



'Ensuring Investor Protection'

## **THE SECURITIES AND EXCHANGE COMMISSION**

# **DIRECTIVE ON THE OPENING, MAINTENANCE AND OPERATION OF TRUST ACCOUNTS BY CAPITAL MARKET OPERATORS NUMBER: SEC/DIR/003/07/2020**

### **1.0 Preamble**

- 1.1 This Directive is issued by the Securities and Exchange Commission (hereinafter referred to as “the SEC”) pursuant to sections 3, 140, 159, 160 and 209 of the Securities Industry Act, 2016 (Act 929) with respect to opening, maintenance and operation of Trust Accounts held by Capital Market Operators (hereinafter referred to as “Licencees firms”).

### **2.0 Scope and Application**

- 2.1. This Directive shall apply to all Capital Market Operators required to open, maintain and operate Trust Accounts for and on behalf of its clients.

### **3.0 Designation and Operation of Trust Accounts**

- 3.1. A Capital Market Operator may open, maintain and operate one or more Trust Accounts provided that they are designated as Trust Account in the name of the Capital Market Operator with number identifiers such as Trust Account 1, Trust Account 2, Trust Account 3 etc into which all monies received from clients or on behalf of clients by Capital Market Operators shall be deposited for the purposes of investment.
- 3.2. A Trust Account shall not contain any other money except those deposited by clients or on behalf of clients of Capital Market Operators for investment purposes.

- 3.3. A Trust Account shall be separated from other Accounts maintained by the Capital Market Operator for operational or proprietary purposes.
- 3.4. All Banks, Specialised Deposit-Taking Institutions, Custodians and Trustees with which Trust Accounts are opened, maintained and operated by a Capital Market Operators shall ensure that receipts, payments and disbursements into and from a Trust Account are only in respect of clients investments and the beneficiary on behalf of whom the receipt, payment and disbursement is made is clearly identified by name and Identity card so that the entries on the Trust Account can be reconstructed such that a statement containing all debits and credits on the Account can be attributed to individual beneficiaries.
- 3.5. Where it appears to a Bank, Specialised Deposit-Taking Institution, Custodian or Trustee that a Trust Account is not being used for the purposes above, the Bank, Specialised Deposit-Taking Institution, Custodian or Trustee shall notify the Securities and Exchange Commission (SEC) immediately before the transaction in question passes or is effected by the Custodian or Trustee.
- 3.6. The SEC may from time to time request for any information on any Trust Account of a Capital Market Operator pursuant to the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) and the Bank, Specialised Deposit-Taking Institution, Custodian or Trustee shall promptly provide the said information within the time requested.
- 3.7 All existing Trust Accounts or Accounts currently opened, maintained and operated by a Capital Market Operators for the purposes of client investments or on behalf of client shall be designated to meet the requirements of this Directive not later than 7 business days from the date of Commencement of this Directive.

#### **4.0 Immunity of Trust Account to bankruptcy and liquidation proceedings or processes of Court**

- 4.1 Where a licensee becomes bankrupt or falls into liquidation or incurs a debt, a Trust Account operated by the Capital Market operator shall not be subject to bankruptcy or liquidation proceedings or be used as a payment for the debt.

4.2 Monies held in a Trust Account are not available for payment of the debts of Capital Market Operator or liable to be paid or taken in execution under an order or process of a court.

#### **5.0 Sanctions for Non-Compliance**

5.1 Where there is a breach of any provision stipulated in these guidelines the SEC may take any action(s) specified under section 209, 159(7),(8), 160(1)(d), 160(2), 160(7)(8), and/or any other relevant provision applicable under the Securities Industry Act 2016 (Act 929)

#### **6.0 Revocation, Variation and Revision**

6.1 The SEC may revise, amend, vary or revoke this Directive.

#### **7.0 Interpretation**

7.1 Where any doubt arises about the meaning of any provision contained in this Directive, the same shall be referred to the SEC and the interpretation provided by the SEC shall be final.

#### **8.0 Commencement of these Guidelines**

8.1 This Directive shall take effect on the date of its issue and shall remain in force until otherwise revised, varied, amended or revoked.

**ISSUED BY ORDER OF**

**THE SECURITIES & EXCHANGE COMMISSION (SEC)**

**DATED: JULY 15, 2020**

CC: Bank of Ghana (for Distribution to Banks)

