

Financial Services (Investment and Fiduciary Services)

1989-47

**FINANCIAL SERVICES (ACCOUNTING AND FINANCIAL)
REGULATIONS, 1991**

Regulations made under s.53.

**Subsidiary
1991/098
Repealed**

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Repealed by Act.2019-26 as from 15.1.2020

(LN. 1991/098)

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PRELIMINARY.**

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Citation.

1. These Regulations may be cited as the Financial Services (Accounting and Financial) Regulations, 1991.

Interpretation.

2.(1) In these Regulations, unless the context otherwise requires—

“approved bank” means a bank that is duly authorised by the relevant authority in the jurisdiction in which it is situated;

“auditor”, in relation to a licensee, means the person appointed by the licensee to be its auditor for the purpose of these Regulations and who is in office at that time;

“the Commission” means the Financial Services Commission established by section 3 of the Financial Services Commission Act, 1989;

“controlled activity” has the meaning given in section 3(2)(c) of, and Schedule 3 to, the Act;

“customer” means any person with or for whom the licensee has entered into or intends to enter into an investment agreement;

“financial services business” means any activity that constitutes investment business or a controlled activity;

“financial year”, in relation to a licensee, means—

- (a) the period beginning with the day on which the licensee commences to carry on financial services business and ending with the date as at which it prepares its first annual balance sheet; and
- (b) each subsequent period beginning with the day following the day as at which an annual balance sheet of the licensee is prepared for the purposes of these Regulations and ending with the day as at which the next annual balance sheet of the licensee is so prepared;

“investment” has the meaning given in section 3(2)(a) of, and Schedule 1 to, the Act;

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“investment agreement” means any agreement the making or performance of which by either party constitutes an activity which falls within any paragraph of Schedule 2 or 3 to the Act;

“investment business” has the meaning given in section 3(2)(b) of, and Schedule 2 to, the Act;

“licensed bank” means a bank licensed under the Banking Act;

“licensee” means a person licensed under section 8 of the Act to carry on investment business or a controlled activity;

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

“the Act” means the Financial Services Act, 1989.

(2) In these Regulations any reference to a balance sheet or to a profit and loss account includes any notes to the financial statement in question giving information which is required by any provision of these Regulations and required or allowed by that provision to be given in a note to the licensee’s financial statements.

Application.

3. These Regulations apply in relation to all licensees in respect of their financial services business.

**PART 2.
ACCOUNTING RECORDS.**

Duty to keep accounting records.

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

- (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 financial resources rules made by the Commission; and

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(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 Regulations.

(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 investments by the licensee distinguishing those which are made by the licensee on its own account and those which are made by the licensee on behalf of others;

(d) entries from day to day of the receipt and despatch of documents of title, or documents evidencing title, to investments which are in the possession or control of the licensee;

(e) a record of investments the documents of title, or the documents evidencing title, to which are in the possession or control of the licensee identifying—

(i) where those documents are kept;

(ii) the beneficial owner of each of those investments;

(iii) the purposes for which those documents are held; and

(iv) whether those investments are subject to any charge.

(f) 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 Regulations;

(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; and

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- (g) a record of—
- (i) balances on individual customer bank accounts;
 - (ii) balances on individual customer accounts at intermediate brokers and exchanges;
 - (iii) balances with individual customers stating the name of each customer and the amount held or received for that customer; and
 - (iv) reconciliations made pursuant to regulations 5 and 6.

Reconciliation of customer money.

5.(1) A licensee shall, at least once every 2 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).

(2) Where a customer bank account contains the money of more than one customer a licensee shall, in addition to the reconciliation made under paragraph (1), at least once every 2 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 paragraph (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 approved bank and of the licensee.

Reconciliation of customers' investments held by a licensee.

6.(1) A licensee shall at least twice in every financial year carry out a reconciliation in accordance with this regulation and correct any discrepancy thereby revealed.

(2) The first such reconciliation shall be carried out at some time in the fifth and sixth months of the financial year and the second shall be carried out at some time in the eleventh and twelfth months of the financial year.

(3) The requirements of this regulation in relation to each reconciliation are—

- (a) in relation to documents of title and documents evidencing title to investments of the licensee's customers which are in the possession of the licensee or in the possession of the licensee's

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own custodian, the licensee shall inspect and count all those documents and, in the case of registrable investments, reconcile any results which show discrepancies with the books and records of the appropriate register;

- (b) in relation to documents of title or documents evidencing title to investments of the licensee's own customers which are in the possession of a custodian other than the licensee's own custodian, the licensee shall obtain from that custodian a statement specifying in relation to each description of investment the documents of title or certificates of title to which were held by him for the licensee, the amount of that investment and, where the investment is a registrable investment, the amount so held in each different name, made up as at the date at which the reconciliation under (a) is carried out; and
- (c) the licensee shall reconcile the results of each inspection under (a) and the contents of each statement referred to in (b) with the records maintained by the licensee under regulation 4(2)(e).

Records to be kept up to date.

7. The obligations under these Regulations are continuing obligations and continuous performance of them is required so as to ensure that records are at all times up to date.

Audit trail.

8.(1) Information required by these Regulations 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 the accounting systems of the licensee.

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

Conformity with accounting standards.

9. The accounting records required to be kept by a licensee shall conform with statements of standard accounting practice issued by such body or bodies as may be prescribed by rules made by the Commission.

Retention of records.

10. A licensee shall preserve the accounting records which it is required to keep under regulation 4 for 6 years from the date on which they are made.

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Inspection of records.

11. Accounting records which are required to be kept under regulation 4 shall, at any time during the period in which they are required to be preserved, be produced to the Commission, or 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.

PART 3.

FINANCIAL STATEMENTS.

Duty to prepare annual financial statements.

12. A licensee shall, in respect of its financial services business, prepare for each of its financial years annual financial statements which shall consist of—

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

Balance sheet to give a true and fair view.

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.

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

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

Form and content of financial statements.

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.

(2) Where compliance with the provisions of the Schedule, and the other provisions of these Regulations 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

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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 those provisions is inconsistent with the requirement 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 paragraph (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.

Annual financial statements to be submitted to meeting of partners, etc.

16. (1) Where the licensee is not a sole proprietor, the annual financial statements of the licensee shall be submitted to a meeting of the partners or, if the licensee is not a partnership, to a meeting of the directors or other governing body of the licensee and the meeting shall be invited to pass a resolution approving those statements.

(2) Where paragraph (1) applies, the balance sheet shall contain a statement, in a position immediately above the signatures, whether the annual financial statements were approved at a meeting of the partners, directors or governing body of the licensee and, if so, the date on which they were approved.

Additional requirement in case of sole proprietor.

17. Where the licensee is a sole proprietor, the balance sheet shall be accompanied by a statement (which shall not be regarded as part of the annual financial statements of the licensee for the purposes of regulation 20) stating whether, at the date as at which the balance sheet is made up—

- (a) his current assets exceed his current liabilities; and
- (b) his total assets exceed his total liabilities.

Annual financial statements to be submitted to Commission.

18. Each financial year a licensee shall submit its annual financial statements to the Commission within 4 months after the end of the financial year to which the annual financial statements relate.

Licensee to obtain auditor's report, etc..

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19. (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 regulation 20.

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

- (a) the annual financial statements in accordance with regulation 18; and
- (b) confirmation in writing that it has complied with each and every one of these Regulations with which it 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 by those who signed the balance sheet) 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.

Contents of auditor's report.

20. (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.

(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 Regulations;
- (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;

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- (c) in the case of the profit and loss account, a true and fair view is given of the profit or loss of the licensee for the financial year;
- (d) the licensee has, throughout the financial year, kept proper accounting records in accordance with the requirements of these Regulations;
- (e) the balance sheet and the profit and loss account are in agreement with the licensee's accounting records;
- (f) 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;
- (g) the licensee has maintained throughout the financial year systems adequate to enable it to identify documents of title, or documents evidencing title, to investments held in safekeeping for the licensee's customers in accordance with regulation 39 of the Financial Services (Conduct of Business) Regulations, 1991; and
- (h) the licensee was in compliance with the requirements of regulation 39 of the Financial Services (Conduct of Business) Regulations, 1991 as at the date on which the balance sheet was prepared.

Qualified reports.

21. (1) If the auditor is of the opinion that one or more of the requirements of regulation 20 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.

(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 regulation 20 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.

Communication with the Commission.

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21A. No duty to which an auditor of a licensee may be subject shall be regarded as contravened by reason of his communicating in good faith to the Commission, whether in response to a request from the Commission, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that licensee and which is relevant to any functions of the Commission under the Act.

**PART 4.
FINANCIAL RESOURCES.****Financial resources rules.**

22. The Commission may make rules requiring licensees to have and maintain, in respect of the financial services business as regards which they are licensed, such financial resources as are required by the rules.

Scope of financial resources rules.

23. (1) Without prejudice to the generality of regulation 22, financial resources rules made by the Commission may—

- (a) impose requirements which are absolute or which are to vary from time to time by reference to factors which either are specified in, or are to be determined in accordance with, the rules;
- (b) impose requirements which take account of any business carried on by the licensee in conjunction with, or in addition to, the business mentioned in regulation 22;
- (c) make provision as to the assets, liabilities and other matters to be taken into account in determining the financial resources of a licensee for the purposes of the rules and the extent to which, and the manner in which, they are to be taken into account for that purpose.

(2) Financial resources rules may provide that the rules or any provision thereof shall not apply, or shall apply with such modifications or only in such circumstances as shall be specified in the rules, to licensees who have and maintain financial resources (in Gibraltar or elsewhere) in accordance with an authorization of an authority (in Gibraltar or elsewhere) which in the opinion of the Commission performs any function which is similar to a function conferred on the Commission by regulation 22.

Modification of financial resources rules in particular cases.

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24. (1) The Commission may, on the application of any licensee to whom financial resources rules apply, give a direction in writing altering the requirements of the rules so as to adapt them, subject to such conditions as may be specified in the direction, to the circumstances of that person or of any particular kind of business carried on, or to be carried on, by it.

(2) The Commission shall not give a direction under paragraph (1) unless it appears to the Commission that—

- (a) compliance with the requirements in question would be unduly burdensome for the applicant having regard to the benefit which compliance would confer on investors; and
- (b) the direction, if given in the particular case, would not result in any undue risk to investors.

(3) A direction under paragraph (1) shall continue in force until withdrawn by the Commission.

**PART 5.
CUSTOMER MONEY.**

Application.

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

Customer money.

26. (1) For the purposes of this Part customer money is money of any currency which, in the course of carrying on financial services business, a licensee holds or receives under paragraph (2) or which a licensee owes to a customer under paragraph (3).

(2) A licensee holds or receives money for the purposes of paragraph (1) if it enters or expects to enter into an investment agreement with or for a customer and holds or receives in Gibraltar or elsewhere in respect of that agreement any money—

- (a) which is not immediately due and payable on demand to the licensee for its own account; or
- (b) which, although so due and payable, is held or received in respect of any obligation of the licensee which has not yet been performed.

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(3) A licensee owes money to a customer for the purposes of paragraph (1) where money owed to a customer is immediately due and payable whether demanded or not.

Duty to segregate.

27. A licensee shall pay all customer money coming into its 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 keep customer money safe.

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

Customer money to be held on trust.

29. It is hereby declared that customer money is 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.

Accounting for and use of customer money.

30. A licensee shall account properly and promptly for customer money and, in particular, shall ensure that subject to the provisions of regulation 35A with respect to mixed payments –

- (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.

Customer bank accounts.

31. (1) A licensee which receives or holds customer money shall open one or more customer bank accounts with an approved bank.

(2) The licensee shall give written notice to the approved bank requiring the bank to acknowledge to the licensee in writing that–

- (a) all money standing to the credit of the customer bank account is held by the licensee as trustee and that the bank is not

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entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any debt owed to it by the licensee; and

(b) interest payable to the account will be credited to the account.

(3) In the event that the bank does not provide the acknowledgement referred to in paragraph (2) within 10 business days of the dispatch of the notice by the licensee, the licensee shall—

(a) withdraw all money standing to the credit of the account;

(b) close that account; and

(c) deposit the money in a customer bank account with another approved bank.

Interest on customer money.

32. (1) Except in so far as may be agreed in writing to the contrary between a licensee and each of his customers, a licensee shall, at least once in every 6 months, credit interest to each customer on money held for that customer and standing (or which should be standing) to his credit in a customer bank account.

(2) Subject to any written agreement to the contrary, the minimum rate of interest payable is the minimum deposit rate publicly offered by the approved bank at which the account is held.

Payment of other money into a customer bank account.

33. Money which is not customer money shall not be paid into a customer bank account unless it is required—

(a) to open or to maintain the account;

(b) to restore an amount withdrawn in error from the account; or

(c) to be paid in as part of the interest earned on the account.

Payment out of a customer bank account.

34. (1) Subject to paragraph (2), money may be withdrawn from a customer bank account only if—

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- (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—

- (a) it has given the customer 7 days notice of its intention and adequate detail of the breakdown of the proposed payment, and the customer has not objected;
- (b) the fees or commission accord with the arrangements agreed with the customer; or
- (c) the amount is agreed by the customer.

Licensee as an approved bank.

35. Where the licensee is an approved bank it may hold a customer bank account with itself and provided and for so long as the bank observes normal banking practice relating to money of that character and complies with these Regulations, it shall not be liable to account to any customer for any profits it makes as banker by using the funds in the customer bank account.

Customer safeguard accounts.

35A.(1) The provisions of this regulation apply where—

- (a) for any financial year of a qualifying licensee, the licensee maintains a customer safeguard account; and
- (b) for any such financial year, the licensee expects to receive from customers specified mixed payments, that is to say, payments representing in part designated customer monies which are disbursements (of which no individual disbursement shall exceed £500) and in part other monies;

and in the following provision of this regulation “relevant financial year” means a financial year for which the qualifying licensee has such an approved account.

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(2) In this Part—

- (a) a “customer safeguard account” means an account approved by the Commission into which a qualifying licensee pays, out of its own funds, one or more sums of money representing, as at the beginning of a relevant financial year, 110 per cent of the licensee’s best estimate of that portion of the mixed payments expected to be received during or in respect of that year which will be represented by designated customer monies;
- (b) “Commission” means the Financial Services Commission;
- (c) in relation to a financial year of a licensee, customer monies are “designated” if they are designated by the licensee for the purposes of these Regulations before the beginning of, and in relation to, that year;
- (d) “qualifying licensee” means a licensee who carries on a controlled activity falling within either paragraph 1 (company management) or paragraph 2 (professional trusteeship) of Schedule 3 to the Financial Services (Investment and Fiduciary Services) Act;

and a customer safeguard account shall be under dual signatory control consistent with the four eyes requirement in the conduct of business.

- (3) (a) In this regulation “disbursement” and “disbursements” mean monies which are not immediately payable on demand to the licensee for its own account in respect of company registry filing fees, notary fees, apostille fees, overseas agent fees, yacht and ship registry filing fees and licences, annual tax in overseas jurisdictions, courier and postage costs, and any fees ancillary to any of the aforesaid; or
- (b) although so due and payable to the licensee, are held or received in respect of an obligation of the licensee which has not yet been performed; or
- (c) represent other disbursements which have not yet fallen due but which are the responsibility of the customer

provided that no single disbursement shall exceed £500.

(4) A qualifying licensee who opens a customer safeguard account—

- (a) shall give written notice in clear terms to the licensed or authorised institution of the nature of the account;

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- (b) shall require the licensed or authorised institution to designate it as such and to acknowledge in writing that it accepts the terms of the account;
- (c) shall at all times maintain records so as to show clearly the monies which the licensee has paid in and the monies which have been withdrawn as permitted by paragraph (8);

and, in the event that the licensee defaults on any of its commitments, no liquidator, banker or other creditor shall have access to any monies in the account except in so far as they exceed the amount representing designated customer monies.

(5) The Commission shall not approve an account as a customer safeguard account unless—

- (a) the application for the Commission's approval is made at least 30 days before the beginning of that financial year;
- (b) the account is with an institution that is licensed or authorised in accordance with section 7 of the Financial Services (Banking) Act;
- (c) the Commission is satisfied that the calculation of the best estimate referred to in subregulation (2) is certified by the licensee's auditor as a fair calculation; and
- (d) the licensee's auditor certifies that the balance in the account at the date of the application is an amount equal to not less than 110 percent of that best estimate.

(6) A qualifying licensee approved by the Commission under subregulation (5) to operate a customer safeguard account on an ongoing basis must, thereafter, submit evidence to the Commission of its compliance with subregulation (5) (b), (c) and (d) no later than 30 days before the beginning of that qualifying licensee's financial year.

(7) Any mixed payments as defined in subregulation (1)(b) above received by a licensee in or in respect of a relevant financial year shall be paid by the licensee into the licensee's own account.

(8) A customer safeguard account shall be regarded as a "customer bank account" for the purposes of regulations 5 and 31 and no withdrawal shall be made from such an account unless it is towards the payment of fees or commissions payable to the licensee; and—

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- (a) the customer has been notified in writing that the monies will be applied against those fees or commissions and the customer has not disagreed; and
- (b) a director of the licensee or staff member who has been granted executive powers has expressly authorised the withdrawal; and
- (c) either an appropriate time has elapsed since the date of delivery to the customer of the notification or the precise amount to be withdrawn has been agreed with the customer.

(9) If, at any time in a financial year, the licensee or the licensee's auditor becomes aware that the balance in a customer safeguard account has fallen below the required minimum, that is to say, 110 per cent of that portion of the mixed payments received during or in respect of that year which at that time represents designated customer monies—

- (a) the licensee or, as the case may be, the auditor shall within seven days of that time notify the Commission of that fact; and
- (b) immediately on becoming aware of that fact, the licensee shall take steps to pay into the account so much as is necessary to restore the balance to at least the required minimum;
- (c) the Commission may require the licensee to suspend or end the operation of the customer safeguard account,

and at the end of each financial year of a customer safeguard account, the licensee's auditor shall certify to the Commission whether, throughout that financial year, the balance in the account was at all times equal to not less than the required minimum.

(10) Paragraph 10 (customer monies) of the Schedule to the Financial Services (Conduct of Fiduciary Services Business) Regulations 2006 shall not apply in relation to a customer safeguard account nor to any designated customer monies.

**PART 6.
APPOINTMENT OF AUDITORS.**

Auditor required.

36. A licensee shall not carry on, or hold itself out as carrying on, financial services business unless it has appointed an auditor in accordance with these Regulations.

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Qualification for appointment as auditor.

37. A person shall not be qualified for appointment as the auditor of a licensee unless he is or the firm is registered in Part I, II or III of the Register maintained under the provisions of the Auditors Approval and Registration Act, 1998.

Ineligibility on ground of lack of independence.

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

(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 regulation an auditor of a licensee shall not be regarded as an officer or employee of the licensee.

Engagement letters.

39. A licensee shall ensure that the auditor appointed under these Regulations has the powers and duties specified in regulation 40 and that—

- (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.

Powers and duties of auditors.

40. (1) An auditor shall have—

- (a) a right of access at all times to the accounting and other records of the licensee and all other documents relating to its 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.

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(2) An auditor shall submit a report to the Commission on the annual financial statements in accordance with these Regulations and the report shall state the matters specified in regulation 20.

(3) In preparing an auditor's report for the purposes of these Regulations, the auditor shall carry out such investigations as will enable him to form an opinion as to the matters required by regulation 20 to be stated in his report.

Notification to Commission.

41. A licensee shall, within 7 days, give written notice to the Commission of the appointment, removal or resignation of an auditor.

Resignation or removal of auditors.

42. (1) Where an auditor resigns or is removed by a licensee, a notice to that effect sent to the Commission under regulation 41 shall contain either—

- (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 auditors of such circumstances as are mentioned in (a).

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

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SCHEDULE

Regulation 15

FORM AND CONTENT OF FINANCIAL STATEMENTS

**PART 1.
GENERAL RULES.**

1. Subject to the following 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. Any item required in accordance with paragraph 1 to be shown in a financial statement of a licensee may be shown in greater detail than required by the appropriate format.
3. A financial statement of a licensee may include as a separately identified item any item representing or covering the amount of any asset or liability, income or expenditure not otherwise covered by any of the items listed in the appropriate format.
4. (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 that 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.
5. Amounts in respect of items representing assets or income may not be set off against amounts in respect of items representing liabilities or expenditure (as the case may be), or vice versa.
6. In the case of a licensee which is a sole proprietor, the items to be included in his financial statements prepared in accordance with these

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Regulations shall be those which arise in the course of the financial services business of that licensee.

PART 2.

ACCOUNTING PRINCIPLES AND RULES.

7. Subject to paragraph 9, 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 Principles and Rules contained in Part II of Schedule 4 to the (English) Companies Act 1985, with the Accounting Standards contained in the United Kingdom Statements of Standard Accounting Practice (SSAPs) which are in force from time to time and with the following rules.

8. Subject to paragraph 7, items shall be included in such a way as to reflect the substance and not merely the form of the underlying transactions and balances.

APPENDIX 1**BALANCE SHEET FORMAT****A. FIXED ASSETS****I. Intangible Assets**

1. Development costs
2. Goodwill
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 (1)**

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

III. Investments (long positions)(3)**IV. Cash at bank and in hand****C. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR**

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1. Bank loans and overdrafts.
2. Eligible subordinated loans (6)
3. Other debenture loans
4. Trade creditors (4)
5. Investments (short positions)(5)
6. Income tax
7. Other taxation and social security
8. Amounts due to group and connected companies
9. Other creditors
10. 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. Eligible subordinated loans (6)
3. Other debenture loans
4. Trade creditors(4)
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 (7)
2. Share premium account
3. Partners' or proprietors' capital accounts
4. Partners' or proprietors' current accounts
5. Revaluation reserve
6. Other reserves
7. Profit and loss account.

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Approved by the directors/partners/governing body on

Signature

Signature

NOTES ON THE BALANCE SHEET FORMAT

(1) Debtors

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

(2) 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
Amounts outstanding for 30 days or less.

(3) Investments (long positions)

(i) Debt instruments

		Residual Maturity			Total
0- 90 days	90 days- 12 Months	12 months - 5 years	more than 5 years		

- UK

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- Government,
Government
of Gibraltar
and Local
Authority
debt
- Accepted or
issued by an
approved
bank
 - Floating Rate
Notes
 - Other debt
instruments:
 - marketable
investments
 - not marketable
investments

(ii) Shares (other than in group companies)

- UK listed
- UK unlisted:
 - marketable investments
 - not marketable investments
- Overseas listed on an established
investment exchange
- Overseas unlisted

(iii) Collective investment schemes

- Units in authorised and recognised unit trust schemes
- Other

(iv) Futures, options, contracts for differences

- Futures
- Purchased options
- Written options
- Contracts for differences

(v) Shares in group companies**(vi) Other investments (specify)****(4) Trade Creditors**

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- (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

(5) Investments (short positions)

The same detail should be given as that required by note (3) above

(6) Eligible subordinated loans

- (a) Eligible long term subordinated loans
- (b) Eligible short term subordinated loans
- (c) Committed undrawn subordinated loan facilities
- (d) Bank Undertakings

(7) Called up share capital

Any amount of share capital which has not been paid up shall be shown separately.

(8) Contingent liabilities and commitments

- (a) Amounts subject to an investment position risk factor
- (b) Other amounts arising in the ordinary course of business
- (c) Other contingent liabilities not provided for
- (d) Capital commitments contracted for but not provided for
- (e) Capital commitments authorised but not contracted for
- (f) Pension commitments not provided for
- (g) Other financial commitments not provided for

The following additional information shall be given, where relevant—

- (i) Whether any valuable security has been provided by the licensee in connection with a contingent liability or commitment
- (ii) The amounts which relate to undertakings on behalf of or for the benefit of group and connected companies.

APPENDIX 2

PROFIT AND LOSS ACCOUNT FORMAT

A. DEALING

Gains/losses on principal dealings (trading)

1. equities
2. debt instruments
3. futures, options and contracts for differences
4. units in collective investment schemes
5. foreign exchange
6. other - specify

B. REVENUE

1. Commissions on transactions in collective investment schemes

1. authorised unit trust schemes and recognised schemes
2. other - specify

II. Commissions on transactions in life insurance policies

1. commission on indemnity terms
2. other initial commission
3. renewal commission
4. other specify

III. Commissions on securities transactions

1. equities
2. debt instruments
3. other– specify

IV. Commissions on transactions in futures, options, contracts for differences, etc.

1. futures
2. options
3. contracts for differences
4. other– specify (e.g. commodities)

V. Investment management fees

VI. Fee income in respect of financial advice

VII. Company management fees

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- VIII. Trustee fees

- IX. Interest and dividends
 - 1. investment positions
 - 2. loan accounts and margin accounts
 - 3. in respect of balances in client bank accounts
 - 4. other specify

- X. Dealing and settlement services

- XI. Revenue from research and consulting services

- XII. Retained underwriting and placing commissions

- XIII. Other revenue – specify if material

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. Investment exchange and clearing house charges

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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.