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CONTENTS • INHOUD

<i>No.</i>	<i>Page No.</i> <i>Gazette No.</i>
BOARD NOTICES	
59 Securities Services Act (36/2004): Repeal and substitution of Rules of JSE Limited	3 27758
60 do.: Amendment: Rules of STRATE Limited.....	61 27758

BOARD NOTICES

NOTICE 59 OF 2005

SECURITIES SERVICES ACT, 2004

REPEAL AND SUBSTITUTION OF RULES OF JSE LIMITED

1. In terms of section 61(5) of the Securities Services Act, 2004 (Act No. 36 of 2004), it is hereby notified that JSE Limited has applied to the Registrar of Securities Services for approval of the repeal of its current equities rules and the substitution for those rules of the rules contained in the Schedule.
2. In terms of section 61(5) of the said Act all interested persons who have any objections to the proposed amendments are hereby called upon to lodge their objections with the Registrar of Securities Services, PO Box 35655, Menlo Park, 0102, within a period of 14 days from the date of publication of this notice.
3. In terms of section 61(6) of the said Act, I, Rob Barrow, hereby determine 1 August 2005 as the date on which the rules in the Schedule will come into operation. If any objections to the proposed rules are received, another commencement date will be determined by notice in the Gazette.

RJG BARROW

Registrar of Securities Services

SCHEDULE

JSE LIMITED

EQUITIES RULES

Section 1: Interpretations and definitions

- 1.10 Unless inconsistent with the context, the singular shall include the plural and the use of any one gender shall be interpreted as required to include any other.
- 1.20 The words defined in the Act bear the same meaning in the rules.
- 1.30 Chapter headings and sub-headings shall not be taken into account in the interpretation of any of the rules.
- 1.40 In the rules –

"Act" means the Securities Services Act, 2004 (Act No. 36 of 2004) and any measure prescribed thereunder by the Minister of Finance or the Registrar;

"advertisement" means any written, printed, electronic or oral communication, including a communication by means of a public radio service, television broadcast or any other media by a member, which communication is directed to the general public, or any section thereof, or to any client, and is intended to call attention to, or to market or promote, the services offered by a member, and which does not purport to provide detailed information about such services; and "advertising" has a corresponding meaning;

"agency office" means an office which does not undertake any of the functions of a branch office but which can undertake scrip and cash settlements;

"alternate settlement officer" means an employee of either a member or a CSP appointed by such a member, fulfilling the function of the settlement officer in the settlement officer's absence;

"auction call period" means a period of time during which orders for inclusion in an auction can be entered into and deleted from the central order book and there is no automated trading;

"auction matching" means the process of matching buy and sell orders according to a matching algorithm at the end of an auction call period;

"auction price" means the price of transactions resulting from auction matching;

"auction trade" means a transaction matched automatically in the JSE equities trading system during auction matching;

"authorised user" has the same meaning as that contained in section 1 of the Act;

"automated trade" means a transaction matched automatically in the JSE equities trading system during continuous trading;

"bank" has the same meaning as that contained in section 1 of the Act;

"BDA system" means the Broker Deal Accounting system operated by the JSE;

"beneficial owner" means a person or entity on whose behalf any equity security is held by a CSDP in the name of a nominee company owned by the CSDP, a member or any other entity;

"BESA" means the Bond Exchange of South Africa;

"branch office" means an office of a member, other than its primary or head office, which can perform trading services and investment services;

"business day" or "day" means any day except a Saturday, Sunday, public holiday or any other day on which the JSE is closed;

"central order book" means the order book of the JSE equities trading system in which automated trades occur according to price then time priority;

"central securities depository" has the same meaning as that contained in section 1 of the Act;

"certificated equity securities" means equity securities evidenced by a certificate or written instrument;

"Chairman" means the person appointed by the controlling body as the Chairman of the controlling body;

"Chief Executive Officer" means the person appointed by the controlling body as the Chief Executive Officer of the JSE;

"client" has the same meaning as that contained in section 1 of the Act;

"client assets" means JSE authorised investments safeguarded by a member on behalf of clients;

"Companies Act" means the Companies Act, 1973 (Act No. 61 of 1973);

"compliance officer" means the person appointed by a member in terms of the rules to assist the board of directors of the member in ensuring compliance by the member with the Act, the rules and the directives;

"contra trade" means a transaction to correct an erroneous central order book trade that is equal and opposite to that trade and which is entered on the same business day as the original trade;

"contract note" means, in respect of trades executed on the JSE equities trading system by a member on any particular day –
(a) on behalf of a client, a confirmation from the member to the client in respect of such trades; and
(b) on behalf of a member's proprietary account, the aggregate trades executed on such account;

"controlled account" means an account reflecting the equity securities and funds of a controlled client or the equity securities of a member;

"controlled client" means a client or an account holder on whose behalf a client is acting, whose funds and uncertificated equity securities are under the control of a CSP or whose settlements take place via the CSDP of a member;

"controlling body" means the board of directors of the JSE which is the governing body managing the affairs of the JSE;

"corporate action" means an action taken by an issuer or any other entity or third party, which affects the registered owner and the beneficial owner of equity securities in terms of an entitlement;

"CSDP" means a central securities depository participant that has been accepted by a central securities depository as a participant in that central securities depository;

"CSP" means a custody services provider;

"custody account" means an equity securities account with a CSDP which reflects the uncertificated equity securities balances of controlled accounts of a member and through which settlement of transactions in equity securities is effected;

"custody services" means the services provided by a custody services provider on behalf of its clients or another member and that member's clients, in relation to the exercising of control over uncertificated equity securities and funds intended for the purchase of equity securities, held by a member on behalf of controlled clients;

"custody services provider" means a member which has been authorised by the JSE to perform custody services in terms of the rules;

"dematerialisation" means the process of converting a certificated equity security into an uncertificated equity security;

"derivative instrument" has the same meaning as that contained in section 1 of the Act;

"direct market access" means the process whereby an order is received electronically by a TSP from a client and then submitted electronically to the JSE equities trading system by means of an order entry application operated by the TSP, without the intervention of a registered securities trader;

"Disciplinary Committee" means the committee appointed in terms of rule 12.40.2;

"discretionary financial services provider" has the same meaning as that contained in section 2.1 of the Code of Conduct for Administrative Financial Services Providers issued by the Registrar of Financial Services Providers;

"employee" means an individual engaged by a member whose function relates to the provision of regulated services;

"equity securities" means those JSE listed securities traded on the JSE equities trading system;

"executive director" means a person appointed as a director of a member under the Companies Act and who is in its full-time employ;

"external exchange" has the same meaning as that contained in section 1 of the Act;

"failed trade" means a transaction in equity securities which the Settlement Authority deems to be a failed trade on the basis that neither the client, the member nor the Settlement Authority is able to ensure that such transaction will settle on the settlement date;

"FAIS Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No.37 of 2002);

"financial products" has the same meaning as that contained in section 1 of the FAIS Act, and by definition includes JSE authorised investments;

"financial services provider" has the same meaning as that contained in section 1 of the FAIS Act;

"foreign client" means a client who does not reside in the Republic;

"foreign investments" means the following JSE authorised investments -

- (a) securities listed on an external exchange;
- (b) units or any other form of participation in a foreign collective investment scheme approved by the Registrar of Collective Investment Schemes in terms of section 65 of the Collective Investment Schemes Control Act, 2002;
- (c) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country; and
- (d) foreign funds intended for the purchase of such securities, units or participation;

"foreign professional market participant" means a person who does not reside in the Republic and whose regular business is the buying and selling of securities;

"funds settlement account" means a funds account with a CSDP in the name of a member used exclusively for the settlement of funds relating to transactions in equity securities;

"in writing" has the same meaning as that contained in section 1 of the Act;

"intermediary services" has the same meaning as that contained in section 1 of the FAIS Act;

"Institute" means the South African Institute of Stockbrokers;

"investment advice" means any recommendation, guidance or proposal of a financial nature furnished by a member, by any means or medium, to any client or group of clients -

- (a) in respect of the purchase or sale of any JSE authorised investments; or
- (b) on any corporate action or other event affecting any rights or benefits in respect of any JSE authorised investments; or
- (c) on the exercise or lapse of any rights in respect of any JSE authorised investments;

and irrespective of whether or not such advice results in any transaction being effected.

Investment advice does not include -

- factual advice given merely –
 - (i) on the procedure for entering into a transaction in respect of any JSE authorised investments;
 - (ii) in relation to the description of any JSE authorised investments;
 - (iii) in answer to routine administrative queries;
 - (iv) in the form of objective information about any JSE authorised investments; or
 - (v) by the display or distribution of promotional material;
- an analysis or report on any JSE authorised investments without any express or implied recommendation, guidance or proposal that any particular transaction in respect of the relevant product is appropriate to the particular investment objectives, financial situation or particular needs of a client;

"investment services" means the services provided by an investment services provider to its clients, and includes:

- (a) exercising discretion in the management of JSE authorised investments on behalf of clients;
- (b) providing investment advice to a client in respect of JSE authorised investments; and
- (c) safeguarding JSE authorised investments, other than uncertificated equity securities and funds intended for the purchase of equity securities;

"investment services provider" means a member which has been authorised by the JSE to perform investment services in terms of the rules;

"ISP" means an investment services provider;

"JSE" means JSE Limited, a company duly registered and incorporated with limited liability under the company laws of the Republic, licensed to operate an exchange under the Act;

"JSE authorised investments" means –

- (a) equity securities;
- (b) JSE listed securities traded on the JSE derivatives trading system or the Yield-X trading system;
- (c) securities listed on an exchange in the Republic other than the JSE;
- (d) securities listed on an external exchange;
- (e) participatory interests in a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (Act No.45 of 2002), and units or any other form of participation in a foreign collective investment scheme approved by the Registrar of Collective Investment Schemes in terms of section 65 of that Act;
- (f) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country; and
- (g) funds intended for the purchase of such securities, units or participation;

"JSE equities trading system" means the computer system or systems and associated network or networks operated or used by the JSE for the purpose of providing a market for the trading of equity securities;

"JSE Executive" means the Chief Executive Officer and such other officials of the JSE as the Chief Executive Officer and Chairman of the controlling body may from time to time designate;

"JSE Gazette" means the official Gazette published under the authority of the JSE Executive;

"JSE listed securities" means those listed securities included in the list of securities kept by the JSE;

"JSE settlement system" means the computer system or systems and associated network or networks operated or used by the JSE for the purpose of settling transactions in equity securities;

"JSE share" means a share in the JSE itself or in any company that owns or operates the JSE;

"JSET" means JSE Trustees (Pty) Ltd;

"JSE year" means the financial year of the JSE which shall end on the last day in December in each year or such other date as the JSE may determine;

"listed securities" has the same meaning as that contained in section 1 of the Act;

"manage" in relation to JSE authorised investments, means any arrangement entered into between a client and a member which authorises such member to buy or sell JSE authorised investments on behalf of such client, either with full discretion or with prior reference to the client;

"margin" means a payment made or guarantee provided by a member to the JSE to assure settlement of transactions in equity securities by that member or its clients;

"Market Controller" means the person appointed by the JSE to supervise, administer and control the daily operations of the JSE equities trading system;

"market corner" has the same meaning as that contained in section 72 of the Act;

"market order" means an order submitted to the central order book during an auction call period with no price limit, which is held on the central order book and may execute either in full or in part against eligible orders, at the price of a new order entered into the central order book or at the reference price;

"market order extension period" means an extension to an auction call period which occurs when there would be unexecuted market orders on the central order book following auction matching;

"member" means an equities member, which is a category of authorised user admitted to membership of the JSE under these rules;

"member trading application" means any system, software or program operated by a member which submits data to and receives data from the JSE equities trading system;

"money broking transactions" means funds accepted by a member from a client and invested by the member in the money market with one or more banks, in terms of the rules, and subject to any conditions published by the Registrar of Banks;

"non-executive director" of a member, means a person appointed as a director of the member under the Companies Act who is not employed by such member;

"nominee register" means the electronic record of ownership of uncertificated equity securities balances of controlled accounts maintained by a CSP;

"non-controlled client" means a client or an account holder on whose behalf a client is acting, who has appointed his own CSDP to settle transactions in equity securities on his behalf;

"normal market size" means a quantity of an equity security as specified by the Market Controller from time to time;

"officer" in relation to a member, includes any executive director, compliance officer, settlement officer or alternate settlement officer thereof;

"order" means an instruction from a client to buy or sell equity securities or an instruction to amend or cancel a prior instruction to buy or sell equity securities;

"order entry application" means any system, software or program operated by a member which facilitates electronic submission of orders to a member trading application and which complies with such requirements as the JSE may from time to time prescribe in the directives;

"participant" has the same meaning as that contained in section 1 of the Act;

"post contra trade" means a transaction to correct an erroneous central order book trade that is equal and opposite to that trade and which is entered on the business day following the original trade;

"pre-issued trading" means transactions effected in pre-issued securities in accordance with the rules;

"pre-issued securities" means entitlements to equity securities the listing of which on the JSE has been approved but where the listing becomes effective only after a number of conditions have been fulfilled on or before the commencement date of official trading;

"price monitoring extension period" means an extension to an auction call period which occurs when the indicative auction price is a specified percentage or more away from the reference price;

"product supplier" has the same meaning as that contained in section 1 of the FAIS Act;

"professional client", in relation to a member, means –

- (a) another authorised user;
- (b) a bank;
- (c) a long-term or short-term insurer registered as such under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or the Short-term Insurance Act, 1998 (Act No. 53 of 1998), respectively;
- (d) a person outside the Republic who –
 - (i) as a regular feature of the person's business, renders a service similar to a "securities service" as defined in section 1 of the Act or conducts the business of a bank or a business referred to in paragraph (c); and
 - (ii) is registered, licensed, recognised, approved or otherwise authorised to render the service or conduct the business referred to in paragraph (d)(i) by a foreign regulator with functions similar to those of the Registrar, the Registrar of Banks or the Registrar of Long-Term or Short-Term Insurance;
- (e) any person who is mandated to manage assets and who has confirmed to the satisfaction of the member that the market value of the assets managed by the person will exceed R1 billion at all times during the rendering of securities services to the person;

- (f) any other client, who has confirmed to the satisfaction of the member that they will have assets of which the net asset value will exceed R20 million at all times during the rendering of securities services to the client, but who is not –
 - (i) a natural person;
 - (ii) a pension fund organisation as defined in section 1 (1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);
 - (iii) a friendly society referred to in the Friendly Societies Act, 1956 (Act No. 25 of 1956);
 - (iv) a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act No.131 of 1998);

"professional market participant" means a financial services provider licensed in terms of section 8 of the FAIS Act;

"publication" means, in relation to a transaction, the disclosure by the JSE of the price and quantity of equity securities traded;

"reference price" means the last auction or automated trade price, whichever is the most recent, or in the absence of a last auction and automated trade price, a price as determined by the JSE;

"registered owner" means a person or entity which appears on the main register of an issuer kept in terms of the Companies Act, and a person or entity which appears on the sub-register of that issuer kept by a CSDP in terms of the Companies Act;

"registered securities trader" means an employee of a member, registered with the JSE and who is authorised by such member to enter and execute orders through, and report trades to, the JSE equities trading system on behalf of such member;

"Registrar" has the same meaning as that contained in section 1 of the Act;

"regulated services" means those securities services and other activities which are regulated by the JSE and which the JSE authorises members to perform, namely –

- (a) trading services;
- (b) investment services;
- (c) custody services; and
- (d) money broking;

"reported transaction" means a transaction executed off the central order book and reported to the JSE equities trading system by a member;

"reported transaction correction" means a cancellation of a previously reported transaction;

"Republic" means the Republic of South Africa;

"ring-fencing" means the process in terms of which linked deliveries and receipts which emanate from reported transactions are separated and distinguished from deliveries and receipts which emanate from transactions in the central order book of the JSE equities trading system;

"safeguard" in relation to client assets, means:

- (a) the holding of such assets in safe custody by a member or a nominee company controlled by a member, on behalf of a client; or
- (b) being accountable as a member to a client for such assets held by another financial services provider;

"securities" has the same meaning as that contained in section 1 of the Act;

"securities services" has the same meaning as that contained in section 1 of the Act;

"SENS" means the Securities Exchange News Service or any other communication mechanism which the JSE uses to communicate corporate action notices;

"settlement agent" means a CSP or CSDP appointed by a member in terms of directive FI to assist the member in managing the settlement of transactions executed by the member on behalf of non-controlled clients;

"Settlement Authority" means the person or persons appointed by the JSE to manage the settlement of transactions in equity securities effected through the JSE equities trading system in terms of the rules and directives;

"settlement commitment" means an electronic undertaking by a CSDP to settle a transaction in equity securities;

"settlement date" means, in respect of a transaction in equity securities, the date on which the transaction is due to be settled;

"settlement officer" means an employee of a member appointed by that member in terms of the rules to manage the member's obligations in relation to the settlement of transactions in equity securities effected by that member;

"settlement period" means one of the prescribed portions of the year for the settlement of Krugerrands, as set out in the directives;

"stockbroker" has the same meaning as that contained in section 1 of the Act;

"STRATE" means STRATE Limited, a public company licensed as a central securities depository in terms of the Act;

"sub-register" means a sub-register maintained by a CSDP recording ownership of equity securities, as defined in section 91A of the Companies Act;

"terminating transaction" means a purchase of equity securities which have not subsequently been sold or a sale of equity securities which have not subsequently been purchased;

"trading services" means the execution of transactions in equity securities by a member –

- (a) for the member's own account; and
- (b) with or on behalf of a client;

"trading services provider" means a member which has been authorised by the JSE to perform trading services in terms of the rules;

"transaction" has the same meaning as that contained in section 1 of the Act;

"TSP" means a trading services provider;

"uncertificated equity securities" means equity securities that are not evidenced by a certificate or written instrument and are transferable by book entry without a written instrument;

"uncommitted settlement" means a settlement obligation for which a CSDP has not provided a settlement undertaking;

"unsolicited call" means any first communication made to a person by a member or an employee of a member, without an express or tacit invitation from such person;

"volatility auction period" means the auction call period which occurs if an order is entered that would execute at a price that is at least a percentage, as specified by the JSE Executive, away from the reference price.

Section 2: General Provisions

2.10 Powers exercisable by the controlling body

2.10.1 The management and control of the JSE shall be exercised by the controlling body which shall be the governing body managing the affairs of the JSE.

2.10.2 The controlling body may, in addition to the powers expressly conferred upon it by the Act, the JSE's Memorandum and Articles of Association and the rules, exercise all such powers and do all such things as may be exercised or done by the JSE.

2.20 Advisory committees

2.20.1 The controlling body may appoint advisory committees.

2.20.2 The function of the advisory committees is to make recommendations to the JSE Executive on operational issues.

2.20.3 The advisory committees shall consist of –

2.20.3.1 a chairperson, who shall be the JSE Executive member responsible for the area in question; and

2.20.3.2 such persons as the chairperson, in consultation with the JSE Executive and the controlling body, shall appoint by reason of their knowledge of or experience in the equity securities market or other relevant markets and which shall include representatives of authorised users of the JSE.

2.20.4 The advisory committees shall make recommendations by reasonable consensus.

2.20.5 If an advisory committee is not able to reach reasonable consensus on any issue considered by it, the conflicting views on the issue in question shall be advised to the JSE Executive.

2.30 Rules and directives

2.30.1 Purpose of rules and directives

The purpose of the rules and directives is to achieve the objects of the JSE as set out in its Memorandum and Articles of Association by providing the procedures necessary to establish and regulate fair and efficient

markets and to ensure that the business of the JSE is carried out in an orderly manner and with due regard to the objects of the Act.

2.30.2 Rules and directives are binding

2.30.2.1 The rules and the directives are binding on members and their employees.

2.30.2.2 The rules are binding on any person utilising the services of a member or who concludes a transaction with a member in the course of that member's business.

2.40 Transactions subject to provisions of the Act, the rules and the directives

Every transaction in equity securities entered into by a member must be concluded on the specific condition that the transaction is entered into subject to the Act, the rules and the directives.

2.50 Interpretation of the rules and the directives

The interpretation and enforcement of the rules and the directives vests in the controlling body.

2.60 Proposals for amendment of the rules and the directives

2.60.1 Any member of the JSE Executive may propose in writing any amendment of the rules or directives.

2.60.2 The JSE Executive will consider the proposed amendment of the rules or directives and notify members, by JSE Gazette, of its decision in regard thereto.

2.60.3 If, within ten days of the announcement of the JSE Executive's decision to adopt the proposal, 5 or more members object, in writing, to the decision, the objection, together with the reasons submitted by the relevant members for such objection, will be referred to the controlling body for determination.

2.60.4 If an objection to a proposed amendment of the rules has not been lodged within the prescribed period, or the controlling body upholds the JSE Executive's decision to adopt a proposal referred to the controlling body in terms of rule 2.60.3, the proposal must be submitted to the Registrar for his approval.

2.60.5 If an objection to a proposed amendment of the directives has not been lodged within the prescribed period, or the controlling body upholds the JSE Executive's decision to adopt a proposal referred to the controlling body in terms of rule 2.60.3, the proposal will take effect immediately.

2.70 JSE not responsible for any losses

Subject to section 62 of the Act, the JSE shall not be responsible or liable to any person for any loss or damage resulting from -

2.70.1 negligence, on the part of the JSE or on the part of any employee or agent of the JSE;

2.70.2 any act of omission on the part of any third party;

2.70.3 incorrect, inaccurate, defective or misleading information furnished or supplied by the JSE or any employee or agent of the JSE or any third party;

2.70.4 equipment breakdown or the breakdown, interruption, suspension, termination or failure of or defect in any system, including but not limited to any trading system, or service rendered by or on behalf of the JSE;

2.70.5 computer system malfunction, the interruption or failure of communications links, power failure, the failure of or defect in any software or hardware, whether owned by, licensed or leased to the JSE, the loss or destruction of any data and any loss or damage caused by natural disaster, riot, insurrection, acts of vandalism, sabotage or similar cause; and

2.70.6 the termination, for any reason, of any licence or other agreement to which the JSE is a party.

2.80 Indemnification

A member of an advisory committee, trustee of the Guarantee Fund and an employee of the JSE, shall be indemnified by the JSE out of the funds of the JSE against any liability, loss or damage incurred or suffered as a result of any *bona fide* or negligent, but not grossly negligent or wilful, act or omission in the execution of their duties. For the purposes of this rule, such member, trustee or employee shall not be regarded as having been grossly negligent or having acted in wilful breach of duty or trust if the act or omission resulted from incorrect information supplied to such member, trustee or employee by a source from which the member, trustee or employee would normally accept the information as correct and which can be expected to provide the correct information.

2.90 Settlement systems

The JSE may operate, or contract with a third party to operate, one or more settlement systems and the JSE may prescribe –

- 2.90.1 procedures and requirements with which members must comply when using such settlement systems; and
- 2.90.2 the fees payable by the members for the use of such settlement systems.

2.100 JSE Trustees (Pty) Limited

- 2.100.1 The JSE has established a company known as JSE Trustees (Pty) Limited ("JSET").
- 2.100.2 The JSE shall hold for its own account all the shares in JSET.
- 2.100.3 The controlling body must nominate and elect suitably qualified members of the controlling body as directors of JSET.
- 2.100.4 JSET must accept from members all funds arising from time to time from accounts operated by members on behalf of clients in terms of the rules, and must repay to such members the funds which are required to be repaid to clients by the member or are required to meet any client obligation to the member arising out of transactions or services provided for in the rules.
- 2.100.5 All funds must be invested as set out in the directives.
- 2.100.6 In the event of a loss of any or all of such funds, including interest on such funds, such loss will be defrayed gradually as circumstances and the liabilities of JSET may permit, by retaining a portion of the interest payable to members from time to time in terms of rule 2.100.8 or by any other equitable and practicable method of general application to clients of members from time to time, determined by the directors of JSET in their sole discretion.
- 2.100.7 In depositing funds with banks or investing in the manner set out in the directives, JSET must act as agent on behalf of members who in turn must act as agents on behalf of their clients. Funds so deposited or invested must neither form part of the assets of JSET nor of any member acting on behalf of a client.
- 2.100.8 In respect of funds held on behalf of members in terms of the rules, JSET must pay to the members such interest as it may from time to time receive on such funds, less a charge in respect of the services rendered by JSET.
- 2.100.9 The JSE must satisfy the Registrar on an annual basis that JSET holds adequate insurance cover against losses of funds held or deposited by JSET arising from the negligence, dishonesty or fraud of any employee of JSET or the JSE, or from theft.
- 2.100.10 JSET may appoint agents, who are licensed as discretionary financial services providers in terms of section 8 of the FAIS Act, to manage the investment and deposit of funds in terms of rule 2.100, on such terms as the directors may determine.

2.110 Imposition of levies

- 2.110.1 The JSE may, in addition to the subscriptions, fees and charges prescribed by the rules, impose upon every member, a levy which must be paid to the JSE or any of its funds on such conditions as the JSE may decide.
- 2.110.2 In circumstances as determined by the JSE, a member may recover such levy from the clients of the member.

2.120 Publication of prices

- 2.120.1 The publication and distribution of exchange prices are the prerogative of the JSE and are effected in such manner as the JSE deems fit.
- 2.120.2 The JSE may enter into such agreements for the publication and distribution of prices as it deems necessary.
- 2.120.3 Save with the consent of the JSE, no member may report prices to persons other than clients of such member.

2.130 JSE Guarantee Fund

- 2.130.1 The JSE shall –
 - 2.130.1.1 establish and maintain, to the satisfaction of the Registrar, a Guarantee Fund ("the JSE Guarantee Fund") out of which shall be paid claims up to an amount specified in the rules of

such fund in respect of liabilities arising prior to the default of a member. Such payment shall be limited to claims arising out of transactions in equity securities with or on behalf of other persons by such member and such other liabilities as may be specified in the rules of the JSE Guarantee Fund and shall be subject to any defences which the defaulting member may have against a claimant;

2.130.1.2 determine a levy to be payable by every member to the JSE Guarantee Fund on all transactions in equity securities.

2.130.2 Where a member has effected a transaction on behalf of a buyer or seller of equity securities, such member may recover the levy imposed in terms of rule 2.130.1.2 from such buyer or seller.

2.130.3 The trustees of the JSE Guarantee Fund, in their capacity as trustees, acquire, incur and administer the assets and liabilities of the JSE Guarantee Fund.

2.130.4 The income of the JSE Guarantee Fund, including but not limited to levy contributions by members, vests in the trustees and is administered by the trustees as part of the JSE Guarantee Fund.

2.140 Lien over proceeds of sale of JSE shares

The JSE shall have a first lien on the proceeds of the disposal of any JSE shares held by a member if the member disposing of such JSE shares is in any way indebted to the JSE. The JSE Guarantee Fund or Funds of the JSE shall have a second lien on the proceeds of the disposal of such JSE shares if the member disposing of such shares has defaulted and the JSE Guarantee Fund or Funds have discharged any of the member's obligations. After the satisfaction of the lien or liens, the balance of the proceeds of the disposal reverts to the disposing member.

2.150 Notice to members by the JSE

2.150.1 Any notice given by the JSE in terms of the rules and directives shall be in writing.

2.150.2 A notice may be delivered by means of an electronic delivery mechanism or by hand or by registered post.

2.150.3 Any notice delivered by the JSE by hand before 16:00 on a business day at the physical address of the member, shall be deemed, unless the contrary is proved, to have been received on the date of delivery.

2.150.4 Any notice transmitted by an electronic delivery mechanism before 16:00 on a business day, shall be deemed, unless the contrary is proved, to have been received on the date of the transmission.

2.150.5 Any notice delivered by the JSE by registered post shall be deemed, unless the contrary is proved, to have been received within seven business days after being dispatched.

Section 3: Authorisations and approvals

3.10 Authorisation by the JSE

3.10.1 The JSE is authorised in terms of the Act to provide for –

3.10.1.1 categories of authorised users;

3.10.1.2 the requirements for admittance as an authorised user;

3.10.1.3 the exclusion of authorised users; and

3.10.1.4 the requirements for an authorised user to perform regulated services.

3.10.2 An equities member is a category of authorised user and for the purpose of these rules is referred to as a member.

3.10.3 An applicant for membership –

3.10.3.1 must apply for authorisation to perform at least one of the following regulated services –

3.10.3.1.1 trading services; or

3.10.3.1.2 custody services;

3.10.3.2 may apply to perform investment services, provided that the applicant has also applied to perform trading services.

3.10.4 For the purpose of the rules –

- 3.10.4.1 a member who is authorised to perform trading services will be referred to as a trading services provider ("TSP");
- 3.10.4.2 a member who is authorised to perform custody services will be referred to as a custody services provider ("CSP"); and
- 3.10.4.3 a member who is authorised to perform investment services will be referred to as an investment services provider ("ISP").

3.20 Membership requirements

To be admitted as a member and to remain a member, an applicant or a member, respectively, must -

- 3.20.1 be incorporated and registered as a domestic company under the Companies Act;
- 3.20.2 only appoint executive and non-executive directors who comply with the fit and proper requirements of rule 4.10;
- 3.20.3 ensure that a shareholder who is a natural person and who directly or indirectly holds in excess of 10% of the issued shares of the applicant or member complies with the fit and proper requirements of rule 4.10;
- 3.20.4 appoint a compliance officer in terms of rule 4.30 who complies with the fit and proper requirements set out in rule 4.10;
- 3.20.5 appoint a settlement officer and an alternate settlement officer in terms of rule 4.40 who comply with the fit and proper requirements set out in rule 4.10;
- 3.20.6 appoint a CSDP, unless it only performs, or intends to perform, custody services and it does not require a CSDP in order to perform such services; and
- 3.20.7 meet the specific conditions of membership set out in rule 3.30.

3.30 Specific conditions of membership

The specific conditions of membership set out in this rule represent the minimum conditions which an applicant for membership and a member are required to satisfy in order to be granted and to retain membership and to be authorised to perform regulated services.

3.30.1 Resources, procedures and systems

- 3.30.1.1 A member must employ adequate resources, procedures and systems necessary for the effective performance of the regulated services which the member provides and for ensuring compliance with the Act and the rules and directives that are relevant to the performance of such regulated services.
- 3.30.1.2 A member must ensure that its employees are suitable, adequately trained and properly supervised.

3.30.2 Business activities

- 3.30.2.1 The dominant business activity of a member must be the performance of regulated services in respect of JSE authorised investments. The scope of a member's business activities may also include the management of investments or provision of advice in relation to other financial products, subject to the member having been granted the appropriate licence to conduct such activity in terms of the FAIS Act and to the limitations referred to in rule 3.40.
- 3.30.2.2 Subject to rule 3.30.2.3, the scope of a member's business activities may not include any activities other than those referred to in rule 3.30.2.1.
- 3.30.2.3 For the purpose of this rule 3.30.2, any activities which are not related to regulated services or services provided in terms of the FAIS Act, but which are not a regular feature of the member's business and are not held out by the member, in any communication with any person, to be part of the business activities of that member, will not be deemed to be part of the business activities of that member.

3.30.3 Financial resources

- 3.30.3.1 A member must on admittance and at all times ensure that it maintains adequate financial resources to meet its business commitments and to withstand the risks to which its business is subject.

- 3.30.3.2 A member must on admittance and at all times thereafter hold adjusted liquid capital which complies with the minimum requirements calculated in accordance with directive DC 2, sufficient to meet its base requirement and its risk requirement.
- 3.30.3.3 The base requirement of a member is the higher of –
 - 3.30.3.3.1 an amount determined in accordance with the directives as being adequate to meet a member's fixed expenditure for a period of 13 weeks; or
 - 3.30.3.3.2 R400 000.
- 3.30.3.4 The risk requirement of a member is the sum of its position, counterparty, foreign exchange, custody and large exposure requirements determined in accordance with the directives.

3.40 Limitations on members operating as financial services providers

- 3.40.1 A member may operate as a financial services provider licensed in terms of section 8 of the FAIS Act in respect of any advisory or intermediary service which it provides in terms of the FAIS Act and where such advice or intermediary service is not regulated by the Act and the rules, subject to rules 3.40.2 and 3.40.3.
- 3.40.2 The intermediary services which a member is permitted to provide in relation to financial products other than JSE authorised investments shall be limited to intermediary services related to investing in such other financial products, as this is considered to form part of the business activities of a member as referred to in rule 3.30.2.1.
- 3.40.3 Without limiting the generality of rule 3.40.2, the intermediary services which a member may be permitted to provide shall exclude collecting or accounting for premiums or other monies payable by a client to a product supplier, or receiving, submitting or processing the claims of a client against a product supplier, in relation to the following financial products –
 - 3.40.3.1 a long-term or a short-term insurance contract or policy, referred to in the Long-term Insurance Act, 1998 (Act No.52 of 1998), and the Short-term Insurance Act, 1998 (Act No.53 of 1998), respectively; or
 - 3.40.3.2 a benefit provided by –
 - 3.40.3.2.1 a pension fund organisation as defined in section 1 (1) of the Pension Funds Act, 1956 (Act No. 24 of 1956), to the members of the organisation by virtue of membership; or
 - 3.40.3.2.2 a friendly society referred to in the Friendly Societies Act, 1956 (Act No.25 of 1956), to the members of the society by virtue of membership; or
 - 3.40.3.3 a health service benefit provided by a medical scheme as defined in section 1 (1) of the Medical Schemes Act, 1998 (Act No.131 of 1998).

3.50 Requirements to perform trading services

- 3.50.1 An applicant for membership or a member may request authorisation to perform trading services provided that it can evidence to the satisfaction of the JSE that they are able to comply with the trading system requirements set out in the directives.
- 3.50.2 An authorised TSP must continue to comply with the trading system requirements set out in the directives on an ongoing basis in order to retain such authorisation.
- 3.50.3 An authorised TSP that provides trading services to controlled clients –
 - 3.50.3.1 must either obtain authorisation to perform custody services on behalf of such clients or must appoint a CSP to perform custody services on behalf of that member; and
 - 3.50.3.2 must establish and maintain a nominee company which is approved by the JSE and which meets the requirements of rule 3.90.

3.60 Requirements to perform investment services

- 3.60.1 An applicant for membership or a member may request authorisation to perform investment services in respect of JSE authorised investments provided that the applicant is authorised to perform trading services and can evidence to the satisfaction of the JSE that it has employed or will employ adequate resources, procedures

and systems necessary for the effective performance of investment services and for ensuring compliance with the Act, the rules and the directives that are relevant to the performance of investment services.

- 3.60.2 An authorised ISP must continue to meet the requirements set out in rule 3.60.1 on an ongoing basis in order to maintain such authorisation.
- 3.60.3 An authorised ISP may not conduct transactions in JSE authorised investments other than equity securities on behalf of clients or provide investment advice to any clients in respect of such investments without prior notification to the Director: Surveillance, in writing, of its intention to conduct such transactions or provide such advice. Such notification is not required if the member will be conducting transactions in listed securities on another JSE market or another exchange as an authorised user of such market or exchange.
- 3.60.4 In order for the JSE to identify the scope of an ISP's activities in JSE authorised investments other than equity securities, the written notification to the Director: Surveillance referred to in rule 3.60.3 must indicate which specific investments the member is intending either to trade in on behalf of its clients or to provide investment advice on, or both.
- 3.60.5 The details which are required to be submitted to the Director: Surveillance in terms of rule 3.60.4 must specify the particular types of JSE authorised investments in which activity is to be conducted, but need not include the name of the particular investments.
- 3.60.6 The failure by an ISP to provide the notification referred to in rules 3.60.3 and 3.60.4 prior to undertaking the relevant activity may result in the JSE imposing restrictions or a prohibition on the ISP's activities in JSE authorised investments other than equity securities.
- 3.60.7 If an ISP has previously notified the Director: Surveillance in terms of rules 3.60.3 and 3.60.4 of its intention to conduct activity in any JSE authorised investments other than equity securities and the ISP ceases to conduct activity in respect of one or more particular types of investments, with no intention of resuming activity in such investments in the foreseeable future, the ISP must notify the Director: Surveillance forthwith, in writing, of such cessation of activity.

3.70 Requirements to perform custody services

- 3.70.1 An applicant for membership or a member may request authorisation to perform custody services provided that the applicant can evidence to the satisfaction of the JSE that they are able to comply with the criteria to operate as a CSP set out in the directives.
- 3.70.2 An authorised CSP must continue to comply with the criteria to operate as a CSP set out in the directives on an ongoing basis in order to retain such authorisation.
- 3.70.3 An authorised CSP that provides custody services to controlled clients must establish and maintain a nominee company which is approved by the JSE and which meets the requirements of rule 3.90.

3.80 Requirements to conduct money broking activities

- 3.80.1 An applicant for membership or an authorised ISP may request authorisation to conduct money broking transactions on behalf of clients, provided that the applicant can evidence to the satisfaction of the JSE that it has employed or will employ adequate resources, procedures and systems necessary for the effective conduct of money broking transactions and for ensuring compliance with the rules that are relevant to the performance of such transactions.
- 3.80.2 A member authorised to conduct money broking transactions must continue to meet the requirements set out in rule 3.80.1 on an ongoing basis in order to retain such authorisation.

3.90 Nominee companies

A member who operates controlled client accounts must establish and maintain a nominee company which meets the following requirements:

- 3.90.1 The sole objective of the nominee company must be to act as the registered holder of securities exclusively on behalf of such member and its controlled clients;
- 3.90.2 The shares in the nominee company must be beneficially owned by the member and be registered in the name of the member;
- 3.90.3 The member must ensure that the nominee company incurs no liabilities other than those normally incurred as a result of its acting as a nominee in respect of securities;

- 3.90.4 The powers of the nominee company shall be limited to the object set out in rule 3.90.1 and such other acts as may be necessary to achieve that object; and
- 3.90.5 The use of the nominee company in acting as the registered holder of equity securities on behalf of the member's controlled clients must be approved by the JSE on the basis that the member –
 - 3.90.5.1 is an authorised CSP; or
 - 3.90.5.2 has appointed a CSP to perform custody services on behalf of the member and has granted authority to that CSP to exercise control over the controlled clients' equity securities held in the name of the nominee company.

3.100 Application process

- 3.100.1 An applicant for membership or for authorisation to perform one or more regulated services must apply to the JSE in the form and manner prescribed by the JSE.
- 3.100.2 The JSE may require the applicant to provide further information and may institute an investigation to verify information submitted by the applicant in support of an application. The investigation may include a request for one or more representatives of the applicant to be interviewed by the JSE.
- 3.100.3 The JSE has the sole discretion to accept or reject the application, or to accept an application subject to certain conditions being fulfilled.
- 3.100.4 The JSE must notify the applicant in writing of its decision and of any conditions that are required to be fulfilled.

3.110 Changes in control of a member

A member wishing to effect a change in control of the member must notify the JSE in writing and may, at the discretion of the JSE, be required to re-apply for membership in terms of rule 3.100.

3.120 Voluntary termination of membership

- 3.120.1 A member may voluntarily terminate its membership by giving the JSE at least 30 days written notice.
- 3.120.2 The JSE, in its sole discretion, may –
 - 3.120.2.1 accept such termination unconditionally; or
 - 3.120.2.2 terminate the membership subject to rule 3.140.

3.130 Involuntary termination of membership

The JSE may provisionally or finally terminate membership if -

- 3.130.1 the member is placed in liquidation, whether provisional or final, or placed under judicial management;
- 3.130.2 a Disciplinary Tribunal terminates membership in terms of rule 12.60.1.3;
- 3.130.3 the member defaults in terms of rule 13.10;
- 3.130.4 the member fails to meet the membership requirements in rule 3.20; or
- 3.130.5 the member fails to make payment of any fees, levies, charges, penalties or subscriptions in terms of rule 3.180.2.

3.140 Provisional termination of membership

- 3.140.1 The purpose of provisional termination of membership is the postponement of the effective date of termination of membership to ensure that –
 - 3.140.1.1 all obligations to clients have been met; and
 - 3.140.1.2 all transactions have been settled.
- 3.140.2 The JSE Executive will determine the period of provisional termination and the effective date of termination of membership and may prescribe any conditions that it considers necessary to achieve the purpose set out in rule 3.140.1.

- 3.140.3 During the period of provisional termination of membership, the member retains all of the obligations of membership but not the right to perform regulated services, except in relation to achieving the objectives of rule 3.140.1.

3.150 Members' duty to furnish information

A member must immediately advise the JSE in writing of –

- 3.150.1 any change in the name of the member or address of any office of the member, and of any change in the member's telephone or facsimile numbers or electronic mailing addresses;
- 3.150.2 the granting of an application for, or the revocation of, any registration, authorisation or licence which may bear upon or be associated with its business as a member of the JSE;
- 3.150.3 any of the circumstances referred to in rule 3.130.1 arising;
- 3.150.4 the prosecution of or the conviction of the member for any offence under legislation relating to banking, other financial services, companies, insolvency, insurance and pension and provident societies, or for any offence involving fraud or dishonesty;
- 3.150.5 any change to the appointment of a compliance officer, a settlement officer or an alternate settlement officer or any person becoming or ceasing to be a director of a member;
- 3.150.6 any change to the appointment of a person in control of a place of business of a member as set out in rules 4.60.1 to 4.60.4;
- 3.150.7 any change in the name of a nominee company maintained in terms of rule 3.90 or the use of a new or different nominee company for the purposes of rule 3.90;
- 3.150.8 any event or circumstance which has or may have any bearing on whether an officer or a shareholder who is a natural person and who directly or indirectly holds in excess of 10% of the issued shares of the member, fails to meet the fit and proper requirements as stipulated in rule 4.10; or
- 3.150.9 the dismissal of an employee for committing or attempting to commit an act which is dishonest or fraudulent.

3.160 Name of a member

The JSE may refuse an application for membership or the approval of a name change of a member if the JSE in its sole discretion deems the name under which the member proposes to operate to be inappropriate or unacceptable for any reason.

3.170 Association with other parties

Membership of the JSE provides specific safeguards and protections to clients of members. Accordingly, a member must ensure that in its business relationships with other parties it does not facilitate such other parties holding out or in any way representing that all or part of their activities are part of the business activities of the member or are subject to the rules, directives or regulation of the JSE.

3.180 Fees, levies, charges, penalties and subscriptions

- 3.180.1 A member must pay to the JSE such fees, levies, charges, penalties or subscriptions as may be prescribed by the JSE.
- 3.180.2 Any fees, levies, charges, penalties or subscriptions to be paid or which may be imposed in terms of the rules must be paid within such period as may be determined by the JSE. The membership of a member who fails to make such payment when due may be provisionally terminated in terms of rule 3.130.5.

Section 4: Management and control

4.10 Fit and proper requirements

- 4.10.1 An officer or non-executive director of a member, or a shareholder who is a natural person and who directly or indirectly holds in excess of 10% of the issued shares of a member, must, subject to any waiver by the JSE –
 - 4.10.1.1 be of full legal capacity;
 - 4.10.1.2 not be an unrehabilitated insolvent; and

- 4.10.1.3 comply with such criteria of good character and high business integrity as the JSE deems fit.
- 4.10.2 In determining whether a person complies with rule 4.10.1.3, the JSE will take into account, inter alia, whether the person has been –
- 4.10.2.1 convicted of an activity constituting a criminal offence involving fraud or theft, whether in the Republic or elsewhere;
- 4.10.2.2 held civilly liable for, inter alia, fraud, theft, dishonesty or market abuse, whether in the Republic or elsewhere;
- 4.10.2.3 disqualified by a court from acting as a director of a company;
- 4.10.2.4 the subject of a formal investigation by any regulatory or government agency;
- 4.10.2.5 expelled, whether as an authorised user or otherwise, from any exchange or external exchange;
- 4.10.2.6 employed by or associated with an authorised user of any exchange or external exchange, which authorised user was expelled from that exchange and where the person has, in the opinion of the JSE, contributed to the circumstances leading to the expulsion;
- 4.10.2.7 declared a defaulter on the JSE or any other exchange or external exchange;
- 4.10.2.8 refused entry to or expelled from any profession or vocation or been dismissed or requested to resign from any office or employment, or from any fiduciary office or similar position of trust; or
- 4.10.2.9 refused approval or had approval involuntarily withdrawn in respect of any status granted by a regulatory authority.
- 4.10.3 Dishonesty or a deliberate omission in an application to the JSE will result in immediate disqualification of a person's fit and proper status.

4.20 Consent required for employment of certain persons

- 4.20.1 No member may without the written consent of the JSE take into or retain in its employment in any capacity in any business carried on by it as a member –
- 4.20.1.1 any person who was an officer of a member expelled from the JSE;
- 4.20.1.2 any person refused admission as a member of the Institute or any person expelled from membership of the Institute;
- 4.20.1.3 any person refused approval to operate as a financial services provider or an authorised representative in terms of the FAIS Act;
- 4.20.1.4 any person expelled, whether as an authorised user or otherwise, from any other exchange; or
- 4.20.1.5 any person who is an unrehabilitated insolvent or has been declared a defaulter by the JSE or has been convicted of theft, fraud, forgery, or any other crime involving dishonesty.
- 4.20.2 The consent of the JSE may be given to a member for a limited period for the employment of a person referred to in rule 4.20.1 and may be withdrawn at any time, provided that the JSE gives the member one calendar month's notice of its intention to withdraw such consent.

4.30 Compliance officers

- 4.30.1 A member must appoint a compliance officer to assist the board of directors of the member in ensuring compliance by the member with the Act, the rules and the directives. The person to be appointed as a compliance officer must have obtained a pass in the compliance officer examination prescribed by the JSE and, if required, be able to evidence to the Director: Surveillance that he has subsequently maintained an adequate knowledge of the Act, the rules and the directives.
- 4.30.2 A compliance officer must –
- 4.30.2.1 with the necessary support and guidance from the board of directors of the member, implement the resources, systems and procedures required to promote and monitor compliance by the member and its employees with the Act, the rules and the directives;

- 4.30.2.2 report to the Director: Surveillance any breaches by the member of the Act, the rules and the directives or any other issue considered by the compliance officer to be irregular; and
- 4.30.2.3 ensure that the content of the JSE Gazettes is communicated to and understood by all relevant employees.
- 4.30.3 The appointment referred to in rule 4.30.1 must be made simultaneously with an application to the JSE to be admitted as a member.
- 4.30.4 In the absence of a duly appointed compliance officer or where a compliance officer post has become vacant, a senior employee must temporarily assume the responsibilities of the compliance officer as referred to in rules 4.30.1 and 4.30.2, for no longer than two months or such other period as the Director: Surveillance may approve.

4.40 Settlement officers

- 4.40.1 A member must appoint a settlement officer to manage the member's obligations in relation to the settlement of transactions in equity securities effected by that member. The person appointed as a settlement officer must have obtained a pass in the settlement officer examination prescribed by the JSE and, if required, be able to evidence to the Settlement Authority that he has subsequently maintained an adequate knowledge of the JSE's settlement rules.
- 4.40.2 A settlement officer must, in respect of the settlement of transactions in equity securities, be responsible for –
 - 4.40.2.1 dealing with all queries by the JSE in relation to settlement;
 - 4.40.2.2 ensuring that appropriate procedures are implemented and the necessary action is taken to facilitate the settlement of all transactions in equity securities in accordance with the rules and the directives;
 - 4.40.2.3 advising the JSE of any issue that may potentially impact on the settlement of a transaction; and
 - 4.40.2.4 cooperating with the Settlement Authority to ensure the efficient and timeous settlement of all transactions.
- 4.40.3 A member must appoint an alternate settlement officer who must act in the absence of the settlement officer in all matters for which the settlement officer is responsible in terms of the rules. The person to be appointed as an alternate settlement officer must meet the requirements set out in rule 4.40.1.
- 4.40.4 The appointments referred to in rules 4.40.1 and 4.40.3 must be made simultaneously with an application to the JSE to be admitted as a member. Notwithstanding these appointments, such member will retain overall responsibility for ensuring compliance with the rules and directives relating to the settlement of transactions in equity securities.
- 4.40.5 Except where the Settlement Authority may otherwise direct, a member may not at any time conduct its business in the absence of a duly appointed settlement officer or alternate settlement officer.
- 4.40.6 Notwithstanding a member having appointed a CSP to effect settlement of transactions in equity securities on its behalf, the member retains the responsibility for ensuring that the settlement of transactions in equity securities takes place.

4.50 Qualifications to manage investments and provide investment advice

- 4.50.1 No employee of a member may manage JSE authorised investments on behalf of clients or advise on any transaction in JSE authorised investments on behalf of a member unless such person –
 - 4.50.1.1 is a stockbroker; or
 - 4.50.1.2 has obtained a pass in the following modules of the Registered Persons Examination of the South African Institute of Financial Markets –
 - 4.50.1.2.1 an introduction to international capital markets;
 - 4.50.1.2.2 regulation of South African financial markets; and
 - 4.50.1.2.3 international equity markets; or
 - 4.50.1.3 has qualified as a Regular Member of the Chartered Financial Analyst Institute; or

- 4.50.1.4 has obtained a pass in the Investment Advice and Portfolio Management module of the South African Institute of Stockbrokers Board examinations; or
- 4.50.1.5 has been accustomed to giving investment advice on transactions since prior to 1 December 2000 and has continued to give investment advice since such date.
- 4.50.2 Any person other than a stockbroker who qualifies to manage investments or provide investment advice in terms of rule 4.50.1 and who ceases to manage investments or advise on transactions for a period of more than three years, must pass the examinations referred to in rules 4.50.1.2, 4.50.1.3 or 4.50.1.4 prior to managing investments or advising on transactions again.

4.60 Control of offices

- 4.60.1 The primary place of business of a member must be under the control of a stockbroker who must be an executive director of the member.
- 4.60.2 A branch office of a member must be under the control of a stockbroker in the full-time employ of the member.
- 4.60.3 An agency office of a member may be under the control of a stockbroker in the full-time employ of the member. Alternatively, the member must appoint a person who has obtained a pass in the compliance officer examination in terms of rule 4.30.1 as part of the staff complement of such office.
- 4.60.4 Notwithstanding rules 4.60.1 and 4.60.2, the primary place of business and branch office of a CSP which is not authorised to provide trading services may be under the control of a person who has obtained a pass in the compliance officer examination in terms of rule 4.30.1.
- 4.60.5 Where the position of a stockbroker or a compliance officer appointed in terms of rules 4.60.1 to 4.60.4 becomes vacant, such position must be filled within two months of it having become vacant or, upon application by a member, within such further time period as the Director: Surveillance may determine.
- 4.60.6 The person in control of a place of business of a member must be resident in the area where the place of business is located.

4.70 Internal control and risk management

- 4.70.1 A member must employ the resources, procedures and technological systems necessary for the effective conduct of its business.
- 4.70.2 The system of internal control employed by the member must be designed to ensure that –
 - 4.70.2.1 the relevant business can be carried on in an orderly and efficient manner;
 - 4.70.2.2 financial and other information used or provided by the member is reliable;
 - 4.70.2.3 all transactions and financial commitments entered into by the member are recorded and are within the scope of authority of the member or the employee acting on behalf of the member;
 - 4.70.2.4 there are procedures to safeguard the assets of the member and assets belonging to any other person for which the member is accountable, and to control liabilities; and
 - 4.70.2.5 there are measures, so far as is reasonably practicable, to minimize the risk of loss to the member or the clients of the member which results from any irregularity, fraud or error and to detect any irregularity, fraud or error should they occur so that prompt remedial action may be taken by the member or the management of the member.
- 4.70.3 A member must adopt sound risk management principles and procedures appropriate to its business activities.
- 4.70.4 The principles and procedures of risk management must be designed to ensure that the records of the member are maintained in such a manner as to promptly disclose financial and business information that will enable the member or the management of the member to –
 - 4.70.4.1 identify, quantify, control and manage the risk exposures of the member;
 - 4.70.4.2 make timely and informed business decisions;
 - 4.70.4.3 monitor the performance and all aspects of the business of the member;
 - 4.70.4.4 monitor the capital of the member to ensure compliance with the capital adequacy requirements imposed in terms of the rules; and
 - 4.70.4.5 monitor the quality of the member's assets.

- 4.70.5 A member must be able to describe and demonstrate the objectives and operation of such systems, principles and procedures referred to in rules 4.70.1 to 4.70.4 above to its auditor and to the JSE.

Section 5: Prudential requirements

Reserved

Section 6: JSE equities trading system

6.10 Use of the JSE equities trading system

- 6.10.1 All transactions in equity securities by a member must only be conducted through the central order book of the JSE equities trading system, unless otherwise stipulated in the rules or directives.
- 6.10.2 A person who seeks to be registered with the JSE as a registered securities trader must satisfy the fit and proper requirements of rule 4.10 and must have obtained a pass in the registered securities trader examination prescribed by the JSE.
- 6.10.3 The Market Controller and any one member of the JSE Executive may decide that the market in equity securities be closed if they are of the opinion that a fair and realistic market does not exist. A fair and realistic market may be deemed not to exist after consideration of the percentage of members not able to access the JSE systems and their contribution to price formation.
- 6.10.4 Despite any other provision of the rules or any directive and subject to rule 2.10, the JSE Executive may –
- 6.10.4.1 reduce or extend the hours of operation of the JSE equities trading system for any particular business day;
 - 6.10.4.2 without prior notice to any person, halt or close the JSE equities trading system for trading at any time and for any period;
 - 6.10.4.3 if there has been any failure of the JSE systems, for any reason, or if JSE systems have been closed, suspended or halted, declare that a transaction effected through or by the JSE equities trading system is void. Such declaration shall bind a member and a client of a member on behalf of or with whom the transaction was effected;
 - 6.10.4.4 exercise such further powers and take such further action as may be exercised or taken by the JSE in terms of the rules and directives, and as may be necessary to resolve any issue which may arise from the closure, suspension, halt or failure of the JSE systems; and
 - 6.10.4.5 take such other steps as may be necessary to ensure an orderly market.
- 6.10.5 Each equity security is allocated to a segment and functional sector based on trading characteristics. These trading characteristics include volatility, liquidity, price and country of issue.
- 6.10.6 Members accessing JSE systems must at all times –
- 6.10.6.1 maintain and enforce appropriate security procedures which are designed to prevent unauthorised persons from having access to any JSE systems, member trading applications or client applications; and
 - 6.10.6.2 have the necessary resources to ensure that any data sent to or received from JSE systems does not interfere with the efficiency and integrity of the equities market or the proper functioning of the JSE systems.
- 6.10.7 The Market Controller may instruct a member to immediately discontinue using a member or client application or may restrict the usage by a member of any or all components of a member or client application.

6.20 Trading capacity, trading periods and times

- 6.20.1 The JSE equities trading system will operate on every business day according to the following standard periods and times:
- 6.20.1.1 market opening period 08h30 to 08h35;
 - 6.20.1.2 opening auction call period: 08h35 to 09h00;

- 6.20.1.3 automated trading period: 09h00 to 16h50;
- 6.20.1.4 closing auction call period: 16h50 to 17h00;
- 6.20.1.5 runoff period: 17h00 to 18h00;
- 6.20.1.6 system close: 18h00;
- 6.20.1.7 intra-day auction call period for selected equity securities: 12h00 to 12h15.
- 6.20.2 Additional periods may occur under certain market conditions. These periods include:
 - 6.20.2.1 volatility auction period;
 - 6.20.2.2 market order extension period; and
 - 6.20.2.3 price monitoring extension period.

A maximum of two of the auction extension periods referred to in 6.20.2.2 and 6.20.2.3 may occur after any auction call period, except for after a closing auction period when there may be up to a maximum of three. In this event, the closing auction period will be extended.
- 6.20.3 Orders submitted to the JSE equities trading system must specify the capacity in which the member is dealing, namely as principal or as agent.

6.30 Reported transactions

- 6.30.1 Reported transactions do not have to be executed through the central order book. The following transactions may validly be reported by the selling member to the JSE equities trading system –
 - 6.30.1.1 block trades (BT);
 - 6.30.1.2 asset swaps (AS);
 - 6.30.1.3 corporate finance transactions (CF);
 - 6.30.1.4 portfolio transactions (PF);
 - 6.30.1.5 late trades (LT);
 - 6.30.1.6 exercise of warrants (WX);
 - 6.30.1.7 exercise of traded options (TX);
 - 6.30.1.8 exercise of options (OX);
 - 6.30.1.9 off order book principal trades (OP);
 - 6.30.1.10 contra trades (CT);
 - 6.30.1.11 post contra trades (PC);
 - 6.30.1.12 reported transaction corrections; and
 - 6.30.1.13 delta trades (OD).
- 6.30.2 Reported transactions –
 - 6.30.2.1 if conducted during trading hours, must immediately be reported by the member to the JSE equities trading system. Where two members are involved in the transaction, the selling member must report the transaction;
 - 6.30.2.2 if conducted after trading hours, must be reported to the JSE equities trading system on the next business day within 15 minutes of the commencement of the market opening period; and
 - 6.30.2.3 are immediately published unless otherwise stated, except for exercise of options, exercise of warrants, exercise of traded options and delta trades, which are not published.
- 6.30.3 A block trade is a reported transaction where a member trades as agent or principal in a single equity security and the transaction –
 - 6.30.3.1 has a minimum value of R5 million; and
 - 6.30.3.2 comprises at least twenty times normal market size.

- 6.30.4 An asset swap is a reported transaction which complies with all the asset swap requirements of the South African Reserve Bank.
- 6.30.5 A corporate finance transaction is a reported transaction which -
 - 6.30.5.1 must be entered into in writing;
 - 6.30.5.2 requires public notification in the press; and
 - 6.30.5.3 complies with the requirements of transaction categories 1, 2 or 3 of Section 9 of the Listing Requirements of the JSE.
- 6.30.6 A portfolio transaction is a reported transaction where a member trades as agent or principal in a list of equity securities which -
 - 6.30.6.1 has a minimum value of R15 million; and
 - 6.30.6.2 comprises at least 10 different equity securities none of which exceeds 25% of the total value of the portfolio.
- 6.30.7 A late trade is a reported transaction where a member trades after trading hours and where the transaction is -
 - 6.30.7.1 executed by a member acting on behalf of a client, in fulfilment of an order already entered into the JSE equities trading system, and where either the buyer or the seller is a foreign professional market participant; or
 - 6.30.7.2 executed by a member for a professional market participant, in fulfilment of an order received prior to the end of the closing auction call period, at a price which can only be established after the closing auction call period; or
 - 6.30.7.3 executed by a member for or on behalf of a professional market participant, in fulfilment of an order received after trading hours, where the buyer or the seller is a foreign professional market participant.
- 6.30.8 A delta trade is a transaction where a member trades as a principal with another member, who also trades as a principal, in a single equity security where the transaction transfers the delta hedge from one member to another member in respect of a derivative transaction which has been reported to either the JSE derivatives trading system or the derivative trade recording system referred to in the directives.

6.40 Off order book principal trades

- 6.40.1 An off order book principal trade is a transaction where a member trades as a principal in a single equity security where the transaction -
 - 6.40.1.1 has a minimum value of R500 000; and
 - 6.40.1.2 comprises at least six times the normal market size;
 except where the transaction is with a foreign professional market participant in which case no minimum value or quantity of equity securities will apply.
- 6.40.2 The details of an off order book principal trade may be delayed for publication until the earlier of -
 - 6.40.2.1 80% of the risk profile of the transaction having been unwound, in which case the details of the transaction must be immediately released for publication by the member; or
 - 6.40.2.2 the following business day.

6.50 Trade corrections

- 6.50.1 Despite any other provision of the rules or any directive, the Director: Surveillance may, where in his opinion a trade has been matched as a result of a clear error by a member or reported in error, grant permission to or instruct the respective members to execute a contra trade, a post contra trade or a reported transaction correction.
- 6.50.2 Contra and post contra trades may only be considered in exceptional circumstances and if the trade meets at least the following requirements—
 - 6.50.2.1 the request is received by the Director: Surveillance within 20 minutes from the time of the erroneous trade; and

- 6.50.2.2 the price of the trade or trades for which the contra trade is requested is 5% or more away from the reference price immediately before the erroneous trade occurred; and
 - 6.50.2.3 the difference between the aggregate value of the trades that qualify in terms of rule 6.50.2.2 and the value that would have resulted had such trades been executed at the reference price is R50 000 or more; or
 - 6.50.2.4 the quantity of shares traded exceeds 5% of the equity security in issue.
- 6.50.3 If, in the opinion of the Director: Surveillance, an automated trade, auction trade or reported transaction materially impacts the integrity or transparency of the market, or the correctness of the statistics, the Director: Surveillance may instruct members to enter a contra or a post contra trade or perform a reported transaction correction without having received a formal request to do so from any member.

6.60 Pre-issued trading

- 6.60.1 A member may only execute transactions in pre-issued securities during the period permitted by the JSE.
- 6.60.2 If the listing in respect of which pre-issued trading has been approved commences, all transactions effected during the period of the pre-issued trading will settle on the same terms as all other transactions in equity securities.
- 6.60.3 If the listing does not commence on the intended commencement date of official trading, every transaction effected under this rule will be void ab initio and neither the member nor a client will have recourse against the JSE or a member, as the case may be, in respect of such transactions.

6.70 Unreasonable transactions

Where, from a lack of clarity in the published information available at the time of the transaction, a member deals in a quantity or at a price which in the opinion of the Director: Surveillance is unreasonable, the Director: Surveillance may declare such transaction void. Such declaration shall be binding on the members who entered into such transaction and on the clients for or on whose behalf the transaction was executed.

6.80 Trading halt

- 6.80.1 The Director: Surveillance or his deputy, in conjunction with the Chief Executive Officer or acting Chief Executive Officer or, failing the Chief Executive Officer or acting Chief Executive Officer, the Director: Issuer Services, may declare a trading halt in an equity security in circumstances where the Director: Surveillance determines that the trading activity in an equity security –
 - 6.80.1.1 is being or could be undertaken by persons possessing unpublished price-sensitive information that relates to that security;
 - 6.80.1.2 is being influenced by a manipulative or deceptive trading practice; or
 - 6.80.1.3 may otherwise give rise to an artificial price for that equity security.
- 6.80.2 No member may trade that equity security for the duration of the trading halt but may delete orders from the central order book.

Section 7: Market conduct

7.10 Manipulative or deceptive trading practices

- 7.10.1 A member must give consideration to the circumstances of orders placed by clients before entering such orders in the JSE equities trading system and is responsible for the integrity of such orders.
- 7.10.2 A member or employee of a member may not use, or knowingly participate in the use of any manipulative or deceptive trading practice in an equity security, either for the account of the member or employee of a member, or on behalf of clients, which creates or may create –
 - 7.10.2.1 a false or deceptive appearance of trading activity; or
 - 7.10.2.2 an artificial price for such equity security.

- 7.10.3 A member or employee of a member may not place an order in the JSE equities trading system to buy or sell equity securities which, to the knowledge of the member or employee of a member will, if executed, have the effect contemplated in rule 7.10.2.
- 7.10.4 Without in any way limiting the generality of the foregoing, the following are deemed to be manipulative or deceptive trading practices:
- 7.10.4.1 Approving or entering on the JSE equities trading system –
- 7.10.4.1.1 an order to buy or sell an equity security with the knowledge that an opposite order or orders of substantially the same size at substantially the same time and at substantially the same price, have been or will be entered by or for the same or different persons with the intention of creating a false or misleading appearance of active public trading in connection with, or an artificial market price for, such equity security;
- 7.10.4.1.2 orders to buy any equity security at successively higher prices or orders to sell any equity security at successively lower prices for the purpose of unduly or improperly influencing the market price of such equity security;
- 7.10.4.1.3 an order at or near the close of the market, the primary purpose of which is to change or maintain the closing price of such equity security;
- 7.10.4.1.4 an order to buy or sell any equity security during an auction call period and cancelling such order immediately prior to the auction matching, for the purpose of creating or inducing a false or deceptive appearance of demand for or supply of such equity security;
- 7.10.4.1.5 an order to buy or sell an equity security which involves no change in the beneficial ownership of that equity security; or
- 7.10.4.1.6 a reported transaction which would result in a contravention of rule 7.10.2;
- 7.10.4.2 effecting or assisting in effecting a market corner;
- 7.10.4.3 maintaining the price of an equity security at a level which is artificial;
- 7.10.4.4 employing any device, scheme or artifice to defraud any other person as a result of a transaction effected through the JSE equities trading system; or
- 7.10.4.5 engaging in any act, practice or course of business in respect of trading in equity securities which is deceptive or which is likely to have such an effect.

7.20 False, misleading or deceptive statements, promises and forecasts

A member or employee of a member may not, directly or indirectly, make or publish in respect of equity securities, or in respect of the past or future performance of a listed company –

- 7.20.1 any statement, promise or forecast which is, at the time and in the light of the circumstances in which it is made, false or misleading or deceptive in respect of any material fact and which the member or employee of a member knows, or ought reasonably to know, is false, misleading or deceptive; or
- 7.20.2 any statement, promise or forecast which is, by reason of the omission of a material fact, rendered false, misleading or deceptive and which the member or employee of a member knows, or ought reasonably to know, is rendered false, misleading or deceptive by reason of the omission of that fact.

Section 8: Conduct of business

8.10 General standards of conduct

This rule provides for the general standards of conduct which members are required to observe in their dealings with clients and the JSE. The additional standards of conduct relevant to specific regulated services are contained in the rules which deal with those specific services.

8.10.1 Standards of integrity

A member must, in the conduct of its business, observe high standards of integrity and fair dealing. It must –

- 8.10.1.1 not knowingly circulate information which is false or misleading;
- 8.10.1.2 not knowingly countenance any attempt to manipulate the market, nor to influence persons for such a purpose;
- 8.10.1.3 conduct its activities in a manner that is compatible with the objects of the Act and with full respect for the reputation of the JSE; and
- 8.10.1.4 not participate in any dealings with other members, clients, the media or other persons which may be of such a nature as to defame the JSE or any of its officers or employees.
- 8.10.2 General conduct towards clients
 - In its dealings with clients, a member must –
 - 8.10.2.1 act honestly and fairly;
 - 8.10.2.2 act with due skill, care and diligence, and in the interests of clients;
 - 8.10.2.3 exercise independent professional judgement;
 - 8.10.2.4 act promptly on and in accordance with the instructions of a client, and exercise any discretion in a responsible manner; and
 - 8.10.2.5 avoid conflicts of interest and when they cannot be avoided, ensure fair treatment to clients by disclosure, confidentiality or declining to act. A member must not unfairly place its interests above those of its clients.
- 8.10.3 Disclosure to clients
 - 8.10.3.1 In rendering a service to a client, any representations made and information provided by a member –
 - 8.10.3.1.1 must be factually correct;
 - 8.10.3.1.2 must be provided in plain language, avoid uncertainty or confusion and not be misleading;
 - 8.10.3.1.3 must be adequate and appropriate in the circumstances of the particular service, taking into account the factually established or reasonably assumed level of knowledge of the client;
 - 8.10.3.1.4 must, as regards all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein, be reflected in specific monetary terms, provided that where any such amount, sum, value, charge, fee, remuneration or monetary obligation is not reasonably pre-determinable, its basis of calculation must be adequately described;
 - 8.10.3.1.5 need not be duplicated or repeated to the same client unless material or significant changes affecting that client occur, or the relevant service renders it necessary, in which case a disclosure of the changes must be made to the client without delay.
 - 8.10.3.2 A member –
 - 8.10.3.2.1 must disclose full and accurate information about the fees and any other charges that may be levied on clients;
 - 8.10.3.2.2 may not disclose any confidential information acquired or obtained from a client about such client, unless the written consent of the client has been obtained beforehand or disclosure of the information is required to further the objects of the Act or is required under any law;
 - 8.10.3.2.3 must advise a client in advance of any restrictions or limitations that may affect the access of that client to their assets.
- 8.10.4 Maintenance of client records
 - 8.10.4.1 A member must maintain proper, complete, accurate and secure records in relation to the services rendered to its clients.

- 8.10.4.2 A member must have appropriate procedures and systems in place to store and retrieve, in a manner safe from destruction, a record of all –
- 8.10.4.2.1 communications relating to a service rendered to a client, including instructions given by the client to the member;
 - 8.10.4.2.2 transaction documentation relating to clients;
 - 8.10.4.2.3 contractual arrangements between the member and its clients, including mandates prescribed by the rules; and
 - 8.10.4.2.4 client particulars required to be provided in terms of the rules or which are necessary for the effective operation of client accounts.
- 8.10.4.3 The client records in rule 8.10.4.2 may be kept in printed, electronic or voice-recorded format.
- 8.10.4.4 Members need not hold the records in rule 8.10.4.2 themselves but must be capable of making such records available for inspection within seven days.
- 8.10.4.5 All instructions given by clients to execute transactions must be kept for a period of at least six months after the relevant transactions and all other client records in rule 8.10.4.2 must be kept for at least five years after the rendering of the services concerned.
- 8.10.5 Contact with the member
- A member must provide for the necessary resources and functionality to ensure that clients are able to readily contact the member.
- 8.10.6 Waiver of rights
- A member may not request or induce in any manner a client to waive any right or benefit conferred on the client by or in terms of the rules, or recognise, accept or act on any such waiver by the client, and any such waiver is void.
- 8.10.7 Co-operation with regulators
- A member shall deal with the JSE as its regulator in an open and co-operative manner and keep the JSE promptly informed of anything concerning the JSE which might reasonably be expected to be disclosed to it. A member shall also provide reasonable co-operation to any other regulatory body or any law enforcement agency in respect of any matters which are the subject of an investigation by such body or agency relating to an alleged contravention of the Act, or any equivalent foreign legislation or any other law governing the activities of the member.

8.20 Marketing and advertising

Advertising

- 8.20.1 A member may advertise its services to the public provided such advertising –
- 8.20.1.1 is carried out with a due sense of responsibility to the profession and to the public;
 - 8.20.1.2 is consistent with the dignity of the profession, is in good taste both as to content and presentation and does not make odious comparisons or belittle JSE products or services or products offered by others, whether members or not, either by claiming superiority for the services or performance of a particular member or otherwise; and
 - 8.20.1.3 conforms with the accepted norms of legality, decency, honesty and truthfulness and does not contain testimonials or endorsements.
- 8.20.2 Advertising material of a member –
- 8.20.2.1 must provide accurate, complete and unambiguous information about any JSE authorised investment or any regulated service rendered by the member;
 - 8.20.2.2 must emphasise the risk of loss and uncertainty of future results;
 - 8.20.2.3 must discern fact from opinion; and
 - 8.20.2.4 may not be comparative in relation to another member.
- 8.20.3 An advertisement by a member –

- 8.20.3.1 may not contain any statement, promise or forecast which is fraudulent, untrue or misleading;
- 8.20.3.2 must, if it contains performance data (including awards and rankings), include references to their source and date;
- 8.20.3.3 must, if it contains illustrations, forecasts or hypothetical data –
 - 8.20.3.3.1 contain support in the form of clearly stated basic assumptions (including, but not limited to, any relevant assumptions in respect of performance, returns, costs and charges) with a reasonable prospect of being met under current circumstances;
 - 8.20.3.3.2 make it clear that they are not guaranteed and are provided for illustrative purposes only; and
 - 8.20.3.3.3 also contain, where returns or benefits are dependent on the performance of underlying assets or other variable market factors, clear indications of such dependence;
- 8.20.3.4 must, if it contains a warning statement about the risks involved in buying or selling a JSE authorised investment, prominently display such statement; and
- 8.20.3.5 must, if it contains information about past performances, also contain a warning that past performances are not necessarily indicative of future performances; and
- 8.20.3.6 must, if the investment value of a JSE authorised investment mentioned in the advertisement is not guaranteed, contain a warning that no guarantees are provided.

Use of name and logo

- 8.20.4 A member shall not use in publicity, promotional or advertising material, or on its professional stationery, or on its name plates, or on its office premises, any designation other than that designation recognised by the JSE and shall record the fact that it is a "member of the JSE".

Market recommendation – disclaimer

- 8.20.5 No member shall publish or circulate any written comment which relates to the trading results of a listed company or which may influence the price of the equity securities of any company unless such comment is accompanied by the name of the person or persons who compiled it.
- 8.20.6 Where a newsletter, circular or other publication carries an expression of opinion on a listed company and the member has an interest (other than a casual or arbitrage interest) in that company, the existence of such an interest without specifying names and amounts shall be disclosed in such newsletter, circular or other publication and if a director of the member is a director of the company that shall also be disclosed.

8.30 Unsolicited calls

A member may enter into a transaction with or on behalf of a person where the transaction is as a result of an unsolicited call, provided that the member has complied with the requirements set out in rules 8.10.3 and 8.130.

8.40 Personal account trading

- 8.40.1 A member must establish and maintain controls and procedures in relation to transactions executed for the direct or indirect benefit of employees of the member, in order to avoid such transactions conflicting with the interests of the member's clients, whether such transactions are executed by the member or by another member.
- 8.40.2 The controls and procedures in relation to the transactions referred to in rule 8.40.1 should, as a minimum, make provision for the review by the member of those transactions, in order to identify any transactions which are in conflict with the interests of the member's clients.

8.50 Inducements

- 8.50.1 A member must take reasonable steps to ensure that it and any person acting on its behalf does not offer, give, solicit or accept any incentive, remuneration, consideration, commission, fee or brokerage ("valuable consideration") as an inducement if it is likely to conflict with any duty that the member owes to its clients in respect of regulated services provided to those clients or any duty that the recipient of the inducement owes to its clients.

- 8.50.2 Without limiting the generality of rule 8.50.1, any valuable consideration offered, given, solicited or accepted as an inducement by a member or any person acting on its behalf, in terms of an agreement with a third party or a client which relates to the provision of regulated services by the member to one or more clients, and which does not directly relate to, and assist in the provision of, such services to such clients or does not otherwise directly benefit the clients of the recipient of such valuable consideration, shall constitute an inducement prohibited in terms of rule 8.50.1.
- 8.50.3 A member who, in terms of an agreement with a third party, directly or indirectly accepts any valuable consideration as an inducement in respect of a regulated service rendered to a client, or for which the member may become eligible, must disclose to the client in writing before the rendering of such service –
- 8.50.3.1 the existence of the agreement;
 - 8.50.3.2 the nature, extent, value and frequency of receipt of such valuable consideration to the extent that such information is known prior to the rendering of the service; and
 - 8.50.3.3 the identity of the other person providing or offering the valuable consideration.

8.60 Client acceptance and maintenance procedures

- 8.60.1 Every member shall ensure that it obtains and maintains sufficient information on each client account and each account operated by a client so as to be able to identify –
- 8.60.1.1 the client;
 - 8.60.1.2 the beneficial owner of a controlled client account if the account holder is not a client of the member but is a person on whose behalf a client is acting as agent; and
 - 8.60.1.3 the person or persons responsible for placing instructions on the account, subject to rule 8.60.4.
- 8.60.2 As a minimum, the member shall obtain the following information in respect of each client and the beneficial owner of each controlled client account if the account holder is not a client of the member but is a person on whose behalf a client is acting as agent –
- 8.60.2.1 full name; and
 - 8.60.2.2 identity number or registration number, as the case may be.
- 8.60.3 In addition to rule 8.60.2, the member shall also obtain the following information in respect of each client –
- 8.60.3.1 physical and postal address;
 - 8.60.3.2 telephone number; and
 - 8.60.3.3 legal status of the client, identifying whether they are a –
 - 8.60.3.3.1 private individual;
 - 8.60.3.3.2 company;
 - 8.60.3.3.3 close corporation;
 - 8.60.3.3.4 private trust;
 - 8.60.3.3.5 partnership;
 - 8.60.3.3.6 joint venture;
 - 8.60.3.3.7 syndicate;
 - 8.60.3.3.8 investment club;
 - 8.60.3.3.9 pension or provident fund;
 - 8.60.3.3.10 mutual fund or collective investment scheme;
 - 8.60.3.3.11 government agency;
 - 8.60.3.3.12 public utility; or
 - 8.60.3.3.13 religious, educational or welfare organisation.

- 8.60.4 Unless the client is a bank or a financial services provider or the foreign regulated equivalent of such entities, the information referred to in rules 8.60.2, 8.60.3.1 and 8.60.3.2 shall also be obtained in respect of the person or persons responsible for placing instructions on a client account if the person placing the instructions is not the individual in whose name the account is held or the account is not in the name of an individual.
- 8.60.5 The information referred to in rules 8.60.2 to 8.60.4, together with any bank account details provided by the client, shall be confirmed by the client in writing and the member shall maintain a record of such confirmation. Any changes to the said information shall be advised by the client in writing to the member as soon as practicable.
- 8.60.6 Before undertaking to execute any transaction for a new client, a member shall, as a minimum, authenticate the identity of such client and maintain a record of the means of such authentication.

8.70 Dealings with a discretionary financial services provider

A member may not effect a transaction with a person whom the member reasonably believes requires authorisation as a discretionary financial services provider or as a representative in terms of the FAIS Act, without having taken reasonable measures to ascertain that such person has the required authorisation.

8.80 Transactions

- 8.80.1 Every member shall transact its business in a just and equitable manner and every transaction, whether for the account of the member effecting it or for the account of a client, must be fulfilled according to the Act, the rules and the directives.
- 8.80.2 No member shall transact any business on the account of a client where such business is being executed in terms of a power of attorney unless a commissioner of oaths or notary public has attested to the power of attorney.
- 8.80.3 A member represents and warrants to the JSE and to persons with or on behalf of whom the member executes transactions in equity securities, that any person employed by the member to deal with such persons in relation to such transactions, has full authority to act on the member's behalf.
- 8.80.4 A member may record any telephone conversation between the member, one of its employees and any client or potential client. Such tape recordings or transcripts may be submitted in evidence in any disciplinary proceedings involving the member or one of its employees.

8.90 Best execution

- 8.90.1 When acting for a client in the purchase or sale of equity securities, a member must at all times adhere to the best execution principle taking reasonable care to obtain the result which is the best available for the client, provided that the member must at all times act in accordance with the terms and conditions of the agreed mandate from the client.
- 8.90.2 To support the best execution principle, all transactions in equity securities by members must be conducted through the central order book of the JSE equities trading system, unless the execution of a reported transaction, which qualifies as such in terms of rule 6.30, is in the best interests of the client.
- 8.90.3 A member may only deal as principal with a client if the member has obtained the prior consent of the client.

8.100 Members' commissions and fees

- 8.100.1 A member may charge for different categories of transactions and—
- 8.100.1.1 in respect of an agency transaction in JSE authorised investments, may charge a commission mutually agreed with the client in advance of such a transaction; and
 - 8.100.1.2 in respect of a transaction in JSE authorised investments where a member has dealt as a principal, may charge a fee mutually agreed with the client in advance of such transaction.
- 8.100.2 A member may not make a profit in respect of an agency transaction other than the agreed commission.
- 8.100.3 An ISP shall be permitted to charge a client a negotiated fee for providing investment services. Such fee may be related to the performance of the client's assets managed by the member or be structured on a percentage of the assets managed or any other basis agreeable to the client.
- 8.100.4 Interest received by a member from JSET in relation to client funds deposited with JSET in terms of the rules must accrue to and must be payable by the member to the clients entitled to such funds, after deduction of

such administration fee or other charge as the member may determine. The member must disclose in advance of accepting funds the rate at which such fee or charge will be determined or the manner of calculation of such fee and must, in respect of each statement to a client, disclose the actual fee or charge so deducted.

8.110 Contract notes

- 8.110.1 In respect of a transaction in equity securities executed through the JSE equities trading system on behalf of or with a client, a member shall, before 12h00 on the business day following the transaction –
- 8.110.1.1 issue to the client a contract note; or
 - 8.110.1.2 transmit to the client via electronic means acceptable to the JSE, a confirmation of the transaction.
- 8.110.2 The contract note or electronic confirmation referred to in rule 8.110.1 shall disclose –
- 8.110.2.1 the date and time of the transaction;
 - 8.110.2.2 the identification number of the transaction;
 - 8.110.2.3 the amount and nature of the member's charges in connection with the transaction;
 - 8.110.2.4 the price at which the transaction was executed and the total consideration due from or to a client;
 - 8.110.2.5 the settlement date of the transaction;
 - 8.110.2.6 whether the member acted as an agent or as a principal in the transaction.
- 8.110.3 Notwithstanding the provisions of rule 8.110.2 and subject to rule 10.30.2, with the prior consent of a client, a member may allocate transactions executed for a client to a specifically designated suspense account, either –
- 8.110.3.1 in the name of the client; or
 - 8.110.3.2 in the name of an agent appointed by the client to transact on his behalf.
- 8.110.4 A designated suspense account in the name of a client, as referred to in rule 8.110.3.1, may be utilised if the member's client is placing instructions in respect of one or more underlying accounts controlled by the client. A designated suspense account in the name of an agent appointed by a client to transact on his behalf, as referred to in rule 8.110.3.2, may be utilised if a number of the member's clients have appointed an agent to transact on their behalf.
- 8.110.5 If the designated suspense accounts referred to in rules 8.110.3 and 8.110.4 are utilised, the member may allocate transactions in the same equity security on the same day to the accounts of the underlying beneficiaries, at an average price, based on the instructions of the client or the appointed agent respectively.
- 8.110.6 A member may issue contract notes or electronic confirmations reflecting average prices in respect of transactions allocated to the accounts of the underlying beneficiaries in terms of rule 8.110.5, provided that such contract notes or electronic confirmations disclose the fact that the price is an average price and the member has notified the client or, if relevant, the agent appointed by the client that the prices and times of each transaction are available from the member on request.
- 8.110.7 If a member uses one or more suspense accounts for transactions executed on behalf of clients whose equity securities are managed by the member and allocates transactions to such clients at an average price, the member is not required to obtain the consent of the client to allocate transactions at an average price in terms of rule 8.110.3, nor are they required to notify the client that the prices and times of each transaction are available from the member in terms of rule 8.110.6.

8.120 Management of JSE authorised investments

Investment mandates

- 8.120.1 The arrangement whereby an ISP manages JSE authorised investments on behalf of a client must be recorded in a written mandate. The mandate must contain the minimum requirements as prescribed by the JSE and the client must accept the terms of the mandate and communicate such acceptance to the member before acceptance of any JSE authorised investments. The mandate may be in electronic form and its acceptance may be expressed by electronic means, provided that if acceptance occurs otherwise than by electronic means, the expression of acceptance must be evidenced by the physical signature of the client.
- 8.120.2 Every ISP must keep a register of each investment mandate in the form as prescribed by the JSE.

Investment objectives and needs analysis

- 8.120.3 In exercising discretion in the management of JSE authorised investments on behalf of clients, an ISP must –
- 8.120.3.1 obtain information regarding the client's financial situation, investment experience, particular needs and objectives in connection with the services required, to enable the member to make an appropriate investment decision;
 - 8.120.3.2 conduct an analysis, based on the information obtained, for the purpose of making an investment decision;
 - 8.120.3.3 identify the JSE authorised investments that will suit the client's risk profile and financial needs, subject to the terms of any mandate provided to the member by the client; and
 - 8.120.3.4 ensure that any discretion exercised is not for the primary purpose of maximising the income of the member.

Identification of investment management accounts

- 8.120.4 Every ISP must distinguish, in its books of account, those client accounts in respect of which the ISP manages investments, so that they can be easily identified as such at all times.

Management of investments in derivative instruments

- 8.120.5 Despite the fact that a client may have given his general consent to an ISP in an investment mandate to effect transactions in JSE authorised investments on behalf of the client and may have given discretion to the ISP to conduct such transactions, an ISP may not conduct transactions in derivative instruments, whether such investments are equity securities or other JSE authorised investments, without the specific prior consent of the client. Such consent must be obtained from the client in writing and must specifically state that the ISP is authorised to invest in derivative instruments on behalf of the client, as well as indicating whether there are any specific conditions or restrictions applicable to such investments which are not otherwise contained in the mandate.
- 8.120.6 The specific consent to be obtained from the client in respect of transactions in derivative instruments, as referred to in rule 8.120.5, may only be elicited once the ISP has –
- 8.120.6.1 considered whether such investments are appropriate for the client in relation to the client's financial situation, investment experience and investment objectives; and
 - 8.120.6.2 advised the client, in writing, of the risks associated with trading in derivative instruments.

Management of JSE authorised investments other than equity securities

- 8.120.7 An ISP who manages JSE authorised investments other than equity securities may not effect transactions in such investments on behalf of a client unless the client has given his general consent to such transactions being effected in the mandate referred to in rule 8.120.1.
- 8.120.8 Any decision by an ISP to invest in JSE authorised investments other than equity securities on behalf of a client must be made with due regard to the relevant provisions of the general standards of conduct set out in rule 8.10, particularly the provisions relating to the general conduct towards clients in rule 8.10.2 and disclosure to clients in rule 8.10.3, and the requirements of rule 8.120.3 in relation to investment objectives and a needs analysis.

Management of foreign investments

- 8.120.9 An ISP who manages foreign investments on behalf of a client may not enter into transactions in foreign investments unless –
- 8.120.9.1 the mandate entered into between the ISP and the client in terms of rule 8.120.1 –
 - 8.120.9.1.1 stipulates that the ISP is authorised to invest in foreign investments;
 - 8.120.9.1.2 contains a statement pertaining to the risks associated with foreign investments, with particular reference to any currency risk;
 - 8.120.9.1.3 states whether there are any jurisdictional restrictions in respect of the particular foreign investments; and
 - 8.120.9.1.4 contains full particulars of the manner in which such foreign investments shall be made and in whose name such investments shall be held or registered;

- 8.120.9.2 the client has obtained the prescribed tax clearance certificate from the South African Revenue Service, subject to the provisions of rule 8.120.10.
- 8.120.10 An ISP who manages foreign investments may apply to the Exchange Control Department of the South African Reserve Bank to acquire Foreign Portfolio Investments for such percentage as may be determined by the Department of the total assets under the ISP's management. Such Foreign Portfolio Investments shall at all times comply with the regulations which the Department may from time to time determine. The provisions of rule 8.120.9.2 regarding the tax clearance certificate to be obtained by the client from the South African Revenue Service shall not apply to Foreign Portfolio Investments authorised by the Exchange Control Department of the South African Reserve Bank.
- 8.120.11 An ISP who manages foreign investments must, on request by a client, furnish the client with the following information regarding any foreign investments made by the ISP on behalf of the client –
 - 8.120.11.1 the name of the licensed external exchange on which the foreign investments are listed, if applicable;
 - 8.120.11.2 the country in which the foreign investments are licensed or registered and the name and address of the relevant licensing or registration authority, if applicable;
 - 8.120.11.3 the name and address of the foreign financial services provider used by the ISP to purchase or hold the foreign investments, if applicable; and
 - 8.120.11.4 the name and address of the regulator of the foreign financial services provider referred to in rule 8.120.11.3 and whether such foreign financial services provider is approved or registered by such regulator.

8.130 Advice on JSE authorised investments

- 8.130.1 In providing investment advice to a client, other than a professional client, in respect of JSE authorised investments, an ISP must –
 - 8.130.1.1 take reasonable steps to obtain information regarding the client's financial situation, investment experience, particular needs and objectives in connection with the services required, to enable the member to provide the client with sound investment advice;
 - 8.130.1.2 conduct an analysis, based on the information obtained, for the purpose of advising the client;
 - 8.130.1.3 identify the JSE authorised investments that will suit the client's risk profile and financial needs, subject to the terms of any mandate provided to the member by the client;
 - 8.130.1.4 take reasonable steps to ensure that the client understands any investment advice that has been provided, as well as the nature and material terms and risks involved in the relevant transaction, so as to enable the client to make an informed decision; and
 - 8.130.1.5 ensure that any investment advice provided is not for the primary purpose of maximising the income of the member.
- 8.130.2* A member may not provide any unsolicited investment advice to a client with the purpose of encouraging or inducing the client to transact in derivative instruments unless the member has –
 - 8.130.2.1 considered whether such investments are appropriate for the client in relation to the client's financial situation, investment experience and investment objectives; and
 - 8.130.2.2 advised the client, in writing, of the risks associated with trading in derivative instruments.

8.140 Management of corporate actions

The arrangement between a member and a controlled client regarding issues pertaining to corporate actions must be recorded in writing. The written arrangement must, as a minimum, incorporate the instructions from the controlled client and the terms and conditions which will apply to the following issues pertaining to corporate actions –

- 8.140.1 whether the client wishes to receive all company reports, proxy forms, notices, circulars, listing particulars and any other issuer communications, in respect of equity securities of which such client is a beneficial owner;
- 8.140.2 whether the member is entitled and obliged to utilise its discretion in electing particular options in respect of all or certain corporate action events which require such an election to be made;
- 8.140.3 whether the member may utilise its discretion in exercising voting rights on behalf of the client;

- 8.140.4 the means of communication between the member and the client if the member is not granted discretion to act in respect of the issues referred to in rules 8.140.2 and 8.140.3. This will apply to the communication of the relevant issues to the client by the member as well as the client's response thereto;
- 8.140.5 the date and time by which the client is required to make an election, if applicable; and
- 8.140.6 the option which the member may elect if the client fails to advise the member of their election before the deadline specified in rule 8.140.5, if applicable. This could either be the default for election or the member may be entitled to utilise its discretion in electing a particular option.

8.150 Money broking transactions

- 8.150.1 Money broking transactions may only be conducted by a member to whom the JSE has granted specific authorisation to conduct money broking transactions in terms of rule 3.80.
- 8.150.2 The arrangements made by a client with a member to conduct money broking transactions must be recorded in a written mandate. The mandate must contain the minimum requirements either –
 - 8.150.2.1 incorporated in the conditions published by the Registrar of Banks if money broking transactions are conducted in terms of rule 8.150.4.1; or
 - 8.150.2.2 prescribed by the JSE from time to time if money broking transactions are conducted in terms of rule 8.150.4.2
- 8.150.3 The client must accept the terms of the mandate and communicate such acceptance to the member before any funds are accepted for such purpose. The mandate may be in electronic form and its acceptance may be expressed by electronic means, provided that if acceptance occurs otherwise than by electronic means, the expression of acceptance must be evidenced by the physical signature of the client.
- 8.150.4 A member authorised to conduct money broking transactions may open an account with a bank either –
 - 8.150.4.1 in the name of the member, where the clients' funds are pooled in an account maintained by the member and the member forwards account statements to the client; or
 - 8.150.4.2 in the name of the client, with the bank forwarding account statements directly to the client and, for the period dealt with in such account statements, the client's capital remains with the same bank.
- 8.150.5 A member authorised to conduct money broking transactions, who conducts such transactions in terms of rule 8.150.4.1, must conduct such transactions strictly in accordance with and subject to the conditions published by the Registrar of Banks by Notice in the Government Gazette under paragraph (gg) of the definition of "the business of a bank" in section 1 of the Banks Act, 1990 and the rules.
- 8.150.6 A member authorised to conduct money broking transactions, who conducts such transactions in terms of rule 8.150.4.2, must conduct such transactions strictly in accordance with and subject to paragraph (ff) of the definition of "the business of a bank" in section 1 of the Banks Act, 1990 and the rules.
- 8.150.7 In cases where money broking transactions are conducted in the manner set out in rule 8.150.4.2, a member must ensure and procure that account statements forwarded by the bank to the client reflect –
 - 8.150.7.1 the amounts invested and withdrawn;
 - 8.150.7.2 the dates and terms of investments, including interest rates and payment details; and
 - 8.150.7.3 the actual amount of the fee charged by the member to the client for the reporting period, reflected in Rand or as a percentage.
- 8.150.8 If a member accepts funds from a client pursuant to a money broking transaction and the proposed deposit with a bank cannot be effected by the close of business on the day on which the funds are received from the client, the funds must be deposited with JSET for same day value pending the deposit of the funds with the relevant bank.

8.160 Authorisation of investments other than equity securities under other regulation

- 8.160.1 Although these rules provide for the JSE authorising ISPs to manage JSE authorised investments other than equity securities, or provide investment advice on such investments, the authorisation by the JSE under these rules will only apply if –

- 8.160.1.1 in relation to investments which are listed on another JSE market or another exchange, the member is not an authorised user of the other JSE market or other exchange; and
- 8.160.1.2 the majority of the member's business activities relate to trading in JSE listed securities as an authorised user of any of the JSE markets.
- 8.160.2 If a member is also an authorised user of any of the other JSE markets or of another exchange, any trading or investment activity by such member in securities listed on those markets or exchanges shall be authorised in terms of the rules of those markets or exchanges and shall, therefore, not be subject to authorisation or regulation under these rules.
- 8.160.3 The overriding principle which determines whether the JSE will regulate an ISP's activities in relation to JSE authorised investments other than equity securities, apart from those regulated under any other rules in terms of rule 8.160.2, is that if a member's business is predominantly conducted on the markets provided by the JSE as an authorised user of those markets, the JSE will also assume responsibility for regulating that member's activities in relation to such investments. However, if the Director: Surveillance determines in terms of rules 8.160.4 to 8.160.7 that the majority of a member's business activities, based on the factors in rule 8.160.5, do not relate to trading in JSE listed securities as an authorised user of the JSE markets, the member will be required to obtain a licence to operate as a financial services provider in terms of the FAIS Act in respect of any advice or intermediary services which it provides to clients relating to investments other than equity securities, and the relevant provisions of the FAIS Act shall apply to such advice or intermediary services.
- 8.160.4 At the time that a member advises the Director: Surveillance in terms of rule 3.60 of its intention to conduct activity in relation to JSE authorised investments other than equity securities, if the member reasonably believes that those activities may not be authorised by the JSE under these rules, based on the principle in rule 8.160.3 and the factors in rule 8.160.5, the member must advise the Director: Surveillance accordingly. The Director: Surveillance may then request such information from the member as is necessary to determine whether the relevant activities will be authorised by the JSE under these rules or not.
- 8.160.5 In order for the Director: Surveillance to make the determination referred to in rule 8.160.4, the following factors will be considered in relation to the member's activity in JSE listed securities as an authorised user of any of the JSE markets, in comparison to its other areas of business activity in other financial products -
 - 8.160.5.1 the value of client assets managed by the member in relation to the respective areas of business activity;
 - 8.160.5.2 the value of transactions in the respective areas of business activity;
 - 8.160.5.3 the revenue earned by the member in the respective areas of business activity; and
 - 8.160.5.4 any other factors which are deemed by the Director: Surveillance to be relevant to such determination.
- 8.160.6 After reviewing the information submitted by the member in terms of rule 8.160.5, the Director: Surveillance will advise the member, in writing, whether the member's activities in relation to JSE authorised investments other than equity securities will be regulated by the JSE under these rules or not.
- 8.160.7 Should the Director: Surveillance consider that a member's activity in JSE authorised investments other than equity securities may constitute the majority of that member's business activities, the Director: Surveillance may request such information from the member as is necessary to determine whether such activities will continue to be authorised by the JSE under these rules. The provisions of rule 8.160.6 will then be applied.
- 8.160.8 If the Director: Surveillance has determined in terms of this rule 8.160 that the JSE will not authorise the member's activities in relation to JSE authorised investments other than equity securities under these rules, the provisions of rules 8.120 and 8.130 will not apply to that member to the extent that those rules relate to such investments, as the member's activities in relation to such investments will instead be regulated under the rules of the other JSE market or the other exchange, or under the FAIS Act, whichever is applicable.

8.170 Acceptance of cash deposits

No member shall knowingly receive or accept a deposit of cash from any person exceeding an amount of R5 000. For the purpose of this rule, "cash" shall mean coin and paper money of the Republic or any other country. A member shall not receive or accept two or more cash amounts exceeding R5 000 in total with the purpose of avoiding compliance with this rule.

8.180 Client statements

- 8.180.1 A member must provide a written statement to a client which complies with rules 8.180.3 and 8.180.4.
- 8.180.2 Statements shall be provided to clients –
- 8.180.2.1 at regular intervals which may not exceed three months, unless the client consents in writing not to receive the statements because they are able to access the information made available by the member through electronic means, such as the internet, on a continuous basis; or
 - 8.180.2.2 monthly if the client's portfolio as managed by the member includes any open positions in derivative instruments; or
 - 8.180.2.3 at such intervals of less than three months as the client requests, although the member shall not be obliged to provide statements more frequently than monthly.
- 8.180.3 A client statement must contain such information as is reasonably necessary to enable the client to –
- 8.180.3.1 produce a set of financial statements;
 - 8.180.3.2 determine the composition of the JSE authorised investments comprising the portfolio held by the member or for which the member is accountable to the client and the changes thereto over the reporting period, if applicable; and
 - 8.180.3.3 determine the market value of the JSE authorised investments comprising the portfolio held by the member or for which the member is accountable to the client and the changes therein over the reporting period, if applicable.
- 8.180.4 Pursuant to rule 8.180.3, and to provide the client with the information necessary for them to review the operation of their account and make appropriate investment decisions, a client statement must contain at least the following information:
- 8.180.4.1 the quantity, description and market value of each investment comprising the portfolio held by the member or for which the member is accountable to the client, at the reporting date;
 - 8.180.4.2 the amount of funds held by the member or which have been invested by the member on behalf of the client and for which the member is accountable to the client, at the reporting date;
 - 8.180.4.3 if any of the JSE authorised investments are reflected in a foreign currency, the relevant currency exchange rate at the reporting date must also be reflected;
 - 8.180.4.4 JSE authorised investments purchased or sold during the reporting period;
 - 8.180.4.5 receipts and payments of funds during the reporting period;
 - 8.180.4.6 details of income earned and expenditure incurred during the reporting period;
 - 8.180.4.7 non-cash transactions during the reporting period, including non-cash components of corporate actions and option expiries;
 - 8.180.4.8 JSE authorised investments transferred into and out of the portfolio during the reporting period;
 - 8.180.4.9 identification of those JSE authorised investments which at the reporting date were loaned to any third party but for which the member is still accountable to the client;
 - 8.180.4.10 the quantity, description and market value of any financial products, or the amount of funds, held as collateral by the member on behalf of the client in respect of any loans made by the client;
 - 8.180.4.11 identification of those JSE authorised investments which at the reporting date were utilised to secure loans to the client or borrowings made on behalf of the client;
 - 8.180.4.12 identification of those JSE authorised investments which at the reporting date were utilised as margin in respect of open positions in any financial product;
 - 8.180.4.13 in respect of investments in derivative instruments, a description of the underlying financial product, index, commodity or thing, the expiry month and the exercise or strike price; and
 - 8.180.4.14 if the statement reflects any JSE authorised investments which are not held by the member and for which the member is not accountable to the client, it should clearly indicate that fact in relation to such JSE authorised investments.

- 8.180.5 The information referred to in rule 8.180.4 may be provided to the client in separate statements either during the reporting period or as at the reporting date.
- 8.180.6 A client statement shall be provided either to the client or to an agent or third party nominated by the client in writing.

Section 9: Client assets

9.10 Safeguarding of assets in controlled client accounts

Control of assets in controlled client accounts

- 9.10.1 A member may accept from or hold uncertificated equity securities or funds intended for the purchase of equity securities for a controlled client for safekeeping. Such equity securities or funds must be subject to the control of an authorised CSP.

Custody mandates

- 9.10.2 The arrangements made by a controlled client with a member in respect of custody of equity securities and funds must be recorded in a written mandate. The mandate must contain the minimum requirements as prescribed by the JSE. The controlled client must accept the terms of the mandate and communicate such acceptance to the member before any funds or equity securities are accepted from the controlled client. The mandate may be in electronic form and its acceptance may be expressed by electronic means, provided that if acceptance occurs otherwise than by electronic means, the expression of acceptance must be evidenced by the physical signature of the controlled client.
- 9.10.3 A member must keep a register, in a form as prescribed by the JSE, of each mandate.

Safeguarding of controlled clients' equity securities

- 9.10.4 A CSP must –
 - 9.10.4.1 keep a nominee register, in terms of criteria prescribed by directive, of the controlled client equity securities that are being held from time to time. Full details of any change must be recorded forthwith in the nominee register;
 - 9.10.4.2 pre-validate equity securities in terms of generally accepted market practice; and
 - 9.10.4.3 dematerialise equity securities that are eligible to be dematerialised in terms of the processes required by the member's CSDP.

For the purpose of this rule, dematerialisation will not be complete until notification has been received from the CSDP that the equity securities are available for electronic settlement.
- 9.10.5 The necessary details of all equity securities of a controlled client must be recorded and stored in a nominee register in the BDA system in a manner which will render it possible at any time thereafter to establish readily the identity of the person entitled to the ownership of those equity securities. Such equity securities must be held in a securities custody account with a CSDP.
- 9.10.6 All equity securities received which have been purchased on behalf of controlled clients must be allocated in the nominee register on that day, so as to establish the identity of the client entitled thereto.
- 9.10.7 A CSP that controls a nominee register must balance the equity securities daily with the securities custody account at the CSDP. A monthly certificate must be furnished by the third business day after the BDA system month end to the Director: Surveillance, confirming that –
 - 9.10.7.1 as at the BDA system month end, the equities securities balances in the nominee register have been agreed with the CSDP custody account balances or, if there are differences, explaining the reasons for such differences; and
 - 9.10.7.2 the equities securities balances in the nominee register have been reconciled daily with the CSDP custody account balances and all the differences have been resolved; and
 - 9.10.7.3 that no circumstances have arisen that have resulted in the improper use of controlled clients' equity securities.
- 9.10.8 Where certificated equity securities are received from a controlled client, a dated and signed receipt recording the name, quantity, certificate number and registered holder of the equity security must be issued forthwith.

- 9.10.9 Equity securities belonging to a controlled client which are held as collateral in respect of a loan of funds or securities to the client must be held in the manner set out in this rule 9.10, and –
- 9.10.9.1 a CSP must record in the nominee register those equity securities which are held as collateral for a loan. Full details of any change in the equity securities held must be recorded forthwith in the nominee register;
- 9.10.9.2 when equity securities of a client are designated in a nominee register as collateral, the client may be required by the member to lodge with it a pledge in such form as may be determined by the member; and
- 9.10.9.3 a member must keep a record or register of the pledges so held.

Safeguarding of controlled clients' funds

- 9.10.10 Funds received in respect of or arising from the operation of an account for a controlled client which are not paid over to the client upon receipt of such funds, must be deposited for the account and in the name of the client with JSET.
- 9.10.11 The difference between the total of the funds balances on all controlled client accounts in the books of account of the member as at the close of business on the preceding business day and the total amount held by JSET on behalf of the clients of such member as at the same date must be paid to or received from JSET forthwith.

9.20 Safeguarding of clients' certificated equity securities

- 9.20.1 A member may accept certificated equity securities from a client for safekeeping.
- 9.20.2 The arrangements made by a client with a member for the safekeeping of certificated equity securities must be recorded in a written mandate. The mandate must contain the minimum requirements prescribed by the JSE and the client must accept the terms of the mandate and communicate such acceptance to the member before any certificated equity securities are accepted for such purpose. The mandate may be in electronic form and its acceptance may be expressed by electronic means, provided that if acceptance occurs otherwise than by electronic means, the expression of acceptance must be evidenced by the physical signature of the client.
- 9.20.3 The client must indicate in the mandate whether the certificated equity securities will be registered in his own name or in the name of a nominee company of the member or in the name of any other person other than the member.
- 9.20.4 A member must keep a register of each mandate.
- 9.20.5 A member must keep a record of the certificated equity securities that are being held from time to time in terms of the mandate. Full details of any change in the certificated equity securities held on behalf of a client must be recorded forthwith.
- 9.20.6 Certificated equity securities held in safekeeping for a client must be marked or the necessary details thereof recorded and stored in the BDA system in a manner which will render it possible at any time thereafter to establish readily the identity of the person entitled to the ownership of those securities.
- 9.20.7 Certificated equity securities held in safekeeping by a member must be safeguarded in a manner which protects such securities from unauthorised access and misappropriation.
- 9.20.8 No transfer deed may be attached to any certificated equity securities retained in safekeeping until such securities are prepared for disposal on behalf of the client or for delivery to the client. The name of the issuer of the equity security and the number of shares involved must be inserted on the transfer deed before the registered owner of the equity security signs it. A member may not retain a blank signed transfer deed in respect of certificated equity securities held in safekeeping.
- 9.20.9 A member that holds certificated equity securities in safekeeping must balance the securities monthly with the safekeeping records. A certificate to that effect must be furnished to the Director: Surveillance on or before the 15th day of the month following the month to which the certificate relates.
- 9.20.10 A member which retains certificated equity securities in safekeeping must satisfy the JSE on an annual basis that they hold adequate insurance cover relative to the value of the securities so held against losses resulting from the negligence, dishonesty or fraud of any person in the employ of such member.
- 9.20.11 Where certificated equity securities are received from a client for retention in safekeeping, a signed receipt recording the name of the equity security, number of securities and certificate number in respect of the securities so received must be issued forthwith.

- 9.20.12 Certificated equity securities belonging to a client which are held as collateral in respect of a loan of funds or securities to the client must be held in the manner set out in this rule 9.20, and –
- 9.20.12.1 a member must record in its safekeeping records those certificated equity securities which are held as collateral for a loan. Full details of any change in the certificated equity securities held must be recorded forthwith in the safekeeping records;
- 9.20.12.2 when certificated equity securities of a client are designated in the member's records as collateral, the client may be required by the member to lodge with it a pledge in such form as may be determined by the member; and
- 9.20.12.3 a member must keep a record or register of the pledges so held.

9.30 Safeguarding of client assets other than equity securities

- 9.30.1 A member may accept client assets other than equity securities from a client for safekeeping or may otherwise assume responsibility for accounting to a client for such assets.
- 9.30.2 The arrangements made by a client with a member for the safekeeping of client assets other than equity securities must be recorded in a written mandate. The mandate must contain the minimum requirements prescribed by the JSE and the client must accept the terms of the mandate and communicate such acceptance to the member before any client assets other than equity securities are accepted for such purpose. The mandate may be in electronic form and its acceptance may be expressed by electronic means, provided that if acceptance occurs otherwise than by electronic means, the expression of acceptance must be evidenced by the physical signature of the client.
- 9.30.3 A member who is responsible for safeguarding client assets other than equity securities must comply with the following requirements –
- 9.30.3.1 the relevant assets must be segregated from the member's own assets at all times. If the assets are held in an account maintained by another financial services provider, including a foreign financial services provider, the account shall either be opened in the client's own name or, if the member opens a single account in respect of transactions executed on behalf of more than one client, the member shall procure that the account is clearly designated in the records of the relevant financial services provider as being an account utilised for investments made by the member on behalf of its clients;
- 9.30.3.2 a member must maintain proper accounting records in respect of all such assets purchased, sold or held on behalf of clients. These records must be updated forthwith in respect of any transactions in respect of such assets and must clearly identify the beneficial owners of all such assets at all times; and
- 9.30.3.3 a member must balance its clients' holdings in such assets, as reflected in the member's records, with the accounts maintained by the other financial services providers who hold such assets, on a monthly basis. Any differences identified between the respective records must be rectified forthwith.
- 9.30.4 Funds held by a member on behalf of a client intended for the purchase of JSE authorised investments other than equity securities, which have not been remitted by the member to a third party in order to effect such purchases, must be deposited for the account and in the name of the client with JSET for value on the date of receipt of such funds.
- 9.30.5 A member who is responsible for safeguarding client assets other than equity securities must implement and maintain an effective system of internal controls to protect such assets and prevent unauthorised access thereto.

9.40 Safeguarding of other client funds

- 9.40.1 A member may from time to time hold client funds which relate to the regulated services provided by the member but which are not intended for the purchase of JSE authorised investments or are not required to be utilised at the time to meet an obligation of the client to the member which the member in turn owes to a third party.
- 9.40.2 Client funds held by a member in terms of rule 9.40.1 must be deposited for the account and in the name of the client with JSET for value on the date of receipt of such funds.

- 9.40.3 For illustrative purposes, client funds which fall within the scope of rule 9.40.1 includes margin or cash collateral obtained by a member from a client in excess of the margin or collateral which the member is required to provide to a third party in relation to transactions or loans in JSE authorised investments executed on behalf of the client.

9.50 Retention of client funds in JSET

- 9.50.1 Client funds may only be deposited in JSET either –
- 9.50.1.1 in the circumstances provided for in rules 9.10, 9.30 and 9.40; or
 - 9.50.1.2 if the member is holding funds intended for the purchase of any financial products other than JSE authorised investments.
- 9.50.2 Funds held by a member or deposited with JSET in terms of rule 9.50.1.2 are not subject to the rules and directives or regulation of the JSE.
- 9.50.3 Client funds deposited by the member with JSET in terms of rule 9.50.1.1 which are no longer required to be held by the member for any of the purposes set out in rules 9.10, 9.30 and 9.40, must be returned to the client forthwith, unless the client instructs the member to utilise such funds for the purpose of money broking transactions in terms of rule 8.150 or to purchase any financial products other than JSE authorised investments.
- 9.50.4 Client funds may not be deposited with JSET for the sole purpose of earning interest.

9.60 Separation of client assets

- 9.60.1 A member must provide for –
- 9.60.1.1 the separation and identification of the assets of a client and the assets of the member; and
 - 9.60.1.2 the proper accounting for the assets of each client.
- 9.60.2 A member may not utilise the assets of clients to finance its business activities.
- 9.60.3 A member must open and maintain one or more trust bank accounts as prescribed in section 27 of the Act to ensure that any funds received by the member from a client are segregated from the member's own funds from the time that such funds are deposited.

9.70 Borrowing or lending of client assets

A member may not borrow or lend any client assets.

9.80 Compliance with Exchange Control Regulations

A member must ensure that in all its dealings with funds or equity securities belonging to controlled clients, it adheres to the Exchange Control Regulations as determined by the South African Reserve Bank and complies with any directives regarding the operation of non-resident client accounts.

Section 10: Clearing and settlement

10.10 Applicability of Section 10

Section 10 shall apply to the clearing of transactions in equity securities and the electronic settlement of such transactions through STRATE.

10.20 Settlement assurance

- 10.20.1 A member must ensure settlement of all transactions in equity securities effected by it through the central order book of the JSE equities trading system.
- 10.20.2 Subject to rule 10.20.3, a member must also ensure settlement of all reported transactions in equity securities entered into by it as agent on behalf of a client or as principal with a client.
- 10.20.3 Rule 10.20.2 shall not apply to reported transactions where either one or two members are involved and where the clients who are parties to such reported transactions have, between themselves, concluded the terms of

the transaction and instructed the member or members to report the transaction through the JSE equities trading system. A client will have no recourse against a member in respect of such transactions.

- 10.20.4 Except in the circumstances set out in rule 10.20.3, any action by a client in respect of a transaction in equity securities will be against the member which effected the transaction on the instruction of such client, and not against any other member or client of such member.
- 10.20.5 A member shall make its clients aware of their settlement obligations in terms of the rules. However, if a client is not aware of such settlement obligations, he nevertheless remains bound by the relevant rules.

10.30 Settlement principles for transactions in equity securities

- 10.30.1 All transactions in equity securities must be settled electronically through STRATE in accordance with the following principles -
 - 10.30.1.1 contract note by contract note;
 - 10.30.1.2 between the ultimate buyer and the ultimate seller;
 - 10.30.1.3 on a rolling and contractual basis, whereby transactions become contractually due to be settled a prescribed number of days after the trade date; and
 - 10.30.1.4 on a net basis per member and per equity security, whereby individual contract notes are consolidated and offset into net amounts of securities and funds for settlement.
- 10.30.2 In addition to rule 10.30.1, where ring-fencing of reported transactions occurs -
 - 10.30.2.1 multiple settlement groups per equity security, per settlement date, per trade type will result;
 - 10.30.2.2 a contract note per trade type will result, with each contract note settling in a settlement group per trade type; and
 - 10.30.2.3 transactions which are ring-fenced may be linked to other transactions to indicate a settlement dependency.

10.40 Settlement Authority

- 10.40.1 The Settlement Authority shall -
 - 10.40.1.1 manage the settlement of transactions in equity securities effected through the central order book of the JSE equities trading system and the risks associated with such settlement to ensure that the principles set out in rules 10.20 and 10.30 are adhered to;
 - 10.40.1.2 manage the settlement of transactions in equity securities reported to the JSE equities trading system where ring-fencing has occurred, and the risks associated with such settlement; and
 - 10.40.1.3 in exceptional circumstances, extend the times referred to in rules 10.60 to 10.110.
- 10.40.2 In order to perform its functions in terms of rule 10.40.1 the Settlement Authority may -
 - 10.40.2.1 monitor the settlement obligations of members and their clients;
 - 10.40.2.2 ensure that the settlement obligations of members are met on the settlement date;
 - 10.40.2.3 monitor uncommitted settlements and take appropriate action in respect of such settlements;
 - 10.40.2.4 take action when the settlement of a transaction in equity securities is unlikely to take place on settlement date;
 - 10.40.2.5 buy and sell equity securities through the JSE equities trading system to meet any obligations arising from the management of the settlement process and the risks associated with such process;
 - 10.40.2.6 borrow, as agent, on behalf of a member as undisclosed principal, equity securities from third parties to facilitate the management of the settlement process and the risks associated with such process;
 - 10.40.2.7 levy fees, as prescribed by directive, on members for the loan of equity securities to members in order to facilitate the settlement process;

- 10.40.2.8 impose penalties, as prescribed by directive, on members for any action or omission by a member which is potentially disruptive and/or has the effect of disrupting the settlement process and the functions of the Settlement Authority;
- 10.40.2.9 invite or instruct a member or a client (via the member) to close a purchase or sale transaction at a price and on the basis set out in rule 10.110; and
- 10.40.2.10 manage the settlement of reported transactions where ring-fencing has occurred.

10.50 General pre-trade settlement requirements

- 10.50.1 A client may only place an order with a member to transact in equity securities if –
 - 10.50.1.1 in the case of a non-controlled client, the client has appointed a CSDP; and
 - 10.50.1.2 in respect of a sell order –
 - 10.50.1.2.1 the equity securities to be sold are held in uncertificated form by the member's CSDP, in the case of a controlled client, or by the client's CSDP, in the case of a non-controlled client; or
 - 10.50.1.2.2 a controlled client is able to evidence to a member that they own the equity securities to be sold in uncertificated form and that such securities will be available for settlement on settlement date; or
 - 10.50.1.2.3 another transaction has been concluded which provides for an equivalent amount of equity securities being available for settlement on settlement date; or
 - 10.50.1.2.4 a satisfactory borrowing arrangement is in place which provides for an equivalent amount of equity securities being available for settlement on settlement date.
- 10.50.2 A member may only enter an order on the JSE equities trading system or report a trade to the JSE equities trading system if the member has appointed a CSDP, has SWIFT connectivity as prescribed by directive and has taken reasonable steps to satisfy itself that –
 - 10.50.2.1 if the client is a non-controlled client, the client has appointed a CSDP and the appointed CSDP has confirmed, in the manner determined by the JSE, that the details of that client held by the CSDP correspond with and match the details of the client held by the member in the BDA system; and
 - 10.50.2.2 in respect of a sell order –
 - 10.50.2.2.1 the equity securities to be sold are held in uncertificated form by the member's CSDP, in the case of a controlled client or proprietary transaction, or by the client's CSDP, in the case of a non-controlled client transaction; or
 - 10.50.2.2.2 a controlled client has evidenced to a member that they own the equity securities to be sold in uncertificated form and that such securities will be available for settlement on settlement date; or
 - 10.50.2.2.3 another transaction has been concluded which provides for an equivalent amount of equity securities being available for settlement on settlement date; or
 - 10.50.2.2.4 a satisfactory borrowing arrangement is in place which provides for an equivalent amount of equity securities being available for settlement on settlement date.

10.60 General settlement provisions

- 10.60.1 A transaction conducted in equity securities by a member shall –
 - 10.60.1.1 be allocated to a client or a member's proprietary account on the trade date;
 - 10.60.1.2 be communicated to a client by no later than 12h00 on the business day after the original trade;
 - 10.60.1.3 in the absence of notification from the client to the contrary by no later than 12h00 on the second business day after the trade date, be deemed to have been accepted by the client;

- 10.60.1.4 be committed to by the CSDP of the member or client by no later than 12h00 on the third business day after the trade date; and
- 10.60.1.5 be settled on the fifth business day after the trade date in accordance with the settlement timetable as prescribed by directive.
- 10.60.2 Notwithstanding rules 10.60.1.1 to 10.60.1.3, allocation corrections may not be made after 16h00 on the second business day after the trade date. Any corrections shall be communicated to, and accepted by the client within sufficient time to allow for the CSDP of the client to comply with rule 10.60.1.4.
- 10.60.3 If a CSDP of a member has not committed to settle a transaction by 16h00 on the fourth business day after the trade date or the Settlement Authority has otherwise determined, by that time, that a member will not be able to settle a transaction, the transaction shall be a failed trade and shall be dealt with in terms of the failed trade procedures as set out in rule 10.110.
- 10.60.4 Notwithstanding the provisions of rule 10.60.3, if –
 - 10.60.4.1 a member advises the Settlement Authority at any stage that the CSDP of the member or the CSDP of a non-controlled client of the member will not be in a position to settle a transaction on settlement date; and
 - 10.60.4.2 the Settlement Authority is not able to procure that the settlement of the transaction will take place on settlement date or to close the transaction in terms of rule 10.40.2.9;
 the transaction shall be declared a failed trade by no later than 09h00 on the next business day and shall be dealt with in terms of the failed trade procedures as set out in rule 10.110.

10.70 Non-controlled client settlement obligations

- 10.70.1 The allocation of a transaction to a non-controlled client will result in the member's obligation to settle the transaction being substituted with the client's obligation to settle the transaction through the client's CSDP.
- 10.70.2 A non-controlled client shall, by no later than 12h00 on the second business day after the trade date, give instructions to his CSDP to settle the transaction. In the event of the correction of an allocation of a trade which results in a new confirmation of the trade by the member, the instruction to the CSDP to settle the transaction must be given within sufficient time to allow for the CSDP of such client to commit to settle in accordance with rule 10.70.3.
- 10.70.3 A non-controlled client shall endeavour to ensure and procure that his CSDP has committed to settle the transaction on his behalf by no later than 12h00 on the third business day after the trade date.
- 10.70.4 If a non-controlled client fails to comply with rule 10.70.3, or the member is advised or otherwise becomes aware, at any stage, that a non-controlled client is unable to settle a transaction, the member may proceed in the manner set out in rule 10.100.
- 10.70.5 In the absence of a commitment from the CSDP of a non-controlled client after 12h00 on the third business day after the trade date, the non-controlled client shall nevertheless ensure that his CSDP commits to settle the transaction by 09h00 on the fourth business day after the trade date.
- 10.70.6 If a non-controlled client fails to meet his obligations in terms of rule 10.70.5, which shall include any indication by the non-controlled client, at any stage, that he is unable to settle a transaction, the member will, by no later than 10h00 on the fourth business day after the trade date, assume the obligation to settle the transaction through the member's CSDP.

10.80 Controlled client settlement obligations

- 10.80.1 A controlled client shall, by no later than 16h00 on the second business day after the trade date, ensure that the member which effected the transaction on behalf of such client will be in a position to settle the transaction on settlement date, either by providing the equity securities or funds required to settle the transaction to the member or by entering into an arrangement with the member to facilitate settlement of the transaction.
- 10.80.2 If a controlled client fails to comply with rule 10.80.1, or the member is advised or otherwise becomes aware, at any stage, that a controlled client is unable to settle a transaction, the member may proceed in the manner set out in rule 10.100.

10.90 Member settlement obligations

- 10.90.1 A member shall at all times endeavour to ensure that the settlement of transactions in equity securities effected by the member takes place.
- 10.90.2 The settlement officer of a member must immediately inform the Settlement Authority when any transaction in equity securities is unlikely to settle.
- 10.90.3 No member may, on settlement date, alter or stop payment in respect of a STRATE settlement instruction.
- 10.90.4 If a member employs or retains a CSP or a settlement agent to perform its obligations or to take any action in terms of the rules, such member shall ensure that the obligations performed or actions taken are in accordance with the rules.
- 10.90.5 A member shall, by no later than 12h00 on the third business day after the trade date, ensure that the CSDP of the member has committed to settle the transactions in respect of controlled accounts.
- 10.90.6 If a non-controlled client fails to comply with rule 10.70.3, or the member is advised or otherwise becomes aware, at any stage, that a non-controlled client is unable to settle a transaction, the member shall, by no later than 10h00 on the fourth business day after the trade date, assume the obligation to settle the relevant transaction.
- 10.90.7 A member shall, by no later than 12h00 on the fourth business day after the trade date, ensure that the CSDP of the member commits to settle any transactions, in respect of non-controlled clients, that the member is obliged to settle in terms of rule 10.90.6.
- 10.90.8 If a client, at any stage, advises a member, or the member otherwise becomes aware, that the client is not able to settle a transaction, the member shall endeavour to enter into an arrangement to ensure that the transaction settles on settlement date. If the member is unable to enter into such arrangement, the member shall immediately notify the Settlement Authority.
- 10.90.9 If the Settlement Authority receives notification in terms of rule 10.90.8 and is able to procure the settlement of the transaction by means of the borrowing of equity securities or funds, as the case may be, then the member shall by no later than the close of business on the next business day –
 - 10.90.9.1 in respect of a sale transaction, buy such securities either for the account of the relevant client or for the member's own account; or
 - 10.90.9.2 in respect of a purchase transaction, sell such securities either for the account of the relevant client or for the member's own account;
 in order to ensure the return of the securities or funds to the Settlement Authority.
- 10.90.10 If the Settlement Authority receives notification in terms of rule 10.90.8, and the Settlement Authority is either able to close the transaction in terms of rule 10.40.2.9 or declares the transaction to be a failed trade in terms of rule 10.60.3, the member shall act in accordance with the instructions received from the Settlement Authority in terms of rule 10.110.
- 10.90.11 A member shall not use a client's equity securities to settle the obligations of –
 - 10.90.11.1 another client; or
 - 10.90.11.2 a proprietary position.

10.100 Breaches of client settlement obligations

- 10.100.1 If a client breaches his settlement obligations as set out in the rules, subject to any agreement with the client or notification to the client to the contrary, and to any action taken by the Settlement Authority in terms of rule 10.40.2.9 or the failed trade procedures set out rule 10.110, the member may –
 - 10.100.1.1 in respect of a sale transaction, buy such equity securities for the account of the client and claim the difference between the selling consideration of such securities and the purchase consideration for such securities, including interest;
 - 10.100.1.2 in respect of a purchase transaction, sell such equity securities for the account of the client and claim the difference between the purchase consideration of such securities and the selling consideration for such securities, including interest; and
 - 10.100.1.3 sell for the account of such client–

10.100.1.3.1 so many of any other equity securities belonging to such client and held by or in the custody of such member; or

10.100.1.3.2 so many of any other equity securities due to be received by the member on the relevant settlement date in respect of any purchase transaction previously entered into by such client with or through the member,

as is necessary to realise an amount equal to the amount still owing by the client in respect of such securities, after the sale or purchase of the equity securities in terms of rules 10.100.1.1 and 10.100.1.2, as the case may be.

10.100.2 If a member acts in accordance with rule 10.100.1, the timing of the relevant purchases or sales as referred to in rules 10.100.1.1 to 10.100.1.3 and the price at which such transactions are executed should take cognisance of –

10.100.2.1 the time at which the breach by the client was or should have been identified by the member;

10.100.2.2 any agreement with or notification to the client with regard to the timing of such transactions; and

10.100.2.3 the market conditions in relation to the relevant equity security;

bearing in mind the overriding principle that the client is responsible for meeting his settlement obligations and that if he does not meet those obligations, the member may take reasonable action to mitigate its risk arising out of such a breach of obligations.

10.100.3 The client shall be liable for any losses, costs and charges incurred, or charges imposed, by the member in relation to the original transaction which was the subject of the breach and any transactions executed in terms of rule 10.100.1.

10.110 Failed trades

10.110.1 A failed trade shall be dealt with in the following manner –

10.110.1.1 the Settlement Authority shall match a failed trade against an equal but opposite transaction represented by a single contract note which is a terminating transaction;

10.110.1.2 if there is no transaction, or more than one transaction, of the type set out in rule 10.110.1.1, the Settlement Authority shall, in terms of the failed trade procedures as laid down, select such transaction or transactions represented by one or more contract notes the failing of which will be least disruptive to members and clients;

10.110.1.3 the transaction selected in terms of rules 10.110.1.1 or 10.110.1.2 shall be closed at a price to be determined by the Settlement Authority, in consultation with the Market Controller. This price may differ from the original trade price and will include compensation for the party whose transaction is being closed. The compensation shall be determined in accordance with the methodology set out in the directives. The difference shall be due from the member who effected the failed trade to the CSDP of the parties whose trades have been closed by the Settlement Authority. The settlement of such amount forms part of the settlement group which contains the failed trade.

10.110.2 This rule is binding on members and clients and applies to an agent acting on behalf of a client.

10.120 Borrowing of equity securities to prevent a trade from failing

10.120.1 If a member –

10.120.1.1 is not able to comply with rule 10.90.7 in respect of a sale transaction; or

10.120.1.2 at any time notifies the Settlement Authority, or the Settlement Authority becomes aware, that the member will not be able to settle a sale transaction on settlement date,

the Settlement Authority will endeavour to borrow, as agent, on behalf of the member as undisclosed principal, the equity securities required by the member to comply with its obligations to settle the transaction.

10.120.2 The arrangement whereby the Settlement Authority facilitates the borrowing of equity securities on behalf of the member to enable the member to settle a transaction shall be on the terms and conditions set out in the directives.

- 10.120.3 A client shall be responsible for the payment of any costs that may be incurred by the member as a result of the member having borrowed the equity securities to effect settlement (including costs related to manufactured dividends and other similar costs), and any penalty imposed on the member by the Settlement Authority, where the client failed to deliver the equity securities required to settle the transaction.

10.130 Lending of funds to prevent a trade from failing

- 10.130.1 If a member –
- 10.130.1.1 is not able to comply with rule 10.90.7 in respect of a purchase transaction; or
 - 10.130.1.2 at any time notifies the Settlement Authority, or the Settlement Authority becomes aware, that the member will not be able to settle a purchase transaction on settlement date,
- the Settlement Authority may, on the terms and conditions set out in the directives, lend to the member the funds required by the member to comply with its obligations to settle the transaction.
- 10.130.2 A client shall be responsible for the payment of any costs that may be incurred by the member as a result of the member having borrowed the funds to effect settlement, and any penalty imposed on the member by the Settlement Authority, where the client failed to pay the funds required to settle the transaction.

10.140 Margin on transactions in equity securities

- 10.140.1 A member may be required to provide margin to the JSE as contemplated in rule 10.140.2 in respect of unsettled transactions in equity securities.
- 10.140.2 Margin shall be payable by a member before 12h00 on the fourth business day after the trade –
- 10.140.2.1 in respect of a non-controlled client transaction where, by end of day on the third business day after the trade date, the CSDP of the non-controlled client has not committed to settle the transaction on behalf of that client;
 - 10.140.2.2 in respect of a controlled client sale transaction where, by end of day on the third business day after the trade date, the controlled client –
 - 10.140.2.2.1 does not have sufficient equity securities in the custody of the member or the member's CSP for the transaction to settle on settlement date;
 - 10.140.2.2.2 has not entered into a securities borrowing arrangement to facilitate settlement of the sale on settlement date, as reflected on the BDA system; or
 - 10.140.2.2.3 has not concluded a purchase transaction which is due to settle on or before the settlement date of the sale and which will provide sufficient equity securities for the sale to settle on settlement date;
 - 10.140.2.3 in respect of a controlled client purchase transaction where, by end of day on the third business day after the trade date, the controlled client –
 - 10.140.2.3.1 does not have sufficient funds in the custody of the member or the member's CSP for the transaction to settle on settlement date; or
 - 10.140.2.3.2 has not concluded a sale transaction which is due to settle on or before the settlement date of the purchase and which will provide sufficient funds for the purchase to settle on settlement date;
 - 10.140.2.4 in respect of a sale transaction for the member's own account where, by end of day on the third business day after the trade date, the member –
 - 10.140.2.4.1 does not have sufficient equity securities available for the transaction to settle on settlement date;
 - 10.140.2.4.2 has not entered into a securities borrowing arrangement to facilitate settlement of the sale on settlement date, as reflected on the BDA system; or
 - 10.140.2.4.3 has not concluded a purchase transaction which is due to settle on or before the settlement date of the sale and which will provide sufficient equity securities for the sale to settle on settlement date;

- 10.140.2.5 in respect of a purchase transaction for the member's own account where the member has not concluded a sale transaction due to settle on the settlement date of the purchase which will provide sufficient funds for the purchase to settle on settlement date.
- 10.140.3 Margin shall be calculated in accordance with principles set out in the directives and shall be payable and repayable on such dates as may be prescribed in the directives.
- 10.140.4 To the extent that margin payable by a member relates to transactions on a client's account, the member may recover such margin from the client. The member shall refund the client forthwith upon the repayment of margin to the member by the JSE.

10.150 Management of corporate action claims

All claims in respect of corporate actions, where the Settlement Authority has instituted lending arrangements or failed trade procedures, shall be managed by the Settlement Authority in terms of rules 10.110.1.3, 10.120.3 and the conditions set out in the directives.

10.160 Penalties and fees

- 10.160.1 The Settlement Authority may –
- 10.160.1.1 impose a penalty on a member which fails to effect instructions or settlement in accordance with the settlement timetable as prescribed by directive; and
 - 10.160.1.2 charge any member the fees associated with settlement of equity securities as prescribed by directive.
- 10.160.2 The penalty referred to in rule 10.160.1.1 shall be levied in accordance with a schedule as prescribed by directive.
- 10.160.3 Payment of the penalty imposed or fees charged in terms of rule 10.160.1 shall be made to the Settlement Authority within five business days of notification.
- 10.160.4 A client shall be responsible for the payment of any penalty imposed on the member by the Settlement Authority where the client was at fault for causing a failed trade.

Section 11: Complaints and disputes

Complaints

11.10 Client complaints

Every member must establish and maintain appropriate procedures for the handling of any client complaint in relation to the provision of regulated services, in which the client alleges that he has suffered, or is likely to suffer, financial prejudice as a result of the member –

- 11.10.1 contravening or failing to comply with any instruction given by the client, or any agreement or mandate entered into with the client;
- 11.10.2 contravening or failing to comply with the rules and the directives;
- 11.10.3 acting dishonestly, negligently or recklessly; or
- 11.10.4 treating the client unfairly.

11.20 Internal complaint handling procedures

- 11.20.1 A member's internal complaint handling procedures must provide for –
- 11.20.1.1 the receipt of oral or written complaints;
 - 11.20.1.2 the appropriate investigation of complaints;
 - 11.20.1.3 an appropriate decision-making process in relation to the response to a client complaint;
 - 11.20.1.4 notification of the decision to the client; and
 - 11.20.1.5 the recording of complaints.

- 11.20.2 A member's internal complaint handling procedures must be designed to ensure that –
- 11.20.2.1 all complaints are handled fairly, effectively and promptly;
 - 11.20.2.2 recurring or systemic problems are identified, investigated and remedied;
 - 11.20.2.3 the number of unresolved complaints referred to the JSE in terms of the rule 11.60 are minimised;
 - 11.20.2.4 complaints are investigated by an employee of sufficient competence who, where appropriate, was not directly involved in the matter which is the subject of a complaint;
 - 11.20.2.5 the employee responsible for the resolution of complaints has the necessary authority to resolve complaints or has ready access to an employee who has the necessary authority; and
 - 11.20.2.6 relevant employees are aware of the member's internal complaint handling procedures and comply with them.

11.30 Timeous response to complaints

A member must respond to a client complaint within 4 weeks of receiving the complaint or, within such period, provide the complainant with an appropriate explanation as to why the member is not, at that time, in a position to respond and must indicate when the member will respond.

11.40 Redress

- 11.40.1 Where a member decides that redress in the form of compensation is appropriate in resolving a complaint, the member must provide the complainant with fair compensation and must comply with any offer of compensation made by it which the complainant accepts.
- 11.40.2 Where a member decides that redress in a form other than compensation is appropriate in resolving a complaint, the member must provide the redress as soon as practicable.

11.50 Recording of complaints

- 11.50.1 A member must maintain a record of all client complaints. The record of each complaint must include –
- 11.50.1.1 the identity of the complainant;
 - 11.50.1.2 the substance of the complaint; and
 - 11.50.1.3 all correspondence in relation to the complaint.
- 11.50.2 The records referred to in rule 11.50.1 must be retained by the member for a period of 5 years from the date of receipt of the complaint.

11.60 Unresolved client complaints

- 11.60.1 A client complaint will be deemed to be unresolved if the complainant is not satisfied with the resolution of the complaint proposed by the member.
- 11.60.2 A complainant may lodge an unresolved complaint, in writing, with the Director: Surveillance, giving full particulars of the matter concerned.
- 11.60.3 In order for an unresolved complaint to be considered by the JSE Surveillance Department, the complaint must be lodged with the Director: Surveillance within 4 weeks of the receipt by the complainant of the member's response referred to in rule 11.60.1 and within 6 months of the conduct by the member giving rise to the complaint.
- 11.60.4 An unresolved complaint which is lodged subsequent to the period referred to in rule 11.60.3 will be considered, provided that failure to lodge the complaint within the relevant period was through no fault of the client.
- 11.60.5 The JSE Surveillance Department may request the member and the complainant to provide copies of all relevant correspondence and documentation that is required to review the complaint.
- 11.60.6 The JSE Surveillance Department will endeavour to facilitate a resolution of the complaint between the member and the complainant.

- 11.60.7 If the JSE Surveillance Department is unable to facilitate a resolution of the complaint within 4 weeks of lodgement of the complaint with it, the Director: Surveillance will refer the unresolved complaint to the Company Secretary of the JSE to be dealt with in terms of the dispute resolution rules.

Disputes

11.70 Applicability of dispute resolution rules

- 11.70.1 Rules 11.70 to 11.120 ("the dispute resolution rules") are intended to facilitate the equitable and expeditious settlement of disputes that –
- 11.70.1.1 a client has with a member, in respect of an unresolved complaint;
 - 11.70.1.2 a member has with another member, in respect of transactions in equity securities; or
 - 11.70.1.3 a member has with a client, in respect of transactions in equity securities.
- 11.70.2 The dispute resolution rules only apply –
- 11.70.2.1 where the amount in dispute is in excess of R2 000;
 - 11.70.2.2 where the dispute is not the subject of existing litigation;
 - 11.70.2.3 in the case of a dispute that a client has with a member, where the amount in dispute either does not exceed R500 000 or, where the amount in dispute exceeds R500 000, if the consent of both parties to proceed has been obtained;
 - 11.70.2.4 in the case of a dispute that a member has with another member, if the members are able to evidence to the satisfaction of the Director: Surveillance that reasonable endeavours have been made by the said members to resolve the dispute, and the consent of both parties to proceed has been obtained;
 - 11.70.2.5 in the case of a dispute that a member has with a client, if the consent of the client to proceed has been obtained.

11.80 Reporting of a dispute

- 11.80.1 An unresolved client complaint that the JSE Surveillance Department is not able to resolve in terms of rule 11.60 will be reported as a dispute by the Director: Surveillance to the Company Secretary of the JSE if the client elects to follow the dispute resolution process.
- 11.80.2 A dispute between two members in respect of transactions in equity securities must be reported in writing, by either member, to the Company Secretary of the JSE within 1 week of the circumstance giving rise to the dispute having arisen.
- 11.80.3 A dispute that a member has with a client in respect of transactions in equity securities must be reported, in writing, by the member, to the Company Secretary of the JSE within 6 months of the circumstance giving rise to the dispute having arisen.
- 11.80.4 The Company Secretary of the JSE may, at any time, request any of the parties to a dispute to furnish him with such further information relating to the dispute as may be required.

11.90 Declaration of a dispute

A dispute reported in terms of rule 11.80 will, subject to criteria set out in rule 11.70.2 having been met, be declared a dispute by the Company Secretary and will be referred by the Company Secretary to a duly appointed ombud for consideration.

11.100 Consideration by an ombud

- 11.100.1 The JSE will appoint an ombud to consider a dispute, who is a retired judge of the High Court of South Africa or a Senior Counsel.
- 11.100.2 Within 3 weeks of the dispute having been referred to the ombud for consideration, the claimant must set out the subject matter of the claim in a written statement, including all the material facts, and furnish this statement, along with all relevant documentation upon which the claim is based, to the ombud.
- 11.100.3 The ombud may require the claimant to expand upon his statement of claim or provide further evidence or particulars as he deems necessary within such reasonable time as is specified by the ombud.

- 11.100.4 The other party to the dispute, hereafter referred to as the defendant, must be provided with a copy of the written statement of claim by the ombud. The defendant will furnish the ombud with his written response to the statement of claim within 3 weeks of having received such. In addition to the defendant's written response, the defendant must attach thereto all other evidence relating to the dispute.
- 11.100.5 The ombud may require the defendant to expand upon his response or provide further evidence or particulars as he deems necessary within such reasonable time as specified by the ombud and may require the claimant to provide a written reply to the defendant's response within such reasonable time as he may specify.
- 11.100.6 The ombud may at his discretion decide that a number of disputes based on similar occurrences or similar facts be consolidated and treated as a single dispute.
- 11.100.7 After ascertaining the parties' availability, the ombud will furnish the parties with written notification of the date on which the dispute will be heard.
- 11.100.8 The dispute resolution proceedings will be conducted without legal representation of any of the parties, unless the ombud in his sole discretion decides otherwise.
- 11.100.9 The ombud, in reaching a decision, may consult with any third party regarding any issue relating to the dispute. The ombud has the discretion to call upon any third party to participate in the dispute resolution proceedings.
- 11.100.10 The ombud will, after having considered the information as presented to him by the parties and such other information as he may request, make his decision within 3 weeks of having considered the dispute. The ombud need not give reasons for his decision.
- 11.100.11 The ombud's decision will be furnished to the parties in writing and is final and binding on both parties to the dispute. The ombud's decision is not subject to appeal.
- 11.100.12 The ombud is not obliged to provide a ruling on a dispute if he is of the view that the dispute is of such a complex nature that it cannot be resolved expeditiously by means of the dispute resolution process and can only be properly considered by a court of law.
- 11.100.13 Any decision made in terms of rule 11.100.11 must be complied with by the party against whom the decision is made within one week of the decision having been made by the ombud.
- 11.100.14 If a member against whom the ombud has made an adverse finding is unable to satisfy his obligations, as provided for in the ombud's decision, within the prescribed period, this member, after the JSE has considered the reasons for its inability to satisfy the ombud's decision, may be declared a defaulter by the JSE. The claimant will be permitted to lodge a claim against the JSE Guarantee Fund for the fulfilment of the member's obligations in terms of the ombud's decision. The JSE will have a subsequent claim against the member for the amount of the member's obligations to the claimant, as provided for in the ombud's decision, which the JSE Guarantee Fund has satisfied.
- 11.100.15 Unless the JSE, the ombud and the parties to the dispute agree otherwise, the identity of the parties, the nature of the evidence and the details of the ombud's deliberations and finding, and all other information pertaining to the proceedings, will be kept confidential by all parties thereto, unless disclosure by the JSE is required by law.

11.110 Costs of the proceedings

- 11.110.1 For the purpose of this rule, the costs of the proceedings means the fee of the ombud, the cost of the venue and any other incidental administrative costs incurred by the JSE relating to the consideration of a dispute by an ombud.
- 11.110.2 The parties to any dispute resolution proceeding in terms of rule 11.100 are responsible for the costs of the proceedings and may be required to pay to the JSE, before the proceedings commence, such amount as the JSE may determine to cover these costs.
- 11.110.3 If the proceedings continue for a period longer than anticipated, the JSE may at any time during the proceedings require each party to pay an additional amount to cover any further expected costs of the proceedings.
- 11.110.4 The ombud may, as part of his award and as he deems appropriate in the circumstances, make an order on costs which may include an order against the unsuccessful party for payment of all the costs of the proceedings.

11.120 Waiver

No party shall have any claim of any nature against the ombud, the JSE and any of its employees in respect of any decision made in good faith by such person or body pursuant to the performance of their functions in terms of the rules.

Section 12: Supervision and enforcement**12.10 Surveillance and investigation by the JSE Surveillance Department****12.10.1 Surveillance**

The JSE Surveillance Department may set up and maintain systems for:

- 12.10.1.1 monitoring compliance by members with the Act, the rules and the directives;
- 12.10.1.2 the surveillance of any matter relevant for the purposes of the Act, the rules and the directives; and
- 12.10.1.3 supervising compliance by members with the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).

12.10.2 Investigation

12.10.2.1 The Director: Surveillance, and any other person designated by him, may -

- 12.10.2.1.1 investigate any JSE related activities of any person who at the relevant time was a member or an employee of a member;
- 12.10.2.1.2 investigate whether that member or any of its employees complies with the Act, the rules, the directives and the Financial Intelligence Centre Act;
- 12.10.2.1.3 investigate whether the member is trading in such a manner that there is a danger that such member may not be able to meet its commitments to clients, other members or a settlement system;
- 12.10.2.1.4 investigate whether such member is conducting its business in a manner which could be detrimental to the interest, good name or welfare of the JSE or its members; and
- 12.10.2.1.5 require any person who is subject to the jurisdiction of the JSE and who is believed to be able to furnish any information on the subject of any investigation or to have in his or her possession or under his or her control any book, document, tape or electronic record or other object which has a bearing on the subject of the investigation, to produce such book, document, tape or electronic record or other object or to appear at a time and place specified, to be questioned by any of the abovementioned persons, to furnish such information or to produce such book, document, tape, electronic record or other object, provided that the subject of the investigation has first been put to such person.

12.10.2.2 The Director: Surveillance may delegate the power granted to him in terms of rule 12.10.2.1 to any member of his staff.

12.20 Use of information obtained by the JSE Surveillance Department and referral to another authority

- 12.20.1 Any information, document, book, tape or electronic record or other object obtained by the JSE Surveillance Department, whether by investigation or otherwise, may be used in evidence in any disciplinary proceedings contemplated in rule 12.40 and may be furnished by the JSE Surveillance Department to any other body which may have jurisdiction over the matter under consideration, whether outside or within the Republic.
- 12.20.2 If the JSE Surveillance Department become aware of any possible contravention of law by a person over whom the JSE does not have jurisdiction, the JSE Surveillance Department may refer such matter to the appropriate authority or authorities, whether outside or within the Republic.

12.30 Improper conduct

The following acts and practices whether of commission or omission on the part of any person who at the time of the alleged act or practice was a member or employee of a member shall constitute improper conduct, provided that the acts and practices so specified are not intended to be a complete list of acts and practices which may constitute improper conduct:

- 12.30.1 committing or attempting to commit any act which is dishonest or fraudulent;
- 12.30.2 being a party to, or facilitating or conducting a transaction which is fictitious or has a dishonest or unlawful motive;
- 12.30.3 contravening, attempting to contravene, or failing to comply with any one or more provision of the Act, a rule or a directive;
- 12.30.4 negligently or recklessly conducting the business or affairs of the member in such a way that actual or potential prejudice is, or may be, caused to the JSE, any other member, a client of a member or the general public. The failure by a member to introduce appropriate and reasonable safeguards or controls to avoid such prejudice may be treated, where appropriate, as constituting either negligence or recklessness;
- 12.30.5 committing or attempting to commit any act which is detrimental to the interest, good name or welfare of the JSE or its members;
- 12.30.6 knowingly obstructing the business of the JSE or its members;
- 12.30.7 failing, when requested, to assist the JSE Surveillance Department in the exercise of its duties, including but not limited to, failure without sufficient cause to provide information in accordance with rule 12.10.2.1.5.

12.40 Disciplinary procedures**12.40.1 Conclusion of investigation**

On conclusion of any investigation in terms of rule 12.10 and if, after having considered all the relevant information in his possession, the Director: Surveillance is of the opinion that there are grounds for an allegation of improper conduct, the Director: Surveillance may:

- 12.40.1.1 refer the matter for determination to a Disciplinary Committee; or
- 12.40.1.2 if he considers that the alleged conduct is so serious that it might warrant the imposition of a fine in excess of the amount referred to in rule 12.40.2.4 or suspension or termination of membership or employment with a member, prefer a formal charge against such person ("the respondent") setting out a brief statement of facts constituting the alleged offence. Such charge shall be referred to a disciplinary tribunal ("a Tribunal"), to be heard in terms of the rules. Such charge may further, in the discretion of the Director: Surveillance, make provision for an admission of guilt.

12.40.2 Disciplinary Committee

12.40.2.1 The Chairman may from time to time appoint one or more Disciplinary Committees. Each Disciplinary Committee shall consist of three persons, as follows: any one of the Chairman or the Deputy Chairman or the Chief Executive Officer or acting Chief Executive Officer of the JSE, and at least two practising members of the Institute. The Chairman, Deputy Chairman, Chief Executive Officer or acting Chief Executive Officer who is a member of the Disciplinary Committee shall be the chairman of the Disciplinary Committee. A Disciplinary Committee may at any time co-opt additional members for the Disciplinary Committee, whether members of the Institute or not, whenever it deems such additional appointments to be necessary and appropriate.

12.40.2.2 A Disciplinary Committee may, subject to rule 12.40.2.3 -

- 12.40.2.2.1 issue instructions to the person whose conduct or omission is under consideration concerning action which must be taken, or not be taken, to remedy the matter referred to the Disciplinary Committee;
- 12.40.2.2.2 warn, reprimand, censure or, subject to rule 12.40.2.4, impose a fine (with or without ordering that a contribution be made towards the JSE's costs) on any person who has, in the reasonable opinion of the Disciplinary Committee, been guilty of improper conduct;

- 12.40.2.2.3 in relation to an employee of a member, direct the member to conduct a disciplinary enquiry into the acts or omissions of such person;
- 12.40.2.2.4 direct a member to ensure that any sanction imposed on an employee of that member is complied with by such employee;
- 12.40.2.2.5 direct a member to prevent or relieve an employee of that member from carrying out any specified activity, function or duty for such reasonable period as the Disciplinary Committee deems appropriate; and
- 12.40.2.2.6 if at any stage it determines that the matter referred to it is sufficiently serious to be heard by a Tribunal, stop the proceedings, and refer the matter to a Tribunal.
- 12.40.2.3 A Disciplinary Committee may not impose any penalty contemplated in rule 12.40.2 unless:
 - 12.40.2.3.1 the alleged improper conduct has first been put to the person who is alleged to have committed it. If such person is a member, the alleged improper conduct shall be put to an executive director or otherwise to a duly authorised employee of the member; and
 - 12.40.2.3.2 such person has been given an opportunity, orally or in writing, of explaining his or her conduct after being warned that any explanation furnished pursuant to the rules may be used in evidence against him or her.
- 12.40.2.4 No fine imposed by a Disciplinary Committee may exceed R25 000 per contravention, or such other amount as the JSE may determine by directive. A Disciplinary Committee may direct that any action taken in terms of rule 12.40.2 be published.
- 12.40.2.5 Any person in respect of whom a Disciplinary Committee has imposed a reprimand, censure, or fine (but not a warning) shall have the right to demand, within a period of three days after the imposition of such reprimand, censure, or fine, that the matter shall be heard de novo by a Tribunal. The Tribunal may, if it finds the person guilty of the conduct which forms the subject of the charge, impose a penalty more severe than that imposed by the Disciplinary Committee.
- 12.40.3 **Preferring charges to be heard by a Tribunal**
 - 12.40.3.1 Where the Director: Surveillance has preferred a formal charge against a respondent, the charge sheet shall, in addition to the matters listed in rule 12.40.1.2, be in a form prescribed by the Director: Surveillance, be signed by the Director: Surveillance or his Deputy, and be served on the respondent in such manner as the Director: Surveillance may determine.
 - 12.40.3.2 Where the Director: Surveillance has decided to make provision for an admission of guilt, he shall stipulate:
 - 12.40.3.2.1 the amount of the fine payable pursuant to the admission of guilt and any required contribution towards the JSE's costs as well as the period within which such amounts must be paid. In determining the amount of such fine and where the person has benefited financially as a result of the alleged transgression, the Director: Surveillance shall take such benefit into consideration. The admission of guilt may, in particular, provide for the fine to be suspended for a period;
 - 12.40.3.2.2 the manner and time in which the admission of guilt may be made, which time shall not be a period in excess of 10 weeks from the date on which the charge sheet is served on the respondent; and
 - 12.40.3.2.3 whether the terms of the admission of guilt should be published.
 - 12.40.3.3 A respondent:
 - 12.40.3.3.1 may, if the respondent is given an opportunity to sign an admission of guilt, admit guilt to such charges within the period set out in the charge sheet; or
 - 12.40.3.3.2 may within 4 weeks after receipt of the charge sheet request particulars to the charges, to which the Director: Surveillance must respond within 4 weeks after receipt of such request; and

- 12.40.3.3 shall, if no admission of guilt is tendered by the Director: Surveillance or if the respondent decides not to admit guilt to the charges, file a defence to such charges on or before 10 weeks after the date on which the charge sheet was served on the respondent or within 4 weeks after the date on which the JSE has responded to the request for further particulars, whichever is later.
- 12.40.3.4 Thereafter the chairman of the Tribunal shall determine the date on which the charges shall be heard, which date shall not without good reason be later than six months after the charge sheet was served on the respondent.
- 12.40.3.5 No extension of the time periods set out in rule 12.40.3, including the date for the hearing of the charges, shall be allowed without good reason. Furthermore, no such extension shall be allowed without the consent of the chairman of the Tribunal.
- 12.40.4 **Tribunal**
 - 12.40.4.1 The Chairman may from time to time appoint one or more Tribunals each comprised of three members.
 - 12.40.4.2 The members of a Tribunal shall be:
 - 12.40.4.2.1 a retired judge, or a practising or retired senior counsel, or a practising or retired attorney with not less than fifteen years experience. Such person shall act as chairman of the Tribunal;
 - 12.40.4.2.2 a professional person appointed by reason of that person's knowledge of financial services as it relates to the matter under consideration; and
 - 12.40.4.2.3 a person appointed by reason of that person's knowledge or experience of stockbroking.

12.50 Procedure and evidence – Disciplinary Matters

- 12.50.1 Any charges preferred shall be decided on a balance of probabilities.
- 12.50.2 In a hearing before a Tribunal:
 - 12.50.2.1 the chairman of the Tribunal shall decide all matters of law which may arise during the hearing, and whether any matter constitutes a question of law or a question of fact, but all three members of the Tribunal shall by a simple majority decide all other matters arising during the hearing;
 - 12.50.2.2 the chairman of the Tribunal shall determine the procedure which the Tribunal shall follow both in respect of preliminary issues and in respect of the hearing itself, subject to the rules and to the principles of natural justice;
 - 12.50.2.3 the JSE may instruct attorneys or counsel to prefer and prosecute the charges on behalf of the JSE, or the charges may be prosecuted by an employee of the JSE; and
 - 12.50.2.4 the respondent is entitled to be legally represented at the respondent's own cost.
- 12.50.3 If a respondent without good cause fails to attend a hearing before a Tribunal at the time and place stated in the charge sheet, the Tribunal may proceed with its consideration of the charge in the absence of the respondent.
- 12.50.4 If, at any stage during a hearing before the Disciplinary Committee or a Tribunal, one or more of the members of the body hearing the matter dies or retires or becomes otherwise incapable of acting or is absent, the hearing shall, where the remaining members constitute a majority of the body before whom the hearing was commenced, proceed before such remaining members and, provided that the remaining members are in agreement, their finding shall be the finding of the body concerned. In any other case, the matter shall be heard de novo.
- 12.50.5 If a Tribunal finds a respondent guilty of an offence, the Tribunal shall have the powers set out in and shall apply rule 12.60.
- 12.50.6 A person charged is entitled to be supplied with a record of the hearing of such charges, and any person who has made oral representations is entitled to be supplied with a record of that portion of the proceedings which related to that person's oral representations.

- 12.50.7 The JSE may make available to the Institute such documents, including extracts from meetings, verbatim records of proceedings and exhibits, as are presented at any disciplinary hearing against a stockbroker or former stockbroker.
- 12.50.8 Whenever the Institute or any committee of the Institute investigates or deals with any complaint against a stockbroker or former stockbroker and finds such person guilty on one or more of the charges laid against such person:
 - 12.50.8.1 the JSE Surveillance Department is authorised at any time at the expense of the JSE to apply to and obtain from the Institute a copy of the relevant extracts from the minutes of meetings of the Institute and its committees and the verbatim record of any proceedings at enquiries or hearings in respect of such complaint, as well as copies of any relevant documents, including correspondence, and, where applicable and practicable, exhibits tabled at such enquiries or hearings. All of the documents so made available to the JSE shall be retained by the JSE Surveillance Department for its own purposes; and
 - 12.50.8.2 the Director: Surveillance may consider and take cognisance of such documents for the purpose of initiating, investigating or adjudicating on any complaint against the stockbroker or former stockbroker or any member of the JSE with which such stockbroker or former stockbroker was in any way associated, and all such documents may be admitted in any proceedings under the rules as if the facts stated therein had been led as evidence in the proceedings in terms of the rules.

12.60 Disciplinary matters – Penalties

- 12.60.1 When any person has been found guilty of improper conduct by a Tribunal pursuant to the rules, the Tribunal -
 - 12.60.1.1 may warn or impose a reprimand, censure or fine upon the respondent, which fine shall in respect of each contravention not exceed R5 million, or such other amount as may be stipulated in the Act;
 - 12.60.1.2 shall in determining an appropriate penalty take into account:
 - 12.60.1.2.1 any previous conviction in terms of the rules of the JSE, the by-laws of the Institute or in a court of law;
 - 12.60.1.2.2 the harm or prejudice which is caused by the offence;
 - 12.60.1.2.3 any other aggravating or mitigating circumstances; and
 - 12.60.1.2.4 where it is possible that the membership of the respondent may be terminated, the representations of such person in this regard;
 - 12.60.1.3 may, on such conditions as the Tribunal may deem fit, terminate the membership of a member who has been found guilty of improper conduct or in the case of an employee of a member, require such member to hold a disciplinary enquiry to consider terminating or suspending the employment of such person;
 - 12.60.1.4 may direct a member to prevent or relieve an employee of that member from carrying out any specified activity, function or duty for such reasonable period as the Tribunal deems appropriate;
 - 12.60.1.5 may find that an officer or a registered securities trader does not meet the fit and proper requirements set out in rule 4.10;
 - 12.60.1.6 may direct a member to ensure that any sanction imposed by the Tribunal on an employee of that member is complied with by such employee;
 - 12.60.1.7 may make a fair and reasonable order as to costs; and
 - 12.60.1.8 may order that particulars of the offence and finding of the Tribunal and the penalty imposed be published, provided that if publication is ordered, the respondent shall be given an opportunity to make representations to the Tribunal in this regard.
- 12.60.2 A Tribunal may impose any one or more of the penalties referred to in rule 12.60.1.
- 12.60.3 Any penalty or part thereof may be suspended on such conditions as the Tribunal may determine.

- 12.60.4 If a member or an employee of a member fails to pay any fine imposed by a Disciplinary Committee or a Tribunal, within 7 days after being informed of the amount of the fine, the JSE may, after serving notice of not less than 3 days on such person, calculated from the expiration of the last of the 7 days within which payment must be made, -
- 12.60.4.1 recover such fine from such member or employee, as the case may be, in a court of competent jurisdiction;
 - 12.60.4.2 terminate the membership of such member on such conditions as the JSE may deem fit, or in the case of an employee of a member, require such member to hold a disciplinary enquiry to consider terminating or suspending the employment of such person; and/or
 - 12.60.4.3 direct a member to prevent or relieve an employee of that member from carrying out any specified activity, function or duty for such reasonable period as the JSE deems appropriate.
- 12.60.5 The amount of any fine paid to the JSE pursuant to the rules shall be paid into the JSE Guarantee Fund. Any costs paid to the JSE pursuant to an award made by a Disciplinary Committee or a Tribunal shall be paid into the general funds of the JSE.
- 12.60.6 A Tribunal may, upon good cause shown and subject to such conditions as the Tribunal may impose, vary or modify any penalty which it may have previously imposed on any person provided that in modifying or varying such penalty, the Tribunal shall under no circumstances increase such penalty.
- 12.60.7 A report of the findings of a Disciplinary Committee or a Tribunal will be forwarded to the Registrar, by the JSE, within 30 days after the completion of the proceedings.
- 12.60.8 Should any termination of the membership of a member be suspended as a result of an appeal being lodged in terms of the Act, such suspension may be made subject to such conditions as the JSE may determine. Any member whose membership has been terminated and who lodges an appeal in terms of the Act shall simultaneously inform the Director: Surveillance that an appeal has been lodged.

12.70 Urgent issues

- 12.70.1 In order to ensure that the business of the JSE is carried on with due regard to the public interest, the Chairman may from time to time appoint one or more Urgent Issues Committees. The Chief Executive Officer or the acting Chief Executive Officer, the Chairman or the Deputy Chairman of the JSE and at least two other members of the controlling body shall constitute an Urgent Issues Committee.
- 12.70.2 An Urgent Issues Committee shall consider whether a member is operating in such a manner that there is imminent danger that such member may be unable to meet its commitments to clients, other members or to a settlement system of the JSE or any other exchange, or that it is conducting business in a manner which could be detrimental to the interests of the JSE or to the interests of the members of the JSE and the public.
- 12.70.3 If an Urgent Issues Committee resolves by a two-thirds majority that an investigation into the affairs of a member in terms of the rules has revealed that the member is operating in such a manner that there is such imminent danger as is referred to in rule 12.70.2, the Urgent Issues Committee may call upon senior representatives of the member to attend a meeting of the Urgent Issues Committee, which meeting may be called on not less than one hour's notice, to hear the concerns of the Urgent Issues Committee and to discuss how such concerns may be resolved.
- 12.70.4 With the agreement of the member concerned or, if the outcome of such meeting fails to satisfy the Urgent Issues Committee with regard to the above, the Urgent Issues Committee may by a two-thirds majority and subject to rule 12.70 -
- 12.70.4.1 prohibit such member from trading;
 - 12.70.4.2 restrict the trading activities of such member in such manner as it deems fit, including the application of rule 12.70.5; and/or
 - 12.70.4.3 give such member such instructions as it may deem necessary in the interests of the member's clients or other members or any settlement system of the JSE or any other exchange.
- 12.70.5 The Urgent Issues Committee may during the period of any order in terms of rule 12.70.4 appoint a registered public accountant and auditor or a stockbroker, member or employee of the JSE to supervise and control the activities of the member, at the member's cost. Such member may further be prohibited from entering into JSE transactions without the prior consent of the person appointed, which consent may be given upon such terms and conditions as the Urgent Issues Committee or the said appointee shall determine.

- 12.70.6 Any action taken by an Urgent Issues Committee in terms of this rule may continue until such time as that Committee is satisfied as to the financial position and business conduct of the member in question.

12.80 Involuntary termination of membership – Supervision and control

- 12.80.1 If, after provisional termination of membership in terms of rule 3.140 and at any stage prior to the final termination of membership, the JSE is of the opinion that the interests of clients, other members or the JSE may not be adequately protected by the member, the JSE may direct that such action is taken by the member or that such supervision or control is executed by the JSE as is deemed necessary to ensure that –
- 12.80.1.1 the member meets all of its obligations to its clients timeously, including the return of client assets to the clients; and
- 12.80.1.2 the member settles all transactions which have not been settled at the date of provisional termination of membership.
- 12.80.2 The intervention by the JSE referred to in rule 12.80.1 may, in appropriate circumstances, involve the JSE following the procedures set out in rule 13.40.5.2, as if the member had been declared to be in default.
- 12.80.3 The JSE may appoint one or more employees of the JSE or another member, or a registered public accountant and auditor, to exercise the supervision and control of the member's activities provided for in this rule 12.80, at the member's cost.

12.90 JSE's powers of publication

- 12.90.1 The JSE may in its discretion and in such manner as it may deem fit, notify the public of any fact that the JSE considers to be in the public interest, including, but not limited to, the name of the member or employee of a member who has been found guilty of any charge and of the sentence imposed on such person.
- 12.90.2 No action or other proceeding shall in any circumstances be taken by any member or employee of a member referred to in any notification referred to in rule 12.90.1, or in a JSE Gazette, against the JSE or any controlling body or committee member or employee thereof or any person publishing or circulating the same.

Section 13: Default

13.10 Default of a member

- 13.10.1 A member shall default if –
- 13.10.1.1 it is unable to meet its commitments to another member, the JSE, a JSE settlement system or a non-member, arising out of a transaction or a JSE settlement system instruction; or
- 13.10.1.2 the JSE, in its sole discretion, considers that it has defaulted.
- 13.10.2 If a member is unable to meet its commitments in terms of rule 13.10.1.1 or the JSE considers that the member has defaulted in terms of rule 13.10.1.2, the JSE Executive will declare the member to be in default.

13.20 Consequences of default

- 13.20.1 Once a member has been declared to be in default –
- 13.20.1.1 its membership shall be provisionally terminated. A defaulting member shall continue to be bound by the provisions of the rules and the directives, but will not retain any of the rights attached to membership; and
- 13.20.1.2 a notice to the effect that the member has been declared to be in default shall be provided to all members.
- 13.20.2 Without limiting or detracting from any other remedies and rights which the JSE may have against a member, upon a member being declared to be in default –
- 13.20.2.1 the member shall, save as provided in this rule, be suspended from trading;
- 13.20.2.2 any amount payable by the JSE to the member arising from any suretyship, cession, pledge or other security or any other cause shall be set off against any amount payable by the member in terms of rule 3.180, including related penalties imposed by the JSE;

13.20.2.3 the member shall hand over to the JSE –

13.20.2.3.1 such financial records of the member as the Director: Surveillance deems necessary for the identification, protection and return of client assets and to facilitate the settlement of outstanding transactions in equity securities; and

13.20.2.3.2 the control of all client assets;

but the JSE shall not withhold from the defaulting member reasonable access to the financial records of such member.

13.20.3 The JSE is entitled to recover any amounts due by the defaulting member to the JSE in terms of rule 3.180 from the assets of the defaulting member.

13.30 Settlement of open transactions in equity securities

13.30.1 For the purpose of Section 13, open transactions in equity securities for settlement –

13.30.1.1 includes all transactions which have been concluded by the defaulting member through the central order book of the JSE equities trading system; and

13.30.1.2 excludes all reported transactions which have been reported to the JSE equities trading system by the defaulting member.

13.30.2 The closing of transactions of the defaulting member shall be dealt with as follows:

13.30.2.1 The JSE shall use its best endeavours to procure that all open transactions in terms of rule 13.30.1.1 between the defaulting member and other members and non-members are settled, by taking such steps as may reasonably be necessary;

13.30.2.2 In procuring settlement of these open transactions, the JSE shall require clients of the defaulting member to meet their settlement obligations in respect of all open transactions executed on their behalf;

13.30.2.3 Where possible, any funds or equity securities held by the defaulting member or its CSP on behalf of controlled clients or received by the defaulting member or the JSE from controlled clients subsequent to the default, which are required to effect settlement of open transactions conducted on behalf of those clients, will be applied by the JSE to settle such transactions;

13.30.2.4 In attempting to procure that open transactions are settled in terms of rule 13.30.2.1, the JSE shall be entitled to buy in or sell out equity securities which cannot be either delivered or paid for by the defaulting member or its client, in those instances where the Settlement Authority is able to, and deems it appropriate to, procure the settlement of a transaction by means of the borrowing of equity securities or funds;

13.30.2.5 If the JSE is unable to procure the settlement of any open transactions in terms of rule 13.30.1.1, the failed trade procedures set out in rule 10.110 will be applied.

13.30.3 Should a defaulting member have reported transactions which have not settled –

13.30.3.1 the JSE will not permit a transaction to settle if a non-controlled client's CSDP has not committed to settling the transaction;

13.30.3.2 the non-controlled client will be contractually bound to deliver the equity securities or funds required to settle the transaction; and

13.30.3.3 the JSE will not be responsible for borrowing equity securities or funds to effect settlement if a party to the transaction has not fulfilled its obligations in respect thereof.

13.30.4 Any loss or costs incurred by the JSE in buying in or selling out equity securities in terms of rule 13.30.2.4, or in otherwise procuring the settlement of open transactions, shall, in the first instance, be recovered by the JSE from any guarantees or any margin provided by the defaulting member in respect of the JSE settlement systems.

13.30.5 Any loss or costs which cannot be recovered by the JSE in terms of rule 13.30.4 shall be recovered by selling so many of any other equity securities belonging to the defaulting member and held by or in the custody of the defaulting member or its CSP, as is necessary to realise an amount equal to the amount still owing to the JSE by the defaulting member.

- 13.30.6 In the event that the JSE is unable to recover any loss or costs in terms of rules 13.30.4 or 13.30.5 and such loss or costs were incurred in either settling or closing transactions concluded by the defaulting member on behalf of a client, the JSE may, notwithstanding anything else contained in these rules, claim such loss or costs from the client.
- 13.30.7 Notwithstanding the provisions of rule 13.30.6, any claim by the defaulting member or the JSE against a client of the defaulting member in terms of rule 13.30.6 shall be reduced by the amount of margin paid by the client to the defaulting member in respect of the particular transactions in terms of rule 10.140.
- 13.30.8 In the event that a client of the defaulting member is unable to meet its settlement obligations in terms of rule 13.30.2.2, the provisions of rule 10.100 shall apply. If the Settlement Authority is able to procure the settlement of the transaction by means of the borrowing of equity securities or funds, as the case may be, the JSE shall be entitled to proceed in terms rule 10.90.9 by concluding the relevant purchase or sale transactions for the account of the client.
- 13.30.9 Any amount claimed from a client by the JSE in terms of rules 13.30.6 and 13.30.7 may be recovered directly out of any funds or equity securities held by the defaulting member or its CSP on behalf of the client.

13.40 Return of client assets

- 13.40.1 The JSE Executive may grant authority to the Director: Surveillance to assume control of the client assets referred to in rule 13.20.2.3.2.
- 13.40.2 The Director: Surveillance shall take reasonable steps to ensure that –
 - 13.40.2.1 any client assets under the control of the defaulting member are identified as the client's property; and
 - 13.40.2.2 only client assets identified as belonging to the client and which are unencumbered are returned to the client or to his order, if so authorised by the client in writing.
- 13.40.3 The client shall warrant in writing to the Director: Surveillance that he is the lawful owner of any client assets before such assets are returned to him in terms of rule 13.40.2.
- 13.40.4 Before any client assets are returned to the client, the client shall indemnify the Director: Surveillance in writing for any loss sustained by or damage caused to any person, including, but not limited to the client, as a result of anything done or omitted by the Director: Surveillance in the bona fide exercise of any power, or performance of any duty or function under or by virtue of the above rules, as a result of the return of such assets to the client and the alienation by the client of such returned assets in respect of which he is not the lawful owner.
- 13.40.5 Where client assets are returned to clients in terms of rule 13.40.3 and it is thereafter established that ownership of such assets does not vest in the client, the client shall immediately return such assets to the control of the Director: Surveillance, upon written notification of the Director. Where such returned client assets have been alienated by the client, the client shall immediately and in so far as he is able to, effect the return of such assets to the control of the Director: Surveillance, upon written notification by the Director.
- 13.40.6 The JSE shall be entitled to recover the costs of returning clients assets to the client from the defaulting member.

13.50 Recovery of losses or costs by the JSE

Any losses or costs incurred by the JSE in relation to any action taken in terms of these default rules that the JSE is unable to recover from the defaulting member, including out of the guarantee or margin referred to in rule 13.30.4, may be recovered out of any capital adequacy guarantees issued in terms of the directives.

Section 14: Transitional provisions

14.10 Authorisations and approvals

- 14.10.1 Any member who was authorised to operate as a broking member (equities) as at the date of introduction of rule 3.50 is deemed to be authorised to perform trading services.
- 14.10.2 Any member who was authorised to operate managed accounts as at the date of introduction of rule 3.60 is deemed to be authorised to perform investment services.

- 14.10.3 Any member who was authorised to operate as a custody and settlement member as at the date of introduction of rule 3.70 is deemed to be authorised to perform custody services.

Section 15: Krugerrands

15.10 Dealings in Krugerrands

- 15.10.1 The provisions of the Act and the rules and directives which apply to transactions in equity securities, where applicable, apply also to transactions in Krugerrands.
- 15.10.2 Transactions in Krugerrands will be subject to the condition that no client will be entitled to claim or demand from a member Krugerrands which can be related to or identified with any specific transaction, nor may a client of a selling member insist that the Krugerrands it delivers must be delivered to a specific member in settlement of a particular transaction.
- 15.10.3 A contract note must be issued by a member to its client in respect of each transaction in Krugerrands.
- 15.10.4 Deliveries of Krugerrands must be effected directly between members on any business day of the new settlement period during the hours laid down in JSE directives. A purchasing member is not obliged to accept a part delivery in respect of a Krugerrand transaction.
- 15.10.5 When making delivery to the receiving member the delivering member must affix its member's rubber stamp to and sign each of the two delivery slips produced by the BDA system in pursuance of the transaction. Upon acceptance of the Krugerrands, the receiving member must affix its member's rubber stamp to and countersign each of the two delivery slips, and retain one copy for its records. The deliverer's copy must be returned to the delivering member. Payment in respect of such deliveries must be effected either by bank cheque or the electronic transfer of funds as arranged between the delivering member and the receiving member.
- 15.10.6 Acceptance of delivery of coins by the member or client constitutes an acknowledgement by such member or client that the coins have been inspected and are genuine, provided that such release of responsibility in respect of Krugerrands held in safe custody will only become effective upon acceptance by a client of Krugerrands out of safekeeping. Upon such acceptance of delivery, payment must be made by the member to the seller. Where a client enters into an agreement with a member to hold the Krugerrands in safekeeping in terms of rule 15.10.8, the purchaser must pay the member against an acknowledgement by the member that the coins have so been placed in safekeeping.
- 15.10.7 Krugerrands purchased on behalf of clients, on coming into possession of a member, must be allocated in the member's records as soon as is practicable so as to establish the identity of the purchaser entitled thereto and, except in the case where an arrangement exists as envisaged in rule 15.10.8, must thereafter without delay be delivered, if they are fully paid for, or offered for delivery, if they are not fully paid for, to the purchaser or to his order.
- 15.10.8 Where a member and a client enter into an agreement which authorises such member to hold Krugerrands in safekeeping, on behalf of the client, the following provisions apply:
- 15.10.8.1 the arrangement must be recorded in a form of mandate which must contain the minimum requirements prescribed by the JSE unless such a mandate already exists in respect of certificated equity securities held in safekeeping in terms of rule 9.20;
- 15.10.8.2 the Krugerrands must be deposited by the member in a safe custody container with a banking institution or, alternatively, in a suitable container in the member's safe or in the member's safe in a strongroom;
- 15.10.8.3 the member must keep a register of each mandate and a safe custody ledger of the Krugerrands that are being held from time to time in terms of the mandates.
- 15.10.9 A member must record all transactions in Krugerrands in its books on the same basis as a record is maintained in respect of transactions in equity securities, save that it is not be obliged to enter coin movements in a securities scrip register but may use a separate register for that purpose.

Section 16: Repeal of rules

Upon the approval of these Rules by the Registrar, the rules of JSE Limited, which applied prior to the approval of these Rules, are repealed.

NOTICE 60 OF 2005**SECURITIES SERVICES ACT, 2004****AMENDMENT TO THE RULES OF STRATE LIMITED**

1. In terms of section 61(5) of the Securities Services Act, 2004 (Act No. 36 of 2004), it is hereby notified that STRATE Limited has applied to the Registrar of Securities Services for approval of proposed amendments of its rules, which amendments are set out in the Schedule.
2. In terms of section 61(5) of the said Act all interested persons who have any objections to the proposed amendments are hereby called upon to lodge their objections with the Registrar of Securities Services, PO Box 35655, Menlo Park, 0102, within a period of 14 days from the date of publication of this notice.
3. In terms of section 61(6) of the said Act, I, Rob Barrow, hereby determine 25 July 2005 as the date on which the rules in the Schedule will come into operation. If any objections to the proposed rules are received, another commencement date will be determined by notice in the Gazette.

RJG BARROW
Registrar of Securities Services

SCHEDULE

General explanatory notes:

1. Words underlined with a solid line (____) indicate the insertions in the existing rules.
2. Words in square brackets in bold ([**]**) indicate omissions from existing rules.

STRATE LIMITED**RULES****1 INTERPRETATION AND DEFINITIONS****[1.1] Interpretation**

[1]1.1 In the Rules:

[1.1]1.1.1 a reference to any gender includes all other genders;

[1.1]1.1.2 the singular includes the plural and vice versa;

[1.1]1.1.3 the heading and sub-heading of a rule shall not be taken into account in the interpretation of **[any of]** the Rules;

- [1.1.1.4] **[the] a word[s] [or] and expression[s] [used in the rules and directives shall, if not inconsistent with the subject or context, bear the same meaning as the same words and expressions used in the Act] to which a meaning has been assigned in the Act bears the meaning so assigned to it;**
- [1.1.1.5] a reference to writing shall include any mode of representing or reproducing letters, figures or marks in a visible form **[including electronic format, whether such mode be Equities or otherwise].**
- [1.1.1.6] the words 'published' and 'notice' shall be interpreted so as to allow the electronic publishing of a notice and to allow a notice to be in electronic format.]
- [1.1.2] **If there is any conflict in meaning between the English text and any other text of the rules, then to the extent of such conflict, the English text shall prevail.]**

Definitions

- 1.2 In **[these]** the Rules, unless the context otherwise requires or indicates: –

'Act'	means the [Custody and Administration of Securities Act, 1992 (Act No. 85 of 1992) Securities Services Act, 2004 (36 of 2004), [as amended or replaced from time to time] and includes [Regulations] any measure prescribed [issued] thereunder by the Minister or the Registrar;
'Account'	means either 'Central Securities Account' or ' [Uncertificated] Securities Account', depending on the context;
'Applicant'	means a person [which] who applies for [admission] acceptance as a [CSD] Participant in terms of Rule [4] 3;
'Authenticated Instruction'	means any [message] instruction sent or received through the SAFIRES system or other settlement system being used by the CSD;
'Authorising Instruction'	means a separate written instruction given by a Client to a [CSD] Participant in respect of every Entry to be effected by the [CSD] Participant on behalf of the Client in that Client's [Uncertificated] Securities Account [and which may include an Authenticated Instruction];
['balance receipt']	means an official receipt issued by an issuer in respect of Securities represented in a share certificate lodged with the issuer which are in excess of the quantity of Securities represented in the certified transfer deeds issued against such Securities;]
<u>'Business'</u>	<u>in relation to a Participant or the CSD, means the Business conducted by the Participant or the CSD, as the case may be, in terms of the Act and Rules;</u>
'Business Day'	means a day on which the CSD does Business as determined by the Controlling Body and [set out in the] as stipulated by Directive;

'Central Securities Account'	means an account kept by the CSD for a [CSD] Participant reflecting the number <u>and/or</u> nominal value of Securities of each kind and all Entries made <u>in respect</u> of such account;
'Companies Act'	means the Companies Act, 1973 (Act No. 61 of 1973) [as amended or replaced from time to time] , and includes Regulations issued thereunder;
'CSD'	means [Share Transactions Totally Electronic] STRATE Limited, Registration No 1998/Q22242/06, [registered] <u>licensed</u> as a central Securities depository in terms of the Act;
['CSD participant']	means a person accepted by the CSD as a CSD participant in terms of rule 4;]
'Client'	means [a person who deposits eligible Securities in the CSD with a CSD participant] <u>any person who uses the services of a Participant;</u>
'Controlling Body'	means the board of directors of the CSD;
'Dematerialisation'	means the process of converting <u>certificated</u> Securities, which are defined in section 1 of the Stock Exchanges Control Act] into Uncertificated Securities;
<u>'Debit Balance'</u>	<u>means a negative balance in a Securities Account maintained by a Participant;</u>
'Directive'	means any Directive issued [under] <u>in accordance</u> with the Rules by the Controlling Body to regulate the Business of the CSD or [the CSD] Participants; [or any other related matter in so far as it relates to Uncertificated Securities;]
['document of title']	means share certificates and balance receipts;]
'Eligible Securities'	means Uncertificated <u>Securities</u> or Immobilised Securities which the Controlling Body permits [from time to time] to be held in a Central Securities Account, <u>or in the case of Money Market Securities, to be held in the Securities Ownership Register;</u>
'Entry'	includes an [Equities] electronic recording of any deposit, withdrawal, transfer, attachment, pledge, cession [in securitatem debiti] <u>to secure a debt</u> or other transaction in respect of Securities;
<u>'Exchange'</u>	<u>means a person who constitutes, maintains and provides an infrastructure:</u> <u>(a) for bringing together buyers and sellers of Securities;</u> <u>(b) for matching the orders for Securities of multiple buyers and sellers; and</u> <u>(c) whereby a matched order for Securities constitutes a transaction;</u>

'Executive Officer'	means the Chief Executive Officer <u>and other executive director of the CSD or any other person designated by [him/] her;</u>
'External Exchange'	<u>means a person authorised to function as an Exchange in terms of the laws of a country other than the Republic;</u>
' <i>force majeure</i> '	<u>means an event beyond the control of, which could not have been foreseen by, and which did not arise out of the negligence of a party and which causes the unreasonable delay of any performance of such party's obligations in terms of the Rules and Directives;</u>
'FSB Act'	means the Financial Services Board Act, 1990 (Act No. 97 of 1990);
['GAAP'	means Generally Accepted Accounting Practices;]
'Guaranteed Transaction'	means a trade in [Uncertificated] Securities which is concluded through [the JSE] <u>an Exchange trading system and which is guaranteed in terms of the Rules and Directives of [the JSE Securities Exchange South Africa] such Exchange;</u>
'Head of Supervision'	means the Head of Supervision of the CSD or any other person designated by [him/]her;
'Immobilisation'	<u>means the process of depositing certificates or documents of title in respect of certificated Securities with the CSD or its wholly owned subsidiary and the recording of the ownership in such Securities in a Securities Account;</u>
['interim rule'	means an interim rule issued in terms of rule 3.3.2]
'Issuer [of Securities] '	means an entity which issues <u>Eligible Securities;</u> [and whose Securities are accepted for deposit by the CSD;]
'Money Market Securities'	<u>means the "Money Market Instruments" for purposes of Chapter IV of the Act that are Uncertificated Securities deposited in the Securities Ownership Register in terms of these Rules;</u>
'Nominee'	<u>means a person that acts as the registered holder of Securities or an interest in Securities on behalf of other persons;</u>
'Off-market Trade'	means a trade in [Uncertificated] Securities which is not concluded [through the JSE trading system] on an Exchange [and which is reported by the seller and the purchaser of the Uncertificated Securities to the relevant CSD participant for settlement through the CSD];
'On-market Trade'	<u>means a trade in Securities reported by an Exchange;</u>
'Own Name or Own Name Client [Client] '	means, in respect of a Client [whose own name appears in the Uncertificated Securities Account], the Entry of such Client's Own Name in the Securities Account of the [CSD] Participant [and who has complied with] subject to the criteria [as prescribed in a] stipulated by Directive and for the

	<u>purposes of Rule 7, includes a Client whose Own Name appears in the Securities Ownership Register;</u>
<u>'Participant'</u>	<u>means a person that holds in custody and administers Securities or an interest in Securities and that has been accepted in terms of the Act by the CSD as a Participant in the CSD;</u>
<u>'Records'</u>	<u>means those records of the CSD, Participants, Issuers and Clients which relate to the [balances and movement of Securities in the conducting of the CSD participants' business] Business of the CSD or Participants in terms of the Act;</u>
<u>'Registrar'</u>	<u>means the [Executive Officer of the Financial Services Board referred to in section 1 of the FSB Act] Registrar or Deputy Registrar of Securities Services referred to in section 5 of the Act;</u>
<u>'Regulatory Committee'</u>	<u>means the Regulatory and Supervisory Committee, a sub-committee of the Controlling Body;</u>
<u>'SAAS'</u>	<u>means the South African Audit Standards;</u>
<u>'SAICA'</u>	<u>means the South African Institute of Chartered Accountants;</u>
<u>'SAICA Guidelines'</u>	<u>means the Guidance for Auditors: Reporting in terms of Central Securities Depository (CSD) Rules as issued by SAICA;</u>
<u>'SAFIRES'</u>	<u>means Southern African Financial Instruments Real Time Electronic Settlement System, the clearing, settlement and depository system of the CSD;</u>
<u>'SAMOS'</u>	<u>means the South African Multiple Option Settlement System, the settlement system established and operated by the South African Reserve Bank;</u>
<u>'Securities'</u>	<u>[means Securities as defined in the Act] includes certificated Securities and Uncertificated Securities and money market instruments;</u>
<u>'Securities Account'</u>	<u>means an account kept by or on behalf of a participant for a Client and reflecting the number or nominal value of Securities of each kind deposited and all entries made in respect of such Securities;</u>
<u>'Securities Ownership Register'</u>	<u>means the register of ownership for dematerialised Money Market Securities;</u>
<u>'Settlement'</u>	<u>means the [process to complete] discharge of the obligations arising from a transaction in Eligible Securities in terms of the Rules and Directives of the CSD [and JSE Securities Exchange South Africa], and where applicable, of the relevant Exchange;</u>

'Standing Instruction'	means a general instruction in writing given by a Client to a [CSD] Participant authorising the [CSD] Participant to effect entries on behalf of the Client in that Client's [Uncertificated] Securities Account [and which may include an Authenticated Instruction];
'Subregister'	means a Subregister as defined in <u>section 91A of the Companies Act</u> ;
'the Rules'	means the <u>CSD Rules</u> contained in this document;
['Stock Exchanges Control Act']	means the <u>Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);</u>
['Uncertificated Securities Account']	means an account kept by or on behalf of a CSD participant for a Client reflecting the number or nominal value of Uncertificated Securities of each kind deposited and all entries made in respect of such Securities relating to such Client;]
'Uncertificated Securities'	means [Securities as defined in section 1 of the Stock Exchanges Control Act which are by virtue of section 91A of the Companies Act transferable without a written instrument and are not evidenced by a certificate] <u>Securities that are not evidenced by a certificate or written instrument and are transferable by Entry without a written instrument.</u>

2 **POWERS, MANAGEMENT AND CONTROL**

[2.1 **Powers of the CSD]**

2.1 [The powers and authority of the CSD are as set out in the Memorandum and Articles of Association of the CSD]. The CSD is a public company having the powers conferred on it by the Act.

[2.2 **Management and control]**

2.2 For the purpose of the Rules, the management and control of the CSD shall be exercised by the Controlling Body, which [may, in addition to the powers and authorities expressly conferred upon it by the Act and these Rules exercise all such powers and do all such acts and things as may be exercised or done by the CSD] shall have the powers conferred on it by the Act, Rules and Directives and the authority to do such things as may be necessary for or incidental to the performance of the CSD functions and objects.

[2.3 **Decisions of the Controlling Body]**

2.3 Decisions of the Controlling Body [shall] made in terms of the Rules -

2.3.1[1] must be published timeously by the Controlling Body in a notice to [CSD] Participants [by the controlling body] or other affected parties bound by the Act, Rules and Directives;

2.3[1].2 are [be] binding on [CSD] Participants and other affected parties bound by the Act, Rules and Directives from the date of receipt of the notice by the [CSD] Participants or other affected parties [until such time as the decision has been revoked or substituted] ; and

- 2.3.3 are binding on any past Participant, in respect of any act or omission which occurred at a time when it was still a Participant.
- [2.4 Confidentiality]
- [2.4.1 Any information relating to a CSD participant, a Client, a Central Securities Account or an Uncertificated Securities Account obtained by the CSD, the controlling body, officer or any employee or agent of the CSD or controlling body or delegate of the CSD or controlling body in the course of its operations, including any information obtained pursuant to rule 9.1.2, shall be kept confidential by such person, unless –]
- [2.4.1.1 such person is required to do so before any court or by any law; or]
- [2.4.1.2 the prior written consent to such disclosure has been obtained from the person concerned.]
- [2.4.2 Any person who divulges or makes known any confidential information contrary to rule 2.4.1 may be disciplined by the controlling body in terms of rule 9. The controlling body shall advise the Registrar in the event that a person is disciplined in terms of this rule. Where the person is the CSD or the controlling body, the CSD or controlling body shall be disciplined by the Registrar.]

[3] RULES AND DIRECTIVES

[3.1 Application and interpretation]

- [3.1.1 3.1.1.1 The rules, the directives issued in terms of the rules and decisions of the controlling body shall be binding on the CSD, the CSD participants, any other person utilising the services of the CSD or a CSD participant, and any person to whom the controlling body has delegated powers and employees of that person. Any past CSD participant shall, in respect of any act or omission which occurred at a time when it was still a CSD participant, continue to be bound.]

- [3.1.2]2.4 The authority to enforce the Rules and Directives shall vest in the Controlling Body.

[3.1.1.2 The controlling body may from time to time impose a penalty or take disciplinary actions in terms of rule 9 against any person as set out in rule 3.1.1.1 which fails to effect any instruction or action in accordance with the rules, the directives issued in terms of the rules and decisions of the controlling body.]

- 2.5 The Controlling Body may impose a penalty or take disciplinary action against any person or entity referred to in section 39(4) of the Act, which fails to execute an instruction given or take any action required by, the Controlling Body.

- [3.1.3]2.6 In the event of any conflict between the Rules and the Directives then, to the extent of such conflict, the Rules shall prevail.

- 2.7 The Controlling Body must make, and may amend, Rules that comply with section 39 of the Act and must supervise compliance with the Rules by Participants.

[3.2 Addition to, amendment of, or deletion from the rules]

- 2.8 [3.2.1 The controlling body may, with the prior written approval of the Registrar, make, alter and rescind the rules to comply with the provisions of the Act and generally to govern, control, manage and regulate the affairs of the CSD and CSD participants.] The Controlling Body [shall publish in a

notice] must notify the [CSD] Participants of any new Rule or amendment to the Rules indicating when such new Rule or amendment shall become effective [and whether Clients of the CSD Participant are to be advised of the amendment].

[3.2.2] 2.9 [Any] A [CSD] Participant may, in writing, propose to the Controlling Body [any] amendments [of] to the Rules accompanied by an explanation of the reasons for the proposed amendments.

[3.2.3] 2.10 The Controlling Body [shall publish in a notice] must, within a reasonable time, notify [to] the [CSD] Participant, who proposed the amendment, of its decision with regard to [a] the proposal lodged in terms of Rule [3.2.2] 2.9 [as soon as possible].

[3.2.4] In the event that the controlling body has determined in terms of rule 3.2.1 that Clients are to be advised of a new rule or amendment to a rule, notification thereof shall be sent at the same time as or prior to the next statement of Uncertificated Securities Account which is sent by the CSD participant to the Client.]

[3.2.5] Any contravention or non-compliance with an interim rule shall have the same legal effect as a contravention of or non-compliance with a rule.]

[3.3] Suspension of a rule]

[3.3.1] The controlling body may with the prior written approval of the Registrar suspend any of the rules for a period not exceeding 90 calendar days at a time after notice of the proposed suspension has been given to the CSD participants.]

[3.2.2] The controlling body may from time to time, with the prior written approval of the Registrar, issue interim rules which shall be binding on the CSD participants from a date as determined by the Registrar and continue to be binding until such time as the appropriate amendment can be made to the rules in terms of the Act.]

[3.4] Issue of directives

2.11 The Controlling Body may from time to time issue Directives [governing all aspects of the business of the CSD and of CSD Participants insofar as the business relates to Uncertificated Securities] in respect of any or all matters relating or incidental to the Act and Rules;

[3.5] Notice of directives]

[3.5.1] Directives issued by the controlling body in terms of rule 3.4 shall -]

[3.5.1.1] be published in a notice to the CSD participants by the controlling body; and]

[3.5.1.2] be binding from the date specified in the notice referred to in rule 3.5.1.1, until such time as the directive has lapsed or has been revoked or substituted or incorporated into the rules: Provided that the date specified in the notice shall not be a date earlier than the date that the notice is received by the CSD participant.]

2.12 The Controlling Body must publish Directives issued by the Controlling Body in terms of Rule 2.11 in a notice to all Participants who participate in the category of participation to which the Directives relate.

2.13 If Participants wish to object to or propose amendments to a Directive, they must lodge an objection or proposed amendment with the Controlling Body accompanied by an explanation of the reasons for the objection or proposed amendment within the period stipulated in the notice in terms of Rule 2.12.

2.14 If there are no objections or proposed amendments, or if the Controlling Body has considered the objections or proposed amendments after consultation with Participants and has decided to approve the proposed

Directive in the form published in the notice in terms of Rule 2.12, the proposed Directive shall be effective from the date indicated in the notice: provided that the date specified in the notice shall not be a date earlier than the date that the notice is received by the affected Participants.

- 2.15 If the Controlling Body, after consultation with the Participant or Participants who lodged the objection, decide to amend the proposed Directive as published in the notice in terms of Rule 2.12, the proposed Directive thus amended must be published by the Controlling Body in a further notice to all the affected Participants and is effective from the date indicated in the notice.
- 2.16 The Controlling Body must, within a reasonable time, notify all affected Participants of its decision with regard to an objection or proposal lodged in terms of Rule 2.13.
- 2.17 [3.5.2] The non-receipt of a notice under this Rule by a [CSD] Participant shall not invalidate the Directive [with which the notice is] concerned.

[4] 3. CSD PARTICIPATION

[4.1] Participation eligibility

- [4.1.1] An applicant must be a person or category of persons which has been authorised by the Registrar to act as a depositary institution in terms of the Act.]
- [4.1.2]3.1 An Applicant may, subject to Rule [4.1.3] 3.2, be [admitted] accepted as a [CSD] Participant.
- [4.1.3]3.2 To be eligible to be [admitted] accepted as or to remain a [CSD] Participant, a person shall satisfy the Controlling Body that it has fulfilled the requirements stipulated by Directive and that -
- [4.1.3.1] it is managed by persons and employs persons who comply with the standards of training and experience and other qualifications as prescribed by the controlling body;]
- 3.2.1 it has the management and human resources with appropriate experience necessary for its operation as a Participant;
- [4.1.3.2]3.2.2 it is of good [repute] character and [maintains standards of] integrity, or in the case of a corporate body, is managed by persons who are of good character and integrity;
- [4.1.3.3] it has formally completed all relevant documentation required by the controlling body, including a Business Continuity Plan, a Disaster Recovery Plan, as well as the necessary service level agreements with third parties before the CSD related operations commence;]
- [4.1.3.4] it has located its disaster recovery hardware and related facilities off-site;]
- [4.1.3.5] where an indemnity letter is required and the holding company of the applicant falls outside the jurisdiction of South Africa, the holding company states that South African law will be applied in its interpretation and application, and that the holding company submits to the jurisdiction of South African courts; and the holding company elects *domicilium citandi et executandi* at a South African address;]
- [4.1.3.6] it has submitted the applicant's financial statements and a copy of a letter of approval stating in the case where the holding company of the applicant falls outside South Africa, the relevant regulators' acknowledgement of the business entity and type of business activities regulated by the appropriate body in that country;]
- [4.1.3.7]3.2.3 it has the financial resources to meet its obligations as a [CSD] Participant [as set out in the directives] and complies with the criteria set out in the Rules and Directives;

- 3.2.4 it is able to replace, immediately on request from the CSD, any Securities deposited by it which are at any time found to be defective;
- 3.2.5 where an indemnity letter is required and the holding company or sponsor of the Applicant falls outside the jurisdiction of the Republic, the holding company or sponsor states that South African law will be applied in its interpretation and application, and that the holding company or sponsor submits to the jurisdiction of South African courts; and the holding company elects *domicilium citandi et executandi* at a South African address;
- 3.2.6 it has adequate insurance to cover the [risks] liabilities associated with its [CSD] participation, including those liabilities that existed before or accrued after it ceased to be a Participant;
- [4.1.3.8]** **it has adequate systems, procedures, personnel, facilities and technical capacity enabling it to fulfill its obligations and operational requirements in terms of the rules and directives promptly and accurately;]**
- 3.2.7 it has adequate systems, procedures, facilities and technical capacity enabling it to fulfill its obligations and operational requirements in terms of the Rules promptly and accurately;
- [4.1.3.10]3.2.8** all clearing and settlement services for payment must take place through the auspices of any clearing bank with an account in SAMOS and which must be a [CSD] participant in the relevant Payments Clearing House;
- 3.2.9 it has submitted its audited financial statements and, where applicable in accordance with Rule 3.2.5, audited financial statements of its holding company or sponsor;
- 3.2.10 it has formally completed all documentation required by the controlling body;
- [4.1.3.11]3.2.11** it has and maintains adequate security, systems, procedures and policies [in place] to protect the information, data, Records and documents relating to [Uncertificated] Securities Accounts and the affairs of Clients against any unauthorised access, use, alteration, destruction or dissemination;
- 3.2.12 it has back-up procedures to ensure the integrity and recoverability of its Records and has located its disaster recovery hardware and related facilities off-site and complies with any other security and disaster recovery procedures as required by the Controlling Body;
- 3.2.13 it has made arrangements for the proper supervision of its compliance with the Rules and Directives;
- 3.2.14 where it has deposited Securities with the CSD or a Nominee owned or controlled by the CSD, that it has indemnified the CSD against any claims relating to the ownership or interest in such Securities;
- [4.1.3.9]3.2.15** it shall pay all fees and levies as determined from time to time by the Controlling Body and in accordance with the Rules;
- [4.1.3.13]3.2.16** where required, it has complied or will comply with Exchange Control Regulations;
- 3.2.17 where there are different categories of Participants, it complies with all the criteria relating to the Business of the Participant applicable to those specific categories in which it shall participate; and
- [4.1.3.14]3.2.18** it complies with any other [reasonable] criteria relating to the Business of the Participant which the Controlling Body may from time to time specify.
- [4.1.4]3.3** Any [applicant or CSD] Participant which ceases to satisfy any of the [Entry] participation criteria set out in Rule [4.1] 3.2 [shall] must immediately notify the [controlling body] CSD in writing.

3.4 If a Participant gives notice to the CSD in terms of Rule 3.3, the CSD may, subject to Rule 3.5, require the Participant to consult with the CSD on the measures necessary to ensure the Participant's continued participation.

3.5 Where a Participant has ceased to satisfy any of the participation criteria, the Controlling Body may take any one or more of the following actions:

3.5.1 Suspend the participation of the Participant;

3.5.2 terminate the participation of the Participant;

3.5.3 lay a formal charge of improper conduct in terms of the Rules.

[4.2] Standard of Integrity of [CSD participants and] persons who manage or control [CSD] Participants

[4.2.1] For the purposes of meeting the requirements of rule 4.1.3, a person may be disqualified if such person (in the Republic of South Africa or elsewhere) has been –]

3.6 In addition to the participation criteria set out in the Rules, no person may manage or control a [CSD] Participant if such person (in the Republic or elsewhere) has been -

[4.2.1.1] expelled from the CSD or any other central Securities depository;]

[4.2.1.2] declared a defaulter on any licensed exchange;]

3.6.1 penalised in disciplinary proceedings for a contravention of the rules of any professional organisation, including a self-regulatory organisation in terms of the Act, which contravention involved dishonesty;

[4.2.1.8]3.6.2 disqualified by a court from acting or being appointed as a director of a company in terms of section 218 of the Companies Act;

[4.2.1.3] convicted of an offence involving fraud or dishonesty;]

[4.2.1.4] involved in any activities which may form the subject matter of a criminal investigation and/or prosecution in respect of an offence which involves fraud or dishonesty;]

3.6.3 convicted or found guilty of a criminal or disciplinary offence resulting from fraud, embezzlement or a breach of the rules of any professional organisation, including a regulated person;

[4.2.1.5] declared insolvent and not rehabilitated, had its estate wound up or entered into an arrangement with its creditors;]

3.6.4 involved in the management and control of an entity that was placed under judicial management or in liquidation, or where the estate of such person has been sequestrated; or

[4.2.1.6] refused Entry to or expelled from any profession or vocation;]

3.6.5 barred from Entry into any professional occupation due to fraud or dishonesty.

[4.2.1.7] convicted of misconduct or malpractice;]

[4.3] Application procedure

[4.3.1] 3.7.1 Application for [CSD] Participation shall be made to the Controlling Body, on a form stipulated [prescribed from time to time] by [the controlling body] Directive.

- [4.3.2]3.7.2 An application for [CSD] Participation shall be accompanied by the payment of the [prescribed] application fee as [determined from time to time by the controlling body and set out in the] stipulated by Directive.
- [4.3.3] The controlling body shall notify CSD participants of an application to become a CSD participant within 14 days of receipt of the application.]
- [4.3.4] A CSD participant shall notify the controlling body of any objection it may have to the application and the reasons for such objection within seven business days of receipt of notification of the application. The controlling body shall then take the reasons into account when making its decision.]
- [4.3.5]3.7.3 In addition to the information specifically required in terms of [these] the Rules, the Controlling Body may require from an Applicant -
- [4.3.5.1]3.7.3.1 any further information that the Controlling Body deems to be appropriate and reasonable [and relevant], and may institute any such investigation which it deems necessary, to verify information submitted by the Applicant in support of an application; [and]
- [4.3.5.2]3.7.3.2 that the Controlling Body interview the Applicant or one or more representatives of the Applicant [be interviewed by the controlling body, or any other person designated by the controlling body for that purpose]; and
- 3.7.3.3 a business plan detailing the future business as a Participant.
- [4.3.6]3.7.4 The agreed or reasonable costs of verification of information referred to in Rule [4.3.5.1] 3.7.3.1 shall be for the account of the Applicant.
- [4.3.7] Once the provisions of the Act and these rules have been complied with, the controlling body shall notify the applicant in writing of its decision to grant or refuse the application and, in the event that the application is granted, the date from which the CSD participant may commence operations. In the event that an application is refused, the applicant shall be provided with the reasons for the refusal. The controlling body shall notify all CSD participants of its decision.]
- 3.7.5 The Controlling Body may, after examining an Applicant's compliance with the participation criteria and the information submitted in accordance with the Rules and Directives, decide, after consultation with the Applicant, either to admit the Participant or to reject the application.
- 3.7.6 If the application is accepted, the Controlling Body must within a reasonable time -
- 3.7.6.1 notify the Participant of the date on which it may commence operations; and
- 3.7.6.2 notify all Participants within the category of participation in which the successful Applicant has been accepted of such Participant's acceptance and the date on which the Participant may commence operations.
- 3.7.7 If the application is rejected, the Controlling Body must within a reasonable time notify the applicant of the rejection and provide the reasons for such rejection to the Applicant.
- [4.3.8]3.7.8 Subject to the provisions of Rule [4.10] 3.13, the Applicant whose application has been [refused] rejected may only reapply after a period of 6 (six) months from the date of [refusal] rejection, unless the Controlling Body determines otherwise.
- [4.3.9]3.7.9 The Controlling Body [shall keep] must publish a list of [CSD] Participants [which shall be published by the Registrar in accordance with the Act] as updated from time to time.

[4.4 Interim Management]**Urgent Issues Committee**

[4.4.1]3.8.1 In order to ensure that the Business of the CSD is carried on with due regard to the [public interest] interests of Participants, Issuers and Clients, the Executive Officer may from time to time appoint one or more Urgent Issues Committees. The Executive Officer or the acting Executive Officer and at least two [other] independent members of the Controlling Body [who are not officers or employees of a CSD participant] shall constitute an Urgent Issues Committee [For the purpose of rule 4.4 "business" shall mean the business of the CSD participant conducted in terms of the Act].

[4.4.2]3.8.2 [An] The Urgent Issues Committee [shall] must consider whether a [CSD] Participant is conducting its Business in such a manner that there is an imminent danger that such [CSD] Participant may be unable to meet its commitments [to Clients] or that it is directly detrimental to the interests, Business and operation of other [CSD] Participants, Clients, Issuers or the CSD [or that it is conducting business in a manner which could be directly detrimental to the interests of the CSD or to the interests of other CSD participants and the public].

[4.4.3]3.8.3 If [an] the Urgent Issues Committee resolves [by a two-thirds majority] that there are reasonable grounds for believing that the Participant is conducting its Business [such] in a manner [that there is such imminent danger] as set out in Rule [4.4.2] 3.8.2, the Urgent Issues Committee may call upon senior representatives of the [CSD] Participant to attend a meeting of the Urgent Issues Committee, which meeting may be called on a Business Day on not less than 4 (four) hour's notice or such other time as the parties may agree, to hear the concerns of the Urgent Issues Committee and to discuss how such concerns may be resolved. [The Urgent Issues Committee shall, at the same time as the CSD participant is notified of the meeting called in terms of this rule, advise the Registrar of the meeting, and provide reasons for the convening of the meeting.]

[4.4.4]3.8.4 [With the agreement of the CSD participant concerned or, should the outcome of such meeting fail to satisfy the Urgent Issues Committee with regard to the above, the Urgent Issues Committee may by a two-thirds majority]. If the Urgent Issues Committee, after consultation with the Participant concerned, decide that the Participant is conducting its Business in a manner as set out in Rule 3.8.2, it may -

[4.4.4.1]3.8.4.1 impose any reasonable restrictions and conditions on the Business [activities] of [such] the [CSD] Participant, including the application of Rule [4.4.5] 3.9.1;

[4.4.4.2]3.8.4.2 give [such] the [CSD] Participant such instructions as it may deem necessary in the interests of other [CSD] Participants, Clients, Issuers or the CSD.

3.8.5 The Urgent Issues Committee must inform the Registrar within 30 (thirty) days of any action taken in terms of Rule 3.8.4.

[4.4] Interim Management

[4.4.5] The Urgent Issues Committee shall during the period of compliance with any instruction in terms of rule 4.4.4, and with the concurrence of the Registrar, have the power to appoint a person registered with the Public Accountants' and Auditors' Board to manage the activities of the CSD participant, at the CSD participant's cost (the "interim manager"). Such CSD participant may further be prohibited from entering into CSD and CSD participant related contracts without the prior consent of the interim manager which consent may be given upon such terms and conditions as the Urgent Issues Committee shall determine.]

3.9.1 The Urgent Issues Committee may during the period of compliance with any restriction, condition or instruction in terms of Rule 3.8.4, appoint an interim manager with relevant experience in the financial services industry, at the Participant's cost.

3.9.2 Such Participant may further be prohibited or restricted from entering into CSD and Participant related contracts without the prior consent of the interim manager, which consent may be given upon such terms and conditions as the Urgent Issues Committee may determine.

[4.4.6]3.9.3 Notice to the Participant concerned of such prohibition, restriction or instruction shall be accompanied by particulars of any alleged contraventions of the Act, Rules and Directives. Any requirements of the Urgent Issues Committee for the rectification of the alleged contraventions shall be stated so as to enable the [CSD] Participant to apply to the Urgent Issues Committee for the removal of the order made in terms of Rule 3.8.4 [4.4.4] once the conditions stated in the order have been satisfied.

[4.4.7]3.9.4 Any action taken by [an] the Urgent Issues Committee in terms of [this] Rule 3.9 may continue until such time as the [that] Committee is satisfied as to the [financial position and] Business [conduct] of the [CSD] Participant [in question]: Provided that such action shall be reviewed by the Urgent Issues Committee [at least once every month] on a regular basis and any order [given above] shall thereafter only continue to the extent that such continuation is resolved by [a two-thirds majority of] the Urgent Issues Committee [The urgent issues committee shall notify the Registrar of the outcome of any review in terms of this rule].

3.9.5 All decisions by the Urgent Issues Committee in terms of Rules 3.8 and 3.9 must be made by a two-thirds majority.

3.9.6 The Urgent Issues Committee must within a reasonable time notify the Registrar of any contraventions of the Act.

3.9.7 Any decision taken by the Urgent Issues Committee may be published in the media or otherwise, provided that if publication is ordered, the Participant referred to in Rule 3.9.2 shall be given an opportunity to make representations to the Urgent Issues Committee in this regard.

3.9.8 Any costs incurred by the Urgent Issues Committee in discharging their obligations in terms of the Rules shall be for the account of the Participant referred to in Rule 3.9.2.

[4.5 Fees and charges]

[4.5.1 The controlling body may from time to time prescribe fees and charges to be paid by CSD participants and other persons.]

[4.5.2 The controlling body shall notify the CSD participants of the fees and charges to be paid within a reasonable time prior to their imposition.]

[4.5.3 Fees and charges shall be paid within fifteen business days after date of statement.]

[4.5.4 Should a CSD participant fail to make any payment within twenty business days of it becoming due and payable, the controlling body shall notify the CSD participant of the amount in arrears.]

[4.5.5 If the arrears are not paid by the CSD participant within seven business days of such notice, or any extended period granted by the controlling body, the controlling body may refuse to provide any further services to the CSD participant.]

[4.5.6 Interest shall be payable on outstanding fees and charges. The interest shall be calculated from due date to the date of payment at the rate which is the average of the prime lending rates offered by the CSD participants as at the date of statement.]

[4.6] Termination [of the participation of a CSD Participant] by the Controlling Body

- [4.6.1]3.10.1** The Controlling Body may terminate the participation of a [CSD] Participant in terms of the Act **[and]** under the following circumstances:
- [4.6.1.1]3.10.1.1** The [CSD] Participant is [liquidated or] placed under curatorship, judicial management, or a liquidator is appointed, whether provisionally or finally, or the Participant makes a compromise or arrangement with its creditors;
- [4.6.1.2]3.10.1.2** the [CSD] Participant fails to take steps within 30 (thirty) calendar days of a material judgment having been granted against it to satisfy such judgment or to have it set aside; **[The controlling body may in its sole discretion elect not to enforce this rule 4.6.1.2;]**
- [4.6.1.3]3.10.1.3** the [CSD] Participant's participation is terminated in terms of the Rules and Directives [is expelled from the CSD pursuant to rule 9];
- [4.6.1.4]3.10.1.4** the [CSD] Participant no longer complies with the requirements of eligibility for [CSD] participation in terms of the Rules and Directives [rule 4.1];
- [4.6.1.5]3.10.1.5** **[as a result of]** the [CSD] Participant **[having]** obtained **[admission to]** acceptance by the CSD by furnishing the Controlling Body with information which is found to be untrue or misleading in any material respect; or
- 3.10.1.6** the Urgent Issues Committee has determined in terms of Rule 3.8 that a Participant's continued participation poses an imminent danger or is directly detrimental to the interests, Business and operation of other Participants, Clients, Issuers or the CSD.
- 3.10.2** A Participant must, upon notification of its termination, transfer all Securities Accounts to other Participants in accordance with Client instructions, the Client Mandate, Rules and Directives.
- 3.10.3** Reserved
- [4.6.2]3.10.4** A [CSD] Participant, or its trustee, liquidator, curator, judicial manager, administrator or other lawful agent as the case requires, shall immediately notify the Executive Officer and the Registrar in writing upon the happening of any of the events referred to in Rule 3.10.1 **[4.6.1]** and shall immediately upon the termination of the participation of the [CSD] Participant ensure that all of its Records are placed in **[the]** custody [of the CSD or other person designated by the controlling body in accordance with section 12 (1C)(a) of the Act.] as determined by the Controlling Body.
- 3.10.5** If the Participant, or its lawful agent, fail to notify the Executive Officer or place its Records as required in terms of Rule 3.10.4, the Controlling Body may appoint any one or more persons with relevant experience in the financial services industry to facilitate the placement by the Participant, at such Participant's cost, of its Records as determined by the Controlling Body.
- 3.10.6** The CSD must give reasons for the termination of its participation to the Participant;
- 3.10.7** The CSD must give notice of a termination of participation, and the effective date of termination, to the Registrar and other Participants who operate in the same the category as the category in which the Participant whose participation has been terminated, operated.

[4.7 Termination of participation by a CSD Participant]

Voluntary Termination

- [4.7.1]3.11.1** A [CSD] Participant may terminate its participation by applying in writing to the **[controlling body]** Executive Officer of the CSD and such termination shall be permitted when the [CSD] Participant has, to the reasonable satisfaction of the **[CSD]** Controlling Body -

- [4.7.1.1]3.11.1.1 entered into satisfactory arrangements regarding outstanding obligations and potential liabilities and ensured that all outstanding ~~[transactions]~~ Business of that [CSD] Participant ~~is [that affect the accounts under the control of the CSD are]~~ completed and the [CSD] Participant no longer has any outstanding obligations of any kind to ~~[its Clients]~~ other Participants, Clients, Issuers or the CSD; ~~[or]~~
- [4.7.1.2] entered into ~~alternate~~ satisfactory arrangements in respect of the affected accounts.]
- 3.11.1.2 transferred all Securities Accounts to other Participants on the instruction of Clients and where Clients have not provided such instructions, to other Participants determined by the Controlling Body; and
- 3.11.1.3 placed all of its records in custody as determined by the Controlling Body. [4.7.2 Prior to the termination of the participation of a CSD participant in terms of this rule, the CSD participant shall ensure that all its records are placed in the custody of the CSD or other person designated by the controlling body in accordance with section 12(1C)(a) of the Act.]
- [4.7.3]3.11.2 The Controlling Body ~~[shall]~~ must notify other [CSD] Participants within the category of participants in which such Participant participates, [as well as the Registrar] of the intention of a [CSD] Participant to terminate its participation within ~~[seven]~~ 10 (ten) Business Days of having received notification to that effect from such [CSD] Participant.
- [4.7.4]3.11.3 The notice of termination by a [CSD] Participant may not be withdrawn by such [CSD] Participant without the written consent of the Controlling Body.
- [4.7.5] The termination of the participation of the CSD participant shall become valid once the Registrar has, in terms of the Act, approved the deletion of the name of the relevant CSD participant from the list referred to rule 4.3.9. The controlling body shall notify the other CSD participants accordingly and shall state whether the termination of the participation of the CSD participant was permitted in terms of rule 4.7.1.1 or rule 4.7.1.2.]
- [4.8] **Effects of termination of participation]**
- [4.8.1] Upon termination of CSD participation, the CSD participant shall remain liable for the fulfillment of, and compliance with all obligations, undertakings, warranties, indemnities and commitments of the CSD participant, the cause of which arose prior to the date of termination of CSD participation.]
- [4.8.2]3.11.4 No [CSD] Participant may cede, transfer or assign participation, or any rights or obligations in respect thereof, without the prior written consent of the Controlling Body, and then only to a person who is a [CSD] Participant within the category of participation in which such Participant participates, and who complies with the [provisions of] the Rules [in relation to CSD participation] and Directives. In exercising its powers under this Rule, the Controlling Body ~~[shall]~~ may, so far as possible, take into account the wishes of the Clients with holdings controlled by the [CSD] Participant.
- 3.11.5 Once the Participant has complied with the requirements for termination in terms of Rule 3.11.1 to 3.11.4, the Controlling Body shall notify the Participant, the Registrar and other Participants within the category of participation in which such Participant participates of the effective date of termination of the Participant's participation.

Effects of termination of participation

- 3.12 Upon termination of participation -

- 3.12.1 Securities Accounts must be transferred in accordance with Rules 3.10.2, 3.10.3 and 3.11.1.2 and shall remain active within the CSD notwithstanding any appointment or decision of a curator, judicial manager, or liquidator, whether appointed provisionally or finally, and all transactions or events in respect of such Securities Accounts must be completed in terms of the Act, Rules and Directives. Any action so taken by the CSD pursuant to the Act, Rules and Directives, is binding upon a curator, judicial manager, or liquidator and shall not be capable of being reversed or rescinded by such curator, judicial manager, or liquidator;
- 3.12.2 the Participant shall remain liable for the payment of, fulfillment of and compliance with all fees and charges, obligations, undertakings, warranties, indemnities and commitments of the Participant, the cause of which arose prior to the date of termination of participation;
- 3.12.3 the Participant may no longer make use of the CSD or any Nominee owned or controlled by the CSD; and
- 3.12.4 where applicable, a Participant shall cause all unencumbered Securities held on its behalf in a Nominee owned or controlled by the CSD to be transferred to another Participant within the records of the Nominee owned or controlled by the CSD or such other person as nominated by the Controlling Body. The records representing such Securities shall be transferred to the other Participant, provided that if the Participant does not nominate another Participant the CSD shall transfer such Securities to a Participant nominated by the Controlling Body. Encumbered securities shall only be transferred to a Participant as contemplated in this section, when, and if, the securities have been released from their encumbrance.

[4.9 Notices]

- [4.9.1]** Every CSD participant shall notify the controlling body of a physical address, an electronic mail address and a secured Equities delivery mechanism address at which that CSD participant shall accept the delivery of all notices issued by the CSD in terms of the rules.]
- [4.9.2]** The controlling body shall notify the CSD participants of a physical address, an electronic mail address and a secured Equities delivery mechanism address at which the CSD shall accept the delivery of all notices from the CSD participants.]
- [4.9.3]** Any notice given by the CSD to a CSD participant or given by a CSD participant to the CSD in terms of the rules shall be in writing, and may be delivered by means of a secured Equities delivery mechanism, electronic mail or by hand or by registered post.]
- [4.9.4]** Any notice delivered by hand before 15:00 on a business day at the nominated physical address of the CSD and or CSD participant shall be deemed, until the contrary is proved, to have been received on the date of delivery.]
- [4.9.5]** Any notice transmitted by a secured Equities delivery mechanism or electronic mail before 15:00 on a business day, shall be deemed, until the contrary is proved, to have been received on the date of confirmation of the transmission.]
- [4.9.6]** Any notice delivered by registered post shall be deemed, until the contrary is proved, to have been received within seven business days after being dispatched.]
- [4.9.7]** The physical address as notified by the CSD and a CSD participant in terms of rule 4.9.1 shall be the address of the CSD and CSD participant for the service of legal process arising out of any dispute between the CSD and the CSD participant.]

[4.10] Right of Appeal

- [4.10.1] 3.13.1** If -

- [4.10.1.1]3.13.1.1 an application for [admission] acceptance as a [CSD] Participant has been [refused] rejected;
- [4.10.1.2]3.13.1.2 an application for termination of participation by a [CSD] Participant has been [refused] rejected;
- [4.10.1.3]3.13.1.3 the [membership] participation in the CSD of a [CSD] Participant has been terminated;
- [4.10.1.4] any penalty has been imposed on a CSD participant or any officer or employee of a CSD participant;]
- [4.10.1.5]3.13.1.4 the Controlling Body has refused to [admit] accept or has suspended the [admission] acceptance of Eligible Securities into the CSD;
- 3.13.1.5 the Urgent Issues Committee has imposed any restrictions, conditions or given instructions in terms of Rule 3.8.4; or
- [4.10.1.6]3.13.1.6 an interim manager has been appointed in terms of Rule [4.4.5] 3.9.1;
- then the aggrieved party [shall have a right of appeal in terms of rule 4.10] may, after notifying the Executive Officer of the CSD, appeal to the board of appeal established in terms of section 26 of the FSB Act, or any replacement Act, within 15 Business Days of receipt of notification of the decision.
- [4.10.2] Any person aggrieved by a decision as referred to in rule 4.10.1 may, within 15 business days of receipt of notification of the decision, which notification shall include the reasons for the decision, request an independent ruling in respect of the matter from the Registrar.]
- [4.10.3] The Registrar shall deal with the request with due regard to –
- 4.10.3.1 the circumstances which were considered in making the decision referred to in rule 4.10.1;
- 4.10.3.2 the grounds for the request;
- 4.10.3.3 the documentary or oral evidence, including evidence in electronic format, submitted or given by any person at the request or with the permission of the Registrar; and
- 4.10.3.4 any other information at the disposal of the Registrar.]
- [4.10.4] The Registrar shall provide the aggrieved party and the controlling body with a decision in writing, which shall include the reasons for the decision, within 15 business days of receipt of the request.]
- [4.10.5] Any person aggrieved by a decision of the Registrar in terms of rule 4.10.4, may appeal against the decision to the Board of Appeal established in terms of section 26 of the FSB Act.]
- [4.10.6] The controlling body may, subject to any conditions which it may wish to impose, suspend its decision pending the outcome of the request to the Registrar and, if applicable, an appeal in terms of rule 4.10.5.]
- [4.10.7] The decision of the Board of Appeal shall be binding upon the controlling body and all other interested parties, but shall not limit their right to have the decision of the controlling body reviewed in a court of law.]
- [4.11] Confidentiality

- 4.11.1 Any information relating to the CSD, a Client, an Uncertificated Securities Account or a Central Securities Account obtained by a CSD participant in the course of its operations shall be kept confidential by the CSD participant, unless –
- 4.11.1.1 the CSD participant is required to do so before any court or by any law; or
- 4.11.1.2 it has obtained the prior written consent of the person concerned.
- 4.11.2 A CSD participant which divulges or makes known any confidential information in contravention of rule 4.11.1 shall be guilty of improper conduct and subject to disciplinary action.]

[5]4. CONDUCT AND ETHICS

[5.1 Conduct of the business of the CSD]

[The business of the CSD shall be carried out with due regard to the public interest and the interests of owners, Clients, CSD participants and issuers of Securities.]

[5.2] Conduct of [the CSD] Participant

4.1 [Every CSD participant shall, at least] In performing their functions in terms of the Rules, Participants must -

4.1.1 carry out their Business in a prudent manner and with due regard to the rights of other Participants, Clients, Issuers and the CSD;

[5.2.1]4.1.2 act with integrity, proper skill, care, diligence, and due regard to the [public interest and the interest of] rights of other Participants, Clients [other CD participants], Issuers and the CSD;

[5.2.2 exercise independent professional judgement;]

[5.2.3]4.1.3 [adequately] inform Clients on matters relating to the Business of the CSD;

[5.2.4]4.1.4 maintain knowledge of and comply with the Act, the Rules, Directives and all applicable laws [the rules and directives] [and regulations governing the activities of the CSD participant] relating to the Business of the CSD; and

[5.2.5]4.1.5 not participate or assist in any acts in violation of [any applicable law] the Act, Rules, Directives and all applicable laws [the rules or any regulations governing the activities of the CSD participant] relating to the Business of the CSD and report any suspicion or [of] contraventions to the Controlling Body.

[5.2.6 employ the resources and implement the procedures that are necessary for the proper performance of its activities;]

[5.2.7 enter into a written agreement with employees who are involved in the conducting of the business carried on by the CSD participant in terms of the Act in terms of which the employees undertake to comply with the provisions of the Act, the rules, the directives and to abide by this rule 5.2.]

Confidentiality

- 4.2 Any information relating to the CSD, a Client, a Securities Account or a Central Securities Account obtained by a Participant in the course of its operations, must be kept confidential by the Participant, unless -
- 4.2.1 the Participant is required to disclose the information before any court or by any law;
- 4.2.2 the information is in the public domain;
- 4.2.3 the information is non-personal;
- 4.2.4 the Participant has obtained the prior written consent of the owner of the information; or
- 4.2.5 the information must be disclosed to the CSD in terms of the Rules and Directives
- 4.3 A Participant which divulges or makes known any confidential information in contravention of Rule 4.2 shall be guilty of improper conduct and subject to disciplinary action in terms of the Rules.
- 4.4 The CSD shall keep confidential all information disclosed to it by a Participant save that the CSD may disclose such information to third parties to the extent that -
- 4.4.1 the information is required to be disclosed in terms of any law;
- 4.4.2 the information is in the public domain;
- 4.4.3 the information is non-personal; or
- 4.4.4 the CSD has obtained the prior written consent of the owner of the information.

5. DUTIES OF PARTICIPANTS

Administration and Maintenance of Information

- 5.1 Participant's Records must, in addition to the requirements of relevant legislation applicable to that security, contain at least the following details of all deposits and withdrawals of Securities in Securities Accounts:
- 5.1.1 The name of the Client whose Securities Account is affected;
- 5.1.2 the name of the Issuer of the Securities;
- 5.1.3 the quantity and description of the Securities;
- 5.1.4 the date of any Entry in the Securities Account; and
- 5.1.5 details of any pledge or cession of the Securities to secure a debt, as the case may be.
- 5.2 Participants must reconcile balances with the CSD on a daily basis. Any differences that cannot be reconciled within 24 hours must immediately be -
- 5.2.1 reported to the CSD; and
- 5.2.2 investigated and corrected by the CSD or Participant.

- 5.3 The retention of any information in terms of the Act, the Rules and Directives may be effected in an electronic or any other manner and where information is retained electronically, such Records must be subject to back-up and recovery procedures and be capable of being reproduced in printed form.
- 5.4 A Participant must, disclose to the CSD information as set out in the Act, Rules and Directives.
- 5.5 A Participant must report to the CSD, as stipulated by Directive, any Off-market Trade resulting in a change of beneficial ownership in those Securities.

Client mandate

- 5.6.1 A Participant must, unless it can satisfy the Controlling Body that a mandate is inappropriate or unnecessary in a specific case, obtain a written mandate from its Client governing the relationship between them. The mandate must be signed by the Client prior to the commencement of any action by the Participant for or on behalf of the Client.
- 5.6.2 The mandate must contain at least provisions that -
- 5.6.2.1 the Client shall be bound by the Act, Rules and Directives;
- 5.6.2.2 the Client must disclose to the Participant information about a beneficial, limited or other interest in Securities deposited by a Client with the Participant in terms of the Rules and Directives;
- 5.6.2.3 in case of a conflict between a provision of the Act, the Rules, Directives and the mandate, then to the extent of such conflict, the provisions of the Act, the Rules and Directives shall prevail;
- 5.6.2.4 the Client indicates whether the Securities held or to be held are to be registered in the Own Name of the Client or in the name of a Nominee approved in terms of the Act;
- 5.6.2.5 an Entry in a Securities Account shall only be made if an instruction is received from the Client or an agent duly authorised to act on behalf of a Client. The instruction may take the form of either -
- 5.6.2.5.1 a Standing Instruction; or
- 5.6.2.5.2 an Authorising Instruction;
- 5.6.2.6 Participants must effect the Entry pursuant to rule 5.6.2.5 in the relevant accounts of the Clients where the Securities are held;
- 5.6.2.7 the Participant must comply with any other provisions that may be required by legislation as a result of the nature of the Client;
- 5.6.2.8 the Participant, or Client, as the case may be, (except in circumstances set out in 5.5.2.12) shall be required to give the Client or Participant not less than 30 (thirty) calendar days written notice of the termination of the mandate;
- 5.6.2.9 Reserved; and
- 5.6.2.10 any amendment to the mandate shall be in writing.

Duties of Participants

- 5.7 A Participant must ensure that -

- 5.7.1 the election by a Client to deposit Securities in the name of the Nominee of a Participant and not in the Client's Own Name shall in no way diminish the rights of the Client as a member of the Issuer of Securities and a Participant shall ensure that the Client is timeously advised of, and in a position to exercise its rights as a member of the Issuer, or legal owner of the Securities in the Issuer, as if the Client were the registered member of the Issuer or legal owner of the Securities;
- 5.7.2 all interest, dividend, capital redemption payments and all other entitlements received by it from an Issuer of Securities will be paid, in accordance with the Client Mandate, Rules and Directives, to the Client upon receipt in accordance with the Client's holdings at the date that the entitlement was calculated;
- 5.7.3 all notices, reports and circulars regarding rights and other benefits accruing to the Securities which are received by a Participant from the Issuer of Securities are conveyed within a reasonable time to the Client concerned;
- 5.7.4 any fee or charge increase shall only become effective upon not less than 30 (thirty) calendar days written notice by a Participant to its Client of the increase;
- 5.7.5 statements in respect of Securities Accounts are provided to Clients at least bi-annually;
- 5.7.6 all entries in Securities Accounts pursuant to an instruction in terms of Rule 6.7.2 are recorded in the statements provided to Clients in terms of Rule 5.7.5; and
- 5.7.7 Clients are advised in writing within 3 (three) Business Days of any suspension, restriction or termination of its participation, or of it being placed under interim management in terms of the Rules.

Securities issued by a company incorporated and listed in a foreign jurisdiction with a dual or secondary listing on a South African Exchange

- 5.8.1 In relation to Securities issued by a company incorporated in the United Kingdom, the Participant must ensure that no Securities Account is opened, administered or maintained for or on behalf of a Nominee for a clearance service provider or a depository receipt Issuer, or a provider or Issuer in that capacity, specified in the list provided by the United Kingdom Inland Revenue to the CSD from time to time.
- 5.8.2 In relation to Rule 5.8.1 and in compliance with the laws of the United Kingdom -
- 5.8.2.1 Securities include immobilised Securities; and
- 5.8.2.2 immobilised means the process of depositing certificates or documents of title in respect of certificated Securities with the CSD or its wholly owned subsidiary and the recording of the ownership in such Securities in a Securities Account;
- 5.8.3 In relation to Securities issued by a company with a secondary or dual listing on a South African Exchange, the Participant shall ensure that it complies with the applicable Rules, Directives and notices issued by the Controlling Body from time to time.

6. ACCOUNTS

(PLEASE NOTE THAT THIS SECTION DOES NOT APPLY TO MONEY MARKET SECURITIES BEING HELD ON A SECURITIES OWNERSHIP REGISTER)

[6.1] Deposit of [Uncertificated] Securities

- [6.1.3]6.1.1 Only Eligible Securities shall be deposited and held in the CSD in Central Securities Accounts opened and maintained by the CSD for [CSD] Participants.
- 6.1.2 A person who wishes to deposit Eligible Securities shall first open a [an Uncertificated] Securities Account with a [CSD] Participant in accordance with the Rules and Directives.
- [6.1.4]6.1.3 The [CSD] Participant [shall] must ensure that all Eligible Securities deposited with it by a Client are entered in a [an Uncertificated] Securities Account opened and maintained by the [CSD] Participant in terms of the Rules and Directives.
- [6.1.1]6.1.4 The [CSD] Participant is not obliged to accept an application to open a [an Uncertificated] Securities Account or accept for Dematerialisation or Immobilisation any [share] certificate or document of title [tendered] by [an Uncertificated Securities Account holder] any person.

[6.2] Dematerialisation and Immobilisation of Securities

- 6.2.1 Upon receipt of any certificate or document[s] of title from a Client for the purposes of Dematerialisation or Immobilisation, the [CSD] Participant [shall] must forthwith issue the Client with a receipt recording the name of the Securities and the number or nominal value of the Securities so received.
- 6.2.2 A [CSD] Participant [shall] must check the certificate or document of title which it has in its possession and determine from the face of it whether the Client is the legal [registered] owner of such Securities. If the Client is not on the face of the certificate or document of title the legal [registered] owner, the [CSD] Participant may reject it.
- [6.2.3] The issuer or its agent shall, upon receipt of Securities to be dematerialised and prior to the dematerialisation of the Securities, examine the documents of title with due diligence to determine the validity and authenticity of it and shall take all reasonable steps to ensure that the documents of title reconcile with the issuer's records.]
- [6.2.4]6.2.3 The Dematerialisation or Immobilisation of Securities shall take place in accordance with the Act, and the Companies Act, where applicable, and in the manner as [prescribed from time to time by the controlling body] stipulated by Directive.

[6.3] Classification of accounts

[6.3.1] Central Securities Accounts

- [6.3.1.1] Central Securities Accounts shall only be opened and maintained by the CSD for CSD participants.]
- 6.3.1 Only the CSD may open, maintain and close one or more Central Securities Accounts for Participants.
- [6.3.1.2]6.3.2 A [CSD] Participant may [open two or more Central Securities Accounts with the CSD] request the CSD to open one or more Central Securities Accounts in the name of the [CSD] Participant with each account reflecting -
- [6.3.1.2.1]6.3.2.1 the number or nominal value of [Uncertificated] Securities of each kind deposited with the CSD by that [CSD] Participant for its own account and all entries made in such account; and [or]
- [6.3.1.2.2]6.3.2.2 the number or nominal value of [Uncertificated] Securities of each kind deposited with the CSD by that [CSD] Participant for the account of its Clients and all entries made in such account.

[6.3.2 Uncertificated] Securities Accounts

- [6.3.2.1]6.3.3** **[Uncertificated] Securities Accounts [shall] may** only be opened and maintained by a **[CSD] Participant.**
- [6.3.2.2]6.3.4** A Client may only operate its **[Uncertificated] Securities Account** through the **[CSD] Participant** with whom such account is opened and maintained.
- [6.3.2.3]** **An account opened for a Client shall be designated by CSD participants as an Uncertificated Securities Account and clearly distinguishable from the CSD participant's own accounts.]**
- 6.3.5** Participants must ensure that the Securities held for their own account and the Securities held for their Clients are deposited into separate Securities Accounts and are clearly segregated and distinguishable.
- [6.3.2.4]6.3.6** A **[CSD] Participant** may have one or more of the following Securities Accounts:
- [6.3.2.4.1]6.3.6.1** [an Uncertificated Securities Account in the CSD Participant's own name;] in the Participant's own name;
- [6.3.2.4.2]6.3.6.2** [an Uncertificated Securities Account in the name of a Client;] in the Own Name of a Client;
- [6.3.2.4.3]6.3.6.3** [an Uncertificated Securities Account in the name of a Nominee company controlled by the CSD participant;] in the name of a Nominee company wholly owned by the Participant;
- [6.3.2.4.4]6.3.6.4** [an Uncertificated Securities Account in the name of such other person as the Client may direct;] in the name of any other Nominee.
- [6.3.2.5]6.3.7** The standards of record keeping which apply to **[Uncertificated] Securities** in the Subregister shall also apply and be maintained by **[CSD] Participants** in respect of other Records of underlying Clients of **[CSD] Participants**.
- [6.3.2.6]6.3.8** **[A CSD participant may open an Uncertificated Securities Account in the name of a Nominee company: Provided that the Nominee company complies with the criteria determined by the Registrar by notice from time to time.] Securities held by the CSD may be registered in the name of the CSD or its wholly owned subsidiary.**

Fees and charges for services provided to Own Name Clients

- 6.4** If a Client elects to be an Own Name Client, the Participant may levy a fee on the Issuer of the relevant Securities and the Issuer shall bear the costs of the following services provided by the relevant Participant:
- 6.4.1** The provision to the Own Name Client of two statements of the Securities Account per annum;
- 6.4.2** the payment of all interest, dividend, capital redemption payments and all other entitlements received by the Participant from the Issuer;
- 6.4.3** the administration and maintenance of the Clients' Securities Account; and
- 6.4.4** the provision to the Own Name Client of all notices, reports and circulars regarding rights and other benefits accruing to the Securities which are received by the Participant from the Issuer.
- 6.5** Interest shall be payable by the Issuer on outstanding fees and charges as set out in Rule 6.4. The interest shall be calculated from due date of payment at the rate which is the prime lending rate offered by the CSD's principal bank as at the date of statement.

Nominees

- 6.6 A Participant may only open a Securities Account in the name of a Nominee where -
- 6.6.1 the Nominee has been approved by an Exchange in terms of section 36(1)(a) of the Act;
- 6.6.2 the Nominee has been approved by the Registrar in terms of section 36(2) of the Act;
- 6.6.3 the Nominee is a foreign Nominee and has assured the Participant that it operates within its domestic legal framework with the appropriate regulatory approval required in its home jurisdiction; or
- 6.6.4 the Nominee has been approved by the CSD in accordance with the Act, Rules and Directives.

[6.4] Operation of Securities Accounts

- [6.4.1]**6.7.1 A [CSD] Participant is responsible for opening, maintaining and closing [Uncertificated] Securities Accounts.
- [6.4.2]**6.7.2 A [CSD] Participant [shall] must, upon receipt of an Authenticated Instruction from the CSD advising it of the completion of a transaction which affects the balance of a [an Uncertificated] Securities Account held by the [CSD] Participant, complete a corresponding Entry in the relevant [Uncertificated] Securities Account in accordance with the Client Mandate, the Rules, Directives, section 91A of the Companies Act [and the Client mandate], where applicable, the Act and other relevant legislation.
- [6.4.3]**6.7.3 A [CSD] Participant [shall] must make a deposit, withdrawal, transfer, record a pledge or cession [in *securitatem debiti*] to secure a debt on behalf of a Client in a [an Uncertificated] Securities Account in accordance with the provisions of the Client Mandate, the Act, [the] Rules and Directives.
- 6.7.4 Where a Participant records a pledge or cession to secure a debt on behalf of a Client in a Securities Account -
- 6.7.4.1 the requirements of the Act, Rules and Directives shall also be applicable to any Securities Account in which the Client's Securities are held;
- 6.7.4.2 it must, in accordance with the Act, prevent the Securities from being transferred from the Securities Account or the underlying account in which the Client's Securities are held, except with the written consent of the pledgee or cessionary;
- 6.7.4.3 it must, in its statements to its Clients, indicate which Securities have been pledged or ceded and specify the nominal amount or number of such Securities; and
- 6.7.4.4 it must, when it sends out statements in accordance with rule 6.7.4.3, send to the person to whom the Securities are pledged or ceded, a statement evidencing the existence of the pledge or cession to secure a debt.
- [6.4.4]**6.7.5 A [CSD] Participant [shall] must ensure that every Entry in a [an Uncertificated] Securities Account is executed pursuant to an Authorising Instruction or a Standing Instruction received from a Client or the Client's duly authorised agent.
- [6.4.5]**6.7.6 A [CSD] Participant [shall] must, on the receipt of an Authorising Instruction or a Standing Instruction, [deliver to the Client or its Nominee the number or nominal value of any Securities held by that CSD participant for the Client.] reflect in the Participant's Records of the Client the content of such instruction.

[6.4.6] In the event that the Client requires Securities to be delivered in certificated form, the provisions of rule 6.7 shall apply.]

[6.4.7]6.7.7 A [CSD] Participant [shall] must, at the close of every Business Day, ensure that the Records as reflected in the [Uncertificated] Securities Accounts held by the [CSD] Participant correspond with the respective Records reflected in the Central Securities Accounts[the details of which will be advised by the CSD to the CSD participant on a daily basis].

[6.4.8] If the records of the CSD are inconsistent with those of the CSD participants regarding any Uncertificated Securities Account, the records of the CSD shall, until the contrary is proved, be deemed to be correct.]

[6.5] Information in respect of accounts

[6.5.1] 6.8.1 Every Central Securities Account [shall] must specify the date [and time] of an Entry in that Central Securities Account and [shall] must clearly reflect the number or nominal value of Securities of each kind deposited with the CSD by a [CSD] Participant.

[6.5.2] 6.8.2 Every [Uncertificated] Securities Account [shall] must -

[6.5.2.1]6.8.2.1 bear the name, an appropriate identification number, where issued, and physical address or principal place of Business of the Client on whose behalf the account was opened;

[6.5.2.2]6.8.2.2 clearly reflect the date of the making of any Entry in the [Uncertificated] Securities Account;

[6.5.2.3]6.8.2.3 clearly reflect the number or nominal value of Securities of each kind deposited with the [CSD] Participant; and

[6.5.2.4]6.8.2.4 reflect any further information that may be required [in respect of the Subregister as set out in] by the CSD, or section 91A of the Companies Act, where applicable, or any other law.

[6.5.3]6.8.3 Access to information and inspection of the [Uncertificated] Securities Account will be allowed in accordance with [the provisions of the Act and] section 91A of the Companies Act, where applicable, or any other law [which applied to the Subregister].

[6.5.4]6.8.4 Any request from an Issuer of [Uncertificated] Securities to the CSD to furnish it with details of holdings in [the] that Issuer [of Securities] as reflected in the Securities Accounts [as reflected in the Uncertificated Securities Accounts] maintained by the [CSD] Participant [in accordance with the provisions relating to the sub-register as set out in section 91A(3) of the Companies Act], [shall] must be made to the CSD in the form [prescribed] required by the Controlling Body [from time to time].

[6.5.5]6.8.5 Upon request by the CSD, a [CSD] Participant [shall] must by no later than 12H00 on the second Business Day following such [a] request [from the CSD received in terms of rule 6.5.4], provide the CSD with details of holdings in an Issuer of [Uncertificated] Securities as reflected in its [Uncertificated] Securities Accounts as at the close of Business on the day of the request by the CSD: Provided that the request was received by no later than 12H00 on that day.

[6.5.6] The CSD shall furnish the issuer of Uncertificated Securities with the information as is required to be disclosed in terms of the Companies Act.]

6.8.6 The CSD must furnish the Issuers of Securities with the information as is required to be disclosed in terms of the Act, Companies Act where applicable, or any other law and may furnish the Issuers with additional information, in accordance with the Rules and Directives.

- [6.5.7] The maximum fee payable by the issuer of Uncertificated Securities to the CSD participant for the provision of the information requested shall be determined in the manner set out in the Companies Act.]

[6.6] Debit Balances

- [6.6.1]6.9.1 A [CSD] Participant [shall] must not give, or give effect to an instruction which would result[s] in any of the [Uncertificated] Securities Accounts maintained by the [CSD] Participant reflecting a Debit Balance.
- [6.6.2] The CSD shall not process any instruction from a CSD participant which results in any of such CSD participant's Central Securities Accounts reflecting a Debit Balance.]
- [6.6.3] In the event that a CSD participant issues instructions to the CSD to execute a transaction, which is not a guaranteed transaction, which would have resulted in a Debit Balance in any CSD participant's Central Securities Account, the CSD shall not execute such transaction and the CSD participant which issued the instruction shall be liable for any direct loss sustained by the CSD or a CSD participant as a result of such instruction.]
- 6.9.2 In the event that a Participant instructs the CSD to execute a transaction which would cause a balance to be in debit, such Participant shall be liable to the CSD and all other Participants to make good to the CSD and the Participants any direct damage which they have sustained as a result of the instruction not being processed.

[6.7] Withdrawal

- [6.7.2]6.10.1 Any Client who wishes to withdraw its [Uncertificated] Securities held by a [CSD] Participant in the Client's [Uncertificated] Securities Account and obtain a certificate or document of title in respect of all or part of those [Uncertificated] Securities, [shall] must notify the Participant thereof in which case the [CSD] Participant [shall] must comply with the procedure stipulated by Directive [as set out in the directives].
- [6.7.1]6.10.2 The application for withdrawal, handling and processing of withdrawal, and the delivery of a certificate or document of title in respect of all or part of those Securities [shall] must be done in accordance with the Act, section 91A of the Companies Act, where applicable, the Rules and [the] Directives.

[6.7.3] Unconditional Commitment to Settle

- [6.8.3.1]6.11.1 [A CSD participant shall,] Once [its] a Participant's conditional commitment to settlement of a transaction in [Uncertificated] Securities becomes unconditional [in terms of the prescribed directive] as stipulated by Directive, it must ensure that the transaction settles on settlement day.
- [6.8.3.2]6.11.2 In the event that a [CSD] Participant fails to ensure that it is in a position to settle any On-market Trade or Off-market Trade [transaction] on settlement day, the CSD may, in its sole discretion (notwithstanding any action taken in accordance [with the rules of the JSE Securities Exchange South Africa on failed trades] with Rule 6.12.2), impose a [penalty] fine on that [CSD] Participant [in accordance with a schedule as prescribed by directive] as stipulated by Directive or proceed in terms of the disciplinary procedures set out in terms of the Rules.

[6.8] Settlement of transactions in [Uncertificated] Securities

- [6.8.1] 6.12.1 Settlement of transactions in [Uncertificated] Securities deposited with the CSD, including Off-market Trades, [shall] must take place in the manner determined by the Controlling Body [from time to time] and in accordance with the Rules of [the JSE Securities Exchange South Africa] an Exchange, where applicable, and in accordance with the Rules and Directives of the CSD.

- [6.8.2] 6.12.2 Any settlement of [uncertificated] Securities which fails as a result of a [CSD] Participant being unable to meet its commitment to such settlement shall be deemed to be a failed settlement and will be dealt with in accordance with [the rules of the JSE Securities Exchange South Africa] the Rules of that Exchange, where applicable, and in accordance with the Rules and Directives of the CSD.
- [6.8.4] The CSD may provide services for CSD participants and other parties and the CSD shall have the power from time to time to prescribe –]
- [6.8.4.1] procedures and requirements with which CSD participants and other parties shall comply when using such services; and
- 6.8.4.2 the fees payable by the CSD participants and other parties for the use of such services.]
- [6.9] Securities issued by a company incorporated and listed overseas with a secondary listing on the JSE.
- 6.9.1 In relation to Securities issued by a company incorporated in the United Kingdom, the CSD participant shall ensure that no Securities Account is opened, administered or maintained for or on behalf of a Nominee for a clearance service provider or a depositary receipt issuer, or a provider or issuer in that capacity, specified in the list provided by the United Kingdom Inland Revenue to the CSD from time to time.
- 6.9.2 In relation to rule 6.9 and in compliance with the laws of the United Kingdom or other legal jurisdictions -
- 6.9.2.1 eligible Securities include immobilised Securities; and
- 6.9.2.2 immobilised means in relation to Securities other than Uncertificated Securities, that the legal title to the Securities is registered in the name of the Nominee or custodian and the certificates or other documents of title are held in safe custody.
- 6.9.3 In relation to eligible Securities issued by an overseas company with a secondary listing on the JSE, the CSD participant shall ensure that it complies with the applicable rules, directives and notices issued by the controlling body from time to time.]

7. SECURITIES OWNERSHIP REGISTER

Reserved

8. RISK AND COMPLIANCE

[7.1]8.1 Reports and audits – [CSD] Participant

- [7.1.1]8.1.1 The Controlling Body may, [prescribe from time to time] in addition to the Accounting Records prescribed by the Act, determine the nature and type of reports, Accounts and Records which a [CSD] Participant shall maintain for the purpose of the requirements of the Act and Rules.
- [7.1.2]8.1.2 A [CSD] Participant [shall] must, to the satisfaction of the Controlling Body, introduce and maintain internal [audit] controls and procedures [and internal controls] to ensure that the [Uncertificated] Securities Accounts held by it are audited on a regular basis according to SAAS. All audit reports compiled in accordance with the provisions of this Rule and submitted to the CSD shall only be disclosed to the Executive Officers of the CSD and the Head of Supervision and on request, to the Registrar.
- [7.1.3]8.1.3 Every [CSD] Participant [shall] must annually report to the Controlling Body whether or not -

- [7.1.3.1]8.1.3.1 the [CSD] Participants' internal controls and procedures, in so far as they relate to the Business of the Participant, provide reasonable assurance as to the integrity and reliability of the accounts;
- [7.1.3.2]8.1.3.2 the audit procedures and internal controls and procedures are based on established policies and procedures and are implemented by trained and skilled personnel **[whose duties have been appropriately segregated]**;
- [7.1.3.3]8.1.3.3 the adherence to the implemented internal controls and procedures is continuously monitored by the [CSD] Participant;
- [7.1.3.4]8.1.3.4 the [CSD] Participant is maintaining high ethical standards, thereby ensuring that the [CSD participant's business practices, in so far as they relate to business conducted in terms of the Act,] business of the Participant is [are] conducted in a manner which is above reproach.
- [7.1.3.5] Every CSD Participant shall timeously report to the controlling body whether anything has come to the directors' attention to indicate that any material malfunction, as defined and documented by the board of directors of the CSD participant, in the functioning of the aforementioned controls, procedures and systems has occurred during the period under review.]
- [7.1.4]8.1.4 The [directors of the CSD] Participants must [are required to] submit the report required in terms of Rule 8.1.3 [7.1.3] within 120 (one hundred and twenty) calendar days after the financial year-end of the Participant.
- [7.1.5] Every CSD participant shall advise the controlling body in writing within 14 days of
- 7.1.5.1 any material changes to its shareholding since the date of approval of the CSD Participant's application;
- 7.1.5.2 any changes to the composition of its board of directors]
- 8.1.5 The external auditor of the Participant must submit a factual findings report annually to the Controlling Body, within 120 (one hundred and twenty) calendar days after the financial year-end of the Participant which complies with the STRATE SAICA Guidelines, the Act and Rules.
- [7.1.6.1] The external auditor of the CSD participant shall submit a factual findings report annually to the controlling body, within 120 calendar days after the financial year-end of the CSD participant stating that :]
- [7.1.6.1.1] the systems and procedures relating to risk reduction are adequate and in all material respects in operation to ensure the safe custody and administration of Securities deposited with the CSD participant, particularly with regard to processing, physical, logical security, back-up and contingency controls.]
- 8.1.6 The external auditor of the Participant must annually report to the Controlling Body whether or not -
- 8.1.6.1 the Participant complies with the requirements of the Act and the Rules regarding the maintenance of Securities Accounts; and
- 8.1.6.2 the Participant complies with the Rules relating to the reconciliation of Securities Accounts to the Central Securities Accounts kept by the CSD.

8.1.7 A Participant must, within 120 (one hundred and twenty) calendar days from its financial year end, ensure that its external auditor submits to the Controlling Body any further reports as required by the Act and Rules.

[7.1.7 A CSD participant's records shall, in addition to the requirements of the Companies Act, contain at least the following details of all deposits and withdrawals of Securities in Uncertificated Securities Accounts –

7.1.7.1. the name of the Client whose Uncertificated Securities Account is affected;

7.1.7.2 the name of the issuer of the Uncertificated Securities;

7.1.7.3 the quantity and description of the Uncertificated Securities;

7.1.7.4 the quantity, description and details of any Uncertificated Securities lent or borrowed;

7.1.7.5 details of any pledge or charge on the Securities.]

[7.1.8 A CSD participant shall reconcile balances with the CSD on a daily basis. Any differences shall immediately be –

7.1.8.1 reported to the CSD; and

7.1.8.2 investigated and corrected by the CSD or CSD participant.]

[7.2 Maintenance of Information

The retention of any information in terms of the Act, the rules and directives may be effected in any manner including electronically and where information is retained electronically, the provisions relating to the maintenance of information in the Electronic Communications and Transactions Act 25 of 2002 as amended shall apply.]

[7.3 Client mandate

7.3.1 The CSD participant shall obtain a written mandate from its Client governing the relationship between them. The mandate must be signed by the Client prior to the commencement of any action by the CSD participant for or on behalf of the Client. For existing Clients a mandate as required by this rule shall be obtained by no later than 1 March 2002.

7.3.2 The mandate shall contain at least provisions that –

7.3.2.1 the Client shall be bound by the Act, the rules and directives as amended from time to time;

7.3.2.2 in case of conflict between a provision of the Act, the rules and directives and the mandate, then to the extent of such conflict the provisions of the Act, the rules and directives shall prevail;

7.3.2.3 all fees and charges made by the CSD participant for its services shall be disclosed to the Client on a regular basis. Such disclosure shall include the manner in which the fees and charges are calculated and the period within which they will become payable;

7.3.2.4 any fee or charge increase shall only become effective upon 30 calendar days written notice by the CSD participant of the increase;

- 7.3.2.5 the CSD participant shall advise the Client in writing within 3 business days of any termination of its participation or of it being placed under interim management in terms of rule 4.4;
- 7.3.2.6 the CSD participant shall provide the Client with a statement of the Uncertificated Securities Account at least twice a year. In the event that the own name of the Client appears in the sub-register of the CSD participant, the statement shall be provided to the Client and at the expense of the Issuer;
- 7.3.2.7 the Client indicates whether the Uncertificated Securities held or to be held are to be registered in the own name of the Client, in the name of the Nominee company of the CSD participant or in the name of any other person;
- 7.3.2.8 an Entry in an Uncertificated Securities Account shall only be made if an instruction is received from the Client or an agent duly authorised to act on behalf of a Client. The instruction may take the form of either –
- 7.3.2.8.1 a standing instruction; or
- 7.3.2.8.2 an authorising instruction;
- 7.3.2.9 by when the CSD participant shall effect an Entry in the Uncertificated Securities Account pursuant to rule 6.4.2;
- 7.3.2.10 any other provisions that may be required by statute as a result of the nature of the Client;
- 7.3.2.11 the CSD participant, or Client, as the case may be, (except in circumstances set out in 7.3.2.5) shall be required to give the Client or CSD participant not more than 30 calendar days written notice of the termination of the mandate;
- 7.3.2.12 any amendment to the mandate shall be in writing.]
- [7.4 The effect of depositing Uncertificated Securities in the CSD participant's Nominee account
- 7.4.1 The CSD participant shall ensure that –
- 7.4.1.1 the election by a Client to deposit Uncertificated Securities in the name of the Nominee of the CSD participant and not in the Client's own name shall in no way diminish the rights of the Client as a member of the issuer of Uncertificated Securities and the CSD participant shall ensure that the Client is timeously advised of, and in a position to exercise its rights as a member of the issuer of Uncertificated Securities as if the Client were the registered member of the issuer of Uncertificated Securities;
- 7.4.1.2 all interest, dividend, capital redemption payments and all other payments received by it from an issuer of Uncertificated Securities will be paid to the Client upon receipt in accordance with the Client's balances at the date that the entitlement was calculated;
- 7.4.1.3 all notices regarding rights and other benefits accruing to the Securities which are received by the CSD participant from the issuer of Uncertificated Securities are conveyed within a reasonable time to the Client concerned.]
- [7.4.2 Fees and charges for services provided to own name Clients

- 7.4.2.1 Should a Client elect to be an own name Client, the issuer of the relevant Securities will bear the fees and charges of the following services provided by the relevant CSD participant --
- 7.4.2.1.1 the provision to the own name Client of two statements of the Uncertificated Securities Account per annum in the form as prescribed from time to time by the controlling body;
- 7.4.2.1.2 the payment of all interest, dividend, capital redemption payments and all other payments received by the CSD participant from the issuer;
- 7.4.2.1.3 the administration and maintenance of the relevant Subregister;
- 7.4.2.1.4 the provision to the own name Client of all notices, reports and circulars regarding rights and other benefits accruing to the Securities which are received by the CSD participant from the issuer.
- 7.4.2.2 The controlling body may from time to time prescribe the fees and charges to be paid by the issuer to the CSD participant, as recommended from time to time by the executive officer of the CSD, in consultation with the industry, and set out in a directive.
- 7.4.2.3 The CSD may provide services to the CSD participant and issuer to facilitate and administer the payment of the fees and charges and the CSD shall have the power to prescribe in a directive the procedures, requirements and administration fee for its services as set out in rule 6.8.4. Nothing in this section shall be construed as causing the CSD to accept any credit risk or liability whatsoever for the non-payment of the fees or charges by the issuer.
- 7.4.2.4 The CSD shall notify the issuer of the fees and charges to be paid at least 30 calendar days prior to their implementation.
- 7.4.2.5 Fees and charges shall be paid within fifteen business days of statement date.
- 7.4.2.6 Should an issuer fail to make any payment within twenty business days of it becoming due and payable, the CSD shall notify the issuer and the CSD participant of the amount in arrears.
- 7.4.2.7 If the issuer does not pay the arrears within seven business days of such notice, the CSD may refuse to provide any further services as set out in rule 7.4.2.3 to the issuer and the CSD participant may take such further steps and legal actions against the issuer as it may deem necessary.
- 7.4.2.8 Interest shall be payable on outstanding fees and charges. The interest shall be calculated from due date of payment at the rate which is the prime lending rate offered by the CSD principal bank as at the date of statement.]
- 8.1.8 A Participant must report any material malfunction in the functioning of the aforementioned controls, procedures and systems to the Controlling Body as soon as is reasonably possible after it has come to the directors' or officers' of the Participant's attention.
- 8.1.9 A Participant must conduct a full Disaster Recovery test bi-annually on its relevant internal systems and related infrastructure and report to the Controlling Body the results of such test.
- 8.1.10 A Participant must advise the Controlling Body in writing of any material change to its shareholding or corporate structure that is likely to affect the risk profile of the Participant.

[7.5] Internal Control and Risk Management

- [7.5.1] A CSD participant shall –
- 7.5.1.1 establish and maintain adequate systems of internal control;
- 7.5.1.2 adopt sound risk management principles and procedures and be able to describe and demonstrate the objectives and operation of these in the manner set out in rule 7.1.3.]
- 8.2.1 A Participant must, in addition to the internal controls and procedures prescribed by the Act, adopt sound risk management principles and procedures and be able to describe and demonstrate the objectives and operation of these in the manner set out in Rule 8.1.3.
- [7.5.2]8.2.2 The [systems of] internal controls and procedures of the Participant must [shall] be designed to ensure that –
- 8.2.2.1 the Business of the Participant can be carried on in an orderly and efficient manner;
- 8.2.2.2 the financial and other information used or provided by the Participant is reliable;
- [7.5.2.1]8.2.2.3 all transactions and [financial] commitments entered into by the Participant in so far as they relate to the Business of the Participant are recorded as prescribed by the Act, Rules and Directives and are within the scope of authority of the Participant and of the officer or employee acting on its behalf;
- [7.5.2.2]8.2.2.4 there are procedures to safeguard and segregate the [CSD] Participant's assets and assets belonging to other persons to which the [CSD] Participant is accountable, and to control liabilities;
- [7.5.2.3]8.2.2.5 there are measures in place to [minimise] detect, identify and mitigate the risk of losses to the [CSD] Participant and its Clients from any irregularity, fraud or error [and to detect any irregularity, fraud or error should they occur so that prompt remedial action may be taken by the CSD participant] in terms of the Act, Rules and Directives;
- [7.5.2.4]8.2.2.6 on a daily basis [the total of the balances of the Uncertificated Securities Accounts held for all Clients for each class and type of Securities held by the CSD participant agree with the aggregate amount for those Securities reflected in the records of the CSD participant;], the Client's Records of the aggregate quantity of the Securities of each class and type of Securities held by it are the same as those held by the Participant on their behalf; and
- [7.5.2.5]8.2.2.7 on a daily basis, the [CSD] Participant's Records of the aggregate quantity of the Securities of each class and type held by it are the same as those held by the CSD on its behalf;
- [7.5.3]8.2.3 The principles and procedures of risk management [shall] must be designed to enable the [CSD] Participant to –
- [7.5.3.1]8.2.3.1 identify, quantify, control and manage its risk [exposures];
- [7.5.3.2]8.2.3.2 make timely and informed Business decisions in regard to the identified risks;
- [7.5.3.3]8.2.3.3 monitor the performance and all aspects of its Business; and
- [7.5.3.4]8.2.3.4 monitor its capital to ensure compliance with the capital adequacy requirement and other requirements imposed in terms of the Rules and Directives.
- 8.2.4 A Participant must be able to describe and demonstrate the objectives and operation of its internal controls and procedures and risk management to its external auditor, the CSD and the Registrar.

[7.6] Compliance Officer

[7.6.1]8.3.1 A [CSD] Participant **[shall] must** appoint **[a]** compliance officers as stipulated by Directive to ensure compliance with the provisions of the Act, **[the]** Rules and Directives **[and controlling body decisions]**.

[7.6.2]8.3.2 A compliance officer **[shall] must** -

[7.6.2.1]8.3.2.1 pass the compliance officer examination **[prescribed by the controlling body]** and fulfill any further requirements stipulated by Directive;

[7.6.2.2]8.3.2.2 immediately report to the **[directors] senior management** of the [CSD] Participant any apparent breach by the [CSD] Participant, **[including]** its officers and employees, of the provisions of the Act, **[the]** Rules and Directives **[or controlling body decisions any discrepancy or irregularity detected in terms of rule 7.6.3 and any other issue considered by the compliance officer to be irregular]**;

8.3.2.3 immediately report to the senior management of the Participant any discrepancy or irregularity detected in terms of the Rules and Directives and any other issue considered by the compliance officer to be irregular;

[7.6.2.3]8.3.2.4 **[in the event that the directors of the CSD participant]** if the Participant fails to rectify the breach, discrepancy or irregularity reported to **[them]** it in terms of Rules **[7.6.2.2] 8.3.2.2 and 8.3.2.3** within 24 (twenty four) hours, the directors of the Participant or, failing the directors, the compliance officer, **[shall] must** report the breach, discrepancy and or irregularity to the Controlling Body, which report shall include a description of any action taken by the **[director] Participant** to rectify the breach, discrepancy **[and]** or irregularity;

[7.6.2.4]8.3.2.5 submit a bi-annual report signed by the chief executive officer or designated officer of the [CSD] Participant and the compliance officer, relating **[only]** to **[the CSD custodian business] the Business** of the [CSD] Participant **[and]** which indicates any material problems that the directors **[and]** or compliance officer have experienced during the preceding 6 (six) months and how these have been or are to be addressed. The report must include a disclosure and analysis of the impact on the solvency of the company of any material problems or losses experienced, risk management, internal controls and procedures implemented to mitigate the risks introduced, as well as any material claims of which the directors or compliance officer are aware.

[7.6.2.5]8.3.2.6 **[shall]** receive all notices issued in terms of Rule 13 [4.9] and monitor that they **[be responsible to ensure that these]** are complied with.

[7.6.3]8.3.3 The primary functions of the compliance officer **[shall be] are** to **[review]**:

[7.6.3.1]8.3.3.1 review the daily monitoring, controlling and reconciling of the **[Uncertificated]** Securities Accounts of the [CSD] Participant;

[7.6.3.2]8.3.3.2 review on a daily basis, that the total of the balances of the **[Uncertificated]** Securities Accounts held for all Clients for each class and type of Securities held by the [CSD] Participant agree with the aggregate amount for those Securities reflected in the Records of the [CSD] Participant;

[7.6.3.3]8.3.3.3 review on a daily basis, that the [CSD] Participant's Records of the aggregate quantity of the **[Uncertificated]** Securities of each class and type held by it are the same as those held by the CSD on its behalf;

[7.6.3.4]8.3.3.4 review the effectiveness of the internal controls and risk management procedures;

8.3.3.5 monitor that the Client mandates referred to in Rule 5 are in place; and

8.3.3.6 monitor the compliance by the Participant with all Rules and Directives.

[7.6.4]8.3.4 Except where the Controlling Body may otherwise [direct] determine, a [CSD] Participant [shall] must not carry on Business for more than 3 (three) months in any continuous period of twelve months unless such [CSD] Participant has appointed a compliance officer in terms of [7.6.1] the Rules.

[7.6.5]8.3.5 In the absence of a duly appointed compliance officer or where a compliance officer post has become vacant, a temporary compliance officer [shall] must be appointed for a period no longer than [six] 3 (three) months.

[7.7] Security measures and controls

[7.7.1]8.4.1 A [CSD] Participant [shall] must take all reasonable security measures, including establishing and maintaining such procedures as may be necessary or expedient, to protect information, data, Records, certificates, documents of title and other documents relating to Clients, and in particular, relating to their [Uncertificated] Securities Accounts, against any unauthorised access, alteration, destruction or disclosure. Without limiting the generality of the foregoing the Participant [shall] must ensure that -

[7.7.1.1]8.4.1.1 a formal security clearance programme for all staff and contract personnel, including [an oath of secrecy] a confidentiality agreement, is in place;

[7.7.1.2]8.4.1.2 it has the necessary security systems [are in place to ensure that] to protect against the inappropriate or unauthorised access of its hardware, software and related procedures [are secured against inappropriate or unauthorised access];

[7.7.1.3]8.4.1.3 a documented security manual for standards and practices [manual] is compiled and enforced by the [CSD] Participant;

[7.7.1.4]8.4.1.4 it adequately secures its physical premises and ensures that those responsible for this function report to a senior official of the [CSD] Participant; and

[7.7.1.5]8.4.1.5 adequate segregation of duties of staff members exist to prevent unauthorised transfers between Clients' [Uncertificated] Securities Accounts.

[7.8] Limitation of liabilities, warranties and indemnities

7.8.1 The CSD, any director, executive officer, officer, employee or representative of the CSD, or the controlling body or a committee of the controlling body is not liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by the CSD, a director, executive officer, officer, employee or representative of the CSD, controlling body or such committee of the controlling body as referred to above, or by an authorised user or participant in a bona fide or negligent, but not grossly negligent, performance of any function under or in terms of the Act, the rules or directives of the CSD.

7.8.2 The CSD and any CSD participant shall not be held liable for any loss or damage of whatsoever nature resulting from force majeure.

7.8.3 The CSD shall by means of insurance or by any other means acceptable to the Registrar place itself in a position to meet any claim for damages against it by any CSD participant or a Client for any loss or damage sustained by it as a result of any claim arising from rule 7.8.1 or 7.8.2 above.

- 7.8.4 In addition to the statutory warranties and indemnities provided for in section 91A of the Companies Act and the Act, every CSD participant shall indemnify the CSD against any loss, legal costs, damage or liability suffered or incurred by the CSD, as a result of any grossly negligent or willful act or omission, on the part of the CSD participant, its officers, employees or agents.]

9. FEES AND CHARGES

- 9.1 The Controlling Body may from time to time determine fees and charges to be paid by Participants and other persons.
- 9.2 The Controlling Body must, within a reasonable time prior to their imposition, notify Participants and other persons of the applicable fees and charges.
- 9.3 Fees and charges shall be due and payable within 30 (thirty) calendar days after date of invoice.
- 9.4 The Controlling Body may charge interest on outstanding fees and charges, which interest shall be calculated on the expiry of the period referred to in Rule 9.3. The rate of interest charged shall be the prime lending rate offered by the CSD's principal bank.
- 9.5 If the arrears are not paid by the Participant within 14 (fourteen) calendar days of the expiry of the period referred to in Rule 9.3, or any extended period granted by the Controlling Body, the Controlling Body may suspend or terminate participation of the Participant or take any other disciplinary action deemed appropriate by the Controlling Body.

[8] 10. RESOLUTION OF DISPUTES

Informal Dispute Resolution

- [8.1 **Appointment of an investor panel**
- The controlling body may from time to time establish an investor panel to facilitate the resolution of any dispute reported to the controlling body by an interested party.]
- [8.2 **Reporting a dispute**
- 8.2.1 Any party to a dispute involving any matters governed by these rules may report the dispute to the controlling body.]
- [8.2.2 The report may be made verbally, provided that the controlling body or investor panel, as the case may be, may request confirmation of the report in writing.]
- [8.2.3 Any party reporting a dispute in terms of this rule must satisfy the controlling body or investor panel, as the case may be, that it has not simultaneously instituted proceedings arising from the dispute in a court of law.]
- [8.3 **Powers of the investor panel]**
- [8.3.1 Any party with an interest in a dispute may furnish the investor panel with any information, book, document, Equities record or any other object that may have a bearing on the dispute.]
- [8.3.2 The investor panel may make recommendations to the disputing parties in respect of the dispute which shall not prevent the parties from referring the dispute to a court of law for resolution.]

- 10.1.1 If any dispute arise between any of the CSD, Participants or Issuers in connection with the existence, implementation or interpretation of the Rules; application of the provisions of the Rules; their respective rights and obligations in terms of or arising out of the Rules; breach of the Rules, validity of the Rules or enforceability of the Rules, then that dispute shall be referred to the Head of Division in which the dispute arose for resolution and failing resolution by these Heads of Division within 10 (ten) Business Days of such referral, be referred to the respective Chief Executive Officers, and failing resolution by the Chief Executive Officers within 10 (ten) Business Days of such referral, be determined by the formal dispute resolution process as set out in Rule 10.2.
- 10.1.2 Any dispute relating to the matters stated in Rule 10.1.1 in which a Client is a party must be referred to the Statutory Ombud in terms of the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004).

Formal Dispute Resolution

- 10.2 Should the parties fail to resolve the dispute in terms of Rule 10.1.1, the party who initiated the dispute shall -
- 10.2.1 refer the matter to mediation in accordance with Rule 10.3;
- 10.2.2 should the matter not be able to be resolved through mediation, the party who initiated the dispute shall refer the matter to arbitration in terms of Rule 10.4.

Mediation

- 10.3.1 The mediation shall commence within 10 (ten) Business Days of the failure by the parties to resolve the dispute in terms of Rule 10.1.
- 10.3.2 The mediator shall be appointed by agreement between the parties, failing which the mediator shall be appointed by the chairperson of the Controlling Body.
- 10.3.3 The venue and the procedure to be followed at the mediation shall be determined by the mediator, who shall give the parties reasonable notice of such venue and procedure.
- 10.3.4 The mediation shall continue for a period no longer than 15 (fifteen) Business Days unless the parties agree otherwise in writing.
- 10.3.5 If the parties resolve their dispute during mediation, the mediator shall confirm such resolution in writing to the parties.
- 10.3.6 If the dispute cannot be resolved by mediation -
- 10.3.6.1 the mediator shall confirm the failure to resolve the dispute by mediation by sending confirmation of such failure in writing to both parties; and
- 10.3.6.2 the party initiating the dispute may refer the matter to arbitration within 20 (twenty) Business Days, or such other period as agreed between the parties, from the date of the letter of confirmation by the mediator.
- 10.3.7 The costs of mediation shall be agreed by the parties and failing agreement shall be shared equally between the parties.
- 10.3.8 If the matter proceed to arbitration, the costs of the mediation may be claimed by either party, which claim shall be determined by the arbitrator at the conclusion of the arbitration.

Arbitration

- 10.4.1 The arbitrator shall be appointed by agreement between the parties to the dispute.
- 10.4.2 If the parties to the dispute fail to agree on the arbitrator, the arbitrator shall be appointed by the chairperson of the Arbitration Foundation of South Africa (AFSA).
- 10.4.3 The arbitrator appointed in terms of Rule 10.4.1 or 10.4.2 shall be a suitably qualified and skilled person with experience in the financial services industry.
- 10.4.4 The arbitration proceedings shall be conducted in accordance with the Rules of the AFSA.
- 10.4.5 The arbitrator shall make such order as to costs as he deems just.
- 10.4.6 The parties must consent to arbitration and may not withdraw from the arbitration process.
- 10.4.7 The decision of the arbitrator shall be final and binding and may be made an order of court.
- 10.4.8 Either party may apply to court for a temporary interdict or other relief of an urgent nature, pending the decision of the arbitrator.

Exclusion

- 10.5 The above provisions on dispute resolution do not apply to any dispute regarding improper conduct or a penalty imposed in terms of Rule 11.

[9 DISCIPLINARY PROCEDURE]**11 SUPERVISION****[9.1 Surveillance and investigation by the controlling body]****[9.1.1 Surveillance]**

- 11.1 The Controlling Body [shall set up and maintain systems for] must ensure that a supervision division headed by the Head of Supervision is set up in the CSD and must set up and maintain systems for -

[9.1.1.1]11.1.1 monitoring compliance by [CSD] Participants, officers, employees and agents of the [CSD] Participant with the provisions of the Act, [the] Rules and Directives; and

[9.1.1.2]11.1.2 the surveillance of any matter relevant for the purposes of the Act, Rules and Directives.

[9.1.2] Investigations

- 11.2 The Controlling Body [and any person or committee designated by the controlling body] may -

[9.1.2.1]11.2.1 investigate any CSD related activities [for] of a [CSD] Participant or past [former] [CSD] Participant and require Participants to furnish information on the subject of any investigation; deliver any book, document, tape or Record or other object which has a bearing on the subject of the investigation;

[9.1.2.2 require any person who is subject to the jurisdiction of the CSD to furnish information on the subject of any investigation, to deliver any book, document, tape or Equities record or other object which has a bearing on the subject of the investigation, or to appear at any reasonable time and place to be questioned by any of the abovementioned persons:

Provided that the person to be questioned has been informed of the subject of the investigation.]

11.2.2 on 2 (two) Business Days prior notice to Participants perform on-site visits at Participants, unless the Controlling Body determines there is an imminent danger in terms of the Rules in which case no prior notice may be given; and

11.2.3 require representatives of the Participants to appear at any reasonable time and place to be questioned.

[9.1.3] Referral to Another Authority

11.3 Should the Controlling Body become aware of any possible contravention of law, it may refer such matter to the appropriate authority, whether outside or within the Republic of South Africa.

[9.2] Use of Information [obtained by the controlling body]

11.4 Any information, document, book, tape or [equities] Record or other object obtained by the [controlling body] CSD pursuant to an investigation or otherwise, may be used in evidence in any disciplinary proceedings as set out in the Rules [contemplated in rule 9.4 below].

[9.3] Improper Conduct

[The following acts and practices whether of commission or omission on the part of any person who at the time of the alleged act or practice was a CSD participant or an employee or officer of a CSD participant shall constitute improper conduct, provided that the acts and practices so specified are not intended to be a complete list of the acts and practices which may constitute improper conduct.]

11.5 Improper conduct may be alleged against any Participant, officer or employee of a Participant where such Participant, officer or employee fails to comply with the Act, Rules and Directives or any other law relating to the Business of the CSD or Participant or has committed any of, but not limited to, the following acts or practices:

[9.3.1]11.5.1 Participating in, assisting in or withholding knowledge of, any acts in violation of any applicable law, regulations or the Rules and Directives governing the activities of the [CSD] Participant;

[9.3.2]11.5.2 effecting an unauthorised Entry in a [Uncertificated] Securities Account;

[9.3.3]11.5.3 committing or attempting to commit any act which is dishonest or fraudulent;

[9.3.4 failing to employ the resources and procedures that are necessary for the proper performance of its business activities]

11.5.4 being a party to, or facilitating or conducting a transaction which is fictitious or has a dishonest or unlawful motive;

[9.3.6 failing to comply with the Act, all applicable laws, the rules and directives, and any regulations governing the activities of the CSD;]

[9.3.7]11.5.5 failing to act in accordance with the instructions of a Client;

[9.3.8]11.5.6 negligently or recklessly conducting its Business or affairs in a way that prejudice is, or may be, caused to the CSD, any other [CSD] Participant or a Client. The failure by a [CSD] Participant to introduce appropriate and reasonable safeguards or controls to avoid such prejudice may be treated where appropriate as constituting either negligence or recklessness;

- [9.3.9]11.5.7 committing or attempting to commit any act which is detrimental to the interest, good name or welfare of the CSD [or other CSD], Participants, Issuers or Clients;
- [9.3.10] failing to preserve the confidentiality of information concerning matters within the scope of the confidentiality relationship with the Client;
- [9.3.11]11.5.8 knowingly obstructing the Business of the CSD or [CSD] Participants;
- [9.3.12] giving effect to an instruction which results in any of the Uncertificated Securities Accounts maintained by the CSD participant reflecting a Debit Balance;
- [9.3.13]11.5.9 failing, when requested, to assist the Controlling Body or committee appointed by the Controlling Body in the exercise of its duties (which shall include, but shall not be limited to, failure without sufficient cause to provide information in accordance with the provisions of Rule [9.1.2.2] 11.2.1);
- [9.3.14]11.5.10 failing to act with integrity, proper skill, care, diligence and with due regard for [the public interest and] the interests of [owners, Clients, the CSD Participants and] the CSD, Participants, Issuers and Clients;
- [9.3.15]11.5.11 failing to exercise sound independent professional judgment;
- [9.3.16]11.5.12 failing to ensure that its officers, employees or agents comply with the [provisions of the] Act, Rules or Directives.

[9.4] 12 DISCIPLINARY PROCEDURE

[9.4.1 Conclusion of investigation]

- 12.1 If during the course of any investigation, the Head of Supervision is satisfied on the basis of the information in [his/]her possession, that there are grounds for an allegation of improper conduct [the Head of Supervision], she may refer the matter to the Regulatory Committee in terms of the Rules.

- [9.4.1.1 refer the matter to a disciplinary committee; or]

- [9.4.1.2 if the Head of Supervision considers that the alleged conduct is so serious that it might warrant the imposition of a fine in excess of the amount referred to in 9.5.5 or suspension or termination of participation or employment with a CSD participant, prefer a formal charge against such person ("the respondent") setting out a brief statement of facts constituting the alleged offence. Such charge shall be referred to a disciplinary tribunal ("a Tribunal"), to be heard in terms of rule 9.6. Such charge may further, in the discretion of the Head of Supervision, make provision for an admission of guilt.]

[9.5 Disciplinary committee]

- [9.5.1 The Chief Executive Officer (or acting Executive Officer) of the CSD or Chairperson of the controlling body may from time to time appoint one or more disciplinary committees. Each disciplinary committee shall consist of three persons, at least one of which shall be a representative of a CSD participant. Each disciplinary committee shall appoint a chairperson. A disciplinary committee may, where necessary co-opt additional members, whether these are employees of CSD participants or not.]

- [9.5.2 A disciplinary committee may, subject to the provisions of rule 9.5.4 –]

- [9.5.2.1 instruct the person whose conduct is under consideration on action which must be taken, to remedy the matter;]
- [9.5.2.2 warn, reprimand, censure or, subject to the provisions of rule 9.5.5, impose a fine (with or without ordering that a contribution be made towards the CSD's costs) on any person who has, in the reasonable opinion of the committee, been guilty of improper conduct;]
- [9.5.2.3 in relation to an officer, employee or agent of a CSD participant, direct the CSD participant to conduct a disciplinary enquiry into the acts or omissions of such person;]
- [9.5.2.4 direct a CSD participant to ensure that any sanction imposed on an officer, employee or agent of that CSD participant is complied with by such officer, employee or agent;]
- [9.5.2.5 direct a CSD participant to prevent an officer, employee or agent of that CSD participant from carrying out any specified activity, function or duty for a reasonable period deemed appropriate by the committee; and]
- [9.5.2.6 if at any stage it determines that the matter referred to it is sufficiently serious to be heard by a Tribunal, stop the proceedings, and refer the matter to a Tribunal.]
- [9.5.3 All decisions of the Disciplinary committee shall be made by simple majority.]
- [9.5.4 A disciplinary committee may not impose any penalty contemplated in rule 9.5.2 unless –]
- [9.5.4.1 the allegation has been put to the person under investigation; and]
- [9.5.4.2 such person has been given an opportunity of explaining (either orally or in writing) his or her conduct, after being warned that any explanation may be used in evidence against him or her.]
- [9.5.5 No fine imposed by a disciplinary committee may exceed R25 000 per contravention, or such other amount as the controlling body may determine by directive from time to time.]
- [9.5.6 A disciplinary committee may direct that other CSD participants and the Registrar be notified of any action taken in terms of rule 9.5.2.]
- [9.5.7 Any person in respect of whom a disciplinary committee has imposed a reprimand, censure, or fine (but not a warning) shall have the right to demand, within a period of three business days after the imposition of such reprimand, censure, or fine, that the matter shall be heard de novo by a Tribunal. In the event of the matter being heard by the Tribunal, publication and notification of the decision of the disciplinary committee shall be postponed until it is confirmed by the Tribunal.]
- [9.5.8 The Tribunal shall, if it finds the person guilty of the conduct which forms the subject of the allegation, be entitled to impose a penalty more severe than that imposed by the disciplinary committee.]

Powers of the Head of Supervision

- 12.2 Where the Head of Supervision determines that a Participant or other person bound by the Rules has failed to comply with the Act, Rules or Directives she may impose a fine, as set out in the relevant Directive.
- 12.3 No fine imposed by the Head of Supervision may exceed such amount as stipulated by Directive.

- 12.4 The Head of Supervision may direct that other Participants be notified of any action taken in terms of Rule 12.2.
- 12.5 Any person in respect of whom the Head of Supervision has imposed a fine in terms of Rule 12.2 may demand, within a period of 3 (three) Business Days after the imposition of such fine, that the matter be heard *de novo* by the Regulatory Committee. If the Regulatory Committee hears the matter, publication and notification of the decision of the Head of Supervision shall be postponed until the Regulatory Committee has determined the matter.
- 12.6 The Regulatory Committee may, if it finds the person guilty of the conduct which forms the subject of the allegation, impose a penalty less severe than that imposed by the Head of Supervision.

Regulatory Committee

- 12.7 Where the Regulatory Committee considers an act of improper conduct to have been committed by a Participant, it may impose any one or more of the penalties stipulated in the Act and the Rules.
- 12.8 The Regulatory Committee may not impose any penalty on a person charged with improper conduct unless –
- 12.8.1 the allegation has been put to the person under investigation; and
- 12.8.2 such person has been given an opportunity of explaining (either orally or in writing) his conduct, after being warned that any explanation [may] might be used in evidence against him.
- 12.9 Any person in respect of whom the Regulatory Committee has imposed a penalty in terms of Rule 12.7 may demand, within a period of 10 (ten) Business Days after the imposition of such penalty, that the matter be heard *de novo* by the Tribunal. In the event of the matter being heard by the Tribunal, publication and notification of the decision of the Regulatory Committee shall be postponed until the Tribunal has determined the matter.

[9.6 Tribunals]

Appointment of Tribunal

- [9.6.1]12.10 The Controlling Body may from time to time appoint one or more Tribunals each comprised of three independent members.
- [9.6.2]12.11 The members of a Tribunal [shall] must be –
- [9.6.2.1]12.11.1 a retired judge, or a practising or retired [senior] advocate, or a practising or retired attorney with not less than [fifteen] 5 (five) years legal experience, acting as chairperson;
- [9.6.2.2]12.11.2 a professional person appointed by reason of that person's knowledge of financial services as it relates to the matters under consideration; and
- [9.6.2.3]12.11.3 a person appointed by reason of that person's practical knowledge or experience [of central security depositories and related matters.] in the Business of the CSD or Participants.

[9.7 Preferring charges to be heard by a Tribunal]

Formal charge

- [9.7.1]12.12 Where the Controlling Body has preferred a formal charge against a respondent, the charge sheet must [shall, in addition to the matters listed in rule 9.4.1.2] be in a form [prescribed by the

controlling body] stipulated by Directive and be served on the respondent in accordance with [rule 4.9.7] the provisions relating to the service of notices under the Rules.

Admission of Guilt

[9.7.2]12.13 Where the Controlling Body has decided to make provision for an admission of guilt, the Controlling Body **[shall]** must stipulate -

[9.7.2.1]12.13.1 the amount of the fine payable pursuant to the admission of guilt and any required contribution towards the CSD's costs as well as the period within which such amounts must be paid. The admission of guilt may, in particular, provide for the fine to be suspended for a period;

[9.7.2.2]12.13.2 the manner and time in which the admission of guilt may be made, which time shall not be a period in excess of **[50 calendar]** 10 (ten) Business Days from the date on which the charge sheet is served on the respondent; and

[9.7.2.3]12.13.3 whether the other **[CSD]** Participants or Registrar should be notified of the terms of the admission of guilt or whether such admission of guilt should be published in the media or otherwise.

Charge Sheet

[9.7.3]12.14 A respondent -

12.14.1 may, if the respondent is given an opportunity to sign an admission of guilt, admit guilt to such charges within the period set out in the charge sheet; or

[9.7.3.1]12.14.2 may within **[21 calendar]** 10 (ten) Business Days after receipt of the charge sheet request further particulars to the charges, to which the Controlling Body **[shall be obliged to]** must respond within **[21 calendar]** 10 (ten) Business Days after receipt of such request; and

[9.7.3.3]12.14.3 **[shall]** must, if no admission of guilt is tendered to the Controlling Body or if the respondent decides not to admit guilt to the charges, file a defence to such charges on or before 10 (ten) Business **[50 calendar]** Days after the date on which the charge sheet was served on the respondent or within 10 (ten) Business **[21 calendar]** Days after the date on which the Controlling Body has responded to the request for further particulars **[whichever is the later]**.

[9.7.4]12.14.4 Thereafter the chairperson of the Tribunal shall determine the date on which the charges shall be heard, which date shall not without good reason be later than **[six months]** 30 (thirty) Business Days after **[the charge sheet was served]** the filing of the defence by **[on]** the respondent.

[9.7.5]12.14.5 No extension of the time periods set out in this Rule, including the date for the hearing of the charges shall be allowed without good reason. Furthermore no such extension shall be allowed unless the consent of the chairperson of the Tribunal is obtained.

[9.8 Procedure and evidence]

Tribunal Hearing

12.15 In a hearing before a Tribunal -

[9.8.1]12.15.1 any charges preferred shall be decided on a balance of probabilities;

[9.8.2 In a hearing before a Tribunal]

- [9.8.2.1]12.15.2 the chairperson of the Tribunal shall decide all matters of law which may arise during the hearing, and whether any matter constitutes a question of law or a question of fact, but all three members of the Tribunal shall by a simple majority decide all other matters arising during the hearing;
- [9.8.2.2]12.15.3 the chairperson of the Tribunal shall determine the procedure which the Tribunal shall follow both in respect of preliminary issues and in respect of the hearing itself, subject to the **[these]** Rules and to the principles of natural justice;
- [9.8.2.3] the CSD may instruct attorneys or counsel to prefer and prosecute the charges on behalf of the CSD, or the charges may be prosecuted by an employee of the CSD;]
- [9.8.2.4] the respondent may be represented by a lawyer at the respondent's own cost;]
- 12.15.4 the parties may be represented by either an employee of the party or by a legal representative at the parties' own cost;
- [9.8.2.5]12.15.5 a hearing date may be cancelled by the Tribunal with reasonable notice to the **[CSD participants]** parties and a substitute hearing date **[appointed]** determined;
- [9.8.2.6]12.15.6 a transcript of proceedings, but not of deliberations, is to be taken and must be made available to the parties;
- [9.8.2.7]12.15.7 the Tribunal may, with the consent and at the cost of the parties, obtain legal or other professional advice as it requires;
- [9.8.2.8]12.15.8 the Tribunal shall within **[15 calendar]** 10 (ten) Business Days after the conclusion of a hearing, give written reasons for its decision to each party, and **[where a stockbroker is a party, to the relevant exchange]** may, where applicable, give such reasons to the parties' supervisory or regulatory institution; and
- [9.8.2.9]12.15.9 each party to a proceeding or appeal shall bear its own costs in relation to the proceedings or appeal, unless otherwise directed by the Tribunal.
- [9.8.3]12.16 Should a respondent without good cause fail to attend a hearing before a Tribunal at the time and place stated in the charge sheet, the Tribunal may **[shall be entitled to]** proceed with its consideration of the charge in the absence of the respondent.
- [9.8.4]12.17 If, at any stage during a hearing before the **[disciplinary committee or a]** Tribunal, one or more of the members of the **[body]** Tribunal hearing the matter, other than the chairperson, dies or retires or becomes otherwise incapable of acting or is absent, the hearing shall, where the remaining members constitute a majority of the Tribunal before whom the hearing was commenced, proceed before the remaining members and, provided that the remaining members are in agreement, their finding shall be the finding of the **[body concerned]** Tribunal. In the event that the chairperson dies, retires or becomes otherwise incapable of acting or in any other case, the matter shall be heard *de novo*.
- [9.8.5] If a Tribunal finds a respondent guilty of an offence, the Tribunal shall have the powers set out in and shall apply rule 9.9.]
- [9.8.6] If the proceedings before a disciplinary committee or a Tribunal are recorded, the person charged may demand a record of the hearing of the charges, and any person who has made oral representations may demand a record of that portion of the proceedings which related to those representations.]
- [9.9] Penalties

- [9.9.1]12.18 When any person has been found guilty of improper conduct by the Regulatory Committee or Tribunal pursuant to the Rules, the Regulatory Committee or the Tribunal -
- [9.9.1.1] may by a simple majority warn or impose a reprimand, censure or fine upon the respondent, which fine shall in respect of each contravention not exceed R1 million, or such other amount as may be stipulated in the Act or in any regulations promulgated in terms of the Act;]
- 12.18.1 may by a simple majority impose any one or more penalties stipulated in the Act, provided that the Regulatory Committee or the Tribunal may suspend the imposition of the penalty for a period of time, as it deems fit;
- [9.9.1.2]12.18.2 [shall] must in determining an appropriate penalty take into account:
- [9.9.1.2.1]12.18.2.1 any previous conviction in terms of the Rules or in a court of law;
- [9.9.1.2.2]12.18.2.2 the harm or prejudice which is caused by the offence; and
- [9.9.1.2.3]12.18.2.3 any other aggravating or mitigating factors;
- [9.9.1.3] may by a simple majority, on such conditions as the Tribunal may deem fit, terminate the participation of a CSD participant who has been found guilty of improper conduct or in the case of an officer or employee of a CSD participant, require such CSD participant to hold a disciplinary enquiry to consider terminating or suspending the employment of such person;]
- [9.9.1.4] may direct a CSD participant to ensure that any sanction imposed by the Tribunal on an officer or employee of that CSD participant is complied with by such officer or employee;]
- [9.9.1.5] may make a fair and reasonable order as to costs; and]
- [9.9.1.6]12.18.3 may, where the Participant or officer or employee of a Participant has been found guilty of improper conduct, on such conditions as the Regulatory Committee or the Tribunal deems fit, order that particulars of the offence and or finding of the Regulatory Committee or the Tribunal and or the penalty imposed to be advised to [the CSD] Participants and or published in the media or otherwise, provided that if publication is ordered, the respondent shall be given an opportunity to make representations to the Regulatory Committee or the Tribunal in this regard.
- [9.9.2] A Tribunal may impose any one or more of the penalties referred to in rule 9.9.1.]
- [9.9.3] Any penalty or part thereof may be suspended on such conditions as the Tribunal may determine.]
- [9.9.4] If a CSD participant is expelled, the CSD participant shall forfeit all rights to participate in the CSD as well as any fees or charges paid to the CSD and must forthwith pay to the CSD any arrears, fees and charges due to the CSD.]
- 12.19 If a Participant's participation is terminated, it shall forfeit all rights to participate in the CSD as well as any fees or charges paid to the CSD and must also pay to the CSD any arrear fees and charges.

Payment of Fine

- [9.9.5]12.20 [Should] If a [CSD] Participant, officer, employee or agent of a [CSD] Participant fail to pay any fine imposed by [a disciplinary committee] the Head of Supervision, the Regulatory Committee or the

Tribunal, within [7 calendar] 20 (twenty) Business Days after being informed of the amount of the fine, the Controlling Body [shall have the right] may, after serving notice of not less than 3 (three) Business Days on such person [to] -

- [9.9.5.1]12.20.1 recover the fine in a court of competent jurisdiction; and
- [9.9.5.2]12.20.2 terminate the participation of the Participant or suspend the provision of further services by the CSD to the [CSD] Participant (on such conditions as the Controlling Body may deem fit) or in the case of an officer or employee of a [CSD] Participant, require such [CSD] Participant to hold a disciplinary enquiry to consider what the appropriate action is that should be taken[and].
- [9.9.5.3] **direct a CSD participant to prevent an officer, employee or agent of that CSD participant from carrying out any specified activity, function or duty for such reasonable period as the controlling body deems appropriate.]**
- [9.9.6]12.21 Any fine and [or] costs paid to the CSD pursuant to an award made [by a disciplinary committee or a Tribunal] in terms of the Rules shall be [paid as the controlling body may direct] used to further the regulatory and supervisory objectives of the CSD in terms of the Act.
- 12.22 The Controlling Body may charge interest on any overdue fine imposed on a Participant under the Rules at the prime lending rate offered by the CSD's principal bank.
- [9.9.7]12.23 A Tribunal may, upon good cause shown and subject to such conditions as the Tribunal may impose, review any penalty which it may have previously imposed on any person.

13. NOTICES

- 13.1 A Participant or other person utilising the services of the CSD, where applicable, shall notify the Controlling Body of a physical address, an electronic mail address, a facsimile address and a secured Securities delivery mechanism address at which such Participant or other person shall accept the delivery of all notices issued by the CSD in terms of the Rules.
- 13.2 The Controlling Body shall notify Participants or other persons utilising the services of the CSD, where applicable, of a physical address, an electronic mail address, a facsimile address and a secured Securities delivery mechanism address at which the CSD shall accept the delivery of all notices from such Participants or other persons utilising the services of the CSD.
- 13.3 Any notice in terms of the Rules shall be in writing, and may be delivered by means of a secured Securities delivery mechanism and where this is not possible, by means of electronic mail, facsimile, by hand or by registered post.
- 13.4 Any notice delivered by hand before 15H00 on a Business Day at the nominated physical address shall be deemed, until the contrary is proved, to have been received on the date of delivery.
- 13.5 Any notice transmitted by a secured Securities delivery mechanism, electronic mail or by facsimile before 15H00 on a Business Day or such other time stipulated by Directive, shall be deemed, if a confirmation receipt is received, to have been received on the date of confirmation of the transmission, unless an error report is received.
- 13.6 Any notice delivered by registered post shall be deemed, until the contrary is proved, to have been received within 7 (seven) Business Days after being dispatched.
- 13.7 The physical address as notified by the CSD, a Participant and other person utilising the services of the CSD in terms of Rules 13.1 and 13.2 shall be the address of the CSD and Participant for the service of legal process arising out of any dispute between the CSD and the Participant.

14. GENERAL

Limitation of liabilities, warranties and indemnities

- 14.1.1 The CSD and a Participant are not liable for any loss or damage resulting from *force majeure*.
- 14.1.2 The CSD, any director, executive officer, officer, employee or representative of the CSD, or the controlling body or a committee of the controlling body is not liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by -
- 14.1.2.1 the CSD, a director, executive officer, officer, employee or representative of the CSD, controlling body or any committee of the controlling body; or
- 14.1.2.2 a participant, in the bona fide or negligent performance of any function under or in terms of the Act, the Rules or Directives of the CSD.
- 14.1.3 The CSD and each Participant shall by means of insurance or by any other means acceptable to the Registrar place itself in a position to meet any claim for damages against it or its wholly owned subsidiary by any Participant, or a Client or any Nominee for any loss or damage sustained by it as a result of any claim arising in terms of the Act or the Rules.
- 14.1.4 In addition to the statutory warranties and indemnities provided for in section 91A of the Companies Act and the Act, every Participant, issuer of Securities and Client hereby indemnifies the CSD, its directors, officers, employees or agents against any loss, legal costs, damage or liability suffered or incurred by the CSD, as a result of any grossly negligent or willful act or omission, on the part of such Participant, Issuer of Securities or Client, as the case may be, or any of their officers, employees or agents.
- 14.1.5 Each Participant, Issuer of Securities and Client hereby waives any claim that it may have against the CSD, its directors, executive officer, officers, employees or representatives resulting from any negligent performance or failure to perform by the CSD, its directors, executive officer, officers, employees or representatives of any function under or in terms of the Act, the rules or directives.

Waiver

- 14.2 No failure by the CSD to exercise, nor any delay on its part in exercising, any of its rights, in whole or in part, in terms of the Act, Rules or Directives shall operate as a waiver of the rights or remedies of the CSD upon that or any subsequent occasion, nor shall any single or partial exercise of any right or remedy prevent any further exercise thereof.

Ancillary Services

- 14.3 The CSD may, with the approval of the Registrar, where necessary, in addition to the security services provided in terms of the Act, provide other services to Participants, Issuers and other persons utilising the services of the CSD, and the CSD may determine -
- 14.3.1 the procedures and requirements with which Participants, Issuers and other persons utilising the services of the CSD shall comply when using such services; and
- 14.3.2 the fees payable by the Participants, Issuers and other persons utilising the services of the CSD for the use of such services.

Applicable Law and Jurisdiction

14.4.1 The Rules shall be interpreted in accordance with the laws of the Republic of South Africa.

14.4.2 Subject to Rule 10.4, all parties submit to the jurisdiction of the High Court of South Africa.

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