

B O A R D N O T I C E
R A A D S K E N N I S G E W I N G

BOARD NOTICE 75 OF 2000
STOCK EXCHANGES CONTROL ACT, 1985

AMENDMENT OF THE RULES OF THE JOHANNESBURG STOCK EXCHANGE

1. In terms of section 12 (6) of the Stock Exchanges Control Act, 1985(Act No. 1 of 1985), it is hereby notified that the Johannesburg Stock Exchange has applied to the Registrar of Stock Exchanges for the approval to make amendments to its rules, as set forth in the Schedule hereto.
2. In terms of section 12 (7) of the said Act all interested persons (other than members of the Stock Exchange) who have any objections to the proposed amendments are hereby called upon to lodge their objections with the Registrar of Stock Exchanges, PO Box 35655, Menlo Park, 0102, within a period of 30 days from the date of publication of this notice.

J VAN ROOYEN
Registrar of Stock Exchanges

SCHEDULE

General explanatory notes

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

AMENDMENTS OF THE RULES OF THE JOHANNESBURG STOCK EXCHANGE

1. PROPOSED AMENDMENTS TO SECTION 2- INTERPRETATIONS AND DEFINITIONS

2.40 In these rules -

"BDA system" means the broker deal accounting system operated by the JSE;

"Broking member equities" see "member";

"CSA" means a custody and settlement member;

"CSM" means a custody and settlement agent;

"carry account" means an agreement whereby a member and a client agree that the client shall not be obliged to make payment of the purchase price in respect of securities purchased to the member by the settlement day but shall be required to provide minimum cover to the member by such day.

"JSE 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 listed products."

"member" means a sole proprietor, partnership or corporate entity (limited or unlimited liability) as the case may be, admitted to membership of the JSE under the rules and shall include a broking member (equities), a CSA and a CSM.

2. PROPOSED AMENDMENTS TO SECTION 14-TRANSACTIONS IN STRATE APPROVED SECURITIES

Section 14 of the Rules is hereby substituted by the following section:

14.10 Applicability of Rule 14

- 14.10.1 Section 14 shall apply to STRATE approved securities.
- 14.10.2 Where the provisions of any rules are not expressly or impliedly amended by the provisions of section 14 or where section 14 does not exclude the applicability of any other rule, the rules, where appropriate, shall apply to STRATE approved securities in the same manner as the rules apply to securities.
- 14.10.3 Without limiting the generality of rule 14.10.2, rules 5.80, 5.90, 5.95, 5.100, 5.110, 5.140, 5.150, 5.170, 5.180, 5.190, 5.230, 5.240 and 11.10.4 do not apply to STRATE approved securities.

14.20 In this Rule 14-

"cash root" means the funds invested by the ultimate buyer of the uncertificated securities;

"client" means a controlled client or a non-controlled client;

"contract note" means, in respect of trades executed on the JSE trading system by a member on any particular day-

- (a) on behalf of a client or counterparty, a confirmation from the member to the client or counterpart 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 uncertificated securities and/or funds of a controlled client or the uncertificated securities of a broking member (equities);

"controlled client" means a client whose funds and uncertificated securities are under the control of a CSM or a CSA or whose settlements take place via the CSD participant of the member as if the client's funds or uncertificated securities were under the control of a CSM or a CSA;

"contractual settlement" means the market convention whereby the parties to a transaction in uncertificated securities have a contractual obligation to cause such transaction to be settled on the settlement day;

"CSD participant" means a person accepted by the CSD as a CSD participant in terms of the CSD rules;

"CSD rules" means the rules of the CSD approved in terms of the Custody and Administration of Securities Act, 1992 (Act No. 85 of 1992);

"custody account" means an uncertificated securities account with a CSD participant which reflects the uncertificated securities balances of controlled accounts of a broking member (equities) and through which settlement of uncertificated securities is effected;

"dematerialisation" means the process of converting a STRATE approved security into an uncertificated security

"failed trade" means a transaction in uncertificated 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;

"funds settlement account" means a funds account with a CSD participant in the name of a broking member (equities) for the exclusive settlement of funds relating to transactions in uncertificated securities;

"managed discretionary portfolio in respect of uncertificated securities" means any arrangement entered into between a client and a broking member (equities), which authorises such member to conduct transactions in uncertificated securities on the client's behalf with full discretion and no prior reference to the client;

"managed non-discretionary portfolio in respect of uncertificated securities" means any arrangement entered into between a client and a broking member (equities), which authorises such member to conduct transactions in uncertificated securities on such client's behalf with prior reference to the client;

"nominee register" means the electronic record of ownership of uncertificated securities balances of controlled accounts maintained by a CSM or a CSA;

"non-controlled client" means a client other than a controlled client who has appointed his own CSD participant;

"rolling settlement" means a settlement environment where transactions become due to be settled a prescribed number of days after the trade date

"scrip root" means the ultimate seller of the uncertificated securities being sold;

"settlement authority" means the person or persons appointed by the JSE to manage the settlement of transactions in uncertificated securities effected through the JSE trading system in terms of the rules and directives and the CSD rules;

"settlement commitment" means an electronic undertaking by a CSD participant to settle a transaction in uncertificated securities;

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

"STRATE approved security" means a security which, in respect of transactions in such security, may only be settled electronically;

"sub-register" means a subregister maintained by a CSD participant recording ownership of uncertificated securities as defined in section 91A of the Companies Act, 1973;

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

“trade date” means, in respect of a transaction in **uncertificated securities**, the date reflected as such on the contract note or an electronic confirmation thereof;

“**uncertificated securities**” means securities which in terms of section 91A of the Companies Act, 1973, are transferable without a written instrument and are not evidenced by a certificate;

“**uncertificated securities entry**” means an electronic recording of any deposit, withdrawal, transfer, attachment, pledge, cession in **securitatem debiti** or any other transaction in respect of **uncertificated securities**;

“**uncommitted settlement**” means a settlement obligation for which a CSD participant has not provided a **settlement undertaking**.

14.25 Settlement Principles for **Uncertificated Securities Transactions**

14.25.1 Settlement of **uncertificated securities** shall be effected in accordance with the following principles -

14.25.1.1 contract note by contract note;

14.25.1.2 between the scrip root and the cash root;

14.25.1.3 rolling and contractual; and

14.25.1.4 on a net basis per member, per listed security whereby individual contract notes are consolidated and offset into net amounts of **uncertificated securities** and funds for settlement.

14.30 Settlement Authority

14.30.1 The settlement authority shall -

14.30.1.1 manage the settlement of transactions in **uncertificated securities** effected through the JSE trading system in terms of 5.10,3,5.10 .4,5.10.5 and the risks associated with settlement to ensure that the principles set out in 14.25 are adhered to; and

14.30.1.2 in exceptional circumstances temporarily extend the times referred to in 14.110, 14.120, 14.130, 14.140 and 14.150.

14.30.2 The settlement authority shall have the power to-

14,30,2.1 monitor the **settlement obligations** of members and their clients;

14.30.2.2 ensure that the **settlement obligations** of members are met on the **settlement date**;

14,30,2.3 monitor **uncommitted settlements** and take appropriate action in respect of such settlements;

- 14.30.2.4 take action when the settlement of a transaction in **uncertificated** securities is unlikely to take place on **settlement** date;
- 14.30.2.5 buy and sell **uncertificated** securities through the JSE trading system to meet any obligations arising from the management of the settlement process and the risks associated with such process;
- 14.30.2.6 to borrow, as agent, on behalf of a member as **undisposed principal**, **uncertificated** securities from third parties to facilitate the management of the settlement process and the risks associated with such process;
- 14.30.2.7 levy fees, as prescribed by directive, on members for the loan of **uncertificated** securities to members in order to facilitate the settlement process;
- 14.30.2.8 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; and
- 14.30.2.9 invite 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 14.150.
- 14.35 **Outstanding Settlements In Respect of Listed Securities that, Subsequent to the Transaction In Question, have been Declared a STRATE Approved Security**
- 14.35.1 In the event that a transaction in a listed security, which is a **STRATE** approved security, has not been **settled** by close of business on the fifteenth business day after **such listed security has been declared a STRATE** approved security, the **settlement** authority shall be entitled to take such steps and issue **such instructions as the settlement authority may deem necessary** to ensure that **settlement** of the said transaction is effected as soon as practicable.
- 14.35.2 Rule 14.35.1 shall be binding on a member and on both buying and selling clients or **counterparties** and shall also apply to an agent acting on behalf of a client or counterpart
- 14.40 Trading In **STRATE** Approved Securities
- 14.40.1 A client shall only place an order in respect of a **STRATE** approved security with a **broking** member (equities) if -
- 14.40.1.1 the client has directly or indirectly appointed a CSD participant and
- 14.40.1.2 in respect of a sell order -
- 14.40.1.2.1 the securities to be sold are in **uncertificated** form; or

14,40,1,2.2 another transaction has been concluded which provides for an equivalent amount of uncertificated securities being available for settlement on settlement date; or

14.40,1,2,3 a satisfactory borrowing arrangement is in place which provides for an equivalent amount of uncertificated securities being available for settlement on settlement date.

14.40.2 A broking member (equities) shall only place an order or report a trade in respect of a STRATE approved security on the JSE trading system if such member has appointed a CSD participant and has SWIFT connectivity as prescribed by directive and has taken reasonable steps to satisfy itself that-

14.40.2.1 If the client is a non-controlled client, the client has appointed a CSD participant and the appointed CSD participant has confirmed, in the manner determined by the JSE, that the details of that client held by the CSD participant correspond with and match the details of the client held by the broking member (equities) in the BDA system; and

14,40,2.2 in respect of a sell order -

14,40.2.2.1 the securities to be sold are in uncertificated form; or

14,40,2.2<2 a further transaction has been concluded which provides for an equivalent amount of uncertificated securities being available for settlement on settlement date; or

14,40,2.2.3 a satisfactory borrowing arrangement is in place which provides for an equivalent amount of uncertificated securities being available for settlement on settlement day.

14,40.3 From the time of designation of a security as a STRATE approved security and thereafter, all transactions in uncertificated securities shall only be conducted through the JSE trading system.

14.50 Compliance with Exchange Control Regulations

A member or CSA shall ensure that in all its dealings with funds or uncertificated securities belonging to clients or counterparties, including foreign clients or foreign counterparties, it adheres to the Exchange Control Regulations as determined by the South African Reserve Bank from time to time.

14.60 Operation of Controlled Client Accounts

14.60.1 The arrangements made by a controlled client with a broking member (equities) shall be recorded in a form of mandate which shall contain the minimum requirements as prescribed by the JSE from time to time. The mandate shall be signed by the controlled client before any cash and/or uncertificated securities as defined in 14.60.2 are accepted from the controlled client.

- 14,60.2 **Uncertificated** securities of a controlled client held in a nominee register may only be held by a **CSM** or a **CSA**, and in accordance with 14.60. Such securities shall not be subject to any lien or charge.
- 14.60.3 " The mandate shall provide that all cash received in respect of or arising from the operation of an account for a controlled client and which is not paid over to the client upon receipt of such cash, shall be deposited for the account and in the name of the client with **JSE Trustees (Pty) Limited**. The mandate may, in addition, provide that such cash will, on receipt of appropriate instructions from the client, be paid to the order of the client.
- 14.60.4 Every broking member (equities) shall keep a register, in a form as prescribed by the JSE, of each mandate.
- 14,60.5 Every CSM and CSA shall -
- 14,60.5.1 keep a nominee register, in terms of criteria as prescribed by directive, of the securities that are being held from time to time in terms of the mandate. Full details of any change shall be recorded forthwith in the nominee register;
- 14,60.5.2 pre-validate securities in terms of generally accepted market practice; and
- 14,60.5.3 dematerialise securities that are eligible to be dematerialised in terms of the processes required by the member's CSD participant.
- For the purpose of this rule dematerialisation shall not be complete until notification has been received from the CSD participant that the uncertificated securities are available for electronic settlement.
- 14.60.6 The necessary details of all **uncertificated** securities of a controlled client shall 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 **uncertificated** securities. Such **uncertificated** securities shall be held in a custody account with a CSD participant.
- 14.60.7 The joint approval of the persons referred to in 5.320 shall be required -
- 14.60.7.1 to withdraw or transfer **uncertificated** securities from the custody account with a CSD participant; and/or
- 14,60.7.2 to withdraw or transfer **uncertificated** securities from the account of a controlled client in a nominee register except where such securities are withdrawn to settle a sale on the client's account
- 14.60.8 Every CSM and CSA which holds a nominee register must balance the **uncertificated** securities daily with the custody account at the CSD participant. A monthly certificate shall be furnished by the 3rd business day after the BDA system month end to the Director: Surveillance confirming that the **uncertificated** securities have been balanced. Such certificate, shall be signed jointly by the persons referred to in 5.320, confirming that -

- 14.60.8,1 as at the BDA system month end, the custody account balances in the nominee register have been agreed with the CSD participant and there are no differences; and
- 14.60.8,2 the custody account balances in the nominee register have been reconciled daily with the CSD participant and all the differences have been resolved; and
- 14.60.8,3 that no circumstances have arisen that would result in the failure to comply with the rules and directives applicable to controlled clients.
- 14.60,9 Employees of a CSM and a CSA, including those who are stockbrokers or executive directors, who are granted authority to approve any payment by the member or its nominee company, may not be granted authority to approve any withdrawal or transfer on the nominee register.
- 14.60.10 All cash received *in* respect of or arising *from* the operation of an account for a controlled client, must be deposited for the account and in the name of the client with JSE Trustees (Pty) Limited.
- 14.60.11 Every CSM and CSA shall send monthly statements of account to controlled clients and shall include approved wording to the effect that the cash credit balance reflected on the statement is held by JSE Trustees (Pty) Limited.
- 14.60.12 Where a STRATE approved security is received from a controlled client for retention in custody a dated and signed receipt recording the name, quantity, certificate number (where applicable) and registered holder of the security shall be issued forthwith.
- 14.70 Minimum Cover - Pledges
- 14.70.1 Every CSM or CSA shall record in the nominee register those securities which are held as minimum cover in terms of Section 23(1) and (2) of the Act or in terms of 5.310, or otherwise as security for a loan, Full details of any change in the uncertificated securities held on behalf of a client shall be recorded forthwith in the nominee register.
- 14.70.2 When uncertificated securities of a client are designated in a nominee register as minimum cover, the client may be required by the broking member (equities) to lodge with it a pledge in such form as may be prescribed by the JSE from time to time.
- 14.70.3 Every broking member (equities) shall keep a record or register of the pledges so held.
- 14.80 Managed Discretionary and Non-discretionary Portfolios in Respect of **Uncertificated Securities**
- 14.80.1 A broking member (equities) shall not operate a managed discretionary portfolio for a client in respect of uncertificated securities without the prior written approval of the JSE. The approval when granted shall be on the condition that such member complies at all times to the satisfaction of the JSE with the provisions hereof. The JSE may at any time review and withdraw such approval.

- 14.80.2 The arrangement whereby a broking member (equities) manages a client's portfolio in terms hereof shall be recorded in a form of mandate which shall contain the minimum requirements as prescribed by the JSE and shall be signed by the client before acceptance of the managed portfolio.
- 14.80.3 A controlled client shall indicate on the mandate that he is a controlled client in terms of 14.60 and as such shall be dealt with at all times in the manner set forth in 14.60.
- 14.80.4 Every broking member (equities) operating managed portfolios in respect of uncertificated securities shall keep a register of each mandate in the form as prescribed by the JSE.

14.90 Borrowing, Lending or Use of Clients' or Counterparties' Uncertificated Securities

A member or CSA shall not borrow or lend or use any uncertificated securities referred to in 14.60.2 or 14.100 except that it may -

- 14.90.1 deliver such securities to the client or counterpart on whose behalf they are being held or to his order; or
- 14.90.2 satisfy a sale made on behalf of the client or counterpart concerned or securities sold to a counterpart; or
- 14.90.3 accept a corporate action on behalf of a client or counterpart where such offer flows from the uncertificated securities; or
- 14.90.4 sell the uncertificated securities being held on behalf of or allocated to a client or counterpart, under any of the circumstances set forth in sections 22, 23, 25 and 27 of the Act or 14.140, 14.150 or 5.300 or in any pledge; or
- 14.90.5 otherwise deal with the uncertificated securities in a manner set forth in the mandate signed by the client or counterpart and held by the member in terms of 14.60 or any pledge held in terms of 14.70.

14.100 Allocation of Uncertificated Securities

All uncertificated securities received which have been purchased on behalf of controlled clients, shall be allocated in the nominee register on that day, so as to establish the identity of the client entitled thereto.

14.110 Settlement of STRATE Approved Securities

- 14.110.1 From the time of designation of a security as a STRATE approved security and thereafter, all transactions in uncertificated securities shall only be settled electronically through STRATE in accordance with the principles set out in 14.25.
- 14.110.2 A transaction conducted in uncertificated securities by a broking member (equities) shall -
- 14.110.2.1 be allocated to a client or counterpart or a member's proprietary account on the trade date;

- 14.110.2.2 be communicated to a client or **counterparty** by no later than 12h00 on the business day after the original **trade**;
- 14.110.2.3 in the absence of **notification** from the **client** or **counterparty** 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 or counterparty
- 14.110.2.4 be committed to by **the** CSD participant of the member or client or counterparty by no later than 12h00 on the third business day after the trade date; and
- 14.110.2.5 be **settled** on the fifth business day after the trade date in accordance with the settlement timetable as prescribed by directive.
- 14.110.3 Notwithstanding 14.110.2.1 to 14.110.2.3, 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 or **counterparty** within **sufficient** time to allow for the CSD participant of the client or counterparty to comply with 14.110.2.4.
- 14.110.4 In the event that a CSD participant (including the CSD participant of the settlement authority) has not committed to settle the transaction by 16h00 on the fourth business day after the trade date, the transaction shall be a failed trade and shall be dealt with in terms of the failed trade procedure asset out in 14.150.
- 14.110.5 Notwithstanding the provisions of 14.110.4 in the event that-
- 14.110.5.1 a member advises the **settlement** authority at any stage that the CSD participant of the member or the CSD participant of a non-controlled client of the member will not be in a position to settle a transaction on settlement day and
- 14.170.5.2 the settlement authority is not able to procure that the **settlement** of the transaction will take place on settlement day or to dose the transaction in terms of 14.30.2.9, 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 procedure asset out in 14.150.

14.120 Non-controlled Client Settlement Obligations

- 14.120.1 A non-controlled **client** shall, by no later than 12h00 on the second business day after the trade date, give instructions to his CSD participant 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 CSD participant to **settle** the transaction must be given within **sufficient** time to allow for the

- CSD participant of such client to commit to settle in accordance with 14.120.2.
- 14.120.2 A non-controlled client shall, by no later than 12h00 on the third business day after the trade date, ensure and procure that his CSD participant has committed to settle the transaction on his behalf.
- 14.120.3 , In the event that a non-controlled client fails to comply with the provisions of 14.120.2, the member which effected the transaction shall be entitled to proceed in the manner set out in 14.120.5.
- 14.120.4 Notwithstanding 14.120.3, in the continued absence of a commitment from the CSD participant of the non-controlled client, the member which effected the transaction shall by no later than 12h00 on the fourth business day after the trade date proceed in the manner set out in 14,120.5.
- 14.120.5 Subject to the provisions of 14.120.3 and 14.120.4, in the event of failure by a non-controlled client to comply with the provisions of 14.120.2-
- 14.120,5.1 the member which effected the transaction on behalf of the non-controlled client shall, as at 12h00 on the fourth business day after the trade date, assume, as principal, the rights and obligations of the non-controlled client in respect of the said transaction, including the obligation to settle the transaction;
- 14,120,5.2 the member which effected the transaction shall proceed in the manner set out in 14.140.9 unless the settlement authority is able to close the transaction in terms of 14.30.2.9 or declares the transaction a failed trade in terms of 14.150;
- 14.120,5.3 the non-controlled client shall forfeit any rights that such client may have had in respect of the said transaction, including the right to enforce performance of the transaction; and
- 14.120,5.4 notwithstanding 14.120.5.1 to 14,120.5,3, the non-controlled client shall remain liable for any losses, costs and charges incurred, or charges imposed, by the member which effected the transaction, as a result of the member acting in accordance with 14.120,3 or 14.120.4.

14.130 Controlled Client Settlement Obligations

- 14.130.1 Save for where the controlled client is a carry account client, 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 day.

- 14.130.2 In the event that a controlled client fails to comply with the provisions of 14.130.1, the member which effected the transaction shall be entitled to proceed in the manner set out in 14.130.4.
- 14.130.3 Notwithstanding 14.130.2, in the event that the client continues to fail to place the member in a position where the member is able to settle the transaction on the clients behalf, the member which effected the transaction shall by no later than 12h00 on the fourth business day after the trade date proceed in the manner set out in 14.130.4.
- 14.130.4 Subject to the provisions of 14.130.2 and 14.130.3, in the event of a failure by a controlled client to comply with the provisions of 14.130.1 -
- 14.130.4.1 the member which effected the transaction on behalf of the controlled client shall, as at 12h00 on the fourth business day after the trade date, assume, as principal, the rights and obligations of the controlled client in respect of the said transaction, including the obligation to settle the transaction;
- 14.130.4.2 the member which effected the transaction shall proceed in the manner set out in 14.140.9 unless the settlement authority is able to close the transaction in terms of 14.30.2.9 or declares the transaction a failed trade in terms of 14.150:
- 14.130.4.3 the controlled client shall forfeit any rights that such client may have had in respect of the said transaction, including the right to enforce performance of the transaction; and
- 14.130.4.4 notwithstanding 14.130.4.1 to 14.130.4.3, the controlled client shall remain liable for any losses, costs and charges incurred, or charges imposed, by the member which effected the transaction, as a result of the member acting in accordance with 14.130.2 or 14,130,3.

14.140 Member Settlement Obligations

- 14,140.1 A member shall at all times endeavour to ensure that the settlement of a transaction in STRATE approved securities effected by the member takes place.
- 14,140.2 The settlement officer of a member must immediately inform the settlement authority when any transaction in a STRATE approved security is unlikely to settle.
- 14.140.3 No member or CSA shall be entitled, on settlement day, to alter or stop payment in respect of a STRATE settlement instruction.
- 14.140.4 If any broking member (equities) employs or retains a CSA or Clearing House Settlement Agent to perform its obligations or to take any action in terms of these rules, such member shall ensure that the

obligations performed or actions taken are in accordance with these rules by entering into an agreement which shall contain the minimum requirements as prescribed by directive.

- 14.140.5 A member shall, by no later than 12h00 on the third business day after the trade date, ensure that the CSD participant of the member has committed to settle the transactions in respect of controlled accounts.
- 14,140.6 ' In the event that a client fails to comply with the provisions of 14,120.2 or 14.130.1, the member shall, as at 12h00 on the fourth business day after the trade date, be liable, as principal, to settle the relevant transaction.
- 14,140.7 A member shall, by no later than 14h00 on the fourth business day after the trade date, ensure that the CSD participant of the member commits to settle any transactions, in respect of non-controlled clients, that the member is obliged to settle in terms of 14.140.6.
- 14.140.8 In the event that a client, at any stage, advises a member, or the member otherwise becomes aware, that the client is notable to settle a transaction, the member shall endeavour to enter into an arrangement to ensure that the transaction settles on settlement day. If the member is unable to enter into such arrangement the member shall immediately notify the settlement authority.
- 14,140.9 In the event that the settlement authority receives notification in terms of 14.140.8 and is able to procure the settlement of the transaction by means of the borrowing of 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 -
- 14,140.9.1 in respect of a sale transaction, buy such 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 as provided for in the rules;
- 14.140.9.2 in respect of a purchase transaction, sell such 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 as provided for in the rules; and
- 14.140.9.3 sell for the account of such client-
- (i) so many of any other listed securities belonging to such client and held by or in the custody of such member; or
- (ii) so many of any other listed securities to be delivered to the client in respect of any transaction relating to securities

previously entered into by such buyer 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 securities in terms of 14.140.9.1 and 14.140.9.2, as the case may be.

- 14.140.10 In the event that the settlement authority receives notification in terms of 14.140.8, and the settlement authority is either able to close the transaction in terms of 14.30.2.9 or declares the transaction to be a failed trade in terms of 14.110.4, the member shall act in accordance with the instructions received from the settlement authority in terms of 14.150.
- 14.140.11 Notwithstanding 14.140.8, in the event that-
- 14.140.11.1 the CSD participant of a non-controlled client fails to commit to settle a transaction by 11h00 on the fourth business day after the trade date; or
- 14.140.11.2 a controlled client fails to ensure that a member is in a position to settle a transaction by 12h00 on the fourth business day after the trade date,
- the member shall, subject to the action taken by the settlement authority in terms of 14.140.9 and 14.140.10, as the case may be, proceed in terms of the procedures set out in 14.140.9 or 14.140.10, whichever is applicable.
- 14.140.12 A member shall not use a client's uncertificated securities balances to settle the obligations of -
- 14.140.12.1 another client; or
- 14.140.12.2 a proprietary position.
- 14.140.13 A contravention of the provisions of 14.140.12 by a member may, in the discretion of the JSE, be deemed to constitute an act of default in terms of 8.40.
- 14.150 Failed Trades
- 14.150.1 A failed trade shall be dealt within the following manner-
- 14.150.1.1 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;
- 14.150.1.2 in the event that there is no transaction, or more than one transaction, of the type set out in 14.150.1.1, the settlement authority shall, in terms of the failed trade procedures as laid down from time to time, select such transaction or

transactions represented by one or more contract notes the failing of which will be least disruptive to members, clients and counterparties;

- 14.150.1.3 the transaction selected in terms of 14.150.1.1 or 14.150.1.2 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 principles set out in the directives from time to time. The difference shall be due from the member who effected the failed trade to the CSD participant of the parties whose trades have been closed by the settlement authority. The settlement of such amount will form part of the settlement batch which contains the failed trade.

14.150.2 This rule shall be binding on members, clients and counterparties and shall also apply to an agent acting on behalf of a client or a counterpart.

14.160 Penalties and Fees

14.160.1 The settlement authority may-

- 14.160.1.1 impose a penalty on a member which fails to effect instructions or settlement in accordance with the settlement timetable as prescribed by directive; and
- 14.160.1.2 charge any member the fees associated with settlement of uncertificated securities as prescribed by directive.
- 14.160.2 The penalty referred to in 14.160.1.1 shall be levied in accordance with a schedule as prescribed by directive.
- 14.160.3 Payment of the penalty imposed or fees charged in terms of 14.160.1 shall be made to the settlement authority within five business days of notification.
- 14.160.4 A client or counterpart shall be responsible for the payment of any penalty imposed on the member by the settlement authority where the client or counterpart was at fault for causing a failed trade.

14.170 Borrowing of **Uncertificated Securities** to Prevent a Trade from Failing

14.170.1 In the event that a member -

- 14.170.1.1 is not able to comply with the provisions of 14.140.7 in respect of a sale transaction; or
- 14.170.1.2 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 day,

the settlement authority will endeavour to borrow, as agent, on behalf of the member as undisclosed principal, the **uncertificated** securities required by the member to comply with its obligations to settle the transaction.

14.170.2 The arrangement whereby the **settlement** authority facilitates the borrowing of **uncertificated** securities on behalf of the member to enable the member to settle the transaction shall be on the terms and conditions set out in the directives from time to time.

14.170.3 A client shall be responsible for the payment of any costs that maybe incurred by the member as a result of the member having borrowed the 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 **uncertificated** securities required to **settle** the transaction.

14,170.4 Failure by a member to-

14,170.4.1 provide collateral **for the borrowed uncertificated securities;** or

14.170.4.2 **timeously** return the borrowed **uncertificated** securities,

in contravention of the rules and directives may, in the discretion of the JSE, be deemed to constitute an act of default in terms of 8.40.

14,180 Lending of Funds to Prevent a Trade from Failing

14,180.1 In the event that a member -

14.180.1,1 is not able to comply with the provisions of 14.140.7 in respect of a purchase transaction; or

14,180.1,2 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 day,

the settlement authority may, on the terms and conditions set out in the directives from time to time, lend to the member the funds required by the member to comply with its obligations to **settle** the transaction.

14,180.2 A client shall be responsible for the payment of any costs that maybe 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.

14.180,3 Failure by a member to-

14.180.3.1 provide collateral **for the borrowed funds;** or

14.180.3.2 **timeously** return the borrowed funds,

in contravention of the rules and directives may, in the discretion of the JSE, be deemed to constitute an act of default in terms of 8.40.