

A BILL

ENTITLED

AN ACT to Amend the Securities Act.

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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:—

1. This Act may be cited as the Securities (Amendment) Act, 2014, and shall be read and construed as one with the Securities Act (hereinafter referred to as the principal Act) and all other amendments thereto.

Short title
and
construction.

Amendment of section 2 of principal Act.

2. Section 2(1) of the principal Act is amended by inserting in the appropriate alphabetical sequence the following definition—

““repurchase agreement” has the meaning assigned to it by section 76(1A);”.

Repeal and replacement of section 35A of the principal Act.

3. Section 35A of the principal Act is repealed and the following substituted therefor—

“ Applica-
tion of
Part V.

35A. For the purposes of this Part, sections 36 and 36A, sections 44 to 49 and sections 52 and 53 shall apply, in addition to securities as defined in section 2(1), to—

- (a) certificates of deposit issued by banks licensed under the *Banking Act*, financial institutions licensed under the *Financial Institutions Act*, or by building societies licensed under the *Building Societies Act*;
- (b) certificates of deposit, and open market debt instruments and other 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.”.

Insertion of new section 36A into principal Act.

4. The principal Act is amended by inserting next after section 36 the following section—

“ Assets
underlying
repurchase
agreements.

36A.—(1) A dealer shall not—

- (a) enter into a repurchase agreement that does not completely and outrightly transfer the legal ownership of the underlying assets to the other party to the repurchase agreement; or

- (b) conduct any transaction pursuant to the repurchase agreement,

unless the agreement is entered into, or (as the case may be) the transaction is conducted, in accordance with the provisions of this Act and any regulations made under this Act.

(2) A dealer who contravenes subsection (1) commits an offence.

(3) Subject to subsection (6), the assets referred to in subsection (5) (a) shall not form part of the estate or property of the dealer, and shall be held, managed and administered in accordance with regulations made under section 76(1)(r).

(4) In the event of any proceedings under the *Insolvency Act* in relation to an insolvent person or a bankrupt, the assets referred to in subsection (5) (a) shall, notwithstanding anything contained in the *Insolvency Act*, be dealt with in the manner provided by this Act and any regulations made under this Act.

(5) For the purposes of—

- (a) subsections (3) and (4), the assets are—
- (i) the underlying assets which are the subject of a repurchase agreement;
 - (ii) any money held in trust pursuant to section 36;
 - (iii) money otherwise held in trust pursuant to this Act or any regulations made under this Act;
- (b) subsection (4), “insolvent person” and “bankrupt” have the meanings assigned to them respectively by section 2 of the *Insolvency Act*.

(6) Regulations made under section 76 (1)(r) may exclude from the application of those regulations any repurchase agreements between entities specified in those regulations, if the Commission is satisfied that the contractual and operational arrangements governing those repurchase agreements comply with international best practices and adequately protect against the risks which those regulations are designed to mitigate.

(7) For the purposes of subsection (1), a transfer in accordance with any enactment or applicable rules governing the operation of—

- (a) a licensed central securities depository, within the meaning of section 67A;
- (b) a securities depository operated and managed by the Bank of Jamaica; or
- (c) a securities depository operating outside of Jamaica, the operations in respect of which the Commission is satisfied are regulated in accordance with international best practices,

shall be treated as a complete and outright transfer of legal ownership.”.

Amendment
of section 76
of the
principal
Act.

5. Section 76 of the principal Act is amended—

- (a) in subsection (1)(r) by inserting immediately after the words “facilitating those agreements” the words “, including arrangements in the event of insolvency or bankruptcy”;
- (b) by inserting next after subsection (4) the following subsection—

“ (5) For the purposes of subsection (1)(r), “underlying assets” includes all instruments referred to in section 35A (a) to (c).”.

6. With effect from the coming into operation of the *Banking Services Act, 2014*, any reference in the principal Act to the Banking Act or the *Financial Institutions Act* shall be construed as a reference to the *Banking Services Act, 2014*.

Transitional
provision re
*Banking
Services Act,
2014.*

Passed in the House of Representatives this 2nd day of December, 2014.

MICHAEL A. PEART
Speaker.

MEMORANDUM OF OBJECTS AND REASONS

A decision has been taken to amend the Securities Act so as to enhance the legal and regulatory framework for retail repurchase agreements in Jamaica, including by providing for additional protection for the interests of repurchase clients in the event of a dealer's insolvency or bankruptcy.

This Bill seeks to give effect to that decision.

DR. PETER D. PHILLIPS
Minister of Finance and Planning.

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As passed in the Honourable House of Representatives.

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SECTION 2 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

2.—(1) In this Act unless the context otherwise requires—

“Appeal Tribunal” means the Appeal Tribunal established by section
19 of the *Financial Services Commission Act*;

...

“representative” means a dealer’s representative or an investment
representative;

...

SECTION 35A OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

35A. For the purposes of this Part, sections 44 to 49 (inclusive) and sections
52 and 53 shall apply to securities and—

- (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”.

SECTION 36 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

36.—(1) A dealer in securities shall open and maintain with a bank in Jamaica
an account designated a trust account into which shall be paid—

- (a) money held by the dealer in trust for a client; and
- (b) without limiting the generality of paragraph (a), money received by the dealer from a client, other than—
 - (i) money received in respect of brokerage or any other preferred charge;
 - (ii) money received in payment or part payment for securities delivered to the dealer before the money is received; or

(iii) money in relation to which the dealer is required under or pursuant to this Act to treat in a specified way.

(2) A dealer shall not withdraw money from a trust account except to make a payment to or in accordance with the directions of a person entitled to the money and for such other purposes as may be prescribed by the Commission.

(3) Any dealer who contravenes the provisions of this section shall be guilty of an offence and shall be liable on conviction before a Judge of the Supreme Court sitting without a jury to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

SECTION 76 OF THE PRINCIPAL ACT WHICH IT
IS PROPOSED TO AMEND

76.—(1) The Commission may, with the approval of the Minister, make regulations—

- (a)
- (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;”;
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(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.”.