

**ROLE, FUNCTIONS AND ACHIEVEMENTS OF THE SECURITIES
COMMISSION: THE COMMISSION'S PERSPECTIVE**

**PRESENTATION TO THE JAMAICAN BAR ASSOCIATION CONTINUING
LEGAL EDUCATION SEMINAR - BRACO VILLAGE RESORT, RIO
BUENO, TRELAWNY, JAMAICA - JUNE 14, 1997**

**PREPARED BY: MR. A. B. STEWART STEPHENSON
FORMER EXECUTIVE DIRECTOR
SECURITIES COMMISSION
ATTORNEY-AT-LAW**

INTRODUCTION

The Securities Commission came into existence on the 6th December, 1993, following the gazetting of a Ministerial Order bringing the Securities Act, 1993 into force. However, the Commission effectively began operations on the 1st June, 1994, with the appointment of its first Executive Director, Mr. A. B. Stewart Stephenson. He was recruited from the private sector with the assistance of Messrs. KPMG Peat Marwick, Management Consultants, who were contracted to recruit candidates for the post.

Composition of Commission

The Commission currently comprises seven (7) persons drawn from diverse professions within the Jamaican Society and is chaired by Professor Alfred A. Francis, Head of the Department of Economics at the University of the West Indies. The Secretary is Mr. Gladstone Lewars, a Chartered Accountant. To date the Commission has held sixty-nine (69) meetings.

Location

The Commission is located on the 5th Floor of the Bank of Jamaica Building by virtue of a lease agreement with the Bank. This Building was selected as an appropriate location from which to conduct the Commission's operations, not only because of the facilities which it offers, but primarily because of the image of being at the centre of the Financial Industry and working side-by-side with the other major regulatory agency, the Bank of Jamaica.

Staffing

Since the 1st June, 1994, when the Commission commenced its operations, it has constantly been engaged in building an efficient administrative base from which to pursue its activities. This has meant from day one undertaking the recruitment of staff, which has basically been timed to reflect the various stages of development of the Commission's work. The Commission has a **full-time Administrative Staff of fourteen (14) persons**, including its Executive Director. The services of a **part-time Local Consultant** has also been engaged. She assisted the Commission in its initial start-up operations and has vast experience in the Securities Industry having been for many years, General Manager of the Jamaica Stock Exchange.

The other members of the Commission's full-time staff include a Legal Officer, Senior Research Officer, Financial Analyst, Securities Inspector and a Senior Examiner, all assigned to the Compliance Department; an Administrative Manager; and a Registrar. The Registrar is responsible for receiving and processing applications to the Commission for licensing and registration. Thereafter, she is responsible for ensuring that all reports submitted by Licensees under the Act, are received on time. The remaining staff members are an Accountant, Accounts Clerk, Executive Secretary, Receptionist/Typist, Office Helper and Messenger.

Compliance Department

The Compliance Department consists of two (2) Units, an Enforcement Unit and an Inspection and Examination Unit. The **Enforcement Unit** is responsible for undertaking investigations and may also initiate prosecutions. It is headed by the Legal Officer and also includes the Financial Analyst and Senior Research Officer. The **Inspection and Examination Unit** undertakes on-site inspections and audits of the Licensees' offices and their records. It is headed by a Securities Inspector, supported by a Senior Examiner.

The Commission intends later this year to strengthen its Compliance Department by increasing the staffing from five (5) to eleven (11) Officers through the recruitment of three (3) Research Officers for the Enforcement Unit and a similar number for the Inspection and Examination Unit. It is also proposed to increase the entire staff complement of the Commission this year from fourteen (14) to twenty-three (23) persons.

New Executive Director

On the 1st June, 1997, Mr. A. Earl Melhado, Attorney-at-Law, assumed the position of Executive Director, replacing Mr. A. B. Stewart Stephenson whose three (3) year Contract with the Commission expired on the 31st May, 1997. Messrs. Price Waterhouse and Associates, Management Consultants, assisted in recruiting the new Executive Director.

Expansion of Offices

With the expected increase in staffing, the Commission will this year be forced to find alternative accommodation as the Bank of Jamaica is unable to provide the additional 2,500 sq. ft. of office space needed to supplement the existing 1,530 sq. ft. presently

leased from the Bank.

Funding for the Commission's Operations

The operations of the Commission are currently being partly funded by budgetary allocations from the Ministry of Finance and the remainder from licensing fees. In its first Financial Year 1994/95, the Commission received all its funding of \$12.81 million from the Government of Jamaica. During the **Financial Year 1995/96**, the Commission received a Government allocation of **Ja\$11.0 Million**. During the **Financial year 1996/97**, the Commission was expected to begin collecting licensing fees from the Jamaica Stock Exchange, Dealers and Investment Advisers and its budgetary allocation was reduced to **\$9.61 Million**. The Commission was therefore expected to raise some **\$8.842 Million** in fees to supplement its **projected Annual Budget of \$18.452 Million**. With the proclamation of Regulations to the Securities Act by the Minister of Finance in May last year, the Commission began collecting fees from the Jamaica Stock Exchange, Dealers and Investment Advisers. Fees collected totalled \$8.560 Million. For the current **Financial Year 1997/98**, the Commission's Budget has been increased to \$34.945 Million to cover projected staff recruitment and costs for relocation of the office. \$19.976 Million of this amount has been allocated by the Government with the remainder to be raised from licensing fees.

International Assistance

Both international agencies, the World Bank and the United States Agency for International Development (USAID) provided material assistance to the Commission in the initial stages of its development. This assistance was welcomed and came in the form of legal and technical consultancies, as well as the provision of furniture and office equipment.

Exchange of Information with Foreign Financial Regulators

The Bank of Jamaica, which is the regulator for Banks and Financial Institutions, has over the years shared information with other banking regulators world-wide regarding illicit trading activities. Indeed, since the advent of the Securities Commission, the Bank of Jamaica has sent several Warning Notices advising the Commission of illegal schemes and activities detected by other banking regulators overseas. The Commission also shares information with the United States Securities and Exchange Commission. Section 5(2) of the Securities Act enables the Commission in undertaking its investigations to "...enter into arrangements with any body or person recognised by the

Commission as having specialised knowledge of any matter being investigated by it..."

SECURITIES AND CAPITAL MARKET REGULATION

Securities and Capital Markets regulation fall within the jurisdiction of two (2) main regulators namely, the Bank of Jamaica and the Securities Commission. Both institutions are statutory bodies which report to the Minister of Finance. Securities issued by banks, merchant banks and other financial institutions are regulated by the Bank of Jamaica in exercise of its authority under the Banking Act and the Financial Institutions Act. The **Bank of Jamaica** exercises absolute authority over the regulation of banking activity undertaken by those institutions which it licenses. On the other hand, the **Securities Commission** has authority over securities issued by all other institutions.

The securities coming under the **jurisdiction of the Securities Commission** fall into two (2) categories namely, those traded on the Equities Market and those on the Money Market.

The Equities Market

The Stock Exchange in Jamaica was established in 1968 under the guidance of the Bank of Jamaica to co-ordinate the activities of traders and persons who bought and sold shares on behalf of individuals and companies. Before this, Jamaicans could only buy and sell securities of companies through banks, lawyers and other individuals upon payment of Government's Transfer Tax and Stamp Duty. The **Jamaica Stock Exchange Ltd. (JSE)** was incorporated as a private limited liability company and began operations in February, 1969, with the objectives of assisting in the promotion and development of a vibrant capital market and ensuring the orderly trading of listed securities.

The Commission licenses and regulates the JSE which provides the market for secondary trading in equities. There is limited trading on the "over the counter" market (OTC) as this market remains relatively underdeveloped. In regulating the activities of the JSE, the Securities Commission retains oversight jurisdiction of this self regulating body. Indeed, under Section 23 of the Act, the Commission may direct the Board of the Stock Exchange to remove or suspend the Manager from Office, if the Commission thinks it necessary in the public interest or for the protection of investors.

All rules governing the operations of the JSE, its listed companies and licensed Brokers, are **subject to approval by the Securities Commission**. Hence, the JSE's Rules regarding take-overs and mergers of listed companies and its Disciplinary Rules, fall within the ambit of the Securities Commission. In exercising its regulatory functions, the Commission during 1996 approved new rules for the Exchange, including a Revised Take-Overs and Mergers Code for listed companies, a Disciplinary Code for Broker Members and rules relating to delinquent clients of Broker Members. In addition, Section 76 of the Securities Act enables the Commission with the approval of the Minister of Finance to make rules for the proper regulation of the Securities Industry.

Under Section 18 (4A) of the Securities Act, the JSE is liable to "... pay the prescribed licence fee to the Commission within thirty days after the commencement of the Securities (Amendment) Act, 1996". **The Second Schedule** to the Securities (Licensing and Registration) Regulations, 1996, requires the JSE to pay an **Annual Licence Fee** to the Commission "... which shall be **paid on a monthly basis**, such payment to be made no later than the last day of the month following the month for which the fee is due". This Annual Licence Fee is to be calculated at "... 0.08% of the total value of all trading activities on the stock market for each day of the financial year of the Exchange". With effect therefore, **from the 15th May, 1996**, the JSE has been required to **pay licensing fees to the Commission** calculated as outlined above.

The Money Market

On the **Money Market** side of the equation, the volume of securities being traded in the financial sector is staggering. Here we are concerned with trading in instruments such as Treasury Bills, Local Registered Stocks, Bonds and Corporate Paper (commonly referred to as commercial paper). Research into **trading in commercial paper** reveals that many public and private companies prefer to float their own commercial loans by issuing promissory notes, rather than seeking "higher interest loans" through the commercial banks. In January 1996, commercial paper was attracting interest rates at an average of 42 - 44% p.a. However, interest rates this year have decreased steadily and are now down to 16 - 18% p.a. In excess of **Ja.\$20 Billion** in commercial paper is being traded monthly for periods averaging thirty (30) days. The major user of this method of funding is the **manufacturing sector**.

Regulation of Investment Funds

The **regulation of Investment Funds**, including Pension Funds, falls under the

jurisdiction of the Superintendent of Insurance, since all the Investment Funds are held by insurance companies and Unit Trust Schemes. The Superintendent exercises authority under the Insurance Act and the Unit Trusts Act.

The recent advent of Mutual Funds within the Securities Industry in Jamaica has created somewhat of a dilemma. As the Unit Trusts Act specifically relates to those Investment Funds administered by Trustees, Mutual Funds fall outside the ambit of that Act and are therefore not subject to direct regulation by the Superintendent of Insurance. However, the Securities Act now includes provisions governing the regulation of **Mutual Funds** and Rules to monitor their operation are expected later this year. **Unit Trust Schemes** are specifically exempt under the Securities Act, but they may in future be regulated by the Securities Commission.

FUNCTIONS AND POWERS OF THE COMMISSION

The Securities Commission is required under Section 5(1) of the Securities Act, 1993, to:

- (a) Regulate the Securities Industry and ensure that appropriate standards of conduct and performance are maintained in the Industry;
- (b) Consider applications for licences or registration and to grant or refuse such licenses or registration or to suspend or cancel any licences or registration so granted;
- (c) Advise the Minister on all matters relating to the operation of the Act as it thinks fit or as requested by the Minister;
- (d) Promote public understanding of the law and practice relating to the Securities Industry;
- (e) Enforce the rules of a recognized Stock Exchange, whenever the Commission considers it necessary to do so; and
- (f) Perform such other duties as may be prescribed by the Act.

Section 5(2) of the Act empowers the Commission to:-

- (i) Carry out investigations in relation to the Securities Industry;
- (ii) Enter into arrangements with persons or organizations having specialized knowledge of any matter being investigated by the Commission;
- (iii) Summon and examine witnesses and administer oaths; and
- (iv) Request and examine documents and may indeed, require documents submitted before it to be verified by Affidavit.

Section 5(3) of the Act allows the Commission in undertaking its investigations, to take oral evidence from persons affected by the investigations or persons having an interest in the results of the investigation. By virtue of Section 6 of the Act, the Minister of Finance is entitled to give general directions regarding the policy to be pursued by the Commission, in relation to those matters which he considers as concerning the public's interest.

COMMISSION'S OBJECTIVES

The Commission's objectives during the **First Phase** of its operations included:-

- (1) The building of an efficient administrative base from which to pursue the operations of the Commission, with particular regard to staff recruitment and training.
- (2) Formulation of Amendments and Regulations to the Securities Act governing areas concerning:-
 - (a) Functions of the Commission and its ability to pursue investigations under the Act;
 - (b) The elimination of exemptions then granted to Dealers and Investment Advisers;
 - (c) Bringing within the ambit of the Act securities issued by private companies;
 - (d) The elimination of several categories of securities exempt under the Act;
 - (e) The creation of rules relating to continuous disclosure by issuers of securities;
 - (f) Creating a basis for enforcing Conduct of Business Rules, governing the relationship between Licensees and their clients;
 - (g) Increasing and streamlining the sentencing powers of the Courts under the Act; and
 - (h) Increasing the limitation period within which criminal prosecutions can be pursued under the Act.
- (3) Another objective was the hosting of Public Fora to introduce the proposed Amendments and Regulations to the Act.

- (4) Implementation of licensing and registration procedures for Dealers, Investment Advisers and their Representatives:
- (5) Completion of the two (2) major investigations then being undertaken by the Commission.
- (6) Approval of an academic course in securities as a criteria for registration of Representatives under the Securities Act.

SUMMARY OF THE COMMISSION'S ACHIEVEMENTS

With the completion of the licensing and registration process at the end of December, 1996 and publication of the initial List of Dealers, Investment Advisers and their Representatives on the 6th January this year and an additional List on the 13th March, 1997, the Commission has completed **Phase One** of its activities which could be recorded in history as "Chapter One - Birth and Development of the Commission". That phase of the Commission's activities has seen the completion of a number of achievements, including:-

- (i) Appointment of the first Executive Director on the 1st June, 1994.
- (ii) Acquisition of a three (3) year Lease of office space from the Bank of Jamaica which expires in June, 1997.
- (iii) Completion of fully furnished offices, with modern computer and telefax facilities.
- (iv) Recruitment of Staff - presently comprising fourteen (14) persons, including five (5) travelling officers.
- (v) Training of Staff - with five (5) members undergoing the Jamaican Securities Course conducted by the Jamaican Institute of Management. Five (5) Staff members, including the Executive Director, have also attended training courses in Washington, D. C. sponsored by the United States Securities Exchange Commission (USSEC) and Georgetown University. Members of Staff have also undergone computer training courses.
- (vi) Membership on the Council of Securities Regulators of the Americas

(COSRA) which is chaired jointly by the USSEC and the Brazilian Securities Commission.

- (vii) **The completion of seven (7) major investigations.**
- (viii) All necessary amendments to the Securities Act to enable the Commission to effectively undertake the regulation of the Securities Industry with power to impose appropriate administrative sanctions for breaches of the Act.
- (ix) Formulation of appropriate Regulations to the Act governing:-
 - (a) Licensing of Dealers and Investment Advisers and registering their Representatives.
 - (b) Licensing Fees for the Jamaica Stock Exchange, Dealers and Investment Advisers.
- (x)
 - (a) Approval of new rules for the Jamaica Stock Exchange, including a Revised Take-Overs and Mergers Code for listed companies, a Disciplinary Code for Broker Members of the Exchange and rules relating to delinquent clients of Broker Members.
 - (b) Approval of the status of Jamaica Stock Exchange as a "recognised stock exchange" under the Securities Act.
 - (c) Institution of monthly consultative meetings between the Securities Commission and the Jamaica Stock Exchange to facilitate exchange of information and closer monitoring of the Exchange's activities as a self-regulatory organization.
- (xi) Approval of the Jamaican Institute of Management's Jamaican Securities Course as one of the qualifying academic criteria for registration of Representatives on March 6th, 1996.
- (xii) Reappointment of Commissioners, under the chairmanship of Professor Alfred Francis, on the 27th June, 1996, who have now acquired considerable experience in securities market regulation.
- (xiii) Submission of Chairman's Report and the Commission's Audited Financial Statements to the Hon. Minister of Finance.

Investigations Undertaken by the Commission

Of the seven (7) investigations completed by the Commission, five (5) involved the trading of publicly listed stocks on the Jamaica Stock Exchange. The sixth and seventh involved the issuing of and dealing in securities on the Money Market.

The first investigation concerned allegations of breach of the Trading Rules of the JSE, market rigging and price manipulation, as well as insider trading. The allegations related to trading in the shares of a company in the Tourism Sector which has a total share capital of 536 million issued shares, with a current market value of approximately Ja.\$273 million. The main issues concerned the manner in which 120 million shares representing 44.8% of the company's Share Capital were traded on the stock market and the Exchange's role in monitoring the trade.

The second investigation concerned allegations of market rigging and price manipulation. The allegations pointed to trading by a Life Insurance Company, through an associated Broker on the Stock Exchange, in the shares of a banking company. The banking company has issued Share Capital of 193 million shares with a current market value of approximately Ja.\$2.068 billion.

The third investigation concerned a complaint of breach of the JSE's Disclosure Rules and allegations of insider trading by Officers of a listed banking company and its associated companies. The company has issued Share Capital of 721.6 million shares with a current market value of approximately Ja.\$2.078 billion.

The fourth investigation concerned a complaint that the Board of a listed company being **taken-over** by a private company, breached the JSE's Take-over Rules by failing to disclose relevant information. The undisclosed information (i.e. the 1978 valuation of the company's assets) formed the basis for determining the price offered to shareholders for their shares. In addition, there was a complaint that the Take-over Bid Circular sent to shareholders by the Board, failed to provide the previous year's Audited Financial Statements or a history of the company's profits.

The fifth investigation concerned complaints regarding the operations of a Real Estate Development Company which was trading its securities on the Money Market. This matter has been referred to the Director of Public Prosecutions for a determination as to whether criminal charges should be pursued.

The sixth investigation concerned a planned take-over of a listed company by a family owned company. The listed company is the parent company of a large group

The **fifth investigation** concerned complaints regarding the operations of a Real Estate Development Company which was trading its securities on the Money Market. This matter has been referred to the Director of Public Prosecutions for a determination as to whether criminal charges should be pursued.

The **sixth investigation** concerned a planned take-over of a listed company by a family owned company. The listed company is the parent company of a large group of companies. The Commission monitored the take-over to determine whether there was compliance with the requirements of the JSE's Take-Overs and Mergers Code. The company's Directors' Circular failed to comply with these requirements, in that it did not include a recent valuation of the company's fixed assets. The Commission therefore exercised its power under Section 23(1) of the Act by directing the JSE not to allow the transfer of the shares until the valuation was disclosed to shareholders. The company's Brokers attempted to transfer the shares on the Exchange, but this trade was blocked by the JSE which subsequently appealed to the Minister of Finance to overturn the Commission's directive. On the 6th May, 1996, the Minister ruled in favour of the Commission and upheld its directive.

The **seventh investigation** concerned a company which acted in breach of the provisions of the Securities Act by issuing and delivering a debenture to the complainant, without being the holder of a Dealer's Licence or applying to the Commission for such a Licence prior to the statutory deadline of 22nd June, 1996. The company also failed to comply with the Commission's Order to cease and desist all activities relating to securities business. This matter was also referred to the Director of Public Prosecutions.

In addition to the seven (7) major investigations, the **Compliance Department** has received **twenty-nine (29) complaints** from members of the public. Sixteen (16) of these complaints were lodged against **six (6) Broker Members** licensed to the JSE. The complaints against the Broker Members covered a wide range of concerns including, unsatisfactory management of client's accounts, disagreement over stocks purchased and non-receipt of share certificates and dividends. These were referred to the JSE for their investigation and subsequent reporting to the Securities Commission. **Thirteen (13) of the complaints** against Stockbrokers have since been resolved to the complete satisfaction of their clients, with only **three (3)** now outstanding. The remaining thirteen (13) complaints received by the Compliance Department were against non-brokers. The Commission has completed the processing of seven (7) of these complaints; one complaint is still before the Commission and the remaining five (5) which concerned dealing in securities by unlicensed companies, have been referred

to the Police.

Amendments and Regulations to the Securities Act

Proposals outlining amendments and supporting Regulations to the Securities Act were completed by the Commission and submitted to the Minister of Finance in March, 1995. The wheels of the legislative process however took sometime to turn and it was not until Friday 29th March last year, that Parliament passed the amendments. These amendments took effect when the Governor General assented, bringing the Securities (Amendment) Act, 1996, into force on the 23rd April, 1996.

The amendments to the Securities Act were designed to remedy several weaknesses in the Act and to streamline and make it more internationally consistent with the operations of Securities Commissions worldwide. The set of amendments and Regulations formulated by the Commission addressed the urgent need to license Dealers and Investment Advisers and register their Representatives under the Act. It also addressed the capability of the Commission to charge fees for licensing the Jamaica Stock Exchange, Dealers and Investment Advisers and registering their Representatives. Included in the Regulations is an Application Form for licensing Dealers and Investment Advisers and registering their Representatives. The Commission took some time in settling the Form as it wanted to ensure complete disclosure by Applicants, conscious of the fact that once it completed the licensing and registration process, it would bear the ultimate responsibility for safeguarding the interests of the Industry.

Also included in the amendments, are provisions strengthening the Commission's authority to take action upon completion of its investigations. The Commission has fairly wide powers under the Securities Act to investigate suspected violations of the law. However, it has no specific authority to initiate prosecutions and without that authority, prosecutions must be initiated either by the Police or the Director of Public Prosecutions. In light of the circumstances outlined earlier, the Commission on the conclusion of each of the first five (5) investigations had to rely on its **common law right** as a public institution and issued Statements outlining the findings in each case.

As a result, provisions were made in the amendments to enable the Commission to impose administrative sanctions on parties who, in its opinion, have contravened any of the provisions of the Securities Act or its Regulations. This route was preferred in the first instance, as against pursuing criminal sanctions under the Act. The Commission holds the view that given the very sensitive nature of the industry, once

it is satisfied that a provision of the Act or its Regulations has been contravened, then administrative sanctions should be applied and the imposition of criminal penalties reserved as a last resort, for severe offenders or repeated breaches of the Act.

Another concern addressed in the recent amendments, was the need to ensure that new securities instruments are regulated. To achieve this, the Minister of Finance now has the flexibility to add to the categories of "securities" falling within the ambit of the Act. This had become necessary because of the dynamic nature of the securities market and to ensure that all institutions involved in securities business are adequately supervised. One new area covered under the amendments concerns the definition of "deal" in relation to securities. Under **Section 2(1)** of the Act this definition has been expanded to cover the activity of "managing investments in securities," which relates to the management of portfolios by Fund Managers and Investment Advisers.

The remaining amendments to the Securities Act :-

- (a) limit the class of securities issued by private companies which are exempt under the Act, to stocks and shares only. This now allows for bonds, debentures, promissory notes etcetera issued to the public by these private companies, to be regulated by the Commission.
- (b) facilitate the execution of Warrants by the Commission to enter premises and examine and seize documents, when it is suspected that persons are operating as Dealers or Investment Advisers without first being licensed by the Commission.
- (c) require a company applying for an Investment Adviser's Licence to satisfy similar requirements as a company applying for a Dealer's Licence. The Act has also been amended to expand the categories of companies entitled to apply for licensing to include companies owned or supervised by citizens or habitual residents of Jamaica or member states of the Caribbean Community.
- (d) require persons being registered as Dealers' or Investment Advisers' Representatives to meet prescribed minimum qualifications and pay fees for being registered.
- (e) enable the Commission to regulate Mutual Funds, which have not traditionally been a part of our Securities Market. This amendment

provides that "... A company, whether incorporated in Jamaica or elsewhere, shall not in Jamaica issue or cause to be issued any invitation to any person to become a participant in a mutual fund, unless under a scheme approved by the Commission in accordance with regulations made under this Act."

- (f) enable the Commission to revoke a Declaration that a Stock Exchange is "recognised", where that Exchange is in breach of the requirements of certain provisions in the Act.
- (g) empower the Commission to impose administrative sanctions on the completion of an investigation. These include, issuing a written warning or a Cease and Desist Order; suspending or cancelling licences or registration; and instituting civil proceedings.
- (h) extend the period for instituting criminal prosecutions from three (3) to seven (7) years, in recognition of the complex nature of securities offences which are neither easily nor quickly detected and require lengthy investigations.
- (i) enable the "regulation making power" of the Commission to be strengthened and to allow for the imposition of fees and minimum requirements for licensing or registration. In addition, whereas the Commission was previously empowered only to make Regulations governing "dealing in securities," it is now authorised to make Regulations on the "issuing of securities." This is important as it will allow for rule-making of continuous disclosure requirements for issuers or securities, such as commercial paper, equities and bonds.

Licensing of Dealers and Investment Advisers

As previously mentioned, one of the main priorities for the Commission once the Amended Act and Regulations were in force, was to complete the task of licensing Dealers and Investment Advisers and registering their Representatives. These persons interface with the investing public.

COMMENCEMENT OF LICENSING AND REGISTRATION PROCESS

The process of licensing Dealers and Investment Advisers and registering their

Representatives was launched by the Commission at a Press Briefing on Monday 27th May, 1996. The Transitional Provisions of the Securities (Amendment) Act, 1996, required persons then operating as Dealers, Investment Advisers or their Representatives to apply to the Commission for a Licence or Certificate of Registration within sixty (60) days of the date of commencement of the Act, i.e. by the **22nd June, 1996.**

Persons who applied to the Commission within the two (2) months period were permitted under the Transitional Provisions to operate for a further six (6) months, during which time the Commission was required to determine whether or not a Licence or Certificate of Registration should be issued to each person.

All individuals and companies who had submitted applications for licensing were invited both orally and in writing to appear before the Commissioners to support their applications. The Commissioners received submissions from all Applicants appearing before them. After considering each application, the Commissioners advised the Applicant of their decision and reminded approved Applicants that until they were issued with their Licences and accompanying Certificates of Registration, if any, they were not entitled to publish any statements regarding the approval of their applications, as **this right was reserved by the Commission.**

Once an application had been approved by the Commissioners, the Applicant was advised in writing of the decision and requested to pay the appropriate fees based on the type of Licence granted, the number of Representatives registered to the Applicant and the number of branches, if any. After payment of the appropriate fees, the Applicant was given a receipt. Thereafter, a Licence was issued by the Chairman of the Commission and delivered to the Applicant. All Licences and Certificates of Registration were issued with effect from the 1st December, 1996. Those Applicants who failed to satisfy the requirements of the law or withdrew their applications, were requested to close their operations and cease dealing or giving investment advice in securities by the 22nd December, 1996.

Individuals or companies wishing to enter in the Securities Industry as Dealers, Investment Advisers or their Representatives, may now apply to the Securities Commission at any time for licensing or registration and will be duly licensed or registered, if they satisfy the criteria stipulated under the Securities Act and Regulations.

Under Section 2(1) of the Act, a **Dealer** is a person who carries on the business of dealing in securities, whether as principal or agent. Basically, **dealing in relation to securities** under the Act, means acquiring, disposing of, subscribing for or underwriting securities, or making or offering to make, or inducing or attempting to induce a person to make or offer to make, an agreement regarding securities. On the other hand, an **Investment Adviser** is a person who carries on an **investment advice business**, which means advising persons regarding investing in or the buying or selling of securities. Under the Act, Dealers and Investment Advisers are licensed, while their Representatives are registered.

In considering the **qualifications to be met** by persons applying to be licensed as Dealers or Investment Advisers and to be registered as Representatives, the Commission had to **establish educational and financial criteria** to be satisfied by all Applicants. These have been formulated and are embodied in the Securities (Licensing and Registration) Regulations, 1996 which were approved by the Hon. Minister of Finance on the 15th May, 1996 and published in the Jamaica Gazette on the 20th May, 1996.

EDUCATIONAL REQUIREMENTS

Regarding the educational qualifications the Commission took into consideration two (2) factors:-

Firstly, that there might be persons with appropriate academic qualifications who know little or nothing about the Securities Industry.

Secondly, there were persons already operating in the Industry with vast experience but who had limited academic qualifications. The Commission had therefore to establish criteria which blended academic qualifications with practical experience in the Industry.

In applying for a **Dealer's or Investment Adviser's Licence**, Applicants must satisfy the following requirements before a Licence will be granted by the Commission:-

- (i) (a) A Bachelor's or higher degree in Economics, Accounting or business related subjects; or
- (b) A professional qualification in Law or Accounting; or
- (c) A course in Securities approved by the Commission; and

- (ii) A minimum of two (2) years experience working in the Securities Industry.

Notwithstanding the requirements at (i) & (ii) above, persons engaged in continuous practice in managing or carrying on a business of dealing in securities and giving investment advice in securities for **at least five (5) years prior to the 15th May, 1996, being the date** appointed by the Minister for enforcement of the licensing requirements under the Act and Regulations, shall be eligible for licensing. With respect to persons applying to be registered as **Dealers' or Investment Advisers' Representatives**, in order to be eligible for registration by the Securities Commission, they must possess either:-

- (a) the academic qualifications listed in Category (i) for Dealers or Investment Advisers; or
- (b) a Diploma or Certificate in Economics, Accounting or business related subjects from a tertiary educational institution **approved by the Commission.**

Notwithstanding the requirements at (a) or (b) above, persons engaged in continuous practice in managing or carrying on a business of dealing in securities and giving investment advice in securities for **at least two (2) years prior to the 15th May, 1996,** shall be eligible for registration.

APPROVED SECURITIES COURSE

On examining the academic qualifications necessary for licensing and registration under the Securities Act, it will be noticed that provision has been made for acceptance of a course in securities approved by the Commission. In this regard, the Commission gave very serious thought to the concept of a standard course to be undertaken by all Applicants. However, as already indicated, the Commission has instead provided a flexible range of qualifications leading to eligibility for licensing and registration. The concept of a **standard course** in securities is however important and it might very well be that in future, the Commission will require all new Applicants to undertake such a course.

The **Jamaican Institute of Management**, in association with the Jamaica Stock Exchange, has been conducting the Jamaican Securities Course since April, 1994. Five (5) members of our staff have already graduated from the Course. This Course was **recently approved** by the Commission as one of the qualifying educational criteria for

companies. These Regulations have already been formulated and will be submitted to the Hon. Minister of Finance for his approval, following their discussion at islandwide Public Fora planned for later this year.

Proposals for future amendments and Regulations to the Act will cover the following areas:-

- (i) Rules relating to the issuing of Prospectuses;
- (ii) Rules relating to the detection and control of insider trading and insider reporting;
- (iii) Increasing and streamlining the sentencing powers of the courts under the Act; and
- (iv) Rules relating to the operation of Mutual Funds.

CONCLUSION

It is clear that the Securities Industry in Jamaica has a major impact on the performance of the financial sector and hence the economy. In regulating the industry, the Commission is mindful of the contribution which many small investors make to the development and growth of capital markets in emerging economies such as ours. The **Commission's Mission** is to ensure that the Securities Industry operates within rules that are well defined and transparent; that issuers of securities make regular and timely disclosure concerning the operation of their companies; and that Dealers in securities and Investment Advisers operate within rules which ensure the viability and integrity of the Industry.

PREPARED BY
A. B. STEWART STEPHENSON
ATTORNEY-AT-LAW
14th June, 1997
(c) All rights reserved