

SECURITIES AND EXCHANGE COMMISSION



ENSURING INVESTOR PROTECTION

SECURITIES INDUSTRY (OVER-THE-COUNTER MARKET) GUIDELINES 2022

SEC/GUI/001/02/2023

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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 by the Securities Industry (Amendment) Act, 2021 (Act 1062), these Guidelines are made this 30 day of November 2022.

1. SCOPE OF APPLICATION

- (1) These Guidelines shall apply to the Over-The-Counter (OTC) market, prescribe the rights and obligations of issuers whose securities are admitted to trade, and the securities that qualify to be traded
- (2) Where the SEC agrees to waive the full application of any part of these Guidelines, it shall issue a directive to specify alternative measures in place of full application of the Guidelines.
- (1) 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.

2. APPLICATION FOR A LICENSE TO OPERATE AN OTC MARKET

- (1) A person shall not establish or assist in establishing or maintaining or pose as providing an OTC market unless that person is licensed under the Act.
- (2) An application for a securities exchange license to operate an OTC market shall be made to the SEC in accordance with section 43 of the Act and in the Form specified by the SEC.

3. MANAGEMENT OF THE OTC MARKET

- (1) The OTC market shall be an independent and neutral platform where OTC transactions shall take place in a fair and transparent manner.
- (2) The actions of the OCT market shall promote an open, impartial, and informative marketplace.
- (3) The overall management of the OTC market shall be performed by a governing body.
- (4) The governing body shall establish committees which shall have the following duties amongst others;
 - (a) register securities dealers and traders;
 - (b) make rules for the OTC market
 - (c) implement and enforce provisions necessary for an efficient, fair and transparent OTC market.
 - (d) review applications from dealers and traders who wish to participate in the OTC market.
 - (e) develop and review Risk Management Policy and associated frameworks, processes and practices to mitigate risk in the OTC market
 - (f) ensure that the OTC market takes appropriate measures to achieve prudent balance between risk and reward in trading activities

- (g) evaluate significant risk exposures of the OTC market and assess actions taken to mitigate the exposures in a timely manner
- (h) ensure that its infrastructure including trading and surveillance systems necessary for operations are sufficient, secure and enables compliance with the OTC Market Rules.

4. MEMBERSHIP

- (1) A person shall not transact in the OTC market as a securities dealer unless the person has been licensed in accordance with the Securities Industry (Licensing) Guidelines 2020, and subsequently registered in accordance with the rules of the OTC market.
- (2) A securities dealer may act as intermediary and may also deal on its own behalf in unlisted securities.

5. REGISTER OF MEMBERS

- (1) An authorized OTC market shall cause to be kept a register containing the names, addresses and functions of each securities dealer as well as the names of their authorised representatives.
- (2) Where membership has ceased, such fact shall be recorded in the register together with the date the membership ceased. The register shall at all times be available for inspection by the SEC.

6. FIDELITY FUND

An authorized OTC market shall comply with Part Seven of Act 929 to establish and maintain a Fidelity Fund.

7. TRADABLE UNLISTED SECURITIES

- (1) A public company, statutory body, local government authority and any other organisation that issues securities to the public and does not intend to list the securities on an approved securities exchange shall cause the securities to be traded on the OTC market.
- (2) A public company that has not issued securities to the public may cause the trading of the securities to be conducted on an approved OTC market.
- (3) All other OTC transfers, sale or purchases in securities of a public company shall be conducted through a licensed securities dealer.
- (4) A licensed securities broker or dealer shall report OTC market transfers, sale or purchases in securities referred to under Guideline 8 (3) to a securities repository or depository.

8. ADMISSION TO TRADE UNLISTED SECURITIES

- (1) An authorized OTC market shall admit to trade unlisted securities within the meaning of Act 929.
- (2) A security of an issuer shall not be traded on an OTC market or transferred, sold or offered for sale to the public without the prior registration of the security in accordance with the Securities Industry (Registration of Securities) Guidelines 2022 issued by the SEC.

- (3) A security of an issuer admitted to trade shall meet the rules of the OTC market.
- (4) Unlisted securities admitted to trade shall be held in dematerialized form.
- (5) Clearing and settlement of OTC market transactions shall be conducted through an approved clearing and settlement institution.
- (6) An approved securities depository shall keep a register of security holders.

9. DISCLOSURE OF INFORMATION

- (1) An issuer whose unlisted securities are admitted to trading on the OTC shall;
 - (a) ensure that any price-sensitive information, facts, change or decisions relating to its securities are disclosed in a timely manner.
 - (b) disclose any proposed dividends payable on its securities and any decisions regarding the payment of dividends and the time of payment.
 - (c) disclose in full any decisions on amendments to its debt instrument or its Trust Deed, and the approval of such amendments by the SEC.
 - (d) immediately disclose any material information including the following to the public through an approved trading facility with a copy to the SEC;
 - (i) material acquisitions or disposals of investments that can affect its performance or profitability.
 - (ii) substantial acquisition of shares of a target issuer by the admitted issuer which would result in the target issuer becoming a subsidiary.
 - (iii) proposed change in the general character or nature of its business.
 - (iv) offers or proposals for the purchase or sale of any controlling interest or any material part of the assets of the admitted issuer or of a subsidiary of the admitted issuer.
 - (v) recommendation or declaration of a dividend or a bonus issue of securities.
 - (vi) intention, recommendation or decision to raise more capital.
 - (vii) substantial change in its shareholding structure.
 - (viii) application filed in court to wind up the business or any of its subsidiaries.
 - (ix) the appointment of a receiver or liquidator for it or any of its subsidiaries.
 - (x) change in the directors, secretary, registrars or its auditors.
 - (xi) intention to pass a resolution at any meeting of its members and whether or not the resolution was carried.
- (2) The OTC market shall assess issuer disclosures and where appropriate cause a temporary trading halt to allow simultaneous dissemination of information.

10. REPORTING BY THE OTC MARKET

- (1) A licensed OTC market shall prepare and submit to the SEC an annual report including audited financial statements presented in accordance with the Internationally Accepted Accounting Standards adopted by the Institute of Chartered Accountants (Ghana) before the expiration of three months from the end of its financial year.
- (2) A licensed OTC market shall submit daily trade reports to the SEC at the end of each trading session.

- (3) A licensed OTC market shall submit monthly surveillance reports to the SEC fifteen (15) days after the end of each month.
- (4) A licensed OTC market shall submit quarterly reports to the SEC 21 days after the end of each quarter containing information as may be specified by the SEC.
- (5) A licensed OTC market shall furnish the SEC with an annual return of its activities during the preceding calendar year which shall contain information on
 - (a) amendments made to its rules;
 - (b) changes in the composition of the governing body;
 - (c) any new sub-committees established or changes in membership of existing sub-committees;
 - (d) disciplinary action taken;
 - (e) settlement of dispute;
 - (f) actions taken to meet any trading emergencies; (g) details of securities in which trading was suspended and
 - (j) the status of the Fidelity Fund.
- (6) The annual return shall be submitted before the 31st day of March in each year or within any extended period granted by the SEC.
- (7) Any other reporting requirement that may be specified by the SEC.

11. REPORTING BY ISSUERS OF UNLISTED SECURITIES

- (1) An issuer shall make available to its members, the SEC and the OTC market, financial statements for the half-year which contain particulars specified in Appendix 1 of these Guidelines before the expiration of one month from each half-year. The half-year financial statements shall be;
 - (a) signed by either two directors of the issuer or one director and the chief executive officer
 - (b) presented on a basis consistent with the presentation adopted by the issuer in its most recent annual financial statements.
 - (c) be presented primarily on a year-to-date basis except where the disclosure of events or transactions material to half year is required under these Guidelines or is relevant or material to explain the performance of the issuer for the interim period.
- (2) An issuer shall prepare and circulate to its members, the SEC, and the OTC market an annual report containing audited annual financial statements presented in accordance with the Internationally Accepted Accounting Standards adopted by the Institute of Chartered Accountants (Ghana) before the expiration of three months from the end of its financial year.

- (3) An issuer of unlisted securities may exercise the option to publish financial statements in the press and electronic media instead of despatching the statements to each shareholder individually.
- (4) Submission of reports may be done electronically.

12. RULES OF CONDUCT

- (1) A securities dealer shall comply with the provisions of the Securities Industry (Conduct of Business) Guidelines 2020, and any other applicable law.
- (2) A securities dealer shall be liable to expulsion, suspension, or payment of a penalty for any misconduct or unprofessional conduct on the OTC market.
- (3) A securities dealer shall be deemed guilty of misconduct if he ;
 - (a) is proven to have committed fraud which renders him unfit to trade on the OTC market;
 - (b) has violated provisions of any law governing its business activities or the Rules of the OTC market or it breaches or assists any OTC market operator who is known to have breached any Rule;
 - (c) is proven to have acted in a disorderly, disgraceful or improper manner on the OTC market or wilfully obstruct the business of the OTC market;
 - (d) refuses or fails to comply with any resolution, notice or decision of the governing body or any other person authorised on its behalf;
 - (e) fails or refuses to submit such books, audited accounts, documents or papers as may be required by OTC market;
 - (f) fails to pay such fees and charges when due and as may be prescribed by OTC market as determined by the SEC.
 - (g) commits any other wrongful act or omission.
- (4) Sections 147 to 155 of Act 929 shall apply to OTC market, with the necessary modifications.
- (5) A securities dealer shall be deemed guilty of unprofessional conduct if he is involved in;
 - (a) dealing with defaulting OTC market operators.
 - (b) dealing in securities not permitted to be traded on the OTC market; and
 - (c) other unprofessional conduct as may be determined by the SEC

13. TRANSITIONAL PROVISION

An OTC market that is already in business at the time these Guidelines are published shall comply in full no later than one year after the date of publication. Any new OTC market seeking a licence shall be required to be in full compliance as soon as the licence is granted.

14. SANCTIONS

- (1) Where a person breaches or fails to comply with a Code, Directive, Guideline or Circular issued by the SEC, the SEC may;
 - (a) take action set out in Section 118, 122 or 123 of the Act;

- (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 SEC considers necessary.
- (2) The SEC may, in addition to the actions taken above, impose any administrative penalty that the SEC considers necessary or take any other remedial action that the SEC 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 SEC, the SEC shall, without instituting criminal proceedings under section 207 of the Act, settle the offence in accordance with this section.
- (4) Sections 206 and 209 (6) to (12) of the Act shall also apply in addition to the above in dealing with offences.
- (5) A person ordered to pay an administrative penalty under these Guidelines shall pay the penalty to the SEC within seven days, or such further period as the SEC may specify by notice, after the order has taken effect

15. INTERPRETATION

In these Guidelines, unless the context otherwise requires –

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

“Broker-dealer” shall have the same meaning under section 216 of the Securities Industry Act 2016 (Act 929)

“Exchange” shall have the same meaning under Section 216 of Securities Industry Act 2016, Act 929”

“Issuer” shall have the same meaning as defined in Act 929.

“L.I. 1728” means Securities and Exchange SEC Regulations 2003, L.I. 1728

“Market operator” shall have the same meaning under Section 216 of Act 929

Over The Counter (OTC) market in these Guidelines” means an approved trading facility for the admission and trading of unlisted securities.

“Primary dealer” shall have the same meaning under Section 216 of Act 929

“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;

“SEC” means the Securities and Exchange Commission.

“Securities” shall have the same meaning under section 216 of Act 929

“Securities dealer” means a broker-dealer or a primary dealer and their representatives duly licensed by the SEC or any other dealer and representative that the SEC may recognize.

“Unlisted securities” means securities within the meaning of the Act which are not traded on a formal exchange.

APPENDIX 1

Contents of half-year financial statements

- (1) The half-year financial statements shall comprise either a complete set of financial statements or a set of condensed financial statements, but the statements shall include at least
 - (a) Statement of financial position;
 - (b) an income statement for the half year period on a year-to-date basis;
 - (c) a statement where relevant showing either
 - (i) changes in equity;
 - (ii) a statement of recognised gains and losses, changes in equity except those arising from capital transactions with owners and distribution to owners;
 - (iii) selected explanatory notes as specified in this regulation; or
 - (iv) a condensed cash flow statement.
- (2) The half-year financial statements shall
 - (a) include at least the headings and sub totals that were included in its most recent financial statements with additional line items included if their omission would make the half-year financial statements misleading; and
 - (b) include details of the basic and diluted earnings per share presented on the face of the half-year income statements.
- (3) Half-year financial statements shall disclose at least
 - (a) the following information by way of notes if material and if not disclosed elsewhere in the half-year financial reports:
 - (i) a statement that the same accounting policies are followed in the half-year financial statements as compared with the most recent annual financial statements or if a change in policies has occurred, a description of the nature and effect of the change;
 - (ii) explanatory comments about the seasonality or cyclical nature of half-year operations, if relevant;
 - (iii) the nature and amount of items affecting assets, liabilities, equity, net income or cash flows that are unusual on account of their character, size or incidence;
 - (iv) the nature and amount of any changes in estimates in amounts reported in prior interim periods of the current year or in prior years if those changes have a material effect in the interim period.