

## THE SECURITIES ACT

REGULATIONS  
(under section 76)

## THE SECURITIES (RETAIL REPURCHASE AGREEMENTS) REGULATIONS, 2014

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

L.N. 154/2014  
116B/2015

1. These Regulations may be cited as the Securities (Retail Repurchase Agreements) Regulations, 2014. Citation.

2.—(1) In these Regulations— Interpretation.

“client” means a person with whom a dealer has a subsisting retail repurchase agreement;

“custodian” means a person appointed—

(a) with the consent of both the dealer and the client; or

(b) by the Commission in any case of insolvency of a custodian appointed under paragraph (a) or of a dealer or Trustee;

“margin securities” means securities purchased pursuant to a retail repurchase agreement, for the purpose of satisfying (at a minimum) the Commission’s margin requirements;

“recognized” means acknowledged to be internationally known and used;

“retail repurchase agreement” means a repurchase agreement to which these regulations apply by virtue of regulation 3;

“sub-custodian” means a person appointed pursuant to a provision of a retail repurchase agreement which accords with item 6 of the Schedule;

“transaction” means any transaction governed by, or purported by a dealer to be governed by, a retail repurchase agreement;

“trust company” means a company duly—

(a) authorized to operate as a trust company in a recognized foreign jurisdiction; or

(b) incorporated or registered in Jamaica and whose constitutional documents do not prohibit the company from providing trustee services;

“trust deed” means the document creating a trust for the purpose of vesting in a Trustee the underlying assets;

“Trustee” means a Trustee approved pursuant to regulation 9;

“underlying assets” means the assets, including any securities (including margin securities), that are the subject of the retail repurchase agreement concerned;

“underlying securities” means the securities (excluding margin securities) which are the subject of the retail repurchase agreement concerned;

Application

3.—(1) These Regulations apply to any repurchase agreement that does not completely and outrightly transfer the legal ownership of the underlying securities from the dealer to the client.

(2) Every repurchase agreement to which these Regulations apply (in these Regulations called “retail repurchase agreements”) shall be entered into and conducted in accordance with these Regulations, all applicable requirements of the Securities (Prudential) Regulations, 2014, and all other prudential requirements and standards that the Commission may stipulate by notice in writing, from time to time.

(3) A dealer who enters into or conducts a retail repurchase agreement in contravention of paragraph (2) commits an offence.

Master Retail  
Repurchase  
Agreement,  
Schedule.

4. Every retail repurchase agreement shall—

- (a) conform to the terms and requirements for a Master Retail Repurchase Agreement, set out in the Schedule;
- (b) not contain any provisions that apply to products or services other than retail repurchase transactions;
- (c) be signed by the dealer and the client (or the client’s authorized representative);
- (d) be written in plain language that can reasonably be understood by the client;
- (e) provide that the agreement can only be modified or amended—
  - (i) by instrument in writing, signed by the dealer and the client (or the client’s authorized representative); or
  - (ii) as is necessary to comply with a requirement imposed by any law.

Transactions  
requirements

5.—(1) Immediately upon receipt of payment, or proof of payment, by a client of any moneys in respect of a transaction, the dealer shall issue a receipt to the client setting out—

- (a) the name under which the dealer carries on business, the address at which the dealer carries on business, the client’s full name and the client’s taxpayer registration number or such other number issued by the Government of Jamaica or the government of any other State, by which the client may be uniquely identified;
- (b) the date on which the transaction takes place;

- (c) the consideration given by the client;
- (d) the International Securities Identification Number or Uniform Identification Number for the underlying assets, if ascertainable at the time of issuing the receipt;
- (e) a statement indicating that the transaction is not a bank deposit;
- (f) a statement that the moneys received are paid by the client for the purpose of a repurchase agreement;
- (g) a statement that the value of the underlying assets is notional and based on market forces and the pricing mechanisms described and approved by the Commission;
- (h) a description of the applicable pricing mechanisms; and
- (i) any other information which may be specified by the Commission, in writing, from time to time.

(2) A dealer shall cause a transaction confirmation to be delivered to the client, by any of the methods referred to in paragraph (4), as soon as is reasonably practicable but in any event no later than three days—

- (a) after receipt of payment from the client in respect of the transaction, in any case where the underlying securities are owned by the dealer at the time of the transaction; or
- (b) after the acquisition or purchase of the underlying securities by the dealer for the client, pursuant to the retail repurchase agreement concerned, in any other case.

(3) A transaction confirmation shall contain—

- (a) in an identical manner, all the matters set out in the receipt referred to in paragraph (1);
- (b) a description of the securities concerned, including the following particulars—
  - (i) the name of the issuer;
  - (ii) the details referred to in paragraph I of the Schedule; and
  - (iii) the International Securities Identification Number or the Uniform Identification Number for the assets; and
- (c) the information specified in section 38(3) of the Act, as if it were a contract note under that section.

(4) For the purposes of paragraph (2), a transaction confirmation shall be deemed to be delivered to the client concerned—

- (a) where mailed by registered post to the current or last known address of the client, within twenty-one days after the date of posting;
- (b) where sent by ordinary post to the current or last known address of the client, within twenty-one days after the date of posting;

- (c) where served personally upon the client or a person duly authorized to accept service on behalf of the client, upon the provision by the client or person duly authorized (as the case may be) of a written acknowledgement of receipt;
- (d) where emailed to a current e-mail address of the client;
- (e) where sent by facsimile to a number provided by the client as an address for service by facsimile, at the moment of successful transmission of the facsimile.

(5) A dealer who knowingly or recklessly includes, in a transaction confirmation, any statement which is false in any material respect commits an offence.

(6) Every receipt and transaction confirmation issued to a client shall form part of the master retail repurchase agreement concerned.

Records and  
returns

6.—(1) A dealer engaged in retail repurchase business shall—

- (a) file with the Commission the following monthly reports in respect of the retail repurchase business, within fifteen days after the end of the calendar month concerned—
  - (i) its balance sheet and supplementary information;
  - (ii) its earnings and expenditure statement; and
  - (iii) any other report that may be specified in writing by the Commission, from time to time;
- (b) keep accurate and up to date records as to the following matters—
  - (i) payments made by clients in respect of retail repurchase transactions and their movement to the client trust account required to be kept under section 36 of the Act;
  - (ii) all information, in relation to transactions, sent by the dealer to the Trustee, including all requests, account information and flat files;
  - (iii) the daily summary of transactions executed in the central securities depository (whether such depository is operated by the Trustee or the Bank of Jamaica or through any overseas custodian) in respect of the retail repurchase business;
  - (iv) each executed retail repurchase agreement and every transaction confirmation and payment receipt issued by the dealer in respect of its transactions; and
  - (v) client information, including physical addresses and e-mail addresses and information as to risk appetite.

(2) The information required to be filed to be kept under paragraph (1) shall be retained for a period of not less than seven years and shall be capable of being readily accessed and produced by the dealer upon the request of the Commission.

(3) In the event of any default by a dealer under a retail repurchase agreement, the dealer shall forthwith notify the Commission.

7. Every dealer shall, in respect of its retail repurchase business—

Recording standards in respect of client accounts.

- (a) establish effective internal controls for the proper identification and accounting of client assets;
- (b) keep evidence of the acquisition or purchase of all underlying securities purchased by the dealer on behalf of the client, including records as to purchase prices;
- (c) keep records that clearly identify the relevant accounts and the underlying securities held by the Trustee on behalf of each client;
- (d) keep records of all withdrawals and encashments by clients, that are made prior to the repurchase date, all reinvestment of clients funds that have become due on the repurchase date, and any other retail repurchase transactions;
- (e) carry out reconciliations of the dealer internal records with the records of the Trustee on a daily basis, promptly correcting any discrepancies and making good any shortfalls; and
- (f) keep a record of all underlying assets held by the dealer and by the Trustee.

8.—(1) Securities purchased under a retail repurchase agreement (including margin securities) shall—

Client asset protection.

- (a) securities that can be dematerialized or immobilized in—
  - (i) payments made by clients in respect of retail repurchase transactions and their movement to the client trust account required to be kept under section 36 of the Act;
    - (A) a central securities depository approved by the Commission;
    - (B) an overseas custodian with whom an agreement is entered into in accordance with these Regulations; and
    - (C) a securities depository operated by the Bank of Jamaica;
  - (ii) securities that do not mature prior to the repurchase date;
  - (iii) securities that are of good delivery; and
  - (iv) such other categories of securities as the Commission may specify in writing; from time to time; and
- (b) be held in trust by a Trustee for the benefit of the clients.

(2) Delivery of securities to a Trustee for the purposes of paragraph (1) shall be effected by the close of business on the day on which the client makes payment to the dealer in respect of the purchase, or, in exceptional circumstances where through no fault of the dealer delivery by the close of business is impossible, no later than three days thereafter.

(3) The cash and securities obligations of a dealer under a retail repurchase agreement shall not be attached, subject to pledge or *lien*, or be used as any other type of collateral.

(4) A Trustee shall not issue any transaction guidelines, operational guidelines, rules or standards, which are not approved by the Commission.

(5) A Trustee who holds any assets pursuant to this regulation shall conduct a daily reconciliation of assets and liabilities by comparing the information obtained from dealers with the information obtained from the real time gross settlement system and the central securities depository operated by the Bank of Jamaica or the overseas custodian, as the case may be.

(6) Subject to paragraph (7), all moneys received from, or payable to, clients by a dealer shall—

- (a) be deemed to be held by the dealer (or any third party Trustee or custodian under the retail repurchase agreement) in trust for the clients; and
- (b) where applicable, be promptly paid into the trust account referred to in section 36 of the Act.

(7) All moneys paid in by clients under retail repurchase agreements shall continue to be considered client moneys until the underlying securities are acquired by the dealer and transferred to the Trustee.

(8) Where a dealer, Trustee or custodian holds assets in which a client has an interest, the dealer, Trustee or custodian (as the case may be) shall—

- (a) make adequate arrangements to safeguard the interest of the client; and
- (b) keep proper records and accounts as necessary to allow for the accurate identification of the assets and the interests therein held by that client as distinct from the assets and interests held by other clients.

9.—(1) A dealer shall, in selecting an overseas custodian or sub-custodian for the purpose of any retail repurchase transaction, comply with such criteria as the Commission may notify in writing, from time to time.

(2) A dealer shall not utilise any entity as a trustee for the purpose of any retail repurchase transaction unless the entity is approved as a Trustee by the Commission in accordance with the criteria set out in paragraph (3).

(3) An entity may, in such form as may be determined by the Commission, together with the matters referred to in paragraph (5), submit an application to the Commission, to be approved as a Trustee under this regulation and the Commission shall grant the application if satisfied that the entity—

(a) is—

(i) a company incorporated under the laws of Jamaica and—

(A) licensed under the Banking Act or Banking Services Act, as the case may require, as a bank, financial institution or building society;

(B) registered under the Co-operative Societies Act; or

(C) licensed as a dealer under the Securities Act;

(ii) a trust company incorporated under the laws of Jamaica; or

(iii) a bank or trust company authorised to operate as such under the laws of a recognized foreign jurisdiction;

(b) has a minimum share capital and professional indemnity insurance in such amount as the Commission is satisfied is sufficient to cover its potential liabilities as Trustee;

(c) [Deleted by L.N. 116B/2015]

(d) is a fit and proper person within meaning of section 9 of the Act;

(e) in the case of an overseas entity, the entity has a place of business located in Jamaica for the carrying on of its retail repurchase business;

- (f) has in place internal controls which protect against conflicts of interest and address how such conflicts are to be treated should they arise; and
- (g) has rules which appear to the Commission to be satisfactory, and the Commission otherwise has no information which would give the Commission reasonable cause to believe that the grant of the application would cause harm to clients.

(4) In paragraph (3), “recognized foreign jurisdiction” means a foreign jurisdiction included on a list published by the Commission, from time to time, as being a jurisdiction the laws in respect of which the Commission is satisfied are sufficient to ensure investor protection and market integrity and are of a standard at least equal to those in Jamaica.

(5) An entity who makes an application under paragraph (3) shall submit a copy of its operating rules to the Commission together with the application fee of twenty-thousand and such other information as the Commission may require, and such rules shall include provision—

- (a) as to the transaction structure for the movement of cash and securities that are the subject of any retail repurchase agreement;
- (b) for a standard Master Retail Repurchase Agreement, which accords with the requirements set out in the Schedule, to be used for all its retail repurchase agreements;
- (c) outlining the management and operating structure of the proposed Trustee;
- (d) setting out the procedure for amending the rules;
- (e) setting out the procedure for correcting errors made by the dealer or by the proposed Trustee;
- (f) as to the back office accountability requirements to be met by the dealer;
- (g) as to the processes to be used by the dealer to report information and to share information with the proposed Trustee;
- (h) outlining the ways in which the proposed Trustee will make information available to the dealer and the dealer’s clients;
- (i) as to confidentiality requirements;
- (j) setting out the procedure for handling complaints and resolving disputes;
- (k) setting out its conflict of interest policies;
- (l) setting out the disciplinary provisions applicable for breach of the rules;
- (m) setting out its fee structures;
- (n) setting out the criteria to be met by dealers in order to utilise the Trustee and the processes to be adhered to by dealers in such utilization including rules as to the holding of accounts, requests to the Trustee which are permitted to be made by dealers, the issuing

of instructions, termination by dealers and the rights of beneficiaries; and

- (o) setting out the valuation method used by the Trustee, being a method recognized by the Commission.

(6) Upon considering an application under paragraph (3), the Commission may in writing to the applicant—

- (a) refuse the application, giving the reasons for the refusal; or
- (b) grant the application subject to such conditions (if any) as the Commission thinks fit,

and upon the grant of an application pursuant to sub-paragraph (b), the applicant shall pay to the Commission an approval fee of five hundred thousand dollars and, on or before each anniversary date of the grant of approval, while the approval subsists, an annual fee of three hundred and seventy-five thousand dollars.

(7) The Commission may, in writing, revoke its approval of any Trustee where the Commission is satisfied that the Trustee—

- (a) is in breach of any fiduciary duty to clients;
- (b) no longer meets a requirement for approval under this regulation and, upon being directed by the Commission to remedy the deficiency within a specified time, fails to do so;
- (c) has failed to comply with any requirements which the Commission is empowered to impose for the protection of the interests of investors;
- (d) has not, within the time specified in regulation 9A, attained participant status in—
  - (i) a real time gross settlement system; and
  - (ii) a central securities depository,
 operated by the Bank of Jamaica, or any other similar systems as are specified by the Commission in writing for the purposes of this regulation;
- (e) has not satisfied the provisions of sub-paragraph (5) with respect to its rules;
- (f) has failed to rectify the rules in accordance with directions issued by the Commission in any case where its rules otherwise appear to the Commission to be unsatisfactory;
- (g) is in breach of any requirement under any law; or operated by the Bank of Jamaica;
- (h) is insolvent.

(8) A Trustee may terminate its operations as Trustee only if—

- (a) the Trustee gives to the Commission the notice required under regulation 12(4); and
- (b) where there subsisting retail repurchase agreements in respect of which the Trustee has custody of underlying assets—

- (i) another Trustee is first appointed to take custody of those assets and takes such custody in a manner consistent with these regulations; or
- (ii) the Trustee completes such steps as are approved by the Commission for the winding-up of its operations.

**9A.** An approved Trustee shall take such steps as are necessary to ensure that the Trustee attains, within ninety days after being granted approval under regulation 9, participant status in—

- (a) a real time gross settlement system; and
- (b) a central securities depository,

operated by the Bank of Jamaica, or any other similar systems as are specified by the Commission in writing for the purposes of this regulation.

**10.—**(1) It shall be the duty of the dealer to provide to any person seeking to enter into a retail repurchase agreement with the dealer, sufficient information about the nature of, and the risks associated with, retail repurchase transactions, including the disclosure statement mentioned in paragraph (2) such as would permit the client or other person, as the case may be, to make an informed decision as to whether to enter into the transaction.

(2) For the purposes of these Regulations, the disclosure statement provided to prospective clients shall set out—

- (a) a statement that retail repurchase agreements are an investment product and are not bank deposits, describing the significant characteristics of the product and any other relevant details about the nature of the product;
- (b) the risks involved in investing in the product;
- (c) the fees and penalties which may be payable by the client in respect of the product (for example, penalties for early encashment);
- (d) the arrangements in respect of the Trustee, custodian and sub-custodians;
- (e) the currency in which transactions will be conducted, and any currency risks to which the client may be exposed if the client makes payments that are not in the specified currency;
- (f) the rights of the client upon insolvency of the dealer;

Status requirements to be satisfied by approved Trustee

Disclosure requirements to clients.

- (g) the procedure for determining and realizing the client's interest in the underlying assets upon the insolvency of the dealer;
- (h) an explanation of the issues of conflict of laws that may arise in relation to assets held in trust by an overseas custodian;
- (i) the valuation method for the underlying assets;
- (j) the nature of any limitations on the functions of the Trustee;
- (k) the tax implications of the product; and
- (l) the dispute resolution procedures available in the event of a dispute.

(3) For the purposes of this regulation—

- (a) the information provided should be written in plain language and, where appropriate, illustrated by providing simple examples, excluding technical and legal jargon as far as practicable;
- (b) where it is not practicable to avoid technical or legal jargon, their meanings should be explained;
- (c) the size of typeface, the layout, the use of colour and graphics, and the order in which the information is presented should be in a reader-friendly format;
- (d) the information shall be provided accurately and completely, shall highlight important information, and shall have regard to the particular needs of the client or prospective client (as the case may be).

(4) Upon execution of a retail repurchase agreement, the dealer shall provide the client concerned with a copy of the executed agreement, together with the name, address and other details of the contact information for the Trustee.

11.—(1) A Trustee shall have the duty to—

Duties of Trustee.

- (a) exercise the same degree of care, diligence and skill that a prudent person would exercise in the circumstances; and
- (b) act in the best interest of the clients.

(2) A dealer shall not be required to indemnify a Trustee for any loss which arises as a result of the failure of the Trustee to—

- (a) exercise the standard described in paragraph (1)(a); or
- (b) comply with the provisions of any law with respect to the duties of the Trustee.

(3) A Trustee shall indemnify the dealer and the clients from any loss arising as a result of the failure of the Trustee to meet the standard described in paragraph (1), including (but not limited) the failure of the Trustee to return the underlying assets to the dealer on the repurchase date.

(4) A Trustee shall ensure that it has in place systems and structures for—

- (a) the segregation of assets;
- (b) the preparation of reconciliations;
- (c) record keeping as required by the Act and these Regulations;
- (d) effecting payments to clients, where applicable;
- (e) communicating with clients promptly as to the status and value of assets held on client's behalf;
- (f) safeguarding the physical integrity of automated systems used by it for information processing;
- (g) liquidity management, if relevant;
- (h) safeguarding against fraud, theft, money laundering and the financing of terrorism;
- (i) furnishing returns as required by the Act and these Regulations; and
- (j) addressing contingencies and providing appropriate back-up support.

(5) A Trustee shall not—

- (a) derive any secret profits or other benefit from its position as Trustee, except for fee payable for its services; or

- (b) execute any retail repurchase agreement on behalf of a client.
- (6) Before delegating any of its functions, a Trustee shall—
  - (a) obtain the approval of the Commission; and
  - (b) where such delegation is proposed to be made to an overseas entity, submit to the Commission the proposed agreement between the Trustee and the overseas entity with respect to the delegation and obtain a statement of “no objection” thereto from the Commission.

12.—(1) A Trustee shall cause an audit of its internal controls and operating procedures to be conducted at least once per year in respect of the previous year ending on the anniversary of the date on which the Trustee was approved by the Commission to act as Trustee, and submit a copy of the auditor’s report thereon to the Commission within ninety days after the conduct of the audit.

Reporting and  
record-keeping

(2) A Trustee shall furnish the following information to the Commission within the period specified hereunder with respect thereto—

- (a) quarterly unaudited financial statements, within forty-five days after the end of the financial quarter;
- (b) annually, audited financial statements within ninety days after the end of financial year concerned;
- (c) annually, certified evidence of tax compliance in respect of the relevant financial year within thirty days after the end of that year;
- (d) evidence of annual renewal of professional indemnity insurance meeting the amount referred to in regulation 9(3), within thirty days after the expiration of the previous renewal;
- (e) monthly reports containing such information, as may be specified by the Commission in writing, from time to time, in respect of securities held and information furnished to the Trustee by dealers, within fifteen days after the end of the month concerned; and
- (f) the daily reconciliations carried out by the Trustee as regards information furnished by depositories, custodians and dealers, before the end of the day.

(3) A Trustee shall notify the Commission immediately of any—

- (a) change of directors of the Trustee;
- (b) change of the shareholders of the Trustee or, in case of a Trustee which is a public company, any change of shareholders holding more than ten per cent of the shares in the company;
- (c) change in the Trustee's auditors; and
- (d) breach by a dealer of any retail repurchase agreement, trust deed, Trustee's rules, the Act, these Regulations or any applicable guidelines, as soon as the breach comes to the attention of the Trustee.

(4) A Trustee shall give not less than seven hundred and thirty days notice, to the Commission, of the Trustee's intention to discontinue business.

(5) A Trustee shall keep all records and other documents in relation to client transactions for not less than seven years after the client concerned has been paid the repurchase price or has requested early encashment of the total.

(6) A Trustee shall, in relation to its operations, keep—

- (a) so as to be readily available to the Commission upon request; and
- (b) in a form that is capable of being read by the Commission, such records as give a true and fair view of its affairs, financial position and financial dealings, and of the transactions it has conducted.

(7) For the purpose of daily monitoring of the retail repurchase market by the Commission, a Trustee shall at all reasonable times facilitate access (including real time electronic access) by the Commission to the Trustee's systems and operations.

(8) Records of the information required to be kept or given under this regulation (other than paragraph (5)) shall be retained by the Trustee for not less than seven years after the date of the last transaction covered by the information.

13.—(1) The Commission has the power to—

- (a) examine the business operations and records of the Trustee;
- (b) at any time require the Trustee to produce information in respect of the Trustee's retail repurchase business;
- (c) conduct such investigations into the conduct or business of the Trustee in respect of retail repurchase transactions as the Commission thinks fit;

- (d) provide to a regulator of securities in a foreign jurisdiction such assistance as the Commission considers appropriate in respect of any investigation, concerning a dealer or Trustee, that is being conducted by that regulator;
- (e) make rules for the winding up, merger or acquisition of Trustees;
- (f) approve the winding up, merger or acquisition of any Trustee; and
- (g) in order to prevent or remedy any breach of these Regulations or any adverse effect on clients, make such directions as it thinks fit as regards to steps to be taken by a dealer, Trustee or custodian.

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

- (a) the Trustee concerned shall provide to the authorized officers and agents of the Commission—
  - (i) access at all reasonable times to all premises on which the Trustee carries out retail repurchase business;
  - (ii) reasonable facilities for the inspection of the records and information referred to in paragraph (1); and
  - (iii) copies of such records and such information upon request;
- (b) the Commission may appoint an auditor to report to the Commission on any matter concerning the retail repurchase business of a Trustee.

14.—(1) Every trust deed shall—

- (a) state the objects for which the trust is established and that the assets comprised in the trust are held in trust for the clients;
- (b) require that the legal title in the underlying securities comprised in the trust be transferred to the Trustee for the benefit of the clients in accordance with the applicable retail repurchase agreement;
- (c) state the effective date of the trust;
- (d) state the Trustee's responsibility for the general management of the trust;
- (e) state the name in which the assets will be held in and any custodian arrangements that will apply to the assets;
- (f) indicate if any functions are being or may be delegated to third party agents;
- (g) prohibit the Trustee from—
  - (i) accepting any benefit from the position of Trustee, other than fees paid for services as Trustee;
  - (ii) acting in a manner that is not impartial or that is not in the best interest of the clients;

Minimum  
requirements  
for trust  
deeds.

- (h) empower the Trustee to seek advice on relevant issues as appropriate;
- (i) outline the mechanisms for the payment of the expenses of the trust;
- (j) specify the circumstances in which and the procedure by which the trust deed may be amended;
- (k) empower the Trustee to distribute the assets, in a manner approved by the Commission, in the event of default or termination of the trust;
- (l) outline the Trustee's powers and duties, and responsibilities to clients and dealers;
- (m) provide for the termination of the trust in accordance with these Regulations; and
- (n) contain such other provisions as may be notified by the Commission, from time to time.

(2) Any provision in a trust deed which is inconsistent with these Regulations shall be void to the extent of the inconsistency.

(3) Before appointing a Trustee in respect of any retail repurchase agreement, the dealer shall submit the proposed trust deed to the Commission for approval.

(4) Where a trust deed is submitted under paragraph (3)—

- (a) the Commission may approve the proposed trust deed; or
- (b) if the Commission determines that the trust deed does not comply with these Regulations or contains provisions that are likely to cause harm to clients, the Commission may refuse approval of the proposed trust deed or direct such amendments or clarifications be made to the proposed trust deed as the Commission thinks necessary.

(5) The provisions of paragraphs (3) and (4) shall apply to any proposed amendment to a trust deed as they apply to the original trust deed.

Valuation of assets

15. The Commission may by order specify the method recognized by the Commission for the valuation of underlying assets.

16.—(1) The Commission may appoint a Special Trustee in respect of any trust, upon the insolvency of the dealer concerned.

(2) An entity shall not be appointed as a Special Trustee under this regulation unless the entity is—

(a) a Trustee approved under regulation 9; or

(b) licensed as a Trustee under the Insolvency Act,

and the Commission is satisfied that there is no material conflict arising between the entity's proposed role as Special Trustee and the entity's role in any other capacity.

(3) A Special Trustee appointed under this regulation shall—

(a) take custody or control of all the assets underlying the retail repurchase agreement concerned, whereupon such assets shall vest in the Special Trustee;

(b) under the supervision of the Commission, effect the disposition of those assets to or on behalf of the clients concerned;

(c) for the purposes of sub-paragraph (b), submit to the Commission for approval a plan for the orderly disposition of the assets, which plan shall allow for the disposition of the assets in a fair manner having regard to the entitlements under the retail repurchase agreement concerned, by—

(i) identifying the assets owed to clients;

(ii) balancing considerations about maximising the recovery of clients' assets in a timely manner;

(iii) providing details of the intended steps to sell or transfer the assets to the clients and the steps for any other course of action the Special Trustee intends to pursue in the disposition;

(iv) setting out an itemized schedule of estimated expenses to be incurred by the Special Trustee and the justification for those expenses; and

(d) at all times, keep up to date records of accounts and, upon the request of the Commission, provide proper statements of accounts to the Commission as to the receipts and payments made in respect of trust assets and payments to clients in the disposition.

(4) Where a plan is submitted to or approved by the Commission under paragraph (3)—

(a) the Commission may, at any time, direct the Special Trustee to amend the plan as the Commission thinks fit to better protect clients interests; and

- (b) the Special Trustee may, at any time, apply to the Commission for approval to amend the plan.

(5) The Commission may appoint an auditor to audit the accounts of the Special Trustee and the Special Trustee shall furnish the auditor with such receipts, transaction records and other information as the auditor may require for the purposes of the audit.

(6) A Special Trustee shall treat with all claims in respect of assets of the trust concerned by one or more of the following methods—

- (a) the transfer of all or part of the assets to clients according to their respective ownership entitlements;
- (b) with the consent of the clients concerned, sell all or part of the assets and distribute the proceeds to the beneficiaries entitled under the trust;
- (c) with the consent of the clients concerned, hold all or part of the securities concerned until maturity.

(7) A Special Trustee shall meet with the clients to provide them with details of the disposition plan and to obtain any consents required under paragraph (6) and shall also provide the clients with periodic written reports as to the progress of the disposition.

(8) A Special Trustee may—

- (a) bring or defend any action or other legal proceeding in the name of and on the behalf of the trust;
- (b) appoint an attorney-at-law or such other agents as are necessary to assist the Special Trustee in the discharge of the functions of the Special Trustee;
- (c) solicit offers for the sale of the underlying assets;
- (d) enter into agreements for the sale of the assets of the trust;
- (e) transfer any assets of the trust to clients;
- (f) sell any assets of the trust to a financial institution or dealer;
- (g) with the prior approval of the Commission, deduct the reasonable administrative expenses of the Special Trustee from trust assets;
- (h) price and sell each class of security comprised in the trust as a block where necessary to obtain the best possible return for clients;
- (i) hold the underlying securities until maturity.

(9) A Special Trustee shall—

- (a) keep proper books of account and other records of its meetings and transactions in respect of the disposition;
- (b) retain the information referred to in sub-paragraph (a) for not less than seven years from the date of the Trustee's certified release under paragraph (10); and
- (c) keep proper records of underlying assets held by the Special Trustee.

(10) The Commission shall, in writing, certify the release of the Special Trustee from the Special Trustee's duties under the appointment where the Commission is satisfied that the Special Trustee has successfully completed the disposition plan approved under paragraph (3).

(11) The Commission may revoke the appointment of a Special Trustee where the Commission determines that the Special Trustee—

- (a) fails to comply with any duty of a Special Trustee under this regulation;
- (b) no longer meets any one or more of the requirements for appointment as Special Trustee under this regulation;
- (c) is in breach of any provision of the Act or any regulations made thereunder;
- (d) fails to comply with a direction of the Commission; or
- (e) has carried out any duty as Special Trustee in an improper manner.

(12) Where the appointment of a Special Trustee is revoked under paragraph (11), the Commission may appoint a new Special Trustee to act under this regulation.

(13) A Special Trustee may terminate its operations as Special Trustee (outside of the circumstances described in paragraphs (10) and (11) only) if—

- (a) the Special Trustee gives to the Commission not less than seven hundred and thirty days notice of the Special Trustee's intention to discontinue business; and
- (b) where there are subsisting retail repurchase agreements in respect of which the Special Trustee has custody of underlying assets—
  - (i) another Special Trustee is first appointed to take custody of those assets and takes such custody in a manner consistent with these Regulations; or
  - (ii) the Special Trustee completes such steps as are approved by the Commission for the winding-up of its operations.

Transitional

17.—(1) On or before the 31st day of January, 2015, a dealer in respect of its retail repurchase business in existence prior to the coming into operation of these Regulations shall submit to the Commission for approval a transition plan to bring the retail repurchase business into compliance with these Regulations.

(2) A retail repurchase agreement created before or during the transition period and dealt with in a transition plan submitted in accordance with paragraph (1) shall be deemed to be in compliance with these Regulations unless—

- (a) the transition period has expired; or
- (b) the transition plan is approved and the dealer fails without reasonable excuse to conform to the transition plan.

(3) The Commission shall notify a dealer who submits a transition plan to the Commission within the date specified in paragraph (1) as to whether the plan is approved or disapproved, not less than sixty days after the date of submission of the plan, and in any event before the expiration of the transition period.

(4) For the purposes of this regulation—

- (a) all retail purchase agreements shall be transferred to an approved trustee before the expiration of the transition period; and
- (b) the transition period begins on the commencement date and expires at midnight on the 31st day of August, 2015, or such later period as may be notified by the Commission in writing.

(5) The Commission may approve a transition plan under this regulation subject to such revisions as the Commission thinks fit.

(6) During the transition period, a dealer shall not enter into any retail repurchase agreement with any entity unless the agreement—

- (a) contains a provision indicating that the client consents to the automatic transfer of the underlying assets to a Trustee pursuant to these Regulations, by or before the end of the transition period;
- (b) contains a provision indicating that the client consent to the unilateral amendment by the dealer, of the terms of the agreement to conform to these Regulations prior to the transfer of the assets to the Trustee;
- (c) conforms with the current Guideline SR-GUID-04/07-0012, entitled “Minimum Requirement for Client-Dealer Repurchase Agreements”;
- (d) does not contain provisions that apply to any services or products other than those related to retail repurchase transactions; and
- (e) is approved by the Commission.

18. A dealer, Trustee or Special Trustee who contravenes any provision of these Regulations commits an offence. Offences.

## SCHEDULE

(Regulations 3 and 5)

*Master Retail Purchase Agreement*

Every Retail Repurchase Agreement shall include provisions concerning the matters set out in the numbered items below.

1. The material details of the agreement, including—
  - (a) the agreement date;
  - (b) the purchase price and the repurchase price;
  - (c) the purchase date and the repurchase date;
  - (d) A description of the security, including the type of instrument concerned (for example, bonds, treasury bills, *etc.*);
  - (e) the term remaining until maturity or the maturity date;
  - (f) the coupon rate;
  - (g) the applicable interest rate;
  - (h) the currency denomination in which payments are to be made; and
  - (i) the face value of the security.
2. A description of the nature of the transaction, indicating that the transaction is a “repurchase agreement” as defined by the Securities Act.
3. Where the dealer does not possess the underlying securities at the time of entering into the agreement and it is agreed that the dealer should purchase the underlying securities after the payment is made by the client, a provision that—
  - (a) any moneys paid by the client for the purposes of the agreement are held by the dealer in trust for the client until the underlying securities are purchased;
  - (b) the client is to immediately be provided with evidence of the purchase; and
  - (c) the money held in trust by the dealer shall be paid into the trust account referred to in section 36 of the Securities Act.
4. Provision that where the Trustee delivers the underlining securities to the dealer on the repurchase date, the monies due to the client that have not been paid over to the client by the dealer or held in trust by the dealer for the client.
5. A statement acknowledging that the client has consented to the establishment of a trust by the dealer for the purpose of the outright transfer by the dealer of the underlining securities to the Trustee to hold for the benefit of the client.
6. A provision—
  - (a) acknowledging the dealer’s obligation to appoint a Trustee approved by the Commission to be the holder of the legal title in the underlying securities in trust for the benefit of the client; and
  - (b) for the appointment of an approved custodian or sub-custodian to hold securities.
7. A provision requiring the dealer to immediately place the underlying assets with the Trustee when those assets are acquired by the dealer for the client.

SCHEDULE *cont'd.*

8. A provision that only assets approved by the Commission by notice in writing, from time to time, will be permitted for use under the agreement.

9. A provision—

- (a) specifying whether or not the client authorizes the dealer to substitute securities, held by the Trustee for the client, with other securities owned by the dealer;
- (b) that where such authorization is given, only equivalent securities may be substituted;
- (c) defining “equivalent securities” as meaning securities which at the time of substitution—
  - (i) have a market value equal to or greater than the market value of the originally underlying securities; and
  - (ii) meet such other criteria as may be specified by the Commission by notice in writing from time to time;
- (d) specifying whether the client consents to netting and rollovers being conducted with respect to the client’s accounts; and
- (e) indicating that the client consents that the custody and control of the underlying securities and any transfer of those securities is to be done by the Trustee on the client’s behalf.

10. A statement of the events of default and the remedies therefor, specifying—

- (a) the acts of insolvency that will cause the non-defaulting party to treat the agreement as being at and end; and
- (b) any other reason which may entitle either party to terminate the agreement, including but not necessarily limited to—
  - (i) where the dealer fails to transfer the underlying security to the Trustee upon becoming obliged to do so;
  - (ii) where the client fails to pay the purchase price to the dealer in respect of the transaction upon becoming obliged to do so;
  - (iii) where the dealer fails to repurchase, or the Trustee fails to transfer the underlying security on the repurchase date;
  - (iv) where the dealer or clients admits to its inability to, or its intention not to, perform any obligation stipulated in the agreement;
  - (v) where the dealer or Trustee fails to deliver the underlying security or, where applicable, the margin securities, along with the relevant documentation duly endorsed or executed (as the case may require);
  - (vi) where the dealer or client commits a breach of any part of the agreement;
  - (vii) where an act of insolvency (as defined in the agreement) occurs with respect to either the dealer, Trustee or the client;
  - (viii) where any representations made by the dealer or client are incorrect or untrue in any material respect.

SCHEDULE *cont'd.*

11. A statement that in the event of default, the client shall be entitled to the underlying securities and in the event that the value of the underlying securities falls below the purchase price, the client shall be entitled (at a minimum) to the value of the margin securities up to the value of the purchase price.

12. A statement that—

- (a) the underlying securities belong to the client and do not form part of the dealer's assets in the event of an insolvency; and
- (b) where the client has paid over moneys to the dealer for the purchase of securities and the dealer has not purchased the securities, the moneys paid over do not form part of the dealer's assets should the dealer become insolvent.

13. Provision for—

- (a) the maintenance of a margin that is—
  - (i) at least equivalent to the required margin as may be notified by the Commission in writing, from time to time;
  - (ii) tied to the purchase price of the securities throughout the life of the agreement; and
- (b) additional margin securities to be given by the dealer in the event that market value of the underlying securities falls below the purchase price of the securities plus the margin amount referred to in paragraph (a) as calculated no less than on a daily basis.

14. The method of valuation to be used by the dealer in respect of the underlying assets, being a method recognized by the Commission, and a statement that the dealer warrants that the method of valuation is recognized by the Commission and that the client agrees to that method of valuation.

15. A statement as to whether payments by clients may be made in currency denominations other than those used by the Trustee and, if so, whether and how any fluctuations in the value of the currency denomination paid by the client or the currency denomination used by the Trustee will impact any sums that become due to the client from the dealer.

16. Provision for the consent of the client to the application of the Trustee's operating rules to transactions under the agreement.

17. A statement that the entitlement to the coupon rate in respect of the underlying securities belongs to the client, but that the client agrees to transfer that entitlement to the dealer.

18. Provision for transactions in respect of foreign debt securities to be done only through an overseas custodian or sub-custodian with whom the Trustee or a central securities depository operated by the Bank of Jamaica has an established relationship for the purposes of retail repurchase transactions.

19. A statement as to the level of risk associated with the instrument, and in particular—

- (a) that in the event that the dealer fails to repurchase the security, all the risk associated with the underlying security will be borne by the client;
- (b) that repurchase agreements are not bank deposits; and
- (c) that early termination of the repurchase agreement by the client may result in the imposition of a penalty by the dealer, and the basis on which the amount of that penalty will be calculated.