

**SECURITIES INDUSTRY (MARKET OPERATORS) (CONDUCT OF BUSINESS)  
REGULATIONS 2017**

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## **SECURITIES INDUSTRY (MARKET OPERATORS) (CONDUCT OF BUSINESS) REGULATIONS 2017**

Pursuant to the powers conferred on the Minister responsible for Finance by Section 215 of the Securities Industry Act 2016 (Act 929) and on the recommendation of the Securities and Exchange Commission, these Regulations are made this [XX] day of [XXX] 201-.

### **PART ONE: PRELIMINARY**

#### **1. Application**

- (1) These Regulations apply to:
  - (a) market operators identified in Section 109(1) of the Act; and
  - (b) persons operating a collective investment scheme.
- (2) Where a market operator is part of a financial group, certain Regulations, where specified, shall apply to the financial group as a whole.
- (3) Where the Commission agrees to waive the full application of these Regulations, it shall issue a direction to the market operator that states what alternative procedures shall be put in place by the market operators to ensure that business is properly and effectively conducted. The market operator shall comply with such directions
- (4) Certain Regulations, where specified, apply to broker/dealers, custodians, fund managers, investment advisers, issuing houses, nominees, primary dealers, trustees, underwriters and persons operating a collective investment scheme, referred to as “market intermediaries”.
- (5) Where a market operator is part of a financial group, certain Regulations, where specified, shall apply to the financial group as a whole.

#### **2. General requirements for the conduct of business**

- (1) A market operator shall, when conducting regulated activity:
  - (a) act with integrity;
  - (b) apply due care, skill, and diligence in the best interests of its clients and the integrity of the capital market;
  - (c) observe high standards of market conduct;
  - (d) not place its own interests above those of its clients; and
  - (e) give similar treatment to similarly situated clients.
- (2) A market operator shall not conduct any business, other than that permitted by the licence, without the written permission of the Commission.
- (3) A market operator shall at all times act in compliance with the Act, Regulations, any other regulatory requirements made under the Act and with any other applicable financial services law.
- (4) A market operator shall not act in a way that brings the capital markets of Ghana into disrepute.

### **3. Relations with the Commission**

- (1) A market operator shall, at all times, co-operate with the Commission and give the Commission such reasonable assistance as the Commission may require for the performance of its functions.
- (2) A market operator shall make payments of fees to the Commission promptly and in such form and manner as the Commission may prescribe.
- (3) A market operator and financial group shall give the Commission reports and notifications as specified in Schedule 1.

### **4. Legal form**

- (1) The market operator shall be a limited company unless paragraph (2) applies.
- (2) Where the market operator is an investment adviser, it may be conducted in a form other than a company if:
  - (a) the Commission is satisfied that the business can be safely conducted in the form proposed;
  - (b) there are at least three key persons registered with the Commission as having responsibility for the conduct of the business; and
  - (c) the market operator has a registered office or place of business in Ghana.
- (3) For the purposes of these Regulations, the term “director” shall have the same meaning as that given in the Companies Act 1963 (Act 179) but shall also include, for market intermediaries who take a legal form other than a company, partners and the key persons registered as being in control of the business.

## **PART TWO: THE BOARD AND DIRECTORS**

### **5. The role and responsibilities of the Board**

- (1) A market operator shall be headed by an effective Board providing strategic guidance to lead and control the market operator.
- (2) The Board of directors shall assume the primary responsibility for fostering the long-term, sustainable business of the market operator consistent with:
  - (a) their fiduciary responsibility to the market operator;
  - (b) their responsibility to ensure the market operator operates in an effective, fair, ethical and prudent manner;
  - (c) their responsibility to investors, other stakeholders and the community more generally; and
  - (d) the Act, any other applicable statute and with any other regulatory requirements imposed under the Act or by any self-regulatory organisation of which the market operator may be a member.
- (3) The responsibilities of the Board shall include the following:
  - (a) With respect to the operation of the market operator:

- (i) to define and document the market operator's mission, strategy, goals, objectives and plans;
  - (ii) to determine and document the market operator's governance practices, its risk management framework, its risk tolerance and its ethical standards;
  - (iii) to hold the executive and particularly the chief executive officer to account, to monitor performance and to provide checks and balances to the chief executive officer's authority;
  - (iv) to fulfil any duties with respect to the market operator itself, to clients, to the capital market, or to any other entity, to which duties are owed by the Act, any other applicable statute, other regulatory requirements imposed under the Act or contract or by any self-regulatory organisation of which the market operator may be a member;
  - (v) to set documented policies and procedures that implement the business strategy, risk management framework and ethical standards and ensure that the duties of the market operator are met;
  - (vi) to set internal controls that are documented and designed to implement the policies and procedures and which apply throughout the market operator including to employees, agents and others through whom services are delivered;
  - (vii) to adopt the market operator's annual budget;
  - (viii) to ensure that accounting policies, record keeping, accounting and financial reporting systems are sufficient for the operation of the business and consistent with the requirements of the Act, any other applicable statute and any other regulatory requirements under the Act;
  - (ix) to oversee and monitor the market operator's management and operations, management accounts, major capital expenditures, acquisitions and divestitures and review corporate performance;
  - (x) to implement a management information system that enables the Board to monitor performance;
  - (xi) to develop and document appropriate staffing and remuneration policy;
  - (xii) to ensure that the financial resources available to the market operator not only meet the statutory or regulatory requirements but also are adequate with respect to the nature, size, and complexity of its business and will enable the company to meet its liabilities as they fall due;
  - (xiii) to ensure that the company has sufficient technological and other resources to carry out its operations; and
  - (xiv) regularly to review the business strategy, corporate governance, risk management, ethical standards, policies and procedures, internal controls, record keeping and accounting policies, management information, level of resources and compliance with the Act, any other applicable statute and any other regulatory requirement imposed under the Act or by any self-regulatory organisation of which the market operator is a member;
- (b) with respect to effective functioning of the Board itself:

- (i) to monitor the performance of the Board and any Committees; and
  - (ii) to establish its own procedures and manage conflicts of interest by Board members.
- (4) The market operator shall make available to the public, on request, the identity of senior management and those authorized to act in the name of the market operator; the category of license held; its current status and the scope of authorized activities.

## **6. The composition of the Board**

- (1) A market operator that is a limited company shall have at least three directors, who have the integrity, skills, experience and qualifications necessary for the business undertaken by the market operator.
- (2) A market operator that is an incorporated private partnership shall ensure that there are at least three partners with the integrity, skills, experience and qualifications necessary to control the business undertaken by the market operator.
- (3) A market operator that is conducted in any other legal form shall have at least three key persons who are registered with the Commission as being responsible for the conduct of the business and who must have the integrity, skills, experience and qualifications necessary to control the business undertaken by the market operator. The market operator (which has a legal form other than a company) shall identify a person, who will perform the role of chairman.
- (4) The Board shall comprise a balance of executive directors, non-executive directors and independent non-executive directors, all of whom shall be natural persons and:
  - (a) there shall be at least three directors; and
  - (b) at least [one third] shall be independent non-executive directors.
- (5) The chairman of the Board shall not be the chief executive officer except with the permission of the Commission. The Commission may, when granting such permission, issue a direction specifying alternative measures designed to ensure that appropriate checks and balances are in place and the market operator shall comply with such a direction.
- (6) New appointments to the Board shall not be made without the prior written consent of the Commission. If a director is dismissed or resigns, the market operator shall report the dismissal or resignation to the Commission, within 14 days and give the reasons for it

## **7. The operation of the Board**

- (1) The Board shall adopt procedures for arranging its business which shall include:
  - (a) an annual schedule of meetings agreed and documented and consisting of at least four meetings at quarterly intervals;
  - (b) the required notice for the circulation of the agenda and the method for securing the adoption of agenda items;
  - (c) a statement as to the decisions that shall be reserved to the Board or a statement of matters that are delegated to a Committee of the Board or to executives;

- (d) the procedures for taking Board decisions, including the required majority, the use of a casting vote and the minimum quorum; and
  - (e) the method of recording and disseminating Board decisions.
- (2) The chairman of the Board shall:
- (a) ensure that the Board meets in accordance with the agreed schedule and otherwise as required;
  - (b) ensure that any committees meet regularly;
  - (c) ensure that meetings are conducted in a proper manner;
  - (d) ascertain the views and/or the decision of the meeting on the issues being discussed;
  - (e) ensure that directors, are encouraged to contribute within their respective capabilities in order to secure the maximum benefit for the market operator; and
  - (f) ensure that the Board exercises its responsibility to act as a check and balance to the decisions of the chief executive officer and other management staff.
- (3) The Board shall adopt a protocol for avoiding conflicts of interest by Board members, which shall be regularly reviewed and updated as necessary and which shall include:
- (a) a requirement that each director shall declare on appointment and annually any outside appointments and any holdings of securities and shall immediately disclose any transactions in securities;
  - (b) the procedures for considering whether a director's outside appointments or securities holdings or transactions, or any other matter amount to a conflict of interest that a reasonable person would conclude was likely to influence that director when considering a matter before the Board;
  - (c) the actions necessary to resolve the conflict including:
    - (i) withdrawing from any discussion on a particular matter; and
    - (ii) receiving no papers or other information on a matter; or
    - (iii) if necessary, resigning from the Board;
  - (d) the supply of information and training on the provisions in the Act and Regulations relating to market abuse; and
  - (e) the procedures for avoiding any misuse of the position of director.
- (4) The protocol shall enable the Board to require a director to resign if conflicts of interest appear to be too severe to permit the director to remain a member of the Board.
- (5) The Board shall appoint a chief executive officer and other management as it sees fit. The Board shall ensure that there are directors or senior staff who are capable of taking over the functions of the chief executive officer in the event that the chief executive officer is incapacitated, absent, or otherwise incapable of fulfilling his or her duties.
- (6) The Board may engage third parties or agents to carry out some of the functions for which the Board is responsible but, in this event, the Board shall retain responsibility for the performance of those duties as performed by the third party or agent,

## **8. Management information**

- (1) The Board shall be supplied with relevant, accurate and timely information that is readily accessible, so as to enable it to discharge its duties.
- (2) The Board shall identify and document the information it considers necessary to monitor:
  - (a) the operation of the business;
  - (b) the discharge of the Board's obligations;
  - (c) the nature and magnitude of risks;
  - (d) the effectiveness of risk mitigation policies;
  - (e) the financial performance and position of the market operator;
  - (f) the exposure to market and other risks by the market operator; and
  - (g) other matters it considers necessary.
- (3) The Board shall consider the information regularly.
- (4) The Board shall also be informed of all relevant laws, regulations and rules that govern the operation of the market operator and the responsibilities and obligations placed on the directors by the Act, any other applicable statute and any other regulatory requirements under the Act or by any self-regulatory organisation of which the market operator is a member.
- (5) The chairman and chief executive officer shall be responsible for supplying information to Board members on a timely basis that is sufficient to enable them to discharge their duties.
- (6) The chief executive officer shall also be responsible for setting and implementing procedures that ensure the security, availability, reliability and integrity of the information.
- (7) It shall be the responsibility of each Board member to make reasonable enquiries to inform himself or herself of the factors affecting the issues before the Board and to seek further information from within or outside the market operator as they consider appropriate.
- (8) The Board shall ensure that the management of the market operator has responsibility for maintaining the security, availability, reliability and integrity of the management information.

## **9. Committees of the Board**

- (1) The Board may form such committees as it considers appropriate. The Board shall appoint an audit committee, except where the market operator is not incorporated and does not hold client money or assets, or when the market operator secures the consent of the Commission that an audit committee is unnecessary, given the nature and other controls of the market operator. The Commission may issue a direction specifying measures that should be taken to ensure the integrity of accounting and financial reporting and the market operator shall comply with that direction.
- (2) The Board shall set and document the terms of reference of any committees that it creates.

- (3) Where the Board has appointed an audit committee, the terms of reference of that committee shall require that:
- (a) The Chairman and a majority of members should be independent non-executive directors, who have reasonable knowledge of finance and basic accounting principles as well as the statutory and regulatory requirements relating to the accounting and financial reporting obligations of the business;
  - (b) The audit committee has:
    - (i) adequate resources and authority to discharge its responsibilities;
    - (ii) authority to investigate any matter within its terms or reference;
    - (iii) authority to employ professional advice or assistance if it considers this necessary; and
    - (iv) full access to any information it considers relevant.
  - (c) The committee should oversee the integrity of the accounting and financial reporting system and to report to the Board on these matters;
  - (d) with respect to external audit, the committee should:
    - (i) consider the appointment of the external auditor, the audit fee and, if such an event occurs, the resignation or dismissal of the external auditor;
    - (ii) discuss with the external auditor before the audit commences, the nature and scope of the audit, and ensure co-ordination where more than one audit firm is involved;
    - (iii) review management's response to the audit report and the auditor's letter to management;
    - (iv) discuss problems and reservations arising from the interim and final audits, and any matter the external auditor may wish to discuss (in the absence of management where necessary); and
    - (v) be a channel of communication between the external audit function and the Board;
  - (e) with respect to internal audit, the committee shall:
    - (i) review of the adequacy, scope, functions, effectiveness and resources of the internal audit function, and ensure that it has the necessary authority to carry out its work;
    - (ii) review the internal audit program and results of the internal audit process and where necessary ensure that appropriate action is taken on the recommendations of the internal audit function;
    - (iii) review any appraisal or assessment of the performance of members of the internal audit function;
    - (iv) approve any appointment or termination of senior staff members of the internal audit function;
    - (v) ensure that the internal audit function is independent of the activities of the company and is performed with impartiality, proficiency and due professional care;



- (vi) consider the implications of the resignation of internal audit staff members and provide the resigning staff members an opportunity to submit reasons for resigning; and
  - (vii) oversee the internal audit function on behalf of the Board.
- (4) Where the Board delegates functions and duties to Committees of the Board or to executives, the Board will retain ultimate overall responsible for such functions and duties.

## **10. The appointment of directors**

- (1) The market operator shall notify the Commission of its intention to make an appointment to its Board and shall not make the appointment unless the Commission gives its approval.
- (2) The Board shall adopt a documented procedure for the appointment of chairman, chief executive officer and other directors which shall be designed to ensure that they are fit and proper and shall include:
  - (a) a documented description of the terms and conditions of the appointment;
  - (b) a documented description of the skills and qualifications required for the appointment;
  - (c) a documented description of the factors to be taken into account by the Board when considering the fitness and properness of the candidates for the appointment and the enquiries to be made to prior to any appointment;
  - (d) a determination as to whether the vacancy is for an executive, non-executive or independent non-executive director;
  - (e) the investigations that should take place with respect to the skills, qualification, integrity and other matters relating to candidates; and
  - (f) the process for evaluating the performance of the appointee.
- (3) A person shall not be appointed to a Board if he or she already is a director of another market operator unless that other market operator is a shareholder, subsidiary or affiliate of the market operator to whose Board the appointment is to be made.
- (4) Newly appointed directors shall be provided with necessary orientation in the area of the company's business in order to enhance their effectiveness in the Board
- (5) The key persons of market operators must have the qualifications specified in the [Securities Industry (Licensing and Forms) Regulations 2017] and any other qualifications that the Commission may specify. The Commission may specify different qualifications for different categories of market operator. The Commission may waive a requirement for a specific qualification in a particular case where it is satisfied that the person appointed to the post has sufficient relevant experience to enable him or her to fulfil the duties.
- (6) The Board shall determine and document the training it considers appropriate for the Board.
- (7) The Board shall arrange for training to be delivered to its Board members on corporate governance and on the business of the market operator, within six months of their

appointment unless the chairman of the Board considers and documents his or her reasons in writing, why such training is not necessary.

- (8) The Board shall adopt a documented policy for determining the remuneration of Board itself, the executive and staff of the business.
- (9) The Board shall keep a register of directors and their qualifications that shall be held available for public inspection without charge at the registered office.
- (10) Where a director resigns, is dismissed, or declines to accept a further term for which he or she would otherwise be eligible, the market operator and the director concerned shall:
  - (a) give the reasons, in writing, to the Commission, for the resignation, dismissal or refusal to accept a further term;
  - (b) attend, if so required by the Commission, for interview to discuss those reasons.

### PART THREE: MANAGEMENT AND CONTROL

#### **11. Risk management**

- (1) The Board is responsible for the management of the risks facing the market operator.
- (2) The Board shall assess the risks facing the market operator. This shall include, where relevant, any risks arising from:
  - (a) the products or services provided;
  - (b) the facilities offered;
  - (c) the clients targeted;
  - (d) the financial management of the market operator;
  - (e) the financial capital applied to the business;
  - (f) the human resources available to the market operator;
  - (g) the technology infrastructure;
  - (h) the information held by the market operator;
  - (i) the potential for internal fraud;
  - (j) the potential misuse of the products, services, or facilities for the purposes of money laundering, financing of terrorism or other abuses as defined in the Anti-Money Laundering Act 2008 (Act 749) and the Anti-Terrorism Act 2008 (Act 762);
  - (k) risks arising from proprietary trading;
  - (l) risks arising from the transfer of functions to agents or third party service providers; and
  - (m) any other market, credit, operational, settlement, counterparty, regulatory, legal and other risks.
- (3) The assessment of risks shall include the risks to the market operator arising from any other activities in which it is engaged or arising from the activities of any member of a financial group of which the market operator is a part.

- (4) The Board shall adopt an internal organisational structure and policies and procedures designed to mitigate the risks it has identified and to maintain risk management, financial and operational control. The risk assessment and the policies and procedures shall be:
  - (a) documented; and
  - (b) communicated to employees.
- (5) The Board shall adopt contingency plans for maintaining business continuity in the event of certain specified risks, including:
  - (a) technology failure;
  - (b) the loss of access to the market operator's main offices;
  - (c) the loss of records or access to them;
  - (d) the default or failure of a counterparty; and
  - (e) the loss of key personnel.
- (6) The Board shall ensure that the contingency arrangements are tested from time to time and no less frequently than annually.
- (7) The Board shall conduct an evaluation (or seek an independent evaluation, for example by the external auditor) of its risk assessment and the effectiveness of its risk management process no less frequently than annually.

## **12. Internal controls**

- (1) The Board is responsible for adopting an internal organisational structure and policies and procedures (referred to as internal controls) of the market operator that are appropriate for the nature of the business in which the market operator is engaged. The Board is further responsible for monitoring the management in ensuring adherence to those controls on a day to day basis.
- (2) The Board shall adopt internal controls that are designed to ensure that the market operator is conducted in a diligent, honest and proper manner and in accordance with:
  - (a) the Board's policies;
  - (b) the applicable requirements imposed by the Act, any other applicable statute, and any other regulatory requirements imposed under the Act or by any self-regulatory organisation of which the market operator is a member; and
  - (c) any applicable regulations of any self-regulatory organisation of which the market operator may be a member.
- (3) The Board shall designate a person (who may be a member of the Board or an employee) as compliance officer. The compliance officer may have other duties, provided that they do not create a conflict of interest. The compliance officer must be independent of any operational divisions of the market operator.
- (4) The market operator shall inform the Commission in writing of the name of the compliance officer within 60 days of the granting of a licence or of the resignation or termination of the previous compliance officer.
- (5) The Commission may prescribe the qualifications for a compliance officer.

- (6) The responsibility of the compliance officer (subject to the overall responsibility of the Board for compliance with regulatory requirements) shall be:
  - (a) to advise the Board on the policies and procedures necessary to comply with the regulatory requirements to which the market operator is subject;
  - (b) to monitor the effectiveness of internal controls, in mitigating risk, ensuring compliance with regulatory requirements and implementing the Board's strategy and policies;
  - (c) to ensure that all relevant persons are aware of the regulatory requirements, including, employees and agents;
  - (d) to report material breaches to the Board;
  - (e) to report to the Board any disciplinary action taken by the Commission against the market operator;
  - (f) to report to the Board the results of any inspections or investigations conducted by the Commission; and
  - (g) to report no less frequently than annually to the Board on the adequacy of the internal controls in mitigating risk, ensuring compliance with regulatory requirements and implementing the Board's strategy and policies.
- (7) The Board shall ensure that the compliance officer:
  - (a) has sufficient seniority, authority and skills to carry out the tasks;
  - (b) has direct access to the Board;
  - (c) is able, without requiring any other prior authority:
    - (i) to examine all books, documents and other records, in whatever media they are held; and
    - (ii) to require any Board member, employee, agent or other relevant person to answer questions about any aspect of their work.
- (8) The Board shall review the compliance officer's reports whenever they are submitted and take and document such action as it considers appropriate in the light of that report.
- (9) Where a compliance officer resigns or is dismissed from the market operator, both the market operator and the compliance officer shall:
  - (a) submit the reasons, in writing, to the Commission for the resignation or dismissal; and
  - (b) attend, if so required by the Commission, for interview to discuss those reasons.
- (10) The Board shall adopt a procedures' manual that includes a description of the internal controls.
- (11) The Board shall submit a copy of the manual to the Commission within three months of a licence being granted and at other times as required by the Commission.
- (12) The Board shall ensure that each employee is supplied with a copy of the internal controls that are relevant to their tasks and responsibilities and that the entire manual is readily available to all employees.

- (13) The Board shall ensure that for each employee, except where the Board determines that the nature of the post (or class of posts) makes it unnecessary and documents its reasons:
- (a) there is a description of the duties of the post;
  - (b) the employee knows the standards of conduct that are expected of them;
  - (c) there is a description of the authority and responsibility of the post holder, of the key areas of discretion of the post, which shall include a description of the limits of that discretion and the criteria to be applied in exercising that discretion;
  - (d) the description of duties for each employee shall define the extent to which that employee may commit the market operator to expenditure, market positions or other financial commitments; and
  - (e) there is a designated person who has oversight responsibility for the officer occupying the post and for ensuring that discretion is exercised in accordance with the established parameters.
- (14) The Board shall ensure that there are adequate financial controls, including the determination of what should be regarded as a significant financial commitment and a requirement for dual signatures prior to the market operator accepting such a commitment.
- (15) The Board shall ensure that there are adequate controls to protect the security, availability, reliability and integrity of information collected and stored by the market operator.
- (16) The Board shall adopt controls that are appropriate for mitigating the risks of proprietary trading by the market operator itself and to mitigate risks to the market operator's own position or credit limits arising when clients are able to use the market operator's facilities to access the securities market directly
- (17) The Board shall have appropriate arrangements for protecting against the risks involved when payments are made or accepted in cash, including but not limited to the risk that such payments may be made in cash as part of a fraudulent scheme or to engage in money laundering as defined in the Anti-Money Laundering Act 2008 (Act 749).
- (18) The Board shall make arrangements to segregate duties within the market operator, (except where the Commission has agreed in writing that such segregation to be unnecessary) between:
- (a) those responsible for making payments;
  - (b) those responsible for incurring financial, investment or trading commitments;
  - (c) those responsible for verifying that financial investment and trading commitments are entered into according to the policies of the market operator;
  - (d) those responsible for keeping books and preparing accounts; and
  - (e) any duties and functions which, if performed by the same individual, may result in undetected errors, or may be susceptible to abuses which expose the market operator or its clients to inappropriate risks.
- (19) Where the Commission has given permission that segregation of duties between particular positions is not necessary, it may issue a direction stating what alternative

measures should be taken to provide appropriate checks and balances and the market operator shall comply with that direction.

- (20) The Board shall ensure that the information in its possession is subject to adequate confidentiality protection, taking account of statutory obligations and the duty of confidentiality to all whose personal, private or financial information is entrusted to the Board. Where the Board determines that it is appropriate and consistent with statutory and regulatory obligations to disclose confidential information to others as part of its business, it shall take reasonable steps to ensure that the recipient of the information affords the confidential information appropriate protection.

### **13. Accounts and audit**

- (1) In addition to meeting the requirements of Sections 124 to 126 of the Companies Act (179), the requirements in the Securities Industry Act (929) and any applicable statute relating to financial reporting, the market operator shall follow any prescriptions made by the Commission as to the form and content of financial statements.
- (2) The financial statements prepared by the Board shall be:
  - (a) accurate, presenting a true, balanced, comprehensible and fair picture of the market operator's financial position and that of any financial group of which it is a part;
  - (b) consistent with the Board's accounting policies;
  - (c) consistent with the Accounting Standards issued by the Institute of Chartered Accountants (Ghana); and
  - (d) comparable, taking one year with another, including both annual and interim statements.
- (3) If the market operator or financial group becomes aware of any apparent misstatement in any accounts submitted to the Commission, it shall report this fact to the Commission.
- (4) A market operator shall adopt procedures to ensure that it is, at all times in compliance with its financial resource requirements. These procedures shall include:
  - (a) daily calculations of the financial resource requirements; and
  - (b) the maintenance of the daily calculations on file.
- (5) A market operator shall, within one month of receiving a licence or of the ending of a previous auditor's appointment, appoint an independent auditor to carry out an audit of its accounts. The market operator shall ensure that:
  - (a) the auditor is independent;
  - (b) on reasonable enquiry, the market operator knows of no reason why the auditor should not serve as auditor;
  - (c) the auditor is appropriately qualified, in accordance with Section 296 of the Companies Act (179), has appropriate professional indemnity insurance and is authorised and competent to conduct an audit of the accounts;
  - (d) the auditor is provided by the market operator, with all material information that is relevant to the audit and that the market operator shall sign a declaration to this effect;

- (e) the auditor has the right of access to all accounting and other records of the market operator and the right to require such information and explanations as the auditor considers necessary to perform its functions; and
  - (f) all information and explanations given to the auditor is accurate and neither false nor misleading.
- (6) The Board shall arrange for the financial statements to be audited by the external auditor in accordance with Sections 124 and 133 of the Companies Act (179) with the Securities Industry Act (929), with the accounting standards issued by the Institute of Chartered Accountants (Ghana) and with any other requirements prescribed by the Commission.
- (7) The Commission may make a determination that an auditor is not independent or is otherwise not suitable to carry out an audit of a market operator and may thereby give a direction that an auditor may not carry out the audit. The Commission shall provide the market operator with an opportunity to make representations on this matter. If having considered the representations, the Commission considers that the auditor is not independent, it shall inform the market operator who shall comply with the Commission's direction and appoint another auditor within one month.
- (8) If a partner of a firm is carrying out the internal audit function of a market operator or any financial group of which it is a part, a different firm shall be appointed as external auditor of the market operator.
- (9) A market operator shall sign an engagement letter with the auditor that:
- (a) defines the scope of the audit;
  - (b) includes a requirement that the auditor shall make a written report to the Commission within seven days if, in the performance of its functions as an auditor, the auditor becomes aware of:
    - (i) a material breach of the regulatory requirements that has not already been reported to the Commission;
    - (ii) a matter that has, is or may affect, adversely, the ability of the market operator to meet its obligations; or
    - (iii) constitutes, or may constitute, a contravention of Sections 157, 158, 159, 160 or Part VII of the Act.
  - (c) includes a requirement that the auditor shall supply to the Commission, a copy of the management letter accompanying audited accounts;
  - (d) includes a requirement that, unless Section 162(2) to 162(6) of the Act applies, the auditor shall, in the event of the auditor's resignation, notify the Commission and provide the Commission with an explanation; and
  - (e) includes an indemnity that, if the auditor chooses in good faith, or is required, to make a report to the Commission about any matter in connection with regulatory obligations, the market operator shall not take any action against the auditor for defamation or breach of confidentiality.
- (10) The audit shall be conducted according to any applicable statutory requirements relating to the audit of public accounts.

- (11) A market operator shall give the auditor such facilities as he or she may reasonably expect and shall pay the reasonable fees and expenses of the auditor.
- (12) The audit reports of the market operator shall include, the following statements, if the auditor reasonably believes them to be true:
  - (a) the financial statements have been prepared according to these regulations;
  - (b) the audited balance sheet, off balance sheet commitments, profit and loss and income and expenditure statements accord with the market operator's records or those of the financial group, as the case may be;
  - (c) proper records have been kept throughout the accounting year;
  - (d) the financial resource requirements are in accordance with the regulations at the financial accounting date,
  - (e) the market operator has conducted regular reconciliations of client money and regular calculations of financial and working capital requirements in accordance with these regulations and has kept the appropriate records of these reconciliations and calculations; and
  - (f) the auditor, in the course of the audit, has not encountered any evidence that the financial resource requirements have been breached during the course of the year that is the subject of the audit.
- (13) If the auditor is of the opinion that any one of these statements cannot be truthfully made, it shall state its reasons in a letter to the market operator. If the auditor submits such a letter or any other letter to a market operator or any financial group of which it is a part with any observations on the audit, this letter shall be submitted to the Commission.
- (14) Unless Section 162(1) of the Act applies, a market operator who wishes to remove an auditor shall notify the Commission in advance and provide an explanation. The Commission may seek further explanations from the auditor. A failure to renew an appointment when the auditor was otherwise willing and eligible to continue the appointment shall be deemed to be a decision to remove an auditor for the purposes of this regulation.
- (15) Unless Section 162(7) of the Act applies, a market operator shall notify the Commission of the resignation of an auditor within fourteen days of the resignation.
- (16) A market operator that is a company shall publish an annual report that includes its audited financial statements within five months of the end of the financial year to which the statements relate.

#### **14. Internal Audit**

- (1) The Board shall establish an internal audit function and shall appoint an internal auditor:
  - (a) which position shall be separate from the compliance officer;
  - (b) who shall have appropriate qualifications which may be prescribed by the Commission; and who may be:
    - (i) a member of staff; or
    - (ii) an external appointment.



- (2) The internal auditor may carry out other functions within the market operator, provided that those functions are not subject to internal audit.
- (3) The responsibility of the internal auditor shall be determined by the Board and shall be documented. The responsibilities shall include:
  - (a) evaluation of the effectiveness of internal controls, risk management and management information systems;
  - (b) evaluation of the integrity of the market operator's dealing practices (where appropriate) and of the controls in place to ensure clients are treated fairly, honestly and professionally;
  - (c) evaluation of the effectiveness of procedures to segregate duties, in accordance with Regulation (12);
  - (d) reporting on the results of its evaluation at (a) and (b) and any material breaches of internal controls to the Board;
  - (e) reporting to the Board (or the Audit Committee) no less frequently than annually; and
  - (f) performing any other duty that the Board may regard as appropriate, provided that it does not conflict with the duties of an internal auditor.
- (4) The Board shall ensure that the internal auditor
  - (a) has sufficient seniority, authority and skills to carry out the tasks;
  - (b) determines an annual audit programme that is subject to the approval of the Board (or Audit Committee as appropriate);
  - (c) has the right to report directly to the Board;
  - (d) is able, without seeking any other prior authority:
    - (i) to examine all books, documents and other records, in whatever media they are held; and
    - (ii) to interview any Board member, employee, agent or other relevant person about any aspect of their work.
- (5) The Board shall review the internal auditor's report, in the light of any views expressed by the Audit Committee, no less frequently than annually and take and document such action as it considers appropriate in the light of that report.
- (6) Where the market operator is a person operating a collective investment scheme, the internal auditor shall be able to interview any of the functionaries of the scheme.

#### **PART FOUR: EMPLOYEES**

##### **15. Recruitment and training of employees**

- (1) For the purpose of this regulation, the term "employee" shall be taken to include agents and other persons who carry out functions at the behest of the Board.
- (2) The Board shall employ staff that are fit and proper for their roles and shall adopt a policy and procedure designed to ensure:
  - (a) that employees have the skills, qualifications and experience for their tasks;

- (b) that the skills available to the Board, taken as a whole are sufficient to carry out the functions of the market operator;
  - (c) that reasonable steps have been taken to verify employees' experience and qualifications;
  - (d) that reasonable steps have been taken to establish that the employees are of good reputation and there is no evidence of lack of integrity or circumstances that might render the employee vulnerable to improper pressure;
  - (e) that the Board has the right to discipline or, if necessary, remove from its employment, any person who fails to abide by the internal controls or who otherwise fails to meet the standards required by the Board's policies and procedures, or by the Act, other applicable statutory requirements, Regulations or other regulatory requirements imposed under the Act or by a self-regulatory organisation of which the market operator is a member.
- (3) The Board shall adopt a code of ethics for the staff that will set out the minimum standards of conduct expected of them and describe the way in which they shall behave when confronted with circumstances that may pose a risk to the ethical conduct of the market operator or create a conflict of interest.
  - (4) The Board shall ensure that the experience and qualifications needed for each post is documented. The experience and qualifications shall meet any requirements that may be published by the Commission.
  - (5) The Board shall adopt a policy that defines the training that each employee shall be given and this training shall include for each employee:
    - (a) the market operator's relevant internal controls,
    - (b) the regulatory and statutory obligations relevant to the employee concerned;
    - (c) the duty of care owed to clients; and
    - (d) the code of conduct for employees.
  - (6) The Board shall ensure that all training is carried out according to a programme based on the needs of the market operator, the requirements of the Act, other applicable statute, Regulations or other regulatory requirements imposed under the Act or by a self-regulatory organisation of which the market operator is a member. The training shall be recorded.
  - (7) The Board shall determine what succession planning arrangements are appropriate and ensure that appropriate succession planning is undertaken and documented.
  - (8) The Board shall review its policies for employment and for training regularly and no less frequently than every three years. It shall document the results of the review.

## **16. Trading in securities by employees and agents**

- (1) In this Regulation, any reference to an employee includes all key persons and an agent that is acting on behalf of the market operator.
- (2) An employee of a broker dealer shall only trade through the broker dealer where he or she is employed.

- (3) No employee of a market operator shall trade in any securities without the permission of the chief executive officer or compliance officer and such permission shall not be given if paragraph (4) applies.
- (4) No employee may trade or procure any other person to trade in any securities whilst in possession of confidential information about issuers, listed securities, market orders, unpublished research, the positions adopted by market participants, or any other matter, where that information is undisclosed and whose disclosure may affect the price of any traded securities.
- (5) All employees shall provide a list of the investments held by them to the compliance officer on appointment and annually. The compliance officer shall maintain that list.
- (6) All employees shall immediately disclose any trading in securities that they have undertaken.
- (7) The compliance officer shall review trading by employees no less frequently than annually to ensure that they have met the terms of this Regulation and do not otherwise create a conflict of interest or risk of fraud or abuse.

## **17. Whistle blowing procedures**

- (1) A market operator shall have appropriate procedures and protections for allowing employees to disclose any information to the Commission or other appropriate bodies involved in the prevention of market misconduct, financial crime, money laundering or terrorist financing. The procedures shall be designed to protect an employee who makes an appropriate disclosure in good faith from any retaliatory action by other employees or the market operator itself.

## **18. Agents and third party suppliers**

- (1) Where the Board decides to employ agents or other third party suppliers to provide services for which it is responsible, it shall enter into a written agreement with the agent or supplier that will specify:
  - (a) the duties and obligations of the agent or third party supplier;
  - (b) the duties and obligations of the market operator;
  - (c) the remuneration and other terms;
  - (d) the performance standards and the method by which they will be judged; and
  - (e) the right of the Board or its employees to call for information or make an inspection, at any time, of the books, records and premises of the agent or third party supplier to satisfy itself that the terms and conditions of the agreement are being met.
- (2) The Board shall conduct appropriate due diligence on, and monitor the activities of, the agent or other third party supplier to ensure that
  - (a) they are capable of performing the tasks assigned to them, that they have (or have staff who have) sufficient qualifications and experience;
  - (b) the agent or third party supplier and its employees meets the standards of conduct and integrity to which the market operator is itself subject under the Act, any

- applicable statute, or any other regulatory requirement imposed under the Act or by a self-regulatory organisation of which the market operator is a member;
- (c) the agent or third party supplier complies with the policies and procedures of the market operator; and
  - (d) the agent or third party supplier has sufficient financial resources to be able to continue to supply the services without causing instability to the market operator itself or the Ghana financial services markets.
- (3) The Board shall ensure that performance is regularly monitored and that there is a report to the Board, no less frequently than annually, of the performance of the agent or third party supplier.
- (4) The Board shall adopt appropriate contingency plans for resuming direct control of the services provided by the agent or third party supplier, or for finding an alternative supplier, in the event that the agent or third party supplier, as the case may be, fails to provide an acceptable service.

## PART FIVE: RELATIONS WITH CLIENTS

### 19. Duties to clients

- (1) This Regulation applies only to market intermediaries.
- (2) A market intermediary shall have a duty of care to its clients and shall act fairly and with due diligence in the best interests of its client when providing services to the client in accordance with the client agreement.
- (3) When establishing business relationships with a client, a market intermediary shall identify, and verify the client's identity using reliable, independent data. The market intermediary shall also obtain sufficient information to identify and verify the identity of those who beneficially own or control securities that are subject to the market intermediary's control.
- (4) A market intermediary may be exempt from paragraphs (8), (10), (11) and (11) when providing services to qualified investors provided that the intermediary:
  - (a) conducts appropriate due diligence to satisfy itself that the client is a qualified investor;
  - (b) obtained a declaration to that effect from the client in the form set out in Schedule 4;
  - (c) documents its policy for identifying and verifying clients who may be regarded as qualified investors; and
  - (d) secures the approval of the Commission to that policy.
- (5) A market intermediary that is a broker/dealer, fund manager, primary dealer or investment adviser shall, unless the client is a qualified investor, have a written agreement with each client that is signed by the client and the market intermediary, and:
  - (a) the client shall have a copy of the agreement;
  - (b) the market intermediary shall abide by the agreement;
  - (c) the agreement shall include all the information described in Schedule 2; and

- (d) the market intermediary shall review and update the agreement whenever any material information changes or on a periodic basis which shall be no less frequently than annually.
- (6) A market intermediary that is a custodian, issuing house, nominee, trustee, underwriter, or person operating a collective investment scheme, or any other market intermediary whose client is a qualified investor, shall have a written agreement with each client that specifies the nature of the services to be supplied, the fees and charges (or the basis on which fees and charges are to be assessed), and the rights and obligations of the market intermediary and the client.
- (7) A market intermediary shall only charge fees in accordance with a client agreement.
- (8) Unless paragraph (12) applies, a market intermediary that is providing investment advice or fund management services shall not provide such services unless and until the market intermediary obtains sufficient information about the client and the client's circumstances to ensure that the services provided and any advice given to or decisions taken on behalf of the client are suitable for the client. The information shall be documented, approved and signed by the client and shall include particulars of:
  - (a) the client's knowledge, understanding and experience in relation to securities;
  - (b) the client's income, essential outgoings, wealth and debt obligations;
  - (c) the client's, financial position and investment objectives;
  - (d) the particular needs of the client; and
  - (e) the client's risk tolerance, including the client's willingness to accept the risk of a reduction in the nominal value of capital in return for the prospect of higher returns.
- (9) Unless paragraph (12) applies, the information specified in paragraph (8) shall be reviewed with the client no less frequently than annually.
- (10) Unless paragraph (12) applies, a market intermediary that is a broker/dealer, fund manager, primary dealer or investment adviser shall take all reasonable steps to enable its clients or its potential clients to take informed decisions relating to their business or potential business with the market intermediary. These steps shall include the provision of information that is
  - (a) accurate and not misleading;
  - (b) sufficiently clear and comprehensive to meet the requirements of paragraph (11), taking account of the client's knowledge and understanding; and
  - (c) only uses meaningful, fair and accurate comparisons.
- (11) Unless paragraph (12) applies, a market intermediary who is making investment recommendations to, or taking investment decisions on behalf of, a client, shall:
  - (a) provide advice or take investment decisions that are suitable for the client, taking account of the full circumstances of the client, including his or her financial objectives, risk tolerance, financial awareness and all other relevant circumstances;
  - (b) undertake due diligence on
    - i. the nature of the investment recommended or investment decision taken and

- ii. any institution with whom client money is placed, or in whose securities the client's money is invested

so as to ensure that the investment is suitable for the client given the information obtained on the client in accordance with paragraph (6);
  - (c) refrain from recommending, or taking an investment decision where that involves placing money in an institution, or purchasing a security issued by an institution, that is
    - i. insolvent or,
    - ii. if subject to minimum financial resources set by the Bank of Ghana, the Commission or any other regulatory body, does not meet those minimum financial resource requirements;
  - (d) take and document reasonable steps to satisfy itself that the client has a full understanding of the nature and risks of the investment, the factors that are likely to affect the performance of the investment, the terms and conditions of the investment and the consequences of departing from the terms and conditions (such as seeking early withdrawal of an investment that is made for a fixed term);
  - (e) inform the client of any fees and charges related to an investment;
  - (f) refrain from undertaking investment transactions or advising the client to undertake transactions of a frequency that is inappropriate for the client; and
  - (g) conduct an annual review of the client's investment portfolio and provide a written report to the client of the outcome of the review.
- (12) A market intermediary is not required to comply with paragraphs (8), (9), (10) or (11) where the client agreement specifies that advice on securities will not be given by the market intermediary and the market intermediary acts only on the instructions of the client.
- (13) A market intermediary shall not make any guarantees concerning the performance of an investment unless a return is contractually guaranteed, in which case, the market intermediary shall explain and document the basis on which that guarantee is given.
- (14) A market intermediary shall be liable to its clients for:
- (a) any unjustifiable failure to meet its commitments; or
  - (b) the improper performance of its obligations.
- (15) A market intermediary shall not, in any oral or written communication with the client, remove, exclude or restrict any rights that the client may have or obligations or duties the market intermediary may owe to the client under the Act, any applicable statute, or any other regulatory requirement imposed by the Act or by a self-regulatory organisation of which the market intermediary is a member. Any attempt by a market intermediary to remove, restrict or exclude rights or obligations other than as specified, shall be of no effect.
- (16) A market intermediary shall ensure that any claim it makes as to its independence or impartiality shall be included in the client agreement and that the agreement shall also disclose any limitation there may be on such independence or impartiality.
- (17) Before commencing a business relationship with a client and throughout the relationship, the market intermediary shall ensure that it has properly determined and

verified the identity of the clients and the true beneficial owner of all securities traded by the client.

## **20. Complaints**

- (1) This regulation applies to all market intermediaries.
- (2) A market intermediary shall have a complaints procedure that is disclosed to the client in the client agreement.
- (3) A market intermediary shall deal with each complaint in a fair and timely manner, and shall inform the client of the outcome. Depending on the nature of the complaint, the market intermediary shall:
  - (a) provide appropriate restitution, where the complaint is justified;
  - (b) address any weaknesses in the internal systems that led to the action causing the complaint; and
  - (c) document any actions taken.
- (4) The complaints procedure shall include the following elements:
  - (a) The maintenance of a register of complaints;
  - (b) the allocation of responsibility to a person other than the one about whom a complaint was made or who was responsible for the actions that led to the complaint;
  - (c) the target timetable for dealing with the complaint;
  - (d) the deadlines for informing the complainant of progress with dealing with the complaint, which shall not leave the complainant without information for more than one month; and
  - (e) an appeal to the chief executive (or another appropriately senior officer nominated by the chief executive) where the complaint cannot otherwise be resolved.
- (5) The client shall be informed of his right to appeal under Sections 18 to 23 of the Act if the client does not consider that the complaint has been satisfactorily resolved.
- (6) A market intermediary shall inform the Commission of any complaints still unresolved more than 90 days after they were received.
- (7) A market intermediary shall maintain a record of complaints that identifies:
  - (a) the person from whom the complaint was received;
  - (b) the nature of the complaint;
  - (c) the date a complaint was received;
  - (d) the officer dealing with the complaint;
  - (e) the officer about whom the complaint was made or who was responsible for the action that led to the complaint;
  - (f) the progress in dealing with the complaint;
  - (g) the way the complaint was resolved; and
  - (h) the time it took to resolve the complaint.

- (8) A market intermediary shall also maintain a summary register of complaints.

## **21. Client money**

- (1) This Regulation applies to market intermediaries that have control of client money but it does not apply to custodians, trustees or persons operating a collective investment scheme with respect to money held on behalf of a client that is a collective investment scheme.
- (2) A market intermediary shall safeguard any client money entrusted to it. All money held on behalf of a client shall be held separately from money belonging to the intermediary. The intermediary's accounts shall clearly identify the money being held on behalf of clients.
- (3) A market intermediary who receives or holds client money shall open one or more client trust accounts in a bank licensed by the Bank of Ghana, or, if the client money is received outside Ghana, in a bank that is licensed by a body with similar functions with regard to the licensing of banks as the Bank of Ghana.
- (4) A market intermediary shall immediately pay into a client trust account all client money coming into its hands for or from a client and shall ensure that interest and income accruing to the client is credited to the account. That money shall be held by the market intermediary in trust for the client.
- (5) A client trust account:
- (a) is a bank account controlled by a market intermediary and into which client money is paid;
  - (b) may be a general account, containing funds for a number of clients or a separate client trust account containing money from just one client; and
  - (c) shall have the words "client trust account" in the name of the account and shall be separate from any other accounts controlled by the market intermediary.
- (6) A market intermediary shall obtain from the bank at which a client trust account is held, a written statement of acknowledgement that the client money in the client trust account is held in trust for the client or clients and that the bank may not use that client money to offset any obligations of the market intermediary to the bank. The written statement shall be held by the market intermediary in its records.
- (7) When the client provides a document setting out the terms and conditions of the acceptance of client money in accordance with Section 140(1)(b) of the Act, the market intermediary shall not use any of the client money for any purpose until the client has indicated, in written form, his or her acceptance of those terms and conditions. Such terms and conditions shall then form part of the client agreement required by regulation (4).
- (8) A market intermediary who has control of client money in a client trust account may only:
- (a) pay the client money to the client or a bank account in the client's name; or
  - (b) use the client money in accordance with the client agreement;
  - (c) use the money for a purpose prescribed by the Commission or by law.



- (9) A market intermediary shall ensure that the management of client trust accounts is such that:
- (a) only client money is paid into the client account unless money from elsewhere is paid in to replace money withdrawn in error and in that case, the error shall be documented;
  - (b) client money held for one client shall never be used to meet the obligations of another;
  - (c) the total funds in a client trust account held for multiple clients shall never be less than the total obligations to clients; and
  - (d) no client trust account shall ever be overdrawn.
- (10) Every day, on which any transaction takes place with respect to any client over whose money the market intermediary has control, a market intermediary shall reconcile the records showing the money being held on behalf of each client with the client bank accounts. Where there is more than one client trust account, the reconciliation shall apply to each client trust account separately as well as to all client trust accounts in aggregate. The conclusion of the reconciliation shall be documented.
- (11) The reconciliation shall be conducted by an officer who is different from the officer with responsibility for authorising payments from the client trust account.
- (12) Where the reconciliation identifies a discrepancy between the market intermediary's records and the client money, the market intermediary shall investigate and correct the discrepancy, shall identify the causes of the discrepancy, shall rectify any systemic errors that led to the discrepancy and, if necessary, replenish any deficit in the client trust account with the market intermediary's own money.
- (13) A market intermediary shall send a statement to each client setting out the details of client transactions that involve the movement of client money and showing the amount owed by the market intermediary to the client (or vice versa) at the end of the period covered by the statement. The period covered by a statement and the frequency with which it shall be sent to the client shall be specified in the client agreement but shall be no less frequently than annually.

## **22. Client Assets**

- (1) This Regulation applies to market intermediaries who have control over client assets but it does not apply to custodians, trustees or persons operating a collective investment scheme with respect to assets of the collective investment scheme.
- (2) Assets belonging to a client shall be held in a manner that makes it clear that they are separated, and clearly distinguishable, from those of the intermediary. Client assets shall be held in a manner that would facilitate their transfer to another intermediary should this be required by the Commission or for any other reason.
- (3) A market intermediary who has control over client assets shall ensure that the legal title to the assets is registered to:
- (a) the client; or
  - (b) a company controlled by the intermediary, which shall hold no assets other than client assets and the records for which identify the client as the beneficial owner of the asset; or

- (c) a licensed custodian or trustee, whose records shall also identify the client as the beneficial owner of the asset.
- (4) Where the market operator receives securities or documents of title for safe custody, the market operator shall:
  - (a) register those documents in the name of the client (where not already registered);
  - (b) if the client requests, register the documents in the name of the market operator; or
  - (c) if the client requests, register the documents with a bank or custodian.
- (5) A market operator that holds securities or documents of title on behalf of a client may not use those securities as collateral against a loan made to the market operator unless the conditions in Section 158(2) to 158(4) of the Act apply.
- (6) A market intermediary shall not use client assets as part of the market operator's own proprietary trading activities and shall not dispose of client assets except:
  - (a) on the instructions of the client; or
  - (b) according to the terms of a client agreement.
- (7) Unless paragraph (12) applies, a market intermediary who has control over client assets shall provide the client with a statement that shows:
  - (a) a list of the assets held on behalf of the client;
  - (b) a valuation of the portfolio in aggregate;
  - (c) transactions undertaken since the last statement; and
  - (d) the value and quantity of the specific assets held.
- (8) The frequency with which such statements shall be submitted to the client shall be specified in the client agreement but shall be no less frequently than annually.
- (9) A market intermediary shall ensure that evidence of title to assets is safely maintained whether such title is in certificated form or in the form of electronic book entries. The record shall show when the asset was acquired, who the beneficial owner is, how title is established and who has legal title to the assets.
- (10) A market intermediary shall undertake a reconciliation in accordance with the client agreement and in any case no less frequently than monthly, of the record of any assets held by the market intermediary on behalf of clients, both individually and in aggregate and compare that with the evidence of title of assets controlled by the market intermediary, whether in the form of immobilised securities or those held in certificated form (if any).
- (11) Where the reconciliation required by paragraph (8) reveals a discrepancy between the market intermediary's records and the evidence of title to client assets, the market intermediary shall investigate and correct the discrepancy, shall identify the causes of the discrepancy, shall rectify any systemic errors that led to the discrepancy and, if necessary, correct the discrepancy making purchases or sales at the market intermediary's expense.
- (12) A market intermediary shall not lend client assets, or pledge them against any obligation unless:

- (a) the Commission has given its approval to the market intermediary engaging in securities lending; and
  - (b) the client agreement specifies that the market intermediary may lend the client's securities; or
  - (c) the client has given written instructions to the market intermediary to lend securities.
- (13) Where a market intermediary is acquiring client assets through a process of subscription for public offers and is subscribing on behalf of more than one client, the market intermediary shall allocate any securities received fairly according to a method that is documented and disclosed to clients. Where the market intermediary itself is also engaged in the subscription on its own account, the market intermediary shall separate its own subscription from that undertaken on behalf of clients.
- (14) A market intermediary who is a custodian or trustee shall send a regular report on transactions in client assets to the fund manager and other reports as determined in the client agreement. Where consistent with the client agreement, the reports may replace those required by paragraph (5).

### **23. Executing Client Orders**

- (1) This Regulation applies to market intermediaries who execute orders on behalf of clients.
- (2) A market intermediary shall deal for a client on the best terms available to the market intermediary, within any parameters defined in the client agreement.
- (3) A market intermediary shall not purchase or sell securities on behalf of a client unless the market intermediary is satisfied that the client has, or will have, access in a timely manner to sufficient funds, or possession of the relevant securities, as the case may be.
- (4) A market intermediary shall not make a purchase or sale on behalf of a client unless it has an instruction to do so. The instruction shall be in writing unless the market intermediary has sufficient systems in place, such as a telephone recording system, to protect itself against fraud or misunderstanding. The instruction may be in the form of a client agreement giving the market intermediary discretion as to when making sales or purchases.
- (5) A market intermediary shall use a time stamping or other secure method to record the time and date:
  - (a) that a client instruction to buy or sell securities or make any other investment decision is received; or
  - (b) where the market intermediary has discretion to buy or sell or make other investment decisions, that the market intermediary made its decision to exercise its discretion.
- (6) A market intermediary shall execute client orders promptly (except where market conditions render this impractical or unwise) and shall effect all orders in the chronological sequence in which they were received unless it is impractical or unwise to do so. Where market circumstances result in a delay in the execution of their order, the market intermediary shall make a record of those circumstances and inform the client in a timely manner.

- (7) A market intermediary shall record the time and date of executing the order.
- (8) Unless paragraph (9) applies:
  - (a) client orders for the purchase or sale of securities shall always be executed before orders relating to the same securities by the market intermediary for its own account or its shareholders, staff or agents; and
  - (b) A market intermediary shall not aggregate a client order with an order by the market intermediary itself, its shareholders, staff or agents.
- (9) Where a particular order, for example a block trade where a minimum size order is required and such a minimum size can only be achieved by aggregating the orders of clients and the intermediary itself, its staff or agents, the market intermediary may aggregate such orders provided that:
  - (a) the terms of the order placed on behalf of clients are no less favourable than those for those for the intermediary, its staff and agents;
  - (b) any securities purchased are allocated to the name of the client, or, where approved in the client agreement, to a nominee account which identifies the client as beneficial owner; and
  - (c) any sale proceeds in respect of the proportion of the sale order that is represented by client assets are allocated to the client account before any sale proceeds are passed to the intermediary, its staff or agents.
- (10) A market intermediary shall ensure that, where it aggregates transactions from different clients, the transactions it executes are allocated to clients who gave the orders in a timely and equitable manner.
- (11) A market intermediary may only lend funds to the client for the purpose of purchasing securities if the market intermediary complies with Section 137 of the Act on unsecured lending, the terms of such lending are included in the client agreement, the market intermediary has satisfied the Commission that it has adequate credit risk management arrangements in place and the Commission considers that it is otherwise appropriate for the market intermediary to engage in such lending.
- (12) A market intermediary shall report all trades in securities otherwise than on a licensed securities exchange in any manner as may be prescribed by the Commission.
- (13) A market intermediary that is dealing as principal shall not enter into a transaction with a person who is not a market intermediary unless the person with whom the market intermediary is dealing has been informed that the market intermediary is acting as principal.

## **24. Contract Notes**

- (1) This Regulation applies to market intermediaries that execute client orders.
- (2) Unless paragraph (3) applies, a market intermediary shall, in respect of every purchase or sale of securities as agent for a client, no later than the end of the next trading day after the transaction was executed, make out a contract note which complies with paragraph (3) and deliver the original contract note to the person on whose behalf it executed the transaction.

- (3) Where the client is a qualified investor, the market intermediary may agree with the client that contract notes may be made out and delivered according to a timescale that is acceptable to both parties and that individual contract notes may contain the details of multiple transactions.
- (4) Unless paragraph (3) applies, the contract note prepared by a market intermediary shall state whether it is in respect of a purchase or sale of securities and shall include:
  - (a) the name of the market intermediary and the address of the principal place at which it carries on business;
  - (b) Where the market intermediary is dealing as a principal with a person who is not the holder of a licence as a market intermediary, a statement that the market intermediary is so dealing;
  - (c) the name and address of the person (if any) to whom the market intermediary is required to give the contract note;
  - (d) (where different) the name of the person for whom the transaction was undertaken;
  - (e) the name of the person who gave the instruction;
  - (f) the date the transaction took place and the date on which the contract note is made out;
  - (g) if the transaction did not take place on the ordinary course of business at a stock exchange, a statement to that effect;
  - (h) the number or amount and description of the securities that are the subject of the contract;
  - (i) the price per unit of the securities and the total amount of the consideration;
  - (j) the rate or amount of commission payable in respect of the contract;
  - (k) the amount of all stamp duties or other duties, taxes and any levy payable in connection with the contract and, where applicable, in respect of the transfer;
  - (l) the date of settlement; and
  - (m) such other information as may be specified by the Commission to ensure that there shall be a complete audit trail in respect of the execution of client instructions and the settlement of market transactions.

## **25. Conflicts of Interest with clients**

- (1) A market operator shall identify the conflicts of interest with clients that are likely to occur in the course of its business and adopt appropriate policies designed to minimise the impact of any conflict of interest.
- (2) A market operator that is part of any financial group shall also consider the conflicts of interest that may arise as a result of its membership of that financial group.
- (3) Policies designed to mitigate conflicts of interest shall include:
  - (a) refusing to act for clients in certain circumstances;
  - (b) where it is appropriate to act, disclosing the conflict of interest to the client;

- (c) training employees in respect of the conflicts of interest and the procedures to avoid or manage such conflicts of interest;
  - (d) obtaining undertakings from employees or agents that they shall disclose any conflicts of information of which they are aware and not seek to exploit information gained from clients for their personal benefit;
  - (e) making reasonable arrangements to ensure that employees abide by such undertakings;
  - (f) arranging appropriate internal barriers of communication or records;
  - (g) ensuring that the client's interests are placed above those of the market intermediary; and
  - (h) reviewing the client relationship no less frequently than annually to ensure that the client's interests are not being compromised and documenting the results of the review.
- (4) A market operator shall adopt documented policies and procedures that are designed to ensure that any fee, charge, commission any other payment, or any gift or hospitality, received from a third party will not encourage the market intermediary or its staff to act in a way other than in the best interests of the client.
- (5) A market operator shall not take advantage of information gained from services provided to one client to benefit another client, the intermediary itself, or any of its shareholders, staff or agents or any other companies in a financial group of which it may be a member.
- (6) A market operator that issues commentaries on trading results shall ensure that the commentary is accompanied by:
- (a) the name of the person who compiled it; and
  - (b) disclosure of the source from which it was obtained.
- (7) Where a market operator or a financial group of which it is a part has a material interest in a transaction to be entered into with or for a client, or a relationship which gives rise to a conflict of interest in relation to such a transaction, the market intermediary shall not knowingly either advise, or deal in the exercise of discretion, in relation to that transaction unless it has –
- (a) disclosed that material interest or relationship, as the case may be, to the client; or
  - (b) taken reasonable steps to ensure that neither the material interest nor relationship adversely affect the interests of the client.
- (8) The Commission may give details of circumstances where all market operators shall decline to act or put special mitigating procedures in place and may direct any market operator to refuse to act where the Commission determines that a conflict of interest exists that cannot be safely managed in any other way. The market operator shall abide by any directions of the Commission.

## PART SIX: THE OPERATION OF THE BUSINESS

## **26. Record keeping**

- (1) A market operator shall maintain all records reasonably required for the orderly management of the business. These records shall include all records that will correctly record and explain the transactions and financial position of the business of the market intermediary
- (2) A market operator shall keep the records specified in Schedule 3, where relevant to its business. A market intermediary shall maintain any other records that the Commission may, from time to time, specify.
- (3) The records maintained by a market operator shall be:
  - (a) kept in a form and location that ensures that they are available in a timely manner to the market operator and the Commission;
  - (b) kept up to date; and
  - (c) kept in a manner that will enable the income statement and statement of financial position of the market operator to be conveniently and properly audited.
- (4) A market operator shall adopt policies and procedures to ensure the integrity, security, availability, reliability and thoroughness of all records relevant to the market operator's business.
- (5) Records shall be kept, whether in electronic or other form and shall be:
  - (a) subject to appropriate procedures which ensure that records are made, amended, or erased, only by authorised persons and only in a manner that complies with the duties of the market operator to keep proper records;
  - (b) stored so as to:
    - (i) minimise any risk of their loss due to theft, fire, flood, corruption or unauthorised amendment;
    - (ii) prevent unauthorised access; and
  - (c) backed up or otherwise duplicated so that copies shall be available if the originals are lost, destroyed, corrupted or amended other than in accordance with the market operator's procedures.
- (6) Records, including duplicates, shall be kept for seven years, from the date of the matter being recorded, except in the case of records concerning the identity of, agreement with, and correspondence with the client, which shall be kept for seven years after the market operator's business relationship with the client has ceased.
- (7) In the case of a person operating a collective investment scheme, the records shall be equally available to the trustee or custodian as the case may be and the records shall be made available to the trustee or custodian, by the fund manager at their request, free of charge.
- (8) If the Commission is of the view that the form or location of the records is not permitting proper oversight, the Commission may give directions as to the form and location of the records and the market operator shall comply with that direction.

## **27. Confidentiality and security**

- (1) All information in the possession of a market operator and financial group about a client or third parties shall be kept confidential unless disclosure is permitted or required by law, (which, for the avoidance of doubt, shall include disclosures to the Commission).
- (2) A market operator shall adopt documented policies and procedures that are designed to ensure that information obtained from clients, about clients and their orders and confidential information obtained from or about third parties is kept confidential and secure and only disclosed in accordance with paragraph (1).
- (3) The policies and procedures referred to in paragraph (2) shall include:
  - (a) undertakings by employees, agents and other third parties who are engaged to provide services for the market operator to maintain confidentiality as part of the contract of employment or other contract;
  - (b) reasonable arrangements to ensure that employees abide by such undertakings;
  - (c) policies that determine which employees may have access to which information;
  - (d) procedures which effectively restrict access to confidential information to such employees through the use of locked cupboards and encryption protected information within the market operator's information technology system; and
  - (e) procedures that ensure that, where information is passed to another person, that information remains subject to the same standards of security and confidentiality as are imposed by the market operator.
- (2) A market operator shall also have documented policies and procedures that are designed to safeguard the integrity of any electronic record or transaction recording system. The policies and procedures shall include:
  - (a) training the employees in the operation of the system, identifying which staff are permitted to make entries into the electronic system and restricting access to such staff;
  - (b) identifying the employees who have the ability to make changes to electronic records, once created, and specifying the circumstances that permit this;
  - (c) instituting appropriate double locking systems to prevent one person amending existing electronic records without the approval of another suitably qualified and senior officer; and
  - (d) ensuring that the technology always keeps an audit trail of changes to the system and that such audit trail cannot be amended or deleted.

## **28. Advertisements**

- (1) This Regulation applies:
  - (a) where a market operator issues an advertisement on its own behalf, or on behalf of a client or other third party; or
  - (b) where an advertisement is issued by a third party on behalf of a market operator.



- (2) Any advertisement issued by a market operator or on its behalf shall include the name and address of the market operator and a statement that the market operator is regulated by the Commission.
- (3) A market operator shall determine and document:
  - (a) which officers have authority to approve advertisements issued by the market operator; and
  - (b) The procedures to be followed to ensure compliance with this Regulation.
- (4) A market operator shall ensure that any advertisement subject to this Regulation is
  - (a) reasonable and fair,
  - (b) clear and comprehensive and capable of being readily understood by the persons who might reasonably be expected to see it;
  - (c) contains accurate information that can be sustained on the basis of objective evidence; and
  - (d) provides sufficient information to describe fairly the nature of the products, services, securities or investment opportunity being offered.
- (5) A market operator shall not publish or cause or permit to be published
  - (a) any advertisement which hides, diminishes or obscures important statements, warnings or factors that may materially affect the understanding of any claims or comparisons of alternative investments, products or services;
  - (b) any advertisement that contains an opinion or endorsement of a person unless that opinion or endorsement is fairly represented, is attributed to that person and reasonable steps have been taken to ensure that the person holds the opinion stated;
  - (c) any advertisement which makes a prediction or forecast of future performance of an investment product, service or opportunity unless:
    - (i) the prediction or forecast can be justified by reference to objective data;
    - (ii) the prediction or forecast is attributed to an identified source that takes responsibility for the prediction or forecast;
    - (iii) the advertisement provides appropriate warnings that forecasts and predictions are not guaranteed; and
    - (iv) the prediction or forecast is not misleading.
  - (d) any advertisement which provides an indication of the benefits of an investment product, service or opportunity without also giving a clear, truthful and fair indication of the corresponding costs (including fees and charges) and risks, in a reasonably prominent manner;
  - (e) any advertisement that promotes an investment product, security or investment opportunity in which the market operator has a direct or indirect interest, unless the nature of that interest is disclosed;
  - (f) any advertisement that refers to the past performance of an investment product, service or opportunity, unless:
    - (i) it is supported by objective data over a period that is not misleading; and

- (ii) it includes a warning about the risks of relying on past performance as a guide to future performance;
- (g) any advertisement that contains a reference to the tax benefits of an investment product, service or opportunity, unless it also states with reasonable prominence that tax advice should be taken by any person wishing to rely on such tax benefits;
- (h) any advertisement that refers to a forthcoming offer of securities unless it also states where the full prospectus relating to that offer can be found and includes a warning that the full prospectus should be read;
- (i) any advertisement that guarantees the performance of any investment product or security or other investment opportunity unless:
  - (i) there is a legally enforceable arrangement backed by a third party;
  - (ii) the third party has stated in writing that they have the capacity and are willing to meet the terms of the guarantee; and
  - (iii) the third party is able to demonstrate its capacity to guarantee the product and are able to demonstrate that capacity.
- (6) Any reference to a government authority whose approval is required for a particular product, service, security or investment opportunity shall not state or imply that the authority has responsibility for the performance of the subject of the advertisement, or is being recommended or endorsed in any way, unless that authority gives written consent to a statement to that effect and the way in which it is made.
- (7) The Commission may direct a market operator to submit to the Commission, copies of any advertisements it has issued, or which have been issued on its behalf. The Commission may direct a market operator to seek the approval of the Commission for any advertisement if the Commission considers that this is necessary to protect investors. The market operator shall comply with such directions.
- (8) A market operator shall comply if the Commission:
  - (a) specifies the basis on which past performance may be calculated when used in advertisements;
  - (b) requires a market operator to submit any advertisement to it for approval prior to it being issued;
  - (c) directs a market operator to withdraw an advertisement on the grounds that it does not comply with the requirements of the Regulations.
- (9) If a market operator becomes aware that an advertisement it has issued does not or no longer complies with the Regulations, it shall withdraw that advertisement and take reasonable steps to inform those who may still be relying on that advertisement, that it is withdrawn.

## **29. Prevention of market abuse**

- (1) Where a market operator has a client order to execute, or where it intends to publish to clients a price-sensitive recommendation or research or analysis, the market operator shall not effect an own account transaction in the securities concerned or in any related investment until the order has been executed or until the clients for whom the

publication were principally intended have had, or are likely to have had, a reasonable opportunity to react to it.

- (2) A market operator shall not –
  - (a) deal or arrange a deal in the exercise of discretion for any client; or
  - (b) advise a client to deal,
  - (c) if the dealing could in the circumstances reasonably be considered as too frequent or too large having regard to the trading activities, investment objectives, size and operations of such client.
- (3) A market operator shall not deal in securities on its own account where it may reasonably be supposed that the price at which the securities are dealt was influenced by transactions undertaken by the market operator on behalf of clients or prompted by recommendations or statements made by the market operator or any person associated with the market operator.
- (4) A market operator shall take reasonable steps to ascertain if any of its clients are persons described in Section 153(1) and 153(2) of the Act and maintain records accordingly to assist in the monitoring of insider dealing.

## PART SEVEN: MISCELLANEOUS

### **30. Penalties**

- (1) In the event of a breach of these Regulations, the Commission may impose an administrative penalty of up to three hundred penalty points or such greater amount where the breach also involves a breach of requirements in the Act for which a higher penalty is imposed.
- (2) In the event of a breach of the following Regulations, the penalty shall be imposed for each day that the market operator remains in breach of the provisions:
  - (a) Regulation 3 (2), payment of fees; and
  - (b) Regulation 3(3) submission of reports.
- (3) The Commission will take account of the nature and seriousness of any breach or pattern of breaches when considering whether or not a market operator continues to meet the licence criteria.
- (4) The Commission will take into account the responsibility of any key person for a breach when considering whether or not they continue to be fit and proper or meet the criteria for an individual representative's licence.
- (5) The Commission may also issue a direction under Section 209 of the Act where it considers this to be an appropriate course in the light of a breach and such direction may include a requirement that:
  - (a) The market operator takes immediate action to correct the breach and amend systems and controls to prevent recurrence;
  - (b) The market operator takes such action as is necessary to place any client or other person in the position that they would have been had the breach not occurred;
  - (c) The market operator amends their staff structure or dismiss employees with responsibility for the breach;

- (d) The market operator limits their business in such a manner as the Commission may consider appropriate;
- (e) The market operator publishes, in such form as the Commission may determine, an announcement about the breach, its effect on clients or other person and the actions taken to rectify the breach.

### **31. Revocation**

- (1) Regulations (3), (4) (5), (7), (8), (9), (10), (11), (12) (21),, (24), (25), (26), (27), (28), (29), (30), (31),(32), (33), (34), (39), (40), (41), (42), (43) and (44) and Schedule 4 of the Securities and Exchange Commission Regulations 2003 are hereby revoked.
- (2) Regulation (60) of the Unit Trust and Mutual Fund Regulations 2001 is revoked.

### **32. Transitional**

- (1) A market operator shall comply with these Regulations no later than one year after they are published.

### **33. Interpretation**

- (1) In these Regulations, all terms carry the same meaning as in the Act:-

“the Act” means the Securities Industry Act 2016 (Act 929).

“advertisement” means any communication by a market intermediary to the public, any section of the public, to clients, or any group of clients that provides information about products, services, securities or investment opportunities that may be offered. It includes any form of communication whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or films or videos or by way of sound broadcasting or television or on websites, computer screens or in any other manner;

“Board” means:

- (a) where the market operator is a company, the Board of directors;
- (b) where the market operator is an incorporated private partnership, the senior partners having responsibility for the conduct of the business; or
- (c) where the market operator is conducted in another legal form, the persons registered with the Commission as having responsibility for the conduct of the business;

“client” is a person to whom the market operator provides products or services, or intends to provide services in the course of its licensable business and includes a potential client;

where the market operator is a custodian, or trustee of a collective investment scheme, the term “client” shall mean the collective investment scheme or schemes for which the market intermediary provides services.

where the market operator is a person operating a collective investment scheme the term “client” shall mean the collective investment scheme;

“client trust account” has the meaning given in regulation (22);

“client assets” means any property other than client money that a market intermediary holds but whose beneficial owner is the client, regardless of the legal title;

“client money” means money of any currency that, in the course of carrying out a securities business, a market intermediary holds or receives on behalf of a client or which it owes to a client but, in accordance with Section 159(4) and (5) of the Act, does not include:

- a) money received in respect of brokerage or other proper charges; or
- b) money received in payment or part payment for securities delivered to the market intermediary before the money is received;

“controller” means a person who, alone or in association with others, directly or indirectly controls more than 5 per cent of the shareholding of a market operator

“director” has the same meaning as that given in Section 179 of the Companies Act 1963 (Act 179) and, in addition, for these regulations, includes partners and those persons in a legal form other than a company or partnership, registered with the Commission as being in control of the business

“financial year” means the twelve month period covered by a market intermediary’s annual accounts;

“functionaries of a collective investment scheme” means the person operating the collective investment scheme, trustee and custodian;

“independent director” means a director who –

- (a) is not a substantial or majority shareholder of the company;
- (b) is not associated with any majority or substantial shareholder of the company, whether through business, family or personal relationships, political affiliation or in any other way;
- (c) has not been employed by the company in an executive capacity within the last three years;
- (d) has not been a director of the company for more than nine years;
- (e) is not affiliated to an advisor or consultant to the company or a member of the company’s senior management or a significant customer or supplier of the company or with a not-for-profit entity that receives significant contributions from the company or,
- (f) has not had any business relationship with the company (other than service as a director) within the last five years;
- (g) is not a significant supplier or customer of the company;
- (h) is not employed by a public company at which an executive officer of the company serves as a director;
- (i) is not a member of the immediate family of any natural person described above; or has not had any of the relationships described above with any affiliate of the company;
- (j) is free from any other relationship with the company which may interfere with his or her capacity to act in an independent manner.

For the purpose of the definition of an independent director, the term “company” shall, in the case of a company that is a subsidiary of another company, include the parent company and any affiliated company.

“key personnel” means the chief executive officer, directors, chief financial officer, company secretary, compliance officer and internal auditor of a market operator (and any other person fulfilling similar functions regardless of the name called), and the term “key person” shall be construed accordingly;

“market intermediary” means a broker-dealer, custodian, fund manager, investment adviser, issuing house, nominee, primary dealer, trustee, underwriter, person operating a collective investment scheme and any other person who may be prescribed by the Minister;

“person operating a collective investment scheme” means, in the case of mutual funds or unit trusts, the manager of that scheme as defined in Section 216 of the Act and, in the case of a collective investment scheme other than a mutual fund or unit trust, means the person who performs a function in relation to that scheme that is similar to that of a manager of a mutual fund or unit trust.

“price sensitive information” means information which, if disclosed to the public would be reasonably expected to cause a material change in the market price of securities.

“qualified investor” means a person who has agreed in writing to be regarded as a qualified investor and who meets at least one of the following criteria:

- (a) any government, any institution which performs the functions of a central bank, or any other multilateral agency;
- (b) any authorised, approved or licensed securities exchange;
- (c) any licensed market operator, or any other person carrying on the business of providing investment services and regulated under the law of any foreign jurisdiction;
- (d) any authorized financial institution, or any bank which is not an authorized institution but is regulated under the law of any foreign jurisdiction;
- (e) any insurer [licensed] under the Insurance Act 2006 (Act 724), or any other person carrying on insurance business and regulated under the law of any foreign jurisdiction;
- (f) any licensed unit trust, mutual fund or other licensed collective investment scheme, and any authorised collective investment scheme regulated under the law of any foreign jurisdiction;
- (g) any individual, either alone or with any of his associates on a joint account, having proven liquid assets of an amount that may be specified by the Commission;
- (h) any individual who meets criteria that may be specified by the Commission with regard to their knowledge and understanding of the capital market;
- (i) any company or partnership having proven liquid assets of an amount that may be prescribed by the Commission from time to time;

- (j) any person declared by the Commission to be a qualified investor; and
- (k) any similarly defined investor in any other securities legislation of any foreign jurisdiction;

“regulated activity” conducted by a market intermediary means the activity that gives rise to the requirement to be licensed under Section 109 of the Act.

“written notification” means notification in a letter or other communication submitted to the Commission on paper or by electronic means.

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## **SCHEDULE 1**

### **REPORTING TO THE AUTHORITY**

#### **REGULATION 3**

##### **1. General requirement**

- (1) A market operator and a financial group shall submit such reports to the Commission as the Commission may request.

##### **2. Application**

- (1) This Schedule applies to all market operators.

##### **3. Annual reporting**

- (1) A market operator and a financial group shall inform the Commission of the financial year that it adopts for its annual accounts and shall not change that financial year without the approval of the Commission. The Commission may specify the financial year that it requires a market operator to adopt.
- (2) Within 90 days of the end of its financial year, or such period as the Commission may prescribe, a market operator and any financial group of which it is a member, shall submit an annual report to the Commission containing the matters described in this section of this Schedule.
- (3) The annual report shall include an audited annual financial statement comprising cash flow, statement of liquid funds, profit and loss account and balance sheet including the auditor's management report in the form specified at Schedule 4 of the Securities and Exchange Regulations 2003.
- (4) A market operator shall include, within the annual report, an updated list of its key persons, shareholders, controllers, compliance officer and internal auditor and those able to exercise material influence over the market operator.
- (5) A market operator shall include, within the annual report, details of any changes, since the previous annual report (or, in the case of its first annual report, since the licence was issued) to its registered office and business addresses, its principal activities and any business names it uses.
- (6) A market operator shall include, within the annual report, details of any material changes in the information that was provided in order to obtain a licence and any other material changes that might reasonably be supposed to affect the Commission's view on whether or not the market operator should continue to be licensed.
- (7) A market operator include, within the annual report, an update, annually, of the structure of any financial group, of which it is a part.
- (8) A market operator shall include, within the annual report, a copy of its risk assessment.
- (9) A market operator shall include, within the annual report, a list of employees with their qualifications and experience where they are occupying a position for which certain qualifications and experience are specified.



- (10) Where a market operator is part of a financial group, its annual report to the Commission shall include financial statements on a consolidated basis for the group as a whole and shall also include separate financial statements for the market operator forming part of the financial group.
- (11) A market operator that is a securities exchange shall include the following within its annual report to the Commission:
- (a) amendments made to the Regulations, rules and laws of the stock exchange during the reporting period;
  - (b) any changes to the securities exchange trading system during the reporting period;
  - (c) details of any additional securities admitted for trading on the exchange during the reporting period;
  - (d) changes made to the mechanism by which data is transmitted to the users of the exchange during the reporting period;
  - (e) changes made to the composition of the governing body during the reporting period;
  - (f) any new sub committees established or changes in membership of the existing sub committees during the reporting period;
  - (g) admission, readmission, resignation or expulsion of members during the reporting period;
  - (h) disciplinary action taken against members during the reporting period;
  - (i) trade failures experienced during the reporting period;
  - (j) actions taken to meet any trading emergencies during the reporting period;
  - (k) details of securities in which trading was suspended or listing was suspended or cancelled during the reporting period; and
  - (l) the status of the Fidelity Fund on the last day of the trading period and any transactions involving the fund during the reporting period.
- (12) A market operator that is a credit rating agency shall include in its annual report, in addition to other matters required of all market operators:
- (a) a copy of its rating methodology for making rating assessments and its procedure for making ratings;
  - (b) the number of ratings made during the reporting period and a summary description of the ratings given; and
  - (c) an analysis of default rates.
- (13) A market operator that is a nominee shall include in its annual report, in addition to other matters required of all market operators, the number of clients for whom nominee services are provided.
- (14) A market operator that is a registrar shall include in its annual report, in addition to other matters required of all market operators the number of companies for which the registrar acts.

- (15) A market operator that is a person operating a collective investment scheme (including a hedge fund, private equity fund and venture capital fund) shall include in its annual report, in addition to other matters required of all market operators:
- (a) the number and name of schemes that are being managed;
  - (b) the assets of each scheme as at the first and the last business day of the reporting period;
  - (c) the value of each scheme on the first and last business day of the reporting period; and
  - (d) in the case of open ended schemes, the number and value of units or shares in issue on the first business day of the reporting period, the number and value of units or shares sold in the period and the number and value of units or shares in issue on the last business day of the reporting period.
- (16) A market operator that is a fund manager shall include in its annual report, in addition to other matters required of all market operators: the amount of funds under management.
- (17) A market operator that is a trustee or custodian shall include in its annual report, in addition to other matters required of all market operators: the names of the collective investment schemes for which services are provided and the total value of the assets held for each collective investment scheme.
- (18) A market intermediary that is an underwriter shall include in its annual report, in addition to other matters required of all market operators: the number of new underwriting agreements into which it has entered in the reporting period and the total obligations outstanding at the end of the period.
- (19) A market underwriter that is an issuing house shall include in its annual report, in addition to other matters required of all market operators: the number of new issues in which it has participated during the reporting period and the amount raised by such issues.
- (20) A market operator that is a clearing and settlement system, or a securities depository shall include in its annual report, in addition to other matters required of all market operators:
- (a) any changes to the rules of the clearing and settlement system during the reporting period;
  - (b) any technical changes to the operation of the clearing and settlement system;
  - (c) any changes to the participants in the clearing and settlement system;
  - (d) any defaults that occurred during the reporting period;
  - (e) any instances where a market participant was holding a position that was considered to pose a threat to the stability of the clearing and settlement system; and
  - (f) any disciplinary action taken by the clearing and settlement system
- (21) The Commission may require a market operator to include such additional matters in its annual report as it may specify.

- (22) The Commission may require market operators to publish annual reports that contain such information as the Commission may specify.

#### **4. Quarterly reporting**

- (1) No later than 21 days after the end of each quarter of its financial year, a market operator shall submit a quarterly report to the Commission that includes the following items:
- (a) a quarterly financial statement comprising cash flow, statement of liquid funds, profit and loss account and balance sheet demonstrating compliance with the financial resource requirements prescribed in the Capital Markets (Financial Resource) (Market Operators) Regulations 2017 and submitted in the form required by the Securities Industry (Licences and Forms) Regulations 2017.
  - (b) the number of complaints received by the market operator during the specified period and the number outstanding for over three months;
  - (c) any changes to the information given by the market operator in respect of its name, address, key personnel, nature of business; and
  - (d) any change in other information that would reasonably be regarded as relevant to a determination of the market operator's continuing fitness and properness.
- (2) A market operator shall also include within its quarterly report the total number of clients for which services are being provided.
- (3) A market operator that is a securities exchange shall include in its quarterly report, in addition to matters required of all market operators:
- (a) purchases and sales of securities during the preceding quarter;
  - (b) names of issuers of securities that have failed to comply with any of the continuing listing requirements of the stock exchange;
  - (c) details of securities admitted to listing; and
  - (d) details of securities in which trading was suspended or listing was suspended or cancelled during the previous three months and the reasons for the cancellation.
- (4) A market operator that is a person operating a collective investment scheme (including a hedge fund, private equity fund and venture capital fund) shall include in its quarterly report, in addition to matters required of all market operators:
- (a) the number and name of schemes that are being managed;
  - (b) the assets of each scheme as at the first and the last business day of the reporting period;
  - (c) the value of each scheme on the first and last business day of the reporting period;
  - (d) in the case of open ended schemes, the number and value of units or shares in issue on the first business day of the reporting period, the number and value of units or shares sold in the period and the number and value of units or shares in issue on the last business day of the reporting period;
- (5) A market operator that is a fund manager shall include in its quarterly report, in addition to matters required of all market operators the amount of funds under management.

- (6) A market operator that is a trustee or custodian shall include in its quarterly report, in addition to matters required of all market operators the names of the collective investment schemes for which services are provided and the total value of the assets held for each collective investment scheme.
- (7) A market operator that is an underwriter shall include in its quarterly report, in addition to matters required of all market operators the number of new underwriting agreements into which it has entered in the reporting period and the total obligations outstanding at the end of the period.
- (8) A market operator that is an issuing house shall include in its quarterly report, in addition to matters required of all market operators the number of new issues in which it has participated during the reporting period and the amount raised by such issues.
- (9) A market operator that is a nominee shall include in its quarterly report, in addition to matters required of all market operators the number of clients for whom it provides nominee services.
- (10) A market operator that is a credit rating agency shall include in its quarterly report, in addition to matters required of all market operators the number and nature of such ratings as it has given during the reporting period.
- (11) The Commission may require a market operator to include within its quarterly report, such additional matters as it may specify.

## **5. Monthly Reporting**

- (1) A market operator who is a broker/dealer shall report to the Commission no later than the 15<sup>th</sup> day after the period to which the statement relates, a statement of its financial position that demonstrates its compliance with the financial resource requirements prescribed in the Capital Markets (Financial Resource) (Market Operators) Regulations 2017. The monthly return shall be in the form required by the Securities Industry (Licences and Forms) Regulations 2017.
- (2) The Commission may require a market operator to make a monthly report on such matters as it may specify.

## **6. Daily reporting**

- (1) A market operator that is a securities exchange shall provide a report at the end of each trading day as follows:
  - (a) a report on transactions of securities that took place on the floor of the exchange, including the price and number of securities traded;
  - (b) a statement of the transactions in securities that have taken place outside the trading floor and reported to the stock exchange, including the price and the number of securities traded; and
  - (c) such other matters as the Commission may specify.

## **7. Advance notification**

- (1) A market operator shall provide the Commission with four weeks advance written notification of the following matters:

- (a) any change in the name, business name (if different), business address, or nature of business, including any decision to withdraw from any area of business;
  - (b) any new appointments to the key personnel;
  - (c) any change to the external auditor;
  - (d) any decision to seek a licence from another regulatory authority in Ghana or abroad;
  - (e) any change to its financial year and hence to its annual reporting date;
  - (f) any change in controller or shareholder;
  - (g) a substantial acquisition;
  - (h) any change to its premises and any new premises it may acquire;
  - (i) any other material change in the information supplied in any application for a licence or any other matter; or
  - (j) a decision to surrender its licence.
- (2) A market operator that is a securities exchange shall, in addition to the matters required of all market operators give at least four weeks' notice of:
- (a) any proposed change to the rules of the exchange;
  - (b) any proposed change to the trading system
  - (c) any proposed change to the mechanisms by which information is disclosed to the users of the exchange; and
  - (d) any new product that is to be admitted for trading;
- (3) A market operator that is a clearing and settlement system or a securities depository shall, in addition to matters required of all market operators, give at least four weeks' notice of:
- (a) any proposed changes to the rules of the clearing and settlement system during the reporting period;
  - (b) any proposed technical changes to the operation of the clearing and settlement system; and
  - (c) any proposed changes to the participants in the clearing and settlement system.
- (4) The advance notification shall be accompanied by an application for permission to make the change if required by the Act or any Regulations issued under the Act.
- (5) If a market operator becomes aware that it has failed to give advance notification in respect of any the matters specified in this regulation, the market operator shall give immediate notice of the matter to the Commission, together with an explanation of the circumstances that resulted in a failure to provide the prescribed advance notice.

## **8. Immediate notification**

- (1) A market operator shall inform the Commission immediately should any of the following events occur:
- (a) any event or material change that is relevant to the suitability of the market operator to hold a licence, including:

- (i) any material change to the information provided by the market operator in connection with its licence application;
    - (ii) any material changes affecting the conditions on a licence;
    - (iii) any event which could reasonably be expected to affect the Commission's assessment of the ongoing fitness and properness of the market operator, its controllers, shareholders or key personnel;
  - (b) a breach of the regulatory requirements applicable to the market operator or a change, misstatement or error in any of the information provided to support the licence application that might reasonably be expected to affect investors' interests or the Commission's assessment of the ongoing fitness and properness of the market operator, its controllers, shareholders or key personnel;
  - (c) a reduction in financial resources below 120% of the minimum capital requirements or liquid funds specified in the Regulations or a reduction in 50% since the previous report to the Commission;
  - (d) any concern by the market operator that it may not be able to meet obligations, including obligations to clients, as they fall due;
  - (e) any shortfall in the funds held in the client trust account as compared with the total obligations to clients;
  - (f) any discrepancy between the records of assets held on behalf of clients and the evidence held of legal title to those assets;
  - (g) any inability to comply with any instruction or direction of the Commission imposed in accordance with the Act;
  - (h) any fraud on the market operator (including a fraud that affects money or assets held on behalf of clients) by any person including its employees or clients;
  - (i) any disciplinary action against any of the key personnel of the market operator;
  - (j) any complaint made against the market operator that has not been resolved after 90 days of receipt;
  - (k) any investigation, finding or conviction relating to the market operator, any of its controllers, shareholders or any of its key personnel by a law enforcement authority, regulatory authority (including a self regulatory organisation), or professional association;
  - (l) any civil claim against the market operator in excess of 25% of the market operator's minimum financial resource requirement; or
  - (m) any litigation instigated by the market operator.
- (2) A market operator shall make public any information reported to the Commission if the Commission determines that it would be in the interests of the Ghana capital markets to do so.
- (3) A market operator that is an underwriter shall, on the expiry of 14 days from the close of an offer, submit a report on the underwriting.
- (4) A market operator that is an issuing house shall, on the expiry of 14 days from the close of an offer shall submit a report which includes information on the offer, proceeds, level of subscription and basis of allotment.

- (5) A market operator that is a securities exchange shall provide the Commission a report as soon as possible and no later than 24 hours of the incident:
- (a) any technical or other disruption to trading on the exchange;
  - (b) any decision to suspend trading of any security;
  - (c) any decision to suspend listing of any security;
  - (d) any disciplinary action on an exchange participant, including any decision to suspend membership; and
  - (e) any default by an exchange participant.
- (6) A market operator that is a clearing and settlement system or a securities depository shall provide the Commission with a report as soon as possible and no later than 24 hours of the incident:
- (a) any defaults that occur;
  - (b) any instances where a market participant holds a position that was considered to pose a threat to the stability of the clearing and settlement system;
  - (c) any technical issues that affect the ability of the clearing and settlement system or securities depository to effect timely settlement; and
  - (d) any disciplinary action taken by the clearing and settlement system

## **SCHEDULE 2**

### **CLIENT AGREEMENTS REGULATION 19**

#### **(1) General Requirement**

- (1) A client agreement shall include the matters described in this Schedule.

#### **(2) Application**

- (1) This Schedule does not apply to custodians or trustees with respect to their relations with collective investment schemes

#### **(3) Short form agreement**

- (1) Where a market intermediary engages in a single transaction with a client, the agreement shall include:
- (a) essential information about the market intermediary, including its name, address and contact information;
  - (b) the services to be provided, including:
    - (i) a statement as to whether the market intermediary is providing advice or acting solely on the instructions of the client; and
    - (ii) if the intermediary is providing advice, the nature and scope of that advice;
    - (iii) the fees or other charges to be levied by the market intermediary (or the way in which the fees will be calculated), so that the client is able to understand the total cost of the services being provided.

#### **(4) Agreements for all other clients**

- (1) Where a market intermediary provides services to clients on a longer term basis, or where it is envisaged that there may be two or more single transactions, the agreement shall include:
- (a) essential information about the market intermediary, including:
    - (i) its name and address;
    - (ii) its contact information;
    - (iii) its licence category; and
    - (iv) scope of activity;
  - (b) the services to be provided, including:
    - (i) a statement as to whether the market intermediary is providing advice or acting solely on the instructions of the client); and
    - (ii) if the market intermediary is providing advice, the nature and scope of that advice;
  - (c) the status of the client – as a qualified investor or otherwise.



- (d) the fees or other charges to be levied by the market intermediary (or the way in which the fees will be calculated), so that the client is able to understand the total cost of the services being provided;
- (e) the nature or basis of commissions (if any) to be received by the market intermediary from third parties where these are related to the services provided to the client;
- (f) the obligations of the client, including the way in which instructions shall be given and the timing of payments to be made to the market intermediary in respect of fees, charges, commissions and transactions;
- (g) the rights of the client, including:
  - (i) the right to ask for information on the experience, qualifications, and disciplinary history of the market intermediary, its key personnel and the officer providing services to the client;
  - (ii) the rights to interest on funds held by the market intermediary (or if there is no such right, the fact that this is so); and
  - (iii) the right to make a complaint and to have that complaint dealt with fairly and promptly;
- (h) the obligations of the market intermediary in respect of the services to be provided, including, where relevant to the service,:
  - (i) any limitations on the ability of the market intermediary to obtain the best terms available for any investment;
  - (ii) any limitation on the type, geographical location of class of investment products about which advice shall be given;
  - (iii) the extent to which the market intermediary is independent of any third party commercial interests and any other limitation on the capacity of the market intermediary to give impartial and independent advice;
  - (iv) the frequency with which statements regarding any client money or client assets held by the market intermediary shall be sent to the client;
  - (v) the frequency of reviews of the client's investment portfolio and performance; and
  - (vi) the method of securing the client's title to securities purchased;
- (i) the arrangements for securing title to and the arrangements for custody of securities bought including the use of nominee accounts, the use of a custodian (where appropriate) and other matters;
- (j) where assets are held or placed in a country outside Ghana, the details of the asset protection and insolvency regimes of that country and the risks of holding the assets in that country;
- (k) any other terms and conditions of the agreement, including the notice to be given in respect of any changes to it or its termination;
- (l) any connections between the market intermediary and other relevant third parties that could affect the services being provided, such as a requirement on the part of

the market intermediary only to deal through certain third parties or only to recommend certain investment products;

- (m) information on the market intermediary's complaints procedure as established in accordance with these Regulations; and
- (n) the fact that the market intermediary is regulated by the Commission.

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### **SCHEDULE 3**

#### **RECORDS TO BE KEPT BY A MARKET OPERATOR REGULATION 26**

##### **1. The records to be kept by all market operators**

- (1) A market operator shall keep records of all decisions by the Board and any Board Committees.
- (2) A market operator shall keep records of the internal organisation and operation of the business.
- (3) A market operator shall keep records of all relations with clients (if any), counterparties and third parties.
- (4) A market operator shall keep records sufficient to be able to establish the financial position of the market operator, with reasonable accuracy at any one time and these will include:
  - (a) all accounting records necessary to prepare financial statements according to accounting standards issued by the Institute of Chartered Accountants (Ghana) including:
    - (i) assets and liabilities, including commitments, contingent liabilities and potential or actual off balance sheet commitments;
    - (ii) profit and loss; and
    - (iii) income and expenditure;
  - (b) all payments made to and by the market operator (distinguishing between those made on its own account and those on behalf of others), together with the reason for the payment, name and address of the counterparty and the bank account into which or from which the payment was made;
  - (c) where the market operator is in control of client money, all payments into and out of the client trust account; and
  - (d) the calculations of financial resources, as required by Regulations or other regulatory requirements issued by the Commission and any reconciliations required by the Regulations to be undertaken.
- (5) Where the market operator is part of a financial group, the financial group shall maintain records that will enable the financial group to calculate with reasonable accuracy, at any time, the financial records identified in sub paragraph (4) above in respect of:
  - (a) the financial group as a whole, on a consolidated basis, including the market operator; and
  - (b) the market operator taken on its own.
- (6) The financial records described in sub paragraphs (4) and (5) shall be maintained in Ghana Cedi unless the Commission otherwise approves.
- (7) A market operator shall keep records of all complaints filed with it, together with the action taken to resolve the complaint, the date the complaint was received, the dates the key elements of the investigation were taken and the date the complaint was resolved.

- (8) Records held by a market operator in respect of employees shall be sufficient to enable the market operator to be satisfied that it is able to meet all relevant employer obligations and to demonstrate that each employee is appropriately qualified and experienced. In particular, records of the market operator's personnel shall include:
- (a) application documents including copies of documents verifying qualifications and experience (or a record of the action taken to verify qualifications and experience);
  - (b) job descriptions;
  - (c) qualifications, experience and training (including a record of training undertaken during the period of employment with the market operator);
  - (d) terms and conditions of employment;
  - (e) remuneration;
  - (f) any securities transactions undertaken by each officer and details of the permissions received;
  - (g) declarations by each officer as appropriate relating to any potential conflict of interest; and
  - (h) lists of investments for those officers for which the Regulations or other regulatory requirements mandate them.
- (9) A market operator shall keep records of all relations with the Commission.
- (10) A market operator shall keep records sufficient to demonstrate its compliance with the Act, Regulations, other regulatory requirements and any other applicable financial services law.
- (11) A market operator shall keep records of any publication it issues, whether in the form of advertisements, financial promotions, or circulars to clients and, where the publication makes claims, evidence to substantiate those claims.
- (12) Where a market operator engages a third party to undertake functions on its behalf, the records shall include:
- (a) the contract with the third party, which details the services to be provided and the service level agreement;
  - (b) details of the third party including its legal form, verification documents and any documentation necessary to establish the financial viability of the third party;
  - (c) details of the qualifications and experience of employees to be engaged on the market operator's business; and
  - (d) information on the performance of the third party in accordance with the service level agreement.

## **2. The records to be kept by a securities exchange**

- (1) The records to be kept by a securities exchange shall include the following information about broker/dealers operating on the market:
- (a) the names, addresses, license category, legal form of each dealer, broker or broker/dealer that has trading rights on the securities exchange;

- (b) the names, addresses, and qualifications of all individual natural persons who are able to execute orders on the securities exchange;
  - (c) the bids and offers posted on the securities exchange by each broker/dealer, including, the date, time, price, amount and nature of the securities for which a bid or offer was made and, for each broker/dealer, the client for whom the bid and offer was made;
  - (d) full trading information for the transactions undertaken on the securities exchange by each broker/dealer, including for each transaction:
    - (i) the date and time of the transaction,
    - (ii) the price, volume and nature of the securities transacted and,
    - (iii) where the transaction was undertaken by a securities broker, the name of the client for whom the transaction was made;such that a full audit trail capable of reconstructing trading activity can be prepared at any time;
  - (e) transaction fees and other payments made by and to the securities exchange by broker/dealers;
  - (f) any investigations into the activities of the broker/dealers and any findings or sanctions imposed on them;
  - (g) any contracts with broker dealers who have the status of market makers whereby they have committed to provide quotes for certain securities; and
  - (h) all other correspondence with broker/dealers who are members of the exchange
- (2) The records to be kept by a securities exchange shall include the following records on the operation of the market
- (a) all bids and offers made, showing the securities, the amount and the price;
  - (b) all transactions undertaken, showing the securities, the amount and the price;
  - (c) all notifications to the market participants and the clearing and settlement system relating to the transactions; and
  - (d) all other market operations.

**3. The records to be kept by stock exchanges that list securities issued by public companies**

- (1) The records to be kept by a stock exchange that lists securities issued by public companies shall include:
- (a) the name and other details of the issuer;
  - (b) details of the securities issued, including the nature, amount and dates of the public offers made;
  - (c) details of any corporate events, including dividend payments, capital restructuring, takeover, mergers, offers and other events;
  - (d) all disclosures made by the issuer;

- (e) all prospectuses published by the issuer and the details of the analysis by the exchange of its compliance with regulatory requirements;
- (f) any investigations into the activities of the issuer, any findings or sanctions imposed;
- (g) the payment of fees and charges by issuers; and
- (h) all other correspondence with the issuer.

**4. The records to be kept by a securities exchange that does not list securities created by an issuing company**

- (1) A securities exchange that lists other securities (such as derivatives) shall maintain the following records in addition to those required for all securities exchanges
  - (a) The nature of the securities;
  - (b) The details of the obligations imposed on buyer and seller; and
  - (c) All other relevant details pertaining to the securities.

**5. The records to be kept by broker/dealers, primary dealers, fund managers, and investment advisers.**

- (1) A market operator that is subject to this paragraph of Schedule 3 shall keep records that, in respect of clients shall show:
  - (a) the name and address of each client and beneficial owner (where the client is not a natural person, or when a natural person is acting on behalf of another) and verification documentation;
  - (b) the legal form of the client and beneficial owner of the client (where the client is not a natural person, or when a natural person is acting on behalf of another) and appropriate documentation verifying these matters;
  - (c) the name of the person authorised to act on behalf of the client;
  - (d) the identity of any agent who acts on behalf of the market operator in relation to each client and verification of the Commission to act;
  - (e) the current and previous client agreements with each client; and
  - (f) the information concerning each client's business, which shall include, where appropriate, financial circumstances, risk appetite, investment policy and objectives and any other information necessary for the nature of the services offered.
- (2) The records maintained by a market operator subject to this paragraph of Schedule 3 shall be sufficient to permit the reconstruction of all transactions (whether by the market operator as principal or agent) and the tracing of any money into and out of any bank accounts controlled by the market operator in connection with the transaction. The records shall include:
  - (a) the date and time, amount and purpose, recipient or source, as the case may be, of client money:
    - (i) paid into and out of client bank accounts and
    - (ii) not passed through client accounts;

- (b) the aggregate balances on client accounts and the amounts of individual client balances, specifying on whose behalf the balance is held;
  - (c) copies of any statements issued to the client about the services provided, transactions undertaken or any other matter; and
  - (d) details of all other services provided for the client, the fees charged and the identity of the officer that provided the services.
- (3) A market operator that is subject to this paragraph of Schedule 3 shall keep records that show the securities and other assets held for each client (whether the client is an individual, a legal person or other legal form or arrangement) and showing:
- (a) the assets held for each client, including the nature of the asset, the form of its legal title, the quantity and latest value of the asset;
  - (b) how title to the asset is established, the nature and location of the legal title and who has legal title;
  - (c) the beneficial owner of the asset;
  - (d) the details of any acquisitions or disposals, including the date, time, method, price and number;
  - (e) where the securities are deposited with a third party, the name of that third party; and
  - (f) where the securities are held by the market operator, the manner in which they are held, whether in a nominee accounts, or directly.
- (4) A market operator that is subject to this paragraph of Schedule 3 shall keep records showing:
- (a) the time, date, purpose and method of transmission of any instructions received from the client and the manner in which they were carried out such that the records will be capable of reconstructing any action taken in relation to the instructions from the time and date the client instruction was received to the time and date that the instruction was completed;
  - (b) any complaints received from clients in accordance with the Regulations; and
  - (c) all other correspondence with the client.
- 6. The records to be kept by broker/dealer, issuing house, underwriters, fund managers, investment advisers, trustees, custodians and persons operating a collective investment scheme (including a hedge fund, private equity fund, or venture capital fund).**
- (1) Where a market operator subject to this paragraph of Schedule 3 executes transactions, including those taken on its own behalf or on behalf of clients or others, the records shall be sufficient to reconstruct each transaction in its entirety and shall include the following:
- (a) the identity of the market operator's officer undertaking the transaction;
  - (b) the name of any bank, or other market operator involved in the transaction and the officers concerned in each case;
  - (c) the time, date and nature;

- (d) the amount purchased or sold and the price of the transaction;
  - (e) the method of execution, including:
    - (i) where the transaction was done on an exchange, the name of the exchange;
    - (ii) where the transaction was done off exchange, the details of the counterparty;
  - (f) details of the fees, charges and other payments paid by the market operator;
  - (g) where the transaction was undertaken for a client:
    - (i) the name of the client;
    - (ii) the identity of the nominal and beneficial owner of the securities before and after the transaction;
    - (iii) the identity of the person authorised to transact business on behalf of the client;
    - (iv) details of any advice given by or to the market operator in respect of the transaction (whether specific to a transaction or as part of a programme of transactions);
    - (v) details of any credit granted to the client (if any);
    - (vi) details of any margin payments made by or on behalf of the client; and
    - (vii) copies of the acknowledgement sent by the market operator of the receipt from clients of securities or documents of title, whether for sale or safe custody.
  - (h) the identity of the person to whom or from whom securities were transferred;
  - (i) the identity of any other market operator involved in the transaction;
  - (j) details of any connection between the market operator and the counterparty to the transaction or the investment that was made;
  - (k) copies of confirmations, bills, receipts or contract notes as appropriate;
  - (l) commissions paid to other market operators and earned by the market operator;
  - (m) the time and date on which payment was made and legal title to the securities was transferred;
  - (n) the date on which documents of title, or documents evidencing title to the securities was received or despatched;
  - (o) the time and date of any transfer of certificated securities to dematerialised securities and vice versa; and
  - (p) the flow of funds and securities into and out of bank and brokerage accounts.
- (2) A market operator that is subject to this paragraph of Schedule 3 shall keep records of any transactions undertaken on its own behalf, including details of any acquisitions or disposals, including the date, time, method, price and number of securities such that the transaction can be reconstructed.
- (3) A market operator that is subject to this paragraph of Schedule 3 and which holds securities on behalf of others shall keep records that show by whom and for whom the



securities or documents of title are held and the extent to which they are held for safe keeping or deposited with a third party as collateral for loans.

- (4) A market operator subject to this paragraph of Schedule 3 shall keep records of all securities that are its property, which shall show by whom the securities or documents of title are held and whether they are held as collateral against loans or advances.
- (5) Where the market operator is a person operating a collective investment scheme, the records to be kept, in addition to those otherwise required for all market operators according to this paragraph of Schedule 3, shall include:
  - (a) the securities held for each collective investment scheme, including the nature of the security, the form of its legal title, the quantity and latest value of the security;
  - (b) the methodology and result of the calculation of the net asset value of each of the collective investment scheme or client as the case may be; and
  - (c) the holdings, subscriptions, and redemptions of units or shares in the collective investment scheme by the investors, including the creation, redemption, disposal or cancellation of interests in the scheme; and
  - (d) the names, addresses and regulatory status of the other functionaries in each collective investment scheme within the control of the fund manager of a collective investment scheme.

**7. The records to be kept by a clearing and settlement system, including a central securities depository**

- (1) The records to be kept by a clearing and settlement system and securities depository shall include:
  - (a) the names, addresses, licence category and legal form of each person that is a participant in the clearing and settlement system, including broker/dealers, clearing members and settlement banks;
  - (b) the date and time of each securities transaction that is handled by the clearing and settlement system, together with the details of the price, volume and nature of the security to be settled and the name and identifying details of the broker/dealer and, in the case of the broker/dealer, the client;
  - (c) the method of calculating and the actual net obligations of each broker/dealer in respect of securities to be delivered and money to be paid at the end of each day;
  - (d) the payments and deliveries made by broker/dealers;
  - (e) the date, time and nature of instructions sent to the settlement bank for the payment of net obligations;
  - (f) details of the contributions to and total resources within, any guarantee fund that may be established by the central securities depository
  - (g) all relations with those who are participants in the clearing and settlement system; and
  - (h) all relations with third parties..

- (2) Where the securities business is a person operating a central securities depository, the records shall include, in addition to those described at paragraph (1) above:
- (a) the date and time of the transfer of ownership of securities;
  - (b) the transactions with company registrars in relation to the dematerialisation and rematerialisation of securities and reconciliations of ownership records;
  - (c) all relations with those who are participants in the central securities depository;
  - (d) all relations with third parties and
  - (e) all transactions and correspondence with the person responsible for the clearing and settlement of securities recorded in the depository.

**8. The records to be kept by a credit rating agency**

- (1) The records to be kept by a credit rating agency shall include:
- (a) the securities for which the agency has provided ratings;
  - (b) the methodology and procedures for giving ratings;
  - (c) the ratings given to each security;
  - (d) any updates or changes made to any rating given to a security;
  - (e) the defaults that occur with respect to any security for which the agency has given a rating;
  - (f) the methodology applicable to each rating is given, the assumptions and data used in the assessment of each rating and all other information and considerations that support each rating;
  - (g) the extent and nature of discussions held with the issuer of each security for which a rating is given; and
  - (h) any disclosed conflicts of interest made to the issuer of any security for which a rating was given.

**9. The records to be kept by nominees**

- (1) The records to be kept by nominees shall include:
- (a) details of all clients who use the nominee services, including the beneficial ownership details where the client is not a natural person acting for him or herself; and
  - (b) details of all transactions undertaken in respect of securities held in the name of the nominee, including the date, time, securities, price, volume, location of the trade, whether on exchange or otherwise and the details of the buyer or seller as the case may be.

**10. The records to be kept by registrars**

- (1) The records to be kept by registrars shall include:
- (a) the names of each of the companies for which the registrar provides services; and

- (b) the names and identification details of all registered owners of securities for each of the securities for which the registrar provides services.

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## SCHEDULE 4

### DECLARATION BY QUALIFIED INVESTOR REGULATION (19)

I declare that I am a qualified investor because I am a

- (a) government, any institution which performs the functions of a central bank, or any other multilateral agency;
- (b) authorised, approved or licensed securities exchange;
- (c) licensed market operator, or any other person carrying on the business of providing investment services and regulated under the law of any foreign jurisdiction;
- (d) authorized or licensed financial institution, or any bank which is not an authorized or licensed institution but is regulated under the law of any foreign jurisdiction;
- (e) insurer [licensed] under the Insurance Act 2006 (Act 724), or any other person carrying on insurance business and regulated under the law of any foreign jurisdiction;
- (f) licensed unit trust, mutual fund or other licensed collective investment scheme, and any authorised collective investment scheme regulated under the law of any foreign jurisdiction;
- (g) individual, either alone or with any of his associates on a joint account, having proven liquid assets of net less than [insert amount specified by the Commission] or its equivalent in any foreign currency;
- (h) company or partnership having proven liquid assets of not less than [4.5 million cedis ?] or its equivalent in any foreign currency;
- (i) person declared by the Commission to be a qualified investor; and
- (j) similarly defined investor in any other securities legislation of any foreign jurisdiction.

and that I recognise that:

some the protections afforded to clients by the Securities and Exchange Commission (Market Operators' Conduct of Business) Regulations 20-- will not apply; and

I may be advised to engage in transactions that may not be regarded as suitable for the generality of investment clients.

Name.....Date.....

- Delete that which does not apply