



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 February 2022)

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 *Emphasis on material disclosures*

- (a) In complying with the requirements of these guidelines, the FSC recognizes that there may still be a significant amount of judgement and subjectivity, reflecting the specific circumstances of each issuer.
- (b) Given the burden of duty on Directors of issuers to consider and ensure all reasonably material¹ disclosures are provided, the FSC is requesting that accompanying a prospectus application, an issuer submits a certification of materiality from an authorized officer indicating that, in their view, the prospectus has been prepared in compliance with FSC guidelines.
- (c) Any subsequent release of material information after the registration of a prospectus will be addressed through enforcement action appropriate to the circumstances, ranging from publishing additional required disclosures via an addendum to the prospectus, to other remedies available under section the Securities Act, including suspending the offer or referral for criminal prosecution.

3.4 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.

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

3.6 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 Sections 44-49 of the Securities Act

¹ The determination of materiality is to be based on relevant accounting standards and guidance. Pursuant to International Accounting Standards (IAS) 1 & 8, "information is material if omitting, misstating or obscuring it could reasonably be expected to influence decisions that the primary users of general purpose financial statement make on the basis of those financial statements, which provide financial information about a specific reporting entity" (IASB Glossary). Further, "In deciding how to recognise, measure, classify, or disclose an item for interim financial reporting purposes, materiality is to be assessed in relation to the interim period financial data, not forecast annual data" (IAS 34.23). IAS 34.10, also stipulates that additional line items or notes should be included if their omission would make the interim financial information misleading.

5.1 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.

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

6.1 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. Summary financial table (profit and loss information and balance sheet information)
- h. Registration Statement

6.2 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

6.3 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.

6.4 References made in respect of items e-f of section 6.1 should include a website where the information may be found as well as the physical address where the documents may be viewed and the times in which the public is allowed to view this information.

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

7.0 Listing by Introduction

7.1 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 audited financial statements with two comparative periods;
- b. Latest unaudited reports;
- c. MD&A for the included statements;
- d. List of Directors and Senior Managers with their titles and experience;
- e. List of all shareholders with holdings of 10% or more with percentage ownership indicated;
- f. Date of the initial raise and all subsequent offers in that security;
- g. Details of extensions of maturity and conversions if applicable;
- h. A description of the business and its risks; and
- i. A copy of the information memorandum that was distributed in the initial placement;

7.2 For companies listed on a recognized stock exchange items a – c of 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.

8.0 Ongoing Obligations

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

8.2 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 the 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.
- e) Issuers that are incorporated as companies under the Companies Act should also comply with the relevant requirements under that Act

9.0 Timetable for Registration of Securities through a Public Offering

- 9.1 Application for registration in the form of the registration statement and prospectus must be received by the FSC a minimum of 30 calendar days prior to the intended commencement date of the issue or resale to the public.
- 9.2 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 calendar days prior to the intended commencement date of the issue to the public.

10.0 Disclaimer Statement

- 10.1 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.

COMMENTS

1. The FSC invites comments on any and all aspects of this paper. Comments should be submitted in hard copy or via email, on or before March 25, 2022. 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

Commented [DG1]: It would be good to have a special email address for correspondence relating to consultations.