

## BOARD NOTICES RAADSKENNISGEWINGS

### BOARD NOTICE 61 OF 2005

#### SECURITIES SERVICES ACT, 2004

#### AMENDMENT TO THE RULES OF THE BOND EXCHANGE OF SOUTH AFRICA

1. In terms of section 61(5) of the Securities Services Act, 2004 (Act No. 36 of 2004), it is hereby notified that the Bond Exchange of South Africa 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 1 August 2005 as the date on which the rules in the Schedule will come into operation. If any objections to the proposed rules are received, another commencement date will be determined by notice in the Gazette.

RJG Barrow

Registrar of Securities Services

#### SCHEDULE

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.
3. The Rules, excluding rule A1.3, are hereby further amended by the substitution for –
  - (a) the expressions "financial instrument principal", "financial instrument trader" and "user", wherever they occur, of the expression "authorised user";
  - (b) the expression "financial instrument", wherever it occurs, of the expression "securities"; and
  - (c) the expression "listed financial instruments", wherever it occurs, of the expression "listed securities".

#### A1.3 Definitions

In these Rules a word or expression to which a meaning has been assigned in the Act, bears the meaning so assigned to it and, unless the context otherwise indicates –

"Act"	means the [Financial Markets Control Act 1989 (Act No. 55 of 1989)] <u>Securities Services Act, 2004 (Act No. 36 of 2004)</u> and <u>any Regulations prescribed thereunder by the Minister of Finance or the Registrar</u> , [as amended or substituted from time to time];
"authorised user"	<u>has the meaning assigned to it by the Act</u>
"client"	<u>has the meaning assigned to it by the Act</u> [means any person who is not a user and who trades with or through a user];
"derivative instrument"	<u>has the meaning assigned to it by the Act</u>
"directive"	<u>has the meaning assigned to it by the Act</u> [means a determination of the governing committee as required in terms of a specific rule, which directive binds rightsholders, users or members of a particular market association, as the case may be];
["financial instrument"]	<u>has the meaning assigned to it by the Act</u>
"securities"	<p>(a) a futures contract as defined in section 1 of the Act;</p> <p>(b) an option contract as defined in section 1 of the Act;</p> <p>(c) loan stock as defined in section 1 of the Act; or</p> <p>(d) any other instrument declared by the Registrar by notice in the Government Gazette to be a financial instrument,]</p>
["financial instrument principal"]	means any person who is a member, who is not a financial instrument trader, and who is authorised in terms of the Rules to carry on the business of buying and selling listed financial instruments on his own account;]
["financial instrument trader"]	means any person who is a member who is authorised in terms of the Rules to carry on the business of buying and selling listed financial instruments on behalf of other persons or on his own account;]
"governing committee"	means the <u>controlling body</u> [executive authority] of the Bond Exchange appointed in terms of rule B3.2 and which committee succeeds the executive committee (the [executive authority] <u>controlling body</u> which managed and controlled the affairs of the Bond Exchange prior to the date of approval of these Rules);
"licensed exchange"	means <u>an</u> [financial] exchange as defined in section 1 of the Act [or a stock exchange licensed in terms of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985) as amended from time to time or, if the Act so permits and with the approval of the Registrar, a foreign financial or other exchange];
"listed [financial instruments] securities"	<u>has the meaning assigned to it by the Act</u> [means financial instruments included in the list of financial instruments kept by the governing committee];
"market association"	means an association of ten or more <u>authorised</u> users formed for the purpose of – <p>(a) carrying on the business of a market association;</p> <p>(b) supervising the buying and selling of listed <u>securities</u> [financial instruments], <u>as</u> identified in the particular Market Association Rules, <u>by</u> its members; and</p> <p>(c) representing and promoting the common interests of its members <u>who represent a separate category of authorised users</u>;</p>
["member"]	means any person who is a financial instrument trader or financial instrument principal;]
"Registrar"	<u>has the meaning assigned to it by the Act</u> [means the Registrar of Financial Markets as defined in section 1 of the Act];

**"STRATE"**

means STRATE Limited, a public company incorporated in accordance with the laws of the Republic of South Africa (registration number 19981022242106 and [registered] licensed as a central securities depository under the [Custody and Administration of Securities Act, 1992 (Act No. 85 of 1992)] Act or any successor;

**["user"**

means a member registered with the Bond Exchange in accordance with the provisions of Part C – Section 2, in order to carry on the business of buying and selling listed financial instruments and who also has membership of a market association recognised by the Bond Exchange.]

**A1.4 Amendment of Rules**

A1.4.1 Proposals in respect of additions to or amendments of the Rules must be lodged in writing with the secretary[for submission to the next meeting of the governing committee].

A1.4.2 [For the purposes of rule A1.4.1], [t]he parties who may propose additions to or amendments of the Rules are limited to –

A1.4.2.1 in respect of General Rules, a governing committee member, a rightsholder, a market association council, three or more users or the Forum;

A1.4.2.2 in respect of Constitutional Rules, a governing committee member, any rightsholder or the Forum;

A1.4.2.3 in respect of Core Rules, a governing committee member, a market association council, three or more users or the Forum; and

A1.4.2.4 in respect of any particular Market Association Rules, a governing committee member, the relevant market association council, three or more members of the relevant market association or the Forum.

A1.4.3 The governing committee must consider the proposed addition to or amendment of the Rules and must, within [five] 5 days thereafter, publish its decision with regard thereto in a notice to the relevant parties referred to in rule A1.4.2.

A1.4.4 Irrespective of whether the governing committee has adopted or rejected the proposal, if [within five days of the publication of the governing committee's decision in terms of rule A1.4.3 an objection in writing is received from the Forum, then the governing committee shall convene a joint sitting of the governing committee and the Forum within five days of the date upon which the objection is lodged, as contemplated in rule B5.3.] a ballot is demanded by requisition in writing within 5 days of the Publication of the governing committee's decision in terms of rule A1.4.3 –

[A1.4.5 Within five days of the joint sitting referred to in rule A1.4.4, the governing committee must publish the outcome of the decision made at the joint sitting in respect of the proposed amendment, in a notice to the relevant parties referred to in rule A1.4.2.]

[A1.4.6 Irrespective of whether an objection has been received in terms of rule A1.4.4 and irrespective of any decision referred to in rule A1.4.5, if a ballot is demanded by requisition in writing within 21 days of the publication of the governing committee's decision in terms of rule A1.4.3 –]

A1.4.[6]4.1 in respect of a proposed amendment of the General Rules, by not less than one-third of all rightsholders and one-third of all users;

A1.4.[6]4.2 in respect of a proposed amendment of the Constitutional Rules, by not less than one-third of all rightsholders;

A1.4.[6]4.3 in respect of a proposed amendment of the Core Rules, by not less than one-third of all users; or

A1.4.[6]4.4 in respect of a proposed amendment of [the particular] Market Association Rules, by not less than one-third of all members of that particular market association, then the governing committee must convene, as the case may be, within 14 days of the date upon which the requisition is made –

A1.4.[6]4.5 in respect of a proposed amendment of the General Rules, a general meeting of rightsholders and users at which meeting a separate ballot of rightsholders and of users must be conducted in terms of rule 83.10;

A1.4.[6]4.6 in respect of a proposed amendment of the Constitutional Rules, a general meeting of rightsholders at which meeting a ballot of rightsholders must be conducted in terms of rule 83.10;

A1.4.[6]4.7 in respect of a proposed amendment of the Core Rules, a general meeting of users at which meeting a ballot of users must be conducted in terms of rule 83.10; or

**A1.4.[6]4.8** in respect of a proposed amendment of [the particular] Market Association Rules, a general meeting of members of that particular market association at which meeting a ballot of those members must be conducted in terms of rule **83.10**.

**A1.4.[7]5** If the governing committee rejects the proposal and no ballot is demanded in terms of rule **A1.4.[6]4** or if at such a ballot a majority of votes cast by the relevant parties referred to in rule **A1.4.[6]4** are recorded against the adoption of the proposal, the proposal is rejected.

**A1.4.[8]6** If the governing committee adopts the proposal and no ballot is demanded in terms of rule **A1.4.[6]4** or if at such a ballot a majority of votes cast by the relevant parties referred to in rule **A1.4.[6]4** are recorded in favour of the proposal, the proposal is adopted.

**A1.4.[9]7** The governing committee shall submit any adopted proposal to the Registrar for his approval, which proposal is valid from the date of granting of such approval in writing.

## **A2.1** Continued existence of Bond Exchange

**A2.1.1** The Bond Exchange is for all purposes in law deemed to have assumed all the rights, powers, duties and obligations of its predecessor, the **BMA**, at the time when it was licensed as the Bond Exchange [a financial market licence was issued to the Bond Exchange].

## **B1.2** Corporate Body

The Bond Exchange is a non-proprietary, voluntary association and, as from the date upon which it is for the first time issued with an [financial market] exchange licence, a juristic person capable of –

**B1.2.1** suing or being sued in the name in which it is licensed;

**B1.2.2** acquiring, owning, burdening] hiring, letting and alienating property; and

**B1.2.3** doing such things as may be necessary for or incidental to the exercise of its powers or the carrying out of its duties in terms of the Act, the Rules and its [financial market] exchange licence.

## **B1.7** Limitation of liability

**B1.7.1** Subject to section 62, [T] the Bond Exchange, the members of its governing committee or other committees, the chief executive and other officers, and the employees of the Bond Exchange are not liable for any loss sustained by or damage caused to any person, including rightsholders and users, as a result of anything done or omitted to be done by the Bond Exchange, its licensed clearing house and their agents, contractors and employees, the members of its governing committee or other committees, and their officers and employees, the Forum, a market association, rightsholders or users in the **bona fide** or negligent, but not grossly negligent, exercise of any power or carrying out of any duty or performance of any function under or in terms of the Act, the Rules or any directive.

## **B2.5** Conversion of seats to rights

### **B2.5.1** Conversion scheme

**B2.5.1.1** In this rule, unless the context otherwise indicates –

'active seat' means, in the context of the Rules approved by the Registrar on **15 May 1996**, a membership seat held by an authorised user or ex-member [member] on the conversion date;

'conversion date' means a date, set by the governing committee, not more than **180** days after the date of approval of these Rules by the Registrar;

'conversion authorised user [member]' means, in the context of the Rules approved by the Registrar on **15 May 1996**, an authorised user [member] who holds an active seat on the conversion date.

'conversion scheme' means the conversion scheme of the Bond Exchange which will, with effect from the conversion date, entitle –

(a) an authorised user [member] to 200 rights for each active seat held on the

	conversion date and one additional right for each completed R10 000 of the Guarantee Fund allocation of such member on the conversion date; and
	(b) each ex-member to 100 rights for each dormant seat held on the conversion date;
"dormant seat"	means, in the context of the Rules approved by the Registrar on 15 May 1996, a membership seat held by an ex-member who ceased to enjoy all the rights and privileges attaching to membership of the <u>Bond Exchange</u> prior to the conversion date, but who remains registered as the holder of such seat on the conversion date;
"ex-member"	means, in the context of the Rules approved by the Registrar on 15 May 1996, a former member of the <u>Bond Exchange</u> who holds a dormant seat on the conversion date;
"Guarantee Fund"	means the Guarantee Fund contemplated in Part D – Section 8 of the Rules, in the context of the Rules approved by the Registrar on 15 May 1996, the Guarantee Fund contemplated in section 14 of those Rules;
"Guarantee Fund allocation"	means the certified rand value of each <u>authorised user's</u> <del>(member's)</del> notional interest in the Guarantee Fund as at the conversion date, calculated in accordance with criteria laid down by the governing committee prior to the conversion date.

#### B2.5.1.2 On the conversion date –

B2.5.1.2.1 an authorised user [member] and an ex-member will become a rightsholder;

B2.5.1.2.2 each –

[(a) member will become a user if that member obtains membership of a market association on the conversion date or obtains such membership within 30 days after the conversion date;]

~~(a)~~[(b)] active seat ~~will~~ be converted into 200 rights;

~~(b)~~[(c)] completed R10 000 of the Guarantee Fund allocation of each authorised user [member] will entitle such [rightsholder] user to one additional right;

~~(c)~~[(d)] dormant seat will be converted into 100 rights; and

B2.5.1.2.3 rightsholders shall be those persons who hold at least one right.

#### B2.5.2 Entitlements of dormant seat holders

B2.5.2.1 A right entitles the holder of a dormant seat on the conversion date, to –

B2.5.2.1.1 vote at any meeting of rightsholders of the Bond Exchange;

B2.5.2.1.2 participate in surplus funds or assets of the Bond Exchange on the winding-up of the Bond Exchange in accordance with the Rules, but in no other circumstances.

B2.5.2.2 An ex-member who is the holder of a dormant seat on the conversion date may not become a user by virtue of holding a dormant seat.

### C2.3 Privileges and obligations of users

C2.3.1 A user must –

C2.3.1.1 satisfy at all times the user status requirements as determined by the governing committee, including being a member of a market association;

C2.3.1.2 where the user is a member or active participant of more than one licensed exchange, elect a lead exchange as its lead regulator;

C2.3.1.3 must at all times comply with the prescribed financial resources requirements set out by its lead regulator;

C2.3.1.4 enter into agreements covering functions designated by the governing committee in order to fulfil the functions and obligations of a user;

- [C2.3.1.5]** declare in writing in advance to the governing committee the user's intention to trade as a financial instrument trader or as a financial instrument principal;]
- [C2.3.1.6]** declare in writing in advance to the governing committee the user's intention to convert his user status registration between a financial instrument trader and a financial instrument principal, and vice versa;]
- C2.3.1.[7]5** in respect of all trades entered into by the user, comply with the reporting requirements as determined by the governing committee;
- C2.3.1.[8]6** in respect of all trades entered into by the user, comply with the settlement requirements as determined by the governing committee;
- C2.3.1.[9]7** hold such fidelity insurance cover in respect of fraud and misappropriation by any director, officer, trader or other person involved in the management or administration of trading, as the user or its board of directors or other governing entity of the user deems appropriate for the level of business undertaken by the user;
- C2.3.1.[10]8** ensure compliance with the Act, the Rules, the directives, the constitution of the market association in question, and a decision or determination of the governing committee;
- C2.3.1.9** comply with the Provisions of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) if that user who undertakes the management of listed securities, as defined in section 1 of the Act, for remuneration or benefit in any form; and
- C2.3.1.10** not effect a transaction in securities with a person whom the user believes or suspects requires approval to undertake management of securities in terms of any law without having taken reasonable measures to ascertain that such person has the necessary approval.
- [C3.1.11]** permit any officer, trader or employee from circumventing the restrictions on unsolicited calls, as provided for in section 25 of the Act.]

#### C5.5 User trades

A market association shall prescribe the requirements in respect of the trading of listed financial instruments between members of that market association, which requirements must be approved by the governing committee [and the Registrar].

#### DS.1 Eligibility to trade

Prior to concluding any trades in listed financial instruments, a BTA member must ensure that –

- D5.1.1** the BTA member is [registered with] authorised by the Bond Exchange as either a financial instrument principal or financial instrument trader;
- D5.1.2** every trader employed by the BTA member to conclude trades in listed financial instruments must have completed the registered person's examination of the South African Institute of Financial Markets, or any equivalent examination recognised by the BTA and approved by the governing committee; and
- D5.1.3** traders employed by the BTA member to conclude trades in listed financial instruments are registered with the Bond Exchange.

### SECTION 9 SEGREGATION OF ASSETS

#### C9 Segregation of financial instruments and other assets

A user must, in accordance with the Provisions of section 27 of the Act -

- C9.1** at all times identify and keep separate the financial instruments and other assets of another user or of a client from the user's own assets;
- C9.2** not use the financial instruments or other assets belonging to another user or client to finance the user's own trades or the trades of any other person; and
- C9.3** not use the financial instruments or other assets of another user or client to operate his own business.

**C12.4** Inspections by Disciplinary Tribunal

C12.4.1 The Disciplinary Tribunal may authorise any person (hereunder referred to as "the inspector") not associated with any user to inspect the affairs of an user -

C12.4.1.1 to ascertain whether the user or any officer, trader or employee of the user complies with the provisions of the Act, the Rules, the directives and any decision or determination of the governing committee;

C12.4.1.2 to ascertain whether the user or trader is trading in such a manner that as a consequence of such trading such user may not be able to fulfil its obligations to another user, a client, the Bond Exchange or the licensed clearing house; or

C12.4.1.3 to ascertain whether the user is carrying on the business of buying and selling listed financial instruments in a manner which could be detrimental to the interest, good name or welfare of the Bond Exchange and its users.

C12.4.2 The inspector must be furnished by the Disciplinary Tribunal with a letter of authority which the inspector must produce at the request of any interested person, and the inspector may ~~with~~ regard to a matter that is the subject of an investigation, subject to ~~rule~~ C12.4.1, without prior notice -

C12.4.2.1 enter the premises of any user;

C12.4.2.2 have access to documents, books, records, articles, recordings of a user or make copies of or take extracts from, such documents, books, records, articles or recordings in possession of a user, officer or employee of

C12.4.2.3 question a director, officer, trader, employee ~~or~~ representative of a user; and

C12.4.2.4 request information from the recognised clearing house.

**C12.9** Notice of convictions

C12.9.1 The chief executive officer must publish a written notice to users setting out details of any conviction of a user, officer or trader and the penalty imposed by the Disciplinary Tribunal: Provided that the contravention is an offence ~~as~~ determined by the Disciplinary Tribunal justifying such notice.

C12.9.2 The chief executive officer may publish, or cause to be published, in any newspaper or other periodical, or permit or authorise the proprietor or publisher of such newspaper or other periodical to publish the notice referred to in rule C12.9.1.

C12.9.3 The chief executive officer must submit a written report to the Registrar setting out details of any conviction of a user, officer or trader and the penalty imposed by the Disciplinary Tribunal, within 30 days of the conviction being imposed.