
BOARD NOTICE

BOARD NOTICE 5 OF 2011

SECURITIES SERVICES ACT, 2004

PROPOSED AMENDMENTS 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, or at the following email address: normanm@fsb.co.za, 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 1 February 2011 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.

DP TSHIDI
REGISTRAR OF SECURITIES SERVICES

SCHEDULE

PROPOSED AMENDMENTS TO STRATE 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

Definitions

- 1.2 In the Rules, unless the context otherwise requires or indicates: –

'BEE Act' means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

'BEE Certificate' means a certificate issued by a verification agency accredited by the accreditation body contemplated in the BEE Codes, certifying that the person identified in the certificate is a BEE Compliant Person;

'BEE Codes' means the Broad-Based Black Economic Empowerment Codes of Good Practice gazetted from time to time under the BEE Act;

'BEE Compliant Person' means as interpreted by the courts, from time to time –

- (a) as regards a natural person, one who falls within the ambit of the definition of "black people" in the BEE Codes;

- (b) as regards a juristic person having a shareholding or similar member's interests, one who falls within the ambit of the definitions of BEE Controlled Company or BEE Owned Company, using the flow-through principle contemplated in the BEE Codes;
- (c) as regards any other entity, any entity similar to a BEE Controlled Company or BEE Owned Company using the flow-through principle contemplated in the BEE Codes which would enable the issuer of Securities owned or controlled by such entity to claim points attributable to the entity's ownership of the Securities pursuant to the BEE Codes;

'BEE Contract' means –

- (a) the contract as defined by the JSE in the JSE Rules which Participants, Clients and the persons on whose behalf such Clients hold BEE Securities, as applicable, must conclude; and
- (b) any contract prescribed by an Issuer of BEE Securities, which Participants and Issuers must conclude;

'BEE Controlled Company' has the same meaning as defined in Schedule 1 of the BEE Codes;

'BEE Instruction' means, for BEE Securities, a separate written instruction given by a Client to a Participant in respect of every Entry to be effected by the Participant on behalf of the Client in that Client's Securities Account, in accordance with the BEE Contract;

'BEE Owned Company' has the same meaning as defined in Schedule 1 of the BEE Codes;

'BEE Securities' means the Securities in respect of which the Issuer requires that the beneficial owner is a BEE Compliant Person for a period of time as prescribed by the Issuer;

...

"Stamp Duty Reserve Tax" means a tax levied by United Kingdom revenue authorities in terms of the Finance Act, 1986 of the United Kingdom, as amended from time to time.

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:

...

5.1.4 clearly reflect 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[.];
and

5.1.6 in respect of BEE Securities, clearly reflect that the BEE Contract has been concluded, and any BEE Certificate or identity document, as the case may be, required in terms of the BEE Contract has been provided.

...

Client mandate

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5.6.3 The mandate must contain at least provisions that:

...

5.6.3.5 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:

5.6.3.5.1 a Standing Instruction; **[or]**

5.6.3.5.2 an Authorising Instruction; or

5.6.3.5.3 in respect of BEE Securities, a BEE Instruction.

Duties of Participants

5.7 A Participant must ensure that:

...

5.7.8 in respect of BEE Securities, it has concluded a BEE Contract.

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 depository 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]** where transfer of such securities into such an account would attract a Stamp Duty Reserve Tax entry charge of 1,5% in the United Kingdom, without express permission in writing from the CSD.

...

Operation of Securities Accounts

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6.7.2 A Participant must, upon receipt of an Authenticated Instruction from the CSD advising it of the completion of a transaction which affects the balance of a Securities Account held by the Participant, complete a corresponding Entry in the relevant Securities Account in accordance with the Client mandate, the BEE Contract in respect of BEE Securities, the Rules, Directives, section 91A of the Companies Act, where applicable, the Act and other relevant legislation.

6.7.3 A Participant must make a deposit, withdrawal, transfer, record a pledge or cession to secure a debt on behalf of a Client in a Securities Account in accordance with the provisions of the Client mandate, the BEE Contract in respect of BEE Securities, the Act, 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:

...

6.7.4.3 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, in respect of BEE Securities, such statements must indicate that the BEE Securities may only be transferred in accordance with the BEE Contract; 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 have been pledged or ceded, a statement evidencing the existence of the pledge or cession to secure a debt, and, in respect of BEE Securities, such statements must indicate that the BEE Securities may only be transferred in accordance with the BEE Contract.

6.7.5 A Participant must ensure that every Entry in a Securities Account is executed pursuant to an Authorising Instruction, **[or a]** Standing Instruction, or a BEE Instruction received from a Client or the Client's duly authorised agent.

6.7.6 A Participant must, on the receipt of an Authorising Instruction, **[or a]** Standing Instruction, or a BEE Instruction reflect in the Participant's Records of the Client the content of such instruction.

...

Compliance Officer

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8.3.3 The primary functions of the compliance officer are to:

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8.3.3.5 monitor that the Client mandates, BEE Contracts and BEE Certificates, where applicable, referred to in Rule 5 are in place; and

...

11 SUPERVISION

11.1 The Controlling Body 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:

11.1.1 monitoring compliance by Participants, officers, employees and agents of the Participant with the provisions of the **[Act,]** Rules and Directives; and

11.1.2 the surveillance and enforcement of any matter relevant for the purposes of the **[Act,]** Rules and Directives.

12 DISCIPLINARY PROCEDURE

12.1 ...

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 or take any enforcement action, as set out in the relevant Directive.

12.3 [No fine imposed by the Head of Supervision may exceed such amount] The Head of Supervision may impose fines or take enforcement action as stipulated by Directive.