

**BOARD NOTICE 198 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](mailto: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 4 January 2012 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        INTERPRETATION AND DEFINITIONS****Interpretation****1.1        In the Rules:**

...

- 1.1.5        a reference to writing **[shall]** includes ~~any~~ any mode of representing or reproducing letters, figures or marks in a visible form.

## Definitions

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

...

**'Beneficiary Download' means the disclosure of information on Securities holdings, as prescribed by Directive;**

'Business', in relation to a Participant or the CSD, means the securities services or other services conducted by the Participant or the CSD, as the case may be, in terms of the Act, Companies Act and Rules;

...

'Companies Act' means the Companies Act, [1973 (Act No. 61 of 1973)]2008 (Act No. 71 of 2008), and includes Regulations issued thereunder;

'CSD' means Strate[STRATE] Limited, Registration No 1998/022242/06, licensed as a Central Securities Depository in terms of the Act;

...

**'SDA Register' means the record of Uncertificated Securities held in a Segregated Depository Account kept by the CSD in terms of the Rules, which is the register of ownership for the Securities deposited therein, and is deemed to be the Uncertificated Securities Register, where applicable;**

'Securities' includes certificated Securities and Uncertificated Securities and Money Market Securities[money market instruments];

...

**'Securities Holder' means a person who holds Securities, and includes a Shareholder;**

...

'Securities Ownership Register' means the record of MM Securities held in a MM Securities Account kept by the CSD in terms of the Rules, which is the register of ownership for dematerialised Money Market Securities, and is deemed to be the Uncertificated Securities Register, where applicable;

**'Shareholder' means shareholder as defined in section 1 of the Companies Act;**

...

**'Subregister' means [a Subregister as defined in section 91A of the Companies Act]the record of Uncertificated Securities held in a Securities Account kept by a Participant in terms of the Rules, which is the register of ownership for the Securities deposited therein, and is deemed to be the Uncertificated Securities Register, where applicable;**

**'Transfer' means the transfer of Securities or an interest in Securities in accordance with the Act and/or Companies Act and Rules, as the case may be;**

...

**'Uncertificated Securities' means Securities that are not evidenced by a certificate or written instrument and are transferable by Entry without a written instrument;**

**'Uncertificated Securities Register' means the record of Uncertificated Securities administered and maintained by a Participant or CSD, as determined in the Rules, and in respect of Securities issued in terms of the Companies Act, has the meaning assigned in section 1 of that Act.**

...

## **2 POWERS, MANAGEMENT AND CONTROL**

2.1 The CSD is a [public] company having the powers conferred on it by the Act.

2.2 For the purpose of the Rules, the management and control of the CSD [~~shall be~~ **is**] exercised by the Controlling Body, which [~~shall have~~ **has**] the powers conferred on it by the Act, **Companies Act**, Rules and Directives and the authority to do such things as may be necessary for or incidental to the performance of the CSD functions and objects.

2.3 Decisions of the Controlling Body made in terms of the Rules:

2.3.1 must be published timeously by the Controlling Body in a notice to Participants or other affected parties bound by the Act, **Companies Act**, Rules and Directives;

- 2.3.2 are binding on Participants and other affected parties bound by the Act, Companies Act, Rules and Directives from the date of receipt of the notice by the Participants or other affected parties; and

...

## RULES AND DIRECTIVES

- 2.4 The authority to enforce the Rules and Directives **[shall]** vests in the Controlling Body.

...

- 2.8 The Controlling Body must notify the Participants, and Issuers, where affected, of any new Rule or amendment to the Rules indicating when such new Rule or amendment shall become effective.

- 2.9 A Participant or Issuer may, in writing, propose to the Controlling Body amendments to the Rules accompanied by an explanation of the reasons for the proposed amendments.

- 2.10 The Controlling Body must, within a reasonable time, notify the Participant or Issuer who proposed the amendment, its decision with regard to the proposal lodged in terms of Rule 2.9.

...

- 2.12 The Controlling Body must publish Directives issued by the Controlling Body in terms of Rule 2.11 in a notice to all Participants who participate in the category of participation to which the Directives relate, and Issuers, where affected.

- 2.13 If Participants or Issuers wish to object or propose amendments to a Directive, they must lodge an objection or proposed amendment with the Controlling Body accompanied by an explanation of the reasons for the objection or proposed amendment within the period stipulated in the notice in terms of Rule 2.12.

- 2.14 If there are no objections or proposed amendments, or if the Controlling Body has considered the objections or proposed amendments after consultation with Participants or Issuers and has decided to approve the proposed Directive in the form published in the notice in terms of Rule 2.12, the proposed Directive **[shall be]** is effective from the date indicated in the notice: provided that the date specified in the notice **[shall]** must not be a date earlier than the date that the notice is received by the affected Participants.

- 2.15 If the Controlling Body, after consultation with **[the Participant or]** Participants **or Issuers** who lodged the objection, decides to amend the proposed Directive as published in the notice in terms of Rule 2.12, the proposed Directive thus amended must be published by the Controlling Body in a further notice to all the affected Participants **or Issuers** and is effective from the date indicated in the notice.
- 2.16 The Controlling Body must, within a reasonable time, notify all affected Participants **or Issuers** its decision with regard to an objection or proposal lodged in terms of Rule 2.13.
- 2.17 The non-receipt of a notice under this Rule by a Participant **or Issuer does[shall]** not invalidate the Directive concerned.

### 3. CSD PARTICIPATION

#### Participation eligibility

...

- 3.2 To be eligible to be accepted as or to remain a Participant, a person **[shall]must** satisfy the Controlling Body that it has fulfilled the requirements stipulated by Directive and that:

...

#### Standard of Integrity of persons who manage or control Participants

- 3.6 In addition to the participation criteria set out in the Rules, no person may manage or control a Participant if such person (in the Republic or elsewhere) has been:

...

- 3.6.2 **placed under probation or** disqualified by a court from acting or being appointed, **or is ineligible to act,** as a director of a company in terms of sections **69 and 162[218]** of the Companies Act;

...

- 3.6.4 involved in the management and control of an entity that was placed under **an Insolvency Proceeding[judicial management or in liquidation, or where the estate of such person has been sequestrated']**; or

**Application procedure**

- 3.7.1 Application for Participation [~~shall~~ **must**] be made to the Controlling Body, on a form as stipulated by Directive.
- 3.7.2 An application for Participation [~~shall~~ **must**] be accompanied by the payment of the application fee as stipulated by Directive.

...

**Urgent Issues Committee**

...

- 3.8.2 The Urgent Issues Committee [~~shall~~] comprises the chairman of the Controlling Body, or a person appointed by him, plus a minimum of two members of the Controlling Body, at least one of whom [~~shall~~] **must** be a member of the Regulatory Committee.

...

**Interim Management**

...

- 3.9.3 Notice to the Participant concerned of such prohibition, restriction or instruction [~~shall~~] **must** be accompanied by particulars of any alleged contraventions of the Act, Rules and Directives. Any requirements of the Urgent Issues Committee for the rectification of the alleged contraventions [~~shall~~] **must** be stated so as to enable the Participant to apply to the Urgent Issues Committee for the removal of the order made in terms of Rule 3.8.5 once the conditions stated in the order have been satisfied.
- 3.9.4 Any action taken by the Urgent Issues Committee in terms of Rule 3.9 may continue until such time as the Committee is satisfied as to the Business of the Participant: Provided that such action [~~shall~~] **must** be reviewed by the Urgent Issues Committee on a regular basis and any order [~~shall~~] thereafter only continues to the extent that such continuation is resolved by the Urgent Issues Committee.

- 3.9.5 Any decision taken by the Urgent Issues Committee may be published in the media or otherwise, provided that if publication is ordered, the Participant referred to in Rule 3.8.3 **[shall] must** be given an opportunity to make representations to the Urgent Issues Committee in this regard.

...

#### **Termination by the Controlling Body**

- 3.10.1 The Controlling Body may terminate the participation of a Participant in terms of the Act under the following circumstances:
- 3.10.1.1 the Participant is placed under **an Insolvency Proceeding**~~[curatorship, judicial management, or a liquidator is appointed, whether provisionally or finally]~~, or the Participant makes a compromise or arrangement with its creditors;
- ...
- 3.10.2 A Participant, its ~~[trustee, liquidator, curator, judicial manager, administrator]~~**Insolvency Administrator** or other lawful agent must, upon notification of the Participant's termination, transfer all Securities Accounts to other Participants in accordance with Client instructions in terms of Rule 5.6.3.9, the Client Mandate, Rules and Directives.
- 3.10.3 Where a Client has not provided a Participant with the instructions referred to in Rule 3.10.2 within 30 (thirty) calendar days of the Participant, its ~~[trustee, liquidator, curator, judicial manager, administrator]~~**Insolvency Administrator** or other lawful agent giving notice to the Client of its termination in terms of Rule 5.7.7, the Participant, its ~~[trustee, liquidator, curator, judicial manager, administrator]~~**Insolvency Administrator** or other lawful agent shall transfer the Client's Securities Account to another willing Participant in its discretion and advise the Client of the details of the receiving Participant.
- 3.10.4 A Participant, or its ~~[trustee, liquidator, curator, judicial manager, administrator]~~**Insolvency Administrator** or other lawful agent as the case requires, **[shall] must** immediately notify the Executive Officer and the Registrar in writing upon the happening of any of the events referred to in Rule 3.10.1 and **[shall] must** in addition to their obligation in Rule 3.10.3 immediately upon the termination of the participation of the Participant ensure that all of its Records are placed in custody as determined by the Controlling Body.

### Voluntary Termination

- 3.11.5 Once the Participant has complied with the requirements for termination in terms of Rule 3.11.1 to 3.11.4, the Controlling Body **[shall] must** notify the Participant, the Registrar and other Participants within the category of participation in which such Participant participates of the effective date of termination of the Participant's participation.

...

### Effects of termination of participation

- 3.12 Upon termination of participation:

- 3.12.1 Securities Accounts must be transferred in accordance with Rules 3.10.2, 3.10.3 and 3.11.1.2 and shall remain active within the CSD notwithstanding any appointment or decision of **an Insolvency Administrator**~~a curator, judicial manager, or liquidator, whether appointed provisionally or finally~~, and all transactions or events in respect of such Securities Accounts must be completed in terms of the Act, Rules and Directives; Any action so taken by the CSD pursuant to the Act, Rules and Directives, is binding upon an **Insolvency Administrator** ~~a curator, judicial manager, or liquidator~~ and **[shall]is** not **[be]** capable of being reversed or rescinded by such **Insolvency Administrator** ~~curator, judicial manager, or liquidator~~;

- 3.12.2 the Participant **[shall]** ~~remains~~ liable for the payment of, fulfillment of and compliance with all fees and charges, obligations, undertakings, warranties, indemnities and commitments of the Participant, the cause of which arose prior to the date of termination of participation;

- 3.12.3 notwithstanding Rule 3.12.2, **[all] no** cash entitlements **[shall not] may** be deposited into the account of the terminated Participant but **[shall] must** remain deposited in a trust account held by the CSD until such time as the entitlements may be able to be allocated to the respective Clients of the terminated Participant;

...

- 3.12.5 where applicable, a Participant **[shall] must** cause all unencumbered Securities held on its behalf in a Nominee owned or controlled by the CSD to be transferred to another Participant within the records of the Nominee owned or controlled by the CSD or such other person as nominated by the Controlling Body. The records representing such Securities **[shall] must** be transferred to the other Participant; provided that if the Participant does not nominate another Participant the CSD **[shall] must** transfer such Securities to a Participant



nominated by the Controlling Body. Encumbered securities **[shall] must** only be transferred to a Participant as contemplated in this section, when, and if, the securities have been released from their encumbrance.

...

#### **Issuers**

...

- 3.15 The Issuer **[shall] must** make an application for admission to the Controlling Body on a prescribed form, and the application **[shall] must** be accompanied by payment of a prescribed fee as stipulated by Directive.

...

- 3.20 The manner in which an Issuer of Eligible Securities may set the record date provided for in Chapter 2 Part F of the Companies Act is stipulated by Directive.**

...

#### **Confidentiality**

- 4.3 A Participant which divulges or makes known any confidential information in contravention of Rule 4.2 **[shall be] is** guilty of improper conduct and subject to disciplinary action in terms of the Rules.

- 4.4 The CSD **[shall] must** keep confidential all information disclosed to it by a Participant save that the CSD may disclose such information to third parties to the extent that:

...

## 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:

...

5.1.5 details of any pledge or cession of the Securities to secure a debt, attachment or any other Entry, as the case may be; and

...

5.3 The retention of any information in terms of the Act, Companies Act, the Rules and Directives may be effected in an electronic or any other manner and where information is retained electronically, such Records must be subject to back-up and recovery procedures and be able to be capable of being reproduced in printed form.

5.4 A Participant must, disclose to the CSD information as set out in the Act, Companies Act, Rules and Directives.

...

### Client mandate

5.6.3 The mandate must contain at least provisions that:

5.6.3.1 the Client [~~shall be~~ is] bound by the Act, Rules and Directives;

...

5.6.3.5 an Entry in a Securities Account [~~shall~~] must 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:

...

5.6.3.8 the Participant, or Client, as the case may be, (except in circumstances set out in Rule 3.10.2) [~~shall be required to~~] must give the Client or Participant not less than 30 (thirty) calendar days written notice of the termination of the mandate;

5.6.3.9 the Client must, following notification of termination of its Participant in terms of Rule 5.7.7, inform the Participant, its [trustee, liquidator, curator, judicial manager, administrator] Insolvency Administrator or other lawful agent to which Participant the Client's Securities Account shall be transferred within 30 (thirty) calendar days of the Client receiving such notification; and

5.6.3.10 any amendment to the mandate [shall] must be in writing.

...

#### **Duties of Participants**

5.7 A Participant must ensure that:

5.7.1 the election by a Client to deposit Securities in the name of the Nominee of a Participant and not in the Client's Own Name [shall] in no way diminishes the rights of the Client as a [member] Securities Holder of the Issuer of Securities and a Participant [shall] must ensure that the Client is timeously advised of, and in a position to exercise its rights as a [member] Securities Holder of the Issuer, or legal owner of the Securities in the Issuer, as if the Client were the [registered member] Securities Holder of the Issuer or legal owner of the Securities;

...

5.7.4 any increase in a fee or charge [increase] only becomes effective upon at least 30 (thirty) calendar days written notice by a Participant to its Client of the increase;

...

5.7.7 Clients are advised in writing within 3 (three) Business Days by the Participant, its [trustee, liquidator, curator, judicial manager, administrator] Insolvency Administrator or other lawful agent of any suspension, restriction or termination of its participation, or of it being placed under interim management in terms of the Rules. Such advice [shall] must include a reference to the Client's obligation to advise the Participant, its [trustee, liquidator, curator, judicial manager, administrator] Insolvency Administrator or other lawful agent to which Participant the Client's Securities Account [shall] must be transferred within 30 (thirty) calendar days of the Client receiving such notification, failing which Rule 3.10.3 would apply.

**Securities issued by a company incorporated and listed in a foreign jurisdiction with a dual or secondary listing on a South African Exchange**

...

- 5.8.3 In relation to Securities issued by a company with a secondary or dual listing on a South African Exchange, the Participant must ensure that it complies with the applicable Rules, Directives and notices issued by the Controlling Body from time to time.

...

**Voting Rights of Persons Who Hold Beneficial Interests**

- 5.9 A person who holds a beneficial interest in any Securities may vote on a matter at a meeting of Shareholders, only to the extent that:**

- 5.9.1 the beneficial interest includes the right to vote on the matter; and**

- 5.9.2 the person's name is on the Beneficiary Download, or the person holds a proxy appointment in respect of that matter from the registered holder of those Securities.**

- 5.10 Where a person submits a voting instruction through a Participant, this must be done in the manner prescribed by Directive.**

**6. ACCOUNTS OTHER THAN MONEY MARKET SECURITIES ACCOUNTS**

...

**Dematerialisation and Immobilisation of Securities**

...

- 6.2.3 The Dematerialisation or Immobilisation of Securities **[shall] must** take place in accordance with the Act, and the Companies Act, where applicable, and in the manner as stipulated by Directive.

**Securities Accounts**

...

- 6.3.7 The standards of record keeping which apply to Securities in the Subregister **[shall] must** also apply and be maintained by Participants in respect of other Records of underlying Clients of Participants

**Operation of Securities Accounts**

...

- 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]Chapter 2 Part E** 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, **Companies Act**, Rules and Directives.

**Information in respect of accounts and the Uncertificated Securities Register**

...

6.8.2 Every Securities Account and the Uncertificated Securities Register must:

6.8.2.1 bear the name, an appropriate identification number, where issued, and [physical] address [or principal place of Business] of the Client on whose behalf the account was opened;

...

6.8.2.4 reflect any further information that may be required by the CSD, Chapter 2 Part E [or section 91A of] the Companies Act, where applicable, or any other law.

6.8.3 Access to information and inspection of the Securities Accounts or Uncertificated Securities Register will be allowed in accordance with [section 91A] Chapter 2 Part E of the Companies Act, where applicable, or any other law.

6.8.4 Any request from an Issuer of Securities to the CSD to furnish it with details of holdings in that Issuer as reflected in the Securities Accounts or Uncertificated Securities Register maintained by the Participant or CSD as the case may be, must be made to the CSD in the form required by the Controlling Body.

6.8.5 Upon request by the CSD, a Participant must by no later than 12H00 on the second Business Day following such request, provide the CSD with details of holdings in an Issuer of Securities as reflected in its Securities Accounts or Uncertificated Securities Register as at the close of Business on the day of the request by the CSD: Provided that the request was received by no later than 12H00 on that day.

...

**Debit Balances**

...

6.9.2 In the event that a Participant instructs the CSD to execute a transaction which would cause a balance to be in debit, such Participant shall be liable to the CSD and all other Participants to make good to the CSD and the Participants any direct damage which they have sustained as a result of the instruction not being processed.

**Withdrawal**

- 6.10.2 The application for withdrawal, handling and processing of withdrawal, and the delivery of a certificate or document of title in respect of all or part of those Securities must be done in accordance with the Act, **[section 91A] Chapter 2 Part E** of the Companies Act, where applicable, the Rules and Directives.

**Unconditional Commitment to Settle**

...

- 6.11.3 Transfer of ownership in any Securities in a Securities Account must be effected by debiting of the Securities Account or Segregated Depository Account from which the Transfer is effected and crediting the Securities Account or Segregated Depository Account to which the Transfer is effected, as the case may be, in accordance with the Act, Companies Act, where applicable, Rules and Directives.
- 6.11.4 A transferee becomes the owner of the Securities upon the crediting of the Securities Account in the Subregister.
- 6.11.5 Transfer of ownership of Securities in accordance with Rules 6.11.3 and 6.11.4 occurs despite any fraud, illegality or Insolvency Proceeding that may affect the relevant Securities; or have resulted in the Transfer being effected: but a transferee who was a party to or had knowledge of the fraud or illegality, or had knowledge of the Insolvency Proceeding, as the case may be, may not rely on this Rule.
- 6.11.6 The Subregister maintained in accordance with these Rules is sufficient proof of any matters directed or authorised to be entered therein by the Rules and Directives.

## Segregated Depository Accounts

...

6.13.8.2 A transferee ~~[shall] becomes the owner of the Securities~~, upon the crediting of the Segregated Depository Account[, ~~become the owner of the Securities~~] in the SDA Register. The SDA Register maintained in accordance with these Rules is sufficient proof of any matters directed or authorised to be entered therein by the Rules and Directives.

6.13.8.3 ... or insolvency proceeding ...

## 7. MONEY MARKET SECURITIES OWNERSHIP REGISTER

### 7.1 Definitions

...

'MM Securities Account' means a Central Securities Account opened and maintained by or on behalf of a Participant for a Client, or for itself, in the Securities Ownership Register reflecting the Client Identification Data of such Client, or itself, and the nominal value of MM Securities deposited and all entries made in respect of such MM Securities;

...

**['Securities Ownership Register' means the Central Securities Account comprising the various MM Securities Accounts opened and maintained by Participants;]**

...

### 7.2 Creation and Deposit of Securities

7.2.1 Rule 7 ~~[shall apply]~~ applies to each MM Security allocated an ISIN by the National Numbering Agency.

7.2.2 Where any provision of the Rules is not expressly or impliedly amended by Rule 7, the Rules ~~[shall]~~ apply in respect of MM Securities in the same manner as they apply to other Eligible Securities.



### 7.3 MM Securities Accounts

...

- 7.3.10 A Participant ~~[shall be]~~ is responsible for ensuring the correctness of the Client Identification Data provided in Rules 7.3.8 and 7.3.9

### 7.4 Information and Reporting in respect of MM Securities Accounts

- 7.4.1 Each Participant must maintain in respect of each Client, the following details:

...

- 7.4.1.5 any further information that may be required by the Act, Companies Act, Rules and Directives.

...

### 7.5 The Transfer of MM Securities

- 7.5.1 Transfer of ownership in a MM Security ~~[shall]~~ must be effected by ~~[the]~~ debiting ~~[of]~~ the MM Securities Account in the Securities Ownership Register from which the Transfer is effected and ~~[the]~~ crediting ~~[of]~~ the MM Securities Account in the Securities Ownership Register to which the Transfer is effected, in accordance with the Rules and Directives.

- 7.5.2 A transferee ~~[shall]~~ becomes the owner of the MM Securities, upon the crediting of the MM Securities Account in the Securities Ownership Register~~], the owner of the MM Securities]~~.

- 7.5.3 Transfer of ownership in accordance with Rules 7.5.1 and 7.5.2 ~~[shall]~~ occurs despite any fraud~~,~~[or] illegality or Insolvency Proceeding that may affect the relevant MM Securities~~;~~[in respect of which the transfer was effected or which may]or have resulted in the Transfer being effected~~;~~[Provided that] but a transferee who was a party to or had ~~[notice]~~ knowledge of the fraud or illegality~~,~~ or had knowledge of the Insolvency Proceeding, as the case may be, may not rely on this Rule.

- 7.5.8 The Securities Ownership Register maintained in accordance with these Rules **[shall be *prima facie* evidence] is sufficient proof** of any matters directed or authorised to be entered therein by the Rules and Directives.

...

## **7.7 Settlement of transactions**

...

- 7.7.2 Any Settlement of MM Securities which fails as a result of a Participant being unable to meet its commitment to such Settlement or its failure to adhere to the stipulated timelines or operational requirements **[shall be] is** deemed to be a failed Settlement and will be dealt with in accordance with the Rules and Directives.

...

## **7.9 Debit balances**

...

- 7.9.2 In the event that a Participant instructs the CSD to execute a transaction which could result in a Debit Balance, such Participant **[shall be] is** liable to the CSD and all other Participants to make good to the CSD and the Participants any direct damage which they have sustained as a result of the instruction not being processed.

...

## **7.10 Withdrawal**

...

- 7.10.3 Transfer of ownership and any interest, capital redemption payments or other entitlements in respect of the MM Securities so withdrawn, **[shall not be capable of being] cannot be** effected through the CSD.

**7.11 Maintenance and Operation of MM Securities Accounts**

...

7.11.4 If an MM Securities Account has been recorded in the Securities Ownership Register as dormant as set out in Rule 7.11.1, and such MM Securities Account remains dormant for a further period of 2 (two) years, the MM Securities Account **[shall] must** be "deleted" by the CSD from the Securities Ownership Register under advice from the relevant Participant.

7.11.5 Participants are not entitled to delete MM Securities Accounts in the Securities Ownership Register. Only the CSD may delete all Records of the MM Securities Account in the Securities Ownership Register from the MMSS and archive and retain such Records for a period of **[5 (five)] 7 (seven)** years.

**8. RISK AND COMPLIANCE****8.1 Reports and audits – Participant**

8.1.1 The Controlling Body may, in addition to the Accounting Records prescribed by the Act, determine the nature and type of reports, Accounts and Records which a Participant **[shall] must** maintain for the purpose of the requirements of the Act and Rules.

...

**9. FEES AND CHARGES**

...

9.3 Fees and charges **[shall be] are** due and payable within 30 (thirty) calendar days after date of invoice.

9.4 The Controlling Body may charge interest on outstanding fees and charges, which interest shall be calculated **[on] from** the expiry of the period referred to in Rule 9.3. The rate of interest charged shall be the prime lending rate offered by the CSD's principal bank.

## 10. RESOLUTION OF DISPUTES

### Informal Dispute Resolution

- 10.1.1 Should any dispute arise between any of the CSD, Participants or Issuers in connection with the existence, implementation or interpretation of the Rules; application of the provisions of the Rules; their respective rights and obligations in terms of or arising out of the Rules; breach of the Rules; validity of the Rules or enforceability of the Rules, then that dispute **[shall] must** be referred to the Head of Division in which the dispute arose for resolution and failing resolution by these Heads of Division within 10 (ten) Business Days of such referral, be referred to the respective Chief Executive Officers, and failing resolution by the Chief Executive Officers within 10 (ten) Business Days of such referral, be determined by the formal dispute resolution process as set out in Rule 10.2.

...

### Formal Dispute Resolution

- 10.2 Should the parties fail to resolve the dispute in terms of Rule 10.1.1, the party who initiated the dispute **[shall] must**:

...

- 10.2.2 should the matter not be able to be resolved through mediation, the party who initiated the dispute **[shall] must** refer the matter to arbitration in terms of Rule 10.4.

### Mediation

- 10.3.1 The mediation **[shall] must** commence within 10 (ten) Business Days of the failure by the parties to resolve the dispute in terms of Rule 10.1.
- 10.3.2 The mediator **[shall] may** be appointed by agreement between the parties, failing which the mediator **[shall] must** be appointed by the chairperson of the Controlling Body.
- 10.3.3 The venue and the procedure to be followed at the mediation **[shall] must** be determined by the mediator, who **[shall] must** give the parties reasonable notice of such venue and procedure.
- 10.3.4 The mediation **[shall] must not** continue for a period **[no]** longer than 15 (fifteen) Business Days unless the parties agree otherwise in writing.

10.3.5 Should the parties resolve their dispute during mediation, the mediator **[shall] must** confirm such resolution in writing to the parties.

10.3.6 Should the dispute not be resolved by mediation:

10.3.6.1 the mediator **[shall] must** confirm the failure to resolve the dispute by mediation by sending confirmation of such failure in writing to both parties; and

....

10.3.7 The costs of mediation **[shall] may** be agreed by the parties and failing agreement **[shall] must** be shared equally between the parties.

...

#### **Arbitration**

10.4.1 The arbitrator **[shall] may** be appointed by agreement between the parties to the dispute.

10.4.2 Should the parties to the dispute fail to agree on the arbitrator, the arbitrator **[shall] must** be appointed by the chairperson of the Arbitration Foundation of South Africa (AFSA).

10.4.3 The arbitrator appointed in terms of Rule 10.4.1 or 10.4.2 **[shall] must** be a suitably qualified and skilled person with experience in the financial services industry.

10.4.4 The arbitration proceedings **[shall] must** be conducted in accordance with the Rules of the AFSA.

10.4.5 The arbitrator **[shall] must** make such order as to costs as he deems just.

...

10.4.7 The decision of the arbitrator **[shall be] is** final and binding and may be made an order of court.

## 12 DISCIPLINARY PROCEDURE

### Powers of the Head of Supervision

...

- 12.5 Any person in respect of whom the Head of Supervision has imposed a fine in terms of Rule 12.2 may demand, within a period of 3 (three) Business Days after the imposition of such fine, that the matter be heard *de novo* by the Regulatory Committee. If the matter is heard by the Regulatory Committee, publication and notification of the decision of the Head of Supervision **[shall] must** be postponed until the matter has been determined by the Regulatory Committee.

...

### Regulatory Committee

...

- 12.9 Any person in respect of whom the Regulatory Committee has imposed a penalty in terms of Rule 12.7 may demand, within a period of 10 (ten) Business Days after the imposition of such penalty, that the matter be heard *de novo* by the Tribunal, in which event publication and notification of the decision of the Regulatory Committee **[shall] must** be postponed until the matter has been determined by the Tribunal.

...

### Charge Sheet

- 12.14 A respondent:

...

- 12.14.4 Thereafter the chairperson of the Tribunal **[shall] must** determine the date on which the charges **[shall] will** be heard, which date shall not, without good reason, be later than 30 (thirty) Business Days after the filing of the defence by the respondent.
- 12.14.5 Extension of the time periods set out in this Rule, including the date for the hearing of the charges, **[shall] may** only be permitted by the chairperson of the Tribunal on good cause shown.

**Tribunal Hearing**

12.15 In a hearing before a Tribunal:

12.15.1 any charges proffered **[shall] must** be decided on a balance of probabilities;

12.15.2 the chairperson of the Tribunal **[shall] must** decide all matters of law which may arise during the hearing, and whether any matter constitutes a question of law or a question of fact, but all three members of the Tribunal **[shall] must** by a simple majority decide all other matters arising during the hearing;

12.15.3 the chairperson of the Tribunal **[shall] must** determine the procedure which the Tribunal **[shall] must** follow both in respect of preliminary issues and in respect of the hearing itself, subject to the Rules and to the principles of natural justice;

...

12.15.8 the Tribunal **[shall] must**, within 10 (ten) Business Days after the conclusion of a hearing, give written reasons for its decision to each party, and may, where applicable, give such reasons to the parties' supervisory or regulatory body; and

12.15.9 each party to the proceedings **[shall] must** bear its own costs in relation to the proceedings, unless otherwise directed by the Tribunal.

...

12.17 If, at any stage during a hearing before the Tribunal, one or more of the members of the Tribunal hearing the matter, other than the chairperson, dies or retires or becomes otherwise incapable of acting or is absent, the hearing **[shall] must**, where the remaining members constitute a majority of the Tribunal before whom the hearing was commenced, proceed before the remaining members and, provided that the remaining members are in agreement, their finding shall be the finding of the Tribunal. In the event that the chairperson dies, retires or becomes otherwise incapable of acting or in any other case, or the remaining members do not constitute a majority, the matter shall be heard *de novo*.

12.18 When any person has been found guilty of improper conduct by the Regulatory Committee or Tribunal pursuant to the Rules, the Regulatory Committee or the Tribunal:

- 12.18.3 may, where the Participant or officer, employee of a Participant has been found guilty of improper conduct, on such conditions as the Regulatory Committee or the Tribunal deems fit, order that particulars of the offence and or finding of the Regulatory Committee or the Tribunal and or the penalty imposed to be advised to Participants, and or published in the media or by other means [otherwise], provided that if publication is ordered, the respondent [shall] must be given an opportunity to make representations to the Regulatory Committee or the Tribunal in this regard.
- 12.19 If a Participant's participation is terminated, it [shall] forfeit all rights to participate in the CSD as well as any fees or charges paid to the CSD and must also pay to the CSD any arrear fees and charges.

#### **Payment of Fine**

...

- 12.21 Any fine and costs paid to the CSD pursuant to a ruling[an award] made in terms of the Rules [shall] must be used to further the regulatory and supervisory objectives of the CSD in terms of the Act.



**13. NOTICES**

- 13.1 A Participant or other person utilising the services of the CSD, where applicable, **[shall] must** notify the Controlling Body of a physical address, an electronic mail address, a facsimile address and a secured securities delivery mechanism address at which such Participant or other person shall accept the delivery of all notices issued by the CSD in terms of the Rules.
- 13.2 The Controlling Body **[shall] must** notify Participants or other persons utilising the services of the CSD, where applicable, of a physical address, an electronic mail address, a facsimile address and a secured securities delivery mechanism address at which the CSD shall accept the delivery of all notices from such Participants or other persons utilising the services of the CSD.
- 13.3 Any notice in terms of the Rules **[shall] must** be in writing, and may be delivered by means of a secured securities delivery mechanism and where this is not possible, by means of electronic mail, facsimile, by hand, or by registered post, provided that where a Participant sends a notice in terms of the Rules to its Clients, it may do so by means of normal post.
- 13.4 Any notice delivered by hand before 15H00 on a Business Day at the nominated physical address **[shall be] is** deemed, until the contrary is proved, to have been received on the date of delivery.
- 13.5 Any notice transmitted by a secured securities delivery mechanism, electronic mail or by facsimile before 15H00 on a Business Day or such other time stipulated by Directive, **[shall be] is** deemed, if a confirmation receipt is received, to have been received on the date of confirmation of the transmission, unless an error report is received.
- 13.6 Any notice delivered by registered post **[shall be] is** deemed, until the contrary is proved, to have been received within 7 (seven) Business Days after being dispatched.
- 13.7 The physical address as notified by the CSD, a Participant and other person utilising the services of the CSD in terms of Rules 13.1 and 13.2 shall be the address of the CSD and Participant for the service of legal process arising out of any dispute between the CSD and the Participant.

**14. GENERAL****Limitation of liabilities, warranties and indemnities**

...

14.1.2 The CSD, any director, executive officer, officer, employee or representative of the CSD, or the Controlling Body or a committee of the Controlling Body is not liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by:

14.1.2.1 the CSD, a director, executive officer, officer, employee or representative of the CSD, Controlling Body or any committee of the Controlling Body; or

14.1.2.2 a participant

in the bona fide or negligent performance of any function under or in terms of the Act, Companies Act, the Rules or Directives of the CSD.

14.1.3 The CSD and each Participant [~~shall~~] must by means of insurance or by any other means acceptable to the Registrar place itself in a position to meet any claim for damages against it or its wholly owned subsidiary by any Participant, or a Client or any Nominee for any loss or damage sustained by it as a result of any claim arising in terms of the Act, Companies Act, or the Rules.

14.1.4 In addition to the statutory warranties and indemnities provided for in section [91A]~~Chapter 2 Part E~~ of the Companies Act and the Act, every Participant, Issuer of Securities and Client shall be deemed to have indemnified the CSD, its directors, officers, employees or agents against any loss, legal costs, damage or liability suffered or incurred by the CSD, as a result of any grossly negligent or wilful act or omission, on the part of such Participant, Issuer of Securities or Client, as the case may be, or any of their officers, employees or agents.

14.1.5 Each Participant, Issuer of Securities and Client shall be deemed to have waived any claim that it may have against the CSD, its directors, executive officer, officers, employees or representatives resulting from any negligent performance or failure to perform by the CSD, its directors, executive officer, officers, employees or representatives of any function under or in terms of the Act, Companies Act, the Rules or Directives.

**Waiver**

- 14.2 No failure by the CSD to exercise, nor any delay on its part in exercising, any of its rights, in whole or in part, in terms of the Act, Companies Act, Rules or Directives shall operate as a waiver of the rights or remedies of the CSD upon that or any subsequent occasion, nor shall any single or partial exercise of any right or remedy prevent any further exercise thereof.

...

**Applicable Law and Jurisdiction**

- 14.4.1.1 The Rules [shall] are to be interpreted in accordance with the laws of the Republic of South Africa.
-