Comments And Queries On The Securities Bill, 2012 – December 12, 2012

	Clause	Provision	Comment/Query	Recommendation	
	Purpose of the Bill	AN ACT to provide protection to investors from unfair, improper or fraudulent practices; foster fair and efficient capital markets and confidence in the securities industry in Trinidad and Tobago and to reduce systemic risk and for other related matters	The Securities Bill, 2012 ("Bill") does not expressly provide for regulation of both capital and the futures markets. There are many references to "Capital Markets" in the Bill which by definition traditionally does not include "Derivative Markets" where the latter applies to Financial Instruments, such as Futures Contracts or options.	Amend the Bill to expressly provide for the establishment of a Futures Market and /or other Derivative Markets. Insert the term "and Futures and other derivative markets" wherever it appears in the Bill immediately after the term "Capital Markets". Insert definition for "Futures Market". Suggested language "means a securities exchange for trading in standardized Futures Contracts made between parties for the buying or selling of specified assets (including but not limited to Commodities or Financial Instruments) of standardized quantity or quality for a price agreed today with delivery and payment occurring at a specified future date, the delivery date".	The Securities Bill 2012("Bill") provides for the regulation of all forms of securities markets. The purpose to the Bill has been amended to reflect this by removing to reference to "Capital Markets" (which was not defined) and replacing same with "Securities Markets" which has been defined to capture all markets in "securities". It should also be noted that the Bill defines "securities" to include derivatives which incorporates among other things, futures, options and swaps.
	4 (1) – Interpretation – Securities Market		International standards require that a securities market be subject to regulatory authorization and oversight. The Bill deals only with securities exchanges and other SROs. The term "securities market" is not defined in the legislation.	Define the term, "a securities market". In so doing this would create a framework for the regulation of securities markets.	A definition for "Securities Market" has been incorporated in the "interpretation section" of the Bill and the relevant sections of the Bill, including those which related to Market Manipulation Insider Dealing and the By-Law making provisions, have been amended to reflect regulation over the broader concept of a securities market.
	4 (1) Interpretation – Alternative Trading Systems		No provisions for Alternative Trading Systems in the Bill.	It is recommended that alternative trading systems be included in the definition and the regulation of same be brought within the legislative framework.	A definition for "Alternative Trading Systems" has been incorporated in the interpretation section of the Bill.
	4 (1) Interpretation – Capital Markets		The term "Capital Markets" is not defined within the Bill.	Insert a definition for "Capital market". Suggested language - "markets which engage in the buying and selling of any securities, Futures Contracts, and such other Financial Instruments as may be prescribed".	The use of the term "capital market" has been removed from the Bill and replaced with "securities markets" or "securities industry" where applicable. The interpretation of either of the two terms by their very nature is intended to capture capital markets.
	4 (1) Interpretation – Commodity		The term "Commodity" is not defined within the Bill.	Insert definition for "Commodity". Suggested language: "Commodity in relation to a Futures Contract means any produce, item, goods, article, or Financial Instrument and includes an index, right or interest in such commodity other than a Financial Instrument, and such other index, right or interest of any nature as may be prescribed".	A definition for "Commodity" has been incorporated in the interpretation section of the Bill.
	4 (1) Interpretation – Financial Instrument		The term "Financial Instrument" is not defined within the Bill.	Insert definition for "Financial Instrument". Suggested language: "includes any currency, currency index, interest rate instrument, interest rate index, share, share index, stock, stock index, debenture, bond index, a group or groups of such Financial Instruments and such other Financial Instruments as may be	The inclusion of the suggested language will be duplicative of the general definition of "derivative".

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				prescribed".	
	4 (1) Interpretation – Futures Contract		The term "Futures Contract" is not defined within the Bill.	Insert definition for "Futures Contract". Suggested language "means a standardized contract between two parties to buy or sell a specified asset (including but not limited to a Commodity or Financial instrument) of standardized quantity or quality for a price agreed today with delivery and payment occurring at a specified future date, the delivery date".	A definition for "Futures Contract" has been incorporated in the interpretation section of the Bill.
	4(1) Interpretation – Investment advice and investment adviser	"Investment advice" means advice with respect to an investment in, or the purchase, sale or holding of, a security, whether or not provided by an investment adviser "Investment adviser" means a person engaging in, or holding himself out as engaging in, the business of providing investment advice, and includes a person that provides investment advice to a manager of a collective investment scheme, or that carries out such other activities that are prescribed	The definitions of investment advice and advisor creates some ambiguity since giving investment advice does not make someone an 'investment advisor' but an investment advisor gives investment advice?		The definitive feature that makes someone an investment adviser is the fact that the person "holds himself out as engaging in the business of providing investment advice". One is not deemed to be an investment adviser if the provision of investment advice is not his primary business. For example, an attorney-at-law providing council to a client on a matter related to an investment. The definition of "investment advice" has been amended to reduce the suggested ambiguity by removing the reference to "whether or not by an investment adviser".
	4 (1) – Interpretation – Securities company		The Bill does not define a "securities company" and "securities business".	Include a definition of a "securities company" and "securities business" in the Bill.	The concept of "a securities company" is no longer captured as a form of securities business for which registration is required under the Bill. That concept is replaced by the concept of "a Broker-Dealer" therefore The inclusion of former definitions in is unnecessary. The reference to the "former Act" is defined within the Bill and the concept of "securities company" is properly referenced in the transitional provisions.
	4(1) – Interpretation - Affiliate		The definition of "affiliate" is confusing.	The definition of "affiliate" requires some tidying up and should reside only in sub-clause 2. This recommendation will provide further clarity in the definition.	A reference to "affiliate" has been added to section 4(1) of the Bill for ease of reference and the definition in section 4(2) has been amended to provide greater clarity.

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	4(1) – Interpretation - Bank	"Bank" means any institution which carries on business of banking and business of a financial nature		Restrict the definition of "Bank" to a licensee under the Financial Institutions Act, 2008. Change the word "and" to "or"' Institutions are licensed to carry on either the business of banking OR the business of a financial nature under the Financial Institutions Act, 2008.	The definition of "Bank" has been revised to state that "Bank has the meaning assigned to it in the Financial Institutions Act".
	4(1)- Interpretation - Control	(a) deemed to exist where the person or persons exercise control or direction over more than fifty percent of the voting power in, or in relation to, that issuer and (b) presumed to exist where the person or persons exercise control or direction over more than thirty percent of the voting power in, or in relation to, that issuer	Can the SEC explain the practical application of (a) and (b)?		Control is thought to exist where a persons or persons acting together own or can otherwise direct the votes amounting to in aggregate more than fifty percent of the voting securities of an issuer. In keeping with the Securities Industry (Take-Over) By-Laws, 2007, whereby the requirement for a "Take-Over Bid" is triggered if in summary thirty percent of an issuer's voting securities is acquired by another person or persons acting together, control is presumed to exist where a persons or persons acting together own or can otherwise direct the votes amounting to in aggregate more than thirty percent of the voting securities of an issuer. The however, is a rebuttable presumption in that a person can make representation to the Trinidad and Tobago Securities and Exchange Commission Limited that to the effect that they do not have control over the issuer.
	4(1) – Interpretation - Distribution	"distribution" means a trade – (a) in securities of an issuer that have not previously been issued...	This expansive definition captures shares issued by companies whether private or public. Should it remain, all incorporated companies will have to seek permission of the TTSEC to issue from one share upwards. It is doubtful this is the definition's intent as this represents a harsh imposition on the business operations of private enterprise.	Consider an amendment to exclude private companies and offerings to 35 or less investors as per the 'limited offering' definition found within the Securities Industry Act 1995. As an alternative to amending the definition of a "distribution" contained in the Bill, we respectfully recommend that the SEC amend Section 79 of the Bill (Prospectus Exemptions) to exempt private enterprises and non-reporting issuers.	Exceptions to the requirement to: - register as a reporting issuer; - register securities to be distributed; and - file a prospectus with the Commission; by private issuers or with respect to limited offerings have been create or otherwise moved from the General By-Laws to the Bill to within the Bill. *See sections 61(4); 62(9) and 79(1)(m) respectively.* The application of the exemption to filing a prospectus with the Commission in the case of a "limited offering" in section 79(1)(m) has been broadened by removing the reference to "by a reporting issuer". The application of the exemption to filing a prospectus with the Commission in the case of a distribution by a "reporting issuers" to an accredited investor has been broadened to provide an exception to filing where a reporting issuer makes a distribution to a maximum of forty-nine accredited investors. *See 79(1)(l).* A definition for "limited offering" has been incorporated in the

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					interpretation section of the Bill. A definition for "Private Issuer" has been incorporated in the interpretation section of the Bill.
	4(1) – Interpretation – Investment Contract	"Investment Contract" includes any contract, transaction, plan or scheme, whether or not evidenced by any document, instrument or writing, whereby a person invests money or other property in a common enterprise with the expectation of profit or gain based on the expertise, management or effort of others, and such money or other property is subject to the risks of the common enterprise;	The inclusion of the ability to form an investment contract without evidencing documentation is seemingly not in keeping with international best practice. Specifically the United States Security Act, 1933 and Ontario Securities Act as amended 2011 require that a security be evidenced via documentation and not merely "verbal agreement"	In keeping with international best practice and to eliminate any possible subjectivity in the definition of an investment contract, the definition of "investment contract" be changed to "....any contract, transaction, scheme or instrument, evidenced in writing, whereby..."	The reference to the phrase "whether or not evidenced by any document, instrument or writing" was removed from the definition of "investment contract" BOBBIE PLEASE INSERT AN APPROPRIATE RESPONSE. I CAN"T REMEMBER WHAT THE RESEARCH FOUND.
	4(1) – Interpretation – Material Change	material change means - (a) when used in relation to an issuer other than a collective investment scheme, a change in the business, operations, assets or ownership of an issuer, the disclosure of which would be likely to be considered important to a reasonable investor in making an investment decision and includes a decision to implement such a change made by the directors of the issuer or other persons acting in a similar capacity; (b) when used in relation to an issuer that is a collective	This definition is strong with the exception of the clause 'likely' which can result in a high level of subjectivity What capacity would be considered similar to that of a director; especially when the term 'director' is defined in the Bill to mean a director of an entity or an individual performing a similar function or occupying a similar position, including the trustee of a trust.	Remove the term 'likely'.	The definition of "material change" has been amended by removing the reference to likely. Director refers to "director" as defined in the Bill or any other individual who's title may not be "director" but they perform the functions traditionally performed by a person with that title.

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		investment scheme, a change in the business, operations or affairs of the issuer that would be considered important by a reasonable investor in determining whether to purchase or continue to hold securities of the issuer, and includes a decision to implement such a change made by the directors of the issuer or the directors of the manager of the issuer or other persons acting in a similar capacity.			
	4(1) – Interpretation - Records	• "Records" means – (a) Books of account, bank accounts and other bank records, correspondence, notes, memoranda and any other books, accounts, documents, data or information relating to the property or affairs of a person; or (b) data or information prepared or maintained in a bound or loose leaf form or in a photographic film form or entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written or	Disclosing bank records without a court order may be in breach of the client confidentially principle set out in common law and which is enshrined in the Financial Institutions Act. – The "whistleblower" protection do not provide sufficient justification to breach the client confidentiality requirement In regards to the Commission's access to bank records this clause is insufficient since it could be overridden by POCA		The sections of the Bill under which the Commission can request the delivery of, review and or examine the records of market actors or other specific registrants have been strengthened with a notwithstanding clause that overrides the requirements for confidentiality or other conflicting requirements on information governed under any other law. Under the whistleblowing section, persons providing information to the Commission in good faith are also protected by the inclusion of a similar notwithstanding provision.

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		other visual form, within a reasonable time;			
	4(1) – Interpretation - Relative	"relative" in relation to a person, means a- (a) spouse or a cohabitant; (b) a parent; (c) a grandparent; (d) a brother or sister, whether or not connected by- (i). consanguinity (ii). affinity; (iii). reason of cohabitational relationship (iv). adoption; or (v). reason of being declared a child of the family under the Matrimonial Proceedings and Property Act; (e) a son or daughter, whether or not connected by- (i). consanguinity (ii). affinity; (iii). reason of cohabitational relationship (iv). adoption; or (v). reason of being declared a child of the family under the Matrimonial Proceedings and Property Act; or (f) a spouse or cohabitant (as defined in the Cohabitational Relationships Act) of	In terms of scope, the definition of relative is extremely wide and will present immense administrative burdens inclusive of system changes on the industry. It may not always be possible to capture this kind of information accurately, particularly when considering connections by consanguinity or affinity.	Consider condensing the definition of "relative" for practical application. It is respectfully submitted that all references to cohabitational relationships be removed from the definition of "relative". Cohabitation can be entered into any time, by anybody of any age and any gender, with no formal requirements. Similarly, it can be ended simply and informally upon the agreement of the parties involved. It is by nature of this loose partnership and the absence of any legal ties that cohabitants are not typically regarded as family members	Relative is used with reference to persons connected to a reporting issuer within the Bill. Its definition is intentionally broad given the mischief that the Bill is attempting to avert within the insider trading provisions. The ability to supervise these relationships falls within the domain of the Commission and places prohibitions on persons who come into possession of material non-public information. It should further be noted that, the Bill limits the requirement to report on trades to specific categories of persons who are deemed to be connected a reporting issuer. Said categories do not include relatives therefore, the administrative burden to the industry is at a minimum. Cohabitation relationships/ arrangement are recognized in law and are governed by the Cohabitation Relationship Act, 1998. Notwithstanding the above, the definition of "relative" has been amended to exclude relatives by way of affinity.

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		any person identified in subsections (b) and (c)			
	4(1) – Interpretation – Security			The definition of "security" should be amended to read " "security" includes any document, instrument or writing, *which on the face of such document, instrument or writing*, evidences ownership of, or any interest in, the capital, debt, property, profits, earnings or royalties of any person, or enterprise, and without limiting the generality of the foregoing, extends to:..""	This definition in consistent with case law on the definition of security.
	4(1) – Interpretation – Security		The Securities Bill exempts "deposit" as a security. Has the Bill sufficiently defined a security to exempt a deposit **(LA)***		The definition of security is sufficient and a deposit would be captured by the Financial Institutions Act.
	4(1) – Interpretation – Security		(1) Where would products that comprise a savings and investment component and/or insurance/savings/investment components be regulated/classified? (2) What is the mechanism for determining classification and regulation of same? (3) Does the Commission have the authority to look at products such as EFPAs? (4) Management of companies may prepare reports on products and classify them in such a manner as to serve their personal (or corporate) interests and/or avoid regulation. Is there a mechanism to prevent this?		The Commission has the authority to examine at all investment or investment related products to determine whether the product is a security and therefore falls within the ambit of the Commission. The nature of such products would have to be examined on a case by case basis. Where it is determined the that product is not a security, the Commission also has the power to refer matters or share its finding (if necessary) with to fellow regulators under the Bill.
	4(1) – Interpretation -Security (e)	"Security" includes any document, instrument or writing evidencing ownership of, or any interest in, the capital, debt, property, profits, earnings or royalties of any person, or enterprise, and without limiting the generality of the foregoing, extends to: .. (e) any investment contract	The definition of a security as defined in the Securities Bill 2012 seems to indicate that a security is evidenced via documentation. Therefore, the inclusion of an investment contract which may be formed/classed as such without documentation seems contradictory.	Clarify the definition of a security in relation to the inclusion of an investment contract.	The definition of Investment Contract has been amended and as such this conflict would no longer exist.
	4(1)- Interpretation – Security (g)(iii)	(g) (iii) an oil, natural gas or mining lease, claim or royalty or other mineral	While recognizing this is not new, can the SEC explain how this security will be regulated?		These would be regulated like any other security. The issuer would be required to provide documentation to Commission, register the security and file a prospectus provided that the issuer or the distribution does not qualify

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		right.			for an exemption under the Act.
	4(1) – Interpretation - Subsidiary	"Subsidiary" means an issuer that is controlled by another issuer	The definition of subsidiary being proposed is somewhat limiting and may present some difficulty when applying sub-clause 2, which states that "one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other or both…"	The definition of "subsidiary" needs to be more generally worded and not associated with issuers only.	The definition of "issuer" has been amended by word "issuer" where ever they appeared in the provision and replacing same with the word "entity".
	4(3)(d) – Interpretation - Connected	For the purposes of this Act, a person is connected to a reporting issuer if the person-…… (d.) is contemplating or proposing, whether alone or with any other person, to make a take-over bid for any securities of the reporting issuer or is contemplating or proposing, whether alone or with any other person, to become a party to any amalgamation, merger or similar business combination with the reporting issuer, or is contemplating or proposing any other material transaction with or including the reporting issuer. (e.) is engaging in or is proposing to engage in any business or professional activity with or on behalf of the reporting issuer or any person identified in	1. "Contemplating or proposing" appear to be subjective terms which can lead to mis-interpretations and inconsistency in terms of application of the section. With respect to the above when does a person become connected to the reporting issuer?	An amendment to clarify the definition or guidelines to flesh out what these subjective terms mean is recommended.	Contemplating has been removed from the Bill. A person who is proposing, whether alone or with another person, to make a takeover bid for any securities may be considered to be connected to the reporting issuer at the time the person obtains knowledge of the material non-public information in relation to the transaction. This would be subject to examination on a case by case basis and may include the point at which the person was negotiating or proposing to take-over.

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		paragraph *(d)*, or is an employee of any such person or of the reporting issuer or any affiliate;			
	4(5)- Interpretation - Trade	For the purposes of this Act, a trade shall be presumed to occur in Trinidad and Tobago in the absence of evidence to the contrary where- (a) in the case of an act, advertisement, solicitation, conduct or negotiation in furtherance of a purchase or sale of a security, whether direct or indirect, such act, advertisement, solicitation, conduct or negotiation is- (i). made by mail or courier, telephone or facsimile transmission, with or to a person in Trinidad & Tobago, whether or not solicited by such person; (ii) made by electronic correspondence, where the recipient of the e-mail correspondence is in Trinidad and Tobago, and the sender has knowledge that the recipient of such e-mail correspondence is in Trinidad and Tobago, or after reasonable inquiry,	This section is confusing and maybe unenforceable On an interpretation of this clause, it appears that a foreign security sold to a person in Trinidad & Tobago will also be subject to the provisions of the Securities Bill, most particularly the requirements for the registration of securities with the SEC and where applicable, the filing of a prospectus. The clause also appears to restrict foreign brokers from selling securities to those either "resident" or "in" Trinidad and Tobago via a broker's website unless done in compliance with the subject legislation (which may require an SEC registration of the security) This makes for an unduly onerous clause and it appears to give the SEC extra jurisdictional powers in foreign markets and over foreign market actors while simultaneously constraining the investing capabilities of its nationals What is the difference in meaning, if any, between a person "in" Trinidad and Tobago as opposed to a person "resident" in Trinidad and Tobago and whether this clause encompasses a person resident and/or in Trinidad and Tobago who is not a national.	It is recommended that this restriction be revisited with a view to removal from the Bill	Based on the use of trade in the Bill no change is necessary as the transactions would not fall into the category of being considered a distribution and as such registration would not be required.

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		should have known, that the recipient of such e-mail correspondence is in Trinidad and Tobago, whether or not solicited by such person; or (iii) in the case of securities offerings made available on the Internet, the web pages and documents in respect of that offering, may be accessed by persons resident in Trinidad and Tobago, unless the document or web page contains a prominent disclaimer that expressly identifies the jurisdictions in which the offering is qualified to be made, and reasonable precautions are taken to ensure that no actual sales occur to persons in Trinidad and Tobago unless done in compliance with this Act; or *(b)* the purchaser of the security is in Trinidad and Tobago.			
	4(1) – Interpretation - Participant	Means a person who receives non-exclusive service from a clearing agency or through another person who acts or as- (a) a pledge; (b) a judgment creditor (c) a beneficial owner, for whom a blocked account in a clearing agency is established	The word 'or' should be deleted from line 3		The definition of "Participant" has been amended by removing the word "or" between the words "acts" and "as".
	4(5)- Interpretation-Published	Used in relation to a material fact or material	The definition of "published" doesn't explicitly allow for the publication of information via		The definition of "published has been amended by removing the words "or otherwise effectively disseminated or made available to the public and that

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		change, means published in a daily newspaper of general circulation in Trinidad and Tobago or otherwise effectively disseminated or made available to the public and that the public has been given a reasonable amount of time to analyze.	websites like the Issuer's or TTSE's website or via email. Would using this method be considered as being "published?" Generally where legislation requires publication it restricts same to daily newspapers in general circulation. To add to this by way of the expression "or otherwise effectively disseminated or made available to the public" would lead to ambiguity in establishing when something is in fact published. -		the public has been given a reasonable amount of time to analyze". In order for consideration to be given to other avenues for fulfilling the published requirement within the Bill, the definition has also been expanded to include the words " or made available to the public in such other manner as approved by the Commission".
	4(1) – Interpretation – "Purchase" & "Sale"	"Purchase" includes – (a) any acquisition of a security for valuable consideration, whether the terms of payment are on margin, installment or otherwise; and (b) any act, advertisement, conduct or negotiation, directly or indirectly, done in furtherance of paragraph *(a)* but does not include a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a *bona fide* debt	The definition of a purchase and also a sale of a security are effected with *valuable consideration*. Is it the legislative intent that a below market value disposition of a security is not a purchase or is it envisaged that the rules of consideration governing sufficiency and adequacy will apply.		Will be determined on a case by case basis. A benefit conferred or a detriment incurred by a party in exchange for another's promise. Valuable consideration may be non-monetary as long as it is of some value to one or both parties. Also called good and valuable consideration and legal consideration.
	4(1) – Interpretation - 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 in a	Includes the expression "for valuable consideration" Is insertion of the term 'valuable consideration' to oust circumstances involving rights issues/ or other non-fund raising issuance of securities etc. where there is no transfer of funds?		A benefit conferred or a detriment incurred by a party in exchange for another's promise. Valuable consideration may be non-monetary as long as it is of some value to one or both parties. Also called good and valuable consideration and legal consideration.

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		paragraph *(a)* or *(b)* for valuable consideration, but does not include- (i) a person whose interest in the transaction is limited to receiving the usual and customary distribution or sales commission payable by an underwriter or issuer; or (ii) a company that purchases shares of its own issue and resells them			
	4(5)- Interpretation- Beneficial ownership	includes ownership through a trustee, legal representative, agent or other intermediary, and a person shall be deemed to have beneficial ownership of a security, including an unissued security, if the person is the beneficial owner of a security convertible into the underlying security, or an option or right to purchase the underlying security or securities convertible into the underlying security – *(a)* under all circumstances, or *(b)* by reason of the occurrence of an event that has occurred and is continuing.	The definition of beneficial ownership does not cover someone owning the shares in their TTCD account or via a certificate.		The definition of "beneficial ownership" has been amended to include direct ownership. Expand definition to include such a person - add "includes direct ownership"- completed
	6(a) – Functions of the Commission	The functions of the Commission are to – (a) advise the Minister on all matters relating to the securities industry and marketplace;		The word 'marketplace' could be replaced with 'capital markets'	The subsection was amended by removing the reference to "marketplace". Securities industry is sufficiently broad to capture all forms of market for securities and the respective market actors.

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	6(i) Functions of the Commission		Please elaborate on the role of the SEC in investigative matters e.g. Fraud and money laundering vs. that of the Financial Intelligence Unit (FIU) –		The Commission has a role to play in these matters in so far as they relate to the securities market. In this regard, the Commission serves as a conduit for external securities regulatory bodies in relation to these matters.
	7 (1)(h) – Powers of the Commission	For the purpose of the discharge of its functions, the Commission has the power to – (h) review the contents of prospectuses and issue receipts therefor, and review any form of solicitation, advertisements or announcement by which securities are proposed to be distributed;	Why has the word 'review' been used to describe the Commission's role re prospectus? In the existing Act the role is to 'approve' such prospectuses, what is the purpose of the review in this section?		This is a matter of Act versus Outcome. The prospectus has to be reviewed for approval to be granted and the approval would be necessary for the issuance of the receipt.
	7(2) - Powers of the Commission	The Commission may in writing require any market actor to furnish it with such information as it may reasonably require for the exercise of its functions within such reasonable time and verified in such manner as it may specify.	The inclusion of the words 'reasonably' and 'reasonable' regarding the type of information that can be requested and the time frame to submit it respectively tends to weaken the strength of this power. This may unduly allow for challenge to such requests.		The subsection has been amended by removing the reference to "reasonable".
	7(3) – Powers of the Commission	A market actor that is required to furnish information to the Commission in accordance with subsection (2) shall furnish the required information, within the time specified and verified in the manner specified by the Commission.		A sanction should be added at the end of this sub-section for failure to furnish information.	The Bill provides for a general administrative fine for breaches of the Bill.
	7(4) – Powers of the Commission	Where the Commission takes any enforcement action against an entity or an employee of an entity regulated by the Central Bank of Trinidad and	• The Commission should notify the Inspector anytime action is taken against a registrant that is also regulated by the Central Bank. Additionally, the "may" in this clause seems inconsistent with the provisions of clause 19(1) which states that "The Commission	Change the word "may" to "shall".	This subsection was been moved to the provision 19 which address co-operation with the Central Bank and other agencies". The reference to may could not be changed as issues were raised by IOSCO regarding the TTSEC being compelled to share certain confidential information that was received via the MMoU with other local agencies.

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		Tobago for failing to comply with this Act, the Commission may notify the Inspector of the enforcement action so taken.	***shall*** consult and co-operate with and provide information to the Central Bank……"		
	8(1) Delegation of Powers		There used to be delegated authorities in Commissions. Maybe it's something that you should consider reintroducing because that would facilitate the process. So the General Manager could now help make certain decisions pretty straightforward, certain issues coming to market, bonds ready for—vanilla bonds, we can deal with that very quickly	Re-introduce the concept of delegated authority in to the Bill	The concept of delegated authority was not removed from the Bill. The Bill provides for the delegation of powers of the Commission in section 8.
	10 – Constitution of Commission		Is the Securities and Exchange Commission ("SEC") structured that the investigative arms of the SEC are separate from the decision making arm of the SEC?		The Commission's decision making arm is separate from the investigative arm. The investigative arm of the SEC primarily consists of staff of the enforcement division and staff of the Market Regulation and Surveillance Department. They do the primary investigations and are responsible for the generation of the investigative report. The decision making arm of the Commission consists of selected members of the Board of Commissioners.
	10 - Constitution of Commission & 11- Disqualification for appointment.			It is suggested that proper guidelines for fit and proper be established and published for both members of the Commission and market actors. While we note there is a requirement for market actors to be fit and proper, it is recommended that the criteria be well established to ensure thoroughness and consistency in the approval process.	Guidance with respect to Fit and Proper criteria shall be issued by the Commission.
	11(1)Disqualification for appointment	A person shall not be appointed or continue as Commissioner if, directly or indirectly, as owner, security holder, director, senior officer, partner, employee or otherwise, he— *(a)* is engaged in the securities business; *(b)* has a material pecuniary or proprietary interest in— (i) a registrant; or		Clarify term "material pecuniary or proprietary interest" Consider extending the disqualifications stated to apply also to a person to be appointed as General Manager	Section has been amended and "material pecuniary or propriety interest" has been clarified. The concept of a General Manager has been replaced by the concept of a Chief Executive Officer and limitations to employment have been outlined. See22(4)

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		(ii) a self-regulatory organization; or *(c)* has beneficial ownership of, or control or direction over more than five per cent of the outstanding equity or voting securities of a reporting issuer			
	12(4)- Term of Office and remuneration	A Commissioner may be removed from membership of the Commission by the President, where he- (a) becomes a person of unsound mind; (b) is absent from three consecutive meetings of the Commission without the permission of the Minister or without reasonable cause; (c) is guilty of misconduct in relation to his duties as a Commissioner; (d) is sentences to imprisonment or is convicted of an offence involving fraud or dishonesty (e) is declared bankrupt in accordance with the law of Trinidad & Tobago or any other country; (f) is a professional and is disqualified or suspended from practising his profession in Trinidad & Tobago or in any other country by an order of any competent authority made in respect of him personally;		It is recommended that this section be amended to include a requirement to publish notice of the removal if effected under this section, and to specifically give the President power to appoint a temporary Commissioner to fill the gap until the process for appointing a new Commissioner is completed Consider including "contravention of a By-Law" as a criteria for the removal of a Commissioner. This criterion currently exists under the Securities Industry Act, 1995.	The list of Commissioners is always available on the TTSEC's website and appointments are required to be Gazetted The Bill provides that the President may appoint a temporary Commissioner for a period not exceed one year to act in place of a Commissioner who is unable to perform his function. The reference to a contravention of this Act captures all By-Laws of instruments issued pursuant to the Act.

	Clause	Provision	Comment/Query	Recommendation	
		(g) is unable to perform his functions because of illness or for any other reason; or (h) contravenes this Act.			
	14(1) Confidentiality	No person shall make use of any confidential information obtained as a result of his relationship with the Commission other than for the administration or enforcement of this Act		1. Clause 14 of the Bill should be rationalized with clause 19. The sections should distinguish between: 1. Confidentiality re: Commissioners / employees of the Commission 2. Confidentiality re: persons <u>other than</u> Commissioners / employees of the Commission Clause 14(1) appears to relate to disclosures by third parties or persons other than employees of the Commission. As such, the deletion of 14(2)(a) should be considered. 2. The prohibition in clause 14(1) of the Bill should be extended to include persons who had former relationships with the Commission. This proposal would ensure that persons who no longer have a relationship with the Commission would continue to be bound by the confidentiality provision.	The wording of this section is intentionally broad to bind all persons (emphasis added) who obtained information from the Commission as a result of his relationship, past or present, with the Commission in the course of his duties in the exercise of the Commission functions under the Bill.
	14(2) - Confidentiality	No person specified in subsection (1) shall disclose confidential information obtained as a result of his relationship with the Commission to any person other than— *(a)* a Commissioner or employee of the Commission *(b)* an official or employee of the Government; *(c)* an expert hired or retained by the Commission; or *(d)* a duly authorized	The exemptions under this Clause 14(2) are too broad. For example, the category "official or employees of the Government" can include clerks etc. Also, why would an "expert hired or retained by the Commission" be exempt? **(RL)***	1. The Bill should just exempt the Financial Intelligence Unit (FIC) as opposed to any "official or employees of the Government". The ability to disclose information to the Financial Intelligence Unit should also be included. 2. Disclosures under clause 14(2)(b) and 14(2)(c) should be permitted only with the written consent of the Commission. Prohibiting disclosures unless the written consent of the Commission is obtained should be stipulated in the Act for the avoidance of doubt 3. Recommend deleting 14(2)(b). Disclosure of confidential information should be limited to	Section 14(2) does not provide an automatic qualification for the disclosure to confidential information by the Commission. Information may (emphasis added) be disclosed to the listed persons only where the Commission considers that the disclosure of the information is necessary for the disclosure of its functions under to Bill or is in the public interest and only where the Commission is satisfied that the information will be treated as confidential by the person or agency to whom it is disclosed and used strictly for the purpose from which it is disclosed. Notwithstanding the above, this section has been amended to provide greater clarity and qualification to acceptable persons as follows: - "a representative of the government of Trinidad and Tobago authorized by the Minister" replaces "an official or employee of the government" and - (d) has been expanded and amended to created greater clarity between authorized representatives of foreign and local regulatory

	Clause	Provision	Comment/Query	Recommendation	
		representative of the government of another country, or an agency of a government of another country, in connection with the enforcement of this Act, or similar legislation of any foreign jurisdiction.		persons who require the information for regulatory or investigative purposes. Disclosures to any official or employee of the Government appear to be too broad. 4. 14(2)(c) should be amended to read "an expert hired or retained by the commission *where such confidential information is relevant to the expert's services"*. This amendment would ensure that disclosures relate to the service being provided the expert. 5. It is recommended that sub-clause 14(1)(d) be amended to give the ability to disclose information to local or foreign regulatory authorities or law enforcement agencies for regulatory purposes.	authorities which now specifically references the FIU and the Central Bank of Trinidad and Tobago.
	15 (1) - Meetings	The Commission shall ordinarily meet for dispatch of business at such time and place as the Chairman may decide but shall meet at least once in every two months		Consider creating a provision which speaks to the minimum number of meetings to be held by the Commission per year and or a requirement for the execution of meetings by way of "round robin".	The provision speaks to the minimum numbers of meetings to be held by the Commission within a two month period. Where a quorum is not available, the Commission considers meetings by way of "round robin" on an as needed basis.
	18(1)(3) – Declaration of interest	In the event that the Commission finds that the interest is such as to constitute a conflict of interest, the Commissioner shall not take part in any deliberations or vote on that matter, and shall leave the room during such deliberations.		The provision on declaration of interest at a meeting and not taking part in deliberations should be extended to cover the General Manager as for Commissioner.	<u>The section has been amended to apply to a Commissioner or any other person attending a meeting of the Commission.</u>
	19 (1) – Consultation with Central Bank and other agencies	The Commission shall consult and co-operate with and provide information to the Central Bank of Trinidad and Tobago or any		There should be a specific provision for further disclosure by parties receiving information that the authorization of the Commission is required where the Commission is satisfied that the disclosure is being	<u>Section 19 has been amended to provide that any information provided and received by the Commission pursuant to this section shall be confidential and shall not be disclosed except in accordance with section 14 which limits the use/disclosure of confidential information shared by the Commission.</u>

	Clause	Provision	Comment/Query	Recommendation	
		other agency that exercises regulatory authority under a written law over a financial institution, insurance company or other entity in order to minimize duplication of effort and to maximize the protection of investors.		made for regulatory purposes	
	19(2)- Consultation with Central Bank and other agencies	The Commission may co-operate with and provide information to and receive information from any of the following entities, whether in Trinidad & Tobago or elsewhere; (a) other securities or financial regulatory authorities, exchanges, clearing agencies, self-regulatory bodies or organizations, law enforcement agencies and other government entities of regulatory authorities not included in the foregoing, and (b) any person, other than an employee of the Commission, who acts on behalf of or provides services to the Commission and any such information received by the Commission shall be confidential and shall not be disclosed <u>except</u>	In information sharing sections such as these, the authorization to disclose confidential information usually lies with the party sharing the information as the proprietor of that information – not the party receiving the information – (1) The provisions on the entities that information can be shared with appears too broad	1. There should be a provision that not only information 'received' by the commission is confidential but also information 'provided' to other entities by the Commission is to be treated as confidential – 2. Change the word "may" to "shall" – 3. Ratify the provision to include the condition that confidential information must be used strictly for the purpose for which it is intended	Section 19(2) has been amended by deleting "and any such information received by the Commission shall be confidential and shall not be disclosed <u>except where authorized by the Commission</u>". Section 19 has been amended to provide that any information provided and received by the Commission pursuant to this section shall be confidential and shall not be disclosed except in accordance with section 14 which limits the use/disclosure of confidential information shared by the Commission. See Section 19(6).

	Clause	Provision	Comment/Query	Recommendation	
		where authorized by the Commission.			
	22(1) - Appointment of General Manager and Chief Executive Officer	The Commission shall appoint a General Manager who shall hold office on terms and conditions approved by the Minister.		The Commission should reconsider the stipulation that the terms and conditions related to the appointment of a General Manager must be approved by the Minister of Finance to ensure a greater degree of independence	This provision is consistent with other similar legislation. The General Manager (now CEO) is responsible for the day to day management of the Commission's affairs.
	22(2) - Appointment of General Manager and Chief Executive Officer	The Commission may, with the approval of the Minister, appoint the Chairman or the General manager as its chief executive officer.	The Bill speaks to the Chairman/General Manager being appointed as Chief Executive Officer of the SEC but the Bill does not define the role of the CEO and would it be proper corporate governance to have the Chairman be an Executive Chairman?		The reference to the Chairman/ General Manager being appointed as the Chief Executive Officer (CEO) has been removed. The Bill now solely contemplates the appointment of a CEO. The concept of a General Manager has also been removed.
	Division 5 – Financial Provisions: 27 -31		The Act purports to promote "fair and efficient capital markets…" establishing a commission to "ensure the orderly growth and development of the capital markets and securities industry." (s. 6(j)) From my own limited experience with shares, bonds and exchange traded funds; the problem we have in Trinidad and Tobago relates to the complexity and lack of understanding by most citizens. When an announcement was made in the budget to promote stock market activity by providing tax incentives for family businesses becoming listed, I found it amusing. I found it amusing because, I couldn't think of any family business with even a remote understanding of what was being suggested. Furthermore, what family business would give up control to other shareholders?!	With this background, I would like to propose that apart from promoting what stock markets are about, that something meaningful and relevant be allowed for within the Bill. Basically I am speaking about making share purchases and sales accessible to the man in the street using PlayWhe/Lotto-styled kiosks which would facilitate trades right on the spot. I know that it may not be as simple as that, but I cannot think of any reason why this cannot be done once money and ID are provided. I am convinced that it would go a long way towards developing market activity locally – which is the objective of the Bill. It would have the additional benefit of shifting people away from gambling with little chance of "winning" towards investing with at least a 50/50 chance of "winning." It may even gain us international recognition. With respect to how this relates to the Bill, my thoughts are that the Financial Provisions (s. 27 to 31) should allow for the setting-up of such outlets including electronic connectivity to the Central Depository and banks for example, to enable the trades.	Noted.
	33 – Public availability of filed documents	(1) Unless the Commission determines that disclosure would not be in the public interest, the Commission		Clarity may be required on whether this provision for public availability of documents is consistent with the Freedom of Information Act provisions.	The section is consistent with the Freedom of Information Act ("FOIA"). The FOIA refers to proprietary documents and this section refers solely to documents required to be filed pursuant to the Act for example annual

	Clause	Provision	Comment/Query	Recommendation	
		shall make all documents or instruments required to be filed with it under the Act available for public inspection during the normal business hours of the Commission. (2) Subject to subsection (1), the Commission may also make all documents or instruments filed with it available to the public by posting such documents to the Commission's website.			financial statements.
	37(3) – Registration requirements	In considering whether an applicant for registration as a self-regulatory organization under this Part is fit and proper for registration, the Commission shall consider the financial condition, proficiency, integrity, and competency of such applicant and any additional requirements as may be prescribed.	The criteria for registration as a self-regulatory organization are vague i.e. 'financial condition, proficiency, integrity and competency'. No metric is indicated as to how these are to be measured and assessed and what standard(s) will be acceptable		The criteria for the registration of SROs are detailed in the General By-Laws to the Bill.
	40 (3) – Procedure on proposed amendment to rules of governance.	Forthwith after receipt of a proposed amendment under subsection (2) the Commission shall publish in a daily newspaper of general circulation in Trinidad and Tobago a notice inviting any interested person to submit written comments on the amendment and the cost of the publication shall be borne by the self-regulatory organization.		Consider stating a specific time period for publication as well as a minimum time frame within which respondents must be allowed to make their submissions.	A public hearing for amendments to SRO rules is required only where the amendments are essentially procedural. Hearings of the Commission are governed by the Securities Industries Hearings and Settlement Rules which contain notice requirements.

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	43 - Membership			In subsection 43(1), add after the words 'subsections (2) and (3)' and "also subject to Section 51(6)".	Section was amended to include 51(6).
	44(6) – Filing of copy of decision of Commission	On an appeal or review referred to in subsection (5), the Commission may set aside or modify the sanction imposed if it finds that it restrains competition to an extent not necessary to achieve the objectives specified in section 39(1), (2) or (3).	This subsection appears to contemplate that there is legislation in effect regulating fair competition in the business sector in Trinidad and Tobago. Such laws are not in effect so the question as to how fair competition is to be assessed/ regulated arises	There are several pieces of legislation dealing with competition and the protection of same in Trinidad & Tobago namely, Protection Against Unfair Competition Chap. 82:36 27 of 1996; Fair Trading Act Chap. 81:13 13 of 2006 however clarification on possible inconsistency in assessment/ regulation of anti-competitive effect of sanctions may be required.	The Commission will liaise with the relevant regulatory authorities where appropriate.
	46 (1) – Appointment of Auditor	A self-regulatory organization shall, subject to the approval of the Commission, appoint an auditor to audit its financial affairs.	It is duly noted that this clause is silent on the procedure to be used to approve the appointment of an auditor by the SEC.	Rather than require the Commission's approval for every such appointment, the Commission should publish an approved list of auditors or criteria for choosing an appropriate auditor.	Auditor requirements are detailed in Part XI of the By-Laws
	47 – Contingency fund of securities exchange		This section provides for Contingency Fund and Settlement Assurance funds that Self-Regulatory Organizations must maintain. Section 63A in the existing Act contains a provision for Indemnity Insurance to be maintained by all registrants. The requirement for indemnity insurance in the Bill now falls within the By-Law making provision of clause 148 which empowers the Minister to make by-laws on conditions of registration including '(vii) requirements for a registrant to obtain and maintain indemnity insurance, the terms and conditions of indemnity insurance, and the amount of indemnity insurance to be obtained and maintained.'	It is submitted that the requirement for indemnity insurance is of paramount importance and ought to be incorporated into the Securities Bill and not relegated to subsidiary legislation / statutory instruments.	Section 52 has been amended to include the requirement for indemnity insurance as the Commission determines may be necessary.
	47(5)- Contingency fund of securities exchange	A self-regulatory organization shall at any time— (a) permit a person authorized by the Commission in writing to inspect the records and assets of any fund referred to in this section; (b) produce and furnish to the person authorized by the	Would the inspection by the Commission **only** be related to the funds and no other reason? Are there any safeguards to protect the reputation of a self-regulatory organization from an abuse of power by the Commission regarding the Commission's "powers to enter the premises and inspect the financial affairs of the SRO"?		Section 47(5) – relates to the inspections of the Contingency Fund and Settlement Assurance Fund. The Commission has internal checks and balances in place in order to grant authorizing to any person to enter a premise of an SRO for inspection purposes. In addition any action taken by the Commission is subject to judicial review.

	Clause	Provision	Comment/Query	Recommendation	
		Commission in writing, any document or record which he reasonably requests; and (c) answer any questions that the person authorized by the Commission in writing, may ask concerning those records or assets.			
	48(2)- Sanction re: Self-Regulatory Organization	48(1) Where a self-organization- (d) fails to observe the prescribed standards of solvency Subject to subsection (1), the Commission may make one or more of the following orders to: (a) censure the self-regulatory organization; (b) limit the activities, functions or operations of the self-regulatory organization; or (c) suspend or revoke the registration of the self-regulatory organization	Will the SEC be prescribing the standard for insolvency to be applied?		Standards of solvency for SROs are prescribed in By-Law 16.
	49 – Complaints re: Self-Regulatory Organizations and registrations	(1) Subject to subsection (4), any person who is aggrieved by any act or omission of a self-regulatory organization, a member thereof, or by any other market actor, may lodge a complaint in respect thereof with the Commission. (2) The Commission may investigate and adjudicate upon the complaint lodged pursuant to subsection (1). (3) Section 157 shall have effect in relation to any investigation and adjudication conducted by	The existing Act provides at Section 50 (3) and (4) for limitations on future action that can be taken where the Commission adjudicates on a complaint. These limitations have not been included in the Draft Bill.	Consideration should be given as to whether this omission will open opportunities for forum shopping and lack of finality in addressing grievances in the securities industry. With respect to Section 49(1), consider adding the words "in writing addressed to the Chairman" at the end of this sub-section so as to reduce the opportunities for frivolous reports by persons unwilling to commit to writing. Writing could be defined to include electronic transmission of such complaints.	The ultimate discretion on whether to hear any matter lies with the Court. Section was amended to provide for the submission of a "written" complaint to the Commission.

	Clause	Provision	Comment/Query	Recommendation	
		the Commission pursuant to subsection (2). (4) The Commission may, following receipt of a complaint made under subsection (1), make such order as it thinks just, including an order for the payment by the self-regulatory organization, the member of the self-regulatory organization or the registrant, as the case may be, of any sum by way of restitution or as compensation for any loss suffered by the complainant.			
	50 – Dispute between members			The provisions on the procedures to resolve disputes between members of self-regulatory organizations should also include provisions for alternative dispute resolution e.g. mediation using certified mediators under the Mediation Act	The SROs has established rules of governance which gives its oversight over the conduct of its member. The Board of the SRO is therefore the first port of call for mediating with respect to disputes between its members. Is should be noted that there are no provisions either within the Bill or the Rules of the SRO which prohibit an SRO from enlisting the services of a certified Mediator to assist in the hearing of any matter under dispute.
	51 – Registration requirements		Why was the term registrant & not market actor added under Part IV? – **(SH)***		Part IV of the Bill refers to registration of specific categories of persons with the Commission. Persons required to be registered with the Commission are terms "registrant". Not all "market actors" require registration with the Commission for the execution of its functions.
	51 (1) – Registration requirement		Once an entity is trading in Trinidad and Tobago it's required to be registered as a registrant. The definition of trading is focused on the physical location of the prospective investor, that is, once the investor is physically located in Trinidad there is a reliable presumption that the trade is occurring in Trinidad. A, how does one rebut that presumption? What constitutes evidence to the contrary? This arguably would require foreign entities to register even if that entity has no presence in Trinidad and Tobago - Are reporting issuers required to be registered		As long as your activity has an effect on Trinidad and Tobago's markets, on our investors and on our economy then you are subject to regulatory oversight. In terms of the concerns foreign issuers and foreign registrants may have, we have tried to make it a bit easier for them to comply with our provisions. So there are certain provisions that allows us to rely on foreign records, the records of foreign regulators, which makes it a bit easier

	Clause	Provision	Comment/Query	Recommendation	
			under this part? Registration of reporting issuers does not appear to be an explicit requirement		
	51(2) – Registration Requirement	Subject to section 53(2), an individual who is a director or senior officer or employee of a person that is required to be registered under subsection (1) in order to carry on its business activities shall register in accordance with this Act, in the prescribed category, subject to such terms and conditions as the Commission may determine		We submit that directors/senior officers or employees of persons "who engage in any act, action or course of conduct in connection with incidental to, the business activities of the registrant" should be registered. Subsection (4) could then be retained "for the avoidance of all doubt"	Subsection (2) was amended to include the phrase "who engage in any act, action or course of conduct in connection with incidental to, the business activities of the registrant"
	51 (3) – Registration requirements	An individual who is not registered under subsection (2) shall not perform any of the functions or engage in any act, action or course of conduct in connection with, incidental to, the business activities of the person that is required to be registered under subsection (1) in order to carry on its business activities.		In the past market actors have experienced significant delays in the processing of applications for registration with the SEC. With a view to promoting productivity and efficiency in the capital markets, SDATT recommends that the Bill provides an exemption from this clause for any individual who has submitted an application meeting the prescribed regulatory requirements and is awaiting approval from the SEC By Law 59(2) requires registrant to submit a registration statement 14 days prior to an issue date. Consequently, SBTT's request for a 1 month seems a reasonable request – SDATT (See 52 (1) below)	The TTSEC notes the concerns indicated and is working to improve its processes we however do not think it necessary or appropriate to impose specific deadlines on the Commission via legislation.
	51 (4) – Registration requirement	Subsections (2) and (3) do not apply to an employee performing functions which are solely administrative in nature, including without limitation, technology support, facilities support, human resources management and clerical support.	What about legal staff, compliance staff, finance? – **FC Group/SDATT**		This would be a function of the indidvual involvement in the entity's activities as it relates to securities. This will be further detailed in the by-laws.
	51 (5) – Registration requirement	Notwithstanding subsections (1) and (2), a person may carry on business, or hold himself out as, or engage in any act,	We are unclear to what the "manner prescribed" in the subsection refers We are also of the view that the term thirty days" requires further clarification	We recommend deletion of the provision at the end of the subsection The following wording is suggested - working", "calendar" or "consecutive" - be inserted before "thirty	The registration of sponsored representatives is annuciated in the General By-Laws to the Bill. The interpretation of a period of time when written into law is detailed in section 25 of the Interpretations Act Ch. 3:01

	Clause	Provision	Comment/Query	Recommendation	
		action or course of conduct in connection with, or incidental to, the business activities of a broker-dealer or investment adviser for a period not exceeding thirty days in any one calendar year, where such person is not registered under subsection (1) or (2), provided such person is registered in the manner prescribed.	The period of 30 days within which a person can carry on broker-dealer business without being registered may be unduly lengthy in view of the type of losses that can be incurred in the modern cyber-trading context The intention of this provision is not clear. This appears to give blanket immunity. If the clause is intended to deal with the expiration of the renewal, this should be more clearly worded as it appears to give immunity to unregistered persons	days" –	This section is in reference to "suitcase traders". The section has been amended to provide greater clarity.
	52(1) - Registration by the Commission	Subject to subsections (2) and (3) an applicant for registration under this Part— *(a)* is considered by the Commission to be fit and proper for registration or reinstatement of registration in the category applied for; *(b)* complies with the prescribed requirements; and *(c)* pays the prescribed fee, the Commission shall register, renew or reinstate the registration of the applicant and issue to such applicant a certificate of registration in the prescribed form.		In the past market actors have experienced significant delays in the processing of applications for registration with the SEC which has negatively impacted business. With a view to promoting productivity and efficiency in the capital markets, we strongly recommend that subject to an application meeting the prescribed regulatory requirements, the Bill prescribe a reasonable time frame within which the Commission shall register, renew or reinstate the registration of an applicant– It is suggested that proper guidelines for fit and proper be established and published for both Commissioners and market actors. While we note there is a requirement for market actors to be fit and proper, it is recommended that the criteria be well established to ensure thoroughness and consistency in the approval process	The time-period for the processing of an application for registration with the Commission is based on a number of factors including the submission of all relevant constituent documents in "good form" (emphasis added). As such, the time-period to register can only be considered within the context of a given situation and the level of interaction between the parties. Guidance with respect to Fit and Proper criteria shall be issued by the Commission. (1)
	52(6)- Registration by Commission	In considering whether a person is fit and proper for registration under this Part, the Commission shall consider the –	(1) The educational and other qualifications requirements of the "fit and proper" test are somewhat abstract. Greater clarification on the nature of the education and other qualification would give applicants some degree of certainty in		Guidance with respect to Fit and Proper criteria shall be issued by the Commission.

	Clause	Provision	Comment/Query	Recommendation	
		(a) financial condition and solvency; (b) educational and other qualification; (c) ability to perform his proposed business efficiently, honestly and fairly; (d) ability to comply with the requirements of this Act applicable to the category of registration for which he is applying; (e) character, financial integrity and reliability; and (f) additional requirements as may be prescribed, and for the purpose of this subsection, the Commission may have regard to any information in its knowledge or possession whether furnished by the applicant or not.	knowing whether they qualify for registration under the Act. - (2) It appears that if these new fit and proper requirements for registrants are enacted the stringency of requirements for operation in the securities industry will be markedly reduced. This may be of concern in particular as it relates to the omission of specified educational and experience requirements at (b). At (c) there is to be provision to consider 'ability to perform his proposed business efficiently, honestly and fairly'. The criteria and assessment process to judge such performance are not defined. This may present opportunities for less stringent and/or inequitable decision making re applicants for registration.		
	52(6)(a) – Registration by the Commission 56(4) – Application for registration		Is the Bill on par with the FIA in term of the level of solvency and capitalisation proposed for registrants?		The Bill provides for the prescription of solvency and capitalization requirements for registrants. The Commission's intends to move to a risked based approach to solvency and capitalization requirements in the future.
	53 – Transitional provisions		The concept of a securities company does not exist in the proposed Bill. As such, it is not clear how an entity currently acting as broker and/or dealer and/or investment adviser and/or underwriter will be dealt with. For example, would a securities company acting as broker-dealer AND engaging in investment advisory services AND/or underwriting business be required to be separately registered? The transitional provision in 53(1) does not appear to deal with such an eventuality		Brokers and securities companies will transition to broker-dealers. However for the transitional period or until the entity meets the new requirements, their activities will be limited to their previous functions under the former Act (see Section 53(2)). Under proposed by-law 19(3) – broker dealers are deemed registered as underwriters and investment advisers.
	55 (1) – Termination	The termination of the	The intention of this provision is unclear. Why it	The grounds or reason for termination may be relevant	Section 55 has been re-drafted to provide greater clarity with respect to

	Clause	Provision	Comment/Query	Recommendation	
	of employment	employment of an individual who is registered under section 51(2) with a registrant that is registered under section 51(1) shall operate as a suspension of the registration of such Individual under section 51(1), with effect from the date of termination of the employment, until notice in writing has been received by the Commission from another registrant registered under section 51(1) of the employment of such individual by the other registrant.	is necessary to wait until notice of employment is received from another registrant before terminating the registration of the person?	and it may be preferable to terminate registration immediately, as opposed to suspending the registration of such an individual, for instance in a case where termination of employment was due to fraud / malfeasance. A requirement for the employer to advise the TTSEC when someone's employment has been terminated, and the reason(s) for the termination, should be considered. This information may assist the TTSEC in its deliberations regarding the suitability of a person for registration.	when suspensions will be applicable versus a termination. The Bill requires notification of the occurrence of prescribed events/changes to the Commission. which shall be annunciated in the General By-Laws to the Bill.
	56(4) – Application for registration	Subject to the By-Laws, every registrant registered under section 51(1) shall, within five business days of the event, deliver to the Commission notice in the prescribed form of – (a) any change in the (ii) directors or senior officers of the registrant and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefore *(sic);* (iii) the information required under section 54 (b) the commencement and termination of employment of every individual registered	We are not in favour of a requirement to advise the Commission of such details. We have not identified any information required under section 54 We are not in favour of a requirement to advise the Commission of such details.	Delete this requirement.	Notification to the Commission of specified corporate events/changes is necessary for the effective oversight of it registrants. The section has been amended to provide a more general requirement to notify the Commission of the occurrence of prescribed events/changes which will be annunciated in the General By-Laws to the Bill

	Clause	Provision	Comment/Query	Recommendation	
		under section 53(2) and, in the case of termination of employment, the reason therefore.			
	57(1)-Suspension of Registration, Warning censure	The Commission may, where it considers it to be in the public interest, issue a warning, private reprimand or public censure or may suspend the registration of a registrant registered under section 51(1), (2) or (5) if— *(a)* such registrant ceases to carry on the business of a registrant; *(b)* such registrant had obtained registration under this Act or the former Act by the concealment or misrepresentation of any fact which is, in the opinion of the Commission, material to the application for registration or to the suitability of the registrant to be registered; (c) the registration of such registrant under this Act or the former Act has been made by mistake, however such mistake arose;		The Trinidad and Tobago Stock Exchange Rules expressly prohibits members from employing in any capacity any person whose registration as a stockbroker has been cancelled or suspended from trading as a stockbroker and whose registration has been refused by the SEC. Additionally, members are restricted from carrying on business for or with a person who has been expelled from the Stock Exchange. With a view to fostering compliance with the Legal and Regulatory Framework, it is respectfully submitted that a provision be included in the Bill which prescribes that the Commission shall maintain a register of all market actors who have been issued a warning, public censure or suspended under Clause 57(1) of the Bill, which shall be published in the *Gazette*, one daily newspaper of general circulation in Trinidad and Tobago or the annual report of the Commission under section 19. It is further submitted that section 57(1)(c) of the Act which empowers the SEC to suspend a registrant who is mistakenly registered howsoever the mistake arose, is unduly onerous and unfair to market actors particularly in circumstances where the mistake is due to an oversight caused by an SEC officer. We recommend that reference to suspension under the Bill for such an infraction be deleted altogether. (1) We are also of the view that to subject a market actor to public censure, suspension or even revocation of registration for ceasing to carry on the business of a market actor may be unduly harsh particularly in cases where there is no malfeasance or impropriety on the part of the Institution. There are many reasons why a market actor may cease carrying on business which are not necessarily deserving of public censure or revocation of	This section seeks to broaden the Commission's powers in keeping with its mandate to ensure that the Act is upheld and to protect investors. This section is discretionary and as such the Commission would determine the best course of action to be applied on a case by case basis. Relevant stakeholders will be informed of all market actors who have been issued a warning, public censure or suspended under Clause 57(1) of the Bill in such manner as it considers appropriate from time to time.

	Clause	Provision	Comment/Query	Recommendation	
				registration. In the circumstances we recommend that that the Bill be amended to exclude 57(1)(a).	
	58(1) - Revocation of registration	The Commission may, where it considers it to be in the registration public interest, revoke the registration of a registrant registered under section 51(1), (2) or (5) for any reason set out in section 57 other than section 57(1)(j) or (k).		There are provisions here exempting certain circumstances listed at Section 57(1) from the commission's power to revoke registration. In addition to those stated here i.e. (j) to (k), the part of (g) that relates to a person being merely 'charged' should be included in these exemptions.	Sections 58(1) and 58(2) have been amended to include (g).
	61(1) – Registration statements of issuers	A person who proposes to make a distribution shall register with the Commission as a reporting issuer and file a registration statement in the prescribed form within the prescribed time and pay the prescribed fee.	Previously in private placements, less than 35 persons did not require registration. Please explain the rationale for treating private placements in the same manner as public offerings? And also, at what stage is registration required? And please define what you mean by "proposes"?		Limited offerings by private issuers under the revised bill do not require registration or a prospectus.
	63- Annual Reports	A reporting issuer shall, within the prescribed time period, after the end of its financial year — (1) file with the Commission, a copy of its annual report containing the prescribed information; and (2) send the annual report to each holder of its securities, other than debt securities, addressed to the latest address as shown on the securities register of the reporting issuer.	63(2) - This provision should be made more flexible to accommodate electronic records and the supply of hard copy on request by shareholders. It would seem more appropriate for matters of substance such as the time period for disclosure to be in the Parent Act instead of awaiting regulations to be prescribed. The existing Act stipulates within four months. The absence of a time period in the Act may allow for loopholes of non-compliance unless the relevant regulations are ready at the time that the Act comes into force		Part V of the Bill has been amended to provide for the sending of documents, statements or records to security holders by way of specified electronic means. All other provisions remain the same as the current General By Laws will continue to be in force until replaced by new ones under the new Act.

	Clause	Provision	Comment/Query	Recommendation	
	64(1)- Timely Disclosures of material change	Subject to subsection (2), where a material change occurs in the affairs of a reporting issuer, the reporting issuer shall- ..*(b)*forthwith, and in any event within seven days of the material change , publish a notice in a daily newspaper of general circulation in Trinidad and Tobago or as otherwise prescribed and such notice shall be authorized by a senior officer and shall disclose the nature and substance of the material change, and be filed with the Commission.	There is a need for greater clarity as to what events, actions, et cetera constitutes "material change" and what needs to be published, given the penalties attached to the non-compliance Reporting time is shortened. Can an exemption be granted for prejudicial material?	It is recommended that perhaps 2 to 3 days is more reasonable Parameters should be put in place by the Commission to guide the market as to what constitutes a material change.	(1) The Commission shall engage reporting issuers and issue further guidance with respect to what constitutes a material change. The section has been amended to provide for a three (3) day notification period to the Commission. There are various options for exemptions/delays under this section.
	64(2) – Timely disclosure of material changes	Subject to subsection (3), subsection (1) shall not apply where the reporting issuer is of the opinion that the disclosure required by subsection (1) would be unduly detrimental to its interests and forthwith after the material change advise the Commission in writing of the material change and of the reasons why it is of the opinion that there should not be a notice as contemplated in subsection (1)(a).		The word 'forthwith' is vague so consideration should be given to stating a time frame.	The subsection has been amended to include the phrase "and in any event within seven days of the occurrence of a material change" after the word "forthwith" for greater clarity.
	64(3) - Timely disclosure of material changes	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		A time frame within which the opportunity to be heard will extend should be stated for clarity although sub-section (4) seems to provide an outer limit of 30 days.	Subsection 4 has been deleted and subsection (3) amended for greater clarity.

	Clause	Provision	Comment/Query	Recommendation	
		heard— *(a)* require disclosure to the public of the material change in accordance with subsection (1);or *(b)* permit non-disclosure of the material change by the reporting issuer provided such non- disclosure does not continue beyond the time set forth in subsection (4			
	65(1) – Annual Financial Statements	Every reporting issuer shall within the prescribed time prepare and file with the Commission annually comparative financial statements relating separately to — …		A time period in the Parent Act would seem appropriate for this obligation re filing financial statements.	the current General By Laws will continue to be in force until replaced by new ones under the new Act.
	65 (4) - Annual Financial Statements	Subject to subsection (5), at the time a reporting issuer files comparative financial statements with the Commission under this section it shall concurrently file a certificate in the prescribed form and signed by— (a) its chief executive officer and its chief financial officer; (b) any other two senior officers if the reporting issuer does not have a chief executive officer or chief financial officer; or (c) any two directors of the reporting issuer shall certify the accuracy of the comparative financial	What is the prescribed form to be signed by the CEO and CFO or any two senior officers, or any 2 Directors? Is it meant to be similar to the requirements of Section 37(1) of the FIA? Should the lack of this reporting by the reporting issuer be considered an offence?		The prescribed form would be contained within the General By-Laws to the Bill. The failure to do anything required under the Bill is a breach and would be subject to sections 155 and 156.

	Clause	Provision	Comment/Query	Recommendation	
		statements in the prescribed manner.			
	70(1)(2) - Offence	Where a reporting issuer is convicted of an offence under subsection (1), each director and senior officer of the reporting issuer, who knowingly or recklessly authorized, permitted or acquiesced in the offence is also liable on conviction on indictment for such offence to a fine of five hundred thousand dollars or to imprisonment for two years	The fines for offences generally in the Draft Bill may not present a deterrent in the context of million or billion dollar transactions Could you clarify the "and imprisonment for two years", who exactly in the company would be faced with that specific penalty?	Consideration should be given to the use of a formula for a proportional fine e.g. three times the quantum of profit made in the transaction involving an offence. Section 102 of the Draft Bill provides a more appropriate fine using such a formula re Insider Trading	The entity against whom an allegation is made, if convicted, will be subject to a fine. Any senior officer who is found to have contributed to the offence may also be subject to a fine and imprisonment. The Bill provides the maximum fine and imprisonment period to be applied however the actual imposition of the fine will be in the discretion of the Court. .
	72(1)- Distribution-Definition and construction	(1) For the purpose of this Part, an advertisement solicits the purchase or sale of securities if— (a) it invites a person to enter into an agreement for, or with a view to subscribing for, or otherwise acquiring or underwriting any securities; or (b) it contains information reasonably calculated to lead, directly or indirectly, to a person entering into such an agreement.	Does section 72 require private companies issuing securities to apply to the SEC to issue those securities?		Exceptions to the requirement to: - register as a reporting issuer; - register securities to be distributed; and - file a prospectus with the Commission; by private issuers or with respect to limited offerings have been create or otherwise moved from the General By-Laws to the Bill to within the Bill. See sections 61(4); 62(9) and 79(1)(m) respectively. The application of the exemption to filing a prospectus with the Commission in the case of a "limited offering" in section 79(1)(m) has been broadened to apply to all issuers. The previous reference to " by a reporting issuer" has been removed. The application of the exemption to filing a prospectus with the Commission in the case of a distribution by a "reporting issuers" to an accredited investor has been broadened to provide an exception to filing where a reporting issuer makes a distribution to a maximum of forty-nine accredited investors. See 79(1)(l. A definition for "limited offering" has been incorporated in the interpretation section of the Bill. A definition for "Private Issuer" has been incorporated in the interpretation

	Clause	Provision	Comment/Query	Recommendation	
					section of the Bill.
	72(2) - Distribution-Definition and construction	—"accredited investor" means— (a) a person who has access to substantially the same information concerning the issuer that is required in a prospectus under this Part; (b) an officer or director of the issuer, or a spouse of any such person; (c) a bank, insurance company, loan or trust company incorporated, governed, or regulated under the laws of Trinidad and Tobago; (d) a registrant;….	Accredited does not seem to meet the meaning required in this context as there is no process to give 'accredited' status to investors.		The characteristics of an "accredited investor" are outlined in the Bill. *See section 72(2).* Where a prospectus exemption request is made on this basis that the distribution is to accredited investors the criteria would be evaluated in regard to the each such person.
	73 (1) – Prospectus required		Like the Central Bank and the FIA, what standards are to be put in place to ensure timely feedback on prospectus issues and new products? There needs to be a greater level of timely feedback with respect to matters and registrations before the Commission.		As previously indicated it would be woefully inappropriate to put in a specific timeframe in which registrations/applications would be processed given that it is primarily driven by the interaction between the parties and the timeliness of the responses by all parties. The Bill does however maintain the concept of delegated authority which provides for the delegation of specific functions of the Commission to appropriate person as considered necessary by the Board of Commissioners. This process is invaluable to increase the timeliness of feedback to respective market players.
	73(1) Prospectus required & 79 Exemptions	Subject to section 79, no person shall trade in a security where such trade would be a distribution unless a prospectus has been filed with the Commission with the prescribed fee and a receipt therefore has been issued by the Commission.	The Bill does not provide for an exemption for the filing of a prospectus in an instance where an issuer is not a reporting issuer and is issuing a security as a Limited Offer, i.e. to less than 35 persons. Reporting issuers are however afforded this exemption.	1. It is submitted that both non reporting and reporting issuers be exempt from the filing of a prospectus for Limited Offers since this offers little added value given the target market for Limited Offerings (i.e. Sophisticated Investors) and incurs significant "cost" (time) to prepare which would significantly outweigh any potential benefit imposing a significant barrier to issuers who wish to raise capital. 2. It is respectfully submitted that the word "reporting" be removed from section 79(1)(l) and (m) so that both reporting and non-reporting issuers are afforded this exemption.	The application of the exemption to filing a prospectus with the Commission in the case of a "limited offering" in section 79(1)(m) has been broadened by removing the reference to "by a reporting issuer".

	Clause	Provision	Comment/Query	Recommendation	
	75 (1) & (3)- Advertising	An issuer, or a registrant not acting as agent for the purchaser, who receives an expression of interest, order or subscription for a security offered in a distribution, shall send or deliver to such a person a prospectus, or amended prospectus, as the case may be, within two business days after the expression of interest, order or subscription is received. A person who files a prospectus with the Commission pursuant to section 73, during the period of distribution determined in accordance with section 83, shall provide copies upon request and shall furnish to a registrant a reasonable number of copies of the prospectus without charge.	Is a prospectus necessary for each mutual fund? What would be considered 'send' or 'deliver'? Would a link to an electronic version or a website posting suffice?		One prospectus can cover more than one mutual fund (2) And (3) – we are looking into guidelines for the electronic delivery of documents which would be in line with the ETA
	72 - Exemptions		New emerging companies and the whole venture capital industry - Where new companies are seeking to promote their shares to potential investors, how does the Act consider potential investee companies that are making such offers? Is that considered within the jurisdiction of the SEC or is that an exempted transaction? There are all these shareholders agreements, there are preemptive rights, there are offers for investment, but I didn't see that specifically excluded. I saw credit unions, I saw banks, but under the Venture Capital Act, investee companies are allowed to make offers. Has the Act contemplated that?		There are a number of exemptions in terms of exemptions from issuances of shares that would be considered the distribution. This would be analyzed on a case by case basis however generally these situations would fall under the category of private issuers.

	Clause	Provision	Comment/Query	Recommendation	
	79 - Exemptions		Generally, our interpretation of this section would require the preparation of a prospectus when companies that are non-reporting issuers are selling securities by way of a limited offering and/or to "accredited investors".	We strongly recommend the retention of the exemption from prospectus provisions contained in section 75(2) and (3) of the Securities Industry Act. The provisions of the Securities Bill seem to be imposing a significant barrier to issuers who wish to raise capital.	The application of the exemption to filing a prospectus with the Commission in the case of a "limited offering" in section 79(1)(m) has been broadened to apply to all issuers. The previous reference to "by a reporting issuer" has been removed. The application of the exemption to filing a prospectus with the Commission in the case of a distribution by a "reporting issuers" to an accredited investor has been broadened to provide an exception to filing where a reporting issuer makes a distribution to a maximum of forty-nine accredited investors. See 79(1)(l).
	79(4) – Exemptions	Subject to subsection (6), section 73 does not apply to a distribution by a person within the meaning of paragraph (c) of the definition of distribution if the distribution is a trading transaction		The reference to paragraph (c) of the definition of "Distribution" should be changed to paragraph "(d)"	Section has been amended by replacing the reference to "(c)" with "(d)".
	79(5)(a) - Exemptions	For purposes of subsections (4) and (6), a distribution is a trading transaction where— (a) the distribution is conducted by or through a registered registrant;	There is an error in the wording of this clause with respect to the term "registered registrant"		Section has been amended by replacing the reference to "registered registrant" to "registrant under section 51(1)". ".
	80 (2)(b)Exemptions for approved foreign issuers	Subsection (1) does not apply to an approved foreign issuer where the approved foreign issuer is a collective investment scheme	We enquire as to the rationale for not permitting foreign collective investment schemes to benefit from a simplified registration process	This section should be revisited with a view to deleting the reference to foreign collective investment schemes	Mutual Funds are different creatures and the regulation of these would be governed by the CIS guidelines
	80(2) - Exemptions for approved foreign issuers			It is recommended that the threshold for an "approved foreign issuer" to have to comply with the general prospectus requirements of part VI be increased from 10% of the voting securities to at least 30%. This is important if Trinidad & Tobago is to become a regional financial centre, bearing in mind that the approved foreign issuer must be in compliance with	Section 80(2)(a) has been amended from ten to twenty percent.

	Clause	Provision	Comment/Query	Recommendation	
				Section 80(1)	
	81(1)(b) – Resale restrictions	The trade is not a distribution within the meaning of paragraph (c) of the definition of distribution.		The reference to paragraph (c) of the definition of "Distribution" should be changed to paragraph "(d)" –	Section has been amended by replacing the reference to "(c)" with "(d)".
	82(1) – Receipt for prospectus	Subject to subsections (2), (3) and (4) the Commission shall issue a receipt for a prospectus within a reasonable time after the date of the filing of the prospectus	We submit that the phrase "reasonable time" requires specificity	We propose that in the interests of efficiency, a time frame, such as ninety (90) days be specified.	A determination of reasonability will be driven by the interaction between the parties and the timeliness of the responses by all parties.
	82(3) – Receipt for prospectus	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.		A time frame should be considered for the opportunity to be heard	A reasonable opportunity to be heard shall be determined on a case by case basis with guidance from the Securities Industries Hearing and Settlement Rules.
	83(6) – Cessation of distribution	Subsections (2), (3) and (4) do not apply to a distribution of securities by a collective investment scheme.	Why are Collective Investment Schemes exempted here from the cessation of distribution provisions? From a perusal of the Bill Collective Investment Schemes are singled out with differing treatment in several clauses: clause 4 (interpretation) "material change" different meaning collective investment schemes; also clause 148.		Mutual Funds are different creatures and the regulation of these would be governed by the CIS guidelines
	86- Trades conducted other than through a securities exchange	A registrant shall keep a record of all trades executed by any person other than through the facilities of a securities exchange and shall file with the Commission a report of the trades in the prescribed form.	We request clarification on the following issues regarding trades conducted other than through a securities exchange: (a) We desire clarification on how long a registrant is expected to keep records of such trades? (b) How regularly is a registrant expected to file a report of its trades with the SEC?	It is duly noted that this Section is silent on the time frame within which records are to be kept. In the absence of a time frame, one could infer that a registrant is expected to retain records indefinitely. This would no doubt have a negative impact on market actors, this as compliance with this new requirement would be extremely difficult, not to mention costly. Consistent with the record retention period in the Financial Obligations Regulations, 2010 we recommend that the Bill be amended to specify a 6 year time frame for record retention.	Consistent with the requirements under the Financial Obligation Regulations, 2010, records relating to financial transaction under the Bill shall be maintained for a minimum period of six (6) years. Reports on trades conducted off the exchange shall be submitted on a quarterly basis. The prescribed form and further guidance will be detailed in the General By-Laws to the Bill.

	Clause	Provision	Comment/Query	Recommendation	
	87(1(a))-Record keeping procedures	(1) Every market actor shall — *(a)* make and keep such books, records and other documents in such form and for such periods as— (i) are reasonably necessary in the conduct of its business and operations, including to document compliance with this Act, including for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others; (ii) are required by this Act ; (iii) are required by the Proceeds of Crime Act, the Anti-Terrorism Act, or any other written law in relation to the prevention of money laundering and combating the financing of terrorism which may be in force from time to time; and (iii) otherwise prescribed (b) file with, or deliver to, the Commission any prescribed document, instrument, writing or report; and *(c)* disseminate to the public any report referred to in paragraph (*b*).	It is duly noted that this Clause is silent on the time frame within which records are to be kept. We enquire whether a minimum record retention period is envisioned by the SEC?	The Minister is asked to note that Part V of the Financial Obligations Regulations 2010 prescribes a six-year time frame for a financial institution or listed business to retain records of transactions. A consistent approach should be adopted and it is recommended that clause 87 be amended to reflect a similar time frame as that found in the Regulations - The wording 'such periods as (i) are reasonably necessary' should be modified to give a more precise indication as to the period for market actors to keep records. Once again this is left to be dealt with by the Minister under his authority to make bye-laws on the on the recommendation of the Commission, a minimum time limit should be prescribed for the retention of records, moreover certain information should be required to be stored electronically indefinitely	Consistent with the requirements under the Financial Obligation Regulations, 2010, records relating to financial transaction under the Bill shall be maintained for a minimum period of six (6) years.
	88-Provison of information to the Commission	Every market actor shall deliver to the Commission at such time as the Commission or any	Particularly given the expanded definition of 'records' and 'communications' this section is very wide and open ended	It is recommended that it be relooked at in terms of the implications for the industry and practical application	The drafting of this provision is consistent with best practices and the Commission's mandate to protect investors.

	Clause	Provision	Comment/Query	Recommendation	
		member, employee or agent of the Commission may request — *(a)* any of the books, records and documents that are required to be kept by the market actor under the Act; and *(b)* any filings, reports or other communications made to any other regulatory agency whether required under this Act or any other written law.		It is recommended that a requirement be included in the Bill for the SEC to give a market actor reasonable timeframe within which to deliver books and records to it (i.e. 3 days). The absence of reasonable prior notice from the Commission can cause disruption to the business affairs of a financial institution.	Market actors will be afforded sufficient time to respond to any request for information by the Commission on a case by case basis. It should also be noted that a request for an extension can be made by any market actor.
	89(2) – Compliance reviews	A person conducting a compliance review under this section shall be permitted to, on production of his authorization— *(a)* enter the business premises of any market actor during normal business hours; and *(b)* inquire into and examine the books, records and documents of the market actor that are required to be kept under section 87, and make copies of the books, records and documents.		The limitation to 'normal business hours' for compliance review should be defined. In the context of the securities industry, business may be conducted during hours that may normally extend beyond say the business hours in a bank.	Normal business hours may differ depending on the institution subject to the review and as such a blanket definition would be impractical. However the Commission would always be reasonable in the conduct of its reviews.
	89(4) -Compliance reviews	A market actor in respect of which a compliance review is conducted under this section shall pay the Commission such fees as may be prescribed.	The requirement in Clause 89(4) for market actors to pay the Commission such fees as may be prescribed for compliance reviews is duly noted. However we respectfully enquire into the associated costs these fees are supposed to cover	If the Commission sees it fit to hold to this position we recommend that the Bill outline the prescribed fees for such compliance reviews The provision on fees for compliance review would only be equitable if all market players are reviewed	The objective of having provisions such as these is to enable securities commissions and other regulators the capacity to do what they have to do. Such provisions are also in keeping with best practices as similar provisions can be observed throughout the financial sectors (e.g. Regulations administered by the Central Bank and the FIU) It is a provision that allows or funds the process of the investigation.

	Clause	Provision	Comment/Query	Recommendation	
			The requirement for a market actor to bear the costs of such a review process does not conform well to the interests of fairness In terms of the review aspect, there's the introduction of this aspect of cost and fees, inspection fees, review fees. Is it that you're now going to pay a policeman to catch a thief? -	and have the same or a proportionate number of reviews per year. There should be a level playing field re payment of fees for compliance review You may need to review those provisions and deal with it because you have a lot of small firms that may not be able to pay those kinds of fees so you need to look at those provisions here. The review fees, the inspection fees and there's also a new provision that deals with recovery fees in terms of whatever funds you may have expended in doing investigations. I think you may need to re-look those provisions It is also respectfully submitted that it is unfair and onerous to require market actors to bear the costs of Compliance Reviews conducted by the Commission, especially since these fees have not been quantified. If the Commission sees it fit to hold to this position we recommend that the Bill outline the prescribed fees for such compliance reviews.	Notwithstanding the above such fees have not presently been prescribed.
	90 – Powers of General Manager, employee or agent of the Commission and 146 (1) & (2) - Guidelines		Clarify the wording of Clause 90 as it relates to Clause 146. It seems to be tied to onsite inspections/compliance reviews.	Given the wording of 90 it is unclear how the TTSEC can take action under clause 90 for contravention of a guideline in 146 since clause 90 is tied to a compliance review. Sub-clause 146(1) should be amended to refer to clause 90 mutatis mutandis.	Under section 90 a compliance direction can be issued to a registrant or a self-regulatory organisation where a compliance review or other inspection *(emphasis added)* in summary a contravention or a potential contravention of a law administered by the Commission. The referenced section is not solely tied to the results of a compliance review.
	90(1)- Powers of General Manager, employee or agent of the Commission	90. (1) In the performance of the functions of the Commission under this Act, the General Manager and any employee or agent of the Commission so authorized in writing by the General Manager shall at all reasonable times have access to all books, records, accounts, vouchers, sales		We strongly recommend that a requirement be included in the Bill for the SEC to give a market actor a reasonable timeframe within which to deliver books and records to it (i.e. 3 days). The absence of reasonable prior notice from the Commission can cause disruption to the business affairs of a financial institution	The TTSEC notes the concerns indicated and is working to improve its processes we however do not think it necessary or appropriate to impose specific deadlines on the Commission via legislation.

	Clause	Provision	Comment/Query	Recommendation	
		contracts, minutes of meetings, securities and any other documents of any market actor for any information or explanation as they consider necessary for the due performance of their duties.			
	90(2) - Powers of General Manager, employee or agent of the Commission	If a compliance review conducted under section 89 or other inspection reveals that a market actor is conducting its business in a manner that is in contravention of this Act or in violation of the Proceeds of Crime Act,, the Anti-Terrorism Act, or any other written law in relation to the prevention of money laundering and combating the financing of terrorism which may be in force from time to time, the General Manager, upon notifying the Chairman, may direct the market actor within such time as may be specified, to take all such measures as he may consider necessary to rectify the situation.		Consideration should be given to whether on discovery during compliance review of a contravention of the Proceeds of Crime Act of Anti-Terrorism Act, the General Manager should in addition to giving a compliance direction to the market actor also inform the relevant co-regulators of the breach.	Consideration will be given as a matter of policy and in relation the section 19 of the Bill which speaks to co-operation among regulatory entities.
	85 - 117 91 – False trading and artificial prices in a securities market 92 – Price rigging 94 – Securities market manipulation 100 101 – Prohibition	Part VII – Market Conduct and Regulation Division 4 – Market Manipulation Offences	The insider trading provisions are directed at transactions on a 'securities exchange or otherwise' while the market manipulation provisions are directed at transactions on a 'securities market'. There are inconsistencies in the language used in Part VII – Market Conduct and Regulation. What is the difference between the two terms?		A definition for "Securities Market" has been incorporated in the "interpretation section" of the Bill and the relevant sections of the Bill, including those which related to Market Manipulation Insider Dealing and the By-Law making provisions, have been amended to reflect regulation over the broader concept of a securities market.

	Clause	Provision	Comment/Query	Recommendation	
	on disclosing price-sensitive information 104 – Exceptions to sections 100 and 101	Division 5 – Insider Trading			
	91(3) – False Trading and artificial prices in a securities market	Without limiting the generality of subsections (1) and (2) where a person— (a) enters into or carries out, directly or indirectly, any transaction which purports to be a transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of the securities; (b) offers to sell securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that another person acting jointly or in concert with him has made or proposes to make, an offer to purchase the same or substantially the same number of the securities; (c) offers to purchase securities at a price that is substantially the same as the price at which he has made or proposes to make, or knows that another person acting jointly or in concert with him has made or proposes to make, an offer to sell the same or substantially the same	While noting the objection of clause 91(1) and the generality of clause 91(2), clause 91(3) makes no allowance for legitimate transactions such as: a) Where there are no other bids or offers especially illiquid and difficult to sell securities b) Legitimate crosses c) Trade errors d) Put through e) Special deals f) Options	Part VII in its entirety be qualified so that such legitimate transactions are not captured.	Section has been amended from the creation of a deeming provision to that of a rebuttable presumption provision.

	Clause	Provision	Comment/Query	Recommendation	
		number of them, then, the person shall, for the purposes of subsections (1)and (2) be regarded as doing something or causing something to be done, with the intention that, or being reckless that such transaction has, or is likely to have, the effect of creating a false or misleading appearance of trading activity on a securities market, or creating or maintaining at a level that is artificial, a price for a security on a securities market.			
	93- Dissemination of information containing a misrepresentation	No person shall disclose, circulate or disseminate, or authorize the disclosure, circulation or dissemination of, information to induce another person to buy, sell or otherwise trade in securities, whether or not such purchase sale or trade is with such person, where the information contains a misrepresentation, and the person knows, or is reckless as to whether the information contains a misrepresentation.	The calculation of the NAV of the fixed NAV funds is done to ensure the NAV remains at its level. While the calculation is allowable under the Trust Deed, the calculation may incorrectly state the number of units. Could this trigger this clause?		Yes it would be considered a misrepresentation unless the necessary disclosures are made in the advertisement.
	94 – Securities market manipulation	A person shall not directly or indirectly enter into, carry out or participate in any transaction in securities of an issuer by itself or in conjunction with any other transaction that the person knows or reasonably ought	What are some of the ways the market could be manipulated and what specific ways does the draft securities Bill address these?		The Bill has sought to increase the oversight function of the Commission. It has also sought to strengthen the disclosure regime with respect to conflicts of interest. With respect to the regulation, the Bill seeks to provide for compliance reviews. It has broadened the concept of reports and the requests that the Commission can make for these reports. It now makes it mandatory that these requests for reports be submitted to the Commission to conduct their reviews.

	Clause	Provision	Comment/Query	Recommendation	
		to know will result in or contribute to a misleading appearance of trading activity in, or an artificial price for, a security			to the Bill has removed some of the deficiencies with respect to the arguments that persons make in response to whether the market manipulation has taken place. For instance, in Part VII of the Bill, and currently—and its provided in the SIA—it says that there must be intent on being reckless that—that is the wording that the mission would have to prove that a false or misleading trading activity has taken place in the market.
	98(1) – Restrictions on recommendation	A registrant shall not recommend a trade in a security to any customer unless— (a) he has reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry as to his investment objectives, financial situation and needs, or on any other information known to the registrant; and (b) he discloses in writing to any such person all conflicts of interest or potential conflicts of interest that he has, or may have, in respect of the security or the issuer of the security, including any conflict or potential conflict of interest arising from— (i) his holding of securities of the issuer as beneficial owner; (ii) any compensation arrangement with any person; (iii) his acting as underwriter in any distribution of securities of the issuer in the three immediately preceding years; or (iv) any direct or indirect	We desire clarification on the following issues regarding restrictions on recommendation: (1) If the recommendation is made verbally, can the registrant also disclose any conflict of interest verbally, or does this information have to be disclosed in writing? (2) With regards to the recommendation of mutual funds, does the receipt of commissions and trailer fees from the Fund Company constitute a compensation arrangement which must be disclosed to the customer?		Conflicts of interest shall be disclosed to clients in writing. All arrangements which may involve the payment of a commission or finders fee etc. shall be disclosed to clients.

	Clause	Provision	Comment/Query	Recommendation	
		financial or other interest in the security or the issuer of the security held by the registrant.			
	100 – Insider trading	No person that is connected to a reporting issuer shall, directly or indirectly, buy or sell or otherwise trade in securities of such reporting issuer, whether in a transaction on a securities exchange or otherwise, with knowledge or possession of unpublished price-sensitive information however obtained, until such information is published.	The prohibition on trading in securities until price sensitive information is published is duly noted. However, while the Interpretation section contains a definition for a "publication", the Bill does not clarify when price-sensitive information will be deemed to be "published".	So as to avoid uncertainty, SDATT recommends an amendment which will succeed in clearly defining when price sensitive information is deemed published for the purposes of compliance with this clause.	A definition for published has been included in the interpretation section of the Bill.
	101(1) – Prohibition on disclosing price-sensitive information	No person connected to a reporting issuer shall, directly or indirectly, counsel, procure or otherwise advise any person to buy, sell, or otherwise trade in any securities of a reporting issuer, whether in a transaction on a securities exchange or otherwise, during the time such person has knowledge or possession of material non-public information until such information has been published.		Consider adding "or cause to trade" after "otherwise trade".	Section 100(2) is specifically drafted to prohibit the enlisting the assistance of any persons (third parties) to trade on material non-publish information obtained directly or indirectly by a person connected to a reporting issuer. ""
	104- Exemptions to sections 100 and 101			There have been instances where Directors and Senior Officers have set up standing orders with brokers to acquire shares with their dividends. This should also be explicitly covered under this section	The Bill provides a general exemption to the prohibition on trading on material non-public information where the trade is made pursuant to an agreement that was entered into before the person who trades came into possession of the material non-public information.
	104(3) - Exemptions to sections 100 and 101	An entity who buys, sells or otherwise trades in securities of a reporting issuer with	The distinction between 'knowledge' and 'actual knowledge' for purposes of exempting certain persons from insider trading liability is unclear.		The section has been amended to remove "actual" wherever it appeared before the word "knowledge".

	Clause	Provision	Comment/Query	Recommendation	
		knowledge or possession of material non-public information that has not been published is exempt from section 100, where the entity proves that— *(a)* no director, senior officer, partner, employee or agent of the entity that made or participated in making the decision to buy, sell or otherwise trade the securities of the reporting issuer had actual knowledge of the material non-public information; and (b) no investment advice was given with respect to the purchase, sale or other trade of the securities to the director, senior officer, partner or employee of the entity who made or participated in making the decision to buy, sell or otherwise trade the securities by a director, senior officer, partner, employee or agent of the entity who had actual knowledge of the material non-public information, provided that this exemption is not available to an individual who had actual knowledge of the material non- public information			
	106 - Presumptions	In this Part— *(a)* a person who trades in a security at a time when he has knowledge or possession of material non-	1. I saw you hinted or the Act stated that the burden of proof is reversed from the Commission to the market player and then I saw you created a substantial amount of criminal offences. What I didn't hear from		The standard of proof required for administrative matters to be heard before the Commission is the "balance of probabilities". For matters where a criminal offence is to be considered before a Court the standard is that of "beyond a reasonable doubt".

	Clause	Provision	Comment/Query	Recommendation	
		public information is presumed to have traded in the security as a result of his knowledge or possession of the material non- public information unless shown to the contrary by him; and *(b)* persons other than individuals are deemed to have knowledge or possession of material non-public information at and from the time such material non-public information comes to the knowledge or possession of any director, senior officer, partner or employee of such person.	you or a glance through the Act is, would you allow the court, through case law, to set what is the standard of proof or would you have the Act assist the Judiciary with a point like that? What is the standard of proof in this statute coming out of this? It appears it starts off that it's criminal and it may be a criminal burden, but there are some times when questions have to be asked, is this standard civil or criminal? 2. With the reversal of the burden of proof, does this mean one is "guilty until proven innocent"? Isn't this contrary to some general tenet in law of innocence until proven otherwise and is this reversal of burden of proof constitutional? How do you prevent misuse of this particular change?		The Constitution provides that a person is presumed innocent until proven guilty, however it also goes on at section 5(2)(f) to state that if a particular law has a provision which requires a defendant to prove something, that provision is not invalidated. In other words the reversal of the burden of proof does not also mean a reversal of the constitutional provision which indicates that a person is presumed innocent unless proven guilty.
	107 – Trust accounts By – Law 78 – Trust Accounts		Currently when attempting to set up Trust Accounts, bankers usually ask for trust documents for these accounts. The timeframe of three (3) days for depositing client funds into the Trust/Client Accounts may be too much	Change the name to "Client Accounts" due to this bureaucratic problem experienced at banks Consider segregated accounts instead of trust accounts since it shows that client accounts are reconciled and mitigates risk	The section has been amended to provide for trust accounts "or such other accounts as may be prescribed". The characteristics of the client accounts which may be used in lieu of trusts accounts shall be prescribed in the General By-Laws to the Bill.
	109 Confirmation to be sent to customer	(1) Subject to subsection (2), a registrant who trades in any security with or for a customer shall send to that customer within two business days after the completion of the trade, a written confirmation of the trade containing the prescribed information. (2) The Commission may order that a registrant who provides a service of a continuous nature may send, instead of a confirmation as referred to in subsection (1),	1. Please clarify by which methods such a written confirmation can be sent to customers, detailing whether email or other e-communication or facsimile will suffice. 2. We request clarification of the procedure/process that a registrant must follow to avail itself of the option to send out quarterly statements in lieu of confirmations.	In keeping with technological developments and the recently passed Electronic Transactions Act which gives legal recognition to information in electronic form, it is recommended that the Bill facilitate Confirmation delivery by way of Fax or Electronic Mail ("E-Mail") options as well. It is submitted that customers should be given the option of having their Confirmations delivered by way of e-mail if they choose e-mail as the mechanism. Market actors can require that the e-mail account be owned by the company or individual, and checked as part of the regular business day. Confirmations delivery by way of e-mail enables them to be sent out to customers automatically before the start of the business day following the transaction. Additionally, the use of e-	The section has been amended to provide for the sending of documents, statements or records to security holders by way of specified electronic means. With respect to quarterly statements, a registrant shall submit a request in writing for an exemption detailing the justification for the exemption and the proposed alternative.

	Clause	Provision	Comment/Query	Recommendation	
		a periodic statement at the end of each three-month period or at such other shorter times and containing such information as may be prescribed.		mail and fax technology for Confirmation delivery will assist with reducing cost for market actors and customers. In the event that the delivery of an e-mail confirmation is unsuccessful the Bill could prescribe the use of an alternative means of delivery. The unsuccessful delivery of a confirmation can easily be determined by a rejected message from the Internet. In fact, Confirmations sent to non-existing e-mail addresses are returned within minutes. It is further recommended that section 109 of the Bill be amended to expressly outline the procedure that registrants must follow to send customers quarterly statements in lieu of confirmations.	
	110-Notification to Commission	A registrant who has acted as a broker-dealer in connection with a trade in a security shall on the request of the Commission forthwith disclose to it the name of the person with or through whom the security was traded.	-	It is respectfully submitted that this clause requires specification as to a reasonable notice period so as to avoid the clause having an unduly onerous effect on the operations of a market actor. This may particularly be the case when a request for information requires time and resources to obtain. It is recommended that the market actor be given a time period of 7 days in which to respond. This 7-day period is prescribed in practice for Production Orders as well as by the Financial Intelligence Unit in their requests for information from Financial Institutions (1) It is recommended that a market actor be given at least a 3 day period within which to disclose the name of a person with or through whom a security was traded	The section has been amended to include the words "no later than seven days from the date of the request" after the word "forthwith".
	111- Restriction on trading at residence	(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	We seek clarification on the intent of this clause since it appears to focus solely on preventing unsolicited communication at a residence. Is it the Commissions intent to allow unsolicited communication anywhere else, including a place of work? Also, with the advent of mobile phones, telephones are no longer fixed to a single location. Does unsolicited communication to a	In the modern context of communications, it may be difficult for a person in the securities industry to determine whether a communication by e-mail or telephone is being received in a residence. Clarification of this provision may be required. In order for the enforcement of the prohibition of making an unsolicited communication to any residence including by telephone, facsimile or e-mail communication, there must be compliance with The Interception of	This provision relates solely to unsolicited communication at a person's residential premises as information on a person's residence is more readily available through public records. The reference to telephones applies to land lines because this information can be accessed as a public record

	Clause	Provision	Comment/Query	Recommendation	
		without being invited by an occupant of the residence; or (b) make an unsolicited communication to any residence including by telephone, facsimile or e-mail communication, within Trinidad and Tobago for the purpose of trading in a security, or providing investment advice.	residence by telephone refer to fixed line services only, or does it also include calls to cellular phones?	Communications Act, No. 11 of 2010	
	114- Declaration as to short position	A person who places an order for the sale of a security through a registrant acting on his behalf and who— (a) does not beneficially own the security; (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 registrant that he or his principal, as the case may be, does not beneficially own the security, and that fact shall be published by the registrant in the written confirmation of sale.	Section 114 excludes the provisions of Section 95(2) of the SIA. (a) and (b) of the referenced section should be included because they explain how someone can trade shares without being the beneficial owner of the shares. 95(2)(c) is already covered by the definition of beneficial ownership		The section has been amended to provided examples of how a securities which are not beneficially owned by a person. [See 114(2)]
	117 – Approval by Commission not to be advertised	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	The reason for prohibiting the advertising of registration status is unclear. It would seem that this is information relevant to securities investors that should be made available to them not only by the Commission but by the Registrants. Registrants should have information on registered status prominently displayed in their business premises, websites, company advertisements etc.		Registration status can be advertised. The prohibition is specifically towards indicating that the Commission is certifying the financial standing, fitness or conduct of a security or issuer. Section 116 speaks to the advertising of registration status.

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	130 – Issuer's duty to request list of participants and beneficial owners		There are several places in the Bill that places obligations on the disclosure of beneficial owners. The banking industry has indicated that sometimes it is difficult to know who the beneficial owners are. Has this been the TTSEC's experience and if yes what measures do the TTSEC plan to implement to address/ rectify this issue?		The only difficulty the TTSEC has experienced to date is the financial institutions being hesitant to disclose such information due to restrictions under the FIA. However under the Bill they would be required to disclose the same to the Commission. In terms of the availability of the information it would be contingent on the banks own records which should be complete in keeping with their requirements under the FORs. Minimally there should be sufficient information on file to assist the Commission in identifying the beneficial owners.
	136 - Reports by certain connected persons		The onus is on the person becoming connected to the reporting issuer to report to the SEC within five (5) days. How will the SEC enforce this provision? Provision 137 allows the reporting issuer to require any holder of its securities to indicate the nature of their interest i.e. the capacity in which the securities are held. Consider having the reporting issuer report to the SEC on the nature of interest held by an holders of its securities		The enforcement would take place when it comes to the Commission's attention, through surveillance and inspections, that the individual has failed to file the requisite report
	139 (1) - I misrepresentation in damages	(1) Subject to this section, a p purchases a security distrib prospectus has a right of actio against each of the followin any loss or damage sustaine reason of any misrepresen prospectus, without regard t purchaser relied on the mis and each such person shall be such loss or damage, namely– (a) the issuer or the selling s on whose behalf the distribut (b) a person who is a directo at the time of the filing of the (c) a person who authoriz himself to be named, and is prospectus as a director or as to become a director, either i after an interval of time; (d) where the issuer is not a re prior to the distribution, an was a promoter of the issu	Lines 5 and 6 appear to be inconsistent wit (3)(b)and Section 140(2) also seems inconsisten 140(3). The result is a lack of clarity on whether t knowledge and/or lack of reliance on a mis excuses the person accused in a claim for damages It also seems to be implicit in Section 140(3) th proof will be on the accused person to establish t i.e. the state of mind of the purchaser. This n onerous. On the other hand another view is that th subsection (1) is to negate the requirement of reli for actions in misrepresentation, however under (has knowledge of the misrepresentation then he damages as he proceeded with notice of same. Again under clause 140(2) & (3) the reasoning same as above. Reliance is a key co misrepresentation as for the claim to succeed the C have relied on the misrepresentation to be ind contract, this act removes the requirement for re misrepresentation but retains the element of Claimant knew of the misrepresentation he cannot been induced by same.	Clarification may be required on these sections in foregoing.	At common law reliance is a component required to prove misrepresentation. does not bar statutory interpretations of various rights of action. The provis from the Ontario Securities Act (S. 130) upon which our Bill is based Columbia Securities Act (S. 131), Alberta Securities Act (S. 203) and the Baha Industry Act (S. 147) also contain similar provisions. In addition the concept is similar to the US "Fraud on the Market Doctrine," that investors in an efficient market may reasonably rely on the integrity of th of securities. Claimants may benefit from the presumption that they relied price of a security as reflecting all public information, including material misre rather than on any specific representation. The doctrine has been used to hurdle posed by the reliance requirement at common law. The impetus for the creation of these kinds of provisions was the need t difficulty that claimants experienced in pursuing common law misrepresenta securities. A report by the Toronto Stock Exchange Committee on Corpora noted that the remedies available to investors who are injured by misleading d so difficult to pursue and establish, that they were as a practical m academic. See. Toronto Stock Exchange Committee on Corporate Dis Report: Responsible Corporate Disclosure: A Search for Balance, 1998 at vii. Notwithstanding the foregoing the ultimate decision in terms of recovery l

	Clause	Provision	Comment/Query	Recommendation	
		twenty-four month period preceding the date of f prospectus; (e) a person whose consent ha required by section 78 but onl to misrepresentations in derived from, or based opinions, valuations or statem been made by such person; ar (f) any other person who signe in the prospectus other th referred to in paragraphs (a) subsection	Moreover the reversal of the onus of proof affec be presumed innocent however, the act is to be p requisite 3/5 majority and as such can abr constitutional rights.		Court who would make a determination based on the facts presented. In provision does not bar a claimant from choosing to go the route of a commor There are several defences available to the issuers including due diligence a expert advice. At the end of the day the provision is consistent with a mor disclosure based regime which encourages accountability on the part of issue to making it exceeding difficult for agrrieved claimants to seek redress.
	139(7) - Liability for misrepresentation in prospectus, damages	The right of action for damages conferred by this section shall not be in derogation of any other right the purchaser may have.	This provision may not allow for finality in litigation on the same matter and may allow for duplication of remedies awarded to the same claimant. This clause may have been inserted to mirror clauses found in legislation such as the workmen's compensation act where the act provides for damages but allows a subsequent action if in a civil court under contract/tort principles the Claimant may be entitled to further payments.	In this regard it may be necessary to clarify that the sums already paid would be deducted from damages awarded which would avoid duplication of damages.	The conference of any other right a person may have where said person is to be awarded damages shall be at the discretion of the Court.
	139- Liability for misrepresentation in prospectus, damages 140- Action by purchasers for rescission for misrepresentation in a prospectus		In Section 139 and 140 it may be necessary to state explicitly that these actions are not available to someone that acquires shares in the secondary market. It might be possible that the misrepresentation is discovered after secondary trading has started and as a result these persons may have also suffered harm as a result of the misrepresentation and would be looking for some form of redress.		The remedy is available at any point once there was a misrepresentation.
	143 – Civil liability for trading contrary to section 103		**143(7)** - This provision may not allow for finality in litigation on the same matter and may allow for duplication of remedies to the same claimant.	The side note reference to Section 103 should be changed to Section 100. At subsection (2) the word 'as' should be changed to 'has'.	The conference of any other right a person may have where said person is to be awarded damages shall be at the discretion of the Court.
	146(1)(b) - Guidelines	The Commission may issue guidelines on any matter it considers necessary to – (a) give effect to this		The word 'perform' seems more appropriate than 'meet' here.	The wording of the section has been amended by replacing the word "meet" with "perform".

	Clause	Provision	Comment/Query	Recommendation	
		Act; (b) enable the Commission to meet its functions;			
	146(3) - Guidelines			Be mindful of the way you craft Guidelines since they do not have the force of law. However, you can still take enforcement action against a registrant in respect of a Guidelines if the Guidelines are premised on principles/provisions that are already enshrined in law	Noted.
	148 – By-Laws		Wouldn't structural changes in the proposed legislation such as academic qualifications, fees, filing of disclosure documents fit and proper requirements provisions be better placed in the parent Act as opposed to the subsidiary legislation?		Provisions such as those referenced in the comment have been placed in By-Laws to the Bill for the following reasons: 1. It facilitate a timelier response to the market developments -It is easier to make or amended By-Laws than to amended an Act; and 2. To place everything in the Act would make it voluminous and difficult to read in its entirety.
	147- Consultation proposed Guidelines	(1) Before making or amending Guidelines referred to in section 146, the Commission shall issue draft Guidelines or draft amendments thereof and shall consult with the registrants who may be affected by the draft guideline or amendment. (2) Where, in the opinion of the Commission, any matter proposed to be dealt with in Guidelines or by an amendment thereof has become urgent, the Commission shall proceed to issue the Guidelines or amendment thereof, without following the process	It is noted that section 147(2) of the Bill gives the Commission the discretion to issue Guidelines without consultation with registrants. It is submitted that this exception can have the effect of excluding vital input from registrants who will ultimately be impacted by these Guidelines	We recommend that even in situations of urgency where Guidelines need to be published to the protection of the integrity and stability of capital markets, the Bill should provide for stakeholder feedback prior to publication, albeit that registrants may have a short time frame within which to respond. In the penultimate line of section 147(1), consideration could be given to adding the words 'and co-regulators' after the word 'registrants' to allow for consultation on guidelines re money-laundering etc.	Section 147(1) has been amended to provide for consultation with market actors and other relevant stakeholders. Section 147(2) has been amended to provide that urgent guidelines shall be in place for a period not exceeding ninety days.

	Clause	Provision	Comment/Query	Recommendation	
		referred to in subsection (2), and shall subsequently consult with the registrants who may have been affected by the Guideline or amendment.			
	148 (1) By-Laws			Amend section 148 (1) to provide for the Minister to make By-Laws at his own volition as follows: "The Minister may, on the recommendation of the Commission and/jor on his own volition, make By-laws" (ii)Insert the following paragraph as Section 148(1) tt of the Bill "in respect of the establishment and regulation of a Futures Market and/or other derivative Market" (ii) Rename the existing paragraph at Section 148(1) tt as "148(1) uu".	This may not be appropriate as the Minister is not involved in the day to day activities of the Commission or regulation of the market.
	148(r) – By-Laws	prescribing the circumstances in which the Commission must refuse to issue a receipt for a prospectus and prohibiting the Commission from issuing a receipt in those	This appears to be incomplete, i.e. words are missing at the end.	The provisions for by-laws appear to be too extensive as matters of significance and should, where possible, be in the Parent Act.	Subsection amended to include the word "circumstances" after the word "those".
	151(1)(i) – Orders in the public interest	any person, registrant, self-regulatory organization, reporting issuer or other market actor be exempted from any requirement of this Act; and		Consideration should be given to stating the criteria for a decision to exempt persons from the requirements of the Act so as to ensure fairness and transparency in what market players can expect in this regard.	This is determined on a case by case basis
	153(8) – Market misconduct proceedings	Nothing in subsection (1) prevents the Commission from referring any matter to the Director of Public Prosecutions if it appears to the Commission that market misconduct is taking place, or has or may have taken	The interchange of investigation, prosecutorial and adjudication responsibilities and powers of the Commission may require clarification; also in view of the overlap with functions of the DPP and the Judiciary. See also Section 163 where it appears that the Court has less scope in imposing sanctions/ making orders than the Commission		The hearings and settlement rules allow for the separation of the Commissions adjudicative and administrative functions. Any matter referred to the DPP would require a separate investigative process by the Commissioner of Police and prosecution by the DPP. The Court's scope is in relation to the offences under the Act.

	Clause	Provision	Comment/Query	Recommendation	
		place.	at 153(5).		
	157 - Investigations by the Commission		The conditions under 157(1) under which the Commission can conduct an investigation are very broad and not linked to an offence, breach of the Act or bylaw etc. The clause, as currently worded, may enable persons to conduct a 'witch-hunt'. The legislation should not enable such activities to be undertaken.	(1) The words "Notwithstanding any other law," should be placed at the beginning of the sub-clause. (2) - Clause 157(3) permits the Commission to examine and make copies of all books, etc relating to the subject of investigation….whether they are in possession of control of the person or company in respect of which the investigation is ordered ***or of any other person or company***. This appears to be broad, far reaching and even unconstitutional. Where the information can be obtained, this section should be rationalized with section 55 of the FIA and should be specific. (3) - Clause 157(3) should be further amended to read "…possession or control…". This appears to be a typographical error.	This provision is now Clause 150 and has been significantly amended. It must be noted however that this section deals with one the deficiency areas identified by IOSCO and as such the Commission must have certain powers. Notwithstanding the FIA.
	157(4) – Investigations by the Commission	A person appointed by the Commission pursuant to subsection (1) may for the purposes of the examination to be conducted under subsection (3) enter the place of business of the person for the purpose of examining or reviewing books, records, documents or other things during normal business hours.	The reason for the limitation to 'during normal business hours' is unclear particularly in the context of an investigation where based on this provision, persons may be afforded time after normal business hours to conceal relevant information.		The Bill creates an offence against withholding or destruction of requested information- under section 152
	163 – General Offences			The penalty in clause 163 should be rationalized with the other penalty sections. The general offence penalty is higher than the other penalties for specified offences under the Bill. This is somewhat irregular.	Noted.
	165- Costs	1) A person convicted of an offence against this Act is liable, after the review and filing of a certificate under this section, for the costs of the investigation of the offence.	Official title of the Rules of the High Court is: Civil Proceedings Rules 1998 made under section 78 of the Supreme Court of Judicature Act (Chap 4:01), the suffix (as amended) may be included as there have been several amendment to date.		Section amended to reflect the "Civil Proceedings Rules 1998".

	Clause	Provision	Comment/Query	Recommendation	
		2) The Commission may prepare a certificate setting out the costs of the investigation of an offence, including the time spent by its staff and any fees paid to an expert, investigator or witness. 3)The Commission may apply to a Master or Registrar of the Supreme Court to review the certificate under the Rules of the Supreme Court, 1998 as if the certificate were a bill of costs, and the Master or Registrar shall review the costs and may vary them if he considers them unreasonable or not related to the investigation. 4) The scales of costs in Order 62 of the Rules of the Supreme Court, 1998 do not apply to a certificate reviewed under this section. 5) After review the certificate may be filed in the Court and may be enforced against the person convicted as if it were an order of the Court.			
	166(2)- Repeal and transition	By-laws made under the Securities Industry Act, 1995, in force at the commencement of this Act, remain in force until replaced by new By-laws made pursuant to this Act.	Please note that certain provisions of the By-laws made under the Securities Industry Act 1995 may conflict with provisions contained in the proposed Bill.	It is strongly urged that critical By-Laws should be amended and passed with the primary legislation as a bundle to ensure that there is no conflict or inadvertent appeal of sections of subsidiary legislation which may be important following the passage of the primary legislation.	Noted
			If the SEC were to miss the IOSCO deadline of December 31st, 2012, when would be the next opportunity to make an application?		IOSCO has given no indication that there will be any revision of the deadline.