

THE SECURITIES ACT

REGULATIONS
(under section 76)

THE SECURITIES (PRUDENTIAL) REGULATIONS, 2014

*(Made by the Securities Commission and approved by the Minister
on the 30th day of December, 2014)*

L.N. 148F/2014

1. These Regulations may be cited as the Securities (Prudential) Regulations, 2014. Short Title.
2. In these Regulations, unless the context otherwise requires— Interpretation.
- “control” means the holding of fifty per cent or more of the voting shares of a company;
- “counterparty” means any party with whom a licensee has a contractual agreement and includes investors, borrowers, secured creditors, issuers of securities and collective investment schemes;
- “exposure” means the maximum loss that a licensee may incur, if a counterparty or a group of affiliated counterparties fails to meet its obligations to the licensee;
- “funds under management” means any cash, securities, financial instruments or contracts, provided by a client to a licensee for the purpose of—
- (a) investing or dealing in investments or other assets, in a manner agreed between the parties;
 - (b) investing in a pool of investments;
 - (c) investing in any variation or combination of investments referred to in paragraphs (a) and (b); or
 - (d) holding in custody or in trust,
- including circumstances where—
- (e) the terms of agreement or arrangement allow the licensee full, partial or no discretion, with regard to the investment activity to be carried out on behalf of investors; or
 - (f) funds are invested—
 - (i) together with the funds of the other investors in a collective manner; or
 - (ii) in a segregated manner;

“group of affiliated counterparties ” means two or more counterparties, whose exposures constitute a single exposure if at least one of the following criteria is satisfied—

- (a) in the case of a control relationship, one of the counterparties directly or indirectly has control over the other counterparty;
- (b) in the case of economic interdependence, where one of the counterparties experiences financial problems, the other counterparties would, as a result, also be likely to encounter funding or repayment difficulties;

“large exposure” means the total exposure of a licensee to a counterparty or a group of affiliated counterparties, which in aggregate is not less than ten per cent of the licensee’s capital base;

“off balance sheet funds under management ” means all funds under management that are not reported on a licensee’s balance sheet;

“prescribed deductions” means the aggregate of—

- (a) a licensee’s—
 - (i) investment in unconsolidated subsidiaries of the licensee and in any other unconsolidated entities in which the licensee has a substantial investment;
 - (ii) proportionate share of the amount of the accumulated losses of any consolidated subsidiary or any other unconsolidated entity, in which the licensee has a substantial investment;
- (b) other facilities provided by the licensee that are treated as capital by unconsolidated subsidiaries and by any other unconsolidated entities, in which the licensee has a substantial investment; and
- (c) new and existing capital issues of two or more companies that represent directly or indirectly, back to back securities;

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

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

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

“substantial investment” means—

- (a) a licensee’s investment in a body corporate where—
 - (i) the voting rights attached to the aggregate of any voting shares of the body corporate legally and beneficially owned by the licensee and by the entities controlled by the licensee, represent twenty per cent or more of the voting rights attached to all of the outstanding voting shares of the body corporate; or
 - (ii) the aggregate of any shares of the body corporate legally and beneficially owned by the licensee and by any entity controlled by the licensee represent ownership of twenty per cent or more of the shareholders equity of the body corporate; and
- (b) a licensee’s investment in an equity other than a body corporate, where the aggregate of the licensee’s ownership interests (however designated) in the body corporate, either exclusively or taken together with any entity controlled by the licensee, represent twenty per cent or more of the total ownership interests in the entity;

“Tier 1 capital” means the aggregate of—

- (a) issued and fully paid up capital in the form of—
 - (i) ordinary shares; and
 - (ii) perpetual non-cumulative preference shares;
- (b) capital paid in excess of par value of qualifying ordinary and perpetual non-cumulative preference shares;
- (c) debt issued to the Government of Jamaica or any agency of the Government of Jamaica, for the purpose of effecting financial assistance;
- (d) retained earnings reserve, where the structure and composition of the reserve is prescribed or approved by the Commission;
- (e) other eligible reserves as the Commission may approve, less the aggregate of—

- (i) debit balances on investment fair value reserves accounts; and
 - (ii) goodwill, start-up expenses and other intangible assets, excluding computer software; and
- (f) any losses for the current year and any accumulated losses from previous years;

“Tier 2 capital” means the aggregate of—

- (a) qualifying paid-up capital in the form of—
 - (i) perpetual cumulative preference shares; and
 - (ii) term preference shares with an original term to maturity of five years or more;
- (b) capital paid in excess of par value of qualifying perpetual cumulative and term preference shares;
- (c) remaining balances on subordinated debt, including subordinated debt issued to the Government of Jamaica or an agency of the Government for the purposes of effecting financial assistance;
- (d) general provisions for loss on assets up to a maximum of one and one quarter percent of the licensee’s aggregate risk weighted assets amount; and
- (e) revaluation reserves on properties, where—
 - (i) the property is held as an investment asset; and
 - (ii) there is satisfactory evidence that re-valuation gains or losses were made on the basis of annual valuations conducted by an appropriately qualified independent third party;
- (f) other reserves approved by the Commission; and
- (g) retained earnings that have not been transferred to a reserve;

“generally accepted accounting principles” means the principles and recommendations contained in the Statement of Standard Accounting Practice or other accounting recommendations of the Institute of Chartered Accountants of Jamaica.

3.—(1) The Commission shall by notice published in the *Gazette* or by way of other written notice, from time to time, specify the respective weights to be applied to the risk based assets and other risk exposures.

Licensee shall maintain capital adequacy ratio

(2) Every licensee shall—

- (a) maintain at all times, a capital adequacy ratio between its capital base and its risk-based assets and other risk exposures of not less than the percentage specified, from time to time, by the Commission;
- (b) implement and maintain adequate systems and procedures which facilitate the accurate computation of the capital adequacy ratio; and
- (c) file with the Commission a report in the format specified by the Commission, which states the computation of the capital adequacy ratio, within the period specified by the Commission in writing, from time to time;

(3) The licensee shall in determining the capital adequacy ratio referred to in paragraph (2) employ the formula expressed in Part A of the Schedule.

(4) The percentage referred to in paragraph (2) shall be specified by notice published in the *Gazette* or by other written means.

(5) A licensee shall forthwith by notice, in writing, inform the Commission when the capital adequacy ratio falls below the percentages specified by the Commission.

(6) A licensee who has at the commencement of these Regulations not complied with the percentage specified by the Commission for the capital adequacy ratio, shall within thirty days of that date, provide a plan acceptable to the Commission for the timely compliance of the licensee with the specified percentage.

4. The Commission may by notice, in writing, to a particular licensee, direct the licensee to vary the ratio between the licensee's capital base and the denominator in the capital adequacy ratio to a level which is more consistent with that licensee's risk profile.

Commission may direct licensee to vary ratio between licensee's capital base and denominator
Licensee shall maintain leverage ratio

5.—(1) Every licensee shall maintain at all times a leverage ratio of not less than the percentage specified, from time to time, by the Commission.

(2) The percentage to be specified in paragraph (1) shall be—

- (a) prescribed by notice published in the *Gazette*; or
- (b) published by such other means as may be specified by the Commission.

(3) The licensee shall determine the leverage ratio, by employing the formula expressed in Part A of the Schedule.

Part A
Schedule

Licensee shall maintain capital base

6.—(1) A licensee shall maintain at all times a capital base comprising not less than fifty per cent of Tier 1 capital.

(2) The Commission may vary the percentage referred to in paragraph (1), from time to time, by notice published in the *Gazette* or by other written means.

Restriction on withdrawal of capital

7.—(1) The licensee shall notify and seek permission from the Commission prior to the withdrawal of its equity capital or the equity capital of any subsidiary or affiliate of the licensee, where such withdrawal results in the licensee's capital base falling below such percentage specified by the Commission.

(2) Where the Commission gives permission to make a withdrawal under paragraph (1), the Commission may impose temporary restrictions on capital withdrawals where the Commission deems it necessary.

(3) In this regulation “withdrawal” includes but is not limited to dividend payments and share buybacks.

Dealings in securities acquired on margin

8.—(1) Every licensee shall ensure that only marginable securities are acquired pursuant to a margin arrangement.

(2) In paragraph (1) “marginable securities” means—

- (a) Government of Jamaica securities;
- (b) stocks and bonds listed on a recognized stock exchange; or
- (c) over the counter securities,

and does not include options, common and preferred stocks not traded on a recognized stock exchange, rights, insurance contracts and new issues of securities on primary sale.

(3) Securities—

- (a) that have been acquired by the licensee on margin for proprietary purposes and which remain subject to margin arrangements at the time of delivery; or
- (b) which are the underlying securities that are serving as collateral for a margin borrowing arrangement which remains unexpired,

shall not be dealt with in any manner specified in paragraph (4).

(4) The dealings in securities referred to in paragraph (3) are—

- (a) sale of securities to clients of the licensee;
- (b) making the securities the subject of a participation; or
- (c) selling the securities under a repurchase agreement with a client of the licensee.

9. The funds of a licensee's client may be invested in margin trades—

- (a) only on the client's specific instructions and in accordance with the client's expressed risk appetite; and
- (b) on the basis of outright purchase of the securities for the client's accounts.

Licensee to invest in margin trades on specific instructions of client

10. A licensee's proprietary margin positions shall not be financed by client liabilities.

Licensee's proprietary margin positions

11.—(1) A licensee shall determine the total credit risk-weighted assets by—

Determination of total credit risk-weighted assets amount
Table 1

- (a) applying credit risk weightings as set out in Column 2 of Table 1 of Part B of the Schedule, to the amounts of the risk-based asset and risk exposures as reported to the Commission and as set out in Column 1 of that Table; and
- (b) computing the sum of all the resulting credit risks weighted assets.

(2) Credit risk weightings shall be applied to equity investments and all balance sheet assets which the dealer intends to hold until the date of maturity.

(3) Notwithstanding paragraph (2), credit risk weightings shall not be applied to—

- (a) any asset—
 - (i) classified as available for sale or trading; or
 - (ii) any other equivalent accounting classification that conforms to generally accepted accounting principles; or
- (b) any asset which the licensee intends to trade, sell or use as the underlying security in the repurchase agreement transaction funded by clients of the licensee.

12.—(1) A licensee shall determine the total market risk-weighted assets by computing the sum of all the specific market risk capital charges and all the general market risk capital charges.

Determination of total market risk-weighted assets amount

(2) Specific market risk capital charges shall be determined by applying the risk weighting factors specified in Column 2 of Table 2 of Part B of the Schedule, to the amounts of risk-based asset and risk exposures as reported to the Commission and as set out in Column 1 of that Table.

Table 2
Part B
Schedule

(3) General market risk capital charges shall be determined by applying the risk weightings factors specified in Column 2 of Table 3 of Part B of the Schedule, to the amounts of risk-based asset and risk exposures as reported to the Commission and as set out in Column 1 of Table 2 of Part B.

Determination
of foreign
exchange
exposure.

13. A licensee shall, in determining the foreign exchange exposure—

- (a) measure the exposure in each foreign currency position, by deducting all liability amounts from all assets amounts including accrued interest denominated in the currency;
- (b) convert any net position that results from paragraph (a) into Jamaican currency in each currency at rates issued by the Central Bank; and
- (c) determine the overall net position by totaling the net short positions, comparing the result to the total of the net long positions, and identifying the greater absolute value of the two.

Management
of risk
related to
large
exposure

14.—(1) A licensee shall establish and maintain at all times written policies and procedures approved by its Board of Directors to govern the management of risks related to large exposures.

(2) A licensee shall—

- (a) notify the Commission of all large exposures with a counterparty or group of affiliated counterparties;
- (b) not incur exposures to any counterparty or group affiliated counterparties which exceeds the percentage of its capital base as specified by the Commission by notice, in writing; and
- (c) not cause the total of all uncollateralized exposures to a group of affiliated counterparties to exceed the percentage of its capital base as specified by the Commission by notice, in writing.

(3) A licensee shall file with the Commission no later than forty-five days after the end of each of the licensee's financial quarters, a report in the specified form disclosing the nature and amount of the licensee's large exposures.

(4) This regulation shall not apply to—

(a) exposures—

- (i) to the Bank of Jamaica;
- (ii) to or guaranteed by the Government of Jamaica including exposures to entities such as—

- (A) statutory bodies;
 - (B) companies owned or controlled by the Government of Jamaica; and
 - (C) agencies of the Government of Jamaica;
- (b) exposures to or guaranteed by—
- (i) government and government agencies of CARICOM countries, exempted, in writing, by the Commission;
 - (ii) governments and government agencies of the United States of America, Canada and the United Kingdom;
 - (iii) governments and government agencies of other G-10 countries, exempted, in writing, by the Commission;
 - (iv) governments and government agencies of other sovereign countries that are rated as investment grade, by an internationally recognized credit rating agency,
- and if exempted, in writing by the Commission.

15.—(1) Every licensee shall—

- (a) develop and monitor liquidity risk management programmes taking into consideration a broad range of adverse circumstances, including extraordinary credit events;
- (b) regularly assess its liquidity risk management practices to maximize the likelihood that it can continue to operate under adverse circumstances, whether as a result of specific events or systemic credit events;
- (c) design and implement programmes which monitor for early warning signs of potential liquidity problems;
- (d) establish and maintain written board approved policies and procedures which govern the management of liquidity risk; and
- (e) demonstrate to the Commission that it is conducting liquidity risk management in a sound manner.

Licensee shall develop and monitor liquidity management

(2) Where a licensee fails to adhere to paragraph (1)(a), it shall be deemed to be engaging in unsafe and unsound practices in conducting its business affairs.

(3) The licensee shall pursuant to paragraph (1)(a)—

- (a) clearly define a licensee's strategy for the day-to-day management of liquidity;
- (b) clearly state areas of management responsibility;
- (c) establish a process for—
 - (i) identifying, measuring, monitoring and managing liquidity risk; and
 - (ii) identifying minimum acceptable levels of liquidity.

(4) The strategy referred to in paragraph (3) shall—

- (a) define the licensee's general approach to managing liquidity, including various quantitative and qualitative targets; and
- (b) cover specific policies on the—
 - (i) composition of assets and liabilities;
 - (ii) use of institutional or broker funding; and
 - (iii) strategies for addressing temporary and longer-term liquidity disruptions.

Licensee shall maintain liquidity ratio

16.—(1) The Commission may, from time to time, establish such liquidity ratio as it may deem fit to measure a licensee's ability to meet its short-term financial obligations on time.

(2) Every licensee shall maintain the liquidity ratio which satisfies the benchmark specified by the Commission, by notice published in the *Gazette* or such other means as may be specified by the Commission.

Determination of total operational risk-weighted assets amount

17. A licensee shall determine the total operational risk-weighted assets amount by applying to the aggregate value of total balance sheet assets and off balance sheet funds under management, a factor that the Commission may specify, from time to time, by notice published in the *Gazette* or by other written means.

Licensee shall maintain ratios specified by Commission

18.—(1) A licensee shall maintain at all times all ratios specified by the Commission by way of written notice.

Part A Schedule

(2) To determine the ratios referred to in paragraph (1), the licensee shall employ the applicable formula specified in Part A of the Schedule or otherwise as may be specified by the Commission.

19.—(1) The Commission may, by way of guidelines, specify the early encashment restrictions for repurchase and the time frame for the early encashment restrictions on repurchase agreements.

Restrictions on early encashment of repurchase agreement.

(2) A licensee shall be subject to the early encashment restrictions; and shall adhere to the guidelines or such other written notice as specified by the Commission in paragraph (1).

(3) Where a licensee contravenes this regulation or any guidelines or notices issued pursuant to paragraph (2), the Commission shall exercise its powers in accordance with any one or more of the following provisions, namely subsection(1A), (3) or (3D) of section 68 of the principal Act.

20.—(1) The Commission may prescribe by notice published in the *Gazette* or by such other written means, the minimum transaction size for repurchase agreements.

Licensee shall adhere to requirements for minimum transaction size.

(2) A licensee who enters into a repurchase agreement with its clients shall—

- (a) comply with the minimum transaction size as prescribed under paragraph (1); and
- (b) present information as to the volumes and values of the repurchase agreement in such form and manner as may be specified, by the Commission.

(3) The Commission may vary by notice published in the *Gazette* or by such other written means, the form and manner of the information referred to in paragraph 2(b).

(4) The Commission may increase the minimum capital requirement for any dealer who fails to comply with the minimum transaction size, notwithstanding anything contained in this or any other Regulations made under the Act.

21.—(1) The Commission shall prescribe the guidelines related to stress testing.

Licensee shall develop stress testing.

(2) A licensee shall comply with the guidelines relating to stress testing issued by the Commission.

(3) Every licensee shall develop a stress testing programme and carry out periodic stress testing as may be prescribed by the Commission, from time to time.

(4) The stress testing programme referred to in paragraph (3) shall consist of—

- (a) a broad range of adverse and possible events that may occur in the market that may cause systemic interaction and feedback effects;

- (b) system-wide interaction and feedback effects;
- (c) appropriately documented policies and procedures governing their stress testing programmes; and
- (d) the development of contingency plans and risk mitigation strategies based on the results of the stress tests.

(5) The Board of Directors of the licensee shall—

- (a) have responsibility for the stress testing programme; and
- (b) be aware of the key findings from the stress tests.

(6) Every licensee shall file with the Commission the results of the stress tests conducted, within forty-five days after the end of each calendar quarter or at such times that the Commission may specify, in writing.

Offence

22. Any person who contravenes any provision of these Regulations for which a penalty is not specifically prescribed, commits an offence.

SCHEDULE

(Regulations 4, 10,
11 and 12)

PART A

1. Capital Adequacy Ratio = $\frac{\text{Capital Base}}{\text{CRWA} + \text{MRWA} + \text{ORWA} + \text{FXE}}$
2. Leverage Ratio = $\frac{\text{Total Balance Sheet Capital}}{\text{Total Balance Sheet Assets}}$

Note: Where—

Capital base is defined as (Tier 1 Capital + Tier 2 Capital)—
prescribed deductions

CRWA=total credit risk weighted assets

MRWA=total market risk weighted assets (that is specific market
risk capital charge + general
market risk capital charge)

ORWA=total operational risk weighted assets

FXE=foreign exchange exposure

SCHEDULE, *cont'd.*

PART B

Table 1. Credit Risk Asset Weightings

Column 1	Column 2
Risk-based Assets and Risk Exposures	Risk Weightings
Cash on hand	0%
Bank of Jamaica deposits and instruments	0%
Government of Jamaica ("GOJ") securities—domestic currency denominated	0%
Domestic currency denominated loans granted to or which are guaranteed by the GOJ	0%
Domestic currency denominated debt securities issued by statutory bodies or companies owned or controlled by the GOJ, or an agency of the GOJ, and which are guaranteed by the GOJ (including undertakings)	0%
GOJ securities—foreign currency denominated	100%
Foreign currency denominated loans granted to or which are guaranteed by the GOJ	100%
Foreign currency denominated debt securities issued by statutory bodies or companies owned or controlled by the GOJ, or an agency of the GOJ, and which are guaranteed by the GOJ (including undertakings)	100%
Debt of G10 countries (inclusive of Governments, Government agencies and Central Banks)	0%
Approved CARICOM debt (inclusive of Government, Government agencies and Central Banks)	0%
Goodwill	0%

SCHEDULE, *cont'd.*PART B, *cont'd.*Table 1. Credit Risk Asset Weightings, *cont'd.*

Column 1	Column 2
Risk-based Assets and Risk Exposures	Risk Weightings
Investments in unconsolidated subsidiaries	0%
Deposits and other amounts due from local deposit-taking institutions, or any other regulated deposit taking institution	20%
Amount due under reverse repurchase agreement transactions	20%
Amounts due from non-G10 and non-approved CARICOM Governments, Central Banks and Development Banks	20%
Loans (secured by client investments)	20%
Amounts due from participation in Collective Investment Schemes	50%
Residential mortgages (first charge and current or arrears less than three months)	50%
Other mortgages and loans	100%
Equity investments, inclusive of ordinary shares and preferences shares	100%
Fixed assets	100%
Other securities, exclusive of trading securities	100%
All other assets, exclusive of trading assets	100%
Foreign Exchange Exposure	100%

SCHEDULE, *cont'd.*PART B, *cont'd.*Table 2. *Specific Market Risk Weighting Factors*

Column 1	Column 2
Risk-based Assets and Risk Exposures	Risk Weighting Factors
Bank of Jamaica securities	0.0%
Government of Jamaica ("GOJ") securities—domestic currency denominated	0.0%
Other public sector securities—domestic currency denominated	0.0%
Other domestic currency denominated local securities	8.0%
Other domestic currency denominated trading assets, exclusive of equities and Collective Investment Schemes	8.0%
GOJ securities—foreign currency denominated	8.0%
Other public sector securities—foreign currency denominated	8.0%
Debt of G10 countries (inclusive of Governments, Government agencies and Central Banks)	1.6%
Approved CARICOM debt (inclusive of Government, Government agencies and Central Banks)	1.6%
Other foreign government securities	8.0%
All other trading assets, exclusive of equities and Collective Investment Schemes	8.0%

SCHEDULE, *cont'd.*PART B, *cont'd.*

Table 3. General Market Risk Weighting Factors

Column 1	Column 2
Time Maturity Buckets	Risk Weighting Factors
On call	0.00%
1-30 days	0.00%
31-90 days	0.20%
91-180 days	0.40%
181-365 days	0.70%
1-5 years	2.75%
5-10 years	3.75%
Over 10 years	6.00%