

DRAFT MARKET GUIDANCE NOTES ON UNCLAIMED/ UNPAID DIVIDENDS IN GHANA

BACKGROUND

As part of its statutory mandate to develop the securities industry, the **Securities and Exchange Commission** undertook a study into the issue of unclaimed / unpaid dividends to shareholders by listed companies.

The study revealed widespread and extensive incidence of accumulated unclaimed dividends owed to shareholders by listed companies in the country.

CAUSES OF UNCLAIMED/ UNPAID DIVIDENDS

Among the reasons given for the high incidence of unclaimed dividends in our jurisdiction include:

- Wrong address of shareholders
- Death of shareholders without any notification
- Relatives and heirs may not be aware of deceased's shareholdings
- Beneficiaries may have traveled without leaving a forwarding address
- Many shareholders fail to monitor their investments
- Minimum deposit requirements by commercial banks has forced many small shareholders to close their accounts, hence, the high incidence of return of dividend cheques back to registrars
- Many individual small shareholders not satisfied with dividend amount received, do not bother to claim dividend.
- Many foreign residents, who do not have bank accounts in Ghana, find it difficult accepting their dividends in cedis overseas. This has compelled many to allow their unclaimed dividends to accumulate
- Ignorance of shareholders is generally regarded as one of the major causes of unclaimed dividends in the country.

POSITION OF SECURITIES AND EXCHANGE COMMISSION (SEC) ON UNCLAIMED DIVIDENDS

By law, dividends become debt of a company once they are declared and must be paid. This implies that unclaimed dividends do not belong to companies that have declared them, but to investors or shareholders. It has however come to the notice of the SEC that some listed companies and other securities market operators are holding substantial sums of monies being declared but unclaimed dividend belonging to unidentified shareholders.

The SEC in the course of the study, has also examined the applicability of the Limitation Decree 1972 (NRCD 54) to outstanding unclaimed dividends and concludes that since **shareholders are in principle and legally acknowledged as part owners of a company, by which they are entitled by right to dividend payments when declared, and also the fact that companies annual reports acknowledge liability of such dividend payments (claimed or unclaimed), it stands to reason that the Limitation Decree 1972(NRCD54) cannot be applied to unclaimed dividends. This is still so even if the shares are transferred to a third party.**

The SEC is aware that whilst jurisdictions all over the world with operating capital markets have extensive provisions on the treatment of unclaimed dividends, there seem to be a void or gap in Ghana's securities industry and related laws and regulations on the subject.

However, under section nine (9) of the Securities Industry Law, (PNDCL 333 as amended); the Securities and Exchange Commission is vested with powers to "maintain surveillance over activities in securities to ensure orderly, fair and equitable dealings in securities and to **formulate principles for the guidance of the industry and protection of investors**. The Law also empowers the SEC to protect the integrity of the market against all forms of abuse and to create the necessary atmosphere for the orderly growth and development of the capital market."

The issue of unclaimed dividends is therefore of current concern of the Commission. In the light of this, and in the interest of investor protection, the SEC wishes to propose the following actions for the comments of market operators. These comments will form the basis of the final set of principles, guidelines, regulations or legislations on the treatment of unclaimed dividends that the SEC intends to issue to the market soon.

SECURITIES AND EXCHANGE COMMISSION'S PROPOSED ACTIONS ON UNCLAIMED/ UNPAID DIVIDENDS

The SEC intends to take measures to reduce the incidence of unclaimed dividends in the capital market. This may include:

- **Directives to registrars, listed companies, investment advisers, broker-dealers and all affected market operators, to take reasonable steps to trace owners of unclaimed dividends through but not limited to the following media form:**
 - **Publication of details of unclaimed dividends in the annual reports of listed companies or in a special publication to be distributed to all shareholders, the SEC and the GSE**
 - **All investment advisers, broker-dealers and other market operators who may have unclaimed dividends of clients in their possession and have no authorization from their clients to reinvest or hold such unclaimed dividends on their behalf, will be required to report and submit a list of such clients and return the dividends to the registrar of the equity in question.**
 - **The SEC will require listed companies to make general announcements in the mass media- print and electronic and such other investor relations vehicles as newsletters, house journals, websites etc. to remind shareholders who have not claimed their dividends in previous dividend declaration years to come forward to claim. The SEC may direct that such announcements be carried for three to four successive times after each dividend declaration year.**

- In addition to the above, listed companies and their registrars will be required to keep a register on details of unclaimed dividends and have them opened for inspection at AGM's and EGM's.
- Listed companies and their registrars and all market operators holding unclaimed dividends will be required to forward a list of all unclaimed dividends and names of affected investors to the SEC.
- The SEC will also direct shareholders to provide fresh information about themselves each year or on periodic basis as may be determined by the SEC, on their current address, bank account, details of next of kin etc. to their respective equity registrars.
- Alternatively, registrars will be directed to insert "shareholders' personal detail validation form" in annual reports sent to all shareholders prior to AGM's. The completed forms would then be collected by registrars to enable them update their records on shareholders.
- The SEC in line with its statutory mandate to protect the interest of investors, will also mount an investor education campaign targeted at individual shareholders with a singular objective of reducing the incidence of unclaimed dividends
- Since minimum bank deposit requirement is identified as one of the principal causes of unclaimed dividends among individual shareholders, the SEC will take steps to solicit the help of Bank of Ghana to persuade commercial banks not to apply their minimum deposit requirements to dividend warrants or cheques. This is aimed at encouraging the culture of shareholding as part of developing Ghana's capital market.

ADDITIONAL PROPOSED MEASURES TO BE TAKEN BY THE SEC

In addition to the above, other measures that the SEC intends to take soon on the issue of unclaimed dividends include the following:

- That listed companies will be directed to separate unclaimed dividend liability from their current year dividend liability statement and be stated as such in their annual financial statements. Listed companies would also be required to state the details or year-by-year breakdown of unclaimed dividends in the notes to their annual financial statements.

- That the SEC will soon initiate legislation or guidelines on unclaimed dividends, giving authority and control over its administration to SEC in line with its statutory investor protection mandate.
- In furtherance of the above objective, the SEC may constitute a trust in consultation with market operators to manage the unclaimed dividends fund. Part of the proceeds of the fund will be used to service the fund and pay interest to claimants.
- That a “dormancy period” of twelve (12) to fifteen (15) months will be set for all unclaimed dividends to be paid into the special fund yet to be established for unclaimed dividends by all listed companies. The “dormancy period” by law, is a period after each dividend declaration year that dividends not claimed is by law considered unclaimed and therefore dormant.
- For example if a public or listed company declares and pays dividends in July 2006, the investor will have to claim his/ her dividend within twelve (12) or fifteen (15) months. If the investor fails to claim within this period, the dividend becomes unclaimed or dormant after which the listed company will be required to pay the unclaimed dividends into the special fund (the unclaimed dividends fund) to be set up by the SEC. Shareholders can then claim their dividend from this fund with interest.
- That the SEC will soon ask all listed companies, registrars and other market operators holding current and outstanding unclaimed dividends to pay them into a special account or fund which will soon be set up by the SEC.
- However, the SEC in giving the above directive will consider giving enough time or notice to listed companies, registrars and all other market operators holding huge arrears of unclaimed/ unpaid dividends to pay up. A three-year grace period will be considered. However, the SEC will require immediate payment into the unclaimed dividends fund, arrears over the last three dividend declaration years.
- That under the proposed unclaimed dividends legislation or guidelines, both listed and unlisted companies and all capital market participants will be covered.
- Under the proposed legislation, a national register under the control of an appointed national registrar will be established to keep record of all unclaimed dividends for the securities market in Ghana.
- Alternatively, a special department within the Office of the Registrar General’s is proposed to be set up to act as the national registrar of unclaimed dividends.

CONCLUSION

The Securities and Exchange Commission views the issue of unclaimed / unpaid dividends with serious concern. It has therefore made the aforementioned proposals as part of its consensus building policy to solicit the views of all concerned in the securities market before the Commission commits itself to making definite rules which will be binding on all market operators.

We will therefore appreciate the contribution of all market operators in this exercise. Deadline for receipt of contributions is thirty (30) days from the date of this circular.

Thank you.

**ISSUED BY THE SECURITIES AND EXCHANGE COMMISSION
31ST JULY 2006**