

FAIRNESS | INTEGRITY | PROTECTION



SECURITIES AND EXCHANGE COMMISSION, GHANA

“Promoting the orderly growth and development of an efficient, fair and transparent securities market in which investors and the integrity of the market are protected through the proactive implementation of the Securities Laws”

COMMODITY EXCHANGE REGULATIONS

July 2018

OUTLINE

- ❖ Introduction
- ❖ Commodity market structure
- ❖ The main features of the Regulations

INTRODUCTION

❖ SEC's objects

- ❖ ensure **safe and transparent market**
- ❖ ensure **investor protection**
- ❖ promote **market development**

INTRODUCTION

The **commodity exchange regulations**
rules and restrictions aimed at controlling behaviors
of **exchange actors** in the **commodity**
market.

To be issued pursuant to Section 216 of the
Securities Industry 2016, (Act 929)

❖ Key definitions

Commodity

- agricultural, livestock, fishery, forestry, mining or energy goods, and any product that is manufactured or processed from any such goods;
- financial instruments;
- an index, right or interest in any such commodity;
- any other ... determined by the Commission and Gazetted

Commodity Exchange

- means a market at which, or a **facility (whether electronic or otherwise)** by means of which, offers or invitations to sell, purchase or exchange **commodity contracts** are made

Commodity contract

- spot commodity contract
- futures commodity contract;-
- such other commodity contract or class of commodity contract as the Commission may direct

❖ Key definitions

Exchange actor

- An individual or corporate licensed to engage in the business of buying and selling of exchange traded commodities contracts

Broker –dealer

- or on behalf of others Buys and sells commodity contracts for itself

Adviser

- Gives advice
- Issues analysis or reports

Reps

INTRODUCTION

Commodity Market

- WHRS
- Trading
- Clearing and Settlement
- Depository
- Surveillance

Exchange Actors

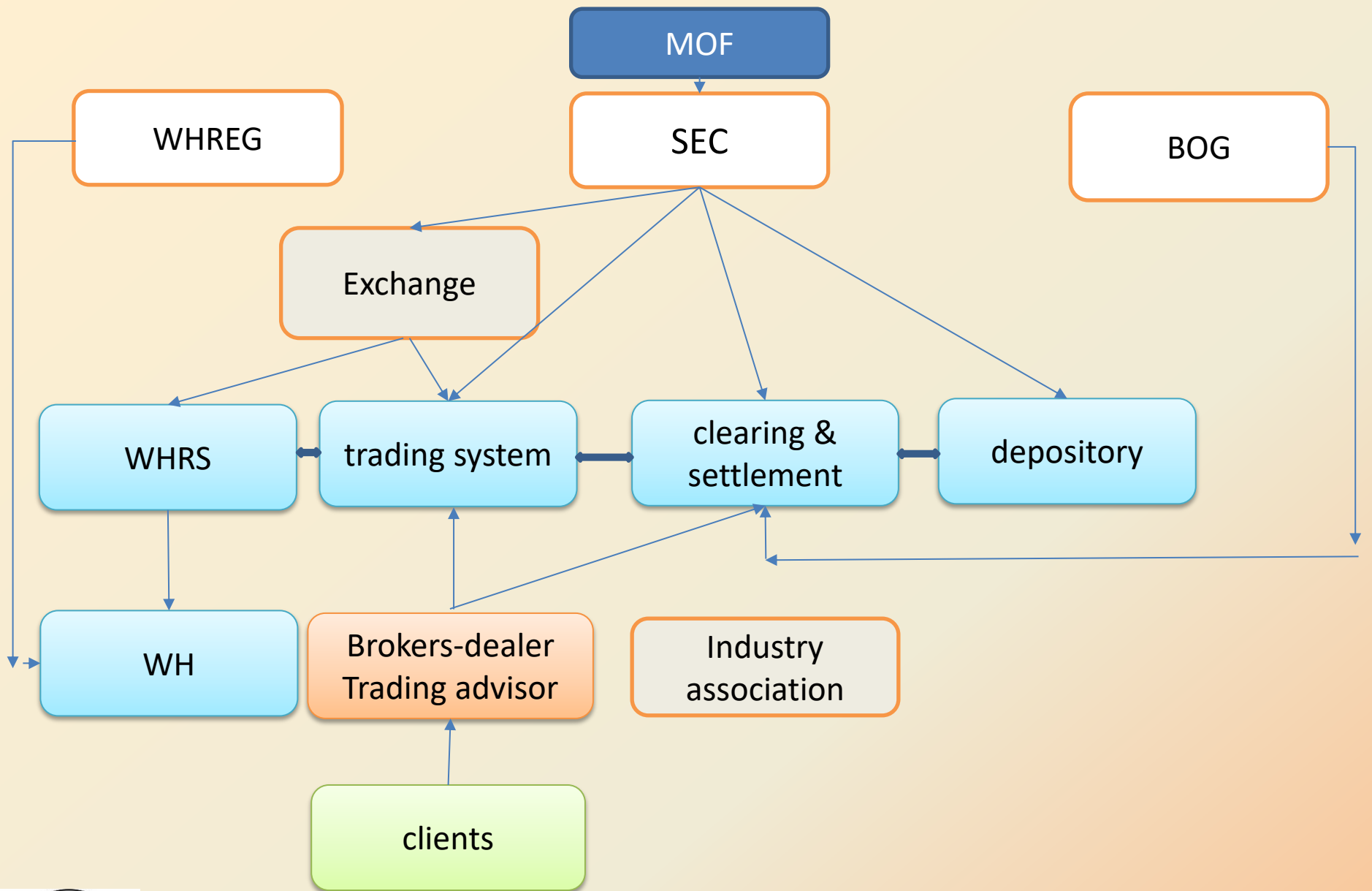
- Broker-dealers
- Trading advisers
- Representatives

Clients

- Buyers
- Sellers

COMMODITY MARKET STRUCTURE





Main laws

Securities Industry Law, 2016 (Act 929)

WHR Regulations

WH op rules

Commodity Exchange Regulations

Market rules

Guidelines , circulars

MAIN FEATURES OF THE REGULATIONS

- Functions of the Commission
- Licensing regime/Continuing obligations
 - Exchange
 - Commodity broker-dealers, trading advisors, reps
- Duties of the Exchange
- Market abuses
- Sanctions

MAIN FEATURES OF THE REGULATIONS

Commission's functionsreg 2

- Regulate activities on the market to :

- Promote fairness
- Efficiency
- Competitiveness
- Transparency
- Orderliness

By :

- Set standards for the market
- **License ... reg 5 & 29**
- Supervise, inspect, investigate ... reg 36 to 38
- Approve rules
- Check **abuses/unfair practices**
- Determine fees
- Approve commodity contracts ... reg 9
- **Issue directives** to Exchange and Exchange Actors... reg 8 & 30
- Use **its emergency** powers ... reg 8
- Sanctions
- Appoint auditors
- Any incidental

MAIN FEATURES

Emergency powers ... reg 8

- To maintain orderly trading
 - Suspend
 - Terminate
 - Order liquidation of positions
 - Limit trading
 - Modify trading days and hours
 - Alter delivery conditions
 - Modify/suspend Exchange rule

MAIN FEATURES

Directives ... reg 7

Considers necessary

- Adjust obligations
- Trading
- Terminating trading
- Manner exchange carries on business
- Remove executive officer
- Delivery of report of transactions

MAIN FEATURES

- License – Exchange
 - *No person shall establish or operate a commodity exchange except under ... license granted by the Commission... reg 4*
 - No approval shall be granted to any person to operate a commodity exchange other than **a body corporate**... reg 5
 - An application for approval as a commodity exchange shall be made to the Commission in the **prescribed form**.

License - general

– Corporate... reg 5 and licensing guidelines

- Fit & proper person
- Corporate body – Act 179
- Minimum capital
- Liquid capital
- Qualified CEO
- Qualified Directors
- Notify SEC of changes
- Business plan
- Satisfactory internal controls
- Audited accounts/statement of affairs
- Complete an application form

License - specific

- Securities exchange
 - Rules
 - Governance of the exchange
 - Membership
 - Trading
 - Surveillance
 - Protect investors etc
 - Financial, human & system resource
 - Trading
 - Surveillance
 - Inspection manual
 - Business Continuity Manual
 - Declaration to set up Fidelity Fund
 - Clearing and Settlement
 - Depository

MAIN FEATURES

- Fit and proper person...(company, directors, CEO, management, key personnel, substantial shareholder)... reg 3
 - Financial status
 - Educational /other qualifications/experience... guidelines
 - Competence, reputation etc
 - Contravened any law – concerning ...?
 - Liquidated or under liquidation?
 - License suspended or revoked?
 - Conducted fraudulent business
 - Does any business practice cast doubt on competence, sound judgment
 - Effective internal control procedure...
 - Continuing obligations?
- Risk management?
- Will operations be orderly, fair, informed?
- Human and systems recourses
- SEC to take account of any info provided by applicant or not
- Not contrary to public interest

MAIN FEATURES OF THE REGULATIONS

❖ Licensing (Key considerations of applicant)

Fit and proper

Financial resources guidelines

Rules – members, trading, surveillance etc

Adequacy of human and IT systems

Clearing, settlement and Depository

Other requirements of SEC

Duties of the Exchange

reg 5

- Self-regulation
- orderly, fair and transparent market
- Manage risks prudently
- Comply with regulations
- Regulate
 - Members
 - Monitor market
 - Resolve disputes
- Publish rules, fees and charges
- Properly equipped
- Competent personnel
- Ensure transactions are cleared and deposited
- Notify Commission
 - Member non-compliance
 - Financial irregularities
- No amendment without prior approval of Commission
- File returns ... reg 13
- Keep proper records, lodge audited account with SEC

FEATURES CONT'D

❖ Broker-Dealers, Trading advisers and Representatives

Broker-Dealers, advisers and reps

No person shall act as broker-dealer, adviser or representative without a license from SEC ... reg 27 &29

Accreditation

A representative is accredited to a principal if the license of the representative states he is accredited to the principal ... reg 28

Reporting

Similar to those of the Commodity Exchange... reg 31 to 35

❖ Accounts and audits of a commodity exchange and market operator's

Appointment of auditor

- No license until an external auditor is appointed
- An appointed auditor must have a valid practicing license

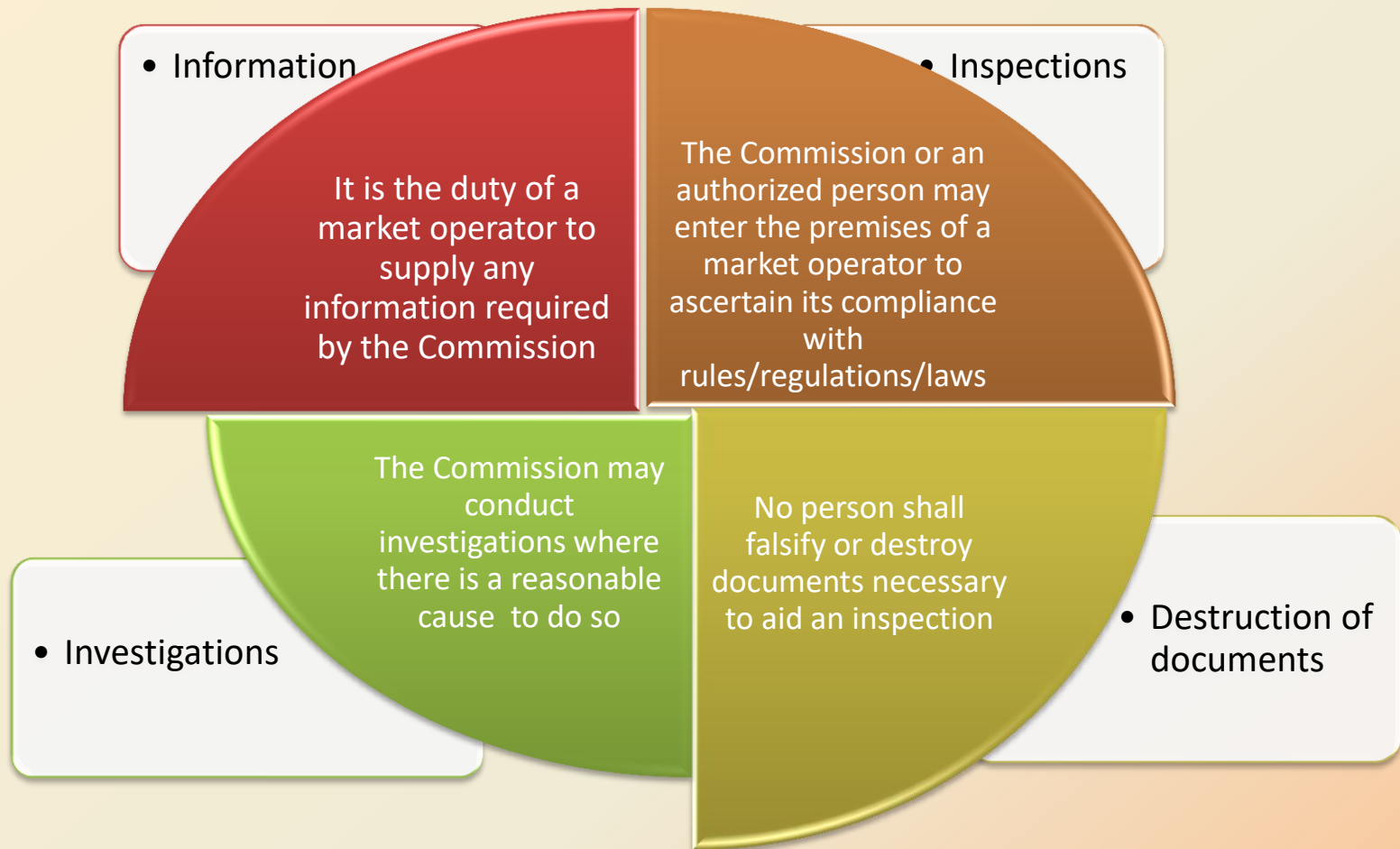
Audited accounts

- A commodity exchange shall prepare financial statements
- lodge its accounts with the Commission

Appointment of an auditor by the Commission

- The Commission may appoint an auditor on behalf of a commodity exchange in the public interest
- This will be at the expense of the commodity exchange

❖ Information, inspections and investigations



❖ Market abuse ... crimes under the Act

False trading

- False or misleading appearance of active trading in commodities is prohibited

Bucketing

- Purchases or sales of commodity contracts without effecting a bona fide purchase or sale in a commodity contract

Price manipulation

- Manipulation or an attempt to manipulate prices is prohibited
- Cornering is also prohibited

Fraudulent devices

- Employ schemes to defraud
- Untrue statements/omissions of material fact
- Publishing misleading statements/promise/forecast

Liability to pay damages

- Liable to damages in addition to **criminal** liability for the offence, criminal conviction doesn't limit civil liability

Discipline of Actors

- Circumstances
 - Misconduct
 - Contravention of Act/Regulations
 - Non-compliance of Directives
 - Act/omission prejudicial to public interest
 - Not fit and proper
 - Individual
 - Company

❖ Infractions ?

Sanctions

Revocation

Suspension

Private/public reprimand

Pay profit or loss avoided

Disqualification of employees

Recover double amount from employee

Penalties

Operating without license (4,500) penalty units

*Non filing of returns...administrative penalty of
500penalty units and additional 20 penalty unit
for each day and suspension after 30 days.*

Non-criminal breach with no specific penalties ... 300
penalty units

Thank you

