

BOARD NOTICES RAADSKENNISGEWINGS

BOARD NOTICE 49 OF 2008 SECURITIES SERVICES ACT, 2004

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

1. In terms of section 61(5) of the Securities Services Act, 2004 (Act No. 36 of 2004), it is hereby notified that the Bond Exchange of South Africa Limited has applied to the Registrar of Securities Services for approval of proposed amendments of its rules, which amendments are set out in the Schedule.
2. In terms of section 61(5) of the said Act, all interested persons who have any objections to the proposed amendments are hereby called upon to lodge their objections with the Registrar of Securities Services, PO Box 35655, Menlo Park, 0102, within a period of 14 days from the date of publication of this notice.
3. In terms of section 61(6) of the said Act, I, Rob Barrow, hereby determine 12 June 2008 as the date on which the rules in the Schedule come into operation. If any objections are received, another commencement date will be determined by notice in the Gazette.

RJG BARROW
Registrar of Securities Services

SCHEDULE

General explanatory notes:

1. Words underlined with a solid line (_____) indicate the insertions in the existing rules.
2. Words in bold and in square brackets ([]) indicate omissions from existing rules.

With the Gazetting of the Bond Exchange of South Africa Limited's Ombud Scheme in terms of the revised Rule C11 below, all disputes will be governed by this Rule. Therefore Rules D11 and E11 are hereby repealed and deleted.

PART C - SECTION 11

DISPUTES

C11.1 General

C11.1.1 The Bond Exchange must provide a scheme as set out in these Rules, to resolve disputes between authorised users or between authorised users and clients in which it is alleged that an authorised user or client has suffered or is likely to suffer financial prejudice or damage in respect of –

C11.1.1.1 a trade;

C11.1.1.2 settlement of a trade; or

C11.1.1.3 the implementation or interpretation of an agreement concluded in terms of rule C10.5.

C11.1.2 All authorised users and clients must have access to the scheme.

C11.1.3 Disputing parties may rely on the scheme only if –

C11.1.3.1 the disputed amount exceeds R2000;

C11.1.3.2 they are not required to resolve the dispute in terms of other legislation; and

C11.1.3.3 they have already attempted to resolve the dispute between themselves.

C11.1.4 Where a dispute involves a client, an authorised user must keep the client notified of the procedures being followed to resolve the dispute.

C11.1.5 A party to a dispute cannot be prevented from obtaining urgent relief from a competent court having jurisdiction pending the outcome of the dispute resolution procedure.

C11.2 Administration of the scheme

C11.2.1 The Bond Exchange must appoint an independent ombud to resolve disputes through mediation, conciliation, recommendation or determination.

C11.2.2 The Bond Exchange must remunerate the ombud and monitor the ombud's performance and independence.

C11.2.3 The Bond Exchange must fulfil the secretarial and administrative functions of the scheme.

C11.2.4 The Bond Exchange must monitor that the scheme complies with the requirements of the Financial Services Ombud Schemes Act No. 37 of 2004 (hereinafter referred to as "FSOS") and report any non-compliance to the Council established in terms of that Act.

C11.3 Reporting and declaring a dispute

C11.3.1 If the disputing parties cannot resolve a dispute on their own, either one or both of them must report the dispute, including full particulars of the dispute and all the steps taken thus far in an attempt to resolve the dispute, to the Head: Market Regulation Division ("MRD"), in writing within 21 days of the dispute arising.

C11.3.2 MRD may request additional information from the disputing parties.

C11.3.3 MRD must examine the written reports and any additional information from the disputing parties.

C11.3.4 If MRD is unable to procure the resolution of the dispute to the satisfaction of the complainant within 21 days of receiving the report of the dispute in terms of rule C11.3.1 then MRD must refer such dispute to the scheme for consideration and resolution in terms of rule C11.4.

C11.3.5 If it appears that an authorised user has contravened the Act or the Rules or Directives of the Bond Exchange, MRD must immediately address the alleged contravention in accordance with rule C12.1.1, notwithstanding the continuation of the dispute resolution process.

C11.4 Resolution in terms of the scheme

C11.4.1 The appointed ombud must be a judge or retired judge of one of the divisions of the High Court of the Republic of South Africa, or an advocate of senior counsel status of that Court.

C11.4.2 Both parties to the dispute must, within 21 days of receiving notification of the ombud's appointment, furnish the ombud with –

C11.4.2.1 a written submission setting out the basis of the dispute; and

C11.4.2.2 supporting documentation and evidence, including any relevant telephone recordings.

C11.4.3 The ombud may, within 21 days of receipt of the information in C11.4.2, require further information from either party which must be provided within 7 days of such request, alternatively, where the ombud does not require any additional information the ombud will follow the procedure in terms of C11.4.5.

C11.4.4 The ombud must, within 7 days of having received any further such information requested from either party pursuant to C11.4.3, ensure that each party to the dispute has been provided with a written report (which written report must include all documentation, written submissions, evidence and any further information supplied to the ombud by the other party).

C11.4.5 Where the ombud does not require any additional information, the ombud must, within 7 days of having received the information requested pursuant to C11.4.2, ensure that each party to the dispute has been provided with a written report (which written report must include all documentation, written submissions, evidence and any further information supplied to the ombud by the other party).

C11.4.6 Either party to the dispute may, within 7 days from receiving the written report of the ombud referred to in rule C.11.4.4 or C11.4.5 (as the case may be), furnish the ombud with –

C11.4.6.1 a written response to the report; and

C11.4.6.2 any additional supporting documentation and evidence.

C11.4.7 After receipt of any written responses in terms of rule C.11.4.6, the ombud may request further information from either party to be provided within 21 days of such request.

- C11.4.8 Where the ombud, after evaluation of all the relevant documentation and the relevant facts, is of the opinion that a dispute can be resolved without hearing any oral evidence, the ombud will notify the parties of such decision within 21 days after receipt of any further information requested by the ombud in terms of rule C11.4.7.
- C11.4.9 In the circumstances contemplated in rule C11.4.8, there will be no mediation unless both parties request such mediation; instead, the ombud will resolve the dispute based on the documentation before him/her within 21 days after the date of despatch of the notice to the parties in terms of rule C11.4.8.
- C11.4.10 Should the ombud decide that mediation proceedings are preferable, the ombud must notify the parties in writing of the date, time and place when mediation for purposes of conciliation will take place, which date shall be within 21 days after receipt of any further information requested by the ombud in terms of rule C11.4.7 or such other period as the parties may agree to in writing.
- C11.4.11 The ombud may consolidate several disputes involving an authorised user based on similar facts and treat them as a single dispute.
- C11.4.12 Neither party to the dispute is entitled to have legal representation at either of the dispute resolution proceedings unless it has been permitted by the ombud in terms of FSOS.
- C11.4.13 The ombud may consult with an independent third party or call that third party to participate in the dispute resolution proceedings.
- C11.4.14 At the mediation proceedings, the ombud and any person appointed by him in terms of C11.4.13 (if any), will afford the parties to the mediation an opportunity to make oral or written representations and will play a facilitating role for purposes of conciliation. If the Parties are unable to resolve a dispute by mediation within 14 days of the date of commencement of the conciliation, the ombud will decide the dispute as contemplated in C11.4.15.
- C11.4.15 If a dispute is not resolved by mediation, the ombud must resolve the dispute within 21 days after the mediation proceedings have ended and, on request by either party, must provide reasons in writing for the decision.
- C11.4.16 Should an authorised user fail to comply with any request or instruction issued by the ombud at any time during the proceedings outlined in this C11.4, the provisions of C11.5 will apply (*mutatis mutandis*).
- C11.4.17 The ombud may refer the dispute to a court of law for resolution if he believes that it is too complex to be resolved in terms of the scheme.
- C11.4.18 Any party shall be entitled to refer the decision of the ombud to a competent court for appropriate relief.
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C11.5 Compliance with the ombud's ruling

Should the parties not appeal against the ruling of the ombud within 30 days of the ruling, the parties must comply with the ombud's ruling, failing which the Bond Exchange may take disciplinary action against an authorised user in terms of the Rules within 14 days of expiration of the date stipulated for compliance in the ruling.

C11.6 Costs of the proceedings

C11.6.1 The costs of the proceedings include –

C11.6.1.1 the ombud's fee;

C11.6.1.2 the fee of any independent third party in terms of C11.4.13;

C11.6.1.3 the cost of the venue; and

C11.6.1.4 any other incidental administrative costs incurred during the consideration of the dispute.

C11.6.2 The ombud may make an order for costs when making the award but may only make an award for costs against a client if, in the opinion of the Ombud, the client's complaint was frivolous, improper or unreasonable.

C11.6.3 The Bond Exchange may, from time to time, levy a fee against authorised users to support the Ombud Scheme. Any such fees will be specified in a Directive.

C11.7 Notice

C11.7.1 The Bond Exchange may publish a notice to authorised users setting out details of any dispute.

C11.7.2 The Bond Exchange will publish any determination of the Ombud within 14 days of the decision.

C11.7.3 The Bond Exchange must report matters of interest to the Registrar.

C11.8 Limitation of Liability

No party has a claim against the ombud in respect of any decision made by the ombud in good faith in fulfilling its functions under the Rules.