinary action unless the Commission directs otherwise.”.

Section 44 amended **15.** Section 44 of the Act is amended—

(a) by repealing subsection (2) and substituting the following subsection:

“ (2) Subject to section 160, a person aggrieved by an order of a self-regulatory organization made under section 43(2), (3) or (4) may apply to the Commission for a review of that decision within fourteen days of receipt of the decision.”;

(b) in subsection (3), by deleting the words “an appeal or review” and substituting the words “a review”;

(c) in subsection (5), by deleting the words “an appeal or review” and substituting the words “a review”;

(d) in subsection (6), by deleting the words “an appeal or review” and substituting the words “a review”; and

(e) in subsection (7), by deleting the words “An order” and substituting the words “ A decision”.

Section 45 amended **16.** Section 45 of the Act is amended—

(a) in subsection (1), by inserting after the words “unless it” the words “pays the prescribed fee and”; and

(b) by inserting after subsection (1), the following subsection:

“ (1A) Where a securities exchange proposes to delist a security, it shall file with the Commission a concise statement of the substance and purpose of the proposal.”;

- (c) in subsection (2), by deleting the words “self-regulatory organization” and substituting the words “securities exchange”.

17. Section 48(3) of the Act is amended by deleting the words “or employee”. Section 48 amended

18. Section 49 of the Act is amended— Section 49 amended

- (a) in subsection (1), by deleting the words “market actor” and substituting the words “person required to be registered pursuant to this Act”; and
- (b) in subsection (4), by deleting the words “the market actor” and substituting the words “person required to be registered pursuant to this Act”.

19. Section 51 of the Act is amended— Section 51 amended

- (a) in subsection (1), by deleting the words “or deemed to be registered, as such,” and substituting the words “deemed to be registered as such, or otherwise exempted”;
- (b) in subsection (2), by deleting the words “a person” wherever they occur and substituting the words “an entity”;
- (c) in subsection (5), by inserting after the words “period not exceeding” the words “an aggregate of ninety”; and
- (d) by repealing subsections (6) and (7) and substituting the following subsection:

“ (6) Subject to section 56(1), the registration of a person as a registrant under subsection (1) or (2) shall be valid for a period of one year from the date of registration, and subject to this

Act, the Commission may renew the registration of a person annually.”.

- Section 52 amended **20.** Section 52(1) of the Act is amended by—
- (a) deleting the words “section 51(1)” and substituting the words “section 51”; and
 - (b) deleting the words “in the prescribed form” and substituting the words “in such form as the Commission may determine”.
- Section 53 amended **21.** Section 53 of the Act is amended—
- (a) in subsection (1), by deleting the words “one year” and substituting the words “two years”; and
 - (b) in subsection (2)—
 - (i) by deleting the words “twelve months” and substituting the words “two years”; and
 - (ii) by deleting the words “twelve month” and substituting the words “two year”.
- Section 54 amended **22.** Section 54 of the Act is amended—
- (a) in subsection (1), by deleting the words “subsection (2)” and substituting the words “subsections (2) and (3)”; and
 - (b) by repealing subsection (3) and substituting the following subsection:
 - “ (3) A financial institution or a registrant under section 51(1)—
 - (a) is deemed approved by the Commission for the purposes of subsection (1); and
 - (b) shall notify the Commission in writing within one month upon its

becoming a substantial shareholder.”;

- (c) in subsection (6)(b), by deleting the words “more than ten per cent” and substituting the words “ten per cent or more”;
- (d) in subsection (7), by deleting the words “more than ten per cent” and substituting the words “ten per cent or more”;
- (e) in subsection (8)—
 - (i) by deleting the words “A person who is a” and substituting the word “A”; and
 - (ii) by inserting after the words “by the Commission for” the word “the”; and
- (f) by inserting after subsection (8), the following subsection:

“ (9) A substantial shareholder shall within one month of any change in its ownership of the issued capital of the registrant under section 51(1) notify the Commission in writing of the change, if the change is five per cent or more of the total issued capital of the registrant.”.

23. Section 55(1) of the Act is amended by deleting the words “on the prescribed form” and substituting the words “in such form as the Commission may determine”. Section 55 amended

24. Section 56 of the Act is amended— Section 56 amended

- (a) in subsection (1), by deleting the words “in the prescribed form” and substituting the words “in such form as the Commission may determine”; and
- (b) in subsection (6), by deleting the words “in the prescribed form” and substituting the words “in such form as the Commission may determine”.

Section 57 amended **25.** Section 57(3) of the Act is amended by deleting the words “the Act” and substituting the words “this Act”.

Section 60 amended **26.** Section 60(1) of the Act is amended by deleting the word “filing,”.

Section 61 amended **27.** Section 61 of the Act is amended—

(a) in subsection (1), by deleting the words “in the prescribed form” and substituting the words “in such form as the Commission may determine”;

(b) in subsection (2), by deleting the words “in the prescribed form” and substituting the words “in such form as the Commission may determine”; and

(c) by repealing subsection (4) and substituting the following subsections:

“ (4) Subsection (1) shall not apply where the distribution is—

(a) a limited offering and the issuer—

(i) notifies the Commission in writing of the proposed commencement date of the distribution within ten days of the first distribution of securities; and

(ii) files a post distribution statement in accordance with section 84; or

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

- (i) is a senior officer or partner of the issuer;
- (ii) is directly involved in the business of the issuer;
- (iii) is an associate of the issuer within the meaning of paragraphs (a), (b) and (c) of the definition of “associate”;
- (iv) relative of a person referred to in subparagraph (i);
- (v) is a shareholder of the issuer; or
- (vi) meets such other conditions as may be prescribed.

(4A) An issuer shall not be required to file a post distribution statement under section 84 with respect to a limited offering under subsection (4)(b).”.

28. Section 62 of the Act is amended—

Section 62 amended

(a) in subsection (2)—

- (i) in the chapeau, by deleting the words “in the prescribed form” and

substituting the words “in such form as the Commission may determine”;

- (ii) in paragraph (a), by deleting the word “or” at the end of the paragraph;
- (iii) by deleting the full stop at the end of paragraph (b) and substituting the words “ ; or”; and
- (iv) by inserting after paragraph (b), the following paragraph:

“(c) in the case of a collective investment scheme established as a trust by the trustee or the duly a u t h o r i z e d representative of the trustee.”;

- (b) by repealing subsection (6); and
- (c) in subsection (9), by deleting paragraph (a) and substituting the following paragraph:

“(a) a limited offering provided that the issuer—

- (i) notifies the Commission in writing of the proposed commencement date of the distribution within ten days prior to the first issuance of securities pursuant to the distribution; and
- (ii) files a post distribution statement in accordance with section 84; or”.

29. Section 64 of the Act is amended—

Section 64 amended

(a) in subsection (1)(c), by deleting the words “subsection (1)” and substituting the words “paragraph (b)”;

(b) by repealing subsection (2) and substituting the following subsection:

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

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

(b) the disclosure required by subsection (1)(b) would be unwarranted,

and the reporting issuer shall forthwith comply with subsection (1)(a) and notify the Commission in writing of the material change and of the reasons why it is of the opinion that there should not be a notice as contemplated in subsection (1)(b).”; and

(c) in subsection (3)(b), by deleting the word “order” and substituting the word “determine”.

30. Section 65(6) of the Act is amended by inserting Section 65 amended after the word “ICATT” the words “or its equivalent in a designated foreign jurisdiction”.

31. Section 67(2) of the Act is amended—

Section 67 amended

(a) in paragraph (c)—

(i) by deleting the words “issuing a press release” and substituting the words “publishing a notice in two daily newspapers”; and

(ii) by deleting the word “or” at the end of the paragraph;

(b) by deleting paragraph (d) and substituting the following paragraphs:

“(d) mailing the document, report or statement to the most recent address as shown on the securities register of the reporting issuer; or

(e) making the document, report or statement available in such other manner as the Commission may determine.”.

Section 68 amended **32.** Section 68 of the Act is amended—

(a) by deleting the word “dissident’s” wherever it occurs and substituting in each place the word “dissident”;

(b) in subsection (1), by deleting the words “a prescribed form of proxy to each holder of voting securities” and substituting the words “a proxy in such form as the Commission may determine to each holder of voting securities of the reporting issuer”;

(c) in subsection (2)(a), by deleting the words “in the prescribed form” and substituting the words “in such form as the Commission may determine”; and

(d) in subsection (2)(b), by deleting the words “in the prescribed form” and substituting the words “in such form as the Commission may determine”.

Section 69 amended **33.** Section 69 of the Act is amended—

(a) in subsection (1)(a), by deleting the words “the Act” and substituting the words “this Act”; and

(b) by repealing subsection (2) and substituting the following subsection:

“(2) Subsection (1) is not applicable to an approved foreign issuer if, as at the end of the last financial year of the

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

34. Section 70(4) of the Act is amended by deleting the words “if it is in the public interest” and substitute the words “under section 155”. Section 70 amended

35. Section 71 of the Act is amended by repealing subsection (1) and substituting the following subsection: Section 71 amended

“ (1) The Commission may—

- (a) on its own motion; or
- (b) on application by a reporting issuer and payment of the prescribed fee,

make an order declaring, subject to such conditions as it considers appropriate, that the issuer is no longer a reporting issuer.”.

36. Section 72(2) of the Act is amended by deleting the definition of “financial assets” and substituting the following definition: Section 72 amended

“ “financial assets” means—

- (a) cash;
- (b) securities;
- (c) any contract of insurance; or
- (d) a certificate or document constituting evidence of any interest in a deposit account with—
 - (i) a financial institution;
 - (ii) a credit union as defined under the Co-operatives Societies Act; or

(iii) an insurance company registered under the Insurance Act;”.

Chap. 84:01

Section 73 amended **37.** Section 73 of the Act is amended—

- (a) in subsection (2), by deleting the words “except under an exemption provided for in section 79;” and
- (b) by inserting after subsection (2), the following subsection:

“ (3) Subsection (2) does not apply to a trade in an asset-backed security distributed under an exemption provided for in section 79.”.

Section 74 amended **38.** Section 74 of the Act is amended—

- (a) by renumbering section 74 as section 74(1);
- (b) in section 74(1)(c) as renumbered, by deleting the words “a document specified in paragraph (a)” and substituting the words “the prospectus offering the securities”; and
- (c) by inserting after section 74(1) as renumbered, the following subsection:

“ (2) Notwithstanding subsection (1), a person may solicit an expression of interest from an accredited investor with respect to a proposed distribution provided that the person—

(a) notifies the Commission in writing that he intends to do so and identifies the security proposed to be distributed; and

(b) notifies the accredited investor that—

- (i) either the security is being distributed pursuant to a

limited offering or a distribution statement related to the proposed distribution has been filed with the Commission but has not been made effective;

- (ii) no offer to buy the securities can be accepted and no part of the purchase price can be recovered until the distribution statement for the proposed distribution has become effective or the Commission has been notified of the date of the distribution under section 62(9)(i); and
- (iii) any such expression of interest may be withdrawn or revoked without obligation, or commitment of any kind, at any time prior to the notice of acceptance given after the effective date.”.

- Section 75 amended **39.** Section 75 of the Act is amended—
- (a) in subsection (1), by deleting the words “expression of interest,” wherever they occur; and
 - (b) in subsection (2), by inserting after the words “An agreement of purchase and sale” the words “in relation to an order or subscription referred to in subsection (1)”.
- Section 79 amended **40.** Section 79 of the Act is amended—
- (a) in subsection (1)(d), by inserting after the word “registrant” the words “registered under section 51(1)”;
 - (b) in subsection (2), by deleting the words “in the prescribed form” and substituting the words “in such form as the Commission may determine”;
 - (c) in subsection (3)—
 - (i) by inserting after the words “The certificate” the words “or other proof of ownership”; and
 - (ii) by deleting the words “in the prescribed form” and substituting the words “in such form as the Commission may determine”; and
 - (d) in subsection (5), by deleting the words “For purposes” and substituting the words “For the purposes”.
- Section 80 amended **41.** Section 80 of the Act is amended—
- (a) in subsection (1)(a)(ii), by inserting after the words “securities has become final for” the word “the”; and
 - (b) in subsection (2), by deleting the words “exceed twenty per cent” and substitute the words “amount to twenty per cent or more”.
- Section 81 amended **42.** Section 81(1)(e) of the Act is amended by deleting the words “the Act” and substituting the words “this Act”.

43. Section 83 of the Act is amended—

Section 83 amended

(a) by repealing subsection (1) and substituting the following subsection:

“ (1) For the purposes of this Part, a distribution commences on—

(a) the effective date of a distribution statement as determined by the Commission under section 62(7); or

(b) in the case of a limited offering, the date of first issuance of the security.”;

(b) in subsection (2), by deleting the words “less than twenty-five per cent” and substituting the words “twenty-five per cent or less”;

(c) by repealing subsection (4) and substituting the following subsection:

“ (4) Subject to subsection (5), a distribution shall not continue longer than one year and twenty days from—

(a) the effective date of the distribution statement relating to it unless the Commission issues a new effective date, in which case the period runs from the latter effective date; or

(b) in the case of a limited offering, the date of first issuance of the security.”;
and

(d) in subsection (5), by deleting the word “order” and substituting the word “determine”.

- Section 84 amended **44.** Section 84 of the Act is amended—
- (a) in subsection (1), by deleting the words “in the prescribed form” and substituting the words “in such form as the Commission may determine”; and
 - (b) by repealing subsection (2).
- Section 86 amended **45.** Section 86 of the Act is amended by deleting the words “in the prescribed form” and substituting the words “in such form as the Commission may determine”.
- Section 89 amended **46.** Section 89 of the Act is amended by repealing subsection (1) and substituting the following subsection:
- “ (1) In the performance of the functions of the Commission under this Act, the chief executive officer or any duly authorized employee or agent of the Commission so authorized in writing by the chief executive officer, shall be permitted to review the books, records or documents of a registrant or self-regulatory organization for the purpose of—
- (a) determining whether the provisions of this Act, the Proceeds of Crime Act, any other written law in relation to the prevention of money laundering and combatting the financing of terrorism or any other written law that is administered or supervised by the Commission are being complied with; and
 - (b) assessing any risk in respect of the registrant or self-regulatory organization that could prejudice its financial viability or the interests of its clients, members, investors or the securities industry.”

- 47.** Section 98 of the Act is amended— Section 98 amended
- (a) in subsection (1)(a), by inserting after the words “investment objectives,” the words “investment experience,”; and
 - (b) in subsection (2), by inserting after the words “Where a registrant” the words “registered under section 51”.
- 48.** Section 104(1)(b) of the Act is amended by deleting Section 104 amended the word “and” at the end of subparagraph (i) and substituting the word “or”.
- 49.** Section 108 of the Act is amended by deleting the Section 108 amended words “market actor” wherever they occur and substituting in each place the words “registrant registered under section 51(1)”.
- 50.** Section 109(2) of the Act is amended by deleting Section 109 amended the word “order” and substituting the word “determine”.
- 51.** Section 112 of the Act is amended— Section 112 amended
- (a) in subsection (1), by deleting the word “order” and substituting the word “require”; and
 - (b) in subsection (2)—
 - (i) by deleting the word “order” and substituting the word “require”; and
 - (ii) by deleting the words “that it be” and substitute the words “that the advertisement be”.
- 52.** Section 120(3) of the Act is amended by inserting Section 120 amended after the word “registrant” the words “registered under section 51(1)”.
- 53.** Section 121(4) of the Act is amended by inserting Section 121 amended after the word “registrant” the words “registered under section 51(1)”.
- 54.** Section 135(3) of the Act is amended by deleting Section 135 amended the word “inconsistent” and substituting the word “consistent”.

Section 136 amended **55.** Section 136 of the Act is amended—

- (a) in subsection (1), by deleting the words “in the prescribed form” and substituting the words “in such form as the Commission may determine”;
- (b) by repealing subsection (2) and substituting the following subsection:
 - “ (2) A person—
 - (a) who is connected to a reporting issuer as a result of section 4(3)(a) or (c); and
 - (b) whose direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer by him changes,
 - shall within five business days from the day on which the change takes place, file in such form as the Commission may determine, a report of direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer by him as of the day on which the change took place.”;
- (c) in subsection (3), by deleting the words “in the prescribed form” and substituting the words “in such form as the Commission may determine”; and
- (d) in subsection (5), by deleting the words “For purposes” and substituting the words “For the purposes”.

Section 139 amended **56.** Section 139(6) of the Act is amended by—

- (a) inserting after the words “liable for more than the” the words “portion of the”; and

(b) deleting the words “the portion of”.

57. Section 148(1) of the Act is amended—

Section 148 amended

- (a) by deleting the words “the Act” wherever they occur and substituting the words “this Act”;
- (b) in paragraph (n), by deleting the words “for purposes” and substituting the words “for the purposes”;
- (c) in paragraph (w), by inserting after the words “financial reporting and auditing for” the word “the”;
- (d) in paragraph (ee), by inserting after the words “advisable for” the word “the”; and
- (e) in paragraph (ff), by inserting after the word “investigations” the words “, reviews”.

58. Section 149 of the Act is amended—

Section 149 amended

- (a) in subsection (1), by deleting the words “in the *Gazette*, two daily newspapers of general circulation in Trinidad and Tobago, or any regular periodical published by the Commission,” and substituting the words “in accordance with subsection (1A) and”;
- (b) by inserting after subsection (1) the following new subsection:
 - “ (1A) The Commission shall satisfy the requirements of subsection (1) by—
 - (a) publishing in the *Gazette*;
 - (b) publishing in two daily newspapers of general circulation in Trinidad and Tobago; or
 - (c) posting on the website of the Commission and

issuing a notice in two daily newspapers of general circulation in Trinidad and Tobago notifying the public of such posting.”;

(c) in subsection (2), by deleting the words “subsection (1)” and substituting the words “subsection (1A)”; and

(d) in subsection (4), by deleting the words “subsections (1) and (2)” wherever they occur and substituting in each place the words “subsections (1), (1A) and (2)” .

Section 150 amended **59.** Section 150 of the Act is amended by inserting after subsection (9), the following new subsection:

“ (10) Proceedings under this section shall be held *in camera*.”.

Section 151 amended **60.** Section 151 (7) of the Act is amended by deleting the words “this section” and substituting the words “subsection (4)”.

Section 152 amended **61.** Section 152 of the Act is amended—

(a) by renumbering section 152 as section 152(1);

(b) in the renumbered subsection (1), by deleting the words “examination or investigation” and substituting the words “investigation, review, examination, hearing or other proceeding”; and

(c) by inserting after section 152(1) as renumbered the following new subsection:

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

62. Section 155 of the Act is amended—

(a) in subsection (1), by deleting Section 155 amended paragraphs (d), (e), (f), (g), (h), (i) and (j) and substituting the following paragraphs:

“(d) a registrant or senior officer of a registrant be reprimanded or that the registration of a registrant be suspended or revoked in accordance with section 57 or 58;

(e) any person be reprimanded; or

(f) a person, security, trade, distribution or registration be classified under Part III, IV or VI, and the requirement appropriate to the class be applied.”;

(b) by inserting after subsection (1) the following new subsection:

“ (1A) Where the Commission on its own motion or on an application by an interested person considers it to be not contrary to the public interest it may make an order—

(a) that any exemption contained in this Act not apply to any person permanently or apply for such period as specified in the order;

(b) that a registrant registered under section 51(1) submit to a review of his practices and procedures and institute such changes as may be ordered by the Commission;

- (c) that any person be exempted from any requirement of this Act;
 - (d) that any documents filed with another government agency be filed with the Commission; or
 - (e) respecting any other matter authorized by or required to carry out the purposes of this Act.”;
- (c) in subsection (3), by deleting the words “and shall include the text of the order in a regular periodical published by it, or in two daily newspapers of general circulation in Trinidad and Tobago” and substituting the words “and shall publish a summary of an order under subsection (1) and the reasons therefor in accordance with subsection (4)”;
- and
- (d) by inserting after subsection (3) the following subsection:
- “ (4) The Commission shall satisfy the requirements of subsection (3) by—
- (a) publishing in two daily newspapers of general circulation in Trinidad and Tobago; or
 - (b) posting on the website of the Commission and issuing a notice in two daily newspapers of general circulation in Trinidad and Tobago notifying the public of such posting.”.

63. Section 157(1) of the Act is amended—

Section 157 amended

(a) in the chapeau—

- (i) by deleting the words “decision, finding or order provide a reasonable opportunity for each person or entity adversely affected” and substituting the words “decision or finding against a person provide a reasonable opportunity for that person”; and
- (ii) by deleting the words “each such person or entity” and substituting the words “that person”; and

(b) by deleting the word “order” and substituting the words “decision or finding”.**64.** Section 158 of the Act is amended—

Section 158 amended

(a) in subsection (6)—

- (i) by deleting the words “file with” and substituting the words “submit in writing to”; and
- (ii) by inserting after the word “report” the words “refer to in subsection 150(6)”; and

(b) in subsection (7), by deleting the word “filed” and substituting the word “submitted”.**65.** Section 159(9) of the Act is amended by deleting paragraph *(c)* and substituting the following paragraph: Section 159 amended

“(c) publish a summary of the order and reasons therefor in accordance with section 155.”.

66. The Act is amended by repealing section 160 and substituting the following new section: Section 160 amended

“Appeals for
review 160. (1) The Commission may—

- (a)* on its own motion; or
- (b)* on an application under sections 8(7) or 44(2),

review any decision made pursuant to authority delegated under section 8 or made by a self-regulatory organization under section 43 and shall provide a reasonable opportunity to make representations and give reasonable notice to each person directly affected by the decision.

(2) The Commission shall, within thirty days of a request for review under this section notify the parties of the date, time and venue of the hearing to review the decision.

(3) The Commission may set aside, vary or confirm the decision under review or make such decisions as it considers appropriate.

(4) In the case of a review of any decision of a self-regulatory organization made under section 43, a decision under subsection (2) shall be subject to section 44(3) to (7).

(5) A decision that is subject to review under this section takes effect immediately unless the Commission grants a stay pending the completion of a review under this section.”.

Section 163 amended **67.** Section 163(1)(a) of the Act is amended by inserting after the words “a person” the word “who”.

Section 164 amended **68.** Section 164(3) of the Act is amended—

(a) in paragraph (a), by deleting the words “in accordance which” and substituting the words “in accordance with”;

(b) in paragraph (b)—

(i) by deleting the words “the High Court, if it is of the opinion” and substituting the words “if the High Court is of the opinion”; and

(ii) by deleting the words “may permit” and substituting the words “the High Court may permit”.

69. Section 165 of the Act is amended—

Section 165 amended

- (a) in subsection (1)(b), by inserting after the word “investigation” the words “, review”; and
- (b) in subsection (5), by deleting the words “if it is in the public interest,” and substituting the words “under section 155”.

Passed in the Senate this day of , 2014.

Clerk of the Senate

I confirm the above.

President of the Senate

Passed in the House of Representatives this day
of , 2014.

Clerk of the House

I confirm the above.

Speaker

No. 6 of 2013

FOURTH SESSION
TENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Securities Act,
2012

Received and read the

First time

Second time

Third time
