



SECURITIES INDUSTRY ADVISORY
New Collective Investment Schemes Regulations

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April 2014



**FINANCIAL SERVICES COMMISSION
SECURITIES INDUSTRY ADVISORY: NEW COLLECTIVE INVESTMENT SCHEMES REGULATIONS**

April 14, 2014

1.0 Introduction

- 1.1 The Financial Services Commission (FSC) undertook to establish a comprehensive regulatory framework for Collective Investment Schemes (CIS) that would provide adequate protection while facilitating growth and development of the industry. The Securities (Collective Investment Scheme) Regulations, 2013 which are consistent with international standards, as published by the International Organization of Securities Commissions (IOSCO) are located within the Securities (Amendment) Act, 2013.
- 1.2 As at December 30, 2013, the Unit Trusts Act and attendant Regulations were repealed by section 40 of the Securities (Amendment) Act, 2013; while the Mutual Fund Regulations were repealed by Regulation 56 of the Securities (Collective Investment Schemes) Regulations.
- 1.3 Existing unit trusts schemes and mutual funds will be given twelve months to transition to the CIS Regulations. All persons offering collective investment schemes are therefore advised to conduct their operations in full compliance with the new regulatory requirements. In addition, their trust deeds and offering documents should be updated to conform to the new CIS regulations.
- 1.4 This advisory seeks to assist market participants to understand the CIS regulatory framework by summarizing the key aspects of the new regulations. Prospective applicants are reminded that all new applications should conform to the regulations.

2.0 The Key Aspects of the CIS Regulatory Framework Include:

- 2.1 Comprehensive authority for the FSC to regulate all facets of the CIS industry in Jamaica, including full powers to authorize, examine, investigate funds and their service providers and the disclosures made by these funds;
- 2.2 A definition of CIS that does not limit the legal form in which the fund is established;
- 2.3 All CIS offered for sale in Jamaica must be registered under the Securities Act (SA) and regulations or expressly exempt from registration. The characteristics of legitimate informal arrangements such as

- investment clubs are defined. These arrangements would be exempt from most statutory requirements, while funds sold to accredited investors or other specified categories of persons are exempt if certain conditions are met;
- 2.4 The service providers to the CIS (custodian, operator, trustee and manager) should be independent of each other and the definition of what constitutes independence is stipulated;
- 2.5 The fund's portfolio of assets and cash must be held in a manner that makes it clear that the assets belong to the fund and its investors, not the entity acting as custodian (manager or operator). Assets must be segregated and the accounts clearly identified as belonging to the fund;
- 2.6 The fund's disclosure documents – financial statements, annual reports and offering documents – must be up-to-date and contain all relevant information about the fund, its operators, managers and other key service providers. This information must be updated promptly if any material changes occur and otherwise on a regular cycle;
- 2.7 Minimum standards are set for the frequency of valuation of the assets of the CIS and the methods to be used to ensure that fair valuations take place. This will be accomplished by requiring all assets to be valued in accordance with any International Accounting Standard acceptable to the FSC. These valuations and the calculation of net asset value of the fund must be verified at least annually by an independent auditor;
- 2.8 There are also requirements in the offering documents for clear disclosure of the process for redeeming an investment, the pricing process and the circumstances where redemptions may be stopped;
- 2.9 Rules governing conflict of interest have been included which impose a general duty to identify, avoid, mitigate and manage conflicts of interest. Full disclosure of all relationships and transactions between the fund and the operators/managers or anyone else related to them that might give rise to a conflict of interest must be made and all transactions must take place at arm's length;
- 2.10 As far as possible, the FSC has been given latitude to set detailed requirements, by notice or guideline. This allows the requirements to be kept up-to-date and supplemented as the need arises, without requiring legislative or governmental action.

3.0 Summary of the Collective Investment Schemes Regulations

3.1 Preliminary

3.1.1 Interpretation

The meanings that should be given to key terms used in CIS Regulations were outlined.

3.1.2 CIS Exempt from Registration

A CIS is exempt from registration under these Regulations if:

- a) The scheme is an investment club
- b) The scheme is sold only to accredited investors
- c) Each investor in the scheme must purchase a minimum of \$10 million
- d) The scheme is a private issuer and offers its securities to only specific persons

3.2 Registration and Constitution of Local Collective Investment Schemes

3.2.1 *Application for Registration of a Local CIS*

The application should be accompanied by:

- a) The application form
- b) The offering document
- c) The most recent audited financial statements
- d) The organizational documents of the scheme
- e) Fit and proper documents for all directors and officers of the scheme

3.2.2 *Approval of Registration of a Local CIS*

The following requirements must be met in order to obtain approval:

- a) Minimum value of the securities in the scheme of not less than the equivalent in Jamaican dollars at the prevailing rate of exchange, of three hundred thousand United States dollars (US\$300,000.00)
- b) Custodian or trustee which is independent of the manager and operator to be appointed to hold the assets of the scheme
- c) Disclosure documents and marketing material that are to be supplied to the investors are acceptable to the FSC
- d) The operator, responsible officer and all service providers must be fit and proper persons

3.2.3 *CIS in the Form of a Trust*

Persons wishing to act as trustees should meet the following requirements:

- a) The trustee should be a company incorporated under the laws of Jamaica, licensed under certain Acts
- b) Minimum share capital specified by the FSC
- c) The trustee should be independent of the manager
- d) The trustee should be fit and proper
- e) The trustee should exercise a certain degree of care with regard to the safe keeping of the assets of the CIS
- f) The trustee should avoid and disclose any conflict of interest that may arise.

3.2.4 *Appointment, Termination and Responsibilities of the Manager*

The operator of a CIS shall appoint a Manager who meets the following requirements:

- a) The manager should have a securities dealer's licence
- b) The manager should have appropriate systems and controls to carry out the functions
- c) The manager should be independent of the trustee and custodian
- d) The manager will be responsible for maintaining proper systems and controls, maintaining accurate and complete records as well as ensuring that the books are audited annually

3.2.5 *Custodian*

The operator of a CIS, other than a scheme established as a trust, shall appoint a custodian who meets the following requirements:

- a) A trust company established under the laws of Jamaica
- b) A bank licensed under the Banking Act
- c) Meet minimum capital and insurance requirements
- d) The custodian should be independent of the manager
- e) The custodian should be fit and proper
- f) The custodian should ensure that transactions are carried out in accordance with the constitutional documents of the scheme

- g) The custodian should ensure that securities held by them are verified and a reconciliation done each quarter
- h) The custodian should ensure that the books are audited annually

3.3 Registration of Regulated Overseas Collective Investment Schemes

3.3.1 *Application for Registration of a Regulated Overseas CIS*

The application should be accompanied by:

- a) The application form
- b) The offering document
- c) The most recent audited financial statements
- d) The organizational documents of the scheme
- e) Fit and proper documents for all directors and officers of the scheme
- f) Evidence of good standing in the recognized foreign jurisdiction

3.3.2 *Approval of Registration of a Regulated Overseas CIS*

The following requirements must be met in order to obtain approval:

- a) Distribution in the jurisdiction of registration and in good standing in the recognized foreign jurisdiction
- b) Minimum value of securities in the scheme of three hundred thousand United States dollars (US\$300,000.00)
- c) The securities can only be sold in Jamaica through local licensed securities dealers
- d) Custodian or trustee which is independent of the manager and operator to be appointed to hold the assets of the scheme
- e) Disclosure documents and marketing material that that are to be supplied to the investors are acceptable to the FSC

3.3.3 *Periodic Reporting of a Registered Regulated Overseas CIS*

A registered regulated overseas CIS will be required to file with the FSC:

- a) Audited financial statements
- b) Quarterly financial statements
- c) Prompt notice of any change in service providers
- d) Any amendments to any disclosure documents or marketing material

3.4 Disclosures, Offerings and Dealings of Local CIS (excluding exempt CIS) and Regulated Overseas CIS

3.4.1 *Offering Documents*

A CIS should not offer or sell any securities to the public unless the offering document is approved by the Commission. The offering document should be kept up-to-date and should contain specified information including, but not limited to, the following:

- a) Characteristics of the securities
- b) Investment Objectives and Restrictions
- c) Risks and Suitability
- d) Operators and providers of services
- e) Valuation
- f) Fees and Charges

The FSC is required to approve the offering documents if the requirements of the legislation are met and to reject the application if it would be contrary to the public interest or the documents do not meet the specified requirements. The reasons for refusal should be communicated to the Operator of the CIS within 25 days after the date of the application. Additionally, the operator should be given an opportunity to be heard or to amend and re-submit the offering document.

3.4.2 Advertising

Any advertisement published in respect of a CIS shall:

- a) Not be false, biased, misleading or deceptive
- b) Be clear, fair and present a balanced picture of the CIS, including any reasonably perceivable risks
- c) Contain information that is consistent with the offering document of the CIS

3.4.3 Dealing in Respect of Scheme's Securities

Securities in a CIS shall not be sold by any person unless that person is a dealer licensed under the Securities Act.

3.5 General Obligations Applicable to Local Collective Investment Schemes

3.5.1 Returns to the Commission

A local CIS will be required to file with the FSC:

- a) Annual financial statements due within ninety (90) days after the end of the scheme's financial year
- b) Quarterly statements due within forty five (45) days after the end of the relevant calendar quarter
- c) Quarterly financial portfolio statements of the net asset value of the scheme due within forty five (45) days after the end of the quarter
- d) Immediate notice of criminal or regulatory action against the scheme or any of its service providers
- e) Prior notice of any change or proposed changes to any of the scheme's service providers
- f) Any other information which the FSC might request to assess the scheme's compliance with the regulations

Service Providers of the schemes are obligated to provide the FSC with the following:

- a) Notice of any criminal or regulatory action against that provider
- b) Notice of proposed delegation of its functions
- c) Any information which the FSC requests to assess its fitness to provide service to the scheme

3.5.2 Public Disclosure Obligations

The manager of a CIS shall ensure that information outlined in this regulation is disclosed in the manner specified by the regulation. These include:

- a) The scheme's website should indicate the cut off time, frequency and pricing of the scheme's securities
- b) At least once per week in a daily newspaper in Jamaica and on the scheme's website, the current net asset value, and the return on its investments. The return on investment should be for a fifty two (52) week period and year to date for the current calendar year.
- c) Publication of the schemes unaudited quarterly financial statements, no later than forty five (45) days after the end of the quarter and annual reports no later than ninety (90) days after the year end.

- d) Publication of any proposed change of the scheme's service providers not less than thirty (30) days before the change is effective
- e) Any change that affects or could affect the interests of scheme's participants not less than thirty (30) days before the change takes effect
- f) Publication will conform to the regulations if the information is posted on the scheme's website, sent by post or e-mail to the scheme's participants or published in a daily newspaper.
- g) A CIS is required to provide a paper copy of all financial statements, free of cost to any investor in the scheme who requests a printed copy
- h) If the CIS does not have a website, publication on a website of the scheme's manager will satisfy the requirements of the legislation

3.5.3 **Disclosure of Material Changes**

Where a material change occurs or is proposed to be made in relation to the affairs of a registered CIS the operator or manager of the scheme shall:

- a) Ensure that the disclosure of the nature and substance of the change is immediately filed with the FSC and published in a daily newspaper in circulation in Jamaica
- b) File with the FSC, a report as soon as possible but no later than ten (10) days after becoming aware of the change or proposed change

3.5.4 **Investments**

Unless a CIS is permitted by the FSC to operate as a non-diversified scheme, the CIS shall comply with the following investment restrictions:

- a) A maximum of 15% of net assets can be invested in illiquid assets
- b) A maximum of 10% of the scheme's net assets can be invested in securities from one issuer except for government securities which have an investment grade credit rating
- c) Any other restrictions imposed by the FSC

3.5.5 **Borrowing**

A CIS can only borrow money or pledge the scheme's assets to accommodate requests for redemptions and this should be limited to 10% of the value of the scheme's assets

3.5.6 **Valuation of Assets**

The valuation and pricing of the scheme's assets should be done in accordance with the scheme's constitutional documents:

- a) The net asset value should be calculated to at least three decimal places:
- b) Securities for which market quotations are available, valued at current market value
- c) Securities for which market values are unavailable, valued at fair market value
- d) Where a scheme has purchased or sold assets, the change in the asset values should be reflected in the net asset value of the scheme, the day after the transaction
- a) Any change in the number of securities which result from purchases, distributions or redemptions should be reflected in the first calculation of the Net Asset Value following the change.
- b) Calculation of Net Asset Value should account for expenses, all dividends declared since the last date of calculation, interest and other income as at the date of calculation but expenses and interest income can be excluded if on a net basis they are less than one percent of the outstanding securities on the calculation date.
- c) Calculation of Net Asset Values should be at specified intervals but at a minimum, weekly

- d) Valuations and calculations of the scheme should be kept and verified by the auditor annually
- e) If errors are made in calculation they should be immediately corrected and steps taken to prevent reoccurrence

3.5.7 **Approval of Significant Changes**

A CIS may not change any of the following without the FSC's approval:

- a) Constitutional documents
- b) Operator, service providers, regulatory status, controlling share holder
- c) Investment objectives , policies or restrictions, fee structure and pricing arrangements
- d) Anything that would materially prejudice the rights or interest of the schemes participants
- e) Offering documents
- f) Its fees where they exceed the maximum permitted by the schemes offering documents

3.6 **General Application to all Local CIS Including Schemes Exempt from Registration**

3.6.1 **Books and Records**

A CIS shall keep books and records that provide:

- a) A true and fair view of the scheme's affairs and financial position
- b) Detail the activities of the schemes

Books and records should be available to the FSC for review and be kept for a minimum of seven years. This is in order to facilitate investigation by the FSC.

3.6.2 **Inspection of Accounts and Records**

The FSC or an authorised officer may conduct an on-site or off-site inspection of accounts and records of a CIS at any time in order to:

- a) Assess the compliance of the scheme with the legislation
- b) Ensure that books and records are being maintained properly
- c) Review the scheme and the operator of the scheme
- d) Investigate complaints from participants in the scheme

3.6.3 **Termination**

Requirements of the operator and the custodian when a CIS is terminated:

- a) The operator, who intends to terminate the scheme, shall give the FSC written notice of the proposed date. The operator shall provide the FSC with evidence of the termination within fourteen (14) days after the conclusion of the termination.
- b) The custodian shall prepare and sign a statement that at the date of termination all the assets of the scheme have been realised and distributed to scheme's participants.

3.6.4 **General Penalty**

Any person who contravenes any provisions of these Regulations commits an offence. These persons shall on conviction before a Resident magistrate be liable to the general penalty of three million dollars (\$3,000,000.00) or imprisonment not exceeding three years or both such fine and imprisonment.

3.6.5 **Transitional**

A person who immediately before these Regulations was lawfully operating a CIS may continue to operate that scheme without registration under these Regulations:

- a) During the twelve months from the start date of these Regulations

- b) If within that period an application for registration is made, the CIS may continue to operate until the application is finally disposed of or withdrawn

3.7 **Schedules**

The First Schedule outlines the fees payable by a CIS

The Second Schedule outlines the matters to be contained in the Trust Document

The Third Schedule outlines the matters to be contained in an offering document

4.0 **Consequential Amendments to the Income Tax Act**

The consequential amendments to the Income Tax Act will amend Section 2(1) of the Income tax Act:

- a) to define both a collective investment scheme and a qualified collective investment scheme
- b) to replace the definition of qualified unit trust with a definition for a qualified collective investment scheme within the definition of unit holder
- c) to replace the words unit trust and unit trust management company wherever it appears in the Income Tax Act with collective investment scheme and collective investment scheme management company respectively, throughout the provisions in order to give a CIS the same tax treatment that is currently afforded to unit trust.
- d) to include a provision to facilitate a CIS incorporated as a company to get same tax treatment as a CIS incorporated as a trust. This will ensure that mutual funds are granted the same tax treatment as unit trusts.

5.0 **Consequential Amendments to the Companies Act**

Consequential amendments were made to the Companies Act in order to facilitate local CIS incorporated as companies in Jamaica. The consequential amendments to the Companies Act will amend several sections including Section 27A of the Companies Act:

- a) A definition of a CIS which gives a CIS incorporated as a company the authority to redeem or purchase shares without reducing its authorized share capital has been included.
- b) The CIS articles of association summarizes various provisions that should be outlined in the articles of association including:-
 - i. the fact that they intend to issue investors shares where the money is pooled to buy assets that are managed by a management company
 - ii. the holders of shares in a CIS shall be entitled to any surplus assets available for distribution on a winding up of the CIS ahead of any other shareholders in the company
- c) The amendments in the Companies Act also exempt the CIS from a number of sections which are considered too onerous to make the CIS operationally viable.

6.0 The CIS application form and checklist have been placed on the FSC website - www.fscjamaica.org

For further information, kindly direct queries in writing to:

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

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