

THE SECURITIES ACT

REGULATIONS
(*under section 76*)

The Securities (Licensing and Registration) Regulations, 1996	L.Nr. 65/96 199/2001 113C/2002 106/2003 93 ² A/2008
The Securities (Disclosure of Interest) Regulations, 1999	L.N. 60D/99
The Securities (Conduct of Business) Regulations, 1999	L.N. 60E/99 113B/2002 105/2003
The Securities (Central Securities Depository) Regulations, 1999	L.N. 111A/99
The Securities (Take-Overs and Mergers) Regulations, 1999	L.N. 119 ² A/99 154/2000
The Securities (Mutual Funds) Regulations, 1999	L.N. 119 ³ A/99

THE SECURITIES ACT

REGULATIONS
(under section 76)

THE SECURITIES (LICENSING AND REGISTRATION) REGULATIONS, 1996

*(Made by the Securities Commission and approved by the Minister
on the 15th day of May, 1996)*

L.N. 65/96
Amends:
L.N. 199/2001
113C/2002
106/2003
93²A/2008

1. These Regulations may be cited as the Securities (Licensing and Registration) Regulations, 1996.

2.—(1) Subject to regulation 5, an individual is eligible to apply for a dealer's licence or an investment adviser's licence if—

- (a) he satisfies one of the following requirements, that is to say—
 - (i) he holds a degree in economics, accounting or business related subjects; or
 - (ii) has a professional qualification in law or accounting; or
 - (iii) has successfully completed a programme of study in securities approved by the Commission; and
- (b) has worked for at least two years in the securities industry; and
- (c) has a net worth of at least two million dollars or has acquired indemnity insurance for at least that amount.

(2) A company is eligible to apply for a dealer's licence if it maintains free assets of at least five million dollars.

(3) A company is eligible to apply for an investment adviser's licence if it maintains free assets of at least one million dollars.

(4) An application for registration as a dealer's representative or an investment adviser's representative may be made in relation to an individual who—

- (a) satisfies the requirements specified in paragraph (1) (a); or
- (b) holds a diploma or certificate in economics, accounting or business related subjects from a tertiary institution approved by the Commission.

(5) Where prospective applicants carry on business as a partnership, application under paragraph (1) shall be made by each partner.

(6) In this regulation—

“free assets” in relation to a company, means the net asset worth of the company held in the form of cash and readily convertible securities;

“net worth” in relation to an individual, means the difference between his assets and his liabilities.

2A.—(1) Every licensee shall maintain at all times a capital adequacy ratio between its capital base and its risk-based assets and other risk exposures, of not less than the percentage specified by the Commission by notice in writing.

(2) The Commission shall determine the respective weights to be applied to the risk-based assets and other risk exposures.

2B. Where the capital adequacy ratio of any licence falls below the percentage specified by the Commission in writing the licensee shall forthwith notify the Commission in writing.

3.—(1) An application for a dealer’s licence or an investment adviser’s licence, as the case may be, shall be made to the Commission in writing in the form specified as Form A in the First Schedule and shall be accompanied by the appropriate fee specified in the Second Schedule.

(2) An application for registration as a dealer’s representative or an investment adviser’s representative shall be made to the Commission in writing in the form specified as Form B in the First Schedule and shall be accompanied by the appropriate fee specified in the Second Schedule.

(3) In support of an application under this paragraph, the following documents shall be supplied to the Commission—

(a) in the case of an individual—

- (i) original certificates or other similar documents evidencing qualifications;
- (ii) two passport-size photographs, in colour, certified by a Justice of the Peace or Notary Public to be a true likeness of the applicant or, in the case of an application for registration under section 10 of the Act, a likeness of the person to whom the application relates; and
- (iii) such other documents or information as the Commission may require;

(b) in the case of a company—

- (i) copies of the memorandum of association, articles of association and certificate of incorporation, respectively; and
- (ii) such other documents as the Commission may require;

First
Schedule.
Form A.
Second
Schedule.

Form B.

(c) in the case of a partnership—

- (i) a copy of the instrument constituting the partnership; and
- (ii) such other documents as the Commission may require.

(4) Any copy required pursuant to paragraph (3) shall carry an endorsement by the applicant made before a Justice of the Peace or Notary Public to the effect that the copy is a true and accurate copy of the original.

4.—(1) Where the Commission—

- (a) grants a dealer's licence or an investment adviser's licence pursuant to section 9 of the Act, it shall issue a licence in the form set out as Form C or Form D in the First Schedule, as is appropriate, on receipt of the licence fee set out in the Second Schedule;
- (b) grants registration as a dealer's representative or an investment adviser's representative, it shall issue a certificate of registration in the form set out as Form E or Form F in the First Schedule, as is appropriate, on receipt of the registration fee set out in the Second Schedule.

First
Schedule.
Form C.
Form D.
Second
Schedule.

Form E.
Form F.

(2) Any person—

- (a) licensed as a dealer shall, while so licensed, be entitled to use the title "Licensed Securities Dealer";
- (b) licensed as an investment adviser shall, while so licensed, be entitled to use the title "Licensed Investment Adviser";
- (c) registered as a dealer's representative shall, while so registered, be entitled to use the title "Registered Dealer's Representative"; and
- (d) registered as an investment adviser's representative shall, while so registered, be entitled to use the title "Registered Investment Adviser's Representative".

(3) Where an individual who is licensed as a dealer or an investment adviser dies or resigns from a company licensed under this Act, the company—

- (a) shall notify the Commission of the event within seven days of its occurrence; and
- (b) where such individual was the only individual in the company so licensed, the company shall, within thirty days of the notification take steps to ensure that an application is submitted under these Regulations to the Commission by a director of that company for a dealer's licence or an investment adviser's licence, as the case may require.

5. Notwithstanding that he does not satisfy the requirements of paragraph

(1) (a), paragraph (1) (b) and paragraph (4) of regulation 2—

- (a) an individual shall be eligible to apply for a dealer's licence or an investment adviser's licence, if he has been a dealer, or, as the case may be, an investment adviser for a continuous period of at least five years immediately preceding the 20th day of May, 1996; and
- (b) an application may be made for registration as a dealer's representative or an investment adviser's representative in relation to a person who has been dealing in securities, or as the case may be, engaged in the business of giving advice on securities for a continuous period of at least two years immediately preceding the 20th day of May, 1996.

6.—(1) A person who is appointed a responsible officer shall apply to the Commission to be so registered.

(2) An application under paragraph (1) shall be in the form set out as Form G in the First Schedule and shall be accompanied by the fee specified in Item 6 of the Second Schedule and such documents, if any, as the Commission may require.

First Schedule.
Form G.
Second
Schedule.

7. Regulation 6 shall not apply to a person who, being the holder of a dealer's licence, is appointed a responsible officer.

8.—(1) Any company which is desirous of being licensed to establish and operate a central securities depository in relation to eligible securities shall apply to the Commission to be so licensed.

(2) An application under paragraph (1) shall be in the form set out as Form H in the First Schedule and shall be accompanied by the fee specified in Item 7(a) of the Second Schedule and such documents, if any, as the Commission may require.

Form H.

9.—(1) The licence to establish and operate a central securities depository shall be in the form set out as Form I in the First Schedule.

Form I.

(2) The fees specified in Item 7(b) and (c) of the Second Schedule, shall be paid in respect of the grant of a licence.

10.—(1) The audited financial statement of a central securities depository shall be submitted to the Commission within ninety days of the end of the central securities depository's financial year.

(2) Where, on receipt of an audited financial statement, the Commission ascertains that the annual licence fee paid is—

- (a) less than the amount which should have been paid, the Commission shall so inform the central securities depository in writing and the central securities depository shall forthwith pay to the Commission the balance of the amount payable; or
- (b) more than the amount which should have been paid, the Commission shall forthwith pay to the central securities depository the amount which was overpaid.

FIRST SCHEDULE

(Regulations 3, 4, 6(2),
8(2) and 9(1))

FORM A

THE SECURITIES ACT

The Securities (Licensing and Registration) Regulations, 1996

APPLICATION FOR DEALER'S LICENCE OR INVESTMENT ADVISER'S
LICENCE

Notes for Completing Application

1. This Form is to be used by every Applicant for a Dealer's or Investment Adviser's licence under the Securities Act.
2. All applicable questions must be answered. Failure to do so may cause delays in the processing of the Application.
3. If space provided for answers is insufficient, then furnish required information on an attachment.
4. This Form and all attachments added thereto must be typewritten. All signatures must be originals.
5. All documents pertaining to any question must be attached to the Form and be clearly marked with the number of the relevant question.
6. The Applicant for licensing under the Act and the Justice of the Peace or Notary Public before whom the Application is sworn, are each required to initial all attachments.

SECTION A:

THE APPLICANT

1. Name.....

Surname	First	Middle	Maiden
---------	-------	--------	--------
2. Address.....
.....
.....
3. Telephone No(s)..... Facsimile No.....

SECTION B:

PURPOSE OF APPLICATION

Application is made for—

- () Dealer's Licence
() Investment Adviser's Licence

Please tick the appropriate box.

SECTION C:

PARTICULARS OF APPLICANT

- Indicate whether Applicant is a company ()
a partnership ()
an individual ()

THE SECURITIES (LICENSING AND REGISTRATION) REGULATIONS, 1996

FORM A, contd.

1. If Applicant is a company:

(a) Set out on an attachment the names, business and residence addresses, and dates of appointment of directors, chief executive officer, company secretary and other senior officers.

(b) Country and Date of Incorporation or Registration

.....

(c) Branch (if any):

Addresses.....

Telephone No(s).....

(d) Share Capital

	Par Value	Authorized	Issued
	(J\$)	(No)	(No)

Preference Shares.....

Ordinary Shares.....

(e) Set out on an attachment the names, addresses and country of domicile and share-holdings of all shareholders holding more than 10% of any class of shares of the applicant.

2. If Applicant is a partnership:

(a) Set out on an attachment the names, business and residence addresses, dates of admission to partnership and partnership interests of all partners.

(b) Date of formation of—

(i) original Partnership

(ii) existing Partnership

(c) Date of Registration under the Registration of Business Names Act

.....

(d) Date of Recording at Island Record Office

.....

(e) Branch if any

Address

Telephone No.

3. If Applicant is an individual:

(a) Residence Address.....

THE SECURITIES (LICENSING AND REGISTRATION)
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FORM A, contd.

(b) Date of establishment of proprietorship.....

(c) Date of Registration under the Registration of Business Names Act
.....

(d) Personal Description of Applicant—

Date of Birth..... Sex.....

.....
Place of Birth

.....
Height Weight Colour of eyes Colour of hair

.....
Citizenship If not a Jamaican citizen answer
Questions (i) and (ii) below

Name of spouse.....
Surname First Middle

Nature of spouse's employment in Jamaica.....
.....

Name of spouse's employer.....

(i) Are you a permanent resident of Jamaica? YES () NO ()

(ii) For how long have you been resident in Jamaica?
.....

Change of Name

List name changes resulting from marriage, divorce, court order or any other process, giving appropriate dates

Previous name	Date changed	Reason
.....
.....
.....

Have you ever carried on business under any name other than the name mentioned in Question 1 of this Form?

YES () NO ()

If YES, give details
.....
.....
.....

THE SECURITIES (LICENSING AND REGISTRATION) REGULATIONS, 1996

FORM A, contd.

Passport Information

In providing the information requested below, the Applicant must also attach a copy of their passport certified by a Justice of the Peace or Notary Public.

Country Place of issue Date of issue Number

Photograph

Attach hereto two copies of a colour passport-size photograph, full face, showing a true likeness of the Applicant as the Applicant now appears and taken within the last six months.

The photographs must measure 2" x 2", and bear on the back the date on which they were taken, certified by a Justice of the Peace or Notary Public.

4. Applicant's Bank (s)

Name:

Address:

Telephone No (s):

5. Applicant's Auditor

Name:

Address:

Telephone No (s):

6. Applicant's Legal Adviser

Name:

Address:

Telephone No (s):

SECTION D:

HISTORY OF APPLICANT

Tick the appropriate box. If "YES" give particulars.

- 1. (a) Has the Applicant ever applied for a licence or registration under any Act and been refused?

() YES () NO

THE SECURITIES (LICENSING AND REGISTRATION)
REGULATIONS, 1996

FORM A, contd.

(b) Has the Applicant ever been licensed or registered under the Securities Act?

() YES () NO

.....

2. Is the Applicant—

(a) now, or has the Applicant been previously licensed in any capacity in any other country which requires licensing to deal or trade in securities?

() YES () NO

.....

(b) licensed in Jamaica or any other country under any legislation which requires licensing to deal with the public in any capacity? (e.g. as an insurance agent, real estate agent, mortgage broker, etc.).

() YES () NO

.....

3. Has the Applicant been refused a licence mentioned in paragraph 2 (a) or 2 (b) above, or has such licence been suspended or cancelled?

() YES () NO

.....

4. Has the Applicant operated under or carried on business under any name other than the name shown in this application?

() YES () NO

.....

5. Has the Applicant ever—

(a) been the defendant or respondent in any proceedings in any civil court in any jurisdiction in any part of the world in which fraud was alleged?

() YES () NO

.....

(b) at any time declared bankruptcy or made a voluntary assignment in bankruptcy?

() YES () NO

.....

If YES, in addition to giving particulars, attach a certified copy of Discharge.

THE SECURITIES (LICENSING AND REGISTRATION) REGULATIONS, 1996

FORM A, contd.

SECTION E:

FINANCIAL INFORMATION

Attach audited financial statement for a period ending not later than 180 days prior to the date of this application. If Applicant is presently carrying on the activity for which application for a licence is made, attach the Applicant's audited financial statement, which must not be more than 360 days old. The Applicant must also ensure that a Credit Report is submitted directly to the Commissioner by the Applicant's bank for consideration with this application.

- 1. List on an attachment the names and addresses of registered, direct and indirect, beneficial owners of each debt obligation and the amount and maturity date of each obligation.
2. Has any person or company guaranteed, or undertaken to act as guarantor of, the financial or other obligations of the Applicant?
3. Has an agreement been executed providing for the deferral of claims against the Applicant by creditors?
4. Is there any person or company whose name is not disclosed above who has any financial interest in the Applicant, either beneficially or otherwise?

SECTION F:

OFFENCES

In responding to the Questions in this section, the Applicant is required to provide a statement from an Attorney-at-Law indicating if there is any litigation pending or outstanding against the Applicant.

- (i) Have you ever pleaded guilty or been found guilty under any law of Jamaica or any other country of any offence involving dishonesty or relating to trading in securities, commodities, commodity futures contracts or options or the theft thereof or been a party in any proceedings taken on account of fraud arising out of any trade in or advice in respect thereof?
(ii) Have you ever been convicted of any criminal offence not mentioned in paragraph (i)?

THE SECURITIES (LICENSING AND REGISTRATION)
REGULATIONS, 1996

FORM A, contd.

- (iii) Are you currently the subject of a charge or indictment under any law of Jamaica or any other country for contravention of any law or for any conduct of the type described in paragraphs (i) and (ii)?
() YES () NO
-

SECTION G:

CIVIL PROCEEDINGS

- A. Has any claim been successfully made in any civil matter before a court or other tribunal in Jamaica or any other country which was based in whole or in part on fraud, theft, deceit or misrepresentation or similar conduct against—
(i) you?

() YES () NO

.....

- (ii) any company of which you are or were at the time of the event or at the time that such proceedings were commenced an authorized officer, a director or holder of voting securities carrying more than 5% of the votes carried by all outstanding voting securities?
() YES () NO
-

- (iii) any partnership of which you were a partner at the time of the event or at the time such proceedings commenced?
() YES () NO
-

- B. To the best of your knowledge is any such claim pending against you or such company or partnership?
() YES () NO
-

SECTION H:

STATUTORY COMPLIANCE

- Have you complied with all requirements for the payments of statutory deductions?
() YES () NO
-

If YES, kindly provide copies of compliance certificates.

THE SECURITIES (LICENSING AND REGISTRATION) REGULATIONS, 1996

FORM A, contd.

SECTION I:

CONTINGENCY FUND

Does the Applicant have a Contingency Fund in place, which can be used to reimburse depositors in case of default, bankruptcy or suspension of operations?

() YES () NO

If YES, indicate the amount in the Fund.

Dated this day of, 19.....

Signature of Applicant

DECLARATION OF APPLICANT IN THE MATTER OF THE SECURITIES ACT

I, of

..... in the Parish of

MAKE OATH AND SAY:

- 1. That I am the Applicant (or a partner or officer of the Applicant) herein and have signed the application.
2. That the statements of fact made in this application are true and correct to the best of my knowledge, information and belief.

SWORN before me at

in the Parish of

this day of 19..... Signature of Applicant

Justice of the Peace or Notary Public

THE SECURITIES (LICENSING AND REGISTRATION)
REGULATIONS, 1996

FORM A, contd.

FOR OFFICIAL USE ONLY

- 1) Licensing Period _____
- 2) Date Application received _____
- 3) (a) Number of Attachments _____
(b) " " Representatives _____
(c) " " Branches _____
- 4) Identification Verification _____
- 5) Application Fee paid \$ _____
- 6) Submitted to Commission on _____
- 7) Date Approved/Rejected _____
- 8) Terms and Conditions of Licensing _____
(i) _____
(ii) _____
(iii) _____
(iv) _____
- 9) Licensing Fees \$ _____
Date Paid _____
- 10) Certifying Officer _____
Chairman/Executive Director
- 11) Suspensions or Cancellations
Action Taken _____
Effective Date _____
Reasons _____

THE SECURITIES (LICENSING AND REGISTRATION)
REGULATIONS, 1996

FORM B, contd.

3. TYPE OF REGISTRATION REQUESTED

Dealer's Representative ()

Investment Adviser's Representative ()

4. PERSONAL DESCRIPTION OF REPRESENTATIVE

A. Date of Birth Sex

Place of Birth

Height Weight Colour of eyes Colour of hair

..... If not a Jamaican citizen answer
Citizenship Question B below

Name of spouse
Surname First Middle Maiden

Nature of spouse's employment in Jamaica

.....

Name of spouse's employer

B. Are you a permanent resident of Jamaica? YES () NO ()

C. For how long have you been resident in Jamaica?

.....

D. Change of Name

List name changes resulting from marriage, divorce, court order or any other process, giving appropriate dates.

Previous name	Date changed	Reason
.....
.....
.....

Have you ever carried on business under any name other than the name mentioned in Question 1 of this Form?

YES () NO ()

If YES, give details

.....
.....

THE SECURITIES (LICENSING AND REGISTRATION)
REGULATIONS, 1996

FORM B, contd.

B. PREVIOUS EMPLOYMENT

.....
Name of previous employer

.....
Address of previous employer

Period of employment
From To

Reasons for leaving
.....

C. SELF-EMPLOYMENT

Give details if any
.....
.....

D. Have you ever been discharged by an employer for dishonesty, negligence or incompetence?

YES () NO ()

IF YES, explain
.....

7. RESIDENTIAL HISTORY

Give all home addresses for the past 5 years, include street, postal code and parish.

Current

..... 19.....to 19.....
Street Postal Code Parish

Previous

..... 19.....to 19.....
Street Postal Code Parish

8. REFERENCES

A. On an attachment provide three (3) names as references, excluding relatives and persons working with the Representative's employer. Include business address with postal code, telephone number and occupation.

THE SECURITIES (LICENSING AND REGISTRATION) REGULATIONS, 1996

FORM B, contd.

B. Banks or other Financial institutions.

Name of bank (s)
Address (es)

9. PRIOR REGISTRATION OR LICENSING

A. Are you now licensed or registered in any capacity under any law of Jamaica or any other country regulating trading in securities, commodities or commodity futures contracts?

YES () NO ()

If YES, give details

B. Have you been previously licensed or registered as mentioned in paragraph A?

YES () NO ()

If YES, give details and dates

C. Are you now a shareholder, director or officer of any company or a partner in a partnership which is now licensed under any law regulating the trading of securities, commodities or commodity futures contracts in Jamaica or any other country?

YES () NO ()

If YES, which company?

D. Are you now a shareholder, director or officer of any company or a partner in a partnership which has been previously licensed under any law regulating the trading in securities, commodities or commodity futures contracts in Jamaica or any other country?

YES () NO ()

If YES, which company and when?

E. Have you ever been a shareholder, director or officer of any company or a partner in a partnership licensed as mentioned in C or D above?

YES () NO ()

If YES, which company and when?

10. A. Are you now registered under any law which requires registration to deal with the public in any capacity other than trading in securities, commodities or commodity futures contracts in Jamaica or any other country?

YES () NO ()

If YES, which company and under what law?

**THE SECURITIES (LICENSING AND REGISTRATION)
REGULATIONS, 1996**

FORM B, contd.

B. Have you ever applied for or obtained registration mentioned in paragraph A above?

YES () NO ()

If YES, when and in which country and under what law?

.....

QUESTIONS 11-16

In answering Questions 11-16 you may need assistance from an authorized officer of the Applicant or from a Legal Adviser. Full details are required as attachments in respect of any question to which the Representative answers "YES". These details must include the circumstances, relevant dates, names of the parties involved and final determination if known. Also disclose any convictions under all laws, excluding convictions under the Road Traffic Act, and any conviction in respect of which an absolute or conditional discharge has been granted. If a conviction has been expunged from the records pursuant to the Criminal Records (Rehabilitation of Offenders) Act, the appropriate response would be "NO".

An authorized officer means any of the following:—

President, Vice-President, Chairman, Vice-Chairman, Chief Executive Officer, Managing Director, General Manager, Executive Director, Company Secretary, Company Treasurer, Financial Controller or Chief Financial Officer.

11. REFUSAL, SUSPENSION, CANCELLATION OR DISCIPLINARY MEASURE

A. Have you ever been refused registration or has your registration been suspended or cancelled under any law regulating trading in securities, commodities or commodity futures contract in Jamaica or any other country?

YES () NO ()

If YES, state in which country, under what law, and when.

.....
.....
.....
.....

B. Are you now or have you ever been an officer or director of a company or a partner in a partnership—

(i) which has been refused registration during the time of your association with it; or

(ii) whose registration has been suspended or cancelled under any law regulating trading in securities, commodities or commodity futures contracts in Jamaica or any other country?

YES () NO ()

If YES, give details

.....

THE SECURITIES (LICENSING AND REGISTRATION)
REGULATIONS, 1996

FORM B, contd.

12. OFFENCES

A. Have you ever pleaded guilty or been found guilty under any law of Jamaica or any other country of any offence involving dishonesty or relating to trading in securities, commodities, commodity futures contracts or options or the theft thereof or been a party in any proceedings taken on account of fraud arising out of any trade in or advice in respect thereof?

YES () NO ()

B. Have you ever been convicted of any criminal offence not mentioned in paragraph A?

YES () NO ()

C. Are you currently the subject of a charge or indictment under any law of Jamaica or any other country for contravention of any law or for any conduct of the type described in paragraphs A and B?

YES () NO ()

D. Has a company of which you are or were at the time of the event an officer, director or holder of voting securities carrying more than 5% of the votes carried by all outstanding voting securities, or any partnership of which you are or were at the time of the offence a partner, ever pleaded guilty or been found guilty under any law in Jamaica or any other country of offences or conduct of the type described in paragraphs A and D?

YES () NO ()

E. Is any such company or partnership mentioned in paragraph D currently the subject of a charge or indictment?

YES () NO ()

13. CIVIL PROCEEDINGS

A. Has any claim been successfully made in any civil matter before a court or other tribunal in Jamaica or any other country which was based in whole or part on fraud, theft, deceit or misrepresentation or similar conduct against—

(i) you

YES () NO ()

FORM B, *contd.*

(ii) any company of which you are or were at the time of the event or at the time that such proceedings were commenced an officer, a director or holder of voting securities carrying more than 5% of the votes carried by all outstanding voting securities?

YES () NO ()

(iii) any partnership of which you were a partner at the time of the event or at the time such proceedings were commenced?

YES () NO ()

B. To the best of your knowledge is any such claim pending against you or such company or partnership?

YES () NO ()

14. BANKRUPTCY

A. Have you or any company of which you are or were at the time of the event an authorized officer, a director or holder of voting securities carrying more than 5% of the votes carried by all outstanding voting securities; or

B. Have you or any partnership of which you are a partner under the laws of Jamaica or any other country, ever—

(i) been declared bankrupt or made a voluntary assignment in bankruptcy?

YES () NO ()

(ii) made a proposal relating to bankruptcy or insolvency?

YES () NO ()

(iii) been subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver or manager, or both, appointed to hold your assets or the assets of the company or partnership?

YES () NO ()

15. JUDGEMENT OR ATTACHMENT

(a) Has any judgement or attachment ever been rendered against you in any civil court in Jamaica in respect of damages or other relief for fraud or for any other reason?

YES () NO ()

THE SECURITIES (LICENSING AND REGISTRATION)
REGULATIONS, 1996

FORM B, *contd.*

(b) Is any judgement or attachment outstanding against you in any civil court in Jamaica or any other country for damages or other relief in respect of fraud or for any reason whatsoever?

YES () NO ()

.....

16. SURETY BOND OR FIDELITY BOND

A. Have you ever applied for a surety bond or fidelity bond and been refused?

YES () NO ()

If YES, give particulars.

.....

B. Are you presently bonded?

YES () NO ()

.....

If YES, with whom and for how much?

.....

17. BUSINESS ACTIVITIES

A. Will you be actively engaged in the business of the Applicant and devote the major portion of your time thereto?

YES () NO ()

If NO, give details.

.....

B. Are you engaged in any other business or have any other employment for gain except your occupation with the Applicant?

YES () NO ()

.....

If YES, set out full details on an attachment including the name and address of the business, the nature of the business, your title or position and the amount of time you devote to the business.

C. Are you an officer, director, shareholder, partner or other contributor of capital or employee of a company having as its principal business that of a dealer or adviser in securities, commodities, commodity futures contracts or options other than the firm with which you are now applying?

YES () NO ()

If YES, give details.

.....

THE SECURITIES (LICENSING AND REGISTRATION)
REGULATIONS, 1996

FORM B, contd.

18. CERTIFICATE AND AGREEMENT OF APPLICANT AND REPRESENTATIVE

The undersigned individual for whom Application is made for registration hereby—

- (a) certifies that the foregoing statements are to the best of his/her knowledge, information and belief true and correct, and hereby undertakes to notify the Commission in writing of any material change in the information provided in Part 11 of this Application; and
- (b) acknowledges and consents to the Commission obtaining information from any source as permitted by law in Jamaica or any other jurisdiction for the purpose of verifying information furnished in this Application.

The undersigned authorized officer of the Applicant hereby certifies that he or she has discussed the questions in this Application with the individual for whom Application is made for registration and that to the best of his knowledge and belief the individual fully understands the questions, and further certifies that such individual is or will be engaged by the Applicant as a Representative.

Dated thisday of, 19.....

.....
(Name of Representative)

.....
(Signature of Representative)

By
(Authorized Officer, Partner or Individual Applicant)

DECLARATION OF REPRESENTATIVE

I, the undersigned, make oath and say that I have read and understood the questions in this Application as well as the answers made by myself thereto and that the statements of fact made therein and the attachments are to the best of my knowledge, information and belief true and correct.

SWORN before me at.....)
 in the parish of.....)
 this.....day of.....19.....) Signature of Representative
)
)
)
 Justice of the Peace or Notary Public

**THE SECURITIES (LICENSING AND REGISTRATION)
REGULATIONS, 1996**

FORM B, contd.

FOR OFFICIAL USE ONLY

- 1) Registration Period _____
- 2) Date Application received _____
- 3) (a) Number of Attachments _____
 (b) " " Representatives _____
 (c) " " Branches _____
- 4) Identification Verification _____
- 5) Application Fee paid \$ _____
- 6) Submitted to Commission on _____
- 7) Date Approved/Rejected _____
- 8) Terms and Conditions of Licensing _____
 (i) _____
 (ii) _____
 (iii) _____
 (iv) _____
- 9) Licensing Fees \$ _____
 Date Paid _____
- 10) Certifying Officer _____
 Chairman/Executive Director
- 11) Suspensions or Cancellations _____
 Action Taken _____
 Effective Date _____
 Reasons _____

[The inclusion of this page is authorized by L.N. 73/1999]

THE SECURITIES (LICENSING AND REGISTRATION)
REGULATIONS, 1996

FIRST SCHEDULE, *contd.*

FORM C

THE SECURITIES ACT

The Securities (Licensing and Registration) Regulations, 1996

Licence to deal in Securities

No. of Licence.....

This Licence authorizes of
.....in the parish
of to carry on business as a dealer in securities in accordance
with the Securities Act and regulations made thereunder.

This licence is issued subject to the terms and conditions, if any, annexed hereto.
This licence is not transferable.

Dated this.....day of, 19.....

.....
Chairman, Securities Commission

FORM D

THE SECURITIES ACT

The Securities (Licensing and Registration) Regulations, 1996

Investment Adviser's Licence

No. of Licence.....

This Licence authorizes of
.....in the parish
of to carry on business as an investment adviser in accordance
with the Securities Act and regulations made thereunder.

This licence is issued subject to the terms and conditions, if any, annexed hereto.
This licence is not transferable.

Dated this.....day of, 19.....

.....
Chairman, Securities Commission

THE SECURITIES (LICENSING AND REGISTRATION) REGULATIONS, 1996

FIRST SCHEDULE, contd.

FORM E

THE SECURITIES ACT

The Securities (Licensing and Registration) Regulations, 1996

Certificate of Registration as a Dealer's Representative

No. of Certificate.....

This certifies that of in the parish of has been registered to carry on business as the representative of a dealer in securities in accordance with the Securities Act and regulations made thereunder.

This certificate is issued subject to the terms and conditions, if any, annexed hereto. This certificate is not transferable.

Dated this day of, 19.....

..... Chairman, Securities Commission

FORM F

THE SECURITIES ACT

The Securities (Licensing and Registration) Regulations, 1996

Certificate of Registration as an Investment Adviser's Representative

No. of Certificate.....

This certifies that of in the parish of has been registered to carry on business as the representative of an investment adviser in accordance with the Securities Act and regulations made thereunder.

This certificate is issued subject to the terms and conditions, if any, annexed hereto. This certificate is not transferable.

Dated this day of, 19.....

..... Chairman, Securities Commission

THE SECURITIES (LICENSING AND REGISTRATION) REGULATIONS, 1996

FIRST SCHEDULE, contd.

FORM G, contd.

.....
Height Weight Colour of eyes Colour of hair

..... If not a Jamaican citizen answer Question B below
Citizenship

Name of spouse
Surname First Middle Maiden

Nature of spouse's employment in Jamaica

.....

Name of spouse's employer

B. Are you a permanent resident of Jamaica?

YES () NO ()

C. For how long have you been residing in Jamaica?

.....

D. Change of name

List name changes resulting from marriage, divorce, court order or any other process, giving appropriate dates.

Previous name	Date changed	Reason
.....
.....
.....

Have you ever carried on business under any name other than the name mentioned in Question 1 of this Form?

YES () NO ()

If YES, give details

.....

.....

E. Passport Information

In providing the information requested below, the Responsible Officer must also attach a copy of his passport certified by a Justice of the Peace or Notary Public.

Country	Place of issue	Date of issue	Number
.....

F. Photograph

Attach hereto two copies of a colour passport size photograph, full face, showing a true likeness of the Responsible Officer as the Responsible Officer now appears and taken

[The inclusion of this page is authorized by L.N. 28/2003]

Dated this.....day of, 19.....

.....
Chairman, Securities Commission

in the last six months. The photographs must measure 2" x 2", and bear on the back the date on which they were taken and be certified by a Justice of the Peace or Notary Public.

4. EDUCATION

List below names of institutions attended and qualifications attained

School/Institution	Year attended	Qualifications
.....
.....
.....
.....

Attach original document or other certified document evidencing qualification.

5. EMPLOYMENT HISTORY

In answering questions 5-7 give full disclosure of your business activities, including any periods of self-employment and unemployment for 5 years immediately prior to the date of this application, excluding any summer employment while a full-time student, but including all securities or commodities industry employment during and prior to the 5-year period. Attach letter, signed by the Responsible Officer's current or former employer, confirming the Responsible Officer's years of service in the securities or related industry.

A. Present Employment

.....
Name of present employer

.....
Address of present employer

.....
Position of employment

.....
Period of employment

.....
Duties

.....

.....

B. Previous Employment

.....
Name of previous employer

.....
Address of previous employer

.....
Period of employment

.....
From To

.....
Reasons for leaving

.....

C. Self-Employment

Give details if any

.....
.....

D. Have you ever been discharged by an employer for dishonesty, negligence or incompetence?

YES () NO ()

If YES, explain

.....

6. RESIDENTIAL HISTORY

Give all home addresses for the past 5 years, include street, postal code and parish.

Current

.....20.....to 20.....

Street Postal Code Parish

Previous

.....20.....to 20.....

Street Postal Code Parish

7. REFERENCES

A. On an attachment provide three (3) names as references, excluding relatives and persons working with the Responsible Officer's employer. Include business address with postal code, telephone number and occupation.

B. Banks or other Financial Institutions.

.....
Name of bank (s)

.....
Address (es)

8. PRIOR REGISTRATION OF RESPONSIBLE OFFICER

A. Are you now licensed or registered in any capacity under any law of Jamaica or any other country regulating trading in securities, commodities or commodity futures contracts?

YES () NO ()

If YES, give details

.....

B. Have you been previously licensed or registered as mentioned in paragraph A?

YES () NO ()

If YES, give details and dates

C. Are you now a shareholder, director or officer of any company or a partner in a partnership which is now licensed under any law regulating the trading of securities, commodities or commodity futures contracts in Jamaica or any other country?

YES () NO ()

If YES, which company?

D. Are you now a shareholder, director or officer of any company or a partner in a partnership which has been previously licensed under any law regulating the trading in securities, commodities or commodity futures in Jamaica or any other country?

YES () NO ()

If YES, which company and when?

E. Have you ever been a shareholder, director or officer of any company or a partner in a partnership licensed as mentioned in C or D above?

YES () NO ()

If YES, which company and when?
.....

9. A. Are you now registered under any law which requires registration to deal with the public in any capacity other than trading in securities, commodities or commodity futures contracts in Jamaica or any other country?

YES () NO ()

If YES, which company and when?
.....

B. Have you ever applied for or obtained registration mentioned in paragraph A above?

YES () NO ()

If YES, when and in which country and under what law?
.....

QUESTIONS 10-15

In answering Questions 10-15 you may need assistance from a Legal Adviser. Full details are required as attachments in respect of any question to which the Responsible Officer answers "YES". These details must include the circumstances, relevant dates, names of the parties involved and final determination if known. Also disclose any convictions under all laws, excluding convictions under the Road Traffic Act, and any conviction in respect of which an absolute or conditional discharge has been granted. If a conviction has been expunged from the records pursuant to the Criminal Records (Rehabilitation of Offenders) Act, the appropriate response would be "NO".

10. REFUSAL, SUSPENSION, CANCELLATION, OR DISCIPLINARY MEASURE

A. Have you ever been refused registration or has your registration been suspended or cancelled under any law regulating trading in securities, commodities or commodity futures contract in Jamaica or any other country?

YES () NO ()

If YES, state in which country, under what law and when?
.....
.....
.....
.....

B. Are you now or have you ever been an officer or director of a company or a partner in a partnership—

(i) which has been refused registration during the time of your association with it;
or

(ii) whose registration has been suspended or cancelled under any law regulating

THE SECURITIES (LICENSING AND REGISTRATION) REGULATIONS, 1996

trading in securities, commodities or commodity futures contracts in Jamaica or any other country?

YES () NO ()

If YES, give details

11. OFFENCES

A. Have you ever pleaded or been found guilty under any law of Jamaica or any other country of any offence involving dishonesty or relating to trading in securities, commodities, commodity futures contracts or options or the theft thereof or been a party in any proceedings taken on account of fraud arising out of any trade in or advice in respect thereof?

YES () NO ()

IF YES, give details.....

B. Have you ever been convicted of any criminal offence not mentioned in paragraph A?

YES () NO ()

IF YES, give details.....

C. Are you currently the subject of a charge or indictment under any law of Jamaica or any other country for contravention of any other law or for any conduct of the type described in paragraphs A and B?

D. Has a company of which you are or were at the time of the event an officer, director or holder of voting securities carrying more than 5% of the votes carried by all outstanding voting securities, or any partnership of which you are or were at the time of the offence a partner, ever pleaded guilty or been found guilty under any law in Jamaica or any other country of offences or conduct of the type described in paragraphs A and D?

YES () NO ()

E. Is any such company or partnership mentioned in paragraph D currently the subject of a charge or indictment?

YES () NO ()

12. CIVIL PROCEEDINGS

A. Has any claim been successfully made in any civil matter before a court or other tribunal in Jamaica or any other country which was based in whole or part on fraud, theft, deceit or misrepresentation or similar conduct against—

(i) you

YES () NO ()

(ii) any company of which you are or were at the time of the event or at the time

that such proceedings were commenced an officer, a director or holder of voting securities carrying more than 5% of the votes carried by all outstanding voting securities?

YES () NO ()

.....

(iii) any partnership of which you were a partner at the time of the event or at the time such proceedings were commenced?

YES () NO ()

.....

B. To the best of your knowledge is any such claim pending against you or such company or partnership?

YES () NO ()

.....

13. BANKRUPTCY

A. Have you or any company of which you are or were at the time of the event an authorized officer, a director or holder of voting securities carrying more than a 5% of the votes carried by all outstanding voting securities; or

B. Have you or any partnership of which you are a partner under the laws of Jamaica or any other country, ever—

(i) been declared bankrupt or made a voluntary assignment in bankruptcy?

YES () NO ()

.....

(ii) made a proposal relating to bankruptcy or insolvency?

YES () NO ()

.....

(iii) been subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver or manager, or both, appointed to hold your assets or the assets of the company or partnership?

YES () NO ()

.....

14. JUDGMENT OF ATTACHMENT

A. Has any judgment or attachment ever been rendered against you in any civil court in Jamaica in respect of damages or other relief for fraud or for any other reason?

YES () NO ()

.....

B. Is any judgment or attachment outstanding against you in any civil court in Jamaica or any other country for damages or other relief in respect of fraud or for any reason whatsoever?

YES () NO ()

.....

15. SURETY BOND OR FIDELITY BOND

A. Have you ever applied for a surety bond or fidelity bond and been refused?

YES () NO ()

If YES, give particulars

.....

B. Are you presently bonded?

YES () NO ()

If YES, with whom and for how much?

.....

16. BUSINESS ACTIVITIES

A. Will you be actively engaged in the business of the Dealer and devote the major portion of your time thereto?

YES () NO ()

If NO, give details.

.....

B. Are you engaged in any other business or have any other employment for gain except your occupation with the Dealer?

YES () NO ()

If YES, set out full details on an attachment including the name and address of the business, the nature of the business, your title or position and the amount of time you devote to the business.

C. Are you an officer, director, shareholder, partner or other contributor of capital or employee of a company having as its principal business that of a dealer or adviser in securities, commodities, commodity futures contracts or options other than the firm with which you are now working?

YES () NO ()

If YES, give details.

.....

17. CERTIFICATE AND AGREEMENT OF APPLICANT

Iwho make application for registration hereby make oath and say—

(a) that I have read and understood the questions in this application as well as the answers made by me thereto and that the statements of fact made therein and the attachments thereto are to the best of my knowledge, information and belief true and correct; and

(b) that I undertake to notify the Commission in writing of any material change in the information provided in this application; and

(c) that I acknowledge and consent to the Commission obtaining information from any source as permitted by law in Jamaica or any other jurisdiction for the purpose of verifying information furnished in this application.

SWORN before me at)
In the parish of)
This.....day of20) Signature of applicant
.....)
.....)
.....)
Justice of the Peace or Notary Public

FOR OFFICIAL USE ONLY

- (1) Registration Period
- (2) Date Application received
- (3) Number of Attachments
- (4) Identification Verification
- (5) Application Fee paid \$
- (6) Submitted to Commission on
- (7) Date Approved/Rejected
- (8) Terms and Conditions of Registration
 - (i)
 - (ii)
 - (iii)
 - (iv)
- (9) Registration Fee \$
Date Paid
- (10) Certifying Officer
Chairman/Executive Director
- (11) Suspensions or Cancellations
Action Taken
Effective Date
Reasons
.....
.....

THE SECURITIES (LICENSING AND REGISTRATION) REGULATIONS, 1996

FIRST SCHEDULE, contd.

FORM H

THE SECURITIES ACT

The Securities (Licensing and Registration) Regulations, 1996

Application for Licence to Establish and Operate a Central Securities Depository

Notes for Completing Application

- 1. This Form is to be used by every Applicant for licensing of a Central Securities Depository under the Securities Act.
2. All applicable questions must be answered. Failure to do so may cause delays in the processing of the Application.
3. If the space provided for answers is insufficient, then furnish required information on an attachment.
4. All documents pertaining to any question must be attached to the form and be clearly marked with the number of the relevant question.

- 1. Name of Company
2. Address of Company
3. Business telephone number
4. Fax number
5. E-mail address
6. Address of principal place of business, if different from No. 2
7. Share Capital \$
8. Date and place of launch of central security depository
9. Name of directors
10. Names of principal officers of central securities depository

THE SECURITIES (LICENSING AND REGISTRATION) REGULATIONS, 1996

- 18. Name of auditor (Financial)
19. Business address of auditor (Financial)
20. Name of system auditor
21. Business address of system auditor

Signature of authorized officer

Affix company seal here

Date

FORM I THE SECURITIES ACT

The Securities (Licensing and Registration) Regulations, 1996

Licence to Establish and Operate Central Securities Depository

No. of Licence.....

This Licence authorizes.....of..... in the parish of..... to establish and operate a central securities depository in accordance with the Securities Act and regulations made thereunder.

This licence is issued subject to the terms and conditions, if any, annexed hereto.

This licence is not transferable.

Dated this.....day of....., 20.....

Chairman, Financial Services Commission

SECOND SCHEDULE

(Regulations 3, 4, 6(2),
8(2) and 9)

Fees

1. The fees in respect of a dealer's licence shall be—

(a) in the case of an individual—

On application (non-refundable)	...	\$ 50,000
On the grant of a licence and, thereafter, annually, on or before the anniversary of the grant of the licence	... ..	\$120,000

(b) in the case of a company—

On application (non-refundable)	...	\$ 5,000
On the grant of a license and, thereafter, annually, on or before the anniversary of the grant of the licence	... ..	the greater of—
		(i) \$500,000; or
		(ii) the aggregate of—
		(A) 5 basis points on the first \$5 billion of total assets;
		(B) 1.5 basis points on the next \$25 billion of total assets; and
		(C) 0.75 basis points on assets over \$30 billion.

Note: For the purposes of Item 1 (b)(ii);

"assets" means

- (a) the aggregate total of a dealer's balance sheet assets as at the 31st December of the year immediately prior to the anniversary of the grant of its licence, taken without the netting off of its liabilities plus the aggregate value, at that date, of securities or other investment instruments held or managed on behalf of clients, whether on a discretionary or a non-discretionary basis; or
- (b) in the case of a unit trust and overseas mutual funds, the net value of securities sold by or through the dealer during the year ending on the 31st December immediately prior to the anniversary of the grant of its licence.

2. The fees payable in respect of an investment adviser's licence shall be—

(a) in the case of an individual—

On application (non-refundable)	...	\$ 5,000
On the grant of a licence and, thereafter, annually, on or before the anniversary of the grant of the licence	... ..	\$ 90,000

THE SECURITIES (LICENSING AND REGISTRATION)
REGULATIONS, 1996

SECOND SCHEDULE, *contd.*

Fees, contd.

(b) in the case of a company—		
On application (non-refundable)	...	\$ 5,000
On the grant of a licence and, thereafter, annually, on or before the anniversary of the grant of the licence	...	\$ 90,000 and \$ 4,000 in respect of each branch
3. The fees payable in respect of registration as a dealer's representative shall be—		
On application (non-refundable)	...	\$ 5,000
On the grant of registration and, thereafter, annually, on or before the anniversary of the grant of the registration	...	\$ 16,000
4. The fees payable in respect of the registration as an investment adviser's representative shall be—		
On application (non-refundable)	...	\$ 5,000
On the grant of registration and, thereafter, annually, on or before the anniversary of the grant of the registration	...	\$ 8,000
5. The fee payable by a recognized stock exchange shall be an annual fee calculated in accordance with the formula indicated hereunder and shall be paid on a monthly basis, such payment to be made no later than the last day of the month following the month for which the fee is due		0.08% of the total value of all trading activities on the stock market for each day of the financial year of the Exchange
6. The fees payable in respect of a Responsible Officer shall be—		
(a) On application (non-refundable)	...	\$ 5,000
(b) On the grant of registration and, thereafter, annually, on or before the anniversary of the grant of the registration	...	\$50,000
7. The fees payable by a central securities depository shall be—		
(a) On application (non-refundable)	...	\$20,000
(b) On the grant of a licence	...	\$20,000
(c) An annual fee calculated in accordance with the formula indicated hereunder and shall be paid on a monthly basis, such payment to be made no later than the last day of the month following the month for which the fee is due	...	5% of the transaction revenue

THE SECURITIES ACT

REGULATIONS

(under section 76)

THE SECURITIES (DISCLOSURE OF INTEREST) REGULATIONS, 1999

*(Made by the Securities Commission and approved by the Minister on
the 29th day of April, 1999)*

L. N. 60n/99

1. These Regulations may be cited as the Securities (Disclosure of Interest) Regulations, 1999.

PART I. *Preliminary*

2. —(1) In these Regulations—

"certification of incumbency" means a certificate indicating the officers and signatures of those officers of a company authorized to sign on its behalf;

"commercial paper" means securities comprising or evidencing a debt obligation repayable within a year of the date of issue, whether or not secured or guaranteed, but does not include payment obligations arising out of the sale of goods or services;

“licensed dealer” means a person licensed under the Act as a dealer;

“licensed institution” means a bank licensed under the Banking Act, a company licensed under the Financial Institutions Act and a building society licensed under the Building Societies Act;

“material change” in relation to securities, means a change in the business operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer and includes a decision to implement such a change made by—

(a) the board of directors of the issuer; or

(b) the issuer, based on a belief that the decision is likely to be confirmed by the board of directors;

“material fact”, in relation to securities outstanding or proposed to be issued, means a fact that significantly affects or would reasonably be expected to have a significant effect on, the market value of such securities;

“registered representative” means a person registered under the Act as a dealer’s representative.

(2) For the purposes of these Regulations, the references to “generally accepted accounting principles”, “auditor’s report” and “generally auditing standards” means the principles and recommendations contained in the Statement of Standard Accounting Practice and accounting recommendations of the Institute of Chartered Accountants of Jamaica.

PART II. *General*

3.—(1) Subject to paragraph (2), where a material change occurs in the affairs of an issuer of traded securities, that issuer shall—

(a) forthwith issue and file a press release authorized by an officer disclosing the nature and substance of the change;

(b) file a report with the Commission of such material change as soon as practicable thereafter, but not later than ten days of the date on which the change occurs.

(2) Where—

(a) in the opinion of the issuer, the disclosure required by paragraph (1) would be unduly detrimental to the interests of the issuer; or

(b) the material change consists of a decision to implement a change made by an officer of the issuer who—

(i) believes that confirmation of the decision by the board is probable; and

(ii) has no reason to believe that persons with knowledge of the material change have made use of such knowledge in purchasing or selling securities of the issuer,

the reporting issuer may, notwithstanding the provisions of paragraph (1) (b), forthwith file with the Commission under confidential cover, the report required under that paragraph, together with written reasons for non-disclosure.

(3) Where a report has been filed with the Commission under paragraph (2), the issuer shall advise the Commission in writing where it believes the report should continue to remain confidential within ten days of the date of filing of the initial report and every ten days thereafter until the material change is generally disclosed in the manner referred to in paragraph (1) or, if the material change consists of a decision of the type referred to in paragraph (2), until that decision has been rejected by the board of directors of the issuer.

4.—(1) Subject to paragraph (5), every issuer of traded securities that is not a unit trust shall file—

- (a) within forty-five days of the date to which it is made up an interim financial statement—
 - (i) where the issuer has not completed its first financial year, for the periods commencing with the beginning of that year and ending nine, six and three months, respectively, before the date on which that year ends, but an interim financial statement is not required to be filed for any period that is less than three months;
 - (ii) where the issuer has completed its first financial year, in respect of each period of nine months, six months and three months, respectively, of the current financial year, including a comparative statement to the end of each of the corresponding periods in the preceding financial year;
- (b) within ninety days from the end of each financial year, comparative audited financial statements relating separately to—
 - (i) the period commencing on the date of incorporation or organization and ending at the close of the first financial year or, if the reporting issuer has completed a financial year, the last financial year, as the case may be; and
 - (ii) the period covered by the financial year next preceding that last financial year, if any.

(2) The financial statements required by this regulation shall be prepared in accordance with generally accepted accounting principles.

(3) Where an auditor reports on a financial statement required by this regulation, the report shall be prepared in accordance with generally accepted auditing standards.

(4) Except where otherwise expressly provided or with the consent of the Commission, each financial statement prepared pursuant to this regulation shall include an auditor's report on the statement.

(5) The exemption of unit trusts from the requirements of paragraphs (1) to (4) shall apply only to the extent that units are issued by such unit trusts.

5.—(1) Subject to paragraph (2), an issuer who files financial statements pursuant to regulation 3 shall send a copy thereof to each holder of its securities.

(2) Where, by virtue of any law in the jurisdiction in which an issuer is incorporated, the issuer is subject to a requirement similar to that referred to in paragraph (1), an issuer who complies with that requirement shall be deemed to be in compliance with this regulation.

PART III. *Commercial Paper*

6.—(1) Subject to this Part, a company shall not issue commercial paper except in accordance with these Regulations.

(2) These Regulations shall not apply to deposit instruments and guarantees issued by a licensed institution.

7. A company shall not guarantee commercial paper issued by another company except in accordance with these Regulations and on such terms as are agreed with that other company.

8. Commercial paper may be issued in such amounts, on such terms and conditions and in such form as the issuer thereof may determine, and the commercial paper so issued shall be—

- (a) in writing;
- (b) signed by one or more persons duly authorized by the issuer to sign such commercial paper on its behalf; and
- (c) shall contain the name of the issuer on the face thereof.

9. If commercial paper is sold or marketed on the basis that it is guaranteed by any third party, the commercial paper, or other instrument through which the investor acquires an interest therein shall—

- (a) state clearly on its face that it has been so guaranteed;
- (b) state the full name of the guarantor;
- (c) be signed by one or more authorized officers of the guarantor or the entity which has issued the other instrument;
- (d) state that the guarantee is available for inspection and the place where it may be inspected.

10. Commercial paper shall only be issued by an issuer that maintains a net asset base which is not less than the greater of five million dollars or 2% of its total outstanding liabilities, unless the commercial paper is guaranteed by a guarantor that maintains a net asset base which is not less than the greater of five million dollars or 2% of its total outstanding liabilities.

PART IV. *The Information Memorandum*

11.—(1) A company which is a licensed dealer shall not issue commercial paper unless it and its guarantor, if any, has delivered a memorandum (hereinafter referred to as an information memorandum) to—

- (a) the Commission; and
- (b) every person who is solicited for such investment or who otherwise subscribes for commercial paper issued by that issuer.

(2) Where a company engages or acts through one or more licensed dealers for the funding of commercial paper issued by that company, it shall not issue commercial paper unless it (and its guarantor, if any) has delivered an information memorandum to—

- (a) the Commissioner; and
- (b) each such licensed dealer.

12. For the purposes of these Regulations, the information memorandum shall—

- (a) be considered and approved by the company's board prior to the issue of the commercial paper;
- (b) be dated and signed by at least two directors of the company pursuant to a resolution of the board;
- (c) include an extract of such resolution, duly certified by the secretary of the company;
- (d) state which officers are authorized by resolution of the company's board to sign, on behalf of the issuer or guarantor, as the case may be, any Schedule attached to the memorandum from time to time, so, however, that any such Schedule shall be signed by at least two such officers.

13.—(1) An information memorandum shall—

- (a) in the case of a company which has issued or intends to issue commercial paper—
 - (i) contain an opinion by an attorney-at-law that the company has the legal capacity to borrow; and
 - (ii) specify the limits (if any) on such borrowing;
- (b) in the case of a company which has guaranteed or intends to guarantee commercial paper—
 - (i) contain an opinion by an attorney-at-law that the company has the legal capacity to guarantee the relevant commercial paper; and
 - (ii) specifying the limits (if any) on such guarantee.

(2) The opinion referred to in paragraph (1) shall not be applicable if it was obtained on a date earlier than six months before the date of delivery of the information memorandum.

14.—(1) An information memorandum may be in two parts as follows—

- (a) one part shall contain the information specified in paragraph (2) (a); and
- (b) the other part shall contain—
 - (i) current financial information in relation to the company;
 - (ii) particulars of any material changes to the information referred to in subparagraph (a);

- (iii) particulars of the borrowing to which the memorandum relates, and shall be accompanied by documents relating to that borrowing.
- (2) An information memorandum shall—
- (a) contain the following information in relation to the company issuing it—
 - (i) place of incorporation and the Act under which the issuer or guarantor is incorporated;
 - (ii) the address of the registered office of the issuer or guarantor and the address where copies of the following documents may be inspected—
 - (A) the Memorandum and Articles of Association of the issuer or equivalent documents;
 - (B) the trust deed or the document constituting debt securities of the issuer;
 - (C) any contract directly relating to the issue of debt securities;
 - (D) any existing or proposed service contract between a director of the issuer and the issuer or any other member of the group;
 - (iii) names of the issuer's or guarantor's bankers and auditors including the names of the auditors for the preceding two years, and a statement as to whether any of those auditors had refused to sign the report, or had qualified such report and if so, the relevant details;
 - (iv) a description of the principal activities of the issuer, including the main categories of products sold or services performed, and, where material in terms of profits or losses, such figures and explanations as are necessary to determine the relative importance of each activity;
 - (v) the principal activities of the guarantor;
 - (vi) if the issuer or the guarantor is—
 - (A) a member of a group, a brief description of the group and the position of the issuer or guarantor therein; or
 - (B) a subsidiary, the name of its holding company;

- (vii) if the debt security is guaranteed, an address where information about the guarantor company may be inspected;
 - (viii) details of any legal or arbitration proceedings pending or threatened against—
 - (A) the issuer; or
 - (B) any other member of a group of which the issuer is a member,
 - which are likely to have, or, during the twelve months preceding the date of issue, might have had, a significant effect on the financial position of the issuer or the group, as the case may be; or where there are no such proceedings, a statement to that effect;
 - (ix) particulars of any patent, licence, new manufacturing process or industrial, commercial or financial contract on which the business or profitability of the issuer or its group depends to a material extent;
- (b) be accompanied by a photocopy of a certified extract from the issuer's Memorandum or Articles of Association governing the issuer's borrowing powers.

15.—(1) The Schedule attached to the information memorandum shall contain the following information—

- (a) the amount of funds being sought by the proposed issuer;
- (b) the purpose of the issue, and whether or not it is intended to use the funds raised to make loans or other investments to or in any other company;
- (c) the proposed form of the commercial paper;
- (d) the proposed minimum denominations, if any, of each instrument, and, where applicable, the available multiples;
- (e) the anticipated maturities of the instruments;
- (f) when and how the investor will receive the instruments and payments thereunder;
- (g) the most recent audited financial statements of the issuer, prepared not more than eighteen months before the date of delivery of the information memorandum and in accordance with generally accepted accounting principles;
- (h) an interim balance sheet and profit and loss statement for the period since the last audited accounts up to a date not more than three

months prior to the date of delivery of the Schedule, stating whether or not they have been audited (if more than six months have passed since the end of the financial year to which the last audited statements relate);

- (i) a statement of the outstanding financial liabilities (with loans from licensed institutions, commercial paper obligations, guarantees and other financial liabilities quantified separately) as at a date not more than thirty days prior to the date of delivery of the Schedule;
- (j) a statement, signed by any two officers of the company approved by the board for that purpose, that, to their best knowledge and belief, the statements filed accurately state the financial status and liabilities of the issuer or guarantor, as the case may be;
- (k) where the issuer or guarantor, having made all reasonable enquiries, is aware of any circumstances which could reasonably be regarded as significantly and adversely affecting its ability to meet its obligations as they fall due, a statement as to such circumstances signed by any two officers of the company approved by the board for that purpose;
- (l) where, having made such enquiries, the issuer or guarantor has not become aware of any circumstances likely to have the foregoing effects, a statement to that effect;
- (m) a photocopy of a certified resolution authorizing the proposed borrowing or the guarantee, as the case may be.
- (n) a list of persons authorized to sign the commercial paper or guarantee on behalf of the issuer or guarantor, as the case may be.

(2) The Schedule to the information memorandum shall contain the following information—

- (a) the amount of—
 - (i) the authorized and issued share capital of the issuer;
 - (ii) any share capital agreed to be issued and the number and classes of the shares of which it was composed, giving details of their principal characteristics;
- (b) if any part of the issued share capital is still to be paid up, an indication of the number of total nominal value, and type of the securities not then fully paid up, broken down, where applicable, according to the extent to which they had been paid up;
- (c) the profits and losses and liabilities and financial record and position of the issuer and, if it is a member of a group, set out as a comparative table for each of the latest five financial years of the issuer for which such information was available, together with copies of individual

and (if applicable) group accounts for each of the latest two such financial years, including, in the case of a company incorporated in Jamaica, all notes, reports or other information required by the Companies Act;

- (d) details as at the most recent practicable date (which shall be stated) prior to the relevant date of the following (which, if the issuer is a member of a group, shall also be provided on a consolidated basis)—
- (i) the total amount of any loan capital outstanding in any member of the group, and loan capital created but unissued and term loans, distinguishing between loans guaranteed and unguaranteed, and those secured (whether the security is provided by the issuer or by third parties) and unsecured;
 - (ii) the total amount of all other borrowings and indebtedness in the nature of borrowing of the issuer or the group (as the case may be), distinguishing between guaranteed and unguaranteed and secured and unsecured borrowings and debts, including bank overdrafts and liabilities under acceptances (other than normal trade bills) or acceptance credits or hire purchase commitments;
 - (iii) all mortgages and charges of the issuer or the group (as the case may be); and
 - (iv) the total amount of any contingent liabilities and guarantees of the issuer or the group (as the case may be);
- (e) if the issuer or the group (as the case may be) has no such loan capital, borrowings, indebtedness or contingent liabilities, a statement to that effect;
- (f) where necessary, a statement to the effect that no account has been taken of liabilities between undertakings within the same group.

(3) Every licensed dealer—

- (a) in the commercial paper authorized by a resolution referred to in paragraph (1) (m), shall keep the signed original of each such resolution;
- (b) in the issuer's commercial paper, shall keep the signed original of the certificate of incumbency in relation to the signatures of the persons referred to in regulation 8 (b),

and the Schedule shall contain a statement that those documents are available for inspection by potential investors at the offices of the licensed dealer.

16. The information memorandum shall be made available—

- (a) by the Commission to the public, for inspection and for making copies thereof at their own cost;

- (b) to investors by the issuer or any dealer in the issuer's commercial paper, at their respective places of business and shall be displayed in a conspicuous place at those places of business.

17. The issuer or guarantor or both, whose shares are listed on a stock exchange shall disclose in its information memorandum whether those shares have been subject to cancellation or suspension by the stock exchange or the Commission and shall state the reasons for such cancellation or suspension.

PART V. *Filing of Statements*

18.—(1) Issuers and guarantors which have outstanding commercial paper obligations shall file with the Commission—

- (a) within ninety days after the end of the corporation's financial year, annual audited financial statements prepared in accordance with generally accepted accounting principles;
- (b) within forty-five days after the end of each financial quarter, quarterly balance sheets and profit and loss accounts containing a certificate, signed by any two officers of the company approved by the board for that purpose, that to their best knowledge and belief the statements filed accurately reflect the financial status of the issuer or guarantor, as the case may require;
- (c) within thirty days after the end of each month, monthly statements of their outstanding financial liabilities (with loans from licensed institutions, commercial paper obligations, guarantees and other financial liabilities quantified separately) and such statements shall contain certificates, signed by any two officers of the company approved by the board for that purpose, stating—
 - (i) that to their best knowledge and belief the statements filed accurately state the financial liabilities of the issuer or guarantor;
 - (ii) the purposes of any incremental borrowings made or guarantees issued since the last monthly filing; and
 - (iii) whether or not any guarantor of any of the issuer's commercial paper has been called upon under the guarantee to redeem all or any part of the guaranteed debt, and (if so) whether or not the guarantor has ever paid any funds in that connection and whether the issuer has repaid the guarantor for those funds.

(2) The statements referred to in paragraph (1) shall be made available by the Commission to members of the public for inspection and for making copies thereof at their own cost.

PART VI. *Exempt Transaction*

19. These Regulations shall not apply to the following securities—

- (a) securities issued between individuals who are acting as principals and not as agents or trustees for any other person or company, pro-

vided that the securities are not sold or otherwise disposed of to any other person or company;

- (b) securities issued to licensed institutions in respect of loans which appear in full on their balance sheets as their assets.

PART VII. *Miscellaneous*

20. Only persons who are licensed dealers in securities or their registered representatives under the Securities Act may be engaged to assist in or may otherwise facilitate the funding of commercial paper issued or to be issued by any other person.

21. Where a licensed dealer receives funds from an investor in respect of an investment in commercial paper, the dealer shall—

- (a) forthwith issue a receipt stating—
- (i) the details of the investment including the amount invested, rate of return, maturity date, type of instrument which will be delivered to the investor and the issuer's or guarantor's name or both; and
 - (ii) that the information memorandum has been made available to the investor; and
- (b) shall deliver the receipt and relevant instrument to the investor as soon as practicable thereafter.

22.—(1) Where an investor has acquired an interest in commercial paper through a licensed dealer and the investor does not receive the actual commercial paper in question, the licensed dealer shall—

- (a) keep a register of the interest in that commercial paper and shall enter in the register, in relation to each such investor—
- (i) a description of the commercial paper and the date on which the investor acquired an interest therein;
 - (ii) the principal amount of that interest;
 - (iii) the rate of return to which the investor is entitled in respect of such investment;
- (b) ensure that the commercial paper has no express restriction on the rights of the holder to negotiate, assign or otherwise dispose of that commercial paper and the rights created thereby;
- (c) issue to the investor, an instrument stating the name of the issuer of the commercial paper.

(2) The holder of commercial paper referred to in paragraph (1) shall not dispose of his rights thereunder, unless he creates a trust in favour of the investor referred to in that paragraph, in respect of those rights or a proportionate part thereof.

23. There shall be paid to the Commission—

- (a) on the filing of a financial statement under regulation 4; and
- (b) on the delivery of an information memorandum under regulation 11,

a fee in an amount calculated at a rate of \$8.00 for every \$100,000 in value of commercial paper issued over a period of thirty days.

24. An issuer who contravenes any provision of these Regulations commits an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

25. Failure to comply with these Regulations shall not affect or prejudice the validity or enforceability of any obligations arising from the issue or guarantee of commercial paper.

THE SECURITIES ACT

REGULATIONS
(under section 76)

THE SECURITIES (CONDUCT OF BUSINESS) REGULATIONS, 1999
(Made by the Securities Commission and approved by the Minister
on the 29th day of April, 1999)

L.N. 60E/99
Amdt.:
L.N. 113B/2002
105/2003

1. These Regulations may be cited as the Securities (Conduct of Business) Regulations, 1999.

2.—(1) In these Regulations—

“A Buy-In” is the cost of the purchase which is transferred to a dealer failing to deliver, by the dealer failing to receive;

“capital” means money raised through the issuance of share certificates, bonds, debentures or any other long-term obligation, contributed or earned surplus and reserves;

“fails” means trades which are not settled on the contractual settlement date within the settlement period;

“licensee” means a dealer or investment adviser to whom a licence is granted under the Act;

“margin”, “margin agreement”, “margin deficiency”, “margin rate” and “margin requirements” mean, subject to paragraph (6), the provisions in that regard determined pursuant to the Rules of the Jamaica Stock Exchange or Regulations issued by the Commission;

“market value” in respect of—

(a) a commodity futures contract, means the settlement price on the relevant date or last trading day prior to the relevant date; and

(b) securities, means—

(i) where the security is listed and posted for trading on a stock exchange, the bid price, or if the security is sold short, the ask price as shown on the exchange quotation sheets as at the close of business on the relevant date or last trading date prior to the relevant date, as the case may be, subject to an appropriate adjustment where an unusually large or unusually small quantity of securities is being valued; or

(ii) where the security is not listed and posted for trading on a stock exchange, a value determined in accordance with paragraph (2);

“stock records” means a record of securities movements kept in the

Second Schedule.

form specified in the Second Schedule.

(2) Subject to paragraphs (3), (4) and (5), the market value of securities not listed and not posted for trading on a stock exchange, shall be determined by assigning a reasonable value on the basis of values shown on published market reports or inter-dealer quotation sheets on the relevant date or last trading day prior to the relevant date.

(3) A licensee may vary a value from that shown on published market reports or inter-dealer quotation sheets where, in light of all the circumstances, some other value would be more appropriate.

(4) The Commission may require that a different value from that determined under paragraph (2) or (3) be assigned, where in light of all the circumstances, some other value would be more appropriate.

(5) Where no published market report or inter-dealer quotation sheet exists with respect to the securities, they shall be assigned a market value of zero, unless the Commission decides otherwise.

(6) For the purpose of the definition of “margin”, “margin agreement”, “margin deficiency”, “margin rate” and “margin requirements”, where there is a conflict between the Rules of the Commission and those of the Jamaica Stock Exchange, the Rules of the Commission shall prevail.

PART I. *General*

3. Each licensee and representative shall comply with the applicable requirements of these Regulations.

4. Every notice to the Commission required to be provided, filed or given shall be delivered to the Commission in writing.

5. On the directive of the Commission, a licensee may enter into an agreement with regard to the treatment of capital in the form prescribed by the Commission.

6.—(1) On the direction of the Commission, every dealer, other than a dealer referred to in paragraph (3), shall participate in a Compensation Fund or Contingency Trust Fund approved by the Commission.

(2) The Commission may vary the amount required to be contributed to the Compensation Fund or Contingency Trust Fund by any dealer, where it would be in the public's interest to do so.

(3) This regulation shall not apply to dealers who are licensed only in the capacity of a qualifying director in respect of a company applying for a licence under section 9 of the Act and who conduct no business on their own behalf.

PART II. *Changes in circumstances of Licensees*

7.—(1) Subject to paragraph (5), a licensee or officer of a licensee who proposes to acquire directly or indirectly, beneficial ownership of the securities of any other licensee, shall, at least thirty days before the proposed date of the

acquisition, give written notice to the Commission providing all relevant facts to enable the Commission to determine if the acquisition—

- (a) will result in a conflict of interest;
- (b) will prevent a licensee from complying with the conditions of his licence;
- (c) is inconsistent with an adequate level of investor protection; or
- (d) is otherwise prejudicial to the public interest.

(2) The acquisition shall not take effect if, within thirty days of receipt of a notice under paragraph (1), the Commission gives notice in writing to the licensee concerned (hereinafter referred to as a notice of objection) that it objects to the proposed acquisition.

(3) Where the Commission issues a notice of objection under paragraph (2), it shall afford the licensees concerned an opportunity to be heard.

(4) After hearing the licensees the Commission may, if satisfied that the acquisition can be approved, cancel the notice of objection and notify the licensees of such cancellation and of its approval of the acquisition.

(5) Paragraph (1) does not apply to a licensee who, alone or in combination with any other person, proposes to acquire securities which together with the securities already beneficially owned by that licensee or over which that licensee exercises control or direction, do not exceed 5% of any class or series of securities of any licensee that is a listed company on a stock exchange in Jamaica.

PART III. Dealer/Client Relationship

8.—(1) Every licensed dealer shall designate an officer or, in the case of a branch office, a manager reporting directly to the designated officer, who shall be responsible for approving the opening of new client accounts and the supervision of trades made for the clients.

(2) Every licensed dealer shall—

- (a) make enquiries to establish the identity, reputation and where applicable, the creditworthiness of each client;
- (b) ensure that all portfolios under management have a Request For Proposal completed and signed by each client;
- (c) ensure that the Request For Proposal clearly states the kind of authority given to the portfolio manager by the client, such as—
 - (i) full discretion (client grants full authority without consultation);
 - (ii) partial discretion (client must be contacted before execution of any trade/transaction);
 - (iii) custody (no discretion to trade. Assets are for safe-keeping and reporting only); and

(d) ensure that the Request For Proposal explicitly states the risk appetite of the client, such as—

- (i) aggressive (high risk);
- (ii) medium (medium risk);
- (iii) conservative (low risk),

and that each strategy employed by the portfolio manager fits one of the above categories.

(3) Paragraph (2) (b) does not apply to a licensed dealer who executes a trade on the instructions of another licensed dealer.

(4) Where an account is opened and traded on behalf of a client or clients by a dealer who executes orders with another dealer in its own name or identifies its client or clients by means of a code or symbols, that other dealer shall satisfy itself as to the creditworthiness of the first mentioned dealer but shall not otherwise have any responsibility for the suitability of any trade for the client or clients of that dealer.

(5) Where dealer A executes orders in the name of its client with dealer B with no agreement that payment of the account is guaranteed by the investor, dealer A shall—

- (a) obtain full information concerning the client with a view to determining the client's creditworthiness; or
- (b) obtain a letter of undertaking from a registered dealer's or investment adviser's representative of dealer B—
 - (i) stating that the representative is familiar with applicable rules of account supervision;
 - (ii) containing a covenant to make the investigation required by this regulation and to advise, where known, if the client is an insider or an employee, director or officer of a company or a partner in a firm engaged in the securities business,

but dealer A shall not have responsibility for determining the suitability of any trade for the client.

9.—(1) Every licensee shall maintain standards which are not inconsistent with the provisions of the Act or any regulations made thereunder, in relation to—

- (a) ensuring fairness in the allocation of investment opportunities among its client; and
- (b) ensuring that no trade is conducted on the dealer's own behalf or on behalf of selected clients when the dealer is in possession of material information that has not yet been made public.

(2) Licensees and their representatives shall where applicable adopt the standards of professional conduct contained in the First Schedule.

(3) A copy of the standards adopted shall be furnished to each client and filed with the Commission.

(4) Every licensee shall ensure that—

- (a) the account of each client is supervised separately from the accounts of other clients; and
- (b) except in the case of mutual funds, unit trust or pension funds, or as expressly permitted by the Commission, an order placed on behalf of one account is not pooled with that of another account.

(5) Where—

- (a) there has been a material change in the ownership or control of a licensee; or
- (b) it is proposed that a licensee sell or assign the account of a client in whole or in part to another licensee,

the licensee shall, prior to such sale or assignment and immediately after such material change, give a written explanation to the client of the proposal or change and shall inform the client of the client's right to withdraw the client's account.

(6) In paragraph (5), "material change" means the acquisition of 10% of the voting shares of a licensee or a 10% increase in the holdings of a licensee.

10.—(1) Where there is a debit or credit balance or securities held by a dealer on behalf of a client, the dealer shall send a statement of account to each such client at the end of each month in which the client has effected a transaction.

(2) Where a client has not effected a transaction but there are either funds or securities held by the dealer on a continuing basis, the dealer shall, not less than once every three months, forward a statement of account to the client showing any debit or credit balance and the details of any securities held.

(3) The statement required by paragraph (1) or (2) shall contain a list of the securities held for the client and indicate clearly which securities are held for safekeeping or in segregation.

(4) Except where the client has expressly directed otherwise, every dealer shall send to each client, not less than once every three months, a statement of the portfolio of such client under the dealer's management.

11.—(1) Securities that are held by a dealer for a client pursuant to a written safekeeping agreement and that are unencumbered shall be kept apart from all other securities and be identified as being so held in the dealer's security position record, client's ledger and statement of account.

(2) Securities referred to in paragraph (1) may be released to a third party only on the client's instruction.

(3) Securities which are unencumbered and are either fully paid for or are excess margin securities held by a dealer for a client, other than pursuant to a written safekeeping agreement shall be—

- (a) segregated and identified as being held in trust for the client; and

- (b) described as being held in segregation on the dealer's security position record, client's ledger and statement of account.
- (4) Securities described in paragraph (1) may be segregated in bulk.
- (5) A dealer, or investment adviser shall not lend a client's securities unless—
 - (a) the client has given written permission for such lending;
 - (b) instructions for the lending of securities form part of a written safekeeping agreement; or
 - (c) the securities are lent from the segregated or proprietary positions of the dealer or investment adviser,

and any fees gained from the lending of securities shall be shared with the client from whose portfolio the securities are lent.

(6) Fails shall not be outstanding for more than thirty days.

(7) If the fails cannot be settled between the brokers within thirty days, the broker failing to receive may "Buy-In" the broker failing to deliver.

(8) Short sales may only be transacted by licensees having the creditworthiness and liquid assets to cover such trades in the event that the market moves in an unfavourable direction.

12.—(1) Every licensee shall maintain books and records necessary to record properly its business transactions and financial affairs.

(2) All records may be kept by means of mechanical, electronic or other devices and the licensee shall—

- (a) take adequate precautions, appropriate to the means used, to guard against the risk of falsification of records and breach of confidence regarding the information recorded; and
- (b) provide a means for making the information available in an accurate and intelligible form within a reasonable time to any person lawfully entitled to examine the records.

(3) Without restricting the generality of paragraph (1), a licensee shall maintain each of the following books and records—

- (a) stock records of original entry, containing an itemized daily record of all purchases and sales of securities;
- (b) records of—
 - (i) all receipts and disbursements of cash;
 - (ii) all debits and credits;
 - (iii) the account for which each transaction was effected;
 - (iv) the name or title or both, of the securities;
 - (v) the class or designation of the securities;

- (vi) the number or value or both, of the securities;
 - (vii) the unit and aggregate purchase or sale price, if any;
 - (viii) the trade date and the name or other designation of the person from whom the securities were purchased or received or to whom they were sold or delivered;
- (c) a securities record or ledger showing separately for each security as of the trade date or settlement date—
- (i) all long and short positions, including securities in safekeeping, carried for the licensee's account or for the account of clients;
 - (ii) the location of all securities long and the position offsetting securities sold short; and
 - (iii) the name or designation of the account in which each position is carried;
- (d) ledgers or other records maintained in detail reflecting all the assets and liabilities, income and expense and capital accounts;
- (e) ledger accounts or other records itemizing separately for each cash and margin account of every client, all purchases, sales, receipts, and deliveries of securities for the account and all other debits and credits to the account;
- (f) ledgers or other records reflecting—
- (i) securities in transfer;
 - (ii) dividends and interest received;
 - (iii) securities borrowed and securities loaned;
 - (iv) money borrowed and money loaned, together with a record of the collateral therefor and any substitutions in the collateral; and
 - (v) securities which the licensee has failed to receive and failed to deliver;
- (g) a record of each order and of any other instruction, or a copy thereof given or received from the purchase or sale of securities, whether executed or unexecuted, showing—
- (i) the terms and conditions of the order or instruction and of any modification or cancellation of the order or instruction;
 - (ii) the account to which the order or instruction is placed by an individual other than the individual in whose name the account is operated or an individual duly authorized to place orders or instructions on behalf of a customer that is a company;

- (iii) where the order or instruction is placed by an individual failing within the exceptions specified in sub-paragraph (ii), the name, sales number or designation of the individual placing the order or instruction;
 - (iv) the date and time of the entry of the order or instruction, and, where the order is entered pursuant to the exercise of discretionary power of a licensee or his representatives, a statement to that effect;
 - (v) the price at which the order or instruction was executed; and
 - (vi) to the extent feasible, the date and time of execution or cancellation;
- (h) copies of confirmation or other records of all prior purchases and sales of securities and copies of notices of all other debits and credits or securities, cash paid or received and other items for the accounts of clients;
- (i) subject to sub-paragraph (3) (c), a client record in respect of each cash and margin account containing—
- (i) the name and address of the beneficial owner and the guarantor, if any, of the account;
 - (ii) where trading instructions are accepted from a person or company other than the client, written authorization or ratification from the client naming the person or company; and
 - (iii) in the case of a margin account, a properly executed margin agreement containing the signature of the owner and the guarantor, if any, and the additional information obtained,
- but in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for the account;
- (j) a record of all options in which the licensee has any direct or indirect interest or which the licensee has granted or guaranteed, containing at least an identification of the security and the underlying security and the number of underlying securities to which the option relates;
- (k) a record of the proof of money balances of all ledger accounts in the form of trial balances and a record of a reasonable calculation of minimum Free Assets in the case of companies licensed as dealers or investment advisers and net worth in the case of individuals so licensed, prepared for each month within thirty days after the end of the month;
- (l) such other books and records as the Commission may require.

(4) Records relating to unexecuted orders or instructions as prescribed in paragraph (3) (f) and confirmations prescribed in paragraph (3) (g), shall be maintained for a period of at least two years.

(5) Documents relating to executed orders or instructions as prescribed in paragraph (3) (f), shall be maintained for a period of at least seven years and shall be best in a readily accessible location for the first two years of that period.

(6) Every licensee shall maintain the location of its book and records in Jamaica.

PART IV. *Periodical Reporting and Accounts*

13.—(1) Every company licensed as a dealer or investment adviser shall file with the Commission annual reports in the form specified as Form “PR.A” in the Third Schedule within ninety days after the end of the dealer’s financial year.

Third
Schedule.

(2) Annual audited financial statements, prepared in accordance with the provisions of the Companies Act must be filed with the annual report.

(3) A Management’s Discussion and Analysis of Financial Condition and Results of Operations must be filed with the annual report, and shall include the following information—

- (a) the constitution of liquid funds;
- (b) the amount of funds under management;
- (c) a list of current liabilities owed to clients;
- (d) a statement as to the value of its investments being held in subsidiaries or associated companies.

14.—(1) Every company licensed as a dealer or investment adviser shall file with the Commission quarterly reports in the form specified as Form “PR.Q” in the Fourth Schedule.

Fourth
Schedule.

(2) The reports referred to in paragraph (1) shall be filed within forty-five days after the end of the dealer’s financial quarters, but no quarterly report need be filed for the fourth quarter of any financial year.

(3) The following shall be filed with the quarterly reports—

- (a) quarterly financial statements accompanied by a certificate signed by—
 - (i) the dealer if he is a sole practitioner; or
 - (ii) the qualifying director or two registered representatives if the dealer is a company or partnership,

stating that to their best knowledge and belief the statements filed accurately reflect the financial state of the dealer;

- (b) a Management’s Discussion and Analysis of Financial Condition and Results of Operations including the following information—
 - (i) the constitution of liquid funds;
 - (ii) the amount of funds under management;
 - (iii) a list of current liabilities owed to clients;
 - (iv) a statement as to the value of its investments

being held in subsidiaries or associated companies.

15. Every individual or partnership licensed as a dealer or investment adviser shall file with the Commission—

- (a) annual reports, annual audited financial statements, quarterly reports and quarterly financial statements as required for companies under regulation 14; or
- (b) a sworn statement indicating that the individual licensee has not transacted securities business; and
- (c) proof of continuing to meet net worth requirements.

15A. [*Deleted by L.N. 105/2003*]

16. Every licensee shall—

- (a) within thirty days after each anniversary of the grant of his licence file with the Commission—
 - (i) a valid tax compliance certificate;
 - (ii) a current listing of directors;
 - (iii) a current list of partners;
 - (iv) a current list of all holders of over ten per cent of any class of licensee's shares;
 - (v) a current list of all representatives;
 - (vi) a current list of branches;
- (b) ensure that—
 - (i) an annual credit report is submitted directly to the Commission by the licensee's bank;
 - (ii) an annual statement on pending or outstanding litigation against the licensee is submitted directly to the Commission by the licensee's attorney-at-law.

17. Licensees shall report to the Commission any change in the licensee's auditors within five business days of the change and shall indicate—

- (a) the reason for the change of auditors;
- (b) whether the auditor's report for either of the past two years included an adverse opinion or disclaimer of opinion; or
- (c) whether there were disagreements with the former auditor on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which if not resolved to the satisfaction of the former auditor, would have caused him to make reference to the subject matter of the disagreement in connection with the report.

PART V. *Display of Licences and Certificates of Registration*

18. Every licensee shall display to the public conspicuously at their respective places of business—

- (a) the licence issued to the dealer or investment adviser by the Commission; and

- (b) the certificates of registration issued to the registered representatives of the dealer or investment adviser.

PART VI. *Inspection, Audit and Investigations*

19. The authorized officers of the Commission shall be empowered to conduct such inspections, audit or investigations at the offices of all licensees as may be required to ensure compliance with the Act and these Regulations.

20. Every licensee shall ensure that full co-operation is rendered and all requested information supplied to the authorized officers of the Commission in carrying out inspections, audits or investigations.

21. A person who contravenes any provisions of these Regulations commits an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

FIRST SCHEDULE

(Regulation 9)

Standards of Professional Conduct

Licensees shall—

(1) Establish a Compliance Department to monitor compliance with the Securities Act and these Regulations. The Compliance Department must also monitor the personal investment activities of all officers and registered representatives of the licensee. In this regard, the Compliance Department should ensure that officers and registered representatives—

- (a) place their own portfolios in blind trusts;
- (b) report their investment holdings to their employers;
- (c) disclose personal investment decisions to clients; and
- (d) ensure that transactions for clients or employers have priority over transactions in securities or other investments of which the licensee or registered representative is the beneficial owner. If a licensee or registered representative decides to make a recommendation about the purchase or sale of a security or other investment he shall give his clients or employer adequate opportunity to act on this recommendation before acting on his own behalf.

(2) Establish a structure within their organization to restrict the flow of confidential information only to those who need to know in order to perform their duties effectively and this structure shall include—

- (a) a physical separation of the part of the firm that receives insider information from the rest of the firm, and particularly from the part of the firm that trades on its own inventory;
- (b) trading restrictions for officers and representatives of the firm regarding particular securities at particular times when the firm may be in possession of insider information; and
- (c) continuous monitoring and review of trading activities of officers and representatives.

THIRD SCHEDULE

(Regulation 13)

SECURITIES COMMISSION

FORM "PR.A"

GENERAL INSTRUCTIONS

A. Rules as to Use of Form "PR.A"

1. Form "PR.A" shall be used for annual reports under regulations 13 and 15 of the Securities (Conduct of Business) Regulations, 1999. An annual report on this form shall be filed within ninety days after the end of each financial year.

2. This is not a blank form to be filled in. It is a guide to be used in preparing the report.

3. These general instructions are not to be filed with the report. The instructions to the various captions are also to be omitted from the report as filed.

B. Incorporation by Reference

1. If the licensee makes available to stockholders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting some or all of the requirements of Part I of this form, the information called for may be incorporated by reference from such public document or statement, in answer or partial answer to any item or items of Part I of this form, provided copies thereof are filed as an exhibit to Part I of the report in this form.

2. Other information may be incorporated by reference in answer or partial answer to any item or items of Part II of this form.

A. Rules as to Use of Form "PR.A"

1. Form "PR.A" shall be used for annual reports under regulations 14 and 16 of the Securities (Conduct of Business) Regulations, 1999. An annual report on this form shall be filed within ninety days after the end of each financial year.

2. This is not a blank form to be filled in. It is a guide to be used in preparing the report.

3. These general instructions are not to be filed with the report. The instructions to the various captions are also to be omitted from the report as filed.

B. Incorporation by Reference

1. If the licensee makes available to stockholders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting some or all of the requirements of Part I of this form, the information called for may be incorporated by reference from such public document or statement, in answer or partial answer to any item or items of Part I of this form, provided copies thereof are filed as an exhibit to Part I of the report in this form.

2. Other information may be incorporated by reference in answer or partial answer to any item or items of Part II of this form.

C. Integrated Reports to Security Holders

Quarterly reports to security holders may be combined with the required information of Form "PR.Q" and will be suitable for filing with the Commission if the following conditions are satisfied—

1. The combined report contains full and complete answers to all items required by Part I of this form. When responses to a certain item of required disclosure are separated within the combined report, an appropriate cross-reference should be made.

THIRD SCHEDULE, *contd.*

2. If not included in the combined report, the cover page, appropriate responses to Part II, and the required signatures shall be included in the Form "PR.Q". Additionally, as appropriate, a cross-reference sheet should be filed indicating the location of information required by the items of the form.

D. Signature and Filing of Report

Three complete copies of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, and five additional copies which need not include exhibits shall be filed with the Commission. At least one complete copy of the report, including any financial statements, exhibit or other papers or documents filed as a part thereof, shall be filed with each recognized exchange on which any class of securities of the licensee is registered. At least one complete copy of the report filed with the Commission and one such copy filed with each exchange shall be manually signed on the licensee's behalf by the qualifying director or a duly authorized officer who must be a registered representative of the licensee, as well as by the principal financial or chief accounting officer of the licensee.

PART I. *Financial Information*

Item 1. Financial Statements.

Provide the information required by regulation 15 or 16.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Companies shall furnish the information required by regulation 15 (3) (b).

PART II. *Other Information*

Instruction: The report shall contain the item numbers and captions of all applicable items of Part II, but the text of such items may be omitted provided the responses clearly indicate the coverage of the item. Any item which is inapplicable may be omitted. Where information called for in Part II has already been addressed in Part I it need not be repeated in Part II. In these circumstances the information can be incorporated into Part II by direct reference to the place where it is addressed in Part I.

Item 1. Legal Proceedings.

Furnish information on proceedings which have been commenced, terminated or in which there have been material developments during the period covered by the report, including the relevant dates and a description of the disposition thereof.

Item 2. Changes in Securities.

- (a) If the constituent instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.
- (b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of securities, upon the rights of the holders of the registered securities.

Instruction: Working capital restrictions and other limitations upon the payment of dividends are to be reported hereunder.

Item 3. Defaults Upon Senior Securities.

THIRD SCHEDULE, *contd.*

If there has been any material default in the payment of principal, interest, a sinking or purchase fund instalment, or any other material default not cured within thirty days, with respect to any indebtedness of the licensee or any of its significant subsidiaries exceeding 5% of the total assets of the licensee and its consolidated subsidiaries, identify the indebtedness and state the nature of the default. In the case of such a default in the payment of principal, interest, or a sinking or purchase fund instalment state the amount of the default and the total arrearage on the date of filing this report.

SIGNATURES

Pursuant to the requirements of the Securities (Conduct of Business) Regulations, 1999, the licensee has caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

	.....	Licensee
.....	Date	(signature—print name and title here)
.....	Date	(signature—print name and title here)

FOURTH SCHEDULE

(Regulation 14)

SECURITIES COMMISSION

FORM "PR.Q"

GENERAL INSTRUCTIONS

A. Rules as to Use of Form "PR.Q"

1. Form "PR.Q" shall be used for quarterly reports under regulations 14 and 15 of the Securities (Conduct of Business) Regulations, 1999. A quarterly report on this form shall be filed within forty-five days after the end of each of the first three financial quarters of each financial year. No report need be filed for the fourth quarter of any financial year.

2. This is not a blank form to be filled in. It is a guide to be used in preparing the report.

3. These general instructions are not to be filed with the report. The instructions to the various captions are also to be omitted from the report as filed.

B. Incorporation by Reference

1. If the licensee makes available to stockholders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting some or all of the requirements of Part I of this form, the information called for may be incorporated by reference from such public document or statement, in answer or partial answer to any item or items of Part I of this form, provided copies thereof are filed as an exhibit to Part I of the report in this form.

FOURTH SCHEDULE, *contd.*

2. Other information may be incorporated by reference in answer or partial answer to any item or items of Part II of this form.

A. Rules as to Use of Form "PR.Q"

1. Form "PR.Q" shall be used for quarterly reports under regulations 15 and 16 of the Securities (Conduct of Business) Regulations, 1999. A quarterly report on this form shall be filed within forty-five days after the end of each of the first three financial quarters of each financial year. No report need be filed for the fourth quarter of any financial year.

2. This is not a blank form to be filled in. It is a guide to be used in preparing the report.

3. These general instructions are not to be filed with the report. The instructions to the various captions are also to be omitted from the report as filed.

B. Incorporation by Reference

1. If the licensee makes available to stockholders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting some or all of the requirements of Part I of this form, the information called for may be incorporated by reference from such public document or statement, in answer or partial answer to any item or items of Part I of this form, provided copies thereof are filed as an exhibit to Part I of the report in this form.

2. Other information may be incorporated by reference in answer or partial answer to any item or items of Part II of this form.

C. Integrated Reports to Security Holders

Annual reports to security holders may be combined with the required information of Form "P.R.A" and will be suitable for filing with the Commission if the following conditions are satisfied—

1. The combined report contains full and complete answers to all items required by Part I of this form. When responses to a certain item of required disclosure are separated within the combined report, an appropriate cross-reference should be made.

2. If not included in the combined report, the cover page, appropriate responses to Part II, and the required signatures shall be included in the Form "P.R.A". Additionally, as appropriate, a cross-reference sheet should be filed indicating the location of information required by the items of the form.

D. Signature and Filing of Report

Three complete copies of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, and five additional copies which need not include exhibits shall be filed with the Commission. At least one complete copy of the report, including any financial statements, exhibit or other papers or documents filed as a part thereof, shall be filed with each recognized exchange on which any class of securities of the licensee is registered. At least one complete copy of the report filed with the Commission and one such copy filed with each exchange shall be manually signed on the licensee's behalf by the qualifying director or a duly authorized officer who must be a registered representative of the licensee, as well as by the principal financial or chief accounting officer of the licensee.

PART I. Financial Information**Item 1. Audited Financial Statements or Indemnity Insurance.**

Provide the information required by regulation 14 or 16.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

FOURTH SCHEDULE. *contd.*

Furnish the information required by regulation 14 (3).

Item 3. Annual Tax Compliance Certificate.

PART II. *Other Information*

Instruction: The report shall contain the item numbers and captions of all applicable items of Part II, but the text of such items may be omitted provided the responses clearly indicate the coverage of the item. Any item which is inapplicable may be omitted. Where information called for in Part II has already been addressed in Part I it need not be repeated in Part II. In these circumstances the information can be incorporated into Part II by direct reference to the place where it is addressed in Part I.

Item 1. Legal Proceedings.

Furnish information on proceedings which have been commenced, terminated or in which there have been material developments during the period covered by the report, including the relevant dates and a description of the disposition thereof.

Item 2. Changes in Securities.

- (a) If the constituent instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.
- (b) Class of securities, state briefly the general effect of the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Instruction: Working capital restrictions and other limitations upon the payment of dividends are to be reported hereunder.

Item 3. Defaults Upon Senior Securities.

If there has been any material default in the payment of principal, interest, a sinking or purchase fund instalment, or any other material default not cured within thirty days, with respect to any indebtedness of the licensee or any of its significant subsidiaries exceeding 5% of the total assets of the licensee and its consolidated subsidiaries, identify the indebtedness and state the nature of the default. In the case of such a default in the payment of principal, interest, or a sinking or purchase fund instalment state the amount of the default and the total arrearage on the date of filing this report.

SIGNATURES

Pursuant to the requirements of the Securities (Conduct of Business) Regulations, 1999, the licensee has caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

.....
Licensee

.....
Date (signature—print name and title here)

.....
Date (signature—print name and title here)

THE SECURITIES ACT
REGULATIONS
(under section 76)

THE SECURITIES (CENTRAL SECURITIES DEPOSITORY) REGULATIONS,
1999

(Made by the Securities Commission and approved by the Minister on
the 20th day of July, 1999) L. N. 111A/99

1. These Regulations may be cited as the Securities (Central Securities Depository) Regulations, 1999. Short Title
- 2.—(1) In these Regulations— Interpretation.
- “handle”, with its grammatical variations and cognate expressions, means, in relation to a security entered in the records of a licensed central securities depository, the transfer of such security, the pledging of such security or the withdrawal thereof from the central securities depository system;
- “principal account” means an account maintained in the name of a principal account holder in accordance with the rules of a securities depository;
- “principal account holder” means a person who maintains an account with a licensed central securities depository;
- “licensed central securities depository” or “securities depository” means a company licensed under section 67B of the Act to operate a central securities depository;
- “subsidiary account” means an account maintained and operated by a principal account holder in the name of the subsidiary account holder as part of a principal account;
- “subsidiary account holder” means the person in whose name a subsidiary account is opened and maintained by the principal account holder.
- 3.—(1) Where a licence is granted to a company under section 67B of the Act to establish a central securities depository— Operation of securities depository.
- (a) a principal account holder may, in accordance with the rules governing the operation of the securities depository (in these Regulations referred to as the relevant rules), open and maintain with that securities depository—
- (i) a principal account in relation to eligible securities, in which shall be recorded the rights exercisable by that principal account holder in relation to those securities; and

- (ii) a subsidiary account in which shall be recorded the beneficial ownership of the eligible securities listed in that account;
- (b) an issuer's eligible securities may be allotted or transferred to the securities depository by or with the authority of a principal account holder or subsidiary account holder, as the case may be;
- (c) upon such allotment or transfer, as the case may be, appropriate entries shall be made in accordance with the relevant rules in—
 - (i) the records of the securities depository;
 - (ii) the relevant principal account or subsidiary account authorizing the principal account holder to handle those securities.

(2) Subject to the provisions of these Regulations, a securities depository may be operated by the licensee for the purpose of—

- (a) holding eligible securities as a nominee for a principal account holder;
- (b) facilitating the transfer of such securities; or
- (c) holding eligible securities on its own account as the beneficial owner thereof.

(3) The title to any eligible securities entered in a principal account or subsidiary account, as the case may be, shall vest in the relevant principal account holder or subsidiary account holder.

4.—(1) Where a licensed central securities depository or its subsidiary is listed in the register of members of an issuer—

- (a) that securities depository or subsidiary, as the case may be, shall, unless it holds eligible securities on its own account as the beneficial owner thereof, be deemed not to be a member of the issuer;
- (b) the persons named as principal account holders or subsidiary account holders, as the case may be, shall, during any period in respect of which eligible securities carrying voting rights are entered against their names in the register of the securities depository—
 - (i) be deemed to be members of that issuer in respect of those securities; and
 - (ii) except as otherwise provided in these Regulations, be entitled to all the rights, powers and privileges and be subject to all the liabilities, duties and obligations of a member as are conferred by the Companies Act or the constitution of the issuer.

Central securities depository deemed not to be member of issuer.

(2) Where a licensed central securities depository or its subsidiary is listed in the register of debenture holders of an issuer as the owner of an issuer's securities which do not carry voting rights—

- (a) that securities depository or its subsidiary shall, unless it holds eligible securities on its own account as the beneficial owner thereof, be deemed not to be the owner of such securities;
- (b) the persons named as principal account holders or subsidiary account holders, as the case may be, shall during any period in respect of which such securities are entered against their names in the register of the central securities depository—
 - (i) be deemed to be the owners of those securities; and
 - (ii) except as otherwise provided in these Regulations, be entitled to such rights, powers and privileges and be subject to such liabilities, duties and obligations, of the owner of such securities as are conferred by the Companies Act or any instrument creating such securities.

(3) An issuer shall not be obliged to enter in its register of members, the names of persons who are deemed to be members of the issuer by virtue of paragraph (1) (b) or (2) (b).

(4) Notwithstanding anything to the contrary in these Regulations, a principal account holder or subsidiary account holder, as the case may be, who, as at the record date of an issuer, is named in the register of the securities depository as—

- (a) the owner of securities carrying voting rights in the issuer, shall be regarded as a member of that issuer for the purpose of attending and exercising all rights at a general meeting of members of that issuer;
- (b) the owner of non-equity securities of the issuer, shall be regarded as the owner of those securities for the purpose of attending and exercising all rights at a general meeting of owners of such securities.

(5) Where—

- (a) a securities depository or its subsidiary is listed in the register of an issuer in relation to securities of that issuer; and
- (b) by virtue of any provision of this regulation, that securities depository or its subsidiary is deemed not to be the owner of those securities or not to be a member of that issuer,

those securities shall not be liable to be attached or taken in execution under an order of a court in respect of any debt or other liability of that securities depository.

(6) In paragraph (4) “record date of an issuer” means the date on which the names of members must be entered in the register of the issuer in order to receive dividends and other distributions or to exercise voting rights.

Manner of
effecting transfers

5.—(1) Subject to the provisions of these Regulations, a transfer of securities which are entered in the records of a securities depository from a principal or subsidiary account to another principal or subsidiary account shall be effected in accordance with the procedures specified in the relevant rules.

(2) A transfer which is effected in accordance with paragraph (1) shall be a valid and effective transfer of title to the securities so transferred.

Effect of transfer.

6.—(1) Where a transfer of securities is effected pursuant to regulation 5—

- (a) the transferee shall be deemed to have agreed, at the time of such transfer, to accept the transfer subject to the terms and conditions on which the securities in question were held by the transferor immediately before the time of such transfer; and
- (b) where applicable, the transferee shall be deemed to have agreed at the time of the transfer to become a member of the issuer and to be bound by the constitution of the issuer or the terms and conditions of any instrument creating the securities.

Protection from
suit, etc

7.—(1) No action, suit or other proceeding shall be brought or instituted against a licensed central securities depository in respect of any act done in good faith and without negligence by that depository while carrying out the instructions of a principal account holder in relation to any securities entered in the register of that depository.

(2) A licensed central securities depository shall not be obliged to ascertain whether or not—

- (a) a principal account holder has a right to handle any securities entered in the principal or subsidiary account maintained by that principal account holder;
- (b) the document of title to a security deposited with an issuer for the purpose of registering the transfer of that security in the name of the securities depository is genuine.

(3) Except as otherwise provided in these Regulations, a licensed central securities depository shall not be under any fiduciary duty or any obligation to a subsidiary account holder in whose name a subsidiary account is maintained in that depository.

(4) Without prejudice to the provisions of any other law for the time being in force, a licensed central securities depository shall be liable to compensate a principal account holder or subsidiary account holder for any loss caused to that account holder which is attributable to the negligent or wrongful act or omission of that depository or any of its employees.

8.—(1) A licensed central securities depository shall, on request by an issuer, furnish to the issuer, for the purposes specified in paragraph (2)—

Central Securities
depository to
supply information.

(a) a list of the names and such other particulars as the issuer may specify, of the principal account holders and subsidiary account holders entered in the register of that central securities depository as the beneficial owners of securities of the issuer; and

(b) particulars of those securities.

(2) The purposes referred to in paragraph (1) are—

(a) the sending of—

(i) notices of general meetings of members or the holders of any securities of an issuer;

(ii) any other notices or documents required to be sent to such members or holders of securities;

(b) the despatching of dividends, warrants or any other payments or benefits payable by an issuer;

(c) the making of formal offers for subscription for securities of an issuer.

(3) The information furnished pursuant to paragraph (1) shall be taken from the records of the securities depository as at the record date as defined in regulation 4 (6).

(4) Where an issuer—

(a) pays any amount by way of dividend or otherwise; or

(b) issues an offer for subscription in respect of any securities,

to any principal account holder or subsidiary account holder on the basis of any incorrect information supplied by the central securities depository, that issuer shall be discharged from any liability to those account holders in respect of that payment or issue.

(5) Where a principal account holder or subsidiary account holder, as the case may be, is deemed to be a member or holder of any securities, of an issuer, all notices and other documents which the issuer is required to send to such member or holder shall be sent on the basis of the information furnished to the issuer under paragraph (1).

9.—(1) Where any eligible securities are pledged to an eligible pledgee in order to secure the payment of a debt or the performance of any obligation by an account holder (in this regulation referred to as the pledgor), the securities depository in whose register those securities are entered shall, upon being notified of the existence of the pledge take such action as is necessary to block the account in question or a portion thereof.

Blocked accounts.

(2) Where an account is blocked in accordance with paragraph (1), the securities depository shall—

- (a) subject to paragraph (c), cease to handle the relevant securities on the instructions of a principal account holder, or, where the pledgor is a subsidiary account holder, on the instructions of the principal account holder and the pledgor;
- (b) notify the eligible pledgee in writing of such cessation in accordance with the relevant rules; and
- (c) handle those securities only on the instructions of the eligible pledgee.

(3) Where an eligible pledgee notifies the securities depository that—

- (a) the eligible pledgee is entitled to call for the transfer of the relevant securities, the securities depository shall on the instructions specified in the notice and in accordance with the relevant rules, transfer the relevant securities to the pledgee if satisfied as to the payment of any stamp duty and transfer tax applicable to the transfer of those securities;
- (b) the right of the eligible pledgee to exercise control of the relevant securities has expired, the securities depository shall take such action as is necessary to unblock the account in question.

(4) In this section “eligible pledge” has the meaning assigned to that expression in the relevant rules.

Erroneous entries.

10.—(1) Where a transfer of any securities entered in the register of a securities depository is effected as a result of an error on the part of that depository—

- (a) the transfer shall be valid notwithstanding that error;
- (b) the securities depository shall pay compensation to any person who sustains loss or incurs any expense as a result of that transfer.

(2) Where an incorrect entry (other than a transfer referred to in paragraph (1)), is made in the register of a securities depository or there is delay in making an entry in that register, any person who suffers any loss or incurs any expense as a result of such incorrect entry or delay may in writing require the securities depository to rectify the error or to pay compensation in respect of that loss or expense, or for both rectification and payment of compensation.

(3) Where a securities depository fails to comply with a requirement made under paragraph (2) to rectify an error in the register or to pay compensation, the person concerned in writing may request the Commission to direct the securities depository to rectify the register or to pay compensation, or both.

(4) Before taking action under paragraph (3), the Commission shall afford the securities depository an opportunity to be heard on the matter.

(5) Any person aggrieved by the action of the Commission under paragraph (3) may appeal to a Judge in Chambers, who may make such order as he thinks fit.

11.—(1) A securities depository shall, upon a request in writing by a principal account holder or subsidiary account holder of securities entered in the register of that securities depository, make available at its office for inspection by that account holder, a list of—

Inspection of
entries

- (a) the names and addresses of the principal account holders and subsidiary account holders recorded in the register of that securities depository as being the beneficial owners of those securities; and
- (b) the amount of such securities.

(2) For the purposes of this regulation, a securities depository may, with the approval of the Commission, make arrangements as specified in paragraph (3) with an issuer whose securities are entered in the register of that depository.

(3) The arrangements referred to in paragraph (2) are that a list of the securities mentioned in that paragraph are made available at the registered office of the issuer or at any other place where that issuer is permitted by law to keep a register of those securities, for inspection and copying of any portion thereof upon payment of such fee as may be agreed between the securities depository and the issuer.

(4) For the purposes of paragraphs (1) and (2), the lists shall be comprised from entries in the register of the securities depository as of a date not earlier than sixty days prior to the date of inspection or such other date as the Commission may specify by notice in writing to that depository.

12.—(1) Every officer and employee of a licensed central securities depository—

Secrecy.

- (a) shall regard as secret and confidential all matters relating to accounts established and maintained by that securities depository;
- (b) shall not disclose any information regarding such accounts to any person other than a person to whom he is authorized by the securities depository to disclose it for the purposes of the due administration of these Regulations.

(2) A person who contravenes paragraph (1) shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

Unlawful interference with computer system.

13.—(1) A person commits an offence if—

- (a) being an authorized person, he gains or attempts to gain unauthorized access to the computer system of central securities depository, whether by means of any device or apparatus forming part of that computer system or by any other means;
- (b) not being an authorized person, he gains or attempts to gain access to the computer system of a central securities depository, by any means referred to in sub-paragraph (a);
- (c) he unlawfully interferes with, impedes or attempts to interfere with or impede, the operation of a computer system of a central securities depository.

(2) A person who is convicted of an offence under paragraph (1) is liable to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

(3) In paragraph (1)—

“authorized person” means a person authorized by a central securities depository to gain access to its computer system, within such limits and for such purposes as may be specified in the authorization;

“unauthorized access” means access which is—

- (a) beyond the limits specified by a central securities depository; and
- (b) for purposes other than those so specified.

THE SECURITIES ACT
THE SECURITIES (TAKE-OVERS AND MERGERS) REGULATIONS, 1999
ARRANGEMENT OF REGULATIONS

1. Citation.

PART I—*Preliminary*

2. Interpretation.

PART II—*Information*

3. Commission may request information.

4. Information to shareholders.

PART III—*Shareholders*

5. Approval by shareholders of board's actions.

6. Prevention of false market.

7. Board to seek independent advice.

8. Exercise of rights of control.

9. Treatment of shareholders.

10. Duty of directors to act in that capacity.

11. Standard of care *re* documents, etc.

12. General offer to shareholders.

13. Notice of acquisition of 20% or more of company's equity.

14. Contents, etc., of offer.

PART IV—*The Take-Over Bid Circular*

15. Take-over bid circular be sent to Commission.

16. Contents of take-over bid circular.

17. Experts' report on take-over bid circular.

PART V—*Directors' Circular*

18. Issue of directors' circular.

19. Contents of directors' circular.

20. Expert report on directors' circular.

21. Where offer made for all equity shares of a class owned by offerees.

22. Where offer made for less than all equity shares of a class owned by offerees.

23. Variation of consideration.

24. Consideration wholly or partly in cash.

25. Certified financial statements.

26. Mandatory offer.

THE SECURITIES ACT

REGULATIONS
(under section 76)

THE SECURITIES (TAKE-OVERS AND MERGERS) REGULATIONS, 1999

*(Made by the Securities Commission and approved by the Minister on the 1st day of September, 1999)*L.N. 119/A/99
154/2000

1. These Regulations may be cited as the Securities (Take-Overs and Mergers) Regulations, 1999. Citation.

PART I. *Preliminary*

2. —(1) In these Regulations, unless the context otherwise requires— Interpretation.

“associate” shall be construed in accordance with section 3(1) of the Act;

“company” means a public company;

“control” means a holding or aggregate holdings of shares carrying 50% or more of the voting rights of a public company;

“shares” means the equity shares or equity stock of a company;

“offer” includes, wherever appropriate, take-overs and merger transactions however effected, including reverse take-overs, partial offers and offers by a parent company for shares in its subsidiary;

“offeree” means a person or company to whom an offer is made;

“offeree company” means a company whose shares are the subject of an offer;

“offeror” means an individual wherever resident or a public or private company, wherever incorporated, other than an agent, who makes an offer and includes two or more persons or companies—

(a) whose offers are made jointly or in concert; or

(b) who intend to exercise jointly or in concert any voting rights attaching to the shares for which an offer is made;

“take-over” means a transaction or series of transactions whereby a person acquires control whether directly or indirectly, over the assets of a company;

“take-over bid” means an offer to shareholders (directly or through the board), to purchase such number of equity shares of a company that, together with the offeror’s shares, will in the aggregate exceed 50% of the company’s outstanding voting shares;

PART I. *Preliminary, contd.*

“merger” means a combination of two or more companies at least one of which is public, whereby the assets of the original companies become vested in or under the control of one company;

“voting rights” means all the voting rights attributable to the shares of a company which are currently exercisable at a general meeting.

(2) For the purposes of these Regulations persons shall be regarded as acting in concert if those persons, pursuant to an agreement, understanding or undertaking (whether formal or informal) actively co-operate, through the acquisition of shares in a public company by any or all of them, in order to obtain or consolidate control of that company.

(3) The following persons shall be deemed to be acting in concert with other persons in the same category unless the contrary is proved—

- (a) a public or private company, its parent, subsidiaries and fellow subsidiaries;
- (b) public or private companies associated with a company referred to in paragraph (a), and for the purpose of this sub-paragraph, a company shall be regarded as an associated company if it owns or controls 20% or more of the equity share capital of a company;
- (c) a public or private company and any of its directors (together with their close relatives and related trusts);
- (d) directors of a company which is subject to an offer or where the directors have reason to believe a *bona fide* offer for their company may be imminent.

PART II. *Information*

Commission
may request
information.

3. In the exercise of its powers under these Regulations, the Commission may request information from any or all of the following—

- (a) licensed dealers;
- (b) investment advisers;
- (c) officers of the offeror and offeree companies;
- (d) all other parties to the offer.

Information to
shareholders.

4. Where an offer has been made in respect of an offeree company—

- (a) the offeror shall give to the shareholders of that company, sufficient evidence, facts and expert opinions upon which an adequate judgment and decision can be reached, and sufficient time to make an assessment and a decision; and
- (b) no relevant information shall be withheld from them.

PART III. *Shareholders*

5. Where—

- (a) a *bona fide* offer has been communicated to the board of an offeree company; or
- (b) the board has reasonable cause to believe that such an offer is likely to be made,

Approval by shareholders of board's actions.

that board or any member or members thereof shall not, at any time thereafter, take any action, whether directly or indirectly, in relation to the company's affairs, without the approval in general meeting by the company's shareholders, which could effectively result in—

- (i) any such offer being frustrated; or
- (ii) the company's shareholders being denied an opportunity to decide on its merits.

6. All parties to take-overs or mergers shall take such steps as are necessary to prevent the creation of a false market in the shares of an offeror or offeree company.

Prevention of false market.

7. A board which receives an offer or is approached with a view to an offer being made shall, in the interest of its shareholders, seek the advice of such persons as it considers competent in such matters.

Board to seek independent advice.

8. Rights of control shall be exercised in good faith and with due regard to the minority rights.

Exercise of rights of control.

9.—(1) All shareholders of the same class of an offeree company shall be afforded equal treatment by an offeror company in relation to the price of shares, the information to be supplied pursuant to regulation 4 and any other aspect of the offer.

Treatment of shareholders.

(2) During the course of an offer or when an offer is being considered the offeror company, the offeree company or any of their respective advisers shall not furnish information to some shareholders which is not made available to all shareholders.

(3) Paragraph (2) shall not apply to the furnishing of information in confidence by any offeree company to a *bona fide* potential offeror company or *vice versa*.

10. Directors of an offeror or offeree company shall, at all times when advising the company's shareholders—

Duty of directors to act in that capacity.

- (a) act only in their capacity as directors without regard to their personal or family shareholdings or their personal relationship with the company;
- (b) have regard only to the interests of the company's shareholders, employees and creditors.

PART III. *Shareholders, contd.*

Standard of
care re
documents,
etc.

11. Any document or advertisement addressed to shareholders containing information, opinions or recommendations from the board of an offeror company or its respective advisers—

- (a) shall be treated with the same standard of care as if it were a prospectus within the meaning of the Companies Act; and
- (b) particular care shall be taken in making forecasts as to profit in order to avoid the encouragement of expectations which may be unrealistic in the particular circumstances.

General
offer to
shareholders.

12.—(1) Subject to regulation 26, where control of a company is acquired by a person or by persons acting in concert, or where such control is consolidated, a general offer to all other shareholders shall be made within thirty days of acquiring control.

(2) A person who intends to acquire control of a company shall, before making the acquisition, take such steps as are necessary to ensure that he can and will continue to be able to implement the offer referred to in paragraph (1).

Notice of
acquisition
of 20% or
more of
company's
equity.

13.—(1) Where any person, whether directly or indirectly, acquires 20% or more of the equity of any company, that person shall, within ten days of the acquisition, send by registered mail to the Commission and to the company at its registered office or principal place of business, a written statement containing the following information—

- (a) the identity, occupation, place of residence and citizenship of the person acquiring such equity;
- (b) a declaration as to—
 - (i) the amount of equity being acquired;
 - (ii) the purpose of such acquisitions;
 - (iii) whether further purchases of equity in the company are intended; and
 - (iv) whether it is intended to acquire control of the company's business or majority shareholding or both.

(2) Whenever a person referred to in paragraph (1) acquires, whether directly or indirectly, a further 5% or more of the company's equity, that person shall, at the time of each such acquisition, send the statement referred to in that paragraph to the company and the Commission.

Contents,
etc., of offer.

14.—(1) All offers to or by a public company shall—

- (a) be made in writing in the first instance to the board of the offeree company or to its shareholders;

PART III. *Shareholders, contd.*

- (b) state the date of the bid and the name and address of the offeror and shall contain—
- (i) precise particulars of the securities of which the offer is made;
 - (ii) the total consideration payable for the purchase;
 - (iii) how any securities issued will rank for dividends, capital and redemption;
 - (iv) when and how the document of title will be issued; and
 - (v) how, when and where such offer may be accepted.

(2) If the offer or an approach with a view to making an offer is made by a principal or by any agent, the identity of the principal shall be disclosed at the outset.

(3) The board of an offeree company shall satisfy itself that the offeror company is, or will be, able to implement the offer in full.

(4) Whenever a board receives notice of any firm intention to make an offer, the board shall, whether or not it views the offer as favourable, forthwith notify the shareholders without delay by notice published in a daily newspaper circulating in Jamaica.

PART IV. *The Take-Over Bid Circular*

15. A take-over bid circular—

- (a) approved and authorized for delivery by the director of the offeror company; and
- (b) containing the particulars specified in regulation 16, shall be sent by prepaid post or delivered to the offeree company and a copy thereof shall be sent to the Commission.

Take-over bid circular be sent to Commission.

16.—(1) The take-over bid circular shall contain the following information—

- (a) the number and designation, without duplication, of any securities of the offeree company beneficially owned, directly or indirectly—
 - (i) by the offeror company;
 - (ii) by a subsidiary, parent or other associate company of the offeror company;
 - (iii) by each director and each officer of the offeror company; or

Contents of take-over bid circular.

PART IV. *The Take-Over Bid Circular, contd.*

- (iv) by a person or company who beneficially owns directly or indirectly, equity shares of the offeror company carrying more than 10% of the voting rights attached to all the equity shares of the offeror company for the time being outstanding or, if no such shares are so owned, a statement to that effect;
- (b) the number and designation of any equity shares of the offeree company traded by the person or companies referred to in paragraph (a) during the six months preceding the date of the offer, including the purchase or sale price and the date of each transaction;
- (c) particulars of all conditions attached to acceptances;
- (d) where the obligation of the offeror to take up and pay for shares under an offer is conditional upon a minimum number of shares being deposited pursuant thereto, the particulars of such condition and the last date on which the offer can be made unconditional;
- (e) particulars of the method and time of payment of the cash or other consideration to be paid for the shares of the offeree company;
- (f) a statement to the effect that any shares deposited pursuant to the offer may be withdrawn by or on behalf of the offeree at any time before the expiration of seven days from the opening date of the offer;
- (g) where the shares in the offeree company are to be paid for in whole or in part in cash, details of the arrangements that have been made to ensure that the required funds are available to carry out the offer;
- (h) where reasonably available, a summary showing in detail the volume of trading and price range of the shares of the offeree company in the six months preceding the opening date of the offer;
- (i) the particulars of any arrangement made or proposed between the offeror and any holders of more than 10% of the offeree's shares, officers or directors of the offeree or persons who, within the period of nine months before the offer was made, were holders of more than 10% of the offeree's shares, including particulars relating to any proposed compensation for loss of office or their retaining or retiring from office if the offer is successful;
- (j) particulars of any information known to the offeror that indicate any material change in the financial position or prospects of the offeree company since the date of its last published interim or annual financial statement;
- (k) a statement as to the intentions of the offeror regarding the employees of the offeree and the continuation of the business;

PART IV. *The Take-Over Bid Circular, contd.*

- (l) particulars of all documents required to be lodged for valid acceptance;
- (m) if the total emoluments receivable by the directors of the offeror company or group will be varied after the acquisition, full particulars of the variations or, if there will be no variation, a statement to that effect;
- (n) details of any special arrangements relating to the offer, between the offeror or any parties acting in concert and any of the directors, immediate past directors or shareholders of the offeree;
- (o) such other information as may be required from time to time by the Commission or a recognized stock exchange or both.

(2) Where the consideration for an offer includes, in whole or in part, the securities of a company, the take-over bid circular shall contain the following additional information regarding that company—

- (a) such information as is required for inclusion in a prospectus statement in lieu of prospectus as prescribed by the Companies Act;
- (b) the audited financial statements for the previous year;
- (c) the company's profit and loss statements for the previous five years of operation;
- (d) the unaudited financial statements for the company's last quarter;
- (e) the particulars of any information known to the offeror that indicates any material change in the financial position or prospects of the company since the date of the last published interim or annual financial statement of such company.

(3) After an offer has become or is declared unconditional, the offer shall remain open for acceptance for not less than fourteen days, but shall, in the event that the offer becomes or is declared unconditional on an expiry date and the offeror company has given at least ten days' notice in writing to the shareholders of the offeree company, the offer shall not be open for acceptance beyond that date.

(4) If the proposed purchase is not completed, all documents referred to in paragraph (1) (l) shall be returned to the offeror within fourteen days of the closing date of the offer.

17.—(1) A report, opinion or statement by an expert or a person whose profession gives authority thereto, shall not form a part of or accompany a take-over bid circular unless the expert or person has agreed in writing to the use of the report, opinion or statement.

Experts' report
on take-over
bid circular.

PART IV. *The Take-Over Bid Circular, contd.*

(2) The agreement referred to in paragraph (1), shall be reproduced in the take-over bid circular.

(3) The report, opinion or statement referred to in paragraph (1) shall be included in or submitted with the take-over bid circular in the exact form and context in which it was made.

PART V. *Directors' Circular*

18.—(1) The board of an offeree company shall, within seven days of receipt of a take-over bid, issue a directors' circular containing a recommendation as to acceptance or rejection of the offer and the particulars specified in regulation 19.

(2) A copy of the directors' circular shall—

- (a) form part of or accompany a notice which shall be sent by the directors to each shareholder by prepaid post or by delivery at the shareholder's last known address, as shown in the books of the company;
- (b) be published in at least one daily newspaper circulating in Jamaica; and
- (c) immediately prior to being published and sent to shareholders, be delivered to the Commission and to any recognized stock exchange where the offeree company's securities are listed.

19. A directors' circular shall contain—

- (a) the number and designation, without duplication of any securities of the offeree company beneficially owned (directly or indirectly) by—
 - (i) each director and officer of the offeree company;
 - (ii) where known to the directors or officers, each person or company who beneficially owns (directly or indirectly) equity shares of the offeree company carrying over 10% of the voting rights,

and in each case, if no such shares are so owned, a statement to that effect;

- (b) a statement as to whether the categories of beneficial owners referred to in paragraph (a) have accepted or intend to accept the offer made in respect of the take-over bid;
- (c) where an offer is made by a company, the number and designation, without duplication, of any securities of the offeror, beneficially owned by each director or officer of the offeree company and, where

PART V. *Directors' Circular, contd.*

known, by each person or company who beneficially owns equity shares for the time being outstanding of the offeror company carrying more than 10% of the voting rights;

- (d) particulars of any arrangement or agreement made or proposed between the offeror and any of the directors or officers of the offeree company, including particulars relating to any proposed compensation for loss of office or their remaining in or retiring from office if the offer is successful;
- (e) a statement as to whether or not any director or officer of the offeree company and, where known, any person or company beneficially owning over 10% of the voting shares of the offeree company for the time being outstanding, has any interest in any material contract to which the offeree is a party, and if so, particulars of such interest;
- (f) where reasonably ascertainable, a summary in detail of the volume of trading and the price range of the shares of the offeree company in the six months preceding the offer, if in the opinion of the directors of the offeree company, such information is not adequately disclosed in the take-over bid circular;
- (g) particulars of any material change in the financial position and prospects of the offeree company since the date of the company's last published interim or annual financial statements;
- (h) a statement showing the trading in the shares of both the offeror and offeree company by every director and officer of the company for at least six months before the date of the offer or, if there was no such trading, a statement to that effect;
- (i) the audited financial statements for the previous year;
- (j) the company's profit and loss statements for the previous five years of operation;
- (k) the unaudited financial statements for the company's last quarter;
- (l) a valuation report, made not more than eighteen months before the date of the directors' circular, of the company's fixed assets prepared by a professional valuator containing a precise explanation of the basis for the valuation;
- (m) particulars of any other material facts not disclosed in the valuation report;
- (n) such other information as may be requested from time to time by the Commission or a recognized stock exchange, or both.

20.—(1) A report, opinion or statement by an expert or person whose profession give authority thereto, shall not form part of or accompany a directors'

Expert report
on directors'
circular.

PART V. *Directors' Circular, contd.*

circular unless the expert or person has agreed in writing to the use of the report, opinion or statement.

(2) The agreement referred to in paragraph (1) shall be reproduced in the directors' circular.

(3) Such report, opinion or statement shall be included in or submitted with the directors' circular in the exact form and context in which it was made.

21.—(1) Where an offer is made for all equity shares of a class owned by the offeree—

- (a) the offer shall remain open for at least twenty-one days;
- (b) shares so deposited—
 - (i) shall not be taken up and paid for by the offeror until the expiration of seven days from the opening date of the offer;
 - (ii) may be withdrawn by or on behalf of an offeree at any time before the expiration of seven days from the opening date of the offer.

(2) Where an offer for all the equity shares is amended to an offer for a lesser number of shares, the offer shall be regarded as having been made for that lesser number.

22. Where an offer is made for less than all the equity shares of a class owned by the offeree—

- (a) share may be deposited pursuant to that offer or any extension thereof not later than thirty-five days from the opening date of the offer;
- (b) shares so deposited shall be taken up and paid for, if all the terms and conditions thereof not waived by the offeror have been complied with, within fourteen days after the last day on which the shares may be deposited;
- (c) if a greater number of shares is deposited than the offeror is bound or willing to take up and pay for, the shares taken by the offeror shall be taken up as nearly as possible *pro rata*, disregarding fractions, according to the number of shares deposited by each offeree.

23. Where offers for the equity shares of an offeree company are varied before their expiration by increasing the consideration offered for such shares—

Where offer made for all equity shares of a class owned by offerees.

Where offer made for less than all equity shares of a class owned by offerees.

Variation of consideration.

PART V. *Directors' Circular, contd.*

- (a) the offeror shall pay such increased consideration to each offeree whose shares were taken up and paid for even if taken prior to the variation; and
- (b) the offeror shall not purchase the shares in the market or from any other source.

24. Where an offer indicates that the consideration therefor may be paid partly or wholly in cash, the offeror shall make arrangements to the satisfaction of the Commission and of a recognized stock exchange for ensuring the adequacy and availability of the funds required to effect payment in full as indicated in the offer.

Consideration wholly or partly in cash.

25. Where the financial statements required under these Regulations to be produced are not accompanied by the auditor's report, they shall be accompanied by a report of the company's chief financial officer who shall certify that the statements reflect fairly the financial position of the company involved over the period in question.

Certified financial statements.

26.—(1) Subject to paragraphs (2) and (3), a mandatory offer shall be made to other shareholders of the same class when any person acquires, whether or not by a series of transactions over a period of time, shares which (taken together with shares held or acquired by persons acting in concert with him) carry 50% or more of the voting rights of a company or control of the company.

Mandatory offer.

(2) The Commission may in writing exempt from the provisions of paragraph (1) a person who, by a transaction or a series of transactions, acquires control of a company in the following circumstances—

- (a) where the company's shares were charged as security for a loan the enforcement of which would require the lender to make a general offer, provided that the security was not given at a time when the lender had reason to believe that enforcement of the loan was likely; or
- (b) the shares are acquired by that person for the purpose of recapitalizing or rehabilitating the company in order to restore it to solvency and to enable it to continue to carry on its business as a going concern.

(3) The exemption referred to in paragraph (2) shall not apply to any person who subsequently acquires the company's shares from a person referred to in that paragraph.

THE SECURITIES ACT
THE SECURITIES (MUTUAL FUNDS) REGULATIONS, 1999
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SCHEDULES

THE SECURITIES ACT

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THE SECURITIES (MUTUAL FUNDS) REGULATIONS, 1999

(Made by the Securities Commission and approved by the Minister on the 1st day of September, 1999) L. N. 1193/99

1. These Regulations may be cited as the Securities (Mutual Funds) Regulations, 1999. Citation.

PART I. *Preliminary*

2. —(1) In these Regulations, unless the context otherwise requires— Interpretation.

“authorized officer” means a person authorized by the Commission to carry out functions on its behalf under these Regulations;

“constitutional documents” means, in relation to a mutual fund—

- (a) the documents of incorporation;
- (b) the custodian agreement;
- (c) the management agreement; and
- (d) the prospectus;

“custodian” means the person appointed by a mutual fund as custodian of the fund’s assets;

“custodian agreement” means an agreement between a mutual fund, the management company and the custodian which contains the matters specified in regulation 15 (4);

“dealer” means a person licensed as such under the Act;

“extraordinary resolution” means a resolution passed by a majority of not less than three-fourths of the fund’s directors at a general meeting of the fund of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given;

“holder” means the person entered in the register of a mutual fund scheme as the holder of shares in that scheme;

“investment invitation” means an invitation to a person in Jamaica to invest in a regulated overseas mutual fund or a local mutual fund;

PART I. *Preliminary, contd.*

“local newspaper” means a daily newspaper printed and circulated in Jamaica;

“local mutual fund” means a mutual fund that is operated in Jamaica;

“management agreement” means an agreement between the management company, the custodian and the mutual fund whereby the management company agrees to become the manager of the mutual fund;

“management company” means the company which manages a mutual fund;

“material change” means a change in the business operation or capital of a mutual fund that would reasonably be expected to have an extraordinary effect on the market price or value of the shares in the fund and includes a decision to implement such change by—

(a) the board of the mutual fund; or

(b) the management company;

“prospectus” means particulars of a mutual fund prepared and produced in accordance with the Third Schedule;

“readily marketable securities” means securities that are freely transferable, regularly purchased in an organized market approved by the Commission and can be converted to cash at the price at which they are being carried within seven days;

“registered local mutual fund” means a local mutual fund which is registered by the Commission under these Regulations;

“registered overseas mutual fund” means a regulated overseas mutual fund which is registered by the Commission under these Regulations;

“regulated overseas mutual fund” means an overseas mutual fund that is—

(a) established in a jurisdiction outside Jamaica in accordance with the relevant laws of that jurisdiction;

(b) registered, licensed or otherwise approved in that jurisdiction; and

(c) permitted under those laws to invite persons outside of the jurisdiction to become participants in the mutual fund.

(2) Every company governed by these Regulations shall include the following information in all documents issued by it in the course of business—

(a) place of registration;

(b) address of head office;

PART I. *Preliminary, contd.*

- (c) the fact that it is an investment company with variable share capital.
- (3) These Regulations shall not apply to—
- (a) shares and stocks in the share capital of a company other than—
- (i) a building society incorporated under the Building Societies Act;
 - (ii) a society registered under the Industrial and Provident Societies Act; or
 - (iii) a co-operative society registered under the Co-operative Societies Act;
- (b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness other than—
- (i) any instrument acknowledging or creating indebtedness for or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
 - (ii) a cheque or other bill of exchange, banker's draft or a letter of credit; or
 - (iii) a banknote, a statement showing a balance in a current deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of property, heritable security or an insurance policy;
- (c) loan stock, bonds and other instruments creating or acknowledging, indebtedness issued by or on behalf of—
- (i) the government of Jamaica or any country or territory outside Jamaica;
 - (ii) a local authority in Jamaica or elsewhere;
 - (iii) any international organization the members of which include Jamaica;
- (d) warrants or other instruments entitling the holder to subscribe for investments falling within paragraphs (a) to (c);
- (e) certificates or other instruments which confer—
- (i) property rights in respect of any investment falling within any of paragraphs (a) to (d);
 - (ii) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the holder would be entitled if he held any such investment to which the certificate or instrument relates; or

PART I. *Preliminary, contd.*

- (iii) a contractual right (other than an option) to acquire any such investment otherwise than by subscription;
- (f) units in any Unit Trust registered pursuant to the Unit Trusts Act;
- (g) rights under a contract the effecting and carrying out of which constitutes long-term business within the meaning of the Insurance Act other than contracts where—
 - (i) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
 - (ii) no benefits are payable under the contract on death (other than a death due to accident) unless it occurs within ten years of the date on which the life of the person in question was first insured under the contract or before that person attains a specified age not exceeding seventy years;
 - (iii) the contract has no surrender value; and
 - (iv) the contract does not make provision for its conversion or extension in a manner that would result in its ceasing to comply with sub-paragraphs (i), (ii) and (iii).

PART II. *Overseas Mutual Funds*

3.—(1) Subject to the provisions of these Regulations, a regulated overseas mutual fund shall not issue investment invitations in Jamaica or cause such invitations to be issued or engage one or more dealers to act as its agent in issuing investment invitations or causing such invitations to be issued unless—

- (a) that regulated overseas mutual fund is registered under Part X of the Companies Act and registered by the Commission under these Regulations; and
- (b) shares or other securities or property in the fund will be sold by one or more dealers who is or are approved by the Commission.

(2) An application for registration of a regulated overseas mutual fund shall be made to the Commission in the form prescribed as Form A in the First Schedule and shall be accompanied by a non-refundable application fee specified in the Second Schedule and the following documents and information—

- (a) the audited financial statements of the applicant, made up as at a date not more than twelve months prior to the date of the application, with the auditor's report annexed thereto;
- (b) a statement of the mutual fund's capital which shall be at least US\$300,000.00 or 2% of total outstanding liabilities, whichever is

Overseas
mutual fund
to be
registered.

First Schedule.
Form A.

Second Schedule.

PART II. *Overseas Mutual Funds, contd.*

higher, calculated in accordance with the formula set out in the Fourth Schedule.

Fourth Schedule.

- (c) copies of the marketing circulars and documents which the applicant or its agents will use to market or advertise the mutual fund and its investment products to prospective investors in Jamaica.
- (d) copies of the documents of incorporation of the applicant and any other legal documents governing the operation of the applicant, including, where the Commission so requires, copies of the statutes governing the applicant, duly notarized as true copies of the originals;
- (e) the names of the dealer or dealers which the applicant intends to engage to act as its agents and copies of any proposed written contracts applicable thereto;
- (f) copies of the application forms and any relevant contractual documents which the applicant or its agents may require investors in Jamaica to sign in connection with investment in the mutual fund concerned;
- (g) a certificate issued by the regulatory agency in the jurisdiction in which the applicant is established, certifying that the applicant is a regulated overseas mutual fund and is in good standing with such regulatory agency;
- (h) a profile of the applicant's directors and officers indicating their qualifications, fit and proper status within the meaning of section 9 (3) (a) (ii) of the Act, financial standing, interests in the securities invested by the relevant fund and their percentage ownership of the business; and
- (i) such other information as the Commission may require.

4.—(1) Where, in relation to an application made under regulation 3, the Commission is satisfied that an applicant meets the requirements of these Regulations as to—

Grant of registration.

- (a) diversification;
- (b) independence of the custodian;
- (c) qualifications of directors; and
- (d) liquidity,

the Commission may register the applicant as a registered overseas mutual fund for a period of twelve months and shall issue to the applicant a certificate of registration in the form set out as Form B in the First Schedule.

First Schedule.
Form B.

(2) A regulated overseas mutual fund which is registered pursuant to paragraph (1) shall, on receipt of the certificate referred to in paragraph (1), pay to the Commission the registration fee specified in the Second Schedule.

Second Schedule.

PART II. *Overseas Mutual Funds, contd.*

(3) Where the Commission approves the dealer or dealers notified to the Commission pursuant to regulation 3 (2) (e), it shall, in writing notify the applicant and the dealer or dealers concerned of that approval.

Preliminary
determination
by Commis-
sion.

5.—(1) Where it appears to the Commission that there is some material irregularity or inadequacy in any of the items submitted with an application pursuant to regulation 3 (2) which is or is likely to be, detrimental to investors in Jamaica, the Commission, within thirty days of the receipt of the application—

- (a) may make a preliminary determination to refuse to register the applicant and shall notify the applicant in writing accordingly; and
- (b) shall afford the applicant an opportunity to be heard, with the applicant's professional advisers, if the applicant so desires.

(2) After hearing the applicant, the Commission shall make a final decision on the matter and shall notify the applicant in writing of that decision.

Quarterly
financial
statements.

6. A registered overseas mutual fund shall submit to the Commission, half yearly unaudited financial statements within sixty days of each period of six months in the mutual fund's financial year.

Renewal of
registration.
Second Schedule.

7.—(1) Application for renewal of registration granted under regulation 4 shall be made within thirty days of the anniversary of such registration and shall be accompanied by the renewal fee specified in the Second Schedule and the following documents and information—

- (a) the applicant's audited financial statements, made up as at a date not more than twelve months prior to the date of the application showing clearly the total securities count, adviser fees, distributors fees, fees paid to affiliated firms and unrealized gains or losses, or both;
- (b) a certificate referred to in regulation 3 (2) (g).

(2) The Commission may renew the registration of a regulated overseas mutual fund for such period as it shall specify in the certificate of renewal.

(3) A registered overseas mutual fund shall, while its registration remains valid, pay to the Commission the annual fee specified in the Second Schedule before the beginning of each financial year.

Additional
documents.

8.—(1) A registered overseas mutual fund or a dealer engaged by that mutual fund shall—

- (a) cause to be submitted to the Commission any documents referred to in regulation 3 (2) (c) to (h) which may replace or be added to those already submitted to the Commission; and
- (b) shall not use any documents referred to in regulation 3 (2) (c) to (h) in Jamaica until at least thirty days after submitting them to the Commission.

(2) A prospectus submitted to the Commission shall be valid for a period of twelve months after the date on which it was so submitted.

PART II. *Overseas Mutual Funds, contd.*

9.—(1) Where it appears to the Commission that any of the circumstances described in paragraph (2) applies in relation to a registered overseas mutual fund, the Commission may—

Suspension or
cancellation of
registration.

- (a) require that mutual fund and its dealers to suspend issuing or causing to be issued, investment invitations to any person within Jamaica; or
 - (b) subject to paragraph (4), cancel the registration of that mutual fund.
- (2) The circumstances referred to in paragraph (1) are—
- (a) there is some material irregularity in any of the documents delivered to the Commission by or on behalf of the registered overseas mutual fund which is or is likely to be detrimental to Jamaican investors;
 - (b) there has been some material misrepresentation to the Commission in relation to the registered overseas mutual fund or any aspect of its business by the fund or any of its agents.
 - (c) the registered overseas mutual fund has, due to fraud, defalcation or misfeasance, suffered a material change in its financial position, which is or likely to be detrimental to Jamaican investors;
 - (d) the registered overseas mutual fund has—
 - (i) ceased to be in good standing in the jurisdiction in which it is established and has ceased to be registered, licensed or otherwise approved in that jurisdiction;
 - (ii) contravened any provision of the Act or of these Regulations;
 - (iii) failed to maintain the requirements for registration specified in regulation (3).

(3) Where the Commission takes action under paragraph (1) (a), the Commission shall afford the overseas mutual fund concerned an opportunity to be heard (together with its professional advisers, if it so desires) as soon as practicable thereafter.

(4) Where the Commission intends to cancel the registration of a regulated overseas mutual fund, it shall notify the fund in writing of that intention and shall afford the fund an opportunity to be heard.

(5) After hearing the registered overseas mutual fund referred to in paragraph (3) or (4), the Commission may—

- (a) confirm or withdraw any suspension required under paragraph (1) (a);

PART II. *Overseas Mutual Funds, contd.*

(b) cancel the registration of the mutual fund, and shall notify the mutual fund in writing of its decision.

(6) Where the Commission cancels the registration of a regulated overseas mutual fund, that fund shall, forthwith upon receipt of the notice of such cancellation, return the certificate of registration to the Commission.

(7) An appeal shall lie from a decision of the Commission under paragraph (5) and the provisions of section 74 of the Act shall apply in relation to such appeal.

Re-registra-
tion.

10. Where the registration of a regulated overseas mutual funds is cancelled under regulation 9, that mutual fund may apply for re-registration at the expiration of a period of twelve months from—

- (a) the date of such cancellation; or
- (b) where it has appealed against the cancellation, the date on which the appeal is dismissed,

whichever is the later.

Documents in
English.

11.—(1) All documents referred to in regulations 3 and 6 which are not in English shall be accompanied by copies translated into English.

(2) Copies of such documents shall be made available for inspection at the registered office of the mutual fund in Jamaica, or, as the case may be, at the office of the dealer engaged by the mutual fund.

PART III. *Local Mutual Funds*

Local mutual
fund to be
registered.

12. A local mutual fund shall not issue investment invitations to persons in Jamaica unless it is registered under these Regulations.

Registration
First Schedule.
Form A.
Second Schedule.

13.—(1) Application for registration of a local mutual fund shall be made to the Commission in the form set out as Form A in the First Schedule and shall be accompanied by the application fee specified in the Second Schedule.

(2) The Commission may require an applicant to furnish such additional information in relation to the application as the Commission may consider necessary for the grant of registration.

(3) The Commission shall, not later than three months after the receipt of an application referred to in paragraph (1) and any additional information required pursuant to paragraph (2) and after giving the applicant an opportunity to be heard—

- (a) notify the applicant of the Commission's decision with respect to the application; or

PART III. *Local Mutual Funds, contd.*

- (b) where there are any deficiencies in an application, notify the applicant thereof and specify a period within which such deficiencies may be remedied by the applicant before a decision is made with regard to the application.

(4) For the purpose of deciding whether or not to grant registration of a local mutual fund, the Commission shall take into account such matters as it considers relevant to the efficient and orderly conduct of the affairs of a mutual fund and, without prejudice to the generality of the foregoing, shall take the following matters into account—

- (a) the experience of the applicant in the field of financial services for a minimum period of five years, the applicant's net worth, dividend paying capacity and profitability, professional competence, financial soundness and general reputation of fairness and integrity in the conduct of his business transactions;
- (b) the appointment of a custodian and the Commission's review of the custodian agreement to ascertain whether it contains the matters specified in regulation 15 (4) (a);
- (c) the appointment by the mutual fund of a licensed dealer as its management company;
- (d) the contribution by the applicant of at least 40% of the net worth of the management company;
- (e) the fact that the applicant and the principal officers to be employed by the applicant are fit and proper persons within the meaning of the section 9 (3) (a) (ii) of the Act.

(5) The Commission shall issue to a local mutual fund which is registered under this regulation a certificate of registration in the form set out as Form B in the First Schedule upon payment by that mutual fund of the registration fee specified in the Second Schedule.

First
Schedule.
Form B.

Second Schedule.

(6) Where the Commission decides not to register an applicant under this regulation, it shall notify the applicant in writing of the reasons for that decision.

(7) An applicant who is aggrieved by the Commission's decision to refuse to grant registration, may appeal against that decision; and the provisions of section 74 of the Act shall apply in relation to any such appeal.

14.—(1) The registration of a local mutual fund under regulation 13 shall be subject to the following conditions—

Conditions of
registration.

- (a) the registered mutual fund shall—
- (i) comply with the relevant provisions of these Regulations;

PART III. *Local Mutual Funds, contd.*

- (ii) subject to paragraph (2), while the registration remains valid, annually before the beginning of each financial year, pay to the Commission the fee specified in the Second Schedule.
 - (iii) forthwith inform the Commission in writing of any material change in the information furnished to the Commission in support of its application for registration;
 - (iv) permit the Commission to inspect the operations of the mutual fund and to co-operative with persons carrying out such inspection;
 - (v) produce to the Commission or a person authorized by the Commission, such books, accounts and other documents as may be required during the course of an inspection;
- (b) the management company and the custodian shall comply with these Regulations;
- (c) the custodian shall forthwith inform the Commission in writing of any information furnished to the Commission in support of the application for registration which is subsequently found to be false or misleading in any material respect;
- (d) the mutual fund shall—
- (i) submit to the Commission, a certificate of incumbency;
 - (ii) identify an officer who will be responsible for compliance with these Regulations;
- (e) the officer referred to in sub-paragraph (d) (ii) shall submit to the Commission, a certificate stating that the mutual fund is not in default in complying with the requirements for registration.
- (2) Subject to paragraph (3), where a mutual fund fails to pay the annual fee referred to in paragraph (1) (a) (ii), the Commission may prohibit the mutual fund from launching any new schemes until the fee has been paid.
- (3) The Commission may, on being satisfied with the reasons given by a mutual fund for the delay in paying the annual fee and subject to such conditions as it may deem fit, permit payment of the annual fee at any time within two months after the commencement of the financial year to which such fee relates.

The Custodian

15.—(1) Every registered local mutual fund shall, with the approval of the Commission, appoint a custodian from the category of persons specified in paragraph (2).

Appointment
of custodian.

PART III. *Local Mutual Funds, contd.*

(2) The persons referred to in paragraph (1) are—

- (a) a bank licensed under the Banking Act;
- (b) a financial institution licensed under the Financial Institutions Act;
- (c) subject to paragraph (5), a foreign banking institution or trust company incorporated outside Jamaica, which is—
 - (i) duly licensed by the relevant authority in the jurisdiction in which it is incorporated; and
 - (ii) registered under Part X of the Companies Act, and approved by the Commission as being capable of performing the functions of custodian.

(3) The custodian shall carry out and be responsible for—

- (a) such matters as are required by these Regulations to be the custodian's responsibility; and
- (b) such other matters as may be sent out in the custodian agreement.

(4) The custodian agreement shall contain—

- (a) a provision that the custodian agrees to become the custodian of the mutual fund, subject to these Regulations and the terms of the fund's documents of incorporation; and
- (b) a declaration that the custodian will hold the fund's property for the mutual fund.

(5) Where a registered local mutual fund appoints as custodian a foreign banking institution or a trust company incorporated outside Jamaica, that institution or trust company shall perform the functions of custodian only in relation to foreign assets held by that registered local mutual fund.

(6) The custodian may, with the approval of the Commission, appoint such persons as it thinks fit to be sub-custodians or to carry out such of the custodian's functions as are specified in the agreement governing such appointment.

(7) An agreement referred to in paragraph (6) shall make provision for the following matters in relation to the mutual fund's assets—

- (a) management;
- (b) valuation;
- (c) custody;
- (d) payments;
- (e) redemption of shares.

PART III. *Local Mutual Funds, contd.*Duties of
custodian.

16.—(1) The custodian shall—

- (a) take into his custody or under his control the property of the scheme and hold it in trust for the scheme in accordance with the provisions of the constitutional documents and these Regulations;
 - (b) be liable for any act or omission of any agent with whom any investments in bearer form are deposited;
 - (c) be liable for the acts and omissions of the lenders and its agents in relation to assets of the mutual fund;
 - (d) take reasonable care to ensure that the sale, issue, repurchase, redemption and cancellation of shares effected by a local mutual fund are carried out in accordance with the provisions of the constitutional documents;
 - (e) take reasonable care to ensure that the methods adopted by the management company in calculating value of shares are adequate to ensure that the sale, issue, repurchase, redemption and cancellation prices are calculated in accordance with the provisions of the constitutional documents;
 - (f) carry out the instructions of the management company in respect of investments unless they are in conflict with the provisions of the offering or the constitutional documents;
 - (g) take reasonable care to ensure that the investment and borrowing limitations set out in the constitutional documents and the conditions under which the scheme was authorized are complied with;
 - (h) issue a report to the holders to be included in the annual report on whether in the custodian's opinion, the management company has, in all material respects, managed the scheme in accordance with the provisions of the constitutional documents and if, in the custodian's opinion, the management company has not done so, the respects in which it has not done so and the steps which the custodian has taken in respect thereof;
 - (i) take reasonable care to ensure that share certificates are not issued until subscription monies have been paid; and
 - (j) take the necessary steps to ensure that adequate arrangements are made to protect confidentiality as regards functions which are not carried out by the custodian.
- (2) The custodian—
- (a) may notify the manager that it is not prepared to accept the transfer of any property which, in the custodian's opinion, infringes any provisions of these Regulations or the constitutional documents;

PART III. *Local Mutual Funds, contd.*

- (b) shall, in writing, notify the Commission of any breach of these Regulations forthwith upon the custodian becoming aware of such breach.

17.—(1) The custodian may not retire or be removed—

- (a) unless the Commission is notified of such retirement not less than ninety days before the effective date thereof;
- (b) until the appointment of a new custodian deemed acceptable by the Commission.

Retirement or removal of custodian.

(2) The retirement of the custodian shall take effect at the same time as the new custodian takes up office.

(3) In the event of the custodian desiring to retire, ceasing to be eligible to act as a custodian or being removed, another person of the category specified in regulation 15 (2) shall be appointed to be the custodian in place of the retiring custodian.

(4) Subject to paragraph (3), the custodian for the time being shall be subject to removal by notice in writing given by the management company to the custodian if an extraordinary resolution in general meeting of the fund is passed for the removal of the custodian.

(5) An appointment of a new custodian shall be made by a new custodian agreement containing such provisions as the management company is advised are necessary or desirable in order to ensure the due performance by the new custodian of its duties.

(6) Holders shall be advised in writing of the retirement or removal of the custodian and the name of the new custodian.

(7) Upon the appointment of a new custodian, the retiring custodian may retain for its own benefit, and without having to account therefor to the holders of any of them, any consideration paid to it in connection with the change of custodian.

18. The custodian and the management company shall be persons who are not associated persons within the meaning of section 3 of the Act.

Independence of custodian and management company.

19.—(1) Subject to paragraph (2), every local mutual fund, other than a fund to which regulation 24 applies, shall, with the approval of the Commission, appoint a management company to manage the scheme and in so doing, to carry out and be responsible for—

Appointment of management company.

- (a) such matters as are specified in these Regulations to be the responsibility of the management company;
- (b) such other matters as may be set out in the management agreement.

PART III. *Local Mutual Funds, contd.*

(2) A management company appointed under paragraph (1) shall be a company licensed as a dealer under the Act.

Qualifications
of manage-
ment
company.

20. A management company shall—

- (a) be engaged primarily in the business of mutual fund management;
- (b) have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities and, in particular, its issued and paid-up capital and capital reserves shall not be less than US\$300,000.00 or 2% of all outstanding liabilities, whichever is greater;
- (c) not lend to an extent that exceeds 10% of its capital base; and
- (d) maintain at all times a positive net asset position in accordance with the formula set out in the Fourth Schedule.

Fourth Schedule.

Intercompany
indebtedness.

21. Indebtedness by the management company to its associated company shall be regarded as part of capital for the purpose of regulation 20 in the following circumstances—

- (a) the indebtedness shall not be settled without the prior written consent of the Commission; and
- (b) the indebtedness shall be subordinated to all other liabilities of the management company.

Qualification
of directors.

22. The directors of the management company shall be fit and proper persons within the meaning of section 9 (3) (a) (ii) of the Act.

Appointment
of investment
adviser.

23.—(1) Subject to paragraph (2), any appointment by the management company of an investment adviser shall be made from among persons licensed as such under the Act.

(2) Paragraph (1) shall not apply to advisers who are resident in Jamaica and who only give advice to the fund outside of Jamaica.

(3) The remuneration and expenses of the investment adviser shall be borne by the management company which shall, notwithstanding the appointment, remain responsible for the discharge of the investment advisers duties under these Regulations.

Self-managed
schemes.

24.—(1) Notwithstanding regulation 19—

- (a) a fund (hereinafter referred to as a self-managed scheme) may be managed by its own officers performing the functions of a management company; and

PART III. *Local Mutual Funds, contd.*

- (b) in such a case, references in these Regulations to the officers of the management company shall be deemed to be references to the officers of that fund.

(2) The officers of a self-managed scheme shall not deal with the scheme as principals.

(3) The bye-laws of a self-managed scheme shall contain the following provisions—

- (a) holders may convene a meeting and, by way of an ordinary resolution, remove any of the officers considered no longer fit and proper to manage the scheme's assets; and
- (b) officers' fees and remuneration shall be fixed by the holders at a general meeting.

25.—(1) A management company shall—

- (a) manage the scheme in the exclusive interest of the holders and in accordance with these Regulations and the scheme's constitutional documents;
- (b) maintain or cause to be maintained the books and records of the scheme and prepare the scheme's accounts and reports;
- (c) ensure that the constitutional documents are made available for inspection by the public in Jamaica, free of charge at all times during normal office hours at its place of business and make copies of such documents available upon the payment of a reasonable fee;

General obligations of management company.

(2) The management company shall publish at least two reports in respect of each financial year and copies of those reports shall be sent to all registered holders and the Commission and such reports shall include a statement of portfolio.

26.—(1) The Management Company shall be subject to removal by notice in writing from the directors of a mutual fund in any of the following events—

- (a) the management company goes into liquidation, becomes insolvent or enters any other insolvency proceedings provided for under the Companies Act;
- (b) for good and sufficient reason, the directors of a mutual fund are of the opinion and so state in writing that a change in management company is desirable in the interests of the holders.
- (2) The management company shall have the right to retire—
- (a) in the manner provided for in the constitutional documents; or

Retirement of a management company.

PART III. *Local Mutual Funds, contd.*

(b) if the Commission withdraws its approval of the management company.

(3) The Commission shall be informed by the directors of a mutual fund of any decision to remove the management company not less than ninety days before the date of that decision.

(4) Upon retirement or dismissal of the management company, the directors of a mutual fund shall, with the approval of the Commission, appoint a new management company as soon as possible.

(5) The appointment of a new management company shall be by a new management agreement containing such provisions as the directors are advised are necessary in order to ensure the due performance of its duties by the new management company.

(6) Upon the appointment of a new management company—

(a) the retiring management company shall be absolved and be released from all further obligations under these Regulations and the constitutional documents and shall cease to have any rights thereunder, but without prejudice to the rights of any holder or other person in respect of any act or omission on the part of the retiring management company prior to such retirement.

(b) the retiring management company may retain for its own benefit, and without having to account therefor to the holders or any of them, any consideration paid to it in connection with the change of manager.

(7) This regulation shall not apply to self-managed schemes.

Appointment
of the auditor.

27.—(1) A management company or the directors of a mutual fund shall, on the establishment of the fund and upon any vacancy, appoint an auditor for the fund.

(2) The auditor shall be independent of the management company, the custodian and the directors of the local mutual fund.

(3) The management company shall cause the fund's annual report to be audited by the auditor within ninety days after the date of the report.

PART IV. *General Obligations of Mutual Fund**Accounts and Disclosures*

Keeping of
accounts, etc.

28.—(1) Subject to paragraph (2), every local mutual fund shall for each fund keep and maintain proper books of accounts, records and documents in such manner as to—

PART IV. *General Obligations of Mutual Fund, contd.*

- (a) explain its transactions and disclose at any point of time the financial position of the mutual fund; and
- (b) in particular, give a true and fair view of the state of affairs of the fund,

and shall notify to the Commission of the place where the books of accounts, records and documents are maintained.

(2) Every mutual fund shall follow such accounting policies and standards as to provide appropriate details of—

- (a) the composition of the assets of the fund at the relevant accounting date; and
- (b) the performance during that period together with information regarding distribution or accumulation of income accruing to the holders in a fair and true manner.

(3) Every mutual fund shall, in its accounts, make a disclosure by segregating its earnings under the following headings—

- (a) short-term capital gains; and
- (b) long-term capital gains; and
- (c) other income.

(4) All expenses shall be clearly identified and appropriated to the individual schemes.

(5) In paragraph (2), “relevant accounting date” means the date on which the company’s audited financial statements are due.

29. The annual report of a mutual fund or an abridged summary thereof shall be published through an advertisement in a local newspaper as soon as may be practicable but not later than three months from the end of the relevant financial year: Annual report.

Provided that, whenever the report is published in summary form, such publication shall carry a note that the full annual report shall be available for inspection of the head office of the mutual fund and if so required, a copy thereof shall be made available on payment of such nominal fees as may be specified by the mutual fund.

30.—(1) The mutual fund, the management company, the custodian and the sponsor shall, when requested to do so by the Commission, make such disclosures or submit such documents as the Commission may specify. Disclosures.

(2) Without prejudice to the generality of paragraph (1), a mutual fund shall furnish the following periodic reports to the Commission in respect of each fund—

PART IV. *General Obligations of Mutual Fund, contd.*

- (a) once per year, copies of the duly audited annual statements of accounts including the balance sheet and the profit and loss account;
- (b) a copy of the following quarterly unaudited accounts—
 - (i) a quarterly statement of movements in net assets; and
 - (ii) a quarterly portfolio statement, including changes from the previous periods.

(3) Local mutual funds shall publish in a local newspaper, such disclosures as are essential in order to keep investors apprised of any material changes, which may have an adverse bearing on their investments.

(4) Every mutual fund shall, within three months from the end of each financial year forward to the Commission a copy of the annual report and other information including details of investments and deposits held by the mutual fund so that the entire portfolio of the mutual funds is disclosed to the Commission.

(5) A mutual fund shall, before the expiry of forty-five days from the 31st March and the 30th September in each year publish its unaudited financial results in a local newspaper.

PART V. *Inspection and Disciplinary Proceedings*

Inspection of
accounts,
records, etc.

31.—(1) The Commission may undertake the inspection of the books of accounts, records and documents of mutual fund, the asset management company and custodian for any of the purposes specified in paragraph (2).

- (2) The purposes referred to in paragraph (1) are—
 - (a) to ensure that the books of accounts and other books are being properly maintained;
 - (b) that the provisions of the act and these Regulations are being complied with;
 - (c) to review the role of the mutual fund, custodian or management company in the case of take-overs;
 - (d) to investigate complaints received from holders, other mutual funds, or any other persons on any matter having a bearing on the activities of the mutual fund, management company and custodian.

(3) Where an inspection is being carried out under this regulation, every director, proprietor, partner, officer and employee of the mutual fund, management company or the custodian, as the case may be, shall—

PART V. *Inspection and Disciplinary Proceedings, contd.*

- (a) produce to the Commission's authorized officer, such books of accounts and other documents in his custody or control and furnish him with the statements and information relating to the mutual fund and its activities within such time as the authorized officer may require;
- (b) allow the authorized officer to have a reasonable access during working hours to the premises occupied by such mutual fund or by any other person, on his behalf or who may be in any way concerned with the activity of the mutual fund; and
- (c) extend reasonable facility for examining any books, records, documents and computer data in the possession of the mutual fund or any other person; and provide or permit the authorized officer to make copies of documents or other material which the authorized officer considers relevant;
- (d) provide such other assistance as may be required by the authorized officer in connection with the inspection.

(4) The authorized officer shall, in the course of inspection, be entitled to examine or record statements of any member, director, partner, proprietor and employee or any person in any way associated with activities of the mutual fund, management company, or custodians.

(5) The authorized officer shall, as soon as may be practicable after carrying out an inspection, submit a report of that inspection to the Commission.

(6) The Commission shall, after consideration of the report, communicate the findings to the mutual fund concerned and give it an opportunity of being heard before any action is taken by the Commission on the findings of the report.

32.—(1) The Commission may in writing, require the auditor of a mutual fund to—

Expanded
audit

- (a) report in writing to the Commission on the extent of the auditor's procedures in auditing the balance sheet and profit and loss account of the fund;
- (b) enlarge the scope of that audit or perform such other audit procedures as the Commission may specify in any particular case and report thereon in writing to the Commission;
- (c) carry out report in writing to the Commission on—
 - (i) such examination of the fund's procedures as the Commission may specify in order to determine whether or not those procedures are adequate for the protection of the investors in the fund;

PART V. *Inspection and Disciplinary Proceedings, contd.*

- (ii) such other examination of the fund as, in the opinion of the Commission, is necessary in the public interest.

(2) Where in any particular case the Commission is of the opinion that an audit of a fund should be conducted by an auditor other than the fund's auditor, the Commission may appoint an auditor or a firm of auditors for that purpose.

(3) The expenses as approved by the Commission of any audit or examination carried out pursuant to this regulation shall be paid by the fund concerned.

(4) An auditor who refuses to comply with a requirement of the Commission under paragraph (1) or (2) shall be guilty of an offence.

(5) An auditor of a mutual fund shall not be regarded as being in breach of his duty to the fund in consequence of any report made to the Commission in compliance with paragraph (1).

PART VI. *General.*

Diversification.

33.—(1) Subject to paragraphs (2) and (3), all mutual funds shall be diversified as follows—

- (a) at least 70% of the value of a fund's total assets shall be invested in readily marketable securities;
- (b) no more than 10% of a fund's assets shall be invested in securities of any one issuer.

(2) The Commission may, on application in writing in that behalf, permit a mutual fund to be operated as a non-diversified fund.

(3) Where the Commission grants permission under paragraph (1), it shall require the mutual fund to be described in such a manner as will identify the actual portfolio mix.

Compliance with Companies Act.

34. All mutual funds shall—

- (a) be operated in accordance with the Companies Act and comply with the provisions of that Act; and
- (b) comply with the prospectus requirements set out in the Third Schedule.

Third Schedule

Penalties.

35.—(1) A person shall be liable to any of the penalties specified in paragraph (2) if he—

- (a) fails to comply with any condition subject to which registration has been granted;

PART VI. *General, contd.*

- (b) contravenes any of the provisions of the Act or these regulations; or
 - (c) fails to maintain the registration requirement including the requirements as to capital base and fit and proper status.
- (2) The penalties referred to in paragraph (1) are—
- (a) subject to paragraph (3), suspension of registration after enquiry for a specified period;
 - (b) cancellation of registration;
 - (c) prohibition against floating or constituting any further funds or both;
 - (d) prohibiting the management company from acting as such for a mutual fund;
 - (e) imposition of conditions or further conditions on any licence which the mutual fund holds or amendment of the existing conditions;
 - (f) appointment of a person to advise the fund on the proper conduct of its affairs, at the expense of the mutual fund;
 - (g) appointment of a person at the expense of the mutual fund to—
 - (i) assume control of the mutual fund; or
 - (ii) terminate the business if it is found to be insolvent.
- (3) No order for suspension may be given without prior consultation with—
- (a) the Bank of Jamaica in respect of mutual funds sponsored by licensed banks or financial institutions; or
 - (b) the office of the Superintendent of Insurance in respect of mutual funds sponsored by insurance companies.
- (4) A penalty of suspension of registration of a mutual fund may be imposed if—
- (a) the mutual fund, management company or custodian of the mutual fund violates the provisions of the Act or these Regulations;
 - (b) the mutual fund, management company or custodian—
 - (i) fails to furnish any information or to submit periodical reports as required under these Regulations;
 - (ii) furnishes wrong or false information;
 - (iii) does not co-operate in any enquiry conducted by the Commission.
 - (c) the mutual fund—
 - (i) fails to resolve the complaints of the holders or fails to give a satisfactory reply to the Board or the Commission in relation thereto; or

PART VI. *General, contd.*

- (ii) is guilty of improper, unbusinesslike or unprofessional conduct;
 - (iii) fails to pay the fees required under these Regulations;
 - (iv) violates the conditions of registration;
- (d) the management company fails to maintain the required net worth in accordance with the provisions of regulation 20;
- (e) the mutual fund, management company or custodian does not carry out its obligations as specified in these Regulations.
- (5) A penalty of cancellation of registration of a mutual fund may be imposed if—
- (a) the financial position of the mutual fund deteriorates to such an extent that the Commission is of the opinion that its continuance is not in the interest of holders and other mutual funds;
 - (b) the mutual fund, management company or custodian is convicted of fraud, or any other criminal offence;
 - (c) the provisions of paragraph (1) applies.
- (6) An order of suspension or cancellation of registration shall be published by the Commission in at least two local newspapers.
- (7) From and after—
- (a) the date of the suspension, the mutual fund shall, during the period of suspension, cease to carry on any activity related to the mutual fund;
 - (b) the date of cancellation, the mutual fund shall cease to carry on any activity related to that mutual fund.

Appeals.

36. Any person aggrieved by an order of the Commission may appeal against that order in accordance with section 74 of the Act.

Offences and penalties.

37. A person who contravenes any of the provisions of these Regulations shall be guilty of an offence and shall be liable on conviction before a Judge of the Supreme Court sitting without a jury—

- (a) in the case of an individual, to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years; or
- (b) in the case of a company, to a fine.

FIRST SCHEDULE (Regulations 3, 4 and 13)

Form A

Application for Registration of a Mutual Fund

Details of the Fund

Name of the Fund:

Address:

Telephone/fax/e-mail

Local or overseas based:

Structure of the Fund:

Base currency of the Fund:

Applicable law, date and country of incorporation:

.....

Quotation on any stock exchange and authorization granted by other regulatory bodies:

Undertakings given to other regulatory bodies:

.....

Launch: Date and place:

Duration of limited mutual fund scheme:

Dealing: daily/weekly/other specify:

Valuation of assets: daily/weekly/other specify:

Pricing: forward/historic/other specify:

Whether shares or units to be offered for sale in Jamaica:

.....

Two character references and one financial for:

(a) every director and senior officer.....

(b) every shareholder, if the applicant, is a private company

Other Details:

- (1) *Description of investment objectives of the Fund including objectives (e.g. capital growth of income), current or proposed investment policy (e.g. specialization in geographical or industrial sectors or type of instruments—money market funds, equity and bond funds, global emerging markets, property funds, etc.) and any current or proposed limitations on that policy.

FIRST SCHEDULE, *contd.*

- (d) Minimum initial subscription and the minimum subsequent holding

DETAILS OF THE PARTIES TO THE FUND

The Management Company

- (a) Name:
- (b) Country and date of incorporation:
- (c) Registered and business address:
- (d) Address of registered office of:
 - (i) manager
 - (ii) head office
 - (iii) principal place of business, if different from (c) above
- (e) Registration number of manager/investment adviser:
- (f) Names of directors of management company:
- (g) Names of—
 - (i) principal officers of manager
 - (ii) controllers of manager
- (h) *Details of Management/Investment Adviser Agreement between the Fund's Board of Directors and Manager.

**(Attach separate sheet)*

- (i) Name of the ultimate parent company (if any)
- (j) Previously registered by the Commission? Yes/No.
If no, submit resumes of the directors and audited financial statements for the last two years and applications for licences.
- (k) Person(s) for contact with the Commission:

In the case of self-managed Fund, submit the resumes of the directors of the Fund and person(s) for contact with the Commission.

**(Attach separate sheet)*

The custodian

- (a) Name:
- (b) Country and date of incorporation:
- (c) Registered and business address:

FIRST SCHEDULE. *contd.*

Attorney in Jamaica:

- (a) Name:
- (b) Persons for contact with the Commission:
-

Details of Registrar/Transfer Agent, etc.

- (a) name of registrar or any other third party to whom it is proposed to delegate any of the functions of the manager or custodian:
-
- (b) Legal form of such person:
- (c) Country of incorporation and date of incorporation:
-
- (d) Registered and business address:
-
- (e) Address of registered office of:
 - (i) manager
 - (ii) head office
 - (iii) principal place of business in Jamaica, if different from (d) above
- (f) Securities Commission's reference numbers (if any) of such persons;
- (g) Names of the directors of partners of such persons:
-
- (h) Names of:
 - (i) the principal officers
 -
 - (ii) any controllers of the manager
 -
- (i) Details of the proposed arrangements in each case
-
- (j) If any of the manager's functions are to be delegated to the custodian or *vice versa*, details of the proposed arrangement in each case
-
-

Other Information

- (a) A copy of the Fund Prospects.

FIRST SCHEDULE, *contd.*

- (b) A certificate signed by an attorney to the effect that the fund prospectus complies with such requirements of the Securities (Mutual Funds) Regulations, or the Securities Act as relate to its contents.
- (c) For an existing fund, copies of latest annual and any subsequent half-yearly reports.
- (d) Details of any commercial arrangements between the manager and the custodian. Those relating to being manager and custodian of other collective investment schemes or mutual fund need not be given.
- (e) A business plan for the fund covering three years or such longer period as, in the opinion of the manager, will be necessary to enable the fund to become a viable size and giving details of:
 - (i) the proposed launch date, if it is a new Fund
 - (ii) how the shares will be sold and to whom
 - (iii) the countries in which it is proposed that the shares of the Fund will be marketed
 - (iv) details of any ended "insurance link"
 - (v) the initial price of the shares
 - (vi) any minimum holding size
 - (vii) any minimum transaction size
 - (viii) where the fund has not been in existence for three years, details of the estimated fund charges (and the basis of these charges should be stated) and itemized annual fund operating expenses and income in respect of the scheme for each of the preceding three years should be given.

Form B

THE SECURITIES ACT (Regulations 4 and 13)

THE SECURITIES (MUTUAL FUNDS) REGULATIONS, 1998

Certificate of Registration for Mutual Funds

This Certificate of Registration is issued to

.....
(Name of Mutual Fund)

which is registered as a Local/Overseas Mutual Fund subject to the terms and conditions specified herein.

.....
Chairman, Securities Commission.

Terms and Condition

SECOND SCHEDULE (Regulations 3, 4, 7 and 13)

Table of Fees

<u>Description of Fee</u>	<u>Amount</u>
Application fee for Mutual Fund Registration	US\$1,000.00
Registration fee	US\$5,000.00
Annual renewal fee in respect of a Mutual Fund registered with the Commission	US\$5,000.00

THIRD SCHEDULE (Regulations 2 and 34)

Prospectus Requirements

1. THE FUND AND MANAGER

(1) The following particulars of the fund and the manager shall be stated—

- (a) its name;
- (b) the nature of its corporate form;
- (c) the country or territory of its incorporation;
- (d) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
- (e) the address of the manager's registered office;
- (f) the address of the manager's head office if that is different from the address of the registered office;
- (g) if neither the registered office nor the head office of the manager is in Jamaica, the address of the manager's principal place of business in Jamaica;
- (h) the date of its incorporation;
- (i) if the duration of its corporate status is limited, when that status will or may cease;
- (j) the amount of its issued share capital and how much of it is paid up;
- (k) the names of the directors and, in each case, any significant activities of the director not connected with the business of the manager;
- (l) whether or not it has been registered by the Commission in accordance with regulation 4 of the Regulations;
- (m) a statement if the fund is registered (or intends to be registered) in any jurisdiction or with any supervisory/regulatory authority outside Jamaica;
- (n) if the manager is the manager of another fund the name of that other fund, the investment objectives of that fund and the fact that the manager is the manager or operator of it.

THIRD SCHEDULE, *contd.*

If any director of the manager is a body corporate there shall also be stated in relation to that director the matters referred to in paragraphs (a) to (d) and (h) to (k).

2. THE CUSTODIAN

(1) The following particulars of the custodian shall be stated—

- (a) its name;
- (b) the nature of its corporate form;
- (c) the country or territory of its incorporation;
- (d) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
- (e) the address of its registered office;
- (f) the address of its head office if that is different from the address of its registered office;
- (g) if neither its registered office nor its head office is in the Island and it has a place of business in the Island, the address of its principal place of business in Jamaica;
- (h) a description of its principal business activity and that of any co-custodian; and
- (i) whether or not it is a licensed bank or licensed financial institution in Jamaica or a subsidiary company of such a bank or financial institution.

3. THE INVESTMENT ADVISER

(1) If the manager employs the services of an investment adviser who manages any of the property of the fund or provides advice in relation to the fund the following particulars of each and every investment adviser shall be stated—

- (a) the name;
- (b) the address of the registered office or principal place of business or both;
- (c) whether or not he has been approved by the Commission to act as an investment adviser;
- (d) if the investment adviser is a body corporate in a group of which the operator is a member, that fact;
- (e) if the principal activity of the investment adviser is other than providing services as an investment adviser, what that principal activity is;
- (f) the main terms of the agreement or arrangement between the manager and each and every investment adviser (other than those related to the investment adviser's remuneration) and, if the investment adviser has the authority of the manager to make decisions on behalf of the manager that fact and a description of the matters in relation to which the investment adviser has that authority;
- (g) if the investment adviser is authorized to deal on behalf of the fund and is an associate of the manager, the relationship by virtue of which he is an associate, and the maximum percentage commission payable to him under the agreement or arrangement in paragraph (f) for any deal done or which could be done on behalf of the fund.

THIRD SCHEDULE, *contd.*

4. THE REGISTRAR

If the manager or the custodian employs the services of a registrar, that is to say, a person who maintains the register of holders, that person's name and address must be stated.

5. THE AUDITOR

The name and address of the auditor of the fund shall be stated.

6. THE REGISTER

The address in Jamaica where the register of holders can be inspected shall be stated.

7. THE CONSTITUTION AND OBJECTIVES OF THE FUND

(1) The following shall be stated—

- (a) the name of the fund;
- (b) the date on which the fund was established and, if the duration of the fund is not unlimited, when it will or may terminate;
- (c) the type of fund, whether feeder funds, umbrella fund or fund of funds;
- (d) if the fund is a feeder fund, the name and a description of the status of the fund, or eligible investment trust, into which it is to feed;
- (e) if the fund is a fund of funds, a list of the categories of funds in which the fund of funds may invest;
- (f) if the fund is a mutual fund, particulars of its capital structure, including, where applicable, any existing, initial, founder or manager share capital.

8. INVESTMENT POLICY

(1) The following shall be stated—

- (a) whether the objective of the investment policy is to be capital growth, income growth or some other stated policy;
- (b) the manager's investment policy for achieving that objective;
- (c) if the investment policy does not envisage remaining fully invested at all times a statement of the manager's policy in that respect;
- (d) any economic sectors or geographical areas to which investment will be confined or which are likely to be preferred in the making of decisions as to how the funds are to be invested.
- (e) a description of the type of property which may be included in the fund;
- (f) any limitations on the types of property which may be included in the fund indicating (where appropriate) where the restrictions imposed on the fund are more restrictive than would otherwise be imposed by the Regulations;
- (g) if and the extent to which a fund may invest in other funds managed by the manager or any associate of the manager;
- (h) the names of the states, local authorities and/or public international bodies in whose securities the fund may invest more than 35% of the assets and whether or not it has done so;
- (i) whether the manager may enter into and, if so, what types of transaction are likely to be entered into for the purposes of efficient portfolio management;

THIRD SCHEDULE, *contd.*

- (j) a statement of what borrowing powers are exercisable in relation to the fund; and
- (k) a description of the fund's material risks.

9. WINDING-UP

The circumstances in which the the winding-up of a fund can be decided upon, a description of the procedure to be followed in a winding-up and what the rights of holders will be in a winding-up shall be stated.

10. ACCOUNTING PERIODS

The accounting reference date shall be stated and if there are interim accounting periods, such periods shall be stated.

11. LIST OF ELIGIBLE MARKETS

List any individual eligible securities and derivatives markets through which the fund may invest or deal.

12. CHARACTERISTICS OF SECURITIES IN THE FUND

(1) The following shall be stated—

- (a) in relation to each available type of security the fund, the entitlement of the holder of that security to participate in the property of the fund and the income thereof, a statement of the nominal value (if any) of each type of security and, where there is more than one type of security, the names given to each type and the characteristics of each type which distinguishes it from the others;
- (b) what voting rights are exercisable at meetings of holders and, if different rights attach to different classes of securities, what those different rights are and, whether persons other than holders can vote at meetings of holders and who those persons are.

13. CHARACTERISTICS OF THE FUND ITSELF

State any characteristics of the fund itself, including in particular any risks it may reasonably be regarded as presenting for reasonably prudent investors of moderate means, and anything else which may reasonably be regarded as relevant and requisite.

14. VALUATION OF THE PROPERTY OF THE FUND

(1) The following shall be stated—

- (a) how frequently and at what time of day the property of the fund will be regularly valued for the purpose of determining prices at which the securities in the fund may be issued or redeemed by the manager and a description of any circumstances in which the fund may be specially valued.
- (b) in relation to each purpose for which the property of the fund will be required to be valued, whether it will be valued on a creation basis, a cancellation basis, a mid-market basis or any other specified basis.

15. PRELIMINARY CHARGE

(1) If the price at which securities may be purchased from the manager may include a preliminary charge by the manager, state—

- (a) the maximum amount of that charge, expressed either as a percentage of the average of the creation and cancellation prices of those securities

THIRD SCHEDULE, *contd.*

or as a fixed amount in the base currency which is the maximum amount permitted by the constitutional documents; and

- (b) if the amount of that charge currently included in the price of securities is below the maximum—
 - (i) that amount; and
 - (ii) if notice has been given to the holders of the manager's intention to increase the amount currently charged, particulars of that increase and when it will take effect; and
 - (iii) if notice has been given to the holders of an intention to propose an increase in the maximum amount of that charge at a meeting of holders, particulars of that proposal.

16. PERIODIC CHARGE

- (1) If the manager may make a periodic charge out of the property of the fund, state—
 - (a) the maximum amount of that charge, expressed as an annual percentage of the value of the property of the fund, which is permitted by the constitutional documents; and
 - (b) if the amount of that charge currently made is below the maximum—
 - (i) that amount; and
 - (ii) if notice has been given to the holders of the manager's intention to increase the amount currently charged, particulars of that increase and when it will take effect.

17. CHARGE ON REDEMPTION

- (1) If the manager may make a charge by way of deduction from the proceeds of redemption, state—
 - (a) the amount of that charge or, if it is variable, the rate or method of arriving at it;
 - (b) if the amount or rate or method has been changed, that details of any previous amount or rate or method may be obtained from the manager on request; and
 - (c) if notice has been given to the custodian of an intention to propose an increase in the amount of rate at a meeting of holders, particulars of that proposal.

18. OTHER CHARGES AND EXPENSES

- (1) When they are payable out of the property of the fund the following remuneration and expenses will be stated and how they will be determined—
 - (a) the remuneration of the custodian;
 - (b) the remuneration of the manager;
 - (c) the remuneration of the registrar;
 - (d) the remuneration and expenses of the directors or other members of the principal company's governing structure and, if the constitutional

THIRD SCHEDULE, *contd.*

documents permit, any of the above to be at a higher level, what those higher levels are or how they may be determined;

- (e) the nature of any other expenses payable out of the property of the fund and how their amounts will be determined.
- (2) If the custodian is to be reimbursed out of the property of the fund, expenses incurred in performing any of the duties of the custodian, what those duties are and that expenses incurred in their performance will be reimbursed out of the property of the fund. It is envisaged that the duties undertaken by the custodian may include any or all of the following—
- (a) delivery of stock;
 - (b) custody of assets;
 - (c) maintenance of the register;
 - (d) collection of income;
 - (e) preparation of the custodian's annual report;
 - (f) such other duties as the custodian is required by law to perform.

19. DISTRIBUTION OF INCOME

- (1) The following shall be stated—
 - (a) a description of the fund's intentions with respect to the declaration of dividends and the date or dates in each calendar year on which distributions of income are to be made to holders;
 - (b) if grouping for equalization is permitted by the constitutional documents, that fact with an explanation of its meaning and a statement of what the grouping periods are.

20. THE ISSUE AND REDEMPTION OF SECURITIES IN THE FUND

- (1) The following shall be stated—
 - (a) the days and times therein on which the manager will be available to receive requests for the issue and redemption of securities;
 - (b) the procedures for effecting the issue and redemption of securities and the settlement of transactions and how a holder to whom no certificate has been issued may produce evidence of title to his securities;
 - (c) the steps required to be taken by a holder in redeeming securities before he can receive the proceeds of redemption;
 - (d) the amounts of the following minima (if they apply) for each type of security in the fund—
 - (i) the minimum number of securities which any one person may hold;
 - (ii) the minimum value of securities which any one person may hold;
 - (iii) the minimum number of securities which may be the subject of one transaction of redemption;
 - (iv) the minimum value of securities which may be the subject of any one transaction of redemption;

THIRD SCHEDULE, *contd.*

- (v) the minimum number of securities which may be the subject of one act of redemption; and
- (vi) the minimum value of securities which may be the subject of any one act of redemption;
- (vii) the circumstances in which the redemption of securities may be suspended;
- (viii) the days and times therein on which the re-calculation of issue and redemption prices will commence;
- (ix) where and when the most recent issue and redemption prices will be published.
- (x) the investment exchanges (if any) on which securities in the fund are or are to be, listed or dealt in;
- (xi) details of the principal.

21. PRICING BASIS FOR ISSUE AND REDEMPTION

State the manager's annual basis of dealing (whether at a forward or historic price or on the basis of a switch from the latter to the former in every dealing period).

22. GENERAL INFORMATION

(1) The following shall be stated—

- (a) when annual and half-yearly reports will be published.
- (b) the address at which copies of the constitutional documents of the fund, any amending instrument and of the most recent annual and half-yearly reports may be inspected and from which copies of them may be obtained;
- (c) that the cancellation price last notified to the custodian is available on request;
- (d) in the case of a fund out of whose property amortized establishment expenses are paid, the amount of those expenses payable in each year.

23. SPECIAL PROVISIONS FOR UMBRELLA FUNDS

(1) In the case of an umbrella fund state—

- (a) that in no circumstances a holder who exchanges rights or securities in one part of the fund for rights or securities in another part of the fund be given a right by law to withdraw from or cancel the transaction; and
- (b) what arrangements are made by the constitutional documents for charges in the case of an exchange of securities in one constituent part for securities in another, including the maximum amount of the charge and the minimum number of exchanges that will be permitted free of charge.

(2) In the application of this Schedule to an umbrella fund, the information required—

- (a) shall be stated in relation to each part of the fund where the information for any part of the fund differs from that for any other part; and
- (b) shall be stated for the fund as a whole, but only where the information is meaningful in relation to the fund as a whole.

THIRD SCHEDULE, *contd.*

24. CONFLICTS OF INTEREST

A description of the potential conflicts of interest between the fund, its directors and its service providers.

25. HEALTH WARNING

"Approvals received from the Securities Commission do not constitute a guarantee by the Commission as to the performance of the fund or its creditworthiness. Furthermore, in giving such approvals the Commission shall not be liable for the performance or default of the fund or for the correctness of any opinions or statements expressed."

26. ADDITIONAL INFORMATION

State any other material information which is within the knowledge of the directors or which the directors would have obtained by the making of reasonable enquires—

- (1) which investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed judgment about the merits of investing in the fund and the extent and characteristics of the risks accepted by so investing; and
- (2) including a statement of any risks in the fund which may reasonably be regarded as existing for reasonably prudent investors.

FOURTH SCHEDULE

(Regulations 3 and 20)

Formula for Determination for Mutual Fund Net Capital Requirement	Credits	Debits
1. Free Credit balances and other credit balances	\$ .....	.....
2. Monies payable against securities loans	\$ .....	.....
3. Securities failed to receive	\$ .....	.....
4. Credit balances in firm accounts which are attributable to principal sales	\$ .....	.....
5. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days	\$ .....	.....
6. Market value of short security count differences over 30 calendar days. (Also shorts from managed funds reconciliation)	\$ .....	.....
7. Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days.	\$ .....	.....
8. Market value of securities which are in transfer in excess of 30 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 30 days.	\$ .....	.....
9. Debit balances in cash and margin accounts excluding unsecured accounts and accounts doubtful of collection.	\$ .....	.....
10. Securities borrowed to effectuate short sales by and securities borrowed to make delivery on securities failed to deliver	\$ .....	.....
11. Failed to deliver securities not older than 30 calendar days	\$ .....	.....
12. Margin required and on deposit with the Options Clearing for all option contracts written or purchased.	\$ .....	.....
	Total credits	Total debits

13. Excess of total credits (Sum of items 1-8) over total debits (sum 9-12) required to be on deposit in the "Trust Bank Account" (Section 36 of the Securities Act).		

*In calculating the Net Capital exclude all "contra" entries from the balance sheet of the financial statements. After making the adjustments to financials based on the result of this schedule proceed to calculate Net Capital.