

**SECURITIES AND EXCHANGE
COMMISSION**



Ensuring Investor Protection

**GUIDELINES FOR ISSUING
INSTRUMENTS UNDER SECTION 209 OF
THE SECURITIES INDUSTRY ACT 2016
(ACT 929) AS AMENDED**

ARRANGEMENT OF GUIDELINES

PART A

Preamble, Application and background

1. Preamble.
2. Application.
3. Background.

PART B

Procedures for Issuing Instruments under Section 209 as amended.

4. Procedure for the issuance of Codes and Guidelines under section 209 as amended.
5. Preparation of final draft Guidelines or Code.
6. Finalisation and Approval of the Final Code or Guidelines.
7. Procedure for the issuance of Directives and Circulars under section 209 as amended.

PART C

Derogation

8. Derogation.

PART D

Authority

9. Authority.

PART E

Variation, Revision or Amendment of Existing Instruments

10. Variation, Revision or Amendment of Existing Codes or Guidelines.
11. Variation, Revision or Amendment of Directives or Circulars.

PART F

Revocation of Instruments

12. Revocation of existing Codes or Guidelines.
13. Revocation of existing Directives and Circulars.
14. Effective Date.

SECURITIES AND EXCHANGE COMMISSION, GHANA

GUIDELINES FOR ISSUING INSTRUMENTS UNDER SECTION 209 OF THE SECURITIES INDUSTRY ACT 2016 (ACT 929) AS AMENDED BY THE SECURITIES INDUSTRY (AMENDMENT) ACT 2021 (ACT 1062)

GUIDELINES SEC/GUI/004/04/2024

PART A

Preamble, Application and Background

1. Preamble

The Securities and Exchange Commission, Ghana hereinafter referred to as the “SEC” is mandated to regulate and promote the growth and development of an efficient, fair and transparent securities market in which investors and the integrity of the market are protected.

2. Application

These Guidelines shall apply to the SEC’s internal procedures for the issuance of Codes, Directives, Guidelines and Circulars made pursuant to section 209 of the Securities Industry Act 2016 (Act 929) as amended by the Securities Industry (Amendment Act) 2021 (Act 1062).

3. Background

- (1) The mandate of the SEC in section 3 of Act 929 as amended refers
- (2) Section 209 of the Securities Industry Act 2016 (Act 929) as amended mandates the SEC to issue Codes, Directives, Guidelines and Circulars that the SEC considers necessary.

PART B

Procedures for Issuing Instruments under Section 209 as amended

4. Procedure for the issuance of Codes and Guidelines under section 209 as amended

- (1) The SEC, in issuing Codes and Guidelines for the securities market shall as far as practicable ensure that:
 - (a) There is a Background Note of not more than two (2) pages stating the following:

- (i) The department(s) or unit(s) initiating the Code or Guidelines
 - (ii) The Statutory provision(s) apart from section 209 as amended, grounding the introduction of the Code or Guidelines
 - (iii) the objective and the gap in regulation that the Code or Guidelines seek to address.
 - (iv) the department(s) or unit(s) responsible for the implementation of the Code or Guidelines is clearly identified.
 - (v) the effect the Code or the Guidelines may have on any existing regulatory framework or existing instrument.
 - (vi) the Background Note shall clearly identify the specific IOSCO Core Objective(s) and relevant IOSCO Principles of Securities Regulation that support the issuance of the Code or Guidelines or in the absence of that, the Background Note shall state the best practice or international standard such as an International Standards Organisation (ISO) standards, Basel Committee on Banking Supervision (BCBS) standards, International Association of Insurance Supervisors (IAIS) core principles, International Organisation of Pension Supervisors (IOPS) Principles of Private Pension Supervision, the Principles issued by the Organisation for Economic Cooperation and Development (OECD) etc relevant to the Code or Guidelines.
 - (vii) the expected date of commencement of the Code or Guidelines.
- (b) A copy of the draft Code or Guidelines is attached to the Background Note.
- (2) The draft Code or Guidelines shall contain the SEC logo embossed on the opening page of the document and watermarked “**INITIAL DRAFT FOR INTERNAL REVIEW**” in red and in the same font as the text of the Guidelines diagonally from left to right across the middle of each page of the Code or Guidelines.
- (3) The Background Note together with the attached draft Code or Guidelines shall be sent to the Director-General or his designated representative (hereinafter referred to as “Instruments Custodian”) to take custody and provide conclusive updates on the status of all Codes or Guidelines at any point in time.
- (4) The Instrument Custodian shall maintain a Register containing all Initial draft or final Instruments issued by the SEC with the following details:
- (a) The title of the Code or Guidelines
 - (b) The name of the department(s) or unit(s) that initiated it and the departmental lead on the Code or Guidelines

- (c) The date it was first initiated
 - (d) The status of the Code or Guidelines
 - (e) Where the Code or Guidelines is under review, the number of previous review sittings on the Code or Guidelines and the dates of the review sittings, date of the last review sitting, the stage of review of the Code or Guidelines, including the part, clause, sub-clause, paragraph, subparagraph, and page number where the review ended.
- (5) The Instrument Custodian shall at the direction of the Director-General, schedule a date and designate persons to review the Code or Guidelines internally and prepare a final draft of the Code or Guidelines with the SEC logo embossed on the opening page of the document and watermarked “**DRAFT FOR MARKET**” in red and in the same font as the text of the Guidelines across the middle of each page of the Code or Guidelines.
- (6) The final draft shall be divided into parts which shall be:
- i. alphabets in capital,
 - ii. clauses which shall be numbers,
 - iii. sub-clauses which shall be numbers,
 - iv. paragraphs which shall be alphabets in small caps and,
 - v. sub-paragraphs which shall be roman numbers in small caps and shall be referred as such.
- (7) The SEC shall subsequently consult with stakeholders including market operators to which the Code or Guidelines shall apply, and in that process, solicit for the purpose of consideration, contributions and inputs (market feedback) from such stakeholders in respect of the Code or Guidelines;
- (8) The Instrument Custodian shall maintain the historical record of all tracked changes to each Code or Guidelines and shall account for what suggestions or comments were accepted by the SEC and from which individual or institution.
- (9) The SEC shall on the date it sends out the draft to the market, send a copy of the Code or Guidelines to the Board for information purposes and publish a copy of the draft Code or Guidelines on its website with a designated email address for receiving feedback (comments and suggestions) from members of the public.
- (10) For the purposes of consultation with stakeholders, the SEC may limit the engagement to the Self-Regulatory Organisation (SRO) in relation to a specified segment of the securities industry or other bodies recognized by the SEC as important stakeholders in the issuance of the draft Code or Guidelines.
- (11) The SEC shall collate all market and public feedback within 14 days of

publication and dispatch feedback for consideration in its next and final review of the draft Code or Guidelines. This period may be extended at the discretion of the SEC.

- (12) The SEC shall ensure that the draft Code or Guidelines to the extent possible, considers the contributions and inputs which in the opinion of the SEC are relevant to IOSCO's 38 Principles of Securities Regulation that support the issuance of the Code or Guidelines or in the absence of that, best practice or international standard such as an International Standards Organisation (ISO) standards, Basel Committee on Banking Supervision (BCBS) standards, International Association of Insurance Supervisors (IAIS) core principles, International Organisation of Pension Supervisors (IOPS) Principles of Private Pension Supervision, the Principles issued by the Organisation for Economic Cooperation and Development (OECD) etc relevant to the Code or Guidelines.
- (13) The Code or Guidelines may contain Explanatory memoranda on potential areas of ambiguity with simulated examples where appropriate.
- (14) The Definition or Interpretation section in any Code or Guidelines shall be situated immediately after the last provision in the Code or Guidelines.

5. Preparation of final draft Guidelines or Code

- (1) Upon receipt of comments and suggestions from stakeholders, the SEC may where it considers necessary publish a final Draft of the Code or Guidelines with the SEC logo embossed on the opening page of the document and watermarked "**FINAL DRAFT FOR APPROVAL**" in red and in the same font as the text of the Guidelines across the middle of each page for further comments for 7 days and this shall conclude the consultation process.
- (2) All Codes or Guidelines shall contain a provision that: Where any doubt arises about the meaning of any provision contained in the Code or Guidelines, the same shall be referred to the SEC and the interpretation provided by the SEC shall be final.
- (3) All Codes or Guidelines shall contain the effective date of commencement and shall remain in force until otherwise revised, varied, amended, or revoked.

6. Finalisation and Approval of the Final Code or Guidelines

- (1) Upon the conclusion of the consultation process outlined above, the SEC shall:
 - (a) At its discretion through the Instrument Custodian as far as is practicable, consider all material comments and suggestions received through the consultation process.
 - (b) Through the Instrument Custodian under the direction of the Director-General or his designated representative send a copy of the final draft Code or Guidelines to the Board of the SEC for their input and consideration within

fourteen (14) days.

- (c) Publish the final Code or Guidelines on its official website and same shall be deemed official communication to the securities industry, capital market operators and the general and investing public.
- (d) All Guidelines or Codes shall be identified by a unique serial number from the SEC and shall have an effective date failing which the effective date shall be interpreted to be the date of issue.

7. Procedure for the issuance of Directives and Circulars under section 209 as amended

- (1) The SEC may, pursuant to section 209 of the Act as amended, issue a Directive or Circular for the securities market where it considers it necessary to do so.
- (2) Where the Directive or Circular is initiated by a supervisory department of the SEC, there may be a memorandum of not more than two (2) pages stating the objective and policy consideration for the issuance of the Directive or Circular.
- (3) The memorandum together with the attached Directive or Circular shall be sent to the Director-General or his designated representative who shall have the discretion to give final approval for issuance of the Directive or Circular.
- (4) A Directive or Circular may contain a provision that: Where any doubt arises about the meaning of any provision contained in the Directive or Circular, the same shall be referred to the SEC and the interpretation provided by the SEC shall be final.
- (5) Publication of the Directive or Circular on the SEC's official website shall be deemed official communication to the securities industry, capital market operators and the general and investing public.

PART C
Derogation

8. Derogation

- (1) Despite clauses 1 to 7 above, the SEC may issue Codes, Directives, Guidelines or Circulars without following the procedures set out above where the SEC determines that:
 - (a) It is impracticable to do so under the circumstances; or
 - (b) It is to protect investors and the integrity of the securities market;

PART D
Authority

9. Authority

- (1) All Codes, Directives, Guidelines or Circulars shall be issued under the Order of the SEC

PART E
Variation, Revision or Amendment of Existing Instruments

10. Variation, Revision or Amendment of Existing Codes or Guidelines

- (1) Pursuant to section 209(2) of the Act, as amended, the SEC may vary, revise, or amend existing Codes or Guidelines.
- (2) The SEC shall follow the same procedures as specified in Part B in varying, revising or amending existing Codes or Guidelines where in its view the variation, revision or amendment shall entail varying, revising or amending substantive provisions of the existing Code or Guidelines. Where the SEC determines that the variation, revision, or amendment shall not affect the substance of the provisions in the existing Code or Guidelines, the SEC shall proceed with same without following the procedures above.
- (3) Any Code or Guidelines that suffer a variation, revision or amendment shall be published on the SEC's official website and shall display on a separate page (Annex) the history Code or Guidelines as affected by such variations, revisions or amendments for ease of reference.

11. Variation, Revision or Amendment of Directives or Circulars

- (1) Pursuant to section 209(2) of the Act as amended, the SEC may vary, revise, or amend existing Directive or Circular.
- (2) The procedure for varying, revising or withdrawing an existing Directive or Circular shall be at the discretion of the SEC.

PART F
Revocation of Instruments

12. Revocation of existing Codes or Guidelines

- (1) Pursuant to Section 209(2), The SEC may revoke any Code or Guidelines.

- (2) The SEC shall revoke any Code or Guidelines by publishing a notice of Revocation of the Code or Guidelines with the effective date of Revocation on its website.

13. Revocation of existing Directives and Circulars

- (1) Pursuant to section 209(2) of the Act, as amended, the SEC may revoke a Directive or Circular by publishing a notice of withdrawal of the Directive or Circular.

14. Effective Date

- (1) These Guidelines shall take effect on the date of issue.

**ISSUED BY ORDER OF
THE SECURITIES AND EXCHANGE COMMISSION**

DATED: 19th APRIL 2024