

THE SECURITIES (ACCOUNTING AND FINANCIAL REQUIREMENTS) RULES

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SECTION 45-SECURITIES (ACCOUNTING AND FINANCIAL REQUIREMENTS) RULES

Statutory Instrument

163 of 1993

152 of 1995

PART I

PRELIMINARY

- 1. These Rules may be cited as the Securities (Accounting and Financial Requirements) Rules. Title

- 2. In these Rules, unless the context otherwise requires-

Interpretation

"auditor", in relation to a licensee, means the person appointed by the licensee to be his auditor for the purpose of these Rules;

"customer bank account" means a bank account established for the purposes of rule twenty-two;

"financial year", in relation to a licensee, means-

- (a) the period of twelve months beginning with the day on which the licensee commences to carry on the business to which the licence relates; 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 Rules;

"licensee" means a dealer or investment adviser, as the case may be, who is licensed under Part IV of the Act, and "licensed dealer" shall be construed accordingly;

"licensed bank" means a bank registered under the Banking and Financial Services Act, or licensed or registered under any Act amending or replacing that Act; Cap. 387

"money" includes any form of money, whether represented by a cheque, or other payable order, or otherwise; and

"securities exchange" means a securities exchange established and operated by a company licensed to do so under the Act.

3. These Rules apply in relation to all dealers and investment advisers who are licensed under Part IV of the Act. Application

PART II

ACCOUNTING RECORDS

4. (1) A licensee shall, in respect of his securities business, keep accounting records which are sufficient to show and explain the licensee's transactions (whether effected on his own behalf or on behalf of others) and shall be such as to-

Duty to keep accounting records

- (a) disclose with reasonable accuracy, at any time, the financial position of the licensee at that time;
- (b) demonstrate whether or not the licensee is at that time complying with any requirements of or made under Part V of these Rules; and
- (c) 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 Rules.

(2) The accounting records shall 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 his own account and those which are made by the licensee on behalf of others;
- (d) entries from day to day of the receipt and dispatch of documents of title, or documents evidencing title, to securities which are in possession or control of the licensee;
- (e) entries from day to day of-

- (i) all money which is paid into or out of a customer bank account maintained for the purposes of these Rules;
- (ii) receipts and payments of customer money not passed through such a customer bank account, identifying the persons to whom each such receipt or payment relates;
- (f) a record of-
 - (i) balances on individual customer bank accounts;
 - (ii) balances with individual customers stating the name of each customer and the amount held or received for that customer; and
 - (iii) reconciliations made pursuant to rule five; and
- (g) details of all securities-
 - (i) which are the property of the licensee, showing by whom they are held and whether, if held otherwise than by the licensee himself, they are so held as collateral against loans or advances; and
 - (ii) which are 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.

5. (1) A licensee shall, at least once every two months, reconcile the balance on each customer bank account (as recorded by the licensee) with the balance on that account (as set out on the statement issued by the bank).

Reconciliation of customer money

(2) Where a customer bank account contains the money of more than one customer a licensee shall, in addition to the reconciliation made under subrule (1), at least once every two months reconcile the balance on that account with the total of the credit balances in respect of each customer (both totals as recorded by the licensee).

(3) Where any difference arises on reconciliation under subrule (1) or (2), the licensee shall correct it forthwith unless the difference arises solely as a result of timing differences between the accounting systems of the relevant bank and of the licensee.

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

Records to be up to date

7. (1) Information required by these Rules to be recorded 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.

Audit trail

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

8. The accounting records required to be kept by a licensee shall conform with statements of standard accounting practice issued by the Zambia Institute of Certified Accountants.

Conformity with accounting standards

9. A licensee shall preserve the accounting records which it is required to keep under rule four for six years from the date on which they are made.

Retention of Records

10. Accounting records which are required to be kept under rule four shall, at any time during the period in which they are required to be preserved, be produced to the Commission, or to any person with the authority of the Commission, on demand at such reasonable time and place as may be specified by the Commission or that person.

Inspection of records

11. Nothing in this Part (or in Part III) shall prevent a licensed securities exchange from imposing on licensees who are members of the exchange any further obligations or requirements which it thinks necessary with respect to-

Exchange may impose additional requirements on members

- (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; or
- (d) the information to be given in reports by auditors.

PART III

FINANCIAL STATEMENTS

12. A licensee shall, in respect of his securities business, prepare for each of his financial years annual financial statements which shall consist of-

Duty to prepare annual financial statements

- (a) a balance sheet as at the last day of the financial year;
- (b) a profit and loss account for the financial year.

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

Balance sheet to give a true and fair view

14. The profit and loss account shall give a true and fair view of the profit and loss of the licensee for the financial year.

Profit and loss account to give a true and fair view

15. (1) The financial statements of a licensee shall comply with the provisions of the Schedule (so far as applicable) with respect to the form and content of the balance sheet, the profit and loss account and any additional information to be provided by way of notes to the financial statements.

Form and content of financial statements

(2) Where compliance with the provisions of the Schedule, and the other provisions of these Rules as to the matters to be included in the licensee's balance sheet or profit and loss account or in notes to them, would not be sufficient to give a true and fair view, the necessary additional information shall be given in the balance sheet or profit and loss account or in a note to them.

(3) If in special circumstances compliance with any of these provisions is inconsistent with the requirements to give a true and fair view, the licensee shall depart from that provision to the extent necessary to give a true and fair view.

(4) If the licensee departs under subrule (3) from any such provision, particulars of the departure, the reasons for it and its effect shall be given in a note to the financial statements.

16. (1) A licensee shall submit its annual financial statements to its auditor for audit and shall obtain an auditor's report thereon which report shall comply with the requirements of rule eighteen.

Licensee to obtain auditor's report, etc.

(2) A licensee shall submit his auditor's report to the Commission together with-

- (a) the annual financial statements in accordance with rule seventeen; and
- (b) confirmation in writing that he has complied with each and every one of these Rules with which he is required to comply and such further information or confirmation as the Commission may by rules require from time to time.

(3) 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 shall when submitted by the licensee to the Commission be accompanied by a written document (signed in the case of a company, by two directors, and in the case of an individual, by the licensee) stating-

- (a) whether all the accounting records of the licensee have been made available to the auditor for the purposes of his audit;
- (b) whether all transactions undertaken by the licensee have been properly reflected and recorded in the licensee's accounting records; and

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

17. Each financial year a licensee shall submit his audited annual financial statements to the Commission within four months after the end of the financial year to which the annual financial statements relate.

Annual financial statements to be submitted to Commission

18. (1) The auditor's report shall be addressed to the Commission and shall state whether the annual financial statements of the licensee have been audited in accordance with approved auditing standards.

Contents of auditor's report

(2) The auditor's report shall 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 Rules;

(b) in the case of the balance sheet, a true and fair view is given of the 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 Rules;

(e) the licensee has, throughout the financial year, kept customer money properly segregated in accordance with Part IV;

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

(g) he has obtained all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit;

(h) the licensee has maintained throughout the financial year systems adequate to enable him to identify documents of title, or documents evidencing title, to securities held in safekeeping for the licensee's customers in accordance with rule twenty-nine of the Securities (Conduct of Business) Rules, 1993; and

(i) the licensee was in compliance with the requirements of rule twenty-nine of the Securities (Conduct of Business) Rules, 1993 as at the date on which the balance sheet was prepared.

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

Qualified reports

(2) If the auditor fails to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, he shall state that fact in his report.

(3) If the auditor is unable to form an opinion as to whether one or more of the requirements of rule eighteen have been met, he shall state that fact in his report and shall specify those requirements and give the reasons why he has been unable to form an opinion.

PART IV

CUSTOMER MONEY

20. This Part applies to any customer money held or received by a licensee in the course of carrying on securities business.

Application

21. For the purposes of these Rules customer money is money of any currency which, in the course of carrying on securities business, a licensee holds or receives on behalf of a customer or which a licensee owes to a customer.

Customer money

22. A licensee shall pay all customer money coming into his hands for or from a customer into a specially created customer bank account which is segregated from any account holding money belonging to the licensee.

Duty to segregate

23. Customer money, unless paid out to or for a customer, must be kept in an account at a licensed bank on trust for the customer.

Duty to keep customer money safe

24. Customer money shall be held by the licensee on trust for the respective customers for whom that customer money is received or held according to their respective shares in it.

Customer money to be held on trust

25. A licensee shall account properly and promptly for customer money and, in particular, shall ensure that-

Accounting for and use of customer money

(a) customer money and other money do not become mixed;

(b) the licensee can at all times be sure how much customer money stands to the credit of each customer; and

(c) money belonging to one customer is not used for another customer.

26. A licensee who receives or holds customer money shall open one or more customer bank accounts with a licensed bank.

Customer bank account

27. (1) Subject to subrule (2), money may be withdrawn from a customer bank account only if-
Payment only of a customer bank account

- (a) it is not customer money;
- (b) it is properly required for payment to or on behalf of a customer; or
- (c) it is properly transferred to another customer bank account or into a bank account in the customer's own name.

(2) A licensee may withdraw money from a customer bank account for or towards payment of its own fees or commission only if the fees or commissions accord with the arrangements agreed with the customer.

PART V

FINANCIAL RESOURCES

28. A licensed dealer shall provide and at all times maintain in his business as a dealer a net capital of not less than K50,000,000.
(As amended by S.I. No. 152 of 1995) Minimum net capital

29. A licensed dealer shall maintain at all times in his business as a dealer a liquidity margin of not less than 10 per centum of the minimum net capital requirement specified in rule twenty-eight as the case may be.
Minimum liquidity margin

30. If a licensed dealer becomes aware of his inability to comply with the minimum net capital or liquidity margin requirements, he shall forthwith-

- (a) notify the Commission, and any securities exchange of which he is a member; and
- (b) cease dealing in securities otherwise than for the purpose of giving effect to any agreement or arrangement entered into before the time when he becomes so aware.
Duty of licensed dealer

31. (1) For the purposes of this Part-

"approved assets" and "ranking liabilities" means such assets and liabilities as are specified to be approved assets and ranking liabilities by the Commission by notice;

"liquid assets" means such of the approved assets as are specified as liquid assets by the Commission by notice;

"liquidity margin" means the excess of liquid assets over ranking liabilities;

"net capital" means the excess of approved assets over ranking liabilities. Interpretation

(2) Where the Commission specifies any assets as approved assets or liquid assets, it may also specify the percentage of the value of the assets that may be taken into account, or the percentage of the minimum net capital or liquid assets that the assets may comprise, in computing the net capital or the liquidity margin as the case may be.

PART VI

APPOINTMENT OF AUDITORS

32. A licensee shall not commence securities business until he has appointed an auditor in accordance with these Rules.

Auditor required

33. A person shall not be qualified for appointment as the auditor of a licensee unless he is a member of the Zambia Institute of Certified Accountants and holds a valid practising certificate pursuant to sections 24 and 25 of the Accountants Act.

Qualification for appointment as auditor

34. (1) No person shall act as an auditor to a licensee if he is ineligible for appointment to the office.

Ineligibility on ground of lack of independence

(2) A person is ineligible for appointment as auditor to a licensee if he is-

- (a) a director, officer, employee, shareholder or partner of the licensee; or
- (b) a partner or employee of such a person.

(3) For the purposes of this rule an auditor of a licensee shall not be regarded as an officer or employee of the licensee.

35. A licensee shall ensure that the auditor appointed under these Rules has the powers and duties specified in rule thirty-six and that-

Engagement letters

- (a) those powers and duties are set out in an engagement letter;
- (b) the engagement letter is signed by the licensee and the auditor; and
- (c) the licensee retains a copy of the engagement letter.

36. (1) An auditor shall have-

Powers and duties of auditors

- (a) a right of access at all times to the accounting and other records of the licensee and all other documents relating to his business; and
- (b) a right to require from the licensee such information and explanations as he thinks necessary for the performance of his duties as auditor.

(2) An auditor shall submit a report to the Commission on the annual financial statements in accordance with these Rules and the report shall state the matters specified in rule eighteen.

(3) In preparing an auditor's report for the purposes of these Rules, the auditor shall carry out such investigations as will enable him to form an opinion as to the matters required by rule eighteen to be stated in his report.

37. A licensee shall, within seven days, give written notice to the Commission of the appointment, removal or resignation of an auditor.

Notification to Commission

38. (1) Where an auditor resigns or is removed by a licensee, a notice to that effect sent to the Commission under rule thirty-seven shall contain either-

Resignation or removal of auditors

(a) a statement signed by the auditor to the effect that there are no circumstances connected with his resignation or removal which the auditor considers should be brought to the attention of the Commission; or

(b) a statement signed by the auditor of such circumstances as are mentioned in (a).

(2) For the purposes of these Rules, a failure to appoint an auditor at the end of his term of office shall be deemed to be removal of that auditor.

PART VII

OFFENCES

39. Any person who contravenes any of the provisions of these Rules shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding twelve months or to both.

(As amended by Act No. 13 of 1994)

Offences

SCHEDULE

(Rule 15)

FORM AND CONTENT OF FINANCIAL STATEMENTS

PART I

GENERAL RULES

- 1.** Subject to the provisions of this Schedule, the annual financial statements of a licensee shall-
 - (a) in the case of the balance sheet show the items listed in the balance sheet format set out in Appendix 1 to this Schedule; and
 - (b) in the case of the profit and loss account show the items listed in the profit and loss account format set out in Appendix 2 to this Schedule.
- 2.** (1) In respect of every item shown in a licensee's balance sheet or profit and loss account or in notes thereto, the corresponding amount for the immediately preceding financial year shall also be shown.

(2) Where the corresponding amount is not comparable with the amount to be shown for the item in question in respect of the financial year to which the balance sheet or profit and loss account relates, the former amount shall be adjusted and particulars of the adjustment and the reasons for it shall be disclosed in a note to the accounts.
- 3.** In the case of a licensee who is sole proprietor, the items to be included in his financial statements prepared in accordance with these Rules shall be those which arise in the course of the securities business of that licensee.

PART 2

ACCOUNTING PRINCIPLES AND RULES

- 4.** Subject to paragraph 6, the amounts to be included in respect of all items shown in a licensee's balance sheet and profit and loss account shall be determined in accordance with the accounting standards and guidelines as approved or accepted by the Zambia Institute of Certified Accountants which are in force from time to time and with the following rules.
- 5.** Subject to paragraph 4, items shall be included in such a way as to reflect the substance and not merely the form of the underlying transactions and balances.
- 6.** If it appears to the licensee that there are special reasons for departing from any of the principles and rules stated above in preparing the licensee's financial statements in respect of any financial year the licensee may do so, but particulars of the departure, the reasons for it and its effect shall be given in a note to the financial statements.

APPENDIX 1

BALANCE SHEET FORMAT

A. FIXED ASSETS

I. Intangible Assets

1. Development costs
2. Goodwill (1)
3. Other

II. Tangible Assets

1. Freehold land and buildings
2. Leasehold land and buildings
3. Motor vehicles
4. Office equipment and computers
5. Fixtures and fittings
6. Payments on account
7. Other tangible assets

III. Investments

1. Loans to and shares in group companies and connected companies
2. Other listed investments
3. Other unlisted investments

B. CURRENT ASSETS

I. Physical stocks

II. Debtors (2)

1. Trade debtors (3)
2. Other debtors
3. Amounts due from connected and group companies

4. Prepayments and accrued income

III. Investments

IV. Cash at bank and in hand

C. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR

1. Bank loans and overdrafts
2. Subordinated loans (4)
3. Other debenture loans
4. Trade creditors (5)
5. Investments (short positions)
6. Income tax
7. Amount due to group and connected companies
8. Other creditors
9. Accruals and deferred income

D. NET CURRENT ASSETS (LIABILITIES)

E. TOTAL ASSETS LESS CURRENT LIABILITIES

F. CREDITORS: AMOUNTS FALLING DUE AFTER MORE THAN ONE YEAR

1. Bank loans and overdrafts
2. Subordinated loans (4)
3. Other debenture loans
4. Trade creditors (5)
5. Income tax
6. Amounts due to group and connected companies
7. Other creditors
8. Accruals and deferred income

G. PROVISIONS FOR LIABILITIES AND CHARGES

1. Commissions on indemnity terms

2. Pension and similar obligations
3. Taxation including deferred taxation
4. Other provisions

H. TOTAL ASSETS LESS TOTAL LIABILITIES

I. CAPITAL AND RESERVES

1. Called up share capital
2. Share premium account
3. Partners' or proprietor's capital accounts
4. Partners' or proprietor's current accounts
5. Revaluation reserve
6. Other reserves
7. Profit and loss account

Notes on the Balance Sheet Format

(1) GOODWILL

Goodwill shall be included only in so far as it was acquired for valuable consideration.

(2) DEBTOR'S

The amount falling due after more than one year shall be shown separately for each item included under debtors.

(3) TRADE DEBTORS

(a) Fees

Outstanding for more than 30 days

Outstanding for 30 days or less.

(b) Commissions

Outstanding for more than 30 days

Outstanding for 30 days or less.

(c) Other

Amounts outstanding for more than 30 days

Amount outstanding for 30 days or less.

(4) SUBORDINATED LOANS

- (a) Long term subordinated loans
- (b) Short term subordinated loans
- (c) Committed undrawn subordinated loan facilities
- (d) Bank Undertakings

(5) TRADE CREDITORS

- (a) Amounts due to be paid against delivery of securities
- (b) Amounts due to be paid in respect of securities transactions otherwise than against delivery of securities
- (c) Others

APPENDIX 2

PROFIT AND LOSS ACCOUNT FORMAT

A. DEALING

Gains/losses on principal dealings (trading)

- 1. equities
- 2. debt instruments
- 3. units in collective investment schemes
- 4. foreign exchange
- 5. other - specify

B. REVENUE

I. Commissions on transactions in collective investment schemes

- 1. authorised mutual fund and unit trust schemes
- 2. other - specify

II. Commissions on securities transactions

1. equities
 2. debt instruments
 3. other - specify
- III. Investment management fees
- IV. Fee income in respect of financial advice
- V. Company management fees
- VI. Trustee fees
- VII. Interest and dividends
 1. investments positions
 2. loan accounts and margin accounts
 3. in respect of balances in customer bank accounts
 4. other - specify
- VIII. Dealing and settlement services
- IX. Revenue from research and consulting services
- X. Retained underwriting and placing commissions
- XI. Other revenue - specify if material

C. EXPENDITURE

- I. Commissions
 1. paid to staff
 2. paid to other investment businesses
 3. other (specify)
- II. Salaries and other employment costs (exclusive of commission)
- III. Directors' emoluments
- IV. Staff bonuses
- V. Interest charges
 1. payable to customer in respect of customer's money balances

2. other (specify)

- VI. Establishment costs
- VII. Communications and marketing
- VIII. Office equipment and services
- IX. Provisions for losses, bad and doubtful debts
- X. Professional charges
- XI. Securities exchange and clearing house charges
- XII. Regulatory fees and expenses
- XIII. Audit fees (including expenses)
- XIV. Miscellaneous office expenses
- XV. Other expenditure - specify if material

D. PROFIT OR LOSS BEFORE TAXATION

E. TAXATION

F. PROFIT OR LOSS AFTER TAXATION

G. EXTRAORDINARY ITEMS

H. PROFIT OR LOSS FOR THE FINANCIAL YEAR