



FINANCIAL SERVICES COMMISSION GUIDELINES FOR ISSUERS OF SECURITIES

Introduction

This securities release is for the attention of persons who intend to issue securities in Jamaica whether on a private placement basis or pursuant to a public offer. It is meant to convey the requirements that are to be complied with in order to secure registration with the FSC in respect to those securities. They do not apply to securities issued by the Government of Jamaica or to issuers operating under the ambit of the Unit Trust Act and Mutual Fund Regulations.

In order to comply with Jamaican securities laws, issuers who intend to publicly offer their securities in Jamaica are required to register with the FSC in respect to those securities. As part of the registration process, the FSC requires an issuer to provide detailed information about itself to the Commission and to the investing public. These requirements are geared to protect investors by promoting full and fair disclosure of information.

Background

Section 26 of the Securities Act 1993 contained the provisions that sought to enforce the Companies Act provisions in relation to prospectuses. The regulations to which the section refers were not promulgated, neither were the necessary prescriptions in relation to form, content and timing established and disclosure standards outlined.

With the passage of The Securities (Amendment) Act 2001, section 26 of the Securities Act 1993 was repealed and a new law in relation to Issuer Registration enacted. Those amendments are contained in section 13 of the 2001 Amendment Act. They require every issuer to apply to the Commission to be registered in respect to a security that is to be offered to the public. The section also stipulates that an application shall be in a prescribed form, which would be developed by the Commission.

Prospective issuers are advised that Section 26 (1) will be further enhanced in the near future. The enhancement will expand the scope of the law to address situations in which securities, which are already in issue, may be offered to the public without having to meet the registration requirements. The additional provisions will require a holder of outstanding securities who intends to offer them for sale to the public, to give written notice of its intention to the person who issued the security, and to request that the issuer register with the FSC in respect to that security. The holder of the securities intending to make such a public offer, will only be able to dispose of the security when it has been furnished with proof of such registration.

FSC Filing and Disclosure Requirements

In a public offering, a prospectus contained in a registration statement, must be filed with the FSC and must meet specific statutory form and content requirements.

A Prospectus must disclose all material information including, among other things, a description of the issuer's business, its audited annual and un-audited interim financial statements, and a management discussion and analysis ("MD&A") of financial condition and result of operations. (For guidance on the compilation of the MD&A please visit the FSC's website and see document of same name under release numbered SR-GUID-05/12-004).

In addition to the requirements outlined above, issuers of equity securities are required to comply with the requirements of Parts I and II of the Third Schedule of the Companies Act.

Financial statements filed as part of a prospectus must generally be presented in accordance with the Accounting Standards in force in Jamaica.

The Offering Process

In order to avoid any undue "conditioning" of the market, restrictions may apply to the disclosure and dissemination of certain issuer-related information in the period immediately preceding the issue of the Prospectus. Restrictions may also apply to trading in the issuers securities during the period prior to the filing of the registration statement with FSC, and thereafter until the offering is complete. Otherwise certain information about the issuer, which originates from the issuer or a related source that comes into the public domain, may be deemed by the FSC to be a part of the prospectus.

Ongoing Obligations

Once an issuer makes a registered public offering of its securities, it becomes subject to a number of ongoing obligations under the securities laws.

These obligations are based on the rationale that the regulators and investors should have access to issuer-specific information on an ongoing basis. The underlying principle is that the original information contained in the registration statement should be reasonably current at all times. In this regard, the primary reporting obligations applicable to the issuer or to persons owning the issuer's securities include the following:

a) *Periodic reporting*

The issuer will be required to file with the FSC its annual reports, including audited financial statements in accordance with Regulation 4 of The Securities (Disclosure of Interest) Regulations 1999. In addition, under certain circumstances the issuer must file with the FSC, a notice of all events that are likely to impact on its operations or financial condition, including a quantification of the impact. Regulation 3 of The Securities (Disclosure of Interest) Regulations 1999 will apply to this form of reporting.

In addition to these reporting requirements, issuers will become subject to various provisions of the Securities Act and its Regulations and in particular the Take-Overs and Mergers Regulation. Issuers of securities and investors should therefore familiarize themselves with the requirements of the Acts and Regulations.

Future Offerings

New offerings being made subsequent to an initial public offering that had been registered with the FSC, will benefit from a simplified and shorter offering process. After filing the first annual report, an issuer will be permitted to use a short-form registration statement. This may incorporate by reference the prospectus, the annual and other reports already filed with the FSC. The FSC retains the right to deny the use of this short-form statement and to specifically request filing of a full registration statement.

An issuer may also use the shorter form registration statement for a "shelf registration" of its securities. A shelf registration facilitates initial registration of a large amount of securities with the FSC, which securities can be subsequently offered without the need for any further FSC involvement save and except for a notification. This approach may be used for covering both debt and equity securities.

Private Placements

Private placements are sales of securities or other investments directly to institutional investors or high net worth individuals. Specifically, they involve the sale of securities in a restricted manner to a limited number of investors. Based on these considerations, private placements are relieved from the registration and prospectus delivery requirements applicable to public offerings. The presumption underlying the exemption is the smaller number of offerees, as well as the generally higher level of sophistication expected of investors in a private placement

In order to qualify for the registration and prospectus delivery exemption, a private placement initiative must comply with the following conditions:

a) *Type of Investors*

Generally, private placements may only be made to large institutional investors or high net worth investors. These investors are considered to be sufficiently sophisticated to assess the riskiness of their investment as well as to have sufficient assets or net worth to be able to absorb partial or complete loss of their investment.

b) *Number of Offerees*

Private placements of securities are based on offers and eventual sales to a limited number of offerees. This number shall not exceed fifty persons.

c) *Method of Offering*

A small number of agents can act for the issuer in relation to the sale of the securities. In the course of such placement and sales, neither the issuer nor the placement agents are permitted to engage in any form of general solicitation or advertisement of the offering. Any such general solicitation or advertisement could cause the placement to be considered a public offering, thereby disqualifying it from the registration and prospectus delivery exemptions.

d) *Resale Restrictions and liquidity limitation*

The resale of securities purchased in a private placement will be subject to stringent limitations compared to unrestricted trading in securities purchased in a public offering. Investors acquiring securities in a private placement will therefore be required to sign a declaration evidencing their consent to, and agreement to abide by, the resale restrictions. This declaration must be filed with the issuer and kept on file for seven years after maturity for debt securities and indefinitely for equity.

Timetable for Registration

Application for registration in the form of the Registration Statement must be received by the FSC a minimum of 30 days prior to the intended commencement date of the issue or resale to the public.

Disclaimer Statement

Whilst the FSC reviews an issuer's prospectus to ensure that it contains whatever material facts are deemed necessary, it does not guarantee the accuracy of the disclosures but merely clears it for distribution. Furthermore, the FSC does not approve an issue or pass judgement on the investment merits of an issue. Accordingly, the FSC will require the front of every prospectus to contain a disclaimer clause specifying the foregoing considerations. A typical disclaimer clause should read as follows:

The Financial Services Commission has not approved these securities nor has the Commission passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offence.

