

**BOARD NOTICE 63 OF 2005****SECURITIES SERVICES ACT, 2004****AMENDMENT OF THE RULES OF JSE LIMITED**

1. In terms of section 61(5) of the Securities Services Act, 2004 (Act No. 36 of 2004), it is hereby notified that **JSE** Limited has applied to the Registrar of Securities Services for approval of 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.

**AMENDMENTS TO THE GUARANTEE FUND RULES OF JSE LIMITED****Name**

1. The name of the **[F]** fund shall be the **JSE** Guarantee Fund, hereafter referred to as "the Fund".

**Separate Identity and Ownership**

2. The Fund shall be a separate legal person capable of owning property in its own name and of suing and being sued in its own name. The Fund shall have no members and no member of the JSE shall have any claim on the assets of the Fund save as set out in these Rules.]
- 2.1 The Fund shall consist of assets acquired and liabilities incurred by the trustees of the **JSE** Guarantee Fund Trust, with Master's reference number IT 9150/2003 ("the Trust"), which vest in the trustees.
- 2.2 The trustees will acquire, hold and administer the Fund subject to and in accordance with these Rules.

**Trustees**

3. The **[T]** trustees of the Fund shall be those independent non-stockbroking members of the **[Board]** ~~controlling a body of the JSE as nominated and elected by [the Board] that controlling body from time to time. The JSE shall act as~~ the secretary of the Fund.
4. The affairs of the Fund shall be administered by the **[T]** trustees at meetings convened for this purpose.

**Definitions**

5. For the purpose of these Rules –

**[5.1]** "Act"

shall mean the **[Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), any subsequent amendments thereto or any replacement Act]** Securities Services Act, 2004 (Act No. 36 of

		<u>2004) and any measure prescribed thereunder by the Minister of Finance or the Registrar;</u>
	<u>Banks Act</u>	<u>shall mean the Banks Act, 1990 (Act No. 94 of 1990);</u>
[5.2]	["carry account"]	[shall have the same meaning as contained in Section 240 of the JSE Rules];
	<u>"central securities depository"</u>	<u>shall have the same meaning as that contained in section 1 of the Act;</u>
[5.3]	"client"	shall [mean any person, including a controlled client, on whose behalf securities or uncertificated securities are bought, sold or held by a member or their CSA] <u>have the same meaning as that contained in section 1 of the Act;</u>
[5.4]	"controlled client"	shall mean a client <u>or an account holder on whose behalf a client is acting</u> , whose funds and uncertificated <u>equity</u> securities are under the control of a [CSM or a CSA] <u>custody services provider</u> or whose settlements take place via the CSDP [participant] of [the] a member [as if the client's funds or uncertificated securities were under the control of a CSM or a CSA];
[5.5]	["counterparty"]	[shall mean in any particular transaction, any person buying or selling securities from or to a member either for that person's own account or on behalf of a client;]
[5.6]	["CSA" or "custody and settlement agent"]	[shall mean a CSM which has been appointed by a broking member (equities) in terms of the JSE rules to: (a) exercise custody over that member's managed account, safe custody and controlled account assets, and (b) effect settlement of certificated and uncertificated securities on behalf of that member and its clients;]
[5.7]	["CSD"]	[shall mean a public company registered as a central securities depository in terms of the Custody and Administration of Securities Act, 1992 (Act No. 85 of 1992);]
[5.8]	"CSDP [participant]"	shall mean a [person accepted by the CSD as a CSD participant in terms of the CSD rules] <u>central securities depository participant that has been accepted by a central securities depository as a participant in that central securities depository;</u>
[5.9]	["CSD rules"]	[shall mean the rules of the CSD approved in terms of the Custody and Administration of Securities Act, 1992;]
[5.10]	["CSM" or "custody settlement member"]	[shall mean a member which has been appointed as a custody and settlement member in terms of the JSE rules and, on behalf of its clients and/or another member and that member's clients - (a) exercises custody over managed accounts, safe custody and controlled account assets, and (b) effects settlement of certificated and uncertificated securities;]
[5.11]	"custody account"	shall mean an [uncertificated] <u>equity</u> securities account with a CSDP [participant] which reflects the uncertificated <u>equity</u> securities balances of controlled accounts of a member [broking member (equities)] and through which settlement of <u>transactions in [uncertificated] equity</u> securities is effected;
	<u>"custody services provider"</u>	<u>shall mean a member which has been authorised by the JSE to perform custody services in terms of the equities rules;</u>
	<u>"equities rules"</u>	<u>shall mean the rules and the directives of the JSE applicable to equity securities;</u>
	<u>"equity securities"</u>	<u>shall mean those JSE listed securities traded on the JSE equities trading system;</u>

- [5.12] "JSE" shall mean JSE Limited, a company duly registered and incorporated with limited liability under the company laws of [South Africa] the Republic, licensed to operate an exchange under the [Securities Services] Act;
- "JSE listed securities" shall mean those listed securities included in the list of securities kept by the JSE.
- [5.13] ["JSE rules"] [shall mean the rules of the JSE applicable to securities, excluding the derivatives rules;]
- "listed securities" shall have the same meaning as that contained in section 1 of the Act.
- [5.14] "member" shall mean [a sole proprietor, partnership or corporate entity as the case may be,] an equities member, which is a category of authorised user admitted to membership of the JSE [in terms of] under the [JSE rules] equities rules [. For the avoidance of doubt it is recorded that reference to member does not include derivative members of the JSE];
- [5.15] ["minimum cover securities"] [shall mean the securities or uncertificated securities deposited by a client with a member or their CSA in respect of transactions on a carry account;]
- "participant" shall have the same meaning as that contained in section 1 of the Act.
- "Registrar" shall have the same meaning as that contained in section 1 of the Act.
- [5.16] "securities" shall [mean those securities as defined] have the same meaning as that contained in section 1 of the Act [which are listed securities];
- "Settlement Authority" shall mean the person or persons appointed by the JSE to manage the settlement of transactions in equity securities effected through the JSE equities trading system in terms of the equities rules; and
- [5.17] ["trust account"] [shall mean an account maintained by a member in terms of section 14 of the Act at a bank registered otherwise than provisionally in terms of the Banks Act, 1990; and;]
- [5.18] 'uncertificated equity securities" shall mean equity securities [which in terms of section 91A of the Companies Act, 1973 (Act No. 61 of 1973),] that are not evidenced by a certificate or written instrument and are transferable by book entry without a written instrument [and are not evidenced by a certificate].

#### Administration and Investments

6. The [T]trustees shall open a banking account with a bank ([registered otherwise than provisionally in terms of] as defined in the Banks Act, 1990) in the name of the Fund and shall have the power to draw and endorse cheques and other negotiable instruments or effect electronic fund transfers connected with the business of the Fund. All monies constituting or accruing to the Fund shall, pending the investment or application thereof, in accordance with these Rules, be paid into the said banking account. The [T]trustees shall have power to close the banking account and open an account with another bank so [registered] defined.
7. Subject to these Rules, the [T]trustees shall have exclusive administration and control of all assets belonging to the Fund and of the income arising therefrom. Such assets or income shall be applied or invested by the [T]trustees in the manner hereafter provided and in no other manner, that is to say –
  - 7.1 if necessary, all the assets of the Fund shall be used to meet claims on the Fund in terms of these Rules;
  - 7.2 not less than **25** per cent of the total assets of the Fund shall be invested –
    - 7.2.1 on deposit with a bank ([registered ~~otherwise~~ than provisionally in terms of] as defined in the Banks Act, 1990);

- 7.2.2 in bills, bonds, debentures or stock issued or guaranteed by the government of the Republic;
- 7.2.3 in stock of any local authority in the Republic authorised by law to levy rates upon immovable property;
- 7.2.4 in debentures or stock of the Reserve Bank, the Rand Water Board, Eskom or such other similar body constituted or established by or under law;
- 7.3 any monies not invested in the manner set forth in **Rule 7.2** above shall be invested in accordance with sound financial principles in securities, in such manner as the **[T]rustees** deem fit;
- 7.4 all contributions levied in terms of these Rules together with the income arising from the Fund shall from time to time be invested in the manner set forth in **Rules 7.2** and **7.3** until the net value of the assets of the Fund has reached the amount determined by the Registrar [of Stock Exchanges] in terms of **Rule 11.3** after which the assets of the Fund in excess of that amount may be applied for the purposes set forth in that **Rule**;
- 8.1 In selecting securities for the Fund, the **[T]rustees** shall follow an investment policy which shall have as its primary objectives a reasonable level of current income and maximum stability for capital invested. **[T]o** achieve this objective, the securities normally to be included in the Fund shall consist of financially sound securities and bonds, to be acquired at fair market prices.]
- 8.2 Such securities shall be registered in the name of the Fund ~~or~~ in the name of a nominee company and shall be held in a custody account in the name of the Fund with a bank ([registered otherwise than provisionally in terms of] **as defined in the Banks Act**, 1990) or a [CSD Participant] **CSDP** or a [Central Depository] **central securities depository** [approved] **licensed** in terms of the [Custody and Administration of Securities Act 1992] **Act**.
- 8.3 Notwithstanding anything contained in these Rules, the **[T]rustees** shall be empowered to sell, exchange, or redeem any investment. The **[T]rustees** may, from time to time, determine what proportion of the monies in the Fund may be retained for the immediate requirements of the Fund and what proportion may be invested.
- 9. Save as may otherwise be determined by the **[T]rustees** from time to time, all contracts, deeds and instruments of a like nature and all drafts, cheques or orders drawn on banks against any account of the Fund in any bank shall be signed by one of the **[T]rustees** and the secretary of the Fund.

#### Fund Assets

- 10. The **[T]rustees** shall apply the assets of the Fund solely for the purposes set forth in these Rules. No withdrawal or appropriation of any part of the assets of the Fund shall be made without special authorisation by the **[T]rustees**.
- 11.1 For the purposes of this Rule 11, the expression "the net assets of the Fund" shall mean the assets of the Fund, valued at market value from time to time, less provisions made from time to time by the **[T]rustees** in their discretion for all actual and contingent liabilities of the Fund.
- 11.2 It is the intention that the net assets of the Fund shall at all times be at least R50 million or such other amount as the Registrar [of Stock Exchanges] may determine from time to time, after consultation with the **[T]rustees**. Should the net assets of the Fund at any time fall below R50 million, the **[T]rustees** shall levy contributions from members sufficient to bring the net assets of the Fund to R50 million.
- 11.3 The **[T]rustees** [shall] may, until such time as the net assets of the Fund are reduced to less than R50 million, ~~be~~ entitled in their discretion, but] in accordance with such conditions as the Registrar may determine, [to] apply the assets of the Fund [which may be received from time to time] ~~to~~
  - 11.3.1 for maintaining or for strengthening the financial resources of the JSE as an institution;
  - 11.3.2 for reducing the listing fees payable by the issuers of **JSE listed** securities [listed on the **JSE**];
  - 11.3.3 ~~to~~ pay the premium in respect of any "In and Out" fidelity insurance policy which the **JSE** may arrange or procure;
  - 11.3.4 ~~to~~ provide funding and/or collateral security to enable the **JSE** to facilitate the settlement of transactions in ~~terms~~ of the [JSE rules and directives] **equities rules**; and
  - 11.3.5 ~~to~~ reimburse the **JSE** for any amounts that may have been disbursed by the JSE pursuant to any action taken by the Settlement Authority in terms of the [JSE rules and directives] **equities rules** to facilitate the settlement of transactions in **JSE listed** securities.

**Contributions**

12. Members shall contribute to the Fund as hereinafter provided, and such contributions together with assets already in the Fund and all other sums which may accrue to the Fund shall constitute the assets of the Fund.
- 13.1 All contributions referred to in these Rules shall be made –
- 13.1.1 not later than one month after the [T]rustees have informed the member of the amount it is liable to contribute; or
- 13.1.2 on such basis, for such period and upon such rate as the [T]rustees may determine.
- 13.2 The [T]rustees [shall have the right to] may recover in a court of competent jurisdiction any amount due to the Fund but not paid by a member in accordance with Rule 13.1, which shall constitute a liquidated amount of money due by a member to the Fund. A certificate issued by the [T]rustees shall be prima facie proof of any amount so due and payable.
14. The [T]rustees may, at any time in their discretion, levy contributions for the purpose of making up any diminution in the Fund or of increasing the size of the Fund from members on such basis as the [T]rustees may decide [in their absolute discretion from time to time].
15. Subject to Rule 25, no member shall be entitled at any time to any refund of contributions paid in terms of these Rules, except where the [T]rustees may determine that an overpayment of a contribution levied in terms of Rule 14 has been made by a member.

**Liability of the Fund for Losses**

- 16.1 Where a member has been declared [a defaulter] to be in default by the JSE in terms of the [JSE] equities rules, the Fund shall be liable [against receipt of the cessions referred to in 16.31 subject to the limit of liability referred to in Rule 16.5 –
- 16.1.1 [F]or the reimbursement[, subject to the limit of liability referred to in 16.2,] of –
- 16.1.1.1 funds owed by the defaulting member to a controlled client in respect of which the client is unable to obtain a refund from such member; and [monies paid by a buyer to the defaulting member in respect of securities or uncertificated securities purchased by the member on behalf of the buyer which have not been allocated or delivered to such buyer by the member;]
- 16.1.1.2 equity securities due to a client by a defaulting member in respect of which the client is unable to obtain delivery from such member; and [monies due to a seller by the defaulting member where the securities or uncertificated securities sold by the member on behalf of the seller have been delivered to the member by the seller and of which the buyer or seller is unable to obtain a refund for such member;]
- 16.1.2 for any outstanding obligations of a defaulting member to a client in respect of a decision made by an ombud in terms of the equities rules.
- [16.1.3 securities or uncertificated securities –
- 16.1.3.1 held by the defaulting member or their custody and settlement agent as minimum cover securities or in respect of a managed account or controlled client account (whether or not deposited by the member in a safe custody account with a bank or in a custody account with a CSD participant); or
- 16.1.3.2 held by the defaulting member for any other purposes on behalf of a client or counterparty and of which the client or counterparty is unable to obtain delivery from the defaulting member;]
- [16.1.4 cash and scrip accruals at the date of default of the defaulting member in respect of securities or uncertificated securities purchased on behalf of a client or held on behalf of a client in custody;]
- [16.1.5 cash held by the defaulting member in a trust account or in JSE Trustees (Pty) Limited on behalf of a client in respect of a managed account or a controlled client account and interest accrued thereon at the date of default of the member of which the client is unable to obtain a refund from such member; and]
- [16.1.6 any other monies received from or due to a client by the defaulting member in respect of a transaction in securities where such monies are irrecoverable.]

- 16.[6]2 The liability of the Fund shall not necessarily be restricted to the types of losses described in the various categories referred to in Rule 16.1 and may be extended to such other losses as the [T]trustees may [in their absolute discretion] determine.
- 16.3 Payment of any amount in terms [hereof] of these Rules shall only be made ~~against~~ a valid out and out cession to the [T]trustees of the respective claims that the client [or counterparty] has against the defaulting member.
- 16.4 Subject to Rule 16.[2]5 and notwithstanding anything else contained in these Rules, the liability of the Fund shall be [limited] –
- 16.4.1 ~~in relation to funds, the amount owed to a client at the date of default; and [to the amount which the defaulting member owes a client or counterparty at the time of the default of such member in respect of a transaction arising from the buying or selling of securities or uncertificated Securities and where the transaction has not been settled –]~~
- 16.4.1.1 by the payment of cash where the delivery of the securities or uncertificated securities sold has taken place; or]
- 16.4.1.2 by the delivery of the securities or uncertificated securities where payment has been made for the securities or uncertificated securities purchased; and]
- 16.4.2 ~~in relation to equity securities, the value based on the closing price on the date of default;~~ [in the case of a liability arising from securities or uncertificated securities held by the member in custody or as minimum cover securities or for any other purpose on behalf of a client or counterparty an amount equal to the market value at the time of default of such member of the securities or uncertificated securities which were not available nor identifiable for delivery to such client or counterparty at the said time;]
- provided that any amount payable by the Fund to a claimant shall be reduced by any amount which such claimant owed ~~to the member~~ at the time of default.
- [16.5 The Fund shall not be liable –
- 16.5.1 for any loss associated with any transaction other than a transaction in securities, including but not limited to transactions in bonds, unlisted securities, listed derivatives, money market instruments or money broking transactions;
- 16.5.2 for any consequential indirect, unforeseeable or indeterminable ~~loss~~ suffered by a client or counterparty as a result of any default including breach of contract, negligence or fraud by a member; or
- 16.5.3 for any loss of income, profits and any loss sustained as a result of fluctuations in the market price of securities or uncertificated securities after the time of the default of such member.]
- 16.[2]5 Reimbursement of the losses referred to in Rule 16.1 shall not exceed the sum of [R200 000 (Two hundred thousand Rand)] R500 000 per claimant in aggregate. If the aggregate of all claims admissible against the Fund exceeds the total net assets of the Fund, the liability of the Fund shall be distributed in the ratio, pro rata, which the total net assets of the Fund bears to the total claims of the claimants admissible against the Fund.
- 16.[8]6 [Notwithstanding anything else contained in these rules, a] A claim by a client [or counterparty for monies, securities or uncertificated securities in respect of which they are unable to obtain a refund or delivery from the defaulting member] in terms of Rule 16.1 or Rule 16.2 shall, in the first instance, be against the defaulting member. The Fund shall only be liable for such claims [in the event that] which the defaulting member is unable to meet [such a claim or] and [the claim is] which are not covered by an insurance policy which indemnifies the member against such a claim.
- [16.7 The limit of liability of the Fund referred to in 16.2 shall, if the aggregate of all claims admissible against the Fund exceeds the total net assets of the Fund, be distributed in a ratio, pro rata, which the total net assets of the Fund bears to the total claims of the claimants admissible against the Fund.]
- 16.[9]7 [Notwithstanding the provisions of 16.8 in the discretion of the Trustees, the Fund may at any time consider a claim in terms of 16.1 if] if the [T]trustees [determine] are of the view that there may be circumstances which could cause an unreasonable delay by the defaulting member or the insurance policy in the settlement of [such] a claim, [by the defaulting member or the insurance policy] the trustees may proceed to consider such claim.

### Claims

17. All claims on the Fund by or on behalf of clients [or counterparties] of the defaulting member –
- 17.1 shall be submitted in writing to the [T]trustees, within a period of one year of such claim arising, who shall be entitled to] may require such evidence as they deem sufficient as proof of the liabilities referred to in Rule 16;

- 17.2 shall, if accepted by the [T]trustees, be paid subject to these Rules directly to such claimants and the amount of such payments shall not form part of the assets of the member;
- 17.3 shall be satisfied by payment by cheque or by electronic funds transfer and in no other manner; and
- [17.4 shall be limited to the extent of the total net assets of the Fund; and]
- [17.5]17.4 shall be decided in the discretion of the [T]trustees, who may reject a claim which does not conform with any of the categories referred to in Rule 16.1.
- 18.[1] Failure by a claimant to comply within a reasonable period with any of the requirements of the [T]trustees under [r]Rule 17 shall be grounds upon which the [T]trustees may reject a claim.

#### General

19. The whole of the expenses in connection with or incidental to the management or administration of the Fund including the cost of audit and legal expenses shall be borne by the Fund.
20. The [T]trustees shall cause proper accounting records relating to the Fund to be kept and shall cause such accounting records to be audited [in respect of each] every year [ended on the last day of December] by a person registered as an accountant and auditor under the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991) or any replacement Act[, and who publicly carries on the profession of an accountant and auditor and shall not later than three months after the said date in each year, or within such further period as the Registrar may allow, transmit to the Registrar a copy of the accounts and balance sheet of the Fund for the said year certified by the said auditor and accompanied by a copy of his report.]
21. Any notice to be given to members in terms of these Rules shall be properly given if given in terms of rule [3.140] 2.150 of the [JSE rules] equities rules [or any amendment thereof].
22. The Rules of this Fund may be amended in the same manner as the [JSE rules] equities rules may [now or hereafter] be amended, provided that every amendment shall be subject to the approval of the Registrar [of Stock Exchanges].
23. Subject to the Act and these Rules, the decision of the [T]trustees in regard to the administration of the Fund and other matters arising therefrom shall be final.
24. In all disputes or queries other than those referred to [in] a court of law, the interpretation of these Rules shall vest with the [T]trustees, whose interpretation shall be final.

#### Winding Up

- 25.1 If the JSE should be wound up, the assets of the Fund shall be used, subject to these Rules, in discharging –
- 25.1.1 all claims against the Fund which are accepted by the [T]trustees in terms of these Rules; and
- 25.1.2 thereafter all obligations of the JSE to the public arising out of the business of an exchange carried on by the JSE.
- 25.2 The balance (if any) of the assets of the Fund shall be deemed to become assets of the JSE.
- 25.3 In the event of a merger, amalgamation or transfer of business by or to the JSE:
- 25.3.1 the assets of the Fund shall not be dealt with pursuant to Rules 25.1 or 25.2, notwithstanding that the JSE may be wound up pursuant to such merger or transfer;
- 25.3.2 at the discretion of the [T]trustees, the Fund may merge or amalgamate with or be transferred to any other fidelity or guarantee fund of the merged, amalgamated or transferee exchange.