

GUYANA

No. 8 of 2002

REGULATIONS

Made Under

The Securities Industry Act 1998
(No. 21 of 1998)

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IN EXERCISE OF THE POWERS CONFERRED ON HIM BY SECTION 126 (1) AND (7) READ WITH SECTION 58 OF THE SECURITIES INDUSTRY ACT 1998, THE MINISTER OF FINANCE HEREBY MAKES THE FOLLOWING REGULATIONS:-

PRELIMINARY

- Citation.** 1. These Regulations may be cited as the Securities Industry (Disclosure by Reporting Issuers) Regulations 2002.
- Interpretation.** 2. In these Regulations –
- (a) “associate” in relation to any director or chief executive means -
 - (i) the spouse;
 - (ii) any son, daughter, step son or step daughter, or adopted son or daughter, under the age of eighteen years of the director or chief executive, or of the spouse of such director or chief executive;
 - (iii) any company of which the director or chief executive is a substantial shareholder, and the holding company or subsidiary of the company of which the director or chief executive is a substantial shareholder;
 - (b) “chief executive” means a person employed by an issuer who either alone or together with one or more other persons is or will be responsible under the immediate authority of the board of directors for the

conduct of the business of the issuer;

(c) “director” includes any person who occupies the position of a director, by whatever name called;

(d) “financial year” means the period in respect of which any profit and loss account of an issuer laid before its members in general meeting is made up, whether that period is a year or not;

(e) “principal activity” in relation to an issuer and its subsidiaries, means an activity which in the financial year contributes more than ten per cent of –

(i) the aggregate turnover; or

(ii) the aggregate results of all activities that –

(ai) showed profits; or

(aii) showed losses;

(f) “securities exchange” means the securities exchange (if any) on which the reporting issuer’s securities are listed or otherwise admitted to dealing;

(g) “substantial shareholder”, in relation to an issuer, means a person entitled to exercise, or control the exercise of, five percent or more of the voting power at any general meeting of the issuer;

(h) “transaction” includes two or more related transactions.

Application.

3. These Regulations shall apply to all reporting issuers of securities which are shares, warrants or corporate debt securities.

DISCLOSURE OBLIGATIONS**General obligation.**

4. (1) An issuer shall, generally and apart from complying with all the requirements of these Regulations, notify the securities exchange, the Council, and its members and other holders of its securities without delay of any major new developments in its sphere of activity which are not public knowledge and which information –

(a) is necessary to enable them and the public to appraise the financial position of the issuer and its subsidiaries;

(b) is necessary to avoid the establishment of a false market in its securities; or

(c) would be likely to bring about a material change in the price of its securities.

(2) Paragraph (1) shall not apply with regard to information about impending developments or matters in the course of negotiation where the securities exchange is satisfied by the issuer that disclosure to the public of such information might prejudice the issuer's legitimate interests and the securities exchange grants a dispensation from the requirement of paragraph (1).

**Delivery of accounts,
etc.**

5. The issuer shall send to –

- (a) the securities exchange;
- (b) the Council;
- (c) every member of the issuer; and
- (d) every holder of securities issued by the issuer,

a copy of the issuer's annual accounts, auditor's report and directors' report for the previous financial year of the issuer, not less than twenty-one days before the date of the issuer's annual general meeting nor more than six months after the end of that financial year.

**Information to
accompany directors'
report.**

6. The issuer shall include in or with the directors' annual report –

- (a) a description of the principal activities of the issuer and its subsidiaries and, where two or more such activities are so described, a statement giving in respect of each such activity the turnover and contribution to operating profit;
- (b) a geographical analysis of consolidated turnover and contribution to trading results of trading operations carried on by the issuer and its subsidiaries outside Guyana;
- (c) a statement showing -
 - (i) the name of every subsidiary, its principal country of operation, its country of incorporation and its main business;

- (ii) particulars of the issued share capital and debt securities of every subsidiary, provided that if, in the opinion of the directors of the issuer, the number of subsidiaries is such that compliance with this paragraph would result in particulars of excessive length being given, compliance shall not be required except in the case of subsidiaries carrying on a business the results of which, in the opinion of the directors, materially affected the amount of the profit or loss of the issuer or the amount of the assets of the issuer; and
 - (iii) the financial year of a subsidiary where this is different to that of the issuer;
- (d) a statement as at the end of the relevant financial year showing-
- (i) the interests of each director and chief executive of the issuer in the equity or debt securities of the issuer or any subsidiary, and of the associates of such director and chief executive in so far as is known or may be ascertained by reasonable enquiry; and
 - (ii) the details of any right to

subscribe for equity or debt securities of the issuer granted to any director or chief executive of the issuer, and of the associates of such director and chief executive in so far as is known or may be ascertained by reasonable enquiry, and of the exercise of any such right;

(e) the statement required by paragraph (d) must-

- (i) distinguish between beneficial and non-beneficial interests; and
- (ii) specify the company in which securities are held, the class to which those securities belong and the number of such securities held;

(f) in the event of operating results shown by the accounts for the period under review differing materially from any published forecast made by the issuer, an explanation for the difference;

(g) a statement by the directors as to the reasons for any significant departure from applicable standard accounting practices in Guyana;

(h) a statement as at the end of the financial year showing as regards, first bank loans and overdrafts and, secondly, other borrowings of the issuer and its subsidiaries, the aggregate amounts repayable-

- (i) on demand or within a period not exceeding one year;
 - (ii) within a period of more than one year but not exceeding two years;
 - (iii) within a period of more than two years but not exceeding three years;
 - (iv) within a period of more than three years;
- (i) in respect of the financial year, a statement of the amount of interest capitalised by the issuer and its subsidiaries during the year;
- (j) a statement as to the unexpired period of any service contract, which is not determinable by the employer within one year without payment of compensation (other than any statutory compensation), of any director proposed for election at the forthcoming annual general meeting or, if there are no service contracts, a statement of that fact;
- (k) summary particulars of any contract of significance subsisting during or at the end of the financial year in which a director of the issuer is or was materially interested, either directly or indirectly, or if there has been no such contract, a statement of that fact;
- (l) summary particulars of any contract of significance between the issuer, or one of its

subsidiary companies, and a controlling shareholder or any of its subsidiaries;

(m) summary particulars of any contract of significance for the provision of services to the issuer and its subsidiaries by a controlling shareholder or any of its subsidiaries;

(n) with effect from 1st January, 2002 a summary, in the form of a comparative table, of the financial results and of the assets and liabilities of the issuer and its subsidiaries, for the last [two] financial years, with any necessary explanations or adjustments for changes in capital to make the figures fully comparable one year with another.

Interim reports.

7. (1) The issuer shall prepare in respect of the first six months of each financial year of the issuer, unless that financial year is less than six months, an interim report containing the information required by paragraph (2) and, not later than four months after the end of that period of six months, the issuer shall-

(a) publish in at least two daily newspapers an announcement containing the information required by paragraph (2) to be contained in the interim report, the day after approval by or on behalf of its board of directors;

(b) send to the Council a copy of the interim report immediately on publication with the names of the relevant newspapers and the date of the publication; and

(c) as soon as reasonably practicable after such publication, send to the securities exchange and to every member and holder

of its securities a copy of the interim report.

- (2) Each interim report referred to in paragraph (1) shall include the following information, in respect of the issuer and its subsidiaries, on
- (a) turnover;
 - (b) interest paid and received;
 - (c) profit (or loss) before taxation and extraordinary items with separate disclosure of any items included which are exceptional because of size or incidence;
 - (d) taxation on profits (Guyana and foreign), in each case indicating the basis of computation;
 - (e) profit attributable to minority interests;
 - (f) profit attributable to shareholders before extraordinary items;
 - (g) extraordinary items (net of taxation);
 - (h) exceptional items (net of tax);
 - (i) profit attributable to shareholders;
 - (j) amount of dividend paid or proposed on each class of shares (with particulars of each such class) and the amounts absorbed thereby (or an appropriate negative statement);
 - (k) transfers to and from reserves;
 - (l) earnings per share calculated on the

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basis of profits before extraordinary items;

(m) comparative figures of the matters specified in subparagraph (a) to (j) inclusive for the corresponding previous period; and

(n) a statement as at the end of the six monthly period showing the interests of each director and chief executive of the issuer, and of their associates in so far as is known or may be ascertained after reasonable enquiry, in the share capital of the issuer and its subsidiaries; the statement shall distinguish between beneficial and non-beneficial interests, and specify the company in which shares are held and the number of such shares.

(3) Where the accounting information given in an interim report has not been audited that fact must be stated; if the accounting information contained in an interim report has been audited by the issuer's auditor, his report including any qualifications shall be set out in the interim report.

(4) Any preliminary announcement of results for the full year shall also contain the information required by paragraph (2).

acquisition or disposal
of assets.

8. (1) In the case of -

(a) any acquisition or disposal of assets by the issuer or any of its subsidiaries where -

(i) the assets being acquired or disposed of represent an amount in excess of fifteen per cent of the value of the issuer's assets or consolidated

assets, as the case may be, as disclosed in the last audited accounts;

- (ii) the assets are acquired from or disposed of to any of the issuer's or its subsidiaries' directors or chief executive, or any associate of any such director or chief executive; or
- (iii) the assets being acquired or disposed of are an interest in any company of which a substantial shareholder is a director or chief executive of the issuer or any subsidiary, or any associate of such director or chief executive;

(b) any disposal of assets by the issuer or any of its subsidiaries where the net profit before taxation earned by the assets which are the subject of the disposal is in excess of fifteen per cent of the issuer's consolidated pre-tax profit disclosed in the last audited accounts,

the issuer shall comply with the disclosure requirements of paragraph (2).

(2) Where paragraph (1) applies, the issuer shall notify the securities exchange, the Council and every member and holder of its securities without delay of the transaction including the following details -

- (a) the date of the transaction and the parties;
- (b) a general description of the nature of

the assets and, if these are shares in whole or part, the name and general description of the activities of the company in which the shares are or were held;

(c) the total consideration and other material terms;

(d) in the case of a transaction referred to in paragraph (1)(a)(i) or 1(b) -

(i) the basis of the valuation placed on the assets at the time of acquisition or disposal; and

(ii) in the case of a disposal, the excess or deficit of the proceeds over or under the book value;

(e) in the case of a transaction referred to in paragraph (1)(a)(ii) or (iii), the name of the director, or chief executive or associate concerned and –

(i) in the case of a director or chief executive, the office held;

(ii) in the case of an associate of a director or the chief executive, the nature of the relationship and the name of that director or chief executive and the office held.

Transactions with related companies where the issuer is a subsidiary.

9. (1) Where a transaction specified in paragraph (2) takes place between-

(a) the issuer and its holding company;

(b) the issuer and any subsidiary of its holding company other than a subsidiary of the issuer;

(c) a subsidiary of the issuer, and the holding company of the issuer; or

(d) a subsidiary of the issuer and any subsidiary of its holding company other than the issuer or any of its subsidiaries.

the issuer shall comply with the disclosure requirements of paragraph (3).

(2) For the purpose of this regulation, “transaction” means –

(a) an arrangement or agreement whereby the issuer directly or indirectly grants a loan or gives other financial assistance;

(b) an arrangement or agreement whereby the issuer provides security, whether by guarantee or otherwise, for the discharge of any obligation; or

(c) any transaction other than in the ordinary course of business.

(3) The issuer shall, where paragraph (1) applies, notify the securities exchange, the Council and every member and holder of its securities without delay of the transaction including the following details –

(a) the date of the transaction and the parties;

(b) the general nature of the transaction and, where the transaction involves the

making of a loan, the giving of financial assistance or the giving of any security, its amount or value.

**Prescribed
information to
shareholders.**

10. An issuer shall ensure that all the necessary facilities and information are available to enable holders of its securities to exercise their rights and, in particular-

(a) shall publish, in at least two daily newspapers , notice of every general meeting;

(b) inform holders of securities of the holding of meetings which they are entitled to attend;

(c) enable them to exercise their right to vote, where applicable;

(d) publish notices or distribute circulars giving information on-

(i) the allocation and payment of dividends and interest;

(ii) the issue of new securities, including arrangements for the allotment, subscription, renunciation, conversion or exchange of the securities; and

(iii) redemption or repayment of the securities.

**Substantial
shareholdings.**

11. An issuer shall notify the securities exchange, the Council and every member and holder of its securities without delay of any notification received by the issuer concerning substantial shareholdings pursuant to section 126 or 127 of the Companies Act 1991.

Meetings of the board of directors.

12. The date fixed for a meeting of the board of directors at which decisions on dividends, the annual results or the half-yearly report are expected to be made or at which any announcement of such matters is to be approved shall be notified to the securities exchange at least ten days in advance.

Decisions of the board of directors.

13. The issuer shall inform the securities exchange and the Council immediately after approval by or on behalf of its board of directors –

(a) a decision to declare, recommend or pay any dividend or to make any other distribution on its securities, and the rate and amount thereof;

(b) a decision not to declare, recommend or pay any dividend which would otherwise have been expected to have been declared, recommended or paid in due course;

(c) a preliminary announcement of profits or losses for any year, half-year or other period;

(d) a proposed change in the capital structure, including any redemption of its convertible securities; and

(e) a decision to change the general character or nature of the business of the issuer or its subsidiaries .

Council to be notified of certain decisions.

14. The issuer shall notify the securities exchange and the Council immediately of any decisions made in regard to –

(a) an alteration of the issuer's constitution;

(b) any proposed change in its capital

structure including the structure of its debt securities;

(c) a change in the rights attaching to any class of securities and any change in the rights attaching to any shares into which any debt securities are convertible or exchangeable; and

(d) a change in its board of directors.

Basis of allotment.

15. The issuer shall inform the securities exchange and the Council of the basis of allotment of securities offered to the public for subscription or sale and of the results of any rights issue and, if applicable, of the basis of acceptance of excess applications, not later than the morning of the business day next after the allotment letters or other relevant documents of title are posted.

Winding-up and liquidation.

16. (1) The issuer shall inform the securities exchange and the Council on the happening of any of the following events as soon as the same shall come to the attention of the issuer –

(a) default on debt interest or repayment of principal;

(b) the appointment of a receiver or administrator;

(c) the presentation of any winding-up petition, or equivalent application in the country of incorporation or other establishment, or the making of any winding-up order or the appointment of a provisional liquidator in respect of the issuer, its holding company or any major subsidiary;

(d) the passing of any resolution by the

issuer, its holding company or any major subsidiary that it be wound-up by way of members' or creditors' voluntary winding-up;

(e) the entry into possession of or the sale by any mortgagee of any of the issuer's assets ; or

(f) the making of any judgment, declaration or order by any court or tribunal of competent jurisdiction whether on appeal or at first instance, which may adversely affect the issuer's enjoyment of any material part of its assets which in aggregate value represents an amount in excess of fifteen per cent of the consolidated net tangible assets of the group.

(2) For the purposes of paragraph (1) a "major subsidiary" means a subsidiary representing fifteen per cent or more of the consolidated net tangible assets or pre-tax trading profits of the group.

Council may require information.

17. (1) The Council may, at any time, require an issuer to –

(a) provide to the Council such information in the form and within the time limits as the Council may require; and

(b) publish that information in the form and within the time as the Council considers appropriate for the purpose of protecting investors and maintaining the smooth operation of the market.

(2) If an issuer fails to comply with a requirement to publish information, the Council may itself publish the information.

SANCTIONS

Actions against an issuer.

18. (1) Where the Council considers that an issuer has contravened any of these Regulations, the Council may take one or more of the following actions-

(a) censure the issuer;

(b) publish the fact that the issuer has been fined or censured for contravening these Regulations;

(c) suspend trading in or discontinue the listing or admission to dealing of the issuer's securities.

(2) In the event of contravention of these Regulations by an issuer, the issuer commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and imprisonment for two years.

Action against a director.

19. (1) Where the Council considers that a contravention of these Regulations by an issuer is due to a failure by all or any of its directors to discharge their responsibilities, the Council may, in addition to any action it may take against an issuer under regulation 18, take one or more of the following actions-

(a) privately censure the relevant directors;

(b) publish the fact that these directors have been fined or censured;

(c) in the case of wilful or persistent failure by a director to discharge his or her

responsibilities, state publicly that in its opinion the retention of office by the director is prejudicial to the interests of investors;

- (d) if the director remains in office following a public censure by the Council under sub paragraph (c), suspend trading in or discontinue the listing or admission to dealing of the issuer's securities.

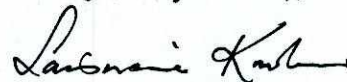
(2) In the event of contravention of these Regulations by a director, the director commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and imprisonment for two years.

**Notification of
sanction.**

20. Unless the Council considers that maintenance of an orderly market, or the protection of investors otherwise requires, where the Council proposes to take any action under regulation 18 or 19, the Council shall, in relation to the party concerned –

- (a) give advance notice of the Council's proposed action;
- (b) invite the making of representations to the Council either in writing or in person;
- (c) advise of the decision as soon as practicable after it is made; and
- (d) advise in writing of the reasons for any decision that is unfavourable.

Made this nd 22 day of July, 2002



Saisnarine Kowlessar
Minister of Finance

EXPLANATORY NOTE
(This note is not part of the Regulations)

1. These Regulations are made by the Minister of Finance in exercise of the powers conferred on him by section 126(1) and (7) read with section 58 of the Securities Industry Act 1998 ("the Act").
2. Section 58 of the Act requires "reporting issuers" to file annual reports and empowers the Securities Council to prescribe by regulation such other reports as it may determine. The purpose of these Regulations is to specify those reports.
3. It should be noted that, from the commencement of Part V of the Act, all public companies automatically become reporting issuers. A "public company" is defined, by section 3(2)(b) of the Act, as meaning a company –
 - (a) any of whose issued shares or debentures are or were part of a distribution, or an offer, to the public; or
 - (b) that is the issuer of a security that is beneficially owned by more than 50 persons.
4. Regulation 1 makes provision for the citation of the Regulations, regulation 2 contains interpretation provisions, and regulation 3 applies the Regulations to all reporting issuers of securities which are shares, warrants or corporate debt securities.
5. Regulation 4 specifies the general overriding disclosure obligation imposed on reporting issuers. Regulations 5 to 17 particularise the specific disclosure obligations.
6. These specific disclosure obligations relate to the delivery of accounts (regulation 5), the information to accompany directors' reports (regulation 6), interim reports (regulation 7), the acquisition or disposal of major assets (regulation 8), transactions with related companies (regulation 9), information to shareholders (regulation 10), substantial shareholdings (regulation 11), board meetings (regulation 12), board decisions (regulation 13), notifications to the Securities Council (regulation 14), basis of allotment (regulation 15), winding up and liquidation (regulation 16), and the power of the Securities Council to require information (regulation 17).

7. Regulations 18 to 20 provide sanctions against issuers and directors who contravene any of the Regulations.