FINANCIAL SERVICES
COMMISSION

GUIDELINE NO. 4

CORPORATE GOVERNANCE GUIDELINE

This guideline is issued on March 1, 2013 pursuant to section 53 of the Financial Services Commission Act, 2010-21

CORPORATE GOVERNANCE GUIDELINE FOR MARKET ACTORS AND MUTUAL FUND ADMINISTRATORS

1. INTRODUCTION

This Guideline is intended to provide guidance to boards of directors and management of registrants and licensees of the Financial Services Commission ("**the Commission**") about the Commission's expectations on corporate governance and related matters.

The Commission expects that the corporate governance framework of registrants and licensees will be designed to satisfy the needs of their organisations, taking account of:

i. The nature and scale of the business;
ii. The complexity, volume and size of transactions
iii. The degree of risk associated with each area of operation.

Where material deviations from this Guideline are contemplated market actors and mutual fund administrators, hereinafter referred to as "**Financial Institutions**", should demonstrate to the Commission that the alternative measures have at least an equivalent effect of ensuring sound corporate governance.

Applicability
This guideline applies to companies registered as financial institutions registered and/or licensed with the Commission.

*In addition to this guideline registrants and licensees should reference other relevant materials on corporate governance, including those published by the International Organisation of Securities Commissions ("**IOSCO**") in developing their corporate governance policies.*

2. CORPORATE GOVERNANCE

Corporate Governance refers to the processes, structures and information used for directing and overseeing the management of an institution. A good corporate governance framework establishes the mechanisms for achieving accountability between the Board, senior management and shareholders, while protecting the interests of relevant stakeholders. It also sets out the structure through which the division of power in the organisation is determined.

Each financial institution is required to establish and implement a policy that addresses corporate governance.

2.1 THE BOARD OF DIRECTORS

The Board of Directors or similar group has ultimate responsibility for the oversight of the day to day management of the financial institution, as well as the quality of its governance. The Board must ensure that among other things the institution is:

i. managed in a way that safeguards its safety, soundness and reputation; and

ii. in compliance with all relevant laws and regulations.

The Board of Directors should among other things:

i. ensure that the financial institution has a balance of appropriately skilled, experienced and qualified individuals who can apply informed and independent judgment to the management of the financial institution;

ii. ensure that the financial institution is effectively managed, by appointing the financial institution's C.E.O. or Managing Director, and ensure that its business is conducted in a sound and prudent manner by establishing relevant objectives and performance measures which are monitored on a regular basis;

iii. meet regularly and oblige members to devote sufficient time to their Board responsibilities, inclusive of receiving, examining and approving reports required by sound financial management, monitoring the institution's financial condition and ensuring the institution's reputation and integrity is sustained ;

iv. establish and document its strategic objectives; the means of obtaining the objectives and the procedures for monitoring and evaluating its progress in achieving those objectives;

v. establish and document the nomination and appointment procedures, structure, functions, re-elections and balance between executive and non-executive directors of the board in a transparent manner;

vi. clearly distinguish between the responsibilities, accountabilities, decision-making, interaction and cooperation of the board of directors, chairman, chief executive and senior management;

vii. outline a clear division of responsibilities to ensure a balance of power and authority, so that no one individual has unfettered powers of decision. Where the posts of chairman and chief executive are combined in one person, evidence that appropriate controls are in place to ensure that management is sufficiently accountable to the board of directors should be provided; and

viii. have access to accurate, relevant and timely information. Where stakeholders participate in the corporate governance process, they should have access to relevant information.

2.2 RISK MANAGEMENT

The Board should among other things:

i. establish policies and procedures to monitor independent risk functions and report deviations to an appropriate level of management. Where appropriate a risk management committee may be established to ensure adequate risk control techniques and procedures are applied and/or adequate investment policies are implemented;

ii. where applicable, establish policies that require directors and senior officers to disclose interests in any contract or transaction to which the financial institution is a party, whether the interest is direct or indirect, as soon as he is aware of the fact. Generally, policies should be adopted to prevent directors and senior officers from taking personal advantage of opportunities that arise as a result of the position as a director or officer;

iii. ensure that the Board is not subject to undue influence from management or outside concerns; and

iv. have in place a proper remuneration policy for directors and senior management and review the policy periodically to ensure that it is consistent with the financial institution's strategy and values.

2.3 INDIVIDUAL RESPONSIBILITIES OF BOARD MEMBERS

Directors are appointed or elected to direct and oversee the affairs of the licensee. In conducting his duties, a director is required to exercise the degree of care, skill and diligence of a reasonable diligent person with both the knowledge and experience expected of a director in their position and also any specific knowledge or skills that they may have.

Board Members should *inter alia*:

i. act in good faith and in the interests of the company;

ii. maintain an awareness of the organisation's internal and external operating environment including local, regional and international financial trends and any statutory and regulatory changes affecting the company;

iii. diligently perform the job;

iv. exercise independent judgement; and

v. avoid conflicts of interest.

2.3.1 Conflicts of Interests

Members should avoid conflicts of interests by:

i. respecting the confidentiality of information received during their term as directors;

ii. transacting their personal business with the institution at arm's length; and

iii. fully disclosing to the Board any interests which directly or indirectly, they may have in loans, contracts, transactions, etc. to which the financial institution is or may become a party.

3. BOARD STRUCTURE AND OPERATIONS

3.1 Size of the Board of Directors

The size of the Board must be adequate to cope with a member or members having to absent themselves from decisions making because of potential conflicts of interest or being absent for any other reason. The board should periodically review its own size and determine the size most effective for making decisions and future operations, having regard to any laws, regulations or guidelines regarding the minimum size of Boards.

3.2 Board Independence

To fulfil its oversight responsibilities, the Board should include both executive and non-executive directors (including independent directors) to ensure that neither management nor any other individual or group of individuals dominate the Board's decision making. In determining whether a director qualifies as independent, consideration should be given as to whether the director:

i. was employed by the institution or an associate of that institution within the last three years;

ii. had a material relationship with the institution either directly, or as an adviser, partner, shareholder or senior employee of a body that has or had such a relationship with the institution within the last three years; or

iii. is in receipt of any additional remuneration or compensation from the financial institution or its associates other than director's fees; or

iv. is a member of the immediate family of any person described at (ii) above.

3.3 The organisational structure of the Board

The functions of the Board may, depending on the size and complexity of the institution, be discharged directly or indirectly through Board committees. Such specialised committees may assist the Board in its oversight function while economising on the limited resources available to monitor specific areas of the institution's activities.

Each committee should have a mandate, which clearly sets out:

i. the size of the committee;
ii. qualifications for membership;
iii. restrictions on the number of directors;
iv. requirements for meetings;
v. committee practices;
vi. the level of authority of the committee; and
vii. objectives, responsibilities and powers of the committee.