

**THE SECURITIES COMMISSION  
FROM THE  
JAMAICA STOCK EXCHANGE'S  
PERSPECTIVE**

**THE JAMAICA BAR ASSOCIATION  
CONTINUING LEGAL EDUCATION SEMINAR**

**June 14 - 15, 1997**

**By C. Wain Iton**

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**1. INTRODUCTION:**

Experience in many jurisdictions has shown that when securities are traded either over-the-counter or on a stock exchange, there usually emerges a class of directors and managers of the companies whose securities are publicly traded. The business activities of these company officials cannot be adequately regulated by the shareholders acting in general meetings. Accordingly, institutional arrangements need to be made to provide for administrative regulation of companies with publicly traded securities, to ensure that members of the general investing public who entrust their savings to quoted or other public companies are not subjected to fraud and dishonest practices.

The objectives of the regulatory framework for a securities industry are:

- 1) the protection of investors from fraud, dishonesty and unfair trading practices
- 2) ensuring that the market operations in securities measure up to the rules of the market place.
- 3) the development and growth of the securities market.

Fraud and dishonesty are not the only factors which can distort the proper functioning of the market. Differential access to information can be equally destructive. Rules regulating the availability of, and access to, information relevant to the exercise of a sound commercial judgement on securities, play an important role in the operation of orderly and efficient markets.

There are two basic approaches to securities regulation. One approach emphasises FULL DISCLOSURE of all material information regarding the issuer and the securities being sold, on the theory that investors can protect their own interests if presented with adequate information. The other approach assumes that investments may involve a degree of business experience which most investors do not possess and requires that the REGULATOR review the merits of the offering. Under this approach, securities regulators are empowered to prohibit the sale of securities that they deem would be unfair or inequitable to investors. This is the merit regulation approach.

2. Given the objectives of the regulatory framework, the JSE welcomed the Securities Act '93 and the Securities Commission, subsequently created to administer the Act.

The JSE is a Self Regulatory Organisation (SRO) which has effectively regulated the exchange and its members for the past twenty seven (27) years. The concept of self regulation is universally practised in securities markets.

It gives a degree of autonomy to the stock exchange to formulate and apply rules on the conduct and ethics of its members and its trading practices and the range of securities that may be traded on its markets. Such self regulation is often effective since the governing body of a stock exchange is usually a repository of special expertise and likely to have greater insight into the day to day operations of the market than any other body.

Undoubtedly there is a need for both a degree of self regulation and regulation by Government the (Securities Commission). The critical issue is how to structure a regime of co-regulation which is balanced and allows efficient market operations without undue Government (Securities Commission) intervention to protect the public interests.

### **3. THE JSE AND THE SECURITIES COMMISSION**

The JSE and the Securities Commission have enjoyed a healthy professional working relationship. We have had a few material differences of opinion. A brief comment on the functions and powers of the Commission.

Section 5(1) of the Securities Act '93 defines the functions:

- a) to regulate the securities industry in accordance with this Act and to ensure that appropriate standards of conduct and performance with this Act or any rules or regulations made hereunder (comment)

- b) to consider applications for licences or registration under this Act and to grant or refuse such licences or registration or to suspend or cancel any licences or registration so granted (comment)
- c) to advise the Minister on all such matters relating to the operation of this Act as it thinks fit or as may be requested by the Minister.  
(comment)
- d) to promote public understanding of the law and practice relating to the securities industry (comment)
- e) to enforce the rules of a recognised stock exchange whenever the Commission considers it necessary so to do. (comment)
- f) to perform such other duties as may be prescribed by or pursuant to this Act. (comment)

The Trinidad and Tobago Government, recently enacted its own securities legislation viz. the Securities Industry Act 1995. It provides for the establishment of the Trinidad and Tobago Stock Exchange Commission with the following functions:

- a) advise the Minister on all matters relating to the securities industry.
- b) maintain surveillance over the securities market and ensure orderly, fair and equitable dealings in securities

- c) register, authorise or regulate in accordance with this Act, self regulatory organisations, securities companies, brokers, dealers, traders, underwriters, issuers and investment advisers, and control and supervise their activities with a view to maintaining proper standards of conduct and professionalism in the securities business.
- d) protect the integrity of the securities market against any abuses arising from the practice of insider trading.
- e) create and promote such conditions in the securities market as may seem to it necessary, advisable or appropriate to ensure the orderly growth and development of the capital market.

The Securities Act '93 as drafted, gives an inordinate amount of power to the Commission with respect to its ability to intervene in the conduct of the market and the Exchange's business. We will take a closer look at sections 23 - 25.

The issue is not so much about excessive power, but the procedure for redress should this power be abused. Section 23(2) provides for a recognised stock exchange which is aggrieved by a direction of the Commission to appeal to the Minister within 15 days after the date of such direction. Is the Minister the appropriate appellate tribunal?

#### **4. THE SECURITIES COMMISSION AND ENFORCEMENT**

The Securities industry is sustained by CONFIDENCE. Confidence thrives in a market that's fair, orderly and transparent. At the JSE we do our best to

preserve the integrity of the market, but there are limitations to an SRO's powers. We have no authority to sanction members of the public who are guilty of sharp practices. This is where the Securities Commission's role is indispensable.

The Securities Act explicitly prohibits among other things:

- a) False trading and market rigging transactions (section 44)
- b) Stock market manipulation (section 45)
- c) False or misleading statements (section 46)
- d) Fraudulently inducing persons to deal in securities (section 47)
- e) Employment of manipulative and deceptive devices (section )
- f) Prohibition of dealings in securities by insiders (section 51)

Anyone found guilty of an offence under the above clauses shall be liable on conviction before a Judge of the Supreme Court sitting without a jury, to a fine or to imprisonment for a term not exceeding ten years.

Enforcement may be the most difficult task confronting the Securities Commission. Success will depend on the quality of the investigations. The paragraph below summarises the United States Securities and Exchange Commission's approach to investigations.

“An investigation is not the same as a prosecution. Investigations involve fact finding by the Commission staff only and **ARE NOT MADE PUBLIC** by the Commission or the staff. In this way; the mere fact of an investigation, which is not a determination of guilt or liability does not harm an individual or

an entity. During an investigation, neither the staff nor the Commission makes any determination of wrongdoing. If, however, the staff ultimately believes that there has been a violation of the securities laws, it generally will make a recommendation to the Commission but the Commission then determines whether to file a public civil lawsuit in court, or institute a public administrative proceeding”\*

Given the tender age of our Securities Commission, and shall I assume the purity of our securities markets, we have no Jamaican case histories to date. In my research for this paper, I came across the following cases which may interest this gathering:

#### **INSIDER TRADING:**

- a) **Securities and Exchange Commission vs Phillip J. Stevens,**  
(March 19, 1991)

“alleging that Phillip J. Stevens the former CEO and Chairman of Ultrasystems Corporation (Ultrasystems) in order to protect and enhance his reputation as a corporate spokesman, informed certain analysts who followed Ultrasystems that the company expected poor quarterly earnings two days before the company publicly announced its quarterly earnings. Stevens, without admitting or denying the Commission’s allegations, consented to the entry of a permanent injunction and agreed to pay \$126,455, which represented the losses

\*An Overview of Enforcement: Domestic and International”, William McLucas and Michael Mann



avoided by certain clients of the analysts who sold Ultrasystems common stock prior to the public announcement of poor quarterly earnings”\*

**b) Securities and Exchange Commission vs. Steven L. Glauberman et. al.,**

(August 9, 1990)

“alleging that a New York lawyer disclosed information to tippees about deals and potential deals on which his law firm was working. Without admitting or denying the allegations in the complaint, several of the defendants consented to the entry of a Final Judgement of Permanent Injunction and agreed to pay disgorgement of over \$2.5million as well as civil penalties”.\*

**FINANCIAL FRAUD**

**Securities and Exchange Commission vs. O.T. Wiles, et. al.,**

(August 14, 1991)

“scheme to inflate the net earnings of Miniscribe Corporation by allegedly creating fictitious inventory by packing bricks into inventory cases and shipping them to distributors”.\*

\*An Overview of Enforcement: Domestic and International”, William McLucas and Michael Mann

## SECURITIES OFFERING CASES

**Securities and Exchange Commission vs. Karczewski, et. al.,**

(April 24, 1991)

“alleging that defendants through Stockbridge Funding Corporation sold securities called “INVESTOR AGREEMENTS” in an unregistered, non-exempt public offering. In addition, the Commission alleged that the defendants made numerous material misrepresentations and omissions, including among other things that the investments were “*as safe as federal bonds*”, “*triple secured*”, “*guaranteed*”, and “*low risk*”, when Stockbridge was engaged in high risk mortgage lending to individuals and entities who otherwise would not obtain credit.

Further, the Complaint alleged that the defendants represented that investor funds, would not be used for any purpose other than mortgage lending when in fact, funds were used to pay the defendants’ personal expenses. Without admitting or denying the allegations in the Commission’s complaint, the defendants consented to final judgements ordering them to disgorge over \$34 million plus prejudgement interest and to pay civil penalties totalling \$15 million.”\*

In concluding, we commit to continue working closely with the Securities Commission to enhance, and preserve the fairness and integrity of our securities markets and foster the development of the capital market so that the benefits can redound to all Jamaicans.

\*An Overview of Enforcement: Domestic and International”, William McLucas and Michael Mann