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No. 164

No. 209

THE SECURITIES ACT

THE SECURITIES (COLLECTIVE INVESTMENT SCHEMES)
(AMENDMENT) REGULATIONS, 2015

In exercise of the power conferred upon the Commission by section 76(1)(p) of the Securities Act, and of every other power hereunto enabling, the following Regulations are hereby made, with the approval of the Minister:—

1. These Regulations may be cited as the Securities (Collective Investment Schemes) (Amendment) Regulations, 2015, and shall be read and construed as one with the Securities (Collective Investment Schemes) Regulations, 2013 (as contained in the Second Schedule to the Securities Act) hereinafter referred to as the “principal Regulations”.

2. The provisions of the principal Regulations set out in the first column of the Schedule are amended in the manner specified in relation thereto, respectively, in the second column of the Schedule.

SCHEDULE

(Regulation 2)

Amendment of the Securities (Collective Investment Schemes) Regulation, 2013

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Regulation 2

1. In paragraph (1)—

- (a) delete subparagraph (d) of the definition of “accredited investor” and substitute therefor the following—

“(d) any officer of the manager or promoter of a collective investment scheme registered under the Act;”;

- (b) in the definition of “custodian”, delete the words “or, in the case of a scheme established as a trust, the trustee”;
- (c) in the definition of “manager”, delete all the words appearing after the word “company” and substitute therefor the words “that has responsibility for the management and performance of the functions of the collective investment scheme, including investment advice and operational services”;
- (d) delete the definition of “operator”; and
- (e) in the definition of “recognized foreign jurisdiction”, delete the words “the operator of”.

2. In paragraph (2), delete the word “operator” and substitute therefor the word “manager”.

New regulation 2A

Insert next after regulation 2 of the following regulation 2A—

“Application. 2A. These Regulations shall not apply to—

- (a) educational savings plans;

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- (b) individual investment management arrangements;
- (c) pure deposit-based schemes;
- (d) certain debt issues such as debentures, bonds, loan stock and such other security as the Commission may designate, from time to time;
- (e) amounts held by participators in common accounts;
- (f) certain funds relating to leasehold property;
- (g) employee share schemes;
- (h) schemes entered into for commercial purposes related to existing business;
- (i) group schemes, where each participant is a body corporate in the same group as the manager;
- (j) franchise arrangements;
- (k) trading schemes (being those which reward participants for introducing new members to the scheme);
- (l) timeshare schemes and other schemes relating to the use or enjoyment of property;

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	(m) the provision of clearing services;
	(n) contracts of insurance;
	(o) funeral plan contracts;
	(p) building societies, industrial and provident societies;
	(q) registered friendly societies and other bodies corporate, except open-ended investment companies;
	(r) private trust funds;
	(s) retirement schemes;
	(t) pension funds;
	(u) real estate investment trusts;
	(v) hedge funds; and
	(w) exchange traded funds.”.
Regulation 3	In paragraph (1) (d) (iii), delete the word “operator” and substitute therefor the word “manager”.
New regulation 3A	Insert immediately before regulation 4 of the following as regulation 3A— “Application of Part II. 3A. This Part applies only to local collective investment schemes.”.
Regulation 4	1. In paragraph (1), delete the word “operator” and substitute therefor the following words “trustees, board of directors, partners”.

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	<p>2. In paragraph (2)(b), delete from—</p> <p>(a) sub-subparagraph (ii), the words “operator or”; and</p> <p>(b) sub-subparagraph (vii), the words “operator and” and substitute therefor the words “trustee, custodian and”.</p> <p>3. Insert next after paragraph (2) the following—</p> <p>“ (2A) Upon receipt of an application under paragraph (1), the Commission may cause an inspector to carry out an inspection of the premises of the management company, the custodian or other service provider to which the application relates.”.</p>
Regulation 5	<p>1. In paragraph (2)—</p> <p>(a) delete from subparagraph (a) the word “operator” and substitute therefor the word “manager”;</p> <p>(b) insert in subparagraph (b) immediately before the words “the minimum value” the words “in the case of an existing scheme,”;</p> <p>(c) delete from subparagraph (c)—</p> <p>(i) the word “operator” and substitute therefor the word “manager”; and</p> <p>(ii) from sub-subparagraph (iii), the words “the operator and”;</p> <p>(d) delete from subparagraph (f) and substitute therefor the following—</p> <p>“(f) the directors and officers of the manager, and the responsible</p>

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	officer in respect of the scheme, are fit and proper persons;”;
	(e) delete from subparagraph (g) the words “acceptable to the Commission” and substitute therefor the words “are in full compliance with the Regulations”.
	2. In paragraph (6), delete the word “operator” and substitute therefor the word “manager”.
Regulation 6	In paragraph (3), delete the word “operator” and substitute therefor the word “manager”.
Regulation 7	1. In paragraph (2)(a), delete sub-subparagraph (i) and substitute therefor the following— <div style="margin-left: 40px;"> “(i) Jamaica, being a company licensed under— (A) the <i>Banking Act</i>; (B) the <i>Financial Institutions Act</i>; (C) the <i>Building Societies Act</i>; (D) the <i>Securities Act as a central securities depository, securities dealer or investment adviser</i>; or (E) a trust company incorporated or registered in Jamaica and whose constituent documents do not prohibit the company from providing trust services;”.</div>
	2. In paragraph (6)(d), delete the word “derive” and substitute therefor the words “not derive”.

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Regulation 8	<p>1. Delete paragraph (1) and substitute therefor the following—</p> <p style="padding-left: 40px;">“ (1) The manager of a collective investment scheme shall meet the requirements set out in a paragraph (2).”.</p> <p>2. In paragraph (3)—</p> <p style="padding-left: 40px;">(a) delete from subparagraph (e) the words “members of the public” and substitute therefor the words “prospective investors”;</p> <p style="padding-left: 40px;">(b) insert immediately after subparagraph (g) the word “and”;</p> <p style="padding-left: 40px;">(c) delete subparagraph (h); and</p> <p style="padding-left: 40px;">(d) reletter subparagraph (i) as subparagraph (h).</p> <p>3. Delete paragraphs (8) and (9) and substitute therefor the following—</p> <p style="padding-left: 40px;">“ (8) The manager of a collective investment scheme shall be terminated if—</p> <p style="padding-left: 80px;">(a) the company is insolvent;</p> <p style="padding-left: 80px;">(b) the company no longer meets any one or more of the requirements set out in paragraph (2); or</p> <p style="padding-left: 80px;">(c) the termination is in the best interests of the investors.</p> <p style="padding-left: 40px;">(9) Where the appointment of a manager is terminated, the trustees, board of directors or partners of the scheme shall promptly give to the Commission and to the scheme’s investors, written notice of the termination, and the name of, and such other particulars as may be relevant in relation to the</p>

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company proposed to be appointed as the new manager.”.

4. In paragraph (10)—

- (a) delete the words “Where the Commission becomes aware that the appointment of the manager of a scheme has been terminated,” and substitute therefor the following “Where the manager has been terminated,”; and
- (b) delete the following words “by the scheme’s operator”.

5. In paragraph (11)—

- (a) delete the words “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),” and substitute therefor the words “The Manager may delegate the performance of any of the functions onferred upon the Manager (other than the power of delegation) to another company,”;
- (b) delete from subparagraph (a) the words “, and under the management contract,”;
- (c) delete subparagraph (c) and substitute therefor the following—
 - “(c) notice of the delegation shall be given by the manager to the scheme’s investors before the delegation takes effect; and the notice shall be in full compliance with regulation 31(3).”.

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First Column — Provisions —	Second Column — Amendments —
Regulation 10	<p>1. Delete paragraph (1) and substitute therefor the following—</p> <p style="padding-left: 40px;">“ (1) The manager of a collective investment scheme shall appoint a custodian that meets the requirements of paragraph (2).”.</p> <p>2. In paragraph (3) (e), delete clause (ii) and substitute therefor the following—</p> <p style="padding-left: 40px;">“(ii) the custodian shall submit to the jurisdiction of the Commission under the Act and these Regulations;”.</p> <p>3. In paragraph (4)(d), delete the word “operator” and substitute therefor the “manager”.</p>
Regulation 11	<p>In paragraph (2), delete from—</p> <p style="padding-left: 40px;">(a) subparagraph (b), the word “operator” and substitute therefor the word “manager”; and</p> <p style="padding-left: 40px;">(b) subparagraph (c), the words “paragraph (4)” and substitute therefor the words “regulation 10 (4)”.</p>
Regulation 12	In paragraphs (2) and (3), delete the word “operator” wherever it appears and substitute therefor, in each case, the word “manager”.
Regulation 13(1)	Delete the words “Unless impracticable in the circumstances, the” and substitute therefor the word “The”.
Regulation 14	In paragraphs (1) and (4), delete the word “operator” wherever it appears and substitute therefor, in each case, the word “manager”.
Regulation 16	<p>1. In paragraph (1)—</p> <p style="padding-left: 40px;">(a) delete the word “operator” and substitute therefor the word “manager”; and</p>

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First Column ————— Provisions —————	Second Column ————— Amendments —————
	(b) insert immediately after the word “register” the words “electronic or otherwise”.
	2. In paragraph (2), delete—
	(a) the word “operator” and substitute therefor the word “manager”; and
	(b) the words “inform the Commission in writing of the address in Jamaica where the register is kept” and substitute therefor the words “ensure that the Commission has access to the register when required”.
New Regulation 16A	Insert immediately before regulation 17 of the following as regulation 16A— “Application of Part III. 16A. This Part applies only to regulated overseas collective investment schemes.”.
Regulation 17	1. In paragraph (1), delete the word “operator” and substitute therefor the words “trustee, board of directors, partners”. 2. In paragraph (2)(b)—
	(a) delete, from sub-subparagraph (ii), the word “operator” and substitute therefor the word “manager”;
	(b) delete, from sub-subparagraph (iii)(B), all the words appearing after the words “recognized foreign jurisdiction”;
	(c) delete, from subparagraph (iv), the words “an issuer”;
	(d) insert in sub-subparagraph (vii) immediately after the word “dealers” the words “in Jamaica”;

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First Column —	Second Column —
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Regulation 18	<p>(e) delete, from sub-subparagraph (viii), the word “operator” and substitute therefor the words “trustee, custodian”.</p> <p>3. In paragraph (3), delete the word “operator” and substitute therefor the words “trustee, board of directors or partners”.</p> <p>1. In paragraph (2), delete from—</p> <p>(a) subparagraph (a) the words “the recognized foreign jurisdiction concerned” and substitute therefor the words “a recognized foreign jurisdiction”;</p> <p>(b) subparagraph (b) the words “the recognized foreign jurisdiction concerned requires the scheme to prepare, file with its regulator and publish” and substitute therefor the words “the recognized foreign jurisdiction requires the scheme to prepare and file with its regulator”;</p> <p>(c) delete subparagraph (e) and substitute therefor the following—</p> <p style="padding-left: 40px;">“(e) the directors and officers of the manager, in respect of the scheme are fit and proper persons;”;</p> <p>(d) subparagraph (f), the words “the operator and”;</p> <p>(e) subparagraph (g), the words, “acceptable to the Commission” and substitute therefor the words “are in full compliance with the Regulations”.</p> <p>2. In paragraph (6), delete the word “operator” and substitute therefor the word “manager”.</p>

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Regulation 19	In paragraphs (1) (d) and (2), delete the word “operator” wherever it appears and substitute therefor, in each case, the word “manager”.
Regulation 20(1)	<p>1. In subparagraph (a)(i)—</p> <p style="padding-left: 40px;">(a) insert immediately before the words “financial statements” the word “audited”; and</p> <p style="padding-left: 40px;">(b) delete the word “and” appearing at the end of sub-subparagraph (i).</p> <p>2. Insert the word “and” at the end of subparagraph (ii).</p> <p>3. Insert next after subparagraph (a) (ii) the following—</p> <p style="padding-left: 40px;">“(iii) the quarterly portfolio statements and the manager’s calculations of the net asset value of the scheme, within forty-five days after the end of the relevant quarter;”.</p>
Regulation 21	<p>1. In paragraph (2) (a) (ii) delete the words “in respect of the scheme” and substitute therefor the words “by the manager”.</p> <p>2. In paragraph (3) (a), delete the words “members of the public” and substitute therefor the words “prospective investors”.</p> <p>3. In subparagraph (4), delete the words “in respect of the scheme” and substitute therefor the words “by the manager”.</p>
Regulation 22	<p>1. Delete from paragraph (1)—</p> <p style="padding-left: 40px;">(a) the words “the public” and substitute therefor the words “prospective investors”; and</p> <p style="padding-left: 40px;">(b) the words “or accompanied by a certified translation thereof”.</p>

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Regulation 25	<p>2. Renumber paragraph (1) as the regulation and delete paragraph (2).</p> <p>1. Delete subparagraphs (a) and (b) from paragraph (1), and substitute therefor the following—</p> <p style="padding-left: 40px;">“(a) the offering documents of the scheme, approved by the Commission in accordance with this regulation; and</p> <p style="padding-left: 40px;">(b) the scheme’s latest audited annual financial statements and latest interim financial statements (if published after the latest available annual financial statements),</p> <p style="padding-left: 40px;">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.”.</p> <p>2. In paragraph (6), delete the words “the operator of the scheme and”.</p>
Regulation 30(1)	<p>1. In subparagraph (a), insert immediately before the words “financial statements” the word “audited”.</p> <p>2. In subparagraph (b), delete the word “calendar”.</p>
Regulation 32	<p>1. In paragraph (1)—</p> <p style="padding-left: 40px;">(a) delete the words “the operator of the scheme” and substitute therefor the words “trustee, board of directors, partners”; and</p> <p style="padding-left: 40px;">(b) delete from subparagraph (b) the words “operator” and substitute therefor the words “trustee, board of directors, partners”.</p>

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	<p>2. In paragraph (2), delete—</p> <ul style="list-style-type: none"> (a) the words “operator or”; (b) from subparagraph (a), the words “operator or”; and (c) from subparagraph (b) (i), the word “operator” and substitute therefor the word “manager”. <p>3. In paragraph (3)—</p> <ul style="list-style-type: none"> (a) delete the words “operator or” wherever they appear; (b) in subparagraph (b), delete— <ul style="list-style-type: none"> (i) the words “or operator” where it appears a first time; (ii) the word “operator” and substitute therefor the word “manager” where it appears a second time.
Regulation 33	<p>1. Delete subparagraph (b) of paragraph (1) and substitute therefor the following—</p> <p>“(b) no more than ten percent of the scheme’s net asset shall consist of securities from one issuer, except in the case of—</p> <ul style="list-style-type: none"> (i) securities issued by any government where those securities have received an investment grade credit rating; and (ii) securities issued or guaranteed by the Government of Jamaica and the Bank of Jamaica.”.

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Regulation 34	<p>2. In paragraph (2), delete the words “operator or”.</p> <p>Delete the words “except temporarily for the purpose of accommodating requests for redemption made by investors in the scheme” and substitute therefor the words “except for a period not exceeding twelve months”.</p>
Regulation 36(2)	<p>1. In subparagraph (a), delete the word “and”.</p> <p>2. In subparagraph (b), delete the words “and thereafter cause such publication to be repeated at least once per month during the period of the suspension”.</p> <p>3. Insert next after subparagraph (b) the following as subparagraphs (c) and (d)—</p> <p style="padding-left: 40px;">“(c) keep the Commission and investors informed throughout the period of suspension; and</p> <p style="padding-left: 40px;">(d) inform the Commission and investors of the decision to resume normal operations.”.</p>
Regulation 37(1)	In subparagraph (b), delete the word “operator” and substitute therefor the word “manager”.
Regulation 38(2)	<p>Delete—</p> <p>(a) the words “the operator of the scheme” and substitute therefor the words “trustee, board of directors or partners of the scheme”; and</p> <p>(b) from subparagraph (c) (ii) the word “operator” and substitute therefor the word “manager”.</p>
Regulation 39	<p>Delete—</p> <p>(a) the word “operator” and substitute therefor the word “manager”; and</p> <p>(b) all the words appearing after the words “person, on the other” and substitute therefor the words</p>

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	“part shall be disclosed in the scheme’s annual report or annual financial statements”.			
Regulation 42(2)	Delete the word “operator” wherever it appears and substitute therefor, in each case, the word “manager”.			
Regulation 43(1)(c) and (d), (3) and (4)	Delete the word “operator” wherever it appears and substitute therefor, in each case, the word “manager”.			
Regulation 46(1)	Delete the word “operator” wherever it appears and substitute therefor, in each case, the words “trustee, board of directors or partners”.			
Regulation 50	Delete the word “operator” and substitute therefor the words “trustee, board of directors or partners”.			
First Schedule				
Paragraph 3	Delete the paragraph and substitute therefor the following— <table border="0" style="margin-left: 40px;"> <tr> <td style="padding-right: 10px;">“3. Renewal fee for local collective investment scheme (regulation 6(1))</td> <td style="padding-right: 10px;">... ..</td> <td>As determined by the securities dealer (fund manager) and payable from funds under the management of the securities dealer (fund manager).”.</td> </tr> </table>	“3. Renewal fee for local collective investment scheme (regulation 6(1))	As determined by the securities dealer (fund manager) and payable from funds under the management of the securities dealer (fund manager).”.
“3. Renewal fee for local collective investment scheme (regulation 6(1))	As determined by the securities dealer (fund manager) and payable from funds under the management of the securities dealer (fund manager).”.		

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Delete paragraph “o” and substitute therefor the following—

- “(o) the name and identification of the scheme;
- (p) the date of registration and other particulars, including the type of fund (for example, whether a money market fund);
- (q) the name and address of the manager;
- (r) the name and address of the trustee;
- (s) the practice to be observed in the buying and selling of units;
- (t) the method of determining prices;
- (u) the extent to which the fund manager may borrow and the limits placed on such borrowing;
- (v) the method of termination of the trust and of the trustee;
- (w) the circumstances under which the trust can be terminated;
- (x) the investment objectives of the fund;
- (y) the types of securities in which the fund manager will make investments should be clearly stated;
- (z) where the trust deed can be inspected.”.

Third Schedule

Paragraph 1

1. Delete from the first paragraph the word “operator” and substitute therefor the word “manager”.

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Paragraph 4	2. Insert immediately after the words “borrowing restrictions” the words “and the maximum term of any borrowing”.
Heading to paragraph 8	Delete and substitute therefor the following — <i>“Managers and providers of services”.</i>
Paragraph 8	Delete subparagraphs (a) to (d) and substitute therefor the following — <ul style="list-style-type: none"> “(a) the directors and officers of the scheme; (b) the names of the directors and officers of the manager; (c) the names of the directors and officers of the trustee; (d) the names of the directors and officers of the custodian.”.
Paragraph 32	Delete from subparagraphs (a) and (b) the words “the operator and” wherever it appears.
New paragraphs 36 and 37	<p>“Requirements regarding the issuing transferring and recording of units.</p> <p>36. The Circular shall contain—</p> <ul style="list-style-type: none"> (a) the steps for issuing a certificate or contract note; (b) the steps for transfer of units. <p>37.—(1) The unit holder shall have access to the list of the investments in the fund.</p> <p>Disclosure of securities and investment of the fund.</p>

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(2) The list of investments shall be outlined in the audited financial statement of the fund.”.

Dated this 31st day of December, 2015.

COLIN BULLOCK
Chairman
Financial Services Commission.

Approved:

PETER PHILLIPS
Minister of Finance and Planning.

