

**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 <b>1992</b> ] <u>Securities Services Act, 2004 (36 of 2004)</u> , [as amended or replaced from <b>time</b> to time] and includes [Regulations] <u>any measure prescribed</u> [issued] thereunder <u>by the Minister or the Registrar;</u>
'Account'	means either 'Central Securities Account' or ' <b>[Uncertificated]</b> Securities Account', depending on the context;
'Applicant'	means a person [which] <b>who</b> applies for [admission] <u>acceptance</u> as a [CSD] Participant in terms of Rule [4] <b>3;</b>
'Authenticated Instruction'	means any [message] <u>instruction sent or</u> received through the SAFIRES system <u>or other settlement system being used by the CSD;</u>
'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 <b>Client's [Uncertificated]</b> 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 <b>certified</b> 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 <del>the</del> CSD for a [CSD] Participant reflecting the number <del>and/or</del> nominal value of Securities of <del>each</del> kind and all Entries made <u>in respect of such account</u> ;
'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 <b>Electronic</b> ] STRATE Limited, Registration No 1998/022242/06, [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 <del>of</del> directors of <del>the</del> CSD;
'Dematerialisation'	means the process of converting <u>certificated Securities</u> , which are defined in section 1 <del>of</del> the Stock Exchanges Control Act] into Uncertificated Securities;
'Debit Balance'	<u>means a negative balance in a Securities Account maintained by a Participant</u> ;
'Directive'	means any Directive issued [ <del>under</del> ] <u>in accordance</u> with the Rules by the Controlling Body to regulate the Business of the CSD or [the CSD] Participants; <del>or any other</del> related matter in so far as it relates to Uncertificated Securities;
'[document of title]'	means share certificates and <del>balance</del> receipts;
'Eligible Securities'	means Uncertificated <u>Securities</u> or Immobilised Securities which the Controlling Body <u>permits</u> [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 <del>of</del> any deposit, withdrawal, transfer, attachment, pledge, cession [ <u>in securitatem debiti</u> ] <u>to secure a debt</u> or other transaction in respect <del>of</del> Securities;
'Exchange'	<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 <del>and other executive director</del> of the CSD or any other person designated by <del>him</del> her;
'External Exchange'	<del>means a person authorised to function as an Exchange in terms of the laws of a country other than the Republic;</del>
'force majeure'	<del>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;</del>
'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 <b>[Uncertificated]</b> Securities which is concluded through <b>[the JSE]</b> <del>an Exchange</del> trading system and which is guaranteed in terms of the Rules and Directives of <b>[the JSE Securities Exchange South Africa]</b> <del>such Exchange</del> ;
'Head of Supervision'	means the Head of Supervision of the CSD or any other person designated by <del>him</del> /her;
'Immobilisation'	<del>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;</del>
'interim rule'	means an interim rule issued in terms of rule 3.3.2]
'Issuer <b>[of Securities]</b> '	means an <b>entity</b> which issues <u>Eligible</u> Securities; <b>[and whose Securities are accepted for deposit by the CSD];</b>
'Money Market Securities'	<del>means the "Money Market Instruments" for purposes of Chapter IV of the Act that are <b>Uncertificated</b> Securities deposited in the Securities Ownership Register in terms of these Rules;</del>
'Nominee'	<del>means a person that acts as the registered holder of Securities or an interest in Securities on behalf of other Persons;</del>
'Off-market Trade'	means a trade in <b>[Uncertificated]</b> Securities which is not concluded <b>[through the JSE trading system]</b> <del>on an Exchange</del> <b>[and which is reported by the seller and the purchaser of the Uncertificated Securities to the relevant CSD participant for settlement through the CSD];</b>
'On-market Trade'	<del>means a trade in Securities reported by an Exchange;</del>
'Own Name or Own Name Client <b>[Client]</b> '	means, in respect of a Client <b>[whose own name appears in the <b>Uncertificated</b> Securities Account]</b> , the Entry of such Client's Own Name in the Securities Account of the <b>[CSD]</b> Participant <b>[and who has complied with]</b> <del>subject to</del> the criteria <b>[as prescribed in a] stipulated by Directive and for the</b>

	<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 <del>the [CSD] Participant to effect</del> entries on behalf of the Client in that Client's [Uncertificated] Securities Account <del>[and which may include an Authenticated Instruction];</del>
'Subregister'	means a Subregister as defined in <u>section 91A of the Companies Act</u> ;
'the Rules'	means the <u>CSD</u> Rules contained in this document;
['Stock Exchanges Control Act'	means the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);]
['Uncertificated Securities Account'	means an account <del>kept</del> 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	<u>POWERS, MANAGEMENT AND CONTROL</u>
[2.1	Powers of the CSD]
2.1	[ <del>The</del> powers and authority of the CSD are as set out in the Memorandum and Articles of Association <del>of the CSD</del> . <u>The CSD is a public company having the powers conferred on it by the Act.</u>
[2.2	Management and control]
2.2	<u>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.</u>
[2.3	Decisions of the Controlling Body]
23	Decisions of the Controlling Body [shall] <u>made in terms of the Rules-</u>
2.3.1[1]	<del>must</del> be published timeously <del>by the Controlling Body</del> in a notice to [CSD] Participants [by the controlling body] <u>or other affected parties bound by the Act, Rules and Directives;</u>
2.3[1].2	are [be] binding on [CSD] Participants <del>and other affected parties bound by the Act Rules and Directives</del> from the date of receipt of the notice by the [CSD] Participants <del>or other affected parties</del> [until such time as the decision has been revoked or substituted]; <u>and</u>

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 to 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] Participational 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 [CSO participants and] persons who manage or control [CSD] Participants

**[4.2.1]** For the purposes of meeting the requirements of rule 4.13, 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;

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 Dublish 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 4.11;**

**[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 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 4.39. 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

- 4.1.1.1** 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 –
- 4.1.1.1.1** the CSD participant is required to do so before any court or by any law; or
- 4.1.1.1.2** it has obtained the prior written consent of the person concerned.
- 4.1.1.2** A CSD participant which divulges or makes known any confidential information in contravention of rule **4.1.1.1** 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

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

##### **4.1.1** can 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 Participant, 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  
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.  
A Participant must report to the CSD, as stipulated by Directive, any Of-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 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.
- 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;
- 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 reissued 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 67 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] Debt 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 Debt 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 procedure 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 Drocedures. 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 Droceduresand 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 ParticiDant 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 ParticiDant must annually report to the Controllina **Body** whether or not -
- 8.1.6.1** the Participant complies with the reauirements of the Act and the Rules reardina the maintenance of Securities Accounts; and
- 8.1.6.2** the Participant complies with the Rules relatina 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 manaaement** 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] ParticiDant** 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 & ~~manaaement, internal controls and Drocduresimplemented 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 **[Uncertiicated]** 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 ~~cath~~ 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

781 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.

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

783 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 781 or 782 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 a resolution by these Heads of Division within 10 ~~(ten)~~ Business Days of such referral, be referred to the respective Chief Executive Officers, and failing a 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 an 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 Participant 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 Debt 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 96. 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 CSDs 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 Reulatorv Committee or Tribunal pursuant to the Rules, the Reulatorv 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 Reulatorv 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 Reulatorv Committee or the Tribunal deems fit, order that particulars of the offence and or finding of the Reulatorv 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 Reulatorv 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 Reulatorv 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 regulator 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.**

---