



FINANCIAL SERVICES COMMISSION
Asset Management Platform Providers
Discussion Paper
January 3, 2008

1.00 Background

- 1.01 The Financial Services Commission is proposing to the Minister of Finance that he issues an Order exempting the providers of Asset Management Platform from requiring a license to conduct securities business in Jamaica.
- 1.02 In January 2006 the Financial Services Commission received an inquiry regarding the use of asset management platform ("AMP") service in Jamaica.
- 1.03 The AMP is a computer based system that selects a list of asset managers based on a profile given by the prospective client. Once the data on the client is input in the computer the AMP software seeks out the set of asset managers that best match the given profile and short lists them for the client. The client, or his representative, have the option to select an asset manager from the list with which to place the client's investment portfolio funds for asset allocation and management.
- 1.04 The firm making the inquiry has indicated that it intends to provide this asset management platform to Jamaican investors but only after they have received the green light to do so from the FSC. The programme will be offered in Jamaica through licensed securities dealers. The firm has advised that they will only accept clients who are of high net worth and who will give full discretion over their account.
- 1.05 Once a client is identified the dealer will facilitate the filling in of a questionnaire designed to demonstrate the risk tolerance and investment objectives of the client and will forward the questionnaire to the firm. It will run the questionnaire through a computer system which will in turn select a short list of suitable asset managers for recommendation to the client. The suitability of an investment manager is determined according to a particular end client's investment objectives and risk tolerance.
- 1.06.1 Major pluses to be gained from using the AMP service include:
- Identification of top-rated and high quality asset managers who have been screened by the firm and whose on-going performance is subject to its continuous monitoring;

- Asset managers included on the AMP have been selected on the basis that they will offer the appropriate diversification in asset allocation when managing client portfolios; and
- Clients are able to access a wide range of asset managers that in the normal course of business they might have had access to if they had acted on their own.

2.00 Conclusions of the FSC

2.01 The FSC after receiving the inquiry from the firm requested promotional literature and samples of the various agreements that are employed in the provision of the service. Having reviewed the documents and obtained explanations and clarifications from the firm personnel in a series of interactions over the past twelve months the FSC has concluded that the activity contemplated by the firm constitutes securities dealing as defined in the Securities Act.

2.02 The Securities Act defines the term "deal" in the following manner:

"deal", in relation to securities, means to acquire, dispose of, subscribe for or underwrite the securities, or make or offer to make, or induce or attempt to induce a person to make or offer to make, an agreement-

- (a) *for or with respect to acquiring, disposing of, subscribing for or underwriting the securities;*
- (b) *the purpose or purported purpose of which is to secure a profit or gain to a person who acquires, disposes of, subscribes for or underwrites the securities or to any of the parties to the agreement in relation to the securities;*
- (c) ***for or with respect to managing investments in securities;*** [bold added for emphasis].

2.03 In the view of the FSC the firm offering its AMP service is an example of an activity that seeks to ***"induce or attempting to induce a person to make or offer to make, an agreement.. for or with respect to managing investments in securities."*** The implication of this position is that the firm would either have to be licensed as a securities dealer or obtain an exemption by way of Ministerial Order pursuant to section 2(3)(h) of the Securities Act.

2.04 The FSC has communicated this information to the firm. After receiving the information the firm decided that it would apply for an exemption as allowed by the Securities Act.

3.00 Basis for an Exemption

3.01 The FSC has no objection to the Minister granting the exemption for the following reasons:

- The type of business being offered is not presently available in Jamaica thus the firm being allowed to sell this service to local dealers provide the opportunity for this type of expertise to be transferred to Jamaica over time. This could bring a welcome added dimension to the local capital market.
- It is arguable, from a regulatory standpoint, that not much value would be added by requiring the firm to be licensed since AMP business would only be solicited from

sophisticated investors and through entities that are regulated by the FSC. The nature of the service's distribution (i.e., by way of an FSC regulated entity to investors who are capable of looking after their own interest) therefore obviates the need for the AMP provider's registration. In any event the exemption would be crafted in such a way to allow the FSC to exercise some element of regulatory oversight over the AMP provider's activities.

4.00 Proposed Action of the FSC

4.01 The FSC proposes to recommend to the Minister that an exemption be granted pursuant to section 2(3)(h) of the Act along the following lines:

- With effect from the date of the Ministerial Order ("the order"), AMP providers who are licensed or registered to carry out securities brokering/dealing or investment advisory services by the relevant securities regulators in the United States, Canada and the United Kingdom shall be regarded as "exempt dealers" within the meaning of section 2 of the Securities Act as long as:

- (a) the AMP provider ("the provider") is a registered or licensed broker/dealer or investment advisor in good standing in the jurisdiction in which the provider is domiciled;
- (b) any Asset Manager selected for placement of the funds of the Jamaican resident clients is licensed or registered with the regulator in the jurisdiction in which the Asset Manager is domiciled and is in good standing with that regulator;
- (c) the provider's service is only sold to Jamaican client's through dealers ("local dealers") or investment advisors ("local advisors") licensed by the Financial Services Commission under the Securities Act of Jamaica; and
- (d) the provider satisfies the FSC that it is able to meet criteria specified by the FSC to ensure that such providers operate in a manner that will not jeopardize the interests of local investors.

4.02 In relation to item (d) above, the FSC is currently developing clearly articulated criteria which would have to be satisfied by an AMP operator before they could be regarded as an exempt dealer under the proposed order. These criteria will address the following matters:

- Requirement for annual submission of evidence that the AMP provider is in good standing with its' national regulator;
- Stipulated submission of declarations from the local dealers affiliated with the AMP provider that the product will only be sold to "accredited investors" (as defined by the FSC);
- Requirement that the FSC be provided with documentary evidence which shows that there will be suitable arrangements or mechanisms for wronged investors to recover monies lost due to inappropriate actions on the part of either the local dealer, AMP provider or an asset manager selected from an AMP generated short-list.

5.0 Comments

- 5.1** We would appreciate receiving your comments on or before the close of business on February 2, 2008. Comments may be submitted by electronic mail to securities@fscjamaica.org or be directed to Mr. George Roper, Acting Executive Director at the following address:

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