



‘Ensuring Investor Protection’

SECURITIES AND EXCHANGE COMMISSION

**SECURITIES INDUSTRY (ISSUING HOUSE)
GUIDELINES 2022
SEC/GUI/003/02/2023**

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PART ONE
PRELIMINARY

1. Scope of Application of Guidelines

- (1) These Guidelines are issued by the Securities and Exchange Commission (hereinafter referred to as “the Commission”) pursuant to sections 109 and 209 of the Securities Industry Act, 2016 (Act 929) as amended with respect to the activities of Issuing Houses. Accordingly, these guidelines shall apply to Issuing Houses licensed under the Act
- (2) Where the Commission agrees to waive the full application of any part of these Guidelines, it shall issue a directive specify alternative measures in place of full application of the Guidelines.
- (3) 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. Functions of the Commission under these Guidelines

The Commission shall in the performance of its functions under section 3 of the Act undertake the following:

- (1) licence, supervise, monitor and regulate the activities of Issuing Houses and their representatives.
- (2) take such steps as it considers appropriate to ensure that these guidelines are complied with.
- (3) set standards of competence and promote fair practices, encourage, enforce the proper conduct and integrity of Issuing Houses.

3. Powers of the Commission to delegate Functions

- (1) The Commission may delegate the performance of any of its functions or the exercise of any of its powers under these guidelines to a person as the Commission may so determine, as being capable of exercising such functions or powers in accordance with the Act.

4. Determination of “fit and proper” person

- (1) For the purpose of these guidelines, the Commission shall subject a person to its fit and proper person test criteria as specified in the Securities Industry (Licensing Guidelines) 2020 when considering an application for an Issuing House license and Issuing House Representative license.

PART TWO

LICENSING

5. Requirements for an Issuing House

- (1) A person shall not establish, operate, commence or carry on an Issuing House business unless he has obtained a licence granted by the Commission under and in accordance with the Act and these guidelines.
- (2) Approval to operate an Issuing House business shall not be granted to any person other than a body corporate.

An Issuing House shall:

- (3) have professional indemnity insurance acceptable to the Commission.
- (4) have at least four representatives including the Chief Executive Officer, licensed by the Commission, who have satisfied relevant professional education requirements.
- (5) ensure that a person appointed as executive director or officer of the Issuing House business satisfies the requirement of Securities Industry (Licensing) Guidelines (2020).
- (6) ensure that the chief executive officer of the Issuing House satisfies the requirements of Securities Industry (Licensing) Guidelines (2020) and shall have experience in the management and supervision of staff involved in the keeping of records of securities or any other services in the securities industry related to the business of Issuing House.
- (7) ensure that all correspondence with the Commission are signed by the authorised signatory. The authorised signatory shall be the Chief Executive Officer or his/her authorised representative. The authorised representative shall not be below the position of a head of department or unit.
- (8) have and maintain a well-functioning website at all times. The website shall among others display at minimum, the profile of the board members and key management personnel, approved applicable pricing supplements.
- (9) not have any of its key management personnel as a board member or an officer of another Issuing House.
- (10) not appoint to its Board a person who is already 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.
- (11) ensure that total transaction fees including regulatory fees on equities and interest-bearing securities shall not exceed the limit approved by the Commission from time to time.
- (12) ensure that its letterhead conforms to the provisions of the Companies Act, 2019 (Act 992) as amended.

6. Application Process for an Issuing House

- (1) Any person desirous of commencing or carrying on the business of an Issuing House shall make an application to the Commission in the prescribed form and shall be accompanied by such fees as may be prescribed by the Commission.
- (2) The Commission shall consider an application and inform an applicant of its decision within ninety (90) days after an application has been lodged with it provided that where further information is required, the period of ninety days shall be calculated from the time when further information is submitted to the Commission.
- (3) The Commission may not grant a licence under these guidelines unless it is satisfied that the applicant has adequate facilities and safeguards required to operate and the applicant satisfies the financial, managerial and other eligibility criteria and competence as may be prescribed.
- (4) Provided that no licence shall be refused to any applicant under these guidelines unless the applicant has been given an opportunity of being heard.

7. Licensing of an Issuing House

The Commission shall not grant any licence, unless the applicant has satisfied all the conditions prescribed by these Guidelines and any applicable law.

- (1) In considering an application to grant or renew an Issuing House licence under the Act, the Commission shall be satisfied that the applicant –
 - (a) has, and shall maintain at all times, such unimpaired paid-up capital as may be determined by the Commission from time to time;
 - (b) shall comply with such other conditions as may be required by the Commission; and
- (2) A licence granted or renewed by the Commission shall be valid for a period of one calendar year and shall be renewed annually subject to meeting continuing licensing obligations and payment of the prescribed annual fee.
- (3) A license holder shall apply to the Commission for renewal of the licence three months prior to the expiry of a licence granted or renewed.
- (4) A licence is non-transferable.
- (5) An Issuing House shall provide the Commission with 14 days prior written notification in respect of changes to its substantial shareholders, or directors, chief executive, or principal place of business.
- (6) Where the Commission proposes to impose a condition or proposes to object to a proposed change, the Commission shall give reasons for its decision and shall give the Issuing House a right to be heard before a final decision is made.

8. Independence of an Issuing House

The Issuing House shall:

- (1) be independent of the public company or the SEC licensee which is the subject of the Issuing House services.
- (2) not act as the lead manager where the client is a related party. It may however act as the Co-Manager of an offer where the client is a related party.
- (3) provide independent, objective and unbiased Issuing House services.

9. Eligible Activities

- (1) An Issuing House shall be eligible to perform the following functions:-
 - a) act as the lead manager or co-manager for issuance of securities
 - b) provide financial and or transaction advisory services for mergers and acquisitions, business combinations and issuance of securities
 - c) provide such other services as corporate valuation services on securities
 - d) prepare the registration statement, the offer documents, the scheme document and any other transaction documents required to be filed with the SEC
- (2) An Issuing House that is a bank, subject to the approval of the Commission, may act as a receiving bank in the same issue, subject to the following conditions:
 - a) that the financial position of the applicant is good;
 - b) that there are no adverse reports on the financial position of the applicant;
 - c) that there are no pending investigations or other enforcement actions on the applicant, before the Commission;
 - d) that the details of the relationship between the directors, major shareholders and principal officers of the Issuing House, the receiving bank and the issuer are disclosed;
 - e) any other factor that may be considered by the Commission from time to time.

10. Duties of an Issuing House

An Issuing House shall

- (1) ensure that an application for a security issuance, or listing of a security submitted to the Commission for review is accompanied by the prescribed fees.
- (2) ensure that all the parties to a public securities issuance are independent of the issuer.
- (3) keep such records as are necessary for the proper recording of each transaction on the Issuing House;
- (4) preserve confidentiality with regard to all information in its possession concerning its clients, except that such information may be disclosed by the Issuing House when required in writing to do so by the Commission, or if it is ordered to do so by the Court;
- (5) Obtain written approval from the Commission prior to:
 - a) announcement and opening of a security offering
 - b) announcement or publication of offer results on any platform
 - c) release of the proceeds of a securities issuance to the issuer.
- (6) ensure that the offer documents disclose all fees to be paid out to persons or bodies, professionals, advisors, in pursuance of the security issuance.
- (7) confirm that no fees are paid to any professional, advisor, in pursuance of a securities issuance except the fees disclosed in the offer documents.
- (8) coordinate activities of other professionals and parties to an issue or scheme
- (9) ensure that no prospectus which it has prepared is released to the public unless approved by the Commission.

11. Offer results and Use of Offer Proceeds

- 1) The Commission shall require the refund of all amounts disbursed or paid out from the proceeds of the offer which were not disclosed in the offer documents such as 'success fees' and other such fees however described.

12. Anti-Money Laundering

An Issuing House shall:

- (1) comply with the provisions of Anti-Money Laundering Act 2020 (Act 1044) Anti-Terrorism Act 2008 (Act 762) as amended by Anti-Terrorism (Amendment) Act 2014 (Act 875) and Combating the Financing of Proliferation of Weapons of Mass Destruction
- (2) designate an officer appropriately as the AML/CFT/CPF Reporting Officer to; inter alia supervise the monitoring and reporting of suspicious transactions and shall put in place a structure that ensures the operational independence of the AMLRO.
- (3) have a written policy framework that would guide and enable its staff to monitor, recognize and respond appropriately to suspicious transactions including securities issuances.
- (4) declare its commitment to comply promptly with all requests made pursuant to the law and guidelines and provide information to the SEC, FIC and other relevant competent authorities.
- (5) comply fully with the SEC/FIC's anti-money laundering/combating the financing of terrorism & the proliferation of weapons of mass destruction (AML/CFT&PF) rules, guidelines, and laws.

13. Revocation, Suspension or Cancellation of license

- (1) The revocation, suspension or cancellation of an Issuing House license shall be in accordance with the Act.

14. Effect of Revocation or Suspension

- (1) From the date of the suspension or cancellation of license, an Issuing House shall with immediate effect, cease to carry issuing house activity and shall be subject to the directives of the Commission with regard to any records, documents or securities that may be in its custody or control relating to its activities as a Issuing House.
- (2) Any person aggrieved by the suspension, revocation or non-renewal of a licence may appeal such decision in accordance with the Act.

15. Issuing House representatives

- (1) A person shall not act as a representative for an Issuing House unless that person is the holder of an Issuing House representative license issued under the Act.
- (2) The Commission shall grant or renew a license granted to the representative of a market operator if after consideration of the application it considers that the applicant will perform the functions diligently, efficiently, honestly and fairly.
- (3) An Issuing House shall have a minimum of four representatives at all times in accordance with the Securities Industry (Licensing) Guidelines 2020.
- (4) An Issuing House shall promptly notify the Commission within 14 days of the resignation of an Issuing House representative.

16. Consideration of application for representative License

- (1) In considering an application to grant or renew an Issuing House representative licence, under the Act, the Commission shall be satisfied that the applicant –
 - (a) is a fit and proper person to be licensed in accordance with the Securities Industry (Licensing) Guidelines 2020;
 - (b) has passed the appropriate courses organised by the Ghana Investment and Securities Institute (GISI) or any other course recognised by the Commission (unless the Commission grants a waiver of course requirement where a director, officer or employee shows evidence of appropriate and suitable alternative qualifications and experience)
 - (c) meets such other conditions as may be required or imposed by the Commission.
- (2) The Commission may grant or renew a licence under this Part subject to such conditions or restrictions as it considers necessary.

PART THREE

ACCOUNTS AND AUDIT

17. Submission of Annual Financial Statements

- 1) An Issuing House shall within 90 days from the end of its financial year, submit to the Commission, an audited annual report which includes
 - (a) a report on the corporate governance policy of the Issuing House and any other information required by the Commission;
 - (b) audited financial statements prepared in accordance with internationally accepted accounting standards adopted by the Institute of Chartered Accountants (Ghana); and
 - (c) additional accounting rules and standards prescribed by the Commission.
 - (d) a description of the activities undertaken by the Issuing House in the financial year;
 - (e) a statement confirming the extent to which the Issuing House considers that the activities undertaken, and resources used, have resulted in full compliance with all of its obligations under these guidelines, and the rules of the Issuing House.
- 2) An Issuing House shall ensure that the annual report is accompanied by such other information and statements as may be specified by the Commission from time to time.
- 3) The financial statements to be included in an annual report shall
 - (a) be audited by an audit firm approved by the Commission, and
 - (b) be in accordance with the auditing standards adopted by the Institute of Chartered Accountants (Ghana).

18. Commission may appoint auditor

Where the Commission is satisfied that it is in the public interest to do so, it may appoint in writing an auditor (at the expense of the Issuing House) to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of a Issuing House.

PART FOUR

INFORMATION, INSPECTION AND INVESTIGATION

19. Investigation and Inspections

The Commission shall, in addition to any other factors it considers necessary conduct an investigation into or inspection of the operations of an Issuing House in accordance with the Act.

20. Returns to be filed

An Issuing House shall submit to the Commission the following report as specified:

- 1) returns containing information specified from time to time by the Commission which shall reach the Commission not later than 21 days after the end of the quarter;
- 2) annual reports containing the audited annual financial statements prepared in accordance with standards adopted by the Institute of Chartered Accountant Ghana and other information to be specified by the Commission which shall reach the Commission not later than 90 days after the end of the financial year to which the annual report relates.
- 3) a report which includes information on the offer, proceeds, level of subscriptions and basis of allotment within 14 days after the close of the offer.
- 4) evidence of transfer of the proceeds from a securities offer to the issuer within one week from the date of the transfer;
- 5) semi-annual statement of its activities in the capital market including exits and new hires of licensed representatives and key management personnel.

21. Issuing House to report to the Commission in certain matters

Where an Issuing House, in the performance of its functions becomes aware of a matter which may negatively affect investor or shareholder interests, the Issuing House shall within seven days after becoming aware of that matter, lodge with the Commission a written report on the matter and send a copy of the report to the issuer.

PART FIVE

SANCTIONS AND PENALTIES

22. Sanctions for Non-Compliance

- 1) The Commission may take action(s) specified under section 209 of the Securities Industry Act, 2016 (Act 929).
- 2) The Commission reserves the right to suspend/revoke the license of the Issuing House
- 3) The Commission shall sanction an Issuing House for any paper, document or information filed with the Commission that contains false or misleading statements

23. Penalties

- (1) Where a person breaches or fails to comply with a code, directive, guideline or circular issued by the Commission, the Commission may
 - a) take action set out in Section 118, 122 or 123;
 - b) impose an administrative penalty of not less than fifty penalty units and not more than twenty thousand penalty units; or
 - c) apply paragraphs (1) (a) and (b) where the Commission considers necessary.
- (2) The Commission may, in addition to the actions taken above, impose any administrative penalty that the Commission considers necessary or take any other remedial action that the Commission considers appropriate in the interests of protecting investors and the integrity of the securities market.
- (3) Where the breach or non-compliance constitutes a criminal offence under any part of the Act or the Regulations, and the accused voluntarily makes an offer of compensation or restitution and reparation in writing to the Commission, the Commission shall, without instituting criminal proceedings under section 207, settle the offence in accordance with this section.
- (4) Sections 209 (6) to (12) of the Act shall also apply in addition to the above in dealing with offences.
- (5) An Issuing House ordered to pay an administrative penalty shall pay the penalty to the Commission within seven days, or such further period as the Commission may specify by notice, after the order has taken effect.

PART SIX
MISCELLANEOUS

24. Future Revisions/Amendments to Guidelines

The Commission may revoke, vary, revise or amend these guidelines as and when it becomes necessary.

25. Effective Date

These Guidelines shall be effective 30 of November 2022.

26. Definitions

“**The Act**” means the Securities Industry Act, 2016 (Act 929);

“**Body corporate**” includes an incorporated body under the Incorporated Private Partnership Act, 1962 (Act 152);

“**group of companies**” means any two or more companies one of which is the holding company of the other or others (as the case may be).

“**Issuer**” means a person or any other entity that issues, has issued or is going to issue securities;

“**Issuing House**” means a bank as defined in section 90 of the Banking Act, 2004 (Act 673) or other licensed Issuing House which undertakes the business of arranging or underwriting the issue of securities by a company;

“**Lead Manager**” means an Issuing House licensed by the Commission and responsible for arranging the issuance of a security and managing the entire issue process, as well as advising the issuer on the structure and timing of the issue;

“**L.I. 1728**” means Securities and Exchange Regulations, L.I. 1728

“**prospectus**” means any prospectus, notice, circular, material, advertisement, publication or other invitation offering to the public (or any section of the public however selected) for subscription or purchase any shares or debentures of an issuer;

“related party” means an associated person set out in section 212 of the Act, and shall also include:

(1) An entity that:

- a) has control or joint control over the Issuing House;
- b) has significant influence over the Issuing House; or

- (2) An entity is related to an Issuing House if any of the following conditions apply:
- a) the entity and the Issuing House are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).
 - b) one entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member)
 - c) both entities are joint ventures of the same third party.
 - d) one entity is a joint venture of a third entity, and the other entity is an associate of the third entity.

“Securities” include

- a) Shares or debentures within the meaning of the Companies Act, 1963 (Act 179)
- b) Loan instruments of a company;
- c) Bonds or other loan instruments of the Government or the Government of any other country;
- d) Bonds or other loan instruments of a corporation established under an enactment;
- e) Rights or interest whether described as units or otherwise under any unit trust;
- f) Warehouse receipts;
- g) A right or option in respect of any shares, debentures, bonds or notes;
- h) Commodities futures, contracts, options or other derivatives;
- i) Derivatives as defined under the Act; and
- j) Any other instruments as the Minister may by notice in the Gazette prescribe upon the recommendation of the Commission;

“Substantial Shareholder” means a shareholder entitled to exercise or control the exercise of thirty percent or more of the voting power at a general meeting of the company or a person who is in a position to control the composition of a majority of the board of directors of a company