



'Ensuring Investor Protection'

SECURITIES INDUSTRY (NOMINEE) GUIDELINES 2020
SEC/GUI/007/11/2020

ARRANGEMENT OF GUIDELINES

1. Preamble
2. Application of Guidelines
3. License to operate a nominee account
4. Criteria for Licensing
5. Clients approval
6. Information on clients
7. Record of clients transactions
8. Identification of securities registered in Nominee accounts
9. Protection of Beneficial Owners in case of insolvency
10. Clients' rights
11. Rights attached to nominee accounts
12. Permission to accept payments and other rights
13. Supervision and provision of information on business and clients
14. Revocation and suspension of license
15. Segregation of Securities
16. Execution of client's instructions and the allocation of securities
17. Client communication
18. Protection of privacy interest of beneficial owners
19. Data Storage
20. Other duties of a nominee
21. Nominee Services Agreement
22. Reporting Obligations
23. Compliance
24. Revocation, Variation and Revision
25. Penalties
26. Interpretation

1. Preamble

In the exercise of the powers conferred on the Securities and Exchange Commission (hereinafter referred to as “the SEC”) by Section 209 of the Securities Industry Act, 2016 (Act 929) as amended, these Guidelines are made this 15th day of November 2020.

2. Application of Guidelines

- (1) These Guidelines shall apply to all nominees licensed by the Commission and their representatives.
- (2) Where any doubt arises about the meaning of any provision contained in these Guidelines and any other Guideline issued by the SEC, the same shall be referred to the SEC and the interpretation provided by the SEC shall be final.

3. License to operate a nominee account

- (1) A person shall not carry on a business as a nominee unless that person holds a valid licence issued by the Commission.
- (2) A nominee shall be a corporate body incorporated under the Companies Act, 2019 (Act 992) or the Incorporated Private Partnerships Act 1962 (Act 152), or an external company with a branch office in Ghana as its established place of business.
- (3) The external company must provide documentation from the home country’s supervisory Authority showing that the applicant is subject to supervision by that Authority.
- (4) A person who intends to hold securities on behalf of its clients shall apply to the Commission for a licence to hold the securities in a nominee account.
- (5) Application for a licence to provide the services of a nominee shall be made in a form prescribed by the Commission.

4. Criteria for Licencing

- (1) A nominee shall meet the minimum capital requirement and any other requirements that may be prescribed by the Commission.
- (2) Except in the case of external companies, at least two-thirds majority of the directors (or board members) must be ordinarily resident in Ghana with a proven local address.
- (3) In the case of an external company, the local manager (s) must have authority to act on behalf of the company.
- (4) Directors of external companies must be of good standing and be fit and proper persons. They shall provide an attestation from the regulator in whose jurisdiction they reside or perform their duties as directors.

- (5) A person shall not be appointed as a director or executive officer of a nominee unless that person has satisfied the requirements of the Securities Industry (Licensing) Guidelines 2020.
- (6) A nominee shall:
- a) maintain the necessary infrastructure such as adequate office space, equipment, and skilled staff to effectively discharge its duties.
 - b) have at least four representatives, including the CEO and the compliance officer, licensed by the Commission, who have satisfied relevant professional education requirements.
 - c) ensure that a person appointed as executive director or officer of the business satisfy the requirement of Securities Industry (Licensing) Guidelines (2020)
 - d) ensure that the Chief Executive Officer 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.
 - e) ensure that all correspondence with the Commission are signed by the authorised signatories
 - f) maintain a functioning website at all times. The website shall among others, have a dedicated section to display:
 - i. corporate information
 - ii. the profile of the board members and key management personnel,

5. Clients approval

- (1) A nominee shall not register securities on behalf of a client unless it has obtained the client's written consent. The nominee shall inform the client of the legal effects of registering and holding the securities in a nominee account.
- (2) Where there is more than one level of nominee registration, the identity of the ultimate beneficial owner shall be disclosed at the very bottom tier.

6. Information on clients

- (1) The nominee shall obtain comprehensive information on clients requesting nominee registration of securities and that information shall be available to the Commission at any time upon request. The nominee shall maintain this information for a minimum of seven (7) years after termination of the business relationship. The information shall include the following:
 - a) full name or name of client;
 - b) personal identification number of client or unique identity code of the client;
 - c) residential address;
 - d) nationality or, if a legal person, country of incorporation;
 - e) the number of securities / classes being tendered and

- f) The person to hold the asset in trust
- (2) The nominee shall put in place adequate Know Your Client (KYC) as prescribed by the Commission or customer due diligence procedures to identify and verify clients at the time of establishing the business relationship and on a continuing basis after establishing the business relationship.
- (3) The nominee shall inform the client of the obligation to provide information to the Commission under these Guidelines.

7. Record of clients transactions

A nominee holding securities in a nominee account shall keep record of the securities of each individual client. The record shall include the names and telephone numbers of clients associated with the securities registered in the nominee account as well as the number of securities covered by each nominee registration agreement. The records shall be kept such that it leaves no doubt as to the beneficial owner of the securities.

8. Identification of securities registered in Nominee accounts

The register of securities shall identify securities registered in nominee accounts separately in its records, such that there is no doubt as to which securities are held in nominee accounts on behalf of clients.

9. Protection of Beneficial Owners in case of insolvency

- (1) In the event that a nominee's estate is subjected to bankruptcy proceedings or a moratorium is granted on its debts, or the nominee is wound up or comparable measures are taken, the client may, on the basis of the record provided, withdraw its securities from the nominee account, provided that their ownership is not in dispute. All securities held in the nominee account shall be insulated from any bankruptcy, insolvency and liquidation or other court proceedings.
- (2) Irrespective of the financial or legal situation of the nominee, beneficial owners shall at any time be able to claim and retrieve their assets without prejudice to their property rights as long as their claims are legally valid. The client shall have co – proprietary rights in the pool of assets by the nominee.

10. Clients' rights

Clients' rights against the nominee are contractual and shall be governed by the terms and conditions in the nominee services agreement. A nominee's Client shall be entitled to all the rights associated with ownership of securities. Clients have the right to receive all the information concerning shareholders' meetings from the nominee.

11. Rights attached to nominee accounts

- (1) The rights attached to the nominee account shall be:
 - a) rights provided in these Guidelines; and
 - b) rights provided in the client's agreement.
- (2) Voting rights at shareholders' meetings are not attached to nominee accounts except expressly given in writing by the client. Where such rights are granted, they shall not be abused by the nominee.

12. Permission to accept payments and other rights

- (1) A nominee may accept payments including rights to dividends or other payments on behalf of its clients from individual issuers of securities.
- (2) A nominee shall keep these payments separate from its other assets.
- (3) A nominee may exercise rights to new shares in the event of a rights issue.

13. Supervision and provision of information on business and clients

The Commission reserves the right to demand from a nominee the disclosure of the identity of the clients registered as beneficial owners of securities held in a nominee account including any persons connected to the securities. A nominee shall provide the Commission with the information required.

14. Revocation and suspension of Licence

Revocation and suspension shall be carried out in accordance with the Securities Industry Act, 2016 (Act 929).

15. Segregation of Securities

- (1) The nominee shall put in place internal control systems that segregate the nominee's own securities from the securities of clients.
- (2) A nominee shall not encumber any of the assets belonging to beneficial owners unless or otherwise expressly agreed in writing.

16. Execution of client's instructions and the allocation of securities

- (1) The nominee shall put in place internal control systems to ensure that:

- a) all beneficial owners are treated fairly, equally and impartially; in the execution of clients instructions and allocation of securities.
- b) any possible conflicts of interest between the nominee and the client is avoided.
- c) mechanisms to protect the investor from misconduct such as misallocation of securities or front running are in place.
- d) clients are not deprived of any shareholder benefit as required by law.

17. Client communication

- (1) The nominee shall communicate to clients, quarterly or as frequently as agreed with the client, the status of their securities.
- (2) Information specially requested by clients shall be provided relative to the Guidelines herein.

18. Protection of privacy interest of beneficial owners

- (1) The nominee shall put in place adequate internal control systems that protect clients' information including their names, addresses and securities position.
- (2) A person shall not, during or after a relationship with a nominee, disclose directly or indirectly to a third party any information related to the nominee's client and beneficial owners without prior written consent of the client and beneficial owners.
- (3) The duty of confidentiality imposed under these Guidelines shall not apply to the provision of information on clients and beneficial owners to the Commission.

19. Data Storage

The nominee shall put in place efficient backup systems to ensure safety of client data and shall maintain proper records containing detailed holdings of each client. Adequate data storage requirements shall be adopted by the nominee such that no hindrances are created in identifying the beneficial owners of securities.

20. Other duties of a nominee

- (1) A nominee shall perform the following duties in addition to other duties stated in these Guidelines and in the nominee services agreement.
 - a) Maintain at all times, a register containing the identity of clients connected with the securities registered in a nominee account and the number of securities held by each client.
 - b) Exercise the rights arising from securities in the nominee account and be liable for the obligations arising from such securities.

- c) Accept payment on clients' behalf from issuers of securities.
- d) Follow the instructions of the client where the nominee's services agreement requires the client's voting instructions at Annual General Meetings in the exercise of voting rights and other rights arising from a security.

21. Nominee Services Agreement

- (1) The application to be submitted by the client shall be accompanied by a nominee service agreement between the client and the nominee. The nominee service agreement between the client and nominee shall include:
 - a) purpose of the nominee account;
 - b) duties of the nominee;
 - c) instructions on the keeping of custody of the securities;
 - d) statement of notification of every transaction;
 - e) keeping of records of every transaction;
 - f) fees charged by the nominee for services provided;
 - g) execution of instructions to prevent conflict of interest;
 - h) voting at meetings;
 - i) indemnity clause;
 - j) criteria under which amendment of the agreement can be carried out; and
 - k) termination of the agreement;

22. Reporting Obligations

- 1) A nominee shall submit to the Commission:
 - a) quarterly returns containing information specified by the Commission which shall reach the Commission not later than 21 days after the end of the quarter; and
 - b) annual reports containing the audited annual financial statements not later than 90 days after the end of the financial year to which the annual report relates.
 - c) any other information required from time to time by the Commission

23. Compliance

Compliance with these Guidelines shall be in addition to the obligations of nominees under the Companies Act, 2019 (Act 992) and any other regulation or instruments issued by the SEC.

24. Revocation, Variation and Revision

The Commission may revoke, vary, revise or amend these Guidelines.

25. Penalties

- (1) Where a person fails to comply with these Guidelines, the Commission may take action as set out in Section 209 (4) of the Act or apply such greater penalty where the breach also involves a breach of requirements in the Act or Regulations for which a higher penalty is prescribed.
- (2) The Commission may take account of the nature and seriousness of any breach or pattern of breaches when considering whether or not a market operator continues to meet the licence criteria.
- (3) The Commission may take into account the responsibility of any key person for a breach when considering whether or not they continue to be fit and proper or meet the criteria for an individual representative's licence.
- (4) The Commission may also issue a directive under Section 209 of the Act where it considers this to be an appropriate course in the light of a breach and such directive may include a requirement that the market operator:
 - (a) takes immediate action to correct the breach and amend systems and controls to prevent recurrence;
 - (b) takes such action as is necessary to place any client or other person in the position that they would have been had the breach not occurred;
 - (c) amends their staff structure or dismiss employees with responsibility for the breach;
 - (d) limits their business in such a manner as the Commission may consider appropriate;
 - (e) publishes, in such form as the Commission may determine, an announcement about the breach, its effect on clients or other person and the actions taken to rectify the breach.

26. Interpretation

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

“Beneficial owner” means the person who receives the financial benefit from or bears the financial risk of securities and grants authorization to the nominee to act in its own name and be registered as the beneficial owner;

“Client” means a person on whose behalf a transaction is executed;

“Commission” means the Securities and Exchange Commission established by section 1 of the Act;

“External Company” an external company has the same meaning as under Companies Act, 2019 (Act 992);

“Nominee account” means a type of account in which the investor holds his/her securities in the name of a different entity;

“Nominee registration” means the registration of securities owned by another person in the name of a nominee.

**ISSUED BY ORDER OF
THE SECURITIES & EXCHANGE COMMISSION (SEC)
DATED: NOVEMBER 15, 2020**