



CONSULTATION PAPER:

Amendments to the Guidelines for Issuers of Securities

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**FINANCIAL SERVICES COMMISSION
AMENDMENTS TO THE GUIDELINES FOR ISSUERS OF SECURITIES
(REVISED JULY 8, 2019)**

i Summary of Changes

ii The Guidelines for Issuers of Securities was released in 2008 and aimed to provide a framework for transparency and disclosure for the public offering of securities. Since then the Jamaican capital markets have grown and more companies are seeking listings on the Jamaica Stock Exchange. The Financial Services Commission has identified a need for further clarity and fine-tuning of its existing framework and is undertaking a review of the Guidelines. This review is aimed at clarify recurring issues such as those relating to market conditioning and to facilitate an easier and more efficient process for the registration of securities for issuers already listed on a recognized exchange.

iii The following sections are the subject of amendment:

- Section 5.0 - Market Conditioning Restrictions
- Section 6.0 - Section 44-49 of the Securities Act
- Section 7.0 - Issuers with securities listed on a Recognized Stock Exchange as defined in the Securities Act
- Section 8.0 - Listing by Introduction
- Section 10 - Timetable for Registration of Securities through a Public Offering

1.0 Introduction

1.1 This release replaces Guidelines for Issuers of Securities (SR-GUID-08/05-0017). 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 Financial Services Commission (FSC or Commission) 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 Securities (Collective Investments Schemes) 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 an 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 and a Registration Statement, must be filed with the FSC and must meet specific statutory form and content requirements.

3.2 The 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 securities are required to comply with the requirements of Parts I and II of the Third Schedule of the Companies Act.

3.4 A letter of registration from the Companies Office must be submitted to the FSC prior to registration being granted by the Commission.

3.5 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 by the issuers of traded securities during the period prior to the filing of the registration statement and prospectus 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 Market Conditioning Restrictions

5.1 The FSC will consider the following disclosures allowable:

- Those made in customary form i.e. the company has previously released information of similar type in the ordinary course of business;
- Disclosures that do not contain projections
- The content, timing and distribution of the disclosure does not suggest a selling effort, but is consistent with similar releases;
- The information is released by agents of the company who have periodically provided such information;
- The information is not a part of the IPO information and is not price-sensitive
- Communications by the Issuer, underwriter, securities dealer was made more than 30 days prior to filing a Registration Statement
- The communication by the company does not include any investment recommendations

5.2 Each person making a disclosure to the public should disclose his/her interest in and/or relationship to the issuer.

5.3 Restrictions will:

- apply to issuers, underwriters, and securities dealers
- begin when the issuer reaches an understanding with the underwriter and/or securities dealer and ends for:
 - (a) the issuer and dealer when the offering is closed;
 - (b) the underwriter when the allotment is sold

5.4 Sanctions

5.41 All disclosures outside of the permitted disclosures will be considered a pre-filing communication and a 30 day time period will commence after such communications are made to the public before registration of the prospectus will be considered.

5.42 Persons who are found to have violated these requirements on an on-going basis will be subject to additional restrictions.

6.0 Sections 44-49 of the Securities Act

6.1 Persons are also prohibited from false trading and market rigging transactions, stock market manipulation, making false and misleading statements, fraudulently inducing persons to deal in securities or inducing purchase or sale by dissemination of information regarding the rise or fall of an investment product and employment of manipulative and deceptive devices in accordance with sections 44 to 49 of the Securities Act.

7.0 Issuers with securities listed on a Recognized Stock Exchange as defined in the Securities Act

7.1 Issuers of securities with a listing on such exchange seeking to issue additional securities either debt or equity publicly will be allowed to register a short form prospectus with the Commission containing at a minimum the following information:

- a. Detailed description of offer;
- b. Use of proceeds;
- c. Details about the company;
- d. Risks associated with offer;
- e. Reference to latest annual/audited report, interim financials and MD&A
- f. Reference to its last registered prospectus
- g. Registration Statement

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

7.3 Compliance with Part II of the Third Schedule of the Companies Act may be met by way of reference to the company's audited/annual reports for the last 5 years or any period following its last prospectus provided that all the disclosures required by this section are covered by those reports and a statement to that effect is to be included in the short form document.

7.4 References for items e-f of section 7.1 should include a website where the information may be found as well as the address where the documents may be viewed and the times in which the public is allowed to view this information.

7.5 A letter of registration from the Companies Office must be submitted to the FSC prior to registration being granted by the Commission.

8.0 Listing by Introduction

8.1 Issuers with securities outstanding by way of exempt distribution wishing to list these securities on the exchange by introduction are required to complete a registration statement and register a memorandum containing at a minimum:

- a. Latest abridged audited financial statements with two comparative periods;
- b. Latest unaudited reports;
- c. MD&A for the included statements;
- d. A description of the business and its risks; and
- e. A copy of the information memorandum that was distributed in the initial placement;

8.2 For companies listed on a recognized stock exchange items a – c of the Section 7.1 may be included by way of reference. References for these should include a website where the information may be found as well as the address where the documents may be viewed and the times in which the public is allowed to view this information.

9.0 Ongoing Obligations

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

9.2 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.
- b) The issuer will be required to file quarterly financials in accordance with Regulation 4 of The Securities (Disclosure of Interest) Regulations 1999.
- c) 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
- d) In addition to these reporting requirements, issuers will become subject to relevant provision 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.
- e) Issuers that are incorporated as companies under the Companies Act should also comply with the relevant requirements under that Act

10.0 Timetable for Registration of Securities through a Public Offering

10.1 Application for registration in the form of the registration statement and prospectus 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.

10.2 For registration to be effected by short form prospectus or for listings by introduction, application for registration must be received by the FSC a minimum of 20 days prior to the intended commencement date of the issue to the public.

11.0 Disclaimer Statement

11.1 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.

12.0 The FSC invites comments on any and all aspects this paper. Comments should be submitted in hard copy or via email, on or before July 19, 2019. Comments may be submitted to:

The Senior Director, Securities
Financial Services Commission
39-43 Barbados Avenue
Kingston 5

Or by email to:

securities@fscjamaica.org