

ANTIGUA AND BARBUDA

STATUTORY INSTRUMENT

2006, No. 4

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Securities (Foreign Securities and Intermediaries) Regulations, 2004 made by the Minister under section 160 of the Securities Act, No. 14 of 2001 and upon the recommendation of the Commission.

PART I

PRELIMINARY

1. These Regulations may be cited as the Securities (Foreign Securities and Intermediaries) Regulations 2006 and shall come into force on such date as the Minister may by notice, published in the *Gazette*.

Short title and commencement.

2. (1) In these Regulations

Interpretation.

“the Act” means the Securities Act;

No. 14 of 2001.

“foreign securities regulatory commission” includes any commission, body or agency that exercises regulatory control or oversight over the securities business of a foreign broker dealer, foreign limited service broker, foreign investment adviser, foreign securities exchange or the issue of securities.

(2) For the purpose of these Regulations, “foreign company”, “foreign custodian”, “foreign government”, “foreign investment adviser”, “foreign security”, “foreign securities exchange”, “foreign securities registry” and “member territory” used in the Securities Act shall have the meaning given under that Act.

No. 14 of 2001.

PART II

LISTING AND TRADING FOREIGN SECURITIES

3. (1) The following classes of foreign securities may be listed and traded on a securities exchange in accordance with the securities exchange’s listing rules and procedures for foreign securities:

Approved classes.

(a) securities issued by a foreign company formed or incorporated in the countries specified in Schedule I;

- (b) securities issued by a foreign company formed or incorporated in any country or jurisdiction, if the securities are listed on a foreign securities exchange that is recognized in the rules of a securities exchange that has been approved by the Commission under section 13 or 14 of the Act;
- (c) other foreign securities approved by the Commission on a case by case basis on application of the issuer of the foreign securities, a securities exchange or other interested party.

(2) Approval under sub-regulation (1)(c) is only approval in that particular case and does not constitute approval of the country or jurisdiction of incorporation or type of company generally.

Exemption from certain requirements.

4. A foreign company whose securities are listed on a securities exchange as a secondary listing pursuant to the Securities Act and rules of the Security Exchange shall be exempt from the requirements of:

S.I. No. 38 of 2001

- (a) the Securities (Continuing Disclosure Obligations of Issuers) Regulations; and

S.I. No. 40 of 2001

- (b) the Securities (Collective Investment Schemes) Regulations, if the foreign company is a collective investment scheme,

on condition that it submits all documents provided to investors, who participated in the issue of securities that are being listed pursuant to regulation 3, to the Commission.

PART III

LICENSING OF FOREIGN BROKER DEALERS AND LIMITED SERVICE BROKERS

Licensing requirement for foreign broker dealers and limited service brokers No. of 2001

5. (1) The Commission may grant an exemption from the requirements of Part IV of the Act to a foreign broker dealer or limited service broker licensed and regulated by a securities regulatory commission in a foreign country acceptable to the Commission provided that it,

- (a) registers with the Commission, and

- (b) trades securities for its own account or on behalf of foreign persons.

(2) In determining whether to grant an exemption under Regulation 5(1), the Commission shall, in evaluating the foreign broker dealer or limited service broker, consider whether the applicant has complied with—

- (a) the requirements of the foreign securities regulatory commission;
- (b) the provisions of sections 48(3)(d), (e), and (h) and 51(3)(d), (e) and (h).

(3) The Commission may require a foreign applicant for a licence as a broker dealer or limited service broker to—

- (a) disclose to the Commission any pending or previous disciplinary action taken against the applicant by a foreign securities regulatory commission within the past three years;
- (b) undertake, if a licence is granted by the Commission, to advise the Commission immediately should disciplinary action be taken against it by a foreign securities regulatory commission; and
- (c) submit to the enforcement and disciplinary jurisdiction of the Commission in connection with any activity or transaction involving a person resident in a member territory or effected through the facilities of a securities exchange.

6. (1) The Commission may grant an exemption from the requirements of the Securities (Accounting and Financial Statements) Regulations and Parts III and IV of the Securities (Conduct of Business) Regulations to a foreign broker dealer or limited service broker licensed and regulated by a securities regulatory commission in a foreign country acceptable to the Commission.

Exemption from certain regulations S.I. No. 42 of 2001 S.I. No. 39 of 2001

(2) In determining whether to grant an exemption under Regulation 6(1), the Commission shall in evaluating the foreign broker dealer or limited service broker take into consideration the following:

- (a) compliance with the requirements of the foreign securities regulatory commission as to the submission of audited financial statements;
- (b) financial statements filed with the licensed securities exchange.

PART IV

LICENSING OF FOREIGN INVESTMENT ADVISERS

Licensing requirement for foreign investment advisers

7.(1) A foreign investment adviser that desires to give advice on securities or holds himself out as carrying on the business of giving advice on securities must comply with this regulation.

(2) The Commission may grant an exemption from the requirements of Part IV of the Act to an investment adviser licensed and regulated by a securities regulatory commission in a foreign country acceptable to the Commission provided that he,

- (a) registers with the Commission, and
- (b) advises foreign persons concerning investment in securities.

(3) In determining whether to grant an exemption under Regulation 7(2) the Commission shall, in evaluating the investment adviser consider the applicants compliance with—

- (a) the requirements of the foreign securities regulatory commission; and
- (b) the requirements of sections 54(3) (c), (d) and (g).

(4) The Commission may require a foreign applicant for a licence as an investment adviser to

- (a) disclose the Commission any pending or previous disciplinary action taken against the applicant by a foreign securities regulatory commission within the past three years;
- (b) undertake, if a licence is granted by the Commis-

sion, to advise the Commission immediately should any disciplinary action be taken against it by a foreign securities regulatory commission; and

- (c) submit to the enforcement and disciplinary jurisdiction of the Commission in connection with any advice given to or activity or transaction involving a person resident in the member territory or effected through the facilities of a securities exchange.

PART V

LICENSING PRINCIPALS AND REPRESENTATIVES OF FOREIGN INTERMEDIARIES

8. (1) A foreign broker dealer, limited service broker or investment adviser licensed by the Commission pursuant to these Regulations must have at least one principal and one representative.

Licensing requirement for principals and representatives of foreign broker dealers, limited service brokers and investment advisers.

(2) A principal or representative of a foreign broker dealer, limited service broker or investment adviser licensed by the Commission pursuant to these Regulations who, conducts business or holds himself out as conducting business, within a member territory must be licensed by the Commission under sections 60 to 63 of the Act.

(3) For the purposes of sub-regulation (2) “conducts business or holds himself out as conducting business” includes but is not limited to

- (a) use of the telephone, mail, internet or e-mail to communicate with investors or potential investors located in a member territory, whether on a regular or sporadic basis;
- (b) visiting investors or potential investors in a member territory, whether singly or in groups, to communicate with them about an investment in securities, whether on a regular or sporadic basis;
- (c) registration as a principal or representative with a securities exchange in connection with a foreign broker dealer or limited service broker’s membership in a securities exchange;

- (d) engaging in any other activity or combination of activities described in
- (i) section 47 of the Act (in the case of a foreign broker dealer or limited service broker), or
 - (ii) section 53 of the Act (in the case of a foreign investment adviser)

if any part of the activity takes place in a member territory or is designed or intended to communicate with persons present in a member territory.

- (4) A person is subject to the requirements of subregulation (2) if he participates in any of the activities listed in subregulation (3) even if he is not physically present in the member territory when he participates in the activity.

SCHEDULE I

[Regulation 3]

APPROVED COUNTRIES

Australia
Canada
Finland
Iceland
Japan
New Zealand
Norway
Singapore
Sweden
Switzerland
United States of America
A member of the Caribbean Community (CARICOM)
A member of the European Union (EU) as at 1st July, 2003

Dated the 11th day of April, 2006.

L. Erol Cort,
Minister responsible for Finance.

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ANTIGA AND BARBUDA
SECURITIES (FOREIGN SECURITIES AND INTERMEDIARIES)
REGULATIONS, 2006

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