

THE UNIT TRUSTS ACT

NOTICES
(*under section 5(3)*)

REGULATIONS
(*under section 28*)

(*Omitted*)

The Unit Trusts (Registration of Schemes) Regulations, 1971

L.N. 122/71
94I/2009

The Unit Trusts (Books and Documents) Regulations, 1973

L.N. 382A/73
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The Unit Trusts (Nominees) Regulations, 2009

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ORDERS
(*under section 29*)

(*Omitted*)

THE UNIT TRUSTS ACT

REGULATIONS
(under section 28)

THE UNIT TRUSTS (REGISTRATION OF SCHEMES) REGULATIONS, 1971

*(Made by the Minister on the 26th day of April, 1971)*L.N. 122/71
Amdts:
941/2009

1. These Regulations may be cited as the Unit Trusts (Registration of Schemes) Regulations, 1971.

Citation.

2. In these Regulations—

Interpretation.

“appeal” means any appeal to the Tribunal pursuant to the Act;

“custodian” means a nominee approved by the Commission for the purposes of item 2 of the Schedule to the Act, being the person to whom the custodial functions of the trustee are delegated;

“registration” means registration under section 5;

“scheme” means a unit trust scheme;

“section” means a section of the Act.

3.—(1) An application for the registration of a scheme shall—

(a) be made by the manager of the scheme;

(b) in a form approved by the Commission; and

(c) accompanied by—

(i) an application fee of one hundred thousand dollars;

(ii) a copy of the certificate of incorporation in respect of the manager, the trustee and, where the custodial functions of the trustee are delegated, the custodian;

(iii) a copy of the agreement between the manager and the trustee;

(iv) a statement signed by the directors of the manager and the directors of the trustee, respectively—

- (A) that to the best of their knowledge the manager and trustee operate independently of each other; and
 - (B) where the custodial functions of the trustee are delegated, that to the best of their knowledge the manager and custodian operate independently of each other;
- (v) a copy of the agreement between the manager and the custodian, in any case where the custodial functions of the trustee are delegated;
 - (vi) a copy of every deed by which any trust relating to the scheme is created;
 - (vii) a list of the persons authorized to sign on behalf of the scheme;
 - (viii) for the financial year ended within the twelve month period immediately preceding the date on which the application is submitted, the audited financial statements in respect of the manager, the trustee and, where the custodial functions of the trustee are delegated, the custodian;
 - (ix) the audited financial statements of the scheme, for the financial year ended within the twelve month period immediately preceding the date on which the application is submitted, and any subsequent half-yearly financial reports;
 - (x) a copy of the offering circular and other marketing documents used or proposed to be used to market or advertise the scheme and its investment products;
 - (xi) a copy of the proposed application forms and other contractual documents to be signed by investors in the Scheme;
 - (xii) the names of the persons acting as distribution agents for the scheme, and copies of the agreement between the scheme and the distribution agent;

- (viii) in respect of every officer and member of the custodian and every officer and member referred to in section 5(1)(f) of the Act, completed fit and proper questionnaires answering to the matters referred to in section 5(4) of the Act (unless the same have been submitted to the Commission during the period of three calendar years immediately preceding the date of the application, and no material change has occurred as respects any of the relevant matters);
- (xiv) resumé and police reports in respect of every director and officer of the manager, the trustee and the custodian;
- (xv) one written character reference and one written financial reference, in respect of every director and officer of the manager, the trustee and the custodian; and
- (xvi) such other documents or information as the Commission requires, in relation to the scheme and its affairs, the manager, trustee or custodian, for the purpose of assisting the Commission in its determination of the application.

(2) Where an application for the registration of a scheme is approved under the Act, a fee of five hundred thousand dollars shall be payable to the Commission, for the registration of the scheme.

3A. So long as the registration of a scheme remains in force, a fee of five hundred thousand dollars shall be payable to the Commission, in respect of the scheme, on or before each anniversary of the date of the scheme's registration. Annual fee.

4.—(1) Every appeal shall be brought in writing within thirty days after service, by the Commission, of a written notice of the decision of the Commission against which the appeal is brought. Appeals.

(2) There shall be paid to the Commission, by the appellant, in respect of an appeal—

- (a) a fee of forty-five thousand dollars, in any case where the appellant is a company;
- (b) a fee of twenty-two thousand dollars, in any case where the appellant is an individual,

and the receipt evidencing payment of the fee shall be attached to the request for appeal.

(3) For the purposes of paragraph (1), the written appeal shall—

(a) set out the name and address of the appellant;

(b) state the grounds of appeal and be accompanied by copies of the documents on which the appellant relies in support of the appeal,

and a copy of the memorandum, together with copies of the documents referred to in sub-paragraph (c) (if any) shall be served on the Commission within the thirty day period referred to in paragraph (1).

(4) The Commission shall, within twenty-one days after the service on it of the documents referred to in paragraph (3)(c), transmit to the Tribunal, as the case may require, a written statement of the reasons for the decision in respect of which the appeal is brought and of the respects (if any) in which it controverts the contents of any documents of which copies had been served on it.

(5) The Tribunal may require the appellant or the Commission to furnish in writing within a specified time such further particulars as may be specified in such requirement.

(6) The Tribunal, if it appears necessary so to do, may give the appellant and the Commission and their respective witnesses (if any) an opportunity to appear at a hearing and be heard on matters arising out of the documents referred to in paragraph (3) (c).

(7) An appellant may be represented at a hearing referred to in paragraph (6) by any person authorized in writing by him in that behalf.

(8) A record of the evidence given by each witness at a hearing pursuant to this regulation shall be made and shall be signed by the Chairman of the Tribunal, who shall mark, date and initial all documents produced at the hearing and attach such documents to the other papers pertaining to the appeal.

(9) Subject to the provisions of the Act and of this regulation, the procedure at a hearing shall be such as may be determined by the Tribunal.

THE UNIT TRUSTS ACT

REGULATIONS
(under section 28)

THE UNIT TRUSTS (BOOKS AND DOCUMENTS) REGULATIONS, 1973

*(Made by the Minister on the 4th day of September, 1973)*L N 382A/73
L N 94K/2009

1. These Regulations may be cited as the Unit Trusts (Books and Documents) Regulations, 1973. Citation

2.—(1) In these Regulations— Interpretation

“bid or realization price” means the price at which the managers of the scheme will repurchase units from the unit holder;

“counterpart”, in relation to any instrument, means an executed copy thereof;

“custodian” means a nominee approved by the Commission for the purposes of item 2 of the Schedule to the Act, being the person to whom the custodial functions of the trustee are delegated;

“material change” means any change in the business operations, or financial condition, of a unit trust, which would reasonably be expected to have a significant effect on the market price or value of the units in the scheme (irrespective of whether or not the change is implemented by a decision of the board of trustees, the manager or the custodian of the scheme);

“offering circular” means a circular containing any such invitation or information as described in paragraph (a) or (b) of subsection (1) of section 23 of the Act;

“return on investment”, for any period of calculation, means the ratio of money gained or lost on an investment, relative to the value of the investment at the beginning of the period, expressed as a percentage and calculated using the difference between the selling price of a unit at the beginning of the period and the bid or realization price of that unit at the end of the period;

“scheme” means a registered unit trust scheme;

“trust instrument”, in relation to any scheme, means a deed expressing any such trust, and providing for any such matters, in the case of that scheme as mentioned in paragraph (e) of subsection (1) of section 5 of the Act, or an instrument having supplemental effect as respects any deed aforesaid or other trust instrument (as hereby defined) for the purposes of that scheme, and includes a counterpart of any such deed or other instrument as aforesaid.

(2) Reference in the definition of “trust instrument” in paragraph (1) to supplemental effect as respects any deed or other instrument includes the effect of varying or adding to any provision made by that deed or other instrument, as the case may be.

(3) For the purposes of these Regulations, the following persons shall be treated as being associated with a given person (“A”) and he with them, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or had ceased to exist—

- (a) a holding company or subsidiary of A;
- (b) a subsidiary of a holding company of A;
- (c) a holding company of a subsidiary of A;
- (d) any company of which A has control;
- (e) any company of which A and persons connected with A together have control;
- (f) any company which together with A constitute a group;
- (g) an individual who is a director, manager, or person who has control, of A, or any partner or immediate relative of such director, manager, or person; and
- (h) any company of which any of the persons referred to in subparagraph (g) is a director, manager, or has control.

3. The trustee under any scheme shall keep, in conformity with regulation 6—

(1) any trust instrument having effect in relation to that scheme and which has, upon execution, been delivered to the trustee or to any duly authorized person for the trustee;

Documents to be kept by trustee.

(2) an account which shall for the time being, in case of any distributions having thitherto been made out of yield from units created pursuant to the scheme—

- (a) show all amounts so distributed, the dates of their distribution and all amounts of income from which such yield was derived; and
- (b) specify all the unit holders to whom the amounts first aforesaid were distributed, respectively, and the property and time with reference to which each of the amounts of income mentioned in sub-paragraph (a) accrued;

(3) a file for the time being containing, in case of any offering circulars having thitherto been permitted by the trustee to be issued by or on behalf of the manager under the scheme, copies of all such offering circulars;

(4) the minutes of each meeting of unit holders under the scheme;

(5) a record—

- (a) showing the number of units under the scheme that represent property vested in the trustee as such;
- (b) in which there is entered from time to time, as soon as any change occurs in the amount of such property, the consequential alteration in the number of units under the scheme;

(6) a register of unit holders in which the following particulars are recorded as soon as practicable—

(a) the name and address of each person who acquires any units under the scheme, the serial numbers assigned under regulation 4 to any certificates of such acquisition and the number of units to which each such certificate relates;

(b) the date or dates on which each such person becomes the holder of any units under the scheme and the number of units of which he becomes the holder on each such date, and—

- (i) in case of his having become the holder by virtue of an instrument of transfer, a sufficient reference to enable the instrument to be readily produced;

- (ii) in case of his having become entitled to the units by operation of law, particulars of the name of the person from whom the right to such units was transmitted to the first-mentioned person, and of the circumstances in which it was so transmitted, or a sufficient reference to some other record kept by the trustee and containing those particulars;
- (c) where any person ceases to hold any units under the scheme, the date or dates at which he ceases to hold them and—
- (i) in case of his having so ceased by virtue of an instrument of transfer, a sufficient reference to the instrument to enable it to be readily produced;
 - (ii) in case of any transmission of the right to any such units from him to any other person by operation of law, particulars of the name of that other person, and of the circumstances of such transmission, or a sufficient reference to some other record kept by the trustee and containing those particulars:

Provided that it shall not be deemed contrary to this regulation for such register to be kept on behalf of the trustee by the manager under the scheme.

4.—(1) Every such certificate in respect of units as mentioned in paragraph 2 of the First Schedule to the Act shall, before issue under a scheme, be assigned a serial number by the trustee under the scheme and, if surrendered by the holder, shall be preserved by the trustee in such a manner as to enable reference to be made readily thereto.

Preservation of the unit certificates and instruments of transfer.

(2) Every such instrument of transfer in respect of units under a scheme as is delivered to the trustee thereunder shall be preserved by the trustee in such a manner as to enable reference to be made readily thereto.

(3) Nothing in these Regulations requires any such certificate or instrument to be preserved for longer than the period of seven years from the date on which the trustee takes custody thereof or such shorter period as the Commission, if satisfied upon application in that behalf by the trustee that it is reasonable in the circumstances so to do, may determine by notice in writing to the trustee.

5.—(1) The manager under any scheme shall keep, in conformity with regulation 6— Documents to be kept.

- (a) any trust instrument having effect in relation to that scheme and which has, upon execution, been delivered to the manager or to any duly authorized person for the manager;
- (b) a file for the time being containing, in case of any offering circulars having thitherto been issued by or on behalf of the manager, copies of all such offering circulars;
- (c) so far as relates to the manager's business as respects the scheme, proper accounts made up in keeping with the best commercial standards;
- (d) a record for the time being of all calculations thitherto made (in the manner, if any, required in keeping with paragraph 1 of the First Schedule to the Act) whereby yield from units and the manager's prices from time to time for units on sales and purchases pursuant to the scheme have been determined, and of the time of every such determination of yield, or of any price, as aforesaid;
- (e) a record which (in so far as is requisite) conforms to the provisions of paragraphs (2), (3) and (4) and in which the manager's transactions in units from time to time are entered separately under the following headings as soon as practicable—
 - (i) the number of units comprised in each transfer to the manager of units by way of any instrument whereby that transfer is provided for;
 - (ii) the number of units to which the manager becomes entitled in consequence of any addition to the property vested in the trustee as such;
 - (iii) the number of units comprised in each transfer by the manager of units to which no other person was entitled at any previous time and which do not replace units to which any other person was previously entitled;
 - (iv) the number of units comprised in each transfer by the manager of units to which some other person was entitled at any previous time or which replace such units.

(2) Each entry under the heading prescribed by sub-paragraph (e) (i) of paragraph (1) with respect to any transfer to the manager by way of any instrument shall include sufficient identification of the instrument.

(3) Where any entry in a record under the heading prescribed by sub-paragraph (e) (iv) of paragraph (1) relates to a transfer of units which are or replace units previously mentioned in any entry in that record under the heading prescribed by sub-paragraph (e) (i) of paragraph (1), the units comprised in the transfer shall be identified with such previously mentioned units by a cross-reference to such entry pursuant to the said sub-paragraph (e) (i), and by an addition to that entry showing the date of the transfer and the number of units mentioned in that entry which are comprised in the transfer, or in such other manner as may be agreed in writing by the Commission with the manager.

(4) Where any units to which an entry under the heading prescribed by sub-paragraph (e) (i) or (ii) of paragraph (1) relates are extinguished, such extinction shall be recorded by an addition to that entry showing the date of the extinction, and, where part only of the units referred to in such entry is extinguished, the number so extinguished, or in such other manner as may be agreed in writing by the Commission with the manager.

(5) The custodian shall maintain—

- (a) a record of all assets in his custody, updated as the need requires or, in any event, not less than once in every calendar year;
- (b) records indicating that the beneficial ownership of the assets of the scheme—
 - (i) are vested in the scheme; and
 - (ii) may be identified by reference to an account number or other similar designation.

6. The duration of the period for which any register, record, statement, account or other document is required to be kept under regulation 3 or 5 in relation to any scheme shall continue so long as the scheme subsists and for one year next thereafter:

Period for which documents to be kept.

Provided that upon the application of the trustee or manager (as the case may be) complying with such requirement, the Commission may at any time, by notice in writing to the applicant, terminate such period if he is satisfied that it is reasonable in the circumstances so to do.

7.—(1) Every unit holder under any scheme who requests permission of the trustee or manager thereunder to examine any trust instruments kept by it in compliance with these Regulations, or to make and take away copies of or extracts from any such instruments, shall be allowed by the trustee or manager (as the case may be) so to do at any reasonable time.

Access to trust instruments and availability of copies thereof.

(2) Copies of each trust instrument kept in accordance with subparagraph (a) of paragraph (1) of regulation 5 by the manager under a scheme, or delivered to or for the trustee thereunder as mentioned in paragraph (1) of regulation 3 by or on the authority of the manager, shall be made available by the manager to the unit holders under the scheme and to all persons submitting applications to the manager for the purpose of acquiring units under the scheme or by whom subsisting offers to, or agreements with, the manager have been made for that purpose:

Provided that, for each copy furnished accordingly to any unit holder or other person, the manager may charge him the price therefore provided by any such instrument or, in the absence of such provision, a reasonable price.

8.—(1) No person acting, or purporting to act, for the furtherance of any business involving the disposal of any units under a scheme shall communicate, or cause to be communicated, to another person—

Offering
circulars

- (a) any representation calculated to induce him to do any of the acts mentioned in paragraph (a) or (b) of subsection (1) of section 22 of the Act in relation to any such units; or
- (b) any invitation to him to do any such acts, unless he is provided with a copy of an offering circular relating to the scheme and for the time being registered under paragraph (5) or is advised of the facilities for obtaining such a copy available to him free of charge at any place (in Jamaica) specified in such advice.

(2) No person shall distribute, or cause to be distributed, copies of any offering circular calculated to invite or lead (directly or indirectly) any person to whom it is distributed to act as mentioned in section 22(1)(a) or (b) of the Act, in relation to any scheme, unless the offering circular—

- (a) is written in such clear and concise language that its contents are readily capable of being understood by the public;
- (b) discloses such matters in reference to the scheme as are specified in the Schedule; and
- (c) is registered by the Commission in accordance with paragraph (5).

(3) Every application for the registration of any offering circular for the purposes of this regulation shall be made in writing to the Commission; and there shall be payable to the Commission, in respect of every such application, a fee of twenty thousand dollars.

(4) Upon the submission of every such application for registration of any offering circular, the applicant shall cause to be delivered to the Commission a copy of the offering circular and shall produce to the recipient of that application such receipt as shall, on payment of the said fee in respect thereof, be issued under the authority of the Commission.

(5) Subject to regulation 9, any such application as aforesaid shall be granted by filing in a register, which shall be kept by the Commission for the purposes of this regulation, the copy delivered under paragraph (4) (with modifications, if any, made under the proviso to paragraph (1) of regulation 9) in the case of such application, and the registration of any offering circular under the foregoing provisions of this paragraph shall (for the said purposes) have effect for the period of seven months commencing with the date of such registration, of which the Commission shall, on granting the application therefore, cause notice to be served on the applicant.

(6) Copies of an offering circular in the form of a newspaper, journal, magazine or other periodical publication shall not be deemed, by reason only of their distribution in the ordinary course of publication, to be distributed contrary to paragraph (2) (in the absence whether of registration or of any disclosures) if the relevant information or invitation in the circular includes or is accompanied therein by the like advice to recipients of that information or invitation as is mentioned in paragraph (1).

8A.—(1) The manager and the trustee of each scheme shall—

Information on
Investments.

- (a) cause notice of every material change affecting the scheme to be published—
 - (i) in a daily newspaper in circulation throughout Jamaica; and
 - (ii) on a website maintained by the scheme's manager, or by post or e-mail to the unit holders,
 forthwith upon becoming aware of the change;
- (b) disclose, on a website maintained by the scheme's manager, the cut-off time for, and the frequency of, the pricing of its units, being a time after the market closes;
- (c) cause to be published, at least once per week in a daily newspaper in circulation throughout Jamaica, the return on investment in the scheme, including information as to —

- (i) the return on investment for a rolling fifty-two week period;
 - (ii) the year-to-date return on investment for the current calendar year;
- (d) at the end of each calendar quarter, cause its unaudited balance sheet, and income statement, for that quarter to be published—
- (i) on a website maintained by the scheme's manager;
 - (ii) by post or e-mail to the unit holders; or
 - (iii) in a daily newspaper in circulation throughout Jamaica,
- not less than forty-five days after the end of the quarter;
- (e) cause to be published—
- (i) as soon as is reasonably practicable, but in any event not later than one hundred and twenty days after the end of the financial year; and
 - (ii) in a daily newspaper in circulation throughout Jamaica,

the audited financial statements of the scheme for that financial year, or an abridged summary of those statements.

(2) Information published under paragraph (1)(d) shall be made available in writing, in the form of hard copies, to a unit holder, by the manager or trustee of the scheme, upon request of the unit holder.

9.—(1) The Commission shall have power—

- (a) to refuse to grant any application under regulation 8 for the registration of any offering circular;
- (b) to cancel the registration under regulation 8 of any offering circular,

on the grounds of any default in compliance with provisions contained in a trust instrument as respects such offering circular, or of any representation therein being deceptive, or of the contents thereof being deficient (for purposes of distribution) as respects disclosures required by paragraph (2) of regulation 8; and notice, specifying particulars of the grounds, of any exercise of such power shall thereupon be served on the person who applied for the registration:

Refusal and
cancellation.

Provided that where the Commission proposes to exercise any such power, he shall cause notice, specifying particulars of the grounds, of such proposal to be served on the said person and shall afford that person an opportunity to make such representations, or such modifications to the offering circular in case of an application for its registration, or such representations and modifications aforesaid (in that case), as the person may consider appropriate in the light of the grounds for such proposal of the Commission, who shall, in taking any decision thereon, have due regard to the representations or modifications or both (as the case may be) so made, if any.

(2) Where the Commission refuses under sub-paragraph (a) of paragraph (1) to grant any application, the Commission shall cause the notice of such refusal to be served under paragraph (1) within twenty-five days of the receipt of such application or, in case of the offering circular having been modified under the proviso to paragraph (1), within twenty-five days of the making of such modification.

10.—(1) The manager and trustee under each scheme shall cause the accounts of the manager as respects its business in relation to that scheme, together with those of the trustee as such, to be audited annually by an auditor duly appointed, pursuant to arrangements made between the manager and trustee, to audit both the manager's and the trustee's accounts aforesaid and to furnish a report thereon for the purposes of paragraph (2).

Audit.

(1A) The report referred to in paragraph (1) shall disclose—

- (a) the amount of all fees, charges and expenses charged to the scheme during the relevant accounting period;
- (b) all other deductions for fees, loads and other charges, including an explanation of such deductions;
- (c) the unit prices and the method of calculation of those prices;
- (d) the method of valuation of assets in the scheme;
- (e) any adjustments made for market appreciation and depreciation;
- (f) the net assets due to the unit holders;
- (g) the details of transactions involving—
 - (i) associated persons;
 - (ii) units amounting to five percent or more of the value of the scheme;

(2) Where any annual audit of accounts has been carried out as required by paragraph (1) in relation to any scheme, the manager under the scheme shall—

- (a) furnish to the Commission within four months of the date to which the accounts have been so audited; and
- (b) within six months after the end of the relevant accounting period, disclose to each unit holder—
 - (i) the audited accounts; and
 - (ii) the report made by the auditor on the accounts, specifying whether they have been found by the auditor to conform with the relevant requirements of regulations 3 and 5; and
 - (iii) the report made by the manager on the investment portfolio of the scheme and the movements in the value thereof, in respect of the relevant financial year.

(2A) The disclosure referred to in paragraph (2)(a) may be made by—

- (a) publishing the information on the scheme's website or in a daily newspaper in circulation throughout Jamaica; or
- (b) sending the information to each unit holder by post or e-mail,

and shall, in any event be made to a unit holder upon request made to the manager at its place of business during normal business hours.

(3) Subject to paragraph (5) every person who is the manager or trustee under a scheme shall, in default of any audit required by paragraph (1) in relation to the scheme, be guilty of an offence and be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two thousand dollars.

(4) Subject as aforesaid, every manager who fails to furnish to the Commission copies of any statement and report, or neglects to forward a copy of each of the same to any unit holder at his request as required by paragraph 2 shall be guilty of an offence and be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two thousand dollars.

(5) Where any person is charged with an offence in default of compliance with any requirement mentioned in paragraph (3) or (4), it shall be a defence to prove that the person exercised all such reasonable diligence as was, in the circumstances, exercisable on his part with a view to fulfillment of such requirement.

11.—(1) Any person—

Information to
be furnished to
the Commission.

- (a) who is the manager, trustee or custodian under a scheme or a salesman conducting business pursuant thereto; or
- (b) whose business involves the acquisition, holding or disposal of units under a scheme,

shall in accordance with any notice of the Commission in that behalf served on such person, furnish to the Commission, or to any officer duly authorized by him and specified in the notice, such information relating to the business conducted by the said person pursuant to the scheme as the Commission may by that notice, if he considers it necessary or expedient so to do for the due performance of any of his functions for the purposes of the Act or these Regulations, require.

(2) Within twenty days from the commencement of every month, the manager under each scheme shall cause to be delivered to the Commission a copy of so much of the record kept by the manager for the purposes of subparagraph (a) of paragraph (1) of regulation 5 as may relate to calculations made during the preceding month.

(3) The manager of each scheme shall give to the Commission—

- (a) in any case where the functions of the manager are to be delegated, prior to any such delegation, notice in writing setting out the details of the proposed delegation;
- (b) forthwith upon the retirement or removal of a trustee, a report detailing the circumstances surrounding the retirement or removal (as the case may be);
- (c) as soon as is reasonably practicable after the occurrence of a material change in the affairs of the scheme, but in any event no later than ten days after the change, a report setting out the details thereof;
- (d) within forty-five days after the end of each calendar quarter—
 - (i) a report detailing the method of calculation of the scheme's return on investment;
 - (ii) the scheme's unaudited balance sheet and profit and loss statement, including in respect of each—

- (A) the comparative changes from the immediately preceding quarter;
 - (B) the adjustments made for market appreciation and depreciation;
 - (C) deductions for fees, loads and other charges, with an explanation of those deductions;
 - (D) the net assets due to the unit holders;
 - (E) the unit prices and the method of calculating those prices; and
 - (F) the method of valuation of the assets in the scheme's investment portfolio;
- (e) within fifteen days after the end of each calendar month, a statement of the scheme's investment portfolio;
- (f) as soon as is reasonably practicable after becoming aware that a trustee has or is about to—
- (i) sell assets to, or purchase assets from, the trust on the trustee's own behalf;
 - (ii) enter into any securities lending transaction, repurchase transaction or reverse repurchase transaction, on the trustee's own behalf;
 - (iii) sell the scheme's assets to, or purchase the scheme's assets from, any person associated with the trustee; or
 - (iv) enter into any securities lending transaction, repurchase transaction, or reverse repurchase transaction with any person associated with the trustee,

notice in writing setting out the nature and circumstances of the transaction and the reasons therefor.

(4) Upon the retirement or dismissal of a manager, the trustee shall forthwith give to the Commission a report setting out the circumstances surrounding the retirement or dismissal (as the case may be).

(5) The custodian of a scheme shall cause the scheme's auditors to give to the Commission, at least once in every calendar year, a report as to the custodian's internal controls and operating procedures.

License required
for manager acting
as dealer or dealers
representative.

11A. For the avoidance of doubt, the manager of a scheme shall not act as a dealer in securities, or as a dealer's representative, unless the manager holds the requisite licence under the Securities Act.

Offences.

12. Every person who—

- (a) being the trustee under any scheme, contravenes the provisions of regulation 3 or 4 or paragraph (1) of regulation 7;
- (b) being the manager under any scheme, contravenes the provisions of regulation 5 or paragraph (1) of regulation 7 or fails to make available to any unit holder or other person in accordance with paragraph (2) of regulation 7, at his request, a copy of any instrument mentioned in the said paragraph (2);
- (c) contravenes the provisions of paragraph (1) or (2) of regulation 8;
- (d) having been served with a notice under regulation 11, fails to comply therewith or, being the manager under any scheme, contravenes regulation 11(2) or (3);
- (e) being the trustee of a scheme, contravenes regulation 11(4);
- (f) being the custodian of a scheme, contravenes regulation 11 (5); or
- (g) contravenes any other provision of these regulations,

shall be guilty of an offence and be liable 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 twelve months, or to both such fine and imprisonment:

Provided that, in proceedings against any person for failing to keep any record, statement, account, or other document, in so far as may be required by regulation 3 or 5 in regard to matters prior to the coming into operation of these Regulations, it shall be a defence for such person to show that he has a lawful or reasonable excuse for such failure:

Provided further that, where any person is charged with an offence in default of compliance with any requirement of a notice mentioned in paragraph (d), it shall be a defence to prove that it was not reasonably practicable for him to comply with such requirement.

13. Nothing in these Regulations shall be construed to abrogate or abridge any duty under any other law or in equity to keep, or cause to be audited, any books, accounts or other records or documents.

SCHEDULE

(Regulation 8)

Matters to be disclosed by offering circulars

1. In respect of the scheme—
 - (a) its name, or other particulars sufficient for its identification;
 - (b) its date of registration;
 - (c) its country or territory of establishment;
 - (d) the date of establishment of the trust;
 - (e) the address of the manager's registered office and, where the manager is a subsidiary of another company, the address of the manager's parent company;
 - (f) if the manager is also the manager of another scheme, the name and objects of the other scheme; and
 - (g) whether the scheme is a registered unit trust scheme.
2. In respect of the trustee—
 - (a) the name of the trustee and the names of its directors;
 - (b) the nature of the corporate form;
 - (c) the country or territory of incorporation;
 - (d) if the trustee is a subsidiary of another company, the name of the ultimate parent company;
 - (e) the address of the trustee's registered office;
 - (f) a description of the trustee's principal business activity;
 - (g) whether the trustee is licensed under the Financial Institutions Act.
3. In respect of the manager—
 - (a) the name of the manager, the name of its directors and, if the manager is a subsidiary of another company, the name of the parent company;
 - (b) if the manager employs the services of an investment advisor in relation to any of the scheme's assets—
 - (i) the name and address of the advisor; and
 - (ii) whether or not the Commission has been notified that the advisor is employed to act in that capacity.
4. In respect of the scheme's auditors appointed for the purposes of regulation 10 (1)—
 - (a) the name and address of the auditors; and
 - (b) the name and address of the registrar and transfer agent for the scheme.
5. The practice (in substance) to be observed in dealings of the manager with purchasers and sellers, and the method of calculation for determining the manager's prices on sales and purchases, of such units as may be created pursuant to the scheme, including—
 - (a) the charges, and maxima restrictive thereof, if any, to be taken into account in any such calculations:

- (b) the manner of determination of the intervals at which prices are to be fixed by way of calculation as aforesaid.
6. The extent of any authority to obtain loans chargeable on, or repayable out of, the funds of the scheme.
7. The general investment policy explained, in essence, as respects—
- (a) funds held on trusts created pursuant to the scheme, including any restrictions or prohibitions imposed under the scheme on investment in securities of any class;
- (b) the objective of the policy (whether capital growth, income growth or other objective);
- (c) the economic or geographic areas to which investment will be confined;
- (d) the type of assets to be included in the scheme;
- (e) whether or not, and the extent to which, the scheme may invest in other schemes managed by the scheme's manager or an associate of the manager;
- (f) investments in particular types of issuers (such as foreign issuers, small capitalization issuers or issuers located in emerging markets) or in assets other than securities as defined by the Securities Act;
- (g) the circumstances which may lead to a departure from the scheme's fundamental investment objectives and what the likely response would be in the event of such a departure.
- 7A. A statement that the manager may borrow, on behalf of the scheme, an amount not exceeding the percentage of the value of assets in the scheme's portfolio as prescribed by the trust deed, which percentage shall be specified in the offering circular and shall not, in any event, exceed ten percent.
8. The manner and circumstances in which the trust applicable to such funds as may be vested in the trustee under the scheme is required or authorized thereunder to be terminated.
9. The time, aggregate amount, and rate per unit, of each distribution (if any) which has, during the period of three years next preceding the date of application for registration of the offering circular under regulation 8, been made out of yield from units under the scheme.
10. The manner of determination of the times for distributions, if any, to be made out of yield from units under the scheme; and an estimated rate of distribution per unit.
11. The remuneration, or rate of remuneration, payable from time to time to the trustee and manager, respectively, under the scheme.
12. The scheme's requirements, in substance, for issuing, transferring and recording title to units.

13. If the acquisition of units under the scheme may be on an installment plan, then, the following, that is to say—

(a) the plan, in essence;

(b) the purchaser's minimum investment, and the mode of calculating the amount payable by him (including any charges to be taken into account), in the case of each installment.

14. The fact of there being no guarantee that such funds as mentioned in paragraph 7 will grow; and the possibility respecting securities comprised in the same, and accordingly units created under the scheme, of decrease as well as increase in their value and in the income from such securities and yield from such units.

15. The form (to be detachable from each copy of the offering circular, upon completion, for submission) of application to acquire units under the scheme.

16. All such funds, the disclosure thereof to be in the form of an itemized statement including descriptions of all such securities, as were held pursuant to the scheme by, for or on behalf of the trustee thereunder at the date to which the trustee's accounts were audited for purposes of the last report thereon for the time being furnished to the Commission under paragraph (2) of regulation 10.

17. The date on which application for registration of the offering circular under regulation 8 was submitted.

18. The following disclaimer, set out on the front cover of the offering circular—

“The Financial Services Commission does not pass upon the accuracy or adequacy of the information contained in this offering circular. Any representation to the contrary will be deemed by the Commission to be a false and misleading statement within the meaning of section 22 of the Unit Trusts Act.”

19. The effective period of the offering circular, together with a statement that once the effective period has expired the offering circular shall not be used as the basis for marketing the product.

20. The risk factors and other investment considerations associated with investing in a unit trust.

21. A description of—

(a) the characteristics of the investor for whom the scheme may or may not be appropriate;

(b) the type of investment portfolio for which the scheme is suited or for which the scheme shall not be used;

(c) the level of risk tolerance that would be appropriate for persons wishing to invest in the scheme.

22. A statement detailing the type of assets held in the investment portfolio of the scheme.

23. In relation to the valuation of the scheme and its investment portfolio—

- (a) the cut-off time for computing the net asset value and the frequency of computation thereof;
- (b) a statement as to whether or not the investment portfolio is being carried at fair value and, if not, the method of valuation;
- (c) the time of day that the assets will be regularly valued for the purpose of determining the prices at which securities in the scheme may be issued and redeemed by the manager.

24. A statement as follows—

“Unit trusts own different types of investment 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, the value of the scheme's units may go up or down and the value of your investment in the scheme, when you redeem it, may be more or less than when you purchased it.”

25. The types of fees levied on the scheme, including (where applicable)—

- (a) preliminary charges;
- (b) periodic charges;
- (c) charges on redemption;
- (d) other charges and expenses, indicating clearly whether these charges are to be borne by the investor directly or indirectly.

26. A statement advising that the past performance of the scheme should not be taken as an indication of future performance.

27. A graph showing, in chronological order, the annual total returns of the scheme for at least each of the five years immediately preceding the date of the offering circular or, if the scheme has been in existence for less than five years, for each year since its inception.

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

THE UNIT TRUSTS ACT

REGULATIONS
(under section 28)

THE UNIT TRUSTS (NOMINEES) REGULATIONS, 2009

*(Made by the Financial Services Commission on the 15th day
of July, 2009 and approved by the Minister)*

L.N. 94H/2009

1. These Regulations may be cited as the Unit Trusts (Nominees) Regulations, 2009.

2.—(1) For the purposes of item 2 of the Schedule to the Unit Trusts Act—

(a) a nominee approved pursuant to that item shall be referred to as the custodian of the scheme;

(b) a nominee shall not be approved by the Commission to be the custodian of a scheme unless—

(i) the nominee is a company having capital in excess of fifty million dollars;

(ii) the nominee has adequate liability insurance, against risk of loss due to any act or omission, amounting to—

(A) not less than two million dollars; or

(B) 0.5%, or fifty basis points, multiplied by the aggregate value of the scheme's assets reflected in the scheme's audited financial statements as at the most recent financial year end;

whichever is the greater;

- (iii) the Commission is satisfied that the nominal is not associated with the manager of the scheme; and
- (iv) the officers and directors of the nominee are fit and proper persons as described in section 5 (4) of the Act.

(2) The provisions of regulation 2(3) of the Unit Trusts (Books and Documents) Regulations, 1973, shall apply in determining, for the purposes of paragraph (1)(b)(iii), whether a nominee is associated with the manager of a scheme.