

JAMAICA

No. 8—2001

I assent,

[L.S.]

H. F. COOKE,
Governor-General.

3rd day of May, 2001.

AN ACT to Amend the Securities Act.

[The date notified by the Minister
bringing the Act into operation]

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, 2001 and shall be read and construed as one with the Securities Act (hereinafter referred to as the principal Act) and all amendments thereto and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title,
construction
and com-
mencement.

Amendment
of section 2
of principal
Act.

2. Section 2 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting the definition of “Commission” and substituting therefor the following—

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

(ii) in the definition of “officer” by inserting in paragraph (a) immediately after the word “secretary,” the words “responsible officer,”;

(b) in subsection (3) by deleting paragraph (b).

Repeal and
replacement
of section 4
of principal
Act.

3. Section 4 of the principal Act and the heading thereto are repealed and the following substituted therefor—

“Commis-
sion re-
sponsible
for general
administra-
tion of Act.

4.—(1) The Commission shall be responsible for the general administration of this Act.

(2) The Commission shall have the power to enforce the rules of a recognized stock exchange whenever it considers it necessary so to do.

(3) For the purposes of this Act the Commission shall—

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

(i) as it considers necessary for the purpose of ascertaining whether the provisions of this Act are being complied with;

or

- (ii) as may be referred to it by the Minister in connection with that industry;
- (b) enter into arrangements with any body or person recognized by the Commission as having special knowledge of any matter being investigated by it, to assist the Commission in carrying out such investigations;
- (c) summon and examine witnesses;
- (d) call for and examine documents;
- (e) administer oaths;
- (f) require that any document submitted to the Commission be verified by affidavit;
- (g) adjourn any investigation from time to time.

(4) The Commission may hear orally any person who, in its opinion, will be affected by an investigation under this Act, and shall so hear the person if a written request for a hearing has been made by the person showing that he is an interested party likely to be affected by the result of the investigation.”.

4. Sections 5 and 6 of the principal Act are repealed.

Repeal of sections 5 and 6 of principal Act.

5. Subsection (3) of section 7 and subsection (3) of section 8 of the principal Act are amended by deleting the words “two hundred thousand” and substituting therefor the words “two million”.

Amendment of sections 7 and 8 of principal Act.

Amendment
of section
8 of prin-
cipal Act.

5A. Section 8 of the principal Act is amended—

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

“ (1) Subsection (1) shall not apply to—

(a) such persons or categories as may be prescribed;

(b) a transaction on a particular occasion by a person who does not hold himself out as giving investment advice on a day to day basis.”;

(b) in subsection (3) by deleting the words “two hundred thousand” and “three” and substituting therefor the words “one million” and “two”, respectively.

Amendment
of section 9
of principal
Act.

6. Section 9 of the principal Act is amended—

(a) in subsection (3)—

(i) by deleting from paragraph (a) (ii) all the words appearing after the word “members” and substituting therefor the words “holding (whether in their own right or when counted with any holding of an associated person) 10% or more of the voting shares of the company has been convicted of an offence involving dishonesty or is an undischarged bankrupt and such officers or members satisfy the criteria specified in subsection (3A);

(ii) by deleting paragraph (a) (iv);

(iii) by deleting paragraph (b) and substituting therefor the following—

“(b) where the applicant is an individual—

(i) he is a fit and proper person as described in paragraph (a) (ii);

- (ii) he satisfies such solvency and liquidity requirements as the Commission may specify and such other criteria as may be prescribed;
 - (iii) he is not associated with a company which, at the time of such association, is engaged in or has conducted securities business without a licence granted under this Act.”;
- (b) by inserting next after subsection (3) the following as subsection (3A)—
 - “ (3A) The criteria referred to in subsection (3) (a) (ii) are as follows—
 - (a) the officers or members are persons who, in the opinion of the Commission, are persons of sound probity, are able to exercise competence, diligence and sound judgment in fulfilling their responsibilities in relation to the licensee and whose relationship with the licensee will not threaten the interests of investors, and for the purposes of this paragraph the Commission shall have regard to any evidence that any such officer or member 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 dealing in securities or in the provision of other financial services or in the management of a company or due to bankruptcy;

(b) the employment record of any officer or member does not give the Commission reasonable cause to believe that such officer or member carried out any act involving impropriety in the handling of securities or in the provision of other financial services or in the management of a company.”;

Amendment of section 10 of principal Act.

7. Subsection (3) of section 10 of the principal Act is amended by deleting paragraph (a) and substituting therefor the following—

“(a) he is a fit and proper person, as described in section 9 (3) (a) and (3A); and”.

Insertion of new section 10A in principal Act.

8. The principal Act is amended by inserting next after section 10 the following as section 10A—

“Appoint-
ment of
responsible
officer.

10A.—(1) Every company which is licensed under section 7 or 8 shall appoint an officer of that company (hereinafter referred to as the responsible officer) who shall—

(a) be answerable for doing all such acts, matters and things as are required to ensure compliance with

the provisions of this Act, and the regulations made hereunder;

- (b) report to the Commission on matters relating to such compliance, at such periods as the Commission may determine;
- (c) be responsible for making payment of all fees payable by the licensee under this Act or the regulations made hereunder.

(2) Every person appointed as a responsible officer shall, within thirty days after such appointment, apply to the Commission in the prescribed manner to be registered as a responsible officer”;

(3) In the absence of any person being registered pursuant to subsection (2), the Commission shall register one of the following persons as the responsible officer for the purposes of this section—

- (a) the person who is the managing director of the licensee or, as the case may be, the person who (by whatever name called) performs the duties normally carried out by a managing director; or
- (b) if there is no such person, the person appearing to the Commission to be primarily in charge of the licensee’s affairs.

(4) Where a person ceases to hold the post of the responsible officer the licensee shall within seven days thereafter, notify the Commission in writing of such cessation.

(5) The Commission may, where it is satisfied that the responsible officer has failed to carry out his duties under this section—

- (a) issue a warning to the responsible officer;
- (b) suspend the registration of the responsible officer; or
- (c) cancel the registration of the responsible officer,

and shall notify the licensee in writing of any action taken under paragraph (a), (b), or (c).

(6) Upon receipt of a notice under subsection (5) (c) of the cancellation of a person's registration as responsible officer, the licensee shall terminate the appointment of that person as responsible officer."

Amendment
of section 11
of principal
Act.

9. Section 11 of the principal Act is amended by deleting the words "a Judge in Chambers and the Judge may make such order as he" and substituting therefor the words "the Tribunal and the Tribunal may make such order as it".

Amend-
ment of
section 17A
of principal
Act.

10. Section 17A of the principal Act is amended—

- (a) by inserting in subsection (1) immediately after the word "elsewhere," the words "or any other person";
- (b) by deleting subsection (2) and substituting therefor the following—

" (2) In this section "mutual fund" means—

- (a) any fund (other than a private trust fund or pension fund), scheme or arrangement—
 - (i) owned, controlled, supervised or operated by a person or by a

body corporate, whether incorporated in Jamaica or elsewhere;

(ii) the proceeds, profits or income from which are pooled and are managed or invested or both directly or indirectly by the person or body corporate on behalf of persons investing in the fund; and

(iii) in which the investor has the right to dispose of his shares, stocks, securities or other property or to have them redeemed or repurchased by that person or body corporate, whether or not at fixed periods; or

(b) such other arrangements as the Minister may prescribe by order.”.

11. Subsection (3) of section 18 of the principal Act is amended in paragraph (a) by deleting from the paragraph and the margin thereto the word “Second”.

Amendment of section 18 of principal Act.

12. Subsection (2) of section 23 of the principal Act is amended by deleting the word “Minister” and substituting therefor the word “Tribunal”.

Amendment of section 23 of principal Act.

13. Section 26 of the principal Act is repealed and the following substituted therefor—

Repeal and replacement of section 26 of principal Act.

“Issuer to be registered with Commission.

26.—(1) Subject to subsection (4), every issuer shall, within the prescribed time and before issuing any security, apply to the Commission in the prescribed form to be registered in respect to that security.

(2) Where the Commission refuses to register an applicant, the Commission shall,

within the prescribed period, notify the applicant in writing of such refusal stating the reasons therefor.

(3) Any issuer who contravenes subsection (1) shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate 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.

(4) Subsection (1) shall not apply to—

- (a) the Government of Jamaica; and
- (b) a person who issues a security to—
 - (i) a licensee under the Banking Act, the Building Societies Act or the Financial Institutions Act; or
 - (ii) a society registered under the Co-operative Societies Act,

in the course of the conduct of business by the licensee or society, pursuant to its licence or registration, respectively.

(5) A licensee or society referred to in subsection (4) (b) which intends to dispose of any interest in any security issued to it by a person who is exempt from subsection (1), to any person other than another licensee or society—

- (a) shall give written notice of that intention to the person who issued the security to it and require that person to register the security; and

(b) shall not dispose of the security until it is furnished with proof of such registration.”.

14. Section 30 of the principal Act is amended—

Amendment of section 30 of principal Act.

(a) in subsection (3)—

- (i) by deleting the words “decide to” and substituting therefor the words “, with the approval of the Commission,”;
- (ii) by deleting the words “shall inform the Commission accordingly who shall cause notice of such decision” and substituting therefor the words “the Commission shall cause notice of the increase”;

(b) in subsection (5)—

- (i) by inserting immediately after the words “it may” the words “, with the approval of the Commission.”;
- (ii) by deleting the words “it thinks fit” and substituting therefor the words “the Commission thinks fit”.

15. The principal Act is amended by inserting next after section 41 the following as section 41A—

Insertion of new section 41A in principal Act.

“Obligation of dealer or dealer’s representative regarding offshore investments.

41A.—(1) Every dealer or dealer’s representative in respect of each transaction involving the investment of funds in an offshore account shall keep records in relation to the transaction.

(2) Every dealer or dealer’s representative shall cause to be made available to the Commission during business hours all records relating to offshore investments.

(3) A dealer or dealer's representative commits an offence if he—

- (a) fails without reasonable cause to comply with subsection (1) or (2); or
- (b) wilfully withholds from a client, information regarding a transaction referred to in subsection (1).

(4) In this section "offshore investments" means investments made outside of Jamaica by a dealer."

**Insertion of
new sections
59A, 59B
and 59C in
principal
Act.**

16. The principal Act is amended by inserting next after section 59 the following as sections 59A, 59B and 59C—

**"Dealer to
establish
committees.**

59A.—(1) Every company which is licensed under section 7 or 8 shall establish an audit committee and a conduct review committee.

(2) The Commission shall make rules with respect to the functions of each committee referred to in subsection (1).

**Obligation
to secrecy.**

59B.—(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 his duties under this Act, relating to the operations of a licensee or a person registered under this **Act**;
- (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 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.

(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.

Disclosure
of informa-
tion in
certain
circum-
stances.

59C.—(1) The obligation as to secrecy imposed by section 59B shall not prevent the disclosure of information—

- (a) to a competent authority;
- (b) where the 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; or
- (c) for the purposes of section 68;
- (d) disclose is ordered by the court for the purpose of any civil proceedings.

(2) In subsection (1) (b) “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.”

Amendment
of section
68 of princi-
pal Act.

17. Section 68 of the principal Act is amended—

- (a) in subsection (1B) by deleting from paragraph (b) the numeral “(5)” and substituting therefor the numeral “(6)”;
- (b) by deleting subsections (2) and (3).

Amendment
of section
69 of princi-
pal Act.

18. Section 69 of the principal Act is amended by deleting the words “fifty thousand” and substituting therefor the words “two million”.

Amendment
of section
75 of princi-
pal Act.

19. Section 75 of the principal Act is amended by deleting all the words appearing after the words “purposes of this Act”.

Amendment
of section
76 of princi-
pal Act.

20. Section 76 of the principal Act is amended—

- (a) in subsection (1)—
 - (i) by re-lettering paragraph (k) as paragraph (n); and

(ii) by inserting next after paragraph (j) the following as paragraphs (k), (l) and (m)—

“ (k) regulating the operations of the licensees for the safeguarding of assets managed or held by the licencees and the protection of investors’ funds and securities;

(l) prescribing reports to be filed with respect to companies within a group;

(m) prescribing in respect to issuers—
(i) the manner of application for registration;
(ii) the reports which are to be filed with the Commission;”;

(b) by inserting next after subsection (1) the following as subsections (1A) and (1B)—

“ (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).

(1B) In subsection (1A) “control” in relation to a company means the power of a person to secure by means of the holding of

shares or the possession of voting power in or in relation to that company, or by any agreement or by virtue of any other powers conferred by the articles of association or other document regulating the company, that the affairs of the company are conducted in accordance with the wishes of that person.”.

Repeal of
First
Schedule
to principal
Act.

21. The First Schedule to the principal Act is repealed.

Amendment
of Second
Schedule to
principal
Act.

22. The Second Schedule to the principal Act is amended by deleting the word “SECOND”.