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## BOARD NOTICE

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### BOARD NOTICE 109 OF 2007

#### SECURITIES SERVICES ACT, 2004

#### NEW RULES OF THE BOND EXCHANGE OF SOUTH AFRICA

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 has applied to the Registrar of Securities Services for approval of proposed new rules, which 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 new rules 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.

**RJG BARROW**  
**REGISTRAR OF SECURITIES SERVICES**

**SCHEDULE**

# **BOND EXCHANGE OF SOUTH AFRICA LIMITED**

# **RULES**

November 2007

The Rules of Bond Exchange of South Africa Limited ("BESA") are published by BESA's board of directors and are approved by the Registrar of Securities Services.

In terms of the Securities Services Act 36 of 2004, the Rules are binding on BESA, authorised users, the board of directors of BESA, the licensed clearing house and on every person utilising the services of an authorised user. The Rules remain binding on any past authorised user in respect of any act or omission which occurred at a time when such past authorised user was still an authorised user.

These Rules may not be reproduced wholly or in part, distributed in any form or published for any purpose without the prior written consent of BESA.

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November 2007

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## **PART A**

### **GENERAL RULES**

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## **PART A GENERAL RULES**

### **SECTION 1 STATUS AND INTERPRETATION OF RULES**

#### **A1.1 Status of Rules**

A1.1.1 The Rules govern the activities and actions of BESA as a licensed exchange in terms of the Act, whereas it is recorded (following the conversion process contemplated in General Rule A2.1.1 and A2.1.2) that the memorandum and articles of association of BESA are the constitutional documents of BESA and govern the relationship between BESA, the board and the shareholders of BESA.

A1.1.2 In the event of any conflict –

A1.1.2.1 between the Act and the Rules, the Act shall prevail;

A1.1.2.2 between the Rules and any market association constitution, the Rules shall prevail; and

A1.1.2.3 between the Rules and any Directive, the Rules shall prevail.

A1.1.3 Upon the approval of these Rules by the Registrar, the Rules of BESA which applied prior to the approval of these Rules, are repealed.

A1.1.4 Anything done under any provision of the Rules of the Bond Exchange repealed under Rule A1.1.3, and which can be done under these Rules, is deemed to have been done under these Rules.

#### **A1.2 Interpretation**

##### **A1.2.1 Interpretation**

A1.2.1.1 Subject to the provisions of Part C – Section 12, if there is any dispute as to the interpretation of the Rules, the Directives, any decision or determination of BESA, such dispute shall be resolved by the board in its sole discretion.

A1.2.1.2 In the Rules, unless the context otherwise indicates –

A1.2.1.2.1 a reference to any one gender includes a reference to all other genders;

A1.2.1.2.2 the singular includes the plural and vice versa; and

A1.2.1.2.3 the heading and sub-heading of a Section or Rule shall not be taken into account in the interpretation of any of the Rules.

##### **A1.2.2 Structure of Rules**

The Rules shall consist of not less than three parts –

A1.2.2.1 General Rules;

A1.2.2.2 Core Rules; and

A1.2.2.3 Market Association Rules,

which Rules shall collectively be referred to as the "Rules".



## A1.2.3 Rules binding

- A1.2.3.1 The General Rules, including any Directive, decision or determination made under the General Rules, are applicable to and binding upon –
- A1.2.3.1.1 BESA, its board and all officers and employees of BESA;
  - A1.2.3.1.2 the Forum and its representatives;
  - A1.2.3.1.3 authorised users and their registered officers, traders and employees involved in the management or administration of trading;
  - A1.2.3.1.4 the licensed clearing house; and
  - A1.2.3.1.5 every person utilising the services of an authorised user or person who concludes a trade with an authorised user in the course of that authorised user's business.
- A1.2.3.2 The General Rules create a contract between –
- A1.2.3.2.1 BESA and the Forum;
  - A1.2.3.2.2 BESA and each market association;
  - A1.2.3.2.3 BESA and all authorised users;
  - A1.2.3.2.4 members of a market association amongst themselves; and
  - A1.2.3.2.5 a market association and its members.
- A1.2.3.3 The Core Rules, including any Directive, decision or determination made under the Core Rules, are applicable to and binding upon –
- A1.2.3.3.1 BESA, its board and officers and employees of BESA;
  - A1.2.3.3.2 authorised users and their registered officers, traders and employees involved in the management or administration of trading; and
  - A1.2.3.3.3 every person utilising the services of an authorised user or person who concludes a trade with an authorised user in the course of that authorised user's business.
- A1.2.3.4 The Core Rules create a contract between –
- A1.2.3.4.1 BESA and each market association;
  - A1.2.3.4.2 BESA and all authorised users;
  - A1.2.3.4.3 members of a particular market association amongst themselves; and
  - A1.2.3.4.4 a particular market association and its members.
- A1.2.3.5 The Market Association Rules of a particular market association established in terms of the Core Rules, including any Directive, decision or determination made under the relevant Market Association Rules, are applicable to and binding upon –
- A1.2.3.5.1 BESA, its board and officers and employees of BESA;

- A1.2.3.5.2 authorised users, admitted as members of that particular market association, and their registered officers, traders and employees involved in the management or administration of trading;
  - A1.2.3.5.3 a licensed clearing house to the extent applicable;
  - A1.2.3.5.4 settlement agents to the extent applicable; and
  - A1.2.3.5.5 every person utilising the services of an authorised user or person who concludes a trade with an authorised user in the course of that authorised user's business, where the authorised user is a member of that particular market association.
- A1.2.3.6 The Market Association Rules of a particular market association shall create a contract between –
- A1.2.3.6.1 BESA and that market association;
  - A1.2.3.6.2 BESA and members of that market association;
  - A1.2.3.6.3 members of that market association amongst themselves; and
  - A1.2.3.6.4 the market association and its members.
- A1.2.3.7 The General Rules, the Core Rules and the relevant Market Association Rules, remain binding on any past authorised user in respect of any act or omission which occurred at a time when such past authorised user was still an authorised user of the Bond Exchange.
- A1.2.3.8 An authorised user shall ensure, by means of a written authorised user-client agreement, that a client is made aware of and shall be bound by the General Rules, the Core Rules and the relevant Market Association Rules, including any Directive, decision or determination made in terms of these Rules.
- A1.2.3.9 BESA must, by notice, inform an authorised user of any Directive, decision or determination of BESA with which an authorised user must comply.
- A1.2.3.10 Despite any provision to the contrary in the Rules, every trade concluded by an authorised user with another authorised user or with or on behalf of a client, shall be concluded on the specific condition that the trade is entered into subject to the provisions of the Act, the General Rules, the Core Rules and the relevant Market Association Rules: Provided that every transaction note, whether in physical or electronic form, issued by an authorised user to a client shall state that the trade to which such note relates has been concluded subject to this Rule.

### A1.3 Definitions

In these Rules a word or expression to which a meaning has been assigned in the Act, bears the meaning so assigned to it and, unless the context otherwise indicates –

"Act" means the Securities Services Act, 2004 (Act No. 36 of 2004) and any Regulations prescribed thereunder by the Minister of Finance or the Registrar;

- "advertise"** in respect of Rule C5.4, means the displaying or quoting of a price of a listed security at which the authorised user is prepared to trade;
- "articles"** means the articles of association of BESA registered with the Registrar of Companies in accordance with section 53(2)(b) of the Act;
- "associate"** means, in relation to a natural person –
- (a) that person's spouse;
  - (b) that person's child, parent, step-child or step-parent and any spouse of such person;
  - (c) another person who has entered into an agreement or arrangement with that natural person, relating to the acquisition, holding or disposal of shares, or the exercising of the voting rights attaching to such shares;
  - (d) a juristic person whose board of directors acts in accordance with that natural person's directions or instructions;
  - (e) a trust controlled or administered by that person,
- or in relation to any juristic person –
- (a) which is a company, means, in relation to that company, any subsidiary, any holding company or ultimate holding company and any subsidiary of those holding companies, including any fellow subsidiary;
  - (b) which is a close corporation, registered under the Close Corporations Act, 1984 (Act No. 69 of 1984) as amended or substituted from time to time means any member thereof as defined in section 1 of that Act;
  - (c) which is not a company or close corporation, means another juristic person which would have been its subsidiary or holding company –
    - i. had it been a company; or
    - ii. in the case where that other juristic person, too, is not a company, had both it and that other juristic person been a company;
  - (d) any person who directs or instructs that juristic person's board of directors;
  - (e) another juristic person whose board of directors acts in accordance with the juristic person's directions or instructions; and
  - (f) includes a trust controlled or administered by that juristic person;

<b>"authorised user"</b>	has the meaning assigned to it by the Act;
<b>"BESA"</b>	means Bond Exchange of South Africa Limited, a limited liability company registered and incorporated in accordance with the company laws of the Republic of South Africa, converted in terms of section 53 of the Act from the Bond Exchange;
<b>"binding matched trade"</b>	means a trade reported to BESA in accordance with the provisions of Rule C5.2;
<b>"board of appeal"</b>	has the meaning assigned to it by the Act;
<b>"Bond Exchange"</b>	means Bond Exchange of South Africa, a non-proprietary voluntary association of members licensed to carry on the business of an exchange in terms of the Act, which entity succeeded the Bond Market Association;
<b>"board"</b>	means the controlling body of BESA appointed under the articles and which entity succeeds the governing committee (the controlling body which managed and controlled the affairs of the Bond Exchange prior to the date of approval of these Rules);
<b>"board member"</b>	means a person appointed to the board of BESA from time to time;
<b>"BTA"</b>	means the Bond Traders' Association referred to in Rule D1.1;
<b>"BTA member"</b>	means an authorised user admitted to membership of the BTA;
<b>"business day"</b>	means any day except a Saturday, Sunday or public holiday within the meaning of the Public Holidays Act, 1994 (Act No. 36 of 1994) as amended or substituted from time to time, or any other day declared by BESA, and approved by the Registrar, not to be a business day;
<b>"buyer"</b>	means a buyer of a listed security in terms of a trade, and, where applicable, includes the settlement agent appointed by the buyer;
<b>"chief executive officer"</b>	means the person appointed by the board as chief executive officer of BESA;
<b>"client"</b>	has the meaning assigned to it by the Act;
<b>"common monetary area"</b>	means the Republic of South Africa, Lesotho, Namibia and Swaziland;
<b>"company"</b>	means a company incorporated under the Companies Act, 1973 (Act No. 61 of 1973) as amended or substituted from time to time;
<b>"compliance officer"</b>	means the officer referred to in Rule C2.4 and includes an alternate compliance officer;
<b>"Core Rules"</b>	means the Rules stipulating the minimum requirements in respect of the business of buying and selling listed securities, and any matters incidental thereto, which Rules are identified by the prefix "C";

"current market value"	means the market price of the listed security at the time of settlement default by the authorised user;
"derivative instrument"	has the meaning assigned to it by the Act;
"designated screen"	means the electronic screen, telephone facility or systems designated by BESA which authorised users may utilise for the purposes of trading in listed securities;
"Directive"	has the meaning assigned to it by the Act;
"Disciplinary Tribunal"	means the Disciplinary Tribunal established by Rule C12.2.1;
"equal and opposite trade"	means a trade equivalent in all respects to the original trade and which is concluded in order to reverse the effect of the original trade;
"fidelity insurance cover"	in respect of Rule C2.3, means fidelity insurance cover against fraud and mis-appropriation carried by an authorised user and includes any self-insurance against fraud and mis-appropriation by the authorised user;
"financial year"	in relation to – (a) BESA, means a year ending on the last day of December; (b) an authorised user, means a year ending on a date notified in advance in writing by the authorised user to BESA;
"fixed time"	means the specific time of day as determined by BESA, at which the daily mark to market determination is made;
"Forum"	means the Stakeholder Forum established in terms of Rule A3.1.4;
"Forum constitution"	means the constitution of the Forum, as amended or substituted from time to time;
"Forum representative"	means a representative appointed to the Forum in terms of Rule A3.2;
"general meeting"	means a general meeting of authorised users or of members of a particular market association as contemplated in Rule C1.3, as the case may be;
"General Rules"	means the Rules setting out definitions and matters incidental thereto, which Rules are identified by the prefix "A";
"Guarantee Fund"	means the fund originally set up during 1995 under section 17(1)(n) of the Financial Markets Control Act, No. 55 of 1989 (repealed by section 117 of the Act) and housed in an oral trust at common law, which trust was later (on or about the date on which the Bond Exchange was converted into BESA in terms of section 53 of the Act) reduced to writing as the BESA Guarantee Fund Trust;
"institutional investor"	means any institutional investment manager, institutional fund or entity that-

	(a) invests in listed securities;
	(b) manages funds with a value in excess of the minimum prescribed value determined by the Forum from time to time;
"issuer"	means any issuer of listed securities;
"lead regulator"	means the Registrar of Banks, or a licensed exchange in the Republic of South Africa approved by the Registrar, for the purposes of monitoring compliance by an authorised user with the financial resources requirements prescribed by the Registrar;
"licensed exchange"	means an exchange as defined in section 1 of the Act;
"listed securities"	has the meaning assigned to it by the Act;
"loss"	means the adverse financial position arising from the difference between the agreed price of the original trade and the market value of the same trade at the time of failure by the authorised user to meet the terms of the original trade, excluding any consequential loss;
"market association"	means an association of authorised users formed for the purpose of – (a) carrying on the business of a market association; (b) supervising the buying and selling of listed securities, as identified in the particular Market Association Rules, by its members; and (c) representing and promoting the common interests of its members who represent a separate category of authorised users;
"market association agreement"	means an agreement between BESA and a particular market association, which regulates the terms and conditions upon which services and facilities shall be provided by BESA to such market association, and ancillary matters;
"market association constitution"	means the constitution of a particular market association;
"market association council"	means the committee, which manages and controls the affairs of a particular market association, and which is appointed in accordance with the relevant market association constitution;
"market association member"	means an authorised user admitted to membership of a market association;
"Market Association Rules"	means in relation to a market association, the Rules of that particular market association, which regulate the buying and selling of listed securities by members of that market association, and any matters incidental thereto, and which Rules are identified by the prefix "D" or subsequent alpha character;

"mark to market"	means the valuation by BESA of listed securities, using the ruling market prices at a fixed time on each business day;
"nett settlement"	means the final settlement after deducting all sales from all purchases of the same security;
"notice"	means a notice to an authorised user in terms of Rule A2.2;
"officer"	means, in relation to an authorised user, a natural person registered in terms of Rule C2.4 with BESA as a compliance officer, representative officer, alternate compliance officer, or alternate representative officer, as the case may be;
"original trade"	means the trade in a listed security concluded on trade date;
"put-through"	means a trade between two clients for whom a trader acts as an agent;
"Recognised Agreement"	means an agreement generally recognised in the market and which is entered into between counterparties to a trade to govern that trade and recognised by BESA in a Directive from time to time;
"Registrar"	has the meaning assigned to it by the Act;
"representative officer"	means the officer referred to in Rule C2.4 and includes an alternate representative officer;
"retransact"	means concluding a new trade to fulfil the obligations of an original trade;
"Rules"	means all the Rules of BESA, as described in Rule A1.2.2, and approved by the Registrar;
"ruling market price"	means the market price of a listed security at a fixed time on a particular business day;
"same day trade"	means a trade which is settled on trade date;
"secretary"	means a person appointed by the board as the secretary of BESA from time to time;
"securities"	has the meaning assigned to it by the Act;
"seller"	means a seller of a listed security in terms of a trade, and, where applicable, includes the settlement agent appointed by the seller;
"service provider"	means a person approved by BESA to provide a trading, clearing or settlement service or any other facility or service to authorised users, on the terms and conditions set out in a service provider agreement;
"service provider agreement"	means an agreement between BESA and a service provider which regulates the terms and conditions upon which such service provider will render certain services to BESA or to authorised users;
"settlement"	in respect of a trade in a listed security, means the delivery of the listed security by a seller to a buyer against the payment, giving or passing of

	the agreed consideration by the buyer to the seller, and "to settle" has a corresponding meaning;
"settlement agent"	means a member of the South African Automated Clearing Bureau approved by BESA to provide electronic settlement facilities to authorised users;
"settlement date"	means the date of settlement of the original trade;
"special proposal"	means in relation to the Forum – <ul style="list-style-type: none"><li>(a) a proposal to amend a market association constitution; or</li><li>(b) a proposal to amend the Forum constitution; or</li><li>(c) a proposal with a view to a resolution by BESA or a proposal with a view to a resolution by shareholders of BESA in a general meeting, which resolution, in the opinion of BESA, may or is likely to affect in a material manner, any of the rights, interest, duties or obligations to the Forum;</li></ul>
"Strate"	means Strate Limited, a public company incorporated in accordance with the laws of the Republic of South Africa (registration number 1998/022242/06 and licensed as a central securities depository under the Act or any successor;
"trade"	when used as a noun, means a transaction in a listed security where at least one party to the transaction is an authorised user and, when used as a verb, or when "trading" is referred to, will have a corresponding meaning;
"trade date"	means the date on which the original trade is concluded;
"trade date +3"	means the third business day after trade date;
"trader"	means a natural person registered in terms of Rule C2.5 with BESA as a trader;
"trust monies"	means any instrument of cash or payment, including but not limited to deposits, margins, trades and profits held in trust by BESA on behalf of clients or authorised users;
"turnover"	means the aggregate of the daily turnover in each listed security, which turnover is the sum of the values calculated by multiplying the selling price of each trade in a particular listed security by the corresponding nominal quantity of each trade in that listed security sold on that day;

#### A1.4 Amendment of Rules

- A1.4.1 Any authorised user or BESA may lodge a written proposal with the secretary in respect of additions to or amendments of the Rules.



A1.4.2 BESA must consider any proposed addition to or amendment of the Rules and shall, within 30 (thirty) business days of receipt of the proposal, publish the proposed amendment and its decision with regard thereto in a notice, *mutatis mutandis*, as contemplated in Rule A2.2 to authorised users.

A1.4.3 If BESA declines the proposed amendments any authorised user may appeal this decision to the board. The appeal must be submitted in writing to the board within 5 (five) business days of the publication of the decision. The board shall consider the appeal of the authorised user and will make its decision with regards thereto within 30 (thirty) business days of receiving such appeal.

A1.4.4 If BESA accepts the proposed amendments, the amended Rules will be submitted to the Registrar for approval and publication in the Government Gazette. BESA will advise authorised users of the expected date of publication of the Government Gazette.

#### **A1.5 Waiver**

No failure by BESA to exercise, nor any delay on its part in exercising, any of its rights in whole or in part under the Rules and/or Directives shall operate as a waiver of BESA's rights or remedies upon that or any subsequent occasion.

## SECTION 2 GENERAL PROVISIONS

### A2.1 Continued existence of BESA

- A2.1.1 BESA is for all purposes in law deemed, in terms of section 53 of the Act, to be the same entity as the Bond Exchange and, accordingly (as contemplated in section 53(2)(c) of the Act), the continued existence of BESA from the date on which it was first licensed as an exchange by the Registrar is unaffected and any actions of BESA before its conversion, from the Bond Exchange to BESA (in terms of section 53 of the Act), remain effectual. Furthermore, it is recorded that, previously, the Bond Exchange was for all purposes in law deemed to have assumed all the rights, powers, duties and obligations of its predecessor, the Bond Market Association at the time when it was licensed as the Bond Exchange.
- A2.1.2 It is further recorded that on the aforesaid conversion from the Bond Exchange to BESA the Rules were substantially amended in order to, *inter alia*, cater for the new corporate structure of BESA. In particular, Part B of the Rules (when they were the Rules of the Bond Exchange) headed "Constitutional Rules", which dealt primarily with matters that are now dealt with in the articles, were deleted (save that the Rules pertaining to the "Stakeholder Forum" were moved to the General Rules). It is noteworthy that as a result of the foregoing the "seatholders" / "rightsholders" of the Bond Exchange became the shareholders of BESA and, furthermore, that the relationship between such shareholders and BESA is now governed in terms of the articles and not the Rules.
- A2.1.3 Unless otherwise determined by BESA, the registered office of BESA is –
- Mezzanine Level  
30 Melrose Boulevard  
Melrose Arch  
2196

### A2.2 Notices

- A2.2.1 Every authorised user must notify BESA of a business address, a postal address, a telefax number and an electronic mail address where notices issued by BESA may be delivered.
- A2.2.2 A notice to authorised users issued by BESA must be in writing and must be transmitted via electronic mail to an authorised user, the nominated electronic mail addresses of both the compliance officer and alternate compliance officer appointed in terms of Rule C2.4, and is deemed –
- A2.2.2.1 to have been received on the date of transmission, until the contrary is proved by the authorised user; and
- A2.2.2.2 to be a notice in writing in terms of section 12(1) of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).
- A2.2.3 Despite Rule A2.2.2, a notice issued by BESA may also be sent to an authorised user's business address, postal address or telefax number and such notice –
- A2.2.3.1 if delivered by hand during normal business hours at an authorised user's business address referred to in Rule A2.2.1, must be deemed, until the contrary is proved by the authorised user, to have been received on the date of delivery; or

- A2.2.3.2 if posted by pre-paid registered post from an address within the Republic of South Africa to an authorised user's postal address referred to in Rule A2.2.1, is deemed, until the contrary is proved by the authorised user, to have been received by no later than the seventh day after the date of posting; or
- A2.2.3.3 if transmitted by telefax to an authorised user's telefax number is deemed, until the contrary is proved by the authorised user, to have been received on the date of transmission.
- A2.2.4 A notice posted on an authorised users sections of the official website of BESA, the address of which must be notified by BESA to authorised users from time to time, has the same effect as a notice delivered to authorised users in terms of Rule A2.2.2, which notice takes effect from the time that it is so posted on the official website, unless otherwise stated in the notice, and must remain posted on such official website for a period of at least 5 business days: Provided that the validity of any such notice shall not be affected by it having been temporarily removed from the official website during the said period.
- A2.2.5 A notice to authorised users, displayed on a reporting facility provided by BESA, has the same effect as a notice delivered to authorised users in terms of Rule A2.2.2, which notice takes effect from the time that it is so posted on the reporting facility, unless otherwise stated in the notice, and must remain posted on such reporting facility for a period of at least 5 business days: Provided that the validity of any such notice shall not be affected by it having been temporarily removed from the reporting facility during the said period

### **A2.3 Trust Monies in Separate Accounts**

BESA must open and maintain a trust account into which any trust monies must be deposited and held: Provided that each deposit made by a client or authorised user into the trust account is immediately identifiable as belonging to a specific client or authorised user and allocated as such.

## SECTION 3 STAKEHOLDER FORUM

### A3.1 Establishment and role of the Forum

- A3.1.1 A Stakeholder Forum is hereby established, referred to in these Rules as the Forum.
- A3.1.2 The Forum is a non-proprietary, voluntary association of industry representatives of institutional investors, issuers and other persons. From the date of approval of these Rules by the Registrar, the Forum –
- A3.1.2.1 is constituted separately from Forum representatives in terms of a Forum constitution;
  - A3.1.2.2 has juristic personality and perpetual succession;
  - A3.1.2.3 is capable of acquiring rights, obligations and duties in law apart from those of the Forum representatives;
  - A3.1.2.4 is an association in which the Forum representatives have a limited beneficial interest;
  - A3.1.2.5 an association not for gain; and
  - A3.1.2.6 subject to the provisions of the Rules.
- A3.1.3 For the purposes of Rule A3.1.2, the reference to "other persons" includes, representatives of the National Treasury and the South African Reserve Bank.
- A3.1.4 The Forum must –
- A3.1.4.1 represent the interests of the Forum representatives in their relations and dealings with BESA;
  - A3.1.4.2 provide a mechanism for Forum representatives to express their views on matters relating to BESA; and
  - A3.1.4.3 contribute through advice and consultation to the functioning of BESA, in a manner that advances the best interests of the Forum representatives.

### A3.2 Forum constitution

- A3.2.1 The Forum constitution is the founding document of the Forum and governs the functions of the Forum: Provided that if any conflict between the Forum constitution and the Rules arises, the Rules shall prevail.
- A3.2.2 Subject to the Rules, the interpretation and enforcement of the Forum constitution shall vest in the Forum.
- A3.2.3 The Forum constitution must –
- A3.2.3.1 be adopted by agreement of the majority of the voting representatives of the Forum at the first meeting of the Forum;
  - A3.2.3.2 be considered and ratified by the board within 14 days of the meeting referred to in Rule A3.2.3.1;
  - A3.2.3.3 be applicable and of full force and effect from the date of ratification by the board;
  - A3.2.3.4 be applicable to and binding upon the Forum and the Forum representatives; and

- A3.2.3.5 create a contract between the Forum and the Forum representatives, and between the Forum representatives amongst themselves.
- A3.2.4 The Forum constitution must give effect to Rules A3.1 and A3.2.1 to A3.2.3, and must further, include provisions to the effect that –
- A3.2.4.1 the Forum may sue or be sued in any court and has such powers as may be necessary or desirable to achieve its objects;
- A3.2.4.2 the Forum must be comprised of voting and non-voting Forum representatives, whose number must be determined by the Forum;
- A3.2.4.3 voting Forum representatives may attend, speak and vote at any meeting of the Forum, whilst non-voting Forum representatives may attend and speak at any meeting of the Forum, but may not vote;
- A3.2.4.4 no board member or market association council member may at the same time hold office as a Forum representative;
- A3.2.4.5 the first Forum shall include 4 voting Forum representatives who must be appointed by their respective associations –
- A3.2.4.5.1 Debt Issuers' Association;
- A3.2.4.5.2 Life Offices' Association;
- A3.2.4.5.3 Investment Managers' Association of South Africa; and
- A3.2.4.5.4 Association of Corporate Treasurers of South Africa;
- A3.2.4.6 the first Forum must include three non-voting Forum representatives comprising one appointed by –
- A3.2.4.6.1 the National Treasury;
- A3.2.4.6.2 the South African Reserve Bank; and
- A3.2.4.6.3 BESA;
- A3.2.4.7 the Forum shall annually, at the first meeting in every calendar year, elect a chair;
- A3.2.4.8 the Forum must meet for the despatch of business as the Forum representatives deem fit: Provided that there shall be at least two Forum meetings in any calendar year;
- A3.2.4.9 a Forum representative must be indemnified by the Forum against all actions and liabilities which he may incur or become liable for in respect of anything done or omitted in his capacity as a Forum representative;
- A3.2.4.10 the Forum constitution may only be amended at a meeting of the Forum duly convened for such purpose and with the approval of not less than two-thirds of the voting Forum representatives: Provided that any amendment of the Forum constitution is invalid unless ratified by BESA.

**A3.3 Special proposals**

- A3.3.1 BESA must, prior to approval, circulate any special proposal to the Forum representatives.
- A3.3.2 The Forum may consider any special proposal and within 5 (five) business days of receipt thereof may –
- A3.3.2.1 submit in writing its views on the special proposal to BESA; or
  - A3.3.2.2 request that BESA convene a meeting of the Forum to consider the special proposal and that the chief executive officer attend the meeting.
- A3.3.3 The chief executive officer shall notify the Forum of his decision after having considered the written submission referred to in General Rule A3.3.2A3.3.2.1 or his decision pursuant to the general meeting referred to in General Rule A3.3.2A3.3.2.2.

**PART B**

**REFER TO THE MEMORANDUM AND ARTICLES OF ASSOCIATION OF BESA**

## **PART C**

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**PART C: CORE RULES****SECTION 1 GENERAL PROVISIONS****C1.1 Establishment of market association**

C1.1.1 At least one market association must be established to supervise the trading by its members in listed securities.

C1.1.2 A market association is a non-proprietary, voluntary association of authorised users, which association –

C1.1.2.1 is constituted separately from the market association members, in terms of a market association constitution;

C1.1.2.2 has juristic personality and perpetual succession;

C1.1.2.3 is capable of acquiring rights, obligations and duties in law apart from those of the market association members;

C1.1.2.4 is an association in which the market association members have a limited beneficial interest;

C1.1.2.5 is an association not for gain; and

C1.1.2.6 is subject to the Rules and Directives:

Provided that the first market association must be established on the date of approval of these Rules by the Registrar.

C1.1.3 A market association must –

C1.1.3.1 carry on the business of a market association, supervising the trading by its members in listed securities, as identified in the Market Association Rules;

C1.1.3.2 obtain and maintain its status as a market association, authorised by BESA to conduct business as a market association;

C1.1.3.3 implement trading practices among its members that contribute to the efficiency, security and transparency of the market, including a central price discovery mechanism; and

C1.1.3.4 represent and promote the common interests of its members in their relations with BESA, and good relations between its members amongst themselves.

**C1.2 Market association constitution**

C1.2.1 A market association constitution is the founding document of any market association and governs the activities and actions of that market association: Provided if a conflict between a market association constitution and the Rules arises, the Rules shall prevail.

C1.2.2 Subject to the Rules, the interpretation and enforcement of a market association constitution shall vest in the relevant market association council.

**C1.3 Meetings**

- C1.3.1 The board may convene a general meeting of authorised users or of members of a particular market association.
- C1.3.2 Any notice convening a general meeting referred to in Rule C1.3.1 must be in writing and must be issued not less than 14 days prior to the date set for such meeting, and must include the agenda for the meeting.
- C1.3.3 The non-receipt of a notice issued in terms of the Rules by any authorised user or member of a particular market association, will not invalidate any resolution passed at a general meeting.

## SECTION 2 AUTHORIZED USER STATUS

### C2.1 Eligibility for authorised user status

C2.1.1 Any person, whether a natural or juristic person, may be granted authorised user status of BESA.

C2.1.2 To be eligible for authorised user status an applicant must satisfy BESA that -

C2.1.2.1 a regular feature of its business is the trading of listed securities;

C2.1.2.2 the applicant is at least 21 years of age and of full legal capacity or if it is a juristic person, that its directors, members or trustees are all at least 21 years of age and of full legal capacity;

C2.1.2.3 the applicant is of good character and high business integrity or if the applicant is a juristic person, that its directors, members or trustees are all of good character and high business integrity;

C2.1.2.4 the applicant complies with the financial resources requirements prescribed in the Rules and at all times holds the capital prescribed by such requirements in the Republic of South Africa;

C2.1.2.5 the applicant has the necessary administrative systems and resources as determined by BESA from time to time; and

C2.1.2.6 all the applicant's officers and traders contemplated in Rules C2.4 and C2.5 respectively comply with the requirements for registration referred to in the Rules.

C2.1.3 Despite any other provision in the Rules, an applicant for authorised user status –

C2.1.3.1 who is not ordinarily resident in the Republic of South Africa; or

C2.1.3.2 which is a juristic person not incorporated in the Republic of South Africa,

must, in pursuance of an application for authorised user status, register as an external company or incorporate a public company in South Africa, as required by the Companies Act, 1973 (Act No. 61 of 1973).

C2.1.4 Notwithstanding Rule C2.1.3, BESA may permit residents of countries within the common monetary area to become authorised users subject to any conditions or restrictions as may be stipulated by BESA from time to time.

### C2.2 Application for and transfer of authorised user status

C2.2.1 Application for authorised user status

C2.2.1.1 An application for authorised user status must be made to BESA on the form and accompanied by the fee as determined by BESA.

C2.2.1.2 Upon making application for authorised user status each applicant must agree in writing to be bound by the Act, the Rules and the Directives.

C2.2.1.3 An application for authorised user status must be accompanied by an application for membership of such market association as BESA may direct.

- C2.2.1.4 BESA must publish the name and address of an applicant for authorised user status in a notice to market association members, who may object thereto in terms of Rule C2.2.1.5.
- C2.2.1.5 A market association member writing to object to any application for authorised user status must lodge an objection within 14 days of the notice in terms of Rule C2.2.1.4 with BESA stating the reasons for the objections.
- C2.2.1.6 BESA may require -
- C2.2.1.6.1 an applicant to furnish further information, and may, with the consent of the applicant, institute any such investigation which it deems necessary, to verify information submitted by the applicant in support of an application;
- C2.2.1.6.2 an applicant or one or more representatives of the applicant, to be interviewed by BESA, the chief executive officer or any other person appointed by BESA for that purpose.
- C2.2.1.7 The agreed or reasonable costs of verification of information referred to in Rule C2.2.1.6 must be borne by the applicant.
- C2.2.1.8 After expiry of the period of notice referred to in Rule C2.2.1.5, BESA must consider an application for authorised user status and must notify the applicant in writing of its decision to grant or refuse the applicant authorised user status, and shall publish its decision in a notice to members of the relevant market association.
- C2.2.1.9 BESA must furnish an applicant and the particular market association with written reasons for its decision to refuse an application for authorised user status.
- C2.2.1.10 If an applicant fails to acquire authorised user status duly approved by BESA, the applicant may exercise the right of appeal as contemplated in the Act.
- C2.2.1.11 If an application for authorised user status is refused and the applicant does not exercise his right of appeal against the refusal or his appeal is unsuccessful, the same applicant may not be entitled to re-apply for authorised user status for a period of two years from the date of refusal, unless BESA determines otherwise.
- C2.2.1.12 BESA must maintain and hold open for inspection by the public at its registered office, a register of all authorised users to whom authorised user status has been granted.
- C2.2.2 Granting of authorised user status
- C2.2.2.1 The granting of authorised user status to an applicant confers formal authorised user status of BESA on the successful applicant.
- C2.2.2.2 Authorised user status may not be granted to a nominee or agent of the applicant and shall be registered in the name of the successful applicant.
- C2.2.2.3 Before the granting of authorised user status to an applicant, all such registration fees, as may be determined by BESA, must have been paid to BESA, and in the

event that an application for the registration or transfer of authorised user status is refused or withdrawn such fees are not refundable to the applicant.

C2.2.2.4 Notwithstanding anything to the contrary contained in the Rules or Directives, an authorised user shall not be permitted to trade on BESA prior to such authorised user having obtained membership of such market association as BESA has directed in terms of Rule C2.2.1.3.

C2.2.3 Transfer of authorised user status

An authorised user may not transfer or otherwise assign the rights, title or interest in or to that authorised user registration to any other person without the approval of BESA.

**C2.3 Privileges and obligations of authorised users**

C2.3.1 An authorised user must -

C2.3.1.1 satisfy at all times the authorised user status requirements as determined by BESA in accordance with the Rules and Directives, including being a member of a market association;

C2.3.1.2 where the authorised user is a member or active participant of more than one licensed exchange, elect a lead exchange as its lead regulator;

C2.3.1.3 must at all times comply with the prescribed financial resources requirements set out by its lead regulator;

C2.3.1.4 enter into agreements covering functions designated by BESA in order to fulfil the functions and obligations of an authorised user;

C2.3.1.5 in respect of all trades entered into by the authorised user, comply with the reporting requirements as determined by BESA;

C2.3.1.6 in respect of all trades entered into by the authorised user, comply with the settlement requirements as determined by BESA;

C2.3.1.7 hold such fidelity insurance cover in respect of fraud and misappropriation by any director, officer, trader or other person involved in the management or administration of trading, as the authorised user or its board of directors or other governing entity of the authorised user deems appropriate for the level of business undertaken by the authorised user;

C2.3.1.8 ensure compliance with the Act, the Rules, the Directives, the constitution of the market association in question, and a decision or determination of BESA;

C2.3.1.9 comply with the provisions of the Financial Advisory and Intermediary Services Act, 2002 (Act No 37 of 2002) if that authorised user undertakes the management of listed securities, as defined in section 1 of the Act, for remuneration or benefit in any form; and

C2.3.1.10 not effect a transaction in securities with a person whom the authorised user believes or suspects requires approval to undertake management of securities in

terms of any law without having taken reasonable measures to ascertain that such person has the necessary approval.

C2.3.2 An authorised user may establish or maintain a nominee company, which has been approved, with the main object of being the registered holder of listed securities on behalf of the authorised user and clients.

C2.3.2.1 The shares in the nominee company shall be beneficially owned –

C2.3.2.1.1 in the case of a sole proprietor, by the sole proprietor and be registered in the name of the sole proprietor;

C2.3.2.1.2 in the case of a partnership, by all of the partners and be registered in the name of one or more of the partners; and

C2.3.2.1.3 in the case of a corporate entity, by the corporate entity and be registered in the name of the corporate entity.

C2.3.2.2 The authorised user must ensure that such nominee company incurs no liabilities other than those normally incurred as a result of its acting as a nominee in respect of the holding of listed securities.

C2.3.2.3 The powers of the nominee company are limited to the main object set out in C2.3.2, and such other acts as may be necessary to achieve the said object.

C2.3.2.4 A nominee company established in terms of this Rule must comply with any additional requirements determined by BESA from time to time.

#### **C2.4 Registration and functions of officers**

C2.4.1 Upon admission to membership of BESA, an authorised user must register with BESA upon payment of the prescribed fee and in the manner determined by BESA, a compliance officer and a representative officer who must each -

C2.4.1.1 be a director or employee of the authorised user;

C2.4.1.2 be at least 21 years of age and of full legal capacity;

C2.4.1.3 be of good character and high business integrity; and

C2.4.1.4 comply with the minimum requirements with regard to training and experience as determined by BESA.

C2.4.2 An authorised user may not carry on the business of buying and selling listed securities unless a compliance officer and representative officer appointed by the authorised user remain registered with BESA as required in terms of Rule C2.4.1: Provided that an authorised user may be granted dispensation from the provisions of this Rule for a period of not more than two consecutive months upon the conditions determined by BESA, which conditions will be determined in consultation with the Registrar. BESA may from time to time require an authorised user to register additional staff members, other than the authorised user's registered compliance officer and representative officer, with BESA.

C2.4.3 The compliance officer -



- C2.4.3.1 may at the same time hold office as the representative officer of the authorised user;
  - C2.4.3.2 must have obtained a pass in the compliance officer examination as prescribed by Directive;
  - C2.4.3.3 must at all times monitor compliance by the authorised user concerned with the Act, the Rules and Directives, decision or determination of BESA or chief executive officer;
  - C2.4.3.4 must monitor compliance at all times by the authorised user with all agreements to be entered into by the authorised user in terms of Rule C2.3.1.4;
  - C2.4.3.5 must monitor compliance at all times by the authorised user with the financial resources requirements prescribed in the Rules;
  - C2.4.3.6 must ensure that, for the authorised user, the prescribed return in respect of the financial resources requirements is submitted to the chief executive officer at such intervals as determined by Directive;
  - C2.4.3.7 must receive all notices from BESA and the licensed clearing house, and must ensure compliance by the authorised user concerned with the requirements of the notices;
  - C2.4.3.8 must report in writing to the chief executive officer any apparent breaches by the authorised user of the Act, the Rules, any Directive, decision or determination of BESA or chief executive officer or the constitution of the relevant market association;
  - C2.4.3.9 if any breach or error arises in respect of any trades entered into by, or effecting the authorised user, upon being so requested by the chief executive officer or the licensed clearing house, must take or cause to be taken all such steps as may be necessary to rectify the breach or to eliminate the error; and
  - C2.4.3.10 must submit to BESA a compliance report as prescribed by Directive.
- C2.4.4 The representative officer -
- C2.4.4.1 may at the same time hold office as the compliance officer of the authorised user;
  - C2.4.4.2 may be a person who stands on behalf of the authorised user for election as a member of the board; and
  - C2.4.4.3 shall represent the authorised user in all other matters for which the compliance officer is not responsible.
- C2.4.5 An authorised user must also register with BESA an alternate compliance officer and alternate representative officer in the manner determined by Directive, unless an authorised user has been granted dispensation from the provisions of this Rule upon the conditions determined by BESA.
- C2.4.6 BESA may decide to accept or refuse an application for registration of any officer and must, at the request of the applicant, furnish the reasons for its decision.

- C2.4.7 An authorised user who is not satisfied with a decision of BESA in respect of an application for registration of its officers, may exercise the right of appeal as contemplated in the Act.
- C2.4.8 The chief executive officer must maintain and hold open for inspection by the public at its registered office a register of all officers granted registration by BESA.
- C2.4.9 Any change in the particulars relating to an officer shall be notified forthwith in writing to BESA in the manner determined by BESA.
- C2.4.10 The appointment of any officer shall not in any way relieve the authorised user from any of the duties and responsibilities in terms of the Act, the Rules and any decision or determination of BESA, and these duties and responsibilities shall remain of a principal nature and are not accessory or subordinate to the functions of such officer.
- C2.4.11 An authorised user must forthwith in writing notify BESA if any of its officers have been found guilty of any improper conduct by any licensed exchange, by any current or previous employer, by any professional association, including the relevant market association, or by a court.

## **C2.5 Registration of traders**

- C2.5.1 Upon admission to authorised user status of BESA, an authorised user must register one or more traders with BESA upon payment of the prescribed fee and in the manner determined by Directive: Provided that no authorised user may carry on the business of buying and selling listed securities unless at least one trader appointed by the authorised user remains registered with BESA as required by this Rule.
- C2.5.2 BESA may decide to accept or refuse an application for registration of any trader and must at the request of the applicant furnish the reasons for its decision.
- C2.5.3 An authorised user who is not satisfied with the decision of BESA in respect of an application for registration of its traders, may exercise the right of appeal as contemplated in the Act.
- C2.5.4 BESA must maintain and hold open for inspection by the public at its registered office a register of all traders granted registration by BESA.
- C2.5.5 Any change in the particulars relating to a trader shall be notified in writing to BESA in the manner determined by Directive.
- C2.5.6 An authorised user must forthwith in writing notify BESA if any of its traders have been found guilty of any improper conduct by any licensed exchange, by any current or previous employer, by any professional association, or by any court.

## **C2.6 Fees and levies**

- C2.6.1 BESA must give authorised users written notice of any proposed fees and levies to be paid by authorised users to BESA or the licensed clearing house, at least 14 days prior to the imposition thereof.
- C2.6.2 An authorised user who fails to pay any fees or levies within 30 days of such fees or levies becoming payable, must be notified by BESA of such arrears.
- C2.6.3 If the arrears are not paid by the authorised user within seven days of the date of receipt of such notice, or any extended period granted in writing by BESA, BESA may, despite the provisions of

PART C – Section 12, suspend the authorised user status of the authorised user until all monies owed by the authorised user to BESA or the licensed clearing house have been paid.

C2.6.4 The monies owed must include interest calculated from the due date to the date of actual payment at a rate determined by BESA

#### **C2.7 Adherence to Act and Rules**

C2.7.1 BESA may require an authorised user to instruct its auditor to examine any or all procedures and transactions of an authorised user's business relating to BESA and the licensed clearing house, and verify the authorised user's adherence to the Act, the Rules, the Directives, a decision or determination of BESA or the constitution of the affected market association in question.

C2.7.2 The report of the auditor must be submitted to BESA and the costs of such audit must be borne by BESA, provided that if, as a result of such audit, it is ascertained that the authorised user has contravened or has not complied with the Act, the Rules, the Directives, a decision or determination of BESA, then the costs of the audit must be borne by the authorised user or market association in question.

C2.7.3 BESA may submit, after due consideration, a report referred to in Rule C2.7.2 to the Disciplinary Tribunal.

#### **C2.8 Termination of authorised user status**

C2.8.1 An authorised user may terminate authorised user status of BESA by giving one calendar month's written notice of termination to BESA.

C2.8.2 BESA shall by written notice to the authorised users at least 14 days prior to the intended date of termination, give notice of the intention of the authorised user to resign.

C2.8.3 After the lapse of the 14 days notice period referred to in Rule C2.8.2 and prior to the intended date of termination, BESA must consider the notice of termination and may accept the resignation either unconditionally or on such conditions as it may deem fit, or may refuse to accept the resignation until it is satisfied that all outstanding obligations of such authorised user in terms of the Rules and/or Directives have been complied with.

C2.8.4 The notification of termination of authorised user status by an authorised user shall not be withdrawn without the written consent of BESA.

C2.8.5 The authorised user status of an authorised user shall terminate -

C2.8.5.1 when the authorised user is placed under curatorship;

C2.8.5.2 when the authorised user is liquidated or placed under judicial management, whether provisionally or finally;

C2.8.5.3 when the authorised user is expelled for any reason from BESA or the market association in question;

C2.8.5.4 automatically upon the refusal by a market association (contemplated in Rule C2.2.1.3) to confer upon an authorised user membership of the said market association, alternatively, upon the lapsing of a period of 30 (thirty) days from the

- date which application was made pursuant to Rule C2.2.1.3, whichever event occurs first;
- C2.8.5.5 when the authorised user fails to take steps within 30 days of judgement having been granted against the authorised user by a court to satisfy such judgement or to have it set aside; or
- C2.8.5.6 when BESA by written notice terminates the authorised user status as a consequence of that authorised user having obtained admission to authorised user status by having furnished to BESA information in connection with its application for admission which is found in any material respect to be untrue or misleading.
- C2.8.6 The name of the authorised user whose authorised user status has terminated and the date from which the termination takes effect must be published by BESA by means of a notice to authorised users and the market association in question.

**SECTION 3 CODE OF CONDUCT****C3.1 Conduct**

No authorised user, officer, trader or any person involved in the management or administration of trading may commit any act or engage in any conduct likely to bring BESA into disrepute, and in particular may not -

- C3.1.1 create, or cause to be created, or do anything that is calculated to create a false or misleading appearance of active trading or a false or misleading appearance with respect to the market for, or the price for trading in, listed securities;
- C3.1.2 whether directly or indirectly, participate in a trade in a listed security which is intended to have the effect of -
  - C3.1.2.1 creating an artificial price for trading in listed securities; or
  - C3.1.2.2 maintaining at a level that is artificial a price for trading in listed securities;
- C3.1.3 by means of any fictitious or artificial transaction or device maintain, inflate or depress, or cause fluctuations in, the price for trading in listed securities;
- C3.1.4 make statements or disseminate information which the authorised user knows, or ought reasonably to know, to be false or misleading -
  - C3.1.4.1 and to be likely to induce other persons to trade or refrain from trading;
  - C3.1.4.2 and to be likely to have the effect of inflating, depressing or maintaining the price for trading in listed securities;
  - C3.1.4.3 regarding the services that the authorised user is capable of delivering to a client;
  - C3.1.4.4 regarding the qualifications and competency of the authorised user; or
  - C3.1.4.5 regarding the investment performance that the authorised user has accomplished or can reasonably be expected to achieve for a client;
- C3.1.5 issue a statement or disseminate information to BESA, the market association council or the licensed clearing house which the authorised user knows, or ought reasonably to know, to be false or misleading by -
  - C3.1.5.1 making or publishing any statement, promise or forecast which the authorised user knows to be misleading, false or deceptive; or
  - C3.1.5.2 concealing of material information at the authorised user's disposal, induce another person to trade or refrain from trading; or
  - C3.1.5.3 inducing another person to trade or refrain from trading;
- C3.1.6 effect an own account transaction or a transaction for a client when the authorised user is aware that effecting the transaction is prohibited by statutory restrictions on insider trading, money laundering or any other practice prohibited by statute or subordinate legislation;
- C3.1.7 enter into trades with or on behalf of a client other than in accordance with the reasonable instructions of the client;
- C3.1.8 execute trades on behalf of a client other than in the best interests of the client; or

- C3.1.9 enter into any agreement with a client nor give effect to any term of an agreement with a client if the effect, likely effect or purported effect of such agreement or term, is to exclude or limit the liability of that authorised user, officer, trader or any person involved in the management or administration of trading, to the client for negligence, fraud, or dishonesty, in relation to the trading activities with or on behalf of the client.

### C3.2 Ethics

An authorised user, officer, trader or any person involved in the management or administration of trading must -

- C3.2.1 act with integrity, dignity, proper skill, care and diligence, and exercise independent professional judgement, in respect of a trade;
- C3.2.2 provide full and accurate information, including information regarding fees as contemplated in Rule C3.2.6, to clients;
- C3.2.3 maintain knowledge of and comply with all applicable laws, rules and regulations of government, governmental agencies and regulatory organisations governing the authorised user's activities in respect of trading;
- C3.2.4 not participate in, assist, or withhold knowledge of any acts in violation of any applicable law, rule or ethical code governing the authorised user's activities in respect of trading;
- C3.2.5 not directly or indirectly offer, solicit or accept any gift or inducement in respect of any securities services, excluding any fees contemplated in Rule C3.2.6 or the agreed consideration in respect of the trade;
- C3.2.6 ensure that fees charged for services are fair and reasonable;
- C3.2.7 not advise a client to buy or sell listed securities with the primary intention of maximising the authorised user's income;
- C3.2.8 preserve the confidentiality of information communicated by a client concerning matters within the scope of the confidential relationship, unless required by law to disclose such information;
- C3.2.9 act promptly in accordance with the instructions of a client, unless the authorised user has a discretion as to timing and uses that discretion in a responsible manner;
- C3.2.10 inform a client in advance of any restrictions pertaining to the access of the client to his funds or securities under the control of the authorised user and, in the absence of such restriction, the authorised user must ensure that a client who requests access to his funds or securities, obtains such access within a reasonable period of time;
- C3.2.11 ensure that a client is able to contact the authorised user timeously and with ease;
- C3.2.12 if requested, disclose to a client information which the authorised user knows is likely to affect the performance of an investment in listed securities; and
- C3.2.13 not knowingly either advise or trade, in relation to a transaction for a client, in which the authorised user has a material interest and which is likely to give rise to a conflict of interest in relation to such a transaction, unless the authorised user takes reasonable steps to ensure fair treatment of the client.

**C3.3 Advertising**

- C3.3.1 Promotional material by or on behalf of any authorised user, in the form of any oral, visual or documentary presentation directed at the public through any medium of communication is acceptable if the purpose of such advertising is to call a potential client's attention to an investment in securities and to encourage the potential client to obtain additional information about the investment.
- C3.3.2 The nature or type of the investment or the investment service to which the advertisement relates must be clear.
- C3.3.3 No authorised user shall make any communication with the public or use any promotional material which -
- C3.3.3.1 is false or misleading in any material respect;
  - C3.3.3.2 makes any statement or suggests that trading on BESA is appropriate for all persons;
  - C3.3.3.3 refers to the possibility of profit unless accompanied by an equally prominent statement of the risk of loss;
  - C3.3.3.4 includes any reference to either hypothetical results or to actual past trading profits without mentioning that these hypothetical or past results are not necessarily indicative of future results; or
  - C3.3.3.5 compares one authorised user or the performance of one authorised user with another authorised user or the performance of another authorised user.
- C3.3.4 Any reference to the past performance of an investment scheme must include information about the previous five years or, if less, the period from the date of issue of the investment.
- C3.3.5 Statements or opinion included in any promotional material must be clearly identified as such, and must have a reasonable basis in fact.
- C3.3.6 No advertising placed by an authorised user shall be worded in a manner calculated to better the image of that authorised user to the detriment of another authorised user.
- C3.3.7 In the event that BESA considers that an authorised user has failed to conform to any of the advertising requirements under this Rule, it may (without prejudice to its other powers under the Rules) require that no further advertising material or other promotional or marketing material may be published by or on behalf of such authorised user unless it has been submitted to BESA in advance and BESA has notified the authorised user that the material is not unsuitable for publication.

**C3.4 Contraventions to be reported**

An authorised user must report to the chief executive officer any contravention by another authorised user of the Act, the Rules or the Directives, regarding conduct, ethics or advertising that comes to the authorised user's attention.

**SECTION 4 LISTINGS****C4.1 Minimum disclosure requirements**

BESA shall issue listings requirements from time to time, as required by the Act, in respect of listed securities.



**SECTION 5 TRADING****C5.1 Eligibility to trade**

The Rules of a market association must make provision for –

- C5.1.1 eligibility requirements, applicable to members of that market association, in respect of the buying and selling of listed securities;
- C5.1.2 minimum qualification requirements applicable to traders employed by members of that market association; and
- C5.1.3 the buying and selling of listed securities to be conducted only by traders registered with BESA in accordance with the Rules and the Directives.

**C5.2 Facilities for concluding and reporting trades**

- C5.2.1 BESA, in consultation with the particular market association council, must determine the facilities for concluding and reporting trades to be utilised by members of a market association.
- C5.2.2 An authorised user may make a recording of any conversation in connection with the execution of a trade, which recording may be submitted as evidence in any dispute referred to in Rule C11.1.1.
- C5.2.3 All trades in listed securities concluded by an authorised user shall be reported by the authorised user to BESA within the times and in the manner determined by BESA.

**C5.3 Trading procedures**

- C5.3.1 The business days on which BESA is closed for the purposes of trading, must be published by means of a notice to authorised users.
- C5.3.2 The Rules of every market association must make provision for –
  - C5.3.2.1 the determination of the period during which trading in listed securities is permitted;
  - C5.3.2.2 the determination of a standard trade size;
  - C5.3.2.3 appropriate supervision of traders employed by the members of that market association; and
  - C5.3.2.4 the fair execution of client trades.

**C5.4 Market prices**

Save with the prior written consent of BESA, an authorised user may only advertise or publish or cause to be advertised or published in any form prices or quotes in listed securities or any statistics relating to trades in listed securities on a designated screen.

**C5.5 Authorised user trades**

RESERVED

**C5.6 Client trades**

A market association must prescribe the requirements in respect of the trading of listed securities by members of that market association, with or on behalf of clients, which requirements must be approved by BESA.

**C5.7 Restrictions on trading**

- C5.7.1 A director, officer, trader or employee of an authorised user involved in the management or administration of trading may be a client of that authorised user for his own account or for an account in which the director, officer, trader or employee has a beneficial interest: Provided that any trades concluded are separately recorded and identified in the accounting records of the authorised user, but are otherwise dealt with in the same manner and subject to the same conditions applicable to trades of other clients of the authorised user.
- C5.7.2 A trade concluded in terms of Rule C5.7.1 shall be reported to and monitored by the compliance officer of the authorised user, which compliance officer must be independent of the director, officer, trader or employee concerned, except where the authorised user is an entity consisting of no more than 10 people who are involved in the business and administration of trading, and who maintain controls to ensure that the trading and conduct of the director, officer, trader or employee is not prejudicial to the interests of the authorised user or the authorised user's other clients.
- C5.7.3 No official or employee of BESA or any person associated with such official or employee shall enter into any trades, whether for own account or on behalf of other persons.
- C5.7.4 A director, officer, trader or employee of an authorised user involved in the management or administration of trading may be a client of another authorised user for his own account or for an account in which the director, officer, trader or employee has a beneficial interest: Provided that -
- C5.7.4.1 he has the prior written approval of the compliance officer of the authorised user of which he is the director, officer, trader or employee;
- C5.7.4.2 he discloses in writing in advance to the other authorised user that the account is for the purposes of trading on his own account; and
- C5.7.4.3 a certified copy of the written approval in terms of Rule C5.7.4.1 and notice in terms of Rule C5.7.4.2 is forwarded to the chief executive officer upon the granting of such approval.

**C5.8 Unreasonable trades**

- C5.8.1 Where, from a lack of clarity in the published information available at the time of a trade, an authorised user trades in a quantity or at a price which in the opinion of the chief executive officer is unreasonable, the chief executive officer may, after consultation with the authorised user and client in question, declare such trade void; and may similarly declare the trade of the other authorised user or authorised user and client, as the case may be, who is party to that trade, to be void.
- C5.8.2 A declaration in terms of Rule C5.8.1 shall be binding on the authorised user who entered into such trade and on the client with whom or on whose behalf the trade was executed; and is similarly binding on the other authorised user or authorised user and client, as the case may be, to that trade.

**C5.9 Emergency actions**

- C5.9.1 if in the opinion of the chief executive officer, any circumstances, calling for emergency action for the orderly conduct of trading on BESA or the due performance of trades, have developed or are

developing, the chief executive officer may take any steps it deems necessary to enable the orderly conduct of trading or the due performance of trades.

- C5.9.2 Circumstances falling within the scope of Rule C5.9.1 may include trades not yet settled in terms of the Rules, a state of war or threatened hostilities, the introduction of official controls affecting the market or due performance in respect of trades or any change in such controls, any change in legal provisions or administrative or financial practice affecting BESA or due performance in respect of trades, a reasonable suspicion of any fraudulent or criminal activity, or any other undesirable situation or practice.
- C5.9.3 If any of the circumstances contemplated in this Rule occur, the chief executive officer may, in consultation with the chief executive officers of other licensed exchanges, form a committee, which may be chaired by the Registrar, to discuss and implement an agreed course of action to be taken by BESA and the licensed exchanges.
- C5.9.4 Where any restriction or suspension of trading is declared, BESA must by notice to authorised users convey –
- C5.9.4.1 the reason for the restriction or suspension;
  - C5.9.4.2 the period of the restriction or suspension; and
  - C5.9.4.3 when the next board meeting will be held to review the restriction or suspension.
- C5.9.5 Where a restriction or suspension of trading has been declared, BESA shall determine the course of action with regard to trades not yet settled prior to the restriction or suspension.

## **SECTION 6 CLEARING**

### **C6.1 Financial resources requirements**

- C6.1.1 The Rules of a market association must provide for the financial resources requirements applicable to members of that market association;
- C6.1.2 The funds required to be held by members of a market association and, where necessary, by a market association, may be stipulated by the Rules and/or Directives.
- C6.1.3 The financial resources requirements specified in Rule C6.1.1 and C6.1.2 must at no time be less than the minimum requirements prescribed by the Registrar.
- C6.1.4 BESA must establish and maintain appropriate procedures to ensure that adequate information is submitted by market association members and, where necessary, a market association, to permit BESA to effectively monitor compliance with the financial resources requirements referred to in Rule C6.1.3.
- C6.1.5 If a member of a market association, or a market association, fails to comply with a financial resources requirement referred to in Rule C6.1.3 and fails to rectify forthwith such non-compliance after being so requested in writing by the chief executive officer, the chief executive officer must proceed in accordance with Rule C12.1.1.
- C6.1.6 If the alleged non-compliance referred to in C6.1.5, is reported to the Disciplinary Tribunal in terms of Rule C12.1.3, the Disciplinary Tribunal must, where a market association member, or a market association, is found guilty of such non-compliance, impose an appropriate penalty on the market association member or market association, as the case may be.
- C6.1.7 Where an authorised user is a member of more than one market association and BESA has been appointed as the authorised user's lead regulator in terms of Rule C2.3.1.2, the authorised user may submit a consolidated financial resource requirement return reflecting the funds held by the authorised user.

### **C6.2 Risk management of trades**

The Rules of a market association may provide for the manner in which and conditions subject to which risk management of trades must take place.

**SECTION 7 SETTLEMENT****C7 Settlement of trades**

- C7.1 The Rules of a market association must make provision for the requirements in respect of the settlement of trades and must include provisions relating to –
- C7.1.1 settlement times;
  - C7.1.2 settlement procedures; and
  - C7.1.3 settlement shortages.
- C7.2 BESA, in consultation with each market association, must determine the manner and conditions of settlement in respect of trades.

## SECTION 8 SETTLEMENT DEFAULT

### C8.1 Performance of trades

- C8.1.1 A market association must prescribe the manner for performance of trades by members of that market association.
- C8.1.2 A market association must prescribe the manner in which and the conditions subject to which a default by a market association member must be declared and managed.

### C8.2 The Guarantee Fund

- C8.2.1 BESA shall no later than 3 (three) months prior to the financial year-end of BESA in each year determine the amount of funds which it recommends the Guarantee Fund should have available solely for the purposes of paying compensation to authorised users and clients for a settlement default as contemplated in Section 8 of Part C, Section 8 of Part D and Section 8 of Part E of the Rules (the "exclusive funds") for the forthcoming financial year of BESA and shall notify the Guarantee Fund and the Registrar of this recommendation. The exclusive funds shall at no time be less than R30 million.
- C8.2.2 By no later than the financial year-end in each year, the Guarantee Fund and the Registrar must, after considering the aforesaid recommendation of BESA, determine by agreement between them the quantum of the exclusive funds, which is to apply for the forthcoming financial year, failing which the quantum of the exclusive funds which apply in the then current financial year shall apply in the forthcoming financial year.
- C8.2.3 The exclusive funds shall be reserved exclusively, on the further terms and conditions of these Rules, for compensating claimants for settlement defaults as contemplated in Section 8 of Part C, Section 8 of Part D and Section 8 of Part E of the Rules.
- C8.2.4 To the extent that the total funds in the Guarantee Fund exceed the exclusive funds, the excess portion (the "excess funds") may be distributed by the Guarantee Fund, in the sole discretion of the Guarantee Fund:
- C8.2.4.1 after consultation with the Registrar, to any person that the Guarantee Fund considers will use the funds so distributed to them in order to attempt to reduce the risk of claims being made at all, or reducing the quantum of claims made, pursuant to a settlement default as contemplated in Section 8 of Part C, Section 8 of Part D and Section 8 of Part E of the Rules; or
- C8.2.4.2 for the purposes contemplated in Rule C8.2.3 above.

### C8.3 Deleted and replaced by the trust deed of the guarantee fund

### C8.4 Deleted and replaced by the trust deed of the guarantee fund

### C8.5 Contributions to the Guarantee Fund

- C8.5.1 All authorised users must contribute to the Guarantee Fund as contemplated below.
- C8.5.2 The quantum of the contributions or the basis for calculating the quantum of contributions that must be made to the Guarantee Fund, the payment dates of such contributions and the duration of such

contributions must be stipulated by Directive. In issuing the Directive BESA shall take account of the then required quantum of the exclusive funds.

C8.5.3 The liability of authorised users to the Guarantee Fund is limited to the contributions due to the Guarantee Fund in terms of the Rules.

**C8.6 Deleted and replaced by the trust deed of the guarantee fund**

**C8.7 Events of Default**

C8.7.1 BESA must prescribe the manner in which and the conditions subject to which a default by a market association member must be managed.

C8.7.2 Default occurs in the following circumstances:

C8.7.2.1 if an authorised user or a client fails to fulfil any of their settlement obligations in respect of a trade;

C8.7.2.2 if an authorised user or a client commits an act of insolvency or an application is made for the liquidation or sequestration of an authorised user or a client;

C8.7.2.3 if an authorised user is suspended or its membership terminated in accordance with the Rules; or

C8.7.2.4 if an authorised user or a client fails to provide adequate assurance to BESA that the authorised user or client will be able to fulfill their obligations in respect of any trade.

**C8.8 Declaration of default**

C8.8.1 An authorised user or client or where appointed, a settlement agent, who becomes aware of an event of default must immediately notify the chief executive officer of the default.

C8.8.2 The chief executive officer must, as soon as is reasonably possible, attempt to independently establish the facts of the matter and based on the factual findings, may declare the authorised user or client to be a defaulter.

C8.8.3 The chief executive officer must notify the authorised users of the default by the authorised user or client.

C8.8.4 When declared a defaulter in terms of Rule C8.8.2 –

C8.8.4.1 a defaulting authorised user is suspended in accordance with Rule C12.7; and

C8.8.4.2 a defaulting client is suspended from the trade reporting facilities provided by the licensed clearing house.

C8.8.5 The chief executive officer may declare that a member of a particular market association is in default if the member of that particular market association has committed an event of default as a member of another market association or exchange.

**C8.9 Netting**

C8.9.1 BESA may net all an authorised user's trades in listed securities when that authorised user has been declared to be in default.

C8.9.2 The declaration of an authorised user as a defaulter does not affect BESA's rights in Rule C8.9.1.

**C8.10 Defaulter's excluded assets**

The following provisions apply with reference to the assets, whether in the form of money, securities, or other corporeal or incorporeal things (hereunder referred to as the "defaulter's excluded assets") of an authorised user with effect from the date upon which control of such defaulter's excluded assets is assumed by the chief executive officer:

- C8.10.1 The chief executive officer may assume control of a defaulter's excluded assets upon declaring an authorised user to be a defaulter.
- C8.10.2 A person for the time being having custody of such defaulter's excluded assets must give effect to all instructions in relation thereto as may be furnished to such person by the chief executive officer.
- C8.10.3 The chief executive officer must, as soon as reasonably possible, realise (whether by sale or otherwise) all of such defaulter's excluded assets and must place the nett proceeds of such realisation (after deduction therefrom of any costs incurred by the chief executive officer in such realisation) and any cash forming part of the defaulter's excluded assets, in a separate trust account (herein referred to as "the liquidation trust account") with a bank in the Republic of South Africa, in which any funds accruing must also be placed.
- C8.10.4 The chief executive officer must give written notice of the establishment of the liquidation trust account to persons considered by the chief executive officer to be potential claimants of the money in the liquidation trust account, and claims in respect thereof shall lie within such period as determined by BESA.
- C8.10.5 The chief executive officer must publish, or cause to be published, in any newspaper or other periodical, or permit or authorise the proprietor or publisher of such newspaper or periodical to publish the notice referred to in Rule C8.10.4.
- C8.10.6 The chief executive officer may publish supplementary notices and announcements to invite claims from potential claimants.
- C8.10.7 A claim must be in the form as stipulated by Directive, and must contain such particulars and be accompanied by such vouchers or other proof, as BESA shall require.
- C8.10.8 On the expiry of the period of a notice given in term of Rules C8.10.4 and C8.10.5 and of any extension thereto in any notice or announcement in terms of Rule C8.10.6, the chief executive officer must adjudicate upon all claims submitted in response to such notices, in accordance with this Rule.
- C8.10.9 A decision of the chief executive officer to admit a claim, or to refuse admission of a claim, or as to the amount of a claim admitted is final and binding on all parties affected thereby.
- C8.10.10 The amount standing to the credit of the liquidation trust account must be applied by the chief executive officer as follows and in the following order of precedence: Provided that if any balance distributable amongst claimants of equal precedence is less than the aggregate of their claims, the available amounts must be distributed amongst them in proportion to the amounts of their respective claims -
- C8.10.10.1 in the first instance, towards payments of all costs reasonably incurred by the chief executive officer in giving notice of the establishment of the liquidation trust account



and calling for the submission of claims in respect thereof, including any costs incurred by the chief executive officer in the adjudication of such claims;

- C8.10.10.2 thereafter, in payment to any authorised user, or to BESA of any obligation incurred by the defaulting authorised user arising from the closing out of all or any of his proprietary positions as contemplated in this Rule, or for taking over the defaulter's nett settlement position;
- C8.10.10.3 thereafter, in payment of liabilities of the defaulting authorised user arising from the closing out or expiry, prior to the assumption of such control by BESA, of proprietary positions of the defaulting authorised user undertaken on behalf of clients and not settled at the date of default;
- C8.10.10.4 thereafter, towards satisfaction of any fees due from the defaulting authorised user to any other authorised user or to BESA as a result of the closing-out of proprietary positions, or for taking over the defaulter's nett settlement position as contemplated in this Rule; and
- C8.10.10.5 as to any surplus, by payment to the defaulting authorised user or the trustee, liquidator or judicial manager of the defaulting authorised user.

**SECTION 9     SEGREGATION OF ASSETS****C9 Segregation of securities and other assets**

An authorised user must, in accordance with section 27 of the Act -

- C9.1     at all times identify and keep separate the securities and other assets of another authorised user or of a client from the authorised user's own assets;
- C9.2     not use the securities or other assets belonging to another authorised user or client to finance the authorised user's own trades or the trades of any other person; and
- C9.3     not use the securities or other assets of another authorised user or client to operate his own business.

**SECTION 10 RECORDS AND PRESCRIBED AGREEMENTS****C10.1 Trading records kept by an authorised user**

C10.1.1 An authorised user must keep a record or cause a record to be kept, of -

C10.1.1.1 the date, time and nature of trades entered into with or on behalf of clients, or with other authorised users, and maintain separate records showing the date, time and nature of the authorised user's own trading and the details of funds used for that trading;

C10.1.1.2 all trades concluded but not yet settled with other authorised users and with or on behalf of each of the authorised user's clients; and

C10.1.1.3 the segregation of funds, securities and other assets as contemplated in the Rules:

Provided that an authorised user who is a member of more than one market association must keep separate records of his trades in each market association.

C10.1.2 The records referred to in this Rule shall be kept for a period of not less than 5 years from the date of entering into a trade by the authorised user, and must be kept in a form that will enable the records to be conveniently and properly audited.

**C10.2 Financial records kept by an authorised user**

An authorised user must keep such financial records as determined by BESA.

**C10.3 Internal control and risk management**

C10.3.1 An authorised user must ensure that it implements and maintains adequate internal control and risk management principles, as required by the Act.

C10.3.2 A compliance officer appointed in terms of Rule C2.4.2 must continuously monitor adherence to the principles of internal control and risk management referred to in Rule C10.3.1.

C10.3.3 The directors of the authorised user must submit a report to BESA within three months after the end of the authorised user's financial year, certifying that -

C10.3.3.1 the authorised user has introduced and maintains internal audit procedures, internal control and risk management principles, and that these provide reasonable assurance as to the integrity and reliability of the authorised user's financial statements;

C10.3.3.2 these internal control and risk management principles are based on established policies and procedures and, that these are being implemented by trained and skilled personnel whose duties have been properly segregated; and

C10.3.3.3 the authorised user and all its employees maintain high ethical standards thereby ensuring that the business practices of the authorised user are above reproach.

C10.3.4 An authorised user must forthwith report to BESA any indication that a material malfunction has occurred in the aforementioned principles and procedures.

**C10.4 Submission of audited financial information**

- C10.4.1 An authorised user must submit to BESA within three months after the end of the authorised user's financial year -
- C10.4.1.1 two copies of the authorised user's audited annual financial statements;
  - C10.4.1.2 two copies of an audited certificate certifying -
    - C10.4.1.2.1 compliance with the financial requirements of the Act and the Rules; and
    - C10.4.1.2.2 that the board of directors of the authorised user has instituted procedures that the board deems appropriate for reviewing the level of fidelity insurance cover held by the authorised user in accordance with Rule C2:3.1.8.
- C10.4.2 The auditor of the authorised user shall report annually to BESA whether or not the auditor concurs with the report required in terms of Rule C10.3.3: Provided that if the auditor does not concur with such report, the auditor shall provide reasons for such non-concurrence.
- C10.4.3 Despite Rules C10.4.1 and C10.4.2, BESA may request an authorised user to submit financial reports at any time.
- C10.4.4 If an authorised user ceases to operate in that capacity, the authorised user must cause his accounting records to be audited as required by the Act.
- C10.4.5 Any audit required in terms of Rules C10.4.1 and C10.4.2 must be performed by an auditor registered under the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), and the appointment of such auditor must be communicated in writing to BESA: Provided that an authorised user must confirm in writing to BESA at the end of each calendar year that the authorised user has retained the services of its auditor.
- C10.4.6 An authorised user shall immediately notify in writing any change of its auditor to the Registrar and BESA.

**C10.5 General**

- C10.5.1 A market association must prescribe the minimum conditions to be contained in an agreement concluded, between an authorised user and a -
- C10.5.1.1 client;
  - C10.5.1.2 service provider;
  - C10.5.1.3 settlement agent; and
  - C10.5.1.4 employee of an authorised user.
- C10.5.2 Any written agreement concluded in terms of Rule C10.5.1 must contain at least conditions to the effect that -
- C10.5.2.1 the words used in the agreement must bear the same meanings assigned thereto in the Act and the Rules;

- C10.5.2.2 the parties to the agreement acknowledge that they have read the Act and the Rules, are conversant with them and will be bound by them;
- C10.5.2.3 in the event of any conflict between the Rules and the agreement, the Rules prevail;
- C10.5.2.4 in the event of any conflict between the Core Rules and the relevant Market Association Rules, the Core Rules prevail;
- C10.5.2.5 either party may terminate the agreement by giving to the other party 30 days notice in writing, or such other period of notice as the parties may agree in writing, specifying the date of termination: Provided that such termination may not affect any rights or obligations of any one of the parties to the agreement which exist at the date of such notice or at the date of termination of the agreement;
- C10.5.2.6 any dispute between the parties emanating or arising from the implementation or interpretation of the agreement must, unless resolved between the parties thereto, be referred to and decided by either mediation or arbitration, whichever procedure is decided upon by the parties concerned; and
- C10.5.2.7 the agreement is governed by and construed in accordance with the laws of the Republic of South Africa.

## SECTION 11 DISPUTES

### C11.1 General

- C11.1.1 A resolution mechanism for all disputes between authorised users or between authorised users and clients in respect of –
- C11.1.1.1 a trade or settlement;
  - C11.1.1.2 the implementation or interpretation of any agreement concluded in terms of Rule C10.5; or
  - C11.1.1.3 advice regarding trading given by an authorised user and which is not the subject of a preliminary investigation in terms of Rule C12.1.1 must be determined by each Market Association Council.
- C11.1.2 The resolution mechanism must at least provide for the following:
- C11.1.2.1 Disputes must be reduced to writing by the parties thereto.
  - C11.1.2.2 The resolution of disputes through mediation, conciliation, recommendation or determination.
  - C11.1.2.3 The adoption of an independent and equitable process to resolve disputes.
  - C11.1.2.4 The adoption of a dispute resolution process that is informal, fair and cost effective.
  - C11.1.2.5 Matters of interest shall be reported to the Registrar.
  - C11.1.2.6 The effective enforcement of determinations.
  - C11.1.2.7 Notification by an authorised user to a client of the procedures being followed by the authorised user to investigate the dispute and of any action taken.
- C11.1.3 No party to a dispute may be prevented from obtaining urgent relief pending the outcome of the dispute resolution procedure from any competent court having jurisdiction.

### C11.2 Dispute resolution

- C11.2.1 Disputes that are not resolved must be made known in writing to the chief executive officer by the parties concerned.
- C11.2.2 Disputes must be resolved by means of the mechanism provided for in Rule C11.1.2.2: Provided that if the parties cannot resolve their dispute by mediation, conciliation, recommendation or determination, the dispute must be resolved by arbitration.
- C11.2.3 If it appears that an authorised user has contravened or failed to comply with the Act or the Rules or the Directives, the alleged contravention or non-compliance must be referred to the chief executive officer in accordance with Rule C12.1.1.

## SECTION 12 DISCIPLINARY MATTERS

### C12.1 Preliminary investigation

- C12.1.1 An alleged contravention of or non-compliance with the Act, the Rules, the Directives or a decision or determination of BESA, which allegation must be reduced to writing, shall be the subject of a preliminary investigation by the chief executive officer or by a person authorised by the chief executive officer, who must report in writing his findings to the chief executive officer.
- C12.1.2 If an alleged contravention or non-compliance by an authorised user, officer or trader is the subject of a preliminary investigation referred to in Rule C12.1.1, the chief executive officer or a person so authorised may instruct any other authorised user, officer or trader to undertake an internal investigation into the matter and to report in writing the findings of such internal investigation to the chief executive officer or authorised person.
- C12.1.3 The chief executive officer must, where satisfied that there is a prima facie case of a contravention or non-compliance by an authorised user, officer or trader -
- C12.1.3.1 report the findings of the chief executive officer or the findings of the delegated person to the Disciplinary Tribunal;
  - C12.1.3.2 impose a fine on the authorised user, officer or trader in accordance with the schedule of penalties determined by BESA;
  - C12.1.3.3 suspend the authorised user or the registration of an officer or trader: Provided that the authorised user, officer or trader is given notice of the intention of the chief executive officer and is allowed an opportunity to make representations to the chief executive officer; or
  - C12.1.3.4 warn the authorised user, officer or trader in writing if the chief executive officer believes that the contravention or non-compliance is not serious enough to warrant any action in terms of Rules C12.1.3.1 to C12.1.3.3:
- Provided that Rules C12.1.3.1 to C12.1.3.3 are not mutually exclusive of each other.
- C12.1.4 The chief executive officer must advise the board in writing of any preliminary investigation undertaken and of the action taken in terms of Rules C12.1.3.1 to C12.1.3.4.

### C12.2 Appointment of Disciplinary Tribunal

- C12.2.1 BESA must establish, on an ad-hoc basis, a Disciplinary Tribunal consisting of 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 such Court of not less than ten years standing, who is the chair of the Disciplinary Tribunal, an accountant in public practice registered as an accountant and auditor, under the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991), of not less than 10 years standing, and a person appointed by virtue of that person's knowledge of the financial markets in the Republic.
- C12.2.2 The Disciplinary Tribunal must appoint a secretary who performs the duties prescribed in this Rule and such other functions as may be delegated or entrusted to the secretary by the chair of the Disciplinary Tribunal.

**C12.3 Proceedings of Disciplinary Tribunal**

The Disciplinary Tribunal must convene a disciplinary hearing upon receipt of a report contemplated in Rule C12.1.3.1 or upon receipt of an appeal by an authorised user, officer or trader against a fine imposed under Rule C12.1.3.2 or a suspension imposed under Rule C12.1.3.3. The chair of the Disciplinary Tribunal must determine the proceedings of the disciplinary hearing.

**C12.4 Inspections by Disciplinary Tribunal**

C12.4.1 The Disciplinary Tribunal may authorise any person (hereunder referred to as "the inspector") not associated with any authorised user to inspect the affairs of an authorised user -

C12.4.1.1 to ascertain whether the authorised user or any officer, trader or employee of the authorised user complies with the provisions of the Act, the Rules, the Directives and any decision or determination of BESA;

C12.4.1.2 to ascertain whether the authorised user or trader is trading in such a manner that as a consequence of such trading such authorised user may not be able to fulfil its obligations to another authorised user, a client, BESA or the licensed clearing house;  
or

C12.4.1.3 to ascertain whether the authorised user is carrying on the business of buying and selling listed securities in a manner which could be detrimental to the interest, good name or welfare of BESA and its authorised users.

C12.4.2 The inspector must be furnished by the Disciplinary Tribunal with a letter of authority which the inspector must produce at the request of any interested person, and the inspector may with regard to a matter that is the subject of an investigation, subject to Rule C12.4.1, without prior notice -

C12.4.2.1 enter the premises of any authorised user;

C12.4.2.2 have access to documents, books, records, articles, recordings of an authorised user or make copies of or take extracts from, such documents, books, records, articles or recordings in possession of an authorised user, officer or employee of an authorised user;

C12.4.2.3 question a director, officer, trader, employee or representative of an authorised user; and

C12.4.2.4 request information from the licensed clearing house.

C12.4.3 On completion of an inspection, the inspector must prepare a report thereon which must be submitted to the Disciplinary Tribunal and the Registrar: Provided that with the consent of the Disciplinary Tribunal a copy of the report may be transmitted to the authorised user concerned.

C12.4.4 The Disciplinary Tribunal may either convene a hearing in terms of Rule C12.5 or dismiss the matter or appeal, after considering the report of the inspector.

**C12.5 Hearings of Disciplinary Tribunal**

C12.5.1 A hearing of the Disciplinary Tribunal must commence within 21 days after its convening and must be completed within one month after the date of its commencement, unless postponed with the consent of the authorised user concerned.



- C12.5.2 No member of the board, a market association council or the Forum may serve on the Disciplinary Tribunal or be present at a hearing unless such member is a party to the hearing.
- C12.5.3 The secretary of the Disciplinary Tribunal must cause notice of such hearing to be sent to the authorised user, officer or trader concerned, specifying a date, time and place for the hearing, giving details of the alleged contravention, or omission, and nominating, where deemed necessary by the Disciplinary Tribunal, any particular director, officer, trader or employee of the authorised user from whom the Disciplinary Tribunal wishes to receive any information or explanation.
- C12.5.4 The compliance officer of the authorised user concerned may in person or by means of a person authorised by the compliance officer, appear at the hearing.
- C12.5.5 At the hearing the authorised user, officer or trader concerned -
- C12.5.5.1 is entitled to legal representation;
  - C12.5.5.2 is entitled to be heard in argument;
  - C12.5.5.3 may give evidence in that authorised user's own defence and be subject to cross-examination;
  - C12.5.5.4 may cross-examine;
  - C12.5.5.5 may call witnesses, who are subject to cross-examination; and
  - C12.5.5.6 may, after the verdict is given and before sentence is passed, give evidence in mitigation:
- Provided that the Disciplinary Tribunal may reach a decision even if the authorised user concerned does not appear, or is not represented at the hearing.
- C12.5.6 If the Disciplinary Tribunal finds the authorised user, officer or trader guilty of the alleged contravention or non-compliance, it may -
- C12.5.6.1 reprimand or warn the authorised user, officer or trader in private or by publication of the details of the reprimand or warning;
  - C12.5.6.2 censure the authorised user, officer or trader;
  - C12.5.6.3 impose a fine on the authorised user, officer or trader not exceeding R 1 million;
  - C12.5.6.4 suspend the authorised user status of the authorised user, officer or trader;
  - C12.5.6.5 terminate the authorised user status of the authorised user, officer or trader;
  - C12.5.6.6 direct the authorised user to terminate the employment of an officer or employee;
  - C12.5.6.7 order the authorised user or trader not to trade;
  - C12.5.6.8 require an authorised user to take steps to remedy or prevent the recurrence of the misconduct which has given rise to the proceedings;
  - C12.5.6.9 require the authorised user, officer or trader to give a written undertaking in such terms as the Disciplinary Tribunal deems fit as to the future conduct of that authorised user, officer or trader;

C12.5.6.10 notify the Director of Public Prosecutions of any likely contravention of a statutory prohibition;

C12.5.6.11 notify the Directorate of Market Abuse; or

C12.5.6.12 cancel the registration of any officer or trader who is found to have been a party to the contravention:

Provided that the provisions of Rule C12.5.6 are not be mutually exclusive and the Disciplinary Tribunal may take any one or more of such actions in respect of the authorised user, officer or trader.

C12.5.7 The Disciplinary Tribunal may make any order of suspension or order not to trade, subject to such conditions as it deems fit, and may give the authorised user directions on the conduct of the authorised user's affairs: Provided that no suspension of an authorised user, officer or trader or order not to trade shall be for a period in excess of six months.

C12.5.8 Any decision contemplated in Rule C12.5.6.4 may be expressed to take effect, or cease to have any effect, upon the happening of an event or the fulfilment of a condition: Provided that the period of 6 months referred to in Rule C12.5.7 does not apply to a conditional suspension of authorised user status under this Rule.

C12.5.9 If any employee of an authorised user, or any duly authorised person acting on behalf of an authorised user, including any officer or trader who acts on behalf of the authorised user, performs any act or omits to do any act, which act or omission if done or omitted by that authorised user would constitute a contravention or non-compliance as referred to in Rule C12.1.1, then such authorised user is liable for such contravention or non-compliance as if he himself had committed the contravention or non-compliance.

#### **C12.6 Fines**

C12.6.1 A fine imposed on an authorised user, officer or trader who has been found guilty of any contravention or non-compliance referred to in Rule C12.1.1 shall not exceed R1 million for each contravention or non-compliance.

C12.6.2 The Disciplinary Tribunal must stipulate the time and manner of payment of the fine when imposed.

#### **C12.7 Suspension**

Where the Disciplinary Tribunal has suspended an authorised user, officer or trader, such authorised user, officer or trader -

C12.7.1 is not permitted -

C12.7.1.1 to trade during the period of suspension unless with the approval of, and on the conditions imposed by, the Disciplinary Tribunal;

C12.7.1.2 to propose or second an applicant for authorised user status;

C12.7.1.3 to act as surety for any applicant for authorised user status; or

C12.7.1.4 to vote as an authorised user;

- C12.7.2 must, subject to Rule C12.7.1.1, be permitted to retain and use during the period of suspension such services and facilities as the authorised user may have been receiving from BESA and a licensed clearing house; and
- C12.7.3 is liable for payment of all fees and levies due to BESA and the licensed clearing house during the period of suspension; and
- C12.7.4 must comply with the Act, the Rules and the Directives during the period of suspension.

**C12.8 Expulsion**

- C12.8.1 An authorised user, officer or trader expelled in terms of Rule C12.5.6.5, and who appeals in terms of the Act against such expulsion, is deemed to be suspended, and this Rule, in so far as it relates to a suspension of an authorised user, officer or trader, shall apply mutatis mutandis to the authorised user until the decision of the board of appeal is announced.
- C12.8.2 Upon expulsion, the authorised user, officer or trader forfeits -
- C12.8.2.1 all rights under or by virtue of the Act and the Rules; and
- C12.8.2.2 any fees or levies paid to BESA or the Guarantee Fund.
- C12.8.3 An authorised user, officer or trader may be expelled subject to such conditions as the Disciplinary Tribunal deems fit and the Disciplinary Tribunal may direct the authorised user, officer or trader with regard to any actions it deems necessary

**C12.9 Notice of convictions**

- C12.9.1 The chief executive officer must publish a written notice to authorised users setting out details of any conviction of an authorised user, officer or trader and the penalty imposed by the Disciplinary Tribunal: Provided that the contravention is an offence as determined by the Disciplinary Tribunal justifying such notice.
- C12.9.2 The chief executive officer may publish, or cause to be published, in any newspaper or other periodical, or permit or authorise the proprietor or publisher of such newspaper or other periodical to publish the notice referred to in Rule C12.9.1.
- C12.9.3 The chief executive officer must submit a comprehensive written report to the Registrar setting out details of any conviction of an authorised user, officer or trader and the penalty imposed by the Disciplinary Tribunal, within 30 days after completion of such disciplinary proceedings.

**C12.10 Full and final**

Any decision of the Disciplinary Tribunal in terms of this Rule is final unless and until the Appeal Board modifies such decision.

**C12.11 Records of proceedings**

- C12.11.1 An authorised user, officer, trader or employee who has made representations to the Disciplinary Tribunal is entitled to a copy of the record of the proceedings at which the representations were considered

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C12.11.2 BESA will advise the Registrar of any hearings, any fines imposed and any suspensions or expulsions made in terms of this Rule C12.

## SECTION 13 SERVICE PROVIDERS

### C13.1 Inter-dealer brokers

For the purposes of this Rule, unless the context otherwise indicates –

<b>"IDB authorised user"</b>	means an authorised user who is registered only to act as a matched principal or name give-up inter-dealer broker to facilitate transactions in securities between – <ul style="list-style-type: none"> <li>a) authorised users; or</li> <li>b) between authorised users and their clients, as approved by the relevant market association council,</li> </ul>
<b>"IDB authorised user services"</b>	means the services an IDB authorised user offers to facilitate transactions in securities;
<b>"matched principal"</b>	means an IDB authorised user that does not disclose to the market the identities of the parties to a trade facilitated by that IDB authorised user; and
<b>"name give-up"</b>	means an IDB authorised user that discloses the identity of each party to the other when the trade price is agreed.

#### C13.1.1 *Eligibility to be registered as an IDB authorised user*

C13.1.1.1 To register with BESA as an IDB authorised user, an applicant must comply with the following requirements –

- C13.1.1.1.1 the main feature of its business is that it acts as an intermediary to facilitate transactions in securities between authorised users or between authorised users and their clients, as approved by the relevant market association council;
- C13.1.1.1.2 its directors are all at least 21 years of age and of full legal capacity;
- C13.1.1.1.3 its directors are all of good character and high business integrity;
- C13.1.1.1.4 it complies with the financial resources requirements stipulated by Directive at all times;
- C13.1.1.1.5 it has the necessary administrative systems and resources stipulated by Directive; and
- C13.1.1.1.6 its officers and traders comply with the requirements for registration under the Rules.

C13.1.1.2 Despite any other provisions in the Rules, an applicant for IDB authorised user status –

C13.1.1.2.1 that is not ordinarily resident in the Republic of South Africa; or

C13.1.1.2.2 that is a juristic person not incorporated in the Republic of South Africa,

must comply with the provisions of Rule C2.1.3 *mutatis mutandis*.

C13.1.1.3 Notwithstanding Rule C13.1.1.2 BESA may permit residents of countries within the common monetary area to become IDB authorised users subject to any conditions or restrictions as may be stipulated by BESA from time to time.

*C13.1.2 Application procedure for approval as an IDB authorised user*

C13.1.2.1 An applicant must submit an application to BESA, in the manner stipulated by Directive from time to time.

C13.1.2.2 An applicant must, together with its application in terms of Rule C13.1.2.1, submit an application for approval as an IDB authorised user of such market association as BESA may direct.

C13.1.2.3 When making an application, each applicant must agree in writing to be bound by the Act, the Rules and the Directives.

C13.1.2.4 BESA must publish the name and address of an applicant in a notice to the relevant market association members, who may, in terms of Rule C13.1.2.5, object to such applicant's application.

C13.1.2.5 A market association member who wishes to object to an application must do so in writing to BESA within 14 days from when the notice under Rule C13.1.2.4 was issued stating the reasons for the objections.

C13.1.2.6 BESA may require –

C13.1.2.6.1 an applicant to furnish further information and may, with the applicant's consent, institute an investigation to verify the information submitted by the applicant;

C13.1.2.6.2 an applicant or its representatives to be interviewed by the board, the chief executive officer or another person identified by BESA for that purpose.

C13.1.2.7 The applicant must bear the reasonable costs incurred to verify the information under Rule C13.1.2.6.

C13.1.2.8 BESA must make its decision on an application on the later of 21 days from the date on which all requirements for registration have been satisfied by the applicant or 7 days after the date on which any investigations contemplated in Rule C13.1.2.6 have been completed.

- C13.1.2.9 BESA must notify the applicant in writing of its decision to grant or refuse the applicant, and must publish its decision in a notice to members of the relevant market association.
- C13.1.2.10 If an application is refused by BESA -
- C13.1.2.10.1 it must furnish an applicant and the relevant market association with written reasons for the refusal, upon being requested in writing to do so; and
- C13.1.2.10.2 an applicant may appeal the decision in terms of the Act.
- C13.1.2.11 BESA must maintain a register of IDB authorised users open for inspection by the public, at its registered office.
- C13.1.3 *Granting of IDB authorised user registration*
- C13.1.3.1 The approval by BESA confers formal IDB authorised user registration on the successful applicant.
- C13.1.3.2 IDB authorised user registration cannot be granted to a nominee or agent of the applicant and must be reflected in the register in the name of the successful applicant; and
- C13.1.3.3 Notwithstanding anything to the contrary contained in the Rules, an IDB authorised user shall not be permitted to render, or offer to render, its services to any member of the market association contemplated in Rule C13.1.2.2 prior to such IDB authorised user having obtained membership of the prescribed market association.
- C13.1.4 *Transfer of IDB authorised user approval*
- C13.1.4.1 An IDB authorised user may not transfer or otherwise assign the rights, title or interest in or to that IDB authorised user registration to any other person without the approval of BESA.
- C13.1.4.2 If BESA does not provide written approval to the IDB authorised user in terms of Rule C13.1.4.1, the IDB authorised user may appeal the decision in terms of the Act.
- C13.1.5 *Obligations of an IDB authorised user*
- C13.1.5.1 An IDB authorised user must -
- C13.1.5.1.1 satisfy the IDB authorised user registration requirements stipulated by Directive;
- C13.1.5.1.2 comply with all initial and other capital required to be held by an IDB authorised user as stipulated by the Rules and Directives;
- C13.1.5.1.3 enter into written agreements with members of a market association who receive that IDB authorised user's services, which must stipulate all the material terms of the services which the IDB authorised user offers to any particular market association member;

- C13.1.5.1.4 comply with the reporting requirements stipulated by the Rules and Directives for trades facilitated by that IDB authorised user;
- C13.1.5.1.5 comply with the settlement requirements stipulated by the Rules and Directives for trades facilitated by that IDB authorised user;
- C13.1.5.1.6 ensure that for all trades being facilitated by that IDB authorised user, the trade information is displayed in the manner stipulated by Directive;
- C13.1.5.1.7 report any suspicion of market abuse to BESA. Failure to do so will render the IDB authorised user liable to a penalty stipulated by Directive;
- C13.1.5.1.8 provide a description, as stipulated by Directive, to BESA of the services it offers to authorised users, which information may be published by BESA;
- C13.1.5.1.9 hold fidelity cover for fraud and misappropriation by a director, officer, trader or other person involved in the management or administration of trading, that the IDB authorised user, deems appropriate for the level of business undertaken by it;
- C13.1.5.1.10 submit to BESA within three months after the end of the IDB authorised user's financial year, and at any other time when requested to do so by BESA –
- C13.1.5.1.10.1 two copies of the IDB authorised user's audited annual financial statements;
- C13.1.5.1.10.2 two copies of an audited certificate certifying –
- (a) that the IDB authorised user has complied with the financial requirements of the Act and the Rules; and
- (b) that the IDB authorised user's board of directors has instituted procedures that the board deems appropriate to review the IDB authorised user's level of fidelity insurance cover held in accordance with Rule C13.1.5.1.9;
- C13.1.5.1.11 notify BESA immediately of any change in auditor;
- C13.1.5.1.12 allow BESA, on reasonable notice, to conduct an on-site review or investigation into the IDB authorised user's activities, which are subject to regulation in terms of the Act, the Rules and the Directives, at the request of BESA; and
- C13.1.5.1.13 comply with the Act, the Rules, the Directives and any decisions of BESA, to the extent applicable.



- C13.1.6 *Restrictions on an IDB authorised user*
- C13.1.6.1 An IDB authorised user may not intentionally take any proprietary or trading positions in any securities trading, provided that any positions taken unintentionally must be closed out immediately.
- C13.1.6.2 An IDB authorised user may not maintain an infrastructure, whether internal or external, separate from BESA for matching and confirming trades.
- C13.1.6.3 If an IDB authorised user wishes to operate as an authorised user in addition to being an IDB authorised user, it must establish a separate legal entity for this purpose, which must -
- C13.1.6.3.1 be a member of a market association;
- C13.1.6.3.2 be registered with BESA as an authorised user;
- C13.1.6.3.3 be separately capitalised; and
- C13.1.6.3.4 have separate traders registered with BESA.
- C13.1.6.4 A matched principal IDB authorised user must always keep the identity of authorised users using its services anonymous.
- C13.1.6.5 A name give-up IDB authorised user must keep the identity of the authorised users using its services anonymous until the counterparty to the trade has accepted all remaining terms of the trade
- C13.1.6.6 An IDB authorised user may not operate or offer its services unless a compliance officer and representative officer appointed by the IDB authorised user remains registered with BESA: Provided that an IDB authorised user may be granted dispensation from the provisions of this Rule for a period of not more than two consecutive months and upon any conditions determined by BESA in consultation with the Registrar.
- C13.1.7 *Access to services offered by an IDB authorised user*
- C13.1.7.1 An IDB authorised user may only offer IDB authorised user services –
- C13.1.7.1.1 to the relevant market association's members; and to
- C13.1.7.1.2 clients disclosed to and approved by the relevant market association council.
- C13.1.7.2 An IDB authorised user –
- C13.1.7.2.1 must maintain a list of the parties to whom it may offer its services;
- C13.1.7.2.2 may not offer its services to parties not included on the list; and
- C13.1.7.2.3 must provide this list to BESA, which list must at all times be current.
- C13.1.8 *Registration and functions of officers of an IDB authorised user*

- C13.1.8.1 An IDB authorised user must register a compliance officer and a representative officer with BESA in the manner stipulated by Directive.
- C13.1.8.2 The compliance officer and representative officer must each -
- C13.1.8.2.1 be an employee of the IDB authorised user;
  - C13.1.8.2.2 be at least 21 years of age and of full legal capacity;
  - C13.1.8.2.3 be of good character and high business integrity; and
  - C13.1.8.2.4 comply with the minimum requirements with regard to training and experience and the passing of any examinations as stipulated by Directive.
- C13.1.8.3 The compliance officer -
- C13.1.8.3.1 may simultaneously hold office as the representative officer of the IDB authorised user;
  - C13.1.8.3.2 must monitor compliance by the IDB authorised user concerned with the Act, the Rules, the Directives and any decision or determination of BESA;
  - C13.1.8.3.3 must monitor compliance by the IDB authorised user with the financial resources requirements stipulated by Directive and ensure that the required return is submitted to BESA as stipulated by Directive;
  - C13.1.8.3.4 must ensure compliance by the IDB authorised user in question with all agreements required to be entered into by the IDB authorised user in terms of Rule C13.1.5.1.3;
  - C13.1.8.3.5 will be BESA's main contact at the IDB authorised user and must receive all notices from BESA and must ensure that the IDB authorised user complies with the requirements of these notices;
  - C13.1.8.3.6 must report to BESA any apparent breaches by the IDB authorised user, its officers and employees of the Act, the Rules, the Directives and any decision or determination of BESA;
  - C13.1.8.3.7 must take steps to rectify a breach or to eliminate an error regarding any trades facilitated by the IDB authorised user, if requested to do so by BESA; and
  - C13.1.8.3.8 must submit to BESA a compliance report as stipulated by Directive.
- C13.1.8.4 The representative officer -
- C13.1.8.4.1 may simultaneously hold office as the compliance officer of the IDB authorised user; and

- C13.1.8.4.2 must represent the IDB authorised user in all other matters for which the compliance officer is not responsible.
- C13.1.8.5 An IDB authorised user must register with BESA an alternate compliance officer and alternate representative officer in the manner stipulated by Directive.
- C13.1.8.6 BESA can accept or refuse an application to register an officer and, if requested by the applicant, must furnish the reasons for its decision.
- C13.1.8.7 If an IDB authorised user is not satisfied with BESA's decision regarding an application for registration of its officers, it may appeal the decision as contemplated in the Act.
- C13.1.8.8 BESA must maintain a register of registered officers open for inspection by the public at its registered office.
- C13.1.8.9 The IDB authorised user must notify BESA in writing as soon as reasonably practicable of any change in the particulars of an officer in the manner stipulated by Directive.
- C13.1.8.10 The appointment of any officer does not relieve the IDB authorised user from the duties and responsibilities it has under the Act, the Rules, the Directives and any decision or determination of BESA.
- C13.1.8.11 An IDB authorised user must notify BESA in writing if any of its officers have been found guilty of any improper conduct by any exchange, by any current or previous employer, by a professional association, including the relevant market association, or by a court or if it has been censured by a supervisory or regulatory authority.
- C13.1.9 *Registration of traders*
- C13.1.9.1 An IDB authorised user –
- C13.1.9.1.1 must register all traders with BESA in the manner stipulated by Directive; and
- C13.1.9.1.2 cannot offer IDB authorised user services without at least one trader being registered with BESA.
- C13.1.9.2 BESA may accept or refuse an application to register a trader and must furnish reasons for its decision if requested to do so by the applicant.
- C13.1.9.3 If an IDB authorised user is not satisfied with BESA's decision regarding an application for registration of its traders, it may appeal as contemplated in the Act.
- C13.1.9.4 BESA must maintain a register of registered traders open for inspection by the public at its registered office.
- C13.1.9.5 An IDB authorised user must notify BESA in writing of any change in the particulars of a registered trader in the manner stipulated by Directive.
- C13.1.9.6 An IDB authorised user must notify BESA in writing as soon as reasonably practicable if any of its traders have been found guilty of any improper conduct by

an exchange, by a current or previous employer, by a professional association, including the relevant market association, or by a court or if any of its traders have been censured by a supervisory or regulatory authority.

*C13.1.10 Fees and levies*

- C13.1.10.1 BESA must notify IDB authorised users in writing of any proposed fees and levies they must pay to BESA, at least 14 days before the fees or levies are imposed.
- C13.1.10.2 BESA must notify an IDB authorised user that has failed to pay any fees or levies within 30 days of such fees or levies becoming payable.
- C13.1.10.3 If the IDB authorised user does not pay the arrears within seven days from receipt of the notice, or any extended period granted in writing by BESA, BESA may, despite the provisions of PART C – Section 12, suspend the IDB authorised user until the IDB authorised user has paid all monies owed to BESA.
- C13.1.10.4 The arrears may include interest calculated from the due date to the date of actual payment at a rate determined by BESA.

*C13.1.11 Adherence to Act and Rules*

- C13.1.11.1 BESA may require an IDB authorised user to instruct its auditor to -
  - C13.1.11.1.1 examine an IDB authorised user's business procedures and transactions relating to BESA; and
  - C13.1.11.1.2 verify that the IDB authorised user has adhered to the Act, the Rules, Directives or a decision or determination of BESA.
- C13.1.11.2 The auditor must submit the report to BESA which will bear the costs of the audit unless it is ascertained as a result of the audit that the IDB authorised user contravened or did not comply with the Act, the Rules, Directives or a decision or determination of BESA, in which case the IDB authorised user will bear the costs of the audit.
- C13.1.11.3 BESA may submit the auditor's report to the Disciplinary Tribunal.

*C13.1.12 Termination of IDB authorised user approval*

- C13.1.12.1 An IDB authorised user's registration terminates -
  - C13.1.12.1.1 when terminated voluntarily by the IDB authorised user in terms of Rule C13.1.12.2;
  - C13.1.12.1.2 when the IDB authorised user is placed under curatorship;
  - C13.1.12.1.3 when there is an order placing the IDB authorised user into provisional or final liquidation;
  - C13.1.12.1.4 when the IDB authorised user is expelled from BESA or the relevant market association;

- C13.1.12.1.5 automatically upon the refusal of the market association contemplated in Rule C13.1.2.2 to confer upon an IDB authorised user membership of the said market association, alternatively, upon the lapsing of a period of 30 (thirty) days from the date on which application was made pursuant to Rule C13.1.2.2, whichever event occurs first; or
- C13.1.12.1.6 when judgement for the payment of debts has been granted against the IDB authorised user by a court and the IDB authorised user has failed to take reasonable steps within 30 days of judgement to satisfy the judgement or have it set aside.
- C13.1.12.2 An IDB authorised user may terminate its registration voluntarily in accordance with this Rule C13.1.12.2.
- C13.1.12.2.1 An IDB authorised user must give one calendar month's written notice to BESA of its intention to terminate its IDB authorised user registration.
- C13.1.12.2.2 BESA must immediately notify members of the relevant market association of the IDB authorised user's intention to terminate its registration voluntarily.
- C13.1.12.2.3 After having notified the members of the relevant market association in Rule C13.1.12.2.2 and before the intended date of termination, BESA must consider the notice of termination and may –
- C13.1.12.2.3.1 accept the resignation unconditionally or on the conditions it deems fit; or
- C13.1.12.2.3.2 refuse to accept the resignation until it is satisfied that the IDB authorised user has complied with its outstanding obligations under the Rules.
- C13.1.12.2.4 An IDB authorised user cannot withdraw the notification in terms of Rule C13.1.12.2.1 to terminate IDB authorised user registration without BESA's written consent.
- C13.1.12.3 BESA must publish –
- C13.1.12.3.1 the name of any IDB authorised user whose registration has terminated; and
- C13.1.12.3.2 the date from which the termination has taken effect,
- to members of the relevant market association.

## **PART D**

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**PART D MARKET ASSOCIATION RULES****SECTION 1 GENERAL PROVISIONS****D1.1 General**

The Rules in Part D must be read together with the relevant provisions of the Core Rules.

**D1.2 Name and constitution**

D1.2.1 The name of the market association is the Bond Traders' Association, in these Rules called the BTA.

D1.2.2 The BTA –

D1.2.2.1 will be the first market association established on the date of approval of these Rules by the Registrar; and

D1.2.2.2 must be constituted separately from BTA members in terms of a market association constitution.



**SECTION 2 ASSOCIATION MEMBER STATUS****D2.1 Eligibility for association member status**

D2.1.1 Any person, whether a natural or juristic person, may be admitted to membership of the BTA.

D2.1.2 To be eligible for BTA membership, an applicant must satisfy the BTA council that it complies, to the extent possible, with C2.1.2.

**D2.2 Application for association member status**

D2.2.1 An application for BTA membership must be made to the BTA council on the form and accompanied by the fee as determined by the BTA council.

D2.2.2 Upon making application for BTA membership each applicant must agree in writing to be bound by the Act, the Rules and the Directives.

D2.2.3 Approval by the BTA council of such application entitles the applicant to apply for authorised user status in terms of Rule C2.2.

**D2.3 Termination of association member status**

The provisions of C2.8 will apply in respect of the termination of association member status, *mutatis mutandis*.

**SECTION 3 CODE OF CONDUCT**

RESERVED

**SECTION 4 LISTINGS**

RESERVED

## SECTION 5 TRADING

### D5.1 Eligibility to trade

Prior to concluding any trades in listed securities, a BTA member must ensure that –

- D5.1.1 the BTA member is authorised by BESA as either an authorised user or trader;
- D5.1.2 every trader employed by the BTA member to conclude trades in listed securities must have completed the registered person's examination of the South African Institute of Financial Markets, or any equivalent examination recognised by the BTA and approved by BESA; and
- D5.1.3 traders employed by the BTA member to conclude trades in listed securities are registered with BESA.

### D5.2 Facilities for concluding and reporting trades

- D5.2.1 A trade reported to BESA in terms of Rule C5.2.3 shall only be deemed to be a binding matched trade when the trade particulars have been received by the registered clearing house and a matched trade reference number has been generated by the licensed clearing house.
- D5.2.2 A matched trade reference number -
  - D5.2.2.1 is conclusive evidence of a binding matched trade;
  - D5.2.2.2 serves as acceptable confirmation of the details of the trade reported by the authorised user; and
  - D5.2.2.3 binds the parties in respect of their obligations to the trade.

### D5.3 Trading procedures

- D5.3.1 Trading in listed securities is permitted on any business day for a period of 24 hours or such other period as determined by BESA in consultation with the BTA council.
- D5.3.2 The standard trade size in respect of transactions in listed securities must be determined by the BTA council.
- D5.3.3 A BTA member shall ensure that traders employed by the BTA member have sufficient experience and are appropriately supervised by the BTA member.
- D5.3.4 A trader must execute a trade on behalf of a client prior to executing a trade in the same listed security for own account: Provided that if the trader is unable to execute the trade on behalf of the client prior to a trade on own account, the trader must ensure that the trade on behalf of the client is concluded on terms and conditions not worse than that of the trade concluded on own account.

### D5.4 Market prices

RESERVED

### D5.5 Authorised user trades

BTA member must conclude trades between themselves on a principal to principal basis and a BTA member may not conclude a trade as a client.

**D5.6 Client trades**

- D5.6.1 A trader may not enter into trades with or on behalf of a client unless the client is registered for reporting purposes with BESA, in the manner determined by BESA.
- D5.6.2 Subject to Rule D10.1, a trader who buys from or sells to a client, listed securities on his own account, must notify the client concerned in advance that those listed securities are to be bought or sold.
- D5.6.3 A trader who buys or sells listed securities on behalf of a client shall conclude an equal and opposite trade with a counterparty, which trade must be at the same price and on the same terms as the instructions given by the client: Provided that -
- D5.6.3.1 the trader remains liable to the client for the due fulfilment by the counterparty, including a counterparty to a put-through, of all the obligations of the counterparty to the client in terms of the trade; and
- D5.6.3.2 any claim by a client in respect of a trade shall be against the trader who entered into the trade on the client's behalf, and not against any other authorised user or client of such authorised user who is the counterparty to the trade.
- D5.6.4 A trader shall, within 24 hours of concluding a trade with or on behalf of a client, issue to that client a transaction note, whether in physical or electronic form, detailing the terms of the trade and indicating the commission and any other fees charged.

**SECTION 6 CLEARING****D6.1 Capital adequacy requirements**

- D6.1.1 Upon admission as a BTA member and at all times thereafter, a BTA member must hold own funds, as determined by BESA, sufficient to meet the BTA member's initial capital requirement and risk requirement.
- D6.1.2 The initial capital requirement referred to in Rule D6.1.1 shall be the greater of -
- D6.1.2.1 an amount determined by BESA as being adequate to meet the operating costs of the BTA member for a period of 13 weeks; or
  - D6.1.2.2 either -
    - D6.1.2.2.1 R200 000 in the case of a BTA member that does not have access to the assets or securities of any client without referral to the client or the client's agent; or
    - D6.1.2.2.2 R400 000 in all other cases.
- D6.1.3 The risk requirement referred to in Rule D6.1.1 shall be the sum of the BTA member's position risk requirement, counterparty risk requirement, large exposure risk requirement and foreign exchange risk requirement, as determined by BESA.
- D6.1.4 Where the alleged non-compliance by the BTA member with Rule D6.1, is reported to the Disciplinary Tribunal in terms of Rule C12.1.3, such Disciplinary Tribunal must, where the accused is guilty of such non-compliance, impose a fine amounting to the lesser of -
- D6.1.4.1 5% of the shortfall in own funds required to be held by the authorised user in accordance with the Rules; or
  - D6.1.4.2 R25 000, for each day from the first date on which such shortfall occurs: Provided that the Disciplinary Tribunal may impose any additional penalty which the Tribunal may deem appropriate in the circumstances.

**D6.2 Risk management of trades**

RESERVED

## SECTION 7 SETTLEMENT

### D7.1 Settlement

- D7.1.1 A BTA member and client must comply with the settlement procedures prescribed by the settlement agent appointed by the BTA member or client.
- D7.1.2 Settlement must be based on the scrip and fund account balances held by the BTA member or client, as the case may be, with the settlement agent.
- D7.1.3 Settlement agents must commit to settlement by the time specified by BESA -
- D7.1.3.1 in respect of a nett settlement run, to every account that a settlement agent is satisfied is funded with the required scrip or cash, as the case may be, and, where an account is not fully funded, to all those trades for which the funding is sufficient; and
  - D7.1.3.2 for every trade that is not satisfactorily funded, to identify and move such trade to another settlement run on that day.
- D7.1.4 Settlement must be in terms of the settlement schedules provided by the licensed clearing house to the settlement agent and in addition –
- D7.1.4.1 a BTA member or client, as the case may be, must comply with the settlement agent agreement concluded in terms of Rule D10.3;
  - D7.1.4.2 a BTA member or client, as the case may be, shall maintain scrip and fund accounts with a settlement agent in order to effect settlement and nothing contained in the Rules prevents a BTA member or client from having more than one settlement agent or settlement account; and
  - D7.1.4.3 settlement takes place on every business day at the settlement times as determined by BESA.
- D7.1.5 If a settlement agent declines to settle the settlement position of a BTA member or a client, the affected BTA member and the appointed settlement agent must forthwith advise the chief executive officer, in writing, of that fact: Provided that the chief executive officer must manage such a potential settlement default in accordance with Rule D7.2.
- D7.1.6 If a client has not appointed a settlement agent, the BTA member with whom or through whom the client has traded shall effect settlement in the manner determined by BESA and as agreed to between the BTA member and the client: Provided that such agreement may not relieve the BTA member concerned of any obligations which may be owed to the BTA member's settlement agent.

### D7.2 Rectifying settlement shortages

If a BTA member or client is short of scrip or fails to submit settlement instructions to the appointed settlement agent, the settlement agent and the affected BTA member must notify the chief executive officer, in writing, of this fact and must provide all information as requested by the chief executive officer, who may, in his sole discretion, instruct any authorised user to enter trades, including scrip lending and substitution, or do or not do any other thing reasonably necessary or desirable to rectify the settlement shortage in question.

## SECTION 8 SETTLEMENT DEFAULT

### D8.1 The Guarantee Fund

It is recorded that the Guarantee Fund shall, in accordance with the Act, the Rules, the Directives and the trust deed, provide compensation to clients and authorised users in the event of a default by a BTA member arising out of trading in BTA listed securities.

### D8.2 Default procedures

#### D8.2.1 Client default

- D8.2.1.1 Upon declaration of a client default, a BTA member must assume the obligations in respect of all trades concluded by the BTA member with or on behalf of a defaulting client.
- D8.2.1.2 No claim against the Guarantee Fund shall be entertained in respect of trades concluded with or on behalf of a defaulting client.
- D8.2.1.3 If a BTA member is unable to fulfil the obligations in respect of trades concluded by that BTA member with or on behalf of the defaulting client, the BTA member must be declared a defaulter in terms of Rule C8.8.5.

#### D8.2.2 BTA member default

- D8.2.2.1 Upon declaration of a BTA member default the chief executive officer must -
  - D8.2.2.1.1 determine the defaulting BTA member's nett settlement obligations and other open positions to the market in respect of each listed security;
  - D8.2.2.1.2 endeavour to fulfil these obligations on behalf of the defaulting BTA member; and
  - D8.2.2.1.3 immediately inform the board and the Guarantee Fund.
- D8.2.2.2 In order to fulfil the obligations of a defaulting BTA member, the chief executive officer may -
  - D8.2.2.2.1 utilise all scrip, funds or margin held by any settlement agent or other Exchange on behalf of the defaulting BTA member;
  - D8.2.2.2.2 lodge a claim with the Guarantee Fund on behalf of such authorised users and/or clients who are beneficiaries of the Guarantee Fund, in the circumstances, and as such are entitled to the benefits of a claim from the Guarantee Fund in the circumstances of the settlement default in question, and pay over any such payment received from the Guarantee Fund in respect of such claim to such authorised user and/or client; and
  - D8.2.2.2.3 alienate the defaulter's excluded assets.
- D8.2.2.3 If the chief executive officer is unable to fulfil the nett settlement obligations of the defaulting BTA member, the affected BTA members and clients may, upon notification



in writing by the chief executive officer (that he is unable to fulfil the nett settlement obligation), close out their positions in listed securities by concluding equal and opposite trades in the manner stipulated by Directive.

D8.2.2.4 No defaulting BTA member may compromise with or accept payment on account from any other BTA member or client in connection with any trade, as from the time of declaration as a defaulter.

D8.2.3 No claim may be made against the Guarantee Fund in respect of trades concluded with or on behalf of a defaulting client of a defaulting authorised user.

### **D8.3 Claims against the Guarantee Fund**

D8.3.1 BESA must determine the current market value of all listed securities involved in the trade.

D8.3.2 BESA must also determine a list of potential claimants.

D8.3.3 A claim against the Guarantee Fund may be lodged (but always subject to Rule D8.4.7) -

D8.3.4.1 by BESA with the Guarantee Fund in the event that the chief executive officer fulfils the obligations of a defaulting BTA member in terms of Rule D8.2.2.2; or

D8.3.4.2 by a BTA member or client who re-transacts in order to fulfil the terms of the original trade in terms of Rule D8.2.2.3, subject to Rule D8.4.7, with the Guarantee Fund.

D8.3.4 A claimant must submit copies of the claim to BESA and the Guarantee Fund in writing and include -

D8.3.4.1 evidence of the terms of the original trade or evidence of the trades concluded to settle the defaulter's nett settlement position;

D8.3.4.2 the loss or potential loss sustained by the claimant in terms of the original trade at current market value which shall be determined and announced by BESA;

D8.3.4.3 the extent of the actual loss if any retransaction has taken place; and

D8.3.4.4 any further evidence that the Guarantee Fund or BESA may require.

D8.3.5 Failure by a claimant to comply within a reasonable period with any requirements of the Guarantee Fund or BESA is ground upon which the Guarantee Fund may reject the claim.

D8.3.6 Payment of any amount may only be made by the Guarantee Fund against a valid out and out cession to the Guarantee Fund by the claimant in respect of claims against the defaulting authorised user. In this regard, the claimant in question shall be deemed to have ceded the claim in question to the Guarantee Fund forthwith on the Guarantee Fund making the aforesaid payment.

D8.3.7 If a BTA member or client concludes an equal and opposite replacement trade in accordance with Rule D8.2.2.3, the BTA member or client -

D8.3.7.1 may (subject to Rule D8.4.7) claim from the Guarantee Fund any loss resulting from the replacement trade; and

D8.3.7.2 must deposit with the Guarantee Fund any profit resulting from the replacement trade: Provided that should a BTA member or client elect not to conclude a replacement trade, then the computation of the claim on the Guarantee Fund or of the profit due to

the Guarantee Fund, must be based on the daily closing price fixed by BESA in respect of every listed security.

#### **D8.4 Payment of claims against the Guarantee Fund**

- D8.4.1 The quantum of contributions made by each contributor in terms of Core Rule C8.4 shall have no impact on the quantum of claims to which such contributor may be entitled from the Guarantee Fund pursuant to a default event.
- D8.4.2 The aggregate of all payments by the Guarantee Fund pursuant to a settlement default shall not exceed the amount available from exclusive funds (as contemplated in Core Rule C8.2) unless otherwise determined by the Guarantee Fund in consultation with BESA.
- D8.4.3 All claims paid by the Guarantee Fund to all authorised users and clients (in terms of any provision of these Rules) shall be limited to, in the aggregate, the lesser of R10 million or one-third of the exclusive funds, in respect of any one default event (in terms of any provision of these Rules) unless otherwise determined by the Guarantee Fund in consultation with BESA: Provided that claims must be met on a pro rata basis in proportion to the total claims by all authorised users and clients lodging claims (whether in terms of this Rule D8.4.3, Rule E8.4.2 or elsewhere in these Rules) in respect of the event of default in question.
- D8.4.4 Payments of claims accepted by the Guarantee Fund must be paid to BESA (unless otherwise determined by the Guarantee Fund in consultation with BESA) and the Guarantee Fund must obtain written acknowledgement of receipt of payment.
- D8.4.5 Payment must be effected by cheque or electronic transfer of funds to a nominated account held at a registered bank.
- D8.4.6 All claims lodged pursuant to these Rules must be lodged against the Guarantee Fund and no BTA member or client may have any claim against BESA.
- D8.4.7 Notwithstanding anything to the contrary contained in the Rules, no BTA member or client shall be entitled to lodge a claim directly with the Guarantee Fund and, accordingly, a BTA member or client must lodge the claim with BESA whereafter BESA will be obliged to lodge the claim with the Guarantee Fund on behalf of such BTA member or client and BESA shall pay over any payment received from the Guarantee Fund in respect of such claim to such BTA member or client, provided that a BTA member or client shall be entitled to interact directly with the Guarantee Fund in respect of all or some of the aforesaid aspects if so determined by the Guarantee Fund in consultation with BESA.

#### **D8.5 *Stipulatio Alteri***

This entire Section 8 constitutes a *stipulatio alteri* in favour of the Guarantee Fund for the benefit of the Guarantee Fund which shall be capable of acceptance by the Guarantee Fund at any time by notice to BESA or any one or more of the authorised users or clients.

**SECTION 9    SEGREGATION OF ASSETS**

RESERVED

**SECTION 10 RECORDS AND PRESCRIBED AGREEMENTS****D10.1 BTA member – client agreement**

- D10.1.1 Prior to entering into a transaction with or on behalf of a client, an authorised user must conclude a written agreement in respect of trading activities with the client concerned.
- D10.1.2 An agreement concluded in accordance with Rule D10.1.1 must contain provisions in addition to the requirements of Rule C10.5 to the effect that –
- D10.1.2.1 the client appoints the BTA member to enter into trades either with the client, on a principal to principal basis, or on the client's behalf on an agency basis, as instructed by the client;
  - D10.1.2.2 the client must provide to BESA or its licensed clearing house all client information required for the reporting of trades as prescribed by BESA;
  - D10.1.2.3 before trades are concluded with or on behalf of the client the BTA member must indicate to the client whether the BTA member is acting as a principal or agent;
  - D10.1.2.4 the BTA member must trade with or on behalf of a client only in accordance with the reasonable instructions received from the client and as required by the Rules;
  - D10.1.2.5 if the client is unable to meet the obligations arising from a trade, the BTA member must perform all the obligations of the client in respect of that trade;
  - D10.1.2.6 if the client is unable to meet the obligations arising from a trade with the BTA member, where the BTA member acts as a principal, the BTA member must bear the counterparty risk with the client;
  - D10.1.2.7 if the BTA member is unable to meet the obligations arising from a trade entered into on a principal basis with the client, the client must bear the counterparty risk with the BTA member; and
  - D10.1.2.8 the client undertakes in writing to pay such fees, levies, charges or commissions as may be agreed with the BTA member in respect of services provided by the BTA member.

**D10.2 BTA member – service provider agreement**

Prior to carrying on the business of buying and selling listed securities, a BTA member must conclude a written agreement with a service provider for the provision of electronic trade reporting facilities to the BTA member.

**D10.3 BTA member – settlement agent agreement**

- D10.3.1 Prior to carrying on the business of buying and selling listed securities, a BTA member must conclude a written agreement with a settlement agent for the provision of electronic settlement facilities to the BTA member.
- D10.3.2 If a client does not settle trades through a BTA member, the client must conclude a written agreement with a settlement agent for the provision of electronic settlement facilities to the client.

**D10.4 BTA member – employee agreement**

A BTA member shall not employ any director, officer, trader or any person involved in the management or the administration of trading unless such person has entered into a written agreement with the BTA member in terms of which the person agrees to comply with the Act and the Rules.

## SECTION 11 DISPUTES

### D11.1 General

- D11.1.1 Any dispute between authorised users or between authorised users and clients in respect of –
- D11.1.1.1 trade or settlement;
  - D11.1.1.2 the implementation or interpretation of any agreement concluded in terms of Rule D10.1; or
  - D11.1.1.3 advice regarding a trade given by an authorised user,
- must be resolved by mediation, conciliation, recommendation, determination or arbitration and shall be reduced to writing by the parties thereto.
- D11.1.2 Parties to the dispute or any person involved in the dispute resolution process shall report to the Registrar, matters that may be of interest to him.
- D11.1.3 An authorised user must notify his client in writing of the procedures being followed and of any action being taken in order to resolve the dispute.

### D11.2 Mediation

- D11.2.1 The appointment of a mediator, the procedures to be followed, and the settlement terms of the dispute must be agreed upon between the parties to the dispute: Provided that the parties to the mediation are jointly liable for the costs of the mediation, subject to an award by the mediator.
- D11.2.2 Despite Rule D11.2.1, where several disputes involving an authorised user are based upon similar facts, the mediator appointed in terms of this Rule may determine that such disputes be consolidated and treated as a single dispute in terms of the Rules.
- D11.2.3 If the chief executive officer is not asked to mediate in the dispute, the parties must, as soon as possible after the settlement or otherwise of the dispute, inform the chief executive officer in writing of the result of the mediation.
- D11.2.4 The chief executive officer must make facilities available to the parties for mediation if the parties so request, on terms determined by the chief executive officer.

### D11.3 Arbitration

- D11.3.1 The parties may agree to settle a dispute by means of an arbitration agreement in accordance with the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965): Provided that the parties to the arbitration are jointly liable for the costs of the arbitration proceedings, subject to an award by the arbitrator.
- D11.3.2 Despite Rule D11.3.1, where several disputes involving an authorised user are based upon similar facts, the arbitrator appointed in terms of this Rule may determine that such disputes be consolidated and treated as a single dispute in terms of the Rules.
- D11.3.3 The parties must, as soon as possible after the settlement of the dispute, inform the chief executive officer in writing of the result of the arbitration agreement.

**D11.4 Notice**

- D11.4.1 The chief executive officer may publish a notice to authorised users setting out details of any dispute and the mediator's or arbitrator's decision with regard thereto.
- D11.4.2 The chief executive officer may publish, or cause to be published, in any newspaper or other periodical, or permit or authorise the proprietor or publisher of such newspaper or other periodical to publish the notice referred to in Rule D11.4.1.

**SECTION 12 DISCIPLINARY MATTERS**

RESERVED



**SECTION 13: SERVICE PROVIDERS****D13.1 Obligations of an IDB authorised user**

D13.1.1 An IDB authorised user must –

D13.1.1.1 in order to ensure transparency, if its services are screen based, publish on the screen, or if its services are not screen based, disclose through other methods the –

D13.1.1.1.1 identity of the security;

D13.1.1.1.2 price for the transaction; and

D13.1.1.1.3 size of the resultant transaction,

regardless of whether the transaction is as a result of a screen or voice order, in the manner stipulated by Directive from time to time;

D13.1.1.2 maintain recordings of all telephonic transactions for a period of at least 90 days;

D13.1.2 An IDB authorised user may not trade with another IDB authorised user.

**D13.2 Data**

D13.2.1 All data, as specified by directive from time to time, relating to trades facilitated by an IDB authorised user may only be distributed in accordance with the requirements as set out in the Directives from time to time.

D13.2.2 An IDB authorised user may not show any prices or trade related information to parties who are not included in the list in Rule C13.1.7.2, unless otherwise provided for in a Directive.

D13.2.3 IDB authorised users must ensure that they report trades facilitated by them correctly and timeously to ensure the integrity of the data flow from BESA.

D13.2.4 BESA may request details of a bid or offer that was placed on the screen and the details of the related trade from the IDB authorised user.

**D13.3 Guarantee Fund**

D13.3.1 A name give-up IDB authorised user –

D13.3.1.1 is not liable for default in a trade it facilitates;

D13.3.1.2 cannot claim against the Guarantee Fund; and

D13.3.1.3 is not required to contribute to the Guarantee Fund.

D13.3.2 Where there is a default by an authorised user in a trade facilitated by a matched principal IDB authorised user, the provisions of Part C section 8 and Part D section 8 will apply.

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**PART E DERIVATIVES TRADERS ASSOCIATION****SECTION 1 GENERAL PROVISIONS****E1.1 General**

The Rules in Part E must be read with the Rules in Part C.

**E1.2 Name and constitution**

E1.2.1 The market association's name is the Derivatives Traders' Association.

E1.2.2 The Derivatives Traders' Association is referred to as the DTA in these Rules.

E1.2.3 The DTA is constituted separately from DTA members in terms of a market association constitution

**SECTION 2 ASSOCIATION MEMBER STATUS****E2.1 Eligibility for association member status**

E2.1.1 A natural or juristic person may become a member of the DTA.

E2.1.2 To be eligible for DTA membership, an applicant must satisfy the DTA council that it complies, to the extent possible, with C2.1.2.

**E2.2 Application for DTA membership**

E2.2.1 An applicant for DTA membership must submit the application to the DTA council.

E2.2.2 The application must be made on the prescribed form and must be accompanied by the prescribed fee.

E2.2.3 An applicant must agree in writing to be bound by the Act, the Rules and the Directives when applying for DTA membership.

E2.2.4 An applicant may apply for authorised user status in terms of Rule C2.2 when its DTA membership application is approved by the DTA council.

**E2.3 Termination of DTA membership**

The provisions of C2.8 will apply in respect of the termination of association member status, *mutatis mutandis*.

**SECTION 3 CODE OF CONDUCT**

RESERVED

**SECTION 4 LISTINGS**

RESERVED

**SECTION 5 TRADING****E5.1 Eligibility to trade**

Before a DTA member trades in DTA listed securities, it must ensure that –

- E5.1.1 it is registered with BESA;
- E5.1.2 every trader it employs to trade in DTA listed securities -
  - E5.1.2.1 has complied with the relevant qualification requirements of BESA;
  - E5.1.2.2 has sufficient experience;
  - E5.1.2.3 is appropriately supervised by the DTA member;
  - E5.1.2.4 is resident in the Republic of South Africa; and
  - E5.1.2.5 is registered with BESA.

**E5.2 Facilities for concluding and reporting trades**

- E5.2.1 A trade reported to BESA in terms of Rule C5.2.3 is a binding matched trade when a matched trade reference number is generated by BESA.
- E5.2.2 A matched trade reference number –
  - E5.2.2.1 is conclusive evidence of a binding matched trade;
  - E5.2.2.2 serves as an acceptable confirmation of the details of the trade reported by the authorised user; and
  - E5.2.2.3 binds the parties in respect of their obligations in terms of the trade.

**E5.3 Trading procedures**

- E5.3.1 Trading in DTA listed securities is allowed 24 hours a day on any business day or during any other period stipulated by Directive.
- E5.3.2 The standard contract size for transactions in DTA listed securities must be determined by the DTA council.
- E5.3.3 When a trader has received an order from the client to trade on the client's behalf, the trader must execute the trade on behalf of the client before executing a trade in the same listed security for own account.
- E5.3.4 If a trader cannot execute the trade on behalf of the client before a trade on own account, the trader must ensure that the trade on behalf of the client is concluded on the same or better terms and conditions as the trade concluded on own account.

**E5.4 Market prices**

RESERVED

**E5.5 Authorised user trades**

RESERVED



**E5.6 Client trades**

- E5.6.1 A DTA member may not enter into trades with or on behalf of a client unless -
- E5.6.1.1 the client is registered for reporting purposes with BESA, in the manner stipulated by Directive; and
  - E5.6.1.2 the DTA member has entered into a Recognised Agreement with the client.
- E5.6.2 A DTA member must notify a client in advance when the DTA member buys from or sells to the client DTA listed securities on that DTA member's own account.
- E5.6.3 A DTA member who buys or sells DTA listed securities on behalf of a client must conclude an equal and opposite trade with a counterparty at the same price and on the same terms contained in the instructions given by the client: Provided that -
- E5.6.3.1 the DTA member is liable to the client for the obligations of the counterparty, including a counterparty to a put-through, in terms of the trade; and
  - E5.6.3.2 a client's claim in respect of a trade must be against the DTA members who entered into the trade on the client's behalf, and not against any other authorised user or client of an authorised user who is the counterparty to the trade.
- E5.6.4 A trader must issue a physical or electronic transaction note -
- E5.6.4.1 within 24 hours of concluding a trade with or on behalf of a client;
  - E5.6.4.2 detailing the terms of the trade; and
  - E5.6.4.3 detailing the commission or fees charged.

**SECTION 6 CLEARING****E6.1 Capital adequacy requirements**

E6.1.1 A DTA member must -

E6.1.1.1 at all times, hold own funds, stipulated by Directive, sufficient to meet the DTA member's initial capital and risk requirement; and

E6.1.1.2 submit a return, stipulated by Directive, to BESA setting out the funds held by the DTA member in terms of Rule E6.1.1.1.

E6.1.2 The initial capital adequacy requirement must be the greater of -

E6.1.2.1 an amount determined by BESA as adequate to meet the operating costs of the DTA member for a period of 13 weeks; or

E6.1.2.2 either -

D6.1.2.2.1 R200 000 where a DTA member does not have access to the assets or securities of any client without referral to the client or the client's agent; or

D6.1.2.2.2 R400 000 in all other cases.

E6.1.3 The risk requirement must be the sum of the DTA member's position risk requirement, counterparty risk requirement, large exposure risk requirement and foreign exchange risk requirement, as stipulated by Directive.

E6.1.4 BESA may impose a penalty on the DTA member and report the DTA member to the Disciplinary Tribunal in Rule C12.1.3 if the DTA member fails to comply with Rule E6.1.

**E6.2 Risk management of trades**

RESERVED

**SECTION 7 SETTLEMENT****E7.1 Settlement**

E7.1.1 A DTA member must appoint a settlement agent or facilitate the settlement of its own trades and those of its clients in DTA listed securities as determined by BESA from time to time.

E7.1.2 If a DTA member has appointed a settlement agent -

E7.1.2.1 the DTA member must enter into a settlement agent agreement with the settlement agent; and

E7.1.2.2 the DTA member and clients must agree to settle trades in DTA listed securities in accordance with the agreement in Rule E7.1.2.1.

**E7.2 Rectifying settlement shortages**

E7.2.1 An affected DTA member and, if applicable the settlement agent, must notify the chief executive officer in writing if a settlement agent fails or refuses to settle a DTA member or a client's settlement position.

E7.2.2 An affected DTA member and the settlement agent must notify the chief executive officer in writing if a DTA member or client is short of cash or fails to submit settlement instructions to the settlement agent.

E7.2.3 The chief executive officer may -

E7.2.3.1 request further information; and

E7.2.3.2 instruct any DTA member to take steps necessary to rectify the settlement shortage.

## SECTION 8 SETTLEMENT DEFAULT

### E8.1 The Guarantee Fund

It is recorded that the Guarantee Fund must, in accordance with the Act, the Rules, the Directives and the trust deed provide compensation to clients and authorised users in the event of a default by a DTA member arising out of trading in DTA listed securities.

### E8.2 Default procedures under a Recognised Agreement

#### E8.2.1 DTA member or Client default

E8.2.2.1 If a DTA member has concluded a trade with or on behalf of a client or with another DTA member in terms of a Recognised Agreement and the DTA member or the client defaults, then the terms and conditions of that agreement determines the default procedure.

E8.2.2.2 If a client or DTA member suffers a loss as a result of the default procedure in E8.2.2.1, that client or DTA member may claim compensation (subject to Rule E8.4.7) from the Guarantee Fund up to the amount stipulated in Rule E8.4.3 or by Directive.

### E8.3 Claims against the Guarantee Fund

E8.3.1 If a DTA member or client defaults in terms of a trade, the chief executive officer must inform the board and the Guarantee Fund as soon as is reasonably possible.

#### E8.3.2 BESA must determine –

E8.3.2.1 the current market value of all DTA listed securities involved in the trade;

E8.3.2.2 a list of potential claimants; and

E8.3.2.3 the loss or potential loss sustained by potential claimants in terms of the original trade.

E8.3.3 A claim against the Guarantee Fund may be lodged by the chief executive officer or (subject to Rule E8.4.7) by an aggrieved party.

E8.3.4 A claimant must submit copies of the claim to BESA and the Guarantee Fund in writing within one month from when the DTA member or client was declared to be in default and include -

E8.3.4.1 evidence of the terms of the original trade or evidence of the trades concluded to settle the defaulter's nett settlement position;

E8.3.4.2 the loss or potential loss in E8.3.2.3 announced by BESA;

E8.3.4.3 the extent of the actual loss; and

E8.3.4.4 any further evidence that the Guarantee Fund or BESA may require.

E8.3.5 Failure by a claimant to timeously submit the claim in terms of Rule E8.3.4 or to comply within a reasonable period with any requirements of the Guarantee Fund or BESA is ground for the Guarantee Fund to reject the claim.

E8.3.6 Payment of any amount may only be made by the Guarantee Fund against a valid out and out cession to the Guarantee Fund by the claimant of claims against the defaulting authorised user. In

this regard, the claimant in question shall be deemed to have ceded the claims in question to the Guarantee Fund forthwith on the Guarantee Fund making the aforesaid payment.

#### **E8.4 Payment of claims against the Guarantee Fund**

- E8.4.1 The quantum of contributions made by each contributor in terms of Core Rule C8.4 shall have no impact on the quantum of claims to which such contributor may be entitled from the Guarantee Fund pursuant to a default event.
- E8.4.2 The aggregate of all payments by the Guarantee Fund pursuant to a settlement default shall not exceed the amount available from exclusive funds (as contemplated in Core Rule C8.2) unless otherwise determined by the Guarantee Fund in consultation with BESA.
- E8.4.3 All claims paid by the Guarantee Fund to all authorised users and clients (in terms of any provision of these Rules) shall be limited to, in the aggregate, the lesser of R10 million or one-third of the exclusive funds, in respect of any one default event (in terms of any provision of these Rules) unless otherwise determined by the Guarantee Fund in consultation with BESA: Provided that claims must be met on a pro rata basis in proportion to the total claims by all authorised users and clients lodging claims (whether in terms of this Rule E8.4.3, Rule D8.4.3 or elsewhere in these Rules) in respect of the event of default in question. In addition to the foregoing and Rule D8.4.3, any claims paid by the Guarantee Fund shall be limited to R1 million per derivative trade (being a trade concluded by a DTA member, in its capacity as a DTA member) unless otherwise determined by the Guarantee Fund in consultation with BESA.
- E8.4.4 Payment of claims accepted by the Guarantee Fund must be paid to BESA (unless otherwise determined by the Guarantee Fund in consultation with BESA) and the Guarantee Fund must obtain written acknowledgement of receipt of payment.
- E8.4.5 Payment must be effected by cheque or electronic transfer of funds to a nominated account held at a registered bank.
- E8.4.6 All claims lodged pursuant to these Rules must be lodged against the Guarantee Fund and no DTA member or client has any claim against BESA.
- E8.4.7 Notwithstanding anything to the contrary contained in the Rules, no DTA member or client shall be entitled to lodge a claim directly with the Guarantee Fund and, accordingly, a DTA member or client must lodge the claim with BESA whereafter BESA will be obliged to lodge the claim with the Guarantee Fund on behalf of such DTA member or client and BESA shall pay over any payment received from the Guarantee Fund in respect of such claim to such DTA member or client, provided that a DTA member or client shall be entitled to interact directly with the Guarantee Fund in respect of all or some of the aforesaid aspects if so determined by the Guarantee Fund in consultation with BESA.

#### **E8.5 *Stipulatio Alteri***

This entire Section 8 constitutes a *stipulatio alteri* in favour of the Guarantee Fund for the benefit of the Guarantee Fund which shall be capable of acceptance by the Guarantee Fund at any time by notice to BESA or any one or more of the authorised users or clients.

**SECTION 9 SEGREGATION OF ASSETS**

RESERVED

**SECTION 10 RECORDS AND PRESCRIBED AGREEMENTS****E10.1 DTA member – client agreement**

- E10.1.1 An authorised user must conclude a written agreement for trading activities with the client before entering into a transaction with or on behalf of the client.
- E10.1.2 An agreement in Rule E10.1.1 must meet the requirements of Rule C10.5 and provide that–
- E10.1.2.1 the client appoints the DTA member to enter into trades as instructed by the client either –
- E10.1.2.1.1 with the client, on a principal to principal basis; or
- E10.1.2.1.2 on the client's behalf on an agency basis;
- E10.1.2.2 the client must provide BESA with client information required by BESA for the reporting of trades;
- E10.1.2.3 the DTA member must indicate to the client whether the DTA member is acting as a principal or agent before concluding a trade with or on behalf of its clients;
- E10.1.2.4 the DTA member must trade with or on behalf of a client in accordance with the Rules and the reasonable instructions received from the client;
- E10.1.2.5 the DTA member must perform the obligations of a client in respect of a trade where the client cannot meet its obligations arising from that trade;
- E10.1.2.6 If the DTA member acts as a principal, the DTA member must bear the counterparty risk with the client if the client is unable to meet the obligations arising from a trade with the DTA member;
- E10.1.2.7 if the DTA member cannot meet the obligations arising from a trade entered into on a principal basis with the client, the client must bear the counterparty risk with the DTA member; and
- E10.1.2.8 the client undertakes to pay the fees, levies, charges or commissions agreed with the DTA member for services provided by the DTA member.

**E10.2 DTA member – service provider agreement**

A DTA member must enter into an agreement with a service provider prior to receiving services provided by that service provider.

**E10.3 DTA member – settlement agent agreement**

If a DTA member has appointed a settlement agent, it must conclude a written agreement with that settlement agent for the provision of electronic settlement facilities to the DTA member before carrying on the business of buying and selling DTA listed securities.

**E10.4 DTA member – employee agreement**

Prior to a director, officer, trader or person of the DTA member being involved in the management or administration of trading, that DTA member must conclude a written agreement with that person which requires that person to agree to comply with the Act, the Rules and the Directives.



**SECTION 11 DISPUTES****E11.1 General**

- E11.1.1 Any dispute between authorised users or between authorised users and clients in respect of –
- E11.1.1.1 a trade or settlement;
  - E11.1.1.2 the implementation or interpretation of any agreement concluded in terms of Rule E10.1; or
  - E11.1.1.3 given by an authorised user regarding a trade.
- must be reduced to writing by the disputing parties and resolved by mediation, conciliation, recommendation, determination or arbitration.
- E11.1.2 Parties to the dispute or any person involved in the dispute resolution process must report to the Registrar any matter that may be of interest to the Registrar.
- E11.1.3 An authorised user must notify his client in writing of the procedures being followed and of any action taken to resolve the dispute between them.

**E11.2 Mediation**

- E11.2.1 The parties to the dispute must agree on the appointment of a mediator, the procedures to be followed, and the settlement terms of the dispute.
- E11.2.2 The parties to the mediation are jointly liable for the costs of the mediation, subject to an award by the mediator.
- E11.2.3 The mediator appointed in terms of Rule E11.2.1 may determine that if several disputes involving a DTA member are based on similar facts, they may be consolidated and treated as a single dispute.
- E11.2.4 The parties must, as soon as possible after the settlement of the dispute, inform the chief executive officer in writing of the result of the mediation if the chief executive officer was not asked to mediate the dispute.
- E11.2.5 The chief executive officer must provide facilities to the parties for mediation if requested by the parties and on the terms determined by the chief executive officer.

**E11.3 Arbitration**

- E11.3.1 The parties may agree to settle a dispute by means of an arbitration agreement in accordance with the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965).
- E11.3.2 The parties to the arbitration are jointly liable for the costs of the arbitration proceedings, subject to an award by the arbitrator.
- E11.3.3 The arbitrator appointed in Rule E11.3.1 may determine that if several disputes involving a DTA member are based on similar facts, they may be consolidated and treated as a single dispute.
- E11.3.4 The parties must, as soon as possible after the settlement of the dispute, inform the chief executive officer in writing of the result of the arbitration agreement.

**E11.4 Notice**

E11.4.1 The chief executive officer may publish a notice to authorised users setting out details of any dispute and the mediator or arbitrator's decision.

E11.4.2 The chief executive officer may publish the notice in Rule E11.4.1 in any newspaper or other periodical.