

Insertion of
New Second
Schedule in
principal Act.

38. The principal Act is amended next after the First Schedule, as re-numbered re-numbering the Schedule as the First Schedule and inserting the following as the Second Schedule—

“ SECOND SCHEDULE (Section 76)

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.

Interpretation. 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 operator**, manager, or promoter, of a **collective investment scheme**;
- (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 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;
- (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** or, in the case of a scheme established as a trust, the trustee;

“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 appointed to manage the scheme**, as evidenced in a contract in writing (hereinafter called the “management contract”) between the operator and that person;

“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—

- (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;

“operator”, in relation to a collective investment scheme, means—

- (a) where the scheme is **a trust**, the **trustee**;
- (b) where the scheme is a **partnership**, the **managing partner**;

- (c) where the scheme is a **company**, the board of **directors** of the company;

“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;

“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 operator of the scheme is established, formed or incorporated (as the case may be);

“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
- (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).

(2) For the purposes of these Regulations, a duty on the operator of a collective investment scheme to ascertain whether a person is an accredited investor is discharged if, at the time in question, the operator 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;
- (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.

(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.

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;
 - (ii) personally involved in the business of the scheme and is an officer of a provider of services to the scheme; or
 - (iii) an associated person in relation to the operator 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.

PART II. *Registration and Constitution of Local Collective Investment Schemes*

4.—(1) An application for the registration of a local collective investment scheme under these Regulations may be made by the scheme’s operator or manager. Application for registration.

(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;
- (ii) a certificate, signed by the chief officer of the scheme's operator or manager, stating that the scheme complies with the requirements for registration set out in regulation 5;
- (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 operator and the manager; and

- (c) any other information which the Commission may reasonably require in order to assess the application.

(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.

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.

Grant of application for registration.

(2) The requirements mentioned in paragraph (1) are that—

- (a) the operator of the scheme is a trust, partnership or company, established, formed or incorporated (as the case may require) under the laws of Jamaica;
- (b) 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;
- (c) the operator 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 operator and the manager of the scheme;
- (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;
- (f) the operator, the responsible officer, and every provider of services, in respect of the scheme, are fit and proper persons;
- (g) the disclosure documents, marketing materials and investment agreements of the scheme are acceptable to the Commission;
- (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;
- (i) the grant of the application is not contrary to the public interest.

First Schedule (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.

(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 operator 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).

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.

(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 operator of the scheme written notice of that intention, together with the reasons therefor, and an opportunity to be heard in response thereto.

Schemes in
the form of a
trust.

7.—(1) Where a collective investment scheme is established as a trust—

Second
Schedule.

- (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.

(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 Act, as a central securities depository, securities dealer or investment adviser; or
 - (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;
- (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 safekeeping 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 trustee.

(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 trustee.

(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) 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.

The manager.

8.—(1) The operator of a collective investment scheme, other than a scheme falling within regulation 9, shall appoint, in respect of the scheme, a manager who meets the requirements set out in paragraph (2), and the terms and conditions of the appointment shall be set out in the management contract, a copy of which shall be—

- (a) filed with the Commission as soon as practicable after the contract is executed; and
- (b) made available by the operator of the scheme, at all reasonable times, for inspection by the scheme's investors.

(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 members of the public and the scheme's investors, at 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;
- (h) carrying out the instructions of the scheme's operator, as regards investments, unless those instructions conflict with the scheme's constitutional documents; and
- (i) 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.

(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 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 operator of a collective investment scheme shall terminate the appointment, as manager, of any company if—

- (a) the company becomes insolvent;
- (b) the company no longer meets any one or more of the requirements set out in paragraph (2); or
- (c) in the opinion of the operator, the termination is in the best interests of the investors.

(9) Where the appointment of a manager is terminated, the operator of the scheme shall promptly give—

- (a) to the Commission and to the scheme's investors, written notice of the termination together with the name of, and such other particulars as may be relevant as to, the company proposed to be appointed as the new manager; and
- (b) to the Commission, a copy of the management contract as required under paragraph (1).

(10) Where the Commission becomes aware that the appointment of the manager of a scheme 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 by the scheme's operator in accordance with this regulation.

(11) A management contract may permit the manager to delegate such of its functions as are specified for that purpose to another company which meets the requirements set out in paragraph (2), but—

- (a) such delegation shall not affect the manager's obligation to ensure that the responsibilities under paragraph (3), and under the management contract, 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) written notice of the delegation shall be given by the manager to the scheme's investors before the delegation takes effect.

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
 - (ii) for the remuneration of those officers to be fixed at a general meeting of the investors;
- (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.

The
custodian.

10.—(1) The operator of a collective investment scheme, other than a scheme established as a trust, shall appoint a custodian that meets the requirements of paragraph (2).

- (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
 - (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 provide the Commission with a declaration, in such form as may be specified by the Commission, submitting to the jurisdiction of the Commission under the Act and these regulations, and appoint an agent in respect of its activities in Jamaica; and
 - (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;
 - (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 operator in respect of investments of the scheme, unless those instructions conflict with the provisions of the scheme's constitutional documents or these Regulations;

(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;
- (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.

11.—(1) The custodian may appoint one or more sub-custodians to carry out any duties of the custodian— Sub-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 paragraph (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 operator 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 paragraph (4) are complied with.

Tenure of
custodian.

12.—(1) The appointment of a custodian may be terminated—

- (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 operator of a collective investment scheme shall terminate the appointment of any custodian appointed in respect of the scheme if—

- (a) the custodian becomes insolvent;
- (b) the custodian no longer meets any one or more of the requirements set out in regulation 10(2); or
- (c) in the opinion of the operator, any other circumstances exist which justify the termination.

(3) Where the appointment of a custodian is terminated, the operator 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—

- (a) the Commission; and
- (b) the scheme's investors, unless the termination is by resolution under paragraph (1).

Rules for the
holding of
assets.

13.—(1) Unless impracticable in the circumstances, the assets of a collective investment scheme shall be held in the name of the collective investment scheme, the custodian or sub-custodian.

(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 any 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.

(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.

14.—(1) The operator of a collective investment scheme shall— Auditors.

- (a) appoint a qualified auditor, being an auditor who is independent of the scheme, and of the scheme's operator 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 operator of the scheme.

(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.

(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.

(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 operator of a collective investment scheme registered under this Part shall keep a register of the investors in the scheme.

Register of investors.

(2) A register kept under paragraph (1) shall contain the information specified by the Commission and the operator of the scheme shall inform the Commission in writing of the address in Jamaica where the register is kept.

(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.

PART III. *Registration of Regulated Overseas Collective Investment Schemes*

17.—(1) The operator or manager of a regulated overseas collective investment scheme may apply for the registration of the scheme under this Part.

Application for registration.

(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—

(i) the application fee specified in the First Schedule;

First Schedule.

- (ii) a certificate, signed by the operator 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 where the operator of the scheme is established, formed or incorporated (as the case may be); and
 - (C) all documents that investors in Jamaica will be required to sign in order to participate in the scheme;
- (iv) evidence that the scheme is an issuer 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;
- (vii) the names of the dealers through whom the scheme will sell securities;
- (viii) a written profile of the directors and officers of the scheme's operator and the manager; and

- (ix) any other information which the Commission reasonably requires in order to assess the application.

(3) Where the Commission intends to deny an application under paragraph (1), the Commission shall give the operator of the scheme written notice of that intention, together with the reasons therefor, and an opportunity to be heard in response thereto.

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 the recognized foreign jurisdiction concerned;
- (b) the recognized foreign jurisdiction concerned requires the scheme to prepare, file with its regulator and publish—
 - (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 operator of the scheme, and every provider of services in respect of the scheme, are fit and proper persons;
- (f) the custodian is independent of the operator and the manager of the scheme;
- (g) the disclosure documents, marketing materials, and all documents to be signed by investors in Jamaica, are acceptable to the Commission; and
- (h) the grant of the application for registration is not contrary to the public interest.

(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.

- (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.

(6) Before taking any action under paragraph (5), the Commission shall give the operator 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).

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)—

Renewal of registration.

- (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 operator 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
- (e) any other information that the Commission may specify for the purpose of determining whether to grant the application for renewal.

First Schedule.

(2) Where the Commission intends to deny an application under paragraph (1), the Commission shall give the operator of the scheme written notice of that intention, together with the reasons therefor, and an opportunity to be heard in response thereto.

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 financial statements and the auditor's report thereon, within ninety days after the end of the scheme's financial year; and
 - (ii) the quarterly interim unaudited financial statements of the scheme, within forty-five days after the end of the relevant quarter;

- (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.

(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.

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—

Availability of disclosure documents to the public.

- (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 in respect of the scheme;
 - (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 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 members of the public 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 newspaper in circulation in Jamaica, post on a website maintained in respect of the scheme, or send by post or e-mail to the investors in the scheme—

- (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.

Translation of documents. 22.—(1) Any document or other information required to be filed with the Commission or made available to the public or the scheme's investors, by a scheme registered under this Part, shall be in the English language or accompanied by a certified translation thereof.

(2) In this regulation, "certified" means certified by a notary public.

PART IV. Disclosures, Offerings and Dealings

Application. 23. Except where otherwise expressly provided, this Part applies to—

- (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.

General standards of disclosure. 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—

- (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.

- (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 where 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—

- (a) the information specified in the Third Schedule; 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
- (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 operator of the scheme and the manager—

- (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—

- (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; or
 - (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—

- (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.

Advertising. 27. Any advertisement published in respect of a collective investment scheme shall—

- (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.

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.

30.—(1) A collective investment scheme shall file with the Commission the scheme's— Returns to
Commission.

- (a) annual 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;
- (b) quarterly financial statements, prepared in accordance with generally accepted accounting principles, within forty-five days after the end of the relevant calendar 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—

- (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.

Public
disclosure
obligations.

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.

(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
- (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 the 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.

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, the operator of the scheme 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 operator or manager (as the case may require) becomes aware of the change or proposed change.

(2) The operator or manager of a collective investment scheme may, instead of acting under paragraph (1) in any case where—

- (a) in the opinion of the operator or 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
- (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 operator 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,

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 operator or manager of the scheme concerned shall notify the Commission in writing if the operator or 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 or operator 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 operator.

(4) Successive notices may be given for the purposes of paragraph (3)(b).

33.—(1) A collective investment scheme shall comply with Investments. the following investment restrictions—

- (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 securities issued by any government where those securities have received an investment grade credit rating; and
- (c) any other investment restrictions specified by the Commission.

(2) The Commission may, upon the application of the operator or 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. 34. A collective investment scheme shall not borrow money or pledge the scheme's assets, except temporarily for the purpose of accommodating requests for redemption made by investors in the scheme, 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—

- (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 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.

(2) Where a collective investment scheme suspends dealings in its securities, the manager shall forthwith—

- (a) notify the Commission; and
- (b) cause a notice of the suspension to be published in every medium in which the scheme's prices are normally published, and thereafter cause such publication to be repeated at least once per month during the period of the suspension.

(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 the approval of the Commission—

- (a) any changes to its constitutional documents;
- (b) any change of its operator 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.

(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 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 operator 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—

- (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 operator, 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.

Transactions with related parties.

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 operator, any provider of services in relation to the scheme, or any associated person, on the other part—

- (a) may only be made after the written consent of the custodian is obtained; and
- (b) shall be disclosed in the scheme's annual report or annual financial statements.

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.

41. A collective investment scheme shall not issue a security unless the security is fully paid up.

Books and records.

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.

(2) An operator 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 the activities carried on by the operator 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.

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—

Inspection of accounts and records, etc.

- (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 operator, 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 operator;
- (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.

(3) Where an inspection is being carried out under this regulation, every operator, 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 its findings thereon to the operator or provider of services (as the case may be) concerned, and afford the operator 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.

44.—(1) The Commission may require the auditor of a collective investment scheme to— Expanded audit.

- (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.

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.

Termination.

46.—(1) Where the operator of a collective investment scheme intends to terminate the operations of that scheme in Jamaica, the operator 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—

- (a) a statement to the effect that all the 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 operator of the scheme may re-apply for registration after the expiration of twelve months after the date of the cancellation. Reregistration.

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.

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. Extensions of time.

- 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.
- Transitional. 55. A person who immediately before the date of commencement of these Regulations was lawfully operating a collective investment scheme (by whatever term described) may continue to operate that scheme without registration under these Regulations—
- (a) during the period of twelve months beginning from the commencement date; and
 - (b) if within that period application is made for registration under these Regulations, until that application is finally disposed of or withdrawn.
- Repeal of Securities (Mutual Funds) Regulations, 1999. 56. The Securities (Mutual Funds) Regulations, 1999, are hereby repealed.

FIRST SCHEDULE		Regulations 4(2), 5(3), 6(1), 17(2), 18(3), 19(1) and 25(4)	
<i>Fee</i>			
1.	Application fee for local collective investment schemes (regulation 4(2)(b))	...	US\$1,000.00
2.	Registration fee for local collective investment schemes (regulation 5(3))	...	US\$5,000.00
3.	Renewal fee for local collective investment scheme (regulation 6(1))	...	US\$5,000.00
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—

- (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 be issued unless the scheme has received full payment 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;
- (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;
 - (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; and
- (o) setting out the matters required by regulation 10(3) to be contained in a custodian agreement.

THIRD SCHEDULE

(Regulation 25)

Matters to be Contained in an Offering Document.

The operator 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.

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 restrictions.

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.

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.

Operators 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 officers of the scheme;

- (b) the manager and its officers;
- (c) the trustee;
- (d) 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 authorised 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;
- (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 instalment plan, the terms of the plan, the minimum investment and the method of calculating the instalments.

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.

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 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 operator and the manager of the scheme accept 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 operator and the manager, no other facts the omission of which would make any information or statement in an offering document misleading.

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.”.

- 39.—(1) The Financial Services Commission Act is amended—** **Amendments
to other
enactments.**
- (a) in section 15(1) by inserting immediately after the words “administration of this Act” the words “, or who at any time has had such a duty or has been so employed,”;

- (b) by deleting section 22 and substituting therefor the following—

“Protection of persons exercising functions of Commission.

22. In the absence of proof of wilful or reckless misconduct, on the part of the Commission, the Executive Director or any member or employee of the Commission, in the course of carrying out the provisions of this Act or any function or duty conferred on the Commission, or any officer of the Commission, by any other law, no liability is incurred by—

(a) the Commission, the Executive Director or any member or employee of the Commission; or

(b) any person specified in section 15(1).”;

- (c) in the Fourth Schedule by deleting all the words appearing under the heading “THE SECURITIES ACT” but before the heading “THE INSURANCE ACT” and substituting therefor the following—

“(1) Section 10(7)	Failure to return Certificate of Registration	... \$50,000.00
(2) Section 14(4)	Failure to maintain a record of securities	... \$500,000.00
(3) Section 15(4)	Failure to give notice of ceasing to be a dealer, etc.	... \$25,000.00
(4) Section 23(5)	Failure of Stock Exchange to comply with Commission’s directions	... \$200,000.00
(5) Section 39(1)	Failure to disclose interest in securities	... \$200,000.00
(6) Section 63	Failure of dealer to keep proper accounting records	... \$500,000.00

(7)	Section 64	Failure to appoint auditor within one month	... \$100,000.00
(8)	Section 65	Failure of stock exchange to report on a specified matter to the Commission	... \$100,000.00 ..

(2) The Companies Act is amended by—

- (a) deleting the heading appearing immediately before section 27A and substituting therefor the heading: “*Collective Investment Scheme Companies*”; and
- (b) deleting section 27A and substituting therefor the following—

“Collective
investment
scheme
companies.

27A.—(1) For the purposes of this Act, a collective investment scheme company means a company—

- (a) having a share capital;
- (b) incorporated for the purpose of investing the moneys of its members for their mutual benefit;
- (c) stating in its articles that it is a collective investment scheme;
- (d) having the power to redeem or purchase for the cancellation of its shares without reducing its authorized share capital; and
- (e) registered as a collective investment scheme as provided by the Securities Act.

(2) The articles of a collective investment scheme company shall state that—

- (a) the company intends to issue investors’ shares; and
- (b) the rights attached to those shares.

(3) For the purposes of this section—

“collective investment scheme”
has the meaning assigned to

it by section 17A of the Securities Act;

“investors’ shares” means shares that are issued by a collective investment scheme company—

- (a) the capital paid upon which and the assets derived therefrom, and all profits, gains and losses referable thereto, are pooled, invested and managed (directly or indirectly) by the company on behalf of persons holding the investors’ shares;
- (b) which do not form part of the permanent share capital of the company; and
- (c) which may be purchased or redeemed by the company at their net asset value, in accordance with the company’s articles and any regulations governing collective investment schemes.

(4) The redemption or purchase by a collective investment scheme company

of investors' shares in that collective investment scheme company shall not be taken as increasing or reducing the company's authorized share capital.

(5) The powers of a collective investment scheme company under subsection (4) shall be exercisable by its directors, or in accordance with the policies and procedures established by its directors.

(6) No investors' shares in a collective investment scheme company shall be redeemed by the company or purchased by another collective investment scheme company unless those shares are fully paid.

(7) Notwithstanding anything contained in this Act or any other law to the contrary concerning the proof and ranking of claims with respect to companies that are being wound up, the holders of investors shares in a collective investment scheme company shall be entitled to any surplus assets available for distribution on a winding up of the collective investment scheme company, ahead of any other shareholders in the company.

(8) A company shall not issue investors' shares unless the company complies with this section and the provisions with respect to collective investment schemes set out in the Securities Act and any regulations made thereunder.

(9) Where a company which contravenes subsection (8), the officers of the company or any other person responsible for the contravention commit

an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two million dollars.

(10) A collective investment scheme company shall be exempt, in the manner herein described, from the following provisions of this Act—

- (a) sections 34 and 35, as respects the provisions relating to an authorized minimum;
- (b) all of sections 38 and 39;
- (c) all of sections 40 to 47 (inclusive);
- (d) all of sections 48 and 49;
- (e) all of sections 52, 56, 57, 58, 59, 60, 62, 67, 79, 109, 112, 113, 120, 121, 122, 124, and 144 to 153 (inclusive);
- (f) all of section 158;
- (g) all of sections 372 to 377 (inclusive).

(11) The Financial Services Commission may, by order published in the *Gazette*, amend subsection (10) so as to add or remove any provision, as the Commission considers appropriate for the more efficient and prudent operation of collective investment scheme companies.”;

- (c) inserting in section 371—(i) in the definition of “place of business” next after the word “office” the following words—

“but shall not be construed as referring to the appointment and use, by a company to which this Part applies that is a collective investment scheme

company, of a dealer in Securities Act, for the purpose of facilitating the issuing in Jamaica of the securities of the regulated overseas collective investment scheme; and

(ii) “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
- (c) not prohibited under those laws from inviting persons outside of that jurisdiction to become participants in the scheme; and

(iii) “recognized foreign jurisdiction” means a foreign jurisdiction specified by the Commission in accordance with regulation 54 of the Securities (Collective Investment Scheme) Regulations 2013.

(3) The Income Tax Act is amended—

(a) in section 2(1) by—

(i) inserting, in the appropriate alphabetical sequence, the following definitions—

““collective investment scheme” has the meaning assigned to it by section 17A of the Securities Act;

“qualified collective investment scheme” means a scheme which is registered as a collective investment scheme under the Securities Act, in which throughout the year of assessment (or where the scheme is registered during the year of assessment, throughout the remainder of the year of assessment) there are not less than fifty unit holders or such other minimum number of unit holders as may by order be prescribed by the Minister responsible for finance;”;

- (ii) in the definition of “unit holder”, by deleting the words “qualified unit trust scheme, means a holder of securities (as defined in the Unit Trusts Act)” and substituting therefor the words “qualified collective investment scheme, means a holder of investors’ shares, in the case of a collective investment scheme company, or in any other case any other ownership interests in a qualified collective investment scheme”;
- (iii) in the definition of “qualified unit trust scheme”, by deleting all the words starting at the words “Unit Trusts Act during the year” and ending at the words “the group” and substituting therefor the words “is operating pursuant to—
 - (A) section 41 of the Securities (Amendment) Act, 2013, or is registered as a collective investment scheme under the Securities Act; and
 - (B) any arrangements whether in Jamaica or elsewhere) made for the purpose,

or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever, (with the exception of any arrangements having as their object or principal object the provision of pensions),

and in which throughout the year of assessment (or where the scheme is registered during the year of assessment, throughout the remainder of the year of assessment) there are not less than fifty unit holders or such other minimum number of unit holders as may by order be prescribed by the Minister responsible for finance”;

- (b) in section 5 by deleting sub-paragraph (vi) of subsection (1)(b) and substituting therefor the following—

“(vi)the accretion realized on the encashment, disposal or redemption of any units or other form of investment in a collective investment scheme, except accretions accruing prior to the 1st day of June, 1999, in units in a qualified unit trust scheme;”;

- (c) in section 12—

- (i) in paragraph (t) by inserting immediately after the word “scheme” the words “, or a collective investment scheme company or other entity which is a qualified collective investment scheme, or a custodian acting on its behalf”;
- (ii) by deleting the word “and” appearing at the end of paragraph (ak);

(4) The Interception of Communications Act is amended—

(a) in section 16—

(i) by inserting the following as subsection (1A)—

“ (1A) For the avoidance of doubt, the information referred to in paragraph (b) of the definition of “traffic data” includes information as to the means and source of payment for the telecommunications service (including any relevant credit card numbers or bank account numbers.”;

(ii) in subsections (3) and (4), by deleting the words “subsection (2)” and substituting therefor in each case the words “subsection (2) or (3A)”;

(iii) by inserting next after subsection (3) the following subsection—

“ (3A) Where it appears to a person listed in column A of the Second Schedule that—

(a) the provider of a telecommunications service is or may be in possession of, or capable of obtaining, any communications data; and

(b) it is necessary to obtain that data for any purpose specified in relation thereto in column B of the Second Schedule,

the person may issue to the provider a notice in writing requiring the provider to disclose to a specified person named in the notice all of the data in the provider’s possession or subsequently

obtained by the provider or, if the provider is not already in possession of the data, to obtain the data and so disclose it.”;

- (iv) in subsection (4) by inserting next after the words “authorized officer” the words “(or specified person, in the case of a notice issued under subsection (3A))”;
- (v) in subsection (9), by deleting—
 - (A) the words “An authorized officer shall not disclose any communications data obtained under this Act” and substituting therefor the words “A person who obtains communications data pursuant to a notice under this Act shall not disclose any such data”;
 - (B) the word “or” appearing at the end of paragraph (b), re-lettering paragraph (c) as paragraph (d), and inserting the following as paragraph (c)—
 - “(c) in the case of communications data obtained pursuant to a notice under subsection (3A), in accordance with the provisions of the Securities Act which permit such disclosure to an agency of a foreign Government for the purpose of cooperation in the enforcement of laws pertaining to the regulation of the securities sector;”;