



**FINANCIAL SERVICES COMMISSION
SECURITIES INDUSTRY ADVISORY: NEW REQUIREMENTS FOR UNIT TRUSTS**

2010 February 18

1.0 Introduction

- 1.1 The regulation of unit trusts in Jamaica is governed by the Unit Trusts Act, 1971 ("UTA") and attendant regulations. In the 1990's a moratorium was placed on the registration of new unit trusts and new unit trust products. In order to promote further financial market development and provide additional investment opportunities, it has become necessary to lift this moratorium.
- 1.2 The removal of the moratorium on the registration of new unit trusts and new unit trust products should be viewed against the background of a broader policy programme aimed at a more comprehensive reform of the regulatory framework for collective investment schemes. In particular, the Government of Jamaica ("GOJ") has embarked on a comprehensive economic and financial policy programme aimed at restoring macroeconomic stability and creating the conditions for strong and sustained growth, with support from the International Monetary Fund ("IMF") and other multilateral financial institutions. The financial sector measures to be undertaken include steps to facilitate a reduction in the level of risks maintained on the balance sheet of securities dealers and shift some of these risks to ultimate investors by encouraging the development of collective investment schemes.
- 1.3 In light of the evolution of regulatory standards relating to collective investment schemes the Financial Services Commission (FSC) felt that prior to lifting the moratorium, enhanced regulatory measures be put in place to ensure that a unit trust investor has a similar level of protection to that afforded an investor in a mutual fund registered under the Securities (Mutual Funds) Regulations (MFR). This enhanced regulatory framework includes revisions to capital, disclosure and reporting requirements for unit trusts and their fiduciaries, which have come into effect with the promulgation of the following regulations:
- (a) The Unit Trusts (Amendment of Schedule to Principal Act) Regulations;
 - (b) The Unit Trusts (Registration of Schemes) (Amendment) Regulations;
 - (c) The Unit Trusts (Nominees) Regulations;
 - (d) The Unit Trusts (Books and Documents) (Amendment) Regulations.

This bulletin seeks to assist financial market participants to understand the new requirements by summarizing key aspects of the revisions. Prospective applicants are reminded to consult the above-mentioned regulations to ensure that their operations are in full compliance with regulatory requirements.

1.4 The new regulations apply to all unit trust schemes approved after the lifting of the moratorium. However, not all of the amended unit trust regulations will apply to existing unit trust schemes operating in Jamaica.¹ Nevertheless, these requirements reflect the FSC's views regarding safe and sound practices to be adhered to by registrants under the UTA and Regulations. All persons offering unit trust services are therefore encouraged to take steps to conduct their operations and ensure that their constitutive documents conform to the amended regulations.

2.0 The following definitions will be added to the Unit Trust Regulations –

“associated person” means a person described under section 3 of the Securities Act;

“custodian” means the person appointed by the trustee of a unit trust scheme as custodian of the unit trust scheme’s assets;

“management company” means a company incorporated under the laws of Jamaica with powers to manage a unit trust scheme;

“material change” means a change in the business operations or capital of a unit trust scheme that would reasonably be expected to have an extraordinary effect on the market price or value of the units in the scheme and includes a decision to implement such change by –

- (a) the board of the trustee;
- (b) the management company; or
- (c) the Custodian;

“settlement date” means the date by which an executed order must be settled, either by the buyer paying for the asset or by a seller delivering the asset and receiving the proceeds of the sale;

“trade date” means the date that a person enters a contract to purchase or sell an asset;

“trustee” means the person holding the property assets on trust for unit holders.

3.0 FSC Requirements

3.1 Revised Eligibility and Minimum Capital Requirements for Trustees and Custodians

3.1.1 Trustees

The trustee will be required to have minimum capital requirement of JA\$1 million.

The following entities will be eligible for appointment as trustees:

¹ The new regulations include amendments to the Schedule to the Principal Act which embody new requirements for trust deeds. These amendments are not applicable to existing unit trust schemes. Section 5(2) of the Act provides that-

“5(2) The Commission may, with the approval of the Minister by regulations made under this Act, amend the Schedule , so , however, that no amendment shall affect any scheme which was registered under subsection (1) prior to making of the amendment”.

However, existing unit trust schemes and unit trust managers, which over time have displayed exemplary responsiveness to regulatory requirements, are encouraged to consider voluntary compliance with the new requirements since they will improve the level of transparency, disclosure and investor protection offered to the public.

- (1) A company licensed under the Financial Institutions Act;
- (2) A company licensed under the Banking Act;
- (3) A company licensed under the Building Society Act;
- (4) A company licensed under the Securities Act as
 - (a) a Central Securities Depository
 - (b) a Securities Dealer or
 - (c) an Investment Advisor;
- (5) A company which
 - (a) is able to satisfy the FSC's criteria for Fit and Proper Status, and
 - (b) meets the stipulated capital requirement.

3.1.2 Custodian

The trustee shall appoint a custodian to carry out the custodial services for the unit trust scheme. A trustee may elect to act as the custodian.

A custodian shall satisfy the following requirements:

- (1) All custodians shall have capital in excess of J\$50 million;
- (2) All custodians shall have adequate liability insurance to provide coverage against risk of loss due to any act or omission. This insurance cover shall not be less than the greater of
 - (a) \$2 million Jamaican dollars or
 - (b) 0.5 % or 50 basis points times the aggregate value of the assets held in custody as at the custodians most recent financial year end, using the custodian's audited financial statements;
- (3) The custodian and the management company shall be persons who are not associated persons.

3.2 Minimum Duties and Responsibilities of Trustees

The duties and responsibilities of the trustees shall include:-

- a) *Duty of efficient management*
Trustees will be expected to
 - i) Adhere to or comply with the terms of the trust deed; and
 - ii) Ensure that suitable structures and procedures are in place for the proper performance of the functions and responsibilities of the trustees as stated under the trust deed and general trust law.
- b) *Acting impartially*
 - i) Trustees shall act in the best interest of the unit holders.
 - ii) Trustees shall not benefit from their position as trustee except for any fees paid for their service.
 - iii) Trustees shall not sell to or purchase assets from the trust fund for their own account unless permitted to do so under the trust deed or for the accounts of associated persons unless the transactions are conducted at arms length.
 - iv) Trustees should exercise best efforts to avoid conflicts of interest. However, where conflicts of interest arise, the offering circular should provide the disclosures prescribed in Section 3.11(p).

3.3 Minimum Duties and Responsibilities of Custodians

The duties and responsibilities of the custodian shall include:-

- a) *Taking control of and ensuring safekeeping of the assets*
 - i) Assets forming part of the unit trust scheme shall be deposited with the custodian for the purpose of providing safekeeping.
 - ii) Assets forming part of the unit trust scheme shall be registered in the name of the custodian. An account number or other designation in the records of the custodian should show that the beneficial ownership of the asset is vested in the unit holders of the particular unit trust scheme.

- b) *Preparation of review and compliance reports*
 - i) Custodians for a unit trust scheme shall on a periodic basis (at least twice per annum) ensure that a 100% physical verification of securities and other assets held by the unit trust scheme is conducted. At least one of these verification exercises should be conducted by an external auditor.
 - ii) Custodians for the unit trust scheme shall require their auditors to provide a report to the regulator regarding the trustee's internal controls and operating procedures at least once per year.

3.4 Requirements for Management Companies

- a) *Management companies shall have full power to deal with trust funds*

The management company shall be required to provide a copy of the audited accounts of the scheme to the unit holders within six months after the end of the accounting period. These accounts should be accompanied by a report of the management company on the investment portfolio as well as the movements in the value of the portfolio. The report on the movement in the portfolio values shall be an annual report covering the financial year of the scheme.

Delivery of the accounts should be done through any method acceptable to the FSC. The statements would be deemed to be supplied if made available through the following means:

- a) website;
 - b) publication in a widely circulated newspaper;
 - c) post;
 - d) email; or
 - e) on request at the management company's office
- b) *Power to sub-delegate*
- The management and administration of the unit trust scheme and all or any of the rights, privileges, powers, duties, trusts and discretions vested in the management company may be delegated to any person approved by the trustee.

If the management company agreement provides for sub-delegation, the FSC shall be notified prior to appointment of the person, and the person must meet the FSC's fit and proper requirements and such other requirements as may be necessary in light of the functions to be undertaken. Where the functions being carried out are those of a dealer or dealer's representative, the relevant licence from the FSC must be obtained.

- c) *Removal/Retirement of Management Company*

The trust deed of an authorised unit trust scheme shall specify the conditions and procedures to be followed with respect to the replacement of the management company or trustee under the

scheme, and shall contain provisions to ensure the protection of unit holders in the event of any such replacement.

Notwithstanding the management company shall be removed by notice in writing from the trustee if the management company goes into liquidation.

Upon retirement or dismissal of the management company the trustee must forthwith file a report with the FSC and appoint a new management company as soon as is practicable.

d) Removal/Retirement of a Trustee

The trust deed of an authorised unit trust scheme shall specify the conditions and the procedures to be followed with respect to the removal and replacement of the trustee under the scheme. These should include provisions to ensure the protection of unit holders in the event of any such replacement. The FSC and unit holders shall be notified forthwith of the removal and retirement of the trustee.

Upon retirement or removal of the trustee, the management company must forthwith file a report with the FSC and appoint a new trustee (which cannot be in the same corporate group as the management company) as soon as is practicable and present such appointment to the unit holders in a general meeting for ratification by ordinary resolution within 60 days thereafter.

3.5 Disclosure of Material Changes

If a material change occurs in the affairs of the scheme, where they are aware of the change, either the management company or the trustee, as appropriate, shall:

- (1) File a report with the FSC of such material change as soon as practicable thereafter, but not later than ten (10) days of the date on which the change occurs;
- (2) Immediately notify the unit holders by way of its website, publication in a widely circulated newspaper, post or email of the substance and nature of the event, even if the nature of the event is one which does not require unit holders to vote on an issue;
- (3) Where the event is one which the trust deed requires unit holders to vote on an issue, then a meeting of unit holders must be convened in accordance with the provisions in the trust deed.

3.6 Expanded Compliance Reporting Requirements

a) The basis for calculating Net Asset Value per unit

Net Asset Value means for a unit trust scheme as at a specific date, the fair value of the total assets of the scheme less the fair value of the total liabilities of the scheme as at that date, calculated in accordance with the accounting standards used in Jamaica.

Requirements in respect of unit price calculations are:-

- i) Each transaction of purchase or sale of a security shall be reflected in a calculation of the unit price no later than the first calculation on the first business day following the trade date.
- ii) Changes in the number of outstanding units of the registered unit trust scheme resulting from distributions and redemptions shall be reflected no later than in the first calculation on the first business day following such change.
- iii) The exchange rate used for valuing assets denominated in foreign currency should be disclosed in the annual investment portfolio.

b) Frequency of Calculation of Unit Prices

- i) The unit price of a unit trust scheme shall be calculated no less than the frequency of trading in the fund's unit.
- ii) The unit price of a unit trust scheme shall be calculated in the currency of the scheme.
- iii) Unit trust schemes should disclose in their offering circulars and on their websites the cut off time and frequency of pricing of units. The cut off time should be after the market closes.
- iv) Unit trust schemes will be required to use forward pricing. Therefore orders for purchase or sale of units in the scheme will have to be priced according to the next computed net asset valuation.

3.7 Return on Investment Calculation

- (1) The management company of the unit trust scheme shall on a quarterly basis provide a report to the FSC giving full details of the method of calculation of the schemes return on investment.
- (2) The management company of the unit trust schemes shall publish the return on investment in a widely circulated newspaper at least once per week.
- (3) "Return on investment" is the ratio of money gained or lost on an investment relative to the amount of money invested. This should be calculated using the difference in the value of a unit using the selling price (ask price) at the start of the relevant period and the bid price at the end of the period.
- (4) Published return on investment information should include a rolling 52 week period along with the year to date return on investments for the current calendar year.

3.8 Additional Disclosure Requirements

a) Financial Statements

The annual financial statements of a unit trust scheme shall set out the amount of all fees, charges and expenses, if any, that have been charged to the scheme during the financial year.

Unit trust schemes shall state the following in a note to the financial statements:

- i) any adjustment for market appreciation or depreciation;
- ii) other deductions for fees, loads and other charges, including an explanation of such deductions;
- iii) the net assets due to the investors;
- iv) disclose the unit prices as well as the method of calculation of unit prices;
- v) disclose the method of valuation of assets in the portfolio; and
- vi) details of associated persons transactions where an affiliate of a scheme purchases or sells units in the scheme which is equivalent to 5% or more of the value of the portfolio.

b) Quarterly un-audited statements

Every unit trust scheme shall before the expiry of forty-five days from the 31st March, 30th June, 30th September and the 31st December forward to the FSC a copy of the following documents:-

- (1) Un-audited balance sheet including comparative changes from the previous period; and
- (2) Un-audited profit & loss account including changes from the previous period.

The un-audited financial statements should provide disclosures on the following items:

- i) the adjustment for market appreciation or depreciation;
 - ii) other deductions for fees, loads and other charges, including an explanation of such deductions;
 - iii) the net assets due to the investors;
 - iv) the unit prices as well as the method of calculation of unit prices and
 - v) the method of valuation of assets in the portfolio.
- c) *Quarterly Publication*
A unit trust scheme shall be required to publish its un-audited balance sheet and income statement before the expiry of forty-five (45) days from the end of the relevant quarter end.
- A variety of publication methods will be allowed including website, widely circulated newspaper, post and email, with copies available on request from the management company's office.
- d) *Audited Financial Statements*
A unit trust scheme shall be required to publish its audited financial statements or an abridged summary thereof in a widely circulated local newspaper as soon as practicable but not later than one hundred and twenty (120) days from the end of the relevant financial year.
- e) *Offering Circulars*
Every unit trust scheme shall forward to the FSC a copy of the new offering circular at least 30 days prior to the expiration of the seven (7) month period for which it is valid.
- f) *Monthly investment portfolio statement*
Every unit trust scheme shall forward to the FSC monthly within 15 days after the month end a copy of their investment portfolio.

3.9 Diversification Requirements

- i) A unit trust scheme shall not purchase a security or other assets of an issuer if more than 10 percent of the net assets of the scheme, taken at market value at the time of the transaction, would be invested in the securities of that issuer. The status of diversified or non-diversified shall be stated in the offering circular and all other marketing materials.
- ii) The above provision would not apply, however, to a purchase of a government or central bank security which has received a rating from an international credit rating agency that is equal to or higher than the rating received for the sovereign debt of the Government of Jamaica.
 - a) For countries outside of CARICOM the security must have an investment grade rating by an international or other credit rating agency recognized by the FSC.
 - b) For countries within CARICOM the provision will only apply to securities denominated in that country's currency and the rating must be equal to or higher than the current rating for Jamaica.

In addition, Government agency issues that are fully backed by an expressed guarantee of a government, meeting the criteria set out in paragraph (ii) will also be exempt from the 10% limit.

- iii) Where a unit trust scheme acquires a security of an issuer other than as a result of a purchase, and the acquisition results in the unit trust scheme exceeding the limits described above, the unit trust scheme shall not purchase any additional securities issued by that issuer whilst the relevant limits are exceeded.

No person should operate a non diversified unit trust scheme unless the FSC grants approval on application by the unit trust scheme. Where the FSC grants this permission, it shall require the unit trust scheme to be described in such a manner that will identify the actual portfolio mix.

3.10 Registration Requirements

The enhancements to the existing registration requirements for unit trust schemes are as follows:

- a) Regulation 3 (2) (d) Unit Trusts (Registration of Schemes) Regulations will be enhanced with an explanation that certificates refer to:

A statement signed by the directors of the management company and trustees that to the best of their knowledge; the trustees and management company will be operated independently of each other.

- b) Regulation 3 (2) will be enhanced to include the following requirements:

An application for registration of a unit trust scheme shall be made to the FSC in the form prescribed as Form UT and shall be accompanied by the prescribed non-refundable application fee along with the following documents/information:

- i)* Copy of certificate of incorporation for the management company, the trustee and the custodian;
- ii)* Copy of agreement between the management company and the trustee;
- iii)* Copy of agreement between the management company and the custodian, where applicable;
- iv)* Copy of the trust deed;
- v)* List of persons authorized to sign on behalf of the unit trust scheme;
- vi)* Audited financial statements of the management company, the trustee and the custodian for a financial year ended within the 12 months immediately preceding the date the application was submitted;
- vii)* Audited financial statements of the unit trust scheme for a financial year ended within the 12 months immediately preceding the date of submission of the application;
- viii)* Any subsequent half-yearly financial reports for existing unit trust scheme;
- ix)* A copy of the offering circular and other marketing documents which the applicant or agent will use to market or advertise the unit trust scheme and its investment products to prospective investors;
- x)* Proposed application forms and other contractual documents to be signed by investors in the scheme;
- xi)* Names of distribution agents and copies of any written contracts which will govern the dealers acting as agents for the unit trust scheme;

- xii) Completed fit and proper questionnaires for every director and officer [as defined in Sec 2 of the Securities Act] of the unit trust management company, the trustee and the custodian (if one has not been submitted to the FSC within the past three years);
- xiii) Résumés of directors and officers of the management company, the trustee and the custodian;
- xiv) Police reports for the directors and officers of the management company, the trustee and the custodian;
- xv) One (1) written character reference for every director and officer of the management company, the trustee and the custodian;
- xvi) One (1) written financial reference for every director and officer of the management company, the trustee and the custodian;
- xvii) Certificate from the compliance officer that there was full compliance with the registration requirements;
- xviii) A statement signed by the directors of the unit trust management company, the trustee and the custodian that to the best of their knowledge the unit trust management company, the trustee and the custodian will operate independently of each other.

3.11 Additional Offering Circular Requirements

The requirements currently set out in the schedule to the Unit Trusts (Books and Documents) Regulations will be enhanced to include the following additional requirements:-

The following items should be disclosed in the unit trust offering circular:

a) *FSC Disclaimer*

An FSC disclaimer such as the one outlined below should be included on the front cover of the offering circular.

"The Financial Services Commission does not pass upon the accuracy or adequacy of the information contained in the Offering Circular. Any representation to the contrary will be deemed by the FSC to be a false and misleading statement."

Under section 22 and section 23 of the UTA, it is a criminal offence to make a false and misleading statement.

b) *Effective Period*

The offering circular must have an effective period. A statement should be made that once the effective period has expired the circular cannot be used as the basis for marketing the product.

c) *Risk*

The risk factors or other investment considerations associated with investing in a unit trust should also be included in the offering circular.

d) *The Unit Trust Scheme*

Item 1 of the schedule to the UTA will be amended to include the following:

- i) Country or territory of establishment;

- ii) Address of management company's registered office, if the management company is a subsidiary, the address of the parent company;
- iii) Date the trust was established;
- iv) If the management company is also the management company for another scheme, the name of that scheme, its investment objectives and the fact that the management company is also the manager and operator of the scheme;
- v) Whether the scheme has been registered by the FSC.

e) *The Trustee*

Item 2 of the schedule to the UTA will be amended to include:

- i) Nature of corporate form;
- ii) Country or territory of incorporation;
- iii) If a subsidiary, name of ultimate holding company;
- iv) Address of registered office;
- v) Description of principal business activity;
- vi) Whether or not it is a licensed financial institution in Jamaica.

f) *Investment Advisor*

If the management company employs the services of a licensed investment adviser who manages any of the property of the scheme and provides advice in relation to the scheme, then the following must be stated:

- i) Name
- ii) Address
- iii) Whether or not the FSC has been notified that the advisor has been contracted to act in this capacity

g) *Auditor and Registrar*

Item 4 of the schedule will be amended to include:

- i) Address of auditor

Name and address of registrar

h) *Investment Policy*

The requirements for the scheme's investment policy (item 7 of schedule) will be extended to include:

- i) Objective of the policy, whether capital growth, income growth or other stated policy;
- ii) The economic or geographical areas to which investment will be confined;
- iii) A description of the type of assets to be included in the scheme;
- iv) If, and the extent to which, a scheme may invest in other schemes managed by the management company or any associate of the management company;
- v) Investments in particular types of issuers such as foreign issuers, small capitalization issuers, issuers located in emerging markets or assets other than securities as defined in the Securities Act;
- vi) A disclosure should be made regarding the details of the circumstances that might lead to a departure from the scheme's fundamental investment objectives and if this occurs what the likely response would be; and
- vii) A statement that the management company may borrow on behalf of the scheme an amount not exceeding the percentage of the value of assets in the scheme's portfolio prescribed in the trust deed. This percentage should not exceed 10%.

i) *Who should invest in the scheme*

The following should be stated:

- i) A description of the characteristics of the investor for whom the scheme may or may not be appropriate.
- ii) A description of the type of investment portfolio for which the scheme is suited, or for which the scheme should not be used.
- iii) An indication of the level of risk tolerance that would be appropriate for persons wishing to invest in this type of scheme.

j) *Investment Portfolio*

A statement detailing the types of assets held in the investment portfolio of the scheme shall be included in the offering circular.

k) *Frequency of Calculation of the NAV*

The cut off time and frequency of computation of the NAV shall be disclosed in the offering circular. The cut off time should be after the market closes.

l) *Valuation of the Scheme*

The offering circular should also state whether the investment portfolio is being carried at fair value. If the fair value of an asset is not being used, then the method of valuation should be clearly stated.

The frequency of valuation must also be stated. This includes what time of day the assets will be regularly valued for the purpose of determining prices at which the securities in the scheme may be issued and redeemed by the management company.

m) *Other Valuation Disclosures*

A disclosure similar to that outlined below shall be included in the circular:

"Unit Trusts own different types of investments depending on their investment objectives. The value of these investments may change from day to day, reflecting changes in interest rates, economic conditions and company news. As a result, the value of the scheme's units may go up or down and the value of your investment in the scheme may be more or less when you redeem it than when you purchased it."

n) *Fees and Charges*

Include a disclosure detailing all types of fees levied on the scheme including, where applicable:

- i) Preliminary Charge
- ii) Periodic Charge
- iii) Charge on Redemption
- iv) Other charges and Expenses

The disclosure should indicate clearly whether these charges are borne directly by the investor or indirectly (i.e. the charge is borne by the scheme).

o) *Past Performance*

A graph showing in chronological order, the annual total returns of the scheme for at least each of the last 5 years, or such period since the scheme has been in existence (if shorter) shall be included. The offering circular shall include a statement advising that past performance of the scheme should not be taken as an indication of future performance.

- p) *Plain Language*
Offering circulars should be written in clear and concise language to ensure that the investing public understands the contents of the document.
- q) *Conflict of Interest*
Ensure that where there are conflicts of interests, the nature of the conflict and the manner in which it is to be treated is disclosed.

3.12 Application, Registration and Renewal Fees

The fees to be paid by new unit trust schemes are as follows:

- a) Application Fee – One hundred thousand dollars (\$100,000)
- b) Registration Fee – Five hundred thousand dollars (\$500,000)
- c) Renewal Fee – Five hundred thousand dollars (\$500,000)
- d) Registration of Offering Circular – Twenty thousand (\$20,000)

Unit trust management companies or custodians will not be required to pay separate fees in respect of their unit trust activities.

3.13 Registration Unit Trust Salesmen

The FSC is of the view that the UTA should be amended to dispense with the requirement to license unit trust salesmen. Instead, persons who perform such functions shall be required to be registered as dealer representatives under the SA. The FSC will be taking steps to ensure that legislation is modified accordingly.

3.14 For further information, kindly direct queries in writing to:

The Senior Director, Securities
Financial Services Commission
39-43 Barbados Avenue
Kingston 5, Jamaica, W.I.

Inquires may also be submitted by email to:
inquiry@fscjamaica.org