



**FINANCIAL SERVICES COMMISSION
GUIDELINES FOR EXEMPT DISTRIBUTIONS (GUIDELINES SR-GUID-08/05-0016)**

PART I INTRODUCTION

- 1.1** These securities industry guidelines are for the attention of persons who intend to issue securities in Jamaica by way of an exempt distribution. It is meant to convey the requirements that are to be complied with in order for a distribution of securities to be exempt from registration of its prospectus or offering document with the Financial Services Commission ("FSC"). These guidelines do not apply to securities issued by the government of Jamaica, or issuers operating under the ambit of the Unit Trust Act and Mutual Fund regulations.
- 1.2** In order to comply with the Securities Act issuers who intend to offer their securities in Jamaica are required to register with the FSC in respect of those securities. As part of the registration process the FSC requires issuers to file a registration statement (or an information memorandum in the case of commercial paper) with details about itself to the FSC. The filing of this registration statement is deemed to satisfy the registration requirements of section 26 of the Securities Act.

PART II DEFINITIONS AND INTERPRETATION

2.1 Short Title

These Guidelines may be referred to as Guidelines SR-GUID-08/05-0016.

2.2 Definitions

- (1) Words and expressions defined in the *Securities Act* or the *Companies Act, 2004*, unless otherwise defined in these Guidelines, have the same meanings when used in these Guidelines.
- (2) In these Guidelines

"accredited investor" means any person who the issuer and if applicable the licensed

dealer or the selling security holder (as the case may be) involved in the distribution reasonably believes after diligent inquiry, comes within any of the following categories at the time of the distribution of the securities to that person -

- (a) any governmental authority or public statutory corporation constituted under any written law in Jamaica, or company a majority of the voting shares of which are owned by the Government of Jamaica;
- (b) a bank as defined in the *Banking Act*, an insurance company registered under *The Insurance Act, 2001*, a company licensed under the *Financial Institutions Act* or a building society registered under the *Building Societies Act*;
- (c) an approved retirement scheme, approved superannuation fund or specified pension fund, as defined in *The Pensions (Superannuation Funds and Retirement Schemes) Act, 2004*;
- (d) any officer or general partner of the issuer, or any officer of a general partner of the issuer;
- (e) any unit trust, mutual fund, non-redeemable investment fund or other collective investment scheme that is registered with the Commission;
- (f) a trust company or licensed dealer purchasing as principal or on behalf of a fully-managed account where the account holder is an accredited investor;
- (g) any individual whose net worth exceeds 50 million dollars, or a corporation over 90% of the voting shares of which are owned by such an individual or a trust of which such an individual is the sole primary beneficiary;
- (h) any individual who had a income before taxes in excess of 10 million dollars in each of the two most recent calendar years, or a corporation over 90% of the voting shares of which are owned by such an individual or a trust of which such an individual is the sole primary beneficiary;
- (i) any entity that had net assets in excess of 250 million dollars as reflected in its audited financial statements for its most recently completed fiscal year or alternatively, if its most recently completed fiscal year ended less than 90 days prior to the relevant date, as reflected in its audited financial statements for its second most recently completed fiscal year;
- (j) an entity in respect of which all of the owners of interests, direct or indirect or beneficial, are accredited investors;
- (k) any entity incorporated or constituted outside of Jamaica that is analogous to the entities listed in paragraphs (a) to (f) or that qualifies as an

accredited investor or has a similar status however defined, under the securities legislation of its governing jurisdiction;

- (l) any individual residing outside of Jamaica who qualifies as an accredited investor (however defined) or has a similar status, under the securities legislation of the individual's country of residence, or who meets the criteria specified in paragraph (g) or (h) and is otherwise lawfully entitled to purchase the securities under the securities laws applicable to such purchase;
- (m) any individual or entity recognized as an accredited investor by the Commission;
- (n) "Commission" means the Financial Services Commission

"distribution" means any dealing with a security, including:

- (a) a sale or disposition for valuable consideration;
- (b) the receipt by a dealer, issuer, selling security holder or promoter of an order to buy or sell the security;
- (c) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing; and
- (d) and any of the actions described above made with respect to
 - (i) securities of an issuer that have not been previously issued;
 - (ii) previously issued securities of an issuer that have been redeemed or purchased by the issuer; or
 - (iii) previously issued securities of an issuer;

"entity" includes a corporation, partnership, trust, or other business organization, whether incorporated or unincorporated;

"fully-managed account" means an account of a client for which a trust company or licensed dealer makes the investment decisions if the trust company or licensed dealer has full discretion to trade in securities for the account without requiring the client's express consent to a transaction;

"person" includes an entity as defined above;

"printed" or "written" includes material distributed by electronic means;

"private issuer" means an issuer

- (a) that is not a reporting issuer;
- (b) whose securities, other than non-voting debt securities,
 - (i) are subject to restrictions on transfer that are contained in the issuer's articles of incorporation or other constitutional instruments or a security holders' agreement; and
 - (ii) are beneficially owned by not more than 50 persons, not including employees and former employees of the issuer;

"recognized rating agency" means a credit rating organization recognized by the Commission as such for purposes of these guidelines;

"securities legislation" means the *Financial Services Commission Act, 2001*, the *Securities Act* and all applicable regulations, rules or guidelines made pursuant to either such Act, the rules of the Jamaica Stock Exchange and sections 40 to 47 and the *Third Schedule* to the *Companies Act, 2004*, and includes analogous legislation of any other jurisdiction.

PART III EXEMPT DISTRIBUTIONS

3.1 Accredited Investor

- (1) A prospectus does not have to be registered with the Commission for distribution of a security to an accredited investor purchasing as principal.
- (2) The registration requirement under section 26 (1) of the *Securities Act* in respect of a trade in a security in the circumstances referred to in paragraph 3.1 (1) shall be satisfied by compliance with Part III of these guidelines.
- (3) For the purposes of paragraph 3.1 (1) a trust company or licensed dealer described in paragraph (f) of the definition of "accredited investor" is deemed to be purchasing as principal.

3.2 Minimum Purchase Amount

- (1) A prospectus does not have to be registered with the Commission for distribution of a security to a person purchasing as principal if
 - (a) the security has an acquisition cost to the purchaser of not less than ten million dollars paid in cash at the time of the purchase; and
 - (b) the trade is in a security of a single issuer.
- (2) The registration requirement under section 26 (1) of the *Securities Act* in respect of a trade in a security in the circumstances referred to in paragraph 3.2 (1) shall be satisfied by compliance with Part III of these guidelines.

- (3) This section does not apply to a trade in a security to a person that is created or used primarily to purchase or hold securities in reliance on this exemption from the prospectus requirement.

3.3 Highly-rated Debt Securities

- (1) A prospectus does not have to be registered with the Commission for the distribution of a security to a person purchasing as principal if
 - (a) the security has been assigned a rating of BBB+ (or equivalent) by a recognized rating agency;
 - (b) the issuer has existing debt or equity securities registered with the Commission or equity securities of the issuer are listed for trading on a recognized stock exchange;
 - (c) the issuer is not in default of any requirements of securities legislation; and
 - (d) the purchaser is provided access to substantially the same information concerning the issuer and its securities as would be required to be provided in a prospectus.
- (2) The registration requirement under section 26 (1) of the *Securities Act* in respect of a trade in a security in the circumstances referred to in paragraph 3.3 (1) shall be satisfied by compliance with Part III of these guidelines

3.4 Private Issuer

- (1) A prospectus does not have to be registered with the Commission for the distribution of a security of a private issuer to a person who purchases the security as principal and is
 - (a) an officer of the issuer;
 - (b) an individual who is personally involved in the business of the issuer and is an officer or partner of a major supplier, service provider, consultant, customer or client of the issuer; or
 - (c) a person associated with the issuer.
- (2) The registration requirement under section 26 (1) of the *Securities Act* does not apply to a trade in a security in the circumstances referred to in paragraph 3.4 (1).
- (3) No commission or finder's fee may be paid to any director, officer, founder or control person of an issuer in connection with a trade under paragraph 3.4 (1).

3.5

Obligation to Comply with the Companies Act

Where an issuer is distributing securities under an exemption in 3.1, 3.2, 3.3 or 3.4, that issuer must comply with all relevant provisions in the Companies Act where the issuer has been registered pursuant to that Act.

PART IV

EXEMPT DISTRIBUTION REQUIREMENTS

4.1

Pre-notification Requirement

- (1) No person shall trade or participate in the distribution of a security pursuant to an exemption under 3.1, 3.2, 3.3 or 3.4, unless the issuer or selling security holder has delivered to the Commission a duly completed Form XD F-1 Notice of Exempt Distribution in respect of the proposed trade or distribution not less than 15 days before the proposed trade or distribution.
- (2) Paragraph 3.1 (1) does not apply to an isolated trade of a security by a holder who acquired the security under an exemption in 3.1, 3.2, 3.3 or 3.4 and is trading such security for his own account.

4.2

Due Diligence Requirement

An issuer, selling security holder or licensed dealer shall not trade in a security on the basis of the exemption provided for in 3.1 unless that person has reasonable grounds for believing, after due inquiry undertaken before completion of the trade, that the prospective purchaser meets the relevant criteria of the definition of accredited investor that is being relied upon in respect of the trade.

4.3

Exempt Distribution Report

The issuer or selling security holder shall deliver to the FSC a duly completed Form XD F-2 Exempt Distribution Report in respect of each trade in a security in reliance on an exemption under 3.1, 3.2, 3.3 or 3.4 no later than the last day of the calendar month following the month during which the trade took place.

PART V

MARKETING RESTRICTIONS AND REQUIREMENTS

5.1

General Restriction

An issuer or selling security holder (“vendor”) or other person participating in a distribution on behalf of the vendor, shall not distribute any printed or written material or electronically provide or make available any material respecting a security that is not permitted by 5.2 or 5.3.

5.2**Pre-registration Communications**

Prior to delivery of a Form XD F-1 Notice of Exempt Distribution to the FSC in respect of a security, an issuer shall not engage in or procure, either directly or through a market intermediary or otherwise, any act, advertisement, solicitation, negotiation with potential investors or other conduct in furtherance of any dealing in relation to those securities.

5.3**Distribution of Material Following Notice of Exempt Distribution**

From the date of delivery to the Commission of a Form XD F-1 Notice of Exempt Distribution in respect of a proposed trade or distribution pursuant to an exemption provided for in 3.1, 3.2 or 3.3, a person trading in the security in a distribution may

- (a) distribute an offering memorandum, any document referred to in the offering memorandum, a circular, a term-sheet or other document describing the security proposed to be distributed and providing such other information as may be permitted or required by any guideline of the Commission; and
- (b) solicit expressions of interest from any prospective purchaser that the person reasonably believes to be qualified to purchase that security if, at least three days before completion of a trade to the prospective purchaser, a copy of the offering memorandum or other document describing the security as permitted by paragraph (a) is delivered to the prospective purchaser.

5.4**Post-distribution Communications**

- (1) Following completion of an exempt distribution of securities pursuant to Part II, an issuer shall not engage in or procure, either directly or through a market intermediary or otherwise, any act, advertisement, solicitation, negotiation or other conduct in furtherance of any dealings in relation to those securities or of any similar securities of the issuer, whether issued or to be issued.
- (2) Despite paragraph 5.4 (1) but subject to paragraph 5.4 (3), following completion of an exempt distribution, an issuer may issue a press release and may place a tombstone-type advertisement in print media regarding the details and completion of the distribution.
- (3) A tombstone-type advertisement as permitted by paragraph 5.4 (2)
 - (a) shall be limited to factual content only;
 - (b) shall state on its face that it is made as a matter of record only and is not an offer to procure or deal in any securities;
 - (c) shall not invite any person to contact the issuer or any other person in order to obtain more information concerning any securities; and

- (d) may not be placed more than once in any single media publication and may not be placed in a newspaper more than 30 days after the completion of the distribution.

5.5**List of Invitees**

Every licensed dealer participating on behalf of the vendor in the distribution of a security pursuant to an exemption under 3.1, 3.2, 3.3 or 3.4, and if there is no dealer, the vendor, shall maintain a record of the names and addresses of all persons to whom the offering memorandum or other material has been forwarded.

PART VI**RESALE RESTRICTIONS****6.1****Resale Restrictions**

- (1) The holder of a security purchased pursuant to an exemption provided for in 3.1, 3.2, 3.3 or 3.4 may not trade the security except to another person qualified to purchase these securities or pursuant to an exemption provided for in these Guidelines, unless and until the following conditions are met:
 - (a) the issuer has become a reporting issuer;
 - (b) the Commission has registered a prospectus qualifying a secondary distribution of the securities acquired in the exempt distribution and:
 - (i) the issuer does not make any public offering of securities of the same or an equivalent class (or securities into which the securities acquired in the exempt distribution are convertible), until at least six months has elapsed since the completion of the secondary offering; or
 - (ii) the issuer has completed a public offering of securities of the same or an equivalent class (or securities into which the securities acquired in the exempt distribution are convertible), and at least six months has elapsed since the completion of that public offering;
 - (b) no unusual effort is made to prepare the market or to create a demand for the security that is the subject of the trade;
 - (c) No extraordinary commission is paid to any person in respect of the trade; and
 - (d) If the selling security holder is an insider or officer of the issuer, the selling security holder has no reason to believe that the issuer is in default of securities legislation in any jurisdiction.

- (2) An issuer shall not undertake a public offering of its securities qualified by prospectus until at least six months has elapsed since the completion of any exempt distribution by the issuer of securities of the same or an equivalent class or of securities convertible into the securities to be offered.
- (3) Sub-paragraph (a) of paragraph 6.1 (1) does not apply to trade in a non-voting debt security that is not convertible into a share or other equity security.

PART VII COMING INTO FORCE

7.1 Effective Date

These guidelines come into force on **June 15, 2008**.

**Form XD F-1
NOTICE OF EXEMPT DISTRIBUTION**

This is the form required under 4.1 of Guidelines XD.

INSTRUCTION: Provide full and complete particulars with respect to each item below. If any item does not apply to the proposed trade or distribution, provide a brief explanation as to why the item does not apply.

Information about the issuer

Item 1: The full name of the issuer of the securities to be distributed, the address of its registered office and the issuer's jurisdiction of incorporation.

Item 2: The address and telephone number of the principal business office of the issuer. If the issuer is a foreign person, the name and address of its agent in Jamaica.

Item 3: The names and residential addresses of the directors of the issuer.

Item 4: The general nature of the business activity actually carried on or to be carried on by the issuer.

Item 5: A table showing the capitalization of the issuer, together with a description of the amount and classes of outstanding securities of the issuer.

Item 6: The names and addresses of all persons beneficially owning 10% or more in aggregate of the outstanding stock of the issuer.

Information about the proposed distribution

Item 7: Names and addresses of proposed underwriters of the issue or any licensed dealers expected to participate in the distribution.

Item 8: The amount and type of securities to be offered and the specific exemption or exemptions under Regulation XD that are applicable to the distribution.

Item 9: The names, addresses and holdings of any beneficial owners of securities who will be selling securities as part of the offering (selling security holders).

Item 10: The estimated net proceeds to be derived by the issuer and selling security holders from the securities being offered.

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Item 11: Details of distribution arrangements, including whether underwriters or agents of the issuer will participate in the distribution and (if known) whether the distribution will be by way of a firm underwriting or on a best efforts or agency basis.

Item 12: The approximate price (or price range) at which it is proposed that the security shall be offered.

Item 13: The approximate date on which the proposed offer of the security will be made and the expected time-frame to complete the distribution.

Item 14: The purposes for which the proceeds of the distribution will be applied, including details regarding the repayment or refinancing of existing debt, purchase of or payment for property, redemption or resale of existing securities etc.

Item 15: The names of any promoters¹ of the issuer and details of any promoter's relationship with the issuer.

Item 16: Information as to each other jurisdiction in which the offering is proposed to be made and whether such offering will be an exempt offering or will be made through a prospectus in such jurisdiction

¹ The term "promoter" means

- (1) a person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes the initiative in founding, organizing or substantially reorganizing the business of an issuer, or
- (2) a person who, in connection with the founding, organizing or substantial reorganizing of the business of an issuer, directly or indirectly receives in consideration of services or property, 10 per cent or more of any class of securities of the issuer or 10 per cent or more of the proceeds from the sale of any class of securities of a particular issue, but a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter if he does not otherwise take part in founding, organizing or substantially reorganizing the business.

Item 17: Particulars as to any proposed eventual public offering in Jamaica of the securities to be issued

Certifications

I have reviewed this Form XD F-1Notice of Exempt Distribution (“Notice”) of [name of issuer]. Based on my personal knowledge of the information provided in this Notice, after due inquiry, I certify that this Notice is true and correct in all respects. I understand that this Notice will be relied upon by the Financial Services Commission in considering the applicability and compliance with Regulation XD under the *Securities Act*.

(signature of director)

(signature of director)

Name and address:

Name and address:

Date: _____.

IT IS AN OFFENCE UNDER THE *SECURITIES ACT* TO MAKE A MISREPRESENTATION IN THIS REPORT

**Form XD F-2
EXEMPT DISTRIBUTION REPORT**

This is the form required under 4.3 of *Guideline XD*.

Issuer Information

Item 1: State the full name of the issuer of the security distributed and the address and telephone number of its head office.

Item 2: State whether or not the issuer is a reporting issuer.

Details of Distribution

Item 3: Complete the following table with respect to each purchaser. This will help you in completing the remainder of this report.

Full name, address and telephone number of each purchaser	Number and type of securities purchased	Total purchase price (\$JA)	Exemption relied on	Date of distribution

Item 4: Complete the following table for each jurisdiction (Jamaica and foreign jurisdictions) where purchasers of the securities reside. Do not include in this table securities issued as payment for commissions or finders fees disclosed under item 7 below.

Jurisdiction where purchasers reside	Number of purchasers	Price per security (Jamaican \$) ¹	Total value raised from purchasers in the jurisdiction (Jamaican \$)
Jamaica			
Other jurisdiction ²			
Total number of purchasers			
Total dollar value of distribution in all jurisdictions (Jamaican \$)			

Note 1. If securities are issued at different prices list the highest and lowest price the securities were sold for.

Note 2. Add rows as necessary. List each jurisdiction on a separate row.

Commissions and finders' fees

Item 5: Complete the following table by providing information for each person who has received or will receive compensation in connection with the distribution(s). Compensation includes commissions, discounts or other fees or payments of a similar nature. Do not include payments incidental to the distribution such as legal, accounting, printing, advertising or similar services.

Full name and address of person being compensated	Compensation paid or to be paid (cash or securities)				Total JA \$ value of compensation	
	Cash (\$JA)	Securities				
		No. and type	Price per security	Exemption and date of distribution		

Certificate

On behalf of the issuer, I certify, after diligent inquiry, that all information contained in this report is true.

Date: _____

Name of issuer

Print name, title and telephone number of person signing

Signature

Item 6: State the name, title and telephone number of the person who may be contacted with respect to any questions regarding the contents of this report, if different from the person signing the certificate.

IT IS AN OFFENCE UNDER THE *SECURITIES ACT* TO MAKE A MISREPRESENTATION IN THIS REPORT