ANTIGUA AND BARBUDA

SECURITIES (ADVERTISEMENTS) REGULATIONS 2001

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ANTIGUA AND BARBUDA

STATUTORY INSTRUMENTS

2001, No. 41

Securities (Advertisements) Regulations made by the Minister under section 160 of the Securities Act, and upon the recommendation of the Commission.

Short title and commencement.

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

Interpretation.

2. (1) In these Regulations

"advertisement" includes every form of advertising, whether in a publication, or by the display of notices, signs, labels or showcards by means of circulars or other documents, by an exhibition of pictures or photographic or cinematographic films, by way of sound broadcasting or television, by the distribution of recordings, by computer output, or in any other manner, and "advertising" shall be construed accordingly;

"authorised person" means a person specifically authorised in writing by the Commission in respect of securities business;

"securities advertisement" means any advertisement for or in connection with securities investment or securities business.

(2) For the purposes of these Regulations an advertisement issued outside Antigua and Barbuda shall be treated as issued in Antigua and Barbuda if

(a) it is directed to persons in Antigua and Barbuda; or

(b) it is made available to persons in Antigua and Barbuda otherwise than in a newspaper, journal, magazine or other periodical publication published and circulating principally outside Antigua and Barbuda or in a sound or television broadcast transmitted principally for reception outside Antigua and Barbuda.

Restrictions on advertising.

3. Subject to regulation 4, only persons who are licensed by the Commission in respect of securities business, or an authorised person, shall issue or cause to be issued a securities advertisement in Antigua and Barbuda.

Exceptions from restrictions on advertising.

4. Regulation 3 does not apply to

(a) a securities advertisement issued or caused to be issued by, and relating only to securities issued by

(i) the Government of Antigua and Barbuda or the government of any country or territory outside Antigua and Barbuda; or

(ii) the central bank of any country or territory; or

(b) an advertisement which is a prospectus approved by the Commission.

Advertisements to comply with Schedule.

5. No licensee or authorised person, shall issue or cause to be issued, whether in Antigua and Barbuda or elsewhere, a securities advertisement unless the requirements of the Schedule are complied with in relation to that advertisement.

Advertisement directions.

6. (1) If the Commission considers that a securities advertisement issued, caused to be issued or proposed to be issued by a licensee or authorised person is misleading, the Commission may by notice in writing give the licensee or authorised person a direction under this regulation.

(2) A direction under this regulation may contain all or any of the following prohibitions or requirements

(a) a prohibition on the issue of advertisements of a specified kind;

(b) a requirement that advertisements of a particular description must be modified in a specified manner;

(c) a prohibition on the issue of any advertisements which are, wholly or substantially, repetitions of an advertisement which has been issued or is proposed to be issued and which is identified in the direction;

(d) a requirement to take all practical steps to withdraw from display in any place or from circulation any advertisement or any advertisements of a particular description specified in the direction;

(e) a requirement, in respect of a particular advertisement, that a correction be published in the manner and form specified by the Commission.

Advertisements to be copied to the Commission.

7. (1) A licensee or an authorised person shall, 14 days prior to the date of first use, forward to the Commission a copy of every securities advertisement issued or caused to be issued by a licensee or an authorised person together with the advertisement filing fee set out in the Third Schedule to the Securities (Licences and Fees) Regulations 2001.

(2) If on receipt the Commission is not satisfied that the advertisement is in accordance with these Regulations the Commission shall before the date of first use require the licensee or the authorised person to make amendments as proposed by the Commission.

Contravention.

8. A person who issues or causes to be issued in Antigua and Barbuda a securities advertisement that is a prohibited issue under regulation 3, or does not comply with regulation 5, commits an offence and is liable on conviction to a fine not exceeding $50,000.

SCHEDULE (Regulation 5)

Prominence of required statements.

1. The significance of any statement or other matter required by the provisions of this Schedule to be included in a securities advertisement must not be disguised

(a) through lack of prominence in relation to the remainder of the advertisement; or

(b) by the inclusion of matter calculated to minimise the significance of the statement or the other matter required to be included.

Advertisements to be clear and not misleading.

2. (1) The content of a securities advertisement and the manner of its presentation shall appear in a context that is not likely to be misunderstood.

(2) A securities advertisement shall not contain any statement, promise or forecast unless the person issuing it has taken all reasonable steps to ensure that each statement, promise or forecast is not misleading in the form or context in which it appears.

(3) A securities advertisement shall not contain any statement purporting to be a statement of fact that the person issuing it does not reasonably believe at the time, on the basis of evidence of which it has a record in its possession, to be true.

(4) If the matter to which a securities advertisement relates is available

(a) in limited quantities,

(b) for a limited period, or

(c) on special terms for a limited period,

the advertisement may say so but, if that is not the case, the advertisement must not contain any statement or matter that implies it is so.

Advertisements to be distinguished from other matter.

3. (1) The terms of a securities advertisement and the manner of its presentation must be issued with the object of promoting the securities investment, securities business or person to which it relates.

(2) Where the medium in which an advertisement is carried contains or presents other matter the advertisement must be distinguished from that other matter so that the advertisement clearly appears as an advertisement.

Promotions to be genuine.

4. No securities advertisement shall be issued with the intention of persuading persons who respond to the advertisement to enter into an agreement, or use business services, of a description not mentioned in the advertisement.

Advertisements not to imply Government or Commission approval.

5. A securities advertisement must not contain any matter that states or implies that the securities investment or securities business that is the subject of the advertisement or any matter in the advertisement has the approval of a Government department or of the Commission.

Advertisements giving an overview of investment securities to be fair.

6. A securities advertisement that states only some of the rights and obligations of an investment in securities or only some of the terms and conditions of an agreement relating to securities investment must

(a) state a sufficient amount to give a fair view of the nature of the investment in securities, of the financial commitment undertaken by an investor in acquiring the investment in securities and of the risks involved; and

(b) state how a written statement of all of them can be obtained.

Comparison with other investments or services.

7. A securities advertisement must not compare or contrast one investment in securities with an alternative investment, or one securities service with an alternative securities service, unless the comparisons and contrasts are fair in relation to what is promoted and to the alternative having regard to what is not stated as well as to what is stated.

Taxation.

8. (1) A securities advertisement that refers to taxation must contain a warning that the levels and bases of taxation can change.

(2) A securities advertisement that contains any matter based on an assumed rate of taxation must state what that rate is.

(3) A securities advertisement that refers to a relief from taxation must

(a) state that the relief is that which currently apply; and

(b) contain a statement that the value of a relief from taxation depends upon the circumstances of the tax payer.

Past performance.

9. A securities advertisement must not contain information about the past performance of securities investments of any description unless

(a) it is relevant to the performance of the securities investment being advertised;

(b) the source of the information is stated;

(c) if the whole of the information is not set out

(i) what is included is not unrepresentative, unfair or otherwise misleading; and

(ii) the exclusion of what is excluded does not have the effect of exaggerating the success or performance over the period to which the information that is included relates;

(d) if the information is presented in the form of a graph or chart, no part of the information is omitted so as to give a misleading impression of the rate at which variable quantities or amounts have changed;

(e) the period which is selected as illustrating past performance is a period of not less than 3 years which period must end no more than 3 months before the date of the issue of the advertisement; and

(f) the advertisement contains a warning that the past is not necessarily a guide to the future.

Indication of the scale of business activities.

10. (1) A securities advertisement must not contain any statement indicating

(a) the scale of the activities, or

(b) the extent of the resources of the advertiser, or of any group of which the advertiser is a member,

so as to imply that the resources available to support the performance of the advertiser's obligations are greater than they are.

(2) Statements that relate to resources of members of a group other than the advertiser shall clearly state that fact.

Risk warnings.

11. (1) A securities advertisement must contain a statement in accordance with this clause warning of the risks involved in acquiring or holding the securities being advertised.

(2) The statement of an advertisement, relating to a security that can fluctuate in value in money terms, must draw attention to that fact and to the fact that the investor may not get back the amount invested.

(3) The statement of an advertisement, offering a security likely to yield a high income or as being suitable for an investor particularly seeking income from the investment, must draw attention to that fact and that income from the investment may fluctuate in value in money terms.

(4) The statement of an advertisement, which relates to a security denominated in a currency other than that of the country where the advertisement is issued, must draw attention to the fact that changes in rates of exchange between currencies may cause the value of the security to diminish or to increase.

(5) The statement of an advertisement, that contemplates the investor entering into a transaction the nature of which is such that the investor may not only lose what is paid at the outset but may incur a liability to pay unspecified additional amounts later, must draw attention to the fact that the investor may or, as the case may be, will have to pay more money later and that accordingly a transaction in that security can lose the investor more than the first payment.

(6) If a security

(a) is not traded on an established securities market, the statement must draw attention to the fact that there is no established market for the security so that it may be difficult for the investor to sell the security or for him to obtain reliable information about its value or the extent of the risks to which it is exposed; and

(b) is traded on an established securities market, but is dealt in so irregularly or infrequently, that there can be no certainty that a price of that security will be quoted at all times; or that it may be difficult to effect transactions at any price that may be quoted, the statement must draw attention to that fact.

Guaranteed returns.

12. A securities advertisement shall not describe a prospective investment return as being in any way guaranteed, secured, assured or promised, either expressly or impliedly, unless the advertisement has been approved in writing by the Commission prior to its issue.

Dating.

13. A securities advertisement in a newspaper publication must state in the bottom right hand corner of the advertisement the date on which it was first issued.

(2) A securities advertisement by way of a prospectus, brochure, handout or similar marketing literature must state the date on which it was first issued on the front outside cover page.

(3) A securities advertisement by way of cinematographic film, television broadcast, or computer output must bear the date on which it was first issued prominently at the beginning or end of the advertising material.

Identification of advertiser.

14. (1) A securities advertisement shall identify the licensee or authorised person who issues or causes the advertisement to be issued, and shall identify the person on whose behalf the advertisement is issued if different from the licensee or authorised person.

(2) Registered principals shall approve, initial and date each advertisement or item of sales literature before the date of first use of the material.

Made this 21st day of December, 2001.

Lester B. Bird,
Minister of Finance.

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