

TRINIDAD AND TOBAGO SECURITIES AND EXCHANGE COMMISSION

**In The Matter of the Contraventions of by-law 56 (1)
of the Securities Industry By-Laws, 1997 ("the By-Laws")
section 66 (1) (a) of the Securities Industry Act, 1995(Act No. 32 of 1995)
("the Act"), section 66 (2) of the Act and by-law 55 (1) of the By-Laws
by the Port Authority of Trinidad and Tobago**

And

**In The Matter of A Proposed
Settlement Agreement Pursuant To
Part VIII of
Securities Industry (Hearings And Settlements)
Practice Rules, 2008 ("the Rules")**

ORDER OF THE COMMISSION

Dated this 28th day of April, 2010

WHEREAS the Port Authority of Trinidad and Tobago ("**the Respondent**"):

- (i) Failed to file its audited **COMPARATIVE FINANCIAL STATEMENT** with the Commission on or before **March 31, 2009** for year **2008**;
- (ii) Failed to file its **ANNUAL REPORT** with the Commission on or before **April 30, 2009** for the year **2008**; and
- (iii) Failed to file its **INTERIM FINANCIAL STATEMENT** with the Commission on or before **August 29, 2009** for year **2009**;

hereinafter referred to collectively as ('the said Financial Statements').

AND WHEREAS by Notices of Contravention S.I. Nos. 194 of 2009 to 196 of 2009 dated December 31, 2009 the Commission advised the Respondent that it was in contravention of by-law 56(1) of the Securities Industry By-Laws, 1997 ("the By-Laws") and section 66 (1) (a) of the Securities Industry Act, 1995 ("the Act"), section 66 (2) of the Act and by-law 55 (1) of the

By-Laws by failing to file the said Financial Statements with the Commission on or before the dates stipulated for submission.

AND WHEREAS by letter dated February 4, 2010 the Respondent requested the staff of the Commission to enter into settlement discussions to determine whether the matter could be settled;

AND WHEREAS on the day of April, 2010 the Respondent entered into a proposed settlement agreement with the Staff of the Commission which was signed by the General Manager of the Commission on behalf of the Staff and the General Manager/Chief Executive Officer on behalf of the Respondent (“**the Settlement Agreement**”), in which the parties agreed to a settlement, subject to the approval of the Settlement Panel;

AND WHEREAS the Settlement Panel approved the Settlement Agreement and agreed to submit the Settlement Agreement to the Commission;

AND WHEREAS the Respondent has agreed to pay the sum of one hundred and thirty thousand Trinidad and Tobago dollars (\$130,000.00) to the Trinidad and Tobago Securities and Exchange Commission;

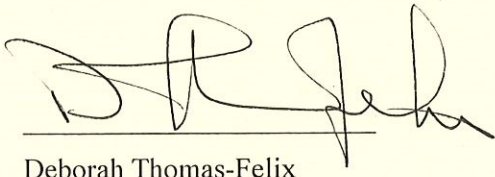
AND WHEREAS the Commission has considered the Settlement Agreement and is of the opinion that it is in the public interest to make this Order.

IT IS HEREBY ORDERED THAT:

- (a) The procedure outlined under the Securities Industry (Hearings and Settlements) Practice Rules, 2008 has been followed;
- (b) The Respondent has contravened By-Law 56(1) of the By-Laws, section 66 (1) (a) of the Act, section 66 (2) of the Act and by-law 55 (1) of the By-Laws;
- (c) Pursuant to section 143 (1) of the Act, the Respondent pay to the Commission, as agent for the Comptroller of Accounts, a fine in the sum of \$130,000.00 within 28 days of the date on which this order is entered as the fine in these matters; and

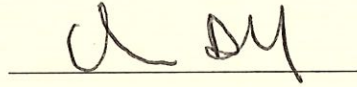
- (d) This Order shall be published in the Trinidad and Tobago Gazette, on the Commission's Website and publication in the daily newspaper shall be delayed for a period of six months of the date hereof.

Dated this 28th day of April, 2010



Deborah Thomas-Felix

Chairman



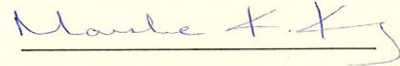
Vishnu Dhanpaul

Commissioner



Dr. Shelton Nicholls

Commissioner



Marsha King

Commissioner



IN THE REPUBLIC OF TRINIDAD AND TOBAGO:

THE TRINIDAD AND TOBAGO SECURITIES AND EXCHANGE
COMMISSION

In The Matter of the Contraventions of by-law 56 (1)
of the Securities Industry By-Laws, 1997 ("the By-Laws"),
section 66 (1) (a) of the Securities Industry Act, 1995 (Act No. 32 of 1995)
("the Act"), section 66 (2) of the Act and by-law 55 (1) of the By-Laws
by the Port Authority of Trinidad and Tobago

AND

In The Matter of
Rule 61 and Rule 62 of
Securities Industry (Hearings And Settlements)
Practice Rules, 2008

Settlement Agreement

A SETTLEMENT AGREEMENT made the *16th* day of *April* Two
Thousand and Ten Between **THE TRINIDAD AND TOBAGO SECURITIES AND
EXCHANGE COMMISSION** a body corporate established under the Securities
Industry Act, 1995 (Act No. 32 of 1995) and having its principal place of business at
Numbers 57-59 Dundonald Street, Port of Spain, in the Republic of Trinidad and Tobago
(hereinafter called "**the Commission**") of the One Part and the **PORT AUTHORITY
OF TRINIDAD AND TOBAGO** a company duly established under the laws of Trinidad
and Tobago and having its registered office at Dock Road, Port of Spain in the Republic
of Trinidad and Tobago (hereinafter called "**the Respondent**") of the Other Part.

1. INTRODUCTION

The Respondent is in contravention of:

1. By-law 56 (1) of the Securities Industry By-Laws, 1997 (“**the By-Laws**”) by failing to file its **audited COMPARATIVE FINANCIAL STATEMENT** with the Commission on or before **March 31, 2009** for the year **2008**;
2. Section 66 (1) (a) of the Securities Industry Act, 1995 (“**the Act**”) by failing to file a copy of its **ANNUAL REPORT** with the Commission on or before **April 30, 2009** for the year **2008**;
3. Section 66 (2) of the Act and by-law 55(1) of the By-Laws by failing to file a copy of its **INTERIM FINANCIAL STATEMENT** on or before **August 29, 2009** for the year **2009**.

By letter dated **February 4, 2010** the Respondent requested the Commission to enter into Settlement Discussions on the matter.

2. JOINT SETTLEMENT RECOMMENDATION

(a) Staff of the Commission (“**the Staff**”) recommends settlement with the Respondent in accordance with the terms and conditions set out below. The Respondent agrees to settle on the basis of the facts set out in Clause 5 below and consents to the making of an Order in the form attached in the Schedule hereto (“**the order**”).

(b) The terms of this Settlement Agreement, including the attached Schedule (collectively, the “**Settlement Agreement**”) will, subject to Clause 9(b), be released to the public only if and when the Settlement Agreement is approved by the Commission.

3. MISCELLANEOUS

Wherever used in this Agreement words importing the masculine shall include the feminine and words importing the singular shall include the plural unless the context otherwise requires.

4. ACKNOWLEDGEMENT

Staff and the Respondent agree with the facts set out in Clause 5 herein for the purposes of this Settlement Agreement only and further agree that this Agreement is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the Commission under Clause 10 (b) or Clause 11(d) or any civil proceedings which may be brought by any other person or agency. No other person or agency may rely upon the terms of this Settlement Agreement or any agreement to the facts stated herein whether or not this Settlement Agreement is approved by the Commission.

5. AGREED FACTS

(a) The Respondent has been a registered Issuer with the Commission since January 25, 2001. The Respondent's financial period runs from January 1st to December 31st of each year, and the Respondent was, therefore, required to file its:

- (i) **AUDITED COMPARATIVE FINANCIAL STATEMENT** with the Commission on or before **March 31, 2009** for the year **2008**;
- (ii) **ANNUAL REPORT** with the Commission on or before **April 30, 2009** for the year **2008**;
- (iii) **INTERIM FINANCIAL STATEMENT** with the Commission on or before **August 29, 2009** for the year **2009**;

(b) The Respondent failed to file its:

- (i) Audited **COMPARATIVE FINANCIAL STATEMENT** with the Commission on or before **March 31, 2009** for year **2008**;
- (ii) **ANNUAL REPORT** with the Commission on or before **April 30, 2009** for the year **2008**;
- (iii) **INTERIM FINANCIAL STATEMENT** with the Commission on or before **August 29, 2009** for the year **2009**;

hereinafter collectively called ("**the said Financial Statements**")

(c) By Notices of Contravention S.I. Nos. 194 to 196 of 2009 dated **December 31, 2009** (the "**said Notices of Contravention**") the Commission notified the Respondent that it was in contravention of by-law 56 (1) of the By-Laws section 66(1) (a) of the Act and section 66 (2) of the Act and by-law 55 (1) of the By-Laws by failing to file copies of

the said Financial Statements with the Commission on or before the dates stipulated for submission to the Commission.

(d) By letter dated **January 19, 2010** the Respondent admitted to the contraventions of by-Law 56(1) of the By-Laws section 66(1) (a) of the Act and section 66(2) of the Act and by-law 55(1) of the By-Laws "**the said contraventions**" and requested the staff of the Commission to consider certain mitigating factors.

(e) By letter dated January 28, 2010 the Commission invited the Respondent to confirm its intention to enter into settlement discussions with Staff of the Commission in accordance with Rule 61(1) of the Securities Industry (Hearings and Settlements) Practice Rules, 2008 ("**the Rules**") or a written hearing in accordance with Part V of the Rules.

(f) By letter dated February 4, 2010 the Respondent confirmed that it was ready and willing to enter into settlement discussions in accordance with Rule 61(1) of the Rules at a date to be advised by the Commission.

(g) By letter dated March 3, 2010 the staff of the Commission submitted to the Respondent its proposed terms of settlement having considered the mitigating factors stated in the Respondent's letters dated January 19, 2010 and February 4, 2010 and other mitigating factors in considering whether the maximum penalty should be imposed on the Respondent.

(h) By letter dated March 8, 2010 the Respondent indicated that it was in agreement with the terms of the settlement proposed by the staff of the Commission in its letter dated March 3, 2010 and that it was ready and willing to have the matter settled in accordance with Rule 61(1) of the Rules at a date to be advised by the Commission.

6. THE LAW:

1. (a) By-laws 56 (1) and (2) of the By-Laws provide that a reporting issuer shall within ninety days after the end of its financial year file with the Commission a copy of its audited **COMPARATIVE FINANCIAL STATEMENT**.

(b) Section 66 (1) (a) of the Act provides that a reporting issuer shall within four months after the end of its financial year file with the Commission a copy of its **ANNUAL REPORT**.

(c) Section 66 (2) of the Act and by-law 55 (1) of the By-Laws provide that a reporting issuer shall with the Commission, within sixty days of the date on which it is prepared an **INTERIM FINANCIAL STATEMENT**.

2. The Respondent's failure to file the said Financial Statements with the Commission on or before the stipulated date is a contravention of each of the sections of the Act and by-laws referred to in paragraphs (a) to (c) above.

7. THE RESPONDENT'S POSITION

- (a) For the purposes of these proceedings under the Rules, the Respondent concedes that the said contraventions have occurred.
- (b) The Respondent has requested the Staff of the Commission to consider that:
 - (i) its internal financial process contributed to the tardiness in complying with the statutory timelines for filing the required documents;
 - (ii) internal procedures have been established to ensure that the statutory deadlines will be met in the future;

8. STAFF APPROACH TO THIS SETTLEMENT

- (a) Under section 143(1) of the Act, the maximum penalty for breach of the Act or By-Laws is the sum of \$50,000.00.
- (b) The Staff has taken into account the mitigating factors stated at clause 7 (b) above.
- (c) The staff has also taken into account the following factors in considering whether the maximum penalty should be imposed upon the Respondent:
 - 1) That the Respondent has accepted responsibility for the contraventions;
 - 2) That the Respondent has filed its Interim Financial Statement for the year 2009 on January 27, 2010;
 - 3) That the Respondent has indicated that it has taken steps to address the other outstanding contraventions;
 - 4) That the Respondent has indicated its implementation of systems to avoid further contraventions; and

- 5) That it was not the first occasion on which the Respondent failed to submit its required financial statements to the Commission within the stipulated deadline.

(d) By reason of the above, the Staff is of the view that the Respondent should pay a lesser penalty in the total sum of **\$130,000.00** as follows:

- 1) Failure to file its 2008 audited comparative financial statement with the Commission on or before March 31, 2009 (S.I. 194/2009), the sum of \$45,000.00.
- 2) Failure to file a copy of its 2008 annual report with the Commission on or before April 30, 2009 (S.I. 195/2009), the sum of \$45,000.00.
- 3) Failure to file a copy of its 2009 interim financial statement with the Commission on or before August 29, 2009 (S.I. 196/2009), the sum of \$40,000.00.

9. TERMS OF THE SETTLEMENT

Based on the facts set out in Clause 5 above, the Respondent agrees to the following terms of Settlement:

- (a) The Respondent agrees that, as a term of settlement, it will, upon the making of the Order, make a payment to the Commission in the amount of one hundred and thirty thousand Trinidad and Tobago dollars (\$130,000.00) representing the penalty to be imposed by the Commission for the breach of by-law 56(1) of the By-Laws, section 66 (1) (a) of the Act, section 66 (2) of the Act and by-law 55 (1) of the By-Laws.
- (b) If an Order in the form attached as the Schedule is made by the Commission, the Order will be published in the Trinidad and Tobago Gazette, on the Commission's Website and publication in the daily newspapers will be delayed for a period of six months.

10. STAFF COMMITMENT

- (a) If this Settlement Agreement is approved by the Settlement Panel, the Staff will not initiate any further civil or administrative proceeding in respect of any conduct or alleged conduct of the Respondent in relation to the facts set out in Clause 5 above. The approval of this Settlement Agreement by the Settlement Panel shall be signified by the making of the Order of the Commission and such Order shall represent the

complete and final resolution of, release and discharge with respect to, all claims, demands, actions and causes of action (of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected, or hereafter discovered or ascertained) by the Commission against the Respondent for violations arising as a result of or in connection with the facts set out in Clause 5 herein.

- (b) If this Settlement Agreement is approved by the Settlement Panel and the Commission and the Respondent fails to comply with any of the terms of this Settlement Agreement, the Staff reserves the right to bring proceedings under the Act against the Respondent based on, but not limited to, the facts set out in Clause 5 of this Settlement Agreement, as well as the breach of the Settlement Agreement.

11. PROCEDURE FOR APPROVAL OF SETTLEMENT

- (a) An application will be made to the Settlement Panel for the review and approval of the Settlement Agreement in accordance with Rule 62 of the Rules.
- (b) The Staff and the Respondent agree that the Settlement Agreement will constitute the entirety of the evidence to be submitted before the Settlement Panel, unless the parties later agree that further evidence should be submitted to the Settlement Panel.
- (c) The Staff and the Respondent agree that if the Settlement Agreement is approved by the Settlement Panel and the Commission the Respondent agrees to waive its rights to a full hearing, judicial review or appeal of the matter under the Act.
- (d) If for any reason whatsoever, this Settlement Agreement is not approved by the Settlement Panel or an Order in the form attached as the Schedule is not made by the Commission, this Settlement Agreement and all discussions and negotiations between the Staff and the Respondent will be without prejudice to the Staff and the Respondent and each of the Staff and the Respondent will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the said Notices of Contravention unaffected by this Settlement Agreement or settlement negotiations.
- (e) Whether or not this Settlement Agreement is approved by the Settlement Panel, the Respondent agrees that it will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation process or approval of this Settlement Agreement as the basis for any allegation against the Commission of lack of jurisdiction, bias, appearance of bias, unfairness or any other remedy or challenge that may otherwise be available.

12. DISCLOSURE OF THE AGREEMENT

The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Settlement Panel and the Order of the Commission executed under the terms of this Settlement Agreement, and forever if, for any reason whatsoever, this Settlement Agreement is not approved by the Settlement Panel, except with the written consent of both the Respondent and the Commission or as may be required by law.

13. APPLICABLE LAW

This Settlement Agreement shall be governed, construed and interpreted in accordance with the Laws of the Republic of Trinidad and Tobago.

THE SCHEDULE ABOVE REFERRED TO:

TRINIDAD AND TOBAGO SECURITIES AND EXCHANGE COMMISSION

**In The Matter of the Contraventions of by-law 56 (1)
of the Securities Industry By-Laws, 1997 (“the By-Laws”)
section 66 (1) (a) of the Securities Industry Act, 1995(Act No. 32 of 1995)
 (“the Act”), section 66 (2) of the Act and by-law 55 (1) of the By-Laws
by the Port Authority of Trinidad and Tobago**

And

**In The Matter of A Proposed
Settlement Agreement Pursuant To
Part VIII of
Securities Industry (Hearings And Settlements)
Practice Rules, 2008 (“the Rules”)**

ORDER OF THE COMMISSION

Dated this day of , 2010

WHEREAS the Port Authority of Trinidad and Tobago (“the Respondent”):

Settlement Agreement: Between the Commission and the Port Authority of Trinidad and Tobago/In The Matter of Rule 61 and Rule 62 of Securities Industry (Hearings And Settlements) Practice Rules, 2008

- (i) Failed to file its audited **COMPARATIVE FINANCIAL STATEMENT** with the Commission on or before **March 31, 2009** for year **2008**;
- (ii) Failed to file its **ANNUAL REPORT** with the Commission on or before **April 30, 2009** for the year **2008**; and
- (iii) Failed to file its **INTERIM FINANCIAL STATEMENT** with the Commission on or before **August 29, 2009** for year **2009**;

hereinafter referred to collectively as ('the said Financial Statements').

AND WHEREAS by Notices of Contravention S.I. Nos. 194 of 2009 to 196 of 2009 dated December 31, 2009 the Commission advised the Respondent that it was in contravention of by-law 56(1) of the Securities Industry By-Laws, 1997 ("the By-Laws") and section 66 (1) (a) of the Securities Industry Act, 1995 ("the Act"), section 66 (2) of the Act and by-law 55 (1) of the By-Laws by failing to file the said Financial Statements with the Commission on or before the dates stipulated for submission.

AND WHEREAS by letter dated February 4, 2010 the Respondent requested the staff of the Commission to enter into settlement discussions to determine whether the matter could be settled;

AND WHEREAS on the day of April, 2010 the Respondent entered into a proposed settlement agreement with the Staff of the Commission which was signed by the General Manager of the Commission on behalf of the Staff and the General Manager/Chief Executive Officer on behalf of the Respondent ("**the Settlement Agreement**"), in which the parties agreed to a settlement, subject to the approval of the Settlement Panel;

AND WHEREAS the Settlement Panel approved the Settlement Agreement and agreed to submit the Settlement Agreement to the Commission;

AND WHEREAS the Respondent has agreed to pay the sum of one hundred and thirty thousand Trinidad and Tobago dollars (\$130,000.00) to the Trinidad and Tobago Securities and Exchange Commission;

AND WHEREAS the Commission has considered the Settlement Agreement and is of the opinion that it is in the public interest to make this Order.

IT IS HEREBY ORDERED THAT:

- (a) The procedure outlined under the Securities Industry (Hearings and Settlements) Practice Rules, 2008 has been followed;
- (b) The Respondent has contravened By-Law 56(1) of the By-Laws, section 66 (1) (a) of the Act, , section 66 (2) of the Act and by-law 55 (1) of the By-Laws;
- (c) Pursuant to section 143 (1) of the Act, the Respondent pay to the Commission, as agent for the Comptroller of Accounts, a fine in the sum of \$130,000.00 within 28 days of the date on which this order is entered as the fine in these matters; and
- (d) This Order shall be published in the Trinidad and Tobago Gazette, on the Commission's Website and publication in the daily newspaper shall be delayed for a period of six months of the date hereof.

Dated this day of , 2010

Deborah Thomas-Felix
Chairman

Vishnu Dhanpaul
Commissioner

Dr. Shelton Nicholls
Commissioner

Marsha King
Commissioner

IN WITNESS whereof the General Manager on behalf of the Commission has hereunto set his hands the 16th day of April 2010 and the General Manager/Chief Executive Officer on behalf of the Port Authority of Trinidad and Tobago has hereunto set his hands the 16th day of April, 2010.

SIGNED by **Charles De Silva** as)
General Manager (Ag) for and on behalf)
of the Trinidad and Tobago Securities)
and Exchange Commission in the)
presence of: *Raphael Roman*)

Charles de Silva

SIGNED by **Christopher Mendez** as)
General Manager/Chief Executive)
Officer for and on behalf of the Port)
Authority of Trinidad and Tobago in the)
presence of:

Patricia Ford)
Senior Legal Officer)
Port Authority of)
Trinidad and Tobago)

Christopher Mendez

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