

SECURITIES INDUSTRY (SELF-REGULATORY ORGANIZATION) GUIDELINES

2022

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SECURITIES INDUSTRY (SELF-REGULATORY ORGANIZATION) GUIDELINES 2022

In the exercise of the powers conferred on the Securities and Exchange Commission by Section 209 of the Securities Industry Act 2016 (Act 929) as amended, these Guidelines are issued this ... day of....., 2022.

PART ONE: RECOGNITION AS A SELF-REGULATORY ORGANIZATION

1. Scope of Application

These Guidelines apply to a company or an organization seeking or required to be recognized by the Commission as a self-regulatory organization in accordance with the Act.

Where the Commission agrees to waive the full application of any part of these Guidelines, it shall issue a directive to the self-regulatory organization that states what alternative measures shall be put in place by the self-regulatory organization in place of full application of the Guidelines.

Where any doubt arises about the meaning of any provision contained in these Guidelines and any other Guideline issued by the Commission, the same shall be referred to the Commission and the interpretation provided by the Commission shall be final.

2. Recognition of a Self-Regulatory Organization

- (1) A company or an organization shall not hold itself out as a self-regulatory organization without recognition from the Commission.
- (2) The Commission may accord recognition to a company or organization as a self-regulatory organization in relation to a specified segment of the securities industry, in accordance with the Act.
- (3) The Commission may nominate and, or following the application made by the company or organization, accord recognition to the company or organization as a self-regulatory organization.
- (4) A self-regulatory organization recognized by the Commission shall not be a member of another self-regulatory organization.

3. Application for recognition of a Self-Regulatory Organization

- (1) An application for recognition of a self-regulatory organization shall be made to the Commission as specified in Schedule 1 and shall comply with the requirements in Schedule 2 of these Guidelines.
- (2) The Commission may require the applicant to
 - (a) provide it with such further information as it considers necessary;

- (b) appear before it through an authorized representative in connection with the grant of recognition.
- (3) The Commission shall consider an application and inform an applicant of its decision within ninety days (90 days) after an application has been lodged with it provided that where further information has been required in accordance with section 111 (2) of the Act, the period of ninety days shall be calculated from the time when further information is submitted to the Commission.

4. Nomination of a company or organization as a self-regulatory organization

- (1) Where the Commission is satisfied that a company or organization :
 - (i) has sufficient capacity and resources to carry out the functions of a self-regulatory organization;
 - (ii) carries out its activities in relation to a particular segment of the securities market; and
 - (iii) has been consistently compliant with the securities market laws,the Commission may nominate and accord recognition to that company or organization to act as a self-regulatory organization.
- (2) The Commission may require the nominated company or organization to be accorded self-regulatory organization status to provide information as specified in schedule 1 of these Guidelines.

5. Processing fees for recognition

An application for recognition of a self-regulatory organization shall not be considered by the Commission unless the applicant has paid the prescribed fees specified in Schedule 2 of these Guidelines.

6. Conditions for recognition of a Self-Regulatory Organization

- (1) The Commission may grant recognition to an applicant as a self-regulatory organization where the applicant has complied with section 50 (1) of the Act; and;
 - (a) the Constitution of the applicant is in conformity with these Guidelines;
 - (b) the applicant agrees in writing to comply with any other conditions or restrictions as the Commission considers fit;
 - (c) the objectives and rules of the applicant are not anti-competitive and are partial.
- (2) A self-regulatory organization shall;
 - (a) meet the fit and proper person criteria established by the Commission under the Securities Industry (Licensing) Guidelines 2020;

- (b) be a corporate body incorporated under the Companies Act, 2019 (Act 992) or the Incorporated Private Partnerships Act 1962 (Act 152);
- (c) be organized and structured in compliance with the Act;
- (d) provide a satisfactory business plan as defined in the Securities Industry (Licensing) Guidelines 2020;
- (e) neither carry on, nor hold itself out as carrying on, any business other than that permitted by its recognition, and from premises specified in its recognition, except only in respect of such other matters as are ancillary or incidental thereto, or as may be expressly permitted by the Commission;
- (f) notify the Commission of proposed changes in its shareholders, governing board membership, chief executive or other principal officers for no objection by the Commission subject to compliance with any conditions the Commission may impose.
- (g) notify the Commission of any changes to its capital structure within 5 working days from the date of change;
- (h) provide evidence that the chief executive officer is duly qualified by reason of –
 1. having a minimum of first degree or its equivalent, or professional qualification in a relevant field including banking, finance, accounting, business management, law or economics with a minimum of 7 years’ post-qualification experience in the financial sector;
 2. having a minimum of first degree or its equivalent in areas other than (a) above with a minimum of 10 years’ relevant post-qualification experience in the financial sector; or
 3. being a non-degree holder with a minimum of 15 years’ post-qualification experience, 5 of which must be in a senior management position in the securities industry;
- (j) have a majority of governing board or council members who have recognized academic or professional qualifications or experience in banking, law, accountancy, economics, business administration, dealing in securities or any other relevant qualifications;
- (k) lodge with the Commission in every year, and update same within 14 days of any change, a list of all principal officers, which list shall include the individual’s full name, National Identity Card number, job designation and description of responsibilities and details of their former employers where they have worked for market operators and any to the information that the Commission may require;
- (l) provide satisfactory information as to its proposed internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements;
- (m) provide a special resolution by members at a general meeting and a resolution by the governing body in support of application for recognition.

(3) Where the self-regulatory organization is a trade association it shall also satisfy the following;

- (i) have organizational structure capable of monitoring adherence to its own professional ethics and conduct of disciplinary measures.
- (ii) have infrastructure and professional staff who have detailed knowledge of how the market works and the expertise required to deal with issues that are relevant to that particular segment of the securities industry.
- (iii) shall not have any of its personnel being disqualified for violation of securities industry law.

(4) The Commission may request to interview the members of the governing board/council and principal officers of the applicant;

(5) The Commission may at any time by written notice to a self-regulatory organization vary a condition or restriction in relation to its recognition.

7. Delegation of powers and functions to self-regulatory organizations

The Commission may, by written arrangement, delegate a power or function of the Commission to a self-regulatory organization, as per section 50 (2) of Act 929.

8. Validity of recognition

A recognition granted to a self-regulatory organization shall be valid until revoked by the Commission subject to meeting continuing recognition obligations and payment of the prescribed annual fee/levy.

9. Refusal to grant recognition

Where an application is made for the grant of a recognition by a body corporate, the Commission shall refuse the application when it finds it unsatisfactory in accordance with Section 50 of the Act.

10. Financial Resource Requirements

A self-regulatory organization shall show evidence that it has the capacity and the financial and administrative resources required to carry out its functions in accordance with Section 50(1) (b) of the Act.

11. Notification of changes of particulars

A self-regulatory organization shall notify the Commission of any change of particulars from those submitted in the application for recognition and any further change within fourteen days of the change.

12. Revocation of recognition

The Commission may revoke the recognition granted to a self-regulatory organization in accordance with Section 55 of the Act.

13. Request by a Self-Regulatory Organization to be derecognized

Where a self-regulatory organization intends to make a request to be derecognized, it shall give the Commission not less than six months' notice in writing.

PART TWO: GOVERNANCE OF SELF-REGULATORY ORGANIZATION

14. Composition of Governing Body

- (1) A self-regulatory organization shall have a governing body who have the integrity, skills, experience and qualifications necessary for its business.
- (2) 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 at least one third shall be independent non-executive directors and:
 - (a) a majority of the directors shall be non-executive directors;
 - (b) a majority of non-executive directors shall be independent; and
 - (c) a minimum of two directors shall be independent non-executive directors, one of whom may be the Chairman of the Board.
- (3) The term of office of a Board Chairman of a self-regulatory organization shall not be more than three (3) years and may be renewed for one (1) additional term.
- (4) The tenure of office of non-executive directors of a self-regulatory organization shall not be more than three (3) years and may be renewed for not more than two (2) additional terms (2).
- (5) A self-regulatory organization shall notify the Commission, in writing, of its intention to make an appointment to its governing body and shall not make the appointment unless the Commission gives its approval.
- (6) The direction and management of the affairs of the self-regulatory organization shall vest in its governing body.
- (7) The Chairman shall be appointed by the governing body with approval of the Commission and shall be independent.
- (8) The chief executive officer shall be appointed by the governing body and shall be responsible for the day-to-day administration of the self-regulatory organization and implementation of the decisions of the governing body.
- (9) The governing body shall establish committees such as disciplinary committee, industry development committee, market supervision committee, dispute resolution committee, or/and any other committees, wholly or partly consisting of members, necessary for the performance of its operations.

15. Membership of Self-Regulatory Organization

- (1) A market operator who is not a member of a self-regulatory organization shall upon coming into effect of these Guidelines apply to the self-regulatory organization related to its segment of the securities market to become a member.

(2) The self-regulatory organization shall communicate its decision on an application under paragraph 15 (1) to the market operator not later than 30 working days from the date of application.

(3) Where application for membership is declined, the self-regulatory organization shall give reasons for the decision.

16. Qualifications of members of the Governing Body

(1) A person shall not be a member of the governing body of a self-regulatory organization where

- (a) the person has been convicted of an offence involving fraud or dishonesty punishable on conviction to a term of imprisonment exceeding three months either in this country or elsewhere, within a period of ten years immediately preceding the date on which an application is made for a recognition under the Act ;
- (b) the person has been adjudged bankrupt by a court;
- (c) there is any evidence against the person involving a case of misconduct, fraud or mismanagement of a firm engaged in securities business or any similar public concern;
- (d) the person has been convicted of a breach of the Law or Regulations made under the Act;
- (e) the person is precluded by an order from any public regulatory authority either in this country or elsewhere from engaging in transactions pertaining to that public regulatory authority

PART THREE: FUNCTIONS AND RULES OF A SELF-REGULATORY ORGANIZATION

17. Functions of a Self-Regulatory Organization

(1) A self-regulatory organization shall

- (a) comply with directives of the Commission;
- (b) promote investor protection and conduct educational and awareness programs for securities market investors;
- (c) promote the education and training of its members
- (d) ensure compliance with the Securities Laws by its members;
- (e) specify standards of conduct for its members and shall ensure compliance with same;
- (f) supervise its members, including conducting inspections and investigations;
- (g) treat members and prospective members in a fair and transparent manner;
- (h) promptly notify the Commission in writing;
 - (i) where it becomes aware of violations of the securities laws, regulations, rules, guidelines and circulars by any of its members;
 - (ii) about any matter which adversely affects or is likely to adversely affect the interest of investors;
- (i) promote market or industry development.

(2). A self-regulatory organization may discharge such other functions as may be specified by the Commission.

18. Disciplinary action by a Self-Regulatory Organization

- (1) A self-regulatory organization shall notify the Commission in writing within seven days before it expels, suspends or disciplines any of its members.
- (2) A person aggrieved by a decision of a self-regulatory organization in paragraph 18 (1) may appeal in writing to the Commission stating the reasons for the appeal and annexing any documentary evidence in support of the appeal.
- (3) The Commission shall examine each appeal and after giving the member an opportunity to be heard, make a determination on the appeal.

19. Rules of Self-Regulatory Organization

- (1) Subject to section 51 of the Act, a self-regulatory organization shall make rules that provide for
 - (a) eligibility criteria for admission of members;
 - (b) proper regulation and supervision of its members;
 - (c) proceedings against a member in breach of the Act and these Guidelines, including provisions for disciplining, sanctioning and suspension or expulsion of members;
 - (d) internal control standards including procedure for inspecting, reviewing, monitoring and surveillance of its members;
 - (e) code of conduct specifying standards for its members;
 - (f) ensuring fair representation of members on the governing board;
 - (g) obligation of members to supply information or explanation and to produce documents relating to the business as the self-regulatory organization may require;
 - (h) managing conflict of interest;
 - (i) dispute resolution;
 - (j) procedure of trading in securities by the governing body and officers; and
 - (k) maintaining accounts or records of the self-regulatory organization.
- (3) Where the Commission considers it expedient so to do, it may, by order in writing direct a self-regulatory organization to make any rule or to amend or revoke any of them within such period as it may specify.
- (4) Where a self-regulatory organization fails or neglects to comply with such order within the specified period, the Commission may act in accordance with section 54 of the Act.

PART FOUR: ACCOUNTS, INSPECTION AND PROVISION OF ASSISTANCE TO THE COMMISSION

20. Annual report of a Self-Regulatory Organization

- (1) A self-regulatory organization shall submit to the Commission within ninety days from the end of its financial year, an annual report in accordance with section 58 of the Act.

21. Returns of a Self-Regulatory Organization

- (1) A self-regulatory organization shall, within ninety days from the end of its financial year, submit to the Commission a return of its activities during the preceding year which shall contain information on
 - (a) amendments made to the rules of the self-regulatory organization;
 - (b) changes in the composition of the governing body;
 - (c) any new committee established or changes in membership of existing committees;
 - (d) admission, re-admission, resignation or expulsion of members;
 - (e) disciplinary action taken against members;
 - (f) settlement of dispute among members;
- (2) A self-regulatory organization shall submit to the Commission quarterly returns within twenty-one days after each quarter in the form that the Commission may prescribe.
- (3) A self-regulatory organization shall submit to the Commission monthly returns within fifteen days after each month in the form that the Commission may prescribe
- (4) A self-regulatory organization shall submit to the Commission quarterly reports of its inspection activities of its members.
- (5) Notwithstanding paragraph 21 (4) above, matters of material importance shall be reported to the Commission as soon as practicable after becoming aware of the matter.
- (6) A self-regulatory organization shall submit to the Commission any other report that may be required.

22. Inspection by the Commission

- (1) The Commission shall undertake inspection of the books of accounts, other records and documents of a self-regulatory organization.
- (2) The Commission shall give notice to the self-regulatory organization before the commencement of an inspection.

23. Directives to a Self-Regulatory Organization

The Commission may issue a directive to a self-regulatory organization in accordance with section 54 of the Act.

24. Provision of assistance to the Commission

A self-regulatory organization shall provide assistance to the Commission or to a person acting on behalf of or with the authority of the Commission, as the Commission or such person reasonably requires, including furnishing of relevant information relating to the operations of the self-regulatory organization and any other information as the Commission may require, for the proper administration of the securities laws.

25. Sanctions

Where a person fails to comply with these Guidelines, the Commission may take action as set out in Sections 55 and 209 of the Act or apply such greater penalty where the breach also involves a breach of the Act or Regulations for which a higher penalty is prescribed.

26. Interpretation

INTERPRETATION

Definitions

In these Guidelines –

“Act” means the Securities Industry Act, 2016 (Act 929), as amended;

“Commission” means the Securities and Exchange Commission;

“Companies Act” means the Companies Act, 2019 (Act 992);

“Company” means a company formed and registered under the Companies Act;

“Company’s constitution” means the Constitution of the company as defined under the Companies Act, 2019 (Act 002);

“Independent member” means refers to a member of a governing board who does not have a material relationship with a company and is neither part of its executive team nor involved in the day-to-day operations of the company.

"Member" means an intermediary who has been admitted as a member of a self-regulatory organization and includes an agent who has been so admitted;

"Self-Regulatory Organization" means a registered securities exchange or an organization of intermediaries which represents a particular segment of the securities market and is recognized by the Commission under this Act.

“Securities” has the same meaning as provided in the Securities Industry Act, 929 (Act 929)

SCHEDULE 1**REQUIREMENTS FOR RECOGNITION OF SELF-REGULATORY ORGANIZATIONS****FORM SEC NO. 1**

SCHEDULE 1

APPLICATION FOR RECOGNITION AS A SELF-REGULATORY ORGANIZATION UNDER THE SECURITIES INDUSTRY ACT, 2016 (Act 929).

1.General Information	a) Registered name of applicant (b) Address (c) Location of principal place of business (d) Location/Address of branches (if applicable) (e) Telephone number (f) Fax (g) E-mail (h) Name and address of principal bankers and bank account numbers (i) Name and address of secretary (j) Name and address of the external auditors of the applicant
2. Type of application	(a) indicate if this is an initial application for recognition or whether it is an application for the restatement of an initial recognition (b) If it is for the restatement of an initial recognition please furnish the following information; i. Date of initial recognition ii. Recognition number
3. Legal status	(1) If applicant is incorporated in Ghana please specify whether applicant is - (a) incorporated under the Companies Act 2019; or (b) Incorporated under the Incorporated Private Partnerships Act, 1962. (2) If applicant is incorporated outside Ghana please specify the jurisdiction and the Act under which the applicant is incorporated. (3) confirm whether the Constitution/Partnership Deed of the applicant permits it to engage in the business for which the recognition is sought.
4. Capital structure and shareholding	(1) specify where applicable; (a) Authorized shares (b) Issued shares (c) Paid up capital of the applicant (2) specify the names and addresses of all shareholders with 5% or more shareholding in the applicant.
5. Other businesses	give details of other businesses (if any) the applicant is engaged in other than the business for which approval is being applied for.

6. Particulars of Governing board/Partners and Management.	<p>(1) specify name, address and profession/occupation of every governing board member/partner of the applicant along with any other directorships held by them.</p> <p>(2) specify if they will be executive or non-executive.</p> <p>(3) specify the name, address and qualifications of the chief executive officer of the applicant along with any other directorships held by him/her;</p> <p>(4) specify the constitution, membership, tenure, powers and functions of any other bodies or committees of the applicant apart from the board of directors.</p> <p>(5) state whether the board is fairly represented with respect to the various market segments</p>
7. Organization chart	annex a chart/ diagram of the organizational structure of the applicant with particular reference to supervision and lines of reporting.
8. Group and associated person information	specify names of the holding company, subsidiary companies and associates of the applicant and any other companies or partnerships in which the applicant has an interest.
9. Staff	<p>(1) name the governing board members/partners, owners and employees of the applicant who will be involved in the operations of the business for which the recognition is sought.</p> <p>(2) specify qualifications and experience of persons in 9 (1)</p> <p>(3) give the names and addresses of documentation/computer/ accounting/administration and clerical staff of the applicant.</p> <p>(4) specify location and custodian of the register of interests in securities required to be maintained under section 126(1) of the Act.</p>
10. Details of market segment to operate in	specify the specific segment:
11. Declaration	<p>a. We the undersigned certify that the above information is true and accurate.</p> <p>b. We undertake in the event of our application being accepted to abide by the Act, Regulations made under the Act, Rules, Statements of Principles, Procedures, Guidelines, Codes, Directives, Circulars, Manuals, etc., present and prospective issued from time to time by the Commission established by the Act.</p> <p>c. We also undertake to inform the Commission immediately of any change in any of the particulars stated in this application.</p>
12. Confirmation	<p>We confirm that</p> <p>(a) the applicant is not in the course of being wound up/or in bankruptcy;</p> <p>(b) no receiver or manager has been appointed under any law with regard to the business and assets of the applicant;</p> <p>(c) the applicant has not entered into any compromise or scheme of arrangement with any of its creditors either in Ghana or outside which is still in operation;</p> <p>(d) neither the applicant nor any of the governing board members /partners and executive officers of the applicant have been -</p> <p>(i) adjudged bankrupt anywhere;</p> <p>(ii) convicted either within Ghana or elsewhere within the period of 10 years immediately preceding the date on which this application is made of an offence involving fraud or dishonesty punishable on conviction with imprisonment for a term of three months or more;</p> <p>(iii) denied a license as a market operator or representative or had a license issued under this Act to them suspended or revoked; or</p>

	(iv) governing board members or partners of an entity which has been denied a license under the Act or had any license issued under this Act suspended or revoked.
13. Documents Enclosed	(A) We enclose the documents specified in schedule 5 of the securities industry (licensing guidelines) 2020. SEAL OF APPLICANT AUTHORISED SIGNATORIES TO COMPLETE SECTION NAME DESIGNATION SIGNATURE NAME DESIGNATION SIGNATURE

SCHEDULE 2

PRESCRIBED INITIAL RECOGNITION AND ANNUAL FEES

Initial recognition fee	GH ₵30,000.00
Annual recognition fee	GH ₵15,000.00