ANTIGUA AND BARBUDA
SECURITIES (DISCIPLINE) REGULATIONS 2001
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ANTIGUA AND BARBUDA

STATUTORY INSTRUMENTS

2001, No. 37

Securities (Discipline) Regulations, made by the Minister under section 140 of the Securities Act and upon the recommendation of the Commission.

PART I

PRELIMINARY

Short title and commencement.

1. These Regulations may be cited as the Securities (Discipline) Regulations 2001 and shall come into force on a date to be appointed by the Minister.

Institution of disciplinary proceedings.

2. If it appears to the Commission in the light of an inspection conducted under section 135, or an investigation under section 136, of the Act that

(a) there are circumstances suggesting that the licensee is not a fit and proper person to continue to hold a licence;

(b) there has been a contravention by the licensee of the Act or any regulation made under the Act; or

(c) it is desirable for the protection of investors,

and the Commission decides that the matter should be the subject of disciplinary proceedings, the Commission shall refer the matter to the Disciplinary Committee for a determination.

Jurisdiction of Disciplinary Committee.

3. The Disciplinary Committee shall hear and determine disciplinary proceedings against a licensee referred to it by the Commission under regulation 2.

Composition of Disciplinary Committee

4. (1) The Disciplinary Committee shall comprise of two Commissioners and one other person who is considered to be of sufficient standing and have general experience to sit as a member of the Disciplinary Committee.

(2) The Commission shall appoint one of the Commissioners to be the chairman of the Disciplinary Committee.

Revocation of appointment of members of Disciplinary Committee.

5. The Commission may revoke the appointment of any member of the Disciplinary Committee if the Commission considers it to be desirable for the effective performance by the Disciplinary Committee of its functions.

Convening of Disciplinary Committee.

6. (1) If the Commission refers disciplinary proceedings to the Disciplinary Committtee, the chairman of the Disciplinary Committee shall convene a meeting of the Disciplinary Committee to hear and determine the matter.

(2) All members of the Disciplinary Committee must be present at a meeting to constitute a quorum.

Secretary.

7. (1) The Commission shall appoint a suitably qualified and experienced individual to act as secretary to the Disciplinary Committee to carry out its administrative functions.

(2) The secretary may sit with the Disciplinary Committee but may not take part in its deliberations.

Majority decision.

8. If the members of the Disciplinary Committee are not unanimous as to any finding, penalty or other matter, the decision of the Disciplinary Committee must be that of the majority provided that, if the members are equally divided, the decision must be that which most favours the licensee.

PART II

PRE-HEARING MATTERS

Statement of case.

9. Within 3 days of the referral of disciplinary proceedings to the Disciplinary Committee, the Commission shall serve on the licensee and the secretary to the Disciplinary Committee a statement of case consisting of the charge and a summary of the principal facts to be relied on.

Exchange of evidence.

10. After the service of a statement of case under regulation 9, except where the licensee has notified the Commission in writing that all charges are to be admitted,

(a) the Commission shall, within 7 days of the service of the statement of case, serve on the lic-

ensee and the secretary to the Disciplinary Committee copies of any documents on which it intends to rely and a list of the witnesses it proposes to call together with an outline of their evidence; and

(b) the licensee shall, within 14 days of the Commission complying with the requirement under paragraph *(a)*, serve on the Commission and the secretary to the Disciplinary Committee a statement of defence which must include

(i) its intended pleas to the charges,

(ii) the evidence of the Commission that is agreed,

(iii) the documents that are agreed,

(iv) the admission of facts the licensee makes, and

(v) a list of the witnesses it proposes to call together with an outline of their proposed evidence.

Directions by Disciplinary Committee

11. The Disciplinary Committee may give directions and take whatever other steps it considers appropriate for the clarification of the facts and issues and generally for their fair and efficient presentation.

PART III

THE DISCIPLINARY COMMITTEE HEARING

Notice of charges

12. The secretary to the Disciplinary Committee shall give the licensee and the Commission not less than 14 days written notice of the time and place of a hearing.

Adminission of charges

13. The licensee may admit all or any of the charges referred to in the Commission's statement of case by notice in writing to the secretary to the Disciplinary Committee not less than 2 days before the day of the hearing.

Attendance

14. (1) The licensee shall attend the hearing by its principal and may be represented by a legal practitioner.

(2) If the licensee fails to attend the hearing, the Disciplinary Committee may proceed in the absence of the licensee.

Burden and standard of proof.

15. (1) The burden of proof shall be on the Commission.

(2)The standard of proof shall be that applicable in civil proceedings (the balance of probability).

Evidence and directions.

16. Proceedings at the Disciplinary Committee hearing shall be governed by these Regulations and by the rules of natural justice, subject to which the Disciplinary Committee may

(a) admit any evidence whether oral or written, whether direct or hearsay, without any requirement that it be on oath, and whether or not the same would be admissible in a court of law;

(b) make directions with regard to the conduct of and the procedure at the hearing as the Disciplinary Committee considers appropriate for securing a proper opportunity for the licensee to answer the case against it and otherwise as may be just.

Conduct of hearing

17. In conducting the hearing the Disciplinary Committee may regulate its sittings and apply rules on procedure and practice as it sees fit, provided that

(a) the Disciplinary Committee shall act fairly and give the licensee a reasonable opportunity to make written or oral representations, to call witnesses and to cross-examine any witness called against the licensee;

(b) the Disciplinary Committee may determine the matter and any penalty on the basis of written evidence and representations if, having regard to the nature and gravity of the matter in issue, it is satisfied that it is suitable for determination and the licensee consents to the procedure being adopted;

(c) in determining the matter by way of oral hearing, the Disciplinary Committee

(i) shall hear the matter in private;

(ii) may permit the licensee to be represented by a legal practitioner;

(d) where the matter in issue against a licensee is found to be proved, the Disciplinary Committee shall, before exercising its disciplinary powers, allow the licensee, or anyone acting on its behalf, to address it in mitigation of penalty.

Record of hearing

18. (1) The Disciplinary Committee shall cause a record to be made of the hearing electronically or otherwise.

(2) The licensee may obtain a transcript or copy of the record on payment of the cost.

(3) The Disciplinary Committee shall transmit a copy of the record to the Commission.

Penalties.

19. (1) On each charge admitted or proved, the Disciplinary Committee may impose on the licensee a fine in an amount it considers appropriate but in any event

(a) in the case of an individual, a fine not exceeding $300,000; and

(b) in the case of a company, a fine not exceeding $500,000.

(2) The Disciplinary Committee may recommend to the Committee the suspension or revocation of a licensee under Part IV of the Act.

Decision.

20. Following the conclusion of the hearing of the disciplinary proceedings, the Disciplinary Committee shall deliver to the licensee and the Commission a written decision comprising a summary of

(a) the charges admitted;

(b) its findings, with a statement of its reasons, as to whether any charges not admitted are proved;

(c) its findings or views on any facts or matters to which it wishes to draw attention;

(d) any penalties and order for costs imposed; and

(e) any recommendation of suspension or revocation.

Costs.

21. The Disciplinary Committee may recommend to the Commission that each party to the disciplinary proceedings bear their own costs.

Made this 21st day of December, 2001.

Lester B. Bird,
Minister of Finance.

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