

SECURITIES AND EXCHANGE COMMISSION



Ensuring Investor Protection

GUIDELINES FOR PRIVATE FUNDS

**GUIDELINE NUMBER:
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SECURITIES INDUSTRY ACT 2016 (ACT 929)

SECURITIES INDUSTRY PRIVATE FUNDS GUIDELINES

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In the exercise of the powers conferred on the Commission by Section 209 of the Securities Industry Act 2016, (Act 292), these guidelines are made thisday of2018

PART ONE

Interpretation

1. Definitions

In these Guidelines,

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

“affiliate” in relation to any Company means any subsidiary, parent or holding company and any subsidiary of such holding company;

“close relation” means a spouse, parent, sibling, child, father-in-law, son-in-law, daughter-in-law, mother-in-law, brother-in-law, sister-in-law, grand child or spouse of a grandchild;

“collective investment scheme” has the meaning given in section 216 of the Act;

“Commission” means the Securities and Exchange Commission established by the Act;

“Companies Act” means the Companies Act, 1963 (Act 179);

“company” means a company formed and registered under the Companies Act;

“company’s regulations” means the regulations made by the company pursuant to section 19 of the Companies Act;

“custodian” means the person to whom the assets of the private fund are entrusted for safekeeping;

“custodian agreement” means the agreement between the private fund and custodian of the private fund relating to the appointment and functions of the custodian;

“formation documents” of a private fund means its Regulations, management contract and custody agreement;

“fund” means a business arrangement which pools together capital raised from investors for the purpose of investment with a view to generating a pooled return for those investors;

gender: any reference to a particular gender shall include a reference to the other and vice-versa

“hedge fund” has the meaning given in section 216 of the Act and includes such other investment objectives as may be specified and described in the offer document subject to the approval of the Commission;

“investor” includes

- (a) a unit holder in respect of a unit trust; and
- (b) a shareholder in respect of a mutual fund;

“licensable activity” means a business activity in respect of which a person is required to be licensed under the Act or these Guidelines;

“independent director” means a director who –

- (a) is not a substantial or majority shareholder of the company;
- (b) is not associated with any majority or substantial shareholder of the company, whether through business, family or personal relationships, political affiliation or in any other way;
- (c) within the last five years;
- (d) has not been a director of the company for more than nine years;
- (e) is not affiliated to an advisor or consultant to the company or a member of the company’s senior management or a significant customer or supplier of the company or with a not-for-profit entity that receives significant contributions from the company or,
- (f) has not had any business relationship with the company (other than service as a director) within the last three years;
- (g) is not a significant supplier or customer of the company;
- (h) is not employed by a public company at which an executive officer of the company serves as a director;
- (i) is not a member of the immediate family of any natural person described above; or has not had any of the relationships described above with any affiliate of the company;
- (j) is free from any other relationship with the company which may interfere with his or her capacity to act in an independent manner.

For the purpose of the definition of an independent director, the term “company” shall, in the case of a company that is a subsidiary of another company, include the parent company and any affiliated company.

“management contract” means the agreement between the private fund and the manager relating to the appointment and functions of the manager;

“manager” means, in relation to a private fund that is not self-managed, the management company appointed by the Board of directors of the private fund to manage the private fund under a management contract, and in relation to a private fund that is self-managed, means that company;

“offer document” has the meaning given in clause 44;

“offer to the public” has the meaning given to it in clause 36;

“private equity fund” has the meaning given in section 216 of the Act and includes such other investment objectives as may be specified and described in the offer document subject to the approval of the Commission;

“private fund” means the person carrying on the business of a hedge fund, a private equity fund or a venture capital fund, as the case may be;

“qualified investor” has the meaning given in clause 38;

“Regulations” means the Regulations made under the Act but for the time being Unit Trust and Mutual Fund Regulations, 2001, L. I 1695

“representative”, in relation to a company licensed under the Act or these Guidelines, means an individual in the direct employment of, or acting for, or by arrangement with, a private fund or manager of a private fund to which he is accredited, who performs for that person any activity for which the private fund or manager is licensable, other than work ordinarily performed by accountants, clerks or cashiers, whether the remuneration is by way of salary, wages, commission or otherwise; and includes any director or officer of the private fund or manager who performs for that person any licensable activity;

“scheme particulars” means particulars of a private fund prepared and published in accordance with the Regulations.

“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 person who is in a position to control the composition of a majority of the Board of directors of a company

“venture capital fund” has the meaning given in section 216 of the Act, and includes such other investment objectives as may be specified and described in the offer document subject to the approval of the Commission.

2. Determination of “fit and proper”

- (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 licensable activity 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, representatives and all other key personnel, and any substantial shareholder of the company.
- (2) In considering whether a person is a fit and proper person, the Commission may in addition:
 - (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 the securities industry;

- (ii) was a director of a market operator 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 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 purpose of the licensable activity;
 - (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; 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 these Guidelines “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

Licensing requirements

3. Private funds

- (1) A person shall not carry on, or purport to carry on, the business of a hedge fund, a private equity fund or a venture capital fund except under and in accordance with a licence granted for that specified purpose by the Commission under the Act.
- (2) The licence referred to in sub-clause (1) shall be granted only to:
- (a) a company incorporated under the Companies Act, and which is determined by the Commission to be a fit and proper person to be licensed under the Act as a hedge fund, private equity fund or venture capital fund; or
 - (b) an external company which is a fit and proper person with a place of business in the Republic within the meaning of Chapter V of the Companies Act, 1963 (Act 179).
- (3) Any person who contravenes sub-clause (1) is liable to pay to the Commission an administrative penalty of four thousand five hundred penalty units.

4. Managers of private funds

- (1) A person shall not act or purport to act as a manager of a hedge fund, private equity fund or a venture capital fund except under and in accordance with a licence granted for that specified purpose by the Commission under these Guidelines.

- (2) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, grant or renew a licence to a person to act as manager of a specified private fund or funds.
- (3) The Commission shall refuse to grant or renew a licence under sub-clause (2) unless:
 - (a) the applicant is a company;
 - (b) the applicant is a fit and proper person to be licensed as the manager of a private fund;
 - (c) the applicant has such minimum paid-up capital as may be determined by the Commission from time to time; and
 - (d) the applicant will be able, if licensed, to comply with financial resources Guidelines.
- (4) A licence granted under sub-clause (2) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the manager, amend, suspend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.
- (5) The Commission may require an applicant to supply it with any further information that it considers necessary in relation to the application.
- (6) A licence is valid for one year and is renewable on an annual basis provided that the Commission may specify a schedule of licence renewals that will permit for licences to be renewed on a calendar year basis.
- (7) The Commission shall not refuse to grant or renew a licence without first giving the applicant or the holder of the licence an opportunity of being heard.
- (8) The fee paid for the processing of a licence in respect of an application is not refundable.
- (9) Any person who contravenes sub-clause (1) is liable to pay to the Commission an administrative penalty of four thousand five hundred penalty units.

5. Representatives

- (1) A person shall not act or purport to act as a representative of a private fund or manager of a private fund except under and in accordance with a licence granted for that purpose by the Commission under these Guidelines.
- (2) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to act as a representative of a private fund, or a manager licensed under clause 4(2), to which he is accredited.
- (3) The Commission shall refuse to grant a representative's licence under sub-clause (2) unless the individual satisfies the Commission that he is a fit and proper person to be so licensed in respect of the licensable activity.
- (4) A licence granted under sub-clause (2) shall be subject to the condition specified in sub-clause (5) and to any other reasonable conditions as the Commission may impose.
- (5) It shall be a condition of a licence granted under sub-clause (2) that the licensed representative concerned shall:
 - (a) at all times keep the Commission informed of particulars of his contact details including, his residential address, telephone and facsimile numbers and electronic mail address; and
 - (b) inform the Commission of any change in the particulars within fourteen (14) days after the change takes place.
- (6) Any person who contravenes sub-clause (1) is liable to pay to the Commission an administrative penalty of five hundred penalty units.

6. Custodians

- (1) A person shall not act or purport to act as a custodian of a private fund except under and in accordance with a licence granted for that purpose by the Commission under the Act.

- (2) Any person who contravenes sub-clause (1) is liable to pay to the Commission an administrative penalty of four thousand five hundred penalty units.

PART THREE

Establishment and operation of private funds

7. Applications for licence or renewal

- (1) An application to the Commission for a licence or the renewal of a licence in respect of a private fund shall indicate its appointed fund manager at the time of application.
- (2) The application shall be made in such manner as the Commission may prescribe and:
- (a) shall state whether the application is in respect of a hedge fund, a private equity fund or a venture capital fund;
 - (b) shall be accompanied by the following:
 - (i) formation documents;
 - (ii) offer document;
 - (iii) manager's latest audited report;
 - (iv) custodian's latest audited report; and
 - (v) evidence of payment of the prescribed fee
- (3) At any time after receiving an application and before determining it, the Commission may require the applicant to provide it with such further information as it considers necessary.
- (4) Information to be provided to the Commission under these Guidelines shall be in such form and verified in such manner as the Commission may direct.
- (5) The Commission shall not refuse to grant or renew a licence without first giving the applicant or holder of a licence an opportunity of being heard.
- (6) The fee paid for the processing of an application is not refundable.

8. Grant or renewal of licence

- (1) The Commission may, on an application made in accordance with clause 7, grant or renew a licence in respect of a private fund under the Act where:
- a. the private fund is a fit and proper person to be licensed as a private fund;
 - b. the private fund meets and continues to meet the minimum financial requirements determined by the Commission generally or specifically;
 - c. the private fund will be able, if licensed, to comply with any financial resources Guidelines;
 - d. the private fund complies with the requirements of these Guidelines;
 - e. the Commission has been provided with a copy of the formation documents, together with certification by a lawyer to the effect that the applicant complies with the application requirements of these Guidelines; and
 - f. the private fund satisfies the requirements of sub-clauses (2) to (4).
 - g. it has as its principal object the provision of risk capital to small, medium and large size businesses;
 - h. it has an initial minimum fund size of ten million (10,000,000) Ghana Cedis;
 - i. it has a Board of directors with at least one independent director;
 - j. it has appointed an auditor who is a member of a recognized professional Institute and
 - k. it has appointed an independent professional, such as a member of the Ghana Bar Association or similar professional body, as a Company Secretary.

- (2) The private fund shall have a separate manager (except where the Commission authorizes a self-managed private fund), and shall provide the Commission with a copy of the investment management agreement. Where the private fund is a hedge fund, it shall also appoint a custodian who shall be independent of the manager.
- (3) The manager and the custodian shall each be licensed by the Commission in respect of their respective functions.
- (4) The name of the private fund shall not be undesirable or misleading.
- (5) A licence granted by the Commission shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the private fund, amend, suspend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.
- (6) The licence issued under these Guidelines shall remain in force for the life of the Fund renewable annually until it is revoked by the Commission.

9. Custody of private fund assets

(1) The assets of:

- (a) a hedge fund shall be held by a custodian on behalf of the investors.
- (b) a private equity fund or a venture capital fund may be held by a custodian on behalf of the investors

10. Valuation

- (1) The fund shall have a valuation policy to assess the value of investments.
- (2) A private equity fund or venture capital fund shall adopt a valuation methodology which is in line with the International Private Equity Valuation Guidelines
- (3) Sufficient disclosure shall be made to allow investors to have a clear understanding of how the portfolio is valued and priced.

11. Changes of manager or custodian

- (1) The Board of a private fund shall give written notice to the Commission of any proposal to replace the custodian of the private fund.
- (2) The Board of a private fund shall give written notice to the Commission of any proposal to replace the manager of the private fund.
- (3) Neither the manager nor the custodian shall be replaced except by persons who satisfy the requirements of these Guidelines.

12. Avoidance of exclusion clauses

Any provision in the formation documents of a private fund shall be null and void in so far as it would have the effect of exempting the manager or custodian from liability for any failure to exercise due care and diligence in the discharge of their functions in respect of the private fund.

13. Revocation of licence

- (1) The Commission may revoke a licence granted under clause 8 if it determines:
 - (a) that the private fund is no longer a fit and proper person to hold a private fund licence;
 - (b) that any of the other requirements for the granting of a licence are no longer satisfied;
 - (c) that it is undesirable in the interests of the investors or potential investors that the private fund should continue to be licensed; or
 - (d) without prejudice to sub-clause (c), that the manager or custodian of the private fund has contravened any provisions of the Act, of any Guidelines made under the Act or, in purported compliance with any such provision, has furnished the Commission with false, inaccurate or

misleading information or has contravened any prohibition or requirement imposed under the Act or these Guidelines.

- (2) For the purpose of sub-clause (1)(a) or (1)(b), the Commission may take into account any matter relating to the private fund, the manager or custodian, a director or substantial shareholder of the manager or custodian or any person employed by or associated with the manager or custodian in connection with the private fund.
- (3) The Commission may revoke the licence of a private fund at the request of the Board of directors of the private fund; but it may refuse to do so if it considers that any matter concerning the private fund should be investigated as a preliminary procedure to a decision on the question of whether the licence should be revoked or that revocation would not be in the interests of the investors.
- (4) Without prejudice to the above, the Commission may revoke the licence of the Fund under section 122 of Act 929.

14. Representations against revocation

- (1) Where the Commission intends to revoke a licence under clause 13 other than at the request of the Board of directors of the private fund, it shall give the Board of directors of the private fund written notice of its intention to do so, stating the reasons for which it proposes to act subject to sub-clause (2).
- (2) A person on whom a notice is served under sub-clause (1) may within 21 days of the date of service make written representations to the Commission and, if desired, oral representations to the Commission.
- (3) The Commission shall have regard to any representations made in accordance with sub-clause (2) in determining whether to revoke the licence.

15. Winding up

A private fund shall be wound up in accordance with the provisions of the Companies Act, 1963 (Act 179) and any Guidelines made under the Act

16. Directives by the Commission

- (1) If it appears to the Commission that:
- (a) the private fund is no longer a fit and proper person to hold a private fund licence;
 - (b) any other requirement for the licensing of a private fund is no longer satisfied;
 - (c) the exercise of the power conferred by these Guidelines is desirable in the interest of investors or potential investors in the private fund; or
 - (d) the manager or custodian of the private fund has contravened any provision of the Act or these Guidelines or has furnished the Commission with false, inaccurate or misleading information, or has contravened any prohibition or requirement imposed under the Act or these Guidelines,

the Commission may give a directive requiring the Board of directors of the private fund to wind it up by such date as is specified in the directive or, if no date is specified, as soon as is practicable.

PART FOUR

Directors of private funds

17. Directions by directors

- (1) Subject to the Companies Act the directors of a private fund shall determine the investment and general policies of the company and shall give directions to the manager.
- (2) A director shall not give a direction which is likely to make the manager act in contravention of the Act or of these Guidelines and the director shall act in accordance with the Regulations of the private fund, the management agreement and these Guidelines.
- (3) A director who contravenes sub-clause (2) is liable to pay to the Commission an administrative penalty of five hundred penalty units.

18. Duties of directors

(1) The directors of a private fund shall take reasonable care:

- (a) to ensure that the property of the private fund is managed by the manager in accordance with the Act, these Guidelines and the Regulations of that private fund;
- (b) that the manager performs its functions and discharges its duties under the Act and these Guidelines; and
- (c) that the custodian performs its functions and discharges its duties under the Act and these Guidelines.

PART FIVE

Managers of private funds

19. Appointment of manager

- (1) Subject to sub-clause (2) every private fund shall appoint as a manager a person that has been licensed by the Commission to act as a manager of collective investment schemes.
- (2) The Commission may in its discretion permit a private fund to be managed by its own Board of directors (a self-managed fund) provided that the Board performs the functions of a manager, and provided always that such directors shall be jointly bound and responsible to perform such functions.
- (3) Where the Commission permits a private fund to be self-managed under sub-clause (2), references in these Guidelines to a manager or the directors of a manager shall be deemed to include references to the directors of the self-managed private fund.
- (4) The directors of a self-managed private fund are prohibited from dealing with the private fund.

- (5) The Regulations of a self-managed private fund shall include the following provisions:
- (a) that investors may convene a meeting and, by way of an ordinary resolution, remove any director considered no longer fit and proper to manage the assets of the private fund; and
 - (b) that the directors' fees and remuneration shall be fixed by the investors at a general meeting.

20. Duties of Manager

- (1) The manager of a private fund shall manage that private fund on a day to day basis, select investments to be owned by the private fund and carry out any other functions assigned to the manager under its management contract.
- (2) The manager shall in the performance of its duties act solely in the interests of investors and take reasonable care to protect those interests, and in particular shall:
 - (a) manage the property of the private fund in accordance with;
 - (i) the provisions of these Guidelines,
 - (ii) the formation documents, and
 - (iii) the most recently published offer document;
 - (b) maintain or cause to be maintained the books and records of the private fund and have prepared in the prescribed form the accounts and shall arrange for such accounts to be audited in accordance with clause 39
- (3) The manager shall have and maintain the required minimum capital and have the amount and type of financial and material resources determined by the Commission.
- (4) The manager shall:
 - (a) ensure that the assets of the private fund are clearly identified and held separately from the assets of the manager and the assets of any other funds managed by the manager;

- (b) ensure that the assets of the private fund are entrusted to a person licensed as a custodian for safe-keeping where applicable;
 - (c) ensure that the assets of the private fund are valued at regular intervals appropriate to the nature of the assets;
 - (d) ensure that officers carrying on functions that require a licence are properly licensed;
 - (e) report to the Commission any breach of the Act or these Guidelines that –
 - (i) relates to the private fund;
 - (ii) has had, has or is likely to have a materially adverse effect on the interest of investors;
as soon as practicable after it becomes aware of the breach;
 - (f) carry out or comply with any other duty, not inconsistent with the Act or these Guidelines, that is imposed on the manager by its management contract or the Regulations of the private fund;
 - (g) except in the case of a self-managed private fund have prepared in the form prescribed the accounts required by law and shall arrange for such accounts to be audited in accordance with these Guidelines; and
 - (h) ensure that it has relevant and reasonable written policy in place to cater for conflict of interest.
- (5) The manager is subject to the directions of the directors of the private fund and shall perform the normal functions performed by the managing director of a company.
- (6) Where the direction given to the manager by the directors of the private fund contravenes the Act or any other enactment, the manager shall refer the matter to the Commission for guidance.
- (7) The manager shall take all reasonable steps and exercise all due diligence to avoid the assets of the private fund being used or

invested contrary to the Regulations of the private fund or these Guidelines.

- (8) The manager shall ensure that the directors or other persons concerned with the management of its business have the necessary educational or other qualifications or experience required by the Commission having regard to the nature of the functions which, if the application is granted, the person will perform.
- (9) The manager shall act in accordance with investment policies laid down by the directors of the private fund.

21. Restrictions on investment

A private fund shall not lend to, invest in, provide finance to, act as a guarantor to or otherwise be exposed to any of its directors or companies (and its affiliates) in which any of its directors and/or their close relations hold a substantial interest.

22. Notification of Change of particulars

A manager shall notify the Commission of any change of particulars in accordance with section 120 of the Act

23. Liability of Manager

- (1) The manager shall be liable to the investors for any loss suffered by them as a result of:
- (a) any unjustifiable failure by it to perform its obligations; or
 - (b) the improper performance by it of its obligations.
- (2) The manager shall be fully responsible for the acts or omissions of any administrator, investment adviser or any other third party it appoints and shall be equally bound to comply with the provisions of these Guidelines.

24. Custodian requests to manager, administrator and investment adviser

The manager, and any administrator or investment adviser appointed by the manager shall:

- (a) at the request of the custodian forthwith supply the custodian with such information concerning the administration of the private fund as it may reasonably require; and
- (b) comply with any directions given by the custodian for the purpose of satisfying the provisions of clause 31.

PART SIX

Custodians of private funds

25. Appointment of Custodian

Every hedge fund shall appoint and shall have at all times a custodian that has been licensed by the Commission.

26. Eligibility to be a Custodian

- (1) A custodian shall be a company that is –
 - (a) a fit and proper person to be licensed as a custodian of the assets of collective investment schemes;
 - (b) independent of the private fund;
 - (c) a bank;
 - (d) a trustee company which is a subsidiary of a bank; or
 - (e) such other company as the Commission may license if the Commission is satisfied that the company has sufficient financial resources and experience necessary to enable it effectively conduct its business and to carry out its obligations as a custodian.

- (2) A custodian shall be independently audited and have such minimum issued and paid-up capital and non-distributable capital reserves as may be determined by the Commission from time to time.

27. Custody of Assets

- (1) The custodian of a private fund appointed under clause 26 shall take into its custody or put under its control all the assets of the private fund by means of an agreement between the custodian and the manager in which the custodian accepts custody of the assets of the private fund and agrees to observe the provisions of the formation documents and the custody agreement.
- (2) The custodian shall hold and deal with such assets in accordance with the provisions of these Guidelines and the formation documents of the private fund.

28. Custody agreements

- (1) An agreement for the custody and safe-keeping of the assets of the private fund shall provide for:
 - (a) the custodian accepting custody of such assets;
 - (b) the custodian agreeing to observe the provisions of the Regulations and offer document of the private fund and of the custody agreement;
 - (c) requirements with regard to the location of assets;
 - (d) the method of holding assets;
 - (e) the standard of care to be exercised by the custodian and its responsibility for loss;
 - (f) that only the manager or the self-managed scheme may give instructions to the custodian;
 - (g) the custodian to forthwith submit a report to the Commission, and a copy thereof to the manager and private fund, in relation to any failure of the manager or private fund to meet the requirements applicable to the conduct of its business activities.

29. Duties of Custodian

- (1) The custodian shall act solely in the interests of the investors in the performance of its duties.
- (2) The custodian shall take reasonable care to ensure that the private fund is managed by the manager in accordance with the provisions of these Guidelines and the formation documents of the private fund, and shall ensure that:
 - (a) the property of the private fund is invested; and
 - (b) the private fund's income is applied, in accordance with those provisions and the formation documents.
- (3) The custodian shall:
 - (a) carry out the instructions of the manager in respect of investments unless they are in conflict with the provisions of the private fund particulars or formation documents;
 - (b) take reasonable care to ensure that any investment and borrowing limitations set out in the formation documents and the conditions under which the private fund was licensed are complied with;
 - (c) issue a report to the investors to be included in the annual report on whether in the custodian's opinion, the manager has in all material respects managed the private fund in accordance with the provisions of these Guidelines and of the formation documents; if the manager has not done so, the manner in respect of custodian responsibilities in which it has not done so and the steps which the custodian has taken in respect thereof;
 - (d) take reasonable care to ensure that the share certificates are not issued until subscription moneys have been paid;
 - (e) ensure that any registrable investments of the private fund are properly registered in its name or, with the consent of the private fund, in the name of a licensed nominee, with an

account number or other designation in the records of the custodian to establish that ownership of the assets is vested in the private fund; and

- (f) where title to investments is recorded electronically, ensure that entitlements are separately identified from those of the manager of the private fund in the records of the person maintaining records of entitlement.

30. Instructions from Manager

The custodian shall carry out the instructions of the manager unless it has reasonable cause to believe that to do so would contravene its duties under clause 29.

31. Notification of Change of particulars

A custodian shall notify the Commission of any change of particulars in accordance with section 120 of the Act

32. Liability of custodian

The custodian shall be liable to the manager and to the investors for any loss suffered by them as a result of:

- (a) any unjustifiable failure by it to perform its obligations; or
- (b) any improper performance by it of its obligations.

33. Register of investors

- (1) The custodian shall establish and maintain a register of investors in the private fund in a form approved by the Commission.
- (2) The custodian may, with the prior written approval of the Commission, appoint some other person to establish and maintain the register on its behalf.
- (3) The register may be formed, in whole or in part, of records maintained by a custodian approved by the Commission.

34. Notification of contravention

The custodian shall notify the Commission in writing forthwith after becoming aware of a matter, of any failure, act or omission of the manager constituting a breach or contravention of any of the provisions of these Guidelines or of the formation documents of the private fund and of the steps taken by it to ensure that the breach or contravention is rectified as soon as is reasonably practicable.

PART SEVEN

Offer Restrictions

35. Prohibition of public offers by private funds

- (1) A private fund shall not:
 - (a) offer to the public any securities of the private fund ; or
 - (b) allot or agree to allot any securities of the private fund with a view to offering same to the public.

36. Meaning of “offer to public”

- (1) An offer to the public includes an offer to any section of the public, however selected.
- (2) An offer is not regarded as an offer to the public if it can properly be regarded, in all the circumstances, as:
 - (a) not being calculated to result, directly or indirectly, in securities of the private fund becoming available to persons other than those receiving the offer; or
 - (b) otherwise being a private concern of the person receiving it and the person making it.

37. Qualified investors

- (1) No private fund or manager shall offer or sell shares in a private fund other than to qualified investors.
- (2) For the purpose of these Guidelines, “qualified investor” means a person who has agreed in writing to be regarded as such and who meets at least one of the following criteria:
 - (a) any government, public institution including a central bank, or any other multilateral agency;

- (b) public and private pension funds, endowments, trusts and other institutional investors;
- (c) any authorised, approved or licensed securities exchange;
- (d) any market operator licensed under the Act, or any other person carrying on the business of providing investment services and regulated under the law of any foreign jurisdiction;
- (e) any authorized financial institution, or any bank which is not an authorized institution but is regulated under the law of any foreign jurisdiction;
- (f) any insurer licensed under the Insurance Act 2006 (Act 724), or any other person carrying on insurance business and regulated under the law of any foreign jurisdiction;
- (g) any licensed unit trust, mutual fund or other licensed collective investment scheme, and any authorised collective investment scheme regulated under the law of any foreign jurisdiction;
- (h) any other individual, either alone or with any of his associates on a joint account, having proven liquid assets of an amount that may be specified by the Commission;
- (i) any individual who meets criteria that may be specified by the Commission with regard to their knowledge and understanding of the capital market;
- (j) any company or partnership having proven liquid assets of an amount that may be prescribed by the Commission from time to time;
- (k) any other person declared by the Commission to be a qualified investor; and
- (l) any similarly defined investor in any other securities legislation of any foreign jurisdiction;

PART EIGHT

Audit of private funds

38. Appointment and eligibility of auditor

- (1) No private fund shall be licensed unless and until it has appointed an auditor to audit its accounts.
- (2) A person shall not be appointed as an auditor of a private fund unless he is qualified under the Companies Act, licenced as an auditor by the Institute of Chartered Accountants Ghana and is duly registered by the Commission for such purpose.
- (3) An auditor, who shall have a place of business in Ghana, shall not be eligible for appointment under sub-clause (2) if he is:
 - (a) a director, officer, employee, shareholder of the private fund, its manager or custodian ; or
 - (b) a partner or employee of such person.
- (4) A private fund shall, within fourteen days of the appointment of an auditor, notify the Commission in writing of the name and address of the auditor.
- (5) A private fund shall, within fourteen (14) days, notify the Commission in writing of the removal or resignation of an auditor.

39. Audited accounts to be submitted to the Commission

- (1) A private fund shall prepare annual financial statements which shall show a true and fair view and contain the information prescribed
- (2) The financial statements shall be submitted to the Commission not later than 4 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 as well as the management letter.

40. Auditor to report to Commission in certain cases

- (1) Where during the performance of his duties as auditor of a private fund, an auditor:
 - (a) becomes aware of any matter which in his opinion adversely affects the financial position of the private fund to a material extent;
 - (b) discovers evidence of a contravention of any requirement under the Act or these Guidelines; or
 - (c) is unable to exercise his legal powers and duties in respect of auditing a private fund,

he shall as soon as is practicable, and in any event within fourteen (14) days, report it in writing to the Commission and to the private fund.

- (2) The Commission may require the auditor to supply it with such information as it may specify.
- (3) The auditor shall send to the Board of the private fund and to the manager a copy of any written report made by him to the Commission under sub-clause (1).

41. Communication with Commission

No duty to which an auditor of a private fund is subject shall be regarded as contravened by reason of his communicating in good faith to the Commission, whether or not in response to a request from the Commission, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of the private fund and which is relevant to any function of the Commission under the Act or these Guidelines.

42. Audit of managers

Clauses 37 to 40 shall apply, so far as applicable, to the auditor of a manager of a private fund.

PART NINE

Regulations, offer document and investors' reports

43. Regulations

- (1) The Regulations of a private fund comprises the company's regulations made by the company pursuant to section 16 of the Companies Act and which Regulations shall contain the particulars specified in Schedule 1.
- (2) Any deviation in form shall not affect the validity of the company's regulations.

44. Offer document

(1) For the purposes of these Guidelines, the management contract and custody agreement shall form an integral part of the offer document and shall be annexed thereto.

(2) The offer document shall include:

(a) particulars of the matters specified in Schedule 2 in so far as such information does not appear in the formation documents; and

(b) such further information as may be necessary to enable investors to make an informed judgement as to the investment offered.

(3) The scheme particulars of a private fund as specified in the offer document shall be revised upon any significant change therein. In the case of a hedge fund, the scheme particulars shall be updated at least once every twelve months.

(4) The offer document shall be submitted to the Commission for approval prior to commencement of marketing to investors

(5) A private fund shall submit to the Commission returns of funds raised within fourteen (14) days of the close of the offer.

45. Investor's report

(1) A private fund shall submit to the Commission and circulate to investors its annual and half-yearly investors' reports.

(2) The investor's report of a private fund shall include:

(a) a statement of assets and liabilities;

(b) an income and distribution account;

(c) a capital account;

(d) a copy of the report of the auditor of the private fund on the above mentioned accounts including any qualifications made

by the auditor; in the case of half year investors' report, it may be unaudited;

- (e) a report by the manager to the investors on the activities of the private fund during the financial year; and
- (f) a copy of the report by the custodian to the investors as to the manner in which the private fund has been managed during the financial year.

(3) In addition to the list above, each half year investors' report shall include:

- (a) The total number of investors in the fund;
 - (b) Details of total commitments;
 - (c) Draw-downs and distributions;
 - (d) Changes to investment strategy (if any);
 - (e) Current and new investments;
 - (f) Detailed realization summary by investments;
 - (g) Valuation of each investments/current value of the assets of the fund;
 - (h) Statement of benefits, fees and net management fee.
- (4) The financial statements referred to in sub-clauses 2 (a), (b) and (c) shall comply with the requirements of Schedule 3.
- (5) The reports referred to in sub-clauses 2 (d), (e) and (f) shall comply with the requirements of Schedule 4.
- (6) The auditor and custodian shall deliver their reports to the manager in a reasonable time to enable it include such reports in the annual report.
- (7) All financial reports shall be prepared in accordance with international standards.

46 Transitional Provisions

A fund operating prior to the commencement date of these Guidelines shall comply with same within six months of its coming into effect.

SCHEDULE 1

Clause 43(1)

Regulations of Private Fund

1. Governing law

A statement that the company's regulations are made under and governed by the laws of Ghana.

2. Name of private fund

A statement of the name of the company being a name not inconsistent with the objectives of the private fund stated in clause 3.

3. Investment objectives

A broad description of the investment objectives to be detailed in the offer document.

If an objective of the scheme is investment in a geographic area (including the whole world) a statement of that fact (specifying the area) and, if an objective of the scheme is investment in any economic sector or in all economic sectors, a statement of that fact (specifying the sectors) and, if an objective of the scheme is investment of a particular nature, a statement of that fact (specifying the particular nature).

4. Base currency

A statement indicating in what currency the accounts of the private fund will be held.

5. Annual accounting period

State the dates in the calendar year on which the annual accounting begins and ends.

6. Annual income allocation date

State the date in the calendar year (not being later than two months after the date on which the immediately preceding annual accounting period ends) which is to be the annual income allocation date.

7. Certificates

Provision as to the form and content of and the manner of authenticating certificates evidencing title to shares.

8. No partly paid shares

A provision that no partly paid shares may be issued.

9. Manager's periodic charge

Either:

- (a) A statement authorising the private fund to make a periodic charge payable out of the assets of the fund and specifying how it should accrue and be paid with a statement of the maximum of that charge expressed as an annual percentage of the value of the assets of the fund; or
- (b) A statement authorising the private fund to make a periodic charge payable out of the assets of the fund expressed as a specified annual percentage of the value of the assets of the fund lower than the maximum referred to in sub-clause b (a) with authority to increase it to a larger percentage of that value (not greater than that maximum) but with effect only from the expiry of three months from the date on which the manager gives notice in writing to each investor entered on the register of its intention to do so.

10. Custodian's remuneration

A statement authorising the manager to make payments to the custodian by way of remuneration for its services, relieving the custodian from any obligation to account for those payments to the investors or any of them and specifying the basis on which that remuneration is to be calculated and how it should accrue and be paid.

11. Custodian's remuneration chargeable to the assets of the private fund

A statement authorising any payments to the custodian by way of remuneration for its services to be paid (in whole or in part) out of the assets of the fund.

12. Custodian's disbursements

The descriptions of any expenses or disbursements of the custodian, including the fees of the registrar (if any) or any expenses or disbursements incurred by the custodian in itself performing the functions of registrar, which are payable out of the assets of the fund.

13. Initial price

A statement of the initial offering price of shares, including a breakdown on how it has been calculated and by identifying clearly the preliminary charges or expenses.

14. Period of initial offer

A statement of the length of the period of the initial offer.

15. Investment in other collective investment schemes managed by the manager or its associate

A statement as to whether or not the assets of the fund may include units in another collective investment scheme which is managed by the manager or by another company in the same group as the manager or which is managed by any person who is controller of the manager or of which the manager is the controller.

16. Interim income allocation date

If interim allocations of income are to be authorised or required, a provision so stating and also either specifying what the interim accounting period or periods is or are to be and what the interim allocation date or dates is or are to be or stating that those matters are left to the discretion of the manager and directors.

17. Investment adviser/fund administrator

If the manager may appoint an investment adviser or fund administrator, a statement authorizing it to do so and setting out the proposed terms of such appointment.

18. Meetings

- (1) Investors may convene a meeting of a self-managed private fund and, by way of an ordinary resolution, remove any director considered to be no longer a fit and proper person to manage the assets of the fund; and
- (2) Investors shall have the right at a general meeting of a self-managed private fund to fix its directors' fees and remuneration.

SCHEDULE 2

(Clause 44)

THE OFFER DOCUMENT SHALL STATE THAT THE COMMISSION TAKES NO RESPONSIBILITY FOR THE CONTENTS OF THE OFFER DOCUMENT AND SHALL NOT BE LIABLE TO ANY ACTION IN DAMAGES AS A RESULT OF ANY OFFER DOCUMENT

OFFER DOCUMENT – INFORMATION TO BE DISCLOSED

(Note: This list is not intended to be exhaustive. The offer document is obliged to disclose all information that may be necessary for investors to make an informed judgement.)

1. Regulations of the private fund

The Regulations of the fund shall include:

- a) Name, legal form, registered address and place and date of creation of the private fund, with an indication of its duration if limited.
- b) compliance requirements of other regulatory bodies (if any);

2. Investment objectives and restrictions

Details of investment objectives and policy, size of the fund including summary of any investment and borrowing restrictions.

State the fundamental investment objectives of the private fund, target sector(s), the types of securities or other property in which the private fund proposes to invest, as well as the fund's investment process.

Explain the nature of the risks, including minimum exposure to the stock market, sensitivity to rate of interest risk, exposure to currency risk, concentration risk, investment in illiquid securities risk, etc.

If the nature of the investment policy so dictates, a warning that investment in the private fund is subject to abnormal risks, and a description of the risks involved.

3. Prohibition of public offers

A private fund is prohibited from offering its shares to the public and shall sell its shares only to qualified investors.

4. No public resale

A statement that shares acquired in the private fund by investors shall not be resold to the public and investors shall be specifically advised of this restriction at the moment of subscription.

5. Principals

The names and registered addresses of the following parties (where applicable) –

- (a) Board of directors of private fund;
- (b) the manager and its Board of directors;
- (c) the custodian;
- (d) the investment adviser;
- (e) the fund administrator;
- (f) the auditors;
- (g) the lawyers; and
- (h) any other persons to whom activities of the private fund may be outsourced and the nature of those activities.
- (i) details and track record of the core investment management team

6. Capital structure of the Fund

- a) Rights and interests attached to shares.
- b) Minimum investment (if any)
- c) A description of the different types of shares, including their currency of denomination.
- d) Form of certification.
- e) Frequency of valuation.
- f) Capital structure of the fund

7. Asset valuation and pricing

A statement of the provisions for the valuation of assets and for the pricing which must include:

- (a) the method of determining the value of the assets and liabilities of the property of the scheme and the net asset value accordingly;
- (b) the method of calculating the issue price; and
- (c) the method of pricing and the circumstances under which it may change.

7. Distribution policy

The distribution policy and the approximate dates on which dividends (if any) will be paid (if applicable).

8. Fees and charges

(1) the level of all fees and charges payable by investors, including all charges levied on subscription; and

(2) the level of all fees and charges payable by the private fund, including management fees, custodian fees and start-up expenses.

Disclosure of entitlement to brokerage or other transaction benefits of any connected persons to the private fund.

9. Custodial arrangements

Name and address of custodian.

A statement that the assets of the private fund are held by the custodian on trust for the private fund.

A statement as to the obligations of the custodian to monitor the conduct of the manager and to ensure that the interests of the investors are protected and safeguarded.

10. Taxation

Details of Ghana and principal taxes levied on the fund's income and capital, including tax, if any, deducted on distribution to investors.

11. Reports and accounts

The period of the private fund's financial year.

Particulars of what reports will be sent to investors and when.

If there are bearer units in issue, information must be given on where in Ghana reports can be obtained.

12. General information

A list of the formation documents and an address in Ghana where they can be inspected free of charge.

The date of publication of the offer document.

Information about measures to be taken to prevent money laundering and the financing of terrorism.

A statement that the manager accepts responsibility for the information contained in the offer document as being accurate as at the date of publication.

13. Termination of private fund (where applicable)

A summary of the circumstances (if any) in which the private fund can be terminated and possible exit strategies for investors

15. Liability for offer document

A person responsible for issuing this offer document is liable to pay compensation to any person who –

- (a) purchases or agrees to purchase shares in the private fund; and
- (b) suffers loss due to an untrue or misleading statement, or the omission of any facts required to be included by these Guidelines.

16 . Corporate Governance

Any corporate governance issues related to independence between the Board of the Target Company and the Board/investment team of the fund manager/Investment Adviser should be disclosed.

SCHEDULE 3

(clauses 45 (2))

CONTENTS OF FINANCIAL STATEMENTS

1. General

The financial statements must contain all the information required in this Schedule.

All accounts must contain comparative figures for the previous accounting period.

The items listed under the Statement of Assets and Liabilities, Revenue Statement, Distribution Statement, Statement of Movements in Capital Account and the Notes to the Accounts, where applicable, must be disclosed.

2. Statement of Assets and Liabilities

The following must be separately disclosed –

- (a) total value of all investments
- (b) bank balances
- (c) formation costs
- (d) dividends and other receivables
- (e) amounts receivable on subscription
- (f) bank loans and overdrafts or other forms of borrowing
- (g) instruments creating or acknowledging indebtedness
- (h) distributions payable
- (i) total value of all assets
- (j) total value of all liabilities
- (k) net asset value
- (l) number of shares in issue
- (m) net asset value per share
- (n) the total net value of all assets of the private fund less the net value of the liabilities of the fund

3. Revenue Statement

- (1) Total investment income net of withholding tax, broken down by category.
- (2) Total other income, broken down by category.

- (3) An itemised list of various costs which have been debited to the fund including –
- (a) fees paid to the manager
 - (b) remuneration of the custodian
 - (c) amortization of formation costs
 - (d) directors' fees and remuneration
 - (e) safe custody and bank charges
 - (f) auditors' remuneration
 - (g) interest on borrowings
 - (h) fees paid to investment adviser, if any
 - (i) other amounts paid to any connected persons of the private fund
 - (j) legal and other professional fees
 - (k) any other expenses borne by the private fund
- (4) Taxes
- (5) Amounts transferred to and from the capital account
- (6) Net income to be carried forward for distribution

4. Distribution Statement

- (1) Amount brought forward at the beginning of the period
- (2) Net income for the period
- (3) Final distribution per share and date of distribution
- (4) Undistributed income carried forward

5. Statement of Movements in Capital Account

- (1) Value of the private fund as at the beginning of the period

- (2) Any items resulting in an increase/decrease in value of the private fund including –
 - (a) surplus/loss on sale of investments
 - (b) exchange gain/loss
 - (c) unrealised appreciation/diminution in value of investments
 - (d) net income for the period less distribution
- (3) amounts transferred to and from the revenue account
- (4) value of the private fund as at the end of the period

6. Notes to the Accounts

The following matters shall be set out in the notes to the accounts –

- (1) Principal accounting policies
 - (a) the basis of valuation of the assets of the fund including the basis for valuation of unquoted and unlisted securities
 - (b) the revenue recognition policy regarding dividend income and other income
 - (c) foreign currency translation
 - (d) the basis of valuation of forward foreign exchange and futures contracts
 - (e) the basis of amortization of formation costs
 - (f) taxation
 - (g) any other accounting policy adopted to deal with items which are judged material or critical in determining the transactions and in stating the disposition of the scheme
- (2) Any changes to the above accounting policies and their financial effects upon the accounts should also be disclosed.

(3) Transactions with Connected Persons

The following transactions should be disclosed –

- (a) details of all transactions entered into during the period between the private fund and the manager, investment adviser, the directors of the private fund or any entity in which these parties or their connected persons have a material interest; and
- (b) name of any director of the private fund or any connected person of such a director if any such person becomes entitled to profits

from transactions in shares or from management of the private fund and the amount of profits to which such person becomes entitled.

(4) Borrowings

State whether the borrowings are secured or unsecured and the duration of the borrowings.

(5) Contingent liabilities and commitments

Details of any contingent liabilities and commitments of the scheme.

(6) If the free negotiability of any asset is restricted by statutory or contractual requirements, this must be stated.

SCHEDULE 4

(Clause 44(3))

INVESTORS' REPORTS

A: Report of the manager

The following matters shall be set out in every annual and half-yearly report of the manager –

1. The names and addresses of the following –
 - (a) the private fund;
 - (b) the manager
 - (c) the custodian;
 - (d) any investment adviser;
 - (e) any fund administrator;
 - (f) the auditor.
2. The objectives of the private fund.
3. The managers policy for achieving the objectives of the private fund.
4. A statement that the private fund is licensed under the Act.
5. A review of the private fund’s investment activities during the period to which the report relates.
6. Particulars of any significant change in the offer document made since the making of the last report by the manager and of any change in the directors of the manager.
7. A statement of the amount (if any) to be distributed to investors or accumulated in respect of the period in question.
8. A statement of the total number of the shares in existence or deemed to be in existence at the beginning of the period to which the report relates and at the end of that period.
9. A statement of the mid-market value per share of the assets of the private fund at the beginning of the period to which the report relates and at the end of that period.
10. Any other significant information which would enable investors to make an informed judgement on the development of the activities of the private fund during this period and the results of those activities as at the end of that period.

B: Portfolio statement

The following shall be set out in the portfolio statement included in the report to investors -

- (a) the changes in the investments in the assets of the private fund since the end of the preceding accounting period showing whether they are new holdings, or changes in existing holdings, and giving a description of each holding and showing the net changes in the number of shares in or the nominal value of that holding since the end of the preceding accounting period;
- (b) the total cost of purchases of investments since the last portfolio statement;
- (c) the total proceeds of sales of investments since the last portfolio statement.

Portfolio Company Reports - A fund should provide quarterly a report on each portfolio company with the following information:

- Amount initially invested in the portfolio company (including loans and guarantees);
- Any amounts invested in the portfolio company in follow-on transactions;
- A discussion by the fund manager of recent key events in respect of the portfolio company;
- Summary financial statement (quarterly and annually) for each portfolio company

C: Comparative table

The following matters shall be set out in the comparative table included in the report of the company –

- (a) a comparative table covering the last three financial years and including, for each financial year, at the end of the financial –
 - (i) the total net asset value;

(ii) the net asset value per share.

(b) a performance record over the last ten financial years or, if the fund has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing the highest issue price during each of those years.

D: Report of the auditor

The report of the auditor to investors for any annual accounting period shall state –

(a) whether in the auditor's opinion the accounts prepared for that period have been properly prepared in accordance with generally accepted accounting principles and in accordance with these Guidelines and the formation documents;

(b) without prejudice to the foregoing, whether in the auditor's opinion a true and fair view is given of the financial position of the fund as at the end of that period;

(c) if the auditor is of the opinion that proper accounting records have not been kept by the private fund or that the accounts are not in agreement with the company's accounting records, that fact together with any resulting qualification, that fact;

(d) if the auditor has not been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, that fact together with any resulting qualifications, that fact; and

(e) if the auditor is of the opinion that the information given in the report of the manager for that period is inconsistent with the accounts, that fact together with any resulting qualifications.

E: Report of the custodian

The report of the custodian to the investors for any annual accounting period shall state whether in the custodian's opinion the manager has managed the private fund in that period –

(a) in accordance with the limitations imposed on the investment and borrowing powers of the private fund and custodian by the formation documents, by the offer document and by these Guidelines; and

(b) otherwise in accordance with the provisions of the formation documents, the offer document and these Guidelines; and if the company has not done so, the respects in which it has not done so and the steps which the custodian has taken in respect thereof.

**ISSUED BY THE SECURITIES AND EXCHANGE COMMISSION, GHANA
18TH APRIL, 2018**