FINANCIAL SERVICES COMMISSION

FOR CONSULTATION

PROPOSED STANDARDS OF SOUND PRACTICE
CORPORATE GOVERNANCE FOR REGULATED ENTITIES

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Standards of Sound Practice on Corporate Governance for Regulated Entities

1. Introduction

1.1. This document establishes the Financial Services Commission's (the "Commission" or "FSC") Standards of Sound Practice on corporate governance for entities regulated by the Commission ("regulated entities"), as provided under the Financial Services Commission Act (as amended) ("FSC Act").

1.2. These Standards should be read in conjunction with the relevant regulations issued and regulatory measures issued by the Commission in relation to the regulation/supervision of the financial services industry.

2. Statutory Authority

2.1. In the pensions sector, the Pensions Act provides for fit and proper requirements for administrators and their officers (section 7) and prohibits an administrator from also acting as actuary or auditor of a fund it administers (section 12(1)). Every pension administrator is required to appoint a responsible officer, with a penalty for failing to notify the Commission when that person ceases to hold the post (sections 11(1), 11(9) and 51), and administrators must notify the Commission as soon as practicable where it appears that a pension fund or scheme is operating without trustees (regulation 30 of the Pensions (Governance) Regulations).

2.2. In the insurance sector, the Insurance Regulations require the establishment of Audit, Conduct Review, and Investment and Loan Committees (regulations 73, 74, 75 and 104), and the Insurance (Amendment) Regulations, 2022 impose duties to avoid conflicts of interest, maintain an Enterprise Risk Management Programme with direct Board responsibility, and conduct business with integrity (regulations 72B(1), 73B(2)(b)(vi)(D) and 142P). Section 43 of the Insurance Act, 2001 requires directors and officers to ensure the accuracy of financial statements.

2.3. In the securities sector, the Securities Act, 2013 requires dealers to establish audit and conduct review committees (section 59A), imposes fit and proper filing requirements (section 9(3)), and requires disclosure of directors' interests (sections 54 and 56); the Securities (Prudential) Regulations, 2014 require written risk management policies (regulations 14 and 15); and the Securities (Mutual Funds) Regulations, 1999 require independence between custodian and management company (regulation 18).

2.4. In the trust and corporate services provider sector, the Trust and Corporate Services Providers Act requires fit and proper applicants and principal representatives (section 6(4)), annual independent audit (section 17), segregation of client assets (section 18), and principal representative accountability (section 17A); the Trust and Corporate Services Providers (Licensing and Operations) Regulations, 2022 further require licensees to maintain a full corporate governance framework — including a conflict of interest policy, risk appetite statement, client money controls, training policies, financial crime controls, and a code of ethics (regulation 5) — under the oversight of a designated governance officer reporting to the Board (regulation 6).

3. Scope of Application

3.1. These Standards apply to the Governing Body of all regulated entities subject to proportional application as outlined in paragraphs 3.2., 6.1. and 6.2. below.

3.2. The corporate governance framework for regulated entities should be commensurate with the size, complexity, structure, nature of business and risk profile of its operations.

3.3. Where a regulated entity is part of a group, it may rely on the corporate governance framework of the group provided that the regulated entities' Governing Body is satisfied that the framework is commensurate with the size, complexity, structure, nature of business and risk profile of its operations and legal requirements in Jamaica, including those outlined in these Standards. Where gaps are identified, a tailored corporate governance framework that complies with the regulatory requirements of Jamaica is required for regulated entities.

4. Definitions

4.1. The following definitions are provided for the purpose of these Standards:

4.1.1. The "**Governing Body**" of a regulated entity refers to the person or group of persons, by any name so called[1], responsible for overseeing the entity's strategic direction, regulatory compliance and risk management. The Governing Body ensures adherence to legal, ethical, market conduct and prudential standards.

[1] Names for such governing bodies, include the Board of Directors for corporations; General Partner(s) for partnerships; Managing Members(s)/Board of Managers for Limited Liability Companies; and Investment/Fund Managers for investment funds.

4.1.2. "**Control Functions**" mean authorised functions, whether in the form of a person, unit or department, serving a control (or checks and balances) function from a governance standpoint and which carry out specific activities including strategy determination, risk management, compliance, actuarial matters, internal audit, and similar functions.

4.1.3. "**Director**" means a member of the Governing Body, and any person who fulfils the functions of a Director, by any name so called. Where the Director is a corporate entity, these Standards apply to the natural persons who represent such corporate entity or the regulated entity's governing body.

4.1.4. "**Non-Executive Director**" means a Director of a regulated entity who does not perform day-to-day management functions for the entity or a similar function in the regulated entity's subsidiaries, holding company or companies related to the regulated entity through common ownership or control.

4.1.5. "**Senior Management**" includes the most senior staff of the regulated entity, including division heads, and any person who fulfils the functions of a senior manager, by whatever name called. Such functions include actively participating in the daily planning, supervision, administration and execution of the objectives and strategy of a regulated entity.

5. Standards and Guidance on Corporate Governance

5.1. The Corporate Governance Framework

5.1.1. A regulated entity shall develop, enforce, and uphold a corporate governance framework that ensures effective and responsible management oversight of its operations while safeguarding the legitimate interests of its stakeholders.

5.1.2. A regulated entity shall establish a Governing Body accountable for implementing a corporate governance framework that, at a minimum, encompasses the following key elements outlined in these Standards.

5.2. Objectives and Strategies of the Regulated Entity

5.2.1. The Governing Body shall, at a minimum, be responsible for:

a) the effective, prudent and ethical oversight of the regulated entity;

b) establishing and overseeing the execution of the entity's corporate culture, business objectives and strategies for achieving such objectives (including ongoing monitoring and evaluation). Such execution must be in line with the entity's long-term interests and viability, including the legitimate interests of relevant stakeholders;
c) adequately documenting in writing the objectives and strategies of the entity and communicating to the Senior Management and staff of the entity, including persons in Control Functions;
d) ensuring the regulated entity conducts its affairs in accordance with the acts, regulations and rules of Jamaica and the Commission, and where applicable, the entity's constitutional documents; and
e) ensuring the regulated entity adopts a management structure that is commensurate with the size, complexity, structure, nature of business and risk profile of its operations.

5.3. Structure and Governance of the Governing Body

5.3.1. The Governing Body, at a minimum, shall have:

(a) A sufficient number of individuals, as mandated by applicable acts and regulations, possessing diverse skills, backgrounds, experience, and expertise to collectively maintain the requisite level of competence within the Governing Body;
(b) Well-documented internal governance practices and procedures that facilitate the Governing Body's operations, ensuring efficient, objective, and independent judgment and decision-making;
(c) Sufficient authority and resources to effectively and efficiently fulfill its responsibilities;
(d) Strong standards of business conduct and ethical behavior for Directors and Senior Management, supported by policies on conflicts of interest, codes of conduct, private transactions, self-dealing, and the fair treatment of internal and external entities;
(e) A requirement for the declaration of any actual or potential conflicts of interests by Directors and Senior Management, as they occur;
(f) Well-established succession plan for Directors and Senior Management to ensure continuity and leadership stability;
(g) Nomination, appointment, resignation, disqualification and termination procedures for Directors and Senior Management; and
(h) Clearly defined and documented responsibilities of sub-committees within the Governing Body, where applicable, to prevent any individual from exercising unchecked control over the business.

5.4. Appropriate Allocation of Oversight and Management Responsibilities

5.4.1. A regulated entity shall explicitly define and document the roles and responsibilities assigned to the Governing Body, Senior Management, and individuals in Control Functions, as applicable, to ensure a proper distinction between oversight duties and managerial responsibilities.

5.4.2. The Governing Body shall oversee Senior Management, including the appointment and dismissal of senior managers, establish suitable performance standards, and ensure that Senior Management effectively manages the regulated entity's daily operations in alignment with the strategies and objectives set by the Governing Body.

5.5. Independence and Objectivity

5.5.1. The Governing Body shall define and formally document clear, objective independence criteria that its members must meet to ensure impartiality in decision-making processes.

5.6. Collective Duties of the Governing Body

5.6.1. The Governing Body, at a minimum, shall:

(a) Collectively possess and continually maintain, through training and education, necessary skills, knowledge and understanding of the regulated entity's business to be able to fulfil its role[2].
(b) Ensure the regulated entity operates in compliance with all applicable laws, regulations and regulatory measures, including those in Jamaica and any other country where the regulated entity conducts business;
(c) Within seven (7) days of becoming aware of any substantive issues that could materially affect the regulated entity, notify the relevant regulator(s)/agencies via email, consistent with applicable legislation, rules, and regulations;
(d) Comply promptly and fully with requests for information from the Commission, consistent with applicable legislation, rules, and regulations; and

[2] Subject to the size, complexity, structure, nature of business, and risk profile of the regulated entity, the Governing Body may occasionally seek guidance from external experts in certain areas of operation. However, the Governing Body must collectively maintain the expertise and experience required to comprehend, assess, and, when necessary, critically evaluate the advice provided by such external specialists.

(e) Enquire into, and keep abreast of, the operations of the regulated entity and request relevant information from management or service providers to support decision-making, including their presence at Governing Body meetings, as needed.

5.6.2. The Governing Body, at a minimum of once per year, shall:

(a) Assess the strategic objectives and policies of the regulated entity, making necessary revisions or reaffirming them as needed;
(b) Evaluate the advancements towards meeting established strategic objectives;
(c) Evaluate the composition of the Governing Body to confirm that, as a collective, it possesses adequate knowledge, skills, experience, commitment, and independence to effectively oversee the regulated entity, considering its size, complexity, structure, nature of business, and risk profile;
(d) Execute comprehensive self-assessments of the performance of the governing body, both individually and collectively, ensuring that any identified deficiencies are addressed and documented;
(e) Evaluate the effectiveness of risk assessment and management systems to confirm that all significant risks are appropriately measured, monitored, and mitigated;
(f) Assess the implementation of internal controls to confirm their effectiveness and ensure that any identified deficiencies are appropriately addressed; and
(g) where applicable, review the remuneration policy for Senior Management for continued suitability.

5.7. Duties of Individual Directors of the Governing Body

5.7.1. Each Director of the Governing Body shall commit time to the role needed for effective and efficient execution of related responsibilities[3].

5.7.2. Individual Directors of the Governing Body are required to act with integrity, demonstrating good faith, honesty, and sound judgment in their duties.

5.7.3. Individual Directors of the Governing Body must carry out their duties with appropriate care and diligence.

[3] The Governing Body should specify the minimum expected time commitment for Non-Executive Directors in their appointment letters, acknowledging that this commitment may vary based on the evolving needs of the regulated entity.

5.7.4. Each Director of the Governing Body must continuously maintain a thorough understanding of the regulated entity's business, periodically updating their knowledge to align with industry developments, regulatory changes, and business evolution.

5.7.5. Each Director must review and assess any issues raised or complaints, ensuring that appropriate and timely action is taken to resolve them. All concerns and corresponding corrective measures must be adequately documented.

5.7.6. The Directors of the Governing Body must prioritise, and act in, the best interests of the regulated entity and its stakeholders, placing those interests above their own.

5.7.7. An individual Director must demonstrate independent thinking, sound judgment, and objectivity in decision-making, considering the interests of the regulated entity and its stakeholders. They must not exploit their position for personal gain or take actions that could harm the regulated entity.

5.7.8. Each Director of the Governing Body must safeguard their independence from undue influence by Senior Management or other parties while ensuring access to all relevant information concerning the regulated entity.

5.7.9. Each individual Director of the Governing Body must have a clear understanding of the scope, reliability, and potential limitations of the services and reports provided by service providers. This includes recognising any constraints in the accuracy, timeliness, or comprehensiveness of the information received. Directors should critically assess such reports and services, ensuring they are not solely reliant on external providers for decision-making. Where necessary, they must seek additional clarifications, conduct independent evaluations, and challenge assumptions to ensure informed and effective governance.

5.8. Appointments and Delegation of Functions and Responsibilities

5.8.1. *Sub-committees*: The Governing Body may establish sub-committees to oversee and execute specific delegated powers, duties, and functions. While these sub-committees remain accountable to the Governing Body, they do not absolve it of its overall responsibilities. The Governing Body retains ultimate oversight and must ensure that all sub-committees operate effectively within their designated scope, while aligning with the strategic and regulatory obligations of the entity.

(a) Each established sub-committee, where applicable, must have a defined charter, terms of reference, or similar document outlining its mandate, scope, accountability, reporting requirements, and operational procedures. Sub-committees are responsible for maintaining comprehensive records, such as meeting minutes or summaries of reviewed matters and decisions made. These records should demonstrate the committee's fulfillment of its responsibilities and facilitate the assessment of its effectiveness by the Governing Body or those overseeing internal control functions.

(b) The Governing Body must establish an appropriate Compliance Committee or designate a responsible individual to provide direct and timely reports on all compliance matters. The selection of a committee or individual should be guided by the size, complexity, structure, nature of business, and risk profile of the regulated entity to ensure effective oversight and regulatory adherence.

(c) For insurance-regulated entities, the Governing Body must ensure that an actuary appointed under the Insurance Act has direct access to the Governing Body and all pertinent information necessary for their role.

5.8.2. *Outsourcing*: when a function of the Governing Body is outsourced, the Governing Body must implement processes to document the delegation and oversee the execution of the delegated functions. However, the Governing Body remains accountable and cannot relinquish its responsibility for these functions. Specifically, it must uphold overall accountability of internal control, internal audit, risk management, and actuarial matters, as applicable.

5.9. Risk Management and Internal Control Systems

5.9.1. The Governing Body is responsible for overseeing the development and implementation of effective and comprehensive risk management and internal control systems, ensuring these functions adequately safeguard the regulated entity.

5.10. Conflicts of Interest and Code of Conduct

Conflicts of Interest

5.10.1. Directors and Senior Management shall declare any actual or potential conflicts of interest to ensure transparency and uphold ethical governance.

5.10.2. The Governing Body must develop and maintain a formal, documented conflicts of interest policy for its members. At a minimum, this policy should include the following:

(a) a member's obligation to actively avoid, as best as possible, any activities that may result in conflicts of interest or give the appearance of such conflicts;
(b) a structured review and approval process that members must follow before participating in certain activities, such as serving on another Governing Body, to ensure that such involvement does not result in a conflict of interest;
(c) a member's responsibility to promptly disclose any situation that could potentially lead to, or has already caused, a conflict of interest;
(d) a member's obligation to refrain from voting on any matter where a conflict of interest exists or where their objectivity and ability to effectively carry out their duties to the regulated entity may be compromised, unless otherwise permitted by the Articles of Association or constitutional documents;
(e) adequate processes and procedures to ensure that transactions with related parties are conducted on an arm's length basis; and
(f) the approach the Governing Body will take to address and resolve any instances of non-compliance with the conflict of interest policy.

5.10.3. When conflicts of interest arise, the Governing Body must ensure they are formally recorded in the meeting minutes corresponding to the subject matter of the conflict.

5.10.4. Unless explicitly permitted by the Articles of Association or constitutional documents of the regulated entity, a member of the Governing Body must promptly withdraw from a meeting when a conflict of interest arises and abstain from discussing or influencing any matter related to the conflict.

5.10.5. Directors and Senior Management must provide the Governing Body with a written annual declaration confirming that all conflicts of interest have been disclosed throughout the year. Additionally, any changes to their declaration must be promptly communicated as they arise.

Code of Conduct

5.10.6. The Governing Body must adhere to a Code of Conduct founded on the following key principles:

(a) ***Selflessness:*** Directors must prioritise and act in the interests of the regulated entity and its stakeholders. Under no circumstances should they engage in actions primarily intended to secure financial or other benefits for themselves, their family, or friends.
(b) ***Integrity:*** Directors must ensure they remain independent and free from obligations to individuals or organisations that could unduly influence their ability to fulfill their duties responsibly and impartially.
(c) ***Objectivity:*** Directors must act and make decisions with impartiality and fairness, prioritising the best interests of the regulated entity. Their actions should be based on credible evidence and conducted without discrimination or bias.
(d) ***Accountability:*** Directors remain accountable to the regulated entity for their decisions and actions. They must also subject themselves to the level of scrutiny that aligns with the responsibilities of their position.
(e) ***Openness:*** Directors must conduct their actions and decisions with openness and transparency, ensuring that information is shared with the regulated entity unless there are legitimate and lawful grounds for withholding it.
(f) ***Honesty:*** Directors are obligated to disclose any private interests that may relate to their responsibilities and must take appropriate measures to address any actual or potential conflicts of interest.
(g) ***Leadership:*** Directors must embody these principles in their actions, actively advocating and firmly upholding them. They should consistently maintain professionalism and demonstrate the integrity to challenge inappropriate behavior whenever it arises.

5.11. Remuneration Policy and Practices

5.11.1. The Governing Body must establish and ensure the effective implementation of a documented remuneration policy. This policy must: (i) prevent excessive or inappropriate risk-taking; (ii) align with the regulated entity's corporate culture, objectives, strategies, defined risk appetite, and long-term interests; and (iii) appropriately consider the interests of relevant stakeholders.

5.11.2. At a minimum, the remuneration policy must be applicable to members of the Governing Body, Senior Management, employees in Control Functions, and any other personnel whose decisions or actions could significantly influence the risk exposure of the regulated entity.

5.12. Reliable and Transparent Financial and Regulatory Reporting

5.12.1. The Governing Body must ensure that there is comprehensive financial and regulatory reporting processes and procedures for internal, public, and supervisory purposes which is supported by clearly defined roles and responsibilities assigned to the Governing Body, Senior Management, and the external auditor.

5.12.2. The Governing Body must establish audit and compliance committees or comparable bodies that align with the regulated entity's size, complexity, organizational structure, business nature, and risk profile[4]. The Governing Body is responsible for oversight of the audit and compliance committees or comparable bodies.

5.13. Transparency and Communications

5.13.1. The Governing Body must have timely access to accurate and relevant information about the regulated entity.

5.13.2. The Governing Body must authorise systems and controls that facilitate appropriate, timely, and effective communication with the Commission regarding the governance of the regulated entity.

5.13.3. The Governing Body must convene regular meetings, at least once per year. If it is not structured as a board, its principals or any individuals with ultimate control over the regulated entity must also meet at least annually.

[4] The audit and compliance committees or comparable bodies oversee the financial and regulatory reporting process, internal and external auditors, and audit-related decisions. It reviews audit scope and frequency, receives key reports, and ensures Senior Management promptly addresses control weaknesses, regulatory non-compliance, and other audit findings. Additionally, the audit and compliance committees or comparable bodies should oversee the establishment of accounting and regulatory reporting policies and practices by the regulated entity.

5.13.4. A comprehensive agenda should be distributed well in advance of any Governing Body meeting, ensuring each Director has ample time to review and familiarise themselves with the matters for discussion.

5.13.5. Comprehensive minutes of all Governing Body meetings must be recorded, documenting decisions, discussions, and action points. At a minimum, the minutes must include:

(a) Attendance of each member;
(b) Dissensions or negative votes;
(c) Conflicts of interest declared; and
(d) The substance of matters considered.

5.13.6. Meeting minutes must capture sufficient detail to demonstrate the Governing Body's engagement, the essence of discussions, and relevant outcomes. They should be formally approved at the next Governing Body meeting.

5.14. Duties of Senior Management

5.14.1. The Governing Body must safeguard its independence from undue influence by Senior Management or other entities, ensuring unrestricted access to all pertinent information about the regulated entity.

5.14.2. The Governing Body must review and approve appropriate policies and procedures to ensure that Senior Management:

(a) Maintains clear and comprehensive accountability to the Governing Body;
(b) Effectively and efficiently conducts and manages the day-to-day operations of the regulated entity, in accordance with the entity’s corporate culture, business objectives and strategies for achieving such objectives. This must also be in line with the long-term interests and viability of the regulated entity, including the legitimate interests of relevant stakeholders;
(c) Supports effective risk management, ensures compliance, and upholds fair treatment of relevant stakeholders;
(d) Ensures the Governing Body receives timely and sufficient information to fulfill its responsibilities, including monitoring and evaluating the performance and risk exposures of the regulated entity, and the effectiveness of Senior Management; and

(e) Ensures the internal organisation maintains well-organised and easily accessible records.

6. Supervisory Review by the Commission

6.1. Regulated entities must, as required by the Commission, provide evidence of the adequacy and effectiveness of their corporate governance framework. The Commission will apply supervisory judgment during its assessment, considering the size, complexity, structure, business nature, and risk profile of the regulated entity.

6.2. If a regulated entity believes that a specific standard or its application does not apply due to its size, complexity, structure, business nature, or risk profile, it must thoroughly justify this to the Commission as required.

7. Enforcement

7.1. Whenever there is non-compliance of these Standards, the enforcement policies and procedures of the Commission will apply, in addition to any other powers provided in legislation.

8. Effective Date

8.1. TBD.