

Trinidad and Tobago Securities and Exchange Commission

Overview of the Philosophical and Overarching Changes in the Regulation of the Securities Market in Trinidad and Tobago

June 27, 2013



Address by Patrick Watson, Chairman, TTSEC

Hosted by: AmCham T&T's Securities Legislation Conference

Trinidad Hilton and Conference Centre

Salutations

- Mr. Phillip Hamel-Smith, AmCham T&T Director
- Mrs. Desiree Gobin-Seecharan, AmCham T&T Executive Director
- AmCham T&T Directors

Introduction

The mandate of the Trinidad and Tobago Securities and Exchange Commission (TTSEC) is, through regulation, to promote investor confidence and to foster the orderly development of the securities market in Trinidad and Tobago. That market, over the years, has increasingly assumed many of the characteristics of the more developed international market and its products have increased in number and complexity.

Market regulation involves the setting of licensing standards, prudential standards, internal controls, risk management standards and business conduct rules. We at the TTSEC also address key issues like the disclosure of information, the monitoring of market behaviour and possible unfair trading practices such as insider trading, price rigging, misrepresentation of information, excessive trading, front running and market manipulation.

The Context

When the TTSEC opened its doors in 1997, its focus was mainly on the registration of new securities issues. From then till now, the value of securities registered with the Commission, as a percentage of GDP, has grown significantly, from roughly 16% of GDP to close to 200% of GDP. This expansion of the capital market gave rise to an increase in the number and complexity of the demands made on the Commission. We had no choice but to embark on a much more active role than when we first began regulating the market in 1997. After all, as the regulator, the Commission must always respond to changes in the marketplace while keeping abreast of international developments in order to ensure that our regulatory framework remains current, relevant and effective.

Then there was the global financial crisis of 2007-9 whose most telling impact was erosion in investor confidence. Interestingly, a lack of adequate regulation was cited as one of the main causes of this crisis, despite the fact, that prior to the crisis, many advocated the need for little or no regulation. Globally, and right here in Trinidad & Tobago, regulators faced the challenge of keeping abreast of constantly changing products. In Trinidad and Tobago, in particular, we encountered new challenges for which the Securities Industry Act (1995) made no provision. To ensure the orderly development and growth of the securities and capital markets, we had to provide an adequate legal framework that allowed for the transparent operation of the markets. Many jurisdictions, including ours, adopted a more aggressive approach to regulation, strengthening their regulatory oversight through the passage of new and revised legislation. This is balanced with the concern, of course, to avoid over-regulation, which is sometimes as bad as no regulation at all since it may have the effect of keeping investors away.

The TTSEC consequently reviewed the existing legislation and proposed a revised Bill to address specific areas for reform. The new Act, SIA 2012, was proclaimed on December 31, 2012. We incorporated into the Act a regulatory system which is forward-looking so that, as regulators, we may readily adapt to market innovations and evaluate potentially new risks to the system. In our view, the changes relative to SIA 1995 give investors and financial institutions, both domestic and foreign, greater confidence in the local financial system, thereby encouraging their entrance and active participation in the domestic market.

The Act focuses on building regulatory capacities to ensure the preservation of market integrity and frameworks for enforcement mechanisms, expanding supervision into previously ‘unregulated’ markets; strengthening prudential regulation for financial institutions especially those of ‘systemic’ importance and enhancing disclosure and reporting regimes.

SIA 2012 has met with the approval of the International Organization of Securities Commissions (IOSCO), the leading international group of securities market regulators with members from over 100 different countries, who regulate more than 90 percent of the world's securities markets. IOSCO plays a significant role in maintaining and improving the international regulatory framework for securities markets by setting international standards, identifying and addressing systemic risks.

It is with immense pride and satisfaction that I inform you that Trinidad and Tobago, through the TTSEC, has just become a Full Signatory to the IOSCO's *Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (MMoU). The TTSEC therefore joins a select group of 95 MMoU signatories. The MMoU sets an international benchmark for cross-border cooperation critical to combating violations of securities laws. It sets out the specific requirements for what information can be exchanged and how it is to be exchanged. Further, it establishes the specific requirements regarding the confidentiality of the information exchanged and ensures that domestic banking secrecy provisions do not prevent regulators from sharing information with their counterparts in other jurisdictions.

Some aspects of the new Regulatory Framework

There is a shift in supervisory philosophy and regime. In particular, there is a shift away from post-event rule-based approaches, which focus on the detection of violations and non-compliance, to risk-based approaches which are more proactive, risk-focused and continuous. The Commission has embarked upon finding improved methods of identifying, measuring and mitigating risks posed by the new breed of market participants and the new financial products. We are now moving away from a rigid rules-based system of regulation to a system that is more reliant on the Commission's discretion and judgment through the adoption of a risk-based supervisory structure, which would include licensing (minimum entry requirements) and capital requirements, risk assessment frameworks and inspection methodologies.

This risk-based approach shall also be used in the development of our policies and procedures for on-site inspections and compliance reviews. SIA 2012 has expanded the powers of the Commission and, for the first time since its inception in 1997, the Commission has the power to conduct onsite inspections of market actors. The main objectives in the conduct of on-site inspections programme are:

- To help identify compliance problems and areas of emerging risk, which may adversely affect investors;
- To assess the adequacy of the risk controls or mitigants implemented by market actors;
- To review allegations of improper practices.

Regular compliance reviews (both off-site monitoring and on-site inspections) are a standard feature of regulatory systems worldwide. These reviews are to ensure compliance with the Act and are a move towards a more proactive approach to regulation.

A successful transition to this risk-based regime requires a complete change in approach and mind-set. Risk-based regulation focuses on compliance efforts of both the Commission and the market participants that they regulate, on areas that pose the most risk to the system. We hope to achieve this by identifying areas of highest risk, adopting specific regulatory objectives and granting the regulated entities flexibility in establishing rules to comply with those objectives. Risk-based regulation applies a prudential approach where the focus is on assuring compliance rather than bringing enforcement actions.

Another change in the Commission's philosophy is its focus on the vulnerability of the securities industry to Money Laundering and Terrorist Financing. The Commission is designated as a supervisory authority under the Proceeds of Crime Act and, as such, participates on the National AML/CFT committee.

AML/CFT Guidelines specific to the securities sector have been issued to provide direction to the market regarding the proper implementation of the required legislative framework. The adoption of an AML/CFT focus by the Commission, as evidenced in the Securities Act 2012, received special mention at the last CFATF Plenary held in Nicaragua in May 2013. This development has greatly enhanced Trinidad and Tobago's compliance with the FATF's Recommendations whilst raising the Commission's profile. The task of preparing our registrants for the upcoming Mutual Evaluation in 2014 has now become a priority of the Commission's Work Plan.

One of the main functions of the Commission is to educate and promote an understanding by the public of the securities industry and the benefits, risks and liabilities associated with investing in securities. Moreover, IOSCO's Principles of Securities Regulation affirms that "Regulators should play an active role in the education of investors and other market participants."

It is against this backdrop that the Commission has developed a sustained investor education campaign aimed at educating and empowering investors to follow best practice when investing in the securities market. This campaign is a multimedia campaign which uses a blend of traditional as well as modern strategies, aims to demystify financial concepts and is designed to equip ordinary investors with the tools that they need to understand and evaluate the risks and benefits of various financial products and to recognise, avoid and report illegal investment schemes.

Tasks at Hand

All policies, guidelines and by-laws issued under SIA 1995 will need to be revisited, and relevant changes made, to bridge the gap between the old and the new legislation. This review will include areas such as Collective Investment Schemes, Repurchase Agreements and Employee Share Ownership Plans. In addition, new policies are currently being developed in accordance with the provisions of the SA 2012. Some of the areas that are currently being researched are Shelf Registration of Securities and Credit Rating Agencies.

I want to assure you that the Commission is listening to the market! To that end, I take the opportunity to thank all those who have provided feedback. The staff has taken the time to review each and every submission and has taken suggestions under consideration. Continue to check the website for updates with responses to your comments, updated FAQs and guidance on various aspects of the legislation.

The Commission is also aware that the new requirements are more demanding and, from that standpoint, we are committed to working with registrants to ensure their compliance. Based on suggestions from the market, we have established an email account dedicated to addressing the material change issue which aims to facilitate faster turnaround times and prompt attention to queries. Several issuers have been utilizing this facility and the results have been very positive.

Conclusion

Securities markets are vital to the growth, development and strength of market economies. They support corporate initiatives, finance the exploitation of new ideas and facilitate the management of financial risk. Further, since retail investors are placing an increasing proportion of their money in mutual funds and other collective investments, securities markets have become central to individual wealth and retirement planning. Sound and effective regulation and, in turn, the confidence it brings, is important for the integrity, growth and development of securities markets.

The Commission has as its over-arching goal the building of investor confidence in the financial system as a whole and the strengthening of the economic foundation of the country.

In order to ensure continued growth and financial stability of the market while simultaneously protecting investors, we are required to constantly re-evaluate the conceptual framework and operational regime for the regulation of the industry.

We thank our hosts, AMCHAM, for their kind invitation to participate in this forum. We at the Commission were quite very keen to participate when we saw the topics to be covered and we look forward to the market's perspective on the Act.

I trust that you will have a productive day.

Thank you for the courtesy of your attention.