

**A BILL
ENTITLED**

AN ACT to Amend the Securities Act and to provide for consequential matters.

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:-

Short title and construction.

1. This Act may be cited as the Securities (Amendment) Act, 2013, and shall be read and construed as one with the Securities Act (hereinafter referred to as the principal Act) and all amendments thereto.

Amendment of section 2 of principal Act.

2. - (1) Section 2(1) of the principal Act is amended -
(a) by inserting in the appropriate alphabetical sequence the following definitions -

""Appeal Tribunal" means the Appeal Tribunal established by section 19 of the Financial Services Commission Act;

"derivative" -

(a) means an option, swap, futures contract, forward contract, or other financial commodity, contract or instrument, the market price, value, delivery obligations, payment obligations or settlement obligations of which are derived from reference to, or based on, an underlying interest (including a value, price, rate, variable index, event, probability or thing); and

(b) does not include any financial commodity, contract or instrument excluded from this definition by regulations prescribed under section 76;"

(b) by deleting the definition of "authorized officer" and substituting therefor the following -

"authorized officer" means a person authorized by the Commission for the purposes of this Act;"

(c) in the definition of "securities" -

(i) in paragraph (c), by deleting the words "or as the Minister may prescribe from time to time by order";

(ii) by deleting paragraph (d) and substituting therefor the following -

"(d) rights in, or options in respect of, a derivative;"

(iii) deleting the comma appearing at the end of paragraph (f), substituting therefor a semi-colon, and inserting the following as paragraphs (g) and (h) -

"(g) any document constituting evidence of an interest in a scholarship or educational plan or trust, other than a private plan or trust not offered to the public as an investment or;

(h) any right, interest or instrument designated by the Commission by order made with

the approval of the Minister
and published in the **Gazette**;"

(iv) deleting all the words starting at the words "but does not include" and ending at the words "Bank of Jamaica;", and substituting therefor the following -

"but, subject to section 35A, does not include -

- (a) bills of exchange;
- (b) stocks or shares of private companies;
- (c) certificates of deposit issued by banks licensed under the Banking Act, by financial institutions licensed under the financial institutions Act, or by building societies licensed under the Building Societies Act;
- (d) securities issued by the Bank of Jamaica;
- (e) certificates of deposit issued pursuant to the carrying on of credit union business by a society registered under the Co-operative Societies Act;
- (f) any form of investment specified by the Commission, by order made with the

approval of the Minister and published in the **Gazette**, to be excluded from definition as a security in any case where the Commission considers the exemption necessary having regard to the nature of the investment and the provisions of this Act,

so, however, that nothing in paragraph (ii) shall be construed as referring to stocks or shares issued in breach of a company's memorandum or articles of association or articles of incorporation (as the case may be), or stocks or shares in a private company formed for the establishment of an investment fund."

Amendment and renumbering of section 4 of principal Act.

3. Section 4 of the principal Act is amended -
- (a) in subsection (3), by deleting paragraph (a) and substituting therefor the following -

"(a) carry out such investigations and examinations in relation to the securities industry -

- (i) as it considers necessary or desirable for the purposes of performing its functions, powers or duties under this Act;

(ii) as it considers necessary for the purpose of enabling the Commission to fulfil any request for assistance made under section 68F (assistance to overseas securities regulatory authority); or

(iii) as may be referred to it by the Minister in connection with that industry,

and any of the powers set out in paragraphs (b) through (h) may be utilized for that purpose;"

(b) in subsection (3) (d) by inserting immediately after the word "documents" the words ", and make copies of any documents produced to it under this subsection or subsection (5) (or any extract of such documents)";

(c) by re-lettering paragraph (g) of subsection (3) as paragraph (i) and inserting next after paragraph (f) the following paragraphs -

"(g) require that any document supplied to the Commission be submitted in a form acceptable to the Commission;

(h) make a request for assistance from an overseas regulatory authority, in accordance with the procedures for obtaining such assistance set out the laws of the jurisdiction of the overseas regulatory authority concerned;"

(d) by inserting next after subsection (4) the

following subsections -

" (5) If the Commission considers it necessary or desirable for the purpose of performing its functions under this Act or to assist it in fulfilling any request for assistance made under section 68F (assistance to overseas securities regulatory authority), the Commission may by written notice served on a person in possession or control of a document, require the person, within the time or in the manner specified in the notice -

- (a) to supply the document to the Commission;
- (b) if necessary, to reproduce the document or assist the Commission in reproducing the document in usable form.

(6) The Commission may issue directions to any person or entity licensed or registered under this Act, for the purpose of securing compliance with the provisions of this Act and all regulations made under this Act.

(7) A person or entity who -

- (a) fails to comply with any process issued to that person or entity (as the case may be); or
- (b) where a time is specified in any process referred to in paragraph (a) for compliance therewith, fails to comply within the time so specified, commits an offence.

(8) Where a person or entity fails to

comply with any process issued to that person or entity, the Commission may apply without notice to a Judge of the Supreme Court in Chambers for an order compelling the person or entity to comply with the process, and the Judge may make the order.

(9) The failure to obey an order made under subsection (8) may be punished by the Judge as contempt of the Court.

(10) For the purposes of this section -

- (a) "documents" means information or data in any form;
- (b) "process" means any summons, call, direction, notice, or other requirement issued by the Commission in the exercise of its powers under this section;
- (c) the power to make copies includes -
 - (i) carrying out the copying at any business premises where the documents are located; or
 - (ii) on giving an appropriate receipt, removing the documents for the purposes of copying them at other premises,

and any documents removed under subparagraph (ii) shall be returned within a reasonable time to the person from whom they were received unless a court otherwise determines.

(11) The powers of the Commission under subsection (3) are exercisable in respect of a bank or other financial institution notwithstanding any provisions regarding confidentiality under the Banking Act, the Financial Institutions Act, or any other enactment specified by the Commission by order published in the **Gazette**.

(12) Nothing in this section shall be construed as compelling any person to disclose any information which is subject to legal professional privilege.

(13) A person shall be entitled to appear with the legal representation of an attorney-at-law at any examination or hearing which the person is required to attend under this section.";

(e) by renumbering the section as section 67F and inserting it immediately before section 68.

Insertion of new section 4 into principal Act.

4. The principal Act is amended by inserting, next after section 3, the following section -

"Exemptions. 4. The Commission may, with the approval of the Minister, by order published in the **Gazette** and subject to negative resolution provide that any activity specified in the order is exempt from any provision of this Act specified in the order."

Amendment of section 8 of principal Act.

5. Section 8(3) of the principal Act is amended by deleting the words "one million" and substituting therefor the words "two million".

Amendment of section 8A of principal Act.

6. Section 8A of the principal Act is amended in subsection (1) (a) by deleting the words "section 7 or 8" and substituting therefor the words "section 7, 8, 17B or 17D".

Amendment of section 9 of principal Act.

7. Section 9 of the principal Act is amended -

(a) by deleting subsection (2) and substituting therefor the following -

" (2) The Commission may require an applicant for a licence to -

(a) give to the Commission such further information in relation to the application as the Commission thinks necessary;

(b) permit the Commission to enter onto any premises at which the applicant proposes to carry on a securities business or investment advice business (as the case may be) and carry out such review and inspection as the Commission may require for the purposes of assessing the operational capability of the applicant.";

(b) in subsection (3) by inserting, next after paragraph (b), the following paragraph -

"(c) the Commission is satisfied as to the operational capability of the applicant, upon an assessment conducted under subsection (2) (b).";

(c) in subsection (5) by inserting next after the word "Commission" the words ", and a licensee who fails to do so shall be liable to pay to the Commission an amount equal to one hundred *per cent* of the

unpaid fee, plus interest on the unpaid fee at a rate of fifteen percent per annum until paid, and those amounts (together with the unpaid fee) shall be recoverable as a civil debt without limit of amount in the Resident Magistrate's Court.";

(d) in subsection (6) by -

(i) deleting the word "or" appearing at the end of paragraph (c);

(ii) deleting the full-stop appearing at the end of paragraph (d)(iii), substituting therefor a semi-colon, and inserting the following as paragraph (e) -

"(e) the operational capability of the licensee does not meet such standards as are prescribed;"

(iii) by inserting, next after paragraph (e), the following words back to the margin of the subsection -

"and may suspend a licence in any case where the licensee fails to pay the fee referred to in subsection (5).";

(e) by inserting, next after subsection (7), the following subsection -

" (8) The Commission may -

(a) at any time cancel a licence under section 7 or 8, by giving notice of the cancellation in writing to the licensee, if -

(i) the Commission is satisfied that the

licensee -

(A) has not, within two years after the date of issue of the licence, begun to carry on, in Jamaica, the business in respect of which the licence is issued; or

(B) has ceased to carry on in Jamaica for more than two years the business in respect of which the licence is issued;

(ii) in the case of a licensee that is a company, proceedings for its winding up have commenced, or a receiver has been appointed, over any part of its assets or business, by a debenture holder or a court;

- (iii) in the case of a licensee that is a partnership, the partnership is dissolved; or
 - (iv) the licensee so requests and the Commission is satisfied that the cancellation will not unduly prejudice the interests of investors or the securities market; and
- (b) in any case falling within paragraph
- (a) (ii) -
 - (i) suspend the licence, prior to any decision as to the cancellation thereof; and
 - (ii) in any case where proceedings for the winding up of a licensee company have commenced, issue such directions as the Commission thinks fit for the efficient winding up of the company."

**Insertion of
new section
9A in
principal
Act.**

8. The principal Act is amended by inserting next after section 9 the following section -

**"Winding
up of
licensee.**

9A. - (1) The Commission shall be a party to any proceedings for the winding up of a company licensed under this Act or any regulations made under this Act.

(2) A liquidator in a winding up shall give the Commission such information about the affairs of the company as the Commission may require from time to time."

**Amendment of
section 10
of principal
Act.**

9. Section 10 of the principal Act is amended -
- (a) in subsection (5) by inserting next after the words "shall not" the words "refuse an application for registration under this section or";
- (b) by inserting next after subsection (5) the following subsections -
- " (5A) The Commission may at any time suspend any registration granted under this section if -
- (a) the Commission is satisfied that the person registered -
- (i) has not within two years after the date on which registration was granted, begun to carry on, in Jamaica, the functions in respect of which registration was granted; or
- (ii) has ceased to carry on, in Jamaica, for more than two years the functions in respect of which the registration was granted;
- (b) in the case of registration granted to a company, proceedings for the winding up of the company have commenced;
- (c) in the case of registration granted to a partnership, the partnership is dissolved; or
- (d) the person registered so requests.
- (5B) Upon a suspension under subsection

(5A), the Commission may issue such directions as the Commission thinks fit in any case falling within subsection (5A), as to the arrangements to be made for the transfer of the functions of the person, company or partnership (as the case may be) to another person, company, or partnership, registered under this section, or take such other steps as the Commission may direct for the discharge of any outstanding obligations to clients.";

(b) in subsection (8) by inserting next after the word "subsection" the words "(6) or";

(c) by inserting next after subsection (8) the following subsection -

" (9) A dealer or investment adviser shall forthwith notify the Commission, in writing, of the termination of the employment of any person registered under this section who performed any functions on behalf of the dealer or investment adviser.".

Amendment of section 11 of principal Act.

10. Section 11 of the principal Act is amended in paragraph (b) by inserting next after the words "section 10" the words "or 26".

Amendment of section 14 of the principal Act.

11. Section 14 of the principal Act is amended in subsection (4) by deleting all the words starting at the words "and shall be liable" and ending at the words "after conviction".

Repeal and replacement of Part IIA of principal Act.

12. Part IIA of the principal Act is repealed and the following substituted therefor -

" **PART IIA. *Investment Schemes***

Regulation of collective

17A. - (1) No person shall issue or cause

investment schemes .

to be issued, in Jamaica, any invitation to another person to become a participant in a collective investment scheme, unless the scheme is registered with the Commission in accordance with regulations made under this Act, or is exempt from such registration by virtue of those regulations.

(2) In this section, "collective investment scheme" includes any scheme in whatever form, whether in Jamaica or elsewhere, whereby members of the public are invited or permitted to invest money or any other property -

- (a) into a portfolio of assets managed as a whole by or on behalf of the operator of the scheme; and
- (b) on terms on which those investors, being two or more in number, hold a participating interest in, receive profits or income arising out of, or share in the risks and benefits of the scheme.

Prohibited Schemes .

17B. - (1) For the purposes of this Act, "prohibited scheme" means any scheme to which this section applies.

(2) This section applies to -

- (a) any scheme commonly known as a "ponzi scheme", being an investment scheme that provides investors with returns derived

substantially from investments made by other investors in the scheme, rather than from genuine profits -

- (i) whether or not the name "ponzi" is used by any person in connection with the scheme; and
 - (ii) whether or not the scheme limits the number of persons who may participate therein, either expressly or by the application of conditions affecting the eligibility of a person to enter, or receive compensation under, the scheme; and
- (b) pyramid selling schemes, being the selling of financial products in circumstances where a promoter or operator of, or an investor in, a scheme induces or attempts to induce a person to make payments into a scheme by holding out to the person that the person will receive some payment or other benefit from -
- (i) other investors in the scheme; or

(ii) the introduction of
other persons to become
investors in the scheme.

(3) A person who establishes,
operates or invites any other person to
become an investor in, any prohibited
scheme commits an offence.

(4) A person who commits an
offence under subsection (3) shall be
liable upon conviction on indictment in
the Supreme Court to a fine or to
imprisonment for a term not exceeding ten
years.

(5) In this section, "the selling
of financial products" means any
transaction that involves the creation of
a security.

**Investment
clubs.**

17C. - (1) Subject to section 17B, an
investment club which meets the criteria
set out in subsection (2) shall be exempt
from registration under section 17A.

(2) The criteria referred to in
subsection (1) are -

- (a) membership in the club is limited
to a maximum of twenty persons;
- (b) payments by members consist of
equal sums payable at agreed
periodic intervals;
- (c) there is a specified limit on the
maximum annual contribution of
members, which limit shall not

exceed the maximum stipulated by the Commission in rules made under section 75;

- (d) all members are entitled to equal participation and voting rights;
- (e) borrowing from the public is prohibited;
- (f) remuneration to officers or members of the club for administrative or other services performed for the club, other than as re-imbusement for expenses reasonably incurred, is prohibited;
- (g) returns as to information pertaining to the membership, investment operations and financial accounts of the club are filed with the Commission in such manner as may be prescribed.

**Transac-
tions
involving
prohibited
schemes or
unlicensed
persons.**

17D. - (1) No licensee, or person registered under section 10 shall, in the course of business to which the licence or registration (as the case may be) pertains, effect any transaction referred to in subsection (2), knowingly or without exercising reasonable care to ascertain whether the transaction is a transaction referred to in subsection (2).

(2) The transactions referred to are any transaction on behalf of any -

- (a) prohibited scheme;
- (b) person or entity operating a securities business or investment advice business without the appropriate licence under this Act;
- (c) collective investment scheme operating in contravention of section 17A; or
- (d) person performing functions as a dealer's representative or investment adviser's representative in contravention of section 10.

(3) No person shall knowingly or with reckless disregard as to whether a transaction is a transaction referred to in subsection (2), invest in, or induce or assist any other person to invest in, any transaction referred to in subsection (2).

(4) A person who contravenes subsection (1) or (3) commits an offence.

(5) The provisions of this section shall apply in respect of any transaction involving persons outside of Jamaica with any person situated inside of Jamaica, or concerning any investments dealt with in Jamaica, as if at all material times all the persons were situated inside of Jamaica."

**Amendment of
section 18
of principal**

13. Section 18 of the principal Act is amended -

Act.

(a) in subsection (6A) by -

- (i) deleting the words "the declaration made under subsection (6)" and substituting therefor the words ", by notice in writing published in the *Gazette*, a licence granted under this section";
- (ii) deleting the words "a licence is granted under this section" and substituting therefor the words "the licence is granted";

(b) by inserting, next after subsection (6A), the following subsections -

" (6B) The Commission may by notice in writing published in the *Gazette* revoke a licence granted under this section, if -

- (a) the Commission is satisfied that the licensee -
 - (i) has not within two years after the date on which the licence was granted, begun to operate, in Jamaica, the recognized stock exchange in respect of which the licence was granted; or
 - (ii) has ceased to operate in Jamaica, for more than two years, the recognized stock exchange in respect of which the licence was granted;
- (b) proceedings for the winding up of the recognized stock exchange have

commenced; or

(c) the licensee so requests.

(6C) The Commission may upon issuing a notice under subsection (6B) issue to the company concerned such written directions as it thinks fit for the purpose of ensuring the satisfactory closing-out of the operations (if any) of the recognized stock exchange.";

(c) by inserting, next after subsection (7), the following subsection -

" (8) A licensee under this section shall pay such annual fee as may be prescribed as payable in respect of a recognized stock exchange."

Amendment of section 23 of principal Act.

14. Section 23 of the principal Act is amended in subsection (6) by deleting the word "Minister" wherever it appears and substituting therefor in each case the words "Appeal Tribunal".

Amendment of section 25 of principal Act.

15. Section 25 of the principal Act is amended in subsection (2) by deleting the words "or enforcement of".

Amendment of section 26 of principal Act.

16. Section 26 of the principal Act is amended -

(a) by deleting subsection (1) and substituting therefor the following -

" (1) Subject to subsection (4), every issuer shall, within the prescribed time and before -

(a) issuing any security; or

(b) issuing to the public any security which was previously issued privately or by way of exempt distribution, or was outstanding from a previous private

offering,

apply to the Commission, in the prescribed form together with the prescribed fee, to be registered with respect to that security.";

(b) by deleting subsection (2) and inserting, next after subsection (1), the following subsections -

" (2) Upon receipt of an application under subsection (1), the Commission may -

- (a) grant the application, subject to such terms and conditions as the Commission may specify in writing; or
- (b) refuse to register an applicant under subsection (1) on any of the grounds specified in subsection (2A) and shall, before such refusal, notify the applicant in writing, within such period as may be prescribed, of the intended refusal and the grounds therefor and afford the applicant an opportunity to be heard thereon.

(2A) The grounds referred to in subsection (2) are that -

- (a) the issuer has violated any provision of, or made under, this Act;
- (b) the issuer has been engaged in, or is about to engage in, a fraudulent transaction;
- (c) the issuer has made a statement which is false or misleading in a material particular in a prospectus concerning the issuer or its securities;

- (d) the issuer has failed to comply with any requirement imposed by the Commission as a condition for registration under section 26;
 - (e) the issuer has made a statement which is false or misleading in a material particular, or has omitted a material particular, in the application for registration or the application is on its face incomplete in any material particular;
 - (f) the application fails to comply, in any material respect, with this Act or any regulations made thereunder, or any other requirement of the Commission made pursuant to this Act;
 - (g) the financial condition or past conduct of the issuer or any officer, director, promoter or other person connected with the issuer, affords reasonable grounds for believing that the business of the issuer will not be conducted in a manner that is responsible or in the best interest of the holders of the securities;
 - (h) a person who prepared or certified any part of the prospectus, or who is named as having done so, is not competent to do so.";
- (c) in subsection (4), by deleting the word "and" appearing at the end of paragraph (a), re-lettering

paragraph (b) as paragraph (c), and inserting the following as paragraph (b) -

"(b) securities issued by the Bank of Jamaica;"

(d) by inserting next after subsection (5) the following subsections -

" (6) An issuer shall -

(a) make such reports to the Commission as may be prescribed;

(b) maintain, in the prescribed form, a record of the securities issued or proposed to be issued by that issuer; and

(c) keep proper accounts and other records in relation to the issuer's operations as an issuer, in accordance with generally accepted accounting principles prevailing in Jamaica.

(7) An issuer shall -

(a) upon request by the Commission during normal business hours, allow the Commission access to the records referred to in subsection (6), including facilitating the taking of copies; and

(b) provide such assistance to the Commission, and its authorized officers, as the Commission reasonably requires for the performance of its functions."

Insertion of new sections 26A into principal Act.

17. The principal Act is amended by inserting, next after section 26, the following section -

**"Special
enforcement
provisions
with res-
pect to
issuers.**

26A. - (1) Where an issuer fails to comply with any requirement of the Commission in the exercise of its powers under section 26, 59 or 67F -

(a) the Commission may refuse any application made by the issuer under section 26 for registration in respect of that security; and

(b) the issuer commits an offence and shall be liable upon conviction on indictment in the Supreme Court to a fine or to imprisonment for a term not exceeding ten years.

(2) Where the Commission considers it necessary for the purposes of any investigation being carried out under section 67F, the Commission may direct any issuer to whom the investigation relates to suspend the offer and sale of any securities.

(3) A direction under subsection (2) shall be given in writing to the issuer, stating the grounds therefor.

(4) Any offer or sale of a security in contravention of any directions given by the Commission under this section shall be deemed to be void and of no legal effect.

(5) Notice of a direction given under this section shall be -

- (a) given by the Commission to every licensee who has notified the Commission of its intention to sell the security; and
- (b) published by the Commission on at least two separate occasions in a daily newspaper in circulation throughout Jamaica."

Amendment of section 30 of principal Act.

18. Section 30 of the principal Act is amended by inserting next after subsection (1) the following subsection -

" (1A) The following provisions shall apply with respect to the compensation fund kept by the Jamaica Stock Exchange pursuant to this Act -

- (a) the fund may be applied to pay insurance premiums in respect of any insurance coverage taken out by the Exchange against potential liabilities which are chargeable to the fund;
- (b) subsection (1) shall be construed as applying only to such losses as are related to securities traded on the Jamaica Stock Exchange."

Insertion of new section 35A in Part V of the principal Act.

19. The principal Act is amended by inserting next after the heading for Part V of the principal Act, the following section -

"Application of Part V.

35A. For the purposes of this Part, sections 44 to 49 (inclusive) and sections 52 and 53 shall apply to securities as defined by this Act as well

as to -

- (a) certificates of deposit issued by banks licensed under the Banking Act, by financial institutions licensed under the financial institutions Act, or by building societies licensed under the Building Societies Act;
- (b) securities issued by the Bank of Jamaica; and
- (c) certificates of deposit issued pursuant to the carrying on of credit union business by a society registered under the Co-operative Societies Act,

which shall be deemed to be "securities" for the purposes of those sections.

Amendment of section 48 of principal Act.

20. Section 48 of the principal Act is amended by -

- (a) deleting the words "any security" and substituting therefor the words "any investment product";
- (b) deleting the words "such security" wherever they appear and substituting therefor the words "such investment product";
- (c) re-numbering the section as section 48(1) and inserting next thereafter the following subsection -

" (2) In this section and section 49, "investment product" means -

- (a) any security, including securities issued by the Bank of Jamaica;
- (b) any certificate of deposit; or
- (c) stocks, or shares, in a private

company;".

Amendment of section 49 of the principal Act.

21. Section 49 of the principal Act is amended -
- (a) by deleting the word "securities" and substituting therefor the words "investment product";
 - (b) in paragraph (a), by inserting next after the word "employ any" the words "manipulative or deceptive device or contrivance, or any";

Amendment of section 51 of principal Act.

22. Section 51 of the principal Act is amended by inserting next after subsection (9) the following subsection -
- " (9A) This section shall not preclude any person from making or pursuing a take-over of a public company in accordance with section 50 if the person discloses his association, and whether or not he is in possession of any information mentioned in subsection (1) or (2), -
- (a) to the Commission; and
 - (b) in the *Take-Over Bid Circular* distributed in respect of the take-over."

Insertion of new section 51A in principal Act.

23. The principal Act is amended by inserting, next after section 51, the following section -
- "Special provisions with respect to acquisitions.**
- 51A. - (1) A licensee shall not acquire or hold five per cent or more of the shareholding in an associated person or another licensee unless -
- (a) the acquisition results in the licensee holding more than fifty per cent of the shares in the associated person or other licensee; and
 - (b) prior to the acquisition, the licensee has given the Commission thirty days notice of

that intention.

(2) A licensee who acquires shares in breach of subsection (1) shall dispose of the shares to an entity other than an associated person of the licensee, within such time as the Commission may direct."

Repeal and replacement of section 59 of principal Act.

24. Section 59 of the principal Act is repealed and the following substituted therefor -

"Information as to holdings.

59. - (1) An issuer may, on its own initiative, or shall, at the request of the Commission, by notice in writing require any holder of its securities to state in writing, within such reasonable time as may be specified in the notice, being in any event not less than ten days -

(a) the capacity in which the holder holds the securities; and

(b) where the holder holds the securities otherwise than as the beneficial owner, the name and address of, or other particulars sufficient to identify -

(i) the beneficial owner; and

(ii) any other person having an interest in the securities;

(c) whether any of the voting rights carried by any securities held

by that holder are the subject of an agreement or arrangement under which another person is entitled to control any aspect of the exercise of those rights and, if so, the particulars of the agreement or arrangement, so far as the holder knows or ought reasonably to know.

(2) An issuer may by notice in writing require any person identified, pursuant to a notice under this section, as having an interest in securities of that issuer, to state in writing within such reasonable time as may be specified in the notice, being in any event not less than ten days -

(a) the capacity in which the person holds the interest; and

(b) where the person holds the interest otherwise than as beneficial owner, the name and address of, or other particulars sufficient to identify -

(i) the beneficial owner; and

(ii) any other person having an interest in the securities, and the nature of the interest,

so far as the person knows or ought reasonably to know.

(3) Where an issuer is informed pursuant to a notice under this section that a person is a party to any agreement or arrangement mentioned in subsection (1) (c), the issuer may by notice in writing require that person within such reasonable time as is specified in the notice, being in any event not less than ten days, to state in writing the particulars of the agreement or arrangement and the parties to it.

(4) An issuer who receives information from a person pursuant to a notice issued under this section, shall keep a record of -

- (a) the fact that the notice was issued and the date on which it was issued; and
- (b) the information received in pursuance of the notice, including copies of all written statements given to the issuer with respect thereto.

(5) A record kept pursuant to subsection (4) shall be retained for a period of not less than seven years, and within that period the Commission may require the issuer to supply the Commission with a copy of any such

record.".

- Amendment of section 59C of principal Act.** 25. Section 59C of the principal Act is amended in subsection (1)(c) by inserting next after the words "section 68" the words "or 68G".
- Insertion of new section 59D into principal Act.** 26. The principal Act is amended by inserting, next after section 59C, the following section -
- "Protection of members, Executive Director and employees.** 59D. No action, suit or other proceedings may be brought or instituted personally against the Executive Director of the Commission, any member of the Commission, or any officer or other employee of the Commission, in respect of any act done, or omission made, in good faith in carrying out the provisions of this Act."
- Amendment of section 63 of principal Act.** 27. Section 63 of the principal Act is amended by inserting, next after subsection (4), the following subsection -
- " (5) A dealer who contravenes this section or section 64(1) commits an offence."
- Amendment of section 65 of principal Act.** 28. Section 65 of the principal Act is amended by inserting, next after subsection (2), the following subsection -
- " (3) A recognized stock exchange that contravenes subsection (1) commits an offence."
- Amendment of heading for Part VII of principal Act.** 29. The principal Act is amended in the heading for Part VII by deleting the word "Miscellaneous" and substituting therefor the words "Administration and Enforcement".
- Insertion of new section 67E into principal Act.** 30. The principal Act is amended by inserting, immediately before section 68, the following section -

which any business of a person or entity licensed or registered under this Act is carried on.

(3) A Resident Magistrate before whom an application is made under subsection (1) shall not issue the warrant unless the Resident Magistrate is satisfied on information under oath that there are reasonable grounds to believe that there may be in the building, receptacle or place to be searched anything that may reasonably relate to an investigation or examination under section 67F.

(4) A person named in a warrant under subsection (1) may, on production of the warrant, enter (with or without a constable) any building, receptacle or place, specified in the warrant and search for and seize anything specified in the warrant.

(5) Every warrant under subsection (1) shall name the date that it expires, being a date not later than fifteen days after the warrant is issued.

(6) Anything seized under this section shall be made available for inspection and copying to the person or entity from which it was seized, as far as may be practicable.

(7) Anything seized under this section shall be returned, to the person or entity from which it was seized, within -

- (a) forty-five days after the date of the seizure; or
- (b) such longer period as a Judge of the Supreme Court, in Chambers, may allow upon the application of the Commission, unless a court otherwise determines or any other law otherwise requires.

**Inspection
of opera-
tions of
applicants
and
licensees.**

67H. - (1) This section applies to any person or entity -

- (a) who is an applicant for a licence or registration under this Act; or
- (b) who is licensed or registered under this Act.

(2) The Commission may assign in writing an authorized officer to review the business and conduct of a person or entity to whom this section applies, for the purpose of determining whether the person or entity is -

- (a) complying, or has complied with or, in the case of an applicant, is in a position to comply with -

- (i) this Act and all regulations made under this Act;
 - (ii) any decision made under this Act or regulations made under this Act; or
- (b) enforcing or administering its by-laws, rules or other regulatory instruments or policies.

(3) On production of the written assignment referred to in subsection (2), the authorized officer may -

- (a) enter the premises on which the person or entity carries on business, during business hours;
- (b) examine any information or data in the possession of the person or entity pertaining to its business or operations, including but not limited to -
 - (i) any licence or registration, or application therefor, under this Act;
 - (ii) a client or former

- client;
 - (iii) an issuer;
 - (iv) dealing in securities, or providing investment advice;
 - (v) its by-laws, rules or other regulatory instruments or policies and any directions, decisions, orders or rulings made hereunder,
- or pertaining to any other matter under this Act or any regulations made under this Act;
- (c) examine property, assets or other items of the person or entity;
 - (d) require the person or entity to produce any information or data referred to in paragraph (b) in a form usable by the Commission for the purpose of making legible copies; and
 - (e) make enquires of the person or entity, or any persons employed by the person or entity.

(4) In exercising the power to make copies under subsection (3)(d), the authorized officer may -

- (a) carry out the copying at any business premises where the information or data is located; or
- (b) on giving an appropriate receipt, remove the information or data for the purpose of copying them at other premises,

and any information or data removed under paragraph (b) shall be returned within a reasonable time to the person from whom they were received unless a court otherwise determines.

(5) The powers of the authorized officer under this section are exercisable in respect of a bank or other financial institution notwithstanding any provisions regarding confidentiality under the Banking Act, the Financial Institutions Act, or any other enactment specified by the Commission by order published in the **Gazette**.

(6) A person commits an offence if the person withholds, destroys, conceals, or refuses to give or produce, any information or data

reasonably required for inspection or copying under this section."

Amendment of section 68 of principal Act.

32. Section 68 of the principal Act is amended -

- (a) in the marginal note, by deleting the words "of investigation" and substituting therefor the words "to investigate breaches and pursue remedies";
- (b) by deleting subsection (1A) and substituting therefor the following -

" (1A) The Commission may make public statements, in the interests of the securities market or otherwise in the public interest, including (but not limited to) statements in relation to -

- (a) any suspected breach of this Act, or regulations made under this Act, and any enforcement action taken by the Commission as a result;
- (b) the winding up or bankruptcy of a licensee or person registered under this Act;
- (c) any matter under this Act which is brought into the public domain;
- (d) an investigation into whether a person is a fit and proper person as described in any provision of this Act or of regulations made under this Act, as the Commission considers necessary for the protection of the public;
- (e) the refusal of an issuer to be registered with respect to its securities;

- (f) the grant of a licence subject to conditions, after the applicant has been given an opportunity to be heard pursuant to section 9(7); or
 - (g) the refusal of the Commission to register an applicant under section 26 (registration of issuer).";
- (c) in subsection (1B)(c), by inserting next after the words "other person", the words ", and in any case where proceedings are brought on behalf of another person, shall give notice of its intention to do so to that person in such manner as the Commission may determine in any particular case";
- (d) by inserting, next after subsection (1C), the following subsections -
- " (2) A warning or cease and desist order under subsection (1B)(a) may include such directions as the Commission thinks fit -
 - (a) as to the steps to be taken by the person in order to secure compliance with this Act and any regulations made under this Act, being steps which may be required to be taken either permanently or for such period of time as may be specified; and
 - (b) as to the time within which, and the terms and conditions upon which, the steps are to be taken.
 - (3) The Commission may enter into an agreement with any person against whom the Commission may take any action -

(a) under this Act, the Financial Services Commission Act, or any regulations made under either Act; and

(b) as concerns compliance with any provision of this Act or the terms or conditions of any licence or registration granted under this Act,

for the settlement of the matter on such terms as are specified in the agreement in accordance with subsection (3B), in *lieu* of any such action.

(3B) A settlement agreement for the purposes of subsection (3) shall be entered into in such form and manner as the Commission may determine from time to time and, without limiting the foregoing -

- (a) may provide for the payment of a monetary penalty by the person;
- (b) shall state the breach in respect of which the penalty referred to in paragraph (a) is payable;
- (c) in addition to any penalty under paragraph (a), may provide for the payment by the person of additional sums by way of compensation to any person on whose behalf the Commission may institute proceedings under subsection (1B) (c);
- (d) shall specify any other terms or conditions to be complied with by the person,

and a copy of the agreement shall be provided

to the person concerned.

(3C) Upon the failure of the person to comply with any provision, term or condition of the agreement, the Commission shall be entitled to do any one or more of the following -

- (a) terminate the agreement;
- (b) take any action, or pursue any remedy, available to it as if the agreement had never been made; or
- (c) treat as forfeited by the person any sums paid thereunder.

(3D) If on an application brought by the Commission in the Supreme Court, the Court is satisfied that any person has contravened such provision of this Act, or any regulations made under this Act, as may be prescribed, the Court may exercise any of the powers referred to in subsection (3E).

(3E) Pursuant to subsection (3D), the Court may -

- (a) order the person to pay to the Crown such pecuniary penalty not exceeding one million dollars in the case of an individual and not exceeding five million dollars in the case of a person other than an individual;
- (b) grant an injunction restraining the person from engaging in conduct constituting the contravention described in subsection (3D),

in respect of each contravention referred to in

subsection (3D).

(3F) In exercising its powers under subsection (3E), the Court shall have regard to -

- (a) the nature and extent of the contravention;
- (b) the nature and extent of any loss suffered by any person as a result of the contravention;
- (c) the circumstances of the contravention; and
- (d) any previous determination against the person against whom the powers are to be exercised.

(3G) The standard of proof in proceedings under subsections (3D), (3E) and (3F) shall be the standard of proof applicable in civil proceedings."

Insertion of new sections 68A to 68I into principal Act.

33. The principal Act is amended by inserting next after section 68 the following sections -

"Coercive orders.

68A. - (1) The Commission may apply to a Judge of the Supreme Court for an order under subsection (2) where there is reasonable cause to believe that any person or entity -

- (a) has contravened any provision of this Act or any regulations made under this Act, and that the contravention is likely to continue or be repeated; or
- (b) is about to contravene any provi-

sion of this Act or regulations made under this Act.

(2) On an application under subsection (1) the Judge may, if satisfied as to the matters set out in paragraph (a) or (b) of that subsection, make an order -

- (a) restraining the person or entity from doing anything which constitutes or repeats the contravention;
- (b) restraining the person or entity from disposing of any assets of the person or entity (as the case may be) which the Judge is satisfied are likely to be disposed of by the person or entity;
- (c) if there are steps which can be taken for remedying the contravention, requiring the person or entity to take such steps to remedy it as may be specified in the order.

(3) An order under subsection (2) (b) may make exceptions in order to provide for the reasonable living expenses (including reasonable legal costs) of the person against whom it is made.

(4) Upon the application of the Commission, a Judge of the Supreme Court may order any person who fails to comply with any provisions of this Act, or regulations

made under this Act, to comply with the provisions.

(5) Nothing in this section shall prevent the Commission from transmitting any information in its control or possession, relating to any contravention of this Act or regulations made under this Act, to the Director of Public Prosecutions for criminal prosecution or to any other authority for the purpose of any criminal investigation.

**Restitu-
tion and
compensa-
tion.**

68B. - (1) Where, in any proceedings under subsection (1B) (c), the Court finds that -

(a) profits have accrued to a person as a result of a contravention of this Act or any regulations made under this Act; or

(b) one or more persons have suffered loss or been otherwise adversely affected as a result of a contravention of this Act or any regulations made under this Act,

the Court may make an order under subsection (2).

(2) The Court may order the person against whom the application is brought to pay to the Commission such sum as appears to be just, having regard to -

(a) the profits appearing to have accrued, in any case described in subsection (1) (a);

(b) the extent of the loss or other

adverse effect, in any case described in subsection (1)(b); or

(c) the profits appearing to the Court to have accrued and the extent of the loss or other adverse effect, in any case described in both subsection (1)(a) and (b).

(3) The amount paid to the Commission in respect of an order under subsection (2) shall be paid by the Commission to such persons as the Court may direct the money to be paid, being persons -

- (a) from whose resources the profits mentioned in subsection (1)(a) are derived; or
- (b) who have suffered the loss or adverse effect mentioned in subsection (1)(b).

(4) For the purposes of subsections (2) and (3), the Court may make an order for the production to the Court of such accounting records and other information as the Court may require in order to -

- (a) establish whether any and, if so, what profits have accrued to the person as described in subsection (1)(a);
- (b) establish whether any person has suffered loss or adverse effect as described in subsection (1)(b) and, if so, the extent of that loss or

adverse effect; and

- (c) determine how any amounts are to be paid or distributed under subsection (3).

(5) An order under subsection (4)

may -

- (a) be directed at the person against whom the application under subsection (1) is brought or any other person whom there is reasonable grounds to believe is in possession of the accounting records or other information concerned; and
- (b) require any accounting records or other information supplied under subsection (4) to be verified in such manner as the Court may direct.

(6) Nothing in this section affects

the right of any person other than the Commission to bring proceedings in respect of the matters to which this section applies, so however, that the Court may make such order as it thinks fit for the stay or consolidation of proceedings as the justice of the case may require.

Restraint orders.

68C. - (1) For the purposes of this section, a "restraint order" means an order -

- (a) prohibiting any person from dealing with (including removing from Jamaica) any property described in

subsection (4) and held by a person specified in the order; and

- (b) containing any directions or provisions as the Judge considers appropriate for the preservation of the property with respect to which the order is made.

(2) The Commission may apply to a Judge of the Supreme Court for a restraint order where -

- (a) there is an investigation in Jamaica with regard to a contravention of, or an offence under, this Act or any regulations made under this Act;
- (b) criminal or civil proceedings for a contravention of, or an offence under, this Act or any regulations made under this Act, have been commenced in Jamaica and have not been concluded; or
- (c) the Commission has made an application for an order under section 68B(2) (restitution and compensation order).

(3) The Judge may grant the application under subsection (1) if there are reasonable grounds to believe that any person has contravened, or has committed an offence under, this Act or any regulations made under this Act, and as a result -

- (a) profits have accrued to the person

as a result of the contravention or the commission of the offence; or

- (b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention or the commission of the offence.

(4) A restraint order may provide that it applies to any property -

- (a) obtained, by the person against whom the order is sought, as a result of or in connection with a contravention or offence mentioned in subsection (3); or

- (b) which, in whole or in part, directly or indirectly represents, in possession or control of the person against whom the order is sought, the value of the property mentioned in paragraph (a).

(5) A restraint order may make exceptions so as to provide for the reasonable living expenses (including reasonable legal costs) of the person against whom it is made.

(6) A copy of the restraint order shall be served on the persons affected by the order, in such manner as may be prescribed by rules of court.

(7) An application to vary or discharge a restraint order may be made to a

Judge of the Supreme Court by -

- (a) the person who applied for the order; or
- (b) any person affected by the order.

(8) Where any application is made under subsection (7), the Judge may vary or discharge the order.

**Access to
informa-
tion of
group
com-
panies.**

68D. - (1) Where a company licensed or registered under this Act is a subsidiary of a holding company, the Commission shall be entitled at all reasonable times to examine books, records, statements and other relevant documents of that holding company.

(2) The Commission may in writing require the holding company to furnish the Commission with such information concerning the operation of the holding company as the Commission shall specify.

(3) A person who fails to comply with a request of the Commission under subsection (2) commits an offence.

(4) The Commission may require -

- (a) any company ("company **A**") which is a member of a group of which a company ("company **B**") licensed or registered under this Act is a member; or
- (b) as the case may require, all companies within that group,

to provide to the Commission such information relating to the operations of company **A** or any other company in that

group, as the Commission considers necessary for the effective supervision of company **B**.

(5) Without prejudice to the generality of subsection (4), the information referred to in that subsection may be required for the purpose of determining -

- (a) the effect of company **A**'s operations on company **B**;
- (b) whether a member of the group is obtaining financing or other benefit, whether directly or indirectly from company **B**;
- (c) the general risks relating to the operations of the members of the group;
- (d) the risk management capabilities of the group as a whole;
- (e) whether the internal audit *facilities* within the group have the capability to scrutinize transactions undertaken or proposed to be undertaken by the management of the group or a company within the group so as to effectively evaluate any associated risks.

(6) For the purposes of this section the Commission may -

- (a) require the information in the form of documents (including audited and consolidated accounts); or

(b) summon any officers, directors or shareholders of the company or companies concerned for the purposes of obtaining the information.

(7) A company that refuses to provide information required under subsection (4) or any person who refuses to obey a summons issued to that person under subsection (6) (b), commits an offence.

(8) For the purposes of this section, "group" has the meaning assigned to it by section 76(1A).

**Power to
require
communi-
cations
data.**

68E. The Commission may exercise the power given to it under section 16(3A) of the Interception of Communications Act (power to request communications data) in respect of any offence under Part V of this Act.

**Provision
of
assistance
to over-
seas
regula-
tory
authority.**

68F. - (1) On the request of an overseas securities regulatory authority, the Commission may provide assistance in accordance with this section -

(a) if the authority making the request states that the purpose for the request is to assist the authority in conducting an investigation in order to determine whether any person or entity has violated, is violating, or is about to violate, any laws or rules relating to securities matters that that

authority administers or enforces;
and

- (b) whether or not the facts stated in the request disclose a violation of any of the laws of Jamaica.

(2) Any assistance provided by the Commission under this section shall be without prejudice to any investigation or examination which the Commission may carry out under section 67F(a)(i) or (iii), or any other law, regardless of whether the Commission utilized any power given to it under section 67F(a)(ii) for the purposes of providing such assistance.

(3) In this Act, "overseas securities regulatory authority" means an authority in a foreign country which, in relation to securities, exercises regulatory functions similar to the functions of the Commission under the Act.

(4) The provisions of this section shall have effect notwithstanding anything contained in any other law providing for assistance by Jamaica, or any Government department or agency, to a foreign State or agency.

(5) The assistance which may be provided for the purposes of this section is the disclosure of any information which the Commission has in its possession or is able to obtain under any of the powers given to

it by this Act or any regulations made under this Act.

Protection of disclosures.

68G. No civil or criminal proceedings for breach of confidentiality may be brought, nor any professional sanction for such breach, may be taken against any person, or against any director or employee of an entity, who provides or transmits to the Commission any information required to be given to the Commission under this Act or any regulations made under this Act.

Requirements regarding qualifications in certain professions.

68H. - (1) The Commission may refuse the opportunity to practice in any matter before it, to any person seeking to practice before it in a professional capacity where the Commission is satisfied, after giving notice and the opportunity for the person to be heard on that issue, that the person -

- (a) has contravened a provision of this Act, regulations made under this Act, or any other enactment administered by the Commission;
- (b) has been convicted of an offence involving fraud or dishonesty; or
- (c) has made a false statement, or an omission, in respect of any material fact in any application or return made to the Commission under this Act, regulations made under this Act, or any other enactment.

(2) Where any provision of this Act

or any regulations made under this Act requires any accounts to be -

(a) kept, filed or otherwise made available to the Commission;

(b) audited, other than by an auditor approved by the Commission pursuant to any other provision of this Act,

that requirement is not met if the Commission is satisfied that the person preparing the account or conducting the audit (as the case may be) -

(a) has contravened any provision of this Act, regulations made under this Act, or any other enactment administered by the Commission;

(b) has been convicted of any offence involving fraud or dishonesty; or

(c) has made a false statement, or an omission, in respect of any material fact in any application or return made to the Commission under this Act, regulations made under this Act, or any other enactment.

(3) Before making a determination that a person falls within subsection (2) (a), (b) or (c), the Commission shall notify that person of the proposed determination and give that person an opportunity to be heard in relation thereto.

(4) An appeal shall lie to the Appeal Tribunal at the instance of an

aggrieved person, in respect of any -

- (a) decision of the Commission under subsection (1) to refuse any person the opportunity to practice before it;
- (b) determination by the Commission that a person falls within subsection (2) (a), (b) or (c).

(5) An appeal shall lie to the Court of Appeal in respect of any decision of the Appeal Tribunal on an appeal to the Tribunal under subsection (4).

(6) Nothing in this section shall be construed as denying any person the right to legal representation of his own choosing in any proceedings relating to the determination of the existence or extent of the person's civil rights or obligations.

(7) For the purposes of subsection (1), practising before the Commission shall include, but shall not be limited to -

- (a) transacting any business with the Commission; and
- (b) the preparation of any statement, opinion or other document by any attorney-at-law, accountant, valuator or other professional or expert, filed with the Commission in pursuance of any provision of the Act, or regulations made under this Act, with the consent of that

person."

Insertion of heading and new section 68J into principal Act.

34. The principal Act is amended by inserting immediately before section 69 the following heading and section -

" **PART VIIA. *Miscellaneous***

Winding up of company.

68I. - (1) A company licensed or registered under this Act shall forthwith notify the Commission upon -

(a) becoming aware of any intention by any shareholder to seek passage of a resolution for the winding up of the company; or

(b) being served with a petition for the winding up of the company.

(2) Where a company licensed or registered under this Act passes a resolution for voluntary winding up, the company shall cause a copy of the resolution to be published in the Gazette and in a daily newspaper printed and circulated in Jamaica."

Amendment of section 69 of principal Act.

35. Section 69 of the principal Act is amended -

(a) by deleting the marginal note and substituting therefor the words "Provisions as to offences.";

(b) by renumbering the section as section 69(1) and inserting the following as subsections (2) and (3) -

" (2) Any person who, being required to furnish any document or information to the Commission in connection with -

(a) any application for a licence or for registration under this Act;

- (b) any investigation or examination conducted by the Commission; or
- (c) any returns required to be made to the Commission,

furnishes any document or information which is false or misleading in any material particular commits an offence.

(3) Where a body corporate commits an offence under this Act and the court is satisfied that a director, manager, secretary, or other similar officer of that body corporate -

- (a) connived in the commission of the offence; or
- (b) failed to exercise due diligence to prevent the commission of the offence,

such director, manager, secretary, or other similar officer, shall be liable (as well as the body corporate) to be convicted of the offence and to be proceeded against and punished accordingly."

Amendment of section 74 of principal Act.

36. Section 74 of the principal Act is amended by deleting subsections (1) and (2) and substituting therefor the following -

" (1) Except in any case where this Act provides for an appeal to the Appeal Tribunal, any appeal provided for by this Act or by any regulations made under this Act shall lie before a Judge of the Supreme Court, in Chambers.

(2) Notwithstanding that an appeal lies

under subsection (1) in relation to an action, decision, ruling, direction, order or proposal of the Commission, the action, decision, ruling, direction, order or proposal of the Commission is binding upon the appellant and the Commission is entitled to act accordingly unless a stay of execution is granted by the Commission or a Judge in Chambers under subsection (3)."

Amendment of section 76 of principal Act.

37. Section 76 of the principal act is amended -

(a) by deleting subsection (1)(d) and substituting therefor the following -

"(d) exempting any person or any additional class of persons from being licensed as investment advisers, and notice of such exemption shall forthwith be published in the **Gazette**";

(b) in subsection (1)(h)(ii), by deleting the words "or the inspection of any register" and substituting therefor the words ", the inspection of any register, the filing of any information, or any other service provided by the Commission";

(c) by re-lettering paragraph (n) of subsection (1) as paragraph (s) and inserting the following as paragraphs (n) to (r) -

"(n) prescribing requirements for continuing professional development, including attendance at prescribed courses of training, to be complied with by any licensee, any officer of a licensee who is in the full-time employment of the licensee, and any person registered under this Act;

- (o) regulating the conduct of scholarship or educational plans or trusts and prescribing the criteria for the approval of such plans or trusts, other than private plans or trusts not offered as an investment to the public;
- (p) regulating the conduct of collective investment schemes and specifying the criteria to be met for the registration of such schemes, the procedures for registration, and the fees payable by the operators of such schemes;
- (q) prescribing the circumstances and manner in which any compensation fund kept pursuant to section 27 may be wound up;
- (r) governing the entry into repurchase agreements by securities dealers with their clients, the holding of the underlying assets which are the subject of those repurchase agreements, and the systems for carrying out, administering or facilitating those agreements;"

(d) by deleting subsection (1A) and substituting therefor the following -

" (1A) In subsection (1) -

"group" in relation to a company means,

that company and -

- (a) any other company which is its holding company or subsidiary;
- (b) any other company which is a

subsidiary of the holding company;

(c) any company which directly or indirectly controls or is controlled by any company referred to in paragraph (a) or (b); and

(d) any company which is controlled by a person who directly or indirectly controls a company referred to in paragraph (a), (b) or (c);

"repurchase agreement" means a financial agreement in which a dealer of securities transfers 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.";

(e) by deleting subsection (2) and inserting next after subsection (1) therefor the following subsections -

" (2) Subject to affirmative resolution, regulations made under -

(a) subsection (1) may provide for penalties exceeding the amounts specified in section 29(b) of the Interpretation Act, in respect of any offence under the regulations but, in any event, such penalties shall not exceed three million dollars;

(b) subsection (1)(j), shall have effect notwithstanding anything to the contrary in the Companies Act.

(3) Until varied or revoked by regulations made under subsection (1)(p) of this section, the provisions of the Second Schedule shall have effect.

(4) For the avoidance of doubt, all regulations made under subsection (1)(p) shall have the same force and effect as Regulations contained in the Second Schedule."

Insertion of Second Schedule in principal Act.

38. The principal Act is amended by re-numbering the Schedule as the First Schedule and inserting the following as the Second Schedule -

" **SECOND SCHEDULE** **(Section 76)**

The Securities (Collective Investment Scheme) Regulations, 2013

PART I. Preliminary

Citation. 1. These Regulations may be cited as the

Securities (Collective Investment Schemes) Regulations, 2013.

**Interpre-
tation.**

2. - (1) In these Regulations -

"accredited investor" means -

- (a) a body corporate, established by any Act of Parliament, over which the Government or an agency of the Government exercises control, or any company in which the Government or an agency of the Government holds the majority of the voting shares;
- (b) a bank as defined by section 2(1) of the Banking Act, a company registered to carry on insurance business under the Insurance Act, a financial institution duly licensed under the Financial Institutions Act, or a building society licensed under the Building Societies Act;
- (c) an approved retirement scheme, approved superannuation fund, or specified pension fund, as defined by section 2 of the Pensions (Superannuation Funds and Retirement Schemes) Act;
- (d) any officer of the operator, manager, or promoter, of a collective investment scheme;
- (e) a unit trust, mutual fund, non-

redeemable investment fund or other collective investment scheme that is registered under the Act;

- (f) a trust company or a licensed dealer purchasing as principal or on behalf of a fully managed account where the account holder is an accredited investor;
- (g) an individual whose net worth exceeds fifty million dollars, a corporation over ninety percent of the voting shares in which are owned by such an individual, or a trust of which such an individual is the sole primary beneficiary;
- (h) any individual who, before deduction of income tax, had in excess of ten million dollars in income in each of the two most recent full calendar years, a corporation over ninety percent of the voting shares in which are owned by such an individual, or a trust of which such an individual is the sole primary beneficiary;
- (i) an entity having net assets in excess of two hundred and fifty million dollars as reflected in -
 - (i) its audited financial statements for its most

- recently completed
financial year; or
- (ii) if that more recently
completed financial year
ended less than ninety
days prior to the time
at which any decision is
made as to whether the
entity falls within this
paragraph, the entity's
audited financial
statements for its
financial year
immediately preceding
its most recently
completed financial
year;
- (j) an entity in respect of which all
the owners of interests (direct,
indirect or beneficial) are
accredited investors;
- (k) an entity, incorporated or
constituted in a jurisdiction
outside of Jamaica that is
analogous to an entity listed in
any of paragraphs (a) to (f), or
which has the status of an
accredited investor or other
similar status (however
described) under the laws
governing securities in that

jurisdiction;

(l) an individual residing in a jurisdiction outside of Jamaica who -

(i) has the status of an accredited investor or other similar status (however described) under the laws governing securities in that jurisdiction; or

(ii) meets the criteria specified in paragraph (g) or (h),

and is otherwise lawfully entitled to purchase securities under the laws governing securities in that jurisdiction; or

(m) an individual or entity specified by the Commission to be an accredited investor;

"collective investment scheme" (or

"scheme") has the meaning assigned to it by section 17A(2) of the Act;

"constitutional documents" means, in relation to a collective investment scheme -

- (a) the organizational documents;
- (b) the custodian agreement;
- (c) the management contract; and

(d) the offering document and any other documents used, or to be used, by the scheme to offer its securities for sale;

"custodian", in relation to a collective investment scheme, means the person appointed as evidenced in a written agreement (hereinafter called the "custodian agreement") between the manager and that person, to hold the scheme's assets in safekeeping or, in the case of a scheme established as a trust, the trustee;

"disclosure documents" means any documents required to be made available to the public under regulation 21(1);

"extraordinary resolution" means a resolution passed by a majority of not less than three quarters of the collective investment scheme's investors at a general meeting of the investors, of which notice specifying the intention to propose the resolution as an extraordinary resolution has been given;

"generally accepted accounting principles" includes the *International Financial Reporting Standards* of the International Accounting Standards Board, and any other set of generally

accepted accounting principles
specified by the Commission;

"generally accepted auditing standards"
includes the *International Standards
on Auditing* of the International
Auditing and Assurance Standards
Board, and any other set of generally
accepted auditing standards specified
by the Commission;

"local collective investment scheme" means
a collective investment scheme that is
established, incorporated, registered,
or in any other manner formed, under
the laws of Jamaica and carries on a
collective investment scheme in
Jamaica;

"manager", in relation to a collective
investment scheme, means the company
appointed to manage the scheme, as
evidenced in a contract in writing
(hereinafter called the "management
contract") between the operator and
that person;

"net asset value" means the current price,
for the purpose of issue, redemption
or repurchase, of each security issued
by a collective investment scheme,
calculated in accordance with
regulation 35;

"offering document" means a document or

series of documents on the basis of which -

(a) equity interests in a collective investment scheme are offered for sale; or

(b) persons are invited to subscribe for or purchase equity interests in a collective investment scheme,

but does not include any other notice, advertisement, letter or other communication used in connection with anything mentioned in paragraph (a) or (b) if, before the offer or invitation is accepted, the prospective investor is given the opportunity to consider an offering document containing the information prescribed by regulation 25;

"operator", in relation to a collective investment scheme, means -

(a) where the scheme is a trust, the trustee;

(b) where the scheme is a partnership, the managing partner;

(c) where the scheme is a company, the board of directors of the company;

"organizational documents", in relation to a collective investment scheme, means

the documents establishing the scheme, including the partnership agreement, trust deed, and articles of incorporation, organization or association, as the case may be;

"promoter" means any person, whether within or outside of Jamaica, who is directly or indirectly responsible for the formation of a collective investment scheme and who causes the preparation or distribution of any offering document in respect of the scheme, but does not include a professional investment adviser or underwriter acting on behalf of such a person;

"provider of services", in relation to a collective investment scheme, means a person who provides financial services to the scheme, and includes a custodian, manager, investment adviser, and any person to whom a provider of such services has delegated part or all of that provider's functions;

"recognized foreign jurisdiction" means a foreign jurisdiction specified by the Commission in accordance with regulation 54, and the term "recognized foreign jurisdiction concerned" used in relation to a regulated overseas collective

investment scheme means the recognized foreign jurisdiction where the operator of the scheme is established, formed or incorporated (as the case may be);

"regulated overseas collective investment scheme" means a collective investment scheme that is -

- (a) operated by a trust, partnership or company, established, formed or incorporated under the laws of a recognized foreign jurisdiction;
- (b) authorized under the laws of that jurisdiction to operate in that jurisdiction as a collective investment scheme; and
- (c) not prohibited under those laws from inviting persons outside of that jurisdiction to become participants in the scheme;

"responsible officer" means the officer appointed pursuant to section 10A of the Act;

"specified by the Commission" means specified by the Commission from time to time by notice published in the **Gazette**;

"trustee", in relation to a collective

investment scheme, means the person appointed, by the trust document, to hold the property of the scheme in trust for its investors;

"trust document" means the document required under regulation 7(1).

(2) For the purposes of these Regulations, a duty on the operator of a collective investment scheme to ascertain whether a person is an accredited investor is discharged if, at the time in question, the operator reasonably believes after making all diligent inquiries, that the person falls within the definition of an "accredited investor" as set out in paragraph (1).

(3) A person is independent of another person for the purposes of these Regulations, if the persons are not associated persons, but two companies that have the same holding company shall be deemed to be independent of each other if -

- (a) both are subsidiaries of a financial institution licensed under the Financial Institutions Act;
- (b) neither is a subsidiary of the other;
- (c) no person is a director of both companies; and
- (d) both companies sign an undertaking to the Commission that they will act independently of each other in their dealings with the collective

investment scheme concerned,
or the Commission has otherwise deemed the
companies to be independent of each other
having regard to all the circumstances.

(4) A person is a fit and proper person
within the meaning of these Regulations if -

- (a) the person's employment record does
not give the Commission reasonable
cause to believe that the person
carried out any act involving
impropriety in the handling of
securities or in the management of a
company;
- (b) the person has not been convicted of
an offence involving dishonesty, and
is not an undischarged bankrupt;
- (c) the person is, in the opinion of the
Commission, a person of sound probity
who is able to exercise competence,
diligence and sound judgment in
fulfilling the person's responsibility
in relation to the collective
investment scheme concerned; and
- (d) the person's relationship with the
scheme will not threaten the interests
of its investors, and for the purposes
of paragraphs (a) and (b), the
Commission shall have regard to any
evidence that the person has -
 - (i) engaged in any business
practice appearing to the

Commission to be deceitful or oppressive, or otherwise improper, which reflects discredit to the person's method of conducting business; or

- (ii) contravened any provision of any enactment designed for the protection of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in dealing in securities or in the provision of other financial services or in the management of a company or due to bankruptcy.

(5) Where the person mentioned in paragraph (4) is a company or partnership, the requirements set out in that paragraph shall be satisfied by each of its officers and members holding (whether in their own right or when counted with any holding of an associated person) ten percent or more of the voting rights in the company or partnership.

(6) For the purposes of these Regulations -

- (a) information in respect of a collective investment scheme is material if the information would reasonably be

expected to significantly affect the value or market price of the securities in the scheme;

- (b) a "material change" in relation to the affairs of a collective investment scheme means any change in the business, operations, or financial condition, of the scheme that would reasonably be expected to have a significant effect on the market price or value of the scheme's securities.

(7) Where a notice or other information is required to be given promptly under these Regulations, the notice or other information (as the case may be) shall, unless otherwise stated in these Regulations, be given within five days (excluding Saturdays, Sundays and public general holidays) after the first occurrence of the event giving rise to the requirement to give the notice or other information.

Exemptions. 3. - (1) Pursuant to section 17A of the Act, a collective investment scheme is exempt from registration under these Regulations if -

- (a) the scheme is an investment club which meets the criteria set out in section 17C(2) of the Act;
- (b) the scheme sells securities only to accredited investors;
- (c) each investor in the scheme acquires the securities as a principal and the

securities acquired have an acquisition cost of not less than ten million dollars at the time of acquisition; or

(d) the scheme is a private issuer and its securities are offered only to any person who is -

(i) an officer of the scheme;

(ii) personally involved in the business of the scheme and is an officer of a provider of services to the scheme;

or

(iii) an associated person in relation to the operator of the scheme.

(2) A collective investment scheme which is exempt from registration under these regulations shall -

(a) file with the Commission -

(i) prior to issuing, or causing to be issued, in Jamaica any invitation to invest in the scheme, a notice of its intention to rely on the exemption;

(ii) an annual declaration by the operator of the scheme or the manager, that the scheme is in compliance with these Regulations; and

(iii) such other information as may be specified by the Commission;

- (b) provide each investor, within ninety days after the end of the scheme's financial year, with a copy of the scheme's annual audited financial statements, including a verification of the assets of the scheme by the scheme's auditor; and
- (c) comply with the requirements set out in Parts IV and V.

(3) In this regulation, "private issuer" means an issuer whose securities, other than non-voting debt securities, are -

- (a) subject to restrictions on the transfer that are contained in the issuer's articles of incorporation or other constitutional instruments, or a security holders' agreement; and
- (b) are beneficially owned by not more than fifty persons, excluding employees and former employees of the issuer.

PART II. *Registration and Constitution of Local Collective Investment Schemes*

**Applicati
on for
regis-
tration.**

4. - (1) An application for the registration of a local collective investment scheme under these Regulations may be made by the scheme's operator or manager.

(2) An application under paragraph (1) shall be in the form specified by the

Commission and shall -

(a) contain sufficient information for the Commission to assess the application;

(b) be accompanied by -

(i) the application fee specified in the First Schedule;

(ii) a certificate, signed by the chief officer of the scheme's operator or manager, stating that the scheme complies with the requirements for registration set out in regulation 5;

(iii) copies of -

(A) all materials to be used to offer or sell securities in the scheme;

(B) the offering document and any other disclosure documents proposed to be used; and

(C) all documents which any investor in the scheme will be required to sign;

(iv) the most recent audited financial statements of the

**First
Schedule.**

scheme (in the case of an existing scheme);

(v) the organizational documents of the scheme;

(vi) the names of the dealers through whom the scheme will sell securities; and

(vii) a written profile of the directors and officers of the scheme's operator and the manager; and

(c) any other information which the Commission may reasonably require in order to assess the application.

(3) Where the Commission intends to -

(a) deny an application under this regulation; or

(b) grant the application subject to any terms or conditions,

the Commission shall give written notice of that intention to the applicant and give the applicant an opportunity to be heard with respect thereto.

(4) After complying with paragraph (3), the Commission shall in writing inform the applicant of the Commission's decision with respect to the application, giving the reasons therefor.

Grant of application for registration.

5. - (1) Where the Commission receives an application for registration in accordance with regulation 4, the Commission may grant the

application, upon such terms and conditions as it thinks fit, if it is satisfied that the requirements for registration set out in paragraph (2) are met in relation to the application.

(2) The requirements mentioned in paragraph (1) are that -

- (a) the operator of the scheme is a trust, partnership or company, established, formed or incorporated (as the case may require) under the laws of Jamaica;
- (b) the minimum value of the securities of the scheme as reflected in its financial statement for its last financial year immediately preceding the date of the application for registration is not less than the equivalent, in Jamaican dollars at the prevailing rate of exchange, of three hundred thousand dollars in the currency of the United States of America;
- (c) the operator of the scheme has appointed a custodian that -
 - (i) meets the requirements set out in regulation 10 and is otherwise acceptable to the Commission;
 - (ii) is appointed under a custodian agreement

- containing the terms
required pursuant to
regulation 10(3); and
- (iii) is independent of the
operator and the manager of
the scheme;
- (d) the manager of the scheme is a company
that meets the requirements set out in
regulation 8;
- (e) a responsible officer is appointed, in
respect of the scheme;
- (f) the operator, the responsible officer,
and every provider of services, in
respect of the scheme, are fit and
proper persons;
- (g) the disclosure documents, marketing
materials and investment agreements of
the scheme are acceptable to the
Commission;
- (h) the constitutional documents include
such terms as may be specified by the
Commission, and nothing in those
documents exempts the scheme, or any
provider of services thereto, from any
liability to its investors arising
from any statute or rule of law, or
seeks to indemnify the scheme, or any
provider of services thereto, from
such liability at the expense of the
investors;
- (i) the grant of the application is not

contrary to the public interest.

**First
Schedule.**

(3) Upon granting an application under subsection (1), and on receipt of the registration fee specified in the First Schedule, the Commission shall issue a certificate of registration, in respect of the scheme concerned, to the applicant.

(4) Subject to subsections (5) and (7), a grant of registration under this regulation shall be valid for a period of one year from the date of issue of the registration certificate, and shall be renewable for successive periods of one year in accordance with regulation 6.

(5) The Commission may cancel the registration of a scheme under this regulation, if the Commission is satisfied that the scheme -

(a) no longer meets any one or more of the requirements set out in paragraph (2);
or

(b) is not in compliance with a provision of the Act or these Regulations,

and has failed without reasonable excuse to comply with any written direction, issued to it by the Commission, to remedy the matter within the time specified in the directions, or that the matter is incapable of being so remedied.

(6) Before taking any action under paragraph (5), the Commission shall give the operator of the scheme written notice of that intention, together with the reasons therefor,

and an opportunity to be heard in response thereto.

(7) The Commission may suspend the registration of any scheme in respect of which it has issued directions under paragraph (5) or issued a notice under paragraph (6), pending compliance with the directions or its decision whether or not to act on the intention indicated in the notice (as the case may be).

Renewal of registration.

6. - (1) An application for the renewal of registration under this Part may be made by submitting to the Commission at least thirty days before the expiration of the registration -

First Schedule.

- (a) the renewal fee specified in the First Schedule; and
- (b) a certificate signed by the responsible officer of the collective investment scheme concerned, stating that the scheme continues to meet the requirements set out in regulation 5(2) and is in compliance with the provisions of the Act and these Regulations.

(2) The Commission may approve the application for renewal of the grant of registration if satisfied that the requirements set out in regulation 5(2) are met and that all information required to be filed in respect of the scheme under these Regulations have been filed.

(3) Where the Commission intends to deny an application under paragraph (1), the Commission shall give the operator of the scheme written notice of that intention, together with the reasons therefor, and an opportunity to be heard in response thereto.

Schemes in the form of a trust.

7. - (1) Where a collective investment scheme is established as a trust -

Second Schedule.

- (a) the establishment of the trust shall be evidenced by a trust deed, a declaration of trust, or other instrument, which contains the matters set out in the Second Schedule; and
- (b) the trustee appointed in relation thereto shall meet the requirements set out in paragraph (2) and be otherwise acceptable to the Commission.

(2) The requirements mentioned in paragraph (1) (b) are that the trustee shall be a company -

- (a) incorporated under the laws of -
 - (i) Jamaica, being a company licensed under -
 - (A) the Banking Act;
 - (B) the Financial Institutions Act;
 - (C) the Building Societies Act; or
 - (D) the Act, as a central securities

depository,
securities dealer or
investment adviser;
or

(ii) a recognized foreign
jurisdiction, and authorized
by the laws of that
jurisdiction to carry on any
of the activities covered by
a licence mentioned in
paragraph (a);

- (b) having the minimum share capital
specified by the Commission;
- (c) which is independent of the manager;
- (d) which is a fit and proper person; and
- (e) any other requirement specified by the
Commission.

(3) In carrying out its duties generally,
the trustee shall exercise the degree of care,
diligence and skill that a reasonably prudent
person would exercise in the circumstances and
shall, as regards the safekeeping of the assets
of the scheme, shall act in a fiduciary
capacity toward the scheme's investors in the
performance of those duties.

(4) The trustee shall not be indemnified
by the scheme for any loss arising as a result
of the trustee's failure to observe the
standard of care required under paragraph (3)
or to comply with the provisions of any law in
the performance of the duties of the trustee.

(5) The trustee shall indemnify the scheme against any loss arising as a result of the trustee's failure to observe the standard of care required under paragraph (3) or to comply with the provisions of any law in the performance of the duties of the trustee.

(6) The trustee shall -

- (a) ensure that suitable structures are in place for the proper performance of the trustee's duties as stated in the trust document and the law relating to trusts;
- (b) act in the best interests of the scheme's investors;
- (c) not sell or purchase from the scheme any assets, whether for the trustee's own benefit or for the benefit of an associated person, unless -
 - (i) permitted to do so by the trust document; and
 - (ii) the transaction in question is conducted at arm's length at fair market value;
- (d) derive any benefit under the scheme from the position as trustee, except for fees payable under the trust document for the trustee's services;
- (e) exercise the trustee's best efforts to avoid any conflict between the interests of the trustee and those of the scheme and, if any such conflict

arises, shall disclose the nature of the trustee's interest and the conflict and employ such measures as are appropriate to protect the interests of the scheme; and

(f) be the custodian of the scheme.

The manager.

8. - (1) The operator of a collective investment scheme, other than a scheme falling within regulation 9, shall appoint, in respect of the scheme, a manager who meets the requirements set out in paragraph (2), and the terms and conditions of the appointment shall be set out in the management contract, a copy of which shall be -

(a) filed with the Commission as soon as practicable after the contract is executed; and

(b) made available by the operator of the scheme, at all reasonable times, for inspection by the scheme's investors.

(2) The requirements mentioned in paragraph (1) are that the manager shall be a company which -

(a) has a dealer's licence;

(b) has appropriate systems and controls in place to carry out the functions and responsibilities of a manager of a collective investment scheme under these Regulations; and

(c) is independent of the trustee and the custodian.

- (3) The manager shall be responsible for -
- (a) managing the scheme in the best interests of the scheme's investors and in compliance with its constitutional documents and these Regulations;
 - (b) ensuring that a responsible officer is appointed as required by section 10A of the Act;
 - (c) establishing and maintaining appropriate policies and procedures to -
 - (i) identify, mitigate and manage any conflicts of interest between the scheme and the manager, any provider of services, or any other scheme managed by that manager;
 - (ii) ensure the best execution of trades for the scheme;
 - (iii) ensure appropriate trading and timely allocation of transactions among the collective investment schemes managed by that manager; and
 - (iv) prevent churning;
 - (d) maintaining accurate and complete books of account and other records of the operations of the scheme,

- including records as to the manager's activities with respect thereto;
- (e) making the constitutional documents of the scheme available, for inspection by members of the public and the scheme's investors, at a place of business in Jamaica;
 - (f) calculating the net asset value of the scheme, and issuing and redeeming securities on behalf of the scheme, as required by the scheme's constitutional documents or by these Regulations;
 - (g) ensuring that the scheme's annual financial statements are audited promptly at the end of the scheme's financial year;
 - (h) carrying out the instructions of the scheme's operator, as regards investments, unless those instructions conflict with the scheme's constitutional documents; and
 - (i) taking reasonable care to ensure that the investment and borrowing limitations set out in the scheme's constitutional documents, and any conditions on which the scheme is registered under these Regulations, are complied with.

(4) In carrying out its duties as manager, the manager shall exercise the degree

of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

(5) The manager shall not be indemnified by the scheme for any loss arising as a result of the manager's failure to observe the standard of care required under paragraph (4).

(6) The manager shall indemnify the scheme against any loss arising as result of the manager's failure to observe the standard of care required under paragraph (4).

(7) The appointment of a company as manager of a collective investment scheme may be terminated -

- (a) in accordance with any grounds and procedure specified in the scheme's constitutional documents;
- (b) in accordance with paragraph (8); or
- (c) by extraordinary resolution the scheme's investors at a meeting of the investors convened by a notice to the investors setting out -
 - (i) the grounds for the termination; and
 - (ii) naming the company proposed to be appointed as the new manager, being a company which meets the requirements specified in paragraph (2).

(8) The operator of a collective investment scheme shall terminate the

appointment, as manager, of any company if -

- (a) the company becomes insolvent;
- (b) the company no longer meets any one or more of the requirements set out in paragraph (2); or
- (c) in the opinion of the operator, the termination is in the best interests of the investors.

(9) Where the appointment of a manager is terminated, the operator of the scheme shall promptly give -

- (a) to the Commission and to the scheme's investors, written notice of the termination together with the name of, and such other particulars as may be relevant as to, the company proposed to be appointed as the new manager; and
- (b) to the Commission, a copy of the management contract as required under paragraph (1).

(10) Where the Commission becomes aware that the appointment of the manager of a scheme has been terminated, the Commission may appoint a company which meets the requirements specified in paragraph (2) to act as manager of the scheme until such time as a new manager is appointed by the scheme's operator in accordance with this regulation.

(11) A management contract may permit the manager to delegate such of its functions as

are specified for that purpose to another company which meets the requirements set out in paragraph (2), but -

- (a) such delegation shall not affect the manager's obligation to ensure that the responsibilities under paragraph (3), and under the management contract, are carried out;
- (b) such a delegation shall not be effective until written notice is given to the Commission containing such particulars of the delegation as may be specified by the Commission and the Commission notifies the manager that the delegation is approved; and
- (c) written notice of the delegation shall be given by the manager to the scheme's investors before the delegation takes effect.

Self-managed schemes.

9. - (1) The Commission may permit the officers of a collective investment scheme to act as the manager of the scheme, in *lieu* of an appointment being made under regulation 8, if -

- (a) the organizational documents of the scheme contain provisions -
 - (i) allowing the scheme's investors to remove those officers by ordinary resolution at a meeting of the investors; and
 - (ii) for the remuneration of those

officers to be fixed at a general meeting of the investors;

(b) the scheme has -

(i) at least the minimum value of securities issued and outstanding, as specified by the Commission; and

(ii) appropriate systems and controls in place for those officers to carry out the duties of manager (including appropriate internal controls and risk management procedures;

(c) those officers are fit and proper persons; and

(d) the scheme is independent of the custodian and the providers of services to the scheme.

(2) References in these Regulations to the "manager" shall be construed as references to the officers mentioned in paragraph (1), in any case where permission is given by the Commission under that paragraph for those officers to act as the manager of the scheme concerned.

The custodian.

10. - (1) The operator of a collective investment scheme, other than a scheme established as a trust, shall appoint a custodian that meets the requirements of

paragraph (2).

(2) The custodian shall -

(a) be either -

- (i) a bank licensed under the Banking Act;
 - (ii) a financial institution licensed under the Financial Institutions Act;
 - (iii) a trust company established or incorporated under the laws of Jamaica;
 - (iv) a company that holds a dealer's licence under the Act; or
 - (v) a bank or trust company authorized to operate as a bank or trust company (as the case may be) under the laws of a recognized foreign jurisdiction;
- (b) meet the minimum capital and insurance requirements specified by the Commission for the purpose of this paragraph;
- (c) be a fit and proper person;
- (d) be independent of the manager; and
- (e) in the case of a bank or trust company mentioned in sub-paragraph (a) (v), hold only assets issued by issuers domiciled outside of Jamaica.

(3) The custodian agreement evidencing

the appointment of the custodian shall -

- (a) specify the location or locations where the assets of the scheme are to be held;
- (b) specify whether a sub-custodian may be appointed;
- (c) state that fees payable to the custodian, and sub-custodian (if any), are for the administrative and safekeeping services provided by the custodian, and that additional fees are not chargeable to the scheme by the custodian for any transfer of beneficial ownership of the assets of the scheme;
- (d) provide, where the custodian is a bank licensed under the Banking Act or a financial institution licensed under the Financial Institutions Act, that the agreement -
 - (i) may only be amended in writing, and shall be so amended where necessary to comply with any law in force in Jamaica;
 - (ii) shall be governed by, and construed in accordance with the laws of Jamaica, and that the parties submit to the jurisdiction of the courts of Jamaica;

(e) provide, where the custodian is a bank or a trust company authorized to operate as a bank or trust company under the laws of a recognized foreign jurisdiction, that -

(i) the agreement may only be amended in writing; and

(ii) the custodian shall provide the Commission with a declaration, in such form as may be specified by the Commission, submitting to the jurisdiction of the Commission under the Act and these regulations, and appoint an agent in respect of its activities in Jamaica; and

(f) contain such other provisions as may be specified by the Commission.

(4) The custodian shall -

(a) hold the assets of the collective investment scheme in trust in accordance with the provisions of the scheme's constitutional documents and these Regulations;

(b) be liable for the act or omission of any person with whom any assets of the scheme in bearer form are deposited, as regards those assets;

(c) take reasonable care to ensure that -

- (i) the sale, issue, repurchase, redemption and cancellation of any securities of the scheme are carried out in accordance with the provisions of the scheme's constitutional documents and these regulations;
- (ii) the methods adopted by the manager in calculating the value of the securities of the scheme are adequate to ensure that the prices of those securities are calculated in accordance with the provisions of the scheme's constitutional documents and these Regulations;
- (iii) the scheme maintains compliance with -
 - (A) the investment and borrowing limits set out in its constitutional documents and as may be specified by the Commission; and
 - (B) any terms and conditions on which the scheme is

granted
registration under
these Regulations;
and

- (iv) certificates for, or other evidence of ownership of, the securities of the scheme are not issued until the full value of the subscription amount is received;
- (d) carry out the instructions of the operator in respect of investments of the scheme, unless those instructions conflict with the provisions of the scheme's constitutional documents or these Regulations;
- (e) keep the custodian agreement, and every sub-custodian agreement relating to the scheme (or the trust document, in the case of a scheme established as a trust), under review for the purpose of ensuring compliance with these Regulations, and if found not to be in compliance, arrange for their prompt amendment accordingly;
- (f) ensure that all securities held by or on behalf of the scheme are physically verified, and prepare for each calendar quarter a reconciliation of the verification with the records of

the scheme;

- (g) permit the auditor of the scheme access to such books of account and other records as are in the custody or control of the custodian and pertaining to the operation of the scheme, for the purpose of any audit carried out pursuant to the Act or these Regulations;
- (h) forthwith inform the Commission in writing of any breach of these Regulations of which the custodian becomes aware.

(5) In carrying out its duties as custodian, the custodian shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

(6) The custodian shall not be indemnified by the scheme for any loss arising as a result of the custodian's failure to observe the standard of care required under paragraph (5).

(7) The custodian shall indemnify the scheme against any loss arising as a result of the custodian's failure to observe the standard of care required under paragraph (6).

(8) The custodian shall cause an auditor's report to be prepared periodically, at intervals of not less than one year, on the custodian's internal controls and operating

procedures over the scheme's financial year.

(9) A copy of a report under paragraph (8) shall be given to the Commission and to each collective investment scheme in respect of which the custodian is the custodian, not more than ninety days after the end of the scheme's financial year.

Sub-custodian.

11. - (1) The custodian may appoint one or more sub-custodians to carry out any duties of the custodian -

(a) if the custodian agreement (or trust document, in the case of a scheme established as a trust) so permits; and

(b) the sub-custodian meets the requirements set out in paragraph (2).

(2) An appointment made under paragraph (1) -

(a) shall be evidenced in writing providing for the matters set out in regulation 10(3);

(b) may be terminated by the custodian in accordance with the custodian agreement, or by the operator or the scheme's investors on any grounds and in any manner in which the appointment of a custodian may be terminated under regulation 12; and

(c) shall not affect the custodian's duty to ensure that the provisions of paragraph (4) are complied with.

**Tenure of
custodian.**

12. - (1) The appointment of a custodian may be terminated -

- (a) in accordance with any ground or procedure specified in the custodian agreement; or
- (b) by a resolution passed at an extraordinary meeting of the scheme's investors if the notice of the meeting sets out the reason for the proposed removal, and the name of the proposed new custodian.

(2) The operator of a collective investment scheme shall terminate the appointment of any custodian appointed in respect of the scheme if -

- (a) the custodian becomes insolvent;
- (b) the custodian no longer meets any one or more of the requirements set out in regulation 10(2); or
- (c) in the opinion of the operator, any other circumstances exist which justify the termination.

(3) Where the appointment of a custodian is terminated, the operator of the scheme shall promptly give written notice of the termination together with the name of, and such other particulars as may be relevant as to, the new custodian proposed to be appointed under this regulation, to -

- (a) the Commission; and
- (b) the scheme's investors, unless the

termination is by resolution under paragraph (1).

**Rules for
the holding
of assets.**

13. - (1) Unless impracticable in the circumstances, the assets of a collective investment scheme shall be held in the name of the collective investment scheme, the custodian or sub-custodian.

(2) Where the assets of a collective investment scheme are held only in the name of the custodian, or a sub-custodian, the records kept by the custodian or sub-custodian (as the case may be) for the purposes of these Regulations shall -

(a) specify an account number or other designation referable to the scheme;
and

(b) show that the beneficial ownership of the assets is vested in the scheme.

(3) Where any assets of a collective investment scheme are issued in bearer form, those assets shall be segregated by the custodian and clearly marked as being beneficially owned by the scheme.

(4) The custodian may deposit the assets of the collective investment scheme concerned into a depository if the records of that depository, or any participant in the depository through which the assets are deposited, contains a designation sufficient to show that the beneficial ownership of the assets is vested in the scheme.

Auditors. 14. - (1) The operator of a collective investment scheme shall -

(a) appoint a qualified auditor, being an auditor who is independent of the scheme, and of the scheme's operator and providers of services, to carry out the duties set out in paragraph (2);

(b) notify the Commission in writing of such appointment and of any termination of the appointment, or resignation of, an auditor so appointed.

(2) An auditor appointed under paragraph (1) shall -

(a) make such examinations as will enable the auditor to make the reports required under the Act, these Regulations, and any other applicable laws;

(b) conduct annually an audit of the collective investment scheme and its financial statements, and provide the scheme and its investors with a report thereon in accordance with generally accepted accounting principles;

(c) conduct such other audits or examinations required under the Act or these Regulations in relation to the scheme.

(3) An audit for the purposes of

paragraph (2) (b) shall include procedures to verify the assets of the collective investment scheme and the manager's calculation of the net asset value of the scheme.

(4) Where in the course of its duties an auditor appointed under this regulation is of the opinion that there is -

(a) a material deficiency, weakness, or non-compliance with any requirement of these Regulations, with respect to the operations of the scheme concerned; or

(b) any other matter which gives rise to concern or which requires a clarification or qualification to be made in the auditor's report on the financial statements of the scheme,

the auditor shall promptly notify the Commission thereof and also give a copy of the notice to the operator of the scheme.

(5) A notice for the purposes of paragraph (4) shall set out all the relevant particulars as to the deficiency, weakness, non-compliance or other matter, concerned.

(6) A person who gives notification pursuant to paragraph (4) shall not, as a result, be -

(a) subjected to any disciplinary action;

(b) dismissed, suspended or demoted;

(c) harassed, intimidated or victimized;

(d) transferred against that person's

will;

- (e) refused transfer or promotion;
- (f) subjected to a term or condition of employment, or retirement from employment, that is altered to the person's disadvantage;
- (g) provided with an adverse reference;
- (h) denied appointment to any employment, profession or office;
- (i) threatened with any of the actions specified in paragraphs (a) to (h); or
- (j) otherwise adversely affected in respect of the person's employment, profession or office, including employment opportunities and job security.

Investment advisers.

15. - (1) Subject to paragraphs (2) and (3), the manager of a collective investment scheme may appoint an investment adviser to provide advice with respect to any assets of the scheme originating or held in a recognized foreign jurisdiction.

(2) The manager shall not appoint a person as an investment adviser under paragraph (1) unless the person is authorized to act as an investment adviser (by whatever description called) under the laws of the recognized foreign jurisdiction concerned.

(3) In any case where an investment adviser is appointed under paragraph (1), the manager remains responsible for any actions taken by the scheme on the advice, or at the

behest, of the investment adviser.

Register of investors.

16. - (1) The operator of a collective investment scheme registered under this Part shall keep a register of the investors in the scheme.

(2) A register kept under paragraph (1) shall contain the information specified by the Commission and the operator of the scheme shall inform the Commission in writing of the address in Jamaica where the register is kept.

(3) The manager of a collective investment scheme may appoint a company to act as registrar for the purposes of maintaining the register kept pursuant to this regulation.

PART III. *Registration of Regulated Overseas Collective Investment Schemes*

Application for registration.

17. - (1) The operator or manager of a regulated overseas collective investment scheme may apply for the registration of the scheme under this Part.

(2) An application for the purposes of paragraph (1) shall be made in the form specified by the Commission and shall -

(a) contain sufficient information for the Commission to assess the merits of the application;

(b) be accompanied by -

(i) the application fee specified in the First Schedule;

(ii) a certificate, signed by the operator of the scheme,

First Schedule.

stating that the scheme
complies with the
requirements for
registration set out in
regulation 18;

(iii) copies of -

(A) all marketing
materials to be
used in Jamaica to
offer or sell the
securities of the
scheme;

(B) the offering
documents and any
other disclosure
documents used in
the recognized
foreign
jurisdiction where
the operator of the
scheme is
established, formed
or incorporated (as
the case may be);
and

(C) all documents that
investors in
Jamaica will be
required to sign in
order to
participate in the

scheme;

- (iv) evidence that the scheme is an issuer in good standing in the recognized foreign jurisdiction concerned;
- (v) the most recent audited financial statements of the scheme (in the case of an existing scheme);
- (vi) the organizational documents of the scheme;
- (vii) the names of the dealers through whom the scheme will sell securities;
- (viii) a written profile of the directors and officers of the scheme's operator and the manager; and
- (ix) any other information which the Commission reasonably requires in order to assess the application.

(3) Where the Commission intends to deny an application under paragraph (1), the Commission shall give the operator of the scheme written notice of that intention, together with the reasons therefor, and an opportunity to be heard in response thereto.

Grant of application for registration.

18. - (1) Where the Commission receives an application for registration in accordance with regulation 17, the Commission may grant the

application if it is satisfied that the requirements set out in paragraph (2) are met in relation to the application.

(2) The requirements mentioned in paragraph (1) are that -

(a) the regulated overseas collective investment scheme is distributed and is in good standing in the recognized foreign jurisdiction concerned;

(b) the recognized foreign jurisdiction concerned requires the scheme to prepare, file with its regulator and publish -

(i) annual financial statements in accordance with generally accepted accounting principles, and that those statements are required to be audited in accordance with generally accepted auditing standards;

(ii) interim financial statements in accordance with generally accepted accounting principles, at least semi-annually;

(c) the latest audited financial statements of the scheme establish that the value of securities in the scheme is not less than three hundred thousand dollars when expressed in the

currency of the United States of America at the prevailing rate of exchange on the date of the application;

- (d) the scheme's securities will be sold in Jamaica only through dealers licensed under the Act, and there is appointed in respect of the scheme at least one such dealer;
- (e) the operator of the scheme, and every provider of services in respect of the scheme, are fit and proper persons;
- (f) the custodian is independent of the operator and the manager of the scheme;
- (g) the disclosure documents, marketing materials, and all documents to be signed by investors in Jamaica, are acceptable to the Commission; and
- (h) the grant of the application for registration is not contrary to the public interest.

(3) Upon granting an application under this Part, the Commission shall, upon payment of the registration fee specified in the First Schedule, issue -

**First
Schedule.**

- (a) a certificate of registration to the applicant; and
- (b) written notification thereof to every dealer appointed for the purposes of paragraph (2) (d).

(4) Registration under this Part shall be effective for a period of one year from the date of issue of the registration certificate, unless renewed in accordance with regulation 19.

(5) The Commission may cancel the registration of a scheme under this regulation, if the Commission is satisfied that the scheme -

(a) no longer meets any one or more of the requirements set out in paragraph (2);

or

(b) is not in compliance with any provision of the Act or these Regulations,

and has failed without reasonable excuse to comply with any written direction issued to it by the Commission to remedy the matter, within the time specified in the directions, or that the matter is incapable of being so remedied.

(6) Before taking any action under paragraph (5), the Commission shall give the operator of the scheme written notice of that intention together with the reasons therefor and an opportunity to be heard in response thereto.

(7) The Commission may suspend the registration of any scheme in respect of which it has issued directions under paragraph (5) or issued a notice under paragraph (6), pending compliance with the directions or its decision whether or not to act on the intention

indicated in the notice (as the case may be).

**Renewal of
registra-
tion.**

19. - (1) An application for the renewal of registration under this Part may be made by submitting to the Commission, at least thirty days before the expiration of the period mentioned in regulation 18(4) -

**First
Schedule.**

- (a) a renewal application in the form specified by the Commission;
- (b) the renewal fee specified in the First Schedule;
- (c) evidence that the scheme is in good standing in the recognized overseas foreign jurisdiction concerned;
- (d) a certificate signed by the operator of the scheme, stating that the scheme continues to meet the requirements for registration set out in regulation 18(2) and that all documents required to be filed under this Act, in respect of the scheme, have been filed; and
- (e) any other information that the Commission may specify for the purpose of determining whether to grant the application for renewal.

(2) Where the Commission intends to deny an application under paragraph (1), the Commission shall give the operator of the scheme written notice of that intention, together with the reasons therefor, and an opportunity to be heard in response thereto.

**Periodic
reporting
to**

20. - (1) A scheme registered under this Part

Commission. shall file with the Commission -

(a) a copy of -

(i) the scheme's financial statements and the auditor's report thereon, within ninety days after the end of the scheme's financial year; and

(ii) the quarterly interim unaudited financial statements of the scheme, within forty-five days after the end of the relevant quarter;

(b) any other document required to be filed in respect of the scheme under the laws of the recognized foreign jurisdiction concerned, as soon as practicable after such filing;

(c) prompt notice of any change as to any provider of services in respect of the scheme; and

(d) as soon as is practicable after any amendment is made to any disclosure documents, marketing materials or any document required to be signed by a person in order to invest in the scheme, the amended version thereof.

(2) Where any amendment is made to any document referred to in regulation 18(2)(g) -

(a) the amended version of the document

- shall be submitted to the Commission;
- (b) the Commission may direct that modifications be made to any such amended version, if it is of the view that the modifications are necessary for the protection of investors in Jamaica; and
- (c) the amended version shall not be used in Jamaica until after the expiration of thirty days after the Commission is given a copy of that version or the modifications directed by the Commission have been incorporated in the document, whichever occurs earlier.

(3) A collective investment scheme shall give to the Commission -

- (a) notice of any regulatory or criminal action, under any law, taken against the scheme, or any of the providers of services to the scheme, forthwith upon becoming aware of the action;
- (b) notice of any material change, or any proposed material change, in the affairs of the scheme forthwith upon become aware of the change or proposed change.

Availability of disclosure documents to the public.

21. - (1) Prior to offering or selling in Jamaica any securities in the scheme, a collective investment scheme registered under this Part shall make available to the

prospective investors -

- (a) the latest offering document, in respect of the scheme, prepared for use in the recognized overseas jurisdiction concerned; and
- (b) the most recent annual and interim financial statements of the scheme.

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

- (a) a document or information is made available to a prospective investor if it is -

- (i) given to the prospective investor;

- (ii) otherwise published in a daily newspaper in circulation in Jamaica or on a website maintained in respect of the scheme;

- (iii) sent by post or e-mail to the prospective investor,

or the prospective investor is informed as to where in Jamaica the document or information may be obtained at no cost to the investor;

- (b) "the latest offering document" means an offering document submitted to, and approved by, the Commission no earlier than one year before the date on which the document is made available to prospective investors.

(3) A scheme registered under this Part

shall -

- (a) make its constitutional documents available, at its registered office in Jamaica, for inspection by members of the public and the scheme's investors; and
- (b) make a paper copy of its most recent annual and interim financial statements available at its registered office to any investor who requests a copy, at no cost to that investor.

(4) A scheme registered under this Part shall publish in a daily newspaper in circulation in Jamaica, post on a website maintained in respect of the scheme, or send by post or e-mail to the investors in the scheme -

- (a) the scheme's unaudited quarterly financial statements, prepared in accordance with generally accepted accounting principles, no later than forty-five days after the end of the quarter concerned;
- (b) the scheme's audited financial statements, prepared in accordance with generally accepted accounting principles, no later than ninety days after the end of the scheme's financial year; and
- (c) notice of any changes it proposes to implement which affect the rights or interests of any of the scheme's

investors, no less than thirty days before implementing those changes.

Translation of documents.

22. - (1) Any document or other information required to be filed with the Commission or made available to the public or the scheme's investors, by a scheme registered under this Part, shall be in the English language or accompanied by a certified translation thereof.

(2) In this regulation, "certified" means certified by a notary public.

PART IV. *Disclosures, Offerings and Dealings*

Application.

23. Except where otherwise expressly provided, this Part applies to -

- (a) local collective investment schemes, other than schemes exempt from registration under these Regulations by virtue of regulation 3; and
- (b) schemes required to be registered under Part III.

General standards of disclosure.

24. All documents or other information provided by a collective investment scheme to the public, its investors or prospective investors, shall meet the following standards -

- (a) the information shall be complete, accurate and fair in all material respects, and shall be presented in a clear, concise and effective manner so as to be readily understood by the investing public;
- (b) the information shall not be false or misleading in any material respect, or

be presented in a deceptive or unfair manner;

- (c) where ongoing disclosure of the information is required, the information must be disseminated in a timely and efficient manner.

Offering documents.

25. - (1) A collective investment scheme shall not offer or sell any securities in the scheme unless copies of -

- (a) the offering documents of the scheme, approved by the Commission in accordance with this regulation; and
- (b) the scheme's latest audited annual financial statements and latest interim financial statements (if published after the latest available annual financial statements) are provided to the prospective investor concerned, free of cost to the investor, or that investor is informed as to where the investor may obtain copies of those documents free of cost to the investor.

(2) A collective investment scheme shall keep its offering documents up-to-date and include in its offering documents the following information -

Third Schedule.

- (a) the information specified in the Third Schedule;
- (b) all information required under these Regulations or specified by the

Commission for the purpose of this paragraph; and

- (c) all information necessary for prospective investors to be able to make an informed judgment as to the investment proposed.

(3) Before issuing to prospective investors or the public any offering document in relation to a collective investment scheme, the scheme shall apply to the Commission for the approval of the document in accordance with paragraph (4).

(4) An application for the approval of an offering document may be made in writing to the Commission, accompanied by -

- (a) a copy of the offering document; and
- (b) any other document or information specified by the Commission for the purposes of this paragraph.

(5) Upon receiving an application under paragraph (4), the Commission -

- (a) shall grant the application if the Commission is satisfied that the offering document in question meets the requirements of the Act and these Regulations; or
- (b) may refuse the application if the Commission determines that approving the application would be contrary to the public interest, or that the offering document in question -

- (i) does not comply with any provision of the constitutional documents of the scheme concerned;
- (ii) is inaccurate, unclear, or misleading, in a material respect, or contains a material omission; or
- (iii) does not provide full and accurate disclosure of all the information that prospective investors would reasonably require for the purpose of making an informed judgment as to investment in the scheme.

(6) Where the Commission intends to act under paragraph (5) (b), the Commission shall give the operator of the scheme and the manager -

- (a) notice of that intention, including the Commission's reasons therefor, within twenty-five days after the date of the application; and
- (b) an opportunity to be heard thereon or to amend and re-submit the offering document.

(7) The provisions of paragraph (5) shall apply to any amendments to an offering document made after the document is approved by the Commission under this regulation, as if the

amended document were a new document.

(8) The approval of an offering document under this regulation shall be effective for a period of twelve months from the date of the grant of the application for approval by the Commission.

**Liability
in respect
of offering
documents.**

26. - (1) Subject to the provisions of this regulation, the following persons shall be liable to pay compensation to any investor in a collective investment scheme who suffers loss or damage as a result of any misrepresentation included in the offering document -

- (a) every person who is a director of the scheme at the time when the offering document is issued;
- (b) every person who gives authorization to be named, and is named, in the offering document as a director or as having agreed to become a director either immediately or after an interval of time;
- (c) every person who is a promoter of the scheme; and
- (d) every person who authorized the issue of the offering document.

(2) Where the authorization of a person as an expert on any matter is required for the issue of an offering document, that person shall not, by reason of having given that authorization, be liable under paragraph (1) as a person who authorized the issue of the

offering document, unless the misrepresentation in question is a misrepresentation made by that person as an expert or purported expert.

(3) A person shall not be liable under paragraph (1) if that person shows that -

- (a) having consented to become a director of the collective investment scheme concerned, the person withdrew that consent before the issue of the offering document and that the offering document was issued without the person's authorization;
- (b) the offering document was issued without the person's knowledge or authorization and that, on becoming aware of the issuing of the offering document, the person forthwith gave reasonable public notice that the offering document was issued without the person's knowledge or authorization;
- (c) on becoming aware, after the issuing of the offering document and before any allotment of securities is made thereunder, that the offering document includes a misrepresentation, the person withdrew that person's authorization to its issue and gave reasonable public notice of that withdrawal and the reason therefor;
- (d) as regards -

- (i) a misrepresentation not purported to be made on the authority of an expert, the person had reasonable grounds to believe and did, up to the time of the allotment of the securities offered, believe that there was no misrepresentation; or
- (ii) a misrepresentation purported to be a statement either made by an expert or contained in a copy or extract of a report or valuation of an expert, the misrepresentation correctly and fairly represents the statement and the person had reasonable grounds to believe and did, up to the time of the issue of the offering document, believe that -
 - (A) the person who made the statement was competent to make it; and
 - (B) the person who made the statement gave the required

consent to the
issuing of the
offering document
and had not
withdrawn that
authorization
before the issuing
of the offering
document or before
any allotment of
securities
thereunder.

(4) Nothing in paragraph (3) (d) (ii) applies to the liability of a person who is the expert mentioned in that paragraph.

(5) A person shall not be liable under paragraph (1) in respect of a misrepresentation made by that person as an expert or purported expert if the person proves that -

- (a) having authorized the issue of an offering document, the person withdrew, in writing, the authorization before the offering document was issued;
- (b) on becoming aware of the misrepresentation, after the issue of the offering document but before any allotment of securities thereunder, the person withdrew, in writing, that person's authorization for the issue and gave reasonable public notice of

the withdrawal and the reason therefor; or

- (c) the person was competent to make the statement at the time of the issue of the offering document and had reasonable grounds to believe and did, up to the time of the allotment of securities thereunder, believe that statement was not a misrepresentation.

(6) A person who is exempt from liability under paragraph (3) or (5) is entitled to be indemnified by every director of the collective investment scheme concerned (other than a director exempt from liability under either of those paragraphs) against all damages arising, and any costs or expenses incurred by that person, as a result of the misrepresentation (including any costs of defending that person against any legal proceedings in respect of the misrepresentation).

(7) Where an offering document includes a material misrepresentation, any person who authorized the issue of the offering document shall be liable, on summary conviction before a Resident Magistrate, to a fine not exceeding three million dollars or imprisonment for a term not exceeding three years or both such fine and imprisonment.

(8) It shall be a defence for a person charged with an offence under paragraph (7) to

prove that the person had reasonable grounds to believe and did, at the time when the offering document was issued, believe that the statement was not a misrepresentation.

**Adverti-
sing.**

27. Any advertisement published in respect of a collective investment scheme shall -

- (a) not be false, biased, misleading or deceptive;
- (b) be clearly and fairly presented, so as to give a balanced picture of the scheme, including any reasonably perceivable risks associated therewith; and
- (c) contain information that is consistent with the scheme's offering document.

**Dealing in
respect of
scheme's
securities.**

28. - (1) Securities in a collective investment scheme shall not be sold by any person unless that person is a dealer licensed under the Act.

(2) This regulation applies to all collective investment schemes required to be registered under these regulations, as well as to schemes exempt from registration by virtue of regulation 3.

**PART V. *General Obligations Applicable to Local
Collective Investment Schemes***

**Applica-
tion.**

29. Except where otherwise expressly provided, this Part applies to local collective investment schemes, including schemes exempt from registration by virtue of regulation 3.

**Returns to
Commission.**

30. - (1) A collective investment scheme shall file with the Commission the scheme's -

- (a) annual financial statements, prepared in accordance with generally accepted accounting principles, together with the auditor's report thereon, within ninety days after the end of the scheme's financial year;
- (b) quarterly financial statements, prepared in accordance with generally accepted accounting principles, within forty-five days after the end of the relevant calendar quarter;
- (c) quarterly portfolio statements and the manager's calculations of the net asset value of the scheme, within forty-five days after the end of the calendar quarter; and
- (d) any other information specified by the Commission for the purpose of assessing the scheme's compliance with these Regulations.

(2) A collective investment scheme shall give to the Commission -

- (a) notice of any regulatory or criminal action, under any law, taken against the scheme, or any of the providers of services to the scheme, forthwith upon becoming aware of the action;
- (b) prior notice of any change or proposed change of any of the providers of services to the scheme; and
- (c) notice of any other matter specified

by the Commission for the purpose of assessing the scheme's compliance with these regulations.

(3) A provider of services in respect of a collective investment scheme shall give to the Commission -

- (a) notice of any regulatory, or criminal, action taken against it under any law;
- (b) notice of any proposed delegation of the provider's functions; and
- (c) any other information as may be specified by the Commission for the purpose of assessing the provider's fitness to act in the capacity of a provider of services to the scheme.

(4) A notice required to be given under any provision of this regulation shall contain sufficient particulars about the matters concerned, and shall be in such form as may be specified by the Commission.

Public disclosure obligations.

31. - (1) The manager of a collective investment scheme shall ensure that the information mentioned in this regulation is disclosed in the manner required by this regulation.

(2) There shall be disclosed -

- (a) on a website maintained in respect of the collective investment scheme, the cut-off time for, and the frequency of, the pricing of the scheme's securities;

- (b) at least once per week in a daily newspaper in circulation in Jamaica, and on a website maintained in respect of the scheme, the current net asset value of the scheme and the return on the investments in the scheme, including information as to -
 - (i) the return on investment for a rolling fifty-two week period; and
 - (ii) the year-to-date return on investment for the current calendar year;
- (c) by publication in accordance with this regulation -
 - (i) the scheme's unaudited quarterly financial statements, prepared in accordance with generally accepted accounting principles, no later than forty-five days after the end of the relevant quarter;
 - (ii) the scheme's audited financial statements prepared in accordance with generally accepted accounting principles, no later than ninety days after the end of the

- scheme's financial year;
- (iii) any proposed change of any provider of services in respect of the scheme, not less than thirty days before the change becomes effective; and
- (iv) any change that affects, or could reasonably be expected to affect, any right or interest of the scheme's participants, not less than thirty days before the change becomes effective.

(3) For the purposes of paragraph (2) (c), publication is in accordance with this regulation if -

- (a) posted on a website maintained in respect of the collective investment scheme concerned;
- (b) sent by post or e-mail to the scheme's participants; or
- (c) published in a daily newspaper in circulation in Jamaica.

(4) A paper copy of all financial statements required to be disclosed under paragraph (2) (c) (i) or (ii) shall be made available by the collective investment scheme concerned, free of cost to any investor in the scheme, upon the request of the investor.

(5) For the purposes of this regulation, where no website is maintained in respect of a collective investment scheme, publication on a website maintained in respect of the scheme's manager shall be sufficient publication for the purposes of any reference to publication on a website maintained in respect of the scheme.

**Disclosure
of material
changes.**

32. - (1) Subject to paragraph (2), where a material change occurs, or is proposed to be made, in relation to the affairs of a local collective investment scheme, or a scheme registered under Part III, the operator of the scheme or the manager shall -

- (a) ensure that, forthwith, a statement made by an officer of the scheme authorized for that purpose, disclosing the nature and substance of the change, is filed with the Commission and published in a daily newspaper in circulation in Jamaica; and
- (b) file with the Commission a report of the change, in such form as may be specified by the Commission, as soon as practicable but in any event no later than ten days after the operator or manager (as the case may require) becomes aware of the change or proposed change.

(2) The operator or manager of a collective investment scheme may, instead of

acting under paragraph (1) in any case where -

(a) in the opinion of the operator or manager (as the case may require), the disclosure required by paragraph (1) would be detrimental to the interests of the investors in the scheme; or

(b) the change in question consists of a decision or action taken by an authorized officer of the scheme who -

(i) believes that confirmation, by the operator of the scheme, of the decision or action is likely; and

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

forthwith file with the Commission, under confidential cover, the report required under paragraph (1) (b), together with the reasons for acting under this paragraph.

(3) Within ten days after a report is filed under paragraph (2), the operator or manager of the scheme concerned shall notify the Commission in writing if the operator or manager (as the case may require) believes that the change should continue to be kept confidential, and -

- (a) such a notice shall be valid to preserve the confidentiality of the change for a period of ten days after the expiration of the initial ten day period from the date of the filing of the report;
- (b) upon the expiration of the period mentioned in sub-paragraph (a), the manager or operator shall act in accordance with paragraph (1) unless another notice in accordance with this paragraph is given to the Commission before the expiration of the previous notice or, in the case of a proposed change mentioned in paragraph (1) (b), the proposed change is rejected by the operator.

(4) Successive notices may be given for the purposes of paragraph (3) (b).

**Invest-
ments.**

33. - (1) A collective investment scheme shall comply with the following investment restrictions -

- (a) no more than fifteen percent of the scheme's net assets may be invested in illiquid assets;
- (b) no more than ten percent of the scheme's net assets shall consist of securities from one issuer, except in the case of securities issued by any government where those securities have received an investment grade credit

rating; and

- (c) any other investment restrictions specified by the Commission.

(2) The Commission may, upon the application of the operator or manager of a collective investment scheme, permit the scheme to operate as a non-diversified scheme, and in that case shall direct that the scheme describe itself as a non-diversified scheme.

(3) The manager of a collective investment scheme shall act promptly to rectify any breach of paragraph (1).

(4) In this regulation, "illiquid asset" means -

- (a) a portfolio asset that cannot be readily disposed of through market facilities on which public quotations in common use are widely available at an amount that at least approximates the amount at which the portfolio asset is valued in calculating the net asset value per security of the collective investment scheme concerned; or
- (b) a security, held by a collective investment scheme, the resale of which is prohibited by a representation, undertaking or agreement, that is binding on the scheme.

Borrowing. 34. A collective investment scheme shall not borrow money or pledge the scheme's assets,

except temporarily for the purpose of accommodating requests for redemption made by investors in the scheme, and in that event the outstanding amount of borrowing shall not at any time exceed ten percent of the aggregate market value of the scheme's assets.

**Valuation
of assets.**

35. - (1) The valuation of a collective investment scheme's assets and the pricing of the scheme's securities shall be carried out by the manager in accordance with the scheme's constitutional documents.

(2) The calculation of the scheme's net asset value shall be carried out -

- (a) in accordance with paragraph (5) and generally accepted accounting principles; and
- (b) at such intervals as may be specified in the scheme's constitutional documents, but in any event no less than weekly.

(3) The manager of a collective investment scheme shall keep records of the valuations and calculations required under these Regulations, and those valuations and calculations shall be verified by the scheme's auditors at least once every calendar year.

(4) Where any error occurs in the pricing of a collective investment scheme's securities, the manager shall forthwith -

- (a) cause the error to be corrected and take such other measures as are

necessary to avoid further error; and

(b) if the error in price is of a margin of point five percent or more of the scheme's net asset value per security -

- (i) inform the custodian and the Commission; and
- (ii) ensure that compensation is paid to the scheme's participants in the amount and manner agreed between the Commission, the manager and the custodian.

(5) The net asset value of a collective investment scheme shall be calculated to at least three decimal places, in accordance with the following criteria -

- (a) portfolio securities for which market quotations are readily available shall be valued at current market value;
- (b) portfolio securities for which market quotations are not readily available are to be valued at fair market value in accordance with generally accepted accounting principles;
- (c) where a collective investment scheme has acquired or disposed of assets, the change in the value of the assets shall be reflected in the net asset value of the scheme no later than the first calculation of the net asset

- value made following the date on which the transaction becomes binding;
- (d) any change in the number of outstanding securities of a collective investment scheme resulting from purchases, distributions or redemptions, shall be reflected no later than in the first calculation of the net asset value made following the change;
- (e) the calculation of the net asset value shall take into account -
- (i) expenses (including investment advisory fees) as at the date of the calculation;
 - (ii) all dividends (whether received or receivable) declared since the last date of calculation;
 - (iii) interest income and other income as at the date of the calculation,
- but expenses and interest income need not be taken into account if, on a net basis, they total less than one percent of the outstanding securities on the date of the calculation.

**Suspension
of sales,
redemptions.**

36. - (1) A collective investment scheme may suspend dealings in its securities only in exceptional circumstances, and having regard to

the interests of the scheme's investors.

(2) Where a collective investment scheme suspends dealings in its securities, the manager shall forthwith -

- (a) notify the Commission; and
- (b) cause a notice of the suspension to be published in every medium in which the scheme's prices are normally published, and thereafter cause such publication to be repeated at least once per month during the period of the suspension.

(3) The Commission may, where it considers necessary in the public interest -

- (a) order redemptions of securities in a collective investment scheme to cease for such period of time as may be specified by the Commission; or
- (b) order a collective investment scheme which has suspended or ceased the redemption of its securities to resume redemption.

Approval of significant changes.

37. - (1) A collective investment scheme shall not implement any of the following changes in respect of the scheme without the approval of the Commission -

- (a) any changes to its constitutional documents;
- (b) any change of its operator or any provider of services in respect of the scheme, or as to the scheme's

regulatory status or controlling shareholder;

- (c) any changes in the scheme's investment objectives, policies or restrictions (including the purpose or extent of use of derivatives), fee structure or dealing and pricing arrangements; or
- (d) any other changes which may materially prejudice the rights or interests of participants in the scheme.

(2) The collective investment scheme concerned shall revise its offering document to reflect any proposed change mentioned in paragraph (1) and shall give a copy of the revised document to the Commission prior to implementing the change, for the purpose of obtaining approval therefor.

(3) Nothing in paragraph (1) or (2) shall apply to a change in any fee or charge not exceeding the maximum level permitted by the scheme's offering document in respect of that fee or charge, but at least one month's prior notice of the change shall be given to the scheme's investors.

**Amendments
to a
scheme's
constitu-
tional
documents.**

38. - (1) Except as provided in paragraph (2), every alteration to any of a collective investment scheme's constitutional documents, other than the offering document, shall be made -

- (a) by a special or extraordinary resolution (as the case may require) of the scheme's investors; and

- (b) with the written approval of the Commission.

(2) The constitutional documents of a collective investment scheme, other than the offering document, may be altered as agreed between the operator of the scheme, the manager and the custodian, without consulting the scheme's investors if the custodian certifies in writing that in the custodian's opinion the alteration -

- (a) is necessary for compliance with the requirements of any law;
- (b) is necessary to correct a manifest error; or
- (c) does not -
 - (i) materially prejudice the rights or interests of the scheme's investors;
 - (ii) to any material extent release the operator, any provider of services, or any other person, from liability to participants in the scheme; or
 - (iii) increase any fees or charges payable out of the assets of the scheme.

**Transac-
tions with
related
parties.**

39. All transactions carried out by or on behalf of a local collective investment scheme or a scheme registered under Part III shall be conducted at fair market value in relation to

the other transacting party, and any transaction between the scheme on the one part and its operator, any provider of services in relation to the scheme, or any associated person, on the other part -

- (a) may only be made after the written consent of the custodian is obtained; and
- (b) shall be disclosed in the scheme's annual report or annual financial statements.

PART VI. General

**Applica-
tion.**

40. This Part applies to all local collective investment schemes, including schemes exempt from registration under regulation 3, and all schemes registered under Part III.

**Issue of
securities
on payment.**

41. A collective investment scheme shall not issue a security unless the security is fully paid up.

**Books and
records.**

42. - (1) A collective investment scheme shall keep such books of accounts and other records in respect of its operations -

- (a) as give a true and fair view of the scheme's affairs and financial position and the transactions conducted by it; and
- (b) as may otherwise be specified by the Commission.

(2) An operator of a collective investment scheme and every provider of services in respect thereof, shall keep such

books of account and other records as -

- (a) detail all the activities carried on by the operator or provider of services, as the case may be, in relation to the scheme;
- (b) as may otherwise be specified by the Commission.

(3) All books and records required to be kept under these Regulations -

- (a) shall, in respect of books and records containing any information relating to a period not older in time than two years, be kept in a manner that ensures that they can be made readily available to the Commission on request;
- (b) shall, in respect of books and records not falling within paragraph (a), be kept in a manner that ensures that they can be made available to the Commission upon the provision of reasonable notice;
- (c) shall be disclosed to the Commission as required under these Regulations, in a form that is capable of being read by the Commission; and
- (d) shall be kept for a minimum of seven years after the latest date to which the information contained in them relates, or such longer period as may be required for the purposes of any

other law.

**Inspection
of accounts
and
records,
etc.**

43. - (1) The Commission may, at any time, conduct an on-site or off-site inspection of any aspect of the operations of a collective investment scheme, or of a provider of services to the scheme, for the purpose of -

- (a) assessing the compliance of the scheme, or provider, with the Act or these Regulations;
- (b) ensuring that the books of account and other records of the scheme, or provider, are being properly maintained;
- (c) reviewing the role of the scheme, the provider, or the scheme's operator, in take-over transactions;
- (d) investigating complaints received from participants in the scheme, another collective investment scheme, or any other person, on any matter relating to the activities of the scheme, the provider or the scheme's operator;
- (e) ensuring the due administration of the Act or any regulations made thereunder;
- (f) providing assistance in relation to any investigation being carried out by a regulatory authority for the securities sector in another jurisdiction; or
- (g) any other matter reasonably related to

the functions of the Commission.

(2) The Commission may, in writing, assign an authorized officer to conduct any inspection under this regulation.

(3) Where an inspection is being carried out under this regulation, every operator, director, partner, officer, employee, or provider of services, in respect of the scheme, and any other person concerned in the operation of the scheme, shall -

- (a) produce such documents or other information in the person's custody or control, as the Commission may require, within such time as the Commission may direct;
- (b) allow the Commission access, during working hours, to the premises on which any operations of the scheme, or the provider of services, concerned are being carried on;
- (c) provide reasonable facilities for the inspection of the books or other records concerned (including access to any records stored on a computer system or electronic storage medium) and permit such copies to be made as the Commission considers necessary; and
- (d) provide such other assistance as may be reasonably required by the Commission in connection with the

inspection.

(4) The Commission shall, within a reasonable time after the conclusion of an inspection carried out under this regulation, communicate its findings thereon to the operator or provider of services (as the case may be) concerned, and afford the operator or provider an opportunity to make representations in response thereto before the Commission takes any action on the findings.

(5) The Commission may make a recording of any statement made by any person mentioned in subsection (3) during any inspection carried out under this regulation.

**Expanded
audit.**

44. - (1) The Commission may require the auditor of a collective investment scheme to -

- (a) report to the Commission on the conduct of any audit, carried out by the auditor, in respect of the scheme;
- (b) enlarge the scope of any audit carried out by the auditor in respect of the scheme, or perform such other examination in relation thereto as the Commission thinks fit, and report thereon to the Commission,

or may appoint another auditor in respect of any matter referred to in paragraph (a) or (b).

(2) The collective investment scheme concerned shall bear the cost of any audit or examination carried out under this regulation.

(3) An auditor who refuses to comply

with a requirement of the Commission made under paragraph (1) commits an offence.

(4) An auditor who provides a report to the Commission pursuant to this regulation or any other requirement of these Regulations or the Act, shall not in respect thereof be taken to have breached any duty of confidentiality imposed by any law.

**Actual or
apprehended
corporate
insolvency.**

45. The powers of the Commission under section 8 of the Financial Services Commission Act shall apply, with any necessary modifications, to a collective investment scheme which is incorporated as a company.

Termination.

46. - (1) Where the operator of a collective investment scheme intends to terminate the operations of that scheme in Jamaica, the operator shall give to the Commission -

- (a) written notice of the proposed date of the termination, not less than thirty days prior to that date; and
- (b) within fourteen days after the conclusion of the termination, such evidence of the termination as the Commission may reasonably require, together with a statement in accordance with paragraph (2).

(2) The custodian of a collective investment scheme that is terminated shall prepare and sign -

- (a) a statement to the effect that all the assets of the scheme as at the date of

- the termination have been realized and the proceeds thereof (net of outstanding liabilities) have been distributed to the scheme's participants in the same proportion as the participant's holdings of securities in the scheme; and
- (b) where the liabilities of the scheme have not been settled but have been accrued to the scheme and excluded from distribution to the scheme's participants, a statement of that fact, including -
- (i) a description of the outstanding liabilities; and
 - (ii) where the amount accrued is an estimate, a statement of how the custodian intends to settle the balance between that estimate and the final liability amount.

**Publica-
tion.**

47. - (1) Subject to paragraph (2), the Commission may publish notice of any penalty or regulatory action, imposed under the Act or these Regulations, in respect of a collective investment scheme or any person in connection with the operations of the scheme.

(2) For the purposes of paragraph (1), notice of the suspension or cancellation of the registration of a collective investment scheme

under these Regulations may be published on the Commission's website, in a local newspaper, or otherwise as the Commission thinks expedient.

Right of appeal.

48. Any person aggrieved by any decision or action taken by the Commission under these Regulations may appeal to the Appeal Tribunal.

Return of registration certificate.

49. Where the registration of a collective investment scheme is cancelled by the Commission, the collective investment scheme concerned shall forthwith return the certificate of registration to the Commission.

Re-registration.

50. Where the registration of a collective investment scheme under these Regulations is cancelled by the Commission, the operator of the scheme may re-apply for registration after the expiration of twelve months after the date of the cancellation.

General penalty.

51. A person who contravenes any provision of these Regulations for which no specific penalty has been provided, commits an offence and shall be liable, on summary conviction before a Resident magistrate, to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years, or both such fine and imprisonment.

Exemptions.

52. The Commission may exempt any person from any requirement of these Regulations where it considers that the exemption is necessary having regard to the nature of the activity or transaction concerned.

Extensions of time.

53. Where a provision of these Regulations

provides for anything to be done within a stipulated period and no provision is therein provided for extension of that period, the Commission may in any case where it thinks fit, extend the time allowed for doing the thing.

**Recognition
of foreign
jurisdiction.**

54. The Commission may specify one or more recognized foreign jurisdictions for the purposes of these Regulations, if the Commission is of the opinion that the laws and regulatory oversight with respect to collective investment schemes in those jurisdictions are -

- (a) sufficient to ensure investor protection and market integrity; and
- (b) of a standard at least equal to those in Jamaica.

**Transi-
tional.**

55. A person who immediately before the date of commencement of these Regulations was lawfully operating a collective investment scheme (by whatever term described) may continue to operate that scheme without registration under these Regulations -

- (a) during the period of twelve months beginning from the commencement date; and
- (b) if within that period application is made for registration under these Regulations, until that application is finally disposed of or withdrawn.

**Repeal of
Securities
(Mutual
Funds)
Regula-
tions,
1999.**

56. The Securities (Mutual Funds) Regulations, 1999, are hereby repealed.

**5 (3) , 6 (1) ,
17 (2) , 18 (3) ,
19 (1) AND 25 (4))**

1. Application fee for local collective investment schemes (regulation 4(2)(b)) US\$1,000.00
2. Registration fee for local collective investment schemes (regulation 5(3)) US\$5,000.00
3. Renewal fee for local collective investment scheme (regulation 6(1)) US\$5,000.00
4. Application fee for regulated overseas collective investment scheme (regulation 17(2)) US\$1,000.00
5. Registration fee for regulated overseas investment scheme (regulation 18(3)) US\$5,000.00
6. Renewal fee for regulated overseas investment scheme (regulation 19(1)) US\$5,000.00

Note: Fees expressed in the currency of the United States of America may be paid in that currency or in the Jamaican currency equivalent at the prevailing rate of exchange at the date of payment.

SECOND SCHEDULE (Regulation 7(1))

Matters to be contained in the trust document.

The trust document shall contain provisions -

- (a) determining the manner in which the net asset value of the securities and the yield from the securities are to be calculated, subject to any methods of calculation thereof specified by the Commission, and for entitling the holder of any securities to require the manager to purchase them at a price calculated accordingly;
- (b) regulating the mode of execution and the issue of

- certificates (if any) evidencing purchases of securities of the scheme and to ensure, to the satisfaction of the trustee, that a security will not be issued unless the scheme has received full payment for that security;
- (c) ensuring that all assets of the scheme are vested in the Trustee;
 - (d) prohibiting or restricting the issue by or on behalf of the manager of advertisements, offering documents, or other documents containing any statement with respect to the sale price of securities, or the payments or other benefits received or likely to be received by investors, or containing any invitation to purchase securities, unless the document in question also contains a statement of the yield from the securities;
 - (e) ensuring that any advertisement, offering document or other document containing any statement with respect to the sale price of securities or the yield therefrom, or containing any invitation to purchase securities, shall not be issued by or on behalf of the manager until the trustee has had a reasonable opportunity of considering the document, and shall not be issued if within a reasonable time after the document first comes to the trustee, the trustee notifies the manager in writing that the trustee does not approve of the terms of the document;
 - (f) establishing a fund to be applied in offsetting the expenses of the administration of the trust and for regulating the application of that fund;
 - (g) requiring the audit of accounts relating to the trust, and the circulation of the accounts and the auditor's report thereon, to the scheme's investors (including the accounts kept, in relation to the trust, by the manager and statements of the manager's remuneration in connection therewith);
 - (h) requiring the manager, subject to any provisions as to appeal contained in the deed, to retire from the trust if the trustee certifies that it is in the interests of the beneficiaries of the trust;
 - (i) governing the realization and distribution of

property subject to the trust, and the termination thereof in case the trust ceases to be registered under these Regulations;

- (j) governing the kinds of investment permissible for the scheme and the maximum amount, if any, to be invested in respect of that investment, subject to the diversification limits specified by the Commission;
- (k) setting out the conditions and procedures to be followed with respect to the removal, and the replacement (whether due to removal or retirement), of the manager or trustee, including provision -
 - (i) to ensure the protection of the interests of the investors; and;
 - (ii) for the manager or trustee to be removed, by notice in writing, if the manager or trustee (as the case may be) goes into liquidation;
- (l) governing the management and administration of the scheme and the extent to which any of the rights, privileges, powers, duties, trusts and discretions vested in the manager may be delegated to any person approved by the trustee;
- (m) requiring the duties and responsibilities of the trustee to include -
 - (i) ensuring the efficient management of the scheme through -
 - (A) compliance with the terms of the trust document;
 - (B) the establishment and maintenance of suitable structures and procedures to ensure the proper performance of the functions of the trustee, as required by the trust document and the laws relating to trusts;
 - (ii) using the trustee's best efforts to avoid conflicts of interest, and disclosing any such conflict, or potential conflict -
 - (A) in any of the scheme's offering documents;
 - (B) in any case where any such

offering document has already been distributed, in such manner as is approved by the Commission;

- (n) prohibiting the trustee from -
 - (i) benefitting from its position as trustee, except for fees paid for its services as trustee; or
 - (ii) acting in a manner that is not impartial or that is not in the best interests of the scheme's investors, including any of the following actions -
 - (A) selling assets to, or purchasing assets from, the trust on the trustee's own behalf or entering into any securities lending transaction, repurchase transaction, or reverse repurchase transaction, on the trustee's own behalf, other than as permitted in circumstances specified in the trust document and at fair market value;
 - (B) selling any of the scheme's assets to, or purchasing any of the scheme's assets from, any person who is an associated person in relation to the trustee, or entering into any securities lending transaction, repurchase transaction, or reverse repurchase transaction, with any such person unless for fair market value; or
 - (C) any other action specified by the Commission; and
- (o) setting out the matters required by regulation 10(3) to be contained in a custodian agreement.

Matters to be contained in an offering document.

The operator of a collective investment scheme shall disclose in the offering document all information that is reasonably necessary for a prospective investor to make an informed judgement about the scheme. That information includes the matters set out below.

Constitution of the scheme and characteristics of the securities

1. The name, registered address, organizational form (trust, partnership or company), and the place and date of creation of the scheme, with an indication of the scheme's duration (if limited).
2. If the scheme or its securities are registered under the laws of any other jurisdiction, details of such registration.
3. The name, class (or classes) of the securities offered and a description of the characteristics of each class, including whether they carry voting rights and the currency in which they are denominated.

Investment objectives and restrictions

4. Details of the scheme's investment objectives and policy, including a summary of any applicable investment and borrowing restrictions.

Risks and suitability

5. A description of -
 - (a) the risk factors and other investment considerations that an investor should take into account when investing in collective investment schemes generally; and
 - (b) any particular material risks that the scheme concerned presents.
6. A description of -
 - (a) the characteristics of the investor for whom the collective investment scheme concerned -
 - (i) may be an appropriate investment; and
 - (ii) may not be an appropriate investment;
 - (b) the portfolio for which the fund is suited or for which the collective investment scheme should not

be used.

7. The level of risk tolerance that would be appropriate for investment in the collective investment scheme concerned.

Operators and providers of services

8. The name, registered address, the place, date and nature of establishment, formation, or incorporation (as the case may require), and the principal business activity of each of the following in relation to the collective investment scheme concerned -

- (a) the officers of the scheme;
- (b) the manager and its officers;
- (c) the trustee;
- (d) the custodian;
- (e) the investment adviser;
- (f) the registered agent or principal distribution company in Jamaica;
- (g) the auditors; and
- (h) the registrar and the transfer agent.

9. If any of the entities mentioned in paragraph 8(a)-(h) is -

- (a) registered, licensed or otherwise authorised to carry on business as a provider of any financial services in any other jurisdiction, the details of such registration, licence or other authorization;
- (b) a subsidiary, the name and jurisdiction of incorporation and address of the registered office of its ultimate holding company;
- (c) permitted to delegate any of its functions -
 - (i) a description of the functions that may be delegated and any conditions that may apply; and
 - (ii) if any functions have been delegated, the name and registered address, the place, date and nature of establishment, formation or incorporation (as the case may be), and the principal business activity, of the delegate, together with a description of the functions delegated.

Application and redemption procedures

10. The names of the local daily newspapers, and the website address (if any), where the prices of the scheme's securities will be published.
11. The minimum initial investment and minimum subsequent holding (if any).
12. The procedure for subscribing for, redeeming, and (if applicable) converting, securities, including relevant settlement dates for subscriptions and redemptions.
13. If securities may be acquired under an instalment plan, the terms of the plan, the minimum investment and the method of calculating the instalments.
14. A summary of the circumstances in which dealing in the scheme's securities may be deferred or suspended.
15. A statement that no money should be paid to any person in Jamaica to acquire the securities unless that person is licensed or registered as a dealer under the Securities Act.

Valuation

16. A statement as to whether or not the investment portfolio is being carried out at fair value and, if not, the method of valuation.
17. Valuation details, including -
 - (a) the frequency of valuation;
 - (b) dealing days;
 - (c) the time of day that all the scheme's assets will be regularly valued for the purpose of determining the prices at which the scheme's securities may be issued and redeemed by the manager.

Distribution policy and history

18. The distribution policy of the collective investment scheme and the approximate dates on which dividends or other distributions (if any) will be paid (if applicable).
19. The time, aggregate amount, and rate per security, of each distribution (if any) which has been paid to investors during the three immediately prior fiscal years of operation of the scheme.

Fees and charges

20. The basis of calculation of all costs and charges payable from the scheme's property, with percentages expressed on a per annum basis; the aggregate level of fees for investment management or advisory functions; and the fees payable by investors directly, including the amount and basis of calculation of those fees; and all charges levied on the purchase, redemption and conversion (if applicable) of the scheme's securities.

21. The amount and basis of calculation of all fees and charges payable by the scheme, including management fees, custodian fees and start-up expenses.

22. The notice period applicable for fee increases, being a period of not less than one month prior to implementation of the increase.

23. The fees payable to any dealer for the sale of the scheme's securities to investors; or, in the case of fees and charges not determinable in advance, the basis of calculation, or the estimated range, of the fees and charges.

Taxation

24. Details of the taxes levied on the scheme's income and capital, including any tax deducted from distributions to investors.

Reports and accounts

25. The date of the scheme's financial year end.

26. Particulars of what reports will be published, how they will be made available to investors, and when.

Warnings

27. The following statement shall appear on the cover page of each of the scheme's offering documents: "The Financial Services Commission does not pass upon the accuracy or adequacy of the information contained in this offering document. Any representation to the contrary will be deemed by the Commission to be a false and misleading statement.".

28. The following statements shall be prominently displayed in each offering document -

- (a) "Important - if you are in any doubt about the contents of this document, you should seek independent financial advice.";
- (b) "Collective investment schemes own different types of investments, depending on their investment objectives. The value of these investments may change from day to day, reflecting changes in interest rates, economic conditions and company news. As a result of these changes, the value of the fund's securities may go up or down and the value of your investment in the fund, when you redeem it, may be more or less than when you purchased it. The full amount of your investment is not guaranteed.";
- (c) "Past performance of the collective investment scheme should not be taken as an indication of future performance.".

29. Each offering document shall also state that other important information is provided in the financial statements and other disclosure documents of the scheme, and describe how that information may be obtained (including, as applicable, the telephone number, e-mail address, and postal address, of the entity from which the information is available.

General information

30. A list of the constitutional documents of the scheme, giving the address in Jamaica at which those documents, any amending documents, and the most recent annual and interim reports, may be inspected and copies obtained.

31. The date of publication of the scheme's offering documents and the date after which each offering document is no longer effective.

32. A statement -

- (a) that the operator and the manager of the scheme accept full responsibility for the accuracy of the information contained in the scheme's offering documents; and
- (b) confirming that, having made all reasonable enquiries, there are, to the best of the knowledge and belief of the operator and the manager, no other facts the omission of which would make any

information or statement in an offering document misleading.

33. The website address, if available, where the scheme publishes its offering documents, circulars, notices, announcements, financial reports and the latest available offer and redemption prices or net asset value.

34. The nature of any conflict of interest relating to the scheme and the manner in which the conflict is to be treated.

Termination of the scheme

35. A summary of the circumstances in which the scheme can be terminated and the rights of holders in that event."

**Amendments
to other
enactments.**

39. - (1) The Financial Services Commission Act is amended -

(a) in section 15(1) by inserting immediately after the words "administration of this Act" the words ", or who at any time has had such a duty or has been so employed,";

(b) by deleting section 22 and substituting therefor the following -

**"Protection
of persons
exercising
functions
of Com-
mission.**

22. In the absence of proof of wilful or reckless misconduct, on the part of the Commission, the Executive Director or any member or employee of the Commission, in the course of carrying out the provisions of this Act or any function or duty conferred on the Commission, or any officer of the Commission, by any other law, no liability is incurred by -

(a) the Commission, the Executive Director or any member or employee

of the Commission; or

(b) any person specified in section 15(1).";

(b) in the Fourth Schedule by deleting all the words appearing under the heading "THE SECURITIES ACT" but before the heading "THE INSURANCE ACT" and substituting therefor the following -

"(1)	Section 10(7)	Failure to return Certificate of Registration	\$50,000.00
(2)	Section 14(4)	Failure to maintain a record of securities	\$500,000.00
(3)	Section 15(4)	Failure to give notice of ceasing to be a dealer, etc.	\$25,000.00
(4)	Section 23(5)	Failure of Stock Exchange to comply with Commission's directions	\$200,000.00
(5)	Section 39(1)	Failure to disclose interest in securities	\$200,000.00
(6)	Section 63	Failure of dealer to keep proper accounting records ...	\$500,000.00
(7)	Section 64	Failure to appoint auditor within one month	\$100,000.00
(8)	Section 65	Failure of stock exchange to report on a specified matter to the Commission	\$100,000.00

."

(2) The Companies Act is amended by -

(a) deleting the heading appearing immediately before section 27A and substituting therefor the heading: "*Collective Investment Scheme Companies*"; and

(b) deleting section 27A and substituting therefor the following -

"Collective investment scheme companies. 27A. - (1) For the purposes of this Act, a collective investment scheme company means a company -

(a) having a share capital;

- (b) incorporated for the purpose of investing the moneys of its members for their mutual benefit;
- (c) stating in its articles that it is a collective investment scheme;
- (d) having the power to redeem or purchase for the cancellation of its shares without reducing its authorized share capital; and
- (e) registered as a collective investment scheme as provided by the Securities Act.

(2) The articles of a collective investment scheme company shall state that -

- (a) the company intends to issue investors' shares; and
- (b) the rights attached to those shares.

(3) For the purposes of this section, "investors' shares" means shares that are issued by a collective investment scheme company -

- (a) the capital paid upon

which and the assets derived therefrom, and all profits, gains and losses referable thereto, are pooled, invested and managed (directly or indirectly) by the company on behalf of persons holding the investors' shares;

(b) which do not form part of the permanent share capital of the company; and

(c) which may be purchased or redeemed by the company at their net asset value, in accordance with the company's articles and any regulations governing collective investment schemes.

(4) The redemption or purchase by a collective investment scheme company of investors' shares in that collective investment scheme company shall not be taken as increasing or reducing the company's authorized share capital.

(5) The powers of a collective investment scheme company under subsection (4) shall be exercisable by its directors, or in accordance with the policies and procedures established by its directors.

(6) No investors' shares in a collective investment scheme company shall be redeemed by the company or purchased by another collective investment scheme company unless those shares are fully paid.

(7) Notwithstanding anything contained in this Act or any other law to the contrary concerning the proof and ranking of claims with respect to companies that are being wound up, the holders of investors shares in a collective investment scheme company shall be entitled to any surplus assets available for distribution on a winding up of the collective investment scheme company, ahead of any other shareholders in the company.

(8) A company shall not issue investors' shares unless the company complies with this section

and the provisions with respect to collective investment schemes set out in the Securities Act and any regulations made thereunder.

(9) Where a company which contravenes subsection (8), the officers of the company or any other person responsible for the contravention commit an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two million dollars.

(10) A collective investment scheme company shall be exempt, in the manner herein described, from the following provisions of this Act -

- (a) sections 34 and 35, as respects the provisions relating to an authorized minimum;
- (b) all of sections 38 and 39;
- (c) all of sections 40 to 47 (inclusive);
- (d) all of sections 48 and 49;
- (e) all of sections 52, 56, 57, 58, 59, 60, 62, 67, 79, 109, 112, 113, 120, 121, 122, 124, and 144 to 153 (inclusive);

(f) all of section 158;

(g) all of sections 372 to 377
(inclusive).

(11) The Financial Services Commission may, by order published in the **Gazette**, amend subsection (10) so as to add or remove any provision, as the Commission considers appropriate for the more efficient and prudent operation of collective investment scheme companies."

(3) The Income Tax Act is amended -

(a) in section 2(1) by -

(i) inserting, in the appropriate alphabetical sequence, the following definitions -

"collective investment scheme" has the meaning assigned to it by section 17A of the Securities Act;

"qualified collective investment scheme" means a scheme which is registered as a collective investment scheme under the Securities Act, in which throughout the year of assessment (or where the scheme is registered during the year of assessment, throughout the remainder of

the year of assessment) there are not less than fifty unit holders or such other minimum number of unit holders as may by order be prescribed by the Minister responsible for finance;"

- (ii) in the definition of "unit holder", by deleting the words "qualified unit trust scheme, means a holder of securities (as defined in the Unit Trusts Act)" and substituting therefor the words "qualified collective investment scheme, means a holder of investors' shares, in the case of a collective investment scheme company, or in any other case any other ownership interests in a qualified collective investment scheme";
- (iii) in the definition of "qualified unit trust scheme", by deleting all the words starting at the words "Unit Trusts Act during the year" and ending at the words "the group" and substituting therefor the words "is operating pursuant to -
 - (A) section 41 of the Securities (Amendment) Act, 2013, or is registered as a collective investment scheme under the Securities Act; and
 - (B) any arrangements whether in Jamaica or elsewhere) made for

the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever, (with the exception of any arrangements having as their object or principal object the provision of pensions),

and in which throughout the year of assessment (or where the scheme is registered during the year of assessment, throughout the remainder of the year of assessment) there are not less than fifty unit holders or such other minimum number of unit holders as may by order be prescribed by the Minister responsible for finance";

- (b) in section 5 by deleting sub-paragraph (vi) of subsection (1)(b) and substituting therefor the following -

"(vi) the accretion realized on the encashment, disposal or redemption of any units or other form of investment in a collective investment scheme, except accretions accruing prior to the 1st day of June, 1999, in units in a qualified unit trust

scheme;";

(c) in section 12 -

- (i) in paragraph (t) by inserting immediately after the word "scheme" the words ", or a collective insurance scheme company or other entity which is a qualified collective investment scheme, or a custodian acting on its behalf";
- (ii) by deleting the word "and" appearing at the end of paragraph (ak);
- (iii) by re-lettering paragraph (al) as paragraph (am) and inserting the following as paragraph (al) -

"(al) accretions realized on the encashment, disposal or redemption of units in a money market fund (within the meaning of section 31A) operated by a qualified collective investment scheme (which units may take the form of investors' shares or otherwise), which have been acquired on or after the 1st day of January, 2014, where the following conditions apply -

- (i) the units are to be held by individuals for a period of not less than five years;
- (ii) the units are not

transferable except
on the death or
bankruptcy of the
investor;

- (iii) not more than
seventy-five *per*
cent of the
accretions realized
in any year have
been paid out;
- (iv) the amount invested
in the acquisition
of any such units in
any year does not
exceed one million
dollars,

and for the purposes of this
paragraph the valuation of a
money market fund shall be
determined on the basis of its
average monthly value during
the prior three month period;
and";

(d) in section 31A(6) in paragraph (1) of the definition
of "prescribed person", by deleting the words "unit
trust management company" and substituting therefor
the words "collective investment scheme management
company";

(e) in section 39 -

- (i) in the marginal note, by deleting the
words "Unit trust" and substituting

therefor the words "Collective investment scheme";

- (ii) in subsection (1), by deleting the words "under a qualified unit trust scheme" and substituting therefor the words "or a collective investment scheme company or any other entity which is a qualified collective investment scheme, or any person acting on its behalf";
 - (iii) in subsection (3) by deleting the words "the manager of a specified unit trust scheme" and substituting therefor the words "a collective investment scheme or any person acting on its behalf";
 - (iv) in subsections (5) and (6), in each case delete the words "the manager" and substitute therefor the words "a qualified collective investment scheme or any person acting on its behalf";
 - (v) in subsection (6) by deleting the word "he" and substituting therefor the words "the scheme or person (as the case may be)";
 - (vi) by deleting subsection (7);
 - (f) in Part II of the Sixth Schedule, by deleting the words "the trustees of a qualified unit trust" and substituting therefor the words "by or on behalf of a qualified collective investment".
- (2) The Interception of Communications Act is amended -
- (a) in section 16 -
 - (i) by inserting the following as subsection

(1A) -

- " (1A) For the avoidance of doubt, the information referred to in paragraph (b) of the definition of "traffic data" includes information as to the means and source of payment for the telecommunications service (including any relevant credit card numbers or bank account numbers.";
- (ii) in subsections (3) and (4), by deleting the words "subsection (2)" and substituting therefor in each case the words "subsection (2) or (3A)";
- (iii) by inserting next after subsection (3) the following subsection -
- " (3A) Where it appears to a person listed in column A of the Second Schedule that -
- (a) the provider of a telecommunications service is or may be in possession of, or capable of obtaining, any communications data; and
- (b) it is necessary to obtain that data for any purpose specified in relation thereto in column B of the Second Schedule,
- the person may issue to the provider a notice in writing requiring the provider to disclose to a specified person named in the notice all of the

data in the provider's possession or subsequently obtained by the provider or, if the provider is not already in possession of the data, to obtain the data and so disclose it.";

- (iv) in subsection (4) by inserting next after the words "authorized officer" the words "(or specified person, in the case of an notice issued under subsection (3A))";
- (v) in subsection (9), by deleting -

(A) the words "An authorized officer shall not disclose any communications data obtained under this Act" and substituting therefor the words "A person who obtains communications data pursuant to a notice under this Act shall not disclose any such data";

(B) the word "or" appearing at the end of paragraph (b), relettering paragraph (c) as paragraph (d), and inserting the following as paragraph (c) -

"(c) in the case of communications data obtained pursuant to a notice under subsection (3A), in accordance with the provisions of the Securities Act which

permit such disclosure to an agency of a foreign Government for the purpose of cooperation in the enforcement of laws pertaining to the regulation of the securities sector;"

- (b) in sections 4 and 8 by inserting immediately before the word "Schedule" wherever it appears the word "First";
- (c) by re-numbering the Schedule as the First Schedule and inserting next thereafter the following as the Second Schedule -

" **SECOND SCHEDULE** (Section 16)

Column A

Column B

Person who may require data

Purpose of requiring data

- | | |
|---|---|
| 1. The Executive Director of the Financial Services Commission. | 1. The prevention or detection of any offence referred to in section 68E of the Securities Act, if the Executive Director is satisfied that there are reasonable grounds for believing that - <ul style="list-style-type: none"> (a) such an offence has been, is being or is about to be committed; and (b) the sender or recipient of any communication, or the subscriber to the telecommunications service, to which the data relates, is |
|---|---|

the subject of
an investigation
in connection
with the
offence.".

**Repeal of
Unit Trusts
Act.**

40. The Unit Trusts Act is hereby repealed.

**Transitional
provision for
unit trusts.**

41. The operation of a fund which immediately before the date of commencement of this Act was -

- (a) lawfully operating; and
- (b) registered under the Unit Trusts Act or the Securities (Mutual Funds) Regulations,

shall not be taken to be in breach of section 17A to any extent that the fund is required by that section to be registered as a collective investment scheme if, before the expiration of twelve months from the date of commencement of this Act, the operator of the fund applies for registration as provided in section 17A and the application has not been refused or withdrawn.

MEMORANDUM OF OBJECTS AND REASONS

A decision has been taken to amend the Securities Act so as to enhance the legislative framework for the regulation of the securities industry in order to combat the establishment and proliferation of unlawful financial organizations, modernize the framework for the regulation of collective investment schemes and correct other deficiencies in the regulatory framework of the securities industry.

The proposed amendments include -

- (a) expanding the definition of securities;
- (b) prohibiting the schemes commonly known as "Ponzi" and "pyramid" schemes;
- (c) provisions as to the criteria to be met by investment clubs;

- (d) provision for the regulation of collective investment schemes;
- (e) enhancement of the enforcement and investigative capabilities of the Financial Services Commission as relates to breaches of the Act or regulations made under the Act, including through the addition of powers to obtain restraint and production orders, to obtain communications data under section 16 of the Interception of Communications Act, and to cancel or suspend licenses, power to seek civil remedies, as well as the widening of the range of administrative penalties;
- (f) facilitate the sharing of information with overseas regulatory authorities for the purpose of co-operation in the enforcement of laws pertaining to the regulation of the securities sector.

This Bill seeks to give effect to that decision and also contains consequential amendments in respect of the Companies Act, the Income Tax Act, the Financial Services Commission Act, and the Interception of Communications Act; and repeals the Unit Trusts Act.

Dr. Peter D. Phillips
Minister of Finance and Planning