

THE UNIT TRUSTS ACT

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SCHEDULE

THE UNIT TRUSTS ACT

Acts
29 of 1970,
11 of 2001.

*[27th April, 1971.]

PART I—*Preliminary*

1. This Act may be cited as the Unit Trusts Act.

Short title.

2.—(1) In this Act—

Interpreta-
tion.

“bank” means commercial bank as defined in subsection (1) of section 2 of the Bank of Jamaica Act;

“broker” means any person who carries on the business of doing any of the following things as an agent, that is to say, contriving, making, or concluding bargains or contracts for the acquisition or disposal of securities;

“building society” means a society incorporated under the Building Societies Act;

“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act;

11/2001
Sch.

“corporation” means any body corporate, whether incorporated in Jamaica or elsewhere;

“debentures” means any debentures, debenture stock or bonds of a corporation, whether constituting a charge on the assets of the corporation or not;

“life insurance company” means any corporation whose business involves the issue of policies of life insurance;

“Minister” means the Minister responsible for finance, and references to the Minister in any provisions of section 164 of the Companies Act, shall be construed accordingly in the application thereof pursuant to any of the provisions of section 19;

*But see L.N. 121/1971

- “pensions” includes compensation, unemployment, retirement or superannuation allowances, and other allowances of a like nature;
- “industrial and provident society” means a society registered under the Industrial and Provident Societies Act;
- “registered unit trust scheme” means any unit trust scheme which is registered under Part II;
- “salesman” means any person who as a servant or agent of the manager under any registered unit trust scheme, or of a bank, broker or life insurance company, or of any institution approved by order of the Minister, does any of the following things, that is to say, making or offering to make with any other person, or inducing or attempting to induce any other person to enter into or offer to enter into, any agreement for, or with a view to, the disposal of any of the units under a registered unit trust scheme to such other person, not being the manager or trustee under the scheme;
- “securities” means—
- (a) shares or debentures, or rights or interests (described whether as units or otherwise) in any shares or debentures; or
 - (b) securities of the Government of Jamaica or of any country or territory outside Jamaica; or
 - (c) rights (whether actual or contingent) in respect of money lent to, or deposited with, any industrial and provident society or building society, and includes rights or interests (described whether as units or otherwise) which may be acquired under any unit trust scheme under which all property for the time being subject to any trust created in pursuant of the scheme consists of such securities as are mentioned in paragraphs (a), (b) and (c) of this definition or in any of such paragraphs;

"shares" means shares in the share capital of a corporation or stock of a corporation;

"the Tribunal" means the Appeal Tribunal established under section 21 of the Financial Services Commission Act; 11/2001
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"unit trust scheme" means 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, but does not include any arrangements having as their object or principal object the provision of pensions.

(2) Any reference in this Act to a manager under a unit trust scheme or to a trustee under such a scheme shall be construed as a reference to the person in whom are vested the functions of management relating to property for the time being subject to any trust created in pursuance of the scheme or, as the case may be, to the person in whom such property is or may be vested according to the terms of the trust.

(3) Any reference in this Act to a servant of, or to a person employed by, any person shall, in relation to a corporation, be construed as including a reference to any director or officer of the corporation.

(4) For the purposes of this Act, a person shall be deemed to be a director of a corporation if he occupies in relation thereto the position of a director, by whatever name called, or is a person in accordance with whose directions or instructions the directors of the corporation or any of them act:

Provided that a person shall not, by reason only that the directors of a corporation act on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.

(5) Any reference in this Act to business involving, or which involved, the acquisition or holding or disposal of any securities includes a reference to business involving, or which involved, their acquisition or holding or disposal, as the case may be, in the capacity of an agent.

Commission
responsible for
adminis-
tration of
Act.
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Sch.

3. The Commission shall be responsible for the general administration of this Act.

PART II—*Registration of Unit Trust Schemes*

Registra-
tion of
unit trust
scheme
required for
its opera-
tion.

4.—(1) Subject to the provisions of subsection (3), no person—

(a) shall, in whatever capacity, carry on or purport to carry on in Jamaica the business of affording, or causing to be afforded, to any persons facilities for them to obtain beneficial interests or rights under a trust (whether such interests or rights be described as units or otherwise) pursuant to any unit trust scheme;

(b) acting in Jamaica as a trustee under any unit trust scheme, shall acquire or purport to acquire any property on account of, or for the purposes of, any such business carried on, or purported to be carried on, as aforesaid; or

(c) acting or purporting to act for the furtherance of any such business carried on in Jamaica or elsewhere, or represented as being so carried on, shall, in Jamaica, induce or attempt to induce, or assist or purport or offer to assist, any other person to avail or seek to avail himself of any such facilities as aforesaid,

unless the scheme is a registered unit trust scheme.

(2) Any person who contravenes any provisions of subsection (1) shall be guilty of an offence and shall be liable—

(a) on conviction on indictment in a Circuit Court, to a fine or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment;

(b) on summary conviction in a Resident Magistrate's Court, to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

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(3) Reference in paragraph (a) of subsection (1) to facilities for persons to obtain beneficial interests or rights pursuant to a unit trust scheme does not include reference to facilities for a person to obtain, incidentally to performing the functions vested in him as manager under the scheme, any such interests or rights by way of purchasing the same from beneficiaries under the scheme upon his being required by them so to do, or for a person acting in the capacity of a trustee under a registered unit trust scheme to obtain any such interests or rights.

Qualifica-
tions of
unit trust
scheme
for registra-
tion
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5.—(1) Upon application in that behalf being made in the prescribed manner to the Commission, it may register any unit trust scheme in relation to which it is satisfied—

- (a) that each of the persons who are respectively the manager and the trustee under the scheme is a corporation incorporated under the law of Jamaica and having a place of business in the Island at which notices and other documents are received on behalf of the corporation;
- (b) that the scheme is such that the effective control of each corporation which is the manager or trustee under the scheme is and will be exercised independently of the other such corporation;
- (c) as respects the corporation being the trustee, either—
 - (i) that the corporation has a capital (in stock or shares) for the time being issued of not less than one million dollars, of which an amount of not less than five hundred thousand dollars has been paid up, and that the assets of the corporation are sufficient to meet its liabilities (including liabilities in respect of the repayment of its capital); or
 - (ii) that more than four-fifths of the said capital of the corporation is held by another corporation, being a corporation in relation to which the conditions as to capital and assets specified in sub-paragraph (i) are fulfilled;
- (d) that the carrying on of business pursuant to the scheme would not be inexpedient in the public interest; and

- (e) that the scheme is such as to secure that any trust created in pursuance thereof is expressed in a deed providing, to the satisfaction of the Commission, for the matters specified in the Schedule (references therein to units being references to securities, described whether as units or otherwise, which may be created in pursuance of the scheme):

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Sch
Schedule

Provided that the Commission may dispense with all or any of the foregoing requirements of this paragraph in relation to any trust, so far as it appears to it that it can properly do so without prejudicing the interests of the beneficiaries, if it is satisfied that the fulfilment of such requirements in relation to the trust is impracticable by reason of the special circumstances thereof; and

- (f) that the officers and members of the corporation referred to in paragraph (a) are fit and proper persons as described in subsection (4).

(2) The Commission may, with the approval of the Minister by regulations made under this Act, amend the Schedule, so, however, that no amendment shall affect any scheme which was registered under subsection (1) prior to the making of the amendment.

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Sch.

(3) Where the Commission registers any unit trust scheme it shall cause notice of such registration to be published in the *Gazette*, and where it refuses any such application as aforesaid, the applicant shall be served with the Commission's written notice of such refusal and the reasons therefor shall be given in the notice.

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Sch.

11/2001
Sch.

(4) For the purposes of subsection (1) (f) a person is a fit and proper person if he is a person—

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Sch.

(a) who, whether in Jamaica or elsewhere—

- (i) has not been convicted of an offence involving dishonesty; or

- (ii) is not an undischarged bankrupt;
- (b) whose employment record does not give the Commission reasonable cause to believe that he carried out any act involving impropriety in the handling of securities;
- (c) who, in the opinion of the Commission, is a person of sound probity, is able to exercise competence, diligence and sound judgment in fulfilling his responsibilities in relation to the unit trust scheme and whose relationship with the unit trust scheme will not threaten the interests of investors, and for the purpose of this paragraph the Commission shall have regard to any evidence that he has—
 - (i) engaged in any business practice appearing to the Commission to be deceitful or oppressive or otherwise improper which reflects discredit to his method of conducting business;
 - (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 the provision of securities or due to bankruptcy.

Appeal from
refusal to
register
scheme.
11/2001
Sch.

6.—(1) Within the prescribed period after service of any notice under subsection (3) of section 5, the person so served may bring an appeal against the decision of the Commission in the prescribed manner.

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Sch.

(2) Every such appeal shall be made to the Tribunal, who shall, after considering the appeal, give its decision in writing and may either—

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Sch.
11/2001
Sch.

- (a) confirm the Commission's decision; or
- (b) direct the Commission to register the relevant unit trust scheme,

but any such direction may be expressed to be subject to the fulfilment, to the Commission's satisfaction, of any conditions with which compliance on the part of the appellant is required, or to which the said scheme is required to conform, under the terms of that direction.

11/2001
Sch.

(3) The Tribunal shall forward one copy of its decision to the Commission and one copy to the appellant.

11/2001
Sch.

(4) The Commission shall take such steps as may be necessary to give effect to any decision given by the Tribunal under this section.

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Sch.

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Sch

7.—(1) If, with respect to any registered unit trust scheme, the Commission considers that the registration thereof ought to be cancelled for any of the following reasons, that is to say—

Proposal to
cancel re-
gistration
of unit trust
scheme.
11/2001
Sch.

(a) that any of the requirements specified in paragraphs (a), (b), (c) and (e) of subsection (1) of section 5, and on the basis of fulfilment of which the scheme was registered, are no longer fulfilled in the case of that scheme;

(b) that the circumstances relevant to the decision required for registration of such scheme have materially changed since the scheme was registered;

(c) that there has been failure to comply with any direction given under subsection (2) of section 20;

(d) that the business of the scheme is carried on in a manner detrimental to the interest of unit holders thereunder or to the public interest,

the Commission may cause to be served on the manager under the scheme and on the trustee thereunder a written notice that the Commission is considering such cancellation for that reason specifying the respect in which the said requirements are no

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Sch.

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Sch.

longer fulfilled or the said circumstances have changed or the said direction has not been complied with or the said business is so carried on, as the case may be, and inviting the manager and the trustee to make to the Commission, within the period of thirty days from the date of service of the notice, any representations which they desire to make with respect to the cancellation under consideration as aforesaid; and the Commission may cause to be served on them, after the expiration of such period, written notice that it proposes to cancel the registration of the scheme, but, before deciding whether or not so to propose, shall take into consideration any representations made by the manager or trustee and, if it so requests, afford it an opportunity of being heard within that period by the Commission.

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Sch.

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Sch.

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Sch.

(2) Where no appeal with respect to a proposal of the Commission under this section is made in accordance with section 8, the Commission shall give effect to its proposal.

11/2001
Sch.

(3) Upon giving effect to a proposal to cancel the registration of any unit trust scheme, the Commission shall cause notice of such cancellation to be published in the *Gazette*.

Appeal against
proposal to
cancel
registration of
scheme.
11/2001
Sch.

8.—(1) Within the prescribed period after notice of proposal of any cancellation is served under section 7, any person who made representations under that section with respect to such cancellation may bring an appeal against the decision of the Commission in the prescribed manner.

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Sch.
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Sch.

(2) Every such appeal shall be made to the Tribunal, who shall, after considering the appeal, give its decision in writing and may either—

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Sch.

(a) with or without variation, confirm the Commission's decision; or

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(b) direct the Commission not to cancel the registration of the scheme in question,

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Sch.

but any such direction may be expressed to be subject to the fulfilment, to the Commission's satisfaction, of any conditions with which compliance on the part of the appellant is required, or to which the said scheme is required to conform, under the terms of that direction.

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Sch.

(3) The Tribunal shall forward one copy of its decision under subsection (2) to the Commission and one copy to the appellant.

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Sch.

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Sch.

(4) The Commission shall take such steps as may be necessary to give effect to any decision given by the Commission under this section; and, accordingly, the Commission shall give effect to its proposal where an appeal results in a direction subject under subsection (2) to any condition and the same is not complied with to the Commission's satisfaction.

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Sch.

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Sch.

(5) Where an appeal made under this section with respect to a proposal of the Commission is withdrawn, the Commission shall give effect to the proposal.

PART III—*Registration and Licensing of Salesmen*

Unlicensed
salesman
guilty of
offence.

9.—(1) Subject to subsection (3), no person, except a salesman acting as such under the authority of a licence granted to him under this Part, shall do or purport to do (whether as a principal or otherwise) in Jamaica any of the following things in the course or furtherance of business involving the disposal of any of the units under a registered unit trust scheme, that is to say, making or offering to make with any other person, or inducing or attempting to induce any other person to enter into or offer to enter into, any agreement for, or with a view to, the disposal of any of those units to such other person, not being the manager or trustee under the said scheme.

(2) Every person who contravenes subsection (1) shall be guilty of an offence and shall be liable—

- (a) on conviction on indictment in a Circuit Court, to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment;
- (b) on summary conviction in a Resident Magistrate's Court, to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

11/2001
Sch.

(3) No person shall be deemed to have contravened subsection (1) by reason only of his having—

- (a) effected any transaction with, or through the agency of, any person acting as a salesman under the authority of a licence granted to him under this Part; or
- (b) made or caused any such distribution as is mentioned in subsection (4) of section 23.

(4) No person shall be licensed under this Part unless he is registered thereunder and, if he is an undischarged bankrupt, unless the Court which adjudged him bankrupt has granted him leave to perform the functions of a salesman.

Registration
of salesman
11/2001
Sch.

10.—(1) Upon application in that behalf being made by any individual in the prescribed manner to the Commission, it may register the applicant as a salesman if it is satisfied—

- (a) that the applicant is employed by a manager under any registered unit trust scheme, or by a bank, broker or life insurance company, or by an institution approved by order of the Minister, that has made effective arrangements for the provision to persons so employed of good and sufficient training in the proper performance of the functions of a salesman;

- (b) that the applicant has not been convicted in Jamaica for an offence his conviction for which necessarily involved a finding that he acted fraudulently or dishonestly or in contravention of any provision of this Act or, if so prescribed, any regulations;
- (c) that, if the application were granted, the applicant would not, upon his registration, be precluded by subsection (4) of section 9 from being licensed under this Part; and
- (d) the applicant satisfies the qualification requirements prescribed by the Commission and the criteria specified in subsection (1A). 11/2001
Sch.

(1A) The criteria referred to in subsection (1) are as follows— 11/2001
Sch.

- (a) the applicant is not connected to or associated with any unit trust scheme or company which, at the time of such associations, is engaged in or has conducted unit trust business without a licence granted under this Part;
- (b) the applicant's relationship with investors is not likely to threaten their interests;
- (c) the applicant has not engaged in any business practice appearing to the Commission to be deceitful or oppressive or otherwise improper which reflects discredit to his method of conducting business;
- (d) the applicant has not 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 the provision of unit trusts or other financial services or in the management of a company;
- (e) the applicant's employment record does not give the Commission reasonable cause to believe that he carried out any act involving impropriety in the handling of unit trusts or other financial services or in the management of a company.

11/2001
Sch. (2) Where the Commission proposes to refuse any such application as aforesaid, the applicant shall be served with the Commission's written notice of such proposal and the reasons therefor shall be given in the notice, which shall inform the applicant of his right of appeal conferred by section 11.

11/2001
Sch. 11.—(1) Within the prescribed period after service of any notice under subsection (2) of section 10, the person so served may bring an appeal under this section in the prescribed manner.

Appeal
against pro-
posal to
refuse regis-
tration of
salesman.

(2) Every such appeal shall be made to the Tribunal, which shall, after considering the appeal, give its decision in writing and may either—

11/2001
Sch. (a) confirm the Commission's proposal; or

11/2001
Sch. (b) direct the Commission to register the applicant, and the Commission shall comply with any such direction, so, however, that the direction may be expressed to be subject to the fulfilment, to the Commission's satisfaction, of any conditions with which compliance on the part of the appellant is required under the terms of that direction.

11/2001
Sch. (3) The Tribunal shall forward one copy of its decision to the Commission and one copy to the appellant.

11/2001
Sch. 12.—(1) Where no appeal with respect to a proposal of the Commission under subsection (2) of section 10 is made in accordance with section 11 or, if made, is withdrawn or results in confirmation of the Commission's proposal, or in a direction subject under subsection (2) of section 11 to any condition and the same is not complied with to the Commission's satisfaction, the Commission shall give effect to the proposal.

11/2001
Sch. (2) Where the Commission refuses any application in pursuance of subsection (1), it shall, in writing, notify the applicant accordingly.

Implementa-
tion of pro-
posal to
refuse to
register
salesman.

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Sch.

11/2001
Sch.

11/2001
Sch.

13.—(1) Subject to the provisions of this Part, the registration of any person as a salesman shall entitle him, upon payment of the prescribed fee, to be granted a licence issued in the prescribed form by the Commission and such licence shall remain in force until the 31st of March next after its effective date as specified therein, and no longer, but without prejudice to the licensing in accordance with this subsection after the 31st March aforesaid of the person so registered.

Licensing
of salesmen11/2001
Sch

(2) A licence issued in accordance with subsection (1) shall be granted subject to such conditions, if any, as may be specified therein, and may be suspended or revoked by the Commission where there has been any breach of the conditions so specified.

11/2001
Sch.

(3) If, at any time during the period for which a licence has been granted to any person, he becomes disqualified by virtue of subsection (4) of section 9 from being licensed, the licence so granted shall thereupon determine.

(4) In any proceedings for an offence against this Act or any regulations thereunder, any document—

(a) purporting to be a copy of a licence under this section and bearing the Commission's certificate, purporting to have been endorsed thereon, that the same is a true copy of a licence issued by the Commission and granted to any person, shall be *prima facie* evidence of such issue and grant and of the contents of the licence;

11/2001
Sch.11/2001
Sch.

(b) being a certificate of the Commission that a person was, at any time, not licensed as a salesman, shall be *prima facie* evidence of his having been, at that time, not so licensed.

11/2001
Sch.

(5) For the purposes of subsection (4), any seal purporting to be the seal of the Commission and affixed to a certificate shall be taken to be the seal of the Commission until the contrary is shown.

11/2001
Sch.

Grounds
for pro-
posed and
summary
cancellation
of registra-
tion of
salesman
11/2001
Sch.

14.—(1) The Commission may cause to be served on any person registered under this Part notice in writing that it proposes to cancel such person's registration, and shall in such notice give the reasons for such proposal and inform the person of the right of appeal conferred by section 15, if at any time the Commission is satisfied that—

- (a) the person has committed a breach of any of the conditions specified in his licence;
- (b) circumstances are no longer such, in the case of the said person, that the like question with reference to him as is mentioned in paragraph (d) of the said subsection may be resolved in his favour;
- (c) such registration was procured as a result of any misleading or false representation or in consequence of any incorrect information, whether such representation or information was made or supplied wilfully or otherwise; or
- (d) such person has not functioned as a salesman during any continuous period of one year after the date of such registration.

11/2001
Sch.

(2) Where the Commission notifies any person that it proposes to cancel that person's registration, it may by such notice suspend that person's licence, and may refuse to issue any further licence to him, pending disposal or implementation of the proposal as hereinafter provided.

11/2001
Sch.

(3) The Commission may at any time cancel a person's registration under this Part if such person makes a written request, and the person whose registration has been so cancelled shall be notified accordingly in writing.

Appeal
against pro-
posal to
cancel
registra-
tion of
salesman.

15.—(1) Within the prescribed period after service of any notice under subsection (1) of section 14, the person so served may bring an appeal under this section in the prescribed manner.

(2) Every such appeal shall be made to the Tribunal, which shall, after considering the appeal, give its decision in writing and may either—

(a) confirm the Commission's proposal; or 11/2001
Sch.

(b) direct the Commission not to cancel the registration of the appellant and, if his licence is suspended, to restore it and to cause notice of the termination of such suspension to be published in the *Gazette*, 11/2001
Sch.

and the Commission shall comply with such direction, if any, so, however, that the direction may be expressed to be subject to the fulfilment, to the Commission's satisfaction, of any conditions with which compliance on the part of the appellant is required under the terms of the direction. 11/2001
Sch.

11/2001
Sch.

(3) The Tribunal shall forward one copy of its decision to the Commission and one copy to the appellant. 11/2001
Sch.

16.—(1) Where no appeal with respect to a proposal of the Commission under section 14 is made in accordance with section 15 or, if made, is withdrawn or results in confirmation of the Commission's proposal, or in a direction subject under subsection (2) of section 15 to any condition and the same is not complied with to the Commission's satisfaction, the Commission shall give effect to its proposal. Implemen-
tation of
proposal to
cancel
registration
of salesman.
11/2001
Sch.

(2) Where the cancellation of any person's registration has been effected under subsection (1) the Commission shall, in writing, notify the person accordingly. 11/2001/
Sch.

17. [*Repealed by Act 11 of 2001.*]

18.—(1) Upon the determination or suspension of any licence under subsection (2) or (3) of section 13 or subsection (2) of section 14, the person to whom such licence was granted shall surrender it to the Commission forthwith. Determina-
tion and
suspension
of licences.
11/2001
Sch.

(2) Every person who without reasonable excuse (the proof whereof shall lie upon him) contravenes subsection (1) shall be guilty of an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars. 11/2001
Sch.

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Sch.

(3) The Commission shall cause notice of every such determination or suspension of a licence as aforesaid to be published in the *Gazette*.

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Sch
Accounts
and audit
of unit
trust
scheme.

PART IIIA —*Accounts and Audit*

18A.—(1) Every manager of a unit trust scheme shall keep proper accounts and other records in relation to its business in such form as will permit—

- (a) accurate recording of income, expenses, assets and liabilities; and
- (b) adequate auditing of the matters referred to in paragraph (a); and
- (c) the preparation of profit and loss accounts and balance sheets.

(2) A manager shall appoint annually an auditor from a panel of persons approved by the Commission as being qualified by training and experience to audit the accounts of the unit trust scheme.

(3) Accounts of each unit trust scheme shall be audited annually by the auditor appointed pursuant to subsection (2), and each such unit trust scheme shall, within three months after the end of its financial year, submit a statement of its accounts so audited to the Commission and the report of the auditor thereon.

(4) The audited financial statements and the auditor's report thereon shall be made available by the Commission for inspection by any persons upon payment of such fee as may be prescribed.

PART IV—*Investigation*

Inspectors
and their
functions.
11/2001
Sch.

19.—(1) The Commission may appoint one or more competent inspectors to investigate and report on the administration of any registered unit trust scheme—

(a) if either—

- (i) it appears to the Commission that it is in the interests of unit holders so to do; or 11/2001 Sch.
- (ii) application is made to the Commission so to do by the manager or trustee under the scheme or by unit holders thereunder of not less than ten *per centum* of the value of all the units in respect of which any such certificates as mentioned in paragraph 2 of the Schedule are for the time being issued pursuant to the scheme; and 11/2001 Sch.
Schedule.

(b) if the Commission considers that the matter is one of public concern. 11/2001 Sch.

(2) Section 163 of the Companies Act, subsection (1) of section 164 thereof and so much of subsection (2) of that section as relates to forwarding a copy of the inspectors' report to the registered office of the company, or to furnishing its members with copies of the same, shall apply in relation to an inspector appointed under this section to investigate the administration of a scheme as they apply in relation to an inspector appointed under section 161 of that Act, but with the following modifications, that is to say—

- (a) the substitution for references in section 163 to the company, and to its affairs, of references to each corporation concerned in the administration of the scheme, and to such administration, respectively;
- (b) the deletion from section 163 of all references to a body corporate whose affairs are invested by virtue of section 162 of the said Act;
- (c) the substitution for the reference in subsection (5) of section 163 to auditors of reference to auditors or salesmen;
- (d) the substitution for references in section 164 (in so far as applicable hereunder) to the Minister, the company, and any member thereof, of references to the Commission, each of the corporations which are 11/2001 Sch.

the manager and trustee under the scheme, and any unit holder thereunder, respectively.

(3) For the purposes of paragraph (a) of subsection (2), a corporation shall be regarded as concerned in the administration of a registered unit trust scheme if, and shall not be so regarded unless—

(a) the corporation is the manager or trustee under the scheme or has retired as such from the trust; or

(b) the corporation is or has been—

(i) within the meaning of the Companies Act, by virtue of section 151 thereof, a subsidiary or holding company, or a subsidiary of any holding company, or a holding company of any subsidiary, of the manager or trustee under the scheme; or

(ii) as an agent or otherwise, performing any function for the purposes of the administration of the scheme,

and the inspector, being satisfied that it is expedient for the purpose of investigation of the administration of the scheme so to do, extends his investigation to the corporation for that purpose.

(4) [*Deleted by Act 11 of 2001.*]

(5) The expenses of any investigation under this section shall be paid by the Commission.

20.—(1) The inspectors appointed to investigate any registered unit trust scheme may make in their report (whether interim or final) any recommendations considered by them to be necessary for the administration of the scheme with due efficiency or economy.

Inspectors'
recommen-
dations

(2) After consultation with the manager and trustee under the scheme, the Commission may, by notice in writing served on them or either of them, as the case may require, direct that effect be given within a specified time to all or any of the recommendations made in pursuance of subsection (1):

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Provided that the Commission shall not be bound to consult with any manager or trustee that fails to avail itself of such reasonable opportunity for consultation as the Commission shall provide.

11/2001
Sch

11/2001
Sch.

21.—(1) If, for the prevention or detection of any offence indictable under any provisions of this Act, there exist reasonable grounds so to do, the Commission may, at any time—

Production
of sales-
men's
books.
11/2001
Sch.

(a) by notice in writing to any person to whom this subsection applies, give directions requiring that person to produce such books or papers, at such time and place, as may be specified in the directions; or

(b) require any person to whom this subsection applies, or authorize any person to require him, to produce forthwith such books or papers as may be specified by the Commission or (as the case may be) that authorized person acting on like grounds, who shall, for the purpose of exercising such authority, produce evidence thereof if he be requested so to do.

11/2001
Sch.

11/2001
Sch.
11/2001
Sch

11/2001
Sch.

(2) Subsection (1) applies to a person who is or was registered as a salesman under Part III, and to any person who appears to the Commission, or any person authorized by the Commission under subsection (1), to be in possession or to have control of any books or papers the production of which it was competent for the Commission or such authorized person to require under subsection (1) from the person who is or was registered as aforesaid.

(3) Any power conferred by or by virtue of this section to require a person to produce books or papers shall include power—

(a) if the books or papers are produced—

- (i) to take copies of them or extracts from them; and
- (ii) to require that person to provide an explanation of any of them;

(b) if the books or papers are not produced, to require any person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) If a requirement to produce books or papers, or provide an explanation, or make a statement, which is imposed by virtue of this section is not complied with, the person on whom the requirement was so imposed shall be guilty of an offence against this Act, so, however, that where a person is charged with an offence under this subsection, it shall be a defence to prove that it was not reasonably practicable for him to comply with the requirement.

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

PART V—*Offences*

22.—(1) Every person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person—

Fraudulent or misleading inducements to acquire units.

(a) to enter into or offer to enter into any agreement for, or with a view to, acquiring any of the units under a registered unit trust scheme; or

(b) to acquire or offer to acquire any such units,

shall be guilty of an offence and shall be liable on conviction on indictment in a Circuit Court to a fine or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

(2) Every person guilty of conspiracy to commit an offence under subsection (1) shall be punishable as if he had committed such an offence.

(3) Any representation (whether express or implied) to the effect that the registration under Part II of any unit trust scheme is indicative of the soundness of the scheme, or is a ground for assuming, considering or anticipating it to be prudent, profitable or otherwise advantageous for any person to act in relation to the scheme as mentioned in paragraph (a) or (b) of subsection (1), is hereby declared to be misleading and accordingly shall be an offence against subsection (1).

23.—(1) Subject to the provisions of this section, every person who distributes or causes to be distributed any documents which, to his knowledge, are circulars containing—

Restrictions on distribution of circulars relating to unit trusts.

- (a) any invitation to persons to do any of the acts mentioned in paragraph (a) or (b) of subsection (1) of section 22; or
- (b) any information calculated to lead directly or indirectly to the doing of any of those acts by the recipient of the information,

shall be guilty of an offence and shall be liable—

- (i) on conviction on indictment in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment;
- (ii) on summary conviction in a Resident Magistrate's Court, to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

11/2001
Sch.

(2) Every person who has in his possession for the purpose of distribution any documents which, to his knowledge, are such circulars as aforesaid, being documents of such a nature as to show that the object or principal object of distributing them would be to communicate such an invitation or such information as aforesaid, or who has in his possession for such purpose any documents, being to his knowledge like circulars, of a corresponding nature relating to beneficial interests or rights under any unit trust scheme, other than a registered unit trust scheme, shall be guilty of an offence against this Act unless such possession be proved lawful by virtue of any of the following provisions of this section.

(3) Without prejudice to the provisions of section 9, and subject as may be prescribed under paragraph (e) of subsection (1) of section 28, no documents shall be deemed to be distributed, or caused to be distributed, contrary to subsection (1) by reason only of their being distributed, or

caused to be distributed, to or by salesmen licensed under Part III, or to any persons who are authorized in writing by the Commission to receive them or whose business involves the acquisition, disposal or holding of securities or who are employed in any such business; and, subject as aforesaid, no documents shall be deemed to be in the possession of any person contrary to subsection (2) where he is in possession of them with a view to their being distributed—

11/2001
Sch.

- (a) as aforesaid, in the case of documents relating to any registered unit trust scheme;
- (b) not inconsistently with section 4, to any persons authorized by the Commission to receive the same, or employed by the manager or trustee under any registered unit trust scheme and authorized by or on behalf of such manager or trustee (as the case may be) to receive the same, in the case of documents relating to any unit trust scheme not being a registered unit trust scheme.

11/2001
Sch.

(4) Documents shall not, for the purposes of this section, be deemed not to be circulars, by reason only that they are in the form of a newspaper, journal, magazine, or other periodical publication; but, subject as may be prescribed under paragraph (e) of subsection (1) of section 28, a person shall not be taken to contravene this section by reason only that he distributes, or causes to be distributed, to purchasers thereof, or has in his possession for the purpose of distribution to purchasers thereof, copies of any newspaper, journal, magazine or other periodical.

(5) Where any person is convicted of any offence under this section, the court dealing with the case may make an order authorizing the destruction or the disposal in any other specified manner, of any documents produced to the court which are shown to its satisfaction to be documents in respect of which the offence was committed:

Provided that an order under this subsection shall not authorize the destruction of a document, or the disposal of a document in any other manner, until conclusion of the proceedings in the matter of which the order is made.

False statements and falsification or destruction of documents.

24.—(1) Every person who, in furnishing any information for any of the purposes of this Act or regulations made thereunder, makes any statement which, to his knowledge, is false in a material particular, or recklessly makes a statement which is false in a material particular, shall be guilty of an offence against this Act.

(2) Every person who destroys, mutilates, falsifies or makes any false entry in, any document which is required by virtue or in pursuance of any provisions of Part IV to be produced, or of which it is reasonable to suppose that production might be so required, shall be guilty of an offence against this Act, unless he proves that, in so doing, he had no intention to deceive or suppress information so as to contravene the law.

Offences committed by corporation.

25. Where any offence against this Act committed by a corporation is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the corporation, he, as well as the corporation, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Connivance at illegal salesmanship.

26. Where any offence committed under section 9 by any person in relation to units under any registered unit trust scheme is proved to have been committed with the consent or connivance of any other person whose business involved the disposal of such units, that other person, as well as the first-mentioned person, shall be deemed to be guilty of the said offence and shall be liable to be proceeded against and punished accordingly.

27. Every person who is guilty of an offence against this Act for which no other penalty is provided shall be liable—

General
penalty

- (a) on conviction on indictment in a Circuit Court to a fine or to imprisonment for a term not exceeding three years or to both such fine and imprisonment,
- (b) on summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

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PART VI—*Miscellaneous*

28.—(1) The Commission may, with the approval of the Minister, make regulations for the better carrying out of the provisions of this Act and, in particular, but without prejudice to the generality of the foregoing, such regulations may make provision in relation to all or any of the following—

Regulations
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Sch

- (a) the prescribing of anything authorized or required by virtue of this Act to be prescribed;
- (b) the books, accounts, and other documents to be kept, in relation to business conducted pursuant to registered unit trust schemes, by managers and trustees thereunder, and by salesmen and any persons whose business involves the acquisition, holding or disposal of any of the units thereunder;
- (c) the furnishing to the Commission, or persons authorized in that behalf by it, of information relating to any business conducted as aforesaid;
- (d) the conduct of business by persons who act as salesmen;
- (e) prescribing requirements which shall, in relation to any such circulars as mentioned in section 23, be observed, whether for the purpose of its being

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Sch.

lawful to distribute or possess them, or to cause their distribution, as provided by subsection (3) or (4) of section 23 or otherwise;

- (f) registers to be kept for the purposes of this Act;
- (g) the furnishing of documents and information by applicants and appellants, and the procedure on applications and appeals, under this Act;
- (h) fees to be paid upon any such applications as aforesaid, the matters in respect of which other fees shall be payable, and the amount of such fees;
- (i) the holding of examinations for applicants or prospective applicants for registration as salesmen and the exemption of persons therefrom;
- (j) identification cards for licensed salesmen;
- (k) forms to be used in connection with any of the provisions of this Act;
- (l) the audit of the accounts relating to registered unit trust schemes.

(2) Except in so far as this Act otherwise provides, any power conferred thereby to make regulations may be exercised—

- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;
- (b) so as to make, as respects the cases in relation to which it is exercised—
 - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);
 - (ii) the same provision for all cases in relation to which the power is exercised or different provision for different cases or classes of

case or different provision as respects the same case or class of case for different purposes of this Act;

- (iii) any such provision either unconditionally or subject to any specified condition.

(3) Any regulations made under this Act may contain such incidental or supplementary provisions as appear to the Commission to be expedient for the purposes of the regulations; and any regulations so made may provide in respect of the breach of any of the provisions thereof that the offender shall be liable to a fine not exceeding one million dollars, or to a term of imprisonment not exceeding twelve months, or to both such fine and imprisonment, as may be prescribed.

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Sch.

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Sch

29. Notwithstanding any other provision contained in this Act, the Minister may by order direct that, subject to such terms, conditions and restrictions (if any) as he may think fit, such provisions of this Act as may be specified in the order shall not apply in relation to any specified unit trust scheme or specified class of unit trust schemes or any specified person or specified class of persons.

Exemption.

30. Regulations and orders made under the foregoing provisions of this Part shall be subject to negative resolution of the House of Representatives.

Parliamentary control.

31.—(1) If a Justice of the Peace is satisfied by information on oath that there are reasonable grounds for believing that, at any premises, a person has any documents in his possession in contravention of subsection (2) of section 23, or by information on oath laid by the Commission or by any person authorized in that behalf by the Commission that there are reasonable grounds for believing that there are at any premises books or other documents required to be produced by virtue or in pursuance of

Entry and search of premises.

11/2001
Sch.

11/2001
Sch.

section 21 and which are not produced, contrary to subsection (4) of section 21, the Justice may issue a warrant authorizing any constable, together with any other person named in the warrant and any other constables, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) and to search the premises and take possession of whatever documents appear to be any such documents as aforesaid, or to take, in relation to any documents appearing to be any such books or other documents not produced as aforesaid, any other steps which may appear necessary for preserving and preventing interference with them.

(2) Every warrant issued under this section shall continue in force until the end of the period of one month after the date on which it was issued.

(3) Any documents of which possession is taken under this section may be retained for a period of three months or, if within that period there are commenced any criminal proceedings under subsection (2) of section 23 or, as the case may be, such criminal proceedings as are mentioned in paragraph (a) of subsection (1) of section 32 (being proceedings to which any books or other documents so retained may be relevant) until the conclusion of those proceedings.

(4) Every person who wilfully delays or obstructs any person in the exercise of any authority or power conferred upon him by virtue of a warrant issued under this section, or who conceals or attempts to conceal any books or other documents to which any such warrant relates shall be guilty of an offence against this Act.

31A.—(1) Every person having an official duty or being employed in the administration of this Act shall—

- (a) regard and deal with as secret and confidential all documents, information and records obtained in the course of their duties under this Act, relating to the operation of a unit trust scheme; and

Obliga-
tion to
secrecy.
11/2001
Sch.

(b) make and subscribe a declaration to that effect before a Justice of the Peace.

(2) Every person referred to in subsection (1) having possession of or control over any documents, information or records, commits an offence if, at any time he communicates or attempts to communicate such information or anything contained in such documents or records to any person—

(a) other than a member of the Commission or other person to whom he is authorized in writing by the Commission to communicate it pursuant to any other law; or

(b) otherwise than for the purposes of this Act.

(3) A person who is convicted of an offence under subsection (2) is liable to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(4) A person to whom information is communicated pursuant to an authority of the Commission in that behalf shall regard and deal with such information as secret and confidential and shall make and subscribe a declaration to that effect.

(5) A person referred to in subsection (4) who at any time communicates or attempts to communicate any information referred to in that subsection to any person otherwise than for the purposes of this Act, shall be guilty of an offence and 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 to both such fine and imprisonment.

32.—(1) The obligation as to secrecy imposed by section 31A shall not prevent the disclosure of information—

Disclosure
of informa-
tion in
certain
circum-
stances.
11/2001
Sch.

- (a) to a competent authority;
- (b) where the publication or disclosure is required for the institution of, or otherwise for the purposes of any criminal proceedings under, or arising out of, the Companies Act, or this Act;
- (c) for the purposes of section 31 or 38, or of provisions of section 164 of the Companies Act, in their application pursuant to any of the provisions of section 19; or
- (d) the disclosure is ordered by the Court for the purposes of any civil proceedings.

(2) In subsection (1) (a) “competent authority” means the Minister, the Supervisor of Banks and Financial Institutions, the Chief Executive Officer of the Jamaica Deposit Insurance Corporation, or the Financial Secretary.

Saving for
solicitors,
counsel and
bankers.

33.—(1) No counsel shall be required under this Act to disclose, whether by way of the production of any document or otherwise, any privileged communication made by or to him in that capacity, except as respects the name and address of his client.

(2) No banker shall be required under this Act to disclose, whether by way of the production of any document or otherwise, information as to the affairs of a customer unless the customer has been required under this Act to disclose any such information.

Extension of
time.

34. Where any provision of this Act or regulation made thereunder requires anything to be done within a specified period of time and no provision is made for the extension thereof, that period (whether expired or not) may in any particular case be extended by the Commission.

11/2001
Sch.

Powers not
affected by
criminal
proceedings.

35. Any criminal proceedings under this Act shall be without prejudice to the cancellation of the registration of any unit trust scheme, and of any salesman, under this Act.

36.—(1) Every notice required or authorized to be given to any individual under any provisions of this Act may be served on him personally or by post. Notices.

(2) For the purposes of service of any notice on any individual by post pursuant to any provisions of this Act, the notice may be posted to his last known business or private address.

(3) Service by post pursuant to subsection (1) of section 14 shall be by registered post.

(4) [*Deleted by Act 11 of 2001.*]

37. The Commission shall, whenever it considers it expedient so to do for public information, cause an up-to-date list of salesmen licensed under Part III to be published in the *Gazette*. Gazetting
list of
licensed
salesmen.
11/2001
Sch.

38. The Commission shall, not less often than once a year, cause particulars of every registered unit trust scheme to be published in such manner as it thinks proper. Publication
of particu-
lars of
schemes.
11/2001
Sch.

MATTERS FOR WHICH TRUST DEEDS PURSUANT TO UNIT TRUST
SCHEMES MUST PROVIDE

L.N. 94J/2009

1. Subject to the methods of calculation specified by the Commission by notice in writing from time to time, for determining the manner in which the manager's prices for units on a sale and a purchase respectively, and the yield from the units, are to be respectively calculated, and for entitling the holder of any units to require the manager to purchase them at a price calculated accordingly.

11/2001
Sch.

2. For regulating the mode of execution and the issue of certificates of the acquisition of units, and in particular, for securing that no such certificate shall be executed or issued in respect of rights or interests in any property until steps have been taken, to the satisfaction of the trustee, to secure that the property will be vested in the trustee or, subject to any prescribed conditions, in a nominee thereof approved by the Commission.

3. For prohibiting or restricting the issue by or on behalf of the manager of advertisements, circulars, or other documents containing any statement with respect to the sale price of units, or the payments or other benefits received or likely to be received by holders of units, or containing any invitation to buy units, unless the document in question also contains a statement of the yield from the units.

4. For securing that any advertisement, circular or other document containing any statement with respect to the sale price of units or the yield therefrom, or containing any invitation to buy units, shall not be issued by or on behalf of the manager until the trustee has had a reasonable opportunity of considering the terms of the document, and shall not be issued if, within a reasonable time after the document first comes under the trustee's consideration, the trustee notifies its disapproval of the terms thereof in writing to the manager.

5. For the establishment of a fund to be applied in defraying the expenses of the administration of the trust and for regulating the application of that fund.

6. For the audit, and the circulation to holders of units, of accounts relating to the trust (including accounts of the manager in relation to the trust and statements of the manager's remuneration in connection therewith).

7. For 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 interest of the beneficiaries under the trust that the manager should do so.

8. For the realization and distribution of property subject to the trust, and the termination thereof, in case the unit trust scheme ceases to be a registered unit trust scheme.

9. For the kind of investment permissible under 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 by notice in writing from time to time.

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Sch.
L.N.
94J/2009.

10. For regulating whether the assets of the trust are to be held by the trustee or an independent custodian.

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94J/2009.

11. For the conditions and procedures to be followed with respect to the removal, and the replacement (whether due to removal or retirement) of the manager, including provision—

- (a) to ensure the protection of the interest of the unit holders; and
- (b) for the manager to be removed, by notice in writing from the trustee, if the manager goes into liquidation.

12. For the conditions and procedures to be followed with respect to the removal, and the replacement (whether due to removal or retirement), of the trustee, including provision—

- (a) to ensure the protection of the interest of the unit holders; and
- (b) that the appointment of a replacement shall not take effect unless the Commission is notified in writing.

13. That the management and administration of the scheme, and any of the rights, privileges, powers, duties, trusts and discretions vested in the manager, may be delegated to any person approved by the trustee.

14. For the duties and responsibilities of the trustee to include—

- (a) ensuring the efficient management of the scheme through—
 - (i) compliance with the terms of the trust deed;
 - (ii) 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 deed and the law relating to trusts;
- (b) using the trustee's best efforts to avoid conflicts of interest, and disclosing any such conflict (or potential conflict)—
 - (i) in the offering circular; or

UNIT TRUSTS

- (ii) in any case where the offering circular has already been distributed, in such manner as is approved by the Commission.

15. Prohibiting the trustee from—

- (a) benefiting from its position as trustee, except for fees paid for its services as trustee;
- (b) acting in a manner that is not impartial or that is not in the best interest of the unit holders, including any of the following actions—
 - (i) selling assets, 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—
 - (A) as permitted in circumstances specified in the trust deed; and
 - (B) at fair market value;
 - (ii) selling any of the scheme's assets to, or purchasing any of the scheme's assets from, any person associated with the trustee, or entering into any securities lending transaction, repurchase transaction, or reverse repurchase transaction, with any such person, other than at fair market value; or
 - (iii) any other action specified by the Commission from time to time, by notice in writing.

SECOND SCHEDULE [Repealed by Act 11 of 2001.]