MARKET GUIDANCE FOR THE ISSUE OF SECURITIES

The following guidelines are provided to aid the process of issuing securities to the public. These guidelines will be used in all Initial Public Offers (IPO) as well as Additional Listings in which case the details will be varied as the case may be.

I. OFFER DOCUMENT SUBMISSION REQUIREMENTS

a. Time Frame

The circular of 5th December 2002, which was distributed to all Licensed Dealing Members, the Stock Exchange, Investment Advisers, and Listed Companies, refers. You are reminded that the circular requires draft prospectuses or documents to be submitted to the Commission at least 6 weeks before the proposed date for the opening of an offer.

This does not mean that the Commission will take 6 weeks to process the application in each case. The processing time may be more or less than 6 weeks depending on how much review has to be done. It will also depend to a great extent on the nature of the document, the gravity of the issues raised, and how quickly sponsors respond to issues that will be raised during the process.

In every case the Commission will endeavour to act as quickly as possible.

b. Prospectus and Supporting Documents

An application for the approval of an offer document shall be addressed to the Director General of the SEC. Every application for approval shall be accompanied with two draft offer documents for review and examination. After the review has been completed, ten copies of the final draft offer document shall be submitted for onward submission to the members of the Approvals Committee.

Copies of the following documents should be submitted with the draft prospectus/document:

- All resolutions passed by shareholders in respect to the offer and the company.
- Revaluation report on assets
- Share price valuation
- Company regulations
- Audited financial statements for the relevant period
- Certificate of Incorporation and Commencement of Business
- An Escrow Account agreement

- Any other documents that may have been referenced in the prospectus as available for inspection during the offer period.

II. REVIEW PROCESS

The Commission will acknowledge receipt of a draft prospectus within five working days.

It is important to note that the minimum processing period of six-weeks shall be effective only when the Commission is satisfied with the completeness on the face of it, of the draft prospectus, and this shall be communicated to the Lead Manager. It is therefore the duty of the Lead Manager to ensure the completeness and accuracy of the prospectus before submitting it to the Commission.

The review process itself, is to establish that the prospectus has been prepared in accordance with the Securities and Exchange Regulations, 2003 (L.I. 1728) and contains adequate disclosure.

During the review the Commission will,

1. schedule meetings with sponsor (and/or issuer) to discuss issues that need to be discussed.
2. advise amendments to the timetable as may be necessary in view of issues that arise.

III. RESPONSIBILITIES OF THE SPONSOR AND ISSUER DURING THE EXAMINATION AND APPROVAL PERIOD

The sponsor/issuer will be required to cooperate fully with the Commission during the process.

Any new material information regarding the issue/issuer that becomes available during the period (from the submission of the application to the SEC until the Offer closes) must be communicated to the SEC and incorporated in the offer document. The Commission will treat any such information that is not disclosed as material withheld. Appropriate sanctions will apply in the event of such conduct.

The issuer may proceed on a publicity campaign during this period with the sole intention of generating interest of the investing public and to solicit commitments in the offer.

IV. LAUNCHING AND OPENING OF THE OFFER

The offer can be launched and declared open only after the Commission's approval of the prospectus or offer document has been given in writing. It is only then that the timetable for the offer can be fixed and presented to the

Commission for approval. The prospectus should then be made available to the public and investors can formally apply for the shares.
Where the issuer intends to use mini prospectuses, the Commission needs to be informed about this. It should be stated on the front cover that the Mini Prospectus should be read in conjunction with the full prospectus. Full Prospectuses should be made available for inspection and for applicants who wish to have them.

During the offer period the issuer can **continue to advertise or promote the issue to ensure success**, but cannot introduce any new information that is not already disclosed in the prospectus or offer document without prior permission from the Commission. Both Manager and Issuer however, have an obligation to report to the Commission on any new information that is material to the offer, and to do so in a timely manner. Such new material information will be disclosed to the public in the form of an addendum or by way of a publication or any other mode of dissemination as the SEC may direct.

The Commission has the power to invalidate the offer should the circumstances so warrant.

V. USE OF THE ESCROW ACCOUNT

The Commission requires the use of an escrow account for the lodgement of all subscription monies for any public issue of securities. A template for a typical escrow agreement is available at the SEC for guidance. The following procedures are to be followed in the use of an escrow account.

1. Open an Escrow account at a bank and submit the Agreement to the SEC.
2. Escrow accounts shall be non-interest bearing.
3. All subscription monies shall be paid directly into the escrow account.
4. The escrow account shall not be debited except as a result of returned cheques, refund of over subscription monies, or the payment of the offer amount to the issuer.
5. All refunds shall be paid out of the escrow account that received the monies.

6. Refunds shall be in the form of printed cheques (like dividend warrants) payable to subscribers and may be <u>opened</u> for cash on request.
7. A statement of account of the escrow account shall be submitted to the Commission within 14 days after the close of the offer.
8. A bank issuing shares to the public may not hold its own escrow account.

During the period of refunding money to subscribers the Commission shall be furnished with periodic (fortnightly) reports on the status of the refund process.

VI. EXTENSION OF THE OFFER PERIOD

Sponsors of the offer may apply to the Commission for an extension of the offer period. The following points should guide such requests.

1. Problems that may affect the success of the offer must be brought to the notice of the Commission before the offer closes.

2. The Commission will consider applications for extension on a case-by-case basis, especially in situations where market dynamics may have created a situation that might have affected the overall response to an offer.

3. The sponsor/issuer is required to monitor the progress of the offer and the market as a whole during the offer period, and this must be demonstrated to the Commission. An application for extension therefore should be made **at least one week** before the close of the offer(and not after the Offer has closed), stating tangible reasons for the request. The Commission has the discretion to approve or decline the request.

4. The Commission will respond to an extension request within 2 days of receipt of the request in writing.

VII. REPORT ON THE OUTCOME OF THE OFFER

Regulation 33 (5) of the L.I. 1728 requires a person performing the functions of an issuing house or a manager of a public issue of securities to submit to the Commission, a report on the offer. This report should be submitted **within 14 days (two weeks)** after the close of the offer, and shall include among others information on the Offer such as:

1. Total number of applications
2. Total subscription amount

3. Basis of allotment
4. Amount raised after allotments (if that is the case)
5. List of the top twenty after the flotation
6. Distribution of the shares
7. Statistics of the allotment

Anyone who contravenes the provision of this regulation is liable for the payment of a penalty of ¢1m for each day that the default subsists.
The fee for the examination and approval of a prospectus or offer document shall be based on the amount realized for the shares issued. This fee should accompany the report.

The fees as set out in Schedule 2 of L.I. 1728 are as follows:

a) ¢1 million for any offer where the value is less than or equal to ¢1 billion
b) 0.05% of the offer where the value of the offer is greater than ¢1 billion

VIII. REFUND OF MONEY IN THE CASE OF AN UNSUCCESSFUL ISSUE

In the event that the minimum subscription is not attained, monies must be returned to applicants immediately after the offer closes. The refund shall be made in accordance with section 284 (4) of the Companies Code.

The Lead Manager/Issuer shall cause a publication in a newspaper of national circulation and announcements on local radio stations on how and where subscribers are to collect refunds.

IX. ALLOTMENT

Under the **Plan of Distribution** in schedule five of the L.I. 1728, the offer document shall provide information on the allotment policy, which will be adopted if applications exceed the securities on offer.

The regulations do not make any provision for an allotment period, especially in the event of over-subscription or where the total applications for an issue far exceed expectations. This has been taken into consideration in preparing these guidelines, and should be factored into the structure of the offer timetable.
The responsibilities of the Manager of a public issue of securities after the offer closes includes the following:

1. Submitting a report pursuant to Regulation 33 (5)
2. Allotting the shares to successful applicants

3. Issuing and dispatching certificates to successful applicants
4. Refunding excess monies
5. Commence trading in the shares

In the light of recent developments with the floatation of IPOs, the Commission reminds managers that they must ensure that they keep to the timetable set out in offer documents and the Commission will enforce same.

X. REFUND OF MONEY – OVERSUBSCRIBED SHARES

In the event that the shares on offer are over-subscribed, monies should be returned to applicants within ten (10) days after the allotment of shares. Any refunds that are returned after the deadline shall attract interest at the Bank of Ghana Prime Rate.

The Commission hereby emphasises that proceeds from the offer shall be held in the escrow account, and refunds shall be made out of this account directly to subscribers.

The Commission shall consider refund as having been dispatched to subscribers where the following conditions have been fulfilled:

1. As set out in the offer prospectus.

   - Using the stated mode of dispatch
   - By the stated date of dispatch
   - For the full refund amount (including the correct computation of interest if that is the case)
   - If refund has been sent out by registered mail to individual subscribers, evidence of such dispatch should be made available.

2. If the refund is being effected through receiving brokers, then dispatch shall be considered concluded when the following are all in place,

   - Brokers have received a list of subscribers and amount due to each,
   - Brokers have received the full refund amount, and
   - The public has been informed of the availability of refund monies at the brokerage houses.

If refunds occur later than the date indicated in the prospectus, then the SEC shall consider the process complete only when the Manager has notified subscribers of the refund.

Until the refund process is complete the Commission will require periodic (weekly) reports on the refund of excess subscription monies.

XI. DISPATCH OF CERTIFICATES AND THE COMMENCEMENT OF TRADING

All share certificates must be dispatched at least one week before trading can commence.

1. Mode of dispatch of Certificates shall be according to the provisions of the prospectus.
2. If dispatch of certificates and or excess monies occurs later than the date indicated in the prospectus, the manager for the floatation has an obligation to inform applicants/subscribers of a new timetable via a medium that is acceptable by the SEC.