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Collective Investment Schemes Bye-Laws

Contents

Credits

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Message from the Chief Executive Officer (Ag.) Lystra Lucillio

Dear Valued Stakeholder

We are pleased to present you with the 31st Issue of our bi-annual Market Newsletter. In recent times, the market has witnessed significant developments impacting the securities industry. Specifically, we would like to highlight the criminalisation of Ponzi-type investment schemes and the establishment of a regulatory framework for the Collective Investment Schemes (CIS) industry. These developments are expected to enhance the regulation of the mutual fund sector and protect the interests of investors.

The Securities Act Chapter 83:02 has been amended to include Section 165A, which criminalises schemes that qualify as 'prohibited schemes' under the legislation. Furthermore, the Securities (Collective Investment Schemes) Bye-Laws 2023, which became law on May 8th, provide a framework for the regulation of Collective Investment Schemes. This new framework enables a higher level of market surveillance and aligns with the principles of the International Organization of Securities Regulators (IOSCO).

In addition to these most recent developments, this issue of our Market Newsletter also focuses on other areas of interest, which include:

- DE-REGISTRATION: Exploring the process and prerequisites for Reporting Issuers and Collective Investment Schemes.
- The Enhanced Risk Based Supervision ("RBS") Framework: An overview of the enhanced RBS.
- TTSEC advances in Online Education: Highlighting the progress made by the TTSEC in the field of online education.
- TTSEC's 'Do You Know' Education Series: Introducing the educational series conducted by the TTSEC.

We hope that you find this issue of our Market Newsletter informative and insightful. As always, we value your feedback and we encourage you to share your thoughts with us via ccei@ttsec.org.tt. We are committed to continuously improving this publication and our communication with you.

Lystra Lucillio
Chief Executive Officer (Ag.)

DE-REGISTRATION:

The process and prerequisites for Reporting Issuers and Collective Investment Schemes

The decision by an entity to offer services in the securities market and seek registration with the Commission is a major development. Likewise, the decision to exit the securities market is significant and is governed by Section 71 (1) of the Securities Act Chapter 83:02 ("the Act") and requires the oversight of the Commission. A registrant's decision to de-register is not made lightly and may only become necessary due to various circumstances. In this publication, we will briefly discuss the reasons why a registrant may de-register with the Commission and review the process and requirements for de-registration of Reporting Issuers and Collective Investment Schemes. These requirements are critical to guaranteeing investor protection and provides a framework for ensuring compliance with the Act.

What is De-registration?
De-registration is a declaration from the Commission that an issuer is no longer a Reporting Issuer or Collective Investment Scheme ("CIS") in accordance with the Act. Upon approval of de-registration, the issuer will be removed from the official register of the Commission.

Why De-register?
Reporting Issuers are entities that are registered with the Commission pursuant to Section 61(1) of the Act. All companies wishing to raise money in the local securities market from the distribution of securities must first be registered with the Commission as Reporting Issuers. Similarly, some CIS which are organised as Trusts may also be registered as Reporting Issuers in accordance with the Act. There are a number of reasons why Reporting Issuers or a CIS may choose to de-register with the Commission, these reasons are detailed below:

- ***Inability to meet continuous disclosure obligations***
  As part of its continuous disclosure requirements, Reporting Issuers are required to provide investors with complete, accurate and timely information in compliance with the Act. As a result, an issuer may elect to de-register with the Commission in situations where it may be challenging for the issuer to continue meeting its disclosure requirements.

- ***Changes to the structure of an organisation***
  In other instances, decisions made by an entity to restructure, take-over, merge or amalgamate, may result in its shares being held by a new entity and consequently de-registering may become necessary.

- ***Independent decision by the Commission***
  The Commission may, due to exceptional circumstances, on its own motion, initiate the process of de-registering a Reporting Issuer or CIS.

Process for De-registration
To ensure consistency with the Act, the Commission amended its previous Guideline for the De-registration of Reporting Issuers, which neglected to address applications for CIS' that are not Reporting Issuers.

The Commission's Revised Guideline for the De-registration of Reporting Issuers and CIS provides a detailed process for such de-registrations and can be accessed on the Commission's website via the following URL: *https://www.ttsec.org.tt/wp-content/uploads/Guideline-for-the-De-registration-of-Reporting-Issuers-and-CIS-2022.pdf*

THE PROCESS is outlined below.

1. Submission of Application
An application made in writing to the Commission, must be submitted by a Reporting Issuer or CIS that is desirous of being de-registered. The following items should be included with the application for de-registration:

a. A completed Form 27 – Application for the removal of Reporting Issuers or CIS from the Register of the Commission;
b. The prescribed fee of TT$1000 as outlined in Schedule 1 of the Securities (General) By-Laws 2015;
c. Documentary evidence from an independent third party (such as the registrar, trustee, custodian or paying agent) verifying that the securities that were issued by the Reporting Issuer or CIS have been redeemed, repurchased, cancelled by the issuer or are held by fewer than thirty-five (35) investors in Trinidad and Tobago. In the event that the securities of the applicant are held by fewer than 35 investors, the applicant will be required to provide documentary evidence that the remaining investors were provided with:
    i. Written notification of the applicant's intention to seek de-registration and the reason(s) therefore;
    ii. An opportunity to sell the securities which were issued by the applicant and which they own;
    iii. Written explanation of the consequences for investors in the event that they do not utilise the opportunity to sell their securities and the application for de-registration is successful. This explanation should at minimum explain the protections afforded to investors in Trinidad and Tobago as a result of the applicant maintaining its registration with the Commission; and
    iv. Written confirmation of what disclosures they will receive and/or how their accounts will be serviced in the event that they retain their investment with the applicant.
d. Where the Reporting Issuer or CIS' securities were listed on a Securities Exchange, the applicant must submit documentary evidence that the securities were de-listed from the securities exchange or that an application was submitted to the relevant securities exchange for the de-listing of the applicant's securities.
e. Written confirmation that all outstanding fees, penalties or fines to the Commission were paid.
f. Written request and sufficient justification for any exemptions it may be seeking from the continuous disclosure requirements of the Act. If a registrant is not able to meet

(Countiues)

THE PROCESS

It should be noted that the applicant is still required to file any continuous disclosure documents that become due during the period between its application for de-registration and its official approval of de-registration. If a registrant is not able to meet this obligation, it must request an exemption from this requirement and provide sufficient justification for the reason for not being able to satisfy this requirement.

2. Initial Review of Application

Staff of the Commission will review the documentation submitted in support of the application as well as the following to determine whether to recommend the approval of the application for de-registration:

a. Whether the applicant is a respondent in any pending enforcement action being taken by the Commission; and
b. Whether the applicant is in default of any of its continuous disclosure obligations under the Act.

3. Feedback and Publication of Advertisement

When the review of the application for de-registration is completed, Staff of the Commission will inform the applicant in writing of:

a. Any outstanding issues to be addressed;
b. Whether the applicant can proceed to publish the required advertisement to advise the public that the issuer or CIS is seeking de-registration. This advertisement must:
    i. Provide the public with a two-week period within which they may lodge written concerns with respect to the application for de-registration with the Commission; and
    ii. Be published in two daily newspapers in Trinidad and Tobago for a period of two weeks, on at least two days in each week; and
    c. Whether a request will be made to the Commission to exempt the Reporting Issuer or the CIS from compliance with any continuous reporting obligations that may arise, or would have arisen during the time when the application was forwarded to the Commission, and the final consideration of that application by the Commission.

4. Consideration of Application

Members of the public may raise issues in response to the abovementioned advertisement. If this occurs, Staff of the Commission will liaise with the applicant and the members of the public to seek resolution.

If the issues cannot be addressed via private communication, the Commission will hold a public hearing in accordance with Section 159(1) of the Act to provide affected persons with an opportunity to be heard. After conclusion of the hearing, the Commission will determine if the application for de-registration will be approved.

However, in the event that the issues raised are addressed to the satisfaction of the applicant, the persons affected and the Commission, the Commission will then be asked to determine whether it will approve the application without having a public hearing.

Alternatively, if no issues arise in response to the advertisement, the Commission at that point will be asked to determine whether it will approve the application for de-registration without conducting a public hearing.

Subject to any conditions it deems appropriate, the Commission may approve the application for de-registration and issue a formal Order confirming the approval and de-registration of the Reporting Issuer or CIS. However, if the application is not approved, the applicant will be informed of this decision and the reasons for same in writing.

It is important to highlight that although the application is made by the Reporting Issuer or CIS to de-register, the investors of these entities play a pivotal role in determining whether the application will be approved.

"CIS market has experienced phenomenal growth over the years"

Securities CIS Bye-Laws 2023

After a long and heavily engaging process that began in 2016 and involving broad-based consultation at all levels, the Securities (Collective Investment Schemes) Bye-Laws ("the CIS Bye-Laws") became law on May 8th 2023 – marking a significant turning point for the industry and a milestone achievement for the Commission in the regulation of the mutual fund sector and the protection of the interest of investors. These new Bye-Laws afford the Commission greater oversight and enforcement power with regard to the regulation of CISs.

Prior to the enactment of the CIS Bye-Laws, this sector of the market was regulated through the issuance of the Guidelines for Collective Investment Schemes, issued in accordance with Section 6(b) of the Securities Industry Act 1995.

The CIS market has experienced phenomenal growth over the years, with TTD62.Bn assets under management - representing a TTD40 Bn or 55% growth from 2010 and more than one million investment accounts as at May 2023. This equates to an estimated 800,000 retail/individual investors with investment holdings in Trinidad and Tobago.

With respect to the CIS Bye-Laws, a few key provisions are highlighted below and market participants are encouraged to become familiar with this new legislation which is available on the Commission's website:

CIS Governance Framework

Responsible Person	• The entity that is responsible for the governance and oversight of the operations of the CIS, including compliance with the legal and regulatory framework • Trustee or Corporate Form Entity
CIS Manager	• A person approved or registered under the CIS By-laws to direct the business, operations or affairs of the CIS, consistent with Part IV of the CIS By-laws
Custodian	• A person that provides custody or safekeeping of the assets of a CIS but does not include a sub-custodian

Authorisation of Responsible Persons

- All CIS must now appoint a Responsible Person
- Responsible Person must be Authorized by the Commission
- Responsible Person must meet the relevant criteria outlined in the By-laws
- Must be independent of the CIS Manager

Registration of CIS Manager

- Creation of a new category of broker-dealer permitted to carry-on business of a CIS Manager
- Restricted Broker-Dealer – Persons that only want to act as a CIS manager and not conduct other Broker Dealer activities can register as a Restricted Broker-Dealer
- Current Broker-Dealers – Can perform activities of a CIS manager provided they demonstrate that they have CIS related controls in place

Authorisation of Custodian

- CIS Guidelines 2008 merely provided that the Custodian had to be licensed under the FIA.
- Required to be independent of the CIS Manager
- Annual self-assessments now required whereby the Custodian must assess the compliance of sub-custodians with the CIS By-Laws

Under the Bye-Laws, there are defined and established roles responsibilities and eligibility criteria for Other Parties related to the CIS namely: Sponsor; Distributor; Registrar and Auditors.

In terms of Outsourcing, there are established criteria here as well for the outsourcing of any function to third parties in relation to the CIS i.e.,

- Can outsource tasks – not responsibility;
- Not all roles may be outsourced; and
- Set standards of due care for third-party service providers appointed by a party related to a CIS.

The CIS Bye-Laws are easily accessible via the following link: *https://www.ttsec.org.tt/legal-framework/?_sft_category=cis-bye-laws* and market participants are encouraged to become familiar with the provisions.

The TTSEC's Enhanced Risk-Based Supervision Framework

While there are similarities among financial institutions, each entity is unique in terms of size, business activities and risks. Hence, there is no "one-size-fits-all" approach to the supervision of these entities. The traditional, compliance-based or rules-based approach has proven to be reactive and inadequate in assessing the inherent risks in entities' business activities. Such risks, if not mitigated, can cause the collapse of the financial system. As such, regulators have taken a proactive stance by predominantly employing a risk-based approach to the supervision of financial institutions.

The Trinidad and Tobago Securities and Exchange Commission ("TTSEC") has been utilising a risk-based approach to the supervision of Registrants namely: Broker-Dealers, Investment Advisers and Underwriters since 2014. In 2021, the TTSEC reviewed and amended its framework given changes in the local financial sector and international standards. The enhanced Risk-Based Supervision ("RBS") Framework was subsequently approved in 2022. The core principles of the TTSEC's enhanced RBS Framework are as follows:

1. To mitigate the risk of failure or inappropriate behaviour by Registrants;
2. To exercise sound judgement in the evaluation of Registrant's risk management of its business activities;
3. To enable the continuous assessment of risk profiles of Registrants and provide an objective basis for allocating supervisory resources; and
4. To promote good corporate governance of Registrants.

The enhanced Framework seeks to assess the risks inherent in entities' key business activities, the effectiveness of their internal controls

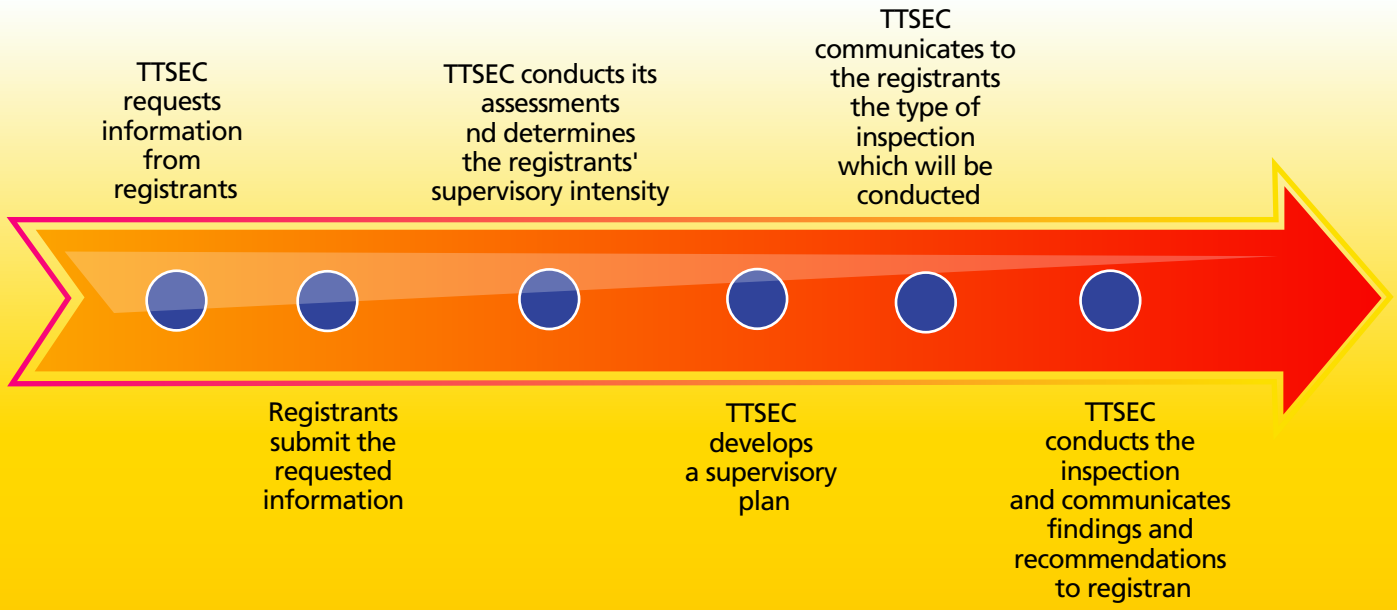
Overview of the TTSEC's enhanced RBS Framework

The enhanced Framework seeks to assess the risks inherent in entities' key business activities, the effectiveness of their internal controls, as well as the systemic implications of a significant failure by a firm. Furthermore, the Framework aims to identify the supervisory intensity for each entity. The key elements of the Framework are as follows:

- **Impact Assessment:** This determines the potential effect on the TTSEC meeting its objectives if there were a significant failure by a Registrant in its securities related activities, for reasons such as insolvency, inability to find liquidity, massive failure of controls, and widespread misconduct. It is a measure of the potential damage to consumer confidence and trust in a well-functioning financial market.
- **Risk Assessment:** The likelihood that a Registrant may fail is assessed. The risk assessment entails an understanding of the Registrant's significant activities, the risks inherent to those activities, assessing the effectiveness of the Registrant's internal controls for risk mitigation, and determining a risk rating.
- **Supervisory Intensity:** The TTSEC gauges the priority of supervision for a particular Registrant using both the firm's impact and the risk ratings. The Registrant is assigned to one of four levels of supervisory intensity (high, moderate, low and very low).
- **Supervisory Plan:** The results of the assessments of Registrants are reviewed and a biennial supervisory plan is developed.

Implementation of the TTSEC's enhanced RBS Framework

As part of the RBS process, Registrants will be required to submit information to the TTSEC. It is important that the requested information be submitted by the stipulated deadline as this would allow the TTSEC to conduct its assessments and design its supervisory plan in a timely manner. The diagram below illustrates the RBS process:



The TTSEC successfully conducted pilot testing with a sample of Registrants and intends to implement the enhanced RBS Framework effective June 2023.

"If it's too good to be true, it probably is a PROHIBITED SCHEME"

Ever heard of Scott Rothstein, or how about Lou Pearlman (Founder of boy bands Backstreet Boys and NSYNC)? Doesn't ring a bell? Okay perhaps you've heard about Allan Stanford (Stanford T 20 Cricket) or for sure you've heard of Bernie Madoff (The Monster of Wall Street)? What do these persons all have in common? Their ability to lie, deceive and manipulate people out of their hard-earned money for their own purposes using that most infamous scam – the Ponzi scheme. In Trinidad and Tobago, a Ponzi scheme is one of the more popular scams falling under the umbrella of "prohibited scheme".

So, what is a prohibited scheme; and what provisions are in place to deal with these schemes. Let's read on and find out.

According to the US Securities and Exchange Commission (US SEC), 'prohibited schemes' refer to investment fraud whereby new participants' fees are typically used to pay money to existing participants for recruiting new members. These scams are often referred to as 'pyramid'- type due to their nature of initiating the investment process with one investor and subsequently recruiting and increasing the number of involved investors exponentially; thus, creating a triangular or rather, 'pyramid' structure. As more individuals invest at the lower levels of the scheme, that money is then used to repay those at the higher tiers as their return on investment.

In the case of Trinidad and Tobago, through the enactment of the Finance (No. 2) Bill, on 17th December 2021, the Securities Act, 2012 ("the Act") was amended to introduce Section 165A. Section 165A has been inserted after the existing Section 165 of the Act to provide for the criminalisation of schemes that qualify as prohibited schemes based on any of the following characteristics:

(a) a business is structured in such a way that the returns an investor or client earns is directly tied to the number of persons he recruits to join the scheme;

(b) the amount of income a person earns while participating in the scheme depends on his rank in the scheme, where such rank is related to when a person joins the scheme;

(c) the amount of income a person earns while participating in the scheme is directly tied to or depends on his success in recruiting other persons to join the scheme;

(d) a person is required to purchase a financial product or financial training offered by the scheme before he can participate in and earn income from the scheme, and neither the product nor the training can be offered for resale to the general public;

(e) a person is required to pay an advanced fee, either as a lump sum or by instalments, in order to receive a larger financial return which is solely based on the number of persons recruited to the scheme;

(f) part of the marketing or promotion of the scheme involves an assertion or statement guaranteeing or promising that participation in the scheme will result in returns which far exceeds the returns offered in the securities market;

(g) an aggregate public scheme requires contributions to a pool of investment, and guarantees or promises a larger pay-out based on the number of persons recruited; or

(h) an investment scheme provides an investor with returns derived substantially from investments made by other investors in the scheme, rather than from genuine profits—

(i) whether or not the name "Ponzi" is used by any person in connection with the scheme; and

(ii) whether or not the scheme limits the number of persons who may participate therein, either expressly or by the application of conditions affecting the eligibility of a person to enter into, or receive compensation under, the scheme.

In addition to the traditional Ponzi Scheme, it is clear from the above amendments to the Act that the term "prohibited scheme" is now broadly defined and intended to capture all schemes whereby an investor may be defrauded.

What are the penalties associated with Prohibited Schemes in Trinidad and Tobago?

Section 165A of the Act makes it illegal to establish, operate, advertise or partake in prohibited schemes. The penalties for breaching these laws are outlined as follows:

- A person who establishes or operates a prohibited scheme is liable on summary conviction to a fine of ten million dollars **($10,000,000)** and to imprisonment for **ten (10) years** and may also be liable to an administrative fine up to five million dollars **($5,000,000)**.
- A person who knowingly participates in a prohibited scheme is liable on summary conviction to a fine of five million dollars **($5,000,000)** and to imprisonment for **five (5) years** and may also be liable to an administrative fine up to five million dollars **($5,000,000)**.
- A person who knowingly advertises or invites another person to join a prohibited scheme is liable on summary conviction to a fine of two million dollars **($2,000,000)** and to imprisonment for **three (3) years** and may also be liable to an administrative fine up to five million dollars **($5,000,000)**.

Impact of Prohibited Schemes

Notably, participation in such prohibited schemes can result in negative consequences. Such as financial losses by investors and other persons, reputational damage, and even psychological consequences. For some, a combination of these could lead to stress, frustration, depression and even suicide.

What Can You Do to Avoid these Schemes?

If you are unsure of what constitutes a prohibited scheme, be mindful of the undermentioned factors:

1. Be wary of investments with promises of unusually high or above-market returns – as discussed, this is a warning sign that the investment in question may be indicative of a Ponzi or other prohibited scheme.

2. Be vigilant of training products – if any entity claims to be selling software or other product with promises of training you in Forex and/or Cryptocurrency trading, this can be a warning sign of a scam.
3. Research investment opportunities thoroughly – it is your responsibility to check all resources for available information on the investment. It is important to inquire as to whether the security is registered with the Trinidad and Tobago Securities and Exchange Commission (TTSEC).
4. Be aware of the common characteristics of prohibited schemes including unusually high returns with little or no risk, unregistered investments, unregistered sellers, secretive and/or complex investment strategies, inadequate or suspicious paperwork and insistence on cash payments.
5. Seek advice from a licensed financial advisor – seek guidance on potential investments from a registered Broker-Dealer or Investment Advisor. A list of these Registrants can be found on the TTSEC's website at *https://www.ttsec.org.tt/*.
6. Report suspicions to regulatory authorities in Trinidad and Tobago to the TTSEC – if you suspect that you may have fallen victim to a Ponzi or other prohibited scheme, you can visit the TTSEC's website or Investor Protection App to file an official scam report/tip.

Due to the potential grave effects of prohibited schemes as well as the legal consequences of wilful participation in such schemes, the public at large must be vigilant to avoid them and any associated penalties under the recently amended legislation. Individuals who are unsure of whether a potential investment opportunity might constitute a prohibited scheme are encouraged to check with the TTSEC before "taking the leap".

DO YOU KNOW?

TTSEC Embarks on a 'Do You Know' Public Education Series ahead of National Survey

In April 2023, the TTSEC embarked on a 'Do You Know' public education series ahead of a proposed National Brand Awareness, Perception and Knowledge-based Survey that is scheduled to be undertaken by the TTSEC later this year. The last national survey to be carried out by the TTSEC occurred over the period 2015-2016.

The 'Do You Know' education series was carried on traditional and social media platforms and focused on the securities market and investing.

TTSEC Advances Investor Education Online

A key function of the TTSEC, in accordance with Section 6 (g) of the Securities Act Chapter 83:02, 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.

This involves increasing the public's awareness and understanding of the role and functions of theTTSEC, as regulator of the market, and also promoting interest in the securities industry and investing in securities.

Since the inception of the TTSEC's Investor Education Programme in 2005, the TTSEC's investor education initiatives have evolved and expanded.

Over the years, the TTSEC has leveraged the use of technology to expand our reach and engagement of the public on securities related matters.

This year the TTSEC heralded its 8 th National Investor Education Month in May, with the launch of two advanced level online courses on investing.

These courses were developed in collaboration with the University of Trinidad and Tobago (UTT) accessible via a new Learning Management System available on our investor education website: *www.InvestuateTT.com*. The areas covered include: Risk Management, Rights and Responsibilities of Investors, Retirement Planning, Financial Resilience,

Inve$tor Quest 2.0

UNLOCK THE INVESTOR IN YOU!

Financial Technology and Fake News Fraud.

Another investor education initiative that is leveraging advances in technology, is the TTSEC's investing game: **Investor Quest-TT** - which simulates trading on a stock exchange. This project was first launched in 2019 but is currently being upgraded through an on-going collaboration with UTT is an immersive playground wherein users can learn and understand how investing works, along with the risks and benefits associated with investing. The learning platform is enabled through the creation of a simulated stock exchange and 20 fictitious companies trading as 15 stocks, 5 mutual funds and 5 bonds.

We can look forward to the launch of IQTT 2.0 later in 2023.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