

CHAPTER 320B

MUTUAL FUNDS REGULATIONS, 2002

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Mutual Funds

Cap. 320B.

MUTUAL FUNDS REGULATIONS, 2002

2002/143.

Authority: These Regulations were made on 24th December 2002 by the Minister under section 56 of the *Mutual Funds Act*.

Commencement: 30th December, 2002.

PART I

PRELIMINARY

1. These Regulations may be cited as the *Mutual Funds Regulations, 2002*. Short title.

2. In these Regulations, Interpreta-
"affiliated person" means tion.

- (a) any individual, company or other entity that is
 - (i) the beneficial owner, directly or indirectly, of 20 per cent of the ordinary share capital of a company or that is able to exercise, directly or indirectly, 20 per cent or more of the total votes in that company;
 - (ii) controlled by a person or entity that falls within one or both of the descriptions given in sub-paragraph (i);
 - (iii) a member of a group of which a company that falls within sub-paragraph (i) or (ii) forms part;
- (b) any director or officer of that company or any of its affiliated persons as defined in paragraph (a); or

(c) any person being a promoter, broker, underwriter, banker, investment banker or professional adviser who has a relationship with the person or company as described in paragraph (a) or (b);

"constitutive documents" means the principal documents governing the formation and operation of the fund and includes the trust deed in the case of a unit trust, articles of incorporation in the case of a company, partnership deed in the case of a partnership, articles of organisation in the case of a society with restricted liability and all other material agreements;

"custodian" means a bank or other financial institution that keeps custody of stock certificates and other assets of a mutual fund, individual, or corporate client;

"fund" means a mutual fund as defined in the Act;

"holder" means a person that is entered in the register as the holder of a share in a mutual fund;

Cap. 324A. "licensed financial institution" means a licensee under the *Financial*
Cap. 325. *Institutions Act*, the *International Financial Services Act* or
Cap. 310. *the Insurance Act*;

"recognised market" means any stock exchange, over the counter market or other organised securities market that is approved by the Securities Commission.

PART II

OPERATION OF FUND

Contents of application for licence. First Schedule. **3.** (1) An application for a mutual fund licence shall be in the form, and shall contain the particulars, set out in the *First Schedule*.

(2) An application for a mutual fund administration licence shall be in the form, and shall contain the particulars, set out in the *Second Schedule*.

Second Schedule.

4. (1) An application form respecting the purchase of shares in a mutual fund shall not be supplied to any person that is not a holder of shares of the fund unless the form is accompanied by the offering document respecting the mutual fund.

Contents of offering document.

(2) The offering document of the mutual fund shall contain

(a) the information set out in the *Third Schedule*;

Third Schedule.

(b) information respecting all the payments that may be made from the fund, including payments in the form of commission payable to sales agents;

(c) the fees to be paid by a holder of shares for the performance of a service related to the share;

(d) a statement that discloses fully all material facts and risks inherent in an investment in the fund; and

(e) such other information as is necessary to enable investors to make an informed judgment concerning the investment proposed in the offering document including statistics of past performance or projections of performance.

(3) Where payments are represented in percentages, those percentages shall be expressed on a per annum basis.

(4) Where statistics of performance data or estimated yield are included in an offering document, advertisement or any other invitation to the public to invest, the method of calculation of the performance or estimated yield shall be clearly stated.

(5) Where a charge or fee is not disclosed in the offering document, it must be disclosed to a person proposing to invest in a mutual fund before the conclusion of the agreement respecting the investment.

5. Where a mutual fund has been in existence for more than one year, the administrator shall make available, for scrutiny to every person to whom an application form is given, a copy of the most recent audited accounts and annual report of the fund, and may also

Availability of report to applicant.

make copies available to a person upon request and payment of the relevant fee, if any.

Notification of changes to offering document. **6.** The operator of a fund shall take reasonable steps to ensure that amendments made to the offering document are notified in the same manner as the offering document was notified.

Constitutive documents. Fourth Schedule. **7.** (1) The constitutive documents of a mutual fund shall contain the information set out in the *Fourth Schedule*.

(2) The administrator or trustee of a fund, as the case may be, shall

(a) make the constitutive documents and other material documents available for inspection on request;

(b) notify holders of any change made to the documents referred to in paragraph (a).

Register of holders. **8.** A fund shall

(a) maintain a register of holders;

(b) advise the Securities Commission of the address where the register is kept; and

(c) submit a copy of the register to the Securities Commission within 3 months of the end of the financial year of the fund.

Display of licence. **9.** Every mutual fund or mutual fund administrator licensed under the Act shall display the licence at its registered or principal office in Barbados and shall produce such licence on request.

Conduct of general meetings. Cap. 308. **10.** (1) Where a fund that is not a company incorporated under the *Companies Act* declares in its constitutive or offering document that general meetings of the holders whose shares carry voting rights will be held, such meetings will be held in accordance with the constitutive or offering document.

(2) The directors of the fund shall ensure, where the constitutive or offering document does not provide to the contrary, that

- (a) the quorum for a meeting at which
 - (i) an ordinary resolution is to be considered shall be constituted by holders of 10 per cent of the shares in issue; and
 - (ii) a special or extraordinary resolution is to be considered shall be constituted by the holders of 25 per cent of the shares in issue;
- (b) where a quorum is not present within 30 minutes of the time appointed for the meeting, the meeting shall stand adjourned to the same day 2 weeks thereafter and at the same time and place and if at the adjourned meeting a quorum is not present within 30 minutes of the appointed time the shareholders present shall constitute a quorum;
- (c) votes cast shall be proportionate to the number of shares held or to the value of shares held;
- (d) an ordinary resolution may be passed by a simple majority of the votes of those present at a duly convened meeting;
- (e) a special or extraordinary resolution may be passed by two-thirds or more of the votes of those present and voting at a duly convened meeting;
- (f) holders shall have the right to vote by proxy;
- (g) provision shall be made for the holding of separate meetings for different classes of holders in the case where there is the likelihood of a conflict of interest between different classes of holders; and
- (h) every
 - (i) director, trustee, custodian, administrator and investment manager of the fund; or

(ii) a person affiliated to or with any person referred to in paragraph (1)

shall be prohibited from voting his or its beneficially owned shares at, or forming a quorum for, a meeting in which he or it has an interest in the business in respect of which a vote is being taken.

(3) An extraordinary general meeting shall be called for any business specified in the constitutive documents or offering document of the fund and notwithstanding anything contained therein shall be called for the following purposes

- (a) to amend the constitutive documents, except in the circumstances set out in section 31(2) of the Act;
- (b) to terminate the fund;
- (c) to increase the maximum fees paid to the administrator, directors of the fund or trustee or custodian; or
- (d) to impose fees that are not provided for in the constitutive document.

Publication
of financial
report.

11. (1) The administrator or trustee of a fund, as the case may be, shall cause a report of the fund's undertaking and performance to be published in respect of each preceding financial year.

(2) A report referred to in paragraph (1)

- (a) shall contain the audited financial statements of the fund; and
- (b) shall be distributed to holders within 4 months of the end of the fund's financial year.

Dealing day.

12. (1) A mutual fund shall appoint one day in every 4 months, herein referred to as a "dealing day", on which the value of each share owned by the fund is calculated based on the valuation of a share computed on the closing sale price of the shares traded on the dealing day.

- (2) Where
 - (a) the shares are not traded on the dealing day, the calculation shall be based on the average of the closing bid and offer price; and
 - (b) the shares have not traded for 9 months, the calculation shall be based on the "book value" of the shares.
- (2) A temporary change in the method of dealing may be made
 - (a) in exceptional circumstances, having regard to the interests of holders;
 - (b) where the circumstances in which the changes to be made are acceptable to the Securities Commission and fully disclosed in the offering document; and
 - (c) with the approval of the operator.
- (3) A permanent change in the method and frequency of dealing may be made only with the approval of the Securities Commission and the operator.
- (4) Where the administrator wishes to cease or suspend dealing in shares, the administrator shall immediately notify the Securities Commission of this; and thereafter the notice of approval by the Securities Commission of such suspension or cessation shall be published at least once a month during the period of suspension, in the newspaper (if any) in which the fund's prices are normally published, and in such newspapers as the Securities Commission may specify.
- (5) Suspension of dealings is permissible only in exceptional circumstances, having regard to the interests of holders or as provided in the offering documents.

Valuation
of shares.

- 13.** (1) The value of a share that is sold by a mutual fund that
- (a) is not listed or quoted on a recognised market shall be determined by a person approved by the Securities Commission that is qualified to value such investment;
 - (b) is an open-ended fund shall be
 - (i) in respect of the purchase price, the price equal to the net asset value determined at the last valuation date;
 - (ii) in respect of the redemption price, the net asset value of the share minus the fees and charges payable by the holder of the share.
- (2) The net asset value of a fund shall be calculated based on the total value of the shares computed on a dealing day.
- (3) For the purposes of this regulation the term
- (a) "open-ended mutual fund" means a mutual fund that does not limit the number of shares that may be sold or the number of times that shares may be traded;
 - (b) "net asset value" means the amount realised when the total value of all the shares owned by the fund minus the total liabilities owed by the fund is divided by the number of shares outstanding.

Redemption
of shares.

- 14.** (1) A mutual fund shall redeem shares of a holder upon receipt of a request in writing.
- (2) After the receipt of a properly documented request for redemption of shares the maximum interval between the dealing day applicable thereto and the payment of the redemption money to the holder may not exceed the earlier of the dealing day immediately following and one calendar month.
- (3) Where redemption requests on any one day exceed 10 per cent of the total number of shares in issue, the requests may be deferred for 7 days.

PART III

OPERATION OF FUND

15. (1) A person shall not be authorised or permitted to enter on behalf of the fund into underwriting or sub-underwriting contracts

Restriction on underwriting contracts.

(a) without the prior consent of the trustee or directors; and

(b) unless the constitutive document of the fund provides that

(i) all commissions and fees payable to any person under such contracts; and

(ii) all investments acquired pursuant to such contracts

shall form part of the fund's assets.

(2) Where cash forming part of the fund's assets is deposited with a financial institution that is the trustee or custodian, the administrator, or an affiliate of that institution, interest shall be paid on the deposit at a rate not lower than the prevailing commercial rate for a deposit of that kind, size and term in accordance with normal banking practice.

(3) Any transactions between the fund and the administrator, investment manager, the directors and trustees of the fund or any of their connected persons as principal shall be made only with the prior written consent of the operator, and shall be disclosed in the fund's annual report.

(4) All transactions carried out by or on behalf of the fund shall be at arms length and shall be disclosed in the fund's annual report.

16. (1) Advertisements and other invitations to the public, whether within or outside Barbados, to invest in the fund, including public announcements made by or on behalf of a Barbados-based mutual fund, shall be accurate and contain sufficient relevant information to ensure that they are not misleading.

Advertisements and invitations to the public.

(2) Where a mutual fund is described in any advertisement, invitation to invest or any other information published by or on behalf of the fund as having been licensed or authorised by the Securities Commission, it shall be stated in that advertisement that the grant of a licence or an authorisation does not render the Securities Commission liable for the financial soundness of the fund or the correctness of any statements made or opinions expressed in this regard.

Duties of
adminis-
trator.

17. An administrator shall

- (a) maintain the books and records of the fund and prepare the fund's accounts and reports, and at least one audited financial statement in respect of each financial year shall be sent to all registered holders within 4 months at the end of the financial year;
- (b) make the constitutive documents available for inspection by the holder in Barbados free of charge at all times during normal office hours at its place of business or that of the Barbados representative of the fund, and make copies of such documents available upon the payment of a reasonable fee;
- (c) maintain a portion of fund assets in cash and short-term highly liquid investments to enable the fund shares on demand, pay dividends, and make new redemption of portfolio purchases as opportunities arise;
- (d) be responsible for
 - (i) calculation of the fund's net asset value, preparation of the fund's prospectus and reports;
 - (ii) supervision of shareholder record-keeping; and
 - (ii) providing the custodian with documentation for the release of chase or securities.

18. (1) The administrator shall be subject to removal by notice in writing from the operator of the fund where

Removal of administrator.

- (a) the administrator goes into liquidation, becomes bankrupt or has a receiver appointed over its assets;
- (b) the operator is of the opinion and so states in writing that a change of administrator is desirable in the interests of holders; or
- (c) holders whose shares carry voting rights representing at least 50 per cent in value of the shares issued, deliver to the operator a written request to dismiss the administrator.

(2) The Securities Commission shall be informed by the operator of any decision to remove the administrator within 7 days of the decision.

(3) Where the administrator is dismissed or otherwise ceases to be the administrator of the fund, the operator, with the approval of the Securities Commission, shall appoint a new administrator immediately after the dismissal or other cessation.

19. A mutual fund administrator

Audit of accounts of administrator.

- (a) shall, not later than the date of the commencement of its business as an administrator, appoint an auditor to audit the accounts respecting the mutual fund administration business; and
- (b) shall have its accounts audited in accordance with International Accounting Standards.

20. (1) The administrator shall give notice in writing to the Securities Commission

Notice of failure to appoint auditor.

- (a) where it fails to appoint an auditor; or
- (b) if it intends to terminate the appointment of its auditor,

and shall in the notice state the reason for its failure to appoint an auditor or the reason of its intention to terminate the appointment, as the case may be.

- (2) Where an administrator
 - (a) fails to appoint an auditor under this regulation; or
 - (b) terminates the appointment of its auditor without appointing a replacement,

the Securities Commission may appoint an auditor, who shall have all the powers of an auditor appointed by the administrator to carry out an audit, and shall fix the remuneration to be paid by the administrator to the auditor.

(3) It is the duty of the auditor to note in his report to the Securities Commission any instances where the operations of the administrator might not in his opinion be in compliance with the requirements of the Act, the Regulations, the conditions and rules of the administrator's conduct or its by-laws.

Indebtedness
of mutual
fund
administra-
tor.

21. Where the mutual fund administrator is a subsidiary of another company,

- (a) any debt owed by the mutual fund administrator to its parent company shall not be settled without the prior written consent of the Securities Commission; and
- (b) the debt shall be subordinate to all other liabilities of the mutual fund administrator, both in terms of its entitlement to income and its rights in liquidation.

Statement
of accounts.

22. (1) The statement of accounts required under section 32 of the Act shall contain

- (a) an income statement;
- (b) a balance sheet;
- (c) statement of investment portfolio and portfolio transactions; and

- (d) a statement of changes in net assets.
- (2) An income statement referred to in paragraph (1) shall set out
 - (a) dividend revenue;
 - (b) interest revenue;
 - (c) every other item of revenue that is 5 per cent or more of total revenue;
 - (d) other revenue;
 - (e) management fees;
 - (f) audit fees;
 - (g) directors' fees;
 - (h) custodian's fees;
 - (i) legal fees;
 - (j) salaries, where the amount is 5 per cent or more of total expenses;
 - (k) the cost of providing information to holders of shares where the amount is 5 per cent or more of total expenses;
 - (l) every other item of expense that is 5 per cent or more of total expenses;
 - (m) other expenses;
 - (n) income before taxes;
 - (o) provision for income tax;
 - (p) extraordinary gains, losses and provisions for losses;
 - (q) net income for the accounting period;
 - (r) net income for the accounting period based on the average number of shares outstanding during the accounting period;
and

- (s) net income per share for the immediately preceding period based on the average number of shares outstanding during the accounting period.
- (3) A balance sheet referred to in paragraph (1) shall set out
 - (a) cash, term deposits and short term debt instruments, if such instruments are not included in the statement of investment portfolio;
 - (b) dividends and accrued interest receivable;
 - (c) accounts receivable in respect of shares sold;
 - (d) accounts receivable in respect of portfolio securities sold;
 - (e) every other class of asset that is 5 per cent or more of total assets;
 - (f) other assets;
 - (g) investments at market value with a notation of their cost;
 - (h) total assets;
 - (i) accrued expenses;
 - (j) liabilities in respect of portfolio securities purchased;
 - (k) liabilities in respect of shares redeemed;
 - (l) income tax payable;
 - (m) every other class of liability that is 5 per cent or more of total liabilities;
 - (n) other liabilities;
 - (o) total liabilities;
 - (p) total net assets and shareholders' equity; and
 - (q) net asset value per share.

(4) A statement of investment portfolio and portfolio transactions referred to in paragraph (1) shall set out the following:

- (a) the name of each issuer of securities held;
- (b) the class or designation of each security held;
- (c) the number or aggregate face value of each class or designation of securities held;
- (d) the market value of each class or designation of securities held;
- (e) the cost of each class or designation of securities held and, where the basis of computing cost is other than average cost, a statement of the basis of computing the cost;
- (f) the name of each issuer of every security purchased or sold during the period reported upon;
- (g) the class or designation of every security purchased or sold during the period reported upon;
- (h) the number or aggregate face value, by issuer, of securities of each class or designation purchased during the period reported upon and the total cost of purchasing securities of each such class or designation; and
- (i) the number or aggregate face value, by issuer, of securities of each class or designation sold during the period reported upon and the consideration for selling securities of each such class or designation.

(5) A statement of changes in net assets referred to in paragraph (1) shall set out the following:

- (a) net assets at the beginning of the period;
- (b) net investment income or loss;
- (c) aggregate proceeds on sale of portfolio securities;
- (d) aggregate cost of portfolio securities owned at the beginning of the period;

- (e) aggregate cost of purchases of portfolio securities;
- (f) aggregate cost of portfolio securities owned at the end of the period;
- (g) aggregate cost of portfolio securities sold;
- (h) realized profit or loss on portfolio securities sold;
- (i) distributions, showing separately the amount out of net investment income and out of realised profits on portfolio securities sold;
- (j) proceeds from securities issued;
- (k) the redemption price of securities redeemed;
- (l) net increase or decrease in unrealised appreciation or depreciation of portfolio securities;
- (m) net assets at the end of the period;
- (n) net asset value per share at the end of the period and at the end of each of the four immediately preceding periods;
- (o) distribution per share out of net investment income; and
- (p) distribution per share out of realised profits on portfolio securities sold.

Independent
administra-
tor for unit
trust.

23. (1) A mutual fund that is a unit trust shall have an administrator that is independent of a trustee or custodian appointed by virtue of the trust deed or other constitutive document of the trust.

Cap. 324A. (2) A person appointed as a trustee may be a financial institution licensed under the *Financial Institutions Act* or the equivalent law of a foreign jurisdiction.

(3) Where the trustee or custodian and the administrator of the fund are bodies corporate having the same ultimate beneficial owners, the trustee or custodian and the administrator of the fund shall be deemed to be independent of each other where

- (a) neither the trustee or custodian nor the administrator of the fund is a subsidiary of the other;
- (b) no person that is a director of the trustee or custodian is also a director or the administrator of the fund.

24. (1) The trustee or custodian, as the case may be, appointed by the mutual fund referred to in regulation 23 shall be responsible for the custody and control of all the property of the fund and hold it in trust for the investors, in accordance with the provisions of the regulations and the trust deed. Duties of trustee.

- (2) The trustee shall be responsible for the assets of the unit trust.
- (3) The trustee shall ensure
 - (a) that cash and registrable assets are registered in the name of or to the order of the trustee or custodian;
 - (b) that the sale, issue, repurchase, redemption and cancellation of shares of the fund are carried out in accordance with the provisions of the regulations and the trust deed;
 - (c) that the value of the shares is calculated in accordance with the provisions of the trust deed;
 - (d) that the investment and borrowing limitations set out in the trust deed are complied with; and
 - (e) that the fund is audited annually or more frequently as is necessary.
- (4) The trustee and custodian shall not issue shares or certificates unless or until subscription moneys have been paid in full.

25. (1) The administrator, trustee or custodian Liability of trustee or custodian for loss.

- (a) shall be liable to the investors for any loss suffered by them as a result of failure to perform obligations or the improper performance of them;

(b) shall be liable for any act or omission of any agent with whom bearer securities or investments or instruments of the fund are deposited.

(2) Where borrowing is undertaken for the account of the fund, assets of the fund may be registered in the name of the lender or of a nominee for the lender, and the trustee or custodian shall be liable for the acts and omissions of the lender and its agent in relation to such assets.

Circumstances under which trustee or custodian may retire.

26. The trustee or custodian shall not be permitted to cease to be the trustee or custodian unless immediately upon the cessation of the holding of the office of trustee or custodian a new trustee or custodian, approved by the Securities Commission, is appointed and assumes the relevant duties.

Independence of trustee or custodian.

27. Where the trustee or custodian and the administrator or the director of the fund are bodies corporate having the same ultimate beneficial owners, wherever incorporated, the trustee or custodian and the administrator or the director of the fund shall be deemed to be independent of each other where

(a) neither the trustee or custodian nor the administrator nor the director of the fund is a subsidiary of the other; and

(b) no person is a director of the trustee or custodian and the administrator of the fund.

PART IV

ADDITIONAL REQUIREMENTS FOR NON-BARBADOS BASED FUNDS

Replacement of representative.

28. Subject to the approval of the Securities Commission, the agent shall be replaced within 30 days, where the agent is dismissed, retires or ceases to be an agent or to perform any of the duties stipulated under the Act.

29. Copies of all contracts between the agent, the fund and the administrator shall be supplied to the Securities Commission, and copies of any subsequent amendments of these contracts shall be submitted to the Securities Commission.

Details of contracts to be supplied to Securities Commission.

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FIRST SCHEDULE

(Regulation 3(1))

Mutual Funds Act
Cap. 320B

Application for a Mutual Fund Licence

The Applicant:

1. Name: _____
2. Address: _____

3. Phone: _____
4. Registered office: _____

5. Names and addresses of the directors of the company, the managers of the society, or the general or limited partners in the partnership, as the case may be.

*6. (1) Application is for:

- (a) Mutual fund licence
- (b) Limited investors mutual fund licence
- (c) Exempt mutual fund licence

(2) In the case of an application for a Limited investors mutual fund licence, state

- (a) the names and addresses of the investors and the place of incorporation where relevant;
- (b) the reasons for setting up the fund in Barbados.

7. Description of Fund

*The Fund is

- (a) a company incorporated or registered under the *Companies Act*;
- (b) a registered unit trust;
- (c) a partnership;
- (d) a society with restricted liability within the meaning of the *Societies With Restricted Liability Act*.

The proposed date for the commencement of the Fund _____

8. Date and country of incorporation or registration:

9. Structure of Fund _____

*Tick the appropriate box.

10. Names of sub-funds (if any): _____

11. State

(a) whether the Fund has been licensed or permitted to operate in another jurisdiction, or has been refused a licence or permission to operate;

(b) whether the licence or permission to operate in the former jurisdiction had been revoked or suspended.

12. Investment Objective:

(a) Types of fund: _____

(b) Investor target group: _____

13. Quotation or listing on any stock exchange(s) (specify)

14. Regulatory bodies currently reported to and information required by these Regulators _____

15. Launch:

Date: _____

Place: _____

*16. Dealing and Valuation:

(a) Dealing: Daily Weekly Other

(b) Valuation of Assets - Daily Weekly Other

(c) Pricing: Forward Historic Other

*17. State whether shares to be offered for sale in Barbados:

Yes No

18. Minimum initial subscription, minimum subsequent subscription and minimum subsequent holding and currency of denomination:

19. Parties connected to the Fund:

(a) Administrator:

(i) Name: _____

(ii) Registered office and business address: _____

(iii) Phone number: _____

(iv) Indicate with a tick whether the administrator is a licensed financial institution

Yes No

(v) Date administrator licence issued: _____

(vi) Last renewal date of licence to financial institution:

*Tick the relevant box.

(vii) Date of appointment of administrator: _____

(viii) Contact person for the Exchange or Commission:

(ix) Enclose

(A) the administrator's letter of consent indicating acceptance of the appointment as administrator

(B) A summary of services to be provided

(x) Provide details of corporate or other structure and ownership, including indirect and beneficial ownership of administrator

(b) Trustee (if applicable):

(i) Name: _____

(ii) Registered office and business address: _____

Provide details of structure and ownership of the trust including name and address of ultimate beneficial owner:

Date of establishment of trust: _____

Date of appointment of trustee: _____

Place of registration: _____

(c) Agent

(i) Name of agent: _____

(ii) Registered office and business address: _____

(iii) Date of appointment of agent _____

Provided details of ownership or the corporate structure, including name and address of ultimate beneficial owner:

(iv) State the jurisdictions in which the agent has engaged in business within the last 5 years and describe the business activity engaged in

(v) State the name of contact person for the Exchange or Commission:

(d) Promoter:

(i) Name: _____

(ii) Registered office and business address: _____

- (iii) In the case of a corporation, submit letters of accreditation and, in the case of an individual, submit a police certificate of character or similar document.
- (iv) The reasons for promoting the establishment of the mutual fund in Barbados.
- (v) The jurisdictions in which the promoter has engaged in the promotion of a mutual fund or mutual fund business.

(e) The Auditor:

Name: _____

Business address: _____

Contact person for the Exchange or Commission: _____

Submit

- (a) auditor's letter indicating acceptance of the appointment as auditor,
- (b) the name of the fund in respect of which the auditor has been appointed,
- (c) statement indicating the period comprising the financial year of the fund and the dates for submission of financial statements and the accounting principles to be used.

20. Please enclose

- (a) Copy of the most recent audited accounts (unless the fund is licensed in a jurisdiction in which accounts are not required to be audited, in which case the most recent accounts)
- (b) Copy of the current offering document
 - (i) including, for each fund or sub-fund,
 - (A) the level of all charges payable by investor
 - (B) the level of all charges payable by fund

- (ii) including, for equity and bond funds,
 - (A) the investment objectives and borrowing powers
 - (B) the currency of denomination
- (iii) including, for specialised funds,
 - (A) the type of fund and applicable regulations
 - (B) the currency of denomination

*21. (a) State whether any one of the following is an affiliate of the fund

- (A) administrator
- (B) trustee of the administrator
- (C) director of the administrator

(b) Name of persons holding appointments as directors or officers with more than one of the affiliated companies

For and on behalf of:

Name of Mutual Fund

Date

*Tick the relevant box.

SECOND SCHEDULE

(Regulation 2)

Mutual Funds Act
Cap. 320B

Application for a Mutual Fund Administration Licence

A. The Administrator:

(1) Name: _____

(2) Address: _____

(3) Phone: _____

(4) Registered office: _____

* (5) Application is for:

(a) general administration licence;

(b) restricted administration licence.

(6) Date and country of incorporation or registration:

(7) (a) Where the applicant is a company, state

(i) place and date of incorporation;

(ii) authorised and stated share capital;

*Tick the appropriate box.

- (iii) names and addresses of shareholders owing 20 per cent or more of the shares in the company;
 - (iv) if applicable, the name of the Stock Exchange on which the company is listed;
 - (v) names and addresses of the directors;
 - (vi) names and addresses of its principal executive officers and resumé of each officer;
- (b) if the applicant is an individual, state, produce or produce evidence of
- (i) nationality;
 - (ii) place of birth;
 - (iii) date of birth;
 - (iv) address.
- (8) Licensed financial institution? Yes No
- (9) Date licence issued: _____
- (10) Last renewal date of licence: _____
- (11) Describe the mutual funds now being administered by the applicant and state for how long the applicant has been the administrator.
- (12) Provide details of ownership and the corporate structure, including name and address of ultimate beneficial owner:
- _____
- _____
- _____

B. The Auditor:

- (13) Name:
- (14) Business address:
- (15) Date of appointment of auditor:

C. Information to be submitted as part of application

Submit

- (a) where the application is for a restricted administration licence, the name and type of funds to be administered;
- (b) a summary of services to be provided by the administrator;
- (c) the resumé of each director and executive officer;
- (d) a statement setting out applicant's experience in administration of mutual funds;
- (e) a letter of accreditation of the administrator;
- (f) copy of the most recent audited accounts;
- (g) auditor's letter indicating acceptance of the appointment as auditor;
- (h) statement indicating the period comprising the financial year of the administrator, and the dates for submission of financial statements.

For and on behalf of:

Name of Mutual Fund

Name of Mutual Fund Administrator

By: (Names of Signatories)

Date

THIRD SCHEDULE

(Regulation 4)

Information to be disclosed in the Offering Document

A. Constitution of the Mutual Fund

(1) Name: _____

(2) Registered address and place: _____

(3) Date of the creation of the mutual fund, with an indication of its duration if limited.

(4) Statement indicating whether the fund is a company or other entity.

B. Investment objectives and restrictions

(5) Details of investment objectives and policy summary of the investment and borrowing restrictions.

C. Operators and Principals

(6) The names and registered addresses of the following parties:

(a) the directors of the mutual fund (if applicable)

(b) the administrator and its board of directors (if applicable)

(c) the trustee

(d) the investment adviser (if any)

(e) the agent (if applicable)

(f) the distribution company (if applicable)

(g) the auditors

D. Characteristics of units and shares

- (7) The minimum investment (if any)
- (8) The methods of calculating net assets and net asset value of units or shares.
- (9) Dealing days and frequency of valuation and dealing.

E. Application and redemption procedures

- (10) The procedure for subscribing and redeeming units and shares.
- (11) The maximum interval not exceeding 2 weeks between the request for redemption and the dispatch of the redemption proceeds.
- (12) The circumstances in which redemption of units and shares may be suspended or changed.
- (13) Except for funds authorised pursuant to subsection (1) of section 4 of the Act, a statement that no money should be paid to any financial intermediary in Barbados who is not a licensed mutual fund administrator or the agent duly appointed under Part IV of these Regulations or an intermediary licensed under the *Securities Act* Cap.318A.
- (14) Fees payable in respect of the redemption of shares.

F. Distribution policy

- (15) The distribution policy and the approximate dates on which dividends (if any) will be paid (if applicable)

G. Voting Powers

H. Fees and charges

- (a) The level of all fees and charges payable by an investor, including all charges levied on subscription and redemption and switching (in the case of umbrella funds).
- (b) The level of all fees and charges payable by the Fund, including management fees, custodian fees and start-up expenses.

- (c) Disclosure of entitlement to brokerage or other transaction benefits of any affiliated persons with the Fund.

I. Reports and accounts

- (16) The date of the Fund's financial year.
- (17) If there are bearer units in issue, information must be given regarding the name and address of the mutual fund administrator.

J. Warnings and Notices

- (18) The following statements and warnings must be prominently displayed in the offering document:

- (a) "Important Notice

Please consult your financial adviser or attorney-at-law if you do not fully understand the contents of this offering document or if you have any queries concerning the offering document."

- (b) A warning that the price of units or shares and the income from them (where income is distributed) are subject to fluctuation.
- (c) A statement that the directors of the Fund or the administrator accept responsibility for the information contained in the offering document as being accurate as at the date of publication.
- (d) If the nature of the investment policy so dictates, a warning that investment in the Fund is subject to abnormal risks, and a description of the risks involved.

K. General Information

- (19) A list of constitutive documents and an address in Barbados where they can be inspected free of charge or purchased if available for purchase.
- (20) The date of publication of the offering document.

FOURTH SCHEDULE

(Regulation 7)

Contents of the Constitutive Documents

A. Name and Structure of Fund

- (1) The name of Fund: _____
- (2) Type of Fund: _____
- (3) Address of Fund: _____

- (4) Names and addresses of directors, trustees, general partners, managers of societies with restricted liabilities:

- (5) Articles of Incorporation, trust deed, organisation or other constitutive document (as applicable):

- (6) By-laws or articles or governing rules: _____

- (7) Investment policy and objective:

- (8) Certificate of incorporation, certificate of organisation, registration of trust deed (as applicable):

Participating parties:

- (9) A statement specifying the participating parties including the administrator, trustee, and investment adviser (if appointed), and the name and address of the agent.
- (10) Governing law: _____

B. Requirements for unit trust schemes only:

- (a) a statement that the deed is binding on each holder as if he had been a party to it and so to be bound by its provisions and authorises and requires the trustee and the administrator to do as required of them by the terms of the deed;
- (b) a provision that a holder is not liable to make any further payment after he has paid the purchase price of his shares, and that no further liability can be imposed on him in respect of the shares which he holds;
- (c) a declaration that the property of the fund is held by the trustee on trust for the holder of the shares *pari passu* according to the number of shares held by each holder.

C. Appointment of Trustee:

- (1) Name of trustee: _____
- (2) Address of trustee: _____

- (3) Property to be held by trustee
- (4) Powers of trustee:

- (5) A statement setting out the duties of the trustee
- (6) Provision for the removal or retirement of the trustee

D. Appointment of Administrator: _____

(1) Name of administrator: _____

(2) Address of administrator: _____

(3) Duties of the administrator: _____

(4) Provision for the removal or retirement of the administrator

E. Investment and Borrowing Restrictions:

Provide a statement setting out

- (a) a list of the restrictions on the investments of the Fund;
- (b) the maximum borrowing limit of the Fund; and
- (c) the purpose for which the borrowing is permitted.

F. Valuation of Property and Pricing:

The following rules on valuation of property and pricing shall be stipulated:

- (a) the method of determining the value of the assets and liabilities of the property of the Fund and the net asset value accordingly;
- (b) the method of calculating the issue and redemption prices; and
- (c) the method of pricing and the circumstances under which the method may be changed.

G. Dealing, Suspension and Deferral of Dealing:

Provide a statement indicating

- (a) the date of the appointed dealing day;
- (b) the method of dealing;
- (c) the circumstances under which the dealing of shares can be deferred or suspended.

H. Fees and charges:

Provide a statement setting out:

- (a) The maximum percentage of the preliminary charge payable to the administrator out of the issue price of a share.
- (b) The maximum fee payable to the administrator out of the property of the fund, expressed as an annual percentage.
- (c) The maximum fee payable to the trustee.
- (d) The preliminary expenses to be amortised against the property of the Fund.
- (e) All other material fees and charges payable out of the property of the Fund.
- (f) The circumstances under which fees may be increased or reduced and the method to be employed for such increase or reduction.
- (g) Fees to be paid by holders of shares in respect of the redemption of shares.

I. Meetings and voting:

Provide information regarding

- (a) The holding and conduct of meetings and the voting rights of holders of shares.
- (b) The manner in which holders' meetings shall be conducted.

J. Disclosure of affiliated entities and transactions:

Provide a statement indicating:

- (a) the entities with which the Mutual Fund is affiliated;
- (b) transactions with affiliated persons respecting the mutual fund business;
- (c) the procedures for disclosure of transactions that are likely to affect, materially, the mutual fund business of the company or investment trust;
- (d) the safeguards to be established and implemented to ensure independent or "arms-length" transactions.

K. Distribution Policy and Distribution Date:

Provide

- (a) A statement respecting the distribution policy.
- (b) Where applicable, the date on which annual income, if any, will be distributed.

L. Annual Accounting Period:

Provide

- (a) The date on which the annual accounting period commences and ends.
- (b) A statement of the base currency of the fund.

M. Modification of the Constitutive Documents:

Provide information respecting:

- (a) The circumstances under which the constitutive document may be modified
- (b) The method by which such modification may be affected.
- (c) Notification of modification.

N. Termination of Fund:

Provide a statement setting out

- (a) the circumstances in which the Fund may be terminated;
- (b) how the investors will be refunded if the Mutual Fund is voluntarily wound-up.