

SECURITIES AND EXCHANGE COMMISSION

MARKET GUIDANCE NOTES

CIRCULAR NUMBER: SEC/CIR/001/02/10

ISSUANCE OF LICENCES TO REPRESENTATIVES OF LICENSEES

This Market Guidance Note is issued pursuant to the Securities Industry Law 1993 (PNDCL 333) as amended by Act 590 s.9 (d) which empowers the Securities and Exchange Commission to formulate principles for the guidance of the Securities Industry. The following guidelines are provided to aid the issuance of licences to representatives of licensees.

Pursuant to Regulation 13 (1), L.I. 1728, two categories of the Commission's licensees are mandated to licence representatives, i.e. **Investment Advisers** and **Broker-Dealers** (Stockbrokers).

DEFINITION OF INVESTMENT ADVISER

Investment Adviser is defined under Securities Industry Law, 1993 (PNDCL 333) as amended by Act 590, s.142 (1) to include:

- A person who carries on a business of advising others concerning securities
- A person who as part of a regular business issues or publishes analysis or reports concerning securities
- A person who pursuant to a contract or an arrangement with a client, undertakes on behalf of the client (whether on a discretionary authority granted by the client or otherwise) the management of a portfolio of securities for the purpose of investment.

DEFINITION OF INVESTMENT ADVISER REPRESENTATIVE

Section 142 of the Securities Industry Law 1993 (PNDCL 333) as amended by Act 590 defines an Investment Representative as a person, "in the direct employment of or acting for or by arrangement with an investment adviser, who performs for the investment adviser any of the functions of an investment adviser (other than work ordinarily performed by accountants, clerks or cashiers) whether his remuneration is by way of salary, wages, commissions or otherwise and includes a director or officer of a body corporate who performs for the body corporate any of the said functions".

DEFINITION OF BROKER-DEALER/STOCKBROKER

Regulation 63 of L.I. 1728 states that 'a broker-dealer means a person who buys and sells securities on his own account and also acts as an intermediary between a buyer and seller of securities'.

DEFINITION OF BROKER-DEALER REPRESENTATIVE

Regulation 13 (1) of L.I. 1728 states that a broker-dealer representative is an executive director, officer or employee who takes part in the day-to-day management and administration of a business for which a dealer's licence is required under the Law, or who deals directly with clients on behalf of the dealer. Such a person shall hold a valid dealer's representative licence issued by the Commission.

DIRECTIVES

For the avoidance of doubt the SEC emphasizes that all investment advisers and broker-dealer representatives licensed by the SEC shall be resident in Ghana, and shall immediately notify the Commission of any changes in residential status.

Further, notification of cessation as a licensed representative is mandatory and should be in accordance with **Regulation 18 of L.I. 1728**.

NOTIFICATION OF CHANGES IN PARTICULARS

Regulation 18 of L.I. 1728 states that 'each stock exchange, dealer, investment adviser, dealer's representative and investment representative shall notify the Commission of any change of particulars from those submitted in the application for a licence and any further change within fourteen days of the change. The notification shall be in the form and contain the particulars specified in Form SEC C of Schedule 3'.

FAILURE TO GIVE NOTIFICATION OF CHANGES IN PARTICULARS

Regulation 19 (2) of L.I. 1728 prescribes a penalty of GH¢50.00 for each day a licensee fails to notify the Commission of any change of particulars as required in Regulation 18, and shall have its licence suspended if the period of default exceeds 30 days.

In the light of the foregoing, the Commission shall not licence Investment Advisers'/Dealers' Representative if he/she is not ordinarily resident in Ghana.

EFFECTIVE DATE

This circular takes effect from 1st April, 2010

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