

2006 December 29

The Editor
The Sunday Herald
17 Norwood Avenue
Kingston 5

Dear Sir:

Reference is made to your article entitled '**Eating Dirt**' which was attributed to David P. Rowe and appeared in the Sunday Herald of December 10, 2006. Since the article contained a number of inaccuracies, the Financial Services Commission ("FSC") would like to set out certain facts for the benefit of your readers.

The article began by discussing the losses being incurred at Air Jamaica and asking the question "Where was the Financial Services Commission ... as several former pension holders from Air Jamaica ate the dirt...?" The answer is simple and a straightforward one; the FSC was not yet formed.

The FSC came into existence on August 2, 2001 by virtue of the Financial Services Commission Act. It was formed in the aftermath of the collapse of several financial institutions in the mid-1990's. Since then there has been a strengthening of the supervisory framework for the financial sector with the creation of the FSC being a part of this process. These steps have been directed at preventing a recurrence of the previous problems thereby affording greater protection to the savings and investments of the members of the Jamaican public.

The FSC's responsibility for overseeing private pensions began with the coming into effect of the Pensions (Superannuation Funds and Retirement Schemes) Act in March 2005 and approval of regulations by Parliament in March 2006. The supervision of the private pensions industry in an environment where all pension plans are registered with the FSC will make it harder for problematic situations, such as the one which occurred with the Air Jamaica Pension Scheme, to happen. Problems which threaten pension plan members' interests will be identified and dealt with at an early stage before they reach unmanageable proportions. The existence of regulatory laws and the monitoring of pension plans, investment managers and administrators by the FSC will serve to build public confidence in the pensions industry. For example, with the new pension's regulatory framework, sponsors will be prevented from using employees' contributions to fund operational expenses. This is a significant step forward for hardworking Jamaicans who save for retirement.

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The FSC supervises industries under its mandate by administering a number of statutes and accompanying regulations. These are public documents which are easily accessible to all concerned stakeholders. Not only is the legislative process a very open and public one in Jamaica, as it should be, but new regulations, rules and guidelines applicable to entities supervised by the FSC are introduced only after extensive dialogue and consultation with industry participants and other stakeholders. All interested persons are able to participate in the process of shaping new rules and regulations. There is no basis for Mr Rowe's gratuitous statement that the FSC is "obviously making up the rules as it goes along".

Mr. Rowe suggests that the Starbucks coffee empire would not have survived in Jamaica due to what he describes as "our ignorant financial governance conspiracy" The Starbucks coffee empire may have "started with a wing and a prayer", as Mr. Rowe asserts, but Starbucks was selling cups of coffee, which is a far cry from taking in people's savings and investing in complex financial products or strategies. It would be disingenuous to pretend otherwise. Certainly, if Starbucks had instead been providing investment contracts for their customers your readers can be sure that they would have faced the significant regulatory requirements of the United States Securities and Exchange Commission ("SEC") and the relevant state securities regulator. Those requirements are in fact similar in nature to the FSC's requirements but generally much more restrictive. Even so, today in the US there are scores of registered financial intermediaries that are operating profitably within the financial system of that jurisdiction even as they are compelled to comply with various regulatory requirements. Although Starbucks is in the business of selling cups of coffee and not financial products, it should not elude us that they like all organisations operating in the US are subject to mandatory compliance with regulatory requirements befitting their business within that jurisdiction.

The FSC does not exist to stifle entrepreneurship but to ensure that there is full disclosure of material information by persons who offer securities and financial services to the public. Our role, like the SEC's, is to ensure that only persons of competence and integrity are allowed to take money from the public for financial products and that they play by the rules. As is the case in all jurisdictions of which we are aware, this is done by a process of licensing or registration. As at December 28 2006 there were in Jamaica 65 entities holding securities dealer's licenses and 626 individuals registered as securities dealers' representatives.

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Since reference was made by Mr Rowe to "JMMB, Cash Plus and DB&G", it is important for the FSC to advise your readers that JMMB Securities Limited and Dehring, Bunting and Golding Limited are securities dealers licensed by the FSC and have sought to operate within the confines of the law. The experiences of these two entities illustrate that you can abide by the rules and achieve success. Those persons and entities that do not play by the rules are a threat to investors. Your readers should note that Cash Plus is not licensed or registered by the FSC and therefore cannot lawfully take money from the public in the form of investments.

No person, and no entity, is above the law. The FSC can be expected to pursue its mandate in all circumstances. Your article makes reference to the "very rich David Smith"; it would be instructive for your readers and investors to consider the purpose of securities regulation and question why, like other local companies such as JMMB and DB&G, Mr Smith (who appears to be the principal of Olint Corp or Olint Corporation) is not licensed and to date has not submitted an application for licensing under the Securities Act.

Mr. Rowe stated in his article that "St Kitts and the Turks & Caicos Islands are laughing at us. They love to do business with successful Jamaicans who we run out of town". Your readers should be made aware that the St Kitts Financial Services Commission has issued an official advisory on their website (www.skbfinancialservices.com) stating that neither Olint Corp nor Olint Corporation are licensed to conduct financial services in that island. Within the Turks and Caicos Islands, on last check, they were not licensed and will need to be licensed to operate legally in that territory.

Mr. Rowe suggests that the approach of the FSC to regulation and enforcement is very different from that of the SEC. The FSC recommends that Mr. Rowe and other interested stakeholders should pay a visit to the SEC's website (www.sec.gov) and view the long list of enforcement actions taken against persons and entities that have operated outside of the boundaries of US securities law. The FSC is no different from the SEC in seeking to bring to book persons who insist on operating outside of the law.

Yours faithfully,

Brian Wynter
Executive Director

