



**FINANCIAL SERVICES COMMISSION  
GUIDELINES FOR ISSUERS OF SECURITIES  
(REVISED JUNE 15, 2008)**

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**1.0 Introduction**

- 1.1 This securities release replaces Guidelines for Issuers of Securities (SR-GUID-02/12-0005). These guidelines are for the attention of persons who intend to issue securities in Jamaica 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 of 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.
- 1.2 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.

**2.0 Background**

- 2.1 Section 26(1) of the Securities Act requires every issuer of securities to apply to the Commission to be registered with respect to those securities. The section also stipulates that an application shall be in a prescribed form, which would be developed by the Commission.
- 2.2 These Guidelines set out the form for application by issuer seeking to be registered with the FSC with respect to its securities.

**3.0 FSC Filing and Disclosure Requirements**

- 3.1 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.
- 3.2 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).

- 3.3 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.
- 3.4 Financial statements filed as part of a prospectus must be presented in accordance with the accounting standards in force in Jamaica.

#### **4.0 The Offering Process**

- 4.1 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 the 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.

#### **5.0 Ongoing Obligations**

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

- (b) In addition to these reporting requirements, issuers will become subject to relevant 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 Securities Act and Regulations.

- (c) Issuers that are incorporated as companies under the Companies Act should also comply with

the relevant requirements under that Act.

## 6.0 Timetable for Registration of Securities through a Public Offering

6.1 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.

## 7.0 Disclaimer Statement

7.1 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 judgment 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.***

## 8.0 Private Placements

8.1 The private placement regime has been repealed effective June 15, 2008 and is replaced with a more comprehensive regime set out in a securities release entitled Guidelines for Exempt Distributions numbered SR-GUID-08/05-0016. As per Guideline SR-GUID-08/05-0016 exempt distributions are exempt from the FSC's prospectus registration requirements. The following distributions of securities are exempt distributions under Guidelines SR-GUID-08/05-0016:

- i) Securities that are offered to accredited investors (the term "accredited investors" is defined in the Guidelines SR-GUID-08/05-0016);
- ii) Securities with an acquisition cost to the purchaser of not less than ten million dollars paid in cash at the time of the purchase;
- iii) Securities offered by an issuer which have an assigned rating of at least BBB+ (or equivalent rating) by a recognized rating agency, where the issuer is already a reporting issuer; and
- iv) Securities that are issued by a private issuer to connected persons as outlined in the Guidelines SR-GUID-08/05-0016.

8.2 In light of the revocation of the private placement regime, the Addendum to the Guidelines for Issuers of Securities (SR-GUID-05/10-0015) has been withdrawn effective June 15, 2008. Securities registered with the FSC through private placement offerings prior to June 15, 2008 and are still outstanding can only be resold to accredited investors.