

THE SECURITIES ACT

REGULATIONS

(under section 76)

THE SECURITIES (DISCLOSURE OF INTEREST) REGULATIONS, 1999

*(Made by the Securities Commission and approved by the Minister on
the 29th day of April, 1999)*

L. N. 60n/99

1. These Regulations may be cited as the Securities (Disclosure of Interest) Regulations, 1999.

PART I. *Preliminary*

2. —(1) In these Regulations—

"certification of incumbency" means a certificate indicating the officers and signatures of those officers of a company authorized to sign on its behalf;

"commercial paper" means securities comprising or evidencing a debt obligation repayable within a year of the date of issue, whether or not secured or guaranteed, but does not include payment obligations arising out of the sale of goods or services;

“licensed dealer” means a person licensed under the Act as a dealer;

“licensed institution” means a bank licensed under the Banking Act, a company licensed under the Financial Institutions Act and a building society licensed under the Building Societies Act;

“material change” in relation to securities, means a change in the business operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer and includes a decision to implement such a change made by—

(a) the board of directors of the issuer; or

(b) the issuer, based on a belief that the decision is likely to be confirmed by the board of directors;

“material fact”, in relation to securities outstanding or proposed to be issued, means a fact that significantly affects or would reasonably be expected to have a significant effect on, the market value of such securities;

“registered representative” means a person registered under the Act as a dealer’s representative.

(2) For the purposes of these Regulations, the references to “generally accepted accounting principles”, “auditor’s report” and “generally auditing standards” means the principles and recommendations contained in the Statement of Standard Accounting Practice and accounting recommendations of the Institute of Chartered Accountants of Jamaica.

PART II. *General*

3.—(1) Subject to paragraph (2), where a material change occurs in the affairs of an issuer of traded securities, that issuer shall—

(a) forthwith issue and file a press release authorized by an officer disclosing the nature and substance of the change;

(b) file a report with the Commission of such material change as soon as practicable thereafter, but not later than ten days of the date on which the change occurs.

(2) Where—

(a) in the opinion of the issuer, the disclosure required by paragraph (1) would be unduly detrimental to the interests of the issuer; or

(b) the material change consists of a decision to implement a change made by an officer of the issuer who—

(i) believes that confirmation of the decision by the board is probable; and

(ii) has no reason to believe that persons with knowledge of the material change have made use of such knowledge in purchasing or selling securities of the issuer,

the reporting issuer may, notwithstanding the provisions of paragraph (1) (b), forthwith file with the Commission under confidential cover, the report required under that paragraph, together with written reasons for non-disclosure.

(3) Where a report has been filed with the Commission under paragraph (2), the issuer shall advise the Commission in writing where it believes the report should continue to remain confidential within ten days of the date of filing of the initial report and every ten days thereafter until the material change is generally disclosed in the manner referred to in paragraph (1) or, if the material change consists of a decision of the type referred to in paragraph (2), until that decision has been rejected by the board of directors of the issuer.

4.—(1) Subject to paragraph (5), every issuer of traded securities that is not a unit trust shall file—

- (a) within forty-five days of the date to which it is made up an interim financial statement—
 - (i) where the issuer has not completed its first financial year, for the periods commencing with the beginning of that year and ending nine, six and three months, respectively, before the date on which that year ends, but an interim financial statement is not required to be filed for any period that is less than three months;
 - (ii) where the issuer has completed its first financial year, in respect of each period of nine months, six months and three months, respectively, of the current financial year, including a comparative statement to the end of each of the corresponding periods in the preceding financial year;
- (b) within ninety days from the end of each financial year, comparative audited financial statements relating separately to—
 - (i) the period commencing on the date of incorporation or organization and ending at the close of the first financial year or, if the reporting issuer has completed a financial year, the last financial year, as the case may be; and
 - (ii) the period covered by the financial year next preceding that last financial year, if any.

(2) The financial statements required by this regulation shall be prepared in accordance with generally accepted accounting principles.

(3) Where an auditor reports on a financial statement required by this regulation, the report shall be prepared in accordance with generally accepted auditing standards.

(4) Except where otherwise expressly provided or with the consent of the Commission, each financial statement prepared pursuant to this regulation shall include an auditor's report on the statement.

(5) The exemption of unit trusts from the requirements of paragraphs (1) to (4) shall apply only to the extent that units are issued by such unit trusts.

5.—(1) Subject to paragraph (2), an issuer who files financial statements pursuant to regulation 3 shall send a copy thereof to each holder of its securities.

(2) Where, by virtue of any law in the jurisdiction in which an issuer is incorporated, the issuer is subject to a requirement similar to that referred to in paragraph (1), an issuer who complies with that requirement shall be deemed to be in compliance with this regulation.

PART III. *Commercial Paper*

6.—(1) Subject to this Part, a company shall not issue commercial paper except in accordance with these Regulations.

(2) These Regulations shall not apply to deposit instruments and guarantees issued by a licensed institution.

7. A company shall not guarantee commercial paper issued by another company except in accordance with these Regulations and on such terms as are agreed with that other company.

8. Commercial paper may be issued in such amounts, on such terms and conditions and in such form as the issuer thereof may determine, and the commercial paper so issued shall be—

- (a) in writing;
- (b) signed by one or more persons duly authorized by the issuer to sign such commercial paper on its behalf; and
- (c) shall contain the name of the issuer on the face thereof.

9. If commercial paper is sold or marketed on the basis that it is guaranteed by any third party, the commercial paper, or other instrument through which the investor acquires an interest therein shall—

- (a) state clearly on its face that it has been so guaranteed;
- (b) state the full name of the guarantor;
- (c) be signed by one or more authorized officers of the guarantor or the entity which has issued the other instrument;
- (d) state that the guarantee is available for inspection and the place where it may be inspected.

10. Commercial paper shall only be issued by an issuer that maintains a net asset base which is not less than the greater of five million dollars or 2% of its total outstanding liabilities, unless the commercial paper is guaranteed by a guarantor that maintains a net asset base which is not less than the greater of five million dollars or 2% of its total outstanding liabilities.

PART IV. *The Information Memorandum*

11.—(1) A company which is a licensed dealer shall not issue commercial paper unless it and its guarantor, if any, has delivered a memorandum (hereinafter referred to as an information memorandum) to—

- (a) the Commission; and
- (b) every person who is solicited for such investment or who otherwise subscribes for commercial paper issued by that issuer.

(2) Where a company engages or acts through one or more licensed dealers for the funding of commercial paper issued by that company, it shall not issue commercial paper unless it (and its guarantor, if any) has delivered an information memorandum to—

- (a) the Commissioner; and
- (b) each such licensed dealer.

12. For the purposes of these Regulations, the information memorandum shall—

- (a) be considered and approved by the company's board prior to the issue of the commercial paper;
- (b) be dated and signed by at least two directors of the company pursuant to a resolution of the board;
- (c) include an extract of such resolution, duly certified by the secretary of the company;
- (d) state which officers are authorized by resolution of the company's board to sign, on behalf of the issuer or guarantor, as the case may be, any Schedule attached to the memorandum from time to time, so, however, that any such Schedule shall be signed by at least two such officers.

13.—(1) An information memorandum shall—

- (a) in the case of a company which has issued or intends to issue commercial paper—
 - (i) contain an opinion by an attorney-at-law that the company has the legal capacity to borrow; and
 - (ii) specify the limits (if any) on such borrowing;
- (b) in the case of a company which has guaranteed or intends to guarantee commercial paper—
 - (i) contain an opinion by an attorney-at-law that the company has the legal capacity to guarantee the relevant commercial paper; and
 - (ii) specifying the limits (if any) on such guarantee.

(2) The opinion referred to in paragraph (1) shall not be applicable if it was obtained on a date earlier than six months before the date of delivery of the information memorandum.

14.—(1) An information memorandum may be in two parts as follows—

- (a) one part shall contain the information specified in paragraph (2) (a); and
- (b) the other part shall contain—
 - (i) current financial information in relation to the company;
 - (ii) particulars of any material changes to the information referred to in subparagraph (a);

- (iii) particulars of the borrowing to which the memorandum relates, and shall be accompanied by documents relating to that borrowing.
- (2) An information memorandum shall—
- (a) contain the following information in relation to the company issuing it—
 - (i) place of incorporation and the Act under which the issuer or guarantor is incorporated;
 - (ii) the address of the registered office of the issuer or guarantor and the address where copies of the following documents may be inspected—
 - (A) the Memorandum and Articles of Association of the issuer or equivalent documents;
 - (B) the trust deed or the document constituting debt securities of the issuer;
 - (C) any contract directly relating to the issue of debt securities;
 - (D) any existing or proposed service contract between a director of the issuer and the issuer or any other member of the group;
 - (iii) names of the issuer's or guarantor's bankers and auditors including the names of the auditors for the preceding two years, and a statement as to whether any of those auditors had refused to sign the report, or had qualified such report and if so, the relevant details;
 - (iv) a description of the principal activities of the issuer, including the main categories of products sold or services performed, and, where material in terms of profits or losses, such figures and explanations as are necessary to determine the relative importance of each activity;
 - (v) the principal activities of the guarantor;
 - (vi) if the issuer or the guarantor is—
 - (A) a member of a group, a brief description of the group and the position of the issuer or guarantor therein; or
 - (B) a subsidiary, the name of its holding company;

- (vii) if the debt security is guaranteed, an address where information about the guarantor company may be inspected;
 - (viii) details of any legal or arbitration proceedings pending or threatened against—
 - (A) the issuer; or
 - (B) any other member of a group of which the issuer is a member,
 - which are likely to have, or, during the twelve months preceding the date of issue, might have had, a significant effect on the financial position of the issuer or the group, as the case may be; or where there are no such proceedings, a statement to that effect;
 - (ix) particulars of any patent, licence, new manufacturing process or industrial, commercial or financial contract on which the business or profitability of the issuer or its group depends to a material extent;
- (b) be accompanied by a photocopy of a certified extract from the issuer's Memorandum or Articles of Association governing the issuer's borrowing powers.

15.—(1) The Schedule attached to the information memorandum shall contain the following information—

- (a) the amount of funds being sought by the proposed issuer;
- (b) the purpose of the issue, and whether or not it is intended to use the funds raised to make loans or other investments to or in any other company;
- (c) the proposed form of the commercial paper;
- (d) the proposed minimum denominations, if any, of each instrument, and, where applicable, the available multiples;
- (e) the anticipated maturities of the instruments;
- (f) when and how the investor will receive the instruments and payments thereunder;
- (g) the most recent audited financial statements of the issuer, prepared not more than eighteen months before the date of delivery of the information memorandum and in accordance with generally accepted accounting principles;
- (h) an interim balance sheet and profit and loss statement for the period since the last audited accounts up to a date not more than three

months prior to the date of delivery of the Schedule, stating whether or not they have been audited (if more than six months have passed since the end of the financial year to which the last audited statements relate);

- (i) a statement of the outstanding financial liabilities (with loans from licensed institutions, commercial paper obligations, guarantees and other financial liabilities quantified separately) as at a date not more than thirty days prior to the date of delivery of the Schedule;
- (j) a statement, signed by any two officers of the company approved by the board for that purpose, that, to their best knowledge and belief, the statements filed accurately state the financial status and liabilities of the issuer or guarantor, as the case may be;
- (k) where the issuer or guarantor, having made all reasonable enquiries, is aware of any circumstances which could reasonably be regarded as significantly and adversely affecting its ability to meet its obligations as they fall due, a statement as to such circumstances signed by any two officers of the company approved by the board for that purpose;
- (l) where, having made such enquiries, the issuer or guarantor has not become aware of any circumstances likely to have the foregoing effects, a statement to that effect;
- (m) a photocopy of a certified resolution authorizing the proposed borrowing or the guarantee, as the case may be.
- (n) a list of persons authorized to sign the commercial paper or guarantee on behalf of the issuer or guarantor, as the case may be.

(2) The Schedule to the information memorandum shall contain the following information—

- (a) the amount of—
 - (i) the authorized and issued share capital of the issuer;
 - (ii) any share capital agreed to be issued and the number and classes of the shares of which it was composed, giving details of their principal characteristics;
- (b) if any part of the issued share capital is still to be paid up, an indication of the number of total nominal value, and type of the securities not then fully paid up, broken down, where applicable, according to the extent to which they had been paid up;
- (c) the profits and losses and liabilities and financial record and position of the issuer and, if it is a member of a group, set out as a comparative table for each of the latest five financial years of the issuer for which such information was available, together with copies of individual

and (if applicable) group accounts for each of the latest two such financial years, including, in the case of a company incorporated in Jamaica, all notes, reports or other information required by the Companies Act;

- (d) details as at the most recent practicable date (which shall be stated) prior to the relevant date of the following (which, if the issuer is a member of a group, shall also be provided on a consolidated basis)—
- (i) the total amount of any loan capital outstanding in any member of the group, and loan capital created but unissued and term loans, distinguishing between loans guaranteed and unguaranteed, and those secured (whether the security is provided by the issuer or by third parties) and unsecured;
 - (ii) the total amount of all other borrowings and indebtedness in the nature of borrowing of the issuer or the group (as the case may be), distinguishing between guaranteed and unguaranteed and secured and unsecured borrowings and debts, including bank overdrafts and liabilities under acceptances (other than normal trade bills) or acceptance credits or hire purchase commitments;
 - (iii) all mortgages and charges of the issuer or the group (as the case may be); and
 - (iv) the total amount of any contingent liabilities and guarantees of the issuer or the group (as the case may be);
- (e) if the issuer or the group (as the case may be) has no such loan capital, borrowings, indebtedness or contingent liabilities, a statement to that effect;
- (f) where necessary, a statement to the effect that no account has been taken of liabilities between undertakings within the same group.

(3) Every licensed dealer—

- (a) in the commercial paper authorized by a resolution referred to in paragraph (1) (m), shall keep the signed original of each such resolution;
- (b) in the issuer's commercial paper, shall keep the signed original of the certificate of incumbency in relation to the signatures of the persons referred to in regulation 8 (b),

and the Schedule shall contain a statement that those documents are available for inspection by potential investors at the offices of the licensed dealer.

16. The information memorandum shall be made available—

- (a) by the Commission to the public, for inspection and for making copies thereof at their own cost;

- (b) to investors by the issuer or any dealer in the issuer's commercial paper, at their respective places of business and shall be displayed in a conspicuous place at those places of business.

17. The issuer or guarantor or both, whose shares are listed on a stock exchange shall disclose in its information memorandum whether those shares have been subject to cancellation or suspension by the stock exchange or the Commission and shall state the reasons for such cancellation or suspension.

PART V. *Filing of Statements*

18.—(1) Issuers and guarantors which have outstanding commercial paper obligations shall file with the Commission—

- (a) within ninety days after the end of the corporation's financial year, annual audited financial statements prepared in accordance with generally accepted accounting principles;
- (b) within forty-five days after the end of each financial quarter, quarterly balance sheets and profit and loss accounts containing a certificate, signed by any two officers of the company approved by the board for that purpose, that to their best knowledge and belief the statements filed accurately reflect the financial status of the issuer or guarantor, as the case may require;
- (c) within thirty days after the end of each month, monthly statements of their outstanding financial liabilities (with loans from licensed institutions, commercial paper obligations, guarantees and other financial liabilities quantified separately) and such statements shall contain certificates, signed by any two officers of the company approved by the board for that purpose, stating—
 - (i) that to their best knowledge and belief the statements filed accurately state the financial liabilities of the issuer or guarantor;
 - (ii) the purposes of any incremental borrowings made or guarantees issued since the last monthly filing; and
 - (iii) whether or not any guarantor of any of the issuer's commercial paper has been called upon under the guarantee to redeem all or any part of the guaranteed debt, and (if so) whether or not the guarantor has ever paid any funds in that connection and whether the issuer has repaid the guarantor for those funds.

(2) The statements referred to in paragraph (1) shall be made available by the Commission to members of the public for inspection and for making copies thereof at their own cost.

PART VI. *Exempt Transaction*

19. These Regulations shall not apply to the following securities—

- (a) securities issued between individuals who are acting as principals and not as agents or trustees for any other person or company, pro-

vided that the securities are not sold or otherwise disposed of to any other person or company;

- (b) securities issued to licensed institutions in respect of loans which appear in full on their balance sheets as their assets.

PART VII. *Miscellaneous*

20. Only persons who are licensed dealers in securities or their registered representatives under the Securities Act may be engaged to assist in or may otherwise facilitate the funding of commercial paper issued or to be issued by any other person.

21. Where a licensed dealer receives funds from an investor in respect of an investment in commercial paper, the dealer shall—

- (a) forthwith issue a receipt stating—
- (i) the details of the investment including the amount invested, rate of return, maturity date, type of instrument which will be delivered to the investor and the issuer's or guarantor's name or both; and
 - (ii) that the information memorandum has been made available to the investor; and
- (b) shall deliver the receipt and relevant instrument to the investor as soon as practicable thereafter.

22.—(1) Where an investor has acquired an interest in commercial paper through a licensed dealer and the investor does not receive the actual commercial paper in question, the licensed dealer shall—

- (a) keep a register of the interest in that commercial paper and shall enter in the register, in relation to each such investor—
- (i) a description of the commercial paper and the date on which the investor acquired an interest therein;
 - (ii) the principal amount of that interest;
 - (iii) the rate of return to which the investor is entitled in respect of such investment;
- (b) ensure that the commercial paper has no express restriction on the rights of the holder to negotiate, assign or otherwise dispose of that commercial paper and the rights created thereby;
- (c) issue to the investor, an instrument stating the name of the issuer of the commercial paper.

(2) The holder of commercial paper referred to in paragraph (1) shall not dispose of his rights thereunder, unless he creates a trust in favour of the investor referred to in that paragraph, in respect of those rights or a proportionate part thereof.

23. There shall be paid to the Commission—

- (a) on the filing of a financial statement under regulation 4; and
- (b) on the delivery of an information memorandum under regulation 11,

a fee in an amount calculated at a rate of \$8.00 for every \$100,000 in value of commercial paper issued over a period of thirty days.

24. An issuer who contravenes any provision of these Regulations commits an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

25. Failure to comply with these Regulations shall not affect or prejudice the validity or enforceability of any obligations arising from the issue or guarantee of commercial paper.