

Newsletter

Thank you from the CEO



Dear Stakeholders, Members and Friends,
The feedback received from the first publication of the Institute of Banking and Finance of Trinidad and Tobago's (IBF) newsletter issued in February 2014 was positive and refreshing. Indeed, we were elated that the objective of publishing a user-friendly and informative newsletter was accomplished and as such, we say a special "Thank you!"

Our general objective is to examine and discuss topics that are intuitive, timely and essential to the promotion of a sound and stable financial system, particularly at a time of rapid information and technological advancement. We strongly believe that encouraging the implementation of legislation that is appropriate to this local environment is of the utmost importance.

IBF intends to continually increase its visibility, and to foster greater public awareness in the financial arena. We see our role as important and relevant to the provision of educational support to the financial services industry. Our mandate is to be "the preferred learning institution for financial professionals" and this must be satisfied through our programmes, workshops and seminars on industry specific topics. One of our flagship workshops is our two day Enterprise Risk Management Workshop which is being

held at the Hyatt Regency, Trinidad on Tuesday July 1st and Wednesday July 2nd, 2014. Our distinguished Minister of Finance and the Economy, Senator the Honourable Larry Howai, will open the Workshop. IBF is taking the initiative in hosting such an event so that employers can educate their staff on proper risk management procedures, which not only mitigates any future risk, but also creates value and encourages professional ethical practices for all shareholders, customers, regulatory agencies and employees associated with their company.

We would like to inform you that a host of other programmes are available through IBF. Our calendar of events which details this information can be accessed on our website: www.ibf.org.tt. IBF has also created an attractive promotional flyer which is distributed monthly to all stakeholders. We encourage our readers to post blogs on our Facebook page "ibf.trinidad" as we value your feedback.

We have planned each quarter to issue exciting topics of interest and are pleased to report that for our next edition, our authors will share with you an important subject matter - "Foreign Accounts Tax Compliance Act" (FATCA). So, Stay Tuned.

Ms. Paula Baldwin, Chief Executive Officer

'Material Change' and Disclosure Obligations

In furtherance of the Trinidad and Tobago Securities and Exchange Commission's (the "Commission") goal to foster investor confidence, transparency and adequate access to information within the Capital Markets, market participants are mandated to disclose "material changes" within a prescribed timeframe. Failure to do so, can attract significant fines and enforcement actions.

What is a Material Change?

Section 4 of the Securities Act, 2012 ("SA, 2012") defines a material change as: " a change in the business, operations, assets, ownership or affairs of an issuer, the disclosure of which would be considered important to a reasonable investor in making an investment decision and includes a decision to implement such a change made by the board of directors of an issuer". Simply put, a material change is any change that will affect the investment decision of a reasonable investor. It is important to note that this definition applies to all reporting issuers, including collective investment schemes.

Change in the basis for determining materiality

This definition has changed from that which was contained in the predecessor to the SA, 2012. Under the Securities Industry Act, 1995 ("SIA, 95"), a material change was defined as: "... a change in the business, operations, assets or ownership of an issuer that would reasonably be expected to have a significant effect on the market price or value of the securities of the issuer ..."

When comparing the definition of a material change under the SIA, 95 and the SA, 2012, it is clear that the basis for determining materiality has changed. The SIA, 95 relied on a significant effect on the market price or value of the securities while the SA, 2012 relies on the effect on the investment decision of a reasonable investor. The definition of material change in the SA, 2012 acknowledges that while some changes to the business, operations, assets, ownership or affairs of a reporting issuer may not result in a change of its securities' price, this does not negate the fact that such information may affect an investor's decision. Since the threshold of what constitutes materiality is decidedly lower under the SA 2012, the standard now depends on the specific set of facts involving the company.

Examples of Material Information may include;

- 1) changes in corporate structure such as changes to the board of directors or share ownership affecting control of the company;
- 2) changes in capital structure such as dividend payments or planned repurchases or redemptions of securities;
- 3) unexpected changes in the financial results for any period;
- 4) changes in business and operations such as a significant change in capital investment plans or any development that affects the company's resources, technology, products or markets;
- 5) acquisitions/disposal of assets or acquisitions of other companies; and
- 6) changes in credit arrangements such as the encumbering of the company's assets, defaults under debt obligations or agreements to restructure debt.

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Barrie Attzs, a graduate of the Institute of Banking and Finance's Cert. FA programme in 2012, is an Attorney-at-Law at J.D. Sellier + Co. Barrie represents his banking and financial service clients in the areas of tax, corporate and commercial law and litigation. Barrie began his career at a large "Seven Sisters" international business law firm in Canada, where he focused on corporate and commercial litigation (inclusive of securities litigation). More recently, Barrie has held the position of Senior Tax Consultant at a big four international professional services firm in T&T and, thereafter, has held the position of Group Tax Manager at one of the largest regional conglomerates in the Caribbean. In these roles Barrie has provided tax planning and compliance advice and representation to a number of leading companies in various sectors including financial services, manufacturing, media, automotive and construction.



Candice Huggins,
Chief Compliance Officer, CIBC
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Ms. Candice Huggins is currently employed with a global banking and financial services company headquartered in Toronto. Ms. Huggins had been employed at the Securities and Exchange Commission since February 2013, in the positions of Director, Legal Advisory and Enforcement/Corporate Secretary and General Counsel. Ms. Huggins is an Attorney-at-Law with specialisation in international financial services, compliance and risk management. She has been called to the Bar of Trinidad and Tobago, the British Virgin Islands and the Cayman Islands. Ms. Huggins has advised extensively on aspects of regulatory and international law, litigated in the area of white-collar crime as well as developed and implemented risk and compliance programmes. She is also GARP (Global Association of Risk professionals) accredited and currently serves as the Deputy Director of the Caribbean Chapter of GARP.

In the Next Issue:

**"Foreign Account Tax Compliance Act"
(FATCA)
August 2014**

'Material Change' and Disclosure Obligations - Continued

Material Change Disclosure Requirements

Section 64(1) of the SA, 2012 states that where a material change occurs, a reporting issuer shall:

- (a) within three days of the occurrence of the change, file a report with the Commission containing the nature and substance of the change;
- (b) within seven days of the occurrence of the change, publish a notice which discloses the nature and substance of the change in two daily newspapers of general circulation in Trinidad and Tobago; and
- (c) within seven days of the occurrence of the change, file with the Commission a copy of the notice published in accordance with the above.

For the purposes of Section 64(1) (b) and (c), the Commission has indicated that it considers that a "Notice" is any informational material which is published at the request of the reporting issuer in the exact form as drafted and issued for publication by the reporting issuer and must be authorised by a senior officer of the reporting issuer. The Commission has also indicated that where a "media release" or an excerpt of a presentation/ interview by a reporter, journalist or other media personnel relating to a material change is published, the disclosure requirement of section 64 would not be considered to be fulfilled.

Exemption from Material Change Disclosure

There is an exception to the above mentioned disclosure obligations. Specifically, subject to the Commission's approval, a reporting issuer may not be required to comply with the disclosure requirements of Section 64(1). Furthermore,

section 64(2) provides that a reporting issuer may not publish a notice regarding the material change if, within three days of the occurrence of the change, it advises the Commission of the material change and its reasons for the non-publication of the notice.

It should be noted that an exemption under Section 64 (2) will only be considered where the reporting issuer is of the opinion that:

- (a) the disclosure required under Section 64(1) will be unduly detrimental to its interests; or
- (b) the disclosure required under Section 64(1) will be unwarranted.

Administrative Fine

The SA, 2012 allows the Commission to impose an administrative fine for the failure to file or publish a document as required under the Act. Section 156 (2) provides for a fine of one thousand dollars per day for each day that the document remains outstanding after the expiration of the time prescribed (i.e. seven days after the occurrence of the change).

Conclusion: Take the Proactive Approach

Given that, on the one hand, the determination of a material change includes a degree of subjectivity, but, on the other hand, can attract significant fines and enforcement actions if not disclosed, we recommend a proactive approach towards the assessment of material changes. Accordingly, where a reporting issuer is uncertain whether a change is in fact material, or in circumstances where it believes that Section 64(2) of the Act is applicable, we strongly recommend that it should write to the Commission and solicit its guidance.