



“Ensuring Investor Protection”

SECURITIES AND EXCHANGE COMMISSION

COMMODITY EXCHANGE GUIDELINES 2019

SEC/GUI/002/02/2019

ARRANGEMENT OF GUIDELINES

PART ONE PRELIMINARY

1. Scope of Application of Guidelines
2. Functions of Commission under these Guidelines
3. Powers of the Commission to delegate Functions
4. Determination of “fit and proper” person

PART TWO COMMODITY EXCHANGES

5. Establishment of a commodity exchange
6. Licensing of a commodity exchange
7. Consideration of application for licence
8. Duties of a commodity exchange
9. Rules of a commodity exchange
10. Directives to a commodity exchange
11. Emergency powers of Commission
12. Commodity contracts to be approved by Commission
13. Fixing of position and trading limits in commodity contracts
14. Revocation or suspension of commodity exchange licence
15. Effect of revocation or suspension
16. Reporting by a commodity exchange
17. Commission may appoint auditor

PART THREE
COMMODITY DEALERS, TRADING ADVISERS AND REPRESENTATIVES

- 18. Licensing requirement
- 19. Accreditation of representatives
- 20. Consideration of application for licence
- 21. Directives to Exchange Actors

PART FOUR
ACCOUNTS AND AUDIT OF EXCHANGE ACTORS

- 22. Accounts and records to be kept
- 23. Reporting by Exchange Actors
- 24. Audited accounts to be lodged with the Commission
- 25. Auditor to report to Commission in certain cases
- 26. Commission may appoint auditor

PART FIVE
INFORMATION, INSPECTION AND INVESTIGATION

- 27. Commission may call for information
- 28. Inspections
- 29. Investigations
- 30. Destruction of documents

PART SIX
DISCIPLINE OF EXCHANGE ACTORS

- 31. Disciplinary action in respect of Exchange Actors
- 32. Other circumstances for disciplinary action in respect of Exchange Actors
- 33. Effect of revocation or suspension of licence
- 34. Procedural requirements for exercise of disciplinary powers

PART SEVEN
MARKET ABUSE

- 35. False trading and market rigging transactions
- 36. Commodity market manipulation
- 37. False or Misleading Statements

- 38. Fraudulently inducing persons to deal in securities
- 39. Dissemination of information about illegal transactions
- 40. Employment of manipulative and deceptive devices
- 41. Prohibition of dealings in securities by insiders
- 42. Penalties related to market abuses
- 43. Convicted persons liable to pay compensation

**PART EIGHT
MISCELLANEOUS**

- 44. Penalties
- 45. Definitions

SECURITIES INDUSTRY (COMMODITY EXCHANGE TRADING) GUIDELINES 2019

PART ONE PRELIMINARY

In the exercise of the powers conferred on the Commission by Section 209 of the Securities Industry Act 2016, (Act 929), these Guidelines are made this 1st day of April 2019

PART I - PRELIMINARY

1.Scope of Application of Guidelines

These Guidelines apply to the operation of commodity exchanges under the Securities Industry Act, 2016 (Act 929).

2.Functions of the Commission under these Guidelines

- (1) The functions of the Commission under these Guidelines are to:
 - (a) license, supervise, monitor and regulate the activities of commodity exchanges and exchange actors ;
 - (b) take such steps as it considers appropriate to ensure that these Guidelines are complied with;
 - (c) take such steps as it considers appropriate to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of commodity exchange business;
 - (d) approve the rules of commodity exchanges and clearing houses;
 - (e) set standards of competence for, and promote, encourage, enforce the proper conduct and integrity of exchange actors;
 - (f) promote understanding by the public of commodity exchange markets and of the benefits, risks and liabilities associated with investing;
 - (g) counter and suppress illegal, improper and unfair practices in commodity exchange markets;
 - (h) determine the rate of, and levy the fees and other charges for carrying out the provisions of this Guidelines;
 - (i) Carry out any other activity incidental or conducive to the carrying out of its functions under these Guidelines.

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.
- (2) A delegation under this Guideline shall not prevent the concurrent performance or exercise of the powers and duties of the Commission.
- (3) Notwithstanding the delegation of any of its powers under this Guideline, the Commission shall remain responsible for the carrying out of its powers and duties under these Guidelines.
- (4) Pursuant to the provisions of Sub-Guideline (1) of these Guidelines, and notwithstanding any provisions to the contrary in this Guidelines, a Commodity Exchange licensed hereunder shall have the delegated authority to carry out the following specified tasks and responsibilities:-
 - (a) prescribing and enforcing rules and regulations pertaining to minimum requirements for licensing and the operations of warehouse operators and their specialist staff;
 - (b) licensing of warehouses; and
 - (c) overseeing and monitoring of rights and obligations of issuers, holders and financiers of warehouse receipts as well as dealing, clearing, settlement and custody of such instruments.
 - (d) Any other responsibility that may be delegated by the Commission

4.Determination of “fit and proper” person

- (1) For the purpose of these Guidelines in considering whether a person is a fit and proper person the Commission shall, in addition to any other matter that it may consider relevant, have regard to –
 - (a) the financial status or solvency;
 - (b) the educational or other qualifications or experience having regard to the nature of the functions which, if the application is granted, the person will perform;
 - (c) the ability to carry on the commodity exchange business competently, honestly and fairly; and the reputation, character, financial integrity and reliability, of –
 - (i) where the person is an individual, the individual himself; or
 - (ii) where the person is a company, the company, its directors, chief executive, management and all other principal officers, and any substantial shareholder of the company.

- (2) The Commission may in addition, in considering whether a person is a fit and proper person –
- (a) have regard to whether the person –
 - (i) has contravened the provision of any law designed for the protection of investors against financial loss due to dishonesty or incompetence of, or malpractice by, persons engaged in commodity trading;
 - (ii) was a director of an Exchange Actor that has been liquidated or is under liquidation, or whose licence is under suspension or has been revoked by the Commission;
 - (iii) has taken part in any business practice that, in the opinion of the Commission, was fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited his methods of conducting business; and
 - (iv) has taken part in, or been associated with, any other business practice as would, or has otherwise conducted himself in such manner as to, cast doubt on his competence and soundness of judgment;
 - (b) take into account any information in the possession of the Commission whether provided by the applicant or not, relating to –
 - (i) any person who is to be employed by, associated with, or who will be acting for or on behalf of, the applicant for the purposes of commodity exchange business;
 - (ii) where the applicant is a company in a group of companies –
 - (a) any other company in the same group of companies; or
 - (b) any substantial shareholder or officer of the company or any other company in the same group of companies;
 - (c) take into account whether the applicant has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements, including all corporate governance requirements under the Companies Act, 1963 (Act 179) as well as the continuing obligations under the same such as filing of annual returns, and other relevant company forms and processes; and
 - (d) have regard to the state of affairs of any other business which the person carries on or proposes to carry on.
- (3) For the purpose of this Guideline, “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).

PART TWO
COMMODITY EXCHANGES

5.Establishment of a Commodity Exchange

- (1) No person shall establish or operate a commodity exchange except under and in accordance with a commodity exchange license granted by the Commission under these Guidelines.
- (2) A person who contravenes Sub-Guideline(1) shall be liable to pay to the Commission an administrative penalty of four thousand five hundred (4,500) penalty units

6.Licensing of a commodity exchange

- (1) An application for approval as a commodity exchange shall be made to the Commission in the prescribed form.
- (2) No approval shall be granted to any person to operate a commodity exchange other than a body corporate.

7.Consideration of application for licence

- (1) In considering an application to grant or renew a commodity exchange licence under the Act, the Commission shall be satisfied that the applicant –
 - (a) is fit and proper to be licenced as a commodity exchange;
 - (b) has, and shall maintain at all times, such minimum paid-up capital (net of losses) as may be determined by the Commission from time to time;
 - (c) shall operate an orderly, informed and fair commodity exchange;
 - (d) shall manage any risks associated with its business and operations prudently;
 - (e) shall enforce compliance by its members with its rules;
 - (f) has rules that make satisfactory provision for –
 - (i) an orderly, informed and fair market in commodity contracts that are traded through its facilities;
 - (ii) the proper guidelines of commodity trading by its officers and employees;
 - (iii) appropriate measures for the protection of investors; and
 - (iv) the prohibition of trading in commodity contracts by its officers and employees;
 - (g) has sufficient financial, human and system resources to –

- (i) establish and operate a fair and efficient commodity exchange;
 - (ii) meet contingencies or disasters (including events such as technical complications occurring with automated systems);
 - (iii) provide adequate security arrangements;
- (h) shall comply with such other conditions as may be required by the Commission; and
 - (i) that it would not be contrary to the public interest to licence the applicant.
- (2) A commodity exchange shall not change its substantial shareholders, or directors, chief executive or other principal officers, except with the prior written confirmation of the Commission that it has no objection to the proposed change and subject to compliance with any condition imposed by the Commission.
- (3) 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 commodity exchange a right to be heard before a final decision is made.
- (4) A commodity exchange shall be exclusively engaged in its commodity business except only in respect of such other matters as are ancillary or incidental thereto as may be permitted by the Commission.

8. Duties of commodity exchange

- (1) It shall be the duty of a commodity exchange to ensure–
 - (a) that it is responsible for its self-guideline subject to the provisions of these Guidelines, its rules and to the overriding powers of the Commission;
 - (b) an orderly, fair and transparent market in commodity contracts traded on the exchange;
 - (c) adequate market information is readily available;
 - (d) that risks associated with its business and operations are managed prudently;
 - (e) compliance with these Guidelines.
- (2) A commodity exchange shall operate its facilities in accordance with its rules made and approved under these Guidelines.
- (3) A commodity exchange shall –
 - (a) regulate the operations, standards of practice and business conduct of its members (and their employees and representatives) in accordance with the rules, procedures and practices of the commodity exchange;

- (b) keep such records as are necessary for the proper recording of each transaction on the commodity exchange;
 - (c) preserve confidentiality with regard to all information in its possession concerning its members and their clients, except that such information may be disclosed by the commodity exchange when required in writing to do so by its clearing house or by the Commission, or if it is ordered to do so by the Court;
 - (d) publish its rules ,fees and charges;
 - (e) identify and manage conflicts of interest;
 - (f) monitor market activity;
 - (g) provide a means for the resolution of disputes between members and between members and their clients;
 - (h) ensure that only licenced warehouses and warehouse operators are used in connection with commodity exchange trading; and
 - (i) provide access to a robust mechanism for clearing and settlement.
- (4) A commodity exchange shall immediately notify the Commission if it becomes aware –
- (a) that a member is unable to comply with any rule of the commodity exchange or of any financial resources rules; or
 - (b) of a financial irregularity or other matter which in the opinion of the commodity exchange may indicate that the financial standing or integrity of a member is in question, or that a member may not be able to meet his legal obligations.
- (5) A commodity exchange shall at all times provide and maintain –
- (a) adequate and properly equipped premises;
 - (b) competent personnel, for the conduct of its business.

9. Rules of a commodity exchange

- (1) A commodity exchange may make rules, not inconsistent with this Act, the Guidelines or rules of the Commission or any applicable enactment, with respect to the matters for which it has functions, including the functions delegated to it by the Commission.
- (2) Rules made by a commodity exchange under Guideline 9 (1), and amendments to the rules, shall be of no effect unless approved by the Commission.

- (3) The Commission shall be deemed to have granted approval for the purposes of Guideline 9 (1) where it has not objected to the rules within three months after the rules have been submitted to the Commission for approval.
- (4) The Commission may, after giving a commodity exchange reasonable opportunity to make representations about a matter, give a written directive;
 - (a) to suspend for the period specified in the directive, a specified provision of its rules;
 - (b) to require the amendment of its rules as specified in the directive so as to bring them in conformity with the relevant Act; or
 - (c) for the implementation or enforcement of its rules
- (5) The rules of a commodity exchange shall make provision to the satisfaction of the Commission –
 - (a) with respect to the constitution, powers and functions of the governing body of the commodity exchange;
 - (b) with respect to the appointment of directors and the proper representation of non-members and investors on that governing body;
 - (c) with respect to the qualifications for membership;
 - (d) for the exclusion from membership of persons who are not of good character and high business integrity;
 - (e) for the expulsion, suspension or disciplining of members for conduct inconsistent with just and equitable principles in connection with trading in commodity contracts, or for a contravention of the rules of the commodity exchange;
 - (f) with respect to the terms and conditions under which commodity contracts may be made;
 - (g) with respect to the class or classes of commodity contracts that may be traded by members and the terms and conditions governing trading in commodity contracts by members;
 - (h) with respect to fair and properly supervised trading practices;
 - (i) with respect to measures to prevent manipulation, market rigging, artificial markets and excessive speculation in its commodity exchange;
 - (j) for preventing the excessive use of credit by way of initial or maintenance of margin in respect of the purchase of commodity contracts;

- (k) with respect to the prohibition of trading in commodity contracts by dealers and their employees and representatives, either directly or indirectly, for their own account or account of associated persons, except in accordance with the rules of the commodity exchange;
 - (l) with respect to the recording and publishing of details of trading;
 - (m) with respect to the clearing and other arrangements made, and the financial condition of –
 - (i) the commodity exchange;
 - (ii) the clearing house of the commodity exchange; and
 - (iii) the members of the commodity exchange;
such as to provide reasonable assurance that all obligations arising out of the trading in commodity contracts will be met;
 - (n) with respect to internal procedures to ensure the proper handling of complaints from investors and to ensure that any appropriate remedial action on those complaints is promptly taken;
 - (o) where a member appears to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts, to enable action to be taken to close out his position in relation to all unsettled market contracts to which he is a party;
 - (p) generally for the carrying on the business of the commodity exchange with due regard to the interests and protection of investors and
 - (q) any other rules as may be specified by the Commission
- (6) The rules of a commodity exchange shall apply to the representatives and other employees of its members, and the member shall be responsible to ensure their compliance with such rules.
- (7) The Commission may, by notice in writing served on a commodity exchange, require it to–
 - (a) make rules specified in the notice within the period specified; or
 - (b) amend rules referred to in the notice in the manner and within the period specified in the notice.
- (8) Where the Commission is satisfied that a commodity exchange has not complied with such a requirement within the period specified in the notice, the Commission may make or amend the rules specified in the notice instead of the commodity exchange.

10. Directives to a commodity exchange

- (1) The Commission may, where it considers necessary or expedient –
 - (a) for ensuring fair and orderly commodity exchanges, or for ensuring fair, orderly and expeditious clearing and settlement of transactions in commodity contracts;
 - (b) for ensuring the integrity of, and proper management of systemic risks in, commodity exchange markets; or
 - (c) for the protection of investors,

issue a directive to a commodity exchange by notice in writing either of a general or specific nature.

- (2) Any directive issued by the Commission may relate to –
 - (a) the clearing or settlement of commodity contracts and the making of adjustments of contractual obligations arising out of those commodity contracts;
 - (b) the trading or the termination of trading on or through the facilities of that commodity exchange;
 - (c) the manner in which the commodity exchange carries on its business, including the manner of reporting off-market trades by members;
 - (d) the removal from office of an executive officer in the employment of a commodity exchange;
 - (e) requiring the commodity exchange to deliver to it reports of transactions on the exchange in such form as the Commission may determine or
 - (f) any other matter that the Commission considers necessary for the effective administration of these Guidelines,

and the commodity exchange shall comply with any such directive.

11. Emergency powers of the Commission

- (1) Where the Commission has reason to believe that an emergency exists, or where the Commission considers it necessary or expedient in the interest of the public or for the protection of investors, the Commission may direct, by notice in writing, a commodity exchange to take such action as it considers necessary to –
 - (a) maintain or restore orderly trading in commodity contracts or any class of commodity contracts; or
 - (b) liquidate any position in respect of any commodity contract or any class of commodity contracts, including but not limited to –

- (i) terminating trading on a commodity exchange;
 - (ii) suspending trading on a commodity exchange;
 - (iii) confining trading to liquidation of commodity contracts positions;
 - (iv) ordering the liquidation of all positions or part thereof or the reduction in such positions;
 - (v) limiting trading to a specific price range;
 - (vi) modifying trading days or hours;
 - (vii) altering conditions of delivery;
 - (viii) fixing the settlement price at which positions are to be liquidated;
 - (ix) requiring any person to act in a specified manner in relation to trading in commodity contracts or any class of commodity contracts;
 - (x) requiring margins or additional margins for any commodity contracts; and
 - (xi) modifying or suspending any of the rules of a commodity exchange, and the commodity exchange shall comply.
- (2) Where the Commission suspends trading on a commodity exchange, the suspension shall be for a period not exceeding 3 months; provided that the Commission may, where it considers necessary, extend the suspension for one further period not exceeding 3 months at the expiry of which the Commission shall either notify the commodity exchange in writing that the suspension has expired, or proceed to revoke the commodity exchange licence, as it deems appropriate.
- (3) Where a commodity exchange fails to comply with a directive of the Commission within such time as is specified by the Commission, the Commission may –
- (a) set emergency margin levels in any commodity contracts or class of commodity contracts;
 - (b) set limits that may apply to market positions acquired in good faith prior to the date of the Commission’s directive; or
 - (c) take such other action as the Commission considers fit to maintain or restore orderly trading in any commodity contracts or class of commodity contracts, or liquidation of any position in respect of commodity contracts or class of commodity contracts.
- (4) In this Guideline, “emergency” means –
- (a) an act of government affecting a commodity;
 - (b) any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity;
 - (c) a threatened or actual market manipulation or corners; or
 - (d) an impending emergency or natural disaster, whether in Ghana or elsewhere; or
 - (e) an economic or financial crisis, whether in Ghana or elsewhere, or

- (f) any other situation or practice which in the opinion of the Commission constitutes an emergency.

12. Commodity contracts to be approved by the Commission

- (1) No commodity exchange shall permit the trading of any commodity contract on the exchange without the prior approval of the Commission.
- (2) Notwithstanding sub-clause (1) the Commission may grant approval for the trading of any commodity contract on a commodity exchange subject to such conditions or restrictions as the Commission may consider fit.
- (3) The Commission may, by notice in writing served on the commodity exchange, withdraw its permission given under paragraph (1) to trade a commodity contract with effect from the date specified in the notice where –
 - (a) the commodity exchange fails to comply with a condition or restriction imposed under paragraph (2); or
 - (b) the Commission considers it would be contrary to the interests of the investing public to permit trading in that commodity contract to continue.
- (4) The Commission shall not withdraw its permission under paragraph (3) without first giving the commodity exchange an opportunity of being heard.

13. Fixing of position and trading limits in commodity contracts

- (1) For the purpose of diminishing, eliminating or preventing excessive speculation in any commodity under a commodity contract, the Commission may, by notice in writing from time to time, fix such limits as it considers necessary on the amount of trading which may be done or positions which may be held by any person, generally or specifically, under a commodity contract traded on a commodity exchange.
- (2) Such limits upon positions and trading shall apply to positions held by, and trading done, by two or more persons acting pursuant to an express or implied agreement or understanding, as if the positions were held by, or the trading done by, a single person.
- (3) No person shall, directly or indirectly –
 - (a) buy or sell or agree to buy or sell a commodity contract, or any number of such contracts, on a commodity exchange, in excess of the trading limits fixed for one business day, or any other stated period set by the Commission, or by a commodity exchange without the approval of the Commission; or
 - (b) hold or control a net buy or sell position under a commodity contract traded on a commodity exchange in excess of any position limit fixed by the Commission, or by the commodity exchange without the approval of the Commission.

- (4) Nothing in this Guideline shall preclude the Commission from –
 - (a) fixing different trading or position limits for different commodity contracts, different delivery months, or for different days remaining until the last day of trading in a commodity contract; or
 - (b) exempting transactions under this Guideline.

14. Revocation or suspension of commodity exchange licence

- (1) The Commission may, by notice in writing served on a commodity exchange, revoke or suspend its commodity exchange licence granted under the Act with effect from the date specified in the notice if–
 - (a) it is being or will be wound up;
 - (b) a levy of execution in respect of it has not being satisfied;
 - (c) a receiver or a receiver and manager have been appointed whether by a Court or creditors in respect of its property;
 - (d) it has entered into a composition or arrangement with its creditors;
 - (e) it ceases to carry on the business for which it was licensed;
 - (f) the Commission has reason to believe that the licensed body or any of its directors or employees, has not performed its functions or the functions of the directors efficiently, honestly or fairly;
 - (g) the licensed body contravenes or fails to comply with a condition or restriction applicable in respect of the licence or any other provision of this Act.
 - (h) it ceases to have in place satisfactory clearing facilities for the clearing and settlement of commodity contracts traded on the commodity exchange;
 - (i) it fails to comply with any requirement of these Guidelines;
 - (j) it fails to comply with a directive of the Commission;
 - (k) it fails to provide the Commission with information required by the Commission, or provides false or misleading information;
 - (l) it is operating in a manner detrimental to the public interest

- (2) In a case to which sub-clause (1) applies, the Commission may, instead of revoking a licence, suspend the licence for a specific period and may remove the suspension.
- (3) The Commission shall not revoke or suspend a licence without first giving the licence holder an opportunity of being heard.
- (4) A person whose licence is revoked under this Guideline shall, for the purpose of this Act be deemed not to be licensed from the date that the Commission revokes the licence.
- (5) A revocation or suspension of a licence of a person shall not operate so as to
 - (a) avoid or affect an agreement, transaction or agreement relating to the trading in securities entered into by that person, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the licence, or
 - (b) affect a right, obligation or liability arising under an agreement, transaction or arrangement.
- (6) The Commission may revoke the licence of a person who fails to commence business within six months of being granted a licence.
- (7) A commodity exchange shall be deemed to have ceased to operate if –
 - (a) it has ceased to operate for more than 30 days unless it has obtained the prior written approval of the Commission to do so; or
 - (b) it has ceased to operate under a directive issued by the Commission under these Guidelines.
- (8) The Commission shall, in the notice of revocation or suspension served under paragraph (1), state –
 - (a) its reasons for doing so;
 - (b) the date on which the revocation or suspension takes effect; and
 - (c) the duration of a suspension, or the event which will terminate it.
- (9) The Commission may by notice permit the commodity exchange to continue, on or after the date on which the revocation or suspension is to take effect, to carry on such activities affected by the revocation or suspension as the Commission may specify in the notice for the purpose of –
 - (a) closing down the operations of the commodity exchange;
 - (b) protecting the public interest.

- (10) Except where responding to a request for revocation, the Commission shall not revoke or suspend a commodity exchange licence without first giving the commodity exchange an opportunity of being heard.
- (11) Where the Commission revokes or suspends the licence of a commodity exchange under this Guideline, it shall cause notice of that fact to be published.

15. Effect of revocation or suspension

- (1) A revocation or suspension of a licence under Guideline 11 shall not operate so as to –
 - (a) avoid or affect any agreement, transaction or arrangement relating to the trading in securities entered into by that person, whether the agreement, transaction or arrangement was entered into before or after the revocation or suspension of the licence
 - (b) affect any right, obligation or liability arising under such agreement, transaction or arrangement.

16. Reporting by a commodity exchange

- (1) The financial year of a licensed commodity exchange shall end on the 31st day of December each year.
- (2) A commodity exchange shall keep proper books of accounts and records of financial and all other transactions of the commodity exchange.

17. Submission of Daily Trading returns by a commodity exchange

- (1) A commodity exchange shall file with the Commission at the end of each trading day
 - (a) a report on transactions of commodities that took place on the floor of the exchange, including the price and number of commodities traded; and
 - (b) a statement of the transactions in commodities that have taken place outside the trading floor and reported to the commodity exchange, including the price and the number of commodities traded.

18. Submission of Quarterly returns by a commodity exchange

- (1) A commodity exchange shall furnish the Commission not later than 21 days after the quarter to which the return relates the following information;
 - (a) purchases and sales of commodities during the preceding quarter;
 - (b) names of commodity members that have failed to comply with any of the continuing trading requirements of the commodity exchange;

- (c) details of commodities traded; and
- (d) details of commodities in which trading was suspended or cancelled during the previous quarter and the reasons for the cancellation.

19. Submission of Annual returns by a commodity exchange

- (1) A commodity exchange shall furnish the Commission with a report of its activities during the preceding calendar year which shall contain information on:
 - (a) amendments made to the rules of the commodity exchange;
 - (b) changes in the composition of the governing body;
 - (c) any new sub-committees established or changes in membership of existing sub-committees;
 - (d) admission, re-admission, resignation or expulsion of members;
 - (e) disciplinary action taken against members;
 - (f) settlement of dispute between members;
 - (g) trade failures;
 - (h) actions taken to meet any trading emergencies;
 - (i) details of commodities in which trading was suspended or cancelled; and
 - (j) the status of Settlement Guarantee Fund
 - (k) status of Fidelity Fund
- (2) The report shall be submitted not later than 90 days after the end of the financial year to which it relates or within any extended period granted by the Commission.

20. Submission of Annual Financial Statements by a Commodity Exchange

- (1) A commodity exchange shall within 90 days from the end of its financial year, submit to the Commission, an annual report which includes
 - (a) a report on the corporate governance policy of the commodity exchange and any other information required by the Commission;

- (b) audited financial statements prepared in accordance with the accounting standards adopted by the Institute of Chartered Accountants (Ghana); and
 - (c) other requirements specified by the Commission.
 - (d) a description of the activities undertaken by the commodity exchange in the financial year;
 - (e) the resources (including financial, technological and human resources) that the commodity exchange had available, and used, in order to ensure compliance with its obligations and, in particular, its obligation to ensure that the commodity exchange operates in a fair, orderly and transparent manner; and
 - (f) an analysis of the extent to which the commodity exchange considers that the activities undertaken, and resources used, have resulted in full compliance with all of its obligations under these Guidelines, regulations and the rules of the commodity exchange.
- (2) A commodity exchange shall ensure that the annual report is accompanied by such other information and statements as may be specified by the Commission.
- (3) An annual report shall be accompanied by an audit report where required by the Commission.
- (a) The Commission may, by giving written notice to a commodity exchange, require the commodity exchange to obtain an audit report (by a person to be approved by the Commission) on the annual report and on any information or
- (4) 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 by the Institute of Chartered Accountants (Ghana).
- (5) Where, in the course of audit, the auditor of a commodity exchange has reason to believe that
- (a) there has been a material adverse change in the risks inherent in the business of that commodity exchange with the potential to adversely affect the ability of the commodity exchange to continue as a going concern;
 - (b) the commodity exchange may be in contravention of Securities Industries Act, Act 929, these Guidelines or rules of the Commission;
 - (c) a financial crime has been, is being or is likely to be committed; or
 - (d) serious irregularities have occurred; that auditor shall report immediately in writing on the matter to the Commission.

- (6) A report made under this Guideline does not constitute a breach of the duties of the auditor.
- (7) A person who contravenes a provision of this Guideline is liable to pay to the Commission an administrative penalty of Five Hundred penalty units.

21. 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 commodity exchange) to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of a commodity exchange.

PART THREE

COMMODITY DEALERS, TRADING ADVISERS AND REPRESENTATIVES

22. Licensing requirement

- (1) A person, shall not carry on commodity exchange business as a commodity broker-dealer, or hold himself out as carrying on such a business, except under and in accordance with a commodity broker-dealer's licence granted by the Commission under the Act.
- (2) A person shall not carry on commodity exchange business as a commodity trading adviser, or hold himself out as carrying on such a business, except under and in accordance with a commodity trading adviser's licence granted by the Commission under the Act.
- (3) A person shall not act as, or hold himself out as, a representative of a commodity dealer except under and in accordance with a commodity dealer's representative's licence granted by the Commission under the Act.
- (4) A person shall not act as, or hold himself out as, a representative of a commodity trading adviser except under and in accordance with a commodity trading adviser's representative's licence granted by the Commission under the Act.
- (5) A commodity broker-dealer's licence may be granted only to a company.
- (6) A commodity trading adviser's licence may be granted to an individual or to a company.
- (7) A representative's licence may be granted only to an individual.
- (8) A representative shall not be licensed unless he is accredited to a named principal.

- (9) A company which is licensed under the Act as a commodity dealer or commodity trading adviser shall at all times employ at least two one individuals who are licenced as a representative under the Act.
- (10) A company that is licensed under the Act as a commodity dealer or commodity trading adviser shall be exclusively engaged in that commodity exchange business except only in respect of such other matters as are ancillary or incidental to its commodity exchange business or otherwise as may be expressly permitted by the Commission.
- (11) In the case of a bank, a commodity dealer's licence shall be granted only to a subsidiary incorporated by the bank for such purpose.

23. Accreditation of representatives

- (1) A representative is accredited to a named principal for the purpose of these Guidelines only if the licence of the representative states that he is accredited to the named principal.
- (2) The Commission shall not issue a representative's licence unless both the representative and the principal have notified the Commission in writing that he is, or is to be, accredited.
- (3) Where the accreditation of the representative has been terminated (whether by the principal or the representative) –
 - (a) the Exchange Actor and the holder of the license l shall notify the Commission in writing of such termination and surrender the license within fourteen days;
 - (b) the Commission shall amend its register of Exchange Actors accordingly.

24. Consideration of application for licence

- (1) In considering an application to grant or renew an Exchange Actor's licence under the Act, the Commission shall be satisfied by the applicant that the applicant –
 - (a) is a fit and proper person to be licensed;
 - (b) has, and shall maintain at all times, such minimum paid-up capital as may be determined by the Commission from time to time;
 - (c) shall establish adequate policies and procedures sufficient to ensure compliance by the Exchange Actor, including its managers and employees, with its obligations under these Guidelines as well as appropriate rules governing personal transactions by such persons;
 - (d) shall maintain and operate effective organisational and administrative requirements with a view to taking all reasonable steps to prevent conflicts of interest from adversely affecting the interests of its clients;

- (e) shall take all reasonable steps to ensure continuity and regularity in the performance of its commodity exchange business and in particular will employ appropriate and proportionate systems, resources and procedures;
 - (f) has sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems;
 - (g) has arrangements for records to be kept of all services and transactions undertaken which shall be sufficient to enable the Commission to monitor compliance with the requirements of these Guidelines, and in particular to ascertain that the Exchange Actor has complied with all obligations with respect to clients and potential clients;
 - (h) where holding clients' property will make adequate arrangements to safeguard clients' ownership rights, especially in the event of its insolvency, and to prevent the use of a clients' property on own account except with the client's express consent;
 - (i) where holding clients' funds, will make adequate arrangements to safeguard the client's rights and to prevent the use of clients' funds for its own account;
 - (j) where it is a company, employs at least two individuals who are licenced as a representative under the Act;
 - (k) in the case of an application other than for a representative's licence, has specified premises that are suitable for keeping records or other documents;
 - (l) in the case of an application for a representative's licence, has passed such examination and undertaken such training as may be directed by the Commission; and
 - (m) 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.

25. Directives to Exchange Actors

- (1) The Commission may by notice in writing give an Exchange Actor a directive under this Guideline where it appears to the Commission that
 - (a) it is desirable for the protection of investors; or
 - (b) the Exchange Actor is contravening, has contravened or is about to contravene, or has failed to comply with any provision of or requirement under these Guidelines or, in purported compliance with any such provision or requirement

has furnished the Commission with information that is false, inaccurate or misleading.

- (2) A directive under this Guideline may contain all or any of the following prohibitions or requirements –
 - (a) require an Exchange Actor to cease and desist from the contravention;
 - (b) prohibit an Exchange Actor from entering into transactions of a class or description specified in the notice or entering into them otherwise than in circumstances so specified or to an extent so specified;
 - (c) prohibit an Exchange Actor from soliciting business from a person of a class or description so specified or from persons other than persons of such a class or description; or
 - (d) prohibit an Exchange Actor from carrying on business in a specified manner or otherwise than in a specified manner;
 - (e) as regards any assets whether in Ghana or elsewhere and whether they are the assets of the Exchange Actor or not –
 - (i) prohibit the Exchange Actor from transferring, alienating or otherwise disposing of such assets or from dealing with them in a manner specified in the notice; or
 - (ii) require the Exchange Actor to deal with such assets in, and only in, a manner specified in the notice;require an Exchange Actor to maintain in Ghana assets of such value as appears to the Commission to be desirable with a view to ensuring that he will be able to meet his liabilities in respect of his commodity business;
 - (f) require an Exchange Actor to transfer control of assets of a specified class or description to a trustee approved by the Commission; and
 - (g) require an Exchange Actor to comply with such other matter as the Commission considers necessary for the protection of investors.
- (3) An Exchange Actor shall comply with a directive under this Guideline.
- (4) A directive under this Guideline shall be for such specified period as the Commission considers necessary (which period may be extended as considered necessary).
- (5) The Commission may, by written notice either of its own motion or on the application of an Exchange Actor on whom a prohibition or requirement has been imposed under this guideline, rescind or vary the prohibition or requirement if it appears to the Commission that it is no longer necessary for the prohibition or requirement to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

PART FOUR
ACCOUNTS AND AUDIT OF EXCHANGE ACTORS

26. Accounts and records to be kept

- (1) An Exchange Actor (other than a representative) shall keep such accounting and other records as will sufficiently show and explain the transactions (whether effected on its own behalf or on behalf of others) and financial position of its commodity exchange business and shall be such as to –
 - (a) disclose with reasonable accuracy, at any time, its financial position at that time;
 - (b) enable it to prepare a true and fair profit and loss account and balance sheet as at any time; and
 - (c) demonstrate whether it is maintaining in its commodity business adequate financial resources to meet its commodity exchange business requirements and withstand the risks to which its business is subject.
- (2) Without limiting the generality of the above, such accounts and other records shall be maintained as may be directed by the Commission.
- (3) The obligations under these Guidelines are continuing obligations and continuous performance of them is required so as to ensure that records are updated daily.
- (4) Information required to be recorded by these Guidelines shall –
 - (a) be recorded in such a way as to enable a particular trade to be identified at any time and traced through from initiation of the order to final settlement; and
 - (b) be arranged, filed, indexed and cross-referenced so as to permit access to any particular record.
- (5) The accounting and other records required to be maintained under this Guideline shall be preserved by the Exchange Actor for a period of not less than 7 years from the date on which they are made, and shall at all reasonable times be open to inspection by the Commission or by an auditor appointed by the Commission.

27. Reporting by Exchange Actors

- (1) The financial year of a licensed an exchange actor shall end on the 31st day of December each year.
- (2) An Exchange Actor shall keep proper books of accounts and records of financial and all other transactions of the commodity exchange.

28. Submission of Quarterly returns by an Exchange Actor

- (1) An Exchange Actor shall furnish the Commission not later than 21 days after the quarter to which the return relates. The quarterly return shall relate to;
 - (a) purchases and sales of commodities during the preceding quarter;
 - (b) details of commodities traded; and
 - (c) details of commodities in which trading was suspended or cancelled during the previous quarter and the reasons for the cancellation.

29. Annual report of an Exchange Actor

- (1) A commodity exchange shall within ninety days from the end of its financial year, submit to the Commission, an annual report which includes
 - (a) a report on the corporate governance policy of the Exchange Actor and any other information required by the Commission;
 - (b) audited financial statements prepared in accordance with the accounting standards adopted by the Institute of Chartered Accountants (Ghana); and
 - (c) other requirements specified by the Commission.
 - (d) a description of the activities undertaken by the Exchange Actor in the financial year;
- (2) An Exchange Actor shall ensure that the annual report is accompanied by such other information and statements as may be specified by the Commission.
- (3) An annual report shall be accompanied by an audit report where required by the Commission.
- (4) The Commission may, by giving written notice to an Exchange Actor, require the Exchange Actor to obtain an audit report (by a person to be approved by the Commission) on the annual report and on any information or
- (5) 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 by the Institute of Chartered Accountants (Ghana).
- (6) Where, in the course of audit, the auditor of an Exchange Actor has reason to believe that
 - (a) there has been a material adverse change in the risks inherent in the business of that Exchange Actor with the potential to adversely affect the ability of the Exchange Actor to continue as a going concern;
 - (b) the Exchange Actor may be in contravention of Securities Industries Act, Act

929, these Guidelines or rules of the Commission;

- (c) a financial crime has been, is being or is likely to be committed; or
 - (d) serious irregularities have occurred; that auditor shall report immediately in writing on the matter to the Commission.
- (7) A report made under these Guidelines does not constitute a breach of the duties of the auditor.
- (8) A person who contravenes a provision of this guideline is liable to pay to the Commission an administrative penalty of Five Hundred penalty units.

30. Audited accounts to be lodged with the Commission

- (1) An Exchange Actor shall –
- (a) for the financial year beginning on the day on which he commences a commodity exchange business; and
 - (b) for each subsequent year,

prepare financial statements made up to the last day of the financial year which shall show a true and fair view, contain the information prescribed, and shall lodge those documents with the Commission not later than [3] months after the end of the financial year, together with an auditor's report which shall express opinions on such matters as may also be prescribed.

31. Auditor to report to the Commission in certain cases

- (1) If, during the performance of his duties as auditor for an Exchange Actor, an auditor –
- (a) becomes aware of any matter which in his opinion adversely affects the financial position of the Exchange Actor to a material extent; or
 - (b) discovers evidence of a contravention of the provisions of these Guidelines relating to client assets, or as to the accounts and records to be kept,

he shall as soon as is practicable, and in any event within seven days, report it in writing to the Commission and to the Exchange Actor.

32. Commission may appoint auditor

- (1) 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 Exchange Actor) to examine, audit, and report, either generally or in relation to any matter, on the books, accounts and records of the Exchange Actor, and on money, securities or other property held on

account of any other person by the Exchange Actor or by a nominee appointed by the Exchange Actor, if –

- (a) the Exchange Actor has failed to lodge an auditor's report;
- (b) the Commission has received an adverse auditor's report; or

the Commission has reason to believe that the Exchange Actor has failed to comply with the provisions of these Guidelines relating to client assets, or as to the accounts and records to be kept.

PART FIVE INFORMATION, INSPECTION AND INVESTIGATION

33. Commission may call for information

In addition to the provisions of sections 24 to 34 of the Act, the Commission may, by notice in writing, require an Exchange Actor to furnish it with such information as it may require for the exercise of its functions within such reasonable time and verified in such manner as it may specify.

34. Inspections

For the purpose of ascertaining whether a person who is, or at any time has been, an Exchange Actor is complying or has complied with any provision of or requirement under the Act or these Guidelines, or the terms and conditions of his licence, the provisions of section 36 of the Act shall apply

35. Investigations

- (1) Where the Commission has reasonable cause to believe, either from its investigation or as a result of a complaint received, that –
 - (a) an offence or other contravention has been or is likely to be committed under the Act, Companies Act, 1963 (Act 179) or these Guidelines;
 - (b) an Exchange Actor may have engaged in defalcation, fraud, misfeasance or other misconduct in connection with his commodity business; or
 - (c) the manner in which an Exchange Actor has engaged or is engaging in his commodity business is not in the interest of the consumer or the public interest, the Commission may in writing direct one or more of its employees or one or more other persons (“the investigator”) to investigate any of these matters and to report the results of the investigation to the Commission.
- (2) Any person who is reasonably believed or suspected by the investigator to have in his possession or under his control any record or document which contains, or which is likely to contain, information relevant to an investigation under this Guideline, or who

is so believed or suspected of otherwise having such information in his possession or under his control, shall –

- (a) produce to the investigator, within the time and at the place as the investigator requires in writing, any record or document specified by the investigator which is, or may be, relevant to the investigation, and which is in his possession or under his control;
- (b) if required by the investigator, give the investigator an explanation or further particulars in respect of any record or document produced under paragraph (a);
- (c) attend before the investigator at the time and place the investigator requires in writing, and answer truthfully and to the best of his ability under oath or affirmation (which oath or affirmation the investigator is hereby empowered to administer) any question relating to the matters under investigation as the investigator may put to him; and
- (d) give the investigator all assistance in connection with the investigation which he is reasonably able to give, including responding to any written question raised by the investigator.

36. Destruction of documents

A person shall not destroy, falsify, conceal or dispose of, or cause or permit the destruction, falsification, concealment or disposal of, any document, which he knows or ought to know is relevant to an inspection or an investigation under these Guidelines.

PART SIX DISCIPLINE OF EXCHANGE ACTORS

37. Disciplinary action in respect of Exchange Actors

- (1) Subject to the disciplinary procedural requirements of these Guidelines, where –
 - (a) an Exchange Actor is, or was at any time, guilty of misconduct; or
 - (b) the Commission is of the opinion that an Exchange Actor is not a fit and proper person to remain an Exchange Actor,

the Commission may exercise such of the following powers as it considers appropriate in the circumstances of the case –

- (i) revoke its licence; or
- (ii) suspend its licence for such period or until the occurrence of such event as the Commission may specify;
- (iii) publicly or privately reprimand the Exchange Actor.

- (2) Subject to the disciplinary procedural requirements of these Guidelines, where an Exchange Actor is, or was at any time, guilty of misconduct, the Commission may make one or more of the orders, separately or in addition to any power exercisable under this Act or Guideline, namely an order that the Exchange Actor –
- (a) shall pay to the Commission an administrative penalty not exceeding three hundred penalty units;
 - (b) shall pay to the Commission an amount not exceeding the amount of any profit gained or loss avoided by the Exchange Actor as a result of the misconduct in question;
 - (c) with regard to an employee or agent of an Exchange Actor –
 - (i) require the Exchange Actor to take action against the employee or agent;
 - (ii) disqualify the employee or agent from employment in any capacity by any Exchange Actor;
 - (iii) recover from the employee or agent an amount double the amount accruing to him from his misconduct;
 - (d) shall pay to the Commission a sum appropriate to reimburse the Commission for the costs and expenses that it has reasonably incurred in relation or incidental to the investigation of its conduct.
- (3) An Exchange Actor 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.

38. Other circumstances for disciplinary action in respect of Exchange Actors

- (1) Subject to the disciplinary procedural requirements of these Guidelines, the Commission may revoke the licence of an Exchange Actor, or suspend such licence for such period or until the occurrence of such event as the Commission may specify, where the exchange actor is
- (a) is an individual, he –
 - (i) is shown by certified medical evidence to have become mentally or physically incapable of performing the activities to which the licence relates;
 - (ii) has been adjudged a bankrupt, in Ghana or elsewhere;
 - (iii) is convicted, whether in Ghana or elsewhere, of fraud or other offences involving dishonesty;
 - (iv) is in breach of these Guidelines;
 - (v) contravenes or fails to comply with any condition applicable in respect of his licence;
 - (vi) fails to comply with a directive of the Commission;
 - (vii) fails to provide the Commission with information required, or provides false or misleading information;

- (viii) ceases to carry on the commodity exchange business for which he is licenced;
 - (ix) is the holder of a representative's licence and the licence of the principal to whom he is accredited is revoked or suspended; or
 - (x) by reason of any other circumstances, is no longer a fit and proper person to hold a licence;
- (b) a company –
- (i) the company goes into liquidation or is ordered to be wound up;
 - (ii) a receiver or manager of all or a substantial part of the property of the company is appointed;
 - (iii) the company ceases to carry on the commodity exchange business for which it is licenced;
 - (iv) the Commission has reason to believe that the company, or any of its directors or employees, has not performed his duties honestly and fairly;
 - (v) the company contravenes or fails to comply with any condition applicable in respect of the licence;
 - (vi) the company does not continue to employ at least two persons who hold representative's licences granted under these Guidelines;
 - (vii) the company is in breach of the Act or of these Guidelines;
 - (viii) fails to comply with a directive of the Commission;
 - (ix) fails to provide the Commission with information required, or provides false or misleading information; or
 - (x) by reason of any other circumstances, the company is no longer a fit and proper person to hold a licence.
- (2) Where the Commission suspends a licence under this Part, the suspension shall be for a specific period.
- (3) An Exchange Actor shall be deemed to have ceased to operate if –
- (a) it has ceased to operate for more than 30 days unless it has obtained the prior written approval of the Commission to do so; or
 - (b) it has ceased to operate under a directive issued by the Commission under these Guidelines.
- (4) Where the Commission suspends or revokes the licence of an Exchange Actor under this Part, it shall cause notice of that fact to be published in the official Gazette.

39. Effect of revocation or suspension

- (1) The revocation or suspension of a licence under this Part does not operate so as to
- (a) avoid or affect an agreement, transaction or arrangement entered into by the Exchange Actor on a commodity exchange where the agreement, transaction or arrangement was entered into before the revocation or suspension; and

- (b) affect a right, obligation or liability arising under the agreement, transaction or arrangement.
- (2) Where a licence is revoked or suspended under this Part, the Commission may by notice in writing –
- (a) require the Exchange Actor to transfer to, or to the order of, his client such records relating to client property or to the affairs of the client held at any time for the client, in such manner, as the Commission may specify in the notice; or
 - (b) permit the Exchange Actor to –
 - (i) in the case of a revocation, carry on business operations for the purpose of closing down the business connected with the revocation; or
 - (ii) in the case of a suspension, carry on only essential business operations for the protection of interests of clients during the period of suspension,subject to such conditions as the Commission may specify in the notice.

40. Procedural requirements for exercise of disciplinary powers

- (1) The Commission shall not exercise any power under this Part without first giving the Exchange Actor in respect of whom the power is to be exercised a reasonable opportunity of being heard.
- (2) The Commission may prescribe the manner in which the Exchange Actor shall be given an opportunity to be heard.
- (3) Where the Commission decides to exercise any power under this Part, the Commission shall inform the Exchange Actor in respect of whom the power is exercised of its decision to do so by notice in writing, and the notice shall include –
 - (a) a statement of the reasons for which the decision is made;
 - (b) the time at which the decision is to take effect;
 - (c) the duration and terms of any revocation or suspension to be imposed under the decision;
 - (d) the terms in which the Exchange Actor is to be reprimanded under the decision;
 - (e) the amount of any pecuniary penalty to be imposed under the decision and the period (being specified as a period after the decision has taken effect) within which it is required to be paid.

PART SEVEN
MARKET ABUSE

41. False trading and market rigging transactions

- (1) A person shall not create or cause to be created, or do anything that is calculated to create a false or misleading appearance of active trading in securities on a Commodity exchange in the country or a false or misleading appearance with respect to the market for, or the price of the securities.
- (2) A person shall not by means of purchases or sales of securities that do not involve a change in the beneficial ownership of those securities, or by fictitious transactions or devices, maintain, inflate, depress, or cause a fluctuation in the market price of any securities.
- (3) Without limiting sub-clause (1), a person who
 - (a) effects, takes part in, is concerned in or carries out, directly or indirectly, a transaction of sale or purchase of securities being a transaction that does not involve a change in the beneficial ownership of the securities; or
 - (b) makes or causes to be made an offer to sell or purchase securities at a specified price where that person has made or caused to be made or purports to make, or knows that a person associated with that person has made or caused to be made or purports to make, an offer to sell or purchase the same number, or substantially the same number of the securities at a price that is substantially the same as the specified price;has for the purposes of this Guideline and Guideline 41, created a false or misleading appearance of active trading in securities on a Commodity exchange.
- (4) When prosecuting a person for an act referred to in sub-clause (3), it is a defence if the defendant establishes that the purpose for which the act was done was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on the Commodity exchange.
- (5) A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this Guideline if a person who had an interest in the securities before the purchase or sale, or a person associated with that person, acquired an interest in the securities after the purchase or sale.
- (6) When prosecuting for an offence under sub-clause (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the defendant establishes that the purpose for which the defendant purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of securities.
- (7) The reference in sub-clause (3) to a transaction of sale or purchase of securities includes
 - (a) a reference to the making of an offer to sell or purchase securities; and

- (b) a reference to making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase securities.

42. Commodity market manipulation

- (1) A person shall not effect, take part in, be concerned with or carry out, directly or indirectly, two or more transactions in securities of a body corporate which are transactions that have or are likely to have, the effect of raising, lowering, maintaining or stabilizing the price of securities of the body corporate on a Commodity exchange in the country with intent to induce other persons to sell, purchase or subscribe for securities of the body corporate or of relates body corporate.
- (2) A reference in sub-clause (1) to a transaction in relation to securities of a body corporate, includes
 - (a) a reference to the making of an offer to sell or purchase the securities of the body corporate; and
 - (b) a reference to the making of an invitation, however expressed that expressly or impliedly invites a person to offer to sell or purchase the securities of the body corporate.

43. False or misleading statement

A person shall not make a statement or disseminate information that is false or misleading in a material particular, that is likely to induce the sale or purchase of securities by any other person or is likely to have the effect of raising, lowering, maintaining or stabilizing the market price of securities.

44. Fraudulently inducing persons to deal in securities

- (1) A person shall not induce or attempt to induce any other person to deal in securities
 - (a) by making or publishing a statement, promise or forecast that that person knows to be misleading, false or deceptive;
 - (b) by a dishonest concealment of material facts;
 - (c) by the reckless making or publishing, dishonestly or otherwise, of a statement, promise or forecast that is misleading, false or deceptive; or
 - (d) by recording or storing in, or by means of any mechanical, electronic or any other device, information which that person knows to be false or misleading in a material particular.
- (2) It is a defence to a prosecution for an offence under the sub-clause (1) (d) to establish that, at the time when the defendant recorded or stored information the defendant had

no reasonable grounds for expecting that the information would be available to any other person.

45. Dissemination of information about illegal transactions

A person shall not circulate or disseminate or authorize or be concerned in the circulation or dissemination of a statement or information to the effect that, the price of any securities of a body corporate will or is likely to rise or fall or be maintained by reason of a transaction entered into or other act or thing done in relation to securities of that body corporate, or of a body corporate that is related to that body corporate, in contravention of a provision of Guideline 35 to 41 where

- (a) that person, or a person associated with that person, has entered into that transaction or done an act or thing; or
- (b) that person has received, or expects to receive directly or indirectly, a consideration or benefit for circulating or disseminating, or authorizing or being concerned in the circulation or dissemination of the statement or information.

46. Employment of manipulative and deceptive devices

A person shall not directly or indirectly in connection with the purchase or sale of securities

- (a) employ a device, scheme or artifice to defraud;
- (b) engage in an act, practice or course of business which operates or would operate as fraud or deceit on any other person; or
- (c) make an untrue statement of a material fact or omit to state a material fact necessary with the result that the statements made in the light of circumstances under which they were made, appear truthful.

47. Prohibition of dealings in securities by insiders

- (1) A person who is, or has during the six months immediately before a dealing in the securities of a body corporate been connected with that body corporate shall not deal in securities of that body corporate if by reason of that association that person is in possession of information that is not generally available but, if it were, might materially affect that price of those securities.
- (2) A person who is, or has during the six months immediately before a dealing in the securities of a body corporate been connected with that body corporate if by reason of being, or having been connected with the first-mentioned body corporate that person is in possession of information that
 - (a) is not generally available but, if it were, would be likely to affect materially the price of those securities; and

- (b) relates to a transaction actual or expected involving both those bodies corporate or involving one of them and the securities of the other.
- (3) Where a person in possession of information as provided in sub-clause (1) or (2), is not precluded by either of those sub-clauses from dealing in those securities, that person shall not deal in those securities if
 - (a) that person has obtained the information directly from any other person and is aware, or ought reasonably to be aware of facts or circumstances by virtue of which that other person is precluded by sub-clause (1) or (2) from dealing in those securities; or
 - (b) when the information was obtained, that person was associated with that other person or had with that person an arrangement for the communication of information of a kind to which those sub-clause apply with a view to dealing in securities by that person or with that other person.
- (4) A person shall not when precluded by sub-clause (1), (2) or (3) from dealing in securities
 - (a) cause or procure any other person to deal in securities; or
 - (b) communicate that information to any other person if
 - (i) trading in those securities is permitted on a commodity exchange whether within or outside the country; and
 - (ii) that person knows, or ought reasonably to know, that that other person will make use of the information for the purpose of dealing or causing or procuring another person to deal in those securities.
- (5) without limiting sub-clause (3) but subject to sub-clause (6) and (7), a body corporate shall not deal in securities where an officer of those body corporates is precluded by sub-clause (1), (2) or (3) from dealing in those securities.
- (6) A body corporate is not precluded by sub-clause (5) from entering into a transaction by reason only of information in the possession of an officer of that body corporate if
 - (a) the decision to enter into the transaction was taken on its behalf by a person other than that officer;
 - (b) it had in operation at that time arrangements to ensure that the information was not communicated to any person and that an advice in respect of the transaction was given to that person by a person in possession of the information; and
 - (c) the information was not communicated and the advice was not so given.
- (7) A body corporate is not precluded by sub-clause (5) from dealing in securities of any other body corporate by reason only of information in possession of its officer which was obtained by the officer in the course of duties as its officer but relates to proposed dealings by the first-mentioned body corporate in securities of the other body corporate.

- (8) For the purposes of this Guideline, a person is connected with a body corporate if, being an individual, that person
- (a) is an officer of that body corporate or of a related body corporate;
 - (b) is a substantial shareholder in that body corporate or a related body corporate;
or
 - (c) occupies a position that may reasonably be expected to give that person access to information of a kind which sub-clause (1) and (2) apply by virtue of
 - (i) a professional or business relationship existing between that person or the employer of that person or a body corporate of which that person is an officer and that body corporate or a related body corporate; or
 - (ii) that person being an officer of a substantial shareholder in that body corporate or in a related body corporate.
- (9) This Guideline does not preclude the holder of the licence of a broker-dealer from dealing in securities or rights or interests in securities of a body corporate, where the securities, rights or interests are permitted by a commodity exchange to be traded on the Commodity exchange, if
- (a) the holder of the licence enters into the transaction concerned as an agent for any other person in accordance with a specific instruction to effect that transaction;
 - (b) the holder of the licence has not given an advice to the other person in relation to dealing in securities, or rights or interests in securities, of that body corporate that are included in the same class as the first-mentioned securities; and
 - (c) the other person is not associated with the holder of the licence
- (10) Where prosecution is instituted against a person for entering into a transaction whilst in possession of certain information contrary to this Guideline, it is a defence if the person satisfies the Court that the other party to the transaction knew, or ought reasonably to have known, of the information before entering into transaction.
- (11) For the purposes of sub-clause (7), “officer”, in relation to a body corporate, includes;
- (a) a director, secretary, executive officer or employee of the body corporate;
 - (b) a receiver or receiver and manager of property of the body corporate;
 - (c) an official manager or a deputy official manager of that body corporate;
 - (d) a liquidator of that body corporate; and
 - (e) a trustee or other person administering a composition or arrangement made between that body corporate and any other person.

48. Penalties related to market abuses

A person who contravenes a provision of Guideline 35 to 41 commits an offence and is liable on summary conviction to a fine of not less than one thousand penalty units and not more than two thousand five hundred penalty units or to a term of imprisonment of not less than four years and not more than five years or to both.

49. Convicted persons liable to pay compensation

- (1) A person convicted of an offence under Guideline 35 to 41 is liable to pay compensation to a person who, in a transaction for the purchase or sale of securities entered into with the first mentioned person or with a person acting for or on behalf of that first mentioned person, suffers loss because of the difference between the price at which the securities were dealt in at the time when the transaction took place if the contravention had not occurred
- (2) The amount of compensation for which a person is liable under sub-guideline (1) is the amount of the loss sustained by the person claiming the compensation.
- (3) Despite the Limitations Act, 1972 (N.R.C.D.54) a person shall not commence an action under this Guideline for the recovery of a loss after the expiration of two years after the date of completion of the transaction in which the loss occurred.
- (4) Sub-guideline (1) does not affect any other liability that a person may incur under any other law.

PART EIGHT MISCELLANEOUS

50. Penalties

The Commission may impose an administrative penalty of five hundred penalty unit for a breach of a non-criminal nature under these Guidelines for which a specific penalty is not provided.

51. Definitions

In these Guidelines –

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

“**accredited**” means a person accredited to a commodity dealer or commodity trading adviser as a representative;

“**clearing house**”, in relation to a commodity exchange, means a person who provides a facility for the –

- (a) clearing or settlement of commodity contracts traded on the exchange; and
- (b) making of adjustments to the contractual obligation arising out of those commodity contracts;

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

“**commodity**” means –

- (a) agricultural, livestock, fishery, forestry, mining or energy goods, and any product that is manufactured or processed from any such goods;
- (b) financial instruments;
- (c) an index, right or interest in any such commodity;
- (d) any other matter as may be determined by the Commission through official Gazette notification to be the subject of a commodity contract;

“**commodity contract**” means a –

- (a) spot commodity contract;
- (b) forward commodity contract;
- (c) futures commodity contract;
- (d) derivative commodity contract;
- (e) such other commodity contract or class of commodity contract as the Commission may direct;

“**commodity dealer**” means a person who, by way of commodity exchange business (whether as principal or agent) –

- (a) makes or offers to make with any person, or induces or attempts to induce any person to enter into or to offer to enter into any agreement for or with a view to the purchase or sale of a commodity contract; or
- (b) solicits or accepts any order for, or otherwise dealing in, a commodity contract;

“**commodity dealer’s representative**” means an individual who acts for, or by arrangement, with a commodity dealer, and who performs any of the functions of that commodity dealer in connection with trading in commodity contracts (other than work ordinarily performed by accountants, clerks or cashiers) whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;

“**commodity exchange**” means as defined in the Act

“commodity exchange business” means trading in, or advising on trading in, commodity contracts on a licensed commodity exchange;

“commodity trading adviser” means a person who, by way of business in respect of trading in commodity contracts on a commodity exchange –

(a) gives advice on whether, which, the time at which or the terms or conditions of which, commodity contracts are to be entered into; or

(b) issues analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on whether, which, the time at which, or the terms or conditions on which, commodity contracts are to be entered into, but does not include –

(i) a licenced commodity dealer who gives such advice or issues such analyses or reports wholly incidental to the carrying out of his business as a commodity dealer;

(ii) a person who gives such advice or issues such analyses or reports –

(A) a newspaper, magazine, book or other publication which is made generally available to the public; or

(B) television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise;

“commodity trading adviser’s representative” means an individual in the employment of, or acting for, or by arrangement, with a commodity trading adviser, who performs for that commodity trading adviser any of the functions of a commodity trading adviser (other than work ordinarily performed by accountants, clerks or cashiers) whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise;

“derivative commodity contract” means a contract the effect of which is that –

(a) one party agrees to deliver to the other party a specified commodity, or a specified quantity of a specified commodity, at a specified future time and at a specified price payable at that time, pursuant to the terms and conditions of the rules of the commodity exchange at which the contract is made; or

(b) the parties will discharge their obligations under the contract by settling the difference between the value of a specified quantity of a specified commodity agreed at the time of the making of the contract and at a specified future time, such difference being determined in accordance with the rules of the commodity exchange at which the contract is made, and includes options on contracts of the kind described in paragraph (a) or (b);

“director” includes a person occupying the position of director by whatever name called;

"Exchange Actor" means any individual or corporate entity recognized by the Commission which engages in the business of buying and/or selling Exchange - traded commodities - linked contracts in warehouse receipts for commodities for others (i.e. as an agent) or for its own account (i.e. as a principal); An Exchange Actor may be an "Exchange Commodities Broker", an "Exchange Commodities Dealer" or an "Exchange Commodities Broker-Dealer" and any other

personnel that may be determined by the Commission to be engaged in commodity exchange business

"market contract" means –

- (a) a contract subject to the rules of a clearing house entered into by the clearing house with a clearing member under a novation which is both in accordance with those rules and for the purpose of the clearing and settlement of transactions using the clearing facility and subject to the rules of a clearing house whether before or after default proceedings have commenced; or
- (b) a transaction which is being cleared or settled using the clearing facility and subject to the rules of a clearing house, whether or not a novation referred to in paragraph (a) is to take place;

"member" means a person who holds membership of any class or description of a commodity exchange, whether or not he holds any shares in the share capital of the commodity exchange;

"misconduct" means –

- (a) a contravention of any of the provisions of the Act or these Guidelines;
- (b) a contravention of any of the terms or conditions of a licence granted under the Act;
- (c) failure to comply with a directive of the Commission; or
- (d) an act or omission by an Exchange Actor in relation to his commodity exchange business which, in the opinion of the Commission, is or is likely to be prejudicial to the public interest, and "guilty of misconduct" shall be construed accordingly.

"principal" in relation to an accredited representative, means a person whom the representative is in the direct employment of, acting for or by arrangement with, and for whom the representative carries out any commodity exchange business;

"principal officer"

- (a) in relation to a company, means any director or a person acting as director, secretary or employee of that company in senior management and a receiver and manager of a part of the undertaken of that company appointed under a power contained in an instrument, and a liquidator of a company appointed in a voluntary winding up; and
- (b) in relation to a partnership means any partner including sole surviving or continuing member of the firm or a person acting as such, a secretary or employee of that firm in senior management and a receiver and manager of a part of the undertaken of that firm appointed under a power contained in an instrument, and a liquidator of that firm appointed in a voluntary winding up;

"representative" means a commodity dealer's representative or a commodity trading adviser's representative, as the case may be;

“**rules**” in relation to a commodity exchange or clearing house, means the rules, by-laws or such similar body of statements, by whatever name called, that govern the activities and conduct of –

- (a) the commodity exchange or clearing house and its members or clearing members, as the case may be;
- (b) other persons in relation to it, whether or not those rules, by-laws or similar body of statements are made by the commodity exchange or clearing house or are contained in its constituent documents;

“**spot commodity trading**” means the purchase or sale of a commodity at its current market or spot price, where it is intended that such transaction results in the physical delivery of the commodity, and “spot commodity contract” shall be construed accordingly;

“**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;

“**trading in commodity contracts**” means (whether as principal or agent) –

- (a) making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to the purchase or sale of a commodity contract; or
- (b) soliciting or accepting any order for, or otherwise dealing in, a commodity contract.

“**warehouse**” means any building, structure or other protected enclosure licensed by the Commission to be used or useable, for the storage or conditioning of goods or buildings used in relation thereof or including operation of the Warehouse;

“**warehouse inspector**” means a person empowered to inspect warehouses and commodities kept therein to ensure that the warehouse operator complies with the Guidelines and the conditions of the operator’s licence;

“**warehouse operator**” means a person who for regard engages in the business of operating a warehouse for receiving, storing, handling of goods for compensation or an agent or employee of that person; and

“**warehouse receipt**” means an acknowledgement, in writing or electronic form, issued by a warehouse operator or the authorised representative of the warehouse operator of the receipt for storage of goods that are not owned by the warehouse operator.