



In keeping with our mandate to promote and advance the banking profession and provide matters of interest to bankers and individuals in other financial institutions, we continue with the second issue of frequently asked questions. We hope the feedback is beneficial and relevant to our readers.

Q: Is Legislation in place for Financial Advisors?

A: The Securities Industry Act of 1995 brought into operation the establishment of the Securities and Exchange Commission (SEC). The Act vested with the SEC, the authority to maintain surveillance over the securities market and other market actors to ensure fair and orderly dealings in the financial market. There has been much talk in Trinidad and Tobago to introduce legislation similar to regulation and legislation in place internationally to say that financial practitioners must be licensed to sell mutual funds, securities and provide financial advice to investors in Trinidad and Tobago. To date, this has not yet materialized; the powers that govern such operations have all recognised the urgent need to rebuild trust and confidence between customer and advisor. Therefore, it's absolutely vital to the future to implement legislation and professional standards in the financial markets, and therefore, optimism is the key here- for this to happen sooner than later.

Q: Is the Cert. FA Programme recognised as one of the standard bodies of knowledge and also one of the minimum examinable requirements to qualify as an Investment Advisor in Trinidad and Tobago?

A: In January 2003, IBF launched the Certificate for Financial Advisors programme (Cert.FA.). This self-study certificate programme was designed to equip finance professionals with the skills required to provide sound

advice to clients. Recognizing developments in the global financial economy and the introduction of complex instruments in the market, coupled with the impending Securities Act, collective investment schemes by-laws and compliance issues, an expanded version of the Cert. FA. was introduced in 2011. This was done through a collaborative partnership with the Mutual Funds Association of Trinidad and Tobago (MFATT), the Securities Dealers Association of Trinidad and Tobago (SDATT) and IBF. The partnership sought to have the expanded version of the programme to be a driving force in strengthening the environment for investor confidence. The enhanced version included three (3) specializations in Banking, Mutual Funds and Securities. IBF is a step closer to have the TTSEC recognize the Cert. FA as one of the standard bodies of knowledge and to serve as the minimum examinable requirement for banking and financial services advisors. We are working closely with MFATT and SDATT to make this a reality.

Q: Is Ethics included in the Cert. FA Programme?

A: The current business environment has seen an increasing demand for ethically-sensitive professionals as we continue to witness a lack of professional and personality integrity resulting in abuse of authority and power and continue loss of confidence in financial establishments. Effective September 2015, IBF will introduce Finance Ethics as an examinable module as part of the syllabus for the Cert.FA Programme. Prior to this introduction, IBF hosted a mandatory Ethics for Financial Service Providers one day workshop. This module is a welcome addition as the course focuses on ethical issues relating to finance, retail customers, investments, financial markets and financial management.



30th Anniversary Milestones: Formation of The Bankers Association of Trinidad & Tobago

The Bankers Association of Trinidad and Tobago (BATT) was formed in 1997, and its' first meeting was held in May 1997 at Royal Bank of Trinidad and Tobago Limited (RBTT Bank).

BATT a non-profit organization was formed among the commercial banks to promote collaboration on matters of importance to the banking sector, in accordance with the Companies Act 1995 of Trinidad and Tobago. In accordance with BATT's By Laws No 1, BATT's main objective; "To promote the consideration and the discussion of all questions affecting banking and financial services in the Republic of Trinidad and Tobago and abroad and generally to watch over, protect, represent, express and give effect to the views and opinions of banks on all matters relating to Banking and Financial Services." BATT was comprised initially of the following Member banks: Bank of Commerce, Bank of Nova Scotia (Scotiabank), Citibank, First Citizens Bank Limited, Republic Bank Limited and Royal Bank of Trinidad and Tobago Limited (RBTT).

The Directors at that time were: Peter July President; Royal Bank of Trinidad and Tobago, Ronald Harford, Vice President, Republic Bank Limited, Larry Howai, Member, Steve Bedeshi, Member, Ronald Huggins, Member and Richard Young, Member. The present Board Members comprise of the following:

ORGANIZATION	BOARD MEMBER	POSITION
RBC Royal Bank	Darryl White	President
Scotiabank (T'dad & T'go) Ltd.	Anya Schnoor	Vice President
Republic Bank Ltd.	Nigel Baptiste	Treasurer
CIBC First Caribbean International Bank	Anthony Seeraj	Director
First Citizens Bank Ltd.	Sharon Christopher	Director
Citibank	Catalina Herrera Roca	Director
Intercommerical Bank Ltd	Keith P. Duncan	Director
Bank of Baroda	Kare Nagabhushana Rao	Director
BATT's Secretariat	Karen Williams-Hall	Executive Director

At present there are eight commercial banks operating in Trinidad and Tobago with an extensive network of 123 branches and 254 ATMs. The sub committees were formed to deal with special matters. The sub committees are comprised of a representative of each of the banks and are generally chaired by the representative of the bank where the president resides.

The main existing sub committees are as follows:

- Anti-Money Laundering and Compliance Awareness Committee
- Business Continuity Policy (BCP) Financial Sector Working Committee
- Credit Risk Committee
- Economics Committee/National Budget
- Foreign Exchange Tax Compliance Act (FATCA) Committee
- Finance Committee
- Fraud Awareness Committee
- Legal Committee
- Marketing Committee
- Mortgage Market Reference Rate Committee
- Operational Risk Committee
- Trade Committee
- Treasury Representatives
- National Advisory Committee on Electronic Transaction

BATT's Secretariat was initially housed at RBTT and is presently housed at the registered office of the Institute of Banking and Finance of Trinidad and Tobago and is responsible for the administration of the Association.

Bankers' Association shall elect annually from amongst its Members, a President and a first Vice President. The Association holds an Annual Meeting in every year not later than 15 months after holding the previous Annual Meeting. BDO Trinidad and Tobago are the approved Accountants.

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Candice Huggins,
Chief Compliance
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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.

"Insider Trading" and the "Connected Person" The Implications of the Legislative Amendments

In furtherance of the Trinidad and Tobago Securities and Exchange Commission's (the "Commission") goal to foster investor confidence, transparency and adequate access to (and equitable use of) information within the Capital Markets, market participants are prohibited from, amongst other things, effecting trades based on non-public information about an issuer which they may obtain. Failure to comply with the provisions of the Securities Act, Act No. 17 of 2012 (the "SA 2012"), can and will attract significant fines and enforcement actions.

The Legislative Changes from 1995 to date

The Securities Industries Act, Act No. 32 of 1995 (the "SIA 1995") (which was replaced by the SA 2012) recognised the following three categories of persons in its insider trading provisions (Part IX of the SIA 1995).

1. Persons "connected" with an issuer:

Pursuant to section 120 of the SIA 1995, a person is "connected"

(i) if said person was a director of the issuer or a related issuer;

(ii) if said person:

- occupied a position as an officer (other than a director) or employee of the issuer or related company; or
- had a professional or business relationship with the issuer or related company which may reasonably be expected to give him access to price sensitive information.

2. Persons contemplating making a take-over bid for an issuer (121(5) of the SIA 1995)

3. Person receiving information from connected persons or persons contemplating making a take-over bid. (121 (3)(6) of the SIA 1995)

The SIA 1995 restricted the following:

1. the ability to buy, sell or participate in any transaction in any securities of either the issuer to which the party was connected (Section 121 (1)) or any other issuer (Section 121 (2)) where:

- Information is held due to connection;
- It would be reasonable to expect a person so connected not to disclose said information except for the proper performance of the functions attaching to his or her position;
- The information is price sensitive;
- The information related to any potential or actual transaction (involving the first and other issuer).

2. counselling or procuring any other person to buy, sell or transact in any such securities.

3. communicating the information to any other person if there is reasonable cause to believe the information will be utilised to buy, sell or transact in any such securities.

Any person who contravened the provisions committed an offence under the SIA 1995 and was liable to a fine and imprisonment.

The scope of the SA 2012 is similar to that of the SIA 1995 with PART VII, Market Conduct and Regulation, Division 5 setting out the provisions related to Insider Trading prohibitions, exceptions and presumptions. However, there are apparently three material differences:

- (i) Expansion of the scope of persons considered to be "connected parties" for the purposes of the SA 2012;
- (ii) Change from "price sensitive information" standard to "material non-public information" standard; and
- (iii) Shift in the burden of proof.

The SA 2012 expands the concept of the "connected party". The definition (section 4(3) of the SA 2012) now includes the following class of persons:-

- (a) Senior officers of reporting issuers;
- (b) Senior officers of affiliates & shareholders of reporting issuers;
- (c) Beneficial owners of voting securities of reporting issuers;

(d) Persons engaging or proposing to engage in take-overs, amalgamations, mergers or other business combinations and other material transactions including the reporting issuer.

(e) Persons engaging in business/professional activities with the reporting issuer or class (d) persons or employees of such persons, the reporting issuers or affiliates.

(f) Persons who know or have possession of material non-public information.

(g) Experts retained by reporting issuer or class (d) persons.

(h) Relatives of senior officers of the reporting issuers.

(i) Entities controlled by any person mentioned at (a), (b) or (h) above.

The SIA 1995 restricted "price sensitive information": i.e. information that would reasonably be expected to have a significant effect on the market price or value of the Company's securities.

The SA 2012 restricts the trading with or communication of, inter alia, "material non-public information": i.e. any material fact or material change that has not been published. "Material" when used in relation to the affairs of an issuer or its securities, means a fact, or a series of facts, the disclosure of which would be considered important to a "reasonable investor" in making an investment decision. In determining materiality one should also consider whether the information:

- is capable of precise measurement or is based on an estimate, and the degree of imprecision inherent in the estimate;
- impacts earnings or other trends;
- hides a failure to meet analysts' consensus expectations;
- changes results from negative to positive, or vice versa;
- impacts a significant business segment;
- effects compliance with regulatory matters, loan covenants or other contractual requirements;
- effects management's compensation; or
- involves the concealment of an unlawful transaction.

Additionally, the following list of information and events are likely to be considered material if not yet published and are acted upon:

- earnings information;
- mergers, acquisitions, joint ventures or tender offers;
- acquisitions or dispositions of company assets;
- new products or discoveries;
- developments regarding customers or suppliers (such as the acquisition or loss of a contract);
- changes in control or management;
- changes in a company's auditors or receipt of notice that the company may no longer rely on an audit report;
- events regarding a company's securities, such as:
- defaults on senior securities;
- a call of securities for redemption;
- repurchase plans;
- stock splits or changes in dividends;
- changes to the rights of shareholders;
- the public or private sale of securities; and
- bankruptcies and receiverships.

Other examples of information or events that may be considered material include:

- significant litigation or governmental investigations, whether pending or threatened;
- regulatory approvals or changes in regulations;
- changes in executive compensation;
- changes to a company's credit rating;
- labor disputes or negotiations;
- significant product defects, recalls or returns;
- significant pricing changes; and
- potential proxy contests

“Insider Trading” and the “Connected Person” The Implications of the Legislative Amendments - Cont’d

The foregoing are mere examples are not meant to be an exhaustive checklist. Materiality is a contextual determination, not a mechanical one, and what is material information for one company or in one situation may not be so for another.

“Reasonable investor” is not defined in the SA 2012.

In contrast to the SIA 1995, which required, inter alia, the Commission to prove that person traded with a view to the making of a profit or the avoidance of a loss, whether for himself or another person, by the use of that information (section 124 of the SIA 1995); under the SA 2012, unless otherwise proven by the connected person, any trade conducted while a said person had knowledge or possession of the material non-public information, is presumed to have been conducted as a result of said knowledge or possession (section 106 of the SA 2012).

An entity is deemed to have knowledge of material non-public information from the time the information comes into the knowledge or possession of any senior officer, partner, employee or agent of such entity.

Conclusion

The laws against “insider trading” have been amended by the SA 2012 in such a way that it is less burdensome on the Commission to initiate prosecutions. In light of this, we recommend the use of extreme caution before acting on information which may not be public. In fact, and out of an abundance of caution, it may be advisable to write to the Commission and solicit its guidance before doing so.