



‘Ensuring Investor Protection’

SECURITIES AND EXCHANGE COMMISSION

**SECURITIES INDUSTRY (NOTE TRUSTEES)
GUIDELINES 2022
SEC/GUI/004/02/2023**

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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 3, 109 and 209 of the Securities Industry Act, 2016 (Act 929) as amended with respect to the activities of Note Trustees. Accordingly, these guidelines shall apply to Note Trustees 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 Note Trustees and their Representatives.
- (2) take such steps as it considers appropriate to ensure that Note Trustees comply with the Guidelines and the Act.
- (3) set standards of competence and promote fair practices for Note Trustees
- (4) promote, encourage, enforce the proper conduct and integrity of Note Trustees.

3. 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 when considering an application for Note Trustee Corporate and Representative licences.

PART TWO
LICENSING

4. Requirements for Licensing

- (1) A person shall not carry on business as a Note Trustee unless that person holds a valid licence issued under the Act.
- (2) The Commission shall grant a licence to only a body corporate to operate a Note Trustee business.

A Note Trustee shall:

- (3) maintain the necessary infrastructure such as adequate office space, equipment, and skilled staff to effectively discharge its duties.

- (4) have at least four representatives, including the CEO and the compliance 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 note trustee business satisfy the requirement of Securities Industry (Licensing) Guidelines (2020)
- (6) ensure that the Chief Executive Officer of the Note Trustee 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 a Note Trustee.
- (7) ensure that all correspondence with the Commission are signed by the authorised signatories
- (8) maintain a functioning website at all times. The website shall among others, have a dedicated section to display:
 - a. corporate information
 - b. the profile of the board members and key management personnel,
- (9) not have any of its key management personnel as a board member or an officer of another Note Trustee.
- (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 its fees shall not exceed the limit as may be approved by the Commission from time to time.
- (12) ensure that its application for licence and renewal is accompanied by a duly executed undertaking by the applicant to comply with and secure compliance of its employees with the Code of Conduct for capital market operators as may be approved by the Commission.

5. Application Process

- 1) An application for the grant or renewal of a licence to carry on the business of Note Trustee shall be made to the Commission in the prescribed form and accompanied by such fees as may be prescribed by the Commission.
- 2) An application for a license shall comply with the provisions of the Securities Industry (Licensing) Guidelines 2020.
- 3) The Commission shall consider an application and inform an applicant of its decision within ninety (90) days from the date of receipt of all declarations, complete information and documentation required under these Guidelines.
- 4) The Commission may require an applicant to furnish it with such further information as it considers necessary in relation to the application.
- 5) The Commission shall not refuse to grant an approval without first giving the applicant an opportunity to be heard.

6. Licensing of a Note Trustee

- (1) In considering an application to grant or renew a Note Trustee licence under the Act, the Commission shall be satisfied that the applicant –
 - (a) has, and shall maintain at all times, unimpaired minimum 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
- (2) A licence granted 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 Note Trustee shall apply to the Commission for renewal of the licence three months prior to the expiry of a licence.
- (4) A licence granted by the Commission shall not be transferable.

7. Independence of a Note Trustee

- 1) A Note Trustee shall be independent of the public company which is the subject of the Note Trustee services.
- 2) A Note Trustee shall not:
 - a. be a promoter, or have any of its directors or key management personnel or any other officer as an employee of the Issuer or its holding, subsidiary or associate company;
 - b. be a debtor or creditor of the Issuer, or its subsidiary or its holding or associate company or a subsidiary of such holding company which is the subject of the Note Trustee services except where the Note Trustee is a bank;
 - c. have any of its directors or key management personnel as an immediate family member of any promoter or any person who is in the employment of the Issuer as a director or key management personnel;

8. Duties of a Note Trustee

A Note Trustee shall:

- 1) take possession of trust property in accordance with the provisions of the trust deed, security agreement and agency agreement;
- 2) ensure on a continuous basis that the property/guarantee charged or pledged to the note is available and adequate at all times to discharge the interest and principal amount payable in respect of the notes and that such property is free from any other encumbrances save and except those which are specifically agreed to by the Note trustee;
- 3) call for periodic status/ performance reports from the issuer on at least, quarterly basis;
- 4) communicate promptly, not later than seven days to the noteholders and the Commission, defaults, if any, with regard to payment of interest or redemption of Notes and action taken by the trustee therefor;
- 5) communicate to the noteholders and the Commission on half yearly basis, the compliance of the terms of the issuance by the issuer, defaults, if any, in payment of interest and principal

- 6) on the occurrence of the following events and until they are remedied, appoint a person who shall attend Board meetings of the Issuer and provide written report to the Note Trustee and the Commission::
 - a) two consecutive defaults in payment of interest to the noteholders; or
 - b) default in creation of security for Notes; or
 - c) default in redemption of Notes.
- 7) ensure the implementation of the conditions regarding creation of security for the Notes and Note redemption reserve, if any;
- 8) perform such acts as are necessary in the event the security becomes enforceable;
- 9) request reports from Issuer on the use of proceeds for every tranche issued;
- 10) take steps to convene a meeting of the noteholders as and when required;
- 11) ensure that notes are redeemed in accordance with the terms of the notes;
- 12) perform such acts as are necessary for the protection of the interest of the noteholders and do all other acts as are necessary in order to resolve grievances of the noteholders;
- 13) take appropriate measures for protecting the interest of noteholders as soon as any breach of the trust deed or law comes to his notice;
- 14) ensure that,-
 - a) noteholders accounts at the Central Securities Depository are credited with the securities paid for by the noteholders as provided for by the CSD operational procedures;
 - b) interest advice, if any, for interest due on the Notes are delivered to the noteholders on or before the due dates;
 - c) noteholders have been paid monies due them on the date of redemption of the Notes;
- 15) ensure that any other regulations issued by the Commission pertaining to debt issuances are complied with;
- 16) where listed debt securities are secured by way of receivables/ book debts, obtain the following,-
 - (1) On half-yearly basis-
 - (a) Certificate signed by two Directors of the issuer certifying the value of the book debts / receivables;
 - (2) On yearly basis-
 - (a) Certificate from the statutory auditor giving the value of book debts / receivables.

9. Offer results and Use of Offer Proceeds

- 1) The Commission shall require the refund of any flotation expenses, by whatever name described, disbursed or paid out from the proceeds of the offer or from any other source which were not disclosed in the prospectus.
- 2) A Note Trustee shall ensure that an issuer has obtained the approval of the Commission and the registered noteholders granted at a general meeting before funds raised by the offer are used for purposes other than those disclosed in the offer document.
- 3) A resolution in respect of 9(2) above when taken shall be communicated to the Commission for its written consent prior to the use of the proceeds.

10. Anti-Money Laundering

A Note Trustee 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.
- 4) comply fully with the SEC/FIC anti-money laundering/combating the financing of terrorism & the proliferation of weapons of mass destruction (AML/CFT&PF) rules, guidelines, and directives.

11. Note Trustee Representative

- 1) A person shall not act as a representative of a Note Trustee unless that person is a holder of Note Trustee representative licence issued under the Act.
- 2) The Commission shall grant or renew a licence 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) A Note Trustee shall have at least four representatives including the Chief Executive Officer at all times.

A Note Trustee shall notify the Commission within fourteen (14) days of the resignation of a representative.

12. Consideration of application for Representative Licence

- 1) In considering an application to grant or renew a representative licence, under the Act, the Commission shall be satisfied that the applicant –
 - a) satisfies the fit and proper person criteria of the Commission;
 - b) has passed such examination and undertaken such training as may be determined by the Commission; and
 - c) satisfies 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.

13. Revocation or Suspension of Licence

The revocation, suspension or cancellation of a Note Trustee license shall be in accordance with the Act

14. Effect of Revocation or Suspension

- 1) From the date of the suspension or revocation of a licence, a note trustee shall with immediate effect, cease to carry on the note trustee business 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 note trustee.

- 2) Any person aggrieved by the suspension or revocation of a licence may appeal such decision in accordance with the Act.

PART THREE

ACCOUNTS AND AUDIT

15. Submission of Annual Financial Statements

- 1) A note trustee shall within 90 days from the end of its financial year, submit to the Commission, a copy of its annual report which shall contain
 - (a) a report on the corporate governance policy of the Note Trustee 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 requirements prescribed by the Commission.
 - (d) a description of the activities undertaken by the Note Trustee in the financial year;
 - (e) an analysis of the extent to which the note trustee considers that the activities undertaken, and resources used, have resulted in full compliance with all of its obligations under these Guidelines.
- 2) A note trustee 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 be audited by an audit firm approved by the Commission.

16. 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 Note Trustee) to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of a Note Trustee.

PART FOUR

INFORMATION, INSPECTION AND INVESTIGATION

17. 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 a Note Trustee in accordance with the Act.

18. Returns to be filed

A Note Trustee shall submit to the Commission the following report as specified:

- 1) Half-yearly financial statements prepared in accordance with international financial reporting standards and containing information specified from time to time by the Commission which shall reach the Commission not later than 30 days after the end of the period . The half-year statements shall include but not be limited to
 - a) statements of profit or loss and other comprehensive income
 - b) statement of financial position.
 - c) statement of changes in equity.
 - d) statement of cash flows.
 - e) Selected explanatory notes.
 - f) Status of the assets charged as security for the issuer’s obligations under the notes
 - g) incidence of defaults by an Issuer that is the subject of a Note Trustee Services

The report shall include a statement that the interim financial statements are in compliance with IFRSs. This means that interim financial report shall not be described as complying with IFRSs unless it complies with all the requirements of IFRSs.

- 2) semi-annual statement of its activities in the capital market including movement of licensed representatives and key management personnel showing but not limited to:
 - a) note tranches issued per issuer, issue date, tranches redeemed, redemption date, coupon payment, outstanding tranches, any default;
 - b) status of security agreement;
 - c) meetings of noteholders if any, including minutes of the meetings
 - d) non-payment or delayed payment of interest/coupon and or principal to noteholders, if any, in respect of each tranche issued by issuers;
 - e) the number and nature of the grievances received from noteholders, whether resolved or outstanding.
 - f) report on inspections carried out on or meetings, if any, held with the issuer which is the subject of the trustee services

19. Note Trustee to report to the Commission in certain matters

(1) Where a Note Trustee, in the performance of its functions, becomes aware of a matter which may negatively affect investors or noteholders’ interests, the Note Trustee shall within seven days after becoming aware of that matter, lodge with the Commission a written report on the matter.

(2) Without limiting the generality of (1) above, a Note Trustee shall report monthly to the Commission on a default in the payment of coupon or principal due on notes issued and on any other breach in the terms and conditions of the Notes until resolved.

FIVE

SANCTIONS AND PENALTIES

20. Liability for action in case of default

- (1) A Note Trustee which-
 - a) fails to comply with any conditions subject to which licence has been granted;
 - b) contravenes any of the provisions of the Act or these Guidelines ;
 - c) contravenes the provisions of the Companies Act or the rules made thereunder;
 - d) fails to furnish any information relating to its activities as a Note Trustee as required by the Commission;
 - e) furnishes to the Commission any paper, document or information which is false or misleading in any material particular;
 - f) does not submit periodic returns or reports as required by the Commission;
 - g) does not co-operate in any enquiry, inspection or investigation conducted by the Commission;
 - h) fails to resolve the complaints of investors or fails to give a satisfactory reply to the Commission;

shall be liable for sanctions in the manner provided under the Act.

21. 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) A Note Trustee 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

22. Future Revisions/Amendments to Guidelines

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

23. Effective Date

These Guidelines shall be effective this 30 of November 2022.

24. Definitions

“**The Act**” means the Securities Industry Act, 2016 (Act 929) as amended by the Securities Industry Amendment Act, 2021 (Act 1062);

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

“**Default**” or “**Event of Default**” shall have the same meaning as provided in the Offer Documents approved by the Commission.

“**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).

“**Independent**” in relation to a Note Trustee means the Note Trustee is not a substantial shareholder of the Issuer and that the Issuer is not a substantial shareholder of the Note Trustee

“**Issuer**” shall have the same meaning as in the Securities Industry Act, 2016 (Act 929)

“**Issuing House**” shall have the same meaning as in the Securities Industry Act, 2016 (Act 929).

“**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, offer 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 Notes of an issuer

“Securities” shall have the same meaning as in the Securities Industry Act, 2016 (Act 929)

“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

“Trustee” means a corporate body in which the property subject to a trust created is or may be vested in accordance with the terms of the trust deed.