ANTIGUA AND BARBUDA

SECURITIES (ACCOUNTING AND FINANCIAL STATEMENTS) REGULATIONS 2001

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ANTIGUA AND BARBUDA

STATUTORY INSTRUMENTS

2001, No. 42

Securities (Accounting and Financial Statements) Regulations, made by the Minister under section 82 of the Securities Act, and upon the recommendation of the Commission.

PART I

PRELIMINARY

Short title, commencement and application.

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

(2) These Regulations apply to all broker dealers and limited service brokers licensed by the Commission.

Interpretation.

2. In these Regulations

"financial year" means

(a) the period of twelve months beginning with the day on which the licensee commences to carry on the business in respect of which the licence has been granted; and

(b) each subsequent period of twelve months beginning with the day following the day as at which an annual balance sheet of the licensee is prepared for the purposes of these Regulations; and

"licensee" means a broker dealer or limited service broker.

Contravention.

3. A licensee who contravenes any provision of these Regulations commits a disciplinary offence.

PART II

ACCOUNTING RECORDS

Duty to keep accounting records.

4. (1) A licensee shall keep accounting records which are sufficient to show and explain its securities transactions (whether they are effected on its own behalf or on behalf of others) and that

(a) disclose with reasonable accuracy, at any time, the financial position of the licensee at that time; and

(b) enable the licensee to prepare a balance sheet and a profit and loss account as at any time and which comply with the requirements of these Regulations.

(2) The accounting records must in particular contain

(a) entries from day to day of all sums of money received and expended by the licensee, and the matters in respect of which the receipt and expenditure takes place;

(b) a record of all assets and liabilities of the licensee including any commitments or contingent liabilities;

(c) entries from day to day of all purchases and sales of securities by the licensee distinguishing those which are made by the licensee on its own account and those which are made by it on behalf of others;

(d) entries from day to day of

(i) all customer money which is paid into or out of a customer bank account maintained for the purposes of these Regulations;

(ii) receipts and payments of customer money not passed through a customer bank account, identifying the persons to whom each receipt or payment relates;

(e) a record of balances

(i) on customer bank accounts;

(ii) balances with individual customers stating the name of each customer and the amount held or received for that customer; and

(f) details of all securities that are

(i) the property of the licensee, showing by whom they are held and whether, if held otherwise than by the licensee itself, they are so held as collateral against loans or advances; and

(ii) not the property of the licensee but for which the licensee is accountable, showing by whom and for whom they are held distinguishing those which are deposited with a third party whether as security for loans or advances made to the licensee or any related person or for any other purpose.

Records to be up to date.

5. The obligations under these Regulations are continuing obligations and continuous performance of them is required so as to ensure that records are updated daily.

Audit trail.

6. (1) Where these Regulations require information to be recorded it shall be recorded in such a way as to enable a particular transaction to be identified at any time and traced through from initiation of the order to final settlement.

(2) All records shall be arranged, filed, indexed and cross referenced so as to permit prompt access to any particular record.

Conformity with accounting standards.

7. The accounting records that a licensee is required to keep must conform to the requirements of international accounting standards.

Retention of records.

8. A licensee shall preserve the accounting records that it is required to keep under regulation 4 for at least 7 years from the date on which they are made.

Inspection of records.

9. Accounting records which are required to be kept under regulation 4 shall, at any time during the period in which they are required to be preserved, be produced to the Commission, or any person authorised by the Commission to receive the documents, on demand at a reasonable time and place that may be specified by the Commission or that person.

Securities exchange may impose additional requirements on members.

10. Nothing in these Regulations shall prevent a licensed securities exchange from imposing on licensees who are members of the exchange any further obligations or requirements that may be necessary with respect to

(a) the keeping of accounts, books and records;

(b) the making of periodic financial reports to the exchange in the form and manner required by the exchange;

(c) the audit of accounts;

(d) the provision of an appropriate trail;

(e) the information to be given in reports by auditors; or

(f) spot order checks.

PART III

FINANCIAL STATEMENTS AND RETURNS

Duty to prepare annual financial statements.

11. A licensee shall prepare for each of its financial year annual financial statements that must consist of

(a) a balance sheet as at the last day of the financial year; and

(b) a profit and loss account for the financial year.

Balance sheet to give a true and fair view.

12. The balance sheet must give a true and fair view of the state of affairs of the licensee as at the end of the financial year.

Profit and loss account to give a true and fair view.

13. The profit and loss account must give a true and fair view of the profit or loss of the licensee for the financial year.

Form and content of financial statements.

14. The financial statements of a licensee must comply with the requirements of international accounting standards.

Commission may require returns.

15. (1) The Commission may by written notice require a licensee to submit periodic returns to it.

(2) In addition to any periodic returns required under sub-regulation (1), the Commission may by written notice require a licensee, either generally or in a particular case or class of case, to submit exceptional returns to the Commission.

Licensee to obtain auditor's report, etc.

16. A licensee shall submit, within 1 month after the end of each financial year, its annual financial statements to its auditor for audit and shall obtain an auditor's report that complies with the requirements of regulation 18.

Annual financial statements, etc. to be submitted to Commission.

17. (1) A licensee shall submit, within 3 months after the end of each financial year, its auditor's report to the Commission together with

(a) its annual financial statements; and

(b) confirmation in writing that it has complied with every regulation that it is required to comply and any further information or confirmation as the Commission may require from time to time.

(2) Where the auditor's report is qualified on the grounds of the auditor's uncertainty as to the completeness or accuracy of the accounting records, that report must when submitted by the licensee to the Commission be accompanied by a written document signed by two directors stating whether all

(a) the accounting records of the licensee have been made available to the auditor for the purposes of the audit;

(b) transactions undertaken by the licensee have been properly reflected and recorded in its accounting records; and

(c) other records of the licensee and related information have been made available to the auditor.

Contents of auditor's report.

18. (1) The auditor's report must state whether the annual financial statements of the licensee have been audited in accordance with approved auditing standards.

(2) The auditor's report must also state whether in the opinion of the auditor

(a) the annual financial statements of the licensee have been properly prepared in accordance with these Regulations;

(b) in the case of the balance sheet, a true and fair view is given of the financial state of affairs of the licensee as at the end of the financial year;

(c) in the case of the profit and loss account, a true and fair view is given of the profit or loss of the licensee for the financial year;

(d) the licensee has, throughout the financial year, kept proper accounting records in accordance with the requirements of these Regulations;

(e) the licensee has kept customer money properly segregated in accordance with regulation 33 of the Securities (Conduct of Business) Regulations 2001;

(f) the balance sheet and the profit and loss account are in agreement with the licensee's accounting records;

(g) all the information and explanations obtained were to the best of the auditor's knowledge and belief necessary for the purposes of the audit;

(h) the licensee has maintained throughout the financial year systems adequate to enable the licensee to identify documents evidencing title, to securities held in safekeeping for the licensee's customers in accordance with regulation 24 of the Securities (Conduct of Business) Regulations 2001; and

(i) the licensee was in compliance with the requirements of regulation 24 of the Securities (Conduct of Business) Regulations 2001 as at the date on which the balance sheet was prepared.

Qualified reports.

19. (1) If the auditor is of the opinion that one or more of the requirements of regulation 18 have not been met, the auditor shall state that fact in the report and specify the relevant requirements and the respects in which they have not been met.

(2) If the auditor fails to obtain all the information and explanations that, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit, that fact shall be stated in the report.

(3) If the auditor is unable to form an opinion as to whether one or more of the requirements of regulation 18 have been met, the auditor shall state that fact in the report and specify those requirements and give the reasons why it was not possible to form an opinion.

Made this 21st day of December, 2001.

Lester B. Bird,
Minister of Finance.

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