

# BOARD NOTICE

## BOARD NOTICE 96 OF 2008

### SECURITIES SERVICES ACT, 2004

#### AMENDMENT TO THE EQUITIES 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, P O 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, Dube Tshidi, hereby determine 16 October 2008 as the date on which the rules in the schedule come into operation. If any objections are received, another commencement date may be determined by notice in the Gazette.

D.P. TSHIDI

REGISTRAR OF SECURITIES SERVICES

#### SCHEDULE

##### Proposed amendments to the JSE Equities Rules

##### General explanatory notes

1. Words underlined with a solid line (\_\_\_\_) indicate the insertions in the existing rules.
  2. Words in bold and in square brackets ([    ]) indicate omissions from the existing rules.
- 1.40 In the rules –
- |                                |   |
|--------------------------------|---|
| “failed trade”                 | means a transaction in equity securities which the Settlement Authority deems to be a failed trade on the basis that neither the client, the member nor the Settlement Authority is able to ensure that such transaction will settle on the settlement date <u>or any revised settlement date</u> ; |
| <u>“rolling of settlement”</u> | <u>means the process initiated by the Settlement Authority in terms of which the settlement date of a transaction in equity securities is postponed to a later date;</u>  |
| “[STRATE] <u>Strate</u> ”      | means [STRATE] <u>Strate</u> Limited, a public company licensed as a central securities depository in terms of the Act;   |

**10.10 Applicability of Section 10**

Section 10 **[shall apply]** is applicable to the clearing of transactions in equity securities and the electronic settlement of such transactions through **[STRATE] Strate**. This section is binding on members and clients and any agent acting on their behalf.

**10.20 Settlement assurance**

- 10.20.1 A member must ensure settlement of all transactions in equity securities effected by it through the central order book of the JSE equities trading system.
- 10.20.2 Subject to rule 10.20.3, a member must also ensure settlement of all reported transactions in equity securities entered into by it as agent on behalf of a client or as principal with a client.
- 10.20.3 Rule 10.20.2 **[shall not apply]** is not applicable to reported transactions where either one or two members are involved and where the clients who are parties to such reported transactions have, between themselves, concluded the terms of the transaction and instructed the member or members to report the transaction through the JSE equities trading system. A client will have no recourse against a member in respect of such transactions.
- 10.20.4 Except in the circumstances set out in rule 10.20.3, any action by a client in respect of a transaction in equity securities will be against the member **[which]** that effected the transaction on the instruction of such client, and not against any other member or client of such member.
- 10.20.5 A member **[shall]** must make its clients aware of their settlement obligations in terms of the rules. However, if a client is not aware of such settlement obligations, he nevertheless remains bound by the relevant rules.

**10.30 Settlement principles for transactions in equity securities**

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

**10.40 Settlement Authority**

- 10.40.1 The Settlement Authority **[shall]** will -
- 10.40.1.1 manage the settlement of transactions in equity securities effected through the central order book of the JSE equities trading system and the risks associated with such settlement to ensure that the principles set out in rules 10.20 and 10.30 are adhered to;

- 10.40.1.2 manage the settlement of transactions in equity securities reported to the JSE equities trading system where ring-fencing has occurred, and the risks associated with such settlement; [and]
- 10.40.1.3 in its sole discretion and in exceptional circumstances, roll the settlement of a transaction on the basis set out in rule 10.105; and
- 10.40.1.[3]4 in exceptional circumstances, extend the times referred to in rules 10.60 to 10.110.
- 10.40.2 In order to perform its functions in terms of rule 10.40.1, the Settlement Authority may –
  - 10.40.2.1 monitor the settlement obligations of members and their clients;
  - 10.40.2.2 ensure that the settlement obligations of members are met on the settlement date;
  - 10.40.2.3 monitor uncommitted settlements and take appropriate action in respect of such settlements;
  - 10.40.2.4 take action when the settlement of a transaction in equity securities is unlikely to take place on settlement date;
  - 10.40.2.5 buy and sell equity securities through the JSE equities trading system to meet any obligations arising from the management of the settlement process and the risks associated with such process;
  - 10.40.2.6 borrow, as agent, on behalf of a member as undisclosed principal, equity securities from third parties to facilitate the management of the settlement process and the risks associated with such process;
  - 10.40.2.7 levy fees, as prescribed by directive, on members for the loan of equity securities to members in order to facilitate the settlement process;
  - 10.40.2.8 impose penalties, as prescribed by directive, on members for any action or omission by a member which is potentially disruptive and/or has the effect of disrupting the settlement process and the functions of the Settlement Authority;
  - 10.40.2.9 instruct a member or a client (via the member) to roll the settlement of a purchase or sale transaction on the basis set out in rule 10.105;
  - 10.40.2.[9]10 [invite or] instruct a member or a client (via the member) to close a purchase or sale transaction [at a price and] on the basis set out in rule 10.110; and
  - 10.40.2.[10]11 manage the settlement of reported transactions where ring-fencing has occurred.

## 10.50 General pre-trade settlement requirements

- 10.50.1 A client may only place an order with a member to transact in equity securities if –
  - 10.50.1.1 in the case of a non-controlled client, the client has appointed a CSDP; and
  - 10.50.1.2 in respect of a sell order –
    - 10.50.1.2.1 the equity securities to be sold are held in uncertificated form by the member's CSDP, in the case of a controlled client, or by the client's CSDP, in the case of a non-controlled client; or
    - 10.50.1.2.2 a controlled client is able to evidence to a member that they own the equity securities to be sold in uncertificated form and that such securities will be available for settlement on settlement date; or

- 10.50.1.2.3 another transaction has been concluded which provides for an equivalent amount of equity securities being available for settlement on settlement date; or
- 10.50.1.2.4 a satisfactory borrowing arrangement is in place which provides for an equivalent amount of equity securities being available for settlement on settlement date[.]; or
- 10.50.1.2.5 a corporate action provides for an equivalent amount of equity securities being available for settlement on settlement date.
- 10.50.2 A member may only enter an order on the JSE equities trading system or report a trade to the JSE equities trading system if the member has appointed a CSDP, has SWIFT connectivity as prescribed by directive and has taken reasonable steps to satisfy itself that –
  - 10.50.2.1 if the client is a non-controlled client, the client has appointed a CSDP and the appointed CSDP has confirmed, in the manner determined by the JSE, that the details of that client held by the CSDP correspond with and match the details of the client held by the member in the BDA system; and
  - 10.50.2.2 in respect of a sell order –
    - 10.50.2.2.1 the equity securities to be sold are held in uncertificated form by the member's CSDP, in the case of a controlled client or proprietary transaction, or by the client's CSDP, in the case of a non-controlled client transaction; or
    - 10.50.2.2.2 a controlled client has evidenced to a member that they own the equity securities to be sold in uncertificated form and that such securities will be available for settlement on settlement date; or
    - 10.50.2.2.3 another transaction has been concluded which provides for an equivalent amount of equity securities being available for settlement on settlement date; or
    - 10.50.2.2.4 a satisfactory borrowing arrangement is in place which provides for an equivalent amount of equity securities being available for settlement on settlement date; or
    - 10.50.2.2.5 a corporate action provides for an equivalent amount of equity securities being available for settlement on settlement date.
- 10.60 **General settlement provisions**
  - 10.60.1 A transaction conducted in equity securities by a member **[shall] must** –
    - 10.60.1.1 be allocated to a client or a member's proprietary account on the trade date;
    - 10.60.1.2 be communicated to a client by no later than 12h00 on the business day after the original trade;
    - 10.60.1.3 in the absence of notification from the client to the contrary by no later than 12h00 on the second business day after the trade date, be deemed to have been accepted by the client;
    - 10.60.1.4 be committed to by the CSDP of the member or client by no later than 12h00 on the third business day after the trade date; and
    - 10.60.1.5 be settled on the fifth business day after the trade date in accordance with the settlement timetable as prescribed by directive.
  - 10.60.2 Notwithstanding rules 10.60.1.1 to 10.60.1.3, allocation corrections may not be made after 16h00 on the second business day after the trade date. Any corrections **[shall] must** be communicated to, and accepted by the client within sufficient time to allow for the CSDP of the client to comply with rule 10.60.1.4.

10.60.3 If a CSDP of a member has not committed to settle a transaction by 16h00 on the fourth business day after the trade date or the Settlement Authority has otherwise determined, by that time, that a member will not be able to settle a transaction, the transaction **[shall] will** be a failed trade and **[shall] will** be dealt with in terms of the failed trade procedures as set out in rule 10.110, unless the Settlement Authority rolls the settlement of the transaction to a subsequent date on the basis set out in rule 10.105.

10.60.4 Notwithstanding the provisions of rule 10.60.3, if –

10.60.4.1 a member advises the Settlement Authority at any stage that the CSDP of the member **[or the CSDP of a non-controlled client of the member]** will not be in a position to settle a transaction on settlement date; and

10.60.4.2 the Settlement Authority is not able to procure that the settlement of the transaction will take place on settlement date **[or to close the transaction in terms of rule 10.40.2.9]** or the Settlement Authority does not roll the settlement to a subsequent date;

the transaction **[shall] will** be declared a failed trade by no later than 09h00 on the next business day and **[shall] will** be dealt with in terms of the failed trade procedures as set out in rule 10.110.

#### 10.70 Non-controlled client settlement obligations

10.70.1 The allocation of a transaction to a non-controlled client will result in the member's obligation to settle the transaction being substituted with the client's obligation to settle the transaction through the client's CSDP.

10.70.2 A non-controlled client **[shall] must**, by no later than 12h00 on the second business day after the trade date, give instructions to his CSDP to settle the transaction. In the event of the correction of an allocation of a trade which results in a new confirmation of the trade by the member, the instruction to the CSDP to settle the transaction must be given within sufficient time to allow for the CSDP of such client to commit to settle in accordance with rule 10.70.3.

10.70.3 A non-controlled client **[shall] must** endeavour to ensure and procure that his CSDP has committed to settle the transaction on his behalf by no later than 12h00 on the third business day after the trade date.

10.70.4 If a non-controlled client fails to comply with rule 10.70.3, or the member is advised or otherwise becomes aware, at any stage, that a non-controlled client is unable to settle a transaction, the member may proceed in the manner set out in rule 10.100.

10.70.5 In the absence of a commitment from the CSDP of a non-controlled client **[after] before** 12h00 on the third business day after the trade date, the non-controlled client **[shall] must** nevertheless ensure that his CSDP commits to settle the transaction by 09h00 on the fourth business day after the trade date.

10.70.6 If a non-controlled client fails to meet his obligations in terms of rule 10.70.5, which **[shall]** includes any indication by the non-controlled client, at any stage, that he is unable to settle a transaction, the member will, by no later than 10h00 on the fourth business day after the trade date, assume the obligation to settle the transaction through the member's CSDP.

#### 10.80 Controlled client settlement obligations

10.80.1 A controlled client **[shall] must**, by no later than 16h00 on the second business day after the trade date, ensure that the member which effected the transaction on behalf of such client will be in a position to settle the transaction on settlement date, either by providing the equity securities or funds required to settle the transaction to the member or by entering into an arrangement with the member to facilitate settlement of the transaction.

10.80.2 If a controlled client fails to comply with rule 10.80.1, or the member is advised or otherwise becomes aware, at any stage, that a controlled client is unable to settle a transaction, the member may proceed in the manner set out in rule 10.100.

**10.90 Member settlement obligations**

- 10.90.1 A member **[shall] must** at all times endeavour to ensure that the settlement of transactions in equity securities effected by the member takes place.
- 10.90.2 The settlement officer of a member must immediately inform the Settlement Authority when any transaction in equity securities is unlikely to settle.
- 10.90.3 No member may, on settlement date, alter or stop payment in respect of a **[STRATE] Strate** settlement instruction.
- 10.90.4 If a member employs or retains a CSP or a settlement agent to perform its obligations or to take any action in terms of the rules, such member **[shall] must** ensure that the obligations performed or actions taken are in accordance with the rules.
- 10.90.5 A member **[shall] must**, by no later than 12h00 on the third business day after the trade date, ensure that the CSDP of the member has committed to settle the transactions in respect of controlled accounts.
- 10.90.6 If a non-controlled client fails to comply with rule 10.70.3, or the member is advised or otherwise becomes aware, at any stage, that a non-controlled client is unable to settle a transaction, the member **[shall] must**, by no later than 10h00 on the fourth business day after the trade date, assume the obligation to settle the relevant transaction.
- 10.90.7 A member **[shall] must**, by no later than 12h00 on the fourth business day after the trade date, ensure that the CSDP of the member commits to settle any transactions, in respect of non-controlled clients, that the member is obliged to settle in terms of rule 10.90.6.
- 10.90.8 If a client, at any stage, advises a member, or the member otherwise becomes aware, that the client is not able to settle a transaction, the member **[shall] must** endeavour to enter into an arrangement to ensure that the transaction settles on settlement date. If the member is unable to enter into such arrangement, the member **[shall] must** immediately notify the Settlement Authority.
- 10.90.9 If the Settlement Authority receives notification in terms of rule 10.90.8 and is able to procure the settlement of the transaction by means of the borrowing of equity securities or funds, as the case may be, then the member **[shall] must** by no later than the close of business on the next business day –
- 10.90.9.1 in respect of a sale transaction, buy such securities either for the account of the relevant client or for the member's own account; or
- 10.90.9.2 in respect of a purchase transaction, sell such securities either for the account of the relevant client or for the member's own account;
- in order to ensure the return of the securities or funds to the Settlement Authority.
- 10.90.10 If the Settlement Authority receives notification in terms of rule 10.90.8, and the Settlement Authority **[is either able to] either rolls settlement in terms of rule 10.105 [close the transaction in terms of rule 10.40.2.9]** or declares the transaction to be a failed trade in terms of rule 10.60.3, the member **[shall] must** act in accordance with the instructions received from the Settlement Authority in terms of **rule 10.105** or **rule 10.110, respectively**.
- 10.90.11 A member **[shall] must** not use a client's equity securities to settle the obligations of –
- 10.90.11.1 another client; or
- 10.90.11.2 a proprietary position.

**10.100 Breaches of client settlement obligations**

- 10.100.1 If a client breaches his settlement obligations as set out in the rules, subject to any agreement with the client or notification to the client to the contrary, and to any action taken by the Settlement Authority in terms of [rule 10.40.2.9] the rolling of settlement procedures set out in rule 10.105 or the failed trade procedures set out in rule 10.110, the member may -
- 10.100.1.1 in respect of a sale transaction, buy such equity securities for the account of the client and claim the difference between the selling consideration of such securities and the purchase consideration for such securities[, **including interest**];
  - 10.100.1.2 in respect of a purchase transaction, sell such equity securities for the account of the client and claim the difference between the purchase consideration of such securities and the selling consideration for such securities[, **including interest**]; and
  - 10.100.1.3 sell for the account of such client—
    - 10.100.1.3.1 so many of any other equity securities belonging to such client and held by or in the custody of such member; or
    - 10.100.1.3.2 so many of any other equity securities due to be received by the member on the relevant settlement date in respect of any purchase transaction previously entered into by such client with or through the member,

as is necessary to realise an amount equal to the amount still owing by the client in respect of such securities, after the sale or purchase of the equity securities in terms of rules 10.100.1.1 and 10.100.1.2, as the case may be.
- 10.100.2 If a member acts in accordance with rule 10.100.1, the timing of the relevant purchases or sales as referred to in rules 10.100.1.1 to 10.100.1.3 and the price at which such transactions are executed should take cognisance of –
- 10.100.2.1 the time at which the breach by the client was or should have been identified by the member;
  - 10.100.2.2 any agreement with or notification to the client with regard to the timing of such transactions; and
  - 10.100.2.3 the market conditions in relation to the relevant equity security;
- bearing in mind the overriding principle that the client is responsible for meeting his settlement obligations and that if he does not meet those obligations, the member may take reasonable action to mitigate its risk arising out of such a breach of obligations.
- 10.100.3 The client **[shall]** will be liable for any losses, costs and charges incurred, or charges imposed, **as a consequence of a breach and the member may charge interest in relation thereto. [by the member in relation to the original transaction which was the subject of the breach and any transactions executed in terms of rule 10.100.1.]**

**10.105 Rolling of settlement**

- 10.105.1 The rolling of settlement will be carried out in the following manner:
- 10.105.1.1 The Settlement Authority will match the transaction for which settlement is being rolled against an opposite transaction or transactions represented by one or more contract notes, being mindful of any apparent implications for the parties concerned.
  - 10.105.1.2 The Settlement Authority will advise the failing and non-failing member that the transaction will be rolled to a revised settlement date determined by the

Settlement Authority, which should not be more than 5 business days after the settlement date of the original transaction.

- 10.105.1.3 The Settlement Authority will instruct the CSDP of the non-failing party to lift its commitment on the original transaction so that the settlement of the transaction may be rolled.
- 10.105.1.4 The Settlement Authority will instruct the non-failing member to transfer the original transaction to a proprietary account if the transaction was booked to a client's account.
- 10.105.1.5 The Settlement Authority will book an opposite settlement transaction through Strate between the failing member and the non-failing member for the same quantity and at the same price as the non-failing party's original transaction.
- 10.105.1.6 If the failing or non-failing party is a client, the member that transacted on behalf of the client must re-book the original transaction to the client for settlement on the revised settlement date.
- 10.105.2 If settlement does not take place on the revised settlement date, the transaction will be declared to be a failed trade and the affected members must act in accordance with the instructions received from the Settlement Authority in terms of rule 10.110.
- 10.105.3 The non-failing member must, before the close of business on the business day following that on which the rolling of settlement has been completed, submit a statement, in writing, to the Settlement Authority detailing—
  - 10.105.3.1 if applicable, any corporate action which the equity security is subject to from the day of the original transaction; and
  - 10.105.3.2 any expenses incurred or income foregone by the member or the client as a consequence of the rolling of settlement, including interest.
- 10.105.4 If the equity security of the original transaction is subject to a corporate action and the rolling of settlement results in either of the parties not receiving an entitlement, the claim for the loss of entitlement will be managed by the Settlement Authority so as to, as closely as possible, place the parties in the position that they would have been in had the original transaction not been rolled.
- 10.105.5 The Settlement Authority will, on request, use reasonable endeavours to procure that the purchaser of the equity securities involved in a rolling of settlement will be able to exercise any voting rights attaching to those securities during the period between the original settlement date and the revised settlement date.
- 10.105.6 Any margin taken on the original transaction will be retained by the Settlement Authority until payment of any claims on the rolled settlement has been made.

#### **10.110 Failed trades**

- [10.110.1 A failed trade shall be dealt with in the following manner –**
  - 10.110.1.1** **the Settlement Authority shall match a failed trade against an equal but opposite transaction represented by a single contract note which is a terminating transaction;**
  - 10.110.1.2** **if there is no transaction, or more than one transaction, of the type set out in rule 10.110.1.1, the Settlement Authority shall, in terms of the failed trade procedures as laid down, select such transaction or transactions represented by one or more contract notes the failing of which will be least disruptive to members and clients;**



- 10.110.1.3 the transaction selected in terms of rules 10.110.1.1 or 10.110.1.2 shall be closed at a price to be determined by the Settlement Authority, in consultation with the Market Controller. This price may differ from the original trade price and will include compensation for the party whose transaction is being closed. The compensation shall be determined in accordance with the methodology set out in the directives. The difference shall be due from the member who effected the failed trade to the CSDP of the parties whose trades have been closed by the Settlement Authority. The settlement of such amount forms part of the settlement group which contains the failed trade.
- 10.110.2 This rule is binding on members and clients and applies to an agent acting on behalf of a client.]
- 10.110.1 A failed trade will be dealt with in the following manner:
- 10.110.1.1 The Settlement Authority will match a failed trade against an opposite transaction or transactions represented by one or more contract notes, being mindful of any apparent implications for the parties concerned.
- 10.110.1.2 The Settlement Authority will advise the non-failing member that its transaction has been selected in terms of rule 10.110.1.1.
- 10.110.1.3 The Settlement Authority will instruct the CSDP of the non-failing party to lift its commitment on the original transaction.
- 10.110.1.4 The Settlement Authority will instruct the non-failing member to transfer the original transaction to a proprietary account if the transaction was booked to a client's account.
- 10.110.1.5 The Settlement Authority will book an opposite settlement transaction through Strate between the failing member and the non-failing member for the same quantity and at the same price as the non-failing party's original transaction.

10.110.2 Redress in respect of a failed trade will be dealt with in the following manner:

10.110.2.1 The Settlement Authority, in consultation with the Director: Surveillance and the Market Controller, will consider the circumstances of the original transaction, the factors which gave rise to its failure to settle and the current prevailing market conditions, and consequently determine the manner in which the matter be most suitably resolved by;

10.110.2.1.1 the non-failing member re-establishing the non-failing party's original transaction by way of re-transacting and recovering any costs from the failing party, on the basis set out in rule 10.110.3 ; or

10.110.2.1.2 determining appropriate compensation payable by the failing party to the non-failing party on the basis set out in rule 10.110.4.

10.110.2.2 The Settlement Authority will notify the failing member and non-failing member of the decision.

10.110.3 Re-transacting in respect of a failed trade must be dealt with in the following manner:

10.110.3.1 The non-failing member must re-transact the trade in the market for its own account within a period specified by the Settlement Authority and, where the non-failing party is a client, re-book the original transaction to the client's account at the original price.

10.110.3.2 The non-failing member must, before the close of business on the business day following that on which the re-transaction has been completed, submit a statement, in writing, to the Settlement Authority detailing—

10.110.3.2.1 the date, price and quantity of securities of the original transaction and re-transaction, and the consequential profit or loss;

10.110.3.2.2 if applicable, any corporate action which the equity security is subject to from the day of the original transaction; and

10.110.3.2.3 any expenses incurred or income foregone by the member or the client as a consequence of the re-transaction, including interest.

10.110.3.3 The Settlement Authority will consider the information supplied by the non-failing member and determine the extent of any financial prejudice suffered, if any. Payment will be made to the non-failing member utilizing the margin held in respect of the failing member. Should the margin be insufficient, the failing member must pay any shortfall to the Settlement Authority on the day of receipt of the instruction to do so. In the event that the re-transaction results in a surplus, such surplus is payable to the JSE.

10.110.3.4 In determining the extent of the financial prejudice suffered, the Settlement Authority may review the price of the re-transaction with reference to the principle of best execution.

10.110.3.5 Any margin taken on the original transaction will be retained by the Settlement Authority until payment of any claims on the re-transaction has been made.

10.110.4 Compensation in respect of a failed trade will be dealt with in the following manner:

10.110.4.1 In determining the compensation referred to in rule 10.110.2.1.2, the following factors may be considered —

10.110.4.1.1 the price at which the equity securities were originally transacted;

10.110.4.1.2 the prevailing market conditions at the time the equity securities were originally transacted;

10.110.4.1.3 the circumstances of the original transaction;

10.110.4.1.4 the nature and pattern of trading in the equity security since the original transaction;

10.110.4.1.5 the current market conditions;

10.110.4.1.6 any publicly available information regarding the equity security or the issuer of the equity security;

10.110.4.1.7 any corporate action which the equity security is subject to from the day of the original transaction;

10.110.4.1.8 any expenses incurred or income foregone by the member or the client as a consequence of the failed trade, including interest; and

10.110.4.1.9 any other factors deemed relevant.

10.110.5 The non-failing member must, before the close of business on the business day after notification in terms of rule 10.110.2.2, submit a statement, in writing, to the Settlement Authority detailing–

10.110.5.1 if applicable, any corporate action which the equity security is subject to from the day of the original transaction; and

10.110.5.2 any expenses incurred or income foregone by the member or the client as a consequence of the failed trade, including interest.

10.110.6 Where it is determined that it is appropriate to compensate the non-failing party in respect of a failed trade, compensation will be paid to the non-failing member utilizing the margin held in respect of the failing member. Should the margin be insufficient, the failing member must pay any shortfall to the Settlement Authority on the day of receipt of the instruction to do so.

10.110.7 Any margin taken on the original transaction will be retained by the Settlement Authority until payment of any compensation has been made.

## **10.120 Borrowing of equity securities to prevent a trade from failing**

10.120.1 If a member –

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

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

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

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

10.120.3 A member must make good any corporate action arising on the loaned equity securities during the loan period and the effects of taxation in the hands of the lender, where applicable, within 5 days of the payment date of the relevant corporate action.

10.120.[3]4 A client **[shall]** will be responsible for the payment of any costs that may be incurred by the member as a result of the member having borrowed the equity securities to effect settlement (including costs related to manufactured dividends and other similar costs), and any penalty imposed on the member by the Settlement Authority, where the client failed to deliver the equity securities required to settle the transaction.

**10.130 Lending of funds to prevent a trade from failing**

10.130.1 If a member –

10.130.1.1 is not able to comply with rule 10.90.7 in respect of a purchase transaction; or

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

the Settlement Authority may, on the terms and conditions set out in the directives, lend to the member the funds required by the member to comply with its obligations to settle the transaction.

10.130.2 A client **[shall]** will be responsible for the payment of any costs that may be incurred by the member as a result of the member having borrowed the funds to effect settlement, and any penalty imposed on the member by the Settlement Authority, where the client failed to pay the funds required to settle the transaction.

**10.140 Margin on transactions in equity securities**

10.140.1 A member **[may]** will be required to provide margin to the JSE as contemplated in rule 10.140.2 in respect of unsettled transactions in equity securities.

10.140.2 Margin **[shall be]** is payable by a member before 12h00 on the fourth business day after the trade –

10.140.2.1 in respect of a non-controlled client transaction where, by end of day on the third business day after the trade date, the CSDP of the non-controlled client has not committed to settle the transaction on behalf of that client;

10.140.2.2 in respect of a controlled client sale transaction where, by end of day on the third business day after the trade date, the controlled client –

10.140.2.2.1 does not have sufficient equity securities in the custody of the member or the member's CSP for the transaction to settle on settlement date; or

10.140.2.2.2 has not entered into a securities borrowing arrangement to facilitate settlement of the sale on settlement date, as reflected on the BDA system; or

10.140.2.2.3 has not concluded a purchase transaction which is due to settle on or before the settlement date of the sale and which will provide sufficient equity securities for the sale to settle on settlement date;

10.140.2.3 in respect of a controlled client purchase transaction where, by end of day on the third business day after the trade date, the controlled client –

10.140.2.3.1 does not have sufficient funds in the custody of the member or the member's CSP for the transaction to settle on settlement date; or

10.140.2.3.2 has not concluded a sale transaction which is due to settle on or before the settlement date of the purchase and which will provide sufficient funds for the purchase to settle on settlement date;

- 10.140.2.4 in respect of a sale transaction for the member's own account where, by end of day on the third business day after the trade date, the member –
- 10.140.2.4.1 does not have sufficient equity securities available for the transaction to settle on settlement date; or
- 10.140.2.4.2 has not entered into a securities borrowing arrangement to facilitate settlement of the sale on settlement date, as reflected on the BDA system; or
- 10.140.2.4.3 has not concluded a purchase transaction which is due to settle on or before the settlement date of the sale and which will provide sufficient equity securities for the sale to settle on settlement date;
- 10.140.2.5 in respect of a purchase transaction for the member's own account where the member has not concluded a sale transaction due to settle on the settlement date of the purchase which will provide sufficient funds for the purchase to settle on settlement date.
- 10.140.3 Margin **[shall be]** is calculated in accordance with principles set out in the directives and **[shall be]** is payable and repayable on such dates as may be prescribed in the directives.
- 10.140.4 To the extent that margin payable by a member relates to transactions on a client's account, the member may recover such margin from the client. The member **[shall]** must refund the client forthwith upon the repayment of margin to the member by the JSE.
- 10.150 [Management of corporate action claims] Reserved**
- [All claims in respect of corporate actions, where the Settlement Authority has instituted lending arrangements, or failed trade procedures, shall be managed by the Settlement Authority in terms of rules 10.110. 1.3, 10.120.3 and the conditions set out in the directives.]**
- 10.160 Penalties and fees**
- 10.160.1 The Settlement Authority may –
- 10.160.1.1 impose a penalty on a member **[which]**~~that~~ fails to effect instructions or settlement in accordance with the settlement timetable, as prescribed by directive; and
- 10.160.1.2 charge any member the fees associated with settlement of equity securities, as prescribed by directive.
- 10.160.2 The penalty referred to in rule 10.160.1.1 **[shall be]** is levied in accordance with a schedule as prescribed by directive.
- 10.160.3 Payment of the penalty imposed or fees charged in terms of rule 10.160.1 **[shall]** must be made to the Settlement Authority within **[five]**5 business days of notification.
- 10.160.4 A client **[shall be]** is responsible for the payment of any penalty or fees imposed on the member by the Settlement Authority where the client is in breach of his settlement obligations [was at fault for causing a failed trade].