

THE SECURITIES ACT
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SCHEDULE.

THE SECURITIES ACT

[6th December, 1993.]

Acts
 8 of 1993,
 9 of 1996,
 25 of 1999,
 8 of 2001,
 39 of 2013,
 6 of 2014
 11th Sch.,
 23 of 2014.
 Short title,

1. This Act may be cited as the *Securities Act*.

PART I. *Preliminary*

2.—(1) In this Act unless the context otherwise requires—

Interpreta-
 tion.

“Appeal Tribunal” means the Appeal Tribunal established by section 19 of the *Financial Services Commission Act*;

39/2013
 S. 2(1)(a).

“associated person” means a person described in section 3;

“authorized officer” means a person authorized by the Commission for the purposes of this Act;

39/2013
 S. 2(1)(b).

“board”, in relation to a recognized stock exchange, means the persons for the time being in whom the management of the exchange is vested;

“business rules”, in relation to a recognized stock exchange, means rules, regulations or by-laws that are made by the exchange or are contained in its constitution, and govern—

(a) the activities or conduct of the exchange or of its members; or

(b) the activities or conduct of other persons in relation to securities traded on the exchange,

but does not include the listing rules of the exchange;

“Commission” means the Financial Services Commission established under section 3 of the *Financial Services Commission Act*;

8/2001
 S. 2(a)(i).

“company” means a company incorporated or registered pursuant to the *Companies Act*;

“compensation fund” means a fund established under section 27;

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“deal”, in relation to securities, means acquire, dispose of, subscribe for or underwrite the securities, or make or offer to make, or induce or attempt to induce a person to make or offer to make, an agreement—

- (a) for or with respect to acquiring, disposing of, subscribing for or underwriting the securities;
- (b) the purpose or purported purpose of which is to secure a profit or gain to a person who acquires, disposes of, subscribes for or underwrites the securities or to any of the parties to the agreement in relation to the securities;
- (c) for or with respect to managing investments in securities;

9/1996
S. 2(b).

“dealer” means a person who carries on the business of dealing in securities whether as principal or agent;

“dealer’s representative” means a person employed by, acting for or by arrangement with, a dealer, who performs for that dealer, any of the dealer’s functions (other than work ordinarily performed by accountants, clerks or cashiers) whether paid by way of salary, wages, commission or otherwise;

39/2013
S. 2(c).

“derivative”—

- (a) means an option, swap, futures contract, forward contract, or other financial commodity, contract or instrument, the market price, value, delivery obligations, payment obligations or settlement obligations of which are derived from reference to, or based on, an underlying interest (including a value, price, rate, variable index, event, probability or thing); and
- (b) does not include any financial commodity, contract or instrument excluded from this definition by regulations prescribed under section 76;

“director”, in relation to a company, has the same meaning as is assigned to that expression in the Companies Act;

- “exempt dealer” means a person specified in subsection (3);
- “financial year” means the twelve months ending the 31st December in any year;
- “immediate relative”, as respects any person, means his spouse, or his children (including step-children) and their spouses, his parents, his brother or sister;
- “investment advice business” means the business of advising persons as to the investing in or the buying or selling of securities;
- “investment adviser” means a person who carries on an investment advice business, but does not include a person referred to in subsection (2);
- “investment adviser’s representative” means a person employed by, acting for or by arrangement with, an investment adviser, who performs for such investment adviser any of the functions of an investment adviser (other than work ordinarily performed by accountants, clerks or cashiers) whether paid by way of salary, wages, commission or otherwise; and includes a manager or officer of a company who performs any of those functions for the company, whether or not he is paid as aforesaid;
- “issuer” means a person or company who has securities outstanding, or issues or proposes to issue, a security or securities to the public;
- “Jamaica Stock Exchange” means the Jamaica Stock Exchange Limited, a company incorporated under the Companies Act;
- “licence” means—
- (a) a dealer’s licence;
 - (b) an investment adviser’s licence;
 - (c) a stock exchange licence;
 - (d) a licence to operate a central securities depository under Part VIA;
- “licensee” means a person to whom a licence is granted under this Act;
- “listed securities” means securities which, pursuant to the provisions of this Act, are admitted for quotation on a recognized stock exchange;

25/1999
S. 2(a).

SECURITIES

“listing rules” in relation to a recognized stock exchange, means rules, regulations or by-laws governing or relating to—

(a) the admission to, or removal from, the official list of the recognized stock exchange for the purposes of quotation on that stock exchange and for other purposes; or

(b) the activities or conduct of companies and other persons who are included in that list,

whether those rules, regulations or by-laws—

(i) are made by the recognized stock exchange or are contained in its constitution; or

(ii) are made by another person and adopted by the recognized stock exchange;

“member dealer” means a dealer who is a member of a recognized stock exchange;

“officer”, in relation to a company, means a person who, in that company—

(a) is a director of the company, president or vice-president (however designated), general manager, secretary, responsible officer, financial controller or treasurer; or

(b) performs functions similar to those normally performed by the holder of any position referred to in paragraph (a);

“prospectus”, in relation to an issuer’s securities, means any prospectus, notice, circular, advertisement, or other written instrument offering the securities for subscription or purchase;

“quotation”, in relation to securities and in relation to a recognized stock exchange, includes the displaying or providing by the stock exchange, of information concerning—

(a) in a case where offers to sell, purchase or exchange the securities at particular prices, or for particular consideration, are made or accepted on that stock exchange, those prices or that consideration;

- (b) in a case where offers or invitations are made on that stock exchange, being offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, purchase or exchange the securities at particular prices or for particular consideration, those prices or that consideration; or
- (c) in any other case, the price at which, or the consideration for which, particular persons or particular classes of persons, propose or may reasonably be expected, to sell, purchase or exchange the securities;

“recognized stock exchange” means a company declared as such under section 18 (6);

“Register” means the Register of licensees;

“relevant authority” means—

- (a) in relation to a member dealer, the stock exchange by which the dealer is recognized; and
- (b) in relation to any other person, the Commission;

“representative” means a dealer’s representative or an investment representative;

“repurchase agreement” has the meaning assigned to it by section 76(1A); 23/2014
S. 2.

“rules”, in relation to a stock exchange, means the rules governing the conduct of that stock exchange or the members thereof by whatever name called and wherever contained and includes rules contained in the memorandum of association and articles of association of the stock exchange;

“securities” means—

- (a) debentures, stocks or bonds issued or proposed to be issued by a government;
- (b) debentures, stocks, shares, bonds or promissory

SECURITIES

notes issued or proposed to be issued by a company or unincorporated body;

39/2013
S. 2(1)(d)(i).

(c) documents or writings commonly known as securities;

39/2013
S. 2(1)(d)(ii).

(d) rights in, or options in respect of, a derivative;

(e) certificates of interest or participation in any profit sharing agreement;

(f) collateral trust certificates, pre-organization certificates, or subscriptions, transferable shares, investment contracts, voting trust certificates or certificates of deposit for securities;

39/2013
S. 2(1)(d)(iii).

(g) any document constituting evidence of an interest in a scholarship or educational plan or trust, other than a private plan or trust not offered to the public as an investment or;

39/2013
S. 2(1)(d)(iii).

(h) any right, interest or instrument designated by the Commission by order made with the approval of the Minister and published in the *Gazette*;

but, subject to section 35A, does not include—

(a) bills of exchange;

(b) stocks or shares of private companies;

6/2014
11th Sch.

(c) certificates of deposit issued by banks or merchant banks;

(d) securities issued by the Bank of Jamaica;

(e) certificates of deposit issued pursuant to the carrying on of credit union business by a society registered under the *Cooperative Societies Act*;

- (f) any form of investment specified by the Commission, by order made with the approval of the Minister and published in the *Gazette*, to be excluded from the definition as a security in any case where the Commission considers the exemption necessary having regard to the nature of the investment and the provisions of this Act,

so, however, that nothing in paragraph (b) shall be construed as referring to stocks or shares issued in breach of a company's memorandum or articles of association or articles of incorporation (as the case may be), or stocks or shares in a private company formed for the establishment of an investment fund.

“securities business” means a business of dealing in securities;

“share” means a share in the share capital of a company and includes stock except where a distinction between stock and shares is express or implied;

“trading day” in relation to a stock exchange means a day on which securities are traded on that exchange;

“unit trust scheme” has the same meaning as in the *Income Tax Act*.

(2) References in this Act to investment adviser do not include—

- (a) a bank as defined in the *Banking Services Act*;
- (b) an insurance company registered under the *Insurance Act*;
- (c) an attorney-at-law or accountant in practice whose function as investment adviser is solely incidental to the practice of his profession;

6/2014
11th Sch.

SECURITIES

- (d) a dealer or his employee or a dealer's representative or an exempt dealer whose function as an investment adviser is solely incidental to the conduct of his business in dealing in securities;
 - (e) a person who is the proprietor of a newspaper where—
 - (i) insofar as the newspaper is distributed generally to the public, it is distributed only to subscribers to and purchasers of the newspapers for value;
 - (ii) the advice is given or the analyses or reports are issued or promulgated only through that newspaper;
 - (iii) that person receives no commission or other consideration for giving the advice or for issuing or promulgating the analyses or reports; and
 - (iv) the advice is given and the analyses and reports are issued or promulgated solely as incidental to the conduct of that person's business as a newspaper proprietor; and
 - (f) a publisher of or any writer for any newspaper, news magazine or business or financial publication of general and regular paid circulation distributed only to subscribers thereto for value or to purchasers thereof, who gives investment advice only through such publication and has no interest either directly or indirectly in any of the securities upon which the advice is given and receives no commission or other consideration for giving the advice, where the performance of the service is solely incidental to his principal business or occupation.
- (3) The following specified persons shall be exempt dealers—

- (a) a person who carries on a business of dealing in securities only through the holder of a dealer's licence on his own account;
- (b) [~~Deleted by Act 8 of 2001.~~]
- (c) any bank as defined in section 2 of the Banking Services Act if the conditions specified in sub-paragraphs (i) to (v) of paragraph (d) are satisfied; 6/2014
11th Sch.
- (d) any merchant bank under the Banking Services Act if the main business carried on by such licensee is a business other than the dealing in securities, and if the dealing is by way of— 6/2014
11th Sch.
- (i) making or offering to make with any person an agreement for or with a view to the underwriting of securities;
 - (ii) making an invitation to persons to subscribe for securities or to purchase securities on the first sale thereof;
 - (iii) issuing any document which is or is deemed to be a prospectus within the meaning of the Companies Act;
 - (iv) acquiring or disposing of securities only through the holder of a dealer's licence; or
 - (v) such other activity as the Commission may from time to time decide;
- (e) any public statutory corporation constituted under any written law in Jamaica;
- (f) an investment adviser whose dealing in securities is solely incidental to his carrying on the business of managing a portfolio of securities on behalf of a client;

25/1999
S. 2(b)(ii).

- (g) a licensed central securities depository; or
- (h) such other persons or categories of persons as the Minister may, by order, exempt.

Associated
person.

3.—(1) For the purposes of this Act the following persons shall be treated as being associated with a given person (“A”) and he with them, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or had ceased to exist—

- (a) a holding company or subsidiary of A;
- (b) a subsidiary of a holding company of A;
- (c) a holding company of a subsidiary of A;
- (d) any company of which A has control;
- (e) any company of which A and persons connected with A together have control;
- (f) any company which together with A constitute a group;
- (g) an individual who is a director, manager or a person who has control of A or any partner or any immediate relative of such director, manager or person as aforesaid;
- (h) any company of which any of the persons referred to in paragraph (g) is a director, manager or has control.

(2) In subsection (2) “group” in relation to a company, means that company and—

- (a) any other company which is its holding company or subsidiary;

- (b) any other company which is a subsidiary of the holding company;
- (c) any company which directly or indirectly controls or is controlled by any company referred to in paragraph (a) or (b);
- (d) any company which is controlled by a person who directly or indirectly controls a company referred to in paragraph (a), (b) or (c).

4. The Commission may, with the approval of the Minister, by order published in the *Gazette* and subject to negative resolution provide that any activity specified in the order is exempt from any provision of this Act specified in the order.

Exemptions
39/2013
S. 4.

5. [Repealed by Act 8 of 2001.]

6. [Repealed by Act 8 of 2001.]

PART II. Securities Business

7.—(1) A person shall not—

- (a) carry on a securities business; or
- (b) hold himself out as carrying on a securities business,

unless he is in possession of a dealer's licence to do so granted under this Act.

Licence to
operate
securities
business.

(2) Subsection (1) shall not apply to—

- (a) a person who is an exempt dealer within the meaning of subsection (3) of section 2; or
- (b) a transaction on a particular occasion by a person who does not hold himself out as dealing in securities on a day to day basis.

(3) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

8/2001
S. 5.

Licensing
of invest-
ment
advisers.

8.—(1) Subject to subsection (2), a person shall not—

- (a) carry on an investment advice business; or
- (b) hold himself out as carrying on an investment advice business,

unless he is the holder of an investment adviser's licence granted under this Act.

8/2001
S. 5A(a).

(2) Subsection (1) shall not apply to—

- (a) such persons or categories as may be prescribed;
- (b) a transaction on a particular occasion by a person who does not hold himself out as giving investment advice on a day to day basis.

8/2001
S. 5A(b).
39/2013
S. 5.

(3) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Enforce-
ment.
9/1996
S. 3.

8A.—(1) Where a Justice of the Peace is satisfied by information given by an authorized officer that—

- (a) there are reasonable grounds for suspecting that an offence under sections 7, 8, 17B or 17D, as the case may be, has been or is being committed by any person; and
- (b) evidence of the commission of the offence is to be found on any premises specified in the information,

39/2013
S. 6.

the Justice of the Peace may act in accordance with subsection (2).

(2) The Justice of the Peace may grant a search warrant to the authorized officer to enter (with or without a

constable) such premises for the purpose of inspecting and making copies of such books, accounts, records and other documents, cheques and securities (in this section referred to as relevant documents) and such cash as may be found on those premises.

(3) A warrant issued under this section may authorize the seizure and detention of the relevant documents for a period not exceeding thirty days.

(4) Any person who hinders or obstructs an authorized officer or any person acting in aid of such officer in the performance of his duties under subsection (2) or (3) shall be guilty of an offence.

9.—(1) Application for a licence under section 7 or 8 may be made by any person having the prescribed minimum requirements, and such application shall be made in the prescribed form and be accompanied by the prescribed application fee and such documents and particulars as may be prescribed.

Applica-
tion for
licences.
9/1996
S. 4(a).

(2) The Commission may require an applicant for a licence to—

39/2013
S. 7(a).

- (a) give to the Commission such further information in relation to the application as the Commission thinks necessary;
- (b) permit the Commission to enter onto any premises at which the applicant proposes to carry on a securities business or investment advice business (as the case may be) and carry out such review and inspection as the Commission may require for the purposes of assessing the operational capability of the applicant.

(3) The Commission shall grant a licence if it is satisfied that—

(a) in the case of a company applying for a dealer's licence or an investment adviser's licence—

9/1996
S. 4(b)(i).
9/1996
S. 4(b)(ii),(iii).

(i) it is incorporated or registered in Jamaica or such other member state of the Caribbean Community as may be prescribed and it is owned, controlled or supervised by persons who are citizens of, and are habitually resident in Jamaica or such member state, as the case may be;

9/1996
S. 4(b)(iv).
8/2001
S. 6(a)(i).

(ii) it is a fit and proper person, that is to say, none of its officers or members holding (whether in their own right or when counted with any holding of an associated person) ten per cent or more of the voting shares of the company has been convicted of an offence involving dishonesty or is an undischarged bankrupt and such officers or members satisfy the criteria specified in subsection (3A);

(iii) it satisfies such solvency and liquidity requirements as the Commission may specify and such other criteria as may be prescribed;

(iv) [*Deleted by Act 8 of 2001.*]

8/2001
S. 6(a)(iii).

(b) where the applicant is an individual—

(i) he is a fit and proper person as described in paragraph (a) (ii);

(ii) he satisfies such solvency and liquidity requirements as the Commission may specify and such other criteria as may be prescribed;

(iii) he is not associated with a company which, at the time of such association, is engaged in or has conducted securities business without a licence granted under this Act;

(c) the Commission is satisfied as to the operational capability of the applicant, upon an assessment conducted under subsection (2)(b). 39/2013
S. 7(b).

(3A) The criteria referred to in subsection (3)(a)(ii) are as follows— 8/2001
S. 6(b).

(a) the officers or members are persons who, in the opinion of the Commission, are persons of sound probity, are able to exercise competence, diligence and sound judgment in fulfilling their responsibilities in relation to the licensee and whose relationship with the licensee will not threaten the interests of investors, and for the purposes of this paragraph the Commission shall have regard to any evidence that any such officer or member has—

(i) engaged in any business practice appearing to the Commission to be deceitful or oppressive or otherwise improper which reflects discredit to his method of conducting business;

(ii) contravened any provision of any enactment designed for the protection of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in dealing in securities or in the provision of other financial services or in the management of a company or due to bankruptcy;

(b) the employment record of any officer or member does not give the Commission reasonable cause to

believe that such officer or member carried out any act involving impropriety in the handling of securities or in the provision of other financial services or in the management of a company;

9/1996
S. 4(c).

(4) A licence may be granted subject to such terms and conditions as the Commission may specify in the licence and shall be issued to the licensee on payment of the prescribed licence fee.

39/2013
S. 7(c).

(5) A licensee shall, while his licence continues in force, annually on or before each anniversary of the grant of the licence, pay the prescribed fee to the Commission, and a licensee who fails to do so shall be liable to pay to the Commission an amount equal to one hundred per cent of the unpaid fee, plus interest on the unpaid fee at a rate of fifteen per cent per annum until paid, and those amounts (together with the unpaid fee) shall be recoverable as a civil debt without limit of amount in the Resident Magistrate's Court.

9/1996
S. 4(d).

(6) Subject to subsection (7), the Commission may suspend or cancel a licence if it is satisfied that—

- (a) the person or persons owning or controlling or supervising the licensee have ceased to be fit and proper persons;
- (b) the licensee has failed to meet such solvency or liquidity requirements as the Commission may specify or as may be prescribed;
- (c) information submitted to the Commission by the licensee—

(i) pursuant to this Act; or

(ii) in support of his application for a licence,

is false or misleading;

39/2013
S.7(d)(i).

- (d) the licensee has contravened—

- (i) any condition of his licence;
- (ii) a provision of this Act or of rules or regulations made hereunder; or
- (iii) the rules of a recognized stock exchange of which he is a member; 39/2013
S. 7(d)(ii).
- (e) the operational capability of the licensee does not meet such standards as are prescribed; 39/2013
S. 7(d)(ii).

and may suspend a licence in any case where the licensee fails to pay the fee referred to in subsection (5). 39/2013
S. 7(d)(iii).

(7) The Commission shall not—

- (a) refuse to grant a licence;
- (b) grant a licence subject to conditions; or
- (c) cancel a licence,

unless it notifies the licensee of its intention to do so and affords to that licensee an opportunity to be heard.

(8) The Commission may— 39/2013
S. 7(e).

- (a) at any time cancel a licence under section 7 or 8, by giving notice of the cancellation in writing to the licensee, if—
 - (i) the Commission is satisfied that the licensee—
 - (A) has not, within two years after the date of issue of the licence, begun to carry on, in Jamaica, the business in respect of which the licence is issued; or
 - (B) has ceased to carry on in Jamaica for more than two years the business in respect of which the licence is issued;

- (ii) in the case of a licensee that is a company, proceedings for its winding up have commenced, or a receiver has been appointed, over any part of its assets or business, by a debenture holder or a court;
 - (iii) in the case of a licensee that is a partnership, the partnership is dissolved; or
 - (iv) the licensee so requests and the Commission is satisfied that the cancellation will not unduly prejudice the interests of investors or the securities market; and
- (b) in any case falling within paragraph (a)(ii)—
- (i) suspend the licence, prior to any decision as to the cancellation thereof; and
 - (ii) in any case where proceedings for the winding up of a licensee company have commenced, issue such directions as the Commission thinks fit for the efficient winding up of the company.

(9) Where a licence is cancelled or suspended under this section, the Commission may issue such directions as the Commission thinks fit for the purpose of discharging any outstanding obligations to clients.

Winding
up of
licensee.
39/2013
S. 8.

9A.—(1) The Commission shall be a party to any proceedings for the winding up of a company licensed or registered under this Act or any regulations made under this Act.

(2) The liquidator in the winding up shall give the Commission such information about the affairs of the company as the Commission may require from time to time.

Registration
of dealer's
representative
or investment
adviser's
representative.
9/1996
S. 5(a).

10.—(1) A person shall not perform functions as a dealer's representative or investment adviser's representative unless he is registered for that purpose by the Commission under this Act.

(2) Application for registration under subsection (1) may be made in relation to a person having the prescribed minimum qualifications and such application shall—

- (a) be made by the dealer or the investment adviser, as the case may be, on whose behalf the functions referred to in that subsection will be performed; and
- (b) be accompanied by the prescribed application fee and such documents and particulars as may be prescribed.

(3) Where an application is made under subsection (2), the Commission shall register the person to whom the application relates if the Commission is satisfied that— 9/1996
S. 5(b).

- (a) he is a fit and proper person, as described in section 9 (3) (a) and (3A); and 8/2001
S. 7.

- (b) the prescribed registration fee has been paid,

and the Commission shall issue a certificate of registration in the prescribed form to the applicant.

(3A) Registration of a person under this section may be granted subject to such terms and conditions as the Commission thinks fit. 9/1996
S. 5(b).

(4) Subject to subsection (5), the Commission may suspend or cancel the registration of any person if it is satisfied that— 9/1996
S. 5(c).

- (a) the person has ceased to be a fit and proper person as described in subsection (3)(a);
- (b) information submitted to the Commission in support of the application for registration is false or misleading; or
- (c) the registered person has contravened any condition subject to which registration was granted or any provision of this Act or any rules or regulations made thereunder.

(5) The Commission shall not refuse an application for registration under this section or suspend or cancel any registration unless it notifies the person who applied for such registration and the person registered of its intention to do so and affords to such persons an opportunity to be heard. 39/2013
S. 9(a).

(5A) The Commission may at any time suspend any registration granted under this section if—

- (a) the Commission is satisfied that the person registered—
 - (i) has not within two years after the date on which registration was granted, begun to carry on, in Jamaica, the functions in respect of which registration was granted; or
 - (ii) has ceased to carry on, in Jamaica, for more than two years the functions in respect of which the registration was granted;
- (b) in the case of registration granted to a company, proceedings for the winding up of the company have commenced;
- (c) in the case of registration granted to a partnership, the partnership is dissolved; or
- (d) the person registered so requests.

(5B) Upon a suspension under subsection (5A), the Commission may issue such directions as the Commission thinks fit in any case falling within subsection (5A), as to the arrangements to be made for the transfer of the functions of the person, company or partnership (as the case may be) to another person, company, or partnership, registered under this section, or take such other steps as the Commission may direct for the discharge of any outstanding obligations to clients.

(6) A person to whom a certificate of registration is issued shall, while that certificate remains in force, pay the prescribed registration fee to the Commission annually on or before each anniversary of the grant of that certificate.

(7) Where the registration of a person is suspended or cancelled or a person registered under this section ceases to perform functions on behalf of the dealer or investment adviser, as the case may be, to whom the certificate of registration was issued, that dealer or investment adviser shall forthwith return the certificate to the Commission.

9/1996
S. 5(d).

(8) A dealer or investment adviser who contravenes subsection (6) or (7) shall be guilty of an offence.

9/1996
S. 5(d).
39/2013
S. 9(b).

(9) A dealer or investment adviser shall forthwith notify the Commission, in writing, of the termination of employment of any person registered under this section who performed any functions on behalf of the dealer or investment adviser.

39/2013
S. 9(c).

10A.—(1) Every company which is licensed under section 7 or 8 shall appoint an officer of that company (hereinafter referred to as the responsible officer) who shall—

Appointment of
responsible
officer.
8/2001
S. 8.

- (a) be answerable for doing all such acts, matters and things as are required to ensure compliance with the provisions of this Act, and the regulations made hereunder;
- (b) report to the Commission on matters relating to such compliance, at such periods as the Commission may determine;
- (c) be responsible for making payment of all fees payable by the licensee under this Act or the regulations made hereunder.

(2) Every person appointed as a responsible officer shall, within thirty days after such appointment, apply to the Commission in the prescribed manner to be registered as a responsible officer.

(3) In the absence of any person being registered pursuant to subsection (2), the Commission shall register one of the following persons as the responsible officer for the purposes of this section—

SECURITIES

- (a) the person who is the managing director of the licensee or, as the case may be, the person who (by whatever name called) performs the duties normally carried out by a managing director; or
- (b) if there is no such person, the person appearing to the Commission to be primarily in charge of the licensee's affairs.

(4) Where a person ceases to hold the post of the responsible officer the licensee shall within seven days thereafter, notify the Commission in writing of such cessation.

(5) The Commission may, where it is satisfied that the responsible officer has failed to carry out his duties under this section—

- (a) issue a warning to the responsible officer;
- (b) suspend the registration of the responsible officer; or
- (c) cancel the registration of the responsible officer,

and shall notify the licensee in writing of any action taken under paragraph (a), (b), or (c).

(6) Upon receipt of a notice under subsection (5) (c) of the cancellation of a person's registration as responsible officer, the licensee shall terminate the appointment of that person as responsible officer.

Appeal.

11. Any person aggrieved by a decision of the Commission—

- (a) to refuse to grant a licence, to grant it subject to conditions or to suspend or cancel a licence; or
- (b) to refuse registration pursuant to an application under section 10 or 26, or to suspend or cancel such registration,

may, within thirty days after the date of that decision, appeal to the Tribunal and the Tribunal may make such order as it thinks fit.

39/2013
S. 10.

8/2001
S. 9.

12.—(1) The Commission shall cause to be kept a Register of licensees and persons registered for the purposes of this Act.

Register of licensees and persons registered.

(2) The Commission shall enter in the Register in relation to each licensee—

- (a) the name of the licensee;
- (b) if the licensee is a company, the name of each director, and of the secretary, of the company;
- (c) the date on which the licence was granted;
- (d) in relation to each business to which the licence relates—
 - (i) the address of the principal place at which the business is carried on;
 - (ii) the addresses of the other places (if any) at which the business is carried on; and
 - (iii) if the business is carried on under a name or style other than the name of the licensee, that name or style;
- (e) particulars of any suspension or cancellation of the licence; and
- (f) such other matters as may be prescribed.

(3) The Commission shall enter in the Register in relation to each person registered under section 10—

- (a) the name of the person registered and the date of registration;

- (b) the name of the person who applied for such registration and the name and address of the business to which the registration relates;
- (c) particulars of any suspension or cancellation of registration; and
- (d) such other particulars as may be prescribed.

9/1996
S. 6.

(4) Where a person no longer holds a particular licence or certification of registration, the Commission shall make an appropriate entry in the Register.

(5) A person may upon payment of the prescribed fee, inspect and make copies of, or take extracts from the Register.

Application
of sections
14 and 15.

13. Sections 14 and 15 apply to a person who is—

- (a) a dealer;
- (b) a dealer's representative;
- (c) an investment adviser;
- (d) an investment adviser's representative.

Records of
securities.

14.—(1) A person to whom section 13 refers shall maintain a record in the prescribed form of the securities in which he has an interest.

(2) Particulars of the securities in which a person to whom section 13 refers has an interest and particulars of his interest in those securities shall be entered in the record within seven days of the acquisition of the interest.

(3) Where there is a change (not being a prescribed change) in the interest or interests in securities of a person to whom section 13 refers he shall enter in the record, within seven days after the date of the change, full particulars of

the change, including the date of the change and the circumstances by reason of which that change has occurred; and for the purposes of this subsection, where a person acquires or disposes of securities, there shall be deemed to be a change in the interest or interests of that person.

(4) A person who fails to keep a record as required by this section shall be guilty of an offence. 39/2013
S. 11.

15.—(1) A person to whom section 13 refers shall give notice to the Commission in the prescribed form containing such particulars as are prescribed, including the place at which he will keep the record of his interest in securities. Notice of
particulars
to Com-
mission.

(2) The notice shall be given—

- (a) in the case of a person who is required by this Act to hold a licence, as part of his application for the licence; or
- (b) in the case of any other person who becomes a person referred to in section 13, within fourteen days after becoming such a person.

(3) The notice shall be so given notwithstanding that, before the expiration of the period referred to in subsection (2)(b), the person has ceased to be a person to whom section 13 refers.

(4) A person who ceases to be a person to whom section 13 refers shall, within fourteen days of his so ceasing, give notice of the fact to the Commission.

(5) A person who fails or neglects to give notice as required by this section shall be guilty of an offence and shall be liable on conviction before a Resident Magistrate to a fine not exceeding fifty thousand dollars.

Defence to
prosecution.

16. It is a defence to a prosecution for failing to comply with section 14 or 15 if the defendant proves that his failure was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that—

- (a) he was not so aware on the date of the summons; or
- (b) he became so aware not less than fourteen days before the date of the summons and complied with the relevant section within fourteen days after becoming so aware.

Production of
record.

17.—(1) The Commission or any person authorized by it in that behalf may require any person to whom section 13 refers to produce for inspection the record required to be kept pursuant to section 14 and the Commission or any person so authorized may make extracts from the record.

(2) A person who fails to produce a record for inspection or fails to allow any person authorized under subsection (1) to make a copy of or make extracts from the record shall be guilty of an offence and shall be liable on conviction before a Resident Magistrate a fine not exceeding one hundred thousand dollars and in default of payment to imprisonment for a term not exceeding twelve months, and in the case of a continuing offence to a further penalty not exceeding five thousand dollars for every day during which the offence continues after conviction.

39/2013
S. 12.

PART IIA. *Investment Schemes*

Regulation of
collective
investment
schemes.
39/2013
S. 12.

17A.—(1) No person shall issue or cause to be issued, in Jamaica, any invitation to another person to become a participant in a collective investment scheme, unless the scheme is registered with the Commission in accordance with regulations made under this Act, or is exempt from such registration by virtue of those regulations.

(2) In this section, “collective investment scheme” includes any scheme in whatever form, whether in Jamaica or elsewhere, whereby members of the public are invited or permitted to invest money or any other property—

- (a) in a portfolio of assets managed as a whole by or on behalf of the operator of the scheme; and
- (b) on terms on which those investors, being two or more in number, and in which they hold a participating interest in, receive profits or income arising out of, or share in the risks and benefits of the scheme.

17B.—(1) For the purposes of this Act, “prohibited scheme” means any scheme to which this section applies.

Prohibited
Schemes.

(2) This section applies to—

- (a) any scheme commonly known as a “ponzi scheme”, being an investment scheme that provides investors with returns derived substantially from investments made by other investors in the scheme, rather than from genuine profits—
 - (i) whether or not the name “ponzi” is used by any person in connection with the scheme; and
 - (ii) whether or not the scheme limits the number of persons who may participate therein, either expressly or by the application of conditions affecting the eligibility of a person to enter into, or receive compensation under, the scheme; and
- (b) pyramid selling schemes, being the selling of financial products in circumstances where a promoter or operator of, or an investor in, a scheme induces or attempts to induce a person to make payments into a scheme by holding out to the person that the person will receive some payment or other benefit from—
 - (i) other investors in the scheme; or
 - (ii) the introduction of other persons as investors in the scheme.

(3) A person who establishes, operates or knowingly invites any other person to become an investor in, any prohibited scheme commits an offence.

(4) A person who commits an offence under subsection (3) shall be liable upon conviction in the Supreme Court to a fine or to imprisonment for a term not exceeding ten years.

(5) In this section, “the selling of financial products” means any transaction that involves the creation of a security.

17C.—(1) Subject to section 17B, an investment club which meets the criteria set out in subsection (2) shall be exempt from registration under section 17A.

(2) The criteria referred to in subsection (1) are—

- (a) membership in the club is limited to a maximum of twenty persons;
- (b) payments by members consist of equal sums payable at agreed periodic intervals;
- (c) there is a specified limit on the maximum annual contribution of members, which limit shall not exceed the maximum stipulated by the Commission in rules made under section 75;
- (d) all members are entitled to equal participation and voting rights;
- (e) borrowing from the public is prohibited;
- (f) remuneration of officers or members of the club for administrative or other services performed for the club, other than as reimbursement for expenses reasonably incurred, is prohibited;
- (g) returns as to information pertaining to the membership, investment operations and financial accounts of the club are filed with the Commission in such manner as may be prescribed.

17D.—(1) No licensee, or person registered under section 10 shall, in the course of business to which the licence or registration (as the case may be) pertains, effect any transaction referred to in subsection (2), knowingly or without exercising reasonable care to ascertain whether the transaction is a transaction referred to in subsection (2).

Transactions involving prohibited schemes or unlicensed persons.

(2) The transactions referred to are any transaction on behalf of any—

- (a) prohibited scheme;
- (b) person or entity operating a securities business or investment advice business without the appropriate licence under this Act;
- (c) collective investment scheme operating in contravention of section 17A; or
- (d) person performing functions as a dealer's representative or investment adviser's representative in contravention of section 10.

(3) No person shall knowingly or with reckless disregard as to whether a transaction is a transaction referred to in subsection (2), invest in, induce or assist any other person to invest in, any transaction referred to in subsection (2).

(4) A person who contravenes subsection (1) or (3) commits an offence.

(5) The provisions of this section shall apply in respect of any transaction involving persons outside of Jamaica with any person situated inside of Jamaica, or concerning any investments dealt with in Jamaica, as if at all material times all the persons were situated inside of Jamaica.

PART III. *Stock Exchange*

18.—(1) Subject to the provisions of this section, a company may apply in the prescribed form and manner to the Commission for a licence to establish and operate a stock exchange, and such application shall be accompanied by the prescribed application fee.

Application for licence to operate stock exchange. 9/1996 S. 8(a).

SECURITIES

(2) From and after the 6th December, 1993, the Jamaica Stock Exchange (hereinafter referred to as “the Exchange”) shall, subject to subsection (3), be deemed to be licensed under this section.

(3) The Exchange shall not later than six months after the 6th December, 1993 or such longer period as the Commission may allow—

- Schedule.
- (a) take such steps as are necessary to ensure that it satisfies the requirements of the Schedule; and
 - (b) notify the Commission in writing of the steps so taken.

(4) If the Exchange fails to take action in accordance with subsection (3) (a), the provisions of subsection (2) shall cease to apply to the Exchange upon the expiration of the period specified in that subsection.

9/1996
S. 8(b).

(4A) The Exchange shall pay the prescribed licence fee to the Commission within thirty days after the 23rd April, 1996.

(5) Upon receipt of an application by a company under subsection (1), the Commission may grant a licence to that company subject to such terms and conditions as the Commission may specify if the Commission is satisfied that—

- (a) the establishment of the stock exchange is necessary in the public interest having regard to the nature of the securities industry; and
- (b) the applicant satisfies the requirements of the Schedule.

(6) The Commission shall by notice in writing declare the Exchange and any company to which a licence is granted under this section to be a recognized stock exchange for the purposes of this Act.

(6A) The Commission may revoke, by notice in writing published in the *Gazette*, a licence granted under this section if it is satisfied that the Exchange or any company to which the licence is granted is in breach of the requirements of the Schedule.

9/1996
S. 8(c).
39/2013
S. 13(a)(i),(ii).

(6B) The Commission may, by notice in writing published in the *Gazette*, revoke a licence granted under this section, if—

39/2013
S. 13(b)

(a) the Commission is satisfied that the licensee—

- (i) has not within two years after the date on which the licence was granted, begun to operate, in Jamaica, the recognized stock exchange in respect of which the licence was granted; or
- (ii) has ceased to operate in Jamaica, for more than two years, the recognized stock exchange in respect of which the licence was granted;

(b) proceedings for the winding up of the recognized stock exchange have commenced; or

(c) the licensee so requests.

(6C) The Commission may upon issuing a notice under subsection (6B) issue to the company concerned such written directions as it thinks fit for the purpose of ensuring the satisfactory closing-out of the operations (if any) of the recognized stock exchange.

(7) Any person who establishes, maintains, operates or assists in establishing, maintaining or operating a stock exchange without a licence granted under this section shall be guilty of an offence and liable on conviction before a

Judge of the Supreme Court sitting without a jury to a fine or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

39/2013
S. 13(c).

(8) A licensee under this section shall pay such annual fee as may be prescribed as payable in respect of a recognized stock exchange.

Commis-
sion to be
notified
of amend-
ments to
rules.

19.—(1) Within fourteen days after—

- (a) an amendment is made, by way of rescission, alteration or addition, to the business rules of a recognized stock exchange; or
- (b) a recognized stock exchange makes or adopts an amendment, by way of rescission, alteration or addition, to its listing rules,

it shall lodge written notice of the amendment with the Commission.

(2) The notice referred to in subsection (1) shall—

- (a) set out the text of the amendment;
- (b) specify the date on which the amendment was made or adopted; and
- (c) contain an explanation of the purpose of the amendment.

(3) If no notice is lodged under subsection (1) within the time specified in that subsection, the amendment ceases to have effect.

(4) As soon as practicable after receiving a notice, the Commission shall send a copy to the Minister.

(5) Within thirty days after the receipt of a notice by the Commission under subsection (1), the Commission may disallow the whole or a specified part of the amendment to which the notice relates.

(6) Within seven days after the whole or a part of an amendment is disallowed under subsection (5), the Commission shall give notice in writing of the disallowance to the recognized stock exchange and, upon receipt by the exchange of the notice, the amendment, to the extent of the disallowance, ceases to have effect.

20. A person who is not licensed under this Act shall not be appointed to the board of a recognized stock exchange unless the Commission approves that person as a fit and proper person (as described in section 9(3)(a)(ii)) for such appointment.

Commission to approve members of board.

21.—(1) A recognized stock exchange shall keep proper accounts and other records in relation to its business, in such form as will permit—

Accounts and audit of stock exchange.

- (a) accurate recording of income, expenses, assets and liabilities; and
- (b) adequate auditing of the matters referred to in paragraph (a); and
- (c) the preparation of profit and loss accounts and balance sheets.

(2) A recognized stock exchange shall appoint annually an auditor from a panel of persons approved by the Commission as being qualified by training and experience to audit the accounts of the exchange.

(3) The accounts of each recognized stock exchange shall be audited annually by the auditor appointed pursuant to subsection (2), and each such exchange shall, within three months after the end of its financial year, submit a statement of its accounts so audited to the Commission and the report of the auditor thereon.

(4) The audited financial statements and auditor's report thereon shall be made available by the Commission for inspection by any person upon payment of such fee as may be prescribed.

Recognized stock exchange to provide assistance to Commission.

22.—(1) A recognized stock exchange shall provide such assistance to the Commission, or to a person acting on behalf of, or with the authority of, the Commission, as the Commission reasonably requires for the performance of its functions.

(2) Where a recognized stock exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action pursuant to its rules against a member dealer, it shall as soon as practicable lodge with the Commission written particulars of the name of the member dealer, the reason for and nature of the action taken, the amount of the fine (if any) and the period of the suspension (if any).

(3) The Commission shall, upon a request by the member dealer concerned, review any disciplinary action taken by a recognized stock exchange under subsection (2) and may affirm or set aside a decision of the recognized stock exchange after giving the member dealer concerned and the stock exchange an opportunity to be heard.

(4) Nothing in this section shall preclude the Commission from taking disciplinary action against a member dealer in any case where that recognized stock exchange fails to take such action, so, however, that, before taking such

action as aforesaid, the Commission shall give the member dealer concerned and the exchange an opportunity to be heard.

(5) Any person who is aggrieved by a decision of the Commission under this section, may within thirty days after he is notified of the decision, appeal to a Judge in Chambers who shall make such order as he thinks fit.

23.—(1) The Commission may, where it appears to be in the public interest, issue directions to a recognized stock exchange with respect to—

Power of Commission to issue directions to stock exchange.

- (a) trading on or through the facilities of that stock exchange or with respect to any security listed on that stock exchange;
- (b) the manner in which a recognized stock exchange carries on its business; or
- (c) any other matters which the Commission considers necessary for the effective administration of this Act,

and the stock exchange concerned shall, subject to this section, comply with any such directions forthwith.

(2) A recognized stock exchange which is aggrieved by a direction of the Commission under subsection (1) may appeal to the Tribunal within fifteen days after the date of such direction. 8/2001
S. 12.

(3) Where a recognized stock exchange intends to appeal pursuant to subsection (2), it may apply to the Com-

mission for a stay of the direction until the appeal is determined and if such application is refused, the recognized stock exchange may within fifteen days after the date of such refusal, apply to a Judge in Chambers for such stay as aforesaid.

(4) Directions given under subsection (1) have effect from the date thereof unless a stay is granted under subsection (3) or the directions are reversed on appeal made under subsection (2).

(5) A recognized stock exchange which, without reasonable excuse, fails or refuses to comply with a direction given under subsection (1), shall be guilty of an offence and shall be liable on summary conviction before a Judge of the Supreme Court sitting without a jury to a fine and where the offence is continued after conviction, to a further fine not exceeding one hundred thousand dollars for every day during which the offence is so continued.

(6) No prosecution for an offence under this section shall be instituted until an appeal to the Appeal Tribunal under subsection (2) has been determined or, in the event of an appeal to the Court of Appeal against a decision of the Appeal Tribunal, the matter is finally determined.

(7) Where the Commission is satisfied that a manager of a recognized stock exchange has wilfully contravened this Act or any regulations made hereunder or the rules of the stock exchange or has, without reasonable cause or excuse, failed to enforce compliance with such provisions by a member dealer or a person associated with that member dealer, the Commission may—

(a) if it thinks necessary in the public interest; or for the protection of investors; and

(b) after giving the manager an opportunity to be heard,

by notice in writing direct the board of the recognized stock exchange to remove or suspend the manager from office or employment and that stock exchange shall comply with the direction.

(8) The board of a recognized stock exchange shall not take action to dismiss a manager who refuses to carry out a decision of the board if the carrying out of such decision would constitute a breach of this Act.

(9) A manager who is affected by a direction given to the board of a recognized stock exchange under subsection (7), may appeal to the Court of Appeal against that direction and the Court of Appeal may make such order as it thinks fit.

24.—(1) Without prejudice to the generality of section 23, where the Commission is of the opinion that it is necessary to prohibit trading in particular securities of, or made available by, an issuer on a recognized stock exchange so as to protect, in the public interest, persons buying or selling the securities, the Commission may by notice in writing to that stock exchange, prohibit such trading as aforesaid, stating its reasons for so doing.

Power of Commission to prohibit trading in particular securities.

(2) Where the Commission gives notice to a recognized stock exchange under subsection (1), the Commission shall at the same time send a copy of the notice to the issuer concerned together with a statement setting out the reasons for the giving of the notice.

25.—(1) Where a person who is under an obligation to comply with or enforce the business rules or listing rules of a recognized stock exchange fails to comply with or enforce

Enforcement of business rules, etc., by Court.

any of those business rules or listing rules, as the case may be, a Judge of the Supreme Court may act in accordance with subsection (2).

(2) For the purposes of subsection (1) the Judge may, on the application of the Commission, the recognized stock exchange or a person aggrieved by the failure and after giving to the person aggrieved by the failure and the person against whom the order is sought an opportunity of being heard, make an order giving directions to the last-mentioned person concerning compliance with those business rules or listing rules.

39/2013
S. 15.

(3) For the purposes of this section, an issuer that is, with its agreement, consent or acquiescence, included in the official list of a recognized stock exchange, or an associate of such an issuer, shall comply with the listing rules of that exchange to the extent to which those rules purport to apply in relation to the issuer or associate, as the case may be.

26.—(1) Subject to subsection (4), every issuer shall, within the prescribed time and before—

- (a) issuing any security; or
- (b) issuing to the public any security which was previously issued privately or by way of exempt distribution, or was outstanding from a previous private offering,

apply to the Commission, in the prescribed form together with the prescribed fee, to be registered with respect to that security.

39/2013
S. 16(b).

(2) Upon receipt of an application under subsection (1), the Commission may—

- (a) grant the application, subject to such terms and conditions as the Commission may specify in writing; or

- (b) refuse to register an applicant under subsection (1) on any of the grounds specified in subsection (2A) and shall, before such refusal, notify the applicant in writing, within such period as may be prescribed, of the intended refusal and the grounds therefor and afford the applicant an opportunity to be heard thereon.

(2A) The grounds referred to in subsection (2) are that—

- (a) the issuer has violated any provision of this Act or any regulations made under this Act;
- (b) the issuer has been engaged in, or is about to engage in, a fraudulent transaction;
- (c) the issuer has made a statement which is false or misleading in a material particular in a prospectus concerning the issuer or its securities;
- (d) the issuer has failed to comply with any requirement imposed by the Commission as a condition for registration under section 26;
- (e) the issuer has made a statement which is false or misleading in a material particular, or has omitted a material particular, in the application for registration or the application is on its face incomplete in any material particular;
- (f) the application fails to comply, in any material respect, with this Act or any regulations made thereunder, or any other requirement of the Commission made pursuant to this Act;
- (g) the financial condition or past conduct of the issuer or any officer, director, promoter or other person connected with the issuer, affords reasonable

SECURITIES

grounds for believing that the business of the issuer will not be conducted in a manner that is responsible or in the best interest of the holders of the securities;

- (h) a person who prepared or certified any part of the prospectus, or who is named as having done so, is not competent to do so;

(3) Any issuer who contravenes subsection (1) shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(4) Subsection (1) shall not apply to—

- (a) the Government of Jamaica;
- (b) securities issued by the Bank of Jamaica;
- (c) a person who issues a security to—
- (i) a deposit taking institution under the *Banking Services Act*; or
 - (ii) a society registered under the *Co-operative Societies Act*,

in the course of the conduct of business by the licensee or society, pursuant to its licence or registration, respectively.

(5) A licensee or society referred to in subsection (4)(b) which intends to dispose of any interest in any security issued to it by a person who is exempt from subsection (1), to any person other than another licensee or society—

- (a) shall give written notice of that intention to the person who issued the security to it and require that person to register the security; and
- (b) shall not dispose of the security until it is furnished with proof of such registration.

(6) An issuer shall—

39/2013
S. 16(d).

- (a) make such reports to the Commission as may be prescribed;
- (b) maintain, in the prescribed form, a record of the securities issued or proposed to be issued by that issuer; and
- (c) keep proper accounts and other records in relation to the issuer's operations as an issuer, in accordance with generally accepted accounting principles prevailing in Jamaica.

(7) An issuer shall—

- (a) upon request by the Commission during normal business hours, allow the Commission access to the records referred to in subsection (6), including facilitating the taking of copies thereof; and
- (b) provide such assistance to the Commission, and its authorized officers, as the Commission reasonably requires for the performance of its functions.

26A.—(1) Where an issuer fails to comply with any requirement of the Commission in the exercise of its powers under section 26, 59 or 67F—

Special
enforcement
provisions
with respect
to issuers.
39/2013
S. 17.

- (a) the Commission may refuse any application made by the issuer under section 26 for registration in respect of that security; and
- (b) the issuer commits an offence and shall be liable upon conviction on indictment in the Supreme Court to a fine or to imprisonment for a term not exceeding ten years.

SECURITIES

(2) Where the Commission considers it necessary for the purposes of any investigation being carried out under section 67F, the Commission may direct any issuer to whom the investigation relates to suspend the offer and sale of any securities.

(3) A direction under subsection (2) shall be given in writing to the issuer, stating the grounds therefor.

(4) Any offer or sale of a security in contravention of any directions given by the Commission under this section shall be deemed to be void and of no legal effect.

(5) Notice of a direction given under this section shall be—

- (a) given by the Commission to every licensee who has notified the Commission of its intention to sell the security; and
- (b) published by the Commission on at least two separate occasions in a daily newspaper in circulation throughout Jamaica.

PART IV. Compensation Fund

Establishment
of compen-
sation fund.

27.—(1) A recognized stock exchange shall establish and keep a compensation fund which shall be administered by the board of the exchange.

(2) The assets of the compensation fund are the property of the recognized stock exchange but shall be—

- (a) kept separate from all other property; and
- (b) held in trust for the purposes specified in this Part.

28. The compensation fund of a recognized stock exchange shall consist of—

Moneys
constituting
compensation fund.

- (a) all moneys paid to a recognized stock exchange by member dealers in accordance with the provisions of this Part;
- (b) the interest and profits from time to time accruing from the investment of the fund;
- (c) all moneys paid to the fund by the recognized stock exchange;
- (d) all moneys recovered by or on behalf of the recognized stock exchange in the exercise of any right of action conferred by this Part; and
- (e) all other moneys lawfully paid into the fund.

29. All moneys forming part of a compensation fund shall, pending the investment or application thereof in accordance with this Part, be paid or transferred into a bank in Jamaica.

Fund to be
kept in
separate
bank
account.

Applica-
tion of
fund.

30.—(1) Subject to this Part, a compensation fund shall be held and applied for the purpose of compensating persons who have suffered pecuniary loss as a result of a defalcation or fraudulent misuse of securities or documents of title to securities or of other property, by a member dealer or any of its directors or employees, whether before or after the 6th December, 1993, in the course of or in connection with the business of that dealer, where such securities, documents or other property—

- (a) were entrusted to or received by a member dealer or any of its directors or any of the dealer's employees for or on behalf of any other person; or
- (b) where entrusted to or received by the member dealer or any of its directors or any of the dealer's employees as trustee or trustees for or on behalf of the trustees of such securities, documents or property.

39/2013
S. 18.

(1A) The following provisions shall apply with respect to the compensation fund kept by the Jamaica Stock Exchange pursuant to this Act—

- (a) the fund may be applied to pay insurance premiums in respect of any insurance coverage taken out by the Exchange against potential liabilities which are chargeable to the fund;
- (b) subsection (1) shall be construed as applying only to such losses as are related to securities traded on the Jamaica Stock Exchange.

(2) Except as otherwise provided in this section, the total amount that may be paid under this Part to all persons who suffer pecuniary loss as mentioned in subsection (1) shall not, in any event, exceed in respect of that member dealer one million dollars, but for the purposes of this subsection any amount paid from a compensation fund shall, to the extent to which the fund is subsequently reimbursed therefor, be disregarded.

(3) If, after taking into account all ascertained and contingent liabilities of a compensation fund, the recognized stock exchange considers that the assets of the fund so permit, the exchange may, with the approval of the Commission, increase the total amount that may be applied from that fund under subsection (2) and the Commission shall cause notice of the increase to be published in the *Gazette*; and from the date of the publication until the notice is revoked or varied, the amount specified in the notice shall be the total amount which may be applied as aforesaid.

8/2001
S. 14(a)(i).

8/2001
S. 14(a)(ii).

(4) Where the recognized stock exchange decides to revoke or vary the notice under subsection (3), it shall inform the Commission accordingly, and the Commission shall cause notice of the revocation or variation to be published in the *Gazette*, and the notice which is so varied shall have effect accordingly.

(5) If, in any particular case after taking into account all ascertained or contingent liabilities of a compensation fund the recognized stock exchange considers that the assets of the fund so permit it may, with the approval of the Commission, apply out of the fund such sum in excess of the total amount limited by or under this section, as the Commission thinks fit, in or towards the compensation of persons who have suffered pecuniary loss as provided in subsection (1).

8/2001
S. 14(b)(i).

8/2001
S. 14(b)(ii).

(6) Notwithstanding any provision in subsections (2), (3) and (5), the Commission may, by order, direct the recognized stock exchange to increase the total amount which shall be applied from a compensation fund to a particular member dealer in payment to persons who had suffered pecuniary loss as referred to in subsection (1) on account of the defalcations or such fraudulent misuse as aforesaid of a particular member dealer or any of its directors or employees.

(7) Where—

- (a) any money, securities, documents of title to securities or other property have been entrusted to or received by, a former member dealer or any director, or employee of such dealer; and
- (b) on account of a defalcation or the fraudulent misuse of the securities, documents of title or other property, by the former member dealer or its director or employee, the person by or from whom the securities, documents of title or other property were so entrusted or received suffered pecuniary loss; and
- (c) at the time that the money, securities, documents of title or other property were so entrusted or received, the person suffering the pecuniary loss had reasonable grounds for believing and did believe that the former member dealer was a member of the recognized stock exchange concerned,

then, a reference in this section to a member dealer includes a reference to that former member dealer.

Investment
of money
in fund.

31. Moneys in a compensation fund that is not immediately required for its purposes may be invested by the board as it thinks fit.

Accounts
of fund.

32.—(1) A recognized stock exchange shall establish and keep proper accounts of its compensation fund and shall within three months after the end of each financial year cause to be prepared a balance sheet in respect of such accounts for the preceding financial year.

(2) The board of the recognized stock exchange shall appoint an auditor to audit the accounts of the compensation fund.

(3) The auditor appointed by the board shall fully audit the accounts of the compensation fund and shall audit each balance sheet and give a report on the accounts and balance sheet to the board not later than three months after the balance sheet is made out.

33.—(1) If at any time a compensation fund is not sufficient to satisfy such liabilities of the recognized stock exchange as are ascertained, the exchange may impose on every member dealer a levy of such amount as it thinks fit. Levy to meet liabilities.

(2) The amount of such levy shall be paid within the time and in the manner specified by the recognized stock exchange either generally or in relation to any particular case.

34.—(1) Subject to this Part, every person who has whether before or after the 6th December, 1993 suffered pecuniary loss as provided in section 30 (1) shall be entitled to claim compensation from the compensation fund and to take proceedings in the Court as provided in this Part against the recognized stock exchange so as to establish such claim. Claims against fund.

(2) A person shall not have a claim against a compensation fund in respect of—

- (a) pecuniary loss suffered before 1986; or
- (b) pecuniary loss in respect of money or other property suffered after the money or other property had, in due course of the administration of a trust, ceased to be under the sole control of a member dealer.

SECURITIES

(3) Subject to this Part, the amount which any claimant shall be entitled to claim as compensation from a compensation fund shall be the amount of the actual pecuniary loss suffered by him (including the reasonable costs of and disbursements incidental to the making and proof of his claim) less the amount or value of all moneys or other benefits received or receivable by him from any source other than the fund in reduction of the loss.

(4) In addition to any compensation payable under this Part, interest shall be payable out of the compensation fund on the amount of the compensation, less any amount attributable to costs and disbursements, at the rate of six per cent per annum (or such other rate as may be prescribed) calculated from and including the day on which the pecuniary loss was suffered until the day on which the claim is satisfied.

(5) Subject to this Part, a board may allow and settle any proper claim for compensation from a compensation fund at any time after the occurrence of the pecuniary loss in respect of which the claim arose.

(6) Subject to subsection (7), a person shall not bring proceedings under this Part against a recognized stock exchange without leave of the board unless—

- (a) the board has disallowed his claim; and
- (b) the claimant has exhausted all relevant rights of action and other legal remedies for recovery of the money, securities, documents of title to securities or other property, in respect of which the pecuniary loss occurred, being rights and remedies that are available against the member dealer in relation to which the claim arose and all other persons liable in respect of the loss suffered by the claimant.

(7) A person who has been refused leave by the board of a recognized stock exchange may apply to the Court for leave to bring proceedings against the recognized stock exchange and the Court may make such order as it thinks fit.

(8) The board after disallowing (whether wholly or partly) any claim for compensation from a compensation fund shall serve notice of the disallowance in the prescribed form on the claimant or his attorney-at-law.

(9) No proceedings against a recognized stock exchange in respect of a claim which has been disallowed by the board shall be brought after the expiration of three months after the service of notice of disallowance under subsection (8).

(10) In proceedings brought to establish a claim, evidence of any admission or confession by, or other evidence that would be admissible against, the person against whom a defalcation or fraudulent misuse of property is alleged is admissible to prove the commission of defalcation or fraudulent misuse notwithstanding that the person is not the defendant in or a party to those proceedings, and all defences that would have been available to that person shall be available to the recognized stock exchange.

(11) The board or, where proceedings are brought to establish a claim, the Court, if satisfied that there was a defalcation or fraudulent misuse of property on which to found the claim, may allow the claim and act accordingly, notwithstanding that—

- (a) the person against whom the defalcation or fraudulent misuse of property is alleged has not been convicted or prosecuted; or
- (b) the evidence on which the board or the Court, as the case may be, acts would not be sufficient to establish the guilt of that person on a criminal trial in respect of the defalcation or fraudulent misuse of property.

Application
of in-
surance
moneys.

35. No claimant against a compensation fund of a recognized stock exchange shall have any right of action against any person with whom a contract of insurance or indemnity is made under this Part in respect of such contract, or have any right or claim with respect to any moneys paid by the insurer in accordance with any such contract.

PART V. *Conduct of Securities Business*

Application
of Part V.
23/2014
S. 3.

35A. For the purposes of this Part, sections 36 and 36A, sections 44 to 49 and sections 52 and 53 shall apply, in addition to securities as defined in section 2(1), to—

- (a) certificates of deposit issued by banks licensed under the Banking Act, financial institutions licensed under the Financial Institutions Act, or by building societies licensed under the Building Societies Act;
- (b) certificates of deposit, and open market debt instruments and other securities, issued by the Bank of Jamaica; and
- (c) certificates of deposit issued pursuant to the carrying on of credit union business by a society registered under the Co-operative Societies Act,

which shall be deemed to be securities for the purposes of those sections.

Trust
account.

36.—(1) A dealer in securities shall open and maintain with a bank in Jamaica an account designated a trust account into which shall be paid—

- (a) money held by the dealer in trust for a client; and
- (b) without limiting the generality of paragraph (a), money received by the dealer from a client, other than—
 - (i) money received in respect of brokerage or any other preferred charge;
 - (ii) money received in payment or part payment for securities delivered to the dealer before

the money is received; or

- (iii) money in relation to which the dealer is required under or pursuant to this Act to treat in a specified way.

(2) A dealer shall not withdraw money from a trust account except to make a payment to or in accordance with the directions of a person entitled to the money and for such other purposes as may be prescribed by the Commission.

(3) Any dealer who contravenes the provisions of this section shall be guilty of an offence and shall be liable on conviction before a Judge of the Supreme Court sitting without a jury to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

36A.—(1) A dealer shall not—

- (a) enter into a repurchase agreement that does not completely and outrightly transfer the legal ownership of the underlying assets to the other party to the repurchase agreement; or
- (b) conduct any transaction pursuant to the repurchase agreement,

unless the agreement is entered into, or (as the case may be) the transaction is conducted, in accordance with the provisions of this Act and any regulations made under this Act.

(2) A dealer who contravenes subsection (1) commits an offence.

(3) Subject to subsection (6), the assets referred to in subsection (5)(a) shall not form part of the estate or property of the dealer, and shall be held, managed and administered in accordance with regulations made under section 76(1)(r).

Assets
underlying
repurchase
agreements.
23/2014
S. 4.

SECURITIES

(4) In the event of any proceedings under the Insolvency Act in relation to an insolvent person or a bankrupt, the assets referred to in subsection (5)(a) shall, notwithstanding anything contained in the Insolvency Act, be dealt with in the manner provided by this Act and any regulations made under this Act.

(5) For the purposes of—

(a) subsections (3) and (4), the assets are—

- (i) the underlying assets which are the subject of a repurchase agreement;
- (ii) any money held in trust pursuant to section 36;
- (iii) money otherwise held in trust pursuant to this Act or any regulations made under this Act;

(b) subsection (4), “insolvent person” and “bankrupt” have the meanings assigned to them respectively by section 2 of the Insolvency Act.

(6) Regulations made under section 76(1)(r) may exclude from the application of those regulations any repurchase agreements between entities specified in those regulations, if the Commission is satisfied that the contractual and operational arrangements governing those repurchase agreements comply with international best practices and adequately protect against the risks which those regulations are designed to mitigate.

(7) For the purposes of subsection (1), a transfer in accordance with any enactment or applicable rules governing the operation of—

- (a) a licensed central securities depository, within the meaning of section 67A;
- (b) a securities depository operated and managed by the Bank of Jamaica; or

- (c) a securities depository operating outside of Jamaica, the operations in respect of which the Commission is satisfied are regulated in accordance with international best practices,

shall be treated as a complete and outright transfer of legal ownership.

37.—(1) A licensee shall not represent or imply or knowingly permit to be represented or implied in any manner to any person that his abilities or qualifications have in any respect been approved by the Commission.

Certain
representa-
tions pro-
hibited.

(2) The statement that a person is a licensee under this Act is not a contravention of this section.

38.—(1) This section applies—

Issues of
contract
notes.

- (a) in relation to a dealer (other than an exempt dealer) as regards a transaction of sale or purchase of securities;
- (b) in relation to an exempt dealer, as regards a transaction of sale or purchase of securities that is entered into in the course of a securities business that the exempt dealer carries on in the capacity of personal representative of a deceased dealer.

(2) A dealer shall, in respect of a transaction of sale or purchase of securities, forthwith give a contract note that complies with subsection (3)—

- (a) where the transaction took place in the ordinary course of business at a recognized stock exchange and the dealer entered into the transaction otherwise than as principal, to the person for whom the dealer entered into the transaction;
- (b) where the transaction did not take place in the ordinary course of business on a recognized stock exchange and the dealer entered into the transaction

SECURITIES

otherwise than as principal, to the person for whom the dealer entered into the transaction and the person with whom the dealer entered into the transaction; and

- (c) where the transaction did not take place in the ordinary course of business on a recognized stock exchange and the dealer entered into the transaction as principal, to the person with whom the dealer entered into the transaction.

(3) A contract note given by a dealer under subsection (1) shall specify—

- (a) the name or style under which the dealer carries on business as a dealer and the address of the principal place at which the dealer so carries on business;
- (b) each recognized stock exchange (if any) of which the dealer is a member;
- (c) if the dealer is dealing as principal with a person who is not the holder of a dealer's licence, a statement that he is so acting;
- (d) the name and address of the person to whom the dealer gives the contract note;
- (e) the day on which the transaction took place and, if the transaction did not take place in the ordinary course of business at a recognized stock exchange, a statement to that effect;
- (f) the number, or amount and description, of the securities that are the subject of the contract;
- (g) the price per unit of the securities;
- (h) the amount of the consideration;
- (i) the amount of commission charged;

- (j) the amount of all stamp duties or other duties and taxes payable in connection with the contract; and
- (k) if an amount is to be added to or deducted from the settlement amount in respect of the right to a benefit bought or sold together with the securities, the first-mentioned amount and the nature of the benefit.

(4) A dealer shall not include in a contract note given under subsection (1), as the name of the person with or for whom he has entered into the transaction, a name that he knows, or could reasonably be expected to know, is not the name by which that person is ordinarily known.

(5) A reference in this section to a dealer dealing or entering into a transaction as principal includes a reference to—

- (a) a person dealing or entering into a transaction on behalf of an associated person;
- (b) a person dealing in securities on behalf of a company in which the dealer has a controlling interest; or
- (c) where he carries on business as a dealer in partnership, dealing on behalf of a company in which his interest and the interest of his directors together constitute a controlling interest.

(6) For the purposes of this section—

- (a) a dealer who is a member of a recognized stock exchange shall not be taken to have entered into a transaction as principal by reason only that the

transaction was entered into with another dealer who is a member of a recognized stock exchange; and

- (b) a transaction takes place in the ordinary course of business on a recognized stock exchange if it takes place in prescribed circumstances or is a transaction that is a prescribed transaction for the purpose of this section.

(7) A person who contravenes this section shall be guilty of an offence and liable on conviction to a fine not exceeding fifty thousand dollars.

Certain persons to disclose certain interests in securities.

39.—(1) Where a person who is a dealer, investment adviser, dealer's representative or investment adviser's representative sends circulars or other written communication in which he makes a recommendation whether expressly or by implication, with respect to securities or a class of securities, that person shall cause to be included in each circular or other communication, in type not less legible than that used in the remainder of the circular or other communication, a concise statement of the nature of his interest in, or his interest in the acquisition or disposal of, those securities or securities included in that class, or the interest of any associated person at the date on which the first-mentioned person last sends the circular or other communication.

(2) It is a defence to a prosecution for an offence against subsection (1) for the defendant to establish that, at the time at which the circular or other communication was sent, he was not aware and could not reasonably be expected to have been aware—

- (a) that he had an interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class; or

- (b) that the associated person had an interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class,

as the case may be.

(3) For the purposes of subsections (1) and (2)—

- (a) an interest of a person in the disposal of securities includes any financial benefit or advantage that will, or is likely to, accrue directly or indirectly to the person upon or arising out of the disposal of the securities;
- (b) without limiting the generality of paragraph (a), a person who has entered into an underwriting agreement in respect of securities shall be deemed to have an interest in the acquisition or disposal of those securities; and
- (c) notwithstanding section 3, a person is not associated with another person in relation to the sending of a circular or other communication or the making of a recommendation by reason only that he is a director of a company of which the other person is also a director, whether or not the company carries on a securities business, unless the person and the other person are acting jointly, or otherwise acting together or under or in accordance with an arrangement made between them, in relation to the sending of the circular or communication or the making of the recommendation.

(4) Where—

- (a) a person has subscribed for or purchased securities for the purpose of offering all or any of them to the public for purchase; and
- (b) the person offers any of those securities for purchase.

the person shall not make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to the securities offered for purchase unless he has informed each person to whom the recommendation is made that he acquired the securities for that purpose.

(5) The provisions of subsection (6) shall apply where—

- (a) securities have been offered for subscription or purchase; and
- (b) a person has subscribed for or purchased or is or will or may be required to subscribe for or purchase, any of those securities under an underwriting or sub-underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased.

(6) The person referred to in subsection (5) shall not, during the period of ninety days after the close of the offer—

- (a) make an offer to sell the securities otherwise than in the ordinary course of trading on a recognized stock exchange; or
- (b) make a recommendation with respect to those securities,

unless the offer or recommendation contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities that he has acquired, or is or will or may be required to acquire in the circumstances mentioned in subsection (5).

(7) A person who is a dealer, investment adviser, dealer's representative or investment adviser's representative shall not send to another person a circular or other

communication or written offer or recommendation to which subsection (1), (5) or (6) applies unless the circular or other communication or the offer or recommendation—

- (a) if the first-mentioned person is an individual, is signed by that individual;
- (b) if the first-mentioned person is a company, is signed by a director, manager or secretary of the company.

(8) Where a person who is a dealer, investment adviser, dealer's representative or investment adviser's representative, sends to a person a circular or other communication or a written offer or recommendation to which subsection (1), (5) or (6) applies, the first-mentioned person shall preserve for seven years, a copy of the circular or other communication or of the written offer or recommendation, duly signed by him.

(9) Reference in this section to an offer of securities shall be construed as including a reference to a statement, however expressed, that is not an offer but expressly or impliedly invites a person to whom it is made to offer to acquire securities.

(10) For the purposes of this section, a circular or other communication or a written offer or recommendation sent to a person shall, if it is signed by a director, manager or secretary of a company, be deemed to have been sent by the company.

(11) The Commission may, if it is in the public interest, exempt a security or any class of securities from the application of this section.

(12) Any person who contravenes this section shall be guilty of an offence and shall be liable on conviction before a Judge of the Supreme Court sitting without a

jury to a fine or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Dealing as
principal.

40.—(1) Subject to subsection (4), a dealer shall not, as principal, deal in any securities with a person who is not a dealer unless he first informs the person with whom he is dealing that he is acting in the transaction as principal and not as agent.

(2) A reference in this section to a dealer dealing or entering into a transaction, as principal includes a reference to a person—

- (a) dealing or entering into a transaction on behalf of an associated person;
- (b) dealing in securities on behalf of a company in which he has a controlling interest; or
- (c) where he carries on business as a dealer on behalf of a company in which his interest and the interest of his directors together constitute a controlling interest.

(3) A dealer who, as principal, enters into a transaction of sale or purchase of securities with a person who is not a dealer shall state in the contract note that he is acting in the transaction as principal and not as agent.

(4) Subsection (1) shall not apply in relation to a transaction entered into by a dealer who is a member of a recognized stock exchange and specialises in transactions relating to odd lots of securities, being a transaction of sale or purchase of an odd lot of securities.

(5) Where a dealer fails to comply with subsection (1) or (3) in respect of a contract for the sale of securities by him, the purchaser of the securities may, if he has not

disposed of them, rescind the contract by a notice of rescission in writing given to a dealer not later than seven days after the receipt of the contract note and, where a dealer fails to comply with subsection (1) or (3) in respect of a contract for the purchase of securities by him, the vendor of the securities may, in like manner, rescind the contract.

(6) Nothing in subsection (5) affects any right that a person has apart from that subsection.

(7) No commission shall be charged by a dealer in respect of any transaction in which the dealer acts as principal.

(8) In this section—

"board lot" means the minimum number of securities in a particular transaction which is defined by a recognized stock exchange to impact the stock exchange index;

"odd lot" means the number of securities in a particular issuer which is less in number than the board lot prescribed by a recognized stock exchange.

41.—(1) A dealer shall not, except as permitted in subsection (3), enter into, as principal or on behalf of an associated person a transaction of purchase or sale of securities that are permitted to be traded on a recognized stock exchange if a client of the dealer, who is not an associated person, has instructed the dealer to buy, or sell, respectively, securities of the same class and the dealer has not complied with the instruction.

Dealer to give priority to clients' orders.

(2) A dealer who contravenes this section shall be guilty of an offence and shall be liable on conviction before a Judge of the Supreme Court sitting without a jury to a fine.

(3) Subsection (1) does not apply in relation to the entering into of a transaction by a dealer as principal or on behalf of an associated person if—

(a) the instructions from the client concerned required the purchase or sale of securities on behalf of the client to be effected only on specified conditions under which the securities were to be bought or sold and the dealer has been unable to buy or sell the securities by reason of those conditions; or

(b) the transaction is entered into in prescribed circumstances.

(4) In relation to a transaction referred to in subsection (3), a dealer shall apportion to the client the securities purchased at the lowest offer price within the trading day or, as the case may be, the highest price obtained for the securities within the trading day.

Obligation of dealer or dealer's representative regarding offshore investments. 8/2001 S.15.

41A.—(1) Every dealer or dealer's representative in respect of each transaction involving the investment of funds in an offshore account shall keep records in relation to the transaction.

(2) Every dealer or dealer's representative shall cause to be made available to the Commission during business hours all records relating to offshore investments.

(3) A dealer or dealer's representative commits an offence if he—

(a) fails without reasonable cause to comply with subsection (1) or (2); or

(b) wilfully withholds from a client, information regarding a transaction referred to in subsection (1).

(4) In this section "offshore investments" means investments made outside of Jamaica by a dealer.

Margin requirements.

42. For the purpose of preventing the excessive use of credit for the purchase or carrying of securities by dealers or member dealers, regulations may provide for margin requirements, that is to say, the amount of credit that may from time to time be extended and maintained on all or specified securities or transactions or class of securities and transactions and for matters connected therewith.

Short selling of securities.

43.—(1) Subject to the provisions of this section and to such provisions as may be prescribed, a dealer shall not sell securities to a buyer unless, at the time of the sale—

(a) the dealer has, or believes on reasonable grounds that he has, a presently exercisable and unconditional right to vest the securities in a buyer; or

(b) where the dealer is selling as agent, his principal has such presently exercisable and unconditional right as aforesaid.

(2) For the purposes of subsection (1)—

- (a) a dealer who, at a particular time, has a presently exercisable and unconditional right to have the securities vested in him or in accordance with his directions has, at that time, a presently exercisable and unconditional right to vest the securities in another person; and
- (b) a right of a dealer to vest securities in another person is not conditional merely because the securities are charged or pledged in favour of another person to secure the repayment of money.

(3) Subsection (1) does not apply in relation to—

- (a) a sale of securities as part of an arbitrage transaction;
- (b) sale of securities by a person who before the time of sale has entered into a contract to buy those securities and who has a right to have those securities vested in him that is conditional only upon all or any of the following—
 - (i) payment of the consideration in respect of the purchase;
 - (ii) the receipt by the person of a proper instrument of transfer in respect of the securities;
 - (iii) the receipt by the person of the documents that are, or are documents of title to, securities; or
- (c) a sale of securities where—
 - (i) the person who sold the securities is not an associate of the issuer;
 - (ii) arrangements are made before the time of the sale that will enable delivery of securities of the class sold to be made to the

buyer within fourteen business days after the date of the transaction effecting the sale; and

- (iii) if the sale is made on a recognized stock exchange the price per unit in respect of the sale is not below the price at which the immediately preceding ordinary sale was effected and if above, is not higher than the next preceding price at which a sale, not being a short sale, was made, and the recognized stock exchange is informed as soon as practicable that the sale has been made short in accordance with this subparagraph.

(4) A dealer who, on a recognized stock exchange makes, whether as principal or agent, a sale of securities that would contravene subsection (1) but for subsection (3), shall, without prejudice to an obligation to deliver the securities to the purchaser, endorse on any document evidencing the sale that is given to the purchaser, a statement that the sale was a short sale.

(5) Where a short sale has been made pursuant to subsection (1), the dealer concerned is under an obligation to deliver the securities to the purchaser and if the dealer is unable to fulfil that obligation because of any default on the part of a person on whose instructions the dealer made the sale, then the dealer is entitled to be compensated by that person for any loss resulting from the dealer's inability to fulfil the obligation aforesaid.

False trading and market rigging transactions.

44.—(1) A person shall not create, or cause to be created, or do anything that is intended or likely to create, a false or misleading appearance of active trading in any securities on a recognized stock exchange or false or misleading

appearance with respect to the market for, or the price of, any such securities.

(2) A person shall not, by means of purchases or sales of any securities that do not involve a change in the beneficial ownership of those securities, or by any fictitious transactions or devices, maintain, increase, reduce, or cause fluctuations in, the market price of any securities.

(3) Without affecting the generality of subsection (1), a person who—

- (a) enters into or carries out, either directly or indirectly, any transaction of sale or purchase of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities;
- (b) offers or sells any securities at a specified price where the person has made or proposes to make or knows that an associated person has made or proposes to make an offer to buy the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or
- (c) offers to buy any securities at a specified price where the person has made or proposes to make or knows that an associate of his has made or proposes to make an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price,

shall be deemed to have created a false or misleading appearance of active trading in securities on a recognized stock exchange.

(4) In a prosecution of a person for an offence under subsection (1) constituted by an act referred to in subsection (3), it is a defence if the defendant establishes that the purpose or purposes for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a recognized stock exchange.

(5) A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities before the purchase or sale, or an associated person in relation to those securities has an interest in the securities after the purchase or sale.

(6) In a prosecution of an offence against subsection (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the defendant establishes that the purpose or purposes for which he bought or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.

(7) The reference in subsection (3) (a) to a transaction of sale or purchase of securities includes—

- (a) a reference to the making of an offer to sell or purchase securities; and
- (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person,

to offer to sell or buy securities.

Stock market manipulation.

45.—(1) A person shall not, with intent to induce other persons to sell, purchase or subscribe for securities of an issuer or of an associated person, effect, take part in, be

concerned in or carry out, either directly or indirectly, two or more transactions in securities of that issuer, being transactions that have or are likely to have the effect of raising, lowering, maintaining or stabilizing the price of the securities of the issuer on a recognized stock exchange.

(2) A reference in this section to a transaction, in relation to securities of an issuer, includes—

- (a) a reference to the making of an offer to sell or purchase such securities of the issuer; and
- (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase such securities of the issuer.

46. A person shall not make a statement, or disseminate information, that is false or misleading in a material particular with the intention of inducing the sale or purchase of securities by other persons or with the intention of raising, lowering, maintaining or stabilising the market price of securities if, when he makes the statement or disseminates the information—

False or misleading statements, etc.

- (a) he is not concerned whether the statement or information is true or false; or
- (b) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

47.—(1) A person shall not, with intent to induce another person to deal in securities—

Fraudulently inducing person to deal in securities.

- (a) make or publish any statement, promise or forecast that he knows to be misleading, false or deceptive;
- (b) dishonestly conceal any material facts;
- (c) recklessly make or publish, dishonestly or otherwise, any statement, promise or forecast that is misleading, false or deceptive; or

- (d) record or store in, or by means of, any mechanical, electronic or other device, information that he knows to be false or misleading in a material particular.

(2) It is a defence to a prosecution for an offence under subsection (1) constituted by recording or storing information as mentioned in paragraph (d) thereof if it is established that, at the time when the defendant so recorded or stored the information, he had no reasonable grounds for expecting that the information would be available to any other person.

Inducement to purchase or sell by dissemination of information.

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S. 20(a),(b),(c).

48.—(1) It is unlawful for a dealer who is selling, offering for sale, purchasing or offering to purchase, any investment product in consideration or anticipation of a reward or benefit, to induce a purchase or sale of such investment product by the circulation or dissemination in the ordinary course of business, of information to the effect that the price of any such investment product will or is likely to rise or fall because of market operations by any one or more persons, conducted for the purpose of raising or depressing the price of such investment product.

39/2013

S. 20(c).

(2) In this section and section 49, “investment product” means—

- (a) any security, including securities issued by the Bank of Jamaica;
- (b) any certificate of deposit; or
- (c) stocks, or shares, in a private company.

Employment of manipulative and deceptive devices.

39/2013

S. 21(a),(b).

49. It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any investment product—

- (a) to employ any manipulative or deceptive device or contrivance, or any device, scheme or artifice to defraud;
- (b) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or

- (c) to knowingly omit to state a material fact which would be necessary, in the light of the circumstances under which this statement was made, to prevent it from being misleading.

50. A person shall not make or pursue a take-over of a public company except in accordance with such rules in respect thereof as the Commission may prescribe. **Take-over.**

51.—(1) A person who is, or at any time in the preceding twelve months has been, or associated with an issuer shall not deal in any securities of that issuer if by reason of his so being, or having been, an associated person, he is in possession of information that is not generally available but, if it were, would be likely materially to affect the price of those securities. **Prohibition of dealings in securities by insiders.**

(2) A person who is, or at any time in the preceding twelve months has been, or associated with an issuer shall not deal in any securities of any issuer if by reason of his so being, or having been, or associated with the first-mentioned issuer he is in possession of information that—

- (a) is not generally available but, if it were, would be likely materially to affect the price of those securities; and
- (b) relates to any transaction (actual or expected) involving both those issuers or involving one of them and securities of the other.

(3) Where a person is in possession of any such information as is mentioned in subsection (1) or (2) that if generally available would be likely materially to affect the price of securities but is not precluded by either of those subsections from dealing in those securities, he shall not deal in those securities if—

- (a) he has obtained the information, directly or indirectly from another person and is aware, or ought reasonably to be aware, of facts or circumstances by virtue of which that other person is then himself precluded by subsection (1) or (2) from dealing in those securities; and
- (b) when the information was so obtained, he was associated with that other person and had with him an arrangement for the communication of information of a kind to which those subsections apply with a view to dealing in securities by either or both of them.

(4) A person shall not, at any time when he is precluded by subsection (1), (2) or (3) from dealing in any securities, cause or procure any other person to deal in those securities.

(5) A person shall not, at any time when he is precluded by subsection (1), (2) or (3) from dealing in any securities by reason of his being in possession of any information, communicate that information to any other person if—

- (a) trading in those securities is permitted on a recognized stock exchange whether within or outside Jamaica; and
- (b) he knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing or causing or procuring another person to deal in those securities.

(6) Without prejudice to subsection (3) but subject to subsections (7) and (8), a company shall not deal in any securities at a time when any officer of that company is precluded by subsection (1), (2) or (3) from dealing in those securities.

(7) A company is not precluded by subsection (6) from entering into a transaction at any time by reason only of information in the possession of an officer of that company if—

- (a) the decision to enter into the transaction was taken on its behalf by a person other than the officer;
- (b) it had in operation at the time arrangements to ensure that the information was not communicated to that person and that no advice with respect to the transaction was given to him by a person in possession of the information; and
- (c) the information was not so communicated and such advice was not so given.

(8) A company is not precluded by subsection (6) from dealing in securities of another company at any time by reason only of information in the possession of an officer of that first-mentioned company, being information that was obtained by the officer in the course of the performance of his duties as an officer of that first-mentioned company and that relates to proposed dealings by that first-mentioned company in securities of that other company.

(9) This section does not preclude the holder of a dealer's licence from dealing in securities of an issuer being securities that are permitted by a stock exchange to be traded on that stock exchange, if—

- (a) the holder of the licence enters into the transaction concerned as agent for another person pursuant to a specific instruction by that other person to effect that transaction;

- (b) the holder of the licence has not given any advice to the other person in relation to dealing in securities of that issuer that are included in the same class as the first-mentioned securities; and
- (c) the other person is not associated with the holder of the licence.

39/2013
S. 22.

(9A) This section shall not preclude any person from making or pursuing a take-over of a public company in accordance with section 50 if the person discloses his association, and whether or not he is in possession of any information mentioned in subsection (1) or (2)—

- (a) to the Commission; and
- (b) in the *Take-Over Bid Circular* distributed in respect of the take-over.

(10) Where a prosecution is instituted against a person for an offence by reason that the person was in possession of certain information and entered into a transaction in contravention of this section, it is a defence if the person satisfies the court that the other party to the transaction knew, or ought reasonably to have known, of the information before entering into the transaction.

(11) For the purposes of subsections (6), (7) and (8), “officer”, in relation to a company, includes—

- (a) a director, secretary, manager or employee of the company;
- (b) a receiver, or receiver and manager, of property of the company;

- (c) a manager of the company appointed under section 68(2);
- (d) a liquidator of the company; and
- (e) a trustee or other person administering a compromise or arrangement made between the company and another person or other persons.

(12) For the purposes of this section—

- (a) an interest of the spouse, infant daughter or infant son (not being himself or herself a director) of a director of a company shall be treated as the director's interest;
- (b) son and daughter include, respectively, a step-son and an adopted son and step-daughter and adopted daughter;
- (c) a person is connected with an issuer if he occupies a position that may reasonably be expected to give him access to information of a kind to which subsections (1) and (2) apply by virtue of any professional or business relationship existing between himself (or his employer or a company of which he is an officer) and the issuer or an associated person.

51A.—(1) A licensee shall not acquire or hold five *per cent* or more of the shareholding in another licensee unless the conditions specified in subsection (3) are met.

(2) An associated person of a licensee shall not acquire or hold five per cent or more of the shareholding in a licensee unless the conditions specified in subsection (3) are met.

Special provisions with respect to acquisitions. 39/2013 S. 23.

(3) The conditions referred to in subsections (1) and (2) are that—

- (a) the acquisition results in the acquirer holding more than fifty *per cent* of the shares in the entity acquired; and
- (b) thirty days notice has been given to the Commission prior to the acquisition.

(4) Within such time as the Commission may direct—

- (a) a licensee who acquires shares in breach of subsection (1) shall dispose of the shares to an entity other than an associated person of the licensee;
- (b) an associated person of a licensee, who acquires shares in breach of subsection (2), shall dispose of the shares to an entity other than—
 - (i) the licensee; or
 - (ii) an associated person of the associated person or the licensee.

(5) Nothing in this section applies to shares acquired or held immediately before the commencement date.

Penalties.

52. A person who contravenes any of the provisions of sections 44, 45, 46, 47, 48, 49, 50 or 51 shall be guilty of an offence and shall be liable on conviction before a Judge of the Supreme Court sitting without a jury—

- (a) in the case of an individual, to a fine or to imprisonment for a term not exceeding ten years; or
- (b) in the case of a company, to a fine.

53.—(1) A person who is convicted of an offence under this Part shall be liable to pay compensation to any person who, in a transaction for the purchase or sale of securities entered into with the first-mentioned person or with a person acting for or on his behalf, suffers loss by reason of the difference between the price at which the securities were dealt in, in that transaction and the price at which they would have been likely to have been dealt in, in such transaction at the time when the first-mentioned transaction took place if the contravention had not occurred.

Convicted persons liable to pay compensation.

(2) The amount of compensation for which a person is liable under subsection (1) is the amount of the loss sustained by the person claiming the compensation.

(3) An action under this section for the recovery of a loss shall not be commenced after the expiration of three years after the date of completion of the transaction in which the loss occurred.

(4) Nothing in subsection (1) affects any liability that a person may incur under any other laws.

54.—(1) Where, on the 6th December, 1993, a director of an issuer is interested in securities of that issuer or another issuer that is an associated person, or thereafter becomes interested in such securities, he shall notify within fourteen days the issuer in writing of his interest in such securities giving particulars of the number of securities of every class.

Notification of director's interest.

SECURITIES

(2) A director shall notify the issuer of which he is a director within fourteen days of the occurrence, while he is a director of any of the following events—

- (a) any event in consequence of which he becomes or ceases to be interested in securities of the issuer or its subsidiary or holding company or a subsidiary of its holding company;
- (b) the entering into by him of a contract to sell any such securities;
- (c) the assignment by him of a right granted to him or to any member of his family by the issuer to subscribe for securities of the company;
- (d) the grant to him by another company being a subsidiary of the issuer or a holding company or a subsidiary of the issuer's holding company of a right to subscribe for securities of that other company, exercise of such a right or the assignment of such a right,

stating the number or amount and class of securities involved.

(3) Where a director of an issuer is granted the right to subscribe for securities of a company under subsection (2) (d), he shall notify the issuer of—

- (a) the date on which the right is granted;
- (b) the period during which or the time at which the right is exercisable;
- (c) the consideration for the grant; and
- (d) in the case of the exercise of the right the number of securities in respect of which it is exercised, and the name or names in which such securities are registered.

(4) Nothing in this section shall operate so as to impose an obligation with respect to securities in an issuer which is the wholly owned subsidiary of another issuer, and for this purpose an issuer shall be deemed to be the wholly owned subsidiary of another issuer if it has no members except that other issuer and any wholly owned subsidiaries of that other issuer.

(5) Where an issuer is notified by a director of any matter of which he is required to give notice under this section, or enters in its register any matter required to be entered under section 58 or section 59 such matters relating to securities, the issuer shall inform the recognized stock exchange before the end of the day following the day of the notification or inscription, as the case may be, and the board of the recognized stock exchange may publish, in such manner as it may determine, any information it receives under this subsection.

55.—(1) A person is deemed to be interested in securities of an issuer if—

Interest in securities.

- (a) the directors of that issuer are accustomed to act in accordance with that person's directions or instructions; or
- (b) that person is entitled to exercise or control the exercise of one-tenth or more of the voting power at any general meeting of that issuer.

SECURITIES

(2) A person shall also be deemed to be interested in the securities of an issuer if—

- (a) he enters into a contract for the purchase thereof by him; or
- (b) he has a right to call for delivery thereof to himself or to his order, whether such right is exercisable presently or in the future; or
- (c) not being a registered holder thereof, he is entitled (otherwise than by virtue of his having been appointed a proxy to vote at any meeting of the issuer, or of his having been appointed by a company to act as its representative at any meeting of the issuer), to exercise any right conferred by the holding thereof or is entitled to control the exercise of any right so conferred; or
- (d) has an interest other than a discretionary interest under a trust the property whereof comprises such securities, and he is not a bare trustee or a custodian trustee thereof.

(3) So long as a person is entitled to receive, during the lifetime of himself or another, income from property comprising securities, an interest in the securities in reversion or remainder shall be disregarded for purposes of this section.

(4) It is immaterial that securities in which a person has an interest within the meaning of this section are unidentifiable.

(5) Subject to the provisions of this Act, references to a person being interested in the securities of an issuer shall be construed so as not to exclude an interest on the ground of its remoteness or the manner in which it arises

or by reason of the fact that the exercise of a right by ownership thereof is, or is capable of being made subject to any restraint or restriction.

56.—(1) For the purposes of sections 54 and 55—

Extension to spouses and children.

- (a) interest of the spouse, infant daughter or infant son (not being herself or himself a director) of a director of an issuer shall be treated as being the director's interest; and
- (b) any interest which arises by virtue of section 55 and is vested in the spouse, infant daughter or infant son (not being herself or himself a director) of a director of a listed company shall be treated as the director's interest.

(2) In this section, "son" includes a step-son and an adopted son and "daughter" includes a step-daughter and an adopted daughter.

57. Every issuer shall, in accordance with such regulations as may be prescribed, keep a register of directors' interests.

Register of directors' interests.

58.—(1) Every person who—

Obligation to notify issuer of acquisition of substantial shareholding.

- (a) being previously uninterested in shares comprised in the relevant share capital (as defined in section 59 (6)) of an issuer, becomes interested in such shares of a nominal value equal to one-tenth or more of—
 - (i) the total number of the issued voting shares; or
 - (ii) the total voting rights attached to such shares (hereinafter referred to as the prescribed proportion);

SECURITIES

- (b) being previously interested in such shares of a nominal value of less than the prescribed proportion, acquires interest in such shares as to increase the value of all shares so comprised to the prescribed proportion;
- (c) being previously interested in shares so comprised of a nominal value of not less than the prescribed proportion—
 - (i) acquires such interest in shares comprised in that share capital as to increase the value of the shares in which he is interested; or
 - (ii) suffers a decrease in the nominal value of shares so comprised in which he is interested, but remains interested in such shares of a nominal value equal to the prescribed proportion; or
- (d) being previously interested in shares comprised in the relevant share capital of an issuer of a nominal value equal to the prescribed proportion—
 - (i) suffers a decrease in the nominal value of such shares so that such nominal value is equal to less than the prescribed proportion; or
 - (ii) becomes uninterested in such shares,

shall notify the issuer in writing of the occurrence of the event resulting in his change of interest within fourteen days of the date on which it occurred, and the number of shares in that share capital in which he has suffered loss of interest.

(2) Every person who upon the 6th December, 1993 is interested in shares comprised in the relevant share capital of an issuer of a nominal value of equal to the prescribed proportion of that share capital shall within five days notify the issuer of the existence of his interest at that time and

the number of shares comprised in that share capital in which each interest exists at that time.

(3) In the event that a company becomes an issuer or an issuer's share capital of any class becomes relevant share capital, subsection (2) shall apply as in the case herein mentioned but with the substitution for references to the time when this Act comes into operation of references to the time at which the event occurs.

(4) This section shall not apply to an interest in relevant share capital held by any person in a member dealer for the purpose of making a market in the trading in securities.

59.—(1) An issuer may, on its own initiative, or shall, at the request of the Commission, by notice in writing require any holder of its securities to state in writing, within such reasonable time as may be specified in the notice, being in any event not less than ten days—

Information
as to
holdings.
39/2013
S. 24.

(a) the capacity in which the holder holds the securities;
and

(b) where the holder holds the securities otherwise than as the beneficial owner, the name and address of, or other particulars sufficient to identify—

(i) the beneficial owner; and

(ii) any other person having an interest in the securities;

(c) whether any of the voting rights carried by any securities held by that holder are the subject of an agreement or arrangement under which another person is entitled to control any aspect of the exercise of those rights and, if so, the particulars of the agreement or arrangement, so far as the holder knows or ought reasonably to know.

(2) An issuer may by notice in writing require any person identified, pursuant to a notice under this section, as having an interest in securities of that issuer, to state in writing within such reasonable time as may be specified in the notice, being in any event not less than ten days—

- (a) the capacity in which the person holds the interest; and
- (b) where the person holds the interest otherwise than as beneficial owner, the name and address of, or other particulars sufficient to identify—
 - (i) the beneficial owner; and
 - (ii) any other person having an interest in the securities, and the nature of the interest, so far as the person knows or ought reasonably to know.

(3) Where an issuer is informed pursuant to a notice under this section that a person is a party to any agreement or arrangement mentioned in subsection (1)(c), the issuer may by notice in writing require that person within such reasonable time as is specified in the notice, being in any event not less than ten days, to state in writing the particulars of the agreement or arrangement and the parties to it.

(4) An issuer who receives information from a person pursuant to a notice issued under this section, shall keep a record of—

- (a) the fact that the notice was issued and the date on which it was issued; and
- (b) the information received in pursuance of the notice, including copies of all written statements given to the issuer with respect thereto.

(5) A record that is kept pursuant to subsection (4) shall be retained for a period of not less than seven years, and within that period the Commission may require the issuer to supply the Commission with a copy of any such record.

59A.—(1) Every company which is licensed under section 7 or 8 shall establish an audit committee and a conduct review committee.

(2) The Commission shall make rules with respect to the functions of each committee referred to in subsection (1).

59B.—(1) Every person having an official duty or being employed in the administration of this Act shall—

Obligation
to secrecy
8/2001
S. 16.

- (a) regard and deal with as secret and confidential all documents, information and records obtained in the course of his duties under this Act, relating to the operations of a licensee or a person registered under this Act;
- (b) make and subscribe a declaration to that effect before a Justice of the Peace.

(2) Every person referred to in subsection (1) having possession of or control over any documents, information or records, commits an offence if, at any time, he communicates or attempts to communicate such information or anything contained in such documents or records to any person—

- (a) other than a member of the Commission or other person to whom he is authorized by the Commission to communicate it pursuant to any other law; or
- (b) otherwise than for the purposes of this Act.

(3) A person who is convicted of an offence under subsection (2) is liable to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(4) A person to whom information is communicated pursuant to an authority of the Commission in that behalf shall regard and deal with such information as secret and confidential.

(5) A person referred to in subsection (4) who at any time communicates or attempts to communicate any information referred to in that subsection to any person otherwise than for the purposes of this Act, shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Disclosure of information in certain circumstances. 8/2001 S. 16.

59C.—(1) The obligation as to secrecy imposed by section 59B shall not prevent the disclosure of information—

- (a) to a competent authority;
- (b) where the disclosure is required for the institution of, or otherwise for the purposes of any criminal proceedings under, or arising out of, the Companies Act or this Act; or
- (c) for the purposes of section 68 or 68F;
- (d) where the disclosure is ordered by the court for the purpose of any civil proceedings.

39/2013 S. 25.

(2) In subsection (1)(b) “competent authority” means the Minister, the Supervisor of Banks and Financial Institutions, the Chief Executive Officer of the Jamaica Deposit Insurance Corporation or the Financial Secretary.

Protection of members, Executive Director and employees. 39/2013 S. 26.

59D. No action, suit or other proceedings shall be brought or instituted personally against the Executive Director of the Commission, any member of the Commission, or any officer or other employee of the Commission, in respect of any act done, or omission made, in good faith in carrying out the provisions of this Act.

Offence.

60. Any person who, in complying with any section of this Act—

- (a) makes a statement which he knows to be false;
- (b) recklessly makes a statement which is false; or
- (c) knowingly or recklessly fails to supply any particulars which he is required to supply,

shall be guilty of an offence and liable on conviction before a Judge of the Supreme Court sitting without a jury to a fine.

PART VI. *Dealers' Accounts and Audit*

Dealer's licence.

61. In this Part a reference to a licence is a reference to a dealer's licence.

Application of Part.

62. This Part applies in relation to a dealer as respects the dealer's securities business whether carried on in Jamaica or elsewhere.

63.—(1) A dealer shall—

- (a) keep such accounting records as correctly record and explain the transactions and financial position of the securities business carried on by the dealer; and
- (b) keep such records in such form and containing such particulars as may be prescribed.

Dealer's
accounting
records.

(2) An entry in the records shall, unless the contrary is proved, be deemed to have been made by, or with the authority of the dealer.

(3) A dealer does not contravene this section merely because some or all of the records are kept as a part of, or in conjunction with, the records relating to any other business that is carried on by the dealer.

(4) Where any of the records are kept outside Jamaica, the dealer shall—

- (a) cause to be sent to and kept at a place in Jamaica such particulars with respect to the business dealt with in those records as will enable true and fair profit and loss accounts and balance sheets to be prepared; and
- (b) if required by the Commission to produce those records at a place in Jamaica, comply with the requirement not later than twenty-eight days after the requirement is made.

(5) A dealer who contravenes this section or section 64(1) commits an offence.

39/2013
S. 27.

64.—(1) A dealer shall, within one month after beginning to hold the licence, appoint an auditor or auditors to audit the dealer's accounts other than a person who, or a firm that, is ineligible by virtue of this section to act as auditor of the dealer.

Appoint-
ment of
auditor by
dealer.

(2) Subject to this section, a person is ineligible to act as auditor of a dealer if—

- (a) the person is not a registered Public Accountant under the Public Accountancy Act; or
- (b) the person is an officer, shareholder or an employee of the dealer.

Recognized stock exchange to report to Commission on certain matters.

65.—(1) Where, in relation to a dealer who is a member of a recognized stock exchange, the recognized stock exchange becomes aware of a specified matter, the recognized stock exchange shall, as soon as practicable after becoming aware of the matter, lodge a written report with the Commission on the matter and send a copy of the report to the dealer.

(2) In this section “specified matter”, in relation to a dealer, means—

- (a) a matter that in the opinion of the recognized stock exchange concerned has adversely affected, is adversely affecting or may adversely affect the ability of the dealer to meet the dealer’s obligations as a dealer; or
- (b) any contravention by the dealer of a provision of the Act, the rules of the recognized stock exchange or any breach of a condition of the dealer’s licence.

(3) A recognized stock exchange that contravenes subsection (1) commits an offence.

39/2013
S. 28.

Recognized stock exchange: additional obligations on members.

66. Nothing in this Part prevents a recognized stock exchange from imposing on a member of that recognized stock exchange any obligations or requirements (other than obligations or requirements inconsistent with this Act or with a condition of a licence held by the member) that the recognized stock exchange thinks fit with respect to—

- (a) the audit of books (including the audit of books by an auditor appointed by the recognized stock exchange);
- (b) the information to be furnished in reports from auditors; or
- (c) the keeping of books.

Destruction, etc., of books prohibited.

67. A person shall not destroy, conceal or alter books, accounts, records and other documents relating to the business carried on by a dealer required to be kept under this Part for the purpose of an audit or examination by auditors appointed under this Part or by the Commission.

PART VIA. *Central Securities Depository*25/1999
S. 3.Interpreta-
tion.**67A.** In this Part—

“eligible securities” means securities defined as such in the rules of a licensed central securities depository;

“licensed central securities depository” or “securities depository” means a company to which a licence is granted by the Commission under section 67B to operate a central securities depository.

67B.—(1) A company may apply in the prescribed form and manner to the Commission for a licence to establish and operate a central securities depository in relation to eligible securities and such application shall be accompanied by the prescribed application fee.

Licence to
operate
central
securities
depository.

(2) Upon receipt of an application by a company under subsection (1), the Commission may grant a licence to the company subject to such terms and conditions as the Commission may specify if the Commission is satisfied that—

- (a) the establishment of the central securities depository is necessary or desirable in the public interest having regard to the nature of the securities industry;
- (b) the company’s constitution and rules will enable it to comply with the relevant provisions of this Act or any regulations made hereunder and with any terms and conditions subject to which the licence is granted.

(3) Where the Commission grants a licence under this section, notice thereof shall be published in the *Gazette*.

67C.—(1) Subject to subsection (2), the Commission may revoke the licence granted to a company under this section if it is satisfied that the company is in breach of the rules governing the operation of the central securities depository or any requirement of this Part.

Revocation
of licence.

(2) Where the Commission intends to revoke a licence pursuant to subsection (1), it shall—

- (a) notify the licensee of that intention; and

(b) afford to the licensee an opportunity to show cause why the licence should not be revoked.

(3) Where the licensee fails to show cause as mentioned in subsection (2) (b), the Commission shall revoke the licence.

Approval of
rules by the
Commis-
sion.

67D.—(1) Where a licensed central securities depository amends its rules by way of recession, alteration or addition, it shall in writing notify the Commission of such amendment within fourteen days after the date thereof.

(2) The notice referred to in subsection (1) shall—

- (a) set out the text of the amendment;
- (b) specify the date on which the amendment was made;
- (c) contain an explanation of the purpose thereof.

(3) If a securities depository fails to comply with subsection (1) within the time specified therein, the amendment ceases to have effect.

(4) Within thirty days after the receipt of a notice by the Commission under subsection (1), the Commission may disallow the whole or a specified part of the amendment.

(5) Within seven days after the whole or part of an amendment is disallowed under subsection (4), the Commission shall give notice in writing of the disallowance to the securities depository and upon receipt by the depository of the notice, the amendment ceases to have effect to the extent of the disallowance.

Publication
of informa-
tion.
39/2013
S. 30.

67E. The Commission may publish with respect to a licensee, or any entity registered under this Act—

- (a) such financial statements as may be prescribed; and
- (b) in such manner as may be prescribed.

67F.—(1) The Commission shall be responsible for the general administration of this Act.

Commission
responsible
for general
administration
of Act.
8/2001
S. 3.
39/2013
S. 3(c).

(2) The Commission shall have the power to enforce the rules of a recognized stock exchange whenever it considers it necessary so to do.

(3) For the purposes of this Act the Commission shall—

(a) carry out such investigations and examinations in relation to the securities industry—

39/2013
S. 3(a).

(i) as it considers necessary or desirable for the purposes of performing its functions, powers or duties under this Act;

(ii) as it considers necessary for the purpose of enabling the Commission to fulfil any request for assistance made under section 68F (assistance to overseas securities regulatory authority); or

(iii) as may be referred to it by the Minister in connection with that industry,

and any of the powers set out in paragraphs (b) through (h) may be utilized for that purpose.

(b) enter into arrangements with any body or person recognized by the Commission as having special knowledge of any matter being investigated by it, to assist the Commission in carrying out such investigations;

(c) summon and examine witnesses;

(d) call for examine documents and make copies of any documents produced to it under this subsection or subsection (5) (or any extract of such documents);

39/2013
S. 3(a)(ii).

(e) administer oaths;

(f) require that any document submitted to the Commission be verified by affidavit;

39/2013
S. 3(a)(iii).

(g) require that any document supplied to the Commission be submitted in a form acceptable to the Commission;

(h) request assistance from an overseas regulatory authority, in accordance with the procedures for obtaining such assistance set out in the laws of the jurisdiction of the overseas regulatory authority concerned;

39/2013
S. 3(a)(iii).

(i) adjourn any investigation from time to time.

(4) The Commission may hear orally any person who, in its opinion, will be affected by an investigation under this Act, and shall so hear the person if a written request for a hearing has been made by the person showing that he is an interested party likely to be affected by the result of the investigation.

39/2013
S. 3(b).

(5) If the Commission considers it necessary or desirable for the purpose of performing its functions under this Act or to assist it in fulfilling any request for assistance made under section 68F (assistance to overseas securities regulatory authority), the Commission may by written notice served on a person in possession or control of a document, require the person, within the time or in the manner specified in the notice—

(a) to supply the document to the Commission;

(b) if necessary, to reproduce the document or assist the Commission in reproducing the document in usable form.

(6) The Commission may issue directions to any person or entity licensed or registered under this Act, for the purpose of securing compliance with the provisions of this Act and all regulations made under this Act.

(7) A person who or entity that—

- (a) fails to comply with any process issued to that person or entity (as the case may be); or
- (b) where a time is specified in any process referred to in paragraph (a) for compliance therewith, fails to comply within the time so specified,

commits an offence.

(8) Where a person or entity fails to comply with any process issued to that person or entity, the Commission may apply without notice to a Judge of the Supreme Court in Chambers for an order compelling the person or entity to comply with the process, and the Judge may make the order.

(9) The failure to obey an order made under subsection (8) may be punished by the Judge as contempt of the Court.

(10) For the purposes of this section—

- (a) “documents” means information or data in any form;
- (b) “process” means any summons, call, direction, notice, or other requirement issued by the Commission in the exercise of its powers under this section;
- (c) the power to make copies includes—
 - (i) carrying out the copying at any business premises where the documents are located; or
 - (ii) on giving an appropriate receipt, removing the documents for the purposes of copying them at other premises,

and any documents removed under sub-paragraph (ii) shall be returned within a reasonable time to the person from whom they were received unless a court otherwise determines.

(11) The powers of the Commission under subsection (3) are exercisable in respect of a bank or other financial

institution notwithstanding any provisions regarding confidentiality under the Banking Act, the Financial Institutions Act, or any other enactment specified by the Commission by order published in the *Gazette*.

(12) Nothing in this section shall be construed as compelling any person to disclose any information which is subject to legal professional privilege.

(13) A person shall be entitled to appear with the legal representation of an attorney-at-law at any examination or hearing which the person is required to attend under this section.

67G.—(1) For the purposes of any investigation or examination carried out by the Commission—

(a) in respect of any person or entity licensed or registered under this Act;

(b) other than in a case falling within section 8A,

the Commission may apply without notice to a Resident Magistrate for a warrant authorizing an authorized officer named in the warrant to enter (with or without a constable) and search any building, receptacle or place specified in the warrant and to seize anything described in the warrant and found there, and detain it for such period as is provided in subsection (7).

(2) In this section, ‘building, receptacle or place’ means any building, receptacle or place, at which any business of a person or entity licensed or registered under this Act is carried on.

(3) A Resident Magistrate before whom an application is made under subsection (1) shall not issue the warrant unless the Resident Magistrate is satisfied on information under oath that there are reasonable grounds to believe that there are reasonable grounds to believe that there may be in the building, receptacle or place to be searched anything that may reasonably relate to an investigation or examination under section 67F.

Powers of search in relation to investigation or examinations. 39/2013 S. 31.

(4) A person named in a warrant under subsection (1) may, on production of the warrant, enter (with or without a constable) any building, receptacle or place, specified in the warrant and search for and seize anything specified in the warrant.

(5) Every warrant under subsection (1) shall name the date that it expires, being a date not later than fifteen days after the warrant is issued.

(6) Anything seized under this section shall be made available for inspection and copying to the person or entity from which it was seized, as far as may be practicable.

(7) Anything seized under this section shall be returned, to the person or entity from which it was seized, within—

- (a) forty-five days after the date of the seizure; or
- (b) such longer period as a Judge of the Supreme Court, in Chambers, may allow upon the application of the Commission, unless a court otherwise determines or any other law otherwise requires.

67H.—(1) This section applies to any person or entity—

- (a) who is an applicant for a licence or registration under this Act; or
- (b) who is already licensed or registered under this Act.

(2) The Commission may assign in writing an authorized officer to review the business and conduct of a person or entity to whom this section applies, for the purpose of determining whether the person or entity is—

- (a) complying, or has complied with or, in the case of an applicant, is in a position to comply with—
 - (i) this Act and all regulations made under this Act;
 - (ii) any decision made under this Act or regulations made under this Act; or

Inspection of
operations of
applicants and
licensees.
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- (b) enforcing or administering its by-laws, rules or other regulatory instruments or policies.

(3) On production of the written assignment referred to in subsection (2), the authorized officer may—

- (a) enter the premises on which the person or entity carries on business, during business hours;
- (b) examine any information or data in the possession of the person or entity pertaining to its business or operations, including but not limited to—
 - (i) any licence or registration, or application therefor, under this Act;
 - (ii) a client or former client;
 - (iii) an issuer;
 - (iv) dealing in securities, or providing investment advice;
 - (v) its by-laws, rules or other regulatory instruments or policies and any directions, decisions, orders or rulings made hereunder,

or pertaining to any other matter under this Act or any regulations made under this Act;

- (c) examine property, assets or other items of the person or entity;
- (d) require the person or entity to produce any information or data referred to in paragraph (b) in a form usable by the Commission for the purpose of making legible copies; and
- (e) make enquires of the person or entity, or any persons employed by the person or entity.

(4) In exercising the power to make copies under subsection (3)(d), the authorized officer may—

- (a) carry out the copying at any business premises where the information or data is located; or
- (b) on giving an appropriate receipt, remove the information or data for the purpose of copying them at other premises,

and any information or data removed under paragraph (b) shall be returned within a reasonable time to the person from whom they were received unless a court otherwise determines.

(5) The powers of the authorized officer under this section are exercisable in respect of a bank or other financial institution notwithstanding any provisions regarding confidentiality under the *Banking Act*, the *Financial Institutions Act*, or any other enactment specified by the Commission by order published in the *Gazette*.

(6) A person commits an offence if the person withholds, destroys, conceals, or refuses to give or produce, any information or data reasonably required for inspection or copying under this section.

PART VII. *Administration and Enforcement*

68.—(1) The Commission may—

- (a) at the request of the board of a recognized stock exchange; or
- (b) on its own initiative where it has reason to suspect that a person has committed an offence under any provisions of this Act or regulations or rules made hereunder or has been guilty of fraud or dishonesty in relation to a dealing in securities,

conduct or cause to be conducted such investigation as it thinks expedient for the due administration of this Act.

(1A) The Commission may make public statements, in the interests of the securities market or otherwise in the public interest, including (but not limited to) statements in relation to—

39/2013
S. 29.

Commission's powers to investigate breaches and pursue remedies.
39/2013
S. 32(a).

39/2013
S. 32(b).

- (a) any suspected breach of this Act, or regulations made under this Act, and any enforcement action taken by the Commission as a result;
- (b) the winding up or bankruptcy of a licensee or person registered under this Act;
- (c) any matter under this Act which is brought into the public domain;
- (d) an investigation into whether a person is a fit and proper person as described in any provision of this Act or of regulations made under this Act, as the Commission considers necessary for the protection of the public;
- (e) the refusal of an issuer to be registered with respect to its securities;
- (f) the grant of a licence subject to conditions, after the applicant has been given an opportunity to be heard pursuant to section 9(7); or
- (g) the refusal of the Commission to register an applicant under section 26 (registration of issuer).

9/1996
S. 9(a).

(1B) On the conclusion of any such investigation the Commission may, if it is satisfied that the circumstances so warrant—

- (a) issue a written warning or a cease and desist order, as the case may require, to the person concerned;
- (b) in accordance with section 9 (6) or section 10 (4), as the case may be, suspend or cancel any licence or registration granted under this Act; or
- (c) institute civil proceedings in its own name or on behalf of any other person and in any case where proceedings are brought on behalf of another person, shall give notice of its intention to do so to that person in such manner as the Commission may determine in any particular case;

8/2001
S. 17(a).

39/2013
S. 32(c).

(1C) Any person aggrieved by a decision of the Commission under subsection (1B) (a) or (b) may, within fourteen days after the date of notification of the decision, appeal to a Judge in Chambers who may make such order as he thinks fit. 9/1996
S. 9(c).

(2) A warning or cease and desist order under subsection (1B) (a) may include such directions as the Commission thinks fit— 31/2013
S. 32(d).

- (a) as to the steps to be taken by the person in order to secure compliance with this Act and any regulations made under this Act, being steps which may be required to be taken either permanently or for such period of time as may be specified; and
- (b) as to the time within which, and the terms and conditions upon which, the steps are to be taken.

(3) The Commission may enter into an agreement with any person against whom the Commission may take any action—

- (a) under this Act, the *Financial Services Commission Act*, or any regulations made under either Act; and
- (b) as concerns compliance with any provision of this Act or the terms or conditions of any licence or registration granted under this Act,

for the settlement of the matter on such terms as are specified in the agreement in accordance with subsection (3A), in lieu of any such action.

(3A) A settlement agreement for the purposes of subsection (3) shall be entered into in such form and manner as the Commission may determine from time to time and, without limiting the foregoing—

- (a) may provide for the payment of a monetary penalty by the person;
- (b) shall state the alleged breach in respect of which the penalty referred to in paragraph (a) is payable;

- (c) in addition to any penalty under paragraph (a), may provide for the payment by the person of additional sums by way of compensation to any person on whose behalf the Commission may institute proceedings under subsection (1B)(c);
- (d) shall specify any other terms or conditions to be complied with by the persons,

and a copy of the agreement shall be provided to the person concerned.

(3B) Upon the failure of the person to comply with any provision, term or condition of the agreement, the Commission shall be entitled to do any one or more of the following—

- (a) terminate the agreement;
- (b) take any action, or pursue any remedy, available to it as if the agreement had never been made; or
- (c) treat as forfeited by the person any sums paid thereunder.

(3C) If on an application brought by the Commission in the Supreme Court, the Court is satisfied that any person has contravened such provision of this Act, or any regulations made under this Act, as may be prescribed, the Court may exercise any of the powers referred to in subsection (3D).

(3D) Pursuant to subsection (3C), the Court may—

- (a) order the person to pay to the Crown such pecuniary penalty not exceeding one million dollars in the case of an individual and not exceeding five million dollars in the case of a person other than an individual;
- (b) grant an injunction restraining the person from engaging in conduct constituting the contravention described in subsection (3C),

in respect of each contravention referred to in subsection (3C).

(3E) In exercising its powers under subsection (3D), the Court shall have regard to—

- (a) the nature and extent of the contravention;
- (b) the nature and extent of any loss suffered by any person as a result of the contravention;
- (c) the circumstances of the contravention; and
- (d) any previous determination against the person against whom the powers are to be exercised.

(3F) The standard of proof in proceedings under subsections (3C), (3D) and (3E) shall be the standard of proof applicable in civil proceedings.

(4) For the purpose of an investigation under this section a recognized stock exchange or any officer or employee of a member dealer or other licensed dealer under investigation shall afford the Commission or any person acting on its behalf, or the manager appointed under subsection (3) access to and shall produce its books, accounts and documents and shall give such information and facilities as may be required for the conduct of the investigation.

(5) A person appointed by the Commission under this section shall have power to copy or take possession of the books, accounts and other documents of a recognized stock exchange, member dealer or other licensed dealer.

(6) A recognized stock exchange or member dealer which fails, without reasonable excuse to produce any book, account or document or furnish any information shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding fifty thousand dollars and in the case of a continuing offence to a further fine not exceeding five thousand dollars for each day during which the offence continues after conviction.

(7) Any person who fails to comply with a warning or a cease and desist order given to that person by the Commission pursuant to subsection (1B)(a) shall be guilty of an offence.

9/1996
S. 9(b).

68A.—(1) The Commission may apply to a Judge of the Supreme Court for an order under subsection (2) where there is reasonable cause to believe that any person or entity—

- (a) has contravened any provision of this Act or any regulations made under this Act, and that the contravention is likely to continue or be repeated; or
- (b) is about to contravene any provision of this Act or regulations made under this Act.

(2) On an application under subsection (1) the Judge may, if satisfied as to the matters set out in paragraph (a) or (b) of that subsection, make an order—

- (a) restraining the person or entity from doing anything which constitutes or repeats the contravention;
- (b) restraining the person or entity from disposing of any assets of the person or entity (as the case may be) which the Judge is satisfied are likely to be disposed of by the person or entity;
- (c) if there are steps which can be taken for remedying the contravention, requiring the person or entity to take such steps to remedy it as may be specified in the order.

(3) An order under subsection (2)(b) may make exceptions in order to provide for the reasonable living expenses (including reasonable legal costs) of the person against whom it is made.

(4) Upon the application of the Commission, a Judge of the Supreme Court may order any person who fails to comply with any provisions of this Act, or regulations made under this Act, to comply with the provisions.

(5) Nothing in this section shall prevent the Commission from transmitting any information in its control or possession, relating to any contravention of this Act or regulations made under this Act, to the Director of Public Prosecutions for criminal prosecution or to any other authority for the purpose of any criminal investigation.

68B.—(1) Where, in any proceedings under subsection (1B)(c), the Court finds that—

- (a) profits have accrued to a person as a result of a contravention of this Act or any regulations made under this Act; or
- (b) one or more persons have suffered loss or been otherwise adversely affected as a result of a contravention of this Act or any regulations made under this Act,

Restitution
and
compensa-
tion
39/2013
S. 33.

the Court may make an order under subsection (2).

(2) The Court may order the person against whom the application is brought to pay to the Commission such sum as appears to be just, having regard to any one or more of the following—

- (a) the profits appearing to have accrued, in any case described in subsection (1)(a);
- (b) the extent of the loss or other adverse effect, in any case described in subsection (1)(b); or
- (c) the profits appearing to the Court to have accrued and the extent of the loss or other adverse effect, in any case described in both subsection (1)(a) and (b).

(3) The amount paid to the Commission in respect of an order under subsection (2) shall be paid by the Commission to such persons as the Court may direct the money to be paid, being persons—

- (a) from whose resources the profits mentioned in subsection (1)(a) are derived; or
- (b) who have suffered the loss or adverse effect mentioned in subsection (1)(b).

(4) For the purposes of subsections (2) and (3), the Court may make an order for the production to the Court of such accounting records and other information as the Court may require in order to—

SECURITIES

- (a) establish whether any and, if so, what profits have accrued to the person as described in subsection (1)(a);
- (b) establish whether any person has suffered loss or adverse effect as described in subsection (1)(b) and, if so, the extent of that loss or adverse effect; and
- (c) determine how any amounts are to be paid or distributed under subsection (3).

(5) An order under subsection (4) may—

- (a) be directed at the person against whom the application under subsection (1) is brought or any other person whom there is reasonable grounds to believe is in possession of the accounting records or other information concerned; and
- (b) require any accounting records or other information supplied under subsection (4) to be verified in such manner as the Court may direct.

(6) Nothing in this section affects the right of any person other than the Commission to bring proceedings in respect of the matters to which this section applies, so however, that the Court may make such order as it thinks fit for the stay or consolidation of proceedings as the justice of the case may require.

68C.—(1) For the purposes of this section, a “restraint order” means an order—

- (a) prohibiting any person from dealing with (including removing from Jamaica) any property described in subsection (4) and held by a person specified in the order; and
- (b) containing any directions or provisions as the Judge considers appropriate for the preservation of the property with respect to which the order is made.

(2) The Commission may apply to a Judge of the Supreme Court for a restraint order where—

- (a) there is an investigation in Jamaica with regard to a contravention of, or an offence under, this Act or any regulations made under this Act;
- (b) criminal or civil proceedings for a contravention of, or an offence under, this Act or any regulations made under this Act, have been commenced in Jamaica and have not been concluded; or
- (c) the Commission has made an application for an order under section 68B(2) (restitution and compensation order).

(3) The Judge may grant the application under subsection (1) if there are reasonable grounds to believe that any person has contravened, or has committed an offence under, this Act or any regulations made under this Act, and as a result—

- (a) profits have accrued to the person as a result of the contravention or the commission of the offence; or
- (b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention or the commission of the offence.

(4) A restraint order may provide that it applies to any property—

- (a) obtained, by the person against whom the order is sought, as a result of or in connection with a contravention or offence mentioned in subsection (3); or
- (b) which, in whole or in part, directly or indirectly represents, in possession or control of the person against whom the order is sought, the value of the property mentioned in paragraph (a).

(5) A restraint order may make exceptions so as to provide for the reasonable living expenses (including reasonable legal costs) of the person against whom it is made.

(6) A copy of the restraint order shall be served on the persons affected by the order, in such manner as may be prescribed by rules of court.

(7) An application to vary or discharge a restraint order may be made to a Judge of the Supreme Court by—

- (a) the person who applied for the order; or
- (b) any person affected by the order.

(8) Where any application is made under subsection (7), the Judge may vary or discharge the order.

Access to
information
of group
companies.
39/2013
S. 33.

68D.—(1) Where a company licensed or registered under this Act is a subsidiary of a holding company, the Commission shall be entitled at all reasonable times to examine books, records, statements and other relevant documents of that holding company.

(2) The Commission may in writing require the holding company to furnish the Commission with such information concerning the operation of the holding company as the Commission shall specify.

(3) A person who fails to comply with a request of the Commission under subsection (2) commits an offence.

(4) The Commission may require—

- (a) any company (“company A”) which is a member of a group of which a company (“company B”) licensed or registered under this Act is a member; or
- (b) as the case may require, all companies within that group,

to provide to the Commission such information relating to the operations of company A or any other company in that group, as the Commission considers necessary for the effective supervision of company B.

(5) Without prejudice to the generality of subsection (4), the information referred to in that subsection may be required for the purpose of determining—

- (a) the effect of company A’s operations on company B;

- (b) whether a member of the group is obtaining financing or other benefit, whether directly or indirectly from company B;
- (c) the general risks relating to the operations of the members of the group;
- (d) the risk management capabilities of the group as a whole;
- (e) whether the internal audit facilities within the group have the capability to scrutinize transactions undertaken or proposed to be undertaken by the management of the group or a company within the group so as to effectively evaluate any associated risks.

(6) For the purposes of this section the Commission may—

- (a) require the information in the form of documents (including audited and consolidated accounts); or
- (b) summon any officers, directors or shareholders of the company or companies concerned for the purposes of obtaining the information.

(7) A company that refuses to provide information required under subsection (4) or any person who refuses to obey a summons issued to that person under subsection (6)(b), commits an offence.

(8) For the purposes of this section, “group” has the meaning assigned to it by section 76(1A).

68E. The Commission may exercise the power given to it under section 16(3A) of the Interception of Communications Act (power to request communications data) in respect of any offence under Part V of this Act.

Power to
require
communi-
cations data.
39/2013
S. 33.

68F.—(1) On the request of an overseas securities regulatory authority, the Commission may provide assistance in accordance with this section—

- (a) if the authority making the request states that the purpose for the request is to assist the authority in

Provision of
assistance to
overseas
regulatory
authority.
39/2013
S. 33.

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conducting an investigation in order to determine whether any person or entity has violated, is violating, or is about to violate, any laws or rules relating to securities matters that the authority administers or enforces; and

- (b) whether or not the facts stated in the request disclose a violation of any of the laws of Jamaica.

(2) Any assistance provided by the Commission under this section shall be without prejudice to any investigation or examination which the Commission may carry out under section 67F(a)(i) or (iii), or any other law, regardless of whether the Commission utilized any power given to it under section 67F(a)(ii) for the purposes of providing such assistance.

(3) In this Act, “overseas securities regulatory authority” means an authority in a foreign country which, in relation to securities, exercises regulatory functions similar to the functions of the Commission under the Act.

(4) The provisions of this section shall have effect notwithstanding anything contained in any other law providing for assistance by Jamaica, or any Government department or agency, to a foreign State or agency.

(5) The assistance which may be provided for the purposes of this section is the disclosure of any information which the Commission has in its possession or is able to obtain under any of the powers given to it by this Act or any regulations made under this Act.

(6) Subject to subsection (7), the Commission shall treat as confidential—

- (a) any request for assistance received under this Act from an overseas regulatory authority; and
- (b) the information or other assistance obtained or provided pursuant to such a request.

(7) Subsection (6) shall not apply to any disclosure ordered by a court—

- (a) for the purpose of any civil proceedings in relation to any matter under the Securities Act; or
- (b) for the purpose of any criminal proceedings.

(8) Upon being ordered to make a disclosure referred to in subsection (7), the Commission shall forthwith notify the overseas regulatory authority concerned of the order.

68G. No civil or criminal proceedings for breach of confidentiality may be brought, nor any professional sanction for such breach, may be taken against any person, or against any director or employee of an entity, who provides or transmits to the Commission any information required to be given to the Commission under this Act or any regulations made under this Act.

Protection of disclosures.
39/2013
S. 33.

68H.—(1) The Commission may refuse the opportunity to practice in any matter before it, to any person seeking to practice before it in a professional capacity where the Commission is satisfied, after giving notice and the opportunity for the person to be heard on that issue, that the person—

Requirements regarding qualifications in certain professions.
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S. 33.

- (a) has contravened a provision of this Act, regulations made under this Act, or any other enactment administered by the Commission;
- (b) has been convicted of an offence involving fraud or dishonesty; or
- (c) has made a false statement, or an omission, in respect of any material fact in any application or return made to the Commission under this Act, regulations made under this Act, or any other enactment.

(2) Where any provision of this Act or any regulations made under this Act requires any accounts to be—

- (a) kept, filed or otherwise made available to the Commission;
- (b) audited, other than by an auditor approved by the Commission pursuant to any other provision of this Act,

that requirement is not met if the Commission is satisfied that the person preparing the account or conducting the audit (as the case may be)—

- (a) has contravened any provision of this Act, regulations made under this Act, or any other enactment administered by the Commission;
- (b) has been convicted of any offence involving fraud or dishonesty; or
- (c) has made a false statement, or an omission, in respect of any material fact in any application or return made to the Commission under this Act, regulations made under this Act, or any other enactment.

(3) Before making a determination that a person falls within subsection (2)(a), (b) or (c), the Commission shall notify that person of the proposed determination and give that person an opportunity to be heard in relation thereto.

(4) An appeal shall lie to the Appeal Tribunal at the instance of an aggrieved person, in respect of any—

- (a) decision of the Commission under subsection (1) to refuse any person the opportunity to practice before it;
- (b) determination by the Commission that a person falls within subsection (2)(a), (b) or (c).

(5) An appeal shall lie to the Court of Appeal in respect of any decision of the Appeal Tribunal on an appeal to the Tribunal under subsection (4).

(6) Nothing in this section shall be construed as denying any person the right to legal representation of his own choosing in any proceedings relating to the determination of the existence or extent of the person's civil rights or obligations.

(7) For the purposes of subsection (1), practising before the Commission shall include, but shall not be limited to—

- (a) transacting any business with the Commission; and
- (b) the preparation of any statement, opinion or other document by any attorney-at-law, accountant, valuator or other professional or expert, filed with the Commission in pursuance of any provision of this Act, or any regulations made under this Act, with the consent of that person.

PART VIIA. *Miscellaneous*39/2013
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68I.—(1) A company licensed or registered under this Act or any regulations made under this Act shall forthwith notify the Commission upon—

Winding up
of company.
39/2013
S. 34.

- (a) becoming aware of any intention by any shareholder to seek passage of a resolution for the winding up of the company; or
- (b) being served with a petition for the winding up of the company;

(2) Where a company licensed or registered under this Act passes a resolution for voluntary winding up, the company shall cause a copy of the resolution to be published in the *Gazette* and in a daily newspaper printed and circulated in Jamaica.

69.—(1) A person who is guilty of an offence under this Act, the rules or regulations, for which no punishment is elsewhere provided in this Act, shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Provisions
as to
offences.
39/2013
S. 35(a),(b).8/2001
S. 18.

(2) Any person who, being required to furnish any document or information to the Commission in connection with—

39/2013
S. 35(b).

- (a) any application for a licence or for registration under this Act;

(b) any investigation or examination conducted by the Commission; or

(c) any returns required to be made to the Commission, furnishes any document or information which is false or misleading in any material particular commits an offence.

(3) Where a body corporate commits an offence under this Act and the court is satisfied that a director, manager, secretary, or other similar officer of that body corporate—

(a) connived in the commission of the offence; or

(b) failed to exercise due diligence to prevent the commission of the offence,

such director, manager, secretary, or other similar officer, shall be liable (as well as the body corporate) to be convicted of the offence and to be proceeded against and punished accordingly.

Evidence.

70. Where it is provided in this Act that a register be established and maintained or kept, or a book of account be kept, or a list be prepared or published, any entry in such a register, book of account or list, and the production of any licence or certificate issued under this Act shall be *prima facie* evidence of the contents thereof.

Prosecution.

71. No proceeding against any person or company for a breach of any of the provisions of this Act, or for a failure to comply with any of the provisions may be commenced after the expiration of seven years after the day upon which the offence was committed.

9/1996
S. 10.

Defence to
prosecution.

72. In any proceeding for an offence under this Act, it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by any person under his control.

Companies
Act to
apply.

73. In the absence of any specific provision in this Act governing the operations of a recognized stock exchange, the appropriate provision of the Companies Act for the time being in force shall apply.

74.—(1) Except in any case where this Act provides for an appeal to the Appeal Tribunal, any appeal provided for by this Act or by any regulations made under this Act shall lie before a Judge of the Supreme Court, in Chambers.

Appeal
under this
Part.
39/2013
S. 36.

(2) Notwithstanding that an appeal lies under subsection (1) in relation to an action, decision, ruling, direction or order of the Commission, the action, decision, ruling, direction, or order of the Commission is binding upon the appellant and the Commission is entitled to act accordingly unless a stay of execution is granted by the Commission or a Judge in Chambers under subsection (3).

(3) The Commission may upon application, stay execution of any decision, refusal, ruling or order of the Commission, subject to such terms and conditions as it may specify, and where the Commission refuses an application for such stay of execution, an application therefor may be made to a Judge in Chambers.

(4) On an appeal, the appellant, and the Commission as respondent, may appear personally or be represented by an attorney-at-law.

(5) An appeal from the determination by a Judge in Chambers shall be to the Court of Appeal the decision of which shall be final.

(6) On an appeal, a Judge in Chambers or the Court of Appeal, as the case may be, may confirm, reverse or vary any decision, refusal, ruling or order made or given by the Commission.

75. The Commission may make rules which are not inconsistent with regulations made under this Act providing for such matters as may be necessary or expedient for the purposes of this Act.

Rules.

76.—(1) The Commission may, with the approval of the Minister, make regulations—

Regula-
tions.

(a) regulating the issue of and dealings in securities and the records relating thereto;

9/1996
S. 11(a).

- (b) governing the furnishing of information to the public or to recognized stock exchange in connection with dealings in securities;
- (c) governing the keeping of accounts and records, the preparation and filing of financial statements of the affairs and business of issuers and the audit requirements with respect thereto;
- (d) exempting any person or any additional class of persons from being licensed as investment advisers, and notice of such exemption shall forthwith be published in the *Gazette*;
- (e) prescribing the documents, reports, statements, agreements and other information and the form, contents and other particulars relating thereto that are to be filed, delivered or prescribed pursuant to this Act and the regulations;
- (f) prescribing terms and conditions governing purchases of securities on margin and the transfer of options to deliver or acquire securities, and prescribing the terms and conditions of escrow or pooling agreements with respect to securities issued for consideration other than cash;
- (g) prohibiting or regulating the distribution of written or printed material by a person in respect of a security, whether in the course of a distribution to the public or otherwise;
- (h) prescribing—
 - (i) the minimum requirements for licensing or registration under this Act; and
 - (ii) the fees payable with respect to the making of an application, the issue of a licence, certificate of registration, notice or other document, the inspection of any register, the filing of any information, or any other service provided by the Commission;

39/2013
S. 37(a).

9/1996
S. 11(b).

39/2013
S. 37(b).

- (i) respecting the appointment, removal and registration of auditors;
- (j) regulating the operation of a licensed central securities depository; 25/1999 S. 4(b).
- (k) regulating the operations of the licensees for the safeguarding of assets managed or held by the licensees and the protection of investors' funds and securities; 8/2001 S. 20(a)(ii).
- (l) prescribing reports to be filed with respect to companies within a group; 8/2001 S. 20(a)(ii).
- (m) prescribing in respect to issuers— 8/2001 S. 20(a)(ii).
 - (i) the manner of application for registration;
 - (ii) the reports which are to be filed with the Commission;
- (n) prescribing requirements for continuing professional development, including attendance at prescribed courses of training, to be complied with by any licensee, any officer of a licensee who is in the full-time employment of the licensee, and any person registered under this Act; 39/2013 S. 37(c).
- (o) regulating the conduct of scholarship or educational plans or trusts and prescribing the criteria for the approval of such plans or trusts, other than private plans or trusts not offered as an investment to the public;
- (p) regulating the conduct of collective investment schemes and specifying the criteria to be met for the registration of such schemes, the procedures for registration, and the fees payable by the operators of such schemes;
- (q) prescribing the circumstances and manner in which any compensation fund kept pursuant to section 27 may be wound up;
- (r) governing the entry into repurchase agreements by securities dealers with their clients, the holding of the

SECURITIES

underlying assets which are the subject of those repurchase agreements, and the systems for carrying out, administering or facilitating those agreements including arrangements in the event of insolvency or bankruptcy;

23/2014
S. 5(a).

39/2013
S. 37(c).

(s) respecting any matter necessary or desirable to give better effect to the purposes of this Act.

39/2013
S. 37(d).

(1A) In subsection (1)—

“group” in relation to a company, means that company and—

- (a) any other company which is its holding company or subsidiary;
- (b) any other company which is a subsidiary of the holding company;
- (c) any company which directly or indirectly controls or is controlled by any company referred to in paragraph (a) or (b); and
- (d) any company which is controlled by a person who directly or indirectly controls a company referred to in paragraphs (a), (b) or (c);

“repurchase agreement” means a financial agreement in which a dealer of securities transfers ownership of securities to another person, or creates a beneficial interest (whether whole or fractional) in securities in favour of another person, with or without provisions allowing for—

- (a) the substitution of the underlying securities by the dealer; or
- (b) the entitlement of the dealer to the coupon rate on the underlying securities,

in which the parties agree that at an agreed future date the securities will be repurchased by the dealer on the terms and conditions specified in the agreement.

(1B) In subsection (1A) “control” in relation to a company means the power of a person to secure by means of the holding of shares or the possession of voting power in or in relation to that company, or by any agreement or by virtue of any other powers conferred by the articles of association or other document regulating the company, that the affairs of the company are conducted in accordance with the wishes of that person. 8/2001
S. 20(b).

(2) Subject to affirmative resolution, regulations made under—

(a) subsection (1) may provide for penalties exceeding the amounts specified in section 29(b) of the Interpretation Act, in respect of any offence under the regulations but, in any event, such penalties shall not exceed three million dollars; 39/2013
S. 37(e).

(b) subsection (1)(j), shall have effect notwithstanding anything to the contrary in the Companies Act.

(3) Until varied or revoked by regulations made under subsection (1)(p) of this section, the provisions of the Second Schedule shall have effect.

(4) For the avoidance of doubt, all regulations made under subsection (1)(p) shall have the same force and effect as regulations contained in the Second Schedule.

(5) For the purposes of subsection (1)(r), “underlying assets” includes all instruments referred to in section 35A(a) to (c). 23/2014
S. 5(b).

77. Any appeal under this Act to a Judge in Chambers or to the Court of Appeal shall be made in such form and manner as may be provided by rules of court. Manner of
appeals.

*Requirements to be met by applicants for licence
to establish a Stock Exchange*

For the purposes of section 18, the requirements referred to in that section are as follows—

1. At least five of the applicant's members will carry on the securities business independently of and in competition with each other.
2. The applicant's rules make such provisions as the Commission considers satisfactory with regard to—
 - (a) the inclusion in its board of individuals;
 - (b) the inclusion in its board of persons who are not licensees;
 - (c) qualifications for membership;
 - (d) the exclusion from its membership of persons who are not of good character and for suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business or for contravention or failure to comply with the rules of the stock exchange or the provisions of this Act;
 - (e) preventing a member from carrying on as principal business, any business other than a securities business;
 - (f) conditions for listing of securities for trading on the stock exchange;
 - (g) obligations of listed issuers which will afford persons dealing in their securities, proper information for determining their current value;
 - (h) the conditions governing dealings in securities by members, and the class or classes of securities that may be dealt with by members;
 - (i) the carrying on of the business of the stock exchange with due regard to the interests of the public; and
 - (j) preventing a member from resigning where the applicant intends to investigate any matter affecting that member or any of the member's representatives for the purpose of deciding whether to expel or to take other disciplinary action against that member.

FIRST SCHEDULE, *cont'd.*

3. The applicant has made such provision as the Commission considers satisfactory for—

- (a) clearing house facilities or arrangements for ensuring performance and settlement and recording of transactions effected on the exchange;
- (b) effective monitoring and enforcement of compliance with its rules and regulations and the provisions of this Act and regulations made hereunder;
- (c) investigating complaints against any of its members.

4. The financial resources of the applicant are sufficient for the proper performance of its functions.

THE SECURITIES ACT

*The Securities (Collective Investment Scheme)
Regulations, 2013*PART I. *Preliminary*

Citation.

1. These Regulations may be cited as the Securities (Collective Investment Schemes) Regulations, 2013.

Interpre-
tation.

2.—(1) In these Regulations—

“accredited investor” means—

- (a) a body corporate, established by any Act of Parliament, over which the Government or an agency of the Government exercises control, or any company in which the Government or an agency of the Government holds the majority of the voting shares;
- (b) a bank as defined by section 2(1) of the Banking Act, a company registered to carry on insurance business under the Insurance Act, a financial institution duly licensed under the Financial Institutions Act, or a building society licensed under the Building Societies Act;
- (c) an approved retirement scheme, approved superannuation fund, or specified pension fund, as defined by section 2 of the Pensions (Superannuation Funds and Retirement Schemes) Act;
- (d) any officer of the manager or promoter of a collective investment scheme registered under the Act;
- (e) a unit trust, mutual fund, non-redeemable investment fund or other collective investment scheme that is registered under the Act;
- (f) a trust company or a licensed dealer purchasing as principal or on behalf of a fully managed account where the account holder is an accredited investor;
- (g) an individual whose net worth exceeds fifty million dollars, a corporation over ninety *per cent* of the voting shares in which are owned by such individual, or a trust of which the beneficiaries are comprised solely of such individuals;
- (h) any individual who, before deduction of income tax, had in excess of ten million dollars in income in each of the two most recent full calendar years, a corporation over

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SECOND SCHEDULE, *cont'd.*

ninety *per cent* of the voting shares in which are owned by such an individual, or a trust of which the beneficiaries are comprised solely of such individuals;

- (i) an entity having net assets in excess of two hundred and fifty million dollars as reflected in—
 - (i) its audited financial statements for its most recently completed financial year; or
 - (ii) if that more recently completed financial year ended less than ninety days prior to the time at which any decision is made as to whether the entity falls within this paragraph, the entity's audited financial statements for its financial year immediately preceding its most recently completed financial year;
- (j) an entity in respect of which all the owners of interests (direct, indirect or beneficial) are accredited investors;
- (k) an entity, incorporated or constituted in a jurisdiction outside of Jamaica that is analogous to an entity listed in any of paragraphs (a) to (f), or which has the status of an accredited investor or other similar status (however described) under the laws governing securities in that jurisdiction;
- (l) an individual residing in a jurisdiction outside of Jamaica who—
 - (i) has the status of an accredited investor or other similar status (however described) under the laws governing securities in that jurisdiction; or
 - (ii) meets the criteria specified in paragraph (g) or (h),

and is otherwise lawfully entitled to purchase securities under the laws governing securities in that jurisdiction; or
- (m) an individual or entity specified by the Commission to be an accredited investor;

“collective investment scheme” (or “scheme”) has the meaning assigned to it by section 17A(2) of the Act;

“constitutional documents” means, in relation to a collective investment scheme—

- (a) the organizational documents;

SECURITIES

SECOND SCHEDULE, *cont'd.*

- (b) the custodian agreement;
- (c) the management contract; and
- (d) the offering document and any other documents used, or to be used, by the scheme to offer its securities for sale;

“custodian”, in relation to a collective investment scheme, means the person appointed as evidenced in a written agreement (hereinafter called the “custodian agreement”), between the manager and that person, to hold the scheme’s assets in safekeeping;

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“disclosure documents” means any documents required to be made available to the public under regulation 21(1);

“extraordinary resolution” means a resolution passed by a majority of not less than three quarters of the collective investment scheme’s investors at a general meeting of the investors, of which notice specifying the intention to propose the resolution as an extraordinary resolution has been given;

“generally accepted accounting principles” includes the *International Financial Reporting Standards* of the International Accounting Standards Board, and any other set of generally accepted accounting principles specified by the Commission;

“generally accepted auditing standards” includes the *International Standards on Auditing* of the International Auditing and Assurance Standards Board, and any other set of generally accepted auditing standards specified by the Commission;

“local collective investment scheme” means a collective investment scheme that is established, incorporated, registered, or in any other manner formed, under the laws of Jamaica and carries on a collective investment scheme in Jamaica;

“manager”, in relation to a collective investment scheme, means the company that has responsibility for the management and performance of the functions of the collective investment scheme, including investment advice and operational services;

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“net asset value” means the current price, for the purpose of issue, redemption or repurchase, of each security issued by a collective investment scheme, calculated in accordance with regulation 35;

“offering document” means a document or series of documents on the basis of which—

SECOND SCHEDULE, *cont'd.*

(a) equity interests in a collective investment scheme are offered for sale; or

(b) persons are invited to subscribe for or purchase equity interests in a collective investment scheme,

but does not include any other notice, advertisement, letter or other communication used in connection with anything mentioned in paragraph (a) or (b) if, before the offer or invitation is accepted, the prospective investor is given the opportunity to consider an offering document containing the information prescribed by regulation 25;

“organizational documents”, in relation to a collective investment scheme, means the documents establishing the scheme, including the partnership agreement, trust deed, and articles of incorporation, organization or association, as the case may be;

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“promoter” means any person, whether within or outside of Jamaica, who is directly or indirectly responsible for the formation of a collective investment scheme and who causes the preparation or distribution of any offering document in respect of the scheme, but does not include a professional investment adviser or underwriter acting on behalf of such a person;

“provider of services”, in relation to a collective investment scheme, means a person who provides financial services to the scheme, and includes a custodian, manager, investment adviser, and any person to whom a provider of such services has delegated part or all of that provider’s functions;

“recognized foreign jurisdiction” means a foreign jurisdiction specified by the Commission in accordance with regulation 54, and the term “recognized foreign jurisdiction concerned” used in relation to a regulated overseas collective investment scheme means the recognized foreign jurisdiction where the scheme is established, formed or incorporated (as the case may be);

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“regulated overseas collective investment scheme” means a collective investment scheme that is—

(a) operated by a trust, partnership or company, established, formed or incorporated under the laws of a recognized foreign jurisdiction;

(b) authorized under the laws of that jurisdiction to operate in that jurisdiction as a collective investment scheme; and

SECURITIES

SECOND SCHEDULE, *cont'd.*

- (c) not prohibited under those laws from inviting persons outside of that jurisdiction to become participants in the scheme;

“responsible officer” means the officer appointed pursuant to section 10A of the Act;

“specified by the Commission” means specified by the Commission from time to time by notice published in the *Gazette*;

“trustee”, in relation to a collective investment scheme, means the person appointed, by the trust document, to hold the property of the scheme in trust for its investors;

“trust document” means the document required under regulation 7(1).

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(2) For the purposes of these Regulations, a duty on the manager of a collective investment scheme to ascertain whether a person is an accredited investor is discharged if, at the time in question, the manager reasonably believes after making all diligent inquiries, that the person falls within the definition of an “accredited investor” as set out in paragraph (1).

(3) A person is independent of another person for the purposes of these Regulations, if the persons are not associated persons, but two companies that have the same holding company shall be deemed to be independent of each other if—

- (a) both are subsidiaries of a financial institution licensed under the Financial Institutions Act;
- (b) neither is a subsidiary of the other;
- (c) no person is a director of both companies; and
- (d) both companies sign an undertaking to the Commission that they will act independently of each other in their dealings with the collective investment scheme concerned,

or the Commission has otherwise deemed the companies to be independent of each other having regard to all the circumstances.

(4) A person is a fit and proper person within the meaning of these Regulations if—

- (a) the person’s employment record does not give the Commission reasonable cause to believe that the person carried out any act involving impropriety in the handling of securities or in the management of a company;

SECOND SCHEDULE, *cont'd.*

- (b) the person has not been convicted of an offence involving dishonesty, and is not an undischarged bankrupt;
 - (c) the person is, in the opinion of the Commission, a person of sound probity who is able to exercise competence, diligence and sound judgment in fulfilling the person's responsibility in relation to the collective investment scheme concerned; and
 - (d) the person's relationship with the scheme will not threaten the interests of its investors, and for the purposes of paragraphs (a) and (b), the Commission shall have regard to any evidence that the person has—
 - (i) engaged in any business practice appearing to the Commission to be deceitful or oppressive, or otherwise improper, which reflects discredit to the person's method of conducting business; or
 - (ii) contravened any provision of any enactment designed for the protection of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in dealing in securities or in the provision of other financial services or in the management of a company or due to bankruptcy.
- (5) Where the person mentioned in paragraph (4) is a company or partnership, the requirements set out in that paragraph shall be satisfied by each of its officers and members holding (whether in their own right or when counted with any holding of an associated person) ten *per cent* or more of the voting rights in the company or partnership.
- (6) For the purposes of these Regulations—
- (a) information in respect of a collective investment scheme is material if the information would reasonably be expected to significantly affect the value or market price of the securities in the scheme;
 - (b) a "material change" in relation to the affairs of a collective investment scheme means any change in the business, operations, or financial condition, of the scheme that would reasonably be expected to have a significant effect on the market price or value of the scheme's securities.

*SECURITIES*SECOND SCHEDULE, *cont'd.*

(7) Where a notice or other information is required to be given promptly under these Regulations, the notice or other information (as the case may be) shall, unless otherwise stated in these Regulations, be given within five days (excluding Saturdays, Sundays and public general holidays) after the first occurrence of the event giving rise to the requirement to give the notice or other information.

Application.
L.N.
209/2015.

2A. These Regulations shall not apply to—

- (a) educational savings plans;
- (b) individual investment management arrangements;
- (c) pure deposit-based schemes;
- (d) certain debt issues such as debentures, bonds, loan stock and such other security as the Commission may designate, from time to time;
- (e) amounts held by participators in common accounts;
- (f) certain funds relating to leasehold property;
- (g) employee share schemes;
- (h) schemes entered into for commercial purposes related to existing business;
- (i) group schemes, where each participant is a body corporate in the same group as the manager;
- (j) franchise arrangements;
- (k) trading schemes (being those which reward participants for introducing new members to the scheme);
- (l) timeshare schemes and other schemes relating to the use or enjoyment of property;
- (m) the provision of clearing services;

SECOND SCHEDULE, *cont'd.*

- (n) contracts of insurance;
- (o) funeral plan contracts;
- (p) building societies, industrial and provident societies;
- (q) registered friendly societies and other bodies corporate, except open-ended investment companies;
- (r) private trust funds;
- (s) retirement schemes;
- (t) pension funds;
- (u) real estate investment trusts;
- (v) hedge funds;
- (w) exchange traded funds.

3.—(1) Pursuant to section 17A of the Act, a collective investment scheme is exempt from registration under these Regulations if— Exemptions.

- (a) the scheme is an investment club which meets the criteria set out in section 17C(2) of the Act;
- (b) the scheme sells securities only to accredited investors;
- (c) each investor in the scheme acquires the securities as a principal and the securities acquired have an acquisition cost of not less than ten million dollars at the time of acquisition; or
- (d) the scheme is a private issuer and its securities are offered only to any person who is—
 - (i) an officer of the scheme;

*SECURITIES*SECOND SCHEDULE, *cont'd.*

(ii) personally involved in the business of the scheme and is an officer of a provider of services to the scheme; or

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(iii) an associated person in relation to the manager of the scheme.

(2) In this regulation, “private issuer” means an issuer whose securities, other than non-voting debt securities, are—

(a) subject to restrictions on the transfer that are contained in the issuer’s articles of incorporation or other constitutional instruments, or a security holders’ agreement; and

(b) are beneficially owned by not more than fifty persons, excluding employees and former employees of the issuer.

Application
of Part II.
L.N.
209/2015.

3A. This Part applies only to local collective investment schemes.

PART II. Registration and Constitution of Local Collective Investment Schemes

Application
for regis-
tration.
L.N.
209/2015.

4.—(1) An application for the registration of a local collective investment scheme under these Regulations may be made by the scheme’s trustees, board of directors, partners or manager.

(2) An application under paragraph (1) shall be in the form specified by the Commission and shall—

(a) contain sufficient information for the Commission to assess the application;

(b) be accompanied by—

First
Schedule.

(i) the application fee specified in the First Schedule;

SECOND SCHEDULE, *cont'd.*

- (ii) a certificate, signed by the chief officer of the scheme's manager, stating that the scheme complies with the requirements for registration set out in regulation 5; L.N. 209/2015.
- (iii) copies of—
- (A) all materials to be used to offer or sell securities in the scheme;
 - (B) the offering document and any other disclosure documents proposed to be used; and
 - (C) all documents which any investor in the scheme will be required to sign;
- (iv) the most recent audited financial statements of the scheme (in the case of an existing scheme);
- (v) the organizational documents of the scheme;
- (vi) the names of the dealers through whom the scheme will sell securities; and
- (vii) a written profile of the directors and officers of the scheme's trustee, custodian and the manager; and L.N. 209/2015.
- (c) any other information which the Commission may reasonably require in order to assess the application.

(2A) Upon receipt of an application under paragraph (1), the Commission may cause an inspector to carry out an inspection of the premises of the management company, the custodian or other service provider to which the application relates. L.N. 209/2015.

(3) Where the Commission intends to—

- (a) deny an application under this regulation; or
- (b) grant the application subject to any terms or conditions,

the Commission shall give written notice of that intention to the applicant and give the applicant an opportunity to be heard with respect thereto.

(4) After complying with paragraph (3), the Commission shall in writing inform the applicant of the Commission's decision with respect to the application, giving the reasons therefor.

SECURITIES

SECOND SCHEDULE, *cont'd.*

Grant of
application for
registration.

5.—(1) Where the Commission receives an application for registration in accordance with regulation 4, the Commission may grant the application, upon such terms and conditions as it thinks fit, if it is satisfied that the requirements for registration set out in paragraph (2) are met in relation to the application.

(2) The requirements mentioned in paragraph (1) are that—

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(a) the manager of the scheme is a trust, partnership or company, established, formed or incorporated (as the case may require) under the laws of Jamaica;

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(b) in the case of an existing scheme, the minimum value of the securities of the scheme as reflected in its financial statement for its last financial year immediately preceding the date of the application for registration is not less than the equivalent, in Jamaican dollars at the prevailing rate of exchange, of three hundred thousand dollars in the currency of the United States of America;

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209/2015.

(c) the manager of the scheme has appointed a custodian that—

(i) meets the requirements set out in regulation 10 and is otherwise acceptable to the Commission;

(ii) is appointed under a custodian agreement containing the terms required pursuant to regulation 10(3); and

(iii) is independent of the manager of the scheme;

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(d) the manager of the scheme is a company that meets the requirements set out in regulation 8;

(e) a responsible officer is appointed, in respect of the scheme;

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(f) the directors and officers of the manager, and the responsible officer in respect of the scheme are fit and proper persons;

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209/2015.

(g) the disclosure documents, marketing materials and investment agreements of the scheme are in full compliance with the Regulations;

(h) the constitutional documents include such terms as may be specified by the Commission, and nothing in those documents exempts the scheme, or any provider of services thereto, from any liability to its investors arising from any statute or rule of law, or seeks to indemnify the scheme, or any provider of services thereto, from such liability at the expense of the investors;

SECOND SCHEDULE, *cont'd.*

- (i) the grant of the application is not contrary to the public interest.

(3) Upon granting an application under subsection (1), and on receipt of the registration fee specified in the First Schedule, the Commission shall issue a certificate of registration, in respect of the scheme concerned, to the applicant.

First
Schedule.

(4) Subject to subsections (5) and (7), a grant of registration under this regulation shall be valid for a period of one year from the date of issue of the registration certificate, and shall be renewable for successive periods of one year in accordance with regulation 6.

(5) The Commission may cancel the registration of a scheme under this regulation, if the Commission is satisfied that the scheme—

- (a) no longer meets any one or more of the requirements set out in paragraph (2); or
- (b) is not in compliance with a provision of the Act or these Regulations,

and has failed without reasonable excuse to comply with any written direction, issued to it by the Commission, to remedy the matter within the time specified in the directions, or that the matter is incapable of being so remedied.

(6) Before taking any action under paragraph (5), the Commission shall give the manager of the scheme written notice of that intention, together with the reasons therefor, and an opportunity to be heard in response thereto.

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209/2015.

(7) The Commission may suspend the registration of any scheme in respect of which it has issued directions under paragraph (5) or issued a notice under paragraph (6), pending compliance with the directions or its decision whether or not to act on the intention indicated in the notice (as the case may be).

6.—(1) An application for the renewal of registration under this Part may be made by submitting to the Commission at least thirty days before the expiration of the registration—

Renewal of
registration.

- (a) the renewal fee specified in the First Schedule; and
- (b) a certificate signed by the responsible officer of the collective investment scheme concerned, stating that the scheme continues to meet the requirements set out in regulation 5(2) and is in compliance with the provisions of the Act and these Regulations.

First
Schedule.

SECURITIES

SECOND SCHEDULE, *cont'd.*

(2) The Commission may approve the application for renewal of the grant of registration if satisfied that the requirements set out in regulation 5(2) are met and that all information required to be filed in respect of the scheme under these Regulations have been filed.

(3) Where the Commission intends to deny an application under paragraph (1), the Commission shall give the manager of the scheme written notice of that intention, together with the reasons therefor, and an opportunity to be heard in response thereto.

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209/2015.

Schemes in
the form of a
trust.

7.—(1) Where a collective investment scheme is established as a trust—

- (a) the establishment of the trust shall be evidenced by a trust deed, a declaration of trust, or other instrument, which contains the matters set out in the Second Schedule; and
- (b) the trustee appointed in relation thereto shall meet the requirements set out in paragraph (2) and be otherwise acceptable to the Commission.

Second
Schedule.

(2) The requirements mentioned in paragraph (1)(b) are that the trustee shall be a company—

(a) incorporated under the laws of—

(i) Jamaica, being a company licensed under—

- (A) the Banking Act;
- (B) the Financial Institutions Act;
- (C) the Building Societies Act; or
- (D) the Securities Act as a central securities depository, securities dealer or investment adviser; or
- (E) a trust company incorporated or registered in Jamaica and whose constituent documents do not prohibit the company from providing trust services;

(ii) a recognized foreign jurisdiction, and authorized by the laws of that jurisdiction to carry on any of the activities covered by a licence mentioned in paragraph (a);

(b) having the minimum share capital specified by the Commission.

(c) which is independent of the manager;

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SECOND SCHEDULE, *cont'd.*

- (d) which is a fit and proper person; and
- (e) any other requirement specified by the Commission.

(3) In carrying out its duties generally, the trustee shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances and shall, as regards the safe-keeping of the assets of the scheme, shall act in a fiduciary capacity toward the scheme's investors in the performance of those duties.

(4) The trustee shall not be indemnified by the scheme for any loss arising as a result of the trustee's failure to observe the standard of care required under paragraph (3) or to comply with the provisions of any law in the performance of the duties of the trustees.

(5) The trustee shall indemnify the scheme against any loss arising as a result of the trustee's failure to observe the standard of care required under paragraph (3) or to comply with the provisions of any law in the performance of the duties of the trustees.

(6) The trustee shall—

- (a) ensure that suitable structures are in place for the proper performance of the trustee's duties as stated in the trust document and the law relating to trusts;
- (b) act in the best interests of the scheme's investors;
- (c) not sell or purchase from the scheme any assets, whether for the trustee's own benefit or for the benefit of an associated person, unless—
 - (i) permitted to do so by the trust document; and
 - (ii) the transaction in question is conducted at arm's length at fair market value;
- (d) not derive any benefit under the scheme from the position as trustee, except for fees payable under the trust document for the trustee's services;
- (e) exercise the trustee's best efforts to avoid any conflict between the interests of the trustee and those of the scheme and, if any such conflict arises, shall disclose the nature of the trustee's interest and the conflict and employ such measures as are appropriate to protect the interests of the scheme; and
- (f) be the custodian of the scheme.

8.—(1) The manager of a collective investment scheme shall meet the requirements set out in paragraph (2).

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*SECURITIES*SECOND SCHEDULE, *cont'd.*

(2) The requirements mentioned in paragraph (1) are that the manager shall be a company which—

- (a) has a dealer's licence;
- (b) has appropriate systems and controls in place to carry out the functions and responsibilities of a manager of a collective investment scheme under these Regulations; and
- (c) is independent of the trustee and the custodian.

(3) The manager shall be responsible for—

- (a) managing the scheme in the best interests of the scheme's investors and in compliance with its constitutional documents and these Regulations;
- (b) ensuring that a responsible officer is appointed as required by section 10A of the Act;
- (c) establishing and maintaining appropriate policies and procedures to—
 - (i) identify, mitigate and manage any conflicts of interest between the scheme and the manager, any provider of services, or any other scheme managed by that manager;
 - (ii) ensure the best execution of trades for the scheme;
 - (iii) ensure appropriate trading and timely allocation of transactions among the collective investment schemes managed by that manager; and
 - (iv) prevent churning;
- (d) maintaining accurate and complete books of account and other records of the operations of the scheme, including records as to the manager's activities with respect thereto;
- (e) making the constitutional documents of the scheme available, for inspection by prospective investors and the scheme's investors, at

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SECOND SCHEDULE, *cont'd.*

a place of business in Jamaica.

- (f) calculating the net asset value of the scheme, and issuing and redeeming securities on behalf of the scheme, as required by the scheme's constitutional documents or by these Regulations;
- (g) ensuring that the scheme's annual financial statements are audited promptly at the end of the scheme's financial year; and
- (h) taking reasonable care to ensure that the investment and borrowing limitations set out in the scheme's constitutional documents, and any conditions on which the scheme is registered under these Regulations, are complied with.

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(4) In carrying out its duties as manager, the manager shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

(5) The manager shall not be indemnified by the scheme for any loss arising as a result of the manager's failure to observe the standard of care required under paragraph (4).

(6) The manager shall indemnify the scheme against any loss arising as result of the manager's failure to observe the standard of care required under paragraph (4).

(7) The appointment of a company as manager of a collective investment scheme may be terminated—

- (a) in accordance with any grounds and procedure specified in the scheme's constitutional documents;
- (b) in accordance with paragraph (8); or
- (c) by extraordinary resolution of the scheme's investors at a meeting of the investors convened by a notice to the investors setting out—
 - (i) the grounds for the termination; and
 - (ii) naming the company proposed to be appointed as the new manager, being a company which meets the requirements specified in paragraph (2).

(8) The manager of a collective investment scheme shall be terminated if—

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SECOND SCHEDULE, *cont'd.*

- (a) the company is insolvent;
- (b) the company no longer meets any one or more of the requirements set out in paragraph (2); or
- (c) the termination is in the best interests of the investors.

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(9) Where the appointment of a manager is terminated, the trustees, board of directors or partners of the scheme shall promptly give to the Commission and to the scheme's investors, written notice of the termination, and the name of, and such other particulars as may be relevant in relation to the company proposed to be appointed as the new manager.

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(10) Where the manager has been terminated, the Commission may appoint a company which meets the requirements specified in paragraph (2) to act as manager of the scheme until such time as a new manager is appointed in accordance with this regulation.

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(11) The Manager may delegate the performance of any of the functions conferred upon the Manager (other than the power of delegation) to another company, but—

- (a) such delegation shall not affect the manager's obligation to ensure that the responsibilities under paragraph (3) are carried out;
- (b) such a delegation shall not be effective until written notice is given to the Commission containing such particulars of the delegation as may be specified by the Commission and the Commission notifies the manager that the delegation is approved; and
- (c) notice of the delegation shall be given by the manager to the scheme's investors before the delegation takes effect; and the notice shall be in full compliance with regulation 31(3).

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Self-managed
schemes.

9.—(1) The Commission may permit the officers of a collective investment scheme to act as the manager of the scheme, in lieu of an appointment being made under regulation 8, if—

- (a) the organizational documents of the scheme contain provisions—
 - (i) allowing the scheme's investors to remove those officers by ordinary resolution at a meeting of the investors; and

SECOND SCHEDULE, *cont'd.*

- (ii) for the remuneration of those officers to be fixed at a general meeting of the investors; and
- (b) the scheme has—
 - (i) at least the minimum value of securities issued and outstanding, as specified by the Commission; and
 - (ii) appropriate systems and controls in place for those officers to carry out the duties of manager (including appropriate internal controls and risk management procedures);
- (c) those officers are fit and proper persons; and
- (d) the scheme is independent of the custodian and the providers of services to the scheme.

(2) References in these Regulations to the “manager” shall be construed as references to the officers mentioned in paragraph (1), in any case where permission is given by the Commission under that paragraph for those officers to act as the manager of the scheme concerned.

10.—(1) The manager of a collective investment scheme shall appoint a custodian that meets the requirements of paragraph (2).

The
custodian.
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- (2) The custodian shall—
 - (a) be either—
 - (i) a bank licensed under the Banking Act;
 - (ii) a financial institution licensed under the Financial Institutions Act;
 - (iii) a trust company established or incorporated under the laws of Jamaica;
 - (iv) a company that holds a dealer’s licence under the Act; or
 - (v) a bank or trust company authorized to operate as a bank or trust company (as the case may be) under the laws of a recognized foreign jurisdiction;
 - (b) meet the minimum capital and insurance requirements specified by the Commission for the purpose of this paragraph;
 - (c) be a fit and proper person;
 - (d) be independent of the manager; and

SECURITIES

SECOND SCHEDULE, *cont'd.*

- (e) in the case of a bank or trust company mentioned in sub-paragraph (a)(v), hold only assets issued by issuers domiciled outside of Jamaica.

(3) The custodian agreement evidencing the appointment of the custodian shall—

- (a) specify the location or locations where the assets of the scheme are to be held;
- (b) specify whether a sub-custodian may be appointed;
- (c) state that fees payable to the custodian, and sub-custodian (if any), are for the administrative and safekeeping services provided by the custodian, and that additional fees are not chargeable to the scheme by the custodian for any transfer of beneficial ownership of the assets of the scheme;
- (d) provide, where the custodian is a bank licensed under the Banking Act or a financial institution licensed under the Financial Institutions Act, that the agreement—
- (i) may only be amended in writing, and shall be so amended where necessary to comply with any law in force in Jamaica;
- (ii) shall be governed by, and construed in accordance with the laws of Jamaica, and that the parties submit to the jurisdiction of the courts of Jamaica;
- (e) provide, where the custodian is a bank or a trust company authorized to operate as a bank or trust company under the laws of a recognized foreign jurisdiction, that—
- (i) the agreement may only be amended in writing; and
- (ii) the custodian shall submit to the jurisdiction of the Commission under the Act and these Regulations;
- (f) contain such other provisions as may be specified by the Commission.

(4) The custodian shall—

- (a) hold the assets of the collective investment scheme in trust in accordance with the provisions of the scheme's constitutional documents and these Regulations:

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SECOND SCHEDULE, *cont'd.*

- (b) be liable for the act or omission of any person with whom any assets of the scheme in bearer form are deposited, as regards those assets;
- (c) take reasonable care to ensure that—
 - (i) the sale, issue, repurchase, redemption and cancellation of any securities of the scheme are carried out in accordance with the provisions of the scheme's constitutional documents and these regulations;
 - (ii) the methods adopted by the manager in calculating the value of the securities of the scheme are adequate to ensure that the prices of those securities are calculated in accordance with the provisions of the scheme's constitutional documents and these Regulations;
 - (iii) the scheme maintains compliance with—
 - (A) the investment and borrowing limits set out in its constitutional documents and as may be specified by the Commission; and
 - (B) any terms and conditions on which the scheme is granted registration under these Regulations; and
 - (iv) certificates for, or other evidence of ownership of, the securities of the scheme are not issued until the full value of the subscription amount is received;
- (d) carry out the instructions of the manager in respect of investments of the scheme, unless those instructions conflict with the provisions of the scheme's constitutional documents or these Regulations; L.N.
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- (e) keep the custodian agreement, and every sub-custodian agreement relating to the scheme (or the trust document, in the case of a scheme established as a trust), under review for the purpose of ensuring compliance with these Regulations, and if found not to be in compliance, arrange for their prompt amendment accordingly;
- (f) ensure that all securities held by or on behalf of the scheme are physically verified, and prepare for each calendar quarter a reconciliation of the verification with the records of the scheme;

*SECURITIES*SECOND SCHEDULE, *cont'd.*

- (g) permit the auditor of the scheme access to such books of account and other records as are in the custody or control of the custodian and pertaining to the operation of the scheme, for the purpose of any audit carried out pursuant to the Act or these Regulations;
- (h) forthwith inform the Commission in writing of any breach of these Regulations of which the custodian becomes aware.

(5) In carrying out its duties as custodian, the custodian shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

(6) The custodian shall not be indemnified by the scheme for any loss arising as a result of the custodian's failure to observe the standard of care required under paragraph (5).

(7) The custodian shall indemnify the scheme against any loss arising as a result of the custodian's failure to observe the standard of care required under paragraph (6).

(8) The custodian shall cause an auditor's report to be prepared periodically, at intervals of not less than one year, on the custodian's internal controls and operating procedures over the scheme's financial year.

(9) A copy of a report under paragraph (8) shall be given to the Commission and to each collective investment scheme in respect of which the custodian is the custodian, not more than ninety days after the end of the scheme's financial year.

Sub-custodian.

11.—(1) The custodian may appoint one or more sub-custodians to carry out any duties of the custodian—

- (a) if the custodian agreement (or trust document, in the case of a scheme established as a trust) so permits; and
- (b) the sub-custodian meets the requirements set out in paragraphs (2).

(2) An appointment made under paragraph (1)—

- (a) shall be evidenced in writing providing for the matters set out in regulation 10(3);
- (b) may be terminated by the custodian in accordance with the custodian agreement, or by the manager or the scheme's investors on any grounds and in any manner in which the appointment of a custodian may be terminated under regulation 12; and
- (c) shall not affect the custodian's duty to ensure that the provisions of regulation 10(4) are complied with.

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SECOND SCHEDULE, *cont'd.*

- 12.—(1) The appointment of a custodian may be terminated—
- Tenture of
custodian.
- (a) in accordance with any ground or procedure specified in the custodian agreement; or
 - (b) by a resolution passed at an extraordinary meeting of the scheme's investors if the notice of the meeting sets out the reason for the proposed removal, and the name of the proposed new custodian.
- (2) The manager of a collective investment scheme shall terminate the appointment of any custodian appointed in respect of the scheme if—
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- (a) the custodian becomes insolvent;
 - (b) the custodian no longer meets any one or more of the requirements set out in regulations 10(2); or
 - (c) in the opinion of the manager, any other circumstances exist which justify the termination.
- (3) Where the appointment of a custodian is terminated, the manager of the scheme shall promptly give written notice of the termination together with the name of, and such other particulars as may be relevant as to, the new custodian proposed to be appointed under this regulation, to—
- L.N.
209/2015.
- (a) the Commission; and
 - (b) the scheme's investors, unless the termination is by resolution under paragraph (1).
- 13.—(1) The assets of a collective investment scheme shall be held in the name of the collective investment scheme, the custodian or sub-custodian.
- Rules for the
holding of
assets.
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209/2015.
- (2) Where the assets of a collective investment scheme are held only in the name of the custodian, or a sub-custodian, the records kept by the custodian or sub-custodian (as the case may be) for the purposes of these Regulations shall—
- (a) specify an account number or other designation referable to the scheme; and
 - (b) show that the beneficial ownership of the assets is vested in the scheme.
- (3) Where the assets of a collective investment scheme are issued in bearer form, those assets shall be segregated by the custodian and clearly marked as being beneficially owned by the scheme.

SECURITIES

SECOND SCHEDULE, *cont'd.*

(4) The custodian may deposit the assets of the collective investment scheme concerned into a depository if the records of that depository, or any participant in the depository through which the assets are deposited, contains a designation sufficient to show that the beneficial ownership of the assets is vested in the scheme.

Auditors.
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14.—(1) The manager of a collective investment scheme shall—

- (a) appoint a qualified auditor, being an auditor who is independent of the scheme, and of the scheme's manager and providers of services, to carry out the duties set out in paragraph (2);
- (b) notify the Commission in writing of such appointment and of any termination of the appointment, or resignation of, an auditor so appointed.

(2) An auditor appointed under paragraph (1) shall—

- (a) make such examinations as will enable the auditor to make the reports required under the Act, these Regulations, and any other applicable laws;
- (b) conduct annually an audit of the collective investment scheme and its financial statements, and provide the scheme and its investors with a report thereon in accordance with generally accepted accounting principles;
- (c) conduct such other audits or examinations required under the Act or these Regulations in relation to the scheme.

(3) An audit for the purposes of paragraph (2)(b) shall include procedures to verify the assets of the collective investment scheme and the manager's calculation of the net asset value of the scheme.

(4) Where in the course of its duties an auditor appointed under this regulation is of the opinion that there is—

- (a) a material deficiency, weakness or non-compliance with any requirement of these Regulations, with respect to the operations of the scheme concerned; or
- (b) any other matter which gives rise to concern or which requires a clarification or qualification to be made in the auditor's report on the financial statements of the scheme,

the auditor shall promptly notify the Commission thereof and also give a copy of the notice to the manager of the scheme.

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(5) A notice for the purposes of paragraph (4) shall set out all the relevant particulars as to the deficiency, weakness, non-compliance or other matter, concerned.

SECOND SCHEDULE, *cont'd.*

(6) A person who gives notification pursuant to paragraph (4) shall not, as a result, be—

- (a) subjected to any disciplinary action;
- (b) dismissed, suspended or demoted;
- (c) harassed, intimidated or victimized;
- (d) transferred against that person's will;
- (e) refused transfer or promotion;
- (f) subjected to a term or condition of employment, or retirement from employment, that is altered to the person's disadvantage;
- (g) provided with an adverse reference;
- (h) denied appointment to any employment, profession or office;
- (i) threatened with any of the actions specified in paragraphs (a) to (h); or
- (j) otherwise adversely affected in respect of the person's employment, profession or office, including employment opportunities and job security.

15.—(1) Subject to paragraphs (2) and (3), the manager of a collective investment scheme may appoint an investment adviser to provide advice with respect to any assets of the scheme originating or held in a recognized foreign jurisdiction.

Investment
advisers.
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209/2015.

(2) The manager shall not appoint a person as an investment adviser under paragraph (1) unless the person is authorized to act as an investment adviser (by whatever description called) under the laws of the recognized foreign jurisdiction concerned.

(3) In any case where an investment adviser is appointed under paragraph (1), the manager remains responsible for any actions taken by the scheme on the advice, or at the behest, of the investment adviser.

16.—(1) The manager of a collective investment scheme registered under this Part shall keep a register, electronic or otherwise, of the investors in the scheme.

Register of
investors.
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(2) A register kept under paragraph (1) shall contain the information specified by the Commission and the manager of the scheme shall ensure that the Commission has access to the register when required.

(3) The manager of a collective investment scheme may appoint a company to act as registrar for the purposes of maintaining the register kept pursuant to this regulation.

SECOND SCHEDULE, *cont'd.*PART III. *Registration of Regulated Overseas Collective Investment Schemes*

Application
of Part III.

16A. This Part applies only to regulated overseas collective investment schemes.

Application
for regis-
tration.
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17.—(1) The trustee, board of directors, partners or manager of a regulated overseas collective investment scheme may apply for the registration of the scheme under this Part.

(2) An application for the purposes of paragraph (1) shall be made in the form specified by the Commission and shall—

(a) contain sufficient information for the Commission to assess the merits of the application;

(b) be accompanied by—

First
Schedule.
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(i) the application fee specified in the First Schedule;

(ii) a certificate, signed by the manager of the scheme, stating that the scheme complies with the requirements for registration set out in regulation 18;

(iii) copies of—

(A) all marketing materials to be used in Jamaica to offer or sell the securities of the scheme;

(B) the offering documents and any other disclosure documents used in the recognized foreign jurisdiction;

(C) all documents that investors in Jamaica will be required to sign in order to participate in the scheme;

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(iv) evidence that the scheme is in good standing in the recognized foreign jurisdiction concerned;

(v) the most recent audited financial statements of the scheme (in the case of an existing scheme);

(vi) the organizational documents of the scheme;

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(vii) the names of the dealers in Jamaica through whom the scheme will sell securities;

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(viii) a written profile of the directors and officers of the scheme's trustee, custodian and the manager; and

(ix) any other information which the Commission reasonably requires in order to assess the application.

SECOND SCHEDULE, *cont'd.*

(3) Where the Commission intends to deny an application under paragraph (1), the Commission shall give the trustee, board of directors or partners of the scheme written notice of that intention, together with the reasons therefor, and an opportunity to be heard in response thereto.

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18.—(1) Where the Commission receives an application for registration in accordance with regulation 17, the Commission may grant the application if it is satisfied that the requirements set out in paragraph (2) are met in relation to the application.

Grant of
application for
registration.

(2) The requirements mentioned in paragraph (1) are that—

- (a) the regulated overseas collective investment scheme is distributed and is in good standing in a recognized foreign jurisdiction;
- (b) the recognized foreign jurisdiction requires the scheme to prepare and file with its regulator—
- (i) annual financial statements in accordance with generally accepted accounting principles, and that those statements are required to be audited in accordance with generally accepted auditing standards;
- (ii) interim financial statements in accordance with generally accepted accounting principles, at least semi-annually;
- (c) the latest audited financial statements of the scheme establish that the value of securities in the scheme is not less than three hundred thousand dollars when expressed in the currency of the United States of America at the prevailing rate of exchange on the date of the application;
- (d) the scheme's securities will be sold in Jamaica only through dealers licensed under the Act, and there is appointed in respect of the scheme at least one such dealer;
- (e) the directors and officers of the manager, in respect of the scheme are fit and proper persons;
- (f) the custodian is independent of the manager of the scheme;
- (g) the disclosure documents, marketing materials, and all documents to be signed by investors in Jamaica, are in full compliance with the Regulations; and
- (h) the grant of the application for registration is not contrary to the public interest.

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(3) Upon granting an application under this Part, the Commission shall, upon payment of the registration fee specified in the First Schedule, issue—

First
Schedule.

SECURITIES

SECOND SCHEDULE, *cont'd.*

- (a) a certificate of registration to the applicant; and
- (b) written notification thereof to every dealer appointed for the purposes of paragraph (2)(d).

(4) Registration under this Part shall be effective for a period of one year from the date of issue of the registration certificate, unless renewed in accordance with regulation 19.

(5) The Commission may cancel the registration of a scheme under this regulation, if the Commission is satisfied that the scheme—

- (a) no longer meets any one or more of the requirements set out in paragraph (2); or
- (b) is not in compliance with any provision of the Act or these Regulations,

and has failed without reasonable excuse to comply with any written direction issued to it by the Commission to remedy the matter, within the time specified in the directions, or that the matter is incapable of being so remedied.

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(6) Before taking any action under paragraph (5), the Commission shall give the manager of the scheme written notice of that intention together with the reasons therefor and an opportunity to be heard in response thereto.

(7) The Commission may suspend the registration of any scheme in respect of which it has issued directions under paragraph (5) or issued a notice under paragraph (6), pending compliance with the directions or its decision whether or not to act on the intention indicated in the notice (as the case may be).

Renewal of
registration.

19.—(1) An application for the renewal of registration under this Part may be made by submitting to the Commission, at least thirty days before the expiration of the period mentioned in regulation 18(4)—

- (a) a renewal application in the form specified by the Commission;
- (b) the renewal fee specified in the First Schedule;
- (c) evidence that the scheme is in good standing in the recognized overseas foreign jurisdiction concerned;
- (d) a certificate signed by the manager of the scheme, stating that the scheme continues to meet the requirements for registration set out in regulation 18(2) and that all documents required to be filed under this Act, in respect of the scheme, have been filed; and

First
Schedule.

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SECOND SCHEDULE, *cont'd.*

- (e) any other information that the Commission may specify for the purpose of determining whether to grant the application for renewal.

(2) Where the Commission intends to deny an application under paragraph (1), the Commission shall give the manager of the scheme written notice of that intention, together with the reasons therefor, and an opportunity to be heard in response thereto. L.N. 209/2015.

20.—(1) A scheme registered under this Part shall file with the Commission— Periodic reporting to Commission.

(a) a copy of—

(i) the scheme's audited financial statements and the auditor's report thereon, within ninety days after the end of the scheme's financial year; L.N. 209/2015.

(ii) the quarterly interim unaudited financial statements of the scheme, within forty-five days after the end of the relevant quarter; and

(iii) the quarterly portfolio statements and the manager's calculations of the net asset value of the scheme, within forty-five days after the end of the relevant quarter; L.N. 209/2015.

(b) any other document required to be filed in respect of the scheme under the laws of the recognized foreign jurisdiction concerned, as soon as practicable after such filing;

(c) prompt notice of any change as to any provider of services in respect of the scheme; and

(d) as soon as is practicable after any amendment is made to any disclosure documents, marketing materials or any document required to be signed by a person in order to invest in the scheme, the amended version thereof.

(2) Where any amendment is made to any document referred to in regulation 18(2)(g)—

(a) the amended version of the document shall be submitted to the Commission;

(b) the Commission may direct that modifications be made to any such amended version, if it is of the view that the modifications are necessary for the protection of investors in Jamaica; and

(c) the amended version shall not be used in Jamaica until after the expiration of thirty days after the Commission is given a copy of that version or the modifications directed by the Commission have been incorporated in the document, whichever occurs earlier.

SECURITIES

SECOND SCHEDULE, *cont'd.*

(3) A collective investment scheme shall give to the Commission—

- (a) notice of any regulatory or criminal action, under any law, taken against the scheme, or any of the providers of services to the scheme, forthwith upon becoming aware of the action;
- (b) notice of any material change, or any proposed material change, in the affairs of the scheme forthwith upon becoming aware of the change or proposed change.

Availability of disclosure documents to the public.

21.—(1) Prior to offering or selling in Jamaica any securities in the scheme, a collective investment scheme registered under this Part shall make available to the prospective investors—

- (a) the latest offering document, in respect of the scheme, prepared for use in the recognized overseas jurisdiction concerned; and
- (b) the most recent annual and interim financial statements of the scheme.

(2) For the purposes of paragraph (1)—

- (a) a document or information is made available to a prospective investor if it is—
 - (i) given to the prospective investor;
 - (ii) otherwise published in a daily newspaper in circulation in Jamaica or on a website maintained by the manager;
 - (iii) sent by post or e-mail to the prospective investor,

or the prospective investor is informed as to where in Jamaica the document or information may be obtained at no cost to the investor;

- (b) “the latest offering document” means an offering document submitted to, and approved by, the Commission no earlier than one year before the date on which the document is made available to the prospective investors.

(3) A scheme registered under this Part shall—

- (a) make its constitutional documents available, at its registered office in Jamaica, for inspection by prospective investors and the scheme’s investors; and
- (b) make a paper copy of its most recent annual and interim financial statements available at its registered office to any investor who requests a copy, at no cost to that investor.

(4) A scheme registered under this Part shall publish in a daily

SECOND SCHEDULE, *cont'd.*

newspaper in circulation in Jamaica, post on a website maintained by the manager, or send by post or e-mail to the investors in the scheme—

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- (a) the scheme's unaudited quarterly financial statements, prepared in accordance with generally accepted accounting principles, no later than forty-five days after the end of the quarter concerned;
- (b) the scheme's audited financial statements, prepared in accordance with generally accepted accounting principles, no later than ninety days after the end of the scheme's financial year; and
- (c) notice of any changes it proposes to implement which affect the rights or interests of any of the scheme's investors, no less than thirty days before implementing those changes.

22. Any document or other information required to be filed with the Commission or made available to prospective investors or the scheme's investors, by a scheme registered under this Part, shall be in the English Language.

Translation of documents.
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PART IV. *Disclosures, Offerings and Dealings*

23. Except where otherwise expressly provided, this Part applies to—

Application.

- (a) local collective investment schemes, other than schemes exempt from registration under these Regulations by virtue of regulation 3; and
- (b) schemes required to be registered under Part III.

24. All documents or other information provided by a collective investment scheme to the public, its investors or prospective investors, shall meet the following standards—

General standards of disclosure.

- (a) the information shall be complete, accurate and fair in all material respects, and shall be presented in a clear, concise and effective manner so as to be readily understood by the investing public;
- (b) the information shall not be false or misleading in any material respect, or be presented in a deceptive or unfair manner;
- (c) where ongoing disclosure of the information is required, the information must be disseminated in a timely and efficient manner.

25.—(1) A collective investment scheme shall not offer or sell any securities in the scheme unless copies of—

Offering documents.

*SECURITIES*SECOND SCHEDULE, *cont'd.*L.N.
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- (a) the offering documents of the scheme, approved by the Commission in accordance with this regulation; and
- (b) the scheme's latest audited annual financial statements and latest interim financial statements (if published after the latest available annual financial statements),

are provided to the prospective investor concerned, free of cost to the investor, or that investor is informed as to whether the investor may obtain copies of those documents free of cost to the investor.

(2) A collective investment scheme shall keep its offering documents up-to-date and include in its offering documents the following information—

Third
Schedule.

- (a) the information specified in the Third Schedule;
- (b) all information required under these Regulations or specified by the Commission for the purpose of this paragraph; and
- (c) all information necessary for prospective investors to be able to make an informed judgment as to the investment proposed.

(3) Before issuing to prospective investors or the public any offering document in relation to a collective investment scheme, the scheme shall apply to the Commission for the approval of the document in accordance with paragraph (4).

(4) An application for the approval of an offering document may be made in writing to the Commission, accompanied by—

- (a) a copy of the offering document; and
- (b) any other document or information specified by the Commission for the purposes of this paragraph.

(5) Upon receiving an application under paragraph (4), the Commission—

- (a) shall grant the application if the Commission is satisfied that the offering document in question meets the requirements of the Act and these Regulations; or
- (b) may refuse the application if the Commission determines that approving the application would be contrary to the public interest, or that the offering document in question—
 - (i) does not comply with any provision of the constitutional documents of the scheme concerned;
 - (ii) is inaccurate, unclear, or misleading, in a material respect, or contains a material omission; or

SECOND SCHEDULE, *cont'd.*

- (iii) does not provide full and accurate disclosure of all the information that prospective investors would reasonably require for the purpose of making an informed judgment as to investment in the scheme.

(6) Where the Commission intends to act under paragraph (5)(b), the Commission shall give the manager—

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- (a) notice of that intention, including the Commission's reasons therefor, within twenty-five days after the date of the application; and
- (b) an opportunity to be heard thereon or to amend and re-submit the offering document.

(7) The provisions of paragraph (5) shall apply to any amendments to an offering document made after the document is approved by the Commission under this regulation, as if the amended document were a new document.

(8) The approval of an offering document under this regulation shall be effective for a period of twelve months from the date of the grant of the application for approval by the Commission.

26.—(1) Subject to the provisions of this regulation, the following persons shall be liable to pay compensation to any investor in a collective investment scheme who suffers loss or damage as a result of any misrepresentation included in the offering document—

Liability in
respect of
offering
documents.

- (a) every person who is a director of the scheme at the time when the offering document is issued;
- (b) every person who gives authorization to be named, and is named, in the offering document as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) every person who is a promoter of the scheme; and
- (d) every person who authorized the issue of the offering document.

(2) Where the authorization of a person as an expert on any matter is required for the issue of an offering document, that person shall not, by reason of having given that authorization, be liable under paragraph (1) as a person who authorized the issue of the offering document, unless the misrepresentation in question is a misrepresentation made by that person as an expert or purported expert.

(3) A person shall not be liable under paragraph (1) if that person shows that—

SECURITIES

SECOND SCHEDULE, *cont'd.*

- (a) having consented to become a director of the collective investment scheme concerned, the person withdrew that consent before the issue of the offering document and that the offering document was issued without the person's authorization;
- (b) the offering document was issued without the person's knowledge or authorization and that, on becoming aware of the issuing of the offering document, the person forthwith gave reasonable public notice that the offering document was issued without the person's knowledge or authorization;
- (c) on becoming aware, after the issuing of the offering document and before any allotment of securities is made thereunder, that the offering document includes a misrepresentation, the person withdrew that person's authorization to its issue and gave reasonable public notice of that withdrawal and the reason therefor;
- (d) as regards—
- (i) a misrepresentation not purported to be made on the authority of an expert, the person had reasonable grounds to believe and did, up to the time of the allotment of the securities offered, believe that there was no misrepresentation;
 - (ii) a misrepresentation purported to be a statement either made by an expert or contained in a copy or extract of a report or valuation of an expert, the misrepresentation correctly and fairly represents the statement and the person had reasonable grounds to believe and did, up to the time of the issue of the offering document, believe that—
 - (A) the person who made the statement was competent to make it; and
 - (B) the person who made the statement gave the required consent to the issuing of the offering document and had not withdrawn that authorization before the issuing of the offering document or before any allotment of securities thereunder.

(4) Nothing in paragraph (3)(d)(ii) applies to the liability of a person who is the expert mentioned in that paragraph.

(5) A person shall not be liable under paragraph (1) in respect of a misrepresentation made by that person as an expert or purported expert if the person proves that—

SECOND SCHEDULE, *cont'd.*

- (a) having authorized the issue of an offering document, the person withdrew, in writing, the authorization before the offering document was issued;
- (b) on becoming aware of the misrepresentation, after the issue of the offering document but before any allotment of securities thereunder, the person withdrew, in writing, that person's authorization for the issue and gave reasonable public notice of the withdrawal and the reason therefor; or
- (c) the person was competent to make the statement at the time of the issue of the offering document and had reasonable grounds to believe and did, up to the time of the allotment of securities thereunder, believe that statement was not a misrepresentation.

(6) A person who is exempt from liability under paragraph (3) or (5) is entitled to be indemnified by every director of the collective investment scheme concerned (other than a director exempt from liability under either of those paragraphs) against all damages arising, and any costs or expenses incurred by that person, as a result of the misrepresentation (including any costs of defending that person against any legal proceedings in respect of the misrepresentation).

(7) Where an offering document includes a material misrepresentation, any person who authorized the issue of the offering document shall be liable, on summary conviction before a Resident Magistrate, to a fine not exceeding three million dollars or imprisonment for a term not exceeding three years or both such fine and imprisonment.

(8) It shall be a defence for a person charged with an offence under paragraph (7) to prove that the person had reasonable grounds to believe and did, at the time when the offering document was issued, believe that the statement was not a misrepresentation.

27. Any advertisement published in respect of a collective investment scheme shall— Advertising.

- (a) not be false, biased, misleading or deceptive;
- (b) be clearly and fairly presented, so as to give a balanced picture of the scheme, including any reasonably perceivable risks associated therewith; and
- (c) contain information that is consistent with the scheme's offering document.

SECOND SCHEDULE, *cont'd.*

Dealing in respect of scheme's securities.

28.—(1) Securities in a collective investment scheme shall not be sold by any person unless that person is a dealer licensed under the Act.

(2) This regulation applies to all collective investment schemes required to be registered under these regulations, as well as to schemes exempt from registration by virtue of regulation 3.

PART V. *General Obligations Applicable to Local Collective Investment Schemes*

Application.

29. Except where otherwise expressly provided, this Part applies to local collective investment schemes, other than schemes exempt from registration by virtue of regulation 3.

Returns to Commission.

30.—(1) A collective investment scheme shall file with the Commission the scheme's—

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(a) annual audited financial statements, prepared in accordance with generally accepted accounting principles, together with the auditor's report thereon, within ninety days after the end of the scheme's financial year;

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(b) quarterly financial statements, prepared in accordance with generally accepted accounting principles, within forty-five days after the end of the relevant quarter;

(c) quarterly portfolio statements and the manager's calculations of the net asset value of the scheme, within forty-five days after the end of the calendar quarter; and

(d) any other information specified by the Commission for the purpose of assessing the scheme's compliance with these Regulations.

(2) A collective investment scheme shall give to the Commission—

(a) notice of any regulatory or criminal action, under any law, taken against the scheme, or any of the providers of services to the scheme, forthwith upon becoming aware of the action;

(b) prior notice of any change or proposed change of any of the providers of services to the scheme; and

(c) notice of any other matter specified by the Commission for the purpose of assessing the scheme's compliance with these regulations.

(3) A provider of services in respect of a collective investment scheme shall give to the Commission—

SECOND SCHEDULE, *cont'd.*

- (a) notice of any regulatory, or criminal, action taken against it under any law;
- (b) notice of any proposed delegation of the provider's functions; and
- (c) any other information as may be specified by the Commission for the purpose of assessing the provider's fitness to act in the capacity of a provider of services to the scheme.

(4) A notice required to be given under any provision of this regulation shall contain sufficient particulars about the matters concerned, and shall be in such form as may be specified by the Commission.

31.—(1) The manager of a collective investment scheme shall ensure that the information mentioned in this regulation is disclosed in the manner required by this regulation.

Public disclosure obligations.

(2) There shall be disclosed—

- (a) on a website maintained in respect of the collective investment scheme, the cut-off time for, and the frequency of, the pricing of the scheme's securities;
- (b) at least once per week in a daily newspaper in circulation in Jamaica, and on a website maintained in respect of the scheme, the current net asset value of the scheme and the return on the investments in the scheme, including information as to—
 - (i) the return on investment for a rolling fifty-two week period; and
 - (ii) the year-to-date return on investment for the current calendar year;
- (c) by publication in accordance with this regulation—
 - (i) the scheme's unaudited quarterly financial statements, prepared in accordance with generally accepted accounting principles, no later than forty-five days after the end of the relevant quarter;
 - (ii) the scheme's audited financial statements prepared in accordance with generally accepted accounting principles, no later than ninety days after the end of the scheme's financial year;
 - (iii) any proposed change of any provider of services in respect of the scheme, not less than thirty days before the change becomes effective; and

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SECOND SCHEDULE, *cont'd.*

- (iv) any change that affects, or could reasonably be expected to affect, any right or interest of the scheme's participants, not less than thirty days before the change becomes effective.

(3) For the purposes of paragraph (2)(c), publication is in accordance with this regulation if—

- (a) posted on a website maintained in respect of the collective investment scheme concerned;
- (b) sent by post or e-mail to the scheme's participants; or
- (c) published in a daily newspaper in circulation in Jamaica.

(4) A paper copy of all financial statements required to be disclosed under paragraph (2)(c)(i) or (ii) shall be made available by the collective investment scheme concerned, free of cost to any investor in scheme, upon the request of the investor.

(5) For the purposes of this regulation, where no website is maintained in respect of a collective investment scheme, publication on a website maintained in respect of the scheme's manager shall be sufficient publication for the purposes of any reference to publication on a website maintained in respect of the scheme.

Disclosure of
material
changes.
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32.—(1) Subject to paragraph (2), where a material change occurs, or is proposed to be made, in relation to the affairs of a local collective investment scheme, or a scheme registered under Part III, trustee, board of directors, partners or the manager shall—

- (a) ensure that, forthwith, a statement made by an officer of the scheme authorized for that purpose, disclosing the nature and substance of the change, is filed with the Commission and published in a daily newspaper in circulation in Jamaica; and
- (b) file with the Commission a report of the change, in such form as may be specified by the Commission, as soon as practicable but in any event no later than ten days after the trustee, board of directors, partners or manager (as the case may require) becomes aware of the change or proposed change.

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(2) The manager of a collective investment scheme may, instead of acting under paragraph (1) in any case where—

- (a) in the opinion of the manager (as the case may require), the disclosure required by paragraph (1) would be detrimental to the interests of the investors in the scheme; or

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SECOND SCHEDULE, *cont'd.*

(b) the change in question consists of a decision or action taken by an authorized officer of the scheme who—

- (i) believes that confirmation, by the manager of the scheme, of the decision or action is likely; and
- (ii) has no reason to believe that persons with knowledge of the change have made use of that knowledge in purchasing or selling the securities of the scheme,

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forthwith file with the Commission, under confidential cover, the report required under paragraph (1)(b), together with the reasons for acting under this paragraph.

(3) Within ten days after a report is filed under paragraph (2), the manager of the scheme concerned shall notify the Commission in writing if the manager (as the case may require) believes that the change should continue to be kept confidential, and—

- (a) such a notice shall be valid to preserve the confidentiality of the change for a period of ten days after the expiration of the initial ten day period from the date of the filing of the report;
- (b) upon the expiration of the period mentioned in sub-paragraph (a), the manager shall act in accordance with paragraph (1) unless another notice in accordance with this paragraph is given to the Commission before the expiration of the previous notice or, in the case of a proposed change mentioned in paragraph (1)(b), the proposed change is rejected by the manager.

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(4) Successive notices may be given for the purposes of paragraph (3)(b).

33.—(1) A collective investment scheme shall comply with the following investment restrictions—

Investments.

- (a) no more than fifteen percent of the scheme's net assets may be invested in illiquid assets;
- (b) no more than ten percent of the scheme's net assets shall consist of securities from one issuer, except in the case of—
 - (i) securities issued by any government where those securities have received an investment grade credit rating; and
 - (ii) securities issued or guaranteed by the Government of Jamaica and the Bank of Jamaica.
- (c) any other investment restrictions specified by the Commission.

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SECOND SCHEDULE, *cont'd.*

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(2) The Commission may, upon the application of the manager of a collective investment scheme, permit the scheme to operate as a non-diversified scheme, and in that case shall direct that the scheme describe itself as a non-diversified scheme.

(3) The manager of a collective investment scheme shall act promptly to rectify any breach of paragraph (1).

(4) In this regulation, “illiquid asset” means—

- (a) a portfolio asset that cannot be readily disposed of through market facilities on which public quotations in common use are widely available at an amount that at least approximates the amount at which the portfolio asset is valued in calculating the net asset value per security of the collective investment scheme concerned; or
- (b) a security, held by a collective investment scheme, the resale of which is prohibited by a representation, undertaking or agreement, that is binding on the scheme.

Borrowing.
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34. A collective investment scheme shall not borrow money or pledge the scheme’s assets, except for a period not exceeding twelve months, and in that event the outstanding amount of borrowing shall not at any time exceed ten percent of the aggregate market value of the scheme’s assets.

Valuation of
assets.

35.—(1) The valuation of a collective investment scheme’s assets and the pricing of the scheme’s securities shall be carried out by the manager in accordance with the scheme’s constitutional documents.

(2) The calculation of the scheme’s net asset value shall be carried out—

- (a) in accordance with paragraph (5) and generally accepted accounting principles; and
- (b) at such intervals as may be specified in the scheme’s constitutional documents, but in any event no less than weekly.

(3) The manager of a collective investment scheme shall keep records of the valuations and calculations required under these Regulations, and those valuations and calculations shall be verified by the scheme’s auditors at least once every calendar year.

(4) Where any error occurs in the pricing of a collective investment scheme’s securities, the manager shall forthwith—

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SECOND SCHEDULE, *cont'd.*

- (a) cause the error to be corrected and take such other measures as are necessary to avoid further error; and
- (b) if the error in price is of a margin of point five percent or more of the scheme's net asset value per security—
 - (i) inform the custodian and the Commission; and
 - (ii) ensure that compensation is paid to the scheme's participants in the amount and manner agreed between the Commission, the manager and the custodian.

(5) The net asset value of a collective investment scheme shall be calculated to at least three decimal places, in accordance with the following criteria—

- (a) portfolio securities for which market quotations are readily available shall be valued at current market value;
- (b) portfolio securities for which market quotations are not readily available are to be valued at fair market value in accordance with generally accepted accounting principles;
- (c) where a collective investment scheme has acquired or disposed of assets, the change in the value of the assets shall be reflected in the net asset value of the scheme no later than the first calculation of the net asset value made following the date on which the transaction becomes binding;
- (d) any change in the number of outstanding securities of a collective investment scheme resulting from purchases, distributions or redemptions, shall be reflected no later than in the first calculation of the net asset value made following the change;
- (e) the calculation of the net asset value shall take into account—
 - (i) expenses (including investment advisory fees) as at the date of the calculation;
 - (ii) all dividends (whether received or receivable) declared since the last date of calculation;
 - (iii) interest income and other income as at the date of the calculation,

but expenses and interest income need not to be taken into account if, on a net basis, they total less than one percent of the outstanding securities on the date of the calculation.

Suspension
of sales,
redemptions.

36.—(1) A collective investment scheme may suspend dealings in its securities only in exceptional circumstances, and having regard to the interests of the scheme's investors.

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(2) Where a collective investment scheme suspends dealings in its securities, the manager shall forthwith—

- (a) notify the Commission;
- (b) cause a notice of the suspension to be published in every medium in which the scheme's prices are normally published;
- (c) keep the Commission and investors informed throughout the period of suspension; and
- (d) inform the Commission and investors of the decision to resume normal operations.

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(3) The Commission may, where it considers necessary in the public interest—

- (a) order redemptions of securities in a collective investment scheme to cease for such period of time as may be specified by the Commission; or
- (b) order a collective investment scheme which has suspended or ceased the redemption of its securities to resume redemption.

Approval of
significant
changes.

37.—(1) A collective investment scheme shall not implement any of the following changes in respect of the scheme without approval of the Commission—

- (a) any changes to its constitutional documents;
- (b) any change of its manager or any provider of services in respect of the scheme, or as to the scheme's regulatory status or controlling shareholder;
- (c) any changes in the scheme's investment objectives, policies or restrictions (including the purpose or extent of use of derivatives), fee structure or dealing and pricing arrangements; or
- (d) any other changes which may materially prejudice the rights or interests of participants in the scheme.

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(2) The collective investment scheme concerned shall revise its offering document to reflect any proposed change mentioned in paragraph (1) and shall give a copy of the revised document to the Commission prior to implementing the change, for the purpose of obtaining approval therefor.

(3) Nothing in paragraph (1) or (2) shall apply to a change in any fee or charge not exceeding the maximum level permitted by the scheme's

SECOND SCHEDULE, *cont'd.*

offering document in respect of that fee or charge, but at least one month's prior notice of the change shall be given to the scheme's investors.

38.—(1) Except as provided in paragraph (2), every alteration to any of a collective investment scheme's constitutional documents, other than the offering document, shall be made—

Amendments to a scheme's constitutional documents.

- (a) by a special or extraordinary resolution (as the case may require) of the scheme's investors; and
- (b) with the written approval of the Commission.

(2) The constitutional documents of a collective investment scheme, other than the offering document, may be altered as agreed between the trustee, board of directors or partners of the scheme, the manager and the custodian, without consulting the scheme's investors if the custodian certifies in writing that in the custodian's opinion the alteration—

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- (a) is necessary for compliance with the requirements of any law;
- (b) is necessary to correct a manifest error; or
- (c) does not—
 - (i) materially prejudice the rights or interests of the scheme's investors;
 - (ii) to any material extent release the manager, any provider of services, or any other person, from liability to participants in the scheme; or
 - (iii) increase any fees or charges payable out of the assets of the scheme.

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39. All transactions carried out by or on behalf of a local collective investment scheme or a scheme registered under Part III shall be conducted at fair market value in relation to the other transacting party, and any transaction between the scheme on the one part and its manager, any provider of services in relation to the scheme, or any associated person, on the other part, shall be disclosed in the scheme's annual report or annual financial statements.

Transactions with related parties.
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SECOND SCHEDULE, *cont'd.*PART VI. *General*

- Application. 40. This Part applies to all local collective investment schemes and all schemes registered under Part III, but not to schemes exempt from registration under regulation 3.
- Issue of securities on payment. Books and records. 41. A collective investment scheme shall not issue a security unless the security is fully paid up.
- 42.—(1) A collective investment scheme shall keep such books of accounts and other records in respect of its operations—
- (a) as give a true and fair view of the scheme's affairs and financial position and the transactions conducted by it; and
 - (b) as may otherwise be specified by the Commission.
- L.N. 209/2015. (2) A manager of a collective investment scheme and every provider of services in respect thereof, shall keep such books of account and other records as—
- (a) detail all activities carried on by the manager or provider of services, as the case may be, in relation to the scheme;
 - (b) as may otherwise be specified by the Commission.
- (3) All books and records required to be kept under these Regulations—
- (a) shall, in respect of books and records containing any information relating to a period not older in time than two years, be kept in a manner that ensures that they can be made readily available to the Commission on request;
 - (b) shall, in respect of books and records not falling within paragraph (a), be kept in a manner that ensures that they can be made available to the Commission upon the provision of reasonable notice;
 - (c) shall be disclosed to the Commission as required under these Regulations, in a form that is capable of being read by the Commission; and
 - (d) shall be kept for a minimum of seven years after the latest date to which the information contained in them relates, or such longer period as may be required for the purposes of any other law.
- Inspection of accounts and records, etc. 43.—(1) The Commission may, at any time, conduct an on-site or off-site inspection of any aspect of the operations of a collective investment scheme, or of a provider of services to the scheme, for the purpose of—

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SECOND SCHEDULE, *cont'd.*

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- (a) assessing the compliance of the scheme or provider, with the Act or these Regulations;
- (b) ensuring that the books of account and other records of the scheme, or provider, are being properly maintained;
- (c) reviewing the role of the scheme, the provider, or the scheme's manager, in take-over transactions;
- (d) investigating complaints received from participants in the scheme, another collective investment scheme, or any other person, on any matter relating to the activities of the scheme, the provider or the scheme's manager;
- (e) ensuring the due administration of the Act or any regulations made thereunder;
- (f) providing assistance in relation to any investigation being carried out by a regulatory authority for the securities sector in another jurisdiction; or
- (g) any other matter reasonably related to the functions of the Commission.

(2) The Commission may, in writing, assign an authorized officer to conduct any inspection under this regulation.

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(3) Where an inspection is being carried out under this regulation, every manager, director, partner, officer, employee, or provider of services, in respect of the scheme, and any other person concerned in the operation of the scheme, shall—

- (a) produce such documents or other information in the person's custody or control, as the Commission may require, within such time as the Commission may direct;
- (b) allow the Commission access, during working hours, to the premises on which any operations of the scheme, or the provider of services, concerned are being carried on;
- (c) provide reasonable facilities for the inspection of the books or other records concerned (including access to any records stored on a computer system or electronic storage medium) and permit such copies to be made as the Commission considers necessary; and
- (d) provide such other assistance as may be reasonably required by the Commission in connection with the inspection.

(4) The Commission shall, within a reasonable time after the conclusion of an inspection carried out under this regulation, communicate

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SECOND SCHEDULE, *cont'd.*L.N.
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its findings thereon to the manager or provider of services (as the case may be) concerned, and afford the manager or provider an opportunity to make representations in response thereto before the Commission takes any action on the findings.

(5) The Commission may make a recording of any statement made by any person mentioned in subsection (3) during any inspection carried out under this regulation.

Expanded
audit.

44.—(1) The Commission may require the auditor of a collective investment scheme to—

(a) report to the Commission on the conduct of any audit, carried out by the auditor, in respect of the scheme;

(b) enlarge the scope of any audit carried out by the auditor in respect of the scheme, or perform such other examination in relation thereto as the Commission thinks fit, and report thereon to the Commission,

or may appoint another auditor in respect of any matter referred to in paragraph (a) or (b).

(2) The collective investment scheme concerned shall bear the cost of any audit or examination carried out under this regulation.

(3) An auditor who refuses to comply with a requirement of the Commission made under paragraph (1) commits an offence.

(4) An auditor who provides a report to the Commission pursuant to this regulation or any other requirement of these Regulations or the Act, shall not in respect thereof be taken to have breached any duty of confidentiality imposed by any law.

Actual or
apprehended
corporate
insolvency.
Termination.
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45. The powers of the Commission under section 8 of the Financial Services Commission Act shall apply, with any necessary modifications, to a collective investment scheme which is incorporated as a company.

46.—(1) Where the trustee, board of directors or partners of a collective investment scheme intends to terminate the operations of that scheme in Jamaica, the trustee, board of directors or partners shall give to the Commission—

(a) written notice of the proposed date of the termination, not less than thirty days prior to that date; and

(b) within fourteen days after the conclusion of the termination, such evidence of the termination as the Commission may reasonably require, together with a statement in accordance with paragraph (2).

(2) The custodian of a collective investment scheme that is terminated shall prepare and sign—

SECOND SCHEDULE, *cont'd.*

- (a) a statement to the effect that all assets of the scheme as at the date of the termination have been realized and the proceeds thereof (net of outstanding liabilities) have been distributed to the scheme's participants in the same proportion as the participant's holdings of securities in the scheme; and
- (b) where the liabilities of the scheme have not been settled but have been accrued to the scheme and excluded from distribution to the scheme's participants, a statement of that fact, including—
- (i) a description of the outstanding liabilities; and
 - (ii) where the amount accrued is an estimate, a statement of how the custodian intends to settle the balance between that estimate and the final liability amount.

47.—(1) Subject to paragraph (2), the Commission may publish notice of any penalty or regulatory action, imposed under the Act or these Regulations, in respect of a collective investment scheme or any person in connection with the operations of the scheme. Publication.

(2) For the purposes of paragraph (1), notice of the suspension or cancellation of the registration of a collective investment scheme under these Regulations may be published on the Commission's website, in a local newspaper, or otherwise as the Commission thinks expedient.

48. Any person aggrieved by any decision or action taken by the Commission under these Regulations may appeal to the Appeal Tribunal. Right of appeal.

49. Where the registration of a collective investment scheme is cancelled by the Commission, the collective investment scheme concerned shall forthwith return the certificate of registration to the Commission. Return of registration certificate.

50. Where the registration of a collective investment scheme under these Regulations is cancelled by the Commission, the trustee, board of directors or partners of the scheme may re-apply for the registration after the expiration of twelve months after the date of the cancellation. Re-registration.
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51. A person who contravenes any provision of these Regulations for which no specific penalty has been provided, commits an offence and shall be liable, on summary conviction before a Resident Magistrate, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years, or both such fine and imprisonment. General penalty.

52. The Commission may exempt any person from any requirement of these Regulations where it considers that the exemption is necessary having regard to the nature of the activity or transaction concerned. Exemptions.

*SECURITIES*SECOND SCHEDULE, *cont'd.*

Extensions of time. **53.** Where a provision of these Regulations provides for anything to be done within a stipulated period and no provision is therein provided for extension of that period, the Commission may in any case where it thinks fit, extend the time allowed for doing the thing.

Recognition of foreign jurisdiction. **54.** The Commission may specify one or more recognized foreign jurisdictions for the purposes of these Regulations, if the Commission is of the opinion that the laws and regulatory oversight with respect to collective investment schemes in those jurisdictions are—

- (a) sufficient to ensure investor protection and market integrity; and
- (b) of a standard at least equal to those in Jamaica.

SECOND SCHEDULE, *cont'd.*

(SCHEDULES TO THE SECURITIES (COLLECTIVE INVESTMENT SCHEME) REGULATIONS, 2013)

FIRST SCHEDULE (Regulations 4(2),5(3), 6(1), 17(2), 18(3), 19(1) and 25(4)) 39/2013 S. 38.

	<i>Fee</i>		
1. Application fee for local collective investment scheme (regulation 4(2)(b))	US\$1,000.00
2. Registration fee for local collective investment scheme (regulation 5(3))	US\$5,000.00
3. Renewal fee for local collective investment scheme (regulation 6(1))	As.deter- mined by the securities dealer (fund manager) and payable from funds under the management of the securities dealer (fund manager).
4. Application fee for regulated overseas collective investment scheme (regulation 17(2))	US\$1,000.00
5. Registration fee for regulated overseas investment scheme (regulation 18(3))	US\$5,000.00
6. Renewal fee for regulated overseas investment scheme (regulation 19(1))	US\$5,000.00

Note: Fees expressed in the currency of the United States of America may be paid in that currency or in the Jamaican currency equivalent at the prevailing rate of exchange at the date of payment.

SECOND SCHEDULE (Regulation 7(1))

Matters to be contained in the Trust Document.

The trust document shall contain provisions—

SECURITIES

SECOND SCHEDULE, *cont'd.*

- (a) determining the manner in which the net asset value of the securities and the yield from the securities are to be calculated, subject to any methods of calculation thereof specified by the Commission, and for entitling the holder of any securities to require the manager to purchase them at a price calculated accordingly;
- (b) regulating the mode of execution and the issue of certificates (if any) evidencing purchases of securities of the scheme and to ensure, to the satisfaction of the trustee, that a security will not issue unless the scheme has received full payment for that for that security;
- (c) ensuring that all assets of the scheme are vested in the Trustee;
- (d) prohibiting or restricting the issue by or on behalf of the manager of advertisements, offering documents, or other documents containing any statement with respect to the sale price of securities, or the payments or other benefits received or likely to be received by investors, or containing any invitation to purchase securities, unless the document in question also contains a statement of the yield from the securities;
- (e) ensuring that any advertisement, offering document or other document containing any statement with respect to the sale price of securities or the yield therefrom, or containing any invitation to purchase securities, shall not be issued by or on behalf of the manager until the trustee has had a reasonable opportunity of considering the document, and shall not be issued if within a reasonable time after the document first comes to the trustee, the trustee notifies the manager in writing that the trustee does not approve of the terms of the document;
- (f) establishing a fund to be applied in offsetting the expenses of the administration of the trust and for regulating the application of that fund;
- (g) requiring the audit of accounts relating to the trust, and the circulation of the accounts and the auditor's report thereon, to the scheme's investors (including the accounts kept, in relation to the trust, by the manager and statements of the manager's remuneration in connection therewith);
- (h) requiring the manager, subject to any provisions as to appeal contained in the deed, to retire from the trust if the trustee certifies that it is in the interests of the beneficiaries of the trust;

SECOND SCHEDULE, *cont'd.*

- (i) governing the realization and distribution of property subject to the trust, and the termination thereof in case the trust ceases to be registered under these Regulations.
- (j) governing the kinds of investment permissible for the scheme and the maximum amount, if any, to be invested in respect of that investment, subject to the diversification limits specified by the Commission;
- (k) setting out the conditions and procedures to be followed with respect to the removal, and the replacement (whether due to removal or retirement), of the manager or trustee, including provision—
 - (i) to ensure the protection of the interests of the investors; and
 - (ii) for the manager or trustee to be removed, by notice in writing, if the manager or trustee (as the case may be) goes into liquidation;
- (l) governing the management and administration of the scheme and the extent to which any of the rights, privileges, powers, duties, trusts and discretions vested in the manager may be delegated to any person approved by the trustee;
- (m) requiring the duties and responsibilities of the trustee to include—
 - (i) ensuring the efficient management of the scheme through—
 - (A) compliance with the terms of the trust document;
 - (B) the establishment and maintenance of suitable structures and procedures to ensure the proper performance of the functions of the trustee, as required by the trust document and the laws relating to trusts;
 - (ii) using the trustee's best efforts to avoid conflicts of interest, and disclosing any such conflict, or potential conflict—
 - (A) in any of the scheme's offering documents;

SECURITIES

SECOND SCHEDULE, *cont'd.*

(B) in any case where any such offering document has already been distributed, in such manner as is approved by the Commission;

(n) prohibiting the trustee from—

(i) benefitting from its position as trustee, except for fees paid for its services as trustee; or

(ii) acting in a manner that is not impartial or that is not in the best interests of the scheme's investors, including any of the following actions—

(A) selling assets to, or purchasing assets from, the trust on the trustee's own behalf or entering into any securities lending transaction, repurchase transaction, or reverse repurchase transaction, on the trustee's own behalf, other than as permitted in circumstances specified in the trust document and at fair market value;

(B) selling any of the scheme's assets to, or purchasing any of the scheme's assets from, any person who is an associated person in relation to the trustee, or entering into any securities lending transaction, repurchase transaction, or reverse repurchase transaction, with any such person unless for fair market value; or

(C) any other action specified by the Commission;

(o) the name and identification of the scheme;

(p) the date of registration and other particulars, including the type of fund (for example, whether a money market fund);

(q) the name and address of the manager;

(r) the name and address of the trustee;

(s) the practice to be observed in the buying and selling of units;

(t) the method of determining prices;

(u) the extent to which the fund manager may borrow and the limits placed on such borrowing;

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SECOND SCHEDULE, *cont'd.*

- (v) the method of termination of the trust and of the trustee;
- (w) the circumstances under which the trust can be terminated;
- (x) the investment objectives of the fund;
- (y) the types of securities in which the fund manager will make investments should be clearly stated; and
- (z) where the trust deed can be inspected.

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THIRD SCHEDULE (Regulation 25)

Matters to be contained in an Offering Document

The manager of a collective investment scheme shall disclose in the offering document all information that is reasonably necessary for a prospective investor to make an informed judgement about the scheme. That information includes the matters set out below.

L.N.
209/2015.*Constitution of the scheme and characteristics of the securities*

1. The name, registered address, organizational form (trust, partnership or company), and the place and date of creation of the scheme, with an indication of the scheme's duration (if limited).
2. If the scheme or its securities are registered under the laws of any other jurisdiction, details of such registration.
3. The name, class (or classes) of the securities offered and a description of the characteristics of each class, including whether they carry voting rights and the currency in which they are denominated.

Investment objectives and restrictions

4. Details of the scheme's investment objectives and policy, including a summary of any applicable investment and borrowing restriction, and the maximum term of any borrowing.

L.N.
209/2015.*Risks and suitability*

5. A description of—
 - (a) the risk factors and other investment considerations that an investor should take into account when investing in collective investment schemes generally; and
 - (b) any particular material risks that the scheme concerned presents.

SECURITIES

THIRD SCHEDULE, *cont'd.*

6. A description of—

- (a) the characteristics of the investor for whom the collective investment scheme concerned—
 - (i) may be an appropriate investment; and
 - (ii) may not be an appropriate investment;
- (b) the portfolio for which the fund is suited or for which the collective investment scheme should not be used.

7. The level of risk tolerance that would be appropriate for investment in the collective investment scheme concerned.

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Managers and providers of services

8. The name, registered address, the place, date and nature of establishment, formation or incorporation (as the case may require), and the principal business activity of each of the following in relation to the collective investment scheme concerned—

- (a) the directors and officers of the scheme;
- (b) the names of the directors and officers of the manager;
- (c) the names of the directors and officers of the trustee;
- (d) the names of the directors and officers of the custodian;
- (e) the investment adviser;
- (f) the registered agent or principal distribution company in Jamaica;
- (g) the auditors; and
- (h) the registrar and the transfer agent.

9. If any of the entities mentioned in paragraph 8(a)-(h) is—

- (a) registered, licensed or otherwise authorized to carry on business as a provider of any financial services in any other jurisdiction, the details of such registration, licence or other authorization;
- (b) a subsidiary, the name and jurisdiction of incorporation and address of the registered office of its ultimate holding company;

THIRD SCHEDULE, *cont'd.*

- (c) permitted to delegate any of its functions—
- (i) a description of the functions that may be delegated and any conditions that may apply; and
 - (ii) if any functions have been delegated, the name and registered address, the place, date and nature of establishment, formation or incorporation (as the case may be), and the principal business activity, of the delegate, together with a description of the functions delegated.

Application and redemption procedures

10. The names of the local daily newspapers, and the website address (if any), where the prices of the scheme's securities will be published.

11. The minimum initial investment and minimum subsequent holding (if any).

12. The procedure for subscribing for, redeeming, and (if applicable) converting, securities, including relevant settlement dates for subscriptions and redemptions.

13. If securities may be acquired under an installment plan, the terms of the plan, the minimum investment and the method of calculating the installments.

14. A summary of the circumstances in which dealing in the scheme's securities may be deferred or suspended.

15. A statement that no money should be paid to any person in Jamaica to acquire the securities unless that person is licensed or registered as a dealer under the Securities Act.

Valuation

16. A statement as to whether or not the investment portfolio is being carried out at fair value and, if not, the method of valuation.

17. Valuation details, including—

- (a) the frequency of valuation;
- (b) dealing days;
- (c) the time of day that all the scheme's assets will be regularly valued for the purpose of determining the prices at which the scheme's securities may be issued and redeemed by the manager.

*SECURITIES*THIRD SCHEDULE, *cont'd.**Distribution policy and history*

18. The distribution policy of the collective investment scheme and the approximate dates on which dividends or other distributions (if any) will be paid (if applicable).

19. The time, aggregate amount, and rate per security, of each distribution (if any) which has been paid to investors during the three immediately prior fiscal years of operation of the scheme.

Fees and charges

20. The basis of calculation of all costs and charges payable from the scheme's property, with percentages expressed on a per annum basis; the aggregate level of fees for investment management or advisory functions; and the fees payable by investors directly, including the amount and basis of calculation of those fees; and all charges levied on the purchase, redemption and conversion (if applicable) of the scheme's securities.

21. The amount and basis of calculation of all fees and charges payable by the scheme, including management fees, custodian fees and start-up expenses.

22. The notice period applicable for fee increases, being a period of not less than one month prior to implementation of the increase.

23. The fees payable to any dealer for the sale of the scheme's securities to investors; or, in the case of fees and charges not determinable in advance, the basis of calculation, or the estimated range, of the fees and charges.

Taxation

24. Details of the taxes levied on the scheme's income and capital, including any tax deducted from distributions to investors.

Reports and accounts

25. The date of the scheme's financial year end.

26. Particulars of what reports will be published, how they will be made available to investors, and when.

Warnings

27. The following statement shall appear on the cover page of each of the scheme's offering documents: "The Financial Services Commission does not pass upon the accuracy or adequacy of the information contained

THIRD SCHEDULE, *cont'd.*

in this offering document. Any representation to the contrary will be deemed by the Commission to be a false and misleading statement”.

28. The following statements shall be prominently displayed in each offering document—

- (a) “Important – if you are in any doubt about the contents of this document, you should seek independent financial advice.”;
- (b) “Collective investment schemes own different types of investments, depending on their investment objectives. The value of these investments may change from day to day, reflecting changes in interest rates, economic conditions and company news. As a result of these changes, the value of the fund’s securities may go up or down and the value of your investment in the fund, when you redeem it, may be more or less than when you purchased it. The full amount of your investment is not guaranteed.”;
- (c) “Past performance of the collective investment scheme should not be taken as an indication of future performance.”.

29. Each offering document shall also state that other important information is provided in the financial statements and other disclosure documents of the scheme, and describe how that information may be obtained (including, as applicable, the telephone number, e-mail address, and postal address) of the entity from which the information is available.

General information

30. A list of the constitutional documents of the scheme, giving the address in Jamaica at which those documents, any amending documents, and the most recent annual and interim reports, may be inspected and copies obtained.

31. The date of publication of the scheme’s offering documents and the date after which each offering document is no longer effective.

32. A statement—

- (a) that the manager of the scheme accepts full responsibility for the accuracy of the information contained in the scheme’s offering documents; and
- (b) confirming that, having made all reasonable enquiries, there are, to the best of the knowledge and belief of the manager, no other facts the omission of which would make any information or statement in an offering document misleading.

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THIRD SCHEDULE, *cont'd.*

33. The website address, if available, where the scheme publishes its offering documents, circulars, notices, announcements, financial reports and the latest available offer and redemption prices or net asset value.

34. The nature of any conflict of interest relating to the scheme and the manner in which the conflict is to be treated.

Termination of the scheme

35. A summary of the circumstances in which the scheme can be terminated and the rights of holders in that event.

Requirements regarding the issuing transferring and recording of units.
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36. The Circular shall contain—

- (a) the steps for issuing a certificate or contract note;
- (b) the steps for transfer of units.

Disclosure of securities and investments of the fund.
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37.—(1) The unit holder shall have access to the list of the investments in the fund.

(2) The list of investments shall be outlined in the audited financial statement of the fund.