



"Ensuring Investor Protection"

SECURITIES AND EXCHANGE COMMISSION

WAREHOUSE RECEIPTS GUIDELINES 2019

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WAREHOUSE RECEIPTS GUIDELINES, 2019

IN the exercise of the powers conferred on the Minister responsible for Finance by Section 215 of the Securities Industry Act 2016 (Act 929) and on the recommendation of the Securities and Exchange Commission, these Guidelines are made this 1st day of April 2019.

PART I - PRELIMINARY

1. Scope of application of Guidelines

These Guidelines apply to the operations of Warehouses and Warehouse receipt systems under the Securities Industry Act, 2016 (Act 929), (herein the “Act”).

2. Functions of the Commission

The Commission shall in the performance of its function under section 3 of the Act undertake the following:

- (a) licence Warehouses, including without limitation, Warehouses that issue exchange traded Warehouse receipt linked to a securities depository;
- (b) license Warehouse operators;
- (c) license Warehouse Inspectors;
- (d) license Warehouse specialized staff;
- (e) approve Warehouse receipt systems; and
- (f) carry out and perform such other functions as are conferred or imposed on it by these Guidelines.

3. Powers of the Commission

For the carrying out of its functions under Guideline 2 of these Guidelines, the Commission shall have power to:-

- (a) investigate the receiving, storing, conditioning and handling of goods and complaints with respect thereto, including the inspection of any Warehouse, the goods stored therein and all property and records pertaining thereto, and to determine whether the Warehouse for which licences are applied or have been issued are suitable for the receiving, storing, conditioning and handling of the goods which are, or are expected to be received, stored, conditioned, or handled;
- (b) require such reports as it may determine are necessary in the administration of these Guidelines;
- (c) require a licensed Warehouse operator to terminate receiving, storing, and conditioning of goods upon revocation of his licence;

- (d) administer oaths and issue subpoenas to compel the attendance and testimony of witnesses and/or the production of records in connection with any investigation or hearing under these Guidelines;
- (e) prescribe all forms, within the limitations set forth in these Guidelines, including the forms of Receipts, tickets, and applications for licences;
- (f) Prescribe all necessary rules for carrying out the provisions of the Guidelines.
- (g) specify the qualifications, code of conduct and practical training for a Warehouse operator and staff engaged in warehousing business;
- (h) approve negotiable Warehouse Receipts ;
- (i) provide guidelines in addition to the relevant national standards for the proper storage of goods for which a licence is applied;
- (j) carry out any other activity incidental or conducive to the carrying out of its functions under these Guidelines.

4. 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.

PART II - LICENSING CONDITIONS FOR WAREHOUSING BUSINESS

Licensing

5. Conditions for operating under the Guidelines

- (1) No person shall commence or carry on the business of maintaining a Warehouse issuing negotiable Warehouse Receipts unless he has obtained a licence granted by the Commission under these Guidelines in respect of the Warehouse or Warehouses;
- (2) Any person desirous of commencing or carrying on the business of maintaining a Warehouse issuing negotiable Warehouse Receipts may make an application to the Commission for a licence in respect of one or more Warehouses owned or occupied by him:-
 - (a) Two or more Warehouses, which constitute a station, may be licensed under a single licence.
 - (b) All Warehouses licensed under a single licence shall be treated as a single Warehouse for all the purposes of these Guidelines, including issuance of Receipts and delivery of goods.
- (3) Application for a licence under sub-guideline (2) shall be in such form and shall be accompanied by such fees as may be prescribed by the Commission.
- (4) The Commission may not grant a licence under this Guideline unless it is satisfied that the Warehouse in respect of which the application has been made has adequate facilities and safe

guards required to Warehouse the goods of the nature specified in the application and the applicant satisfies the financial, managerial and other eligibility criteria and competence as may be prescribed.

- (5) Provided that no licence shall be refused to any applicant under this Guideline unless the applicant has been given an opportunity of being heard.
- (6) Nothing in these Guidelines shall require the Commission to license or otherwise regulate Warehouses or Warehouse operators issuing Warehouse receipts that are not eligible for trading on a commodities exchange as defined in Section 214 and 215 of the Act.
- (7) Nothing in these Guidelines shall affect or regulate the right of unlicensed Warehouse operators referred to in sub-guideline (6) to issue Warehouse receipts as defined in these Guidelines.
- (8) Nothing in these Guidelines shall affect the responsibility of Ghana Standards Authority to adopt and to enforce Guidelines concerning Warehouse operators.

6. Conditions for Granting Licence

- (1) The Commission shall not grant any licence, unless the applicant has satisfied all the conditions prescribed by the Guidelines.
- (2) The Commission shall consider an application and inform an applicant of its decision within ninety days (90 days) after an application has been lodged with it provided that where further information is required in accordance with section 111 (2) of the Act, the period of ninety days shall be calculated from the time when further information is submitted to the Commission

- (3) A licence granted or renewed by the Commission shall be valid for a period of one calendar year and shall be renewed for further periods of one year subject to meeting continuing licensing obligations and payment of the prescribed annual fee.
- (4) A license holder shall apply to the Commission for renewal of the licence three months prior to the expiry of a licence granted or renewed.
- (5) A licence is non transferable. A new licence shall be required anytime there is a change in name of a Warehouse operator

7. Licence to Operate A Warehouse

- (1) Before the Commission grants a licence to any person to operate a Warehouse it shall satisfy itself of the following:-
 - (a) that the applicant is in possession of a Warehouse whether as a tenant or owner provided that, where the property is leased, the lease period shall be for a minimum period of two years;
 - (b) that upon inspection the Warehouse is suitable for warehousing of the respective goods in accordance with the Guidelines made under these Guidelines;
 - (c) that the applicant's director, business partner or manager is of good and sound business and management record and has not been involved in any criminal proceedings involving business and dishonesty or impropriety;
 - (d) that the Warehouse and the goods which are or may be kept therein are fully insured at full market value in respect of fire, natural disasters including but not limited to flood, lightning and windstorm, theft and burglary or any other damage; and
 - (e) that the applicant is financially capable of conducting the business of warehousing.
- (2) Each Warehouse operator applying for a licence under these Guidelines shall
 - (a) Execute and file with the Commission a bond sufficient to secure the faithful performance by him of the obligations as a Warehouse operator under these Guidelines and any other applicable law these Guidelines.
 - (b) Where the Commission determines that a previously approved bond is, or for any cause has become insufficient, it may require an additional bond or bonds to be given by the Warehouse operator concerned that conforms with the requirements of this Guideline, and, unless the additional bond is given within the time fixed by a written demand made by the Commission, the licence of the Warehouse operator may be suspended or revoked by the Commission.
- (3) Whenever the Commission determines that a previously approved insurance is insufficient, it shall require additional insurance to be given by the Warehouse operator, conforming to the requirements of these Guidelines.

- (4)
 - (a) Each applicant for a licence to operate a Warehouse under these Guidelines shall as a condition to the granting thereof, file or have on file with the Commission information on the goods proposed to be Warehoused and a copy of his schedule of charges as a Warehouse operator.
 - (b) A licensed Warehouse operator shall not make a change in his charges without prior approval of the Commission. The request for approval of the change shall be accompanied by reasons for the proposed change.
 - (c) The Commission shall refuse to approve any change, which it finds unjust, unreasonable, or discriminatory after the Warehouse operator has been afforded the opportunity to be heard. .
- (5) The Commission shall have the authority to issue waivers, exemptions, and other forms of relief from any of the foregoing licensing conditions upon application.

8. Warehouse Operator's Specialized Staff Licence

- (1) No person shall weigh, sample, grade, classify or certify any goods stored in a Warehouse licensed under these Guidelines unless duly licensed by the Commission under these Guidelines.
- (2) The Commission shall prescribe the qualifications and other conditions for the issuance of specialized staff licence for samplers, graders, weighers or quality Inspectors.
- (3)
 - (a) Every application for a Specialized Staff Licence shall be in such form and accompanied by such fees as may be prescribed by the Commission
 - (b) Every application shall name the specific job for which the licence is required.

9. Warehouse Inspectors

- (1) The Commission may license persons or a group of persons to be Warehouse Inspectors.
- (2) The Commission may also appoint professionals where the Commission deems necessary to perform Warehouse services
- (3) The Commission shall prescribe in the Guidelines, qualifications of a person to be licensed as a Warehouse Inspector.
- (4) The Warehouse Inspectors licensed pursuant to the provisions of these Guidelines shall have power to inspect Warehouse premises and goods kept therein to ensure that the Warehouse operator observes the conditions in these Guidelines, and Guidelines prescribed thereunder and any other conditions appearing on the licence issued.
- (5) A Warehouse Inspector or any other person duly authorized by the Commission may at any reasonable time during the day, enter a Warehouse premises for the purposes of ensuring that the provisions of these Guidelines are complied with
- (6) The Commission will issue to license Warehouse Inspectors after each twelfth- month

period, non-alterable photo identify cards or badges that will be presented to Warehouse operators prior to the admission to Warehouses for the performance of their duties.

10. Functions of Warehouse Inspector

- (1) A Licensed Warehouse Inspector shall among others perform the following functions :
 - (a) determine whether Warehouses for which licences are applied for or have been issued are suitable for the receiving, storing, conditioning, and handling of the goods stored or expected to be received, stored, conditioned, or handled;
 - (b) inspect the receiving, storing, conditioning and handling of goods stored in designated Warehouses;
 - (c) inspect all relevant documents with regard to the Warehouse operator's licence, Warehouse operator, Warehouse Receipt, agreements and any other necessary documents in the performance of the Warehouse Inspector's duties; and
 - (d) Complete and submit to the Commission an inspection report on a form prescribed by the Commission within fourteen (14) days of the completion of the assignment.
- (2) Notwithstanding the provisions in sub Guideline 1(d) above, the licensed Warehouse Inspector shall report immediately to the Commission, if, during the course of inspection, he finds any of the following:-
 - (a) goods are in such a condition that, if immediate remedial measures are not taken, the conditions of such goods will deteriorate to irreversible levels;
 - (b) goods are not of the grade represented on the Warehouse Receipts issued to the depositors;
 - (c) the Warehouse insurance cover is not adequate to cover the goods stored in the Warehouse;
 - (d) the Warehouse building(s) is/are not in a condition, conducive for keeping the goods according to the required standard and no measures are being taken by the operator or owner to rectify the situation; or
 - (e) any other form of non-compliance with these Guidelines and any rules under the Act prescribed thereunder calling for urgent action on the part of the Warehouse operator.
- (3) A licensed Warehouse Inspector shall be assigned by the Commission to visit each licensed Warehouse at least once every twelve months at irregular intervals to carry out spot checks on licensed Warehouses and the facilities of licensed Warehouse operators to ensure that they meet the Commission's basic requirements.
- (4) The Warehouse Inspector can during spot checks also perform quality determination, grading and independent verification of the stored goods.
- (5) Every licensed Warehouse or licensed Warehouse operator shall permit any authorized representative or agent of the Commission to enter and inspect or examine, on any business day, during usual business hours, a Warehouse's business, mode of conducting the same, facilities, equipment, inventories, property, books, records, accounts, papers and minutes of proceedings held at such Warehouse, and any other records deemed relevant to the operation

of the Warehouse.

- (6) Every licensed Warehouse or licensed Warehouse operator shall provide the necessary facilities that may be required for the conduct of the inspection and examination under these Guidelines.
- (7) The licensed Warehouse Inspector shall charge such fees as may be determined by the Commission from time to time for every examination or inspection services provided.
- (8) Any person who contravenes clause (2) shall be liable to pay to the Commission an administrative penalty of five hundred penalty units

11. Posting of Licence, Rates, and Signs

Each licensed Warehouse operator shall:-

- (1) immediately upon receipt of a licence post it in a conspicuous place in the office of the licensed Warehouse or, if a station licence, in the main office of such station;
- (2) keep conspicuously displayed in each operational office the approved schedule of charges for services; and
- (3) post at or near the main entrance to each of the licensed Warehouses a sign, as prescribed by the Commission, which shall include the name under which such Warehouse is operated and the term "Licensed by SEC".

12. Publication of Licences, Investigations and Revoked Licences

The Commission may, from time to time, publish:-

- (a) the names and addresses of persons licensed under these Guidelines;
- (b) the results of any investigations made under these Guidelines;
- (c) a list of all licences suspended or revoked under these Guidelines and the causes for the suspension or revocation.

13. Revocation, Suspension and Non- Renewal of Licence

- (1) The Commission may, after an opportunity to be heard has been afforded to the licensee concerned, suspend, revoke or refuse the renewal of any licence issued to any Warehouse operator conducting business in a licensed Warehouse under these Guidelines for any contravention of these Guidelines.
- (2) Any person aggrieved by the suspension, revocation or non-renewal of a licence may appeal such decision in accordance with Sections 18 to 23 of the Act

14. Operation after Revocation, Suspension or Expiration of Licences

- (1) Where a licence is revoked, suspended or has expired, the Warehouse operator shall refrain from issuing further Warehouse receipts traded or tradable on a commodities exchange (other than replacements for existing receipts) and refrain from receiving further goods eligible for such trading but shall be permitted, under direction or supervision of the Commission to maintain quality and deliver deposited goods covered by such Warehouse receipts previously

issued. Such costs incurred by the Commission will be reimbursed by the Warehouse operator and upon the failure of the Warehouse may be drawn by the Commission from a call on the Warehouse operator's bond or Warehouseman's professional liability insurance policy.

- (2) During any suspension of a licence, the Warehouse operator shall cease receiving of goods which may be covered by Warehouse receipts traded or tradeable on a commodities exchange and shall inform the public by conspicuously placing a notice at the Warehouse entrance.
- (3) The foregoing provisions shall apply only to goods covered by Warehouse receipts issued by the licensed Warehouse operator that are traded or tradable on a commodity exchange. The Commission shall have no obligation to manage or control the storage or handling of goods covered by other Warehouse receipts or by no Warehouse receipts, provided that in the event of commingled goods the Commission will have the right to manage the commingled goods for the benefit of all claimants until the claims of the depositors and other holders of tradeable Warehouse receipts have been satisfied or all such goods have been delivered, whichever shall first occur.

Insurance and Bonds

15. Cancellation of Insurance/Bond

- (1) A licensed Warehouse operator shall not cancel or suspend an insurance policy or Bond or arrange for substitution of insurance policy or Bond without written notification to the Commission 30 days before the change.
- (2) Where an insurance company or surety decides to cancel an insurance policy or Bond, the insurance company or surety shall furnish the Commission with a copy of the cancellation notice sent to the Warehouse operator at least 10 days prior to the effective date of such cancellation and if the cancellation is due to non-payment of fees or premium at least 30 days prior to the effective date of such cancellation.
- (3) Where the Warehouse operator fails to provide new evidence of insurance within 30 days or sufficient bond within 35 days after the Commission receives notice of cancellation the Warehouse licence shall be suspended.
- (4) Where new evidence of same has not been filed by the 30th day following receipt of notice the licence shall be revoked.
- (5) The Commission may waive or grant an extension of time for the procurement of a replacement policy or bond or accept the posting of alternative security in the event of the cancellation or non-renewal of a policy or bond due to withdrawal of the insurer or surety from the market or other cause outside the reasonable control of the Warehouse operator.

16. Action on Bond or Warehouseman's Liability and Fidelity Insurance by person injured

- (1) The terms of the Bond and/or Warehouseman's Liability and Fidelity Insurance shall provide that any depositor or Warehouse receipt holder (including a commodities exchange that has guaranteed performance by the Warehouse operator) injured by reason of any obligation for which a Bond or insurance is given shall be entitled to sue on the Bond or claim directly on the

insurance policy in his or her own name in court, to recover the damages he or she has sustained by the breach, provided that no such action shall be commenced unless the dispute has first been referred to arbitration in accordance with the Alternative Dispute Resolution Guidelines 2010 (Act 798) and any subsequent amendments thereto or such other arbitration/mediation system as may be established by the Commission for the resolution of trade disputes.

- (2) A Warehouse operator shall have adequate Warehouseman's insurance cover and fidelity insurance
- (3) If the amount of the Bond or the claim limit under the insurance is insufficient to cover all adjudicated claims, the proceeds of the Bond or insurance shall be allocated *pari passu* among all persons entitled under the Bond or insurance in accordance with its terms. If the Commission is entitled to recover its expenses as manager under Guideline 14 and the operator is unable to pay such costs, the Commission shall have a priority claim under the Bond or insurance.

17. Claims under Casualty Insurance

- (1) In case fire, internal explosion, flood, lightning, windstorm or other casualty causes covered by the Warehouse operator's casualty insurance policy is deemed by a loss adjuster, appointed by the insurer and approved by the Commission, to be the proximate cause of destruction or damage to any goods in any licensed Warehouse, the Warehouse operator shall, upon being presented with the Receipt or other evidence of ownership, make settlement, after deducting the Warehouse operators charges and advances, at the market value of the goods based on the value at the average price paid for the goods of the same grade and quality on the date of the loss at the location of the Warehouse.
- (2) The Warehouse operator must make reasonable efforts to pursue claims under the casualty insurance policy covering the goods and pay the policy proceeds to the depositors or other holders of Warehouse receipts covering damaged or destroyed goods within ten (10) days after settlement with the insurance company. Failure of the Warehouse operator to make such settlement shall be grounds for the revocation or suspension of the Warehouse licence in addition to any civil remedies at law available to the depositor or other claimant.

PART III - WAREHOUSE OPERATORS

Duties and Obligations of Warehouse Operators

18. Duties of Warehouse Operator to Receive Goods and Issue Receipts

- (1) Every licensed Warehouse operator shall receive for storage, conditioning, or handling, without discrimination, so far as the capacity and facilities of the Warehouse shall permit, all goods in suitable condition for storage, conditioning, or handling tendered to the operator in the usual course of business and shall upon receiving any such goods issue therefore a receipt or ticket. Where a ticket is issued on receipt of the goods, a receipt shall be issued upon demand.
- (2) A person who deposits goods for storage in a licensed Warehouse shall be taken to have deposited the goods subject to the terms of these Guidelines.

19. Rebates and Preferences Prohibited.

No licensed Warehouse operator shall:-

- (1) Directly or indirectly, by any special charge, rebate, draw back, or other device, demand,

collect, or receive from any person a greater or lesser compensation for any service rendered or to be rendered in the receiving, storage, conditioning, or handling of any goods than the operator demands, collects, or receives from any person for doing a like and contemporaneous service in the receiving, storage, conditioning, or handling of any goods under substantially similar circumstances or conditions; or

- (2) Make or give any undue or unreasonable preference or advantage to any person in any respect whatsoever; or
- (3) Subject any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

20. Duty to Keep Goods Separately

Except as provided in these Guidelines a Warehouse operator shall keep goods of each depositor separate from goods of other depositors and from other goods of the same depositor for which a separate receipt has been issued as to permit the identification and re-delivery of the goods deposited.

21. Commingling

- (1) If authorized by agreement, a Warehouse operator may mingle fungible goods with other goods of the same kind and grade.
- (2) If goods are mingled in the manner described in sub-guideline(1), the holders of the Receipts for the mingled goods own the entire mass in common, and each holder is entitled to the proportion of them that the quantity shown by each holder's Receipt to have been deposited bears to the whole.
- (3) The warehouse operator shall be liable to each depositor for the care and delivery of his share of such commingled goods to the same extent and under the same condition as if the goods had been kept separate.

22. Duty of Care

A Warehouse operator is liable for loss of or damage to goods caused by the Warehouse operator's failure to exercise such care and diligence in regard to them as a careful and vigilant owner of similar goods would exercise in the custody of the goods in similar circumstances.

23. Duties to Keep Records and Accounts

- (1) Every Warehouse operator shall keep in a place of safety a complete and accurate set of records and accounts of all transactions pertaining to the operation of a Warehouse including records and accounts of:-
 - (a) All goods received in the Warehouse and withdrawn therefrom;
 - (b) All unissued receipts in his possession;
 - (c) All sampling, grading and weighing results; and
 - (d) All receipts issued, returned to, or cancelled, by him.

- (2) The Warehouse operator shall keep all the records and accounts of the Warehouse business in numerical sequence separate and distinct from the records and accounts of any other business in such form and in such manner and for such period as the Commission may specify.
- (3) The Warehouse operator shall make available to the Commission for inspection the records and accounts of the Warehouse business at any time as may be required by the Commission.
- (4) Copies of Receipts or other documents evidencing ownership of any goods or liability as a Warehouse operator shall be retained so long as such documents are outstanding, and any such document which has been cancelled shall be retained for a period of not less than seven (7) years from the date of cancellation.

24. Duty to Deliver

A Warehouse operator shall deliver the goods referred to in a negotiable Warehouse receipt, to the bearer of the receipt on demand made by the bearer in accordance with Guideline 48 of these Guidelines.

25. Duty to Deliver Goods to Persons with Valid Titles or Right.

- (1) The Warehouse operator shall not be under any obligation to ensure that the:
 - (a) depositor of goods or the holder of a Warehouse receipt has valid or unencumbered title to the goods or to the Warehouse receipt or
 - (b) delivery of goods is made to a person who has lawfully obtained a Warehouse receipt.
- (2) The Warehouse operator's title or right to the possession of goods shall only be derived directly or indirectly from:-
 - (a) a transfer made by a depositor or holder of a Warehouse receipt at the time of or subsequent to deposit of goods; or
 - (b) a lien.
- (3) Unless the title or right to possession of the goods by a Warehouse operator is obtained in accordance with the provisions of sub-guideline 25 (2) no title or right to possession of goods shall exonerate the Warehouse operator from liability for refusing to deliver the goods according to the terms indicated on the Warehouse receipt or underlying storage agreement entered into with the depositor (if such agreement is referenced in the receipt).

26. Duty to Ascertain Valid Titles to Goods.

Notwithstanding Guideline 25, where a Warehouse operator has information that a person other than the depositor or holder of a receipt claims to be the owner of or entitled to the goods, the Warehouse operator may refuse to deliver the goods until the Warehouse operator has had a reasonable time, not longer than seven (7) days, to make further enquiry in an attempt to determine the validity of the adverse claim or to commence interpleader proceedings.

Liabilities of a Warehouse Operator

27. Damages for Late Delivery

- (1) Delivery shall be made within the reasonable time provided in any contract with the depositor or, if no such contract provision exists, then to the several depositors in order of demand as rapidly as it can be done by diligence. Delivery made within forty-eight (48) hours, after excluding Saturdays, Sundays, and legal holidays, constitutes compliance with this sub-Guideline.
- (2) The person entitled to delivery of goods may maintain an action against the Warehouse operator for damages resulting from the Warehouse operator's failure to deliver within the time provided in this Guideline. In any such action the person entitled to delivery of the goods may seek recovery of his actual damages or liquidated damages of half of one percent (0.5%) of the value for each day's delay after the time provided in this Guideline.

28. Liability for Mis-delivery.

- (1) A Warehouse operator shall not deliver the goods if, prior to delivery, he receives information or otherwise becomes aware that a person to whom delivery is about to be made is not legally entitled to the delivery.
- (2) A Warehouse operator who:
 - (a) discovers that the person who claims delivery of the goods is not in fact lawfully entitled to the possession thereof;
 - (b) ignores the request not to make delivery of the goods, made under paragraph (a); andproceeds to deliver the goods shall be liable for conversion to all persons having proprietary rights in or possession of the goods unless the claimant posts security with the Warehouse operator in an amount at least double the value of the goods at the time of posting to indemnify any person adversely affected by the delivery.

29. Liability for Nonexistent or Mis-described Goods.

The Warehouse operator shall be liable to the holder of the Warehouse receipt for damages caused by non-existence of the goods or by failure of the goods being delivered to correspond with the description thereof in the receipt at the time of deposit.

30. Liability for Failure to Cancel Warehouse Receipt after Delivering Goods.

A Warehouse operator who contrary to Guideline 50 fails to take up and cancel a negotiable receipt after delivery of all or any portion of goods shall be liable for failure to deliver the goods to anyone who purchases the receipt in good faith and for valuable consideration, whether the receipt was acquired before or after delivery of the goods by the Warehouse operator.

31. Liability after a Warehouse Receipt has been Lost, Stolen or Destroyed.

Subject to the provisions of Guideline 54, a Warehouse operator shall be liable for failure to deliver goods to a person to whom a lost, stolen or destroyed Warehouse receipt has been or shall be negotiated for value in good faith and without notice of the fact that a duplicate Receipt has been issued or goods have already been delivered.

Warehouse Operator's Lien

32. Warehouse Operator's Right to Lien.

- (1) Every Warehouse operator has a lien on goods deposited with him for storage, whether deposited by the owner of the goods or by his authority, or by any person entrusted with the possession of the goods by the owner or by his agent.
- (2) The lien of the Warehouse operator is for the amount of the storage and maintenance charges including:-
 - (a) all lawful charges for storage and preservation of the goods;
 - (b) all reasonable charges for:-
 - (i) any notice required to be given under the provisions of these Guidelines;
 - (ii) notice and advertisement of sale;
 - (iii) sale of goods where default is made in satisfying the lien of the Warehouse operator; and
 - (iv) compliance with statutory provisions.
- (3) In case of any endorsement on the face of a negotiable Warehouse receipt, by a bank or the Warehouse operator, such endorsement shall be evidence of a pledge and the pledgee shall have priority over the interest of the holder of the receipt.
- (4) In case of any pledge referred to in sub-guideline (3), the Warehouse operator shall not deliver the goods unless the endorsement of the pledge has been duly cancelled.

33. Statement of Charges under Lien.

Where a negotiable receipt is issued for goods and has been duly negotiated to a valid purchaser for value, the Warehouse operator shall have no lien on the goods except for

- (a) charges relating to the handling and storage of those goods after the date of the Receipt, unless the Receipt expressly enumerates other charges for which a lien is claimed; and
- (b) any conditioning of the goods that has been undertaken by the Warehouse operator at the time of or after the date of deposit and where the provision of that service and its associated costs have been expressly agreed to in writing by the depositor and referred to on the receipt.

34. Refusal to Deliver Goods until Lien is Satisfied.

A Warehouse operator having a valid lien against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

35. Enforcement of a lien.

- (1) A Warehouse operator's lien may be enforced subject to the provisions of Guideline 38 against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and against all goods belonging to others, which have been deposited by the person who is liable as a debtor for the claims to which the lien is asserted if such person has been entrusted with goods at the time of deposit just as a person who takes the goods in good faith and for value.

- (2) A Warehouse operator's lien may be satisfied by sale of goods, other remedies allowed by the law for the enforcement of a lien against personal property or any other legally enforceable action for recovery of the Warehouse operator's claim.
- (3) Where storage and other fees are not paid in accordance with the provisions of the storage agreement between the depositor and the Warehouse operator and/or the goods are not timeously removed from the Warehouse in accordance with the terms of the storage agreement and the fees are not timeously paid,
 - (a) The Warehouse operator shall have the right to recover his charges, by selling by public auction, in accordance with Auction Sales Law 1989, (PNDCL 230) (as amended) or in any other manner provided in this Guideline any goods upon which he has a lien.
 - (b) The Warehouse operator shall give reasonable notice in writing to the depositor (not less than fourteen days unless a shorter period is provided in the storage agreement of receipt) and to the Commission and all other persons known to the Warehouse operator to have an interest in the goods or Warehouse receipt(s) of his intention to sell the goods for the charges for which the lien exists.
 - (c) The notice under sub-guideline (3) (b) shall:-
 - (i) Contain all the details of the goods, the location of the Warehouse, date of deposit, the name of depositor and a statement of lien claimed by the Warehouse operator for the goods stored in the Warehouse; and
 - (ii) State that unless the charges are paid within the stipulated time mentioned in the notice, the goods shall be advertised for sale and sold by public auction at a time and place as specified in the notice.
 - (d) Where the charges are not paid on or before the day mentioned in the notice, then, unless any other mode of sale is specified by the Commission, an advertisement of the sale shall be published in a leading newspaper having circulation in the locality where the sale is to be held as well as where the owner of the goods is located and the sale shall be held not less than fourteen (14) days from the date of first publication of the advertisement.
 - (e) The Warehouse operator shall, from the proceeds of the sale, satisfy his lien and shall pay the surplus, if any, to the person entitled thereto.

36. Perishable, Hazardous and Unclaimed Goods

- (1) When goods are of a perishable nature, or are likely by their nature to deteriorate greatly in value, or destroy other property, the Warehouse operator may give such notice as is reasonable and possible under the circumstances to the holder of the receipt for the goods, if the name and address of the holder is known to the Warehouse operator or Warehouse alternatively, to the depositor, requiring the holder to satisfy the lien on the goods and to remove them from the Warehouse.
- (2) The notice referred to in sub-guideline(1) may be given by sending it by registered mail addressed to the person to whom it is to be given at the person's last known place of address and the notice shall be deemed to be given on the day following the mailing.

- (3) Upon failure of the person to whom notice is given to satisfy the lien and remove the goods within the time specified in the notice, the Warehouse operator may sell the goods by public or private sale without advertising.
- (4) The Warehouse operator shall, from the proceeds of any sale made pursuant to this Guideline, satisfy the Warehouse operator's lien and shall hold the balance in trust for the rightful claimant to the goods.
- (5) Where the Warehouse operator after a reasonable effort is unable to sell the goods, the Warehouse operator may dispose of them in any manner the Warehouse operator thinks fit, and the Warehouse operator shall incur no liability by reason of disposing of them.
- (6) Goods which are subject to mandatory removal from the Warehouse under the terms of the storage agreement and for which no present claimant can be identified or contacted despite reasonable efforts by the Warehouse operator may be disposed of in the manner provided in this Guideline after a fourteen-day written notice to the last known address of the depositor and any other persons known by the Warehouse operator to have claimed an interest in the goods.

37. Effect of Sale

If goods have been lawfully sold to satisfy a Warehouse lien, or have been lawfully sold or disposed of under Guideline 36, the Warehouse operator is not liable for failure to deliver the goods to the rightful claimant to the goods.

38. Loss of Lien

A Warehouse operator shall lose the right of his lien upon the goods by –

- (a) Surrendering possession thereof; or
- (b) Refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of these Guidelines.

39. Warehouse Operator's Lien Loss Does Not Preclude Other Remedies

The fact that a Warehouse operator has or does not possess a lien upon the goods, shall not affect his entitlement to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the Warehouse operator.

PART IV - WAREHOUSE RECEIPTS

40. Persons who may issue A Negotiable Warehouse Receipt Traded on a Commodity Exchange

- (1) For the purposes of these Guidelines, a negotiable Warehouse receipt covering goods and otherwise eligible for trade on a commodity exchange may only be issued by persons duly authorized and licensed to do so under these Guidelines.
- (2) No Warehouse operator shall issue a Warehouse receipt without actually receiving the goods of the quantity, quality or grade and other particulars as may be mentioned in the receipt.

41. Negotiable Warehouse Receipts

- (1) A Warehouse Receipt in which it is stated that the goods received will be delivered to the person named in the Receipt or his order or to bearer or negotiable receipts endorsed in blank shall be known as a negotiable Warehouse Receipt.
- (2) No words shall be inserted in a negotiable Receipt with the effect of rendering that Receipt non-negotiable.
- (3) Any language in a negotiable Warehouse Receipt which purports to limit its negotiability shall be void.
- (4) A negotiable Warehouse Receipt may refer to a date on which the goods are to be removed from storage, provided that such term shall not affect the validity of the Receipt after such date.

42. Non-negotiable Warehouse Receipts

- (1) A Warehouse Receipt in which it is stated that the goods received will be delivered to the depositor or to any other specified person is a non-negotiable Receipt.
- (2) A Warehouse operator who issues a non-negotiable Receipt must cause to be plainly marked on its face "non-negotiable" or "not negotiable".
- (3) Without in any way affecting the operation of Guidelines 57 to 67 associated with negotiable Warehouse receipts or Guidelines 68 and 69 associated with non-negotiable receipts, if a Warehouse operator fails to comply with sub-guideline 42 (2), a holder of the Receipt who purchases it for valuable consideration believing it to be negotiable may, at the holder's option, treat the Receipt as vesting in the holder all rights attaching to a negotiable Receipt and imposing on the Warehouse operator the same liabilities the Warehouse operator would have incurred had the Receipt been negotiable. Warehouse.

43. Form of Warehouse Receipt

- (1) A negotiable Warehouse Receipt shall be in the form and contain such information as may be prescribed by the Commission from time to time.
- (2) A Warehouse Receipt, which may be either in writing or in electronic form, shall be a document of title to goods if it contains all the following particulars, namely:-
 - (a) Receipt number;
 - (b) Warehouse licence number;
 - (c) the location of the Warehouse or other place where the goods are stored;
 - (d) the name of the person by whom or on whose behalf the goods are deposited;
 - (e) the date of issue of the Receipt;
 - (f) a statement either:-

- (i) that the goods received will be delivered to the person by whom or on whose behalf the goods are deposited, or to another named person, or
 - (ii) that the goods will be delivered to bearer or to the order of a named person;
- (g) the rate of storage charges;
- (h) a description of the goods or of the packages containing them;
- (i) the signature of the Warehouse operator or the authorized agent of the Warehouse operator;
- (j) a statement of the amount of any advance made and of any liability incurred for which the Warehouse operator claims a lien.
- (3) If a Warehouse operator omits from a negotiable Receipt any of the particulars set out in sub-guideline (2), the Warehouse operator is liable for damage caused by the omission.
- (4) A Receipt shall not be considered not to be a Warehouse Receipt by reason of the omission of any of the particulars set out in sub-guideline (43) (2).
- (5) A Warehouse operator may insert in a Receipt issued by the Warehouse operator any other term or condition that:-
- (a) is not contrary to any provision of these Guidelines, and
 - (b) does not impair the Warehouse operator's obligation to exercise the care and diligence in regard to the goods as a careful and vigilant owner of similar goods would exercise in the custody of them in similar circumstances.

44. Receipts Terms

- (1) Every Warehouse Receipt issued shall embody within its terms:-
- (a) The grade of the goods received as established by the official standards adopted by the Commission, unless the identity of the goods is preserved in a special pile or special bin or otherwise and in that event an identifying mark of such identity preserved goods shall appear on the face of the Receipt.
 - (b) A statement that the Receipt is issued subject to this Warehouse Receipt System Guidelines and Guidelines prescribed thereunder and is subject to a separate agreement between the depositor and the issuer.
 - (c) A clause reserving for the Warehouse operator the right to terminate storage, conditioning, and handling arrangements and collect outstanding charges upon the revocation of the Warehouse operator's licence.
 - (d) Such other terms and conditions as may be required by the Commission provided that nothing contained therein shall require a Receipt issued for any goods to specifically state the variety of the goods by name.

45. Description of Goods by Mark

- (1) Where goods are described in a Receipt merely by a statement:
 - (a) of certain marks or labels on the goods or on the packages containing them,
 - (b) that the goods are said by the depositor to be goods of a certain kind, or
 - (c) that the packages containing the goods are said by the depositor to contain goods of a certain kind, or by a statement of import similar to that of sub-guideline(a), (b) or (c),unless the Warehouse operator knows such statement to be false or misleading, the statement does not impose any liability on the Warehouse operator in respect of the nature, kind or quality of the goods.
- (2) Subject to 49(1), a statement referred to in sub-guideline (1) shall be deemed to be a representation by the Warehouse operator either
 - (a) that the marks or labels were in fact on the goods or packages,
 - (b) that the goods were in fact described by the depositor as stated, or
 - (c) that the packages containing the goods were in fact described by the depositor as containing goods of a certain kind, as the case may be.

46. Registration of Negotiable Warehouse Receipts

A Warehouse operator shall register all negotiable Warehouse Receipts issued by him with an automated depository approved by the Commission.

47. Delivery of Warehouse Receipts to Owner

Subject to these Guidelines, a Warehouse Receipt issued by a Warehouse operator when delivered to the owner or bailor of the goods or mailed to the owner or bailor at the last known address of the owner or bailor Warehouse constitutes the contract between the owner or bailor and the Warehouse operator subject to any separate agreement between the bailor and the Warehouse operator governing the terms of storage and other services.

48. Duty to Deliver

- (1) In the absence of a lawful excuse, a Warehouse operator shall deliver the goods referred to in a negotiable Receipt, to the bearer of the Receipt on demand made by the bearer and on the bearer doing all of the following:
 - (a) Satisfying the Warehouse lien;
 - (b) Surrendering the Receipt with endorsements necessary for the negotiation of the Receipt; and
 - (c) Acknowledging in writing the delivery of the goods.
- (2) In the absence of a lawful excuse, a Warehouse operator shall deliver the goods referred to in a non-negotiable Receipt to the holder of the Receipt on demand made by the holder and on the holder doing all of the following:
 - (a) Satisfying the Warehouse lien;

- (b) Surrendering the Receipt; and
 - (c) Acknowledging in writing the delivery of the goods.
- (3) Where a Warehouse operator refuses or fails to deliver the goods in compliance with this Guideline, the Warehouse operator shall establish the existence of a lawful excuse for the refusal or failure. For purposes of this Guideline, a lawful excuse means, without limitation, any circumstance under which the person receiving the goods has good title as against the holder or bearer of a Warehouse receipt, or any superior right to receive the goods under any provision of this Guideline or other applicable law, including without limitation under any court order or government Guideline directed to and binding on the Warehouse operator.
- (4) The Warehouse operator shall not be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of a Receipt given for the goods when they were deposited, even if such Receipt is negotiable, in a situation where goods have been lawfully sold or disposed of:-
- (a) because of their perishable or hazardous nature; or
 - (b) to satisfy the Warehouse operator's lien.

49. Delivery on Presentation of Negotiable Receipt

If a person is in possession of a negotiable Receipt that has been endorsed to the person or endorsed in blank, or by the terms of which the goods are deliverable to the person or the person's order or to bearer, the Warehouse operator is justified in delivering the goods to that person if delivery is made in good faith and without notice of any defect in the title of that person.

50. Cancelling Negotiable Receipts on Delivery of Goods

A Warehouse operator who delivers goods for which he had a negotiable Receipt shall take up and cancel the Receipt.

51. Liability for Failure to Deliver Goods

- (1) Except as provided in Guideline 37 where a Warehouse operator delivers goods for which the Warehouse operator has issued a negotiable Receipt, and fails to take up and cancel the Receipt, the Warehouse operator is liable for failure to deliver the goods to anyone who purchases the Receipt in good faith and for valuable consideration, whether he or she acquired title to the Receipt before or after delivery of the goods by the Warehouse operator.
- (2) Except as provided in Guideline 37, where a Warehouse operator:-
- (a) delivers part of the goods for which the Warehouse operator has issued a negotiable Receipt; and
 - (b) fails either
 - (i) to take up and cancel the Receipt, or
 - (ii) to place plainly on it a statement of what goods or packages have been delivered,

the Warehouse operator is liable, for failure to deliver all the goods specified in the Receipt, to anyone who purchases the Receipt in good faith and for valuable consideration, whether the purchaser acquired title to the Receipt before or after the delivery of any portion of the goods.

52. Altered Warehouse Receipts

- (1) An alteration to a Warehouse Receipt shall be regarded as:
 - (a) immaterial, if the alteration does not affect ex-ante proprietary rights of the holder;
 - (b) authorized, when made with an implied or direct permission or connivance of the Warehouse operator and which renders a Warehouse operator and the perpetrator liable under the provisions of these Guidelines; or
 - (c) unauthorized but made without fraudulent intent, when made without an implied or direct permission or connivance of the Warehouse operator and which render the Warehouse operator liable according to the terms of the Receipt, as they were before alteration.

53. Right of Purchasers of Altered Receipts against Warehouse Operator

- (1) A purchaser of a Warehouse Receipt for value without notice of alteration shall acquire the same proprietary rights against the Warehouse operator which the purchaser would have acquired if the Receipt had not been altered at the time of purchase.
- (2) A purchaser of a Warehouse Receipt shall be regarded to have had notice of alteration, if before the purchase of the Warehouse Receipt, he or his agent took part in or influenced the alteration of the said Warehouse Receipt.
- (3) A purchaser of an altered Warehouse Receipt who has been found or who could be reasonably imputed with possession of notice of alteration commits an offence and shall be proceeded against under Guideline 70(2) (g) in the same footing with the operator.
- (4) Where a blank in a tangible negotiable Warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized.

54. Lost or Destroyed Warehouse Receipts

- (1) In the case of lost or destroyed Warehouse Receipts, a new Receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the Receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate Receipt issued in lieu of a lost or destroyed Receipt, may be issued upon compliance with this Guideline.
- (2) Before issuing such new or duplicate negotiable Receipt the Warehouse operator shall require the depositor or other person applying therefor to make and file with him:-
 - (a) An affidavit showing
 - (i) that the applicant is lawfully entitled to the possession of the original Receipt
 - (ii) that he has not negotiated or assigned it,
 - (iii) how the original Receipt was lost or destroyed, and
 - (iv) if lost, that diligent effort has been made to find the Receipt without success, and
 - (b) A bond in an amount double the market value, at the time the bond is given, of the goods represented by the lost or destroyed Receipt. Such bond shall be in a form approved for that purpose by the Commission, shall be conditioned to indemnify the Warehouse operator against any loss sustained by reason of the issuance of such

Receipt, and shall be executed by the depositor as principal and by a corporate surety licensed to do business in Ghana, as surety.

- (3) Upon Receipt of such affidavit and bond, the Warehouse operator shall send copies thereof to the Commission.
- (4) The original affidavit and bond shall be retained by the Warehouse operator for at least seven (7) years after the duplicate Receipt is cancelled.

55. Duplicate Receipts

- (1) No more than one Receipt shall be issued in respect of the same goods except in case of a lost or destroyed Receipt, in which case the new Receipt, if one is given, shall bear the same date as the original and shall be plainly marked on its face "duplicate".
- (2) A Warehouse operator is liable for damage caused by the Warehouse operator's failure to observe sub-guideline55 (1) in respect of any person who purchases the subsequent Receipt for valuable consideration believing it to be an original, even though the purchase is made after the delivery of the goods by the Warehouse operator to the holder of the original Receipt.
- (3) A Receipt on the face of which the word "duplicate" is plainly marked is a representation and warranty by the Warehouse operator that it is an accurate copy of a Receipt properly issued and not cancelled at the date of the issue of the duplicate.
- (4) A duplicate Receipt issued shall have the same standing as the original and shall not impose upon the Warehouse operator any additional liability.

56. Negotiable Receipt to State Charges for which Lien Claimed

If a negotiable Receipt is issued for goods, the Warehouse operator has no lien on the goods except for charges for storage of those goods after the date of the Receipt, unless the Receipt expressly enumerates other charges for which a lien is claimed.

57. Negotiable Receipt Conclusive Proof

- (1) In the hands of a holder who has purchased it for valuable consideration, a negotiable Receipt is conclusive evidence of the **receipt** by the Warehouse operator of the goods described in it as against the Warehouse operator and any person signing it on the Warehouse operator's behalf or any person claiming through him.
- (2) Sub-guideline56 (1) applies, even though the goods or some part of them may not have been received, unless the holder of the negotiable Receipt has actual notice at the time of receiving it that the goods had not in fact been received.

58. Negotiation of Negotiable Receipts by Delivery and by Endorsement

- (1) A negotiable Receipt may be negotiated by delivery in either of the following cases if
 - (a) by the terms of the Receipt, the Warehouse operator undertakes to deliver the goods to the bearer;

- (b) by the terms of the Receipt, the Warehouse operator undertakes to deliver the goods to the order of a named person, and that person or a subsequent endorsee has endorsed it in blank or to bearer.
- (2) A negotiable Receipt may be negotiated by the bearer endorsing it to a named person if;
 - (a) by the terms of a negotiable Receipt, the goods are deliverable to bearer, or
 - (b) a negotiable Receipt has been endorsed in blank or to bearer.
- (3) Where a negotiable Receipt is endorsed under sub-guideline 58 (2), the Receipt must subsequently be negotiated by the endorsement of the endorsee or a subsequent endorsee or by delivery if it is again endorsed in blank or to bearer.
- (4) If, by the terms of a negotiable Receipt, the goods are deliverable to the order of a named person, the Receipt may be negotiated by the endorsement of that person.
- (5) An endorsement under sub-guideline(4) may be in blank, to a bearer or to a named person, and if the endorsement is to a named person the Receipt may be again negotiated by endorsement in blank, to a bearer or to another named person, and subsequent negotiation may be made in similar manner.

59. Persons Capable of Negotiating a Warehouse Receipt

A negotiable Warehouse Receipt may be negotiated by any person in possession of the same irrespective of the manner the Warehouse Receipt was acquired, if, by the terms of the Receipt, the Warehouse operator undertakes to deliver the goods to the order of such person or if at the time of negotiation the Receipt is in such a form that it may be negotiated by delivery.

60. Rights in Negotiated Receipts

- (1) A person to whom a negotiable Receipt is duly negotiated shall acquire all of the following:
 - (a) such title to the goods as the person negotiating the Receipt to him possessed or had the ability to convey to a purchaser in good faith for value;
 - (b) such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the Receipt possessed or had the ability to transfer to a purchaser in good faith and for valuable consideration;
 - (c) the benefit of the obligations of the Warehouse operator to hold possession of the goods for the person according to the terms of the Receipt as fully as if the Warehouse operator had contracted directly with him; and
 - (d) all rights accruing under the law of agency, estoppel, including the right to goods delivered to the Warehouse operator after the Warehouse Receipt was delivered.
- (2) The negotiation of a Warehouse Receipt in good faith and the acquisition of title by a person to whom a Warehouse Receipt has been negotiated, shall create a direct obligation to the Warehouse operator to hold possession of the goods for such person according to the terms of the Receipt as fully as if the Warehouse operator had contracted directly with him.

61. Warranties on Negotiation of Warehouse Receipt.

- (1) A person who, for valuable consideration, negotiates or transfers a Receipt by endorsement or delivery, including one who assigns for valuable consideration, a claim secured by a Receipt, unless a contrary intention appears, warrants the following:-
 - (a) that the Receipt is genuine;
 - (b) that the person has a legal right to negotiate or transfer it;
 - (c) that the person has no knowledge of any fact that would impair the validity of the Receipt;
 - (d) that the person has a right to transfer the title to the goods; and that the goods are merchantable or fit for a particular purpose when those warranties would have been implied, if the contract of the parties had been to transfer without a Receipt the goods represented by it.
- (2) A collecting bank or other intermediary known to be entrusted with Warehouse receipts on behalf of another or with the collection of a bill of exchange or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or bill of exchange to be collected.

62. Liability of Endorser

The endorsement of a Receipt does not make the endorser liable for any failure on the part of the Warehouse operator or previous endorsers of the Receipt to fulfill their respective obligations.

63. Validity of Negotiation of Receipt

The validity of the negotiation of a Receipt is not impaired by the fact that:-

- (a) The negotiation was a breach of duty on the part of the person making the negotiation;
or
- (b) The owner of the Receipt was induced by fraud, mistake or duress to entrust the possession or custody of the Receipt to that person, the person to whom the Receipt was negotiated, or a person to whom the Receipt was subsequently negotiated, paid value for it without notice of the breach of duty, or fraud, mistake or duress.

64. Negotiation of Receipt Defeats Lien of Seller of Goods

- (1) When a negotiable Receipt has been issued for goods, no seller's lien or right of 'stoppage in transit' defeats the rights of a purchaser for value in good faith to whom the Receipt has been negotiated, whether the negotiation is prior or subsequent to the notification to the Warehouse operator who issued the Receipt of the seller's claim to a lien or right of 'stoppage in transit.'
- (2) The Warehouse operator shall not deliver the goods to an unpaid seller unless the Receipt is first surrendered for cancellation.

65. Transfer of a Negotiable Receipt without Endorsement

When a negotiable Receipt is transferred for valuable consideration by delivery and the endorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to

compel the transferor to endorse the Receipt unless a contrary intention appears, and the negotiation takes effect as of the time when the endorsement is made.

66. Subsequent Negotiation

When a person:-

- (a) having sold, mortgaged or pledged goods that are in a Warehouse and for which a negotiable Receipt has been issued, or
- (b) having sold, mortgaged or pledged a negotiable Receipt representing goods, continues in possession of the negotiable Receipt,

the subsequent negotiation of it by that person under a sale or other disposition of it to a person receiving it in good faith, for valuable consideration and without notice of the previous sale, mortgage or pledge, has the same effect as if a previous purchaser of the goods or Receipt had expressly authorized the subsequent negotiation.

67. Rights acquired in the Absence of Due Negotiation

A Warehouse Receipt may be transferred without negotiation if transferred by:-

- (a) the holder to another person under a separate arrangement or agreement; or
- (b) by order of a court.

68. Transfer of Goods Covered by Non-negotiable Receipt

Goods covered by a non-negotiable Receipt may be transferred by the holder by delivery to a purchaser or donee or a transfer of the goods in writing executed by the holder, but the transfer does not affect or bind the Warehouse operator until the Warehouse operator is notified in writing of it.

69. Rights of Person to Whom Goods Transferred

- (1) A person to whom the goods covered by a non-negotiable Receipt are transferred acquires, as against the transferor:-
 - (a) the title to the goods, and
 - (b) the right to deposit with the Warehouse operator the transfer or duplicate of it or to give notice in writing to the Warehouse operator of the transfer.
- (3) The transferee acquires the benefit of the obligation of the Warehouse operator to hold possession of the goods for the transferee according to the terms of the Receipt:-
 - (a) upon deposit of the transfer of the goods, or
 - (b) upon giving notice in writing of the transfer and on the Warehouse operator having a reasonable opportunity of verifying the transfer.

PART V - OFFENCES AND PENALTIES

70. Offences and Administrative Penalties

- (1) Any Warehouse operator or any officer, agent or servant of a Warehouse operator who:
 - (a) Removes, delivers, directs, assists, or permits any person to remove, or deliver any goods from any Warehouse for which Receipts have been issued and are outstanding without receiving and cancelling the Receipt issued thereof;

- (b) Sells, encumbers, transfers, or in any manner removes or permits to be transferred, or removed from a licensed Warehouse any goods received for deposit for storage, conditioning, or handling for which tickets have been issued without written approval of the holder of the ticket and such transfer shall be shown on the individual depositor's account and the inventory records of the Warehouse operator;
- (c) Knowingly accepts for storage any goods destined for human consumption that has been contaminated with an agricultural pesticide or filth rendering-it unfit for human consumption, if the goods are commingled with any uncontaminated goods; and
- (d) Delivers goods out of the possession of such Warehouse operator , knowing that a negotiable Receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and not canceled, without obtaining the possession of such Receipt at or before the time of such delivery,
- (e) Deposits goods to which he has no title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable Receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage.
- (f) Knowingly delivers goods held in the Warehouse without lawful excuse to any person not authorized by the depositor or any transferee or by the holder of any Warehouse receipt covering such goods

shall be liable to pay to the Commission an administrative penalty of five hundred penalty units

- (2) Any Warehouse operator or any officer, agent or servant of a Warehouse operator who:-
 - (a) Issues a negotiable Warehouse Receipt without a valid licence issued by the Commission;
 - (b) Issues a Receipt for any goods that are not in the operator's Warehouse at the time the Receipt is issued;
 - (c) Issues a Receipt or ticket in excess of the amount of goods held in the operator's licensed Warehouse to cover the Receipt;
 - (d) Issues a Receipt showing a grade or description different from the grade or description of the goods deposited;
 - (e) Issues a duplicate Receipt without substantially following the procedure for issuing duplicate Receipt and plainly placing upon the face thereof the word "Duplicate";
 - (f) Issues or aids in issuing negotiable Receipt for deposited goods owned by the Warehouse operator and omits to state any fact with respect to ownership;
 - (g) issues or aids in fraudulently issuing a Receipt for goods knowing that it contains any false statement;
 - (h) issues or aids in issuing a duplicate or additional negotiable Receipt for goods knowing that a former negotiable Receipt for the same goods or any part of them is outstanding and not canceled, without plainly placing upon the face thereof the word "duplicate" except in the case of a lost or destroyed Receipt;

- (i) negotiates a Warehouse Receipts which does not confer legal title and or without authorization from legal owner

shall be liable to pay to the Commission an administrative penalty of 1,000 penalty units .

- (4) Any Warehouse operator or any officer, agent or servant of a Warehouse operator who
 - (a) Terminates storage of a goods without giving seven (7) days' written notice to the Depositor; or
 - (b) Knowingly compromises the use of equipments to deceive in weigh, grade, sampling and documentation, shall be liable to pay a penalty of 500 penalty units
- (5) Any person who obstructs a Warehouse Inspector or any other authorized person in the exercise of the power conferred upon him by these Guidelines as Warehouse Inspector or who neglects or refuses to produce to the Warehouse Inspector or such authorized person any books, records, information or anything which the Inspector or the authorized person may request to be produced for inspection, shall be liable to pay to the Commission an administrative penalty of five hundred penalty units.
- (6) Where an offence under this Guideline is committed by a company, every person, who at the time the offence was committed, was in charge of the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
- (7) Provided that nothing contained in this sub-guidelines shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.
- (8) The Commission may impose an administrative penalty of 300 penalty units for a breach of a non-criminal nature under these Guidelines for which a specific penalty is not provided.

PART VI - MISCELLANEOUS PROVISIONS

71. Revocation or Termination of Licence not to affect Receipts

The revocation or termination of a licence under these Guidelines shall not affect the validity of Receipts issued under the licence, and the Warehouse operator will continue to comply with these Guidelines with regard to valid Receipts so far issued.

72. Creation of Statutory Lien

- (1) When a depositor stores goods with the Warehouse Operator, the depositor has a first priority lien on the goods or the proceeds there from or on goods owned by the Warehouse Operator if the depositor has written evidence of ownership disclosing a storage obligation. The lien arises at the commencement of the storage obligation. The lien terminates when the storage liability of the Warehouse Operator to the depositor terminates.
- (2) The lien created under this Guideline shall be preferred to any lien or security interest in favor of any creditor of the Warehouse operator, regardless of whether the creditor's lien or security interest attached to the goods or proceeds before or after the date on which the depositor's lien attached under sub-guideline(1) of this Guideline.

- (3) A depositor who claims a lien under this sub-guideline⁷² (1) of this Guideline need not file any notice of the lien in order to perfect the lien.
- (4) The lien created by sub-guideline(1) of this Guideline is discharged, except as to the proceeds there from and except as to the goods owned by the Warehouse Operator upon sale of the goods by the Warehouse Operator to a buyer in the ordinary course of business.

73. Power of Commission to make Guidelines

The Commission may issue guidelines as it considers necessary for carrying out the provisions of these Guidelines:

- (a) prescribing the procedures and-limits of negotiation of a negotiable Warehouse Receipt;
- (b) prescribing a standard format of a Warehouse Receipt;
- (c) determining the requirements for allowing a Warehouse operator to sell or dispose of goods, which are perishable or hazardous;
- (d) determining the manner of keeping depositors goods in a Warehouse
- (e) prescribing the classification of Warehouses;
- (f) determining goods which may be commingled in the Warehouse;
- (g) Determining ways of recovering the Warehouse operator's lien by sale of goods;
- (h) prescribing conditions for the licensing of the Warehouse;
- (i) prescribing conditions that may be inscribed on the Warehouse licence;
- (j) prescribing Warehouse licence application procedure;
- (k) prescribing Warehouse licence application appeal procedure;
- (l) prescribing the qualifications of the employees that may be employed by a Warehouse operator,
- (m) prescribing fees that may be paid for Warehouse licensing;
- (n) these Guidelines as the Commission may prescribe.

74. Interpretation

- (1) In these Guidelines, unless the context otherwise requires: -

"Bin" shall mean a bin, tank, interstice, or other container in a Warehouse in which bulk grain may be stored;

"Commingle" means the binning and or storage of goods by class, under circumstances other than identity preserved;

"Commission" means the Securities and Exchange Commission established by Section 1 of the Securities Industry Act, 2016 (Act 929)

"Conditioning" includes the drying or cleaning of goods;

"Delivery" means voluntary transfer of possession from one person to another.

"Depositor" means any person who delivers goods in a Warehouse for storage, handling, or who is the owner or legal holder of an outstanding Warehouse Receipt, or who is lawfully entitled to possession of the goods;

"Duly Negotiated" means negotiated in the manner stated in Guideline 58 to a holder that purchases a Warehouse receipt in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

"Electronic form" with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, microfilm, computer generated microfiche or similar device;

"Endorsee" means the person to whom the Warehouse Receipt is negotiated;

"Endorsement" means signing on the Warehouse Receipt by the depositor or holder of the Warehouse Receipt for the purpose of its negotiation;

"Exchange traded Warehouse receipts" means Warehouses that are approved by a regulated Ghanaian commodity exchange for the storage and handling of goods subject to contracts traded on such exchange;

"Fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit;

"Goods" means all tangible movable goods (other than actionable claims, money and securities), whether fungible or not; and for the purposes of the Guidelines includes, but not limited to, agricultural goods;

"Grade" means the quality standard of any goods as notified as grade designation by the Ghana Standards Authority established by Section 1 of the Standards Authority Act 1973 (NRCD 173) or any other law for the time being in force;

"Holder" means:

- a) in relation to a negotiable Receipt, a person who has possession of the Receipt and a right of property in it and,
- b) in relation to a non-negotiable Receipt, a person named in it as the person to whom the goods are to be delivered or the assignee of that person;

"Identity Preserved" means the handling of goods in such a manner that guarantees the return of the quantity and quality of the goods to the depositor.

"Licence" means a licence issued under the Guidelines and includes any renewals and amendments thereof except where the context requires otherwise;

"Licensed Warehouse" means any Warehouse for which the Commission, subject to other terms and requirements of the Guidelines, has issued a licence;

"Negotiable Warehouse Receipt" means a Warehouse Receipt which states that the goods specified in it will be delivered to bearer or to the order of a named person;

"Non-negotiable Warehouse Receipt" means a Warehouse Receipt which states that the goods specified in it will be delivered to the depositor or to another named person;

"Person" means any individual, corporation, two or more persons having a joint or common interest, or other legal or commercial entity.

"Purchase" includes taking by sale, discount, negotiation, mortgage pledge, gift, or other voluntary transactions creating an interest in goods;

"Purchaser" includes mortgagee and pledgee;

"Scale Weight Ticket" hereinafter referred to as "ticket", means Goods Received Note, a load slip or other evidence, other than a Receipt, given a depositor by a Warehouse operator licensed under the Guidelines, upon initial delivery of the goods to the Warehouse. A ticket shall not be negotiable.

"Station" means a Warehouse located not more than three kilometers from the central office of the Warehouse, for which a Warehouse licence may be issued, listing two or more stations on the same licence; ;

"Warehouse operator" means any person who engages in the business of operating a Warehouse for receiving, storing, handling of goods for compensation and includes the agent or employee the scope of whose actual or apparent authority renders such person to exercise rights or become liable under the Guidelines;

"Warehouse Receipt" means an acknowledgement in writing or in electronic form issued by a Warehouse operator or his duly authorized representative of the Receipt for storage of goods not owned by the Warehouse operator;

"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;

"Warehousing business" means the Business of maintaining Warehouses for storage of goods and issuing negotiable Warehouse Receipts;