

## Securities Industry Law, 1993 (PNDCL333)

### a) Functions of the Commission

- The law states in Section 10(1)c that, a dealer, manager of a mutual fund scheme e.g. DAMSEL<sup>1</sup>, inter alia shall produce to a person authorized by the *Commission*,<sup>2</sup> certain books (e.g. clients account balance) required to be produced by the Commission.
- In case the books are not produced in accordance with Section 10(1)c, the Commission may require the person who should have produced the books to either
  - a) state, to the best of his knowledge, where the books may be found;
  - b) identify the person who, to the best of his knowledge, is in possession of the books;
  - c) state the reasons why the books cannot be produced.
- Section 12 states that a District Magistrate may issue a warrant, authorizing the Commission to search the premises of the institution, and break open cupboards, drawers, etc to take possession of the said books.

### Penalties

- The law states in Section 14 that a person, who without reasonable excuse, refuses or fails to comply with any of the directions stated above (i.e. Sections 10 and 12), commits an offence and is liable on conviction to a fine of not more than GH¢100 or to an imprisonment term not exceeding 1 year or to both.

### b) Licenses

- Section 48

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<sup>1</sup> Databank Asset Management Services Limited – Managers of all the Mutual Funds; Epack, Mfund, Bfund and Ark Fund as well as other asset management services.

<sup>2</sup> Securities and Exchange Commission

The law makes it an offence for a person who is not licensed by the Commission to deal in securities on behalf of clients.

It is also an offence to act as an investment adviser, investment representative or dealer's representative without being licensed as such by the Commission.

- Section 59 also states that a license shall be valid for a period of one year from the date of issue; and a renewed license shall also be valid for a period of one year from the date of renewal.

### c. Withdrawal or suspension of licenses

#### Section 62

- The license of an individual (an investment representative) may be withdrawn by the Commission, if:
  - a) he/she ceases to carry out the business for which he/she was licensed; e.g. if he performs other functions such as work ordinarily performed by accountants, cashiers, etc.
  - b) he/she is convicted of an offence involving fraud or dishonesty; where such an offence is punishable by an imprisonment term of not less than 3 months;
  - c) the Commission has reason to believe that the holder of the license has been dishonest or inefficient in the performance of his duties.

In the case of a body corporate or the broker-dealer itself (e.g. Databank), the Commission may withdraw its license to operate if:

- a) the organization is being or will be wound up;
- b) it ceases to carry out the business for which it was licensed;
- c) it fails to comply with any of the conditions applicable to it in this law, or

- d) the Commission has reason to believe that the organization or any of its directors or employees has not performed its/his duties efficiently or honestly.
- The law states in Section 63 that a holder of a license (an investment representative or broker-dealer) can still carry out the business for which he/it has been licensed, if he has applied for a renewal of his license before the expiration of his old license, and the new license has not been issued.
- Section 64 gives license holders who have been refused a renewal or revocation of their licenses the right to appeal to the Secretary of the Commission within 30 days of such refusal.
- Any such person may appeal to the Court of Appeal within 30 days if he is dissatisfied with the Secretary's decision.

*c) Register of Securities*

- Sections 67 & 68  
The dealer, dealer's representative or investment representative should maintain a register of their/his/her securities and the particulars of the securities should be entered into the register. All of the above persons shall notify the Commission about the particulars of the register (e.g. where it will be kept) and a failure to do this attracts a fine of GH¢10.
- Section 70  
The law makes it mandatory for the dealer, the dealer's representative or an investment representative to produce the register of securities to the Commission or any person authorized by it for inspection. A violation of this law is considered an offence.

*d) Conduct of Securities Business*

- Section 74 deals with issuing contract notes. The law requires that the dealer (eg DBL) shall issue contract notes to clients in respect of every transaction of either sale or purchase of securities. The contract note shall include details such as:
  - a) the name and address of the brokerage firm ( eg DBL);

- b) the name and address of the client;
- c) the day on which the transaction took place;
- d) the number of shares or securities that are the subject of the contract, and
- e) the price per unit.

It is important to note that the dealer shall not use a name of a client in the contract note which he knows is not the name by which the client is ordinarily known or identified with.

The contract note validates the transaction carried out between the broker and the client (either purchase or sale of shares) and provides proof that the client has either sold or purchased  $x$  number of shares to/from a third party, through DBL.

#### Priority to client's orders

- The law makes it mandatory for a dealer to give priority to a client's orders. This is clearly stated in Section 79 of the law. This means that the dealer shall not enter a transaction for himself or for any other person associated with him if a client has filled a sale or purchase order form for trade in the same class of securities. This further emphasizes the point that the client is very important and has to be satisfied first at all times.

It is very important that brokerage personnel act in accordance with this law. This is because anyone who violates this law is guilty of an offence and could be prosecuted. If one is found guilty, he/she shall pay a fine of GH¢50 or he/she shall be sentenced to 6 months imprisonment or both.

#### Use of clients' money

##### Section 80

With regards to the use of clients' money, the law requires that monies deposited for the purchase of shares by clients should be retained in an account in a bank and this should be done not later than the next day on which the bank opens for business.

In addition, the client should be given a document which sets out the terms and conditions of the deposit made and the **purpose** for which the money is to be used by the broker-dealer.

A violation of this law is an offence and anybody found guilty shall pay a fine not exceeding GH¢100 or shall be imprisoned for a term not exceeding one year or to both. In addition, he/she shall be liable to refund the money together with interest at the prevailing commercial bank rate to the client.

### *e) Accounts and audit*

#### Section 82

The broker-dealer shall keep proper accounting records which explain all transactions as well as the financial position of the business of the dealer.

A dealer who contravenes this law, commits an offence and is liable on conviction to pay a fine not exceeding GH¢100 or to an imprisonment term not exceeding one year, or to both.

#### Security documents

#### Section 84

Where a dealer receives documents from clients for safe custody (e.g. documents of title to securities), the dealer shall:

- (a) register the documents in the name of the client if they are not registered;
- (b) deposit the documents with its bankers if the client so requests.

Section 85 also makes it mandatory for the broker-dealer to open and maintain a trust account with a bank in Ghana and it shall pay into such an account all monies held in trust for clients not later than the next day on which the bank is open for business.

Again, the law makes the violation of the above, an offence and such an act attracts a penalty of a fine not exceeding GH¢100 or an imprisonment term of one year or both.

- Section 87 & 88

An auditor shall be appointed to audit the accounts of the dealer within one month after obtaining a dealer's license and the dealer may remove the auditor from office with the consent of the Commission.

- Section 91 states that where an auditor becomes aware of a *prescribed matter*<sup>3</sup> in the performance of his duties, he shall write a report to the Commission within 7 days. He shall also send a copy of the report to the dealer and to every stock exchange where the dealer is a member. (Eg GSE).
- Section 93 talks about the liabilities of the auditor. The law states in this section that the auditor is *not* liable to an action for defamation in respect of an oral or written statement issued by him in the course of his duties as an auditor.

#### *f) Offences*

Sections 122 – 137 specifically deal with offences.

The law makes it an offence if:

- A person creates a false or misleading appearance of active trading in securities on the Ghana Stock Exchange.
- A person takes part in two or more transactions which have or are likely to have the effect of raising or lowering the price of securities to induce other persons to sell, buy or subscribe for securities.
- A person makes a statement that is false or misleading to induce others to purchase or sell securities.
- A person, with intent to deceive, makes a false or misleading statement to the Commission or stock exchange, regarding dealing in securities.

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<sup>3</sup> A prescribed matter is a matter which has, is or may adversely affect the ability of the dealer to meet his obligations.

- A person employs a device or scheme or engages in any fraudulent act with an intention to induce others to purchase or sell securities.

*g) General penalty*

Section 138 states that a person guilty of an offence under this law for which no specific penalty has been provided (such as offences under Sections 122 – 137), shall be liable on conviction to a fine not exceeding GH¢100 or shall be imprisoned for a term not exceeding 1 year or to both.