POLICY FRAMEWORK FOR TRINIDAD AND TOBAGO DEPOSITARY RECEIPTS

TRINIDAD AND TOBAGO SECURITIES AND EXCHANGE COMMISSION

April 21, 2008

Table of Contents

Background and Rationale for TTDRs

As part of Trinidad and Tobago's (T&T's) efforts to deepen the development of its financial markets and establish an International Financial Center (IFC), the government has decided to introduce Depositary Receipts (DRs) as a new security. In addition to contributing to the development of T&T as an IFC, the introduction of DRs will have three principal benefits.

First, it will introduce new securities into a marketplace where new listings have been rare and participants have indicated a strong interest in new products. This has the potential to contribute to the vibrancy and growth of the local stock market. The rapid growth of mutual funds and unit trusts since their introduction is one indication of this latent demand for new product. With the introduction of a larger diversity of new products mutual fund holdings have grown to nearly the same size as bank deposits. Market consultations in March and April 2008 with brokers and institutional investors have confirmed continuing interest in new investment products.

Second, it will enable retail and institutional investors in Trinidad and Tobago to achieve greater diversification of their investment portfolios without having to leave the local capital market. This is particularly important in a relatively small country like Trinidad and Tobago, where the local market currently provides a limited number of equities for investment. Using DRs, investors should be able to achieve higher returns and lower risk through additional international and sector diversification.

Third, the introduction of DRs into the market will have an immediate beneficial impact on the macro-economic environment. Trinidad and Tobago is currently experiencing inflation as a result of excess liquidity in the market. To the extent that investors choose to hold DRs, there will be some absorption of this excess liquidity and a resulting reduction of inflationary pressure.

The policy decision to introduce DRs into the Trinidad and Tobago market has been taken at this time partly to encourage greater participation by the general public in the energy and energy-related sector. While the growth of the energy and energy-related sector has contributed to the strong growth of the Trinidad and Tobago economy, none of this growth has been reflected in the local stock market. The domestic, state-owned and foreign-owned enterprises that operate in this sector have not been listed on the local stock exchange.

Foreign owned energy companies typically source their capital and other forms of financing in the major metropolitan markets. The ease and benefits of that approach have obviated the need to secure a listing in the local stock exchange. Moreover, the idea of a local listing has not been attractive to these entities given the small size of the T&T market.

The acquisition of RBTT has sharpened local concern about domestic participation in significant enterprises operating in the country because this acquisition will lead to the removal of one of the largest companies from the Trinidad and Tobago Stock Exchange (TTSE). The 60/40 stock/cash structure of the transaction will also result in pumping significant new liquidity into the economy at a time when inflationary pressures are already high.

The Trinidad and Tobago Securities and Exchange Commission (TTSEC) believes that a comprehensive regime governing the introduction and operation of depositary receipts should be put in place as quickly as possible to achieve these benefits for the Trinidad and Tobago investing public.

Trinidad and Tobago investors are increasingly interested in global portfolio diversification. However, obstacles such as undependable settlements, costly currency conversions, unreliable custody services, poor information flow, unfamiliar market practices, confusing tax conventions and internal investment policy may discourage retail and institutional investors from venturing outside T&T markets. TTDRs offer a simple, convenient alternative for investing internationally. Benefits to investors include:

- Portfolio diversification into international markets,
- TTDRs are denominated in and pay dividends in T&T dollars, eliminating the need for currency conversions by TTDR holders,
- International brokerage, international transaction and custodial costs are eliminated since TTDRs would be traded locally,
- TTDRs allow institutions with foreign investment restrictions to diversify its investments,
- TTDRs will be as liquid as the underlying Foreign Share because the convertibility feature exists,
- T&T nationals would be allowed to maintain some ownership of local factors of production if TTDRs of multinational companies, operating locally, are part of TTDR

programmes. Therefore, TTDR holders would be able to share in the profits when these companies issue dividends or through capital gains.

Objective of Establishing a DR Programme in Trinidad and Tobago

The objective is to design a depositary receipt programme for Trinidad and Tobago that can be implemented successfully, as soon as possible. The programme is intended to provide a framework within which depositary receipts may be introduced, allowing Trinidad and Tobago investors to participate in a broader choice of locally traded securities.

While a DR programme might initially contain only one DR (for RBC shares, for example), to be deemed successful over a medium-term perspective of two or three years, it should have:

- Grown to include at least 10-20 DR programmes
- Resulted in the creation of DRs, held by retail and institutional investors, that would account for a significant portion (greater than 10%) of the market capitalization of the local market
- Achieved reasonable levels of trading and liquidity
- Contributed to the general development of T&T as an IFC by increasing local trading and trading-related financial services

Introducing a Depositary Receipt Programme for Trinidad and Tobago

Sponsored and Unsponsored DRs

On account of the fact that the capital markets in the United States and the United Kingdom are large and many foreign issuers seek access to them, most DRs in those markets are sponsored by issuers who take positive steps to make their securities available. However, in the early days of international investing, before international issuers were convinced of the benefit of establishing DR programmes, unsponsored DRs were created by Depositary Banks at the request of brokers who saw demand from their customers to trade the securities. Even in the US today there continue to exist unsponsored DR programs where, without any positive steps by the issuer, Depositary Banks manage DR programs making certain DRs available to brokers and investors.

In Trinidad and Tobago, because the capital market is small at this time, it is unlikely that a large number of international issuers will see the benefits of sponsoring a DR programme. There will surely be some exceptions. Notably, RBC has already committed to sponsoring a DR programme while the long outstanding obligation by Arcelor-Mittal to issue some 40 percent of its value to its staff and on the local exchange can easily be met through the issue of DRs. Moreover, some of the large multinational oil and gas companies who earn a substantial portion of their global profits in Trinidad and Tobago may be willing to sponsor DRs, in order to demonstrate their commitment to the local economy and in order to broaden participation in their economic success among Trinidad and Tobago investors.

In the short- and medium-term, however, it will be necessary to put in place a framework that allows – and actively encourages – unsponsored DR programmes. Attracting sponsored DRs and listings may take years. On the other hand, if the regulatory framework can be put in place, and if local institutions with adequate capabilities see the potential for this market, it may be possible to start trading five, ten or even twenty unsponsored DRs relatively quickly.

Using Unsponsored TTDRs to Promote T&T as an IFC

Using DRs to encourage the trading of foreign securities is a well-established strategy used successfully by many countries – most notably the UK and the US. Trading foreign securities – in the form of GDRs, ADRs or in the original underlying security – without a formal local registration or local listing is also increasingly common around the world. Some of the international markets which have tried to build trading this way are London (with GDRs and ordinary shares on the IOB, the International Order Book market), Frankfurt (with ADRs), Hong Kong (with Nasdaq stocks) and more recently DIFX , the Dubai International Financial Exchange (with GDRs and ordinary share listings). The concept of “unlisted” trading, usually under some kind of regulatory procedure that does not involve the consent of the issuer, is also quite common in jurisdictions where multiple exchanges compete, such as the US, India and the EU. The idea of trading “derivative” securities based on underlying securities, and without a corporate issuer's active consent, is even better established for options and index products around the world.

For Trinidad and Tobago, using unsponsored DRs – or some other trading vehicle that makes possible local trading without any positive steps by the issuer – is the most realistic strategy to build trading volumes in international securities.

TTDRs are Domestic Securities

Following market practice in other jurisdictions, TTDRs will be domestic securities, issued by local T&T financial institutions and subject to T&T law.

This is important from an investor point of view, but the fact that TTDRs will be domestic securities is critical from a regulatory point of view, for one practical reason: it would obviate the need for, many of the largest institutional investors in Trinidad and Tobago, who now hold the statutory maximum percentage of foreign securities to sell their RBC shares upon the closing of the RBTT sale and avoid the spillage of an additional US$ 800 million of cash (5.7% of 2007 GDP) into the T&T economy.

With the introduction of TTDRs into the T&T marketplace, we can expect international diversification to intensify for two additional reasons. The first is simply the advertising effect of TTDRs being locally listed. More people will become aware of TTDRs as an investment supplement to indigenous securities and there will therefore be some uptake of these new investment products (beyond what investors are already investing abroad directly).

A second reason is that some institutional investors are currently constrained by statutory limits on the holding of foreign securities (i.e. 10% or 20% of their total investment portfolios). Because TTDRs are domestic securities, TTDRs will not be subject to these constraints.

Tax Treatment of TTDRs

Under current Trinidad and Tobago regulations, dividend income paid to holders of domestic securities is exempt from income tax. Dividend income to domestic holders of foreign securities, however, is subject to taxation at the standard income tax rate of 25%. Depending on the jurisdiction and the existence of double-taxation treaties, the Trinidad and Tobago tax authorities will impose additional tax to the foreign withholding tax at source, so that total withholding on foreign dividend income equals 25 %.

Since TTDRs are domestic securities, they will receive the same dividend tax exemption from the Trinidad and Tobago taxation authorities as other domestic securities enjoy.

Basic Components of a Depositary Receipt Programme

Depositary receipts are negotiable securities issued by a Depositary Receipt Issuer that represents a foreign company's publicly trade security. Since 1927, these instruments have been used by issuers, investors and financial intermediaries to facilitate investment across international borders.

The popularity of DRs as both an investment vehicle and as a tool for accessing capital markets is evident from current market figures. Today there are over 1,950 DR programs available to investors, representing companies from 73 countries (source: BoNYMellon).

Foreign Securities Issuer

The Foreign Securities Issuer is the company in a foreign jurisdiction whose publicly traded securities are deposited with the Custodian, and against which DRs will be issued.

The Depositary Receipt Issuer

The Depositary Receipt Issuer is the person who causes the Foreign Security to be acquired and who issues the DR locally in the appropriate ratio. The DR Issuer plays a key role in the establishment of any DR regime by creating and cancelling DRs, performing the DR registrar function, providing or arranging for custody of the underlying securities, handling foreign exchange conversion, paying distributions, soliciting votes and distributing notices to DR holders.

The Custodian

The Custodian is the person whom the DR Issuer contracts to maintain custody of the foreign shares. The role of the Custodian is to hold the underlying Foreign Security against which the DRs are issued. The Custodian is required to correspond with the Depositary Receipt Issuer to reconcile Foreign Securities in custody with DRs issued in the local market. The responsibilities of the Custodian are as follows:

- Holding the Foreign Securities that are represented by the DRs ,
- Perform dividend collection services on behalf of the Depositary Issuer,
- Notify the Depositary Issuer of notices of shareholder meetings, annual reports and other shareholder communications from the Foreign Security Issuer.

How Depositary Receipts Work

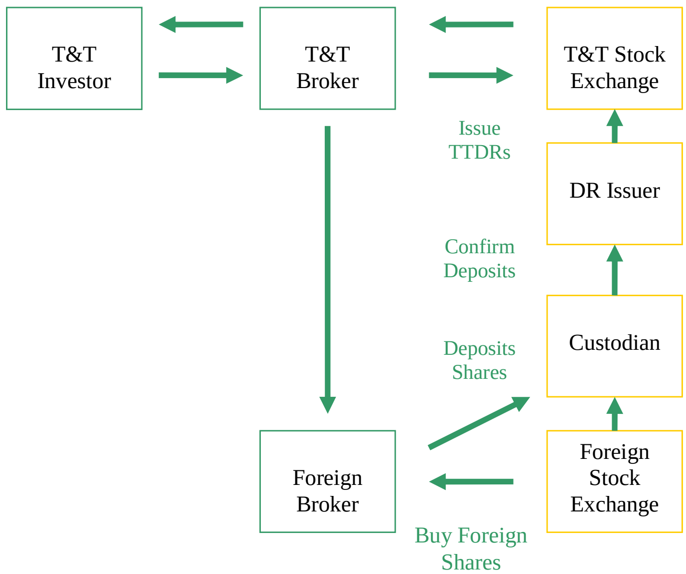
Issuance

A DR is created when an investor arranges for the purchase or deposit of Foreign Securities in the Foreign Security Issuer’s market. Once these Foreign Securities are purchased they are delivered to the Depositary Receipt Issuer's Custodian. The local broker who initiated the transaction converts the investor’s domestic currency into the corresponding foreign currency and pays the foreign broker for the Foreign Securities purchased. On the same day, the Foreign Securities are delivered to the Custodian in the foreign market, the Depositary Receipt Issuer is then notified. When the Depositary Receipt Issuer receives this notification, it creates and issues the equivalent DRs.

Cancellation

If a DR holder wants to sell his DRs, he notifies his broker. The broker will likely sell the DRs on the local stock exchange, but may alternatively surrender the DRs to the Depositary Receipt Issuer with instructions to deliver the underlying Foreign Securities to a buyer in the Foreign Security Issuer’s market. The Depositary Receipt Issuer therefore cancels the DRs and instructs the Custodian to release the underlying Foreign Securities.

TTDR Issuance and Acquisition Process



Rights of the DRs

The Deposit Agreement governs the specific rights and protocol of the DR programme, including voting and dividend rights as well as the right of convertibility to the underlying security. With respect to voting, the Depositary Receipt Issuer will be required to prepare a voting package with an announcement of the General Meeting of the Foreign Security Issuer's shareholders, a list of resolutions to be voted upon, and an instruction card for voting. The Depositary Receipt Issuer distributes the packages to DR holders, tabulates the returns and votes in accordance with these instructions at the Foreign Security Issuer's General Meeting. Several variations of DR voting procedures exist, any of which may be incorporated into the Depositary Agreement.

Required Policy Changes and Incentives

While the inherent features of the DR are likely to make it attractive to retail and institutional investors in Trinidad and Tobago more may be needed to hasten market acceptance of this new instrument and to facilitate the conduct of trading in TTDRs. To this end a number of changes are being contemplated to the operations of the Stock Exchange and other policy initiatives have been identified which could contribute significantly to the successful introduction of TTDRs.

The Trinidad and Tobago Stock Exchange (TTSE)

Once TTDRs are issued they would be traded similar to other listed equities on a separate TTDR trading board on the TTSE. To facilitate the efficient introduction of trading of TTDRs on the exchange a few logistical adjustments are required these include:

Short-selling

Rules and the logistical capabilities permitting short-selling of TTDRs are required to encourage arbitrage by brokers that will result in additional conversion of underlying Foreign Shares into TTDRs.

Expanded trading hours

The TTSE only permits a combined 15 hours of trading time per week as compared 35 hours in North American and other developed markets. The current trading rules on the TTSE would need amendments to allow for a full day of trading. This would ensure there is sufficient opportunity for price adjustments to occur and for reasonable pricing parity to be maintained between the TTDR and the underlying Foreign Security

Incentivised Market-making fee structure

Two changes may be required to encourage active trading and adequate liquidity in the market for TTDRs. Firstly, an incentivised marketmaker/taker fee structure in which the market maker would receive an incentive of a lower transaction fee would contribute to significant increases in liquidity in the market. In addition, additional incentives may be provided to market makers such as allowing priority to brokers (relative to other market participants) who are willing to commit to continuous two-sided markets when the market is open. This would foster additional liquidity and active trading in TTDRs on the TTSE.

TTDR Closing price adjustments

At the beginning of trading each day, the local opening price will be set to equal the official closing price in the foreign market (adjusted by the FX conversion to Trinidad and Tobago dollars, and the DR ratio). This will ensure reasonable daily closing prices each day, even when there is no local trading.

Trading bands in TTDRs would not apply

The TTSE currently imposes a 10% threshold limit on price movement of locally listed companies; this is done to ensure that erratic price swings do not occur during a single trading day due to an illiquid market. Such restrictions do not exist on mainstream foreign stock markets. These limits would stymie the timely adjustment of prices for TTDRs in the event that the share on the international market experiences price movement of more than 10%. The removal of this restriction would ensure that pricing parity is properly maintained when a price change of the Foreign Share occurs greater than 10%.

Government Policy

To encourage the future listing of sponsored TTDRs the Government of the Republic of Trinidad and Tobago (GoRTT) should formulate an official policy with regard to Multi-national Corporations (MNCs) listing TTDRs on the TTSE. An affirmative proclamation on the desire for MNCs to list sponsored TTDR programmes would place additional political pressure on MNCs list so as to operate in congruence with guiding principles set out by the GoRTT.

Necessary Amendments to Tax Laws

In order for TTDRs to receive treatment similar to local securities confirming interpretation of the proposed tax treatment by the Board of Inland Revenue (BIR) and approval from the Ministry of Finance (MOF) is required. The Commission amendments to both the Corporation Tax (Section 6)and the Income Tax (Section 8(1) Acts, both of which are intended to have the effect of exempting from Trinidad and Tobago tax dividends paid by a non-resident company in respect of shares against which TTDRs have been issued by an approved issuer. The Commission has initiated consultations with the Board of Inland Revenue and with the Ministry of Finance on these recommendations.

Insurance Act Amendments

Amendments are also required in relation to the treatment of TTDRs with regard to Pension Funds and Statutory Insurance Funds under the Insurance Act. Schedule 2 of the Insurance Act which stipulates eligible securities, require amendments that would qualify TTDRs as an equally eligible security similar to other local securities. These institutions collectively constitute a major segment of trading on the TTSE, therefore to ensure the success of TTDRs programmes, TTDRs they must be considered eligible domestic investment products. The proposed amendments would provide for TTDRs to be specifically listed on the Second Schedule as qualifying assets for inclusion in the Statutory Funds of insurance companies and pension funds.

Waiving of TTSEC fees

Because it will be challenging for a TTDR issuer from a standing start to create an initial pool of inventory that can generate fees at a profitable level, the Commission is considering the feasibility of providing economic incentives for TTDR Issuers to establish unsponsored DR programs by waiving some or all applicable fees during the first year of a programme or until some critical mass of DRs is reached (that is likely to produce breakeven revenues).

A Regulatory Framework for Trinidad and Tobago Depositary Receipts (TTDRs)

Requirements of a Depositary Receipt Programme

A TTDR programme, for which a receipt for a prospectus must be issued by the Commission must:,

a) be eligible for settlement through and listing with one or more self-regulatory organization in the Republic of Trinidad and Tobago;
b) be denominated in Trinidad and Tobago dollars;
c) pay applicable dividends in Trinidad and Tobago dollars;
d) contain provisions for cancellation and conversion by TTDR holders;
e) provide disclosures in the English Language; and
f) satisfy all the requirements of the Depositary Receipt By-laws

A Depositary shall not issue or administer TTDRs on a foreign security if another Depositary has issued a programme for the same foreign security. However, a Depositary may transfer a TTDR programme to another Depositary or to terminate the programme subject to the requirement to notify the Commission and all TTDR holders not less than sixty (60) days prior to the proposed transfer or termination, and to the payment of market access fees, pro rata, for the expired part of the year up to the date of the transfer or termination.

A foreign security issuer shall have the right to acquire control of an unsponsored TTDR programme based on its own foreign securities, and such an unsponsored depositary receipt issuer must, at the time of registration of the TTDR programme, acknowledge the right of the foreign security issuer to replace an unsponsored programme.

Registration Requirements Applicable to the Depositary Issuer

A Depositary Receipt Issuer will be required to be registered with the Commission in accordance with the SIA. A pre-condition of such registration will be that the proposed

Depositary Receipt Issuer is permitted under its own governing legislation to undertake the activities of a Depositary Receipt Issuer. Other conditions of registration will require that the proposed Issuer must:

- be a financial institution licensed under the FIA or a brokerage company registered under the FIA
- be in good standing with its regulator
- possess the technical resources and capacity to perform the functions of a Depositary Receipt Issuer
- has a relationship with a Global Custodian; and
- acknowledges the right of the foreign security issuer to replace an unsponsored TTDR Programme.

The key functions of the depositary receipt issuer include to :

(a) hold on deposit the foreign securities of the TTDR programme for the exclusive benefit of TTDR holders, with no rights, monies or benefits accruing to TTDR holders to be treated as assets of the Depositary or of the Custodian;

(b) cancel and issue TTDRs in accordance with the Depositary Agreement;

(c) manage the transfer and disbursement of dividend payments and any other beneficial interest payments that may be due and owing to TTDR holders;

(d) to exercise any voting rights or other rights, duties and or obligations attaching to the foreign securities held on deposit in the interest of the TTDR holders and in accordance with the instructions of the TTDR holders;

(e) to provide for and arrange for the collection and delivery of voting proxies to the foreign security issuer;

(f) provide the Commission with the disclosure and reporting information as provided for in the Act and these By-Laws;

(g) make available for public inspection and in plain English any material information provided by the foreign security issuer to any regulator in the foreign security Issuer's market of incorporation, market of residence and or market of listing within five (5) business days;

(h) reconcile the holdings of the foreign securities held on deposit by the Custodian; and

(i) discharge any other obligation that the Commission may impose.

Registration Requirements for the DR

In accordance with the SIA a Depositary Receipt will be required to be registered with the Commission before it can be issued. The conditions of such registration will require that the DR be based on a Qualifying Foreign Security, and will include:

- registration with the Commission of the associated Depositary Agreement
- registration with the Commission of the associated Custodian Contract
- acknowledgement by an unsponsored issuer that a security sponsor has the right to replace an unsponsored programme

Regulatory Requirements Applicable to the Foreign Security

The Commission will require that Foreign Securities proposed to form the basis of an issue of DRs should meet certain qualifying criteria. Specifically, it will be required that:

- The share is traded on a major international exchange and the issuing company is in good standing with the exchange
- The issuing company of the share should have a market capitalization of at least US$1 billion
- The issuing company of the share:

    a. must be from an approved jurisdiction i.e. initially Canada, USA or UK. The Commission may approve other jurisdictions from time to time.

    b. in compliance with its registration obligations in an approved jurisdiction

c. has published or filed audited accounts for the three years prior to the establishment of the DR programme.

- The average daily value of trading in the share in the foreign market is at least US$10 million

Regulatory Requirements Applicable to the Custodian

The Commission will establish standards for the qualifications of a Custodian used by DR Issuers for a DR programme. In particular, the Commission will require that the Custodian:

- is registered and regulated in an approved jurisdiction
- has provided services as a Global Custodian for at least three (3) years immediately preceding the establishment of the programme.

Continuous Disclosure Obligations of the DR Issuer

In accordance with the SIA the DR Issuer will be required to fulfill certain continuous reporting obligations to the Commission and to DR investors. These obligations will include:

- Providing quarterly and annual reports on DRs outstanding and foreign securities in custody
- Reporting any material changes affecting the Foreign Securities Issuer and the Foreign Security (within 5 business days of filing in the foreign jurisdiction)
- Providing copies of the filings which the foreign securities issuer has filed in the foreign jurisdiction within 7 business days of filing in the foreign jurisdiction).

Requirements Applicable to the Depositary Agreement

A requirement for the registration of a DR will be the registration of the associated Depositary Agreement, the elements of which must include:

a) the obligations and duties of the Depositary towards the holders of TTDRs;
b) the name and particulars of the Custodian;
c) the voting and other rights of the holders of TTDRs and the nature and extent of those rights;
d) the dividend rights of the holders of TTDRs and the arrangements for the payment of dividends;
e) details of the underwriters, legal counsel, investment advisers and any other interested party involved in the arrangement and conduct of the TTDR programme;,
f) the number of TTDRs representing one foreign security ;
g) the foreign exchange conversion and other currency related provisions;
h) arrangements if any for the distribution of additional TTDRs;
i) charges and fees of the Depositary and the Custodian;
j) provisions for amendment to the Depositary Agreement amendment and for termination of the TTDR programme; and
k) provisions for the issuance or cancellation TTDRs including conversion of the TTDRs into foreign securities.

Approved Jurisdictions

The Commission may from time to time designate jurisdictions that it considers appropriate as approved jurisdictions within the meaning from which securities may be selected for the issue of TTDRs.

Initially, the approved jurisdictions recommended by the Commission are:

- Canada
- The United States of America; and
- The United Kingdom

Applicable Fees

The registration of Depositary Receipt Issuers, and of depositary receipts will be subject to the existing schedule of registration and other fees prescribed by the Commission in accordance with the SIA., except for Market access Fees which will be specifically prescribed in the Depositary receipt By laws.

The Commission recommends a Market Access fee for depositary receipts at the rate of 0.0075 per cent (equivalent to TT$ 75.00 per million dollars of receipts in issue) on the (simple) average quarterly balance of depositary receipts in issue as at March 31, June 30, September 30 and December 31 in each year. Depositary receipt issuers are required to submit to the Commission their estimates of the market access fee due and payable by February 28 each year and, subject to the Commission's approval of this estimate, to pay the fee so calculated not later than March 31 each year.

The Trinidad and Tobago Securities Industry (Depositary Receipts) by Laws (2008)

The Commission has prepared a draft of the Securities Industry (Depositary Receipts) By Laws, 2008 which accompanies this statement of policy and should be considered in conjunction with this statement of policy.

Trinidad and Tobago Securities and Exchange Commission
April 2008