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SECURITIES INDUSTRY (CORPORATE GOVERNANCE) RULES, 2019

Arrangement of Rules

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MINISTRY OF FINANCE

S.I. No. 19 of 2019

SECURITIES INDUSTRY ACT (NO. 10 OF 2011)

SECURITIES INDUSTRY (CORPORATE GOVERNANCE) RULES, 2019

The Securities Commission of The Bahamas, in exercise of the powers conferred by section 150 of the Securities Industry Act, makes the following Rules —

PART I - PRELIMINARY

1. Citation.

These Rules may be cited as the Securities Industry (Corporate Governance) Rules, 2019.

2. Interpretation.

In these Rules —

“Act” means the Securities Industry Act (*No. 10 of 2011*);

“Bank” means the Central Bank of The Bahamas;

“Board” means the Board of Directors of a company;

“Chairman” means the chairman of a Board;

“Commission” means the Securities Commission of The Bahamas;

“company” means a public issuer;

“Compliance Officer” means the person appointed pursuant to regulation 40(2) of the Securities Industry Regulations (*S.I. No. 1 of 2012*);

“enterprise-wide risk assessment” means the overall management of risk that a company takes and holds to achieve its strategic aim;

“Executive” means an employee of a company having administrative and managerial responsibility for the company, and includes the Chief Executive, Executive Director, Managing Director and President or their equivalent;

“independence” or “independent” with respect to the role of directors means that a director is neither an officer nor an employee of the company or its affiliates, nor has any material relationship with the company, either directly or as a partner, shareholder or officer of another company which has a relationship with the company.

“non-executive director” means a person appointed as a Board member who is not an executive of the company and does not participate in the day-to-day management of the company;

“parent company” has the meaning assigned to it under section 2 of the Companies Act (*Ch. 308*);

“public company” has the meaning assigned to it under section 2 of the Companies Act (*Ch. 308*), and includes a public issuer;

“related party” means any entity, including a shareholder that controls the company or is under common control of a parent company or significant shareholders including family members and key management personnel;

“shareholder” means a person who lawfully acquires shares in the capital of a company;

“stakeholder” includes a director, employee, creditor, customer, depositor, distributor, regulatory authority, supplier, tax authority and lender;

“state-owned enterprises” or “SOE” means an entity, whose shares may or may not be publically traded —

(a) in which the Government of The Bahamas —

(i) holds ten percent of the ordinary shares; or

(ii) is the ultimate beneficial owner of the entity’s economic activities; and

(b) where the purpose or part of its activities are of an economic nature.

3. Application.

Subject to rule 4, these Rules shall apply to —

(a) every public company whose securities are listed on a recognized securities exchange in The Bahamas;

(b) every state-owned enterprise; and

(c) any private company either proposing to raise funds from the capital markets through the issuance of its own securities, or seeking listing by introduction.

4. Non-application of rules.

- (1) These Rules shall not apply to state-owned enterprises, which are statutory corporations —
 - (a) whose purpose is to regulate the activities of licensees;
 - (b) that have the authority to determine and set its own fees; and
 - (c) whose fees or other revenue do not form part of the Consolidated Fund.
- (2) Notwithstanding subsection (1), a state-owned statutory corporation may adopt any provision of these Rules where —
 - (a) relevant legislation establishing the statutory corporation does not contain governance provisions; and
 - (b) such adoption would strengthen the governance structure of the statutory corporation.
- (3) Where a state-owned statutory corporation adopts any of the provisions of these Rules in accordance with paragraph (2), it shall —
 - (a) issue a public notice to be published on its website, if any, and in the *Gazette* for a period of one week; and
 - (b) acknowledge compliance with these Rules in a separate corporate governance statement contained in its annual report.

PART II - BOARD OF DIRECTORS

5. Board of directors.

- (1) Every company shall be led by a Board made up of directors who are —
 - (a) either —
 - (i) elected by the shareholders or members; or
 - (ii) in the case of an SOE, appointed in accordance with the provision of any applicable legislation or contractual arrangement; and
 - (b) suitably qualified to act as director having the requisite range of skills, competence, knowledge and experience for the role of director.
- (2) A director shall act in the best interest of the company consistent with the company's constitutive documents and be subject to the laws of The Bahamas.

- (3) Every company shall ensure that —
 - (a) there is transparency in the selection of potential candidates for Board membership; and
 - (b) where the Board has delegated responsibility for the selection of potential candidates to a nominating committee that the committee performs its role consistent with clearly defined procedures.
- (4) For the purposes of this Rule, “constitutive documents” means the principal documents governing the formation of a company, an investment fund, or a unit trust.

6. Composition of board.

- (1) The Board of each company must —
 - (a) be of a sufficient size relative to the scale and complexity of the company’s operations and must be independent of management to enable it to carry out its oversight function in an objective and effective manner;
 - (b) consist of executive and non-executive directors, including independent directors; and
 - (c) consist of directors with diverse experience and competence.
- (2) The Board of a state-owned enterprise shall comply with any legislation addressing the composition of a board of directors.
- (3) A company to which these Rules apply shall ensure that the majority of its board’s directors are non-executive directors, at least one of whom must be an independent director, and where a such company limits the size of its board to the statutory minimum, two of those board members must be completely independent of the company.
- (4) For the avoidance of any conflict of interest, breach of confidentiality, insider dealing and to safeguard the independence of the board —
 - (a) directors must not be members of Boards of companies in the same industry or of companies competing or likely to compete directly with each other in the same market;
 - (b) the company’s Board must not include more than two members of the same immediate family as directors at the same time; and
 - (c) cross memberships on the boards of two or more companies must be avoided unless part of a commonly controlled group of companies.
- (5) A serving and nominee director must promptly notify the Board through the Chairman of prospective appointments on and to other Boards, and any relationships or potential related party transactions that may affect the independence of the director or nominee director.

7. Board responsibilities and duties.

- (1) The Board shall ensure that the company is properly managed in order to protect and enhance shareholder value and to meet the company's obligations to its employees and other stakeholders.
- (2) Directors shall —
 - (a) encourage the reporting of unlawful and unethical behaviour and actively promote ethical behaviour and protection for those who report violations in good faith;
 - (b) not improperly use information acquired as directors and officers of the company;
 - (c) not disclose non-public information except where the disclosure is authorised or required by law;
 - (d) keep confidential any information received in the course of the exercise of their duties unless disclosure is required by law or has been authorised by the person from whom the information is provided;
 - (e) not take improper advantage of his position as director or use the position for personal gain or to compete with the company;
 - (f) not take advantage of company property or use such property for personal gain or to compete with the company;
 - (g) not allow personal interests or the interest of any associated person to conflict with the interests of the company; and
 - (h) not engage in conduct likely to bring discredit upon the company.
- (3) In exercising the powers of the company, the Board shall ensure the effective performance of the company by —
 - (a) directing the management and conduct of the affairs of the company ensuring that ethical standards are maintained;
 - (b) defining the company's strategic goals and ensuring that its human and financial resources are effectively deployed towards attaining those goals;
 - (c) defining a framework for the delegation of its authority or duties to Management specifying matters that may be delegated and those reserved for the Board;
 - (d) formulating the company's policies on risk management, communication and information dissemination;
 - (e) overseeing the effectiveness and adequacy of internal control systems, ensuring the integrity of the company's accounting and financial reporting systems, including the independent audit;

- (f) formulating the requisite Board procedures and rules to be followed for the scheduling and place of meetings, for the conduct of meetings and attendance of members, the term of board appointments, and the appointment, training, remuneration and replacement of board members and senior executives;
 - (g) formulate plans for Board succession, and effective communication with shareholders;
 - (h) reviewing and approving financial reports; and
 - (i) ensuring compliance with these Rules.
- (4) The Board shall appoint individuals to be officers of the company, and two or more offices may be held by the same person, except where —
- (a) the Board has delegated the power to appoint; or
 - (b) the Articles of Association or any unanimous shareholder agreement specifically restricts the power to appoint.
- (5) Where the Board determines that certain of its powers, duties and responsibilities must be undertaken through committees, it shall ensure that each committee operate under terms of reference approved by the Board.
- (6) The Board shall —
- (a) establish a code of conduct to guide the directors and Chief Executive Officer and other key persons within the company;
 - (b) monitor the company's compliance with governance by consistent review of the board's processes and the internal structure of the company to ensure that standards of accountability are met by management; and
 - (c) perform self-assessments of its performance as well as the performance of key persons within the company's governance requirements, and make the necessary changes to those requirements based on the results of such assessments.

8. Orientation and training of directors.

- (1) The Board must establish a formal orientation programme to familiarize new directors with the company's operations, strategic plan, senior management and its business environment, and to advise them of their fiduciary duties and responsibilities.
- (2) The Board shall require the participation of all directors in appropriate annual professional continuing education programmes to ensure that directors remain current in their skills and knowledge and with new developments in the company's business and operating environment.

9. Board meetings and attendance.

- (1) Boards members shall attend the majority of all Board meetings and meetings may be held within or outside of The Bahamas.
- (2) Except where the Chairman excuses an absence, attendance at board meetings shall be mandatory for every director, who shall attend in person, or, where all directors consent, attend by means of conference call.

10. Multiple directorships.

- (1) A prospective nominee to the Board of a company must disclose any memberships he may have on other Boards.
- (2) The nominating committee shall determine whether any prospective nominee can effectively contribute to the performance of the Board where such nominee holds more than one directorship.

11. Conflicts of interest.

- (1) Every company must adopt a policy to guide the Board and individual directors on conflict of interest situations and what types of disclosures shall be made in the event of a conflict of interest.
- (2) Every director, officer, and external auditor of a company shall make a written disclosure to the Board of all conflicts which arise or may arise, and such disclosure shall specify —
 - (a) the value of every material contract and payments made under such contract with the company of which he is a beneficiary; and
 - (b) whether he is a director or an officer of any other company that is party to a material contract or any proposed material contract with the company.
- (3) Disclosures under this section shall be made on an annual basis and directors and officers must disclose any conflict of interest as soon as it is discovered.
- (4) The company shall keep and maintain a register setting out the interests of directors and officers, and the register shall be available for inspection at any time, upon five days' written notice to the Chairman, by any shareholder of the company.
- (5) For the purpose of this Rule, "material contract" means a contract that has a transaction value of more than two percent of the revenues of a company.

12. Remuneration.

- (1) Except where the remuneration of a director is set out in legislation, or is subject to the company's Articles of Association or a contractual arrangement, the Board must develop a comprehensive policy on remuneration for company directors, executives, and senior management.
- (2) The remuneration policy must —
 - (a) define the criteria and mechanism for determining levels of remuneration and the frequency for review of such criteria and mechanism;
 - (b) define a process, if necessary, with the assistance of external advisers, for determining the compensation of an executive or non-executive director's and
 - (c) specify how and to what extent the remuneration of an executive directors is linked to corporate and individual performance.
- (3) The Board must —
 - (a) undertake a periodic peer review of its compensation and remuneration levels to ensure that the company remains competitive; and
 - (b) ensure that the company's remuneration policy and any material benefits and compensation paid to directors are published in the annual report of the company.

13. Performance evaluation of board.

- (1) The Board of every company to which these Rules apply must establish an annual performance review policy with respect to its own performance, and the performance of its committees, the Chairman and individual directors.
- (2) The annual performance evaluation established by the Board shall —
 - (a) include the criteria, key performance indicators and targets for the Board as a whole, its committees, the Chairman and each individual committee member; and
 - (b) be ratified by shareholders before implementation.
- (3) The Board may engage the services of external consultants to conduct an annual performance evaluation.
- (4) Upon the completion of an annual performance evaluation, the Board shall review and discuss the overall results of its own performance evaluation.

- (5) The Chairman shall —
 - (a) provide each director with the results of that director's performance evaluation; and
 - (b) personally discuss such results with each director.

PART III - RELATIONSHIP WITH SHAREHOLDERS

14. Protection of shareholder rights.

- (1) The Board must ensure that —
 - (a) the statutory and general rights of a shareholder are protected at all times;
 - (b) all shareholders are treated equally and that no shareholder is given preferential treatment or superior access to information or other materials;
 - (c) minority shareholders are treated fairly at all times and are adequately protected from abusive actions of majority shareholders; and
 - (d) the company promptly and securely provides shareholders with documentary evidence of ownership interest in the company, including share certificates, dividend warrants and related instruments.
- (2) If the Articles of Association provides for shareholders to be represented on the Board, such representation must be proportionate to the size of shareholding.
- (3) The company's shareholders shall be entitled to consider the ownership level at which shareholders may have representation.
- (4) Notwithstanding subsection (2), the Board shall ensure that provision is made to include board representation by any shareholder having a twenty-five per cent or greater interest in the company, but such representation shall not be greater than the ratio of the number of shares held by that shareholder.

15. Shareholder meetings.

- (1) The Board must establish proper mechanisms and procedures for the scheduling of annual general meetings with the shareholders.
- (2) The procedures established shall address the —
 - (a) time, place and date of meetings;
 - (b) process to be followed in the issue of meeting notices to shareholders; and

- (c) right of shareholders to participate by proxy.
- (3) The Board must ensure that shareholders attending an annual general meeting are provided with the relevant information and material, including the notice and agenda for the meeting, as well as any proxy materials, in advance of the scheduled date of the meeting.
- (4) The Board must ensure that at least twenty-one days elapses between the issue of a notice of and the scheduled date of a meeting.
- (5) The Board shall not restrict the proxy right of a shareholder, including the right to have the proxy speak on a shareholder's behalf, and no stipulation shall be placed on who may act as proxy for a shareholder.

16. Institutional shareholders.

If the shareholders of a company to which these Rules apply consists of institutional shareholders, a duly authorised representative of the institutional shareholder is entitled to attend and participate in all general meetings and such representative shall exercise all of the rights of that shareholder.

PART IV - RISK MANAGEMENT AND INTERNAL CONTROL

17. Risk management.

- (1) The Board shall determine the nature and extent of the risks which may have a significant effect on the company and ensure that a thorough enterprise-wide risk assessment, which covers all aspects of the company's business, is performed on an annual basis as determined by the Board.
- (2) The Board must oversee the establishment of a management framework that defines the company's risk policy, risk appetite and risk limits, that —
 - (a) formally approve the framework for its integration into the day-to-day operations of the company; and
 - (b) provide guidelines and standards for administering the on-going management of key risks such as operational, reputational, financial, market, technology and compliance risk.
- (3) The management framework established is accountable to the Board for implementing and monitoring the process of risk management and integrating it into the day-to-day activities of the company.
- (4) The Board must ensure —
 - (a) that the results of the enterprise-wide risk assessment is used to update the risk management framework of the company; and

- (b) that the company's risk management policies and practices are disclosed in the annual report.

18. Whistle-blowing policy.

- (1) The Board shall implement whistle-blowing policy and procedures, which creates a whistle-blowing mechanism.
- (2) Once implemented, the Board shall ensure that the whistle-blowing policy and mechanism is communicated to employees and stakeholders including contractors, shareholders, job applicants, and the general public.

PART V - AUDITS

19. Internal audit unit.

- (1) The Board must ensure that the company has an effective risk-based internal audit process, the parameters of which must be consistent with the International Standards for the Professional Practice of Internal Auditing established by the Institute of Internal Auditors.
- (2) The Board, or where applicable, the audit committee, must approve terms of reference clearly defining the purpose, authority and responsibility of the internal auditing activity.
- (3) Except where outsourced to independent internal audit advisors, the internal audit unit must be headed by a suitably qualified member of senior management and must be adequately resourced with staff and an appropriate budget to enable it to effectively discharge its responsibilities.
- (4) The head of the internal audit unit must —
 - (a) report directly to the audit committee and have unrestricted access to the chairman of the audit committee, the Board's Chairman and the Chief Executive Officer; and
 - (b) at least once every quarter, report to the audit committee on the adequacy and effectiveness of management's governance, risk and control environment, deficiencies observed and the mitigation plans by management.
- (5) An annual risk-based internal audit plan must be developed by the internal audit unit based on a risk-based methodology that —
 - (a) addresses the broad range of risks facing the company;
 - (b) identifies the audit priority areas and the risk profile of each area;
 - (c) identifies how the requisite assurance will be provided on the company's risk management process; and
 - (d) indicates the resources and skills required to implement the plan.

- (6) The internal audit plan must —
 - (a) be approved by the Board;
 - (b) identify audit priority areas; and
 - (c) determine the frequency of audits and the required resources and skills for the internal audit unit.
- (7) The evaluation of controls implemented by the internal audit unit must comprise —
 - (a) the information systems environment;
 - (b) the reliability and integrity of financial and operational information;
 - (c) the effectiveness and efficiency of operations;
 - (d) safeguarding of assets; and
 - (e) compliance with laws and regulations.
- (8) A qualified, independent reviewer or an external review team must conduct an external assessment of the effectiveness of the internal audit unit at least once every three years.

20. External auditor.

- (1) Every company to which these Rules apply shall appoint, during its annual general meeting, an external auditor who shall hold office until the next annual general meeting of the company, and whose remuneration shall be determined by the Board.
- (2) The external auditor must be licensed under The Bahamas Institute of Chartered Accountants Act (*No. 13 of 2015*), and —
 - (a) shall be independent of the company, its affiliated companies and of its directors and officers of the company; and
 - (b) shall be entitled to attend every meeting of the company where notice of such meeting has been provided.
- (3) The Board shall —
 - (a) ensure that the company's auditor has unrestricted access to the books and accounts of the company; and
 - (b) provide the auditor with all such information and explanation necessary for the auditor to perform the duties of the auditor as well as for preparing the auditor's report.
- (4) As required by the Companies Act (*Ch. 308*), the Board shall, during the annual general meeting, submit to the company's shareholders the approved auditor's report, along with the comparative financial statements, prepared in accordance with international financial reporting standards unless otherwise approved by the Commission for the immediate preceding financial year and any other information relating to the company's financial position.

- (5) The Board shall periodically consider and determine whether audit firms or the partners within an audit firm should be alternated and, in writing, state the reason for its determination.

21. Audit committee.

- (1) Every company to which these Rules apply shall establish an audit committee which shall be responsible for the appointment of the auditor and be entitled to obtain external professional advice in its discretion.
- (2) The Board shall appoint, as far as practicable, non-executive directors as the majority of audit committee members, and the Board shall ensure that at least one committee member has expertise in international accounting and reporting standards.
- (3) The audit committee shall be entitled to meet with the auditor independently of the Board.
- (4) The functions of the audit committee include —
 - (a) assisting the Board in the oversight of —
 - (i) the integrity of the company's financial statements;
 - (ii) compliance with legal and other regulatory requirements;
 - (iii) the assessment of qualifications; and
 - (iv) the independence of external auditor;
 - (b) establishing an internal audit unit and ensuring that there are other means of obtaining sufficient assurance of regular review or appraisal of the system of internal controls in the company;
 - (c) oversight of —
 - (i) the company's internal audit unit; and
 - (ii) the role of the external auditor;
 - (d) ensuring the development of a comprehensive internal control framework for the company, and the generation of an annual report in the company's financial report on the operating effectiveness of the company's internal control framework;
 - (e) overseeing management's procedure for identifying significant fraud risks across the company and ensuring that adequate prevention, detection and reporting mechanisms are in place;
 - (f) annually, obtaining and reviewing the report by the internal auditor describing the strength and quality of internal controls, including any issues or recommendations for improvement, raised by the most recent internal control review of the company;
 - (g) meeting with management and external auditors to discuss the annual audited financial statements and half yearly unaudited statements, and the policies and strategies with respect to risk assessment and management;

- (h) ensuring the implementation of adequate whistle-blowing procedures, and periodically reviewing such procedures;
- (i) submitting a summary of issues to the chairman based on reports made to the audit committee;
- (j) reviewing with the external auditor, any audit scope of limitations or problems encountered and management's responses to such limitations and problems;
- (k) reviewing the independence of the external auditors and ensuring that where non-audit services are provided by the external auditors, there is no conflict of interest;
- (l) preserving auditor independence by establishing clear hiring policies for employees of independent auditors;
- (m) considering any related party transactions that may arise within the company or group of companies;
- (n) exercising its authority to investigate any matter within its terms of reference, having regard, where necessary, to the company's resources utilised by the internal auditors to perform its functions, including rendering external advice; and
- (o) reporting regularly to the Board.

PART VI - ACCOUNTABILITY AND REPORTING

22. Disclosures.

- (1) The Chairman and the Chief Financial Officer or the equivalent of every company to which these Rules apply must, in writing, satisfy the Board that the financial statements present a true and fair view of the affairs of the company.
- (2) Every company must disclose, on an annual basis —
 - (a) details of its directors' interest in contracts either directly or indirectly with the company or its subsidiaries or holding companies, including details on the name of the director, the nature and details of the contract and the director's interest therein; and
 - (b) any service contracts and other significant contracts with controlling shareholders.

23. Annual report.

- (1) The Board must ensure that the company's annual report contains information on the company's capital structure, including —

- (a) details of issuance of share capital during the year;
 - (b) borrowings and maturity dates; and
 - (c) details and reasons for share buybacks during the year.
- (2) The Board must ensure that the company's annual report includes —
- (a) a corporate governance report that conveys clear information on the strength of the company's governance structures, policies and practices to stakeholders;
 - (b) the composition of Board of directors, including the names of the chairperson, the Chief Executive Officer, executive and non-executive directors as well as independent directors;
 - (c) the roles and responsibilities of the Board, including matters that are reserved for the board and those delegated to management;
 - (d) board appointment process, including induction and training of board members;
 - (e) a summary of any performance evaluation assessment undertaken by the Board;
 - (f) the directors' standing for re-election and their biographical details to enable shareholders make informed decisions about their re-election;
 - (g) the composition of board committees, including the names of chairpersons and members of each committee;
 - (h) a description of the roles and responsibilities of the board committees and a description of how those responsibilities have been discharged by the committee;
 - (i) an account of the number of meetings held during the year by the board and the committees, and the attendance of individual directors at those meetings;
 - (j) the details of the interests of a director and any significant security holder that is held in the company and its subsidiaries or associated companies.
 - (k) a statement confirming the Board's compliance with the company's rules of business conduct and ethics, if any, for directors and employees; and
 - (l) human resource policies, internal management structure, relations with employees, employee share-ownership schemes and other workplace development initiatives.
- (3) The board of every company to which these Rules apply must ensure that the company's annual report makes sufficient disclosure on accounting and risk management issues, particularly disclosing in the annual report —

- (a) a statement of the responsibilities of a director in connection with the preparation of the financial statements;
 - (b) details of accounting policies utilised and reasons for changes in accounting policies;
 - (c) where the accounting policies applied do not conform to standard practice, the reasons for the departure from standard practice and a statement from the external auditor on whether he agreed with the departure;
 - (d) a statement from the directors that the business is a going concern, with supporting assumptions or qualifications where necessary;
 - (e) the value of all material benefits and compensation paid collectively to directors;
 - (f) non-executive directors' fees, allowances and share options, if any; and
 - (g) risk management policies as outlined in Part IV of these Rules indicating the board's responsibility for the total process of risk management as well as its opinion on the effectiveness of the process.
- (4) The annual report must contain a statement from the Board outlining the company's degree of compliance with the provisions of these Rules, and such statement shall include —
- (a) specifics on the effectiveness of the internal audit unit and risk management controls;
 - (b) confirmation of whether the compliance system are operating efficiently and effectively in all respects; and
 - (c) an explanation where the Board does not accept the audit committee's recommendation on the appointment, reappointment or removal of an external auditor.
- (5) Every person to whom these Rules apply shall acknowledge compliance with these Rules in a separate corporate governance statement contained in its annual report.

Made this 18th day of March, 2019.

Signed
ROBERT LOTMORE
Chairman
Securities Commission