

CASE FILE NO.: 129/2017

**IN THE MATTER OF THE COMMISSION ON HUMAN RIGHTS
AND ADMINISTRATIVE JUSTICE ACT, 1993**

**AND
IN THE MATTER OF CHAPTER 24 OF THE 1992
CONSTITUTION**

BETWEEN:

YAW BROGYA GYENFI

COMPLAINANT

AND

KEN OFORI-ATTA

RESPONDENT

DECISION

1.0. INTRODUCTION

On April 25, 2017, Yaw Brogya Gyenfi (the Complainant), "...in line with his duties as a citizen", submitted a complaint to the Commission alleging that Ken Ofori-Atta (the Respondent), a public officer, has contravened or has not complied with Article 284 of the 1992 Constitution (the Constitution).

The said Article 284 provides that "a public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office". This is the Decision of the Commission after investigations.

2.0. BACKGROUND

A number of developments occurred in the country prior to the submission of the complaint to the Commission. The key developments include the release of a Press Statement by the Ministry of Finance (MOF) on the bonds it had issued, a Press Conference by the Minority in Parliament and reports by both national and

international media, which in turn became the subject of media reviews and public discussions at the time.

2.1 Statement by the Ministry of Finance

On Monday, April 3, 2017, the Public Relations Unit of the Ministry of Finance (the Ministry) issued a statement (the statement) announcing that the Ministry, under the aegis of Ofori-Atta had *“successfully issued 15 and 7 year bonds with the same coupon of 19.75%, raising a total amount of USD1.13 billion”*. The Ministry, according to the statement also *“raised the cedi equivalent of USD1.12 billion in 5 and 10 year bonds via a tap-in arrangement.”* Thus, a total of USD2.25 billion was raised for the bonds.

According to the statement, the issuance of the bonds represented the largest amount issued by a sub-Saharan African country in **a day** (emphasis supplied), and that the pricing obtained was also consistent with the initial price range of 18.95% - 19.85%. That the issuance attracted a number of global portfolio investors including a very substantial investment in the 15-year bond by a very well respected global financial investor.

It was also reported that the successful bond issuance and the significant amount raised, especially the longer tenor 15-year, was an indication of the strong appetite for Ghana Bonds due to the markets’ renewed confidence in the long term prospects of the Ghanaian economy and a major vote of confidence in the new government’s economic policies, fiscal measures and programmes as outlined in the 2017 Budget (Source: “Ghana beyond Aid”, Hon. Ken Ofori-Atta added: <http://www.mofep.gov.gh/?q=content/gog-raises-over-usd2-billion-including-debut-15-year-domestic-bond>)

2.2. Minority Statement: “The Great Debt Deception”

Following the statement by the Ministry of Finance, the Minority in Parliament released a press statement, “THE GREAT DEBT DECEPTION” in which the Minority expressed some concerns about the “recent US\$2.25billion bond issued by the NPP government” including the following:

“Some have argued that this bond purchase should not be compared with our Sovereign Bond rates. We should be reminded that our Domestic Bonds have a “Hybrid” (cedi/forex) feature and, therefore, when non-resident investors bring in foreign currency at the time of purchase, they hold the equivalent cedi bond in the same implicit foreign

currency. Therefore, when eventually they sell, they expect to repatriate the proceeds in US Dollars or other convertible currency.

Hence, above 90 percent Bond holding is technically a dollar denominated bond and not a cedi bond. The Ministry of Finance and Bank of Ghana are alert to the risk of default in non-resident investor holdings and plan to support the commercial banks or agents with enough foreign exchange to honour any sales and repatriation obligations at maturity or on the secondary market. In essence, the opposite sales activity for a non-resident bond holding is the opposite of a purchase (forex inflows) and implies depletion of our foreign exchange reserves (outflows).

This is why the domestic bond issue must be efficient. On the contrary, the virtual “private placement” approach that was used in this Templeton case was not competitive: it was opened in the morning and closed in the evening of the same day, obviously cooked for one single investor. Hence our insistence that there was no transparency.

In the past “book-building” approach for issuance of bonds, initiated by the NDC government, the process was opened for a minimum of three days to ensure optimal participation. In the case of this historic US\$ 2.25 billion bond issue, the process was limited to one day, denying other market players the opportunity to participate in the process”.

The Minority further stated under “Ministry of Finance Statement: Unmasking the secret of the said Bond Issue” indicated that the Respondent is linked to Trevor G. Trefgarne, through Enterprise Group Limited and that Trevor Trefgarne “...a member of the Board of Directors took a substantial position in the April 3, 2017 bond issued by the Finance Minister”.

A call was then made for a full-scale parliamentary inquiry into whether, and the extent to which, this situation of lack of transparency and conflict of interest has adversely affected the welfare of the people of Ghana.

2.3. Second Statement by MOF

The Ministry of Finance reacted to the Minority statement on the bonds in a statement, “ASPERSIONS ON THE US\$2.25 BILLION OF DOMESTIC CEDI DENOMINATED BONDS ISSUED BY THE GOVERNMENT OF GHANA”

The statement reads in part:

“The attention of the Ministry of Finance has been drawn to a statement issued by the Minority in Parliament which seeks to cast negative aspersions on the 9.7 billion cedis (USD2.25 BILLION) domestic bond issue of the Government of Ghana.

2. The Ministry considers the statement as unfortunate especially as it was fronted by Hon Cassiel Ato Forson, a former Deputy Finance Minister, who knows very well the workings and processes for the issue of domestic bonds and as such, should not be making such baseless allegations. As such, the Ministry has no choice but to surmise that these allegations are maliciously designed to malign and negate the positive news and rave reviews this landmark transaction has garnered, both locally and internationally”

The Ministry then responded to the concerns raised by the Minority in their statement, thus:

1. The issuance was not shrouded in secrecy nor was it “cooked” for any particular investor. The Bookrunners, (Barclays, Stanbic and SAS), on behalf of the Ministry of Finance have been mandated since 2015 to issue these domestic bonds on a regular basis as per the debt issuance calendar which Ministry of Finance (MoF) puts out every quarter. Also the book runners announce and publish every impending bond issue to the market, the week of issue and provide price guidance to the market. This particular bond issue was no different and was done in conformity with the established process. It was announced by the Book Runners to the market on March 30, via email and same published on MoF and Bank of Ghana (BoG) websites with settlement on April 3. FT was not the only participant, there were over 25 other buyers including other foreign entities, who all brought in dollars to convert to cedis to buy the bonds.

2. This bond issue, like all the others done prior could not have been designed to favour any single investor. The conventional processes for the issue of bonds using the book building approach were adhered to in this particular issuance. It is our understanding that the said investor engaged various market participants and other key institutions including the IMF before deciding to participate in the bonds. It is worth noting that local investors also participated. The said investor participated in the issuance in the manner they have always done since 2006 through their local Primary Dealer, Barclays Bank and their local custodians, Standard Chartered Bank and Stanbic Bank. To have obtained preferential treatment, all the above mentioned institutions would have had to conspire to do so, a situation which is unfathomable. The investor in question, FT, has held

Government of Ghana bonds of up to USD 2 Billion prior to this transaction. Indeed FT has been buying and investing in government bonds since 2006.

3. This issuance, like all other domestic bonds issued under this bond program since 2015, did not require Parliamentary approval. Approval was given under the initial application to Parliament in the 2015 Budget Statement and Economic Policy document, to run such a bond issuance program. The Ministry of Finance has the mandate to fund the deficit as contained in the budget approved by Parliament through the issuance of debt instruments and to manage the countries debt stock" (Signed for the Ministry by PR Unit):(<http://www.mofep.gov.gh/?q=content/aspersions-us225-billion-domestic-cedi-denominated-bonds-issued-government-ghana>)

2.4. Report by Reuters, Moscow

In a Reuters (Moscow) report, dated 4 April 2017 <http://www.reuters.com/article/ghana-bonds-hasenstab-idUSL5N1HC4QM> it was stated that “Franklin Templeton's high-profile bond fund manager, Michael Hasenstab, has taken a "substantial" position in Ghana's cedi-denominated government bonds via this week's jumbo debt auction.

According to Reuters “...the investment by Hasenstab, whose flagship \$41 billion Templeton Global Bond fund seeks to pick up out-of-favour credits and made successful contrarian punts on Ireland and Hungary in recent years, is a boon for Ghana as the new government tries to stabilise the economy and review terms of an International Monetary Fund loan...”.

The report further indicated that “Ghana's Monday sale of \$2.2 billion worth of bonds was the single-biggest daily transaction in sub-Saharan Africa. It included a debut 15-year bond that raised 3.42 billion cedis (\$790 million) at a 19.75 percent yield”.

2.5. Other Reports

ModernGhana (www.modernghananews.com/news, Starrfmonline, among other media organisations, also published stories around the issuance of the bonds.

It is against this background that Yaw Brogya Genfi makes his complaint to the Commission, urging it to investigate the allegations “...*thoroughly and dispassionately and in a non-partisan manner to help us reach a just conclusion*”.

3.O. THE ALLEGATIONS

A summary of the allegations made by the Complainant in his letter to the Commission titled *"PETITION TO INVESTIGATE CONFLICT OF INTEREST IN THE RECENT US\$ 2.25 BILLION BOND ISSUED BY THE GOVERNMENT OF GHANA THROUGH THE MINISTRY OF FINANCE"*, is as follows:

- 1) On April 3, 2017, the Ministry of Finance announced that the Government of Ghana had issued a 15-year and 7-year bonds at a coupon rate of 19.75% each. The said bonds' issued raised a total amount of USD 1.13 billion. In addition, the Ministry of Finance raised the cedi equivalent of USD1.12 billion in 5- year and 10-year bonds via a tap arrangement;
- 2) According to the Complainant, "a number of issues of conflict of interest and lack of transparency have emerged from the bond issuance":
 - a. The 7-year and 15-year Bonds were not on the issuance calendar;
 - b. The initial pricing guidelines of the Bond were issued around 5:37 pm on March 30, 2017, by e-mail, which was after normal working hours;
 - c. The transaction was opened at 9:00 a. m. on March 31, 2017;
 - d. The public announcement of the transaction was sent by e-mail at approximately 9:09 am. on March 31, 2017, which meant that the transaction was opened before the announcement was made to the public;
 - e. The issuance summary was issued on March 31, 2017, at about 4:20 pm. by e-mail indicating that the Bond transaction had been closed and announcement made to the public, and
 - f. April 3, 2017, was the Settlement Date and not the closing date of the Bond.
- 3) One single investor, Franklin Templeton Investment Limited (an American global investment management organization founded in 1947), purchased

almost 95% of the Bond issued by the Minister for Finance. The size of this virtual “private placement” makes it akin to a sovereign bond or foreign loan;

- 4) The virtual “private placement” approach that was used was opened in the morning and closed in the evening of the same day March 31, 2017;
- 5) In an unaudited semi-annual report of Franklin Templeton Investment Limited dated December 31, 2016, Mr. Trevor G. Trefgarne (also described as the Chairman of Enterprise Group Limited) was named as one of the Directors of the Board of Franklin Templeton Investment Limited;
- 6) Enterprise Group Limited is a company partially owned by Data Bank Limited, a company in which the Finance Minister is known to have significant interest;
- 7) The following are Directors of Enterprise Group Limited: Dr. Angela Ofori Atta, wife of the Finance Minister; Keli Gadzekpo, business partner of the Finance Minister; Hon Gloria Akuffo, Attorney-General & Minister for Justice, and Hon. Ken Ofori Atta, the Minister for Finance (Respondent);
- 8) From the points above, a reasonable person has cause to believe that there is a relational interest between Hon. Ken Ofori Atta and Mr. Trevor G. Trefgarne, who have been described as "great friends";
- 9) The clear link between the Finance Minister and his friend Trevor Trefgarne, and the sub-links with the Finance Minister’s family and business associates, leads to legitimate questions like:
 - a. Did the Finance Minister issue the bond in a manner that would favour his friend, family, associates and/or business partners, and
 - b. Was the deal influenced by cronyism, nepotism and corruption.
- 10) The Bond transaction seems to have been shrouded in secrecy - the process was limited to one day, unlike past bonds where the “book-building” method had been used and the process was opened for a minimum of three days to ensure optimal participation;

11) There is no record available to the effect that the Finance Minister disclosed his relational interest in the transaction.

The Complainant further alleged that from the facts he has provided, the Respondent:

- Has put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office;
- Has attempted to promote a private or personal interest for himself or for some family members and business associates, and the promotion of the private interest has resulted in, or was intended to result in, or appears to have resulted in, or has the potential to result in an interference with the objective exercise of his duties and an improper benefit or an advantage by virtue of his position;
- Did not take proper steps to disclose his conflicting interests, and
- Did not resolve or manage his conflicting interests

The Complainant attached the following documents in support of some of his allegations:

- 1) Copy of document titled "Appendix to Petition," Guidelines on Conflict of Interest to Assist Public Officials Identify, Manage and Resolve Conflicts of Interest -CHRAJ
- 2) Copy of a Statement issued by the Ministry of Finance, *"GOG RAISES OVER USD 2 BILLION INCLUDING A DEBUT 15 YEAR DOMESTIC BOND"*
- 3) Copy of a Report by Reuters dated Wed Apr. 5, 2017, by Sujata Rao, titled *"RPT-Templeton's Hasenstab buys Ghana's Cedi bond-Source"*.
- 4) Copy of document titled *"THE MINORITY'S STATEMENT ON THE 15- YEAR BOND ISSUED BY THE NPP GOVERNMENT"* dated April 18, 2017.

- 5) Copy of document issued by the News Editor of the Public Relations Unit of the Ministry of Finance, dated April 19, 2017 and titled "*ASPERSIONS ON THE US\$2.5 BILLION OF DOMESTIC CEDI DENOMINATED BONDS ISSUED BY THE GOVERNMENT OF GHANA*"--Marked "D"
- 6) Copy of document issued by Hon. Haruna Iddrisu (MP), Minority Leader, dated April 20, 2017
- 7) Copy of an Article by Dr. John Gatsi, dated April 21, 2017 and titled "*WHAT IS EXTERNAL BORROWING IN THE CONTEXT OF THE ISSUANCE OF THE \$2.5 EURO BILLION BOND AND GHANA'S PUBLIC BORROWING GUIDELINES*"

4.0. RESPONDENT'S POSITION

In accordance with the provisions of Article 287 of the 1992 Constitution (the Constitution), the Commission, on 5th May 2017, requested Ken Ofori-Atta in a letter ref: CHRAJ/129/2017/158 to comment on the allegations of contravention or non-compliance with the provisions of article 284 of the Constitution made against him by Yaw Brogya Gyenfi, the Complainant, (in particular, those listed in paragraphs 1-11 of the said letter), within 10 days. The Commission also requested him to indicate expressly whether he admits the allegations or not and that if he did not admit, the Commissioner would cause the allegations to be investigated.

The Chief Director of the Ministry of Finance, Mr. Patrick Nomo, purporting to act on behalf of the Respondent, wrote to the Commission requesting for an extension of time by fifteen working days to enable the Respondent provide his comments to the Commission, which the Commission obliged in its letter Ref: CHRAJ/129/2017/75, dated 22 May 2017. Thus, the Respondent had fifteen (15) additional working days to submit his comments to the Commission. In a letter dated 31st May 2017, the Respondent, acting through the Attorney-General, provided his comments to the complaint. The letter containing the Respondent's response was signed for the Attorney-General and Minister for Justice by a Deputy Attorney-General and Deputy Minister for Justice, Godfred Dame.

The Respondent denied the allegations and stated that there was “...no breach of any of the laws or rules governing the issue of bonds, ...the allegations of the complainant are based on plain falsehoods, and... there has been no conflict of interest involving the respondent”.

According to the Respondent, no distinct particulars of conflict were made out by the Complainant in his petition, but “...in order to aid in an efficient determination of the claims by petitioner and to shed light on the full circumstances of the issuance of the Bonds in question by the Government of Ghana (GoG)...”, he explained his position under the following headings:

- i. Rules governing the issue of Bonds in question
- ii. Rationale for the issue of the Bonds in question
- iii. Specific responses to allegations of petitioner outlined in the letter of the Commission dated 5th May, 2017
- iv. Conflict of interest

On “Rules Governing the Issue of the Bonds in Question”, he explained that: “The issuance of Bonds are governed by elaborate rules. Bonds are part of Government securities and constitute direct, unsecured and unconditional obligations of GoG. The purpose of issuing Securities is to

- (i) Finance Government shortfalls, and
- (ii) Redeem maturing Securities”.

According to him, the Bank of Ghana, on behalf of GoG, issues all bonds. For that matter, it has provided rules, **"GUIDELINES FOR THE GOVERNMENT SECURITIES MARKET FOR PRIMARY DEALERS"** (the Guidelines), dated December 2015, to regulate the issue of all securities.

The Guidelines provides, among others, from pages 3-11, the following relevant provisions:

"...In 1996, BOG introduced the wholesale auction and a system of Primary Dealers (PDs) in the G-Secs Market which is intended to enhance the ability of BOG to achieve efficient funding of the Government of Ghana's (GOG's) Public Sector Borrowing Requirement (PSBR) through the development of strong primary and secondary markets.

Selected financial institutions have been permitted to participate in the periodic wholesale auction. Each is designated as a Primary Dealer (PD). PDs can participate in the

primary auction as principals for their own accounts. Individuals, other firms and institutions are expected to obtain their securities from the dealers. The BOG introduced the Central Securities Depository (CSD) in November 2004 to further enhance the book entry system of registering holdings and to reinforce the non-issue of certificates for G-Secs.

B. SECURITIES

BOG, on behalf of the Government of Ghana and other agencies of Government issues all securities. The Bank may also issue securities in its own name for its Open Market Operations. The securities may be issued through the wholesale auction, book-building or any other processes.

i. Government Securities

G-Secs (bills, notes and bonds) constitute direct, unsecured and unconditional obligations of the Government of Ghana. The principal and discount/interest on G-Secs will be charged on the Consolidated Fund.

G-Secs sold in the primary market in Ghana, all of which can be traded in the secondary market, include the following:-

-
- 3-year Fixed Rate Bond,
- 5-year Fixed Rate Bond,
- 7-year Fixed Rate Bond,
- and any other securities that may be issued.

The securities are issued for the financing of Government cash shortfalls and to redeem maturing securities. G-Secs are also issued for the development of the financial market by providing risk-free benchmark securities as reference for the issue of debt instruments in the money and capital market by corporate and non-government institutions.

WHOLESALE AUCTION

AUCTION GUIDELINES

1.0 Eligibility

a. Only financial institutions licensed by the Securities and Exchange Commission (SEC) to deal in securities and authorized by BOG as PDs to participate in the wholesale auctions of debt securities conducted by BOG on behalf of GoG and its agents.

b. For the purposes of these guidelines, financial institutions so authorized shall be referred to as "PRIMARY DEALERS" (PDs).

2.0 Available Financial Instruments

a. The Ministry of Finance (MOF) through BOG shall publish a six (6) months calendar for the issuance of G-Secs. This publication would be done two (2) weeks prior to the commencement of the calendar period.

b. Based on the published calendar, the BOG on behalf of the MOF shall announce periodically but not less than a week before an auction, the amounts and specific details of the financial instruments available at the next auction and their maturity profiles.

c. For the issuance of medium and longer-term securities, a separate notice or prospectus shall be placed in the daily newspapers and on the BOG and MOF websites

3.0 Application Procedure for Auction

a. An advertisement inviting bids for the securities to be issued shall be placed in the national dailies and on the BOG and MOF websites in advance of the auction by BOG.

b. For the issuance of Bonds, a Prospectus would be published by the issuer, inviting bids for the Bonds to be issued, in advance of the auction.

c. Auctions for G-Secs shall make provision for bids to be made on competitive or non-competitive basis.

d. For its own OMO [Open Market Operations] activities, BOG may from time to time hold additional auctions at short notice.

e. Each tender application for the purchase of securities shall be submitted electronically through the CSD Auction System by the PDs to the Treasury Department of BOG unless otherwise specified.

f. For each security, PDs may quote a single bid rate or a series of bid rates indicating the amount required at each bid rate. However, no interest rate shall be submitted for non-competitive bids.

g. Unless otherwise stated in a Prospectus in the case of a Bond issue, auctions shall be set up on Fridays and made available to all PDs on the Auction Terminal for the input of bids, same day at 8.30 am.

Submission of bids through the Auction system ends at 1.00 p.m. on same day, after which time the bidding screen shall be closed and made unavailable to PDs.

h. The Auction shall normally be held on Fridays, between 3:00 p.m. and 4:00 p.m. Where Friday is a holiday, the Auction shall be held on the preceding Thursday and submission of bids shall therefore close at 1:00 p.m. on Thursday or the preceding working day.

i. In the case of medium term bond issues open to non-resident investors, the auction shall normally be held on Thursday, between 3:00 p.m. and 4:00 p.m. Where Thursday is holiday, the auction shall be held on the preceding Wednesday and submission of bids shall therefore close at 1:00 p.m. on Wednesday or the preceding working day.

j. The BOG may accept or reject or refuse to recognize any or all bids or tenders and also reserves the right to cancel an auction depending on the bids submitted.

k. The Auction Committee may award 25% more of the target amount advertised or specified in any Prospectus or notice.

4.0. New Products

a. Bank of Ghana shall notify the Market at least two (2) weeks in advance of the issue of a new product.

5.0 Pricing and Allotment

5.1 Competitive Bids

a. Each competitive bid must be for one amount and at a desired price or interest rate expressed as a percentage. A PD may submit one or more competitive bids at different prices or interest rates.

*b. Each competitive bid must be for a minimum of **GH¢500,000** nominal value of Securities and for multiples of **GH¢10,000**. **No sale will be made of an amount less than GH¢500,000 nominal value of Bonds.***

*c. Competitive bids for the Auction will be ranked in descending order of price or ascending order of discount/interest rate. Bills/Bonds will be sold to applicants whose competitive bids are at or above the lowest price or at or below the highest interest rate at which the Auction Committee decides that any competitive bid should be accepted (the "**lowest accepted price**" or "**highest accepted rate**").*

d...

e. Where allotments are made by **the uniform allotment price method (which shall be restricted to the issue of Notes and Bonds)**, all successful bidders will purchase the Bonds at the cut-off price, irrespective of the price quoted. Competitive bids which are accepted and which are made at prices above the uniform allotment price or rates below the highest accepted rate would be satisfied in full. Competitive bids which are accepted and which are made at the uniform allotment price may be satisfied in part only.

f. In making a competitive bid, each bidder represents and undertakes that it has not discussed its bid.

6.0. Notification of Results

6.1 The detailed results of any auction shall be available by 6:00pm on the Auction Module and available to all PDs on the auction day and in any event the PD shall be notified (whether by e-mail or by fax) of their allotments by no later than the end of the first Business Day following the auction.

6.2. The BOG will publish a detailed report and analysis of each auction in a press notice and on BOG and MOF websites by close of business on the first business day following the Auction date. Where appropriate, such reports and analyses will include...:

i. In the case of Bills/Bond

a. the highest, average and lowest accepted prices or rates (with the pro rata allocation of amounts bid for at the lowest accepted price or highest accepted rate);

b. the interest equivalent to those prices or rates;

c. the amount of bids submitted and allotted for the various securities;

d. the ratio of the total value of bids received to the amount on offer, including bids rejected in whole or in part on account of price or rate; and

e. any other relevant information.

7.0. Payment and Settlement

7.1 Unless otherwise announced, the settlement period for primary issues of Bills and Notes shall be T+1, that is, the first working day after the auction.

7.2 In the case of medium to long term bond issues, settlement shall be T+2¹.

7.3 The amount of payment to be effected on settlement day for discount securities will be

¹ 2nd working day after the auction

calculated on the basis of the actual number of days to maturity (D), a year of 364 days and the accepted discount rate..."

7.7. The holdings of each Bondholder shall be recorded by electronic book entry on the CSD.

8.0 Registration of Applicants

8.1 A register of the G-Secs in electronic book entry form shall be maintained by the CSD. An entry in the Register of the name of an investor shall constitute prima facie evidence that the investor is the legal owner of the securities referred to against their name.

8.2 Holders of G-Secs shall be registered and have an account with the CSD.

For first time purchasers of G-Secs, the PD will register and obtain a unique identification number and a securities account number on the CSD for the client.

8.3 G-Secs shall only be sold to applicants that have been registered and hold Securities accounts with the CSD.

8.4 The Register shall contain the following information:

i The Issue Date of the securities;

ii The serial numbers of the securities;

The amount, type and maturity of each security held by each investor and the date the investor became registered as owner of the security;

iv The name and address of the investor; and

v. Whether the investor is holding the securities as nominee for a beneficial owner.

8.5 Although the Register shall not be open to the public, the CSD shall meet all reasonable written requests for information about the securities held by the investor, on payment to the CSD of a prescribed fee that will be published.

8.6 The Register shall be closed for the purpose of making payments on issued securities two (2) Business Days prior to an Interest Payment Date and the Maturity Date (in each case, the "Record Date"). Accordingly, if the Securities are transferred to a new Bondholder after the Record Date but before an Interest Payment Date or the Maturity Date, BOG will make the payment in question to the person who was the Bondholder as at the close of business on the Record Date

The Respondent stated further that issuance of securities "... in accordance with the regulations published by the Bank of Ghana, is in compliance with the financial laws of Ghana". He then set out the following rules in the Guidelines, as those applicable:

- a. Securities issued in Ghana under the Bank of Ghana Guidelines are denominated in the local currency, and all payments are required to be made in Ghana cedis;
- b. Only financial institutions licensed by the Securities and Exchange Commission (SEC) to deal in securities and authorised by Bank of Ghana as Primary Dealers/joint Book Runners are eligible to participate in the auction of debt securities;
- c. The Ministry of Finance is required to publish a quarterly calendar for the issuance of government securities;
- d. For the issuance of Bonds, a prospectus would be published by the Issuer, inviting bids for the Bonds to be issued, in advance of the auction;
- e. Unless otherwise stated in a Prospectus for the issue of a Bond, auctions shall be set up on Fridays and made available to all Primary Dealers on the auction terminal for the input of bids, same day at 8:30 am;
- f. Submission of bids through the auction system ends at 1 pm on same day, after which time bidding screen is closed and made unavailable to primary dealers;
- g. The auction is held on Fridays, between 3 pm and 4 pm, except where Friday is a holiday, in which case the auction shall be held on the preceding Thursday and submission of bids shall close at 1 pm on Thursday or the preceding working day;
- h. In the case of medium term bond issues open to non-resident investors, the auction is required to be held on Thursday, between 3 pm and 4 pm. Where Thursday is a holiday, the auction is held on the preceding Wednesday or preceding working day;

- i. Detailed results of any auction are, by rule, made available by 6 pm on the auction module and available to all primary dealers. The primary dealers are also notified by email or fax;
- j. The Bank of Ghana also proceeds to publish a detailed report and analysis of each auction in a press notice and on both the Bank of Ghana and Ministry of Finance websites by close of business on the first business day following the auction date. According to the Respondent, "This process is used for tap ins into existing Bonds".

He opined that *"The complainant has woefully failed to indicate which rule was breached in the issue of the Bonds in question. The reason is more than apparent – no rule was breached, and there was strict compliance. We respectfully request the Commission to reject this petition as conjectural, spurious and trumped up"*.

Continuing, he said, *"Prior to November 2015, there was only one methodology for auctioning government securities at the Bank of Ghana. On 11th August 2015, the Ministry of Finance announced a second auction methodology, the "book building" approach which is similar to the approach applicable for Eurobonds and for new bond issuances. In pursuance of this, three (3) financial institutions were chosen as Joint Book Runners through competitive tendering processes. That the issuance of Bonds on 31 March, 2017 complied in every material detail with the tenets of the rules and regulations governing the issue of government securities, and followed in the tradition of previous issue of securities by GoG under the Bank of Ghana Guidelines. Perhaps, the only difference is the size of the recent issue"*.

Concerning the **"RATIONALE FOR THE ISSUE OF THE BONDS IN QUESTION"**, he stated: "As a solution to the inordinate budget deficit and in furtherance of government's debt refinancing strategy, the Ministry of Finance in a letter dated 5th January, 2017 signed by the erstwhile Minister for Finance, Seth Terkper published the government's issuance calendar for first quarter, January – March, 2017. This calendar bearing reference number MOF/DMD/FIRU/CAL/Q1/2017/1 was prepared in accordance with the provision of the quarter one Expenditure in Advance of Appropriation in accordance with Article 180 of the Constitution. The letter was addressed to the Bank of Ghana and the Managing Director of the Ghana Stock Exchange. The Respondent attached and marked it as "EXHIBIT 2- LETTER BY FORMER FINANCE MINISTER"

Exhibit 2 provides:

"... GOVERNMENT'S REVISED ISSUANCE CALENDAR FOR JANUARY-MARCH 2017

As part of government's efforts to improve market transparency in the issue of Government securities, we forward the attached issuance calendar for publication.

2. The calendar is developed based on the 2017 first quarter appropriation, the monthly fiscal forecast and the provisional Medium Term Debt Management Strategy (MTDS) for 2017-2019. The calendar shows the securities that are intended to be issued in respect of Government's Public Sector Borrowing Requirements for the period January to March 2017.

3. The Calendar also takes into consideration Government financing/restructuring strategy, market developments (both domestic and international) and the Debt Management objective of lengthening the maturity profile by reducing short-term borrowing.

4. Based on the above, table 1 below provides a summary of the gross borrowing requirement for the period January to March 2017.

Table: ISSUANCE CALENDAR FOR JANUARY –MARCH, 2017.

AMOUNT IN GHS'MILLION							
Month	91-Day	182 Day	1-year	2 -Year	3-yaer	5-Year	7 -
Year	10 -Year	15 'year					
Jan-17	3,500.00	2,000.00	200.00	400.00	-	600.00	-
-	-	6,700.00					
Feb-17	2,200.00	1,800.00	200.00	400.00	700.00	-	-
-	-	5,300.00					
Mar-17	2,650.00	2,150.00	200.00	400.00	-	-	-
-	-	5,400.00					
Total	8,350.00	5,950.00	600.00	1,200.00	700.00	600.00	-
-	-	17,400.00					

5. Please note that for the period, Government plans to issue an amount of GH¢17,400.00 million, to rollover maturities, GH¢15,504.43 million with the remaining amount of GH¢1,895.57 million being refresh issuance to meet Government's financing requirements and build buffers for liability management.

6. Per the calendar:

- The 91-day and 182-day will be issued weekly.
- The 1-Year Note will be issued bi-weekly through the primary auction, with settlement occurring on first and third Mondays of each month.
- The 2-Year Note will be issued monthly through the primary auction, with settlement occurring on second Mondays of each month.
- The 3- and 5-year bonds will be done per the calendar through the book-building method at the Ghana Stock Exchange (GSE) and settlement on the last Mondays of each month.
- The medium term instruments may be reopened to create liquidity and benchmark securities

7. Should the auctions in the medium-term instruments be successful and acceptable at prevailing interest rates, Government may consider accepting a reasonable amount above the target to build buffers which would be used to reduce borrowing at the short end of the yield curve.

8. Kindly take the necessary action to operationalize the programme

9. Counting on your usual cooperation

Hon Seth E. Terkper
Minister

THE GOVERNOR
BANK OF GHANA
ACCRA

THE MANAGING DIRECTOR
GHANA STOCK EXCHANGE
ACCRA..."

He mentioned that following the letter by the former Minister for Finance, the Bank of Ghana published a notice to Primary Dealers, Banks, Stock brokers and General Public – Notice No.BG/TD/2017/02 on 13th January 2017. The

Respondent, however, did not provide a copy of the said Notice, neither did he indicate what other steps were taken following that Notice by BOG.

Continuing, the Respondent said that a similar notice was published by the Bank of Ghana in respect of issue of Bonds for the second quarter, via Notice No. BG/TD/2017/15 on 30th March 2017. He stated further that the second quarter issuance included 7-year and 15-year bonds, which "in accordance with the calendar, the 5 & 10 year Bonds of April, were reopening existing 5-year and 10 – Year Bonds". He marked the Notice by Bank of Ghana, Notice No. BG/TD/2017/15, dated March 30 2017, as “NOTICE BOG-EXHIBIT 3” (attached). It provides as follows:

"BANK OF GHANA

NOTICE TO PRIMARY DEALERS, BANKS, STOCKBROKERS, AND THE GENERAL PUBLIC

NOTICE NO. BG/TD/2017/15

ISSUANCE CALENDAR FOR GOVERNMENT OF

GHANA SECURITIES: APRIL-JUNE 2017

The Bank of Ghana, on behalf of the Ministry of Finance, announces for the information of Primary Dealers, Banks, Brokers, the General Public and all prospective investors in the domestic securities market, the Issuance Calendar for Government of Ghana Securities for the period April – June 2017.

The following instruments would be available for issue in accordance with the stated respective frequencies:

Table: ISSUANCE CALENDAR FOR APRIL –JUNE, 2017.

<i>Month</i>	<i>91-Day</i>	<i>182-Day</i>	<i>1-Year</i>	<i>2-Year</i>	<i>3-Year</i>	<i>5-Year</i>	<i>7-Year</i>	<i>10-Year</i>	<i>15-Year</i>	<i>Total</i>
<i>April</i>	220 0.00	900	300. 00	400. 00		110 0.00	110 0.00	220 0.00	2200. 00	10400. 00
<i>May</i>	240 0.00	1050. 00	300. 00	400. 00	800. 00	-	-	-	2000. 00	6950.0 0
<i>June</i>	240	900	400.	400.		800.	-	-	-	4900.0

	0.00		00	00		00				0
Total	700	2850.	100	120	800.	190	1100	220	4200.	22250.
	0.00	00	0.00	0.00	00	0.00	.00	0.00	00	00

Please note:

That for the period, Government plans to issue an amount of GH¢22,250.00 million of which GHC 14,094.30 million is to rollover maturities, GHC 2,555.70 million being fresh issuance to meet Government's financing requirements and the remaining amount of GHC 5,600.00 million is to build buffers for liability management.

Per the proposed calendar, the issuance frequency for the Notes and Bonds will be as follows:

- *The 91-day and 182-day will be issued weekly.*
- *The 1-Year Note will be issued bi-weekly through the primary auction, with settlement occurring on first and third Mondays of each month*
- *The 2-Year Note will be issued monthly through the primary auction, with settlement occurring on second Mondays of each month.*
- *The 3- and 5-Year bonds will be done per the calendar through the book-building method and settlement on the last Mondays of each month.*
- *The 5-and 10-year Bonds in April 2017 will be raised through reopening of the existing 5-year Bonds (coupon of 18.75% maturing 24th January 2022 and the 10-year Bond (coupon of 19.0%) maturing 2nd November 2028, respectively. Settlement will be on 3rd April 2017.*
- *The 7- and 15-Year bonds in April 2017 will be done through the book-building method and settlement on 3rd April 2017. However, the 15-Year Bond will have a callable option feature.*
- *The 15-year fixed Bond in May 2017 will be a Bond exchange to convert the existing 91-Day Treasury Bills.*

All enquiries on this Notice should be directed to the Head, Treasury Department, Bank of Ghana, Accra.

(Sgd.)

CAROLINE OTOO (MRS)

THE SECRETARY..."

The Respondent also said that the 7-year and 15-year bonds of April, 2017 were by book-building method since they were fresh issuances. In addition, the 15 Year

Bonds had a callable option feature and for a bond exchange to convert existing 91 – Day Treasury Bills and that "this happens to be the first time such a condition had been applied to a bond with the intention to providing the opportunity to buy it back after 5 years if conditions become more favourable".

The Respondent disclosed that the Government of Ghana had to raise an amount of almost Six Hundred and Ten Million Ghana Cedis (GH¢610,000,000.00) by 3rd April, 2017, to service her domestic debt in the form of Treasury Bills as well as support budgetary expenditure. He enclosed a copy as "EXHIBIT 4-BREAKDOWN OF BILLS". He also said that the purpose for the issue of Bonds, as encapsulated in the Bank of Ghana Guidelines, was satisfied by the recent issue of the Bonds.

The Respondent said that the Ministry of Finance deals with only financial institutions licensed by the SEC to deal in securities and authorised by Bank of Ghana as Primary Dealers/Joint Book Runners, to act as Transaction Advisers. These are Barclays Bank, Stanbic Bank and Strategic African Securities.

He stated that "... at no point in time in the process does the Ministry of Finance communicate with any investor in any way. This remained the same in the case of the Bonds in question".

Any prospective investor acts through their Primary Dealers who in turn submit their offers through the Transaction Advisers who build up a book of offers submitted to them by the Primary Dealers. The Ministry of Finance in issuing the Bonds in question, in accordance with rule and practice set out above, did not deal with any investor. Indeed, it is correct to say that, apart from the Primary Dealers, no other entity had capacity to participate in the auction of 31st March, 2017.

The Respondent concluded on this point thus: *Respectfully, to meet the threshold of an investigable complaint, the complainant ought to have shown which of the procedures for the issuance of bonds was breached, and particularly, was breached as a result of conflict of interest between the Minister of Finance and the Primary Dealer/Joint Book Runner or Franklin Templeton Investment Limited. The complainant has been unable to refer to any entity that participated in the issue of the Bonds on 31st March, 2017 in violation of the processes highlighted above. To this extent, the instant petition is utterly frivolous and without basis.*

Therefore, he urged that *"the instant petition is unwarranted, specious and founded either on a lack of knowledge of the facts and circumstances of a Bond issue or mischief"*.

Turning to the specific allegations of petitioner outlined in the Commission's letter requesting for his comments, the Respondent noted, in respect of the allegation that the 7-year and 15-year Bonds were not on the issuance calendar, that the allegation does not impinge on conflict of interest, and therefore, the propriety or otherwise of the issue of 7-year and 15-year Bonds not being in the issuance calendar, does not fall within the jurisdiction of this Commission. Nevertheless, *"... out of sheer desire to inform the Commission, we say that paragraph 6 of respondent's Exhibit 1 – letter signed by former Finance Minister, Seth Terkper, clearly indicates that medium-term instruments may be reopened to create liquidity and benchmark securities. 7-year and 15-year Bonds fall into the classification of medium term Bonds"*.

The Respondent added that the Bank of Ghana which has the sole mandate to issue Government securities published a calendar for the second quarter and thereby issued notice to Primary Dealers, Banks, Stockbrokers and General Public – Notice No. BG/TD/2017/15 on 30th March 2017 (Exhibit 3) of the issue of the Bonds in question. According to him, the Bank of Ghana clearly indicated in Exhibit 3 that the Bonds in question would be done through the Book Building method for settlement to occur on 3rd April, 2017.

On the allegation that the Initial Pricing Guidance on the Bond was released around 5.37 pm on March 30, 2017, by email, which was after normal working hours, he described it as completely false and misleading and urged the Commission to reject it as such. The reasons he provided to convince the Commission to reject it are as follows:

- a. Initial pricing guidelines [sic]- "Guidance" rather- are not issued by the Ministry of Finance. Under the regulations, they are issued by the Book Runners/Transaction Advisers licensed by the Bank of Ghana – Barclays Bank Ghana, Strategic African Securities and Stanbic Bank Ghana.
- b. On the occasion of the issue of the Bonds in question, the Book Runners by a public announcement on 30th March, 2017 at 10.12 am, (EXHIBIT 5 - PUBLIC ANNOUNCEMENT) published details of the Bonds to be issued and sent invitations to all investors before the transaction opened. He said that the Initial Pricing Guidance was released on Thursday, 30th March, 2017 at 12.40 pm.

- c. The process used is the same as has existed since Nov. 2015 for the issuance of 3-15 year bonds. This was also published on the website of the Ministry of Finance on 30th March, 2017 ahead of the transaction.

Exhibit 5 provides, among others:

EXHIBIT 5: BOND ISSUANCE ANNOUNCEMENT

From: Deborah Akyeampon deborah.akyeampong@sas.ghana.com
Sent: Thursday, March 30, 2017 10:12 AM
Cc: Ben Abiaglo; 'Thomas K. Eso'; Sena Agbo
Subject: Republic of Ghana March 2017 7-Year Bond and 15-Year Callable Bond Issuance Announcement

Dear Investor,

Please find attached the following transaction announcements for your consideration:

	<u>7-YEAR TREASURY BOND ISSUANCE</u>	<u>15-YEAR CALLABLE TREASURY BOND ISSUANCE</u>
ISSUER:	Republic of Ghana	Republic of Ghana
SIZE:	GHS [To Be Determined]	GHS [To Be Determined]
ISSUE:	Treasury Bonds (the "Notes", "Bonds")	Treasury Bonds (the "Notes", "Bonds")
MATURITY:	2024 (7-year issuance)	2032 (15-year issuance)
SECURITY:	Senior Unsecured	Senior Unsecured
PRINCIPAL REPAYMENT:	Bullet	Bullet
CALL	Not Applicable	At the Issuer's discretion, this bond is callable in the 5 th , 6 th , , 7 th , 8 th , 9 th or 10 th year post issuance date
DISTRIBUTION:	Marketed to Resident Investors/Open to Non-Resident Investors	Marketed to Resident Investors/Open to Non-Resident Investors

DENOMINATIONS:	Each Bond shall have a face value of One Ghana Cedi	Each Bond shall have a face value of One Ghana Cedi
MINIMUM BID	GHS50 Thousand and multiples of GHS1 Thousand thereafter	GHS50 Thousand and multiples of GHS1 Thousand thereafter
GOVERNING LAW:	Ghana	Ghana
LISTING:	Ghana Stock Exchange (GSE)	Ghana Stock Exchange (GSE)
ACTIVE JOINT BOOKRUNNERS:	Barclays, SAS, Stanbic	Barclays, SAS, Stanbic

PRICING, BOOKBUILD AND ALLOCATION METHODOLOGY

OFFER PERIOD

**THURSDAY 30TH
MARCH 2017**

Release of Initial Pricing Guidance

Release of Initial Pricing Guidance

Book-build opens 9:00AM

Book-build opens 9:00AM

**FRIDAY 31ST
MARCH 2017**

Revised Pricing Guidance (released as necessary during the Book-build)

Revised Pricing Guidance (released as necessary during the Book-build)

**FRIDAY 31ST
MARCH 2017**

Revised and Final Pricing Guidance (released as necessary during the

Revised and Final Pricing Guidance (released as necessary during the Book-build)

Book-build)

Books to close on short notice on
Friday p.m.

Final Pricing and Allocation

Books to close on short notice on Friday p.m.

Final Pricing and Allocation

**MONDAY 3RD APRIL
2017**

Settlement/Issue Date

Settlement/Issue Date

ISSUE

METHODOLOGY

Book-build format

Bids accepted on a yield (%) basis

All successful bids will clear at a
single clearing level

Discretionary allocation at the single
clearing level in event of over-
subscription

Book-build format

Bids accepted on a yield (%) basis

All successful bids will clear at a single clearing level

Discretionary allocation at the single clearing level in
event of over-subscription

d. Further, as is normal practice, there was a second publication during the period books were open (2 pm in this case), to inform investors about the acceptable price range and encourage those outside the range to submit new bids within the range if they so desired (EXHIBIT 6 - INITIAL PRICING GUIDANCE)

EXHIBIT 6: INITIAL PRICING GUIDANCE

From: Deborah Akyeampon deborah.akyeampon@sas.ghana.com
Sent: Thursday, March 30, 2017 12:11 PM
Cc: Ben Abiaglo; 'Thomas K. Eso'; Sena Agbo
Subject: REPUBLIC OF GHANA 7-YEAR AND 15-YEAR
CALLABLE GHS DENOMINATED TREASURY BOND
ISSUANCES: INITIAL PRICING GUIDANCE ("IPG")

*The Joint Bookrunners, Barclays Bank Ghana, Strategic African Securities and Stanbic Bank Ghana, are pleased to announce the **Initial Pricing Guidance ("IPG")** for this week's Treasury Bond issuances as:*

- **7-Year Bond: 18.50% – 19.80%; and***
- **15-Year Callable Bond: 18.80% – 19.85%***

The issuance sizes are TBD. The book-build will open on Friday, 31st March 2017 at 9:00AM and close on Friday, 31st March 2017. Book, timing updates and revisions to the IPG (based on the book of demand) will be sent to the market as necessary.

The Joint Bookrunners and Deal-team

On behalf of the Ministry of Finance..."

On the allegation that "The transaction was opened at 9.00 am on March 31, 2017", the Respondent stated that "no provision of the Bank of Ghana Guidelines was breached in the manner in which the transaction was opened". He refuted the allegation that "*Public announcement of the transaction was sent by email at approximately 9.09 am on March 31, 2017, which meant that the transaction was opened before the announcement was made to the public*".

According to the Respondent, "As shown above, public announcement of the transaction was at 10.00 a.m. on 30th March, 2017 and not at 9.09 am on 31st March, 2017. In any event, this announcement was made by the Book Runners, not the respondent or the Minister for Finance".

Reacting to the allegation that “*The issuance summary was issued on March 31, 2017, at about 4.20 pm by email indicating that the Bond transaction had been closed and announcement made to the public*”, he said, “This is an irrelevant allegation. An Issuance Summary is prepared by the Book Runners/Primary Dealers licensed by the Bank of Ghana upon close of the transaction. It is the final summary of the transaction issued to investors in the nature of an acknowledgement. Neither the Ministry of Finance nor the Minister for Finance, Respondent hereto, played any role in the preparation of the Issuance Summary. In any event, the Issuance Summary complied with the regulations governing issue of Bonds of this kind as well as the practice before 2017”. He provided and marked as "EXHIBIT 7 - BOND ISSUANCE SUMMARY", a copy of the issuance summary.

EXHIBIT 7: BOND ISSUANCE SUMMARY

From: Deborah Akyeampon deborah.akyeampon@sas.ghana.com
Sent: Friday, March 31, 2017 4:19 PM
Cc: Ben Abiaglo; 'Thomas K. Easo'
Subject: Republic of Ghana: GHS Denominated 7-Year and 15-Year
 Callable Treasury Bond Issuance Summary

Dear Investor:

REPUBLIC OF GHANA GHS DENOMINATED 7-YEAR AND 15-YEAR CALLABLE TREASURY BOND ISSUANCE SUMMARY **(Tender 1531)**

<i>Issue Size</i>	<i>7-YEAR TREASURY BOND GHS1,452,080,000</i>	<i>5-YEAR CALLABLE TREASURY BOND GHS3,422,150,000</i>
<i>SECURITY DESCRIPTION:</i>	<i>7-Year GHS Treasury Bond: GOG-BD- 25/03/24-A4429- 1531</i>	<i>5-Year Callable GHS Treasury Bond: GOG- BD-15/03/32-A4430- 1531</i>
<i>LISTING:</i>	<i>Ghana Stock Exchange (GSE)</i>	<i>Ghana Stock Exchange (GSE)</i>
<i>GOVERNING LAW:</i>	<i>Ghana</i>	<i>Ghana</i>

TRADE DATE:	<i>31st March 2017</i>	<i>31st March 2017</i>
SETTLEMENT DATE:	<i>3rd April 2017</i>	<i>3rd April 2017</i>
ACTIVE JOINT BOOKRUNNERS:	<i>Barclays, SAS, Stanbic</i>	<i>Barclays, SAS, Stanbic</i>

The Joint Bookrunners and Deal-team

On behalf of the Ministry of Finance..."

On the settlement date being April 3, 2017, and not the closing date of the Bond, the Respondent mentioned that the Bank of Ghana Guidelines stipulate that Settlement Date for medium to long-term Bonds shall be 2 days after issue of Bonds. No breach occurred in the settlement effected on 3rd April, 2017, pursuant to the issue of the Bonds on Friday, 31st March, 2017. He also said that 2nd April, 2017 being a Sunday, the next working day that the Bonds could have been settled in accordance with the Bank of Ghana Guidelines was 3rd April, 2017.

In answer to the allegation that one single investor, Franklin Templeton Investment Limited (an American global investment organisation founded in 1947), purchased almost 95% of the bonds issued by the Minister for Finance, the Respondent said *"The Ministry of Finance, in the matter of the issue of Bonds, does not transact with any investor. All transactions are carried out by Book Runners designated by the Bank of Ghana as Primary Dealers"*. He explained further that *"... there is no law or regulation that imposes a limit on the amount of an investor's offer. The transaction processes for this issuance did not deviate from previous issuances, as to lead to a finding that Franklin Templeton was favoured. The records will show that Franklin Templeton has always, through primary dealers licensed by Bank of Ghana, invested in Ghana's bonds in a way no different from the instant one in dispute"*.

With regard to the allegation that the approach used in the Bonds' transaction was Virtual Private Placement and that the process was opened in the morning and closed in the evening of the same day March, 31, 2017, he said that there was no virtual "private placement" approach deployed in the issue of the Bonds. He explained that Private placement is done with one financial institution or a selected group of investors, which is not made public. He disclosed that a public announcement was made in a manner sanctioned by the Bank of Ghana Guidelines and approved by the Transaction Advisers.

The Respondent also stated that the transactions complied with the tenets of the same book building approach that the Ministry of Finance had used since 2015, when Ministry of Finance adopted that method to issue domestic bonds. The order books were opened to all interested investors and closed to all at the same time, and were managed by Transaction Advisers approved by Bank of Ghana, as they always have been.

He further stated that the discretion for books to be opened and closed in one day is one to be exercised by the Transaction Advisers taking into account relevant financial factors, which could impact on the Bonds to be issued. According to the Respondent, there is no domestic law or regulation that prohibits closing the books in the same day they are opened and that as a matter of practice, Book Runners may choose to close the books anytime they are satisfied with orders received. Further, the issuance invitation put investors on notice that the transaction would close on short notice.

The Respondent answered the allegation concerning the relationship between the Respondent and Trevor G. Trefgarne, stating that:

- a. The investor in the Bonds, Franklin Templeton Investment Limited, is a corporate person, and not an individual. Neither the Ministry of Finance nor the Minister for Finance, respondent hereto, has any interest in the said corporate body. The Respondent has, at no point in time, held any shares or directorship in the company Franklin Templeton Investment Limited.
- b. The transaction in issue was conducted by Transaction Advisers licensed by Bank of Ghana to carry out the function, not the Ministry of Finance or the Minister for Finance. That at no point during the transaction did either the Ministry of Finance or the Respondent deal with any investor including Franklin Templeton Investment Limited.
- c. Mr. Trevor G. Trefgarne is not a shareholder in Franklin Templeton Investment Limited, the company, which acquired some of the Bonds in question.
- d. It is claimed that Mr. Trefgarne is a Director in Franklin Templeton Investment Limited. Assuming, without admitting that this were true, the purchase of

Bonds by Franklin Templeton Investment Limited does not result in any benefit to Mr Trevor Trefgarne.

- e. Prior to 2017, Franklin Templeton has acquired Bonds issued under the same Bank of Ghana Guidelines. If Mr. Trevor G. Trefgarne is indeed a Director of Franklin Templeton, he must have been a Director when all of those Bonds were acquired. He had no personal benefit from those purchases, and no such benefit has been proven or established by the complainant in respect of the Bond issue in question.
- f. Enterprise Group Limited played absolutely no role in the transaction in issue. There could thus not have been any benefit to Enterprise Group Limited from this transaction.
- g. With regard to the allegation that Enterprise Group Limited is owned by Databank Limited, a company in which the Minister for Finance owns shares, that the records show that neither Databank Limited nor Enterprise Group Limited acquired any of the Bonds in question.
- h. That whoever the Directors of Enterprise Group Limited may be or may not be has no bearing on the issuance and purchase of the Bonds in question. Neither Enterprise Group Limited nor its directors played any role in the transaction and did not in any way benefit from it.

The Respondent also mentioned that he had absolutely no interest in the transaction in issue to disclose and that the transaction was an open market transaction carried out in accordance with Bank of Ghana Guidelines, and not designed to benefit any particular investor in anyway.

On the issue of the bond transaction having been shrouded in secrecy as the process was limited to one day, unlike past bonds where the “book-building” method had been used and the process was opened for a minimum of three days to ensure optimal participation, the Respondent described it as “founded on untruths”. He indicated that the transactions followed the same book building approach that had been used since 2015 to issue domestic bonds.

On the issue of conflict of interest, the Respondent said *“We rely on the incontrovertible facts set out in sub-paragraphs (a) to (h) in resolution of issues (ix) to (xiii) above, in vehement denial of the allegation of conflict of interest against the Minister for Finance*

in the issuance of Bonds by the Government of Ghana. A conflict of interest allegation arises in the light of clear facts which support a conclusion that a public officer's personal interest conflicts with or is likely to conflict with the performance of the functions of his or her office. The interest ought to be financial or otherwise, direct or indirect, which must ultimately be clearly proven" and cited *Okudzeto Ablakwa (No.2) & Another v Attorney-General & Obetsebi-Lamprey (No 2) [2012] 2 SCGLR 845* in support.

The Respondent, through the Deputy Attorney-General, submitted that in that case, the Supreme Court, in dealing with the issues before it in general, laid down seven (7)-fold blanket test for establishing a claim against a public official under the Constitution. The court observed that it is essential to establish the following:

- 1) The law under which the complaint is brought to court. This law may be constitutional, statutory or legislative instrument. If the law is constitutional and it is brought under articles 23, 35(8) or 296, what follow must be established.
- 2) The capacity of the decision maker. He must be a public officer or administrative officer if the complaint is brought under article 23. No such requirement is necessary if it is brought under article 296.
- 3) Did the decision maker profit by the decision or action (to provide the basis for conflict of interest or economic gain)?
- 4) The capacity of the beneficiary or the recipient of the decision or action. Was the decision taken in his favour in unjustifiable preference to other applicants who were equally or better qualified but were bi-passed because of some oblique motives or obscene considerations or special favours or due to family, social or political connections (to provide the basis for establishing favouritism, nepotism, cronyism, etc.).
- 5) What were the grounds or the basis for making the decision for that particular recipient?
- 6) Were the known or established procedures or processes for taking the action or making the decision duly complied with?

- 7) Did the decision or action conform to the audi alteram partem rule or any other law relevant to that particular decision or action? Thus, Brobbey JSC made the following observations:

“The plaintiffs’ reliefs failed in so far as they were based on cronyism, arbitrariness, capriciousness, discrimination or conflict of interest. I have had the benefit of reading in advance the opinion of my brother Atuguba CJ, the President of this panel. He dismissed the claims of the plaintiffs in respect of conflict of interest, cronyism, discrimination, arbitrariness, capriciousness and corruption. What that implies is that this panel is unanimous in dismissing the claims of the plaintiffs based on cronyism, discrimination, arbitrariness, capriciousness and conflict of interest.... this is a Court of law, a court of equity and a court of justice. As a court of law we are governed by rules and regulation. For the purposes of this case, some of the rules are as provided in the 1992 Constitution, the Evidence Act, 1975 (NRCD323) and the Lands Commission Act, 1994 (Act 483). Our rules and regulations mandate that people who invite the court to condemn others for wrong doing should be in the position justify what they call on the courts to do”.

The Respondent further submitted that “*Similarly in **Dikyi & Others v. Ameen Sangari Industries Ltd.** [1992] 1 GLR 61, Kpegah J. (as he then was) held that conflict of interest and conflict of duties were objectionable, and that on account of a director of a company standing in a fiduciary relationship with the company and the duty to observe the utmost good faith in his dealing with the company or on its behalf, a director is not permitted to place himself in a situation where his duty to the company conflicts with or may conflict with his personal interest or his duties to other persons*”.

He urged that “*What stands out from the above cases is that there was evidence before the court, on the bases of which a finding of a conflict of interest situation could be validly made*”.

He said that the law makes no room for mere conjecture, suspicion or imagination and that the complainant had been unable to allude to, show or establish any facts relevant and contemporaneous to the transaction that has even the remotest potential to undermine the respondent’s impartiality, in view of the possibility of a clash between the respondent’s self-interest and professional interest or public interest.

According to him, there is no evidence of any act or omission on the part of either the Ministry or the Minister supporting an allegation of participation in a business

transaction or activity for the benefit of friends or family. Neither did the personal interests of either the Ministry of Finance or the Respondent interfere with the performance of their duties and functions. Further, no personal or private benefit had been derived by the Respondent through the issuance of the bonds in question. Therefore, the respondent has not contravened article 284 of the Constitution. As such, the petition should be dismissed as grossly unmeritorious and frivolous.

5.0. POWERS AND FUNCTIONS OF THE COMMISSION

5.1. The 1992 Constitution of Ghana

The Commission was established pursuant to Chapter 18 of the 1992 Constitution of the Republic of Ghana (the Constitution) to investigate complaints of violations of fundamental human rights and freedoms, administrative injustice, abuse of power, instances of alleged or suspected corruption and misappropriation of public monies by officials.

Article 218 provides that “the functions of the Commission shall be defined and prescribed by an Act of Parliament and shall include the duty to,

(a) investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;

(b) investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the Armed Forces, the Police Service and the Prisons Service in so far as complaints relate to the failure to achieve a balanced structuring of those services or equal access by all to the recruitment of those services or fair administration in relation to those services...;

(e) investigate all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigations;

(f) educate the public as to human rights and freedoms by such means as the Commissioner may decide, including publications, lectures and symposia; and (g) report annually to Parliament on the performance of its functions”

On conclusion of an investigation, the Commission may take appropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigations.

The Commission is also mandated to investigate allegations that a public officer has contravened or has not complied with the Code of Conduct for Public Officials prescribed under Chapter 24 of the Constitution. This Chapter contains provisions on conflict of interest by public officials, among other matters relating to the proper conduct in public sector institutions.

Article 284 of the Constitution (under Chapter 24) provides that "*A public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of his functions*", whilst article 287 of the Constitution stipulates that "*An allegation that a public officer has contravened or has not complied with a provision of this Chapter [Chapter 24] shall be made to the Commissioner for Human Rights and Administrative Justice and, in the case of the Commissioner of Human Rights and Administrative Justice, to the Chief Justice who shall, unless the person concerned makes a written admission of the contravention or non-compliance, cause the matter to be investigated.*

(2) The Commissioner of Human Rights and Administrative Justice or the Chief Justice as the case may be, may take such action as he considers appropriate in respect of the results of the investigation or the admission".

Article 288 of the Constitution provides that "in this chapter (Chapter 24), unless the context otherwise requires, "Public Officer" means a person who holds a "public office", which term is defined in Article 295(1) to include "an office the emoluments attached to which are paid directly from the Consolidated Fund or directly out of the moneys provided by Parliament."

The mandate of the Commission to investigate complaints concerning Chapter 24 of the Constitution is a function exclusively reserved for the Commission: *Okudzeto Ablakwa (No. 2) & Another v. Attorney-General & Obetsebi-Lamprey (No.2) 2 [2012] SCGLR, 845 (the Ablakwa Case).*

In that case, the Supreme Court held that Article 287 of the 1992 Constitution mandates that complaints under Chapter 24 of the 1992 Constitution are to be investigated exclusively by the Commission for Human Rights and Administrative Justice.

The facts of the case are that, the Lands Commission, at the instance of the Minister of Water Resources, Works and Housing in the J. A. Kufour Government (2001-2008), granted a 50-year lease of government property in 2008, i.e. Bungalow No. 2 located in the Ridge Area, Accra, to the defendant, Mr. Jake Obestebi-Lamprey (2nd Defendant) for the specific purpose of developing the land into three flats of at least four-storey in height. The second defendant paid a total cost of GH¢390,000 for the grant.

The plaintiffs, Mr. Okudzeto Ablakwa and Dr. Omane-Boamah, in their capacities as Ghanaian citizens, viewing the grant of the lease to the second defendant as improper, sued invoking the original jurisdiction of the Supreme Court for a declaration, inter alia, that the purported lease of the said government bungalow by the Kufour Government to the second defendant smacked of cronyism and the same was arbitrary, capricious, discriminatory and a gross abuse of discretionary power vested in a public officer under the 1992 Constitution.

In their statement of case, the plaintiffs contended, among others, that the lease of the disputed property to the second defendant amounted to corruption and conflict of interest and abuse of discretionary power by public officer in contravention of article 284 which provides that: “A public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office.”

The Supreme Court held that complaints under Chapter 24 of the 1992 Constitution are to be investigated exclusively by the Commission on Human Rights and Administrative Justice. That being the case, the court further held that

*"Since specific remedy has been provided for investigating complaints of conflict of interest, the plaintiffs were clearly in the wrong forum when they applied to this court to investigate complaints relating to conflict of interest involving those public officers. This was the decision of this court in **Yeboah v Mensah** [1998-99] SCGLR 492 which endorsed similar decision of the court in **Edusei v Attorney-General** [1996-97] SCGLR 1 and **Edusei v Attorney-General** [1998-99] SCGLR 753".*

To invoke the investigative machinery of the Commission under Chapter 24 of the Constitution, a complainant needs to file a complaint before the Commission. The Complainant does not have to be the victim and the complainant could be an individual or a body corporate. This was the decision in **Republic v High Court**

(Fast Track Division) Ex parte, CHRAJ; Interested Party, Richard Anane (HC) [2007-8] SCGLR 340.

In that case, it was held that to invoke the investigative machinery of CHRAJ in matters relating to the Code of Conduct for Public Officers, [i.e. Chapter 24 of the Constitution] there must be an identifiable complainant, be he an individual or body of persons or even bodies corporate before the Commission. The identifiable complainant must file a complaint, which might be in writing or even if it was given orally to a representative in the region or the district, such representative should reduce it into writing and sign it and the complainant should also sign or thumbprint it.

The Commission consists of a Commissioner and two Deputy Commissioners. It is independent, subject only to the Constitution and the law and is impartial and exercises its powers and performs its functions without fear, favour or prejudice.

5.2. The Commission on Human Rights and Administrative Justice Act, 1993 (Act 456)

Section 7 of Act 456 restates the functions and powers of the Commission as provided under Articles 218 and Chapter 24 of the Constitution. Under section 7(1)(f) of Act 456, the Commission has the mandate to investigate instances of alleged or suspected corruption by public officials.

In terms of s. 8 of Act 456, “the *Commission shall, for purposes of performing its functions under this Act, have power –*

- (a) to issue subpoena requiring attendance of a person before the Commission and the production of any document or record relevant to any investigation by the Commission;*
- (b) to cause any person contemptuous of any such subpoena to be prosecuted before a competent court;*
- (c) to question any person in respect of any such matter under investigation by the Commission;*
- (d) to require any person to disclose truthfully and frankly any information within his knowledge relevant to any investigation by the Commissioner.*

Section 15 (1) (a) and (b) of the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456) provide that:

“...the Commission may require any person who is able to give information relating to a matter being investigated by the Commission –

a) to furnish the information to it

b) to produce a document, a paper or thing that relates to the matter being investigated and which may be in the possession or control of that person

In addition, under sections 6 (2) and 82 of the Mutual Legal Assistance Act, 2010 (Act 807), the Commission as a competent authority in the Republic may request, through the Attorney-General and Minister of Justice, assistance from a foreign state for its investigations.

The Commission can, on its own initiative, investigate allegations of corruption or suspected corruption that have come to its notice through various sources including the media or even suspicions: ***Republic v High Court (Fast Track Division) Ex parte, CHRAJ; Interested Party, Richard Anane (HC) [2007-8]*** (Supra).

5.3. Commission on Human Rights and Administrative Justice (Investigation Procedure), Regulations 2010 (C.I. 67)

The procedure to be followed by the Commission in conducting an investigation is regulated by the Commission on Human Rights and Administrative Justice (Investigation Procedure) Regulations, 2010 (C.I. 67) taking into consideration the circumstances of each case. Regulations 3 and 4 of C.I. 67 provide:

r. 3: “The Commissioner or a representative of the Commissioner, may assign

(a) an investigator, or

(b) an officer of the Commission

to conduct preliminary investigations into a complaint lodged with the Commission”.

r. 4: The Commission may request:

a. the services of a Police Officer,

b. a public Institution, or

c. a person with expert knowledge relevant to the subject matter of the Commission's investigations in the performance of its functions.

In addition, where the complaint relates to Chapter 24 of the Constitution, the Commission may proceed to investigate where the person “denies the allegations”. Where the person admits the allegation, then the “*Commissioner for the Commission on Human Rights and Administrative Justice or the Chief Justice as the case may be, may take such action as he considers appropriate in respect of the results of the investigation or the admission*”.

In the instant case, there is a complaint from a complainant, Yaw Brogya Genfi, before the Commission. His complaint to the Commission is that the Respondent has contravened or has not complied with Article 284 of the Constitution relating to conflict of interest, which he alleges is as a result of the issuance of various types of bonds in March/April 2017. He alleges that the Respondent, being a public officer, “*has put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office. He attempted to promote a private or personal interest for himself or for some family members and business associates, and the promotion of the private interest has resulted in, or was intended to result in, or appears to have resulted in, or has the potential to result in an interference with the objective exercise of his duties and an improper benefit or an advantage by virtue of his position*” but did not take proper steps to disclose his conflicting interests, neither did he resolve or manage his conflicting interests.

The investigative reach of the Commission in relation to Chapter 24 extends to persons who hold “public office”: see article 288 of the Constitution. “Public office” is defined in Article 295(1) to include “an office the emoluments attached to which are paid directly from the Consolidated Fund or directly out of the moneys provided by Parliament.”

Thus, by virtue of Article 288 of the Constitution, the Respondent, being the Minister for Finance, is a public officer within the meaning of Article 288 of the Constitution and, therefore, subject to investigation under Chapter 24 of the Constitution by the Commission as his salaries and allowances are charged on the Consolidated Fund.

The particulars of the complaint satisfy the provisions of the Constitution and Act 456 and C.I 67 which provide the manner in which complaints under Chapter 24 may be brought to the Commission to trigger its investigative machinery. Clearly then, from the provisions of the Constitution, Act 456 and C.I 67, which established, empowered and regulate the functions of the Commission, the Commission has power to investigate the allegations of conflict of interest made against the Respondent.

6.0. APPLICABLE CONSTITUTIONAL, LEGAL AND POLICY FRAMEWORK

The investigation by the Commission was also guided by the overarching values and principles underpinning the 1992 Constitution, as well as the legal, regulatory and policy framework relating to the proper conduct of persons assigned to perform the functions of state, as well as others regulating the subject matter of the investigations. The provisions of the Constitution and some of the applicable legislation and policy are provided below.

5.1.1. The Constitution, 1992

The 1992 Constitution, *inter alia*, declares and affirms Ghana's commitment to freedom, justice, probity, and accountability and the principle that all powers of government spring from the sovereign will of the people (see Preamble).

Article 23 states "Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal".

Article 35(8) of the Constitution provides thus: "The State shall take steps to eradicate corrupt practices and abuse of power" and Chapter 24 of the Constitution provides the minimum standards of conduct in public office. The standards of conduct include the following:

- Private and personal interest of public office holders are subordinate to public interest, and where a public officer puts himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office.
- Article 286 (7) further provides: "Before entering upon the duties of his office, a person appointed to an office to which the provisions of this article apply, shall take and subscribe the Oath of Allegiance, the Oath of Secrecy and the Official Oath set out in the Second Schedule to this Constitution, or any other oath appropriate to his office".
- The Oath of a Minister of State provides among others as follows:

"I,having been appointed Minister of State (Deputy Minister) of the Republic of Ghana, do (in the name of the Almighty God swear) (solemnly affirm) that I will at all times well and truly serve the Republic of Ghana in the office of Minister of State (Deputy Minister); that I will uphold, preserve, protect and defend the Constitution of the Republic of Ghana as by law established; that I will, to the best of my judgment, at all times when required, freely give my council and advice for the good management of the public affairs of the Republic of Ghana; and that I will not directly or indirectly reveal any matters that shall come to my knowledge in the discharge of my duties and committed to my secrecy as Minister of State (Deputy Minister). (So help me God)..."

Article 296, under "Exercise of discretionary power", provides:

"Where in this Constitution or in any other law discretionary power is vested in any person or authority,

- (a) that discretionary power shall be deemed to imply a duty to be fair and candid;
- (b) the exercise of the discretionary power shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law; and
- (c) where the person or authority is not a Justice or other judicial officer, there shall be published by constitutional instrument or statutory instrument, Regulations that are not inconsistent with the provisions of this Constitution or that other law to govern the exercise of the discretionary power".

5.1. 2. The Criminal and Other Offences Act, 1960 (Act 29)

Section 179C provides that a person commits a criminal offence who (a) while holding a public office corruptly or dishonestly abuses the office for private profit or benefit; or (b) not being a holder of a public office acts or is found to have acted in collaboration with a person holding a public office for the latter to corruptly or dishonestly abuse the public office for private profit or benefit.

5.1.3. Public Financial Management Act, 2016 (Act 921)

Act 921 provides, inter alia, that:

Powers of Minister

s. 4. (1) The Minister is responsible for the policy and strategic matters related to the efficient operation of the public financial management system of the country subject to policy guidance from Cabinet.

(2) For the purpose of subsection (1) and subject to the Constitution and any other enactment, the Minister shall...

(a) prepare the annual and supplementary budget estimates and reports for submission to Parliament;

(b) submit to Parliament for approval, the budget of covered entities as required under this Act or any other enactment to ensure compliance of the covered entities;

(c) monitor and assess the implementation of the annual budget and ensure the implementation of the fiscal policy of Government;

(d) manage Government property, financial assets, Government debts, Government guarantees and other contingent liabilities specified under this Act;

(g) prepare Fiscal Strategy Document;

(i) coordinate and mobilise resources including financial assistance from development partners and integrate the resources into the planning, budgeting, reporting and accountability processes provided under this Act;

(k) issue directives and instructions necessary for the effective implementation of this Act or any other enactment to the head of a covered entity, a Principal Account Holder and Principal Spending Officer of a covered entity; and

(l) perform any other functions assigned to the Minister under this Act.

s. 5. (1) Pursuant to section 4, the Minister may

(a) request a report or any other information from any covered entity or any other person receiving grants, advances, loans, guarantees or indemnities from the Government;

(b) in consultation with the Civil Service Council and with the approval of Cabinet, establish structures or units, within the Ministry necessary to enable the Minister discharge responsibilities under this Act;

(c) acting on the advice of the Attorney-General and subject to the approval of Parliament, enter into and execute an agreement on behalf of the Government in relation to matters of a financial nature; and

(d) give directives and instructions necessary for the implementation of the provisions of this Act.

(2) The Minister may delegate any of the responsibilities under subsection (1) to the Chief Director or to a senior public officer not below the rank of a Director within the Ministry but shall not be relieved of the ultimate responsibility for the performance of the delegated responsibility.

(3) Subject to any procurement laws, the Minister may hire or retain the services of professionals, consultants or experts, as the Minister considers necessary for the proper and effective performance of the functions of the Minister under this Act, on the terms and conditions to be agreed upon.

Section 54. (1) The Ministry of Finance shall have an office that is responsible for public debt management and which shall be under the supervision of the Chief Director in accordance with the Civil Service Act, 1993 (PNDC Law 327).

(2) The Public Debt Management Office shall (a) handle debt management operations of the Government; (d) assess the feasibility of borrowing requirements implied by the path for the fiscal deficit in the Fiscal Strategy Document; (e) formulate the Medium-Term Debt Management Strategy; and (f) perform any other functions that may be determined by the Minister.

Section 102 of Act 921 explains some of the terms used in the Act. It provides that unless the context otherwise requires, in the Act:

- “borrowing” means (c) issuing debt securities; and “debt” includes a financial liability created by (a) borrowing, (c) the issuance of debt securities, and
- “debt securities” mean (a) legal documents as evidence of debt issued by the Government in electronic format or hard copy to a named person;
- “liquidity buffer” means funds set aside by Government to take care of shortfalls in Government financing in the short term;

5.1.5. Companies (Amendment) Act, 2016 (Act 920)

“beneficial owner means an individual

- (a) who directly or indirectly ultimately owns or exercises substantial control over a person or company;
- (b) who has a substantial economic interest in or receives substantial economic benefits from a company whether acting alone or together with other persons;
- (c) on whose behalf a transaction is conducted; or
- (d) who exercises ultimate effective control over a legal person or legal arrangement”;

5.1.6. Code of Conduct for Public Officers of Ghana

The Code of Conduct for Public Officers of Ghana, 2009, (the Code) contains minimum standards of conduct applicable to all public officers, including elected, non-elected or appointed, who are to ensure that the basic values and principles provided in the Code are adhered to. It seeks to promote integrity, probity and accountability, dedicated and faithful service to the Republic of Ghana.

These standards include “Guidelines on Conflict of Interest to Assist Public Officials Identify, Manage and Resolve Conflicts of Interest” (the Guidelines). The Code and the Guidelines were issued as administrative and operational framework/guidelines for implementing the Constitutional intendment underpinning Chapter 24 of the Constitution.

3.1: Conflicting Financial Interests

A public official shall not participate in an official capacity in any particular matter which to his knowledge: he/she has a financial interest; and any person whose interests are imputed to him in any way has a financial interest; if the particular matter will have a direct effect on that interest.

Self-dealing: A public official shall not take an action in an official capacity which involves dealing with himself/herself in a private capacity and which confers a benefit on himself/herself.

3.4.1. Use of Public Office for Private Benefit

A public official shall not use his public office for his/her own private benefit, for the endorsement of any product, service or enterprise, or for the private benefit of friends, relatives, or persons with whom the public official is affiliated in a private capacity, including non-profit organizations of which he/she is an officer or member, and persons with whom the public official has to seek employment or business relations.

4.0: Dealing with conflict of interest situations

As soon as a conflict of interest situation is foreseeable, the public official must take all appropriate steps to extricate him/her from the situation. Such steps may include:

Reporting the conflict of interest situation and its circumstances to his/her superior officer, or removing him/her from the conflict of interest situation.

4.2 Disclosure of Conflicting Interests

Whenever a conflict of interest situation occurs or is likely to occur, the public official must make a disclosure of the situation as provided by law or as follows:

What to disclose: Assets and liabilities, gifts, conflicting interests, outside employment, and NGO activities.

How to disclose: In writing, verbal and surrender the item.

When to disclose: As soon as a conflict of interest situation occurs or is likely to occur and when in doubt.

To Whom: CHRAJ, superior officer/head of institution, and ethics committee or compliance officer or a similar set up within the institution.

7.0. ISSUES FOR THE INVESTIGATION/DETERMINATION

Five main issues were identified for investigation. They are the following:

- 1) Whether there are rules on the issuance of the bonds
- 2) Whether the issuance of the 7-year and 15-year bonds by the government of Ghana was done in accordance with the rules
- 3) Whether the Issuance of the 5-Year and 10-Year Government of Ghana bonds was done in accordance with the rules
- 4) Whether the Bond Transactions were organised in a manner that favoured Respondent's friends, family, associates and business partners, and
- 5) Whether the Conduct of the Respondent in the Issuance of the Bonds constitutes conflict of Interest, Cronyism, Insider Trading and Corruption

8.0. THE INVESTIGATION

The investigation was conducted in terms of Articles 284 and 287 of the Constitution and Section 7(1) (e) of Act 456 and comprised the following:

- i. Consideration and evaluation of Media and other Reports:
 - a) Staronline.com
 - b) Modernghana
 - c) Reuters
 - d) Press Statements by the MOF
 - e) Press Statement by the Minority in Parliament
- ii. Interviews with:
 - a) Deborah Akyeampon, Strategic African Securities Limited
 - b) Ben Ahiaglo, Strategic African Securities Limited
 - c) Yaw Brogya Genfi, Complainant
 - d) Komla Nyaletey, Barclays Bank
 - e) Alhassan Andani and Randolph Rodrigues, Stanbic Bank
 - f) Yao A. Abalo, Central Securities Depository
 - g) Sam Arkhurst, Debt Management Unit, MOF

- h) Mrs. Caroline Otoo, Bank of Ghana
 - i) Mrs. Evelyn Kwatia, Bank of Ghana
 - j) Kofi S. Yamoah, GSE
 - k) Ken Ofori-Atta, Respondent
 - l) Patrick Numo, Chief Director, MOF
- iii. Consideration and evaluation of the following Documents/Information from the Registrar-General's Department:
- i. Enterprise Group Limited
 - ii. Ventures and Acquisitions Limited
 - iii. Databank Asset Management Services Limited
 - iv. Databank Ark Fund Limited
 - v. Databank Money Market Fund Limited
 - vi. Enterprise Insurance Ltd
- iv. Consideration and evaluation of the "Declaration of Assets and Liabilities under article 286 of the Constitution 1992" submitted to the Auditor-General's Department by the Respondent
- v. Consideration and evaluation of Documents/Information obtained from the Bank of Ghana:
- (a) Prospectus in Relation to the Bonds Issued in the First Quarter
 - (b) List of Investors who purchased the bonds and amounts purchased by each investor
- vi. Consideration and evaluation of the following Documents/Information obtained from the Central Securities Depository:
- a. Schedules showing bids submitted and successful bids for the 5-year, 7-year, 10-year and 15-year GoG bonds issued in March, 2017
 - b. List of the members of the Board of Directors of the CSD as at March 30, 2017
- vii. Consideration and evaluation of the following Documents/Information obtained from the Ministry of Finance:

- a. List of global portfolio investors that the issuance of the bonds attracted, the Name and address of the investor, and
 - b. Summary report of Auction held on 31st March, 2017 Issuance calendars
- viii. Consideration and evaluation of the following additional Documents/Information obtained from the Complainant:
 - a) Copy of “Republic of Ghana GHS denominated 7-year and 15-year callable treasury Bond Issuance Summary (1531)”
 - b) Copy of “Republic of Ghana: March 2017 15-year callable Treasury bond issuance announcement”
- ix. Consideration and evaluation of the following additional Documents/Information obtained from
 - Stanbic Bank Ghana
 - Barclays Bank Ghana
- x. Consideration and evaluation of other documents/information obtained in the course of the Investigation from the Official Websites of:
 - i. MOF
 - ii. BOG
 - iii. Franklin Templeton Investments Limited

8.1.0. SUMMARY OF EVIDENCE/INFORMATION

8.1.1. DEBORAH AKYEAMPON

DEBORAH AKYEAMPON is a Finance Officer with the Corporate Finance Department of Strategic African Securities (SAS), and a member of the SAS Team involved in the trading of Government of Ghana (GoG) securities. She said that the other members of the Team are Thomas K. Esono, Ben Ahiaglo and Sena Agbo.

She was interviewed to ascertain and verify, among others, the authenticity of three e-mails tendered/exhibited by the Respondent to support his response to the complaint/allegation of conflict of interest involving the issuance of the bonds. Each of the three emails has the following features:

EXHIBIT 5: BOND ISSUANCE ANNOUNCEMENT

From: Deborah Akyeampon deborah.akyeampon@sas.ghana.com
Sent: Thursday, March 30, 2017 10:12 AM
Cc: Ben Abiaglo; 'Thomas K. Eso'; Sena Agbo
Subject: Republic of Ghana March 2017 7-Year Bond and 15-Year Callable Bond Issuance Announcement

EXHIBIT 6: INITIAL PRICING GUIDANCE

From: Deborah Akyeampon deborah.akyeampon@sas.ghana.com
Sent: Thursday, March 30, 2017 12:11 PM
Cc: Ben Abiaglo; 'Thomas K. Eso'; Sena Agbo
Subject: REPUBLIC OF GHANA 7-YEAR AND 15-YEAR
CALLABLE GHS DENOMINATED TREASURY BOND
ISSUANCES: INITIAL PRICING GUIDANCE ("TPG")

EXHIBIT 7: BOND ISSUANCE SUMMARY

From: Deborah Akyeampon deborah.akyeampon@sas.ghana.com
Sent: Friday, March 31, 2017 4:19 PM
Cc: Ben Abiaglo; 'Thomas K. Eso'
Subject: Republic of Ghana: GHS Denominated 7-Year and 15-Year
Callable Treasury Bond Issuance Summary

As can be seen from the features on the emails, none contained recipients' field usually indicated by "TO". Rather, they contained the field "CC".

Deborah Akyeampon identified the e-mails as having emanated from her and explained that the recipients were placed on the "bcc" field because SAS did not intend that the email addresses of its investor clientele be made known to every other investor, which is usually the case when emails are sent using the "TO" field. Thus, according to her, this ensured that investors received the mails addressed specifically to them without knowing the other recipients of that same mail.

She provided the list of those investors the SAS notified of the bonds. The list contained over 50 investors including “Enterprise Group” which emails were addressed to: yaw.acheampong@enterprisegroup.com.gh, wilson.davor@enterprisegroup.com.gh.

Officials of the BOG, MOF and CSD were also on the list. She said that these investors (recipients) would in turn send out relevant information on the bond transaction to their respective clients.

Indeed, a control test conducted by the Investigators showed that persons on the “bcc” field of e-mails would receive the email even in the absence of persons listed in the “To” field.

Deborah Akyeampon mentioned that officials of the Ministry of Finance are also part of the recipients on her mail and that Sam Arkhurst, Head of the Debt Management Unit, and Elizabeth Owiredi of the MOF, were among those she sent the mails to.

On the issue of public announcement of the bonds' transaction, Deborah Akyeampon stated that one of her e-mails was a “public announcement”. She explained that the investors are, in this context, regarded as the “public”. She said apart from sending e-mails, she also places calls to the prospective investors.

She indicated that the Book Runners comprising Stanbic Bank, SAS and Barclays Bank are allocated tranches of investors. She works on SAS allocated tranche of investors, which has a mix of both local and foreign investors. Deborah Akyeampon mentioned that representatives of the other bookrunners that she collaborates with include the following:

Barclays Bank:

- Komla Nyalety (Corporate Head)
- Kofi Awuku, Sandra Osman, and
- Samuel Feretas

Stanbic Bank Ghana:

- Randolph Rodrigues (Head of Investment Banking)
- Big Sam, Kizito Seddoh (Co-ordinator)

- Kwesi Kwarteng, and
- Kobby Bentsi-Enchil (a representative from Nigeria).

She said that Exhibit 5 (Bond Issuance Announcement) was one of the mails she sent out to her group of investors to announce the issuance of the bonds, the list of which she made available to the Commission. She added that the list of the investors did not indicate who is a “Resident” or “Non-Resident” investor.

On the pricing of the bonds, Deborah Akyeampon said the Joint Book Runners conducted a market survey before determining the price range, which they send out as “Initial Pricing Guidance” (IPG) to their client, the Ministry of Finance, and investors. She provided a copy of the correspondence containing the IPG in respect of the 7-year bond and 15-year callable bond, which was dated Thursday, March 30, 2017 at 12:11PM, and provides, among others, as follows:

“Dear Investor,

Republic of Ghana 7-year and 15-year Callable GHS denominated Treasury Bond Issuance: Initial Pricing Guidance (IPG):

*The Joint Book Runners, Barclays Bank, Strategic African Securities and Stanbic Bank Ghana, are pleased to announce the **Initial Pricing Guidance** (IPG) for this week’s Treasury Bond issuance as:*

7-Year Bond: 18.50-19.80%%

15-year Bond: 18.80%-19.85%

The issuance sizes are TBD. The book-build will open on Friday, 31st March 2017 at 9:00AM and close on Friday, 31st March 2017. Book, timing updates and revisions to the IPG (based on the book of demand) will be sent to the market as necessary

*Joint Bookrunners and Deal-Team
Barclays, Stanbic Bank, SAS*

On behalf of the Ministry of Finance...”

After the first public announcement about the bond issuance was made at 10:12 AM on Thursday, 30 March 2017 and the release of the IPG at 12:11AM on

Thursday March 30, 2017, the SAS, according to Deborah, sent out another email announcing the “Final Pricing Guidance” (FPG). The copy of the said FPG announcement, which she made available to the Commission in respect of the issuance of the bonds in question discloses the following:

“Dear Investor,

Republic of Ghana 7-year and 15-year Callable Treasury Bond- Bookbuild update and Final Pricing Guidance:

Current Book size:

7-Year Bond: GHS1.40 billion

15-year Bond: GHS3.41 billion

Final Pricing Guidance:

7-Year Bond: 19.75%

15-year Callable Bond: 19.75%

Books Close at approximately: 3:00PM(Accra Time)

Discretionary allocation at the single window clearing level in event of over-subscription

Best Regards,

Debora Akyeampon

Corporate Finance Research Department

SAS

Deborah explained that it was an “...update from CSD during the bookbuilding. We sent this to the market during the process when we were at the CSD”.

On the issue of Settlement, Deborah Akyeampon said her schedule entails mainly deal origination and so she could not say how Settlement was done. However, she was certain that after a deal is closed, they send out an announcement with a transaction number in addition to other information.

Deborah Akyeampon provided a copy of a document, “Issuance Summary”, which captures the brief details of the Bonds issued as she alluded to. She described it (with handwritten inscription on it) as “Result Announcement after the Bookbuild closed at the CSD”.

From the Issuance Summary, the following, among others, stand out:

“Dear Investor:

REPUBLIC OF GHANA GHS DENOMINATED 7-YEAR AND 15-YEAR CALLABLE TREASURY BOND ISSUANCE SUMMARY
(Tender 1531)

	7-YEAR TREASURY BOND
ISSUE SIZE:	GHS1,452,080,000
ISIN:	GHGGOG044744
SECURITY DESCRIPTION:	7-Year GHS Treasury Bond: GOG-BD-25/03/24-A4429-1
LISTING:	Ghana Stock Exchange (GSE)
GOVERNING LAW:	Ghana
MATURITY DATE:	March 2024
TRADE DATE:	31st March 2017
SETTLEMENT DATE:	3rd April 2017
ACTIVE JOINT BOOKRUNNERS:	Barclays, SAS, Stanbic
BOOK SUMMARY	
COUPON (FINAL CLEARING YIELD):	19.75%
INITIAL PRICING GUIDANCE:	18.50% – 19.80%
TOTAL BIDS (AMT) TENDERED:	GHS1,462,080,000
TOTAL BIDS (AMT) ALLOCATED:	GHS1,452,080,000

The Joint Bookrunners and Deal-team



On behalf of the Ministry of Finance”.

8.1.2. BEN AHIAGLO

BEN AHIAGLO, is the Executive Director, Strategic African Securities Ltd. He stated that the Strategic African Securities Ltd, (SAS) does not have agents. As such, the SAS relies on its marketing officers to reach out to retail investors and where it does not have enough officers, SAS partners with others, such as the National Investment Bank (NIB) which has a large branch network across the country, to do so.

Mr. Ahiaglo indicated that SAS is not a Primary Dealer (PD), though it was a PD some time back.

Therefore, SAS has not registered any of its investors with the Central Security Depository (CSD) but that SAS is licensed by the Securities and Exchange Commission (SEC) as a brokerage firm. Therefore, SAS submits its bids through a CSD Dealer.

Mr. Ahiaglo disclosed that SAS, Barclays Bank Ghana and Stanbic Bank Ghana form the JBRs having been engaged by Ministry of Finance and their role is to conduct the bond transaction through the book-running method.

Ben Ahiaglo gave an account of how the 7-year and 15-year bonds were issued and the role SAS played. He stated that as a practice, at 10.00am every Wednesday, the Book Runners have a conference call with the Debt Management Office of the Ministry of Finance (MoF), Advisers and the SAS lawyers to discuss their plans and programme for raising money and also discuss and assess the previous issuance of securities in view of the active secondary market. He said Representatives of the MOF at the Debt Management Unit comprising Dr. Sam Mensah, Cynthia Arthur, Dr. Arkhurst, and Elizabeth Owiredo, form the core Team from the MOF responsible for Bonds.

The subject of the conference call, according to him, also includes discussion on other favourable factors such as rate of inflation as well as an update on market conditions and data from the Ghana Statistical Service. Mr. Ahiaglo said although the conference call is managed by Standard Bank in South Africa, it is SAS that sets the agenda for the discussion.

Referring specifically to the 7-year and 15-year bonds, Ahiaglo said that they came to a conclusion in March, 2017 that they could do the 15-year bonds issuance, which was done following the standard principles/practice for issuing bonds: announcement setting timelines, assessment of liquidity in deciding whether to have a 5-day or 1-day Book-Building (which depends on the demands), etc.

He said that on the day the book will be opened and closed, the Joint Book Runners and or their representatives meet at CSD, whose platform is used to receive the bids that appear on the screen. Representatives of the Ministry of Finance also attend.

He also said that since SAS is not a Primary Dealer, if it wants to deal with offshore investors it would have to pass through a Primary Dealer.

On the question of whether the rates at which the Bonds were purchased could have been more or less, Mr. Ahiaglo said this depended on a combination of factors, including the prevailing interest rate environment.

Mr. Ahiaglo disclosed that the JBRs organised a 1-day Book Building and that their client, the Ministry of Finance, agreed on the description and process of the investment and they acted accordingly.

He admitted, however, that in this instance the period of notice was shorter – only one (1) business day – as opposed to the usual three (3) days. According to Ahiaglo, *“there is no regulation (hard and fast rule) about the number of days to make the announcement and open the Books. If you know there is demand you can open the Books early and sell”*.

Referring once more to the Book Building method which was used in this instance, Ahiaglo explained that the Primary Dealers take the Bonds and do what we call “sell down”, which the Bank of Ghana is not concerned about.

On the “Settlement Date”, Ahiaglo stated that Settlement is usually a banking process, where the money is paid for the Bonds (Government is credited and the investor is debited), which does not concern the SAS. In the case of offshore

investors, they would advise a Primary Dealer to pay (or transfer) the whole sum of what the offshore investor has subscribed to/purchased.

Mr. Ahiaglo said the traditional method of making public announcements is by e-mail to their investors. He provided a copy of the e-mail list. However, he disclosed that in one instance (that was in October, 2015) they advised the Ministry of Finance to place an advertisement in the newspapers, which it did. He said that apart from the announcement by e-mail or in newspapers, he was aware that some market players, including Ecobank Assets Management, do call them. Offshore investors would also check on the website of the Ministry of Finance.

He mentioned that both residential and non-residential investors, including Franklin Templeton Ltd, purchased the bonds.

Touching further on Franklin Templeton, Mr. Ahiaglo said that it is a big Fund Group with different strategies but he could not tell which of the sub-funds (vehicles) of Franklin Templeton that Trevor Trefgarne, whom he also knows, sits on.

Ahiaglo also disclosed that Enterprise Group Limited was one of the investors (one of its clients) contacted but that it is usually hard to convince the insurance companies who are more interested in treasury bills, to invest in longer dated bonds. He noted thus: “Even with the 3-year Bonds we struggle”.

Mr. Ahiaglo further disclosed that there were Four Bonds issued on the day in question: 5-year, 7-year, 10-year and 15-year and that the 5-year and 10-year bonds were issued using a “tap-in” method which, he explained, “means issuing the same bonds on the same terms”.

On the issue of “Private Placement”, Ahiaglo said that it was “public placement” and as such standard processes were followed and that in contrast to private placement, where only one or two people are approached similar to “restricted tendering,” with “public placement”, it is opened to all.

In his view, the issuance of the bonds did not have to go to Parliament for approval because approval was given when the 2015 Budget containing Bonds Issuance Programme was approved by Parliament.

8.1.3. YAW BROGYA GENFI, THE COMPLAINANT

YAW BROGYA GENFI, the Complainant, accompanied by his Lawyer, Godwin Tamakloe, told the Commission that after he lodged his complaint with the Commission, he later found that Trevor Trefgarne, Executive Director of Franklin Templeton, was not only the Chairman of Enterprise Group Ltd, but also a shareholder of Enterprise Insurance Company Ltd.

Continuing, the Complainant mentioned that after he had lodged the complaint, he found that Keli Gadzekpo, a long-time business partner of the Minister of Finance at Databank Group, was also a Director at Enterprise Insurance Company Ltd, where Trevor Trefgarne was also a Director.

Referring to the total bond transaction, the Complainant said that Government in all raised US\$D2.25 billion. Of this amount, US\$D1.13 billion was through the Book Building Method. The additional US\$D1.12 billion was done through the “tap in” arrangement which, he argued, was a “virtual private placement”.

He said every bond issued comes with its own prospectus. Therefore, one cannot use a *“previous prospectus to amend what is to be done today. The moment you open a prospectus it is “close-ended”*. According to him, a *“tap in” arrangement in financial matters is a sole sourcing. Here you are not asking for bids, but you are asking the person to bring money. And so “tap in” is a private arrangement. And for a private arrangement, the tenor cannot be beyond two years*. Because Tap-in is “sole sourcing”, it is hardly used.

The Complainant re-iterated that his concerns relate to both the Book Building method and the “tap in” arrangement that were used in the bond issuance transaction, particularly with regard to the individuals who bought the bonds. In terms of the “tap in” arrangement, the Complainant said he was interested in knowing the circumstances under which the “private placement” was done and who gave the individual the pricing. He further stated that, it was insider-dealing, partly because of the yield curve, and that *“you cannot pay the same interest rate for both 5-year and for 10-year duration of loans”*.

On the question of who provided the Initial Pricing Guidance, the Complainant said that it was provided by the issuer, the Ministry of Finance, and the Book Runners. He still maintained that the IPG was released at 5.15 PM and provided a scanned copy of document titled "Republic of Ghana: March 2017 15-year Callable

Treasury Bond Issuance Announcement". It is provided in this document, among others, that:

"...PRICING, BOOKBUILD AND ALLOCATION METHODOLOGY

Offer Period

Thursday 30th March 2017 - Release of Initial Pricing Guidance".

Against the "Release of Initial Pricing Guidance" is handwritten "5.15pm"

Referring to the assertion that there was a 2015 Parliamentary approval for the issuance of bonds he said, *"we are in 2017 and the Legal Regime has changed. And so you cannot say you had a pending approval in 2015 and for that matter you can do anything. Subsequent to 2015 a new Financial Management Act, 2016 (Act 921), and Securities Industry Act, 2016 (Act 929) have been enacted. He also argued that a prospectus is a contract, which ends with every transaction"*.

On the period when the bonds were issued, the Complainant enquired thus: *was the issuance within the 1st Quarter Calendar? Did the transaction fall within the 1st Quarter Calendar or the 2nd?* He said that per the Guidelines on Borrowing, you need, at least, one (1) week notification. He also noted that the 2nd Calendar was issued immediately after the 1st Quarter on 31st March, 2017, which he said was unusual.

In conclusion, the Complainant stated that the issuance of the bonds in question *"did not find expression in the 1st Quarter Calendar"*. Rather, the 2nd Quarter Calendar *"had to go back to 31st March, 2017 to issue the 2nd Calendar bonds"*. Furthermore, *"by the Securities and Exchange Act, the Securities and Exchange Commission Board ought to have given approval for the issuance of the bond, but the Board had not even been constituted"*.

8.1.4. MR. KOBLA NYALETEY

Kobla Nyalety, Head of Markets, Barclays Bank Ghana (BBG) stated that in 2015, the Government of Ghana, acting through the Ministry of Finance, appointed BBG, Stanbic Bank Ghana and SAS as Joint Lead Book Runners (JBR) after they emerged successful in a recruitment and selection process advertised in the newspapers. Together, the three JBRs constituted the *"Joint Lead BRs to act as Joint Lead Managers and Bookrunners in respect of the issue of longer dated issuances denominated either in Ghanaian cedis or United States Dollars in the Republic of Ghana"* as contained in the Bookrunners Mandated Letter of Dec. 2016 executed between the Ministry of Finance as Issuer and the JBRs , which provides among others:

“...1.2 Pursuant to the Mandate Letter the Issuer appointed the Joint Lead Bookrunners to act as joint lead managers and bookrunners in respect of the proposed issue and offering of mainly 3 and 5 year Treasury Bonds or longer dated issuances as maybe agreed between the parties (“Longer Dated Issuances”).

2.2 the parties hereby agree to amend the terms of the Original Mandate Letter as set out below:

2.3.1 the Joint Lead Boorunners are appointed to act as joint lead managers and bookrunners in respect of the proposed issue and offering of Longer Dated Issuances denominated either in Ghanaian Cedis (“GHS”) or United States Dollars (“USD”) in the Republic of Ghana;

2.3.2 Notwithstanding the date of signature of this Second Extension Letter, the Appointment of the Joint Lead Bookrunners shall remain effective as of the date of the Original Mandate Letter and shall continue until 31 December 2017...”

Nyaletey also indicated that the JBRs have categorized the investor community into Banks and Non-Banks and each Book Runner works with a defined investor list. He said that Barclays Bank deals mainly with the Banks and provided a copy of the mailing list for the Banks whom Barclays Bank contacted including five (5) representatives of Enterprise Group Limited, about fifteen (15) from Databank and one (1) from Bloomberg.

He explained that the mailing list would not show some of the off-shore clients or rated clients who may also want to participate in the bonds and that though BBG’s list comprises mainly Banks, it is possible that some underlying Clients may do business with two or more banks which may potentially lead to “criss-crossing” between and among the Book Runners. In that regard, a Client may receive emails from the other Book Runners.

According to Nyaletey, as Book Runners, the Ministry of Finance (as the "Issuer") talks to JBRs about issuance of Bonds and the need to assess the market. He said that the Ministry of Finance engages investors through the JBRs, also through fora such as Town Hall meetings.

He disclosed that the JBRs deal with the Debt Management section of the Ministry of Finance, usually represented by Sam Arkhurst, Sam Mensah, Elizabeth Owiredi, Cynthia Arthur and, sometimes, a Deputy Minister for Finance.

On the 7-year and 15-year Bonds, Nyalety said that the issuance of those bonds was on the Issuance Calendar but he could not say which quarter calendar that they were on even though BBG was supposed to have advised and dealt with the transaction. Nevertheless, he remembers that it was also on the website. He said that the market already knows that Calendars are issued every quarter. So, towards the end of a quarter and the beginning of another, the market looks out for same. According to him, the Calendar would indicate the month and week the issuance will take place. He indicated that when the Ministry of Finance is ready for the process to begin, the JBRs are informed and they send out information to the market or investors accordingly.

Nyalety discussed the method used in the issuance of the 7-year and 15-year Bonds. He said that an announcement for commencement of the process was agreed between the Joint Book Runners and the Ministry of Finance (as is always the case), which JBRs communicated to the market. But before sending out the announcement, Cynthia Arthur at the Ministry of Finance would approve a draft and signal to them that the announcement is suitable for despatch before the JBRs then send it out. He explained that it was quite a standard practice that any one of the JBRs, with consensus of the others, would draft the announcement but the signature of the particular person making the draft would not appear on it.

Reacting to the view that the Bank of Ghana Guidelines for Government Securities only mentions the Book Building Method without explaining the procedure, Mr. Nyalety said the Book Building Method came about when the Ministry of Finance appointed the Joint Book Runners to help issue the 7-year and 15-year Bonds under the Book Building Approach. He said he was not aware the Guidelines state the procedure for the other methods. Furthermore, he said he was not sure the Guidelines mentioned that a Prospectus must be issued for every Bond Transaction and that he did not remember the last time he saw one having been issued for a bond transaction. He stated, though, that in his 10 years experience in the market what he knows, and which might hold for a prospectus, is that *"on a weekly basis, an announcement will come from the Bank of Ghana that they are selling a 1-year Bond or 2-year Bond, they will state when it will start and they will tell the interest that will apply"*. He said this information is also provided for the issuance of bonds under the Book Building method.

According to him, besides what he had mentioned, he had never seen the BOG or any person give another document apart from the press announcement with the

relevant details, which every investor needs to know in order to make a decision in the press announcement that is normally issued.

Explaining the process further, he said first, a price was announced and every interested buyer will submit a bid through the Primary Dealers and within that range into an Auction Module of the Bank of Ghana.

On the Settlement Date of the Bonds, he said it was a Monday but he was not certain about it. When it was suggested to him that the formula for the Settlement Date for medium to long term Bonds is usually "T+ 2", he said he was not aware of any such formula.

As to whether Barclays Bank was involved in the Settlement, he explained that every investor must bid through a Primary Dealer and on the Settlement Day, Bank of Ghana will debit the Primary Dealer who submitted the bid on behalf of the client/investor.

Nyalety disclosed that in his experience in the bonds market, there has never been any insider-trading or dealing and would not understand any motivation for such a practice. He also revealed that at the time of the issuance of the 7-year and 15-year Bonds, there was a separate announcement of a "tap in" by BOG. However, Barclays Bank was not involved in the "tap in". Ministry of Finance and Bank of Ghana took care of the "tap in" process.

Nevertheless, Nyalety said that the technical bit of the "tap in" process was that depending on where the prevailing interest rates are, and due to the fact that the bond may have attracted some interest already, the amount that investors will pay for it will not be what we call the face value. He explained that what you end up paying in the "re-open" will be impacted by such factors as the prevailing interest rate and not necessarily the initial interest rate, how long it has already travelled to maturity and whether it has already accumulated some interest.

He also said that "...the key thing is that you can issue a bond on the 1st to mature on a certain date and six months down the road you can come and sell the same bond. It simply means selling the bond with identical features and these features are the original coupon rate and the maturity date".

Nyalety disclosed that there was one overriding reason why Governments all over the world would "tap in" or re-open bonds. This is to enable bonds to be of a certain volume in order to achieve a certain level of liquidity of trading in the

secondary market. Liquidity is determined by the amount of bonds in issuance and the number of people holding it.

Barclays Bank (Sandra Osman and Eirene Quainoo) also provided the Commission the following documents:

- 1) Transaction Announcements related to the 7- and 15-year bonds.
The announcement is, in substance, similar to the one already provided by Deborah of the SAS .
- 2) "...REPUBLIC OF GHANA 7-YEAR AND 15-YEAR CALLABLE GHS DENOMINATED TREASURY BOND ISSUANCES: INITIAL PRICING GUIDANCE ("IPG")" [and Final Pricing Guidance]
- 3) "...REPUBLIC OF GHANA GHS DENOMINATED 7-YEAR AND 15-YEAR CALLABLE TREASURY BOND ISSUANCE SUMMARY (Tender 1531)"

The documents show that except the time they were sent to investors, they were in substance similar to those provided by the other Book Runners

8.1.5. MR. ALHASSAN ANDANI

The Commission's Investigators met with the Chief Executive of Stanbic Bank Ghana (SBG), Alhassan Andani, and other officials including Randolph Rodrigues, Head, Investment Banking and Ama Gyamfua Abrefa, Snr. Legal Manager & Assistant Company Secretary.

Alhassan Andani stated that SBG was one of the Joint Book Runners for the issuance of the 7-year and 15-year Government of Ghana bonds and that SBG has the necessary expertise in the issuance of bonds. It has participated in bonds in Ghana since 2012. He provided a copy of an extract from a report that indicated performance in the Bonds' sector published in May 2017.

He explained that in June, 2015 the Government of Ghana (GoG) acting through the Ministry of Finance (MoF) mandated Barclays Bank, Stanbic Bank Ghana and Strategic African Securities (SAS) as Joint Book Runners (JBRs) to arrange the issuance of longer-dated GoG Treasury Bonds, under the novel Book Building format adopted by the MoF Project code-named Adinkra. He mentioned the importance of the Issuance Calendar, which he said, enables investors to plan as they may have other uses for their money

On the participation of Franklin Templeton (FT) in bonds in Ghana, he explained that FT had been a regular participant in the GoG bonds since 2012 and it had also invested in bonds in Ireland and other countries. Referring to the report, he indicated that it was not the first time that FT purchased a larger portion of bonds issued by the state through the MoF. That in August 2012, FT purchased 98.82% of the bonds issued. Again, in May, 2014 FT purchased 94.69% of the bonds issued. This was done under a different political regime and the information is publicly available on Bloomberg.

Randolph Rodrigues, Head of Investment Banking at Stanbic Bank, also said that FT is the largest Investor on bonds in the World and had invested significantly in sovereign bonds across the world including Ghana. He indicated that it is possible for investors such as FT to contact the bond issuers and inform them that they have money available for investments in bonds to help finance budget deficits. He said that they look for countries where the yields are good and they would usually wait for the presentation of the Budget before they enter the market.

Rodrigues further stated that Governments would usually indicate in their Budget Statements the policy to undertake on certain projects within the year, the amount required and how much they could raise and the deficit. They would then outline the need to borrow from external sources, including the issuance of bonds to finance deficits. According to him, the estimated deficit for this year (2017) was 6.5%. The decision to borrow is indicated in the Budget Statement and the programme to borrow published in the Calendar every year to guide investors who might have alternative use for their funds. He also said that the 7-year and 15-year bonds' issue was a GoG programme to borrow over a longer period, which was in the Budget Statement of 2015 already approved by the Parliament of Ghana. Hence there was no need for Parliament's approval.

Rodrigues further explained that the bonds in March were in two folds: 5-year and 10-year bonds (Old issue), and 7-year and 15-year bonds (New Issue).

According to him, the JBRs were only invited to arrange for the new issue – the 7-year and 15-year bonds – which were part of a programme under the Book Building format. Therefore, JBRs did not arrange that. Nevertheless, Rodrigues explained that it was on the Calendar and was done through the auction system by the BoG by way of tap-in. According to him, Tap-in may be necessary if no new bond is being issued and the investor approaches the issuer to invest or the issuer

finds out that there is an opportunity to have additional money to add to the stock. In that case, the issuer may decide to go to one or two investors for the funds. Tap-In arrangement in bond issuance has a bit of flexibility compared to new issues. Issuing bonds is very expensive so instead of going through a process for new bonds, sometimes the tap-in may be resorted to.

He stated that any time within the mandatory period that the MoF decides to issue longer dated bonds, it would invite the JBRs whose roles include the conduct of market survey to ascertain the market conditions, rates, pricing, etc. The information from the surveys would then be submitted to the issuer (MOF), which would then form the basis to agree on when to start and to close trading. This is then published. He further stated that the Debt Management section of the MoF usually initiates a weekly conference call between the JBRs, the MoF and the Primary Dealers to discuss issues pertaining to the financing plans among others. In addition, e-mail correspondence and other means of communication are used as part of their interactive platform. He said that the offshore investors like FT usually come through a rated Bank such as Barclays Bank.

Rodrigues stated that investors also get the information through the Issuance Calendars, which are usually posted on the BoG and MoF websites. In addition, each of the JBRs has a mailing list of its investors or clients to whom information pertaining to the issuance of bonds is sent. SBG's mailing list contains over 50 investors including SIC Financial Services, SSNIT, CAL Brokers, ADB Bank Limited, Ecobank Limited, Oak Partners, Daakye Pension Trust, EGL. MOF officers were also on the list.

He said that offshore investors get the notification also through Bloomberg, an international trading platform, which usually picks the feed from the BoG website. He disclosed that Stanbic Bank did not deal with FT but he was aware that FT bided through Barclays Bank. On Trevor Traftane, Rodrigues said that SBG had dealt with him at Enterprise Group, which is on its e-mail list.

In relation to the issue of Prospectus for the bonds, Rodrigues said that the process involved in the issuance of bonds is tedious and expensive and so instead of issuing Prospectus for each bond, it was packaged into a programme as was the case of the 7-year and 15-year bonds' programme code-named "Adinkra".

He said under the wholesale auction system, the Prospectus is usually a one-page notice and issued by BoG for its short term securities and treasury bills but when the Book Running method was adopted, one Prospectus is used to cater for all bonds to be issued under the programme.

About submission of bids, he stated that the individual investors submit their bids through a Primary Dealer (PD) who submits same to CSD via an auction terminal device located in the office of each PD. He said that one can only see the PD and not the specific investor. According to him, after close of the transaction, the representatives of the issuer (MoF), the JBRs and investors met at the CSD and bids were then opened and validated after which the accepted price was announced and the successful bidders allocated their bonds. He added that there are fourteen (14) PDs and three Book Runners but could not tell whether any of their clients were successful in their bids.

On the determination of the interest rate, he stated that it is influenced by the interest rates at the time, capital market conditions both locally and internationally and other related factors.

He indicated that the Minister of Finance or his Deputies played no direct role in the issuance of the bonds and it was during the Town Hall Meetings that the deputies were present to provide information to the investors and answer questions, though occasionally, JBRs held meetings with the Minister.

Rodrigues also explained that though the 7-year & 15-year bonds' issuance was not on the Issuance Calendar, the Calendar was not a legally binding document and so a bond should not necessarily be on the Calendar before it could be issued. The Calendar is for clarification and it is not in all cases that a Calendar was followed.

According to Rodrigues, success of the issuance is not the total amount raised or the Calendar being met. The rate is also important. He indicated that if the bond issuance could not wait for a day or two into the 2nd quarter, it could be because of anticipated gains as a single day counts very much in bond issues.

He concluded by stating that in his interaction with investors in the course of the issuance of the bonds, he did not have the feeling that anybody had been excluded.

7.1.6. YAO A. ABALO, CENTRAL SECURITIES DEPOSITORY

On Monday, 7th August, 2017 the Commission's Investigators met Mr. Yao A. Abalo, the Acting CEO, who was barely three months on the schedule, and other officers, namely Faustina Coleman-Forson and Melvin Amoako, of the Central Securities Depository (CSD).

The CEO told the Commission that bonds are issued by the Government of Ghana and to facilitate the process, there was the need for a vehicle or an automated system for the trading of the bonds. As a result, the CSD was established in 2004 to house the system for the trading in bonds' market and or the securities trading systems. The CSD further stated that previously, through the wholesale auction system, investors who purchased bonds were issued with certificates of the bonds held, but with the CSD system, the bonds are held in electronic form.

The CSD stated that the decision to issue bonds is taken by the Government of Ghana, but the CSD's role is to accept the bids from the Primary Dealers (PDs) through the Auction System and after the closure of the transaction, forward the Auction File to the Bank of Ghana for action.

CSD further stated it does not meet with the PDs or the investors in the process of issuing bonds. The CSD sets up the system for the Book Runners (BRs) to observe the bids that are being submitted through the system.

In respect of the processes for the issuing of the 5-year, 7-year, 10-year and 15-year bonds, Abalo stated that CSD did not play any role and could not know the processes involved. All what the CSD did was to set up the system to receive the bids submitted by the PDs and only the Joint Book Runners (JBRs) can provide further information on how the process was conducted.

On the registration of investors, Abalo said that the bonds were issued to the PDs and not any specific investor. In that regard, he indicated that the CSD has registered PDs, who are mainly banks. Abalo also stated emphatically that the denomination of the bonds was in the local currency (Ghana Cedi).

With regard to the closure of the book building, he said that is the responsibility of the Bank of Ghana (BOG).

On whether the CSD receives information in respect of the issuance of bonds and if it does for what purpose, he stated that it does and explained that the information received is in respect of setting up of the system to receive the bids from the PDs on behalf of their investors. On the 5-year, 7-year, 10-year and 15-year bonds, he revealed that the head of IT, Ambrose Kwame Karikari, received notification through a mail regarding the setting up of the system for the 5-year, 7-year, 10-year and 15-year bonds.

Abalo also said that the CSD plays a role in the Settlement. He indicated that after the closure of the transaction, the bids received through the auction sale terminal are put in an Auction File and same forwarded to the Bank of Ghana for Settlement. The Bank of Ghana sends information to notify CSD on the Settlement on the various PDs account. He further stated that each of the PDs has an account with the Bank of Ghana through which successful bids are settled through the PDs.

The CSD also submitted Schedules showing bids submitted and successful bids for 5-year, 7-year, 10-year and 15-year bonds issued in March, 2017.

8.1.7. SAM ARKHURST, DEBT MANAGEMENT DIVISION/UNIT, MOF

SAM ARKHURST is Director at the Debt Management Division of MOF, who was accompanied by three other officers of MOF, namely Mr. Victor Azameti (Chief Economics Officer), Ms. Elizabeth Owiredu (Budget Analyst & Investor Relations Officer), and Ms. Cecilia Akwetey (Head, Public Relations).

He provided an explanation to an e-mail that was sent without a “To” field. Arkhurst said that the recipients of the e-mail are all in “Bcc” part. He said that is so in order that one recipient does not have access to the e-mail address of the other. According to him this is a normal competitive market practice

He described the procedure for issuing bonds. According to him, there are two kinds of procedure: 1) the traditional procedure for Government Securities, which comprises mainly the issuance of Treasury Bills) and 2, issuance of Bonds.

He explained that in November, 2015, based on a bit of experience from the Eurobond that was being issued on the international market, MOF had noticed that in the old tradition, Ministry of Finance “...just goes to the Bank of Ghana,

people bring in their bids (i.e. amount of money you expect them to bring in) and they quote their price and we choose the smallest. Sometimes you see people quoting 45% and some quoting 18, 20. Depending upon what we want, we pay a higher interest cost”.

He said that MOF realized the usefulness of the experience from the Eurobond transaction. So in November, 2015 MOF considered using the Eurobond method to issue domestic bonds but as MOF lacked the capacity, it engaged advisors through open tender. Hence, since November 2015, one method, the book-running method has been applied in addition to the traditional auction method.

He said in November, 2015 MOF issued a 5-year bond and got GH¢400.00. From there they had issued couples of 3, and issued the first 10-year bond which showed how important the second process was in 2016. Again, in 2016 MOF issued 3-year and 5-year and the first 2-year domestic dollar denominated bond.

Arkhurst confirmed that the Issuance Calendar for the first quarter (January-March, 2017) signed by Hon. Seth Tepker did not make specific provision for 7-year and 15-year bonds, and that the Quarter 2 Calendar rather made provision for that.

On the publication of the Calendar on quarterly basis, he disclosed that it was initially being done for the whole year, but it was realized that often changes in the Budget or changes in the entire fiscal affected the Calendar. So it was brought to half year. Then the IMF and others advised that it be made even shorter to enhance the credibility of the market. Hence, the quarterly Calendars.

Arkhurst said that the Calendar is about what they will issue – an indication of what will be issued and within a particular quarter. He admitted that the 15-year bond had never been issued and, therefore, the information about its issuance would not have been available to an outsider.

He said MOF had already engaged the advisors on the issuance of the longer term bonds. And, therefore, the advisors actually talk to their investment pool: banks, financial institutions and finance houses for information on the developments in the market. The MoF, on their advice, then issues a Calendar to formalize the process. But this point contradicts his previous statement that the IMF advised MOF to issue the Calendar on quarterly basis. So the question is, is the Calendar

based on the advice of the Book Runners, the IMF or policy of government? Besides, his point contradicts the policy initiative contained in the 2015 Budget at paragraph 188 that “Government to continue to develop and publish the issuance calendar in a bid to promote transparency towards the development of the domestic debt market”.

In his view, the time to release the Issuance Calendar plays no significant role on the participation of investors because “...these people already have their money. They are waiting for them to be convinced on why they should come in and take your bonds. You can use Town Hall Meetings to convince them as to why they should partake in the primary issuance instead of the secondary”. Nevertheless, Arkhurst said that the Issuance Calendar gives legitimacy to what Government intends to issue.

On the determination of interest rates, he said that certain developments in the market assist MOF in that direction and mentioned that based on the weekly attendance at the Bank of Ghana and based on the bids that are coming in, BoG and MoF staff make a determination as to what cut off we should pick and that becomes the rate that we will be bound by that week. Then BoG publishes the results in the dailies. He also stated that the advisors “...determine the medium for all other banks to bring in their assets and they engage them. That engagement we do not come in, but there are times when we do a Town Hall Meeting which is to sell the product or an opportunity for people to ask questions on Government’s intentions, etc.”

Specific to the bonds in question, Arkhurst said there was no Town Hall Meeting because there was a change in Government. However, the Respondent had one organised for the Second Quarter. He said that the bonds in question were cedi denominated domestic bonds, and that was why it became important that our Joint Book Runners work hard to mobilize resources from non-residents, which they did.

On the Press Statement by the Ministry of Finance (already referred to in the Background section of this report), in which it was stated that a USD 2.25 Billion bonds had been issued, he said that it was made in error and that he was out of the country when the Statement was released. He said that on hearing about it, he pointed out the mistake to the Minister of Finance and advised that this information be “torn down” from the Ministry’s website, which he said was done.

On whether other parts of the Statement which reads: “the pricing obtained was consistent with the initial price range of 18.95 – 19.85” for both the 15-year and 7-year bonds”, were accurate, he said that for the 7-year bonds, it was 18.5 – 19.8 and for the 15-year it was 18.8 – 19.85.

Arkhurst revealed that in relation to the Price Guidance, the advisors will be talking to those of them in Debt Management who will in turn seek approval from Management, principally, the Finance Minister and the Chief Director.

Arkhurst also said that the “global portfolio investors” included non-residents whose participation was more than 90% and disclosed that it was the largest of bonds ever issued and that the first one in November, 2015 was about GH¢400,000,000.00 and at a point GH¢1.3 Billion. And so, within a week, raising that kind of money was larger than ordinarily usually what they are able to attract. He said the signs were that there was “...a lot of appetite because weeks before then the advisors were telling them that one investor would call saying I have USD150million, I have USD100million. So Bank of Ghana was even doing/allowing some tap in. So the MoF said to the advisors why they would not call the investors, if the appetite is good, so they rather issue a big one which everybody would be satisfied with.” Arkhurst explained that as far as the bonds are concerned, they never see the individual persons because they are dealing through Primary Dealers.

Arkhurst further explained that the re-opening of bonds issued is only just looking at “I am not issuing something new; I am taking an existing one that has a time of maturity and I am opening it”. That, once it is opened, those who bid are tapping in. He also said that re-opening does not go through the auction module. [Again, this point by Arkhurst contradicts the BOG position and documentation on the point that even though it is reopening, bids are submitted through PDs into the auction module at the BOG].

Arkhurst stated that in debt management a private placement means “...a situation where you know one particular investor whom you approach one-on-one and ask for finances from him and you do a contract only with regard to him. There is no publication, there is no settlement. An example is where in the past the MoF will go to the Bank of Ghana for an overdraft without any publication of any sort. It is an arrangement between the Finance Minister and BoG. At the end of the year when we do not pay, for audit purposes it is put together as a loan but it is not

traded; they do not list it for anybody to trade”. Concluding on this point, he said that a private placement is not marketable, cannot be traded and it is done privately without any public information whatsoever.

Arkhurst mentioned further that it is a normal practice for the Bank of Ghana to issue Notices after the Minister of Finance has provided to the Bank the Issuance Calendar. He also said that the 2nd quarter Issuance Calendar was issued on 30/03/2017, the same day the 2017 Budget was approved in Parliament, explaining that by that time all discussions concerning the issuance of the bonds, including the Pricing Guidance, had been ensued because the “advisors are with us on weekly basis. So, the advisors were very much aware of the way Government was going. It is the advisors who do all the Pricing Guidance which is followed by the Notice. The MoF does not come in here, but only provides the space”.

Furthermore, he said that the MOF Issuance Calendar and BoG Notice were both dated 30/03/2017 because of urgency. He admitted that ideally a longer time should have been given for the necessary notices and preparations to be done.

8.1.8. MRS. CAROLINE OTOO

Mrs. Caroline Otoo, Secretary of the Bank of Ghana, informed the Commission that as Secretary of the BOG, she does not deal with the issuance of securities directly and that it is the Treasury Department (then) of the BOG, which handles that schedule. She stated that she signs letters and correspondence from the BOG although she might not be directly involved in the subject matter.

On the issuance of bonds, she stated what she was aware of is that usually prospectus is issued for bonds. According to her, the Ministry of Finance discusses with Treasury Department on the need to raise funds for government projects through securities including bonds. The Ministry of Finance (MoF), after the deliberations, would usually send a memo to the BOG informing it of the decision of the government to issue a bond. Upon receipt of the information from the MoF, the Treasury Department at BOG then issues notice to the public through the media on the intention of the government to issue a bond. Then she signs the notice for despatch.

Concerning the issue of Prospectus for the 2017 bonds, she stated that prospectuses and Calendars are issued based on the programme. However, she

could not recall if the prospectus issued was similar to that of the 2015. She also stated that the Ministry of Finance did issue a Calendar for the 1st Quarter, from January to March, 2017.

8.1.9. MRS. EVELYN KWATIA

Mrs. Evelyn Kwatia, then Head, Treasury Department of the Bank of Ghana, in the presence of Louis Asu, Chief Manager, Financial Markets Department, Bank of Ghana, stated that the Bank of Ghana issues Government of Ghana (GoG) bonds on the request of the Ministry of Finance (MOF) which has the responsibility to borrow to finance government expenditures and debts. Bank of Ghana has the infrastructure and, therefore, together with the CSD, BOG provides the platform to enable the Government trade in the bonds.

On how BOG gets authorisation to issue bonds, Mrs. Kwatia said that the MoF sends the BOG with a copy of the Issuance Calendar together with the prospectus in both soft and hard copies.

After receiving the Calendar and the prospectus, they are referred to the Treasury Department which then extracts for publication the Issuance Calendar and sends same to the Secretary and the IT for publication in the dailies and hoisting on the BOG website respectively, to inform the public about government's intention to issue bonds on a set date.

She stated further that the nature of the prospectus prepared by the BOG prior to the appointment of the JBRs was different from the one prepared by the JBRs for the book building method. According to her, under the Auction System, the prospectus is a one-page document and issued every time a new bond was being issued. However, under the Book Building approach, the prospectus is a bulky and detailed document prepared by the BRs and or the Transaction Advisors for a programme to borrow.

Therefore, unless requested by the MOF in the manner described above, the Bank of Ghana would not issue Government of Ghana bonds. According to her, the request comes in the form of an Issuance Calendar and the BOG then informs the investors and the public about it through a notice (which the BOG provided the Commission in an earlier request for same).

She said that in issuing the bonds in question, an Issuance Calendar for the second quarter of 2017 was provided by the Ministry of Finance and accordingly, the

BOG sent out a notice. She provided a copy of the Issuance Calendar from the Ministry of Finance, which was signed by “Ken Ofori-Atta, Minister”. The BOG received it on 3rd April 2017.

Mrs. Kwatia also said that the Treasury Department (then) of the BOG had no oral request or instruction from the MOF or any other person on the matter prior to sending out the notice to PDs, Banks and the general public in respect of the second quarter of 2017.

She further explained that the BOG and CSD provide the platform to enable government trade in the bonds. She further explained that during the issuance of bonds, the Ministry of Finance (MoF) on behalf of the government sits on the CSD to collate the bids that are submitted through the Auction Model Platform and that after every transaction, the CSD sends the bids directly to the MoF for it to decide on the cut off point. After taking the decision, the MoF communicates to BOG to close the transaction. She added that the MoF acting on behalf of GOG is always the borrower, but BOG only plays an intermediary role by providing the platform for the lenders and the borrower (MOF) to interact and reach a decision.

Concerning the role of Primary Dealers (PDs), Book Runners (BRs), and Transaction Advisors (TA), Mrs. Kwatia explained that government in a move to create a robust financial market, through BOG, gave license to 15 entities as PDs. However, most of them have not been effective. In 2015, Government decided to adopt the Book Building approach, which requires Book Runners to ensure the smooth operation of the system. The BRs or Transaction Advisors (TAs), as part of their activities, organise Town Hall meetings, which bring together investors and borrowers to discuss issues in relation to the prevailing market conditions. The BRs or TAs are not involved in the trading itself, but offer only technical support or expertise including legal services in relation to securities’ trade globally.

She said that PDs appointed Book runners and Transaction Advisors to government on the issuance of bonds can play only one role at a time and not two. She also said that most of the offshore investors have different banks as PDs and others as custodians which ensure objectivity. It also avoids playing conflicting roles. She mentioned that there has not been any evidence to show compromise of the system or any investigation to indicate a possible collusion.

On why the 7-year and the 15-year bonds’ coupon rates were the same, it was explained that under the ideal situation, there should be some difference as they are

of different maturity dates, but she indicated that it depends on the prevailing market conditions and the borrower's tight financial needs.

With regard to the issue of tap in arrangement, Mrs Kwatia explained that BRs were not involved in the process. The 5-year and 10-year bonds were re-opened as part of the 2017 2nd Quarter Issuance Calendar. The investors submitted the prices through their PDs using the Auction Model platform as announced.

Mrs Kwatia also disclosed that over twenty-five (25) investors including local banks took part in the 5-year, 7-year, 10-year and 15-year bonds issued by the government in March, 2017.

On the currency denomination of the bonds and the list of the individual investors who purchased the bonds as indicated in the MoF Press Statement, she said that the bonds issued in March, 2017 were in Cedis and not dollars and that the Statement from the MoF indicating otherwise, was not accurate and that non-resident investors settled their bonds in Cedis, converted from US Dollars into Cedis.

On the opening and closing of the 7-year and 15-year bonds' transaction, she admitted that the duration for the transaction was shorter compared to previous bonds issued under the same approach in 2016.

The Commission obtained from the BOG information on the currency with which the non-resident investors settled their bonds: "FX Purchase Approval" which indicates that from 3rd - 5th April, 2017, following the issuance of the bonds, an amount of USD1,999,186,195.81 and USD134,352,499.67 was approved for exchange into Ghana Cedis making a total GHC 8,666,264,531.23, and GHC 564,280,498.61 respectively.

The Commission also obtained from the official website of the MOF, confirmed by similar information from BOG, the issuance of GOG 10-year Treasury bonds referenced "DMD/FIRU/JBR/2016/5: Republic of Ghana: November 2016 10-Year Treasury Bond Issuance". It provides, among others:

Republic of Ghana: November 2016 10-Year Treasury Bond Issuance Announcement

ISSUER:

Republic of Ghana

SIZE: GHS [To Be Determined]
ISSUE: Treasury Bonds (the "Notes")

**PRICING, BOOKBUILD AND ALLOCATION METHODOLOGY
OFFER PERIOD**

MONDAY 7 TH NOVEMBER 2016 Release of Initial Pricing Guidance

WEDNESDAY 9TH NOVEMBER 2016 Book-build opens 9:00AM
Revised Pricing Guidance (released as necessary during the Bookbuild)

THURSDAY 10TH NOVEMBER 2016
Revised and Final Pricing Guidance (released as necessary during the Book-build) Books to close on short notice on Thursday p.m.
Final Pricing and Allocation

MONDAY 14TH NOVEMBER 2016 Settlement/Issue Date

8.1.10. KOFI S. YAMOAHAH

Mr. Kofi S. Yamoah, Managing Director, Ghana Stock Exchange (GSE), in the presence of his Lawyer, Yaw Essien, stated that involvement of the GSE in the issuance of the Government of Ghana bonds is limited. He explained that essentially the exchange market deals with different securities from corporate entities and governments which are composed of the following and at two (2) levels: the Primary Market and the Secondary Market:

- the main market that deals with Securities;
- the market that deals with SMEs financing; and
- the fixed income market that deals with bonds.

He explained that the Primary Market deals with new issuance of bonds and floatation of shares by Corporate entities or government. He further explained that for Corporate entities, the directors meet and take a decision on the funds needed and consider various sources of the funding, e.g. loan from bank, bonds etc. In

case the decision is to issue a bond, an advisor with the expertise is appointed to assist in the processes including the preparation of the seller document, which is the prospectus. After the prospectus is prepared, it is sent to the Security and Exchange Commission (SEC) for approval. He indicated that all these processes is required to give credibility to the transaction.

He mentioned that GSE only gets involved after the bond is approved and is to be listed on the stock exchange. The GSE also makes input into how it would be traded on the exchange.

Concerning the issue of Government, BOG and COCOBOD securities or bonds, he stated that there is no need for SEC approval, no involvement of GSE in the process. The Ministry of Finance acting for and on behalf of the government, takes the decision on the need to issue the bond, it appoints transaction advisors and Book Runners in the case of medium and long term securities. The role of the Transaction Advisors, according to him, includes the preparation of a prospectus. After the prospectus is adopted by Book Runners and borrower, the Ministry of Finance in this case, a Calendar is issued to the public inviting for bids on a date set for the transaction and the trading. He indicated that the key players in Government bonds are:

- Minister of Finance acting on behalf of the government;
- BOG-Treasury Department;
- CSD-Bank for Securities;
- Book Runners – Transaction Advisors.

He further stated that GSE plays a role by admitting the transaction into the system after the bond had been issued and it is to be traded in the stock exchange, secondary market, which deals in already issued securities including bonds.

On whether Franklin Templeton trades on the stock exchange, he stated that he could not readily tell. However, he stated that the law does not restrict foreign companies from participating in the securities market in Ghana.

8.1.11. HON. KEN OFORI-ATTA, RESPONDENT

The main purpose of the Interview with the Respondent was to seek clarification on some points contained in his response to the Commission dated 31st May, 2017, and to seek additional information on the subject of the investigation.

The Respondent was accompanied by Deputy Attorney-General and Deputy

Minister for Justice, Godfred Dame, the Chief Director, Mr. Patrick Nomo, the Director, Legal, Mrs. Mangowa Ghanney, Sam Arkhurst, Director, Debt Management Division and Michael Bediako, Special Assistant.

Points for Clarification

Point 1:

The first point for clarification was on paragraph k of his Response.

- k. "Only financial institutions licensed by the Securities and Exchange Commission (SEC) to deal in securities and authorised by Bank of Ghana as Primary Dealers/Joint Book Runners are eligible to participate in the auction of debt securities"; (p. 2)

On whether Primary Dealers and joint Book Runners are the same, he responded that "For our purposes, they are same" but finally, he conceded that the Joint BRs and Primary Dealers were not the same, they are different. These aspects of the response stand corrected as they were used incorrectly.

Point 2:

"...A similar notice was published by the Bank of Ghana in respect of issue of Bonds for the second quarter, via Notice No. BG/TD/2017/15 on 30th March 2017. This second quarter issuance included 7-year and 15-year bonds. In accordance with the calendar, the 5 & 10 year Bonds of April were reopening existing 5-year and 10 – Year Bonds. Please find enclosed and marked "Exhibit 3" a copy of the Notice by Bank of Ghana. The issuance of the Bonds in question was in furtherance of these measures referred to herein..." (p. 4).

On the above statement, the Investigators questioned why he did not exhibit the calendar for the 2nd quarter Issuance Calendar from the Ministry of Finance in his response dated 31st May 2017, just as he did with the 1st Quarter Calendar. The Respondent then provided a copy of the said Calendar.

As to why a copy of the Calendar for the 2nd Quarter was not exhibited to the Minister's letter, Mr. Arkhurst, speaking on behalf of the Respondent, wondered why it was not enclosed at the time. He also said that "the best thing was to issue it about 2 weeks earlier. However, the challenge was due to change in government for which reason they [MOF] had to work in that stressful arrangement".

On whether there were any further steps following the release of the Quarter 1 Calendar, the Respondent, through the Chief Director, stated that there was trading. He provided a copy of the Auction Performance for January-March 2017, which showed among others that the 3-year, 5-year and 10-year bonds were issued from January-March 2017.

Point 3:

“...This is an irrelevant allegation. An Issuance Summary is prepared by the Book Runners/Primary Dealers licensed by the Bank of Ghana upon close of the transaction...” (p.8)

He was asked to clarify if the terms “Book Runner and Primary Dealer”, as used in his response above, were the same. The Issuance Calendar exhibited as 7, showed that it was issued by the Joint Team of Book Runners and not “Book Runners/Primary Dealers”. The Respondent and the Deputy Attorney-General initially disputed it but on examination of Exhibit 7, Respondent agreed that Book Runners and PDs are different. Arkhurst also agreed that since BRs were responsible for the new issuance of bonds, then the Summary could not have been prepared by “BRs/PDs” as indicated.

Point 4: On page 9 of Respondent’s statement, it is provided:

- i. The Virtual “private placement” approach that was used was opened in the morning and closed in the evening of the same day March, 31, 2017.*

There was no virtual “private placement” approach deployed in the issue of the Bonds. Private placement is done with one financial institution or a selected group of investors and this is not made public. As indicated above, a public announcement was made in a manner sanctioned by the Bank of Ghana Guidelines and approved by the Transaction Advisers.

The statement that “...a public announcement was made in a manner sanctioned by the Bank of Ghana Guidelines and approved by the Transaction Advisers” (p.9) was found to be inaccurate. The Transaction Advisors (SAS, Barclays and Stanbic Bank) were not involved in the issuance of the bonds traded by “reopening” and “tap-in”. Therefore, they could not have approved any announcement.

Just as before, JBRs were not involved in the reopening and tap-in process, which was handled by the BOG. The announcement/notice for the reopening was by the BOG and PDs were brought in at the time when bids were opened. Therefore, the public announcement could not have been approved by Transaction Advisors as

the Deputy Attorney-General maintained.

The Respondent and his Team also agreed that the procedure involved in Reopening old issuance to investors for “tap-in” was different from the Book Running/Book Building method, which involves Book Runners.

Point 5:

The Respondent further indicated in his response that:

“The transactions complied with the tenets of the same book building approach that the Ministry of Finance had used since 2015, when Ministry of Finance adopted that method to Issue domestic bonds. The order books were opened to all interested investors and closed to all at the same time, and were managed by Transaction Advisers approved by Bank of Ghana, as the always have been...”(p.9)

The Investigators drew the attention of the Respondent and his Team that the procedure for the issuance of the new bonds (7-year, 15-year) and old bonds (5-year and 10-year) were different and that the response (as above) show that one procedure was used for all. The Respondent agreed that the procedure for the old and new are different.

Town hall meeting: On this point, the Respondent said that he meets investors regularly but he had not yet taken part in a Town Hall meeting on issuance of bonds. Arkhurst then added that the Town Hall Meeting is not a prerequisite for the issuance of bonds. It is only an opportunity to explain the processes involved to the Investors.

On how the IPG was determined, Arkhurst explained that the coupon or Price Guidance considers how much similar bonds are trading on the secondary market, the size of the total amount they are looking for and how much of the total amount being offered on the market could be accepted. He said that the Joint BRs are the Advisors. They give the appetite for the market as well as the market indications. In some cases, notices are even taken off when the indicators are not too good.

Additional information

The additional information required from the Respondent were on whether the BOG can issue bonds without authorization from MOF and whether Databank limited is partly owned Enterprise Group Limited.

On whether BOG can issue bonds without authorization from MOF, the Respondent said that unless instructed by the Minister, MOF, the BOG would not issue any bonds and that prior to the delivery of 2nd Quarter Issuance calendar to the BOG by mail, there was prior engagement with BOG via email. The Respondent then provided the Commission a copy of the email conveying the instructions. This email was from Mrs. Cynthia Arthur, Head, Financing & Investor Relations Unit, Debt Management Division of MOF. It was sent at 12:31 PM to evelyn.kwatia@bog.gov.gh, under the subject: “Q2 Issuance Calendar and notice of bond reopening”. The email also provides, among others:

“Hello Mrs. Kwatia,

Pls note attached the issuance calendar for Q2 and request to publish and operationalize. Per our discussions, please go ahead to announce a reopening of the 5 and 10 year bonds programmed for April...”

As to whether Databank limited owns Enterprise Group Limited, the respondent stated that Databank limited does not own Enterprise Group Limited.

8.1.12. PATRICK NOMO

Mr. Patrick Nomo told the Commission that after the presentation of the 2017 Budget to Parliament, the Ministry was waiting patiently for the approval in order to proceed with its activities. The same day the approval was given by Parliament on either the 30th or 31st March, 2017 (he could not be specific), the Ministry then kick-started the processes that led to the issuance and sale of the bonds.

He also provided information to the Commission, in a letter dated 2nd October 2017, ref. no. MOF/CHRAJ/2017/1) where he clarified some information contained in the Press statement that the MOF issued on 3rd April 2017. The said letter reads, among others:

The name of the “...very well respected global financial investor” that purchased a substantial amount of the bonds is Franklin Templeton Investment, which is a global asset management firm headquartered in San Francisco but with offices in most parts of the world according to their website www.franklintempleton.com; and

We also wish to provide further clarity on the Press release on the MOF website dated 3rd April, 2017. The Ministry issued a domestic bond denominated in Cedis for the total amount of GH¢ 9.7 billion, and not US\$2.25 billion as stated. This has caused some misinformation in the media about the issuance and whether it was a domestic bond or not. The dollar amount quoted was the equivalent of the cedi issuance. Therefore, the interest rate of 19.75% is on the cedi and not on the dollar. In fact, no sovereign has issued a dollar loan with such a high interest rate. As a result of this confusion, the Press release has since been taken off the MOF website.

The size of the participation in the bond issue, especially the debut 15-year bond, necessitated our interest in finding out more about the investors who participated to confirm that they were all legitimate recognized investors with a known track record of investing in Ghanaian bonds. And also to confirm the level of local participation in the bond, which gives us an indication of the growth of domestic investors. This issue was the biggest issuance in Africa in a day which further prompted the interest in knowing the list of participants...”.

Under cover of another letter dated 4th October 2017MOF/CHRAJ/2017/2, the Chief Director provided a copy of an Auction Performance document of the bonds in question. That document which captures the "issuance calendar versus performance from January to June 2017", provides among others, that:

- in January 2017 and February, there were no issuance of 7-year, 10-year and 15-year bonds
- in March 2017, only the 10-year bond was issued
- in April 2017, the 5-year 7-year, 10-year and 15-year bonds were issued,

7.2.0. REVIEW OF DOCUMENTS

In the course of the investigation, the Commission requested for and received documentation/information from the following institutions and organisations, which it considered:

- i. The Registrar-General's Department;
- ii. Auditor-General's Department;
- iii. Bank of Ghana;
- iv. Central Securities Depository, and
- v. Ministry of Finance

8.2.1. DOCUMENTS FROM THE REGISTRAR OF COMPANIES

The Commission conducted a search at the Registrar-General's Department on the following companies, among others:

- i. Ventures and Acquisitions Limited
- ii. Databank Asset Management Services Limited
- iii. Enterprise Group Limited
- iv. Databank Brokerage Limited
- v. Databank Financial Services Limited
- vi. Enterprise Insurance Ltd

7.2.1.1. Ventures and Acquisitions Limited:

Ventures and Acquisitions Limited (VAL) was originally incorporated on 19th May 1995. It was re-registered on 8 July 2016 and its objectives include agriculture, mining and energy, industrial and manufacturing activities, wholesaling and stockholding, provision of technical, financial management and consultancy services.

There are three (3) shareholders: Structured Capital Limited; Ken Ofori Atta, and Keli Gadzekpo, while Ken ofori-Atta and Keli Gadzekpo are its Directors.

7.2.1.2. Databank Asset Management Services Limited

The objectives of Databank Asset Management Services Limited, which was incorporated on 2nd February 1996, include to subscribe for, purchase, hold, manage and sell securities and other property, to provide brokerage services to investors, to underwrite the issue of shares, bonds and other securities, to acquire any such securities including stocks, shares, debentures and bonds by original subscription.

The Shareholders include Ventures and Acquisitions Limited, Ken Ofori Atta, Keli Gadzekpo and Databank Financial Holdings Limited. The Directors include Keli Gadzekpo and Angela Ofori-Atta. Ken ofori Atta resigned as its Director in 2015.

7.2.1.3. Enterprise Group Limited

Enterprise Group Limited (EGL) was incorporated on 22nd October 2013. It commenced business on 23rd October 2013, with Keli Gadzekpo and Trevor Trefgarne and others as shareholders. Its objectives include investment, real estate development.

The Directors include:

- Keli Gadzekpo
- George Otoo
- Trevor Trefgarne
- Angela Ofori-Atta

Ken Ofori Atta resigned as Director effective 30-06-2015 and Angela Ofori Atta appointed as Director effective 01/10/2015

7.2.1.4. Databank Brokerage Limited

Databank Brokerage Limited was incorporated on 10th June 1991 and re-registered on 5th October 2016. Its objectives include the following:

- To subscribe for, purchase, hold, manage and sell securities and other property,
- to provide brokerage services to investors,
- to underwrite the issue of shares, bonds and other securities and deal as principals and agents, and
- to acquire any such securities including stocks, shares, debentures and bonds by original subscription

Shareholders include :

- Ghana Reinsurance Company Limited
- Databank Financial Services Limited
- The Databank Foundation
- Ken Ofori-Atta
- Keli Gadzekpo, and
- Databank Financial Holdings Limited

Keli Gadzekpo and Ken Ofori-Atta resigned as Directors of Databank Brokerage Limited on 10th July 2002.

7.2.1.5. Databank Financial Services Limited

This company was re-registered on 20th September 2016 having been incorporated originally 20th April, 1990. Its objectives are Data Processing and Computer Services, Consultancy Services, Management Services, Feasibility Services, Financial Services, Investment Brokers and Investment Services.

Shareholders include Ken Ofori-Atta, Keli Gadzekpo and Databank Financial Holdings Limited. Angela Ofori-Atta (replacing Ken Ofori Atta) and Keli Gadzekpo are some of the directors of this company. Ken Ofori Atta resigned as Director on 29TH April 2015.

The Commission finds as facts from above that Ventures and Acquisitions Limited holds shares in Databank Asset Management Services Limited, which in turn is sole shareholder of Databank Ark Fund Limited and Databank Money Market Fund Limited.

7.1.2.6. Enterprise Insurance Limited

Enterprise Insurance Limited was incorporated on 6th November, 2013, with two broad objectives:

"A. TO ACQUIRE AND CONTINUE AS A GOING CONCERN THE BUSINESS OTHER THAN LIFE INSURANCE BUSINESS CARRIED ON IN GHANA BY THE GUARDIAN ASSURANCE COMPANY LIMITED AND ROYAL EXCHANGE ASSURANCE BOTH INCORPORATED IN ENGLAND AND FOR THIS PURPOSE TO ACQUIRE AND TAKE OVER ALL OR ANY OF THE ASSETS, BUSINESS, PROPERTY, PRIVILEGES, CONTRACTS, RIGHTS, OBLIGATIONS AND LIABILITIES OF THESE COMPANIES USED IN CONNECTION THEREWITH OR BELONGING THERETO

B. THE BUSINESS OF GENERAL INSURANCE AND OTHER BUSINESSES AND AGENCIES INCIDENTAL THERETO".

Shareholders are Enterprise Group Limited And Sanlam Emerging Markets Proprietary Limited and with the following Directors, among others:

- Keli Gadzekpo
- Trevor Trefgarne
- Angela Ofori-Atta

8.2.2. DOCUMENTS FROM THE AUDITOR-GENERAL

A Declaration of Assets and Liabilities under Article 286 of the Constitution of 1992 (Assets Declaration) submitted to the Auditor-General by the Respondent and produced before the Commission in evidence shows that Ken Ofori-Atta has, among others, employment or business interests as of the date of making the Assets Declaration (12 March 2017), in the following companies:

- Databank;
- Ventures and Acquisitions;
- Enterprise Group;
- Busy Internet, and
- Structured Capital.

In terms of Investment bonds, treasury bills, shared, etc, the Respondent has T-Bills with:

- Databank MFWD-Ghana LTD
- Databank BFUND
- Databank EDIFUND
- Databank EPACK
- ELM Africa Holdings Limited
- Frontier Alliance Ltd
- Family Ventures and Officials Holdings
- International Advisors Holdings Ltd

On details of any other names or aliases in which any properties or businesses are held on his Behalf, the completed form further discloses the following companies:

- Ventures & Acquisitions
- Databank

The Commission discovered from the assets disclosure that the Respondent did not disclose to the Auditor-General that he is a shareholder in Databank Financial Services Limited, Databank Brokerage Limited, and Databank Financial Holdings Limited.

From the records of the Auditor-General and the Registrar-General, the Respondent has business and other close relations with the following persons:

- Keli Gadzekpo: The respondent and Keli Gadzekpo are both shareholders and Directors of Ventures & acquisitions, which also owns shares in Databank Asset Management Services Ltd. Both of them were also directors of Databank Brokerage Limited at some point but resigned same day.
- Angela Ofori-Atta: is the respondent's spouse and a business partner.
- Trevor Trefgarne: is a Director of EGL. The respondent was also Director of EGL but resigned effective 30th June 2015. The Respondent's spouse, Angela Ofori-Atta, is also Director of the EGL. In addition, Trevor Tefgarne is also a Director in Enterprise Insurance Limited, which is also owned by EGL, which is partly owned by Ventures and Acquisitions, which in turn owns Databank Asset Management Services Limited

From the above, the Respondent is either a director, former director, a shareholder of several companies either directly or indirectly through his spouse. The information also discloses that the Respondent has several business partners and affiliations in relation to the said companies.

8.2.3. DOCUMENTS FROM BANK OF GHANA

ANNOUNCEMENT FOR RE-OPENING OF 5-YEAR AND 10-YEAR BONDS

On the re-opening of the 5-year and 10-year bonds, the BOG made announcements to the market as indicated below:

Announcement for reopening of 5-year.

“BANK OF GHANA

FINANCIAL MARKETS DEPARTMENT

ANNOUNCEMENT OF AUCTION FOR GOVERNMENT OF GHANA SECURITIES

- SECURITY AVAILABLE FOR SUBSCRIPTION UNDER TENDER 1531;
- RE-OPEN OF 5 – YEAR BOND MATURING 24TH JANUARY, 2022
- *Bids are invited from Banks and investors (both residents and non- residents)*
- *Bids must be submitted electronically through the Auction Module not later than 2:00 p.m. on Thursday March 30, 2017.*
- *Settlement will be on MONDAY APRIL 03, 2017.*
- *All Banks are eligible to participate.*
- *Banks are allowed to trade the instrument on the secondary market”.*

2) 10-year bonds Announcement

“BANK OF GHANA

FINANCIAL MARKETS DEPARTMENT

ANNOUNCEMENT OF AUCTION FOR GOVERNMENT OF GHANA SECURITIES

- SECURITY AVAILABLE FOR SUBSCRIPTION UNDER TENDER 1531;
- RE-OPEN OF 10 – YEAR BOND MATURING 2ND NOVEMBER, 2026
- *Bids are invited from Banks and investors (both residents and non-residents)*
- *Bids must be submitted electronically through the Auction Module not later than 2:00 p.m. on Thursday March 30, 2017.*
- *Settlement will be on MONDAY APRIL 03 2017.*
- *All Banks are eligible to participate.*
- *Banks are allowed to trade the instrument on the secondary market”.*

PROSPECTUS FOR THE ISSUANCE OF 5-YEAR FIXED RATE BOND

The BOG announcement the issuance of GOG 5-year Fixed Rate Bond as notice to the general public as follows:

“...NOTICE OF THE GENERAL PUBLIC

NOTICE NO. BG/TD/2015/15

PROSPECTUS FOR THE ISSUANCE OF GH¢440 MILLION

GOVERNMENT OF GHANA 5-YEAR FIXED RATE BOND

1. Invitation of bids

*Further to the Bank of Ghana Notice No.: BG/TD/2015/02 on the Issuance Calendar for Government of Ghana Securities for the first-half year period, January 1 – June 30, 2015, the Bank of Ghana invites bids for the issuance of the above instrument on behalf of the Government of Ghana through the **Auction process**.*

.....

The instrument will be Ghana cedi-denominated and will be issued at par. It shall bear a coupon rate equal to the highest competitive bid accepted at the auction for the security. The coupon rate so fixed shall carry throughout the term of the security.

Issue Method: Through an auction to be held on March 26, 2015.

Coupon: To be determined at the auction to be held on March 26, 2015, as described under (1) above.

.....

Closing Date: Bids must be electronically delivered to the Central Securities Depository Auction \module not later than 1.30 pm on Thursday, March 26, 2015...”.

9.0. ANALYSIS OF EVIDENCE IN THE LIGHT OF THE ISSUES AND CONCLUSIONS

9.1. Whether there are rules on the issuance of bonds

The Complainant alleges in his complaint that: “A number of conflict of interest and lack of transparency have emerged from the bond issuance”. He added that the bond transaction seemed to have been shrouded in secrecy as the process was limited to one day, unlike past bonds when the “book-building” method had been used and “the process was opened for a minimum of three days to ensure optimal participation.”

The Complainant also claimed that: “One single investor, Franklin Templeton Investment Limited, purchased almost 95% of the Bond issued by the Minister of Finance.” He noted that: “The size of this virtual “private placement” makes it akin to sovereign bond or foreign loan.” He further posed various questions suggesting non-adherence to rules and procedures relating to the issuance of the bonds.

Furthermore, during an interview with the Complainant and his lawyer on 10th July, 2017, he said that:

“Government in all raised USD2.25 Billion. Of this amount, USD1.13 Billion was through the Book Building system. The additional USD1.2 Billion was the tap-in arrangement which is the virtual private placement. He argued that a tap-in arrangement in financial matters is sole sourcing and described it as “Here, you are not asking for bids, but asking the person to bring money. And so tap-in is a private arrangement. And for private arrangement, the tenor cannot be beyond 2 years. Because tap-in is sole-sourcing, it is hardly used”.

The Deputy Attorney-General and Deputy Minister for Justice, Hon Godfred Yeboah Dame, in his comments on behalf of the Respondent dated 31st May, 2017, stated that there had been no breach of any of the laws or rules governing the issue of bonds and that “the allegations of the complainant are based on plain falsehoods.” In the comments, the Respondent stated that the issuance of bonds is governed by elaborate rules, noting that “Bonds are part of Government securities and constitute direct, unsecured and unconditional obligations of GoG.”

The Respondent also noted that the Bank of Ghana on behalf of GoG issues all bonds and had, therefore, devised rules dubbed GUIDELINES FOR THE GOVERNMENT SECURITIES MARKET FOR PRIMARY DEALERS to regulate the issuance of all securities.

The Respondent attached a copy of the Bank of Ghana Guidelines (“Guidelines”) to his comments and maintained that issuance of securities in accordance with the regulations of the Guidelines was in compliance with the financial laws of Ghana. He further quoted copiously from the Guidelines arguing that they were the “relevant rules” applicable.

The Respondent also argued that the Complainant had “woefully failed to indicate which rule was breached in the issue of the Bonds in question.” He emphasized that “no rule was breached, and there was strict compliance.”

The Respondent submitted that, “Prior to November 2015, there was only one methodology for auctioning government securities at the Bank of Ghana. On 11th August 2015, the Ministry of Finance announced a second auction methodology, the “book building” approach which is similar to the approach applicable for Eurobonds and for new bond issuances. In pursuance of this, three (3) financial institutions were chosen as Joint Book Runners through a competitive tendering process.”

Concluding his comments on this subject, the Respondent said “the issuance of Bonds on 31st March, 2017 complied in every material detail with the tenets of the rules and regulations ... and followed in the tradition of previous issue of securities by GoG under the Bank of Ghana guidelines.”

The Commission secured a copy of the Guidelines dated December, 2015 from the official website of the Bank of Ghana, which are similar to the copy provided by the Respondent. The Guidelines provide “BoG, on behalf of the Government of Ghana and other agencies of Government issues all securities”, and that “BoG acts on behalf of the MoF” (Ministry of Finance). Again, the Guidelines provide that: “The securities may be issued through the wholesale auction, book-building or any other processes” (emphasis added).

Government Securities (“G-Secs”) under the Guidelines consists of “bills, notes and Bonds.” G-Secs sold in the primary market in Ghana, all of which can be traded in the secondary market, include the following:-

- 91-day Treasury Bill,
- 182-day Treasury Bill,
- 1-year Treasury Note,
- 2-year Treasury Note,
- 3-year Fixed Rate Bond,
- 7-year Fixed Rate Bond,
- Any other securities that may be issued” (emphasis added).

On currency, the Guidelines provide that securities will be “denominated in the local currency Ghana Cedis (GHC)” and all “payments in respect of subscription and redemption will be made in Ghana Cedis.”

Specifically on eligibility, the guidelines provide that:

“a. Only financial institutions licensed by the Securities and Exchange Commission (SEC) to deal in securities and authorized by BoG as PDs to participate in the wholesale auction of debt securities conducted by BoG on behalf of GoG and its agents.

b. For the purposes of these guidelines, financial institutions so authorized shall be referred to as “PRIMARY DEALERS” (PDs)”.

The rest of the Guidelines are the following:

- The Ministry of Finance (MoF) through GoG shall publish a six (6) months calendar for the issuance of G-Secs. This publication would be done two (2) weeks prior to the commencement of the calendar period

(2.0. Availability of Financial Instruments).

- Based on the published calendar, the BoG on behalf of the MoF shall announce periodically but not less than a week before an auction, the amounts and specific details of the financial instruments available at the next auction and their maturity profiles.

- For the issuance of medium and longer-term securities, a separate notice or prospectus shall be placed in the daily newspapers and on BoG and MoF websites (2.0. (c)).
- An advertisement inviting bids for the securities to be issued shall be placed in the national dailies and on BoG and MoF websites in advance of the auction by BoG.
- For the issuance of Bonds, a Prospectus would be published by the issuer, inviting bids for the Bonds to be issued, in advance of the auction.
- Auctions for G-Secs shall make provision for bids to be made on competitive or non-competitive basis.
- Each tender application for the purchase of securities shall be submitted electronically through the CSD Auction System by the PDs to the Treasury Department of BoG unless otherwise specified.
- Unless otherwise stated in a Prospectus in the case of a Bond issue, auctions shall be set up on Fridays and made available to all PDs on the Auction Terminal for the input of bids, same day at 8:30 a.m. submission of bids through the Auction system ends at 1:00 p.m. on same day, after which time the bidding screen shall be closed and made unavailable to PDs.
- The Auction shall normally be held on Fridays, between 3:00 p.m. and 4:00 p.m. Where Friday is a holiday, the Auction shall be held on the preceding Thursday and submission of bids shall therefore close at 1:00 p.m. on Thursday or the preceding working day.
- In the case of medium term bond issues open to non-resident investors, the auction shall normally be held on Thursday, between 3:00 p.m. and 4:00 p.m. Where Thursday is a holiday, the auction shall be held on the preceding Wednesday and submission of bids shall therefore close at 1:00 p.m. on Wednesday or the preceding working day.
- The BoG may accept or reject or refuse to recognize any or all bids or tenders and also reserves the right to cancel an auction depending on the bids submitted.

- The Auction Committee may award 25% more of the target amount advertised or specified in any Prospectus or notice (Emphasis added).
- 4.0. New Products: a) Bank of Ghana shall notify the Market at least, two (2) weeks in advance of the issue of a new product. Curiously, the Respondent ignored 4.0. of the Guidelines in his response dated 31st May 2017.

There are other elaborate Guidelines on Pricing and Allotment (Competitive Bids and Non-Competitive Bids), Notification of Results, and Payment and Settlement, among others. Particularly, the following Regulations are noteworthy:

- Each competitive bid must be for one amount and at a desired price interest rate expressed as a percentage. A PD may submit one or more competitive bids at different prices or interest rates.
- Each competitive bid must be for a minimum of GHC500,000 nominal value of securities and for multiples of GHC10,000. No sale will be made of an amount less than GHC500,000 nominal value of Bonds.
- Competitive bids for the Auction will be ranked in descending order of price or ascending order of discount/interest rate. Bills/Bonds will be sold to applicants whose competitive bids are at or above the lowest price or at or below the highest interest rate at which the Auction Committee decides that any competitive bid should be accepted (the “lowest accepted price” or “highest accepted rate”).
- The detailed results of any action shall be available by 6:00 p.m. on the Auction Module and available to all PDs on the auction day and in any event the PD shall be notified (whether by e-mail or by fax) of their allotments by no later than the end of the first Business Day following the auction.
- The BoG will publish a detailed report and analysis of each auction in a press notice and on BoG and MoF websites by close of business on the first business day following the Auction date ...

- Unless otherwise announced, the settlement period for primary issues of Bills and Notes shall be T + 1, that is the first working day after the auction.
- In the case of medium and long term bond issues, settlement shall be T + 2” (emphasis added).

At Section 216 (on Interpretation) of the Securities Industry Act, 2016 (Act 929), “primary dealer means a body corporate which buys government securities directly from the government with the intention of reselling them to any other person”.

Officials of the BOG disclosed during the investigation that the authorization by the Ministry of Finance to the Bank of Ghana to take up the process for the issuance of bonds is through an Issuance Calendar, usually issued quarterly. Upon receipt of the Quarterly Issuance Calendar with the prospectus in both soft and hard copies, the Treasury Department of the BoG in turn notifies the market about the availability of the bonds (instruments) two weeks prior to the commencement of the calendar period. Based on the calendar, the BOG SHALL announce periodically but not less than a week before the auction, the amounts and specific details of the instruments available at the next auction and their maturity profiles.

Where the process involves book build method, the JBRs prepare the prospectus. For new issuances the Notice by the BOG is to be published in the daily newspapers and on the official websites of the BOG and the Ministry of Finance.

On the strength of the evidence before it, the Commission:

- 1) finds that the issuance of bonds in Ghana attracts various approaches, which comprise the traditional wholesale auction and book building methods and that each approach is driven by a separate set of rules and procedures.
- 2) accepts that operational Guidelines exist for the issuance of bonds and that the Guidelines submitted by the Respondent is the copy that regulates the issuance of bonds.
- 3). The Guidelines contain rules relating to the various stages of the process of issuing bonds which involves the Minister for Justice (in this case, the

Respondent), the Ministry of Justice, the Bank of Ghana and other market players. The process includes release of quarterly issuance calendar, BoG Notice and announcement on the availability of instruments, Public/transaction Announcements, Methods of used (Traditional or Bookbuild) Submission of Bids issuance Summary or/results, Settlement, and Publication of Auction Results.

- 4) Finds also that the Minister for Finance has the sole responsibility to borrow on behalf of the State, and therefore, he takes ultimate responsibility for delegating his functions.

9.2. Whether the issuance of the 7-year and 15-year Bonds on behalf of the Government of Ghana was in accordance with the rules

The opening paragraph of the Complainant's letter of complaint states as follows:

“On April 3, 2017 the Ministry of Finance announced that the Government of Ghana had issued a 15-year and 7-year bond at a coupon rate of 19.75% each. The said issuance raised a total amount of USD1.13 billion ...”

The Complainant alleged “lack of transparency” in the bond issuance and claimed that “credible information in the public domain” indicated that “One single investor, Franklin Templeton Investment Limited, purchased almost 95% of the Bond issued.” He imputed that Franklin Templeton purchased the 95% of the bonds through “private Placement.”

He said “the size of this virtual “private placement” makes it akin to a sovereign bond or a foreign loan.”

The Complainant alleged further that the virtual “private placement” approach that was used was opened in the morning and closed in the evening of the same day, March 31, 2017. He noted that the Bond transaction seemed to have been “shrouded in secrecy” as the process was limited to one day, unlike past bonds when the “book-building” method had been used and “the process was opened for a minimum of three days to ensure optional participation.”

The Complainant raised the following “Further Details” as his major concern:

- “1. *The 7-year and 15-year Bonds were not on the issuance calendar.*
2. *The initial pricing guidelines[guidance] of the Bond were issued around 5:37 p.m. on March 30, 2017, by e-mail, which is after normal working hour.*
3. *The transaction was opened at 9:00 a.m. on March 31, 2017.*
4. *The public announcement of the transaction was sent by e-mail at approximately 9:00 a.m. on the March 31, 2017, which means the transaction was opened before the announcement was made to the public.*
5. *The issuance summary was issued on March 31, 2017, at about 4:20 p.m. by e-mail indicating that the Bond transaction had been closed and announcement made to the public.*
6. *April 3, 2017, was the Settlement Date and not the Closing date of the Bond.”*

The Respondent, in his letter No. AGD/CDR/95/17 of 31st May, 2017, referred to the 7-year and 15-year Bonds not being on the issuance calendar as an allegation that did not “impinge on conflict of interest.” The Respondent submitted thus:

“Respectfully, the propriety or otherwise of 7-year and 15-year Bonds when same is allegedly not on the issuance calendar, does not fall within the jurisdiction of this Commission.”

The Respondent, represented by the Deputy Attorney-General and Deputy Minister for Justice, Godfred Dame, denied being in conflict of interest and urged the Commission to dismiss the complaint. He asserted that the allegation that the 7 year and 15 – year Bonds were not on the issuance calendar, **does not impinge on conflict of interest, and therefore, the propriety or otherwise of the issue of 7 year and 15 year Bonds not being in the issuance calendar, does not fall within the jurisdiction of this Commission** (emphasis added).

The Commission considers this submission by the Deputy Attorney-General and Deputy Minister for Justice as a lack of appreciation of the nature of the complaint of conflict of interest made against the Respondent by isolating the allegation that the 7 year and 15 – year Bonds were not on the issuance calendar, to conclude that it does not impinge on conflict of interest. The Complainant did not allege that the

absence of the bonds on first quarter issuance calendar, standing alone, constituted conflict of interest.

The complaint is that the personal interest of the Respondent conflicted with the performance of his functions as Minister and Public officer in relation to the issuance of the bonds and that the matters that occasioned the conflict include: non publication of the issuance of the bonds on the relevant calendar, lack of transparency in processes leading to the issuance of the bonds, attempt by the respondent to promote his private interest..." (see p.7 of Complaint) and other violations of the processes for issuing bonds. Obviously, there are a host of conducts alleged to have been perpetrated by the respondent leading to the alleged conflict of interest .

His submission does not also reflect the true position of the law on the mandate of the Commission. The law is that to trigger the investigative machinery of the Commission on allegations of conflict of interest and generally on Chapter 24 of the Constitution, there must be a complaint addressed to the Commission by an identifiable complainant, who need not be the victim: **Republic v High Court (Fast Track Division) (Ex parte CHRAJ, Interested party, Richard Anane (Supra).**

The complainant in this case, submitted a complaint to the Commission where he expressed his grievances or discontent, as a citizen of this country, against a public officer, the respondent in respect of the performance of the official functions of the Respondent under the law. The Complainant is identifiable and his complaint meets the requirements of the law in terms of invoking the investigative machinery of the Commission.

Nevertheless, the Respondent exhibited a letter signed by the former Finance Minister, Hon. Seth Tekper which indicated, among others, that "medium-term instruments may be reopened to create liquidity and benchmark securities." He argued that "7-year and 15-year Bonds fall into the classification of medium term Bonds," and by implication were to be "re-opened".

However, as the evidence shows the 7-year and 15-year Bonds constituted a "fresh issuance." Moreover, the 7-year Bond had been suspended, while the 15-year Bonds were making a "debut" entry. Therefore, they could not have been re-opened. In deed the evidence further shows that the 7-year and 15-year bonds were issued through the book build approach.

The Respondent described as “completely false and misleading” the Complainant’s assertion that the initial “pricing guidelines [sic] of the Bond were issued around 5:37 p.m. on March 30, 2017, by e-mail, which was after normal working hours.” He stated that, “Initial pricing guidelines[sic] are not issued by the Ministry of Finance” and that under the regulations, “they are issued by the Book Runners/Transaction Advisors licensed by the Bank of Ghana.

We must point out here again that the Respondent misunderstood the relationship between the BOG and the BookRunners who were recruited by the MOF after open tender as Transaction advisers on longer dated bonds (such as the 7-year and 15-year bonds). Therefore, it is inaccurate to state that the “...BookRunners/Transaction advisors licensed by the Bank of Ghana”. The BOG does not license Bookrunners/Transaction advisors. The correct position is that Securities and Exchange Commission licenses financial institutions including Banks, some of which (banks) the BOG authorises as “Primary Dealers”, as eligible to participate in auction of debt securities.

The Respondent also said that:

“On the occasion of the issue of the Bonds in question, the Book Runners by a public announcement on 30th March, 2017 at 10:12 a.m., published details of the Bonds to be issued and sent invitations to all investors before the transaction opened. The initial pricing guidelines[sic] were issued on 30th March, 2017 at 12:04 p.m.” (emphasis added).

He attached to his comments copies of the public announcement and stated further that:

“ ... as is normal practice, there was a second publication during the period books were open (2:00 p.m. in this case), to inform investors about the acceptable price range and encourage those outside the range to submit new bids within the range if they so desired” (emphasis added).

The Respondent stressed that the public announcement of the transaction was at 10:00 a.m. on 30th March, 2017 and not at 9:09 a.m. on 31st March, 2017. He said the transaction was “opened at 9:00 a.m. on March 31, 2017.” He labeled as irrelevant the allegation that the issuance summary was issued on March 31, 2017 at about 4:20 p.m. by e-mail indicating that the Bond transaction had been closed.

In his view, the Issuance Summary “is prepared by the Book Runners/Primary Dealers” and not the Ministry of Finance or the Minister of Finance. He exhibited a copy of the Issuance Summary and held that it complied with the regulations governing issue of bonds of this nature.

It is again being presented as if Bookrunners and Primary dealers are the same, when the respondent said in his response that “Issuance Summary “is prepared by the Book Runners/Primary Dealers”. As the evidence shows and which the respondent admit as correct, not all Book runners are Primary dealers, who must be Banks. Furthermore, the issuance summary is prepared by the Joint Bookrunners and Deal-Team, on behalf of the Ministry of Finance.

Regarding the issue of Settlement Date, this is what the Respondent wrote:

“Bank of Ghana Guidelines stipulate that Settlement Date for medium to long term Bonds shall be 2 days after issue of Bonds. No breach occurred in the settlement effected on 3rd April, 2017, pursuant to the issue of the Bonds on 31st March, 2017.

It would be noted that 2nd April, 2017 being a Sunday, the next working day that the Bonds could have been settled in accordance with the Bank of Ghana guidelines was 3rd April, 2017” (emphasis added).

The Respondent proffered some views on the issue of one single investor, Franklin Templeton Investment Limited, purchasing 95% of the Bonds. He wrote:

“The Ministry of Finance, in the matter of the issue of Bonds, does not transact with any investor. All transactions are carried out by Book Runners designated by the Bank of Ghana as Primary Dealers. Further, there is no law or regulation that imposes a limit on the amount of an investor’s offer. The transaction processes for this issuance did not deviate from previous issuances, as to lead to a finding that Franklin Templeton was favoured” (emphasis added).

The Commission notes a misstatement on the part of the Deputy Attorney-General when he submitted that “All transactions are carried out by Book Runners designated by the Bank of Ghana as Primary Dealers. As the Commission has explained already, Bank of Ghana only authorizes Banks as financial institutions to

operate as Primary dealers and to participate in auctions of securities. Book runners are different and may not be banks. In fact, in the issuance of the bonds in question-5-year, 7-year, 10-year and 15-year- many players were involved: Debt Management Section of the Ministry of Finance, Bank of Ghana, Primary Dealers and Book runners playing different roles. Therefore, ALL the transactions could not have been done any one of them.

The Respondent reacted to the allegation that it was the virtual “private placement” approach that was used as the Books were opened in the morning and closed in the evening of the same day – 31st March, 2017. His comments on this follow:

“The discretion for books to be opened and closed in one day is one to be exercised by the Transaction Advisors taking into account relevant financial factors which could impact on the Bonds to be issued.

Unfortunately, this statement is inaccurate. The time when books will open and close are predetermined (see 3.0. (g)-(i) of the BOG Guidelines) which provides “*The book-build will open on Friday, 31st March 2017 at 9:00AM and close on Friday, 31st March 2017*”.

There is no domestic law or regulation that prohibits closing the books on the same day they are opened. As a matter of practice, Book Runners may choose to close the books anytime they are satisfied with orders received. Further the issuance invitation put investors on notice that the transaction would close on short notice” (emphasis added).

It was found during the investigations that by a letter numbered MOF/DMD/FIRU/CAL/Q1/2017/1 and dated 5th January, 2017 with the title “GOVERNMENT’S REVISED ISSUANCE CALENDAR FOR JANUARY-MARCH, 2017”, the immediate past Minister of Finance, Hon. Seth E. Tekper, informed the Governor of the Bank of Ghana and the Managing Director of the Ghana Stock Exchange about Government’s Issuance Calendar, which was “a summary of the gross borrowing requirement for the period January to March, 2017. The addressees were requested to take the necessary steps to “operationalise the programme”. The Issuance Calendar made provision for the issuance of “3-year and 5-year bonds to be done through the book-building method”, and not 7-year and 15-year bonds.

In furtherance to the 1st Quarter, 2017 Issuance Calendar by Hon. Seth Tekper, the Bank of Ghana per Caroline Otoo issued a Notice dated 13th January 2017 to Primary Dealers, Banks, Stock brokers and the General Public. A copy of the Notice was also put up on the Bank of Ghana's website. The content of this Notice was a reproduction of Hon. Seth Tekper's Issuance Calendar for the First Quarter. Investigations showed that the First Quarter Calendar became operational as evidenced by the Auction Performance Calendar for the 1st and 2nd Quarters (January – June), which was procured from the Ministry of Finance.

In accordance with the rule and practice, Hon. Ken Ofori-Atta released the 2nd Quarter Issuance Calendar vide his letter No. MOF/DMD/FIRU/CAL/Q2/2017/2 of 30th March, 2017 addressed to the Governor of the Bank of Ghana and the Managing Director of the Ghana Stock Exchange. This 2nd Quarter Calendar comprised a summary of the gross borrowing requirement for the period April to June 2017 and provided/contained the issuance of 7-year and 15-year bonds. Categorically, the letter stated thus:

“The 7- and 15-year bonds in April, 2017 will be done through the book-building method and settlement on 3rd April, 2017. However, the 15-year Bond will have a callable option feature.”

As a step “to operationalize” the content of the 2nd Issuance Calendar, the Bank of Ghana per Caroline Otoo, Secretary, on 30th March, 2017 – the same date as that on the Minister's 2nd Issuance Calendar sent out Notice No. BG/TD/2017/15 to Primary Dealers, Banks, Stock brokers and the General Public, with same posted on the Bank of Ghana's website. Again, this notice is a reproduction of the content of the Honourable Minister's letter.

Mrs. Evelyn Kwatia, former Head of the Treasury Department of the Bank of Ghana, also said that the Bank of Ghana gets authorization to issue bonds after it receives the issuance calendar and the prospectus – in hard and soft copies – from the Ministry of Finance. She explained that the type of prospectus prepared by BoG prior to the appointment of the Joint Bookrunners was different from the one prepared by the Joint Book-runners for the book-building method. According to her, under the Auction System, the prospectus is a one-page document, but “under the Book-Building approach the prospectus is a bulky and detailed document prepared by the Bookrunners or the Transaction Advisors.” Clearly,

investigations have shown that neither the Ministry of Finance nor the BoG issued any Prospectus, respective to the 7-year and 15-year Bonds' Issuance.

Furthermore, there was no evidence that the issuance was published in the newspapers. As required by the BoG Guidelines (paragraph 4(a)), BoG ought to have informed the market “at least two (2) weeks in advance of the issuance of the 15-year bonds, “being a new product”.

Subsequent to the delivery of the Issuance Calendar and the Bank of Ghana Notice, the Joint Bookrunners sent out Transaction Announcements to their respective clients. Mr. Kobla Nyalety of Barclays Bank stated that the announcement for commencement of the process is agreed among the Joint Bookrunners/the MoF and, subsequently, the Bookrunners will communicate to the market. He said normally Cynthia Arthur at the Ministry of Finance would “signal” that the announcement was fine and could be sent. Again, Mr. Nyalety explained that “it was quite standard that any one of the Bookrunners, with consensus, could draft the announcement which is eventually “cleared” by the Ministry of Finance and later sent to the market.” He averred that in respect of the 7-year and 15-year Bonds it was the Bookrunners who wrote the announcement.

Mr. Ahiaglo also mentioned that the traditional method of making a public announcement is by e-mail. He revealed, though, that in one instance – that was in October, 2015 – they advised the MoF to place an advertisement in the newspapers which it did. Deborah Akyeampon of Strategic African securities indicated that she sent out the “public” announcement by e-mails, explaining that the e-mails do not have a “To” field as the recipients – mainly investors, both foreign and local – are not intended to know each other. And so the investors were lumped under the “bcc” field where they would receive the e-mails alright but would not know who else received them.

Evidence was also adduced to show that each Bookrunner – SAS, Stanbic Bank, and Barclays Bank – has an allocated tranche of investors to whom they sent the public announcement. Deborah Akyeampon said SAS has a tranche with “a mix of local and foreign investors”. She made available a list of SAS investors and it showed over 50 investors, including named addressees of Enterprise Group, BoG, MoF and CSD.

The Investigators procured copies of all relevant e-mails in respect of the issuance of the 7-year and 15-year bonds. Both SAS and Stanbic provided the same set of e-mails which were sent out by Deborah Akyeampon of SAS. In the case of Barclays Bank, all the important e-mails concerning the transaction were sent out on the Bank's behalf by one Sandra Osman. The Bank of Ghana also provided copies of all the announcements that the Bookrunners sent out, but not in an e-mail format.

A close study of all these e-mails reveal some key features. Regarding the Bond Issuance Announcement, the e-letter sent out by Deborah Akyeampon, is dated "Thursday, March 30, 2017" and the time is "10:12 a.m." Sandra Osman's e-mail, also on the same subject (i.e. Bond Issuances Announcement"), is dated "Thu, 30 Mar 2017" and with a time of "10:07: 48 + 0000." From this analysis, it is evident that the Bookrunners sent out a Bonds Issuance Announcement on Thursday 30th March, 2017 at either 10:12 a.m. or 10:07 a.m. depending on which of the Bookrunners' e-mail you were looking at.

Similarly, the Bookrunners sent e-mail correspondence to their respective investors on the Initial Pricing Guidance (IPG). A review of Deborah Akyeampon's e-mail on the subject shows it was sent on "Thursday, March 30, 2017" at "12:11 p.m." Sandra Osman's e-mail on the IPG was sent out on "Thu, 30 Mar 2017" at "12:03:52 + 0000." Clearly, it has been established that the Initial Pricing Guidance was duly published by e-mail on Thursday, 30th March, 2017 at either 12:11 p.m. or 12:03 p.m.

During the interview with the Respondent, Mr. Arkhurst of the Ministry of Finance stated that it is the MoF that issues the Pricing Guidance with advice from the Bookrunners. Mr. Artkhurst said it is the Bookrunners who have "the market intelligence and also they hold discussions with the market players". On the issue of how the Initial Pricing Guidance is determined, Mr. Artkhurst mentioned the following factors:

- *"How the bond is trading in the market*
- *The size you would like*
- *What sentiments the Joint Bookrunners are giving from the market".*

The next e-mail that was transmitted during the issuance of the bonds was one on the subject of "Final Pricing Guidance" which in the body of the e-mail itself is

referred to as the “BOOKBUILD UPDATE AND FINAL PRICING GUIDANCE.” The Investigators procured only the e-mail of Deborah Akyeampon on this subject. She sent out this e-mail on Friday, March 31, 2017” and at “2:12 p.m.” This e-mail was sent while the book-building was ongoing. Clearly, it was found that the Final Pricing Guidance was sent out via e-mail on Friday, 31st March, 2017 at 2:12 p.m.

The investigations discovered that both Deborah Akyeampon and Sandra Osman sent separate e-mails to the public on Bond Issuance Summary, that is after the books had closed. Deborah Akyeampon’s e-mail on this subject showed that she sent it on “Friday, March 31, 2017” at “5:38 p.m.” while Sandra Osman sent hers on “Fri, 31 Mar 2017” at the time of “17:01:25 + 0000.” The conclusive evidence here is that the Issuance Summary was announced per e-mail on Friday, 31st March, 2017 after 5.00 PM.

The Chief Director of the Ministry of Finance provided the Commission with details of the investors that participated in and the Commission also received from the Central Securities Depository (CSD) a list of successful bids respective to the 7-year and 15-year Bonds.

The Ministry of Finance prepared for its internal purposes “A SUMMARY REPORT OF AUCTION HELD ON 31ST MARCH, 2017”. As revealed by the evidence, Mrs. Evelyn Kwatia, then Head of the Financial Markets Department, Bank of Ghana, prepared for the Bank a “RESULTS OF TENDER”. The Bank of Ghana in turn put up on its website Notice No. BG/TD/2017/14 dated 31st March, 2017 and signed by Caroline Otoo, Secretary, with the following title: “RESULTS OF TENDER 1531 HELD ON 31ST MARCH, 2017 FOR GOVERNMENT OF GHANA SECURITIES TO BE ISSUED ON 3RD APRIL, 2017”.

The Respondent admitted in his comments on the complaint that the Settlement Date for the bonds issued was 3rd April, 2017 in accordance with the Bank of Ghana Guidelines. He stated that the Bank of Ghana Guidelines “stipulate that Settlement Date for medium to long term Bonds shall be 2 days after issue of Bonds.” He argued that “2nd April, 2017 being a Sunday, the next working day that the Bonds could have been settled ... was 3rd April, 2017.”

The mode of Settlement, as stated by Mr. Nyaletey of Barclays Bank, is that Bank of Ghana debits the account of the Primary Dealer who submitted bids on behalf of the client/investor. He admitted that Barclays Bank made Settlement in respect of the bonds in question for some clients, “including offshore investors such as ... Franklin Templeton.”

A close look at Paragraph 7 of the Bank of Ghana Guidelines on “Payment and Settlement,” which the Respondent referred to, states thus:

“7.1 Unless otherwise announced, the Settlement period for primary issues of Bills and Notes shall be T + 1, that is, the first working day after the auction.

7.2 In the case of medium to long term bond issues, settlement shall be T + 2 ...” (emphasis added).

It is noted that unlike the settlement date for primary issues of Bills and Notes, which may be “otherwise announced, the settlement date is certain, “shall be T+2”

From the foregoing, it is evidently clear that the issuance of 7-year and 15-year bonds fall into the category of “medium and long term bond issues” and that the Settlement Date contemplated in this instance is 2nd “working day” after the trading day, which was Friday 31st March 2017.

As the Respondent rightly pointed out, 2nd April, 2017 being a Sunday, and not the 2nd working day after the issue of the bonds, then the 2 working days after Friday, 31st March, 2017 – when the bonds were issued – would be Tuesday, 4th April, 2017. Accordingly, the Settlement date ought to have been Tuesday, 4th April, 2017.

Evidence shows that the Treasury Department of the Bank of Ghana prepared an “FX PURCHASE – APPROVAL SHEET” on 3rd April, 2017, for Settlement to be effected. Thus, the bonds in question were allotted on 31st March, 2017 and Settlement was effected on 3rd April, 2017, instead of 4th April 2017.

Evidence gathered suggested that the 1-day book-building was short as compared to 2015 and 2016. Mr. Ahiaglo of SAS said their client, Ministry of Finance, “agreed on the description and process of the investment and they acted

accordingly.” Mrs. Evelyn Kwatia, former Head of the Treasury Department, BoG, also observed that the period for the opening and closing of the 7-year and 15-year bonds’ transaction was shorter compared to previous bonds issued under the same approach in 2016. She said “it all depends on the exigencies of the matter.”

The evidence on record shows that prior to the issuance of the 7-year and 15-year bonds on 31st March, 2017, the immediate past issuance using the Book Building approach was in November 2016. On the official website of the MoF is a letter No. DMD/FIRU/JBR/2016/5 dated 11th November, 2016 and with the following heading: “GOVERNMENT’S 10-YEAR BONDS ISSUANCE IN NOVEMBER, 2016

Republic of Ghana: November 2016 10-Year Treasury Bond Issuance”

Some contents of this letter – an issuance announcement – are noteworthy. These contents are:

“OFFER PERIOD

MONDAY 7TH NOVEMBER 2016	Release of Initial Pricing Guidance
WEDNESDAY 9TH NOVEMBER 2016	Book-build opens 9:00 a.m.
...	
THURSDAY 10TH NOVEMBER 2016	Revised and Final Pricing Guidance ...
MONDAY 14TH NOVEMBER 2016	Settlement/Issue Date ...”

The evidence, therefore, clearly shows that in November 2016, the Initial Pricing Guidance was given to the market 2 clear days (on 7th November, 2016) before the Book Building process was opened at 9:00 a.m. on 9th November, 2016). The Book was also opened for two clear days – 9th – 10th November, 2016. Here, the provision in the Bank of Ghana Guidelines on Settlement/Issue Date was adhered to. The Books closed on Thursday, 10th November, 2016 and Settlement was on Monday, 14th November, 2016, in conformity with the formula on Settlement Date – T + 2.

Similarly, in November, 2015, the following details were contained in the Issuance Announcement.

“OFFER PERIOD

MONDAY 23RD NOVEMBER

Release of Initial Pricing Guidance

TUESDAY 24TH NOVEMBER

Book-build opens 9:00 a.m. ...

THURSDAY 26TH NOVEMBER

Final Pricing Guidance ...

MONDAY 30TH NOVEMBER

Settlement/Issue Date ...”

In the case of 2015, therefore, the Book Building for the issuance of a 5-year bond took 3 days (from Tuesday, 24th November to Thursday, 26th November). Again, the Settlement/Issue Date complied with the rule – i.e. T + 2.

The evidence clearly shows that Respondent’s statement in his comments that “the process used is the same as has existed since November 2015 for the issuance of 3 – 15 year bonds” cannot be said to be true. The 2017 issuance of 7-year and 15-year bonds, using the book building approach, was for 1 day. However, for 2015 and 2016 the Books were opened for 3 and 2 days respectively.

Other key observations on the issuance of the 7-year and 15-year bonds are that Hon. Seth Tekper’s Issuance Calendar for the 1st Quarter of 2017 was released on 5th January, 2017. Following that, the BoG Notice of the Calendar was issued on 13th January, 2017. However, the 2nd Quarter Issuance Calendar signed by Hon. Ken Ofori-Atta is dated 30th March, 2017. The BoG Notice on the 2nd Quarter Issuance Calendar also came out on 30th March, 2017. Both Hon. Ken Ofori-Atta and Mr. Artkhurst have asserted that it was normal for both the Issuance Calendar and the BoG Notice to come out on the same date.

Significantly, it is the Issuance Calendar that serves as authorization to the BoG to commence issuances on behalf of the Government of Ghana. The Bank, according to Mrs. Kwatia, received the hard copy of this Issuance Calendar on 3rd April, 2017. The e-mail from the MoF sent by Cynthia Arthur transmitting a soft copy of the Issuance Calendar to the BoG per Mrs. Kwatia is dated “Thursday, March 30, 2017” with a departure time of “12:31 P.M.” (emphasis added). Meanwhile, the “Bond Issuances Announcement” sent out to investors by Sandra Osman of Barclays Bank and Deborah Akyeampon have departure times of “10:07” and “10:12 a. m” respectively. The import of this is that the Joint Bookrunners started placing announcements before the Bank of Ghana received formal authorization from MoF for the issuances.

The following findings were made under the third issue:

- 1) The 7-year and 15-year bonds were new issuances. Whereas the 7-year bond was the second issue attempt (having been suspended), the 15-year bond was making its debut entry.
- 2) The Issuance Calendar for the 1st Quarter did not include issuance of 7-year and 15-year bonds, the trading of which concluded on 31st March 2017, which is within the 2017 first quarter calendar period. It contained issuance of 3-year and 5-year bonds through the book building method.

Pursuant to the 1st Quarter Issuance Calendar, the Bank of Ghana issued a Notice dated 13th January, 2017 to Primary Dealers, Banks, Stock brokers and the General Public, with a copy on Bank of Ghana's website, which the Auction Performance Calendar from the Ministry of Finance showed has been implemented.

- 3) The 2nd Quarter Issuance Calendar presented to the BOG by the Respondent dated 30th March, 2017 and dispatched by email same day at 12:31 PM, made provision for the issuance of 7-year and 15-year bonds. , which the Respondent indicated expressly that Settlement would be on 3rd April, 2017.
- 3) On receipt of the 2nd Quarter Issuance Calendar at 12:31 PM on 30th March, 2017, the BOG made announcements to the public on the reopening of 5-year and 10-year bonds, with an indication that *Bids must be submitted electronically through the Auction Module not later than 2:00 p.m. on Thursday March 30, 2017 and Settlement will be on MONDAY APRIL 03,2017 .*

This is contrary to its own rules requiring the BOG to announce periodically but not less than a week before an auction, the amounts and specific details of the financial instruments available (5-year, 7-year, 10-year and 15-year bonds) at the next auction and their maturity profiles.

- 4) In terms of the 7-year and 15-year bonds, the BOG should have notified the market at least two (2) weeks in advance of their issue since they were “new products” in accordance with the Bank of Ghana Guidelines. But as the evidence shows, the market was notified only one (1) day on the availability of the 7-

year and 15-year bonds prior to the commencement of trading. This period is shorter than the 2-3 days period that the previous issues provided.

- 5) The Bookrunners, Barclays Bank, SAS and Stanbic Bank sent out Bond Transaction Announcements on the issuance of the 7-year and 15-year bonds to investors through e-mails on Thursday, 30th March, 2017 at 10:07am and 10:12am respectively, contrary to the Complainant's allegation that the announcement was made on 31st March, 2017 at 9:00am. This means that the Bookrunners sent out Bond Transaction Announcements to investors even before the Bank of Ghana, which is supposed to issue the bonds on behalf of the Ministry of Finance. It is also not clear on what authority the Transaction advisors relied on before the BOG issued the announcement to the Public, investors and stockbrokers only after 12:31 PM.
- 6) The Initial Pricing Guidance was published by e-mail to investors on Thursday, 30th March, 2017 at 12:03pm and 12:11pm and NOT at 5:37 PM on March 30, 2017 as claimed by the Complainant.
- 7) The Books for the issuance of the 7-year and 15-year bonds were opened on Friday, 31st March, 2017 at 9:00am and closed at 5:00pm on the same day, and during the period that books were still open, the Final Pricing Guidance was released to investors by e-mail at 2:12pm.
- 8) The Issuance Summary was announced by e-mails on Friday, 31st March, 2017 at 5:01pm and 5:38pm and NOT 4:20pm on Friday, 31st March, 2017 as alleged by the Complainant.
- 9) Settlement was effected on 3rd April 2017 instead of 4th April, 2017 as provided by the Bank of Ghana Guidelines as rightly pointed out by the Complainant.

9.3. Whether the Issuance of the 5-Year and 10-Year on behalf of the Government of Ghana bonds was done in accordance with the Rules.

The Commission has already found that the Bank of Ghana published Guidelines on the issuance of the bonds, which cover the 5-year and 10-year bonds which are existing bonds.

The Commission has also found that the issuance of bonds in questions were subject to two methods, 1) the traditional Bank of Ghana Auction method, and 2) the Book build method, introduced in 2015.

The Traditional method, as the evidence before the Commission shows, was used for the issuance of the 5-year and 10-year bonds and the procedure differed from the Book build method, which used the services of Book Runners and Transaction Advisors. However, there rules in the Guidelines that apply equally to the two approaches used.

The Complainant told the Commission that the publication by the MOF on April 3, 2017, the Ministry of Finance indicated that in addition to the 7-year and 15-year bonds that the Government of Ghana raised at a coupon rate of 19.75%, the Ministry of Finance raised the cedi equivalent of USD1.12 billion in a 5- year and 10-year bonds via a tap arrangement;

He said that one single investor, Franklin Templeton Investment Limited (an American global investment management organization founded in 1947), purchased almost 95% of the Bond issued by the Minister for Finance, the size of which he said was virtual “private placement” and therefore making it akin to a sovereign bond or foreign loan;

According to him, the Virtual “private placement” approach, which by all intents and purposes, refers to the "re-opening, that was used was opened in the morning and closed in the evening of the same day March 31, 2017;

The complainant said that every bond issued comes with its own prospectus. Therefore, one cannot use a *“previous prospectus to amend what is to be done today. The moment you open a prospectus it is “close-ended”*. According to him, at a *“tap in” arrangement in financial matters is sole sourcing. Here you are not asking for bids, but you are asking the person to bring money. And so “tap in” is a private arrangement. And for a private arrangement, the tenor cannot be beyond two years.*

On the period when the bonds were issued, the complainant enquired thus: *was the issuance within the 1st Quarter Calendar? Did the transaction fall within the 1st Quarter*

Calendar or the 2nd? He said that per the Guidelines on Borrowing, you need, at least, one (1) week notification. He also noted that the 2nd Calendar was issued immediately after the 1st Quarter on 31st March, 2017, which he said was unusual.

In conclusion, the Complainant stated that the issuance of the bonds in question “did not find expression in the 1st Quarter Calendar”. Rather, the 2nd Quarter Calendar “*had to go back to 31st March, 2017 to issue the 2nd Calendar bonds*”. Furthermore, “*by the Securities and Exchange Act, the Securities and Exchange Commission Board ought to have given approval for the issuance of the bond, but the Board had not even been constituted*”.

On his part, the Respondent stated that the issuance of bonds complied with the Guidelines published by the Bank of Ghana as well as the financial laws of Ghana. He then set out the following rules in the Guidelines at pages 2 and 3 of his response, which have been extensively discussed in the Commission’s consideration of the issue above as to whether or not the 7-year and 15-year bonds were issued in accordance with the rules.

Relevant to the 5-year and 10-year bonds are the following rules:

- i. Securities issued in Ghana under the Bank of Ghana Guidelines are denominated in the local currency, and all payments are required to be made in Ghana cedis;
- ii. The Ministry of Finance is required to publish a six month calendar through the BOG for the issuance of government securities, which publication should be done two (2) weeks prior to the commencement of the calendar period.
- iii. Based on the published calendar, the BOG on behalf of the MOF shall announce periodically but not less than a week before an auction, the amounts and specific details of the financial instruments available at the next auction and their maturity profiles.
- iv. For the issuance of medium and longer-term securities, a separate notice or prospectus shall be placed in the daily newspapers and on the BOG and MOF websites

- v. An advertisement inviting bids for the securities to be issued shall be placed in the national dailies and on the BOG and MOF websites in advance of the auction by BOG.
- vi. For the issuance of Bonds, a Prospectus would be published by the issuer, inviting bids for the Bonds to be issued, in advance of the Auction by BOG
- vii. Unless otherwise stated in a Prospectus in the case of a Bond issue, auctions shall be set up on Fridays and made available to all PDs on the Auction Terminal for the input of bids, same day at 8.30 am.
- viii. Submission of bids through the Auction system ends at 1.00 p.m. on same day, after which time the bidding screen shall be closed and made unavailable to PDs.
- ix. The Auction shall normally be held on Fridays, between 3:00 p.m. and 4:00 p.m. Where Friday is a holiday, the Auction shall be held on the preceding Thursday and submission of bids shall therefore close at 1:00 p.m. on Thursday or the preceding working day.
- x. In the case of medium term bond issues open to non-resident investors, the auction shall normally be held on Thursday, between 3:00 p.m. and 4:00 p.m. Where Thursday is holiday, the auction shall be held on the preceding Wednesday and submission of bids shall therefore close at 1:00 p.m. on Wednesday or the preceding working day

Continuing, the Respondent said, *“Prior to November 2015, there was only one methodology for auctioning government securities at the Bank of Ghana. On 11th August 2015, the Ministry of Finance announced a second auction methodology, the “book building” approach which is similar to the approach applicable for Eurobonds and for new bond issuances. In pursuance of this, three (3) financial institutions were chosen as Joint Book Runners through competitive tendering processes. That the issuance of Bonds on 31 March, 2017 complied in every material detail with the tenets of the rules and regulations governing the issue of government securities, and followed in the tradition of previous issue of securities by GoG under the Bank of Ghana Guidelines. Perhaps, the only difference is the size of the recent issue”.*

He stated further that the second quarter issuance included 7-year and 15-year bonds, which "in accordance with the calendar, the 5 & 10 year Bonds of April,

were reopening existing 5-year and 10 – Year Bonds". This calendar provides, among others:

"...Per the proposed calendar, the issuance frequency for the Notes and Bonds will be as follows:

- *"...The 5-and 10-year Bonds in April 2017 will be raised through reopening of the existing 5-year Bonds (coupon of 18.75% maturing 24th January 2022 and the 10-year Bond (coupon of 19.0%) maturing 2nd November 2028, respectively. Settlement will be on 3rd April 2017, and*
- *The 7- and 15-Year bonds in April 2017 will be done through the book-building method and settlement on 3rd April 2017..."*

With regards to the allegation that the approach used in the Bonds transaction was Virtual Private Placement and that the process was opened in the morning and closed in the evening of the same day March, 31, 2017, he said that there was no virtual "private placement" approach deployed in the issue of the Bonds. He explained that Private placement is done with one financial institution or a selected group of investors, which is not made public. He disclosed that a public announcement was made in a manner sanctioned by the Bank of Ghana Guidelines and approved by the Transaction Advisers.

Indeed this statement by the Respondent is misleading. The public announcement was made by the BOG and without the approval of Transactions Advisors because the Transaction Advisors whose role was limited to Book Build method, were not involved in the 5-year and 10-year issuance which were being reopened.

The Respondent also stated that the transactions complied with the tenets of the same book building approach that the Ministry of Finance had used since 2015, when Ministry of Finance adopted that method to issue domestic bonds. The order books were opened to all interested investors and closed to all at the same time, and were managed by Transaction Advisers approved by Bank of Ghana, as they always have been.

According to the Respondent, there is no domestic law or regulation that prohibits closing the books in the same day they are opened and that as a matter of practice, Book Runners may choose to close the books anytime they are satisfied with

orders received. Further, the issuance invitation put investors on notice that the transaction would close on short notice. This statement is inaccurate. 3.0. (i) of the Guidelines provided that "In the case of medium term bond issues open to non-resident investors, the auction shall normally be held on Thursday, between 3:00 p.m. and 4:00 p.m. Where Thursday is holiday, the auction shall be held on the preceding Wednesday and submission of bids shall therefore close at 1:00 p.m. on Wednesday or the preceding working". Therefore, there are regulations setting the time for opening for submission of bids and time for closure where non-resident investors are involved as the 5-year and 10-year bonds were.

Ahiaglo of SAS told the Commission that there were four type of bonds issued on the day in question: 5- year, 7-year, 10- year and 15 year and that the 5 year and 10 year bonds were issued using a “tap-in” method, which he said, “means issuing the same bonds on the same terms”.

On the issue of private Placement, Ahiaglo said that the procedure used was not private and that standard processes were followed in contrast to private placement, where only one or two persons/investors are approached similar to “restricted tendering.”. Furthermore, the bonds opened to all investors.

Nyaletey said that on the issuance of the 5-year and 10-year Bonds, there was an announcement of a “tap in”. However, Barclays Bank was not involved in the “tap in”. Ministry of Finance and Bank of Ghana took care of the “tap in” process.

Evelyn Kwatia said that the 5 -year and 10-year bonds re-opened were part of the Issuance Calendar published on the MoF and BOG websites. The investors submitted the bids through their PDs using the Auction Model platform. She mentioned that GOG acting through MoF informs BOG of the decision to re-open already issued bond (s) as per an issuance calendar. The information is then communicated to banks and PDs who are interested to submit bids for consideration.

The BOG “announcement of auction for Government of Ghana securities” provides in respect of the 10-year bond :

- “...*SECURITY AVAILABLE FOR SUBSCRIPTION UNDER TENDER 1531:*

RE-OPEN OF 10 – YEAR BOND MATURING 2ND NOVEMBER, 2026

- *Bids are invited from Banks and investors (both residents and non-residents)*
- *Bids must be submitted electronically through the Auction Module not later than 2:00 p.m. on Thursday March 30, 2017.*
- *Settlement will be on MONDAY APRIL 03,2017.*
- *All Banks are eligible to participate”.*

In terms of the 5-YEAR BOND , the announcement provides:

- *SECURITY AVAILABLE FOR SUBSCRIPTION UNDER TENDER 1531:*
RE-OPEN OF 5 – YEAR BOND MATURING 24TH JANUARY, 2022
- *Bids are invited from Banks and investors (both residents and non-residents)*
- *Bids must be submitted electronically through the Auction Module not later than 2:00 p.m. on Thursday March 30, 2017.*
- *Settlement will be on MONDAY APRIL 03, 2017.*
- *All Banks are eligible to participate”.*

From both announcements, it comes out clearly that the BOG made the announcement on Thursday 30 March 2017, having received the Issuance Calendar by the Respondent on Thursday 30 March 2017 at 12:31 P.M. By that announcement also, bids were to be submitted same day by 2:00PM, meaning that investors had less than 2 hours to submit their bids.

On the strength of the evidence available to the Commission, it makes the following findings in respect of this issue:

- 1) The Bookrunners and Transaction advisors were not involved in the process leading to the issuance of the 5-year and 10-year bonds, which were done through the BOG auction (traditional) method.

- 2) The 2nd Quarter Issuance Calendar presented to the BOG by the Respondent dated 30th March, 2017 and dispatched by email same day at 12:31 PM, made provision for the re-opening of 5-year and 10-year bonds , which the Respondent indicated expressly that Settlement would be on 3rd April, 2017
- 3) The publication by the BOG on the availability of financial instruments (5-year and 10-yearbonds) was not done "two weeks prior to the commencement of the Calendar period which was stated as 30 March 2017 as required by (2.0. (a) of the BOG Guidelines. The publication was done on same day trading was to commence.
- 4) On receipt of the 2nd Quarter Issuance Calendar at 12:31 PM on 30th March, 2017, the BOG made announcements to the public on the reopening of 5-year and reopening of 10-year bonds, with an indication that *Bids must be submitted electronically through the Auction Module not later than 2:00 p.m. on Thursday March 30, 2017 and Settlement will be on MONDAY APRIL 03, 2017.* This is contrary to its own rules requiring the BOG to announce periodically but not less than a week before an auction, the amounts and specific details of the financial instruments available (5-year, 10-year bonds) at the next auction and their maturity profiles. A separate notice or prospectus was also not placed in the daily newspapers
- 5) The advertisement or announcement by the BOG inviting bids for the 5-year and 10-year bonds was not placed in the dailies either.
- 6) Settlement was effected on 3rd April 2017 instead of 4th April, 2017 as provided by the Bank of Ghana Guidelines as rightly pointed out by the Complainant.

9.4. Whether the Bond Transaction was organised in a manner that favoured Respondent's friends, family, associates and business partners

The Complainant alleged that in the issuance of the bonds, the Respondent attempted to favour his relations (business, family and others), which relationships, the complainant indicated as follows:

- Mr. Trevor G. Trefgarne is a Director of Franklin Templeton Investment Limited (FT)), which purchased almost 95% of the Bond.
- He is also Chairman of Enterprise Group Limited, a company partially owned by Databank Group Limited, a company in which the Respondent is known to have significant interest.
- That the Directors of Enterprise Group Limited are Dr. Angela Ofori Atta, Respondent's spouse, Keli Gadzekpo, business partner of the Finance Minister; Hon Gloria Akuffo, Attorney-General & Minister for Justice, and the Respondent;
- FT purchased almost 95% of the Bond issued by the Minister for Finance, through virtual "private placement which " was used was opened in the morning and closed in the evening of the same day March 31, 2017
- The purchase of the 95% of the bonds by FT was influenced by the relationship between the Respondent and Trefor G. Trefgarne ("great Friends"), both of whom have various interests in EGL.

In his reaction to the complaint, the Respondent did not deny that a single investor (Franklin Templeton Investment Limited) purchased almost 95% of the bonds issued by the Respondent, but denied transacting the bond issue in a manner to favour anyone. He stated that *"The Ministry of Finance, in the matter of the issue of Bonds, does not transact with any investor. All transactions are carried out by Book Runners designated by the Bank of Ghana as Primary Dealers"*. The Respondent also explained that *"... there is no law or regulation that imposes a limit on the amount of an investor's offer. The transaction processes for this issuance did not deviate from previous issuances, as to lead to a finding that Franklin Templeton was favoured. The records will show that Franklin Templeton has always, through primary dealers licensed by Bank of Ghana, invested in Ghana's bonds in a way no different from the instant one in dispute"*.

The submission by the Respondent, some of which are misstatements of the facts, have already been addressed except the submission that *"... Franklin Templeton has*

always, ..., invested in Ghana's bonds in a way no different from the instant one in dispute".

The evidence shows that:

- This was the first time that a 5-year and 10-year bonds issued were issued again via “tap-in arrangement”
- The period when Franklin Templeton Funds invested in the GOG bonds, the Minister for Finance did not have as many private interests in the securities sector as the Respondent, and
- The Finance Minister at the time did not have business relations with Trevor Trefgarne, a member of the Board of Directors of Franklin Templeton Investment Funds

The Respondent also denied the assertion that the approach used in the Bonds transaction was Virtual Private Placement and that the process was opened in the morning and closed in the evening of the same day March, 31, 2017. His explanation was that there was no virtual “private placement” in the transaction and indicated that Private placement is done with only one financial institution or a selected group of investors, which is not made public. He disclosed that in this particular transaction, a public announcement was made in a manner sanctioned by the Bank of Ghana Guidelines.

The Respondent denied holding any shares or directorship in the company, Franklin Templeton Investment Limited and explained that whoever the Directors of Enterprise Group Limited may be or may not be has no bearing on the issuance and purchase of the bonds in question. Neither Enterprise Group Limited nor its directors played any role in the transaction and did not in any way benefit from it.

The Respondent also mentioned that he had absolutely no interest in the transaction in issue to disclose which was an open market transaction carried out in accordance with Bank of Ghana Guidelines, and not designed to benefit any particular investor in anyway.

The Respondent again stated that he has been working in the financial market for several years before his appointment as the Finance Minister by this present government. According to him, he had been working in the securities industry for close to 30 years. Logically, he is bound to have friends, associates and business partners including in that industry.

This is consistent with the evidence before the Commission. Copies of returns on companies believed to be linked with the Respondent from the Registrar- General in the course of the investigation show that he has business interest in Databank, Ventures and Acquisitions, Databank Asset Management Services Limited and Enterprise Group Limited. He also has interest in other subsidiaries of Databank. Some of these companies also hold shares in some of the companies or holdings mentioned above. For instance, Enterprise Group Limited is a major shareholder in Enterprise Insurance Ltd. The Directors of Enterprise Insurance Limited are Keli Gadzekpo, Trevor Trefgarne and Angela Ofori-Atta, Respondent's spouse.

It is observed that the Respondent had other assets which he did not disclose in his Assets Declaration Form. They include his interest in Databank Financial Services Limited and Databank Brokerage Limited.

The Respondent and Keli Gadzekpo are both shareholders and Directors of Ventures & Acquisitions which also owns shares in Databank Asset Management Services Ltd. The Respondent and Keli Gadzekpo were both directors of Databank Brokerage Limited, where both of them resigned same day as directors. He also has a working relationship with Angela Ofori Atta (spouse) as directors of Enterprise Group Limited, with Angela Ofori-Atta.

The evidence also show that Angela Ofori-Atta, spouse as well as business partner of Respondent holds directorships in several companies. Though the Respondent has neither confirmed nor denied that Trevor Trefgarne is a Director of Enterprise Group Ltd, information available on the website of the Franklin Templeton Investment Funds confirms that he is.

FT Unaudited report 2017, indicates that the "Honourable Trevor G. Trefgarne ... was appointed to the Board of Franklin Templeton Investment Funds on November 29, 2002. He is Chairman of Enterprise Group Limited, Ghana, and has been Director of a number of U.K. listed investment funds including Templeton Emerging Markets Investment Trust, Recovery Trust (Chairman) and Gartmore High Income Trust. He has extensive experience of the management of listed companies in the U.K. and Africa".

The evidence available to the Commission indicate that Trevor Trefgarne is also a Director in Enterprise Insurance Limited, which is owned by Enterprise Group Ltd. which is partly owned by Ventures and Acquisitions, which in turn owns Databank Asset Management Services Limited

Enterprise Group Limited (EGL) is a management consultancy and an investment firm, which was incorporated on 22 October 2013. It commenced business on 24

October 2013. The shareholders of EGL are Emmanuel Idun, George Otoo, Keli Gadzekpo, Trevor Trefgarne (4th largest shareholder), Mercy Boampong, Margaret Clarke-Kwesie, Araba Beecham and Joseph Boakye Danquah. The Directors are Martin Eson-Benjamin, Keli Gadzekpo, George Otoo, Margaret Clarke-Kwesie, Trevor Trefgarne, Angela ofori-Atta, Daniel Larbi Tiekue, Cleland Cofie Bruce Jnr, Fifi Kwakye, Kenneth Ofori Atta (resigned as Director effective 30-06-2015).

This means that currently, Hon Gloria Akuffo, Minister of Justice and Attorney General as well as the Respondent, Ken Ofori Atta are not directors of the company. The Commission could not however independently ascertain that Trevor Trefgarne is a Board member of Franklin Templeton Investments though information on the website of the company confirms this. It is also not ascertained that EGL is partially owned by *Databank Limited* though EGL has various subsidiaries but which does not include *Databank Limited*.

From a copy of brochure procured from Stanbic Bank which is one of the JBRs, there is indication that Franklin Templeton Investments purchased about 95% of the 5 and 10 year bonds sold in April, 2017. The letter dated and signed by the Chief Director of the MoF Mr. Nomo dated 2nd October, 2017 also said that the *"very well respected global investor that purchased a substantial amount of the bonds s Franklin Templeton Investments..."*

From the evidence, the Commission finds that the Respondent is either a director, former director, a shareholder either directly or indirectly. The evidence also shows that the Respondent has several business partners and relations in the said companies. By extension, there is therefore a relational interest between the respondent and Mr. Trevor Trefgane.

The 5-year and 10-year bonds were previously issued bonds which were reopened and re- issued. Mrs. Evelyn Kwatia, then Head Treasury Depart of the BoG explained that the BRs were not involved in the process of the "tap arrangement" for the 5 -year and 10-year bonds which were part of the Issuance Calendar published on the MoF and BOG websites. She said that the investors submitted the prices through their PDs using the Auction Model platform.

The Commission also finds that contrary to the position by the Respondent that no rule was breached in the issuance of the bonds, the following rules, among others, were not adhered to:

- contrary to its own rules requiring the BOG to announce periodically but not less than a week before an auction, the amounts and specific details of

the financial instruments available (5-year, 7-year, 10-year and 15-year bonds) at the next auction and their maturity profiles, the BOG failed to do so.

- On receipt of the 2nd Quarter Issuance Calendar at 12:31 PM on 30th March, 2017, the BOG made announcements to the public on the reopening of 5-year and reopening of 10-year bonds, with an indication that *Bids must be submitted electronically through the Auction Module not later than 2:00 p.m. on Thursday March 30, 2017 and Settlement will be on MONDAY APRIL 03, 2017.* This is contrary to its own rules requiring the BOG to announce periodically but not less than a week before an auction, the amounts and specific details of the financial instruments available (5-year, 7-year, 10-year and 15-year bonds) at the next auction and their maturity profiles.

But the question to ask is, do the breaches inure to the benefit of the relations of the Respondent?

Mr. Artkurst informed the Commission that the issuance of the bonds was found in the 2nd quarter calendar which was signed by the Minister on 30th March, 2017. Mr. Artkhurst explained that the ground work had already been done by the PDs and the investors already sensitized. He admitted though that the time was shorter compared to previous issuance though they received the highest payments than in previous transactions.

Mr. Nyaletey of Barclays Bank informed the Commission that the MoF engages the Investors and also hold Town Hall Meetings to market the issuance that the Government wants to do. He mentioned that the Ministry was usually represented by Sam Artkhurst, Dr. Sam Mensah, Elizabeth Owiredo, Cynthia Arthur and, sometimes, the Deputy Minister.

Franklin Templeton had participated GoG bonds transactions previously and had actually purchased 98.82 % of the bonds issued in August, 2012 and 94.69% in May, 2014 respectively.

In a letter received from the Chief Director of the MoF, he provided a list of persons who participated in the bids, which was not limited to few persons, but including Frank Templeton Investments.

On the basis of the foregoing, the Commission makes the following findings of fact:

- 1) The Respondent has business partners and associates related to the securities industry where the Respondent has been working for over thirty years. These business partners and associates include Databank, Enterprise Group Limited, Ventures and Acquisitions Limited, Keli Gadzekpo, Trevor Trefgarne and Angela Ofori Atta, also the spouse.
- 2) The Companies in which the Respondent has interest were among the list of investors notified of the issuance of the bonds, especially the 7-year and 15-year bonds. Several resident and non-resident investors received notices of the issuance of the bonds. But none of the companies and individuals known to be associated with the Respondent purchased the bonds in question.
- 3) The nature of delivery of the notices and subsequent announcements by the JBRs were such that investors had no access to the email addresses of other investors through the email systems. It is therefore reasonable to conclude that the MOF and the Minister may not have been aware of whom the JBRs were dealing with in the period leading to the trading in the bonds.
- 4) Over 80 sub-funds of FT exist around the world. Some of them participated in the bonds transaction in March/April 2017 and did purchase bonds. The evidence before the Commission at this point in time, did not disclose that Trevor Trefgarne influenced the purchase of the bonds by the over 20 sub funds of FT.
- 5) The issuance of the 5 & 10 year bonds or the 7-year and 15-year was not organized in a way to favour Respondent's friends, family, associates and business partners despite breaches of the rules.

9.5. Whether the Conduct of the Minister in the Issuance of the Bonds constitute conflict of Interest, Cronyism, Insider Trading and Corruption

The position of the Complainant is that the personal interest of the Respondent, being a public officer, conflicted with the performance of his functions as a public officer in relation to the issuance of the bonds. I.e. he has attempted to promote a

private or personal interest for himself or for some family members and business associates. The Complainant enumerated the instances, which in his view, occasioned the conflict of interest which instances have been sufficiently set out in this decision earlier. However for ease of reference, the allegations relevant to the consideration of the issue whether there was conflict of interest are hereby re-stated for ease of reference.

The complainant alleged that:

- the Bond transaction seems to have been shrouded in secrecy and lacked transparency
- The purchase of the 95% of the bonds by FT via tap arrangement was influenced by the relationship between the Respondent and Trevor G. Trefgarne (“great Friends”), both of whom have various interests in EGL.
- According to him, a “tap in” arrangement in financial matters is sole sourcing.

He states further that the Respondent, being a public officer, *“has put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office; He attempted to promote a private or personal interest for himself or for some family members and business associates, and the promotion of the private interest has resulted in, or was intended to result in, or appears to have resulted in, or has the potential to result in an interference with the objective exercise of his duties and an improper benefit or an advantage by virtue of his position.”*

He further alleges that the procedure for issuing bonds was not followed in order that the Respondent, by himself or his business and family relations, including FT and Trevor Trefgarne would benefit unfairly. That the Respondent, having thus conflicted himself, failed to take proper steps to disclose or manage his conflicting interests.

To sum it all, the complainant’s beef is that the Respondent has either contravened or has not complied with article 284 of the Constitution relating to conflict of interest, which he alleged is as a result of the issuance of 5-year, 7-year, 10-year and 15-year bonds in the March/April 2017 and that the matters that occasioned the conflict include: non publication of the issuance of the bonds on the relevant calendar, the non transparent manner in which the bonds were traded, that he

attempted to promote his private interest..." (see p.7 of Complaint) and other violations of the processes for issuing bonds.

The Respondent, represented by the Deputy Attorney-General and Deputy Minister for Justice, Godfred Dame, denied being in conflict of interest and urged the Commission to dismiss the complaint.

The Deputy Attorney-General submitted that in **OKudzeto Ablakwa (No.2) & Another v Attorney-General & Obetsebi-Lampitey (No 2) [2012] 2 SCGLR 845**, (supra), the Supreme Court, in dealing with the issues before it in general, laid down seven (7) fold blanket test for establishing a claim against a public official under the Constitution, which he provided as follows:

- 1) The law under which the complaint is brought to court. This law may be constitutional, statutory or legislative instrument. If the law is constitutional and it is brought under articles 23, 35(8) or 296, what follow must be established;
- 2) The capacity of the decision maker. He must be a public officer or administrative officer if the complaint is brought under article 23. No such requirement is necessary if it is brought under article 296;
- 3) Did the decision maker profit by the decision or action (to provide the basis for conflict of interest or economic gain)?;
- 4) The capacity of the beneficiary or the recipient of the decision or action. Was the decision taken in his favour in unjustifiable preference to other applicants who were equally or better qualified but were bi-passed because of some oblique motives or obscene considerations or special favours or due to family, social or political connections (to provide the basis for establishing favouritism, nepotism, cronyism, etc.);
- 5) What were the grounds or the basis for making the decision for that particular recipient?;

- 6) Were the known or established procedures or processes for taking the action or making the decision duly complied with?, and
- 7) Did the decision or action conform to the audi alteram partem rule or any other law relevant to that particular decision or action?

The Respondent also submitted that “*Similarly in **Dikyi & Others v. Ameen Sangari Industries Ltd.** [1992] 1 GLOR 61, Kpegah J. (as he then was) held that conflict of interest and conflict of duties were objectionable, and that on account of a director of a company standing in a fiduciary relationship with the company and the duty to observe the utmost good faith in his dealing with the company or on its behalf, a director is not permitted to place himself in a situation where his duty to the company conflicts with or may conflict with his personal interest or his duties to other persons*”.

The Commission is not oblivious of the position of the law on conflict of interest espoused in the Ablakwa case which requires that that when litigant/person comes to Court with a claim of conflict of interest against a public officer, the onus of proof lies on that person to prove the matters listed therein. But no such requirement is necessary to invoke the investigative machinery of the Commission.

The correct position of the law on the mandate of the Commission on matters of conflict of interest is that An allegation that a public officer has contravened or has not complied with a provision of this Chapter [Chapter 24] shall be made to the Commissioner for Human Rights and Administrative Justice and, in the case of the Commissioner of Human Rights and Administrative Justice, to the Chief Justice who shall, unless the person concerned makes a written admission of the contravention or non-compliance, cause the matter to be investigated: article 287 (1) of the Constitution.

To invoke the investigative machinery of the Commission under Chapter 24 of the Constitution (also on conflict of interest), the complainant is required to file a complaint before the Commission. The Complainant does not have to be the victim and the complainant could be an individual or a body corporate. This was the decision of the Supreme Court in **Republic v High Court (Fast Track Division) Ex parte, CHRAJ; Interested Party, Richard Anane (HC) [2007-8] SCGLR 340** (supra).

The Commission is an investigative body. Therefore, when the Commission receives a complaint pursuant to Article 287 it becomes imperative that the Commission conducts investigations into the allegations in the absence of any

admission by the public officer against whom the allegations are made and may take the action it considers appropriate in respect of the results of the investigation: article 287 (2) of the Constitution. It is important to distinguish certain aspects of the Ablakwa judgment in the light of the Anane Judgment by the same Supreme Court.

To the substantive issue. The Commission has already established, on the basis of the evidence before it that FT did not purchase the bonds unfairly and that though Databank and Enterprise Group Ltd, companies known to be associated with the Respondent, were notified of the availability of the bonds, they did not purchase any of the bonds. Therefore, the issue whether the Bond Transaction was organised in a manner that favoured Respondent's friends, family, associates and business partners, has been determined to the effect that the transaction was not organised to favour friends, family and other relations of Respondent.

In terms of conflict of interest, it is a well-known equitable and common law principle that a person in a fiduciary capacity is not allowed to put himself in a position where his personal or private interest and public duty conflict. The principle also includes a situation where a reasonable person looking at the circumstances will conclude that there is a real possibility of conflict between the personal interest and public duty of the person in pecuniary capacity.

Lord Herschell laid down the principle in *Bray v. Ford* [1896] AC 44 @ p. 51, thus:

"It is an inflexible rule of a Court of Equity that a person in a fiduciary position...is not allowed to put himself in a position where his interest and duty conflict. It does not appear to me that this rule is, as has been said, founded upon principles of morality. I regard it rather as based on the consideration that, human nature being what it is, there is danger, in such circumstances, of the person holding a fiduciary position being swayed by interest rather than by duty, and thus prejudicing those whom he is bound to protect. It has, therefore, been deemed expedient to lay down this positive rule. "

The facts of that case are that Bray was a governor of Yorkshire College and Ford was the Vice Chairman of the governors of Yorkshire College (the College), who had also been working as a solicitor for the college. Bray sent Ford a letter, and circulated it to others, saying, *"Sir, during last summer, as you are aware, it came to my knowledge that whilst holding the fiduciary position of vice-chairman of the Yorkshire College you were illegally and improperly, as you know, making profit as its paid solicitor."*

This letter was held to be libellous by the Jury at trial. But Cave J had directed the jury that the College's articles did in fact allow for pay of services as a solicitor. The jury awarded £600 damages, and the question was whether the award could stand in the face of the misdirection. The Court of Appeal held the Jury was misdirected, but that it was libel anyway and that the misdirection was unsubstantial and the jury would have decided the same.

The House of Lords, unanimously reversed the Court of Appeal's decision, on the basis that the decision of whether a libel existed was peculiarly within the jury's power to decide, and the misdirection did constitute a 'substantial wrong or miscarriage' requiring a new trial.

This principle of avoidance of conflicts of interest by persons in fiduciary capacity and precaution that such persons should not take advantage of their positions to secure a personal benefit, have been reinforced by the Constitution, law and policy in Ghana.

Article 284 of the Constitution (under Chapter 24) provides that a public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of his functions. What comes out of article 284 of the Constitution is that in order to arrive at a conclusion that a public officer is in conflict of interest, it is required to prove all the under listed:

- That the respondent is a public officer within the meaning of Chapter 24 of the Constitution;
- That the public officer performed his public functions improperly because of his personal interests and
- That the public officer derived a benefit either for himself or others closed to/associated with the public officer as a result of the improper performance of his functions.

Capacity of the Public Officer. That the respondent a public officer?

That the Respondent is a Public Officer within the meaning of Chapter 24 of the Constitution is not in dispute he being the Minister for Finance.

Respondent's Public Duty

As such, the Respondent, under Article 76 (2) of the Constitution, assists the President in the determination of general policy of the Government. With respect to the subject of the investigation, the Public Financial Management Act, 2016 (Act 921), provides, among others:

- Section 4 (1) The Minister [for Finance] is responsible for the policy and strategic matters related to the efficient operation of the public financial management system of the country subject to policy guidance from Cabinet.

Section 5 (1) and (2) provides:

- (1) Pursuant to section 4, the Minister may “...(d) give directives and instructions necessary for the implementation of the provisions of this Act.
- (2) The Minister may delegate any of the responsibilities under subsection (1) to the Chief Director or to a senior public officer not below the rank of a Director within the Ministry but shall not be relieved of the ultimate responsibility for the performance of the delegated responsibility.

Thus under the Constitution, Act 921 and other relevant laws, the Respondent has both general and specific functions of state, which he must perform in the interest of the state.

Financial interests of the Respondent

The evidence before the Commission shows that before assuming or on assumption of duty, the Respondent had and still has personal interests, some pecuniary and others non-pecuniary.

The Assets Declaration Form which the Respondent completed and submitted to the Auditor General in compliance with article 286 (6) of the Constitution and dated 12 March 2017 discloses that the Respondent has employment or business interests listed as unspecified shares in Databank, Ventures and Acquisitions and Enterprise Group Ltd.

Ventures and Acquisitions, originally incorporated on 19 May 1995, and re-registered on 8 July 2016 deals in Agriculture, mining and Energy, industrial and Manufacturing activities, Stock holding, provision of technical, financial management and consultancy services. Ventures and Acquisitions Limited also holds shares in Databank Asset Management Services Limited, which in turn is sole shareholder of Databank Ark Fund Limited and Databank Money Market Fund Limited. He also has securities and bank balances such as Government Bonds, Treasury Bills and shares in Databank MFWD-Ghana LTD, Databank BFUND, Databank EDIFUND, Databank EPACK

In addition, the Respondent provided “details of any other names or aliases in which any properties or businesses are held on his behalf, to include Ventures & Acquisitions, Databank, and Family Ventures and Officials Holdings. Furthermore, he is a shareholder in Databank Asset Management Services Limited.

In terms of Enterprise Group Limited, it is in evidence that Enterprise Group Limited (EGL) is a management consultancy, investment firm, incorporated on 22 October 2013 with the following objectives: Investment, Real Estate development, management consultancy and to control the activities of the subsidiaries or operating units it shall establish, operate and acquire for the provision of insurance and its incidental agencies and services, investment, real estate development and management consultancy.

It commenced business on 24 October 2013 and its shareholders include Keli Gadzekpo and Trevor Trefgarne (4th Largest shareholder). The Directors are Keli gadzekpo, Trevor Trefgarne and Angela Ofori-Atta, among others. The respondent resigned as Director of EGL effective 30-06-2015 and his spouse, Angela Ofori Atta, was appointed as Director effective 01/10/2015.

Enterprise Group Limited has subsidiaries, which include Enterprise Insurance Ltd, which was incorporated on 6 November 2013 as a limited liability company. Its objectives are a) to acquire and continue as a going concern the business other than life insurance business carried on in Ghana by the guardian assurance company limited and Royal Exchange Assurance both incorporated in England and for the purpose to acquire and take over all or any of the assets, business and property, privileges, contracts, rightsand b) the business of general insurance and other businesses and agencies incidental thereto.

Trevor Tefgarne is also a Director in Enterprise Insurance Limited, which is a subsidiary of EGL, in which Ventures and Acquisitions has shares. Ventures and Acquisitions in turn, owns shares Databank Asset Management Services Limited.

It is to be noted that EGL and EIL were both incorporated in 2013 (October and November), a time when the Respondent was not the Finance Minister and the participation of persons related to him through EGL and EIL, would not have been a concern. Therefore, the argument that once TT and FT participated in bonds in the past since 2007, conflict of interest (COI) allegations ought not to have been made this time, is untenable as the conditions that gave rise to the allegations did not exist then. In any case the fact that the allegations of COI were

never made against FT and TT, does not mean that it should never be made at all even if there is basis for it.

These interests, which were disclosed in the Assets Declaration Form at the Auditor-General's have also reflected in the returns of companies in which the Respondent has interest, except that the Respondent did not disclose that he is a shareholder in Databank Financial Services Limited and Databank Brokerage Limited.

Business Associates and other Relations:

- Ventures and Acquisitions: (Directors- Ken Ofori Atta and Keli Gadzekpo)
- Enterprise Group Limited: Respondent is former Director (he resigned as Director effective 30-06-2015. His spouse was appointed as Director effective 01/10/2015)
- Shareholders include Keli Gadzekpo, Respondent's Business Partner in Ventures and Acquisitions;
- Enterprise Insurance Limited: Shareholders: Enterprise Group Limited and SALAM Emerging Markets Propriety Limited, Directors are Keli Gadzekpo, Trevor Trefgarne and Angela Ofori-Atta

Thus, from the foregoing, it is evident that the private/personal interests of the Respondent relate to the securities sector/securities market which, if not managed properly a potential conflict with the proper performance of his public functions, especially as Minister for Finance, is eminent.

How did the Respondent Perform his Functions?

From the evidence, the issuance of bonds involves a step-by- step process including the following:

1. Preparation of Annual borrowing and recovery plan based on the Medium-Term Debt Management Strategy (s. 61), which shall include planned borrowing operations over the year; (b) borrowing instruments to be used; and (c) the indicative timing of the borrowings.
2. Seeking Parliament's Approval by Parliament of a Debt Servicing Strategy to approve/review to borrow;
3. Preparation of Issuance Calendar for every quarter[six months], which should be submitted to BOG with instructions to operationalize

4. BOG sends notice to the Public, and PDs in case of the auction method; Joint Bookrunners & Deal Team (JBRs) in case of book building method. The announcement from the BoG must be done at least, two weeks in advance, in case of new products (4.0. of the BOG Guidelines)
5. In case of book build method, the JBRs, after receiving the BOG notice, then takeover: issue a transaction announcement of the pending bond with other details (Prospectus) to investors indicating type of instrument; maturity, whether marketed to resident and non resident investors, denomination of each bond, offer period, release of pricing guidance, when book build opens and closes, methodology, settlement/issue date.
6. Commencement of trading: Bids/book build opens (submission of bids through PDs) at the appropriate times. Final pricing guidance is released and books close, then allocation and Publication of Issuance summary, and
7. Settlement: settlement cycle of T+1 for Government of Ghana and Bank of Ghana securities sold at the primary auction (OPERATIONAL PROCEDURES OF THE CENTRAL SECURITIES DEPOSITORY (GH) LTD, dated 24/3/2016.

Some of the steps as listed above, are to be undertaken by the Minister for Finance, the MOF, the BOG, the Primary dealers and Joint Bookrunners, and the CSD. In the case of the Respondent, he may delegate some of the functions to other persons, but he takes ultimate responsibility for it: Section 55(2) of Act 921(supra)

It is in evidence that for the issuance of longer dated bonds using the book building method, the MOF through open tender engaged Joint Book Runners and Joint Team (JBRs), namely Barclays Bank Ghana Limited (BBG), Strategic African Securities (SAS) and Stanbic Bank Ghana (SGB) to advise and conduct the bonds issuance transaction on behalf of the MOF.

It has also been established that though Databank and EGL, the companies in which the Respondent has interest, were among the list of investors notified of the

issuance of the bonds, especially the 7-year and 15-year bonds, they did not purchase the bonds in question.

There was also no evidence before the Commission at this stage that there was a personal benefit to the Respondent or his business and the other relations.

On the basis of the foregoing, it is reasonable to conclude that though there was the significant potential that the Respondent's personal interest could have been in conflict with his vast personal interest in the securities sector, it was not the case in these specific bond issuance.

10.0. SUMMARY OF KEY FINDINGS OF THE INVESTIGATION

The following constitute the key findings of the investigation:

- 1) In November 2015, the Bank of Ghana published guidelines titled "*Guidelines for the Government Securities Market for Primary Dealers.*" These Guidelines provide for the processes leading to the issuance of both short (up to 3-year) and longer dated (above 3-year) bonds or government securities.
- 2) The rules in the Guidelines relate to various stages of the process of issuing bonds and involve the Minister for Finance (in this case, the Respondent), the Ministry of Finance, the Bank of Ghana and other market players: Issuance Calendar; BoG Notice and announcement; Public/transaction Announcements; Initial Pricing Guidance; Submission of Bids (Tender); Auction; book building; issuance Summary/results; Settlement; and Publication of Auction Results or Weekly Report by BoG, are essential components of the Rules. Thus, the Respondent plays a key role in the process of issuing Government of Ghana bonds.
- 3) The 5-year, 7-year, 10-year and 15-year bonds issued in March/April 2017, were domestic bonds (cedi denominated) and opened for non-resident investors, but the Statement issued by the Ministry of Finance on 3rd April 2017 misled the public into believing that the bonds were dollar denominated. The MOF, on realising that the statement it issued on 3rd April 2017 was inaccurate, removed it from its website but at the time of

this decision, the MOF had not yet replaced it with the more accurate statement.

- 4) The Issuance Calendar for the 1st Quarter did not include issuance of 7-year and 15-year bonds, the trading of which concluded on 31st March 2017, which is within the 2017 first quarter calendar period and NOT the 2nd Quarter Calendar period.
- 5) Pursuant to the 1st Quarter Issuance Calendar released by the Minister for Finance on 5 January 2017, the Bank of Ghana issued a Notice dated 13th January, 2017 to Primary Dealers, Banks, Stock brokers and the General Public, with a copy on Bank of Ghana's website, which the Auction Performance Calendar from the Ministry of Finance showed, has been implemented.
- 6) The 2nd Quarter Issuance Calendar presented to the BOG by the Respondent dated 30th March, 2017 and dispatched by email same day at 12:31 PM, made provision for the issuance of 7-year and 15-year bonds, which the Respondent indicated expressly that Settlement was to be on 3rd April, 2017.
- 7) On receipt of the 2nd Quarter Issuance Calendar at 12:31 PM on 30th March, 2017, the BOG made announcements to the public on the reopening of 5-year and 10-year bonds, with an indication that *Bids must be submitted electronically through the Auction Module not later than 2:00 p.m. on Thursday March 30, 2017 and Settlement will be on MONDAY APRIL 03, 2017.* This contradicts the BOG's own rules requiring the BOG to announce periodically but not less than a week before an auction, the amounts and specific details of the financial instruments available (in this case the 5-year, 7-year, 10-year and 15-year bonds) at the next auction and their maturity profiles.
- 8) In terms of the 7-year and 15-year bonds, the BOG gave only one (1) day notice to the market on the availability of the 7-year and 15-year bonds prior to the commencement of trading, instead of two weeks required for new products under the BOG Guidelines.

- 9) The Bookrunners - Barclays Bank, SAS and Stanbic Bank - sent out Bond Transaction Announcements on the issuance of the 7-year and 15-year bonds to investors through e-mails on same Thursday, 30th March, 2017 at 10:07am and 10:12am respectively, and not on 31st March, 2017 at 9:00am as alleged by the Complainant.
- 10) The evidence shows that the BOG received the request via Sandra Arthur's email to it on 30th March 2017 at 12:31PM to take steps to issue the 7-year and 15-year bonds. However, the Bookrunners sent out Bond Transaction Announcements to investors on 30th March 2017 at 10:07am and 10:12am respectively, suggesting that the Bond Transaction Announcements were sent to investors before the MOF request.
- 11) The Initial Pricing Guidance was published by e-mail to investors on Thursday, 30th March, 2017 at 12:03pm and 12:11pm, again before the MOF released the 2nd Quarter Calendar. Nonetheless, it was NOT at 5:37 PM on March 30, 2017 as claimed by the Complainant.
- 12) The Books for the issuance of the 7-year and 15-year bonds were opened on Friday, 31st March, 2017 at 9:00am and closed at 5:00pm on the same day, and during the period that books were still open, the Final Pricing Guidance was released to investors by e-mail at 2:12pm.
- 13) The Issuance Summary was announced by e-mails on Friday, 31st March, 2017 at 5:01pm and 5:38pm and NOT 4:20pm on Friday, 31st March, 2017 as alleged by the Complainant.
- 14) Settlement was effected on 3rd April 2017 instead of 4th April, 2017 as provided by the Bank of Ghana Guidelines and as rightly pointed out by the Complainant.
- 15) The Respondent is either a director, former director or shareholder, or beneficial owner, of several companies whose objects relate to the securities market sector. The companies include Databank and EGL. As such, Respondent's interests in the growth and wellbeing of those companies, have the potential to conflict with the interests of the state in relation to the securities market such as the issuance of bonds.

- 16) The Respondent has business partners and associates related to the securities industry where, according to the Respondent, he has been working for over thirty years. These business partners and associates include partners in Databank, Enterprise Group Limited, Ventures and Acquisitions Limited, as well as Keli Gadzekpo, Trevor Trefgarne and Angela Ofori Atta, also Respondent's spouse.
- 17) Representatives of Databank and EGL were among the list of investors notified of the issuance of the bonds, especially the 7-year and 15-year bonds. Several resident and non-resident investors also received notices of the issuance of the bonds by emails. But there was no evidence that any of those companies and individuals known to be closely associated with the Respondent, purchased the bonds in question.
- 18) The nature of delivery of the notices and subsequent announcements by the JBRs were such that ordinarily, investors had no access to the email addresses of other investors through the email systems. It is therefore reasonable to conclude that the MOF and the Minister may not have been aware of whom the JBRs were dealing with in the period leading to the trading in the bonds.
- 19) Over 80 sub-funds of FT exist around the world. Some of them participated in the bonds transaction in March/April 2017 and did purchase bonds. The evidence before the Commission at this point in time, did not disclose that Trevor Trefgarne influenced the purchase of the bonds by the over 20 sub-funds of FT.
- 20) The issuance of the 5 & 10 year bond or the 7-year and 15-year was not organized in a way to favour Respondent's friends, family, associates and business partners, breaches of the rules for issuing bonds, notwithstanding.
- 21) There was also no evidence before the Commission that there was a personal benefit to the Respondent or his private businesses and other relations.

11.0. OBSERVATION

The BOG Guidelines provide in 1.0. (a) at page 5 that only PDs are eligible to participate in the wholesale auctions of debt securities conducted by BOG on behalf of GoG and its agents. By the announcement inviting bids for the bonds, the BOG states “All Banks are eligible to participate” Investors who are not banks submit their bids through PDs, two of whom are Bookrunners. As was found during investigations, some of Banks which are also bookrunners submit their own bids, whilst receiving others’ bids for submission. It does appear that those PDs which are also bookrunners may have an unfair advantage over the others.

12.0. CONCLUSIONS

The evidence available to the Commission **supports** the Complainant’s allegations that:

- 1) The 7-year and 15-year Bonds were not on the 1st Quarter Issuance Calendar (January- March 2017). They were on the 2nd quarter issuance calendar which was released to the BOG on 30th March 2017 at 12:31 PM but operationalized before the end of the 1st quarter 2017;
- 2) April 3, 2017, was the Settlement Date;
- 3) The process leading to the issuance of the 5-year and 10-year bonds through the tap in arrangement or tap in simpliciter, took place in one (1) day, that is from 12:31 PM on 30th March 2017 when the notice was sent out by the BOG inviting bids and closed at 2:00PM same day;
- 4) Franklin Templeton Investment Limited (an American global investment management organization founded in 1947), purchased about 95% of the Bond issued;

The evidence available to the Commission **does not support** the Complainant’s allegations that:

- 1) The initial pricing guidelines of the Bond were issued around 5:37 pm on March 30, 2017, by e-mail, which was after normal working hours;
- 2) The transaction was opened at 9:00 a. m. on March 31, 2017;
- 3) The public announcement of the transaction was sent by e-mail at approximately 9:09 am. on March 31, 2017, which meant that the transaction was opened before the announcement was made to the public;
- 4) The issuance summary was issued on March 31, 2017, at about 4:20 pm. by e-mail indicating that the Bond transaction had been closed and announcement made to the public, and
- 5) The size of this virtual “private placement” makes it akin to a sovereign bond or foreign loan;
- 6) The Virtual “private placement” approach that was used was opened in the morning and closed in the evening of the same day March 31, 2017;
- 7) Enterprise Group Limited is a company partially owned by Data Bank Limited, a company in which the Finance Minister is known to have significant interest;
- 8) The Finance Minister issued the bond in a manner that would favour his friend, family, associates and /or business partners,
- 9) The Bond transaction seems to have been shrouded in secrecy.

13.0. DECISION

On the basis of the evidence available to the Commission, it has come to the conclusion and therefore holds that the allegations by the Complainant that the Respondent has contravened Article 284 of the 1992 Constitution by putting

himself in a conflict of interest situation in relation to the issuance of the 5-year, 7-year, 10-year and 15-year bonds, have not been substantiated.

14.0. ACTION BY COMMISSIONER IN RESPECT OF THE INVESTIGATION

Article 287(1) of the Constitution provides that *“An allegation that a public officer has contravened or has not complied with a provision of this Chapter shall be made to the Commissioner for Human Rights and Administrative Justice and, in the case of the Commissioner of Human Rights and Administrative Justice, to the Chief Justice who shall, unless the person concerned makes a written submission of the contravention or non-compliance, cause or matter to be investigated.*

Article 287 (2) provides that *“The Commissioner for Human Rights and Administrative Justice or the Chief Justice as the case may be, may take such action as he considers appropriate in respect of the results of the investigation or the admission.”*

In accordance with powers vested in the Commissioner of the Commission on Human Rights and Administrative Justice (CHRAJ) under Article 287(2) of the 1992 Constitution, the following actions are hereby directed to be taken as a result of the investigation:

1. In view of the breaches of the processes leading to the issuance of bonds, the Respondent should take urgent and verifiable steps to ensure that all officials involved in the issuance of bonds at the Ministry, Bank of Ghana (BOG), JBR comply with the processes and procedures for issuing bonds;
2. The Respondent/Minster for Finance should, as a matter of urgency, make Regulations, or rules or guidelines published in the Gazette, to regulate the format of and criteria for the auctions and the procedures for participation, bidding, and allocation in auctions in relation to the issuance of securities in the domestic market;
3. The Respondent/Minster for Finance should take steps to prevent Primary Dealers who are also bookrunners/Transaction Advisors from gaining unfair advantage because of their dual roles as Primary Dealers and Bookrunners/Transaction advisors.

4. Fiscal consolidation measures for some time now are being taken by the Ministry of Finance in stabilising the economy and this includes heavy reliance on debt management through debt payment restructuring. To the extent that the issuance of Bonds which are a form of borrowing on the domestic market for both resident and non-resident investors is deepening with a growing appetite of investors for short and longer dated securities with increasing volumes, it has become imperative that section 56 of the Public Financial Management Act, 921 of 2016 be implemented in the shortest possible time.
5. Section 56 (1) provides as follows: “The terms and conditions of all government borrowing shall be laid before Parliament and shall not come into operation unless the terms and conditions are approved by a resolution of Parliament in accordance with article 181 of the Constitution”. The issuance of bonds is a form of borrowing and therefore operationalising section 56 (2) of the PFM Act with standard terms and conditions for government borrowing through a legislative instrument or through a Resolution of Parliament to enable greater transparency in all borrowings is long overdue.

The Commission wishes to thank the Parties and their Counsel and all persons who gave liberally of their time in the course of this investigations.

**DATED AT THE COMMISSION ON HUMAN RIGHTS AND
ADMINISTRATIVE JUSTICE, OLD PARLIAMENT HOUSE, ACCRA
THIS DAY OF DECEMBER 2017**



**Joseph Whittal
Commissioner**