



PROPOSED  
CENTRAL SECURITIES DEPOSITORY  
RULES

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## Index

<b>SECTION 1</b>		<b>6</b>
	<i>INTERPRETATION AND DEFINITIONS</i>	6
	1.1 INTERPRETATION	6
	1.2 DEFINITIONS	6
<b>SECTION 2</b>		<b>16</b>
	<i>POWERS OF MANAGEMENT AND CONTROLLING BODY</i>	16
	2.1 CONTROLLING BODY	16
	2.2 MANAGEMENT	16
	2.3 COMMITTEES	16
	2.4 AD-HOC COMMITTEES	17
	2.5 CONFLICTS OF INTEREST	17
<b>SECTION 3</b>		<b>20</b>
	<i>DEPOSITORY RULES AND DIRECTIVES</i>	20
<b>SECTION 4</b>		<b>22</b>
	<i>CO-OPERATION WITH MARKET INFRASTRUCTURES AND OTHER REGULATED PERSONS</i>	22
<b>SECTION 5</b>		<b>23</b>
	<i>PARTICIPANTS</i>	23
	5.1 CENTRAL SECURITIES DEPOSITORY PARTICIPATION CRITERIA	23
	5.2 APPLICATION PROCEDURE	24
	5.3 DUTIES OF PARTICIPANTS	24
	5.4 ADMINISTRATION AND MAINTENANCE OF INFORMATION	27
	5.5 CLIENT MANDATE	28
	5.6 PARTICIPANT TERMINATION OR SUSPENSION	28
	5.7 FINANCIAL SOUNDNESS	30
<b>SECTION 6</b>		<b>31</b>
	<i>BOND AND MONEY MARKET SECURITIES</i>	31
	6.1 REGISTRATION OF SECURITIES	31
	6.2 DEMATERIALISATION OF SECURITIES	32
	6.3 DEBIT BALANCES	34
	6.4 OPERATION OF SECURITIES ACCOUNTS AND CENTRAL SECURITIES ACCOUNTS	34
	6.5 OPERATION OF ISSUER ACCOUNTS	35
	6.6 ACCOUNT INFORMATION	35
<b>SECTION 7</b>		<b>36</b>
	<i>SETTLEMENT</i>	36
	7.1 MATCHING OF TRANSACTIONS	36
	7.2 SETTLEMENT OF TRANSACTIONS	36
	7.3 GROSS SETTLEMENT	37
	7.4 TRANSFER OF UNCERTIFICATED SECURITIES	37
	7.5 REVOCATION OF SETTLEMENT INSTRUCTIONS	38
<b>SECTION 8</b>		<b>39</b>
	<i>ISSUERS</i>	39
	8.1 ADMINISTRATION OF ISSUERS	39
	8.2 DUTIES OF ISSUERS OF UNCERTIFICATED SECURITIES	39

# GRANITE CSD RULES

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SECTION 9	<b>40</b>
<i>CORPORATE ACTIONS AND EVENTS</i>	40
9.1 GENERAL	40
SECTION 10	<b>41</b>
<i>PLEDGE OR CESSION OF UNCERTIFICATED SECURITIES</i>	41
SECTION 11	<b>42</b>
<i>ATTACHMENT</i>	42
SECTION 12	<b>43</b>
<i>NOMINEES</i>	43
SECTION 13	<b>44</b>
SECTION 14	<b>45</b>
SECTION 15	<b>46</b>
SECTION 16	<b>47</b>
<i>RECORDS</i>	47
SECTION 17	<b>48</b>
<i>CONFIDENTIAL INFORMATION</i>	48
SECTION 18	<b>49</b>
<i>RISK MANAGEMENT</i>	49
18.1 PARTICIPANT COMPLIANCE	49
18.2 COMPLIANCE OFFICER	50
SECTION 19	<b>51</b>
<i>DISPUTE RESOLUTION</i>	51
SECTION 20	<b>53</b>
<i>FEES AND CHARGES</i>	53
SECTION 21	<b>54</b>
<i>REGULATORY COMPLIANCE</i>	54
21.1 SURVEILLANCE	54
21.2 INVESTIGATION	54
21.3 THE DISCIPLINARY COMMITTEE	55
21.4 DISCIPLINARY PROCEDURE	56
SECTION 22	<b>57</b>
<i>RIGHT OF APPEAL</i>	57
22.1 A person aggrieved by the decision of-	57
SECTION 23	<b>58</b>
<i>INSOLVENCY</i>	58
SECTION 24	<b>59</b>
<i>NOTICES</i>	59
SECTION 25	<b>60</b>
<i>LIMITATION OF LIABILITY, WARRANTIES AND INDEMNITIES</i>	60

SECTION 26

**61**

*APPLICABLE LAWS AND JURISDICTION*

*61*

WHEREBY IT IS AGREED AS FOLLOWS:

## SECTION 1

### INTERPRETATION AND DEFINITIONS

#### 1.1 INTERPRETATION

- 1.1.1 The headings to the clauses in these rules are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of these rules nor any clause hereof.
- 1.1.2 Unless a contrary intention clearly appears-
- 1.1.2.1 words importing-
- 1.1.2.1.1 any one gender includes the other gender;
- 1.1.2.1.2 the singular include the plural and vice versa;
- 1.1.2.1.3 persons include natural persons, created entities (corporate or un-incorporated) and the state and vice versa;
- 1.1.2.1.4 words and expressions defined in the body of these rules shall have the meaning assigned to them therein; and
- 1.1.2.1.5 words and terms used in the rules and not defined in 1.2 which are defined in the Financial Markets Act No.19 of 2012 shall carry the same meaning as assigned to them in the Act or as amended and/or re-enacted from time to time thereafter.

#### 1.2 DEFINITIONS

- 1.2.1 In the rules, unless the context otherwise requires or indicates-
- 1.2.1.1 "**the Act**" means the Financial Markets Act No 19 of 2012 including any regulations, notices or directives issued by the Registrar in terms of the Act;
- 1.2.1.2 "**authenticated instruction**" means an instruction generated or received by the Granite Securities Settlement System;
- 1.2.1.3 "**applicant**" means a person who applies for authorisation as a Participant or a Nominee in terms of rule 5 or as an Issuer in terms of rule 8;
- 1.2.1.4 "**attachment**" means a judicial act or process to freeze, restrict or impound the securities or interest in securities held in a central securities account or securities account, as the case may be, in order to enforce or satisfy a judgment or warrant of execution;
- 1.2.1.5 "**Banks Act**" means the Banks Act, No 94 of 1990;

- 1.2.1.6 “**Beneficial Holder**” means a person who holds or has a beneficial interest in any securities issued by a company, through ownership, agreement, relationship or otherwise, alone or together with another person but does not include any interest held by a person an unit trust or collective benefit scheme in terms of the Collective Investment Schemes Act, 2002 (Act 45 of 2002);
- 1.2.1.7 “**Beneficial Holder Account (BHA)**” means a Central Securities Account that a Client can instruct its Participant to open in the name of a Beneficial Holder at the Central Securities Depository and Registered in the name of the Beneficial Holder. Only the same Beneficial Holder’s Securities can be kept in a single Beneficial Holder Account;
- 1.2.1.8 “**board**” means the Financial Services Board established by section 2 of the Financial Services Board Act;
- 1.2.1.9 “**business day**” means a day in which the central securities depository does business as determined by the Controlling Body;
- 1.2.1.10 “**central securities account**” means an account that reflects the number or nominal value of Securities of each kind deposited and all entries made in respect of such securities, held by a licensed central securities depository for a Participant or external central securities depository in the name of-
- (a) a Participant
  - (b) an external central securities depository; or
  - (c) any other persons as determined in the depository rules.
- 1.2.1.11 “**certificated securities**” means, securities evidenced in relation to securities issued by an Issuer other than a public company, by a certificate or written instrument; or in relation to securities issued by a public company, by a certificate;
- 1.2.1.12 “**central securities depository (CSD)**” means a person who constitutes, maintains and provides an infrastructure for holding uncertificated securities which enables the making of entries in respect of uncertificated securities, and which infrastructure includes a securities settlement system;
- 1.2.1.13 “**clear**” - in relation to a transaction or group of transactions in securities, means-
- (a) to calculate and determine, before each settlement process -
    - (i) the exact number or nominal value of securities of each kind to be transferred by or on behalf of a seller; and
    - (ii) the amount of money to be paid by or on behalf of a buyer, to enable settlement of a transaction or group of transactions; or

(b) where applicable, the process by means of which -

(i) the functions referred to in paragraph (a) are performed; and

(ii) the due performance of the transaction or group of transactions by the buyer and the seller is underwritten from the time of trade to the time of settlement;

and "**clearing**" has a corresponding meaning,

- 1.2.1.14 "**clearing house**" means a person who constitutes, maintains and provides an infrastructure to clear transactions in securities;
- 1.2.1.15 "**client**" means any person to whom a regulated person provides securities services and includes any person that acts as an agent for another in relation to those services, in which case it will include the agent or exclude the other person if the contractual arrangement between the parties indicates this to be the intention;
- 1.2.1.16 "**client identifier**" means a unique code that is used to identify a client.
- 1.2.1.17 "**client mandate**" means the written mandate entered into between the Participant and the Client;
- 1.2.1.18 "**Companies Act**" means the Companies Act, No 71 of 2008;
- 1.2.1.19 "**collateral**" means an asset or third-party commitment that is used by a collateral provider to secure an obligation vis-à-vis a collateral taker;
- 1.2.1.20 "**confirmation matching**" means the process for comparing the trade and settlement details provided by counterparties to ensure that they agree with respect to the terms of the transaction;
- 1.2.1.21 "**Controlling Body**" means the board of directors of the central securities depository;
- 1.2.1.22 "**debit balance**" means an overdrawn balance in a securities account or a central securities account managed by a Participant;
- 1.2.1.23 "**dematerialisation**" means the conversion of certificated securities into uncertificated securities;
- 1.2.1.24 "**deposit**" means a deposit of securities, and includes a deposit by means of an entry in a securities account or a central securities account;
- 1.2.1.25 "**depository directive**" means any directive issued in accordance with the rules by the Controlling Body to regulate the business of the central securities depository and all parties, referred to in section 3 of these rules, as being regulated by the central securities depository;
- 1.2.1.26 "**document**" includes a book, record, securities or account, and any information stored or recorded electronically, photographically, magnetically, mechanically, electro-mechanically or optically or in any other form;



- 1.2.1.27 “**electronic**” includes created, recorded, transmitted or stored in digital or other intangible but visible form by electronic, magnetic, optical or any similar means;
- 1.2.1.28 “**eligible securities**” means uncertificated securities which the Controlling Body permits to be held in a securities account, central securities account or Issuer account;
- 1.2.1.29 “**entry**” means an electronic recording of any issuance, deposit, withdrawal, transfer, attachment, pledge, cession in *securitatem debiti* or other instruction in respect of securities or an interest in securities;
- 1.2.1.30 “**exchange**” means a person who constitutes, maintains and provides an infrastructure-
- (a) for bringing together buyers and sellers of securities;
  - (b) for matching the bids and offers for securities of multiple buyers and sellers; and
  - (c) whereby a matched bid and offer for securities constitutes a transaction;
- 1.2.1.31 “**exchange rules**” means the rules made by a licensed exchange in accordance with the Act;
- 1.2.1.32 “**external central securities depository**” means a foreign person who is authorised by a supervisory authority to perform a function or functions similar to one or more of the functions of a central securities depository as set out in this Act and who is subject to the laws of a country other than the Republic, which laws-
- (a) establish a regulatory framework equivalent to that established by this Act; and
  - (b) are supervised by a supervisory authority;
- 1.2.1.33 “**external exchange**” means a foreign person who is authorised by a supervisory authority to perform a function or functions similar to one or more of the functions of an exchange as set out in the Act and who is subject to the laws of a country other than the Republic, which laws-
- (a) establish a regulatory framework equivalent to that established by the Act; and
  - (b) are supervised by a supervisory authority;
- 1.2.1.34 “**external participant**” means a foreign person who is authorised by a supervisory authority to perform a service or services similar to one or more of the services of a Participant or an external central securities depository as set out in the Act, and who is subject to the laws of a country other than the Republic, which laws-
- (a) establish a regulatory framework equivalent to that established by this Act; and
  - (b) are supervised by a supervisory authority;
- 1.2.1.35 “**Financial Services Board Act**” means the Financial Services Board Act, No 97 of 1990;

- 1.2.1.36 “**Financial Institutions (Protection of funds) Act**” means the Financial Institutions (Protection of Funds) Act, No 28 of 2001;
- 1.2.1.37 “**Financial Intelligence Centre Act**” means the Financial Intelligence Centre Act, No 38 of 2001;
- 1.2.1.38 “**force majeure**” means an event or disaster that could not be anticipated or expected, that causes any loss to, or the non-performance by any party in terms of these rules;
- 1.2.1.39 “**instruction**” means an instruction, in writing, given by a Client or an Issuer to a Participant, to effect an entry or entries on behalf of a Client or an Issuer in that Client’s or Issuers securities account or central securities account;
- 1.2.1.40 “**in writing**”, in relation to anything which must be done in writing in terms of the Act, includes electronic actions;
- 1.2.1.41 “**insolvency proceeding**” means a judicial or administrative proceeding or both, authorised in or by national legislation or the laws of a country other than the Republic, including an interim proceeding, in which the assets and affairs of a person are subject to the control or supervision by a court or an insolvency administrator for the purpose of reorganisation, business rescue, curatorship or liquidation, and includes, but is not limited to any proceeding under-
- (a) the Companies Act;
  - (b) the Insolvency Act, No 24 of 1936;
  - (c) the Banks Act;
  - (d) the Financial Institutions Act; and
  - (e) the National Payment Systems Act, No 78 of 1998;
- 1.2.1.42 “**issuer**” means an issuer of securities, which includes an issuer of money market securities;
- 1.2.1.43 “**issuer account**” means a central securities account that an issuer of securities can instruct its Participant to open in the name of the Issuer at the central securities depository and registered in the name of the Issuer for the deposit of securities to be issued, or the deposit of securities that have been in issue which have been bought back by the issuer;
- 1.2.1.44 “**listing requirements**” means the requirements, determined by a licensed exchange and approved by the Registrar, that must be met before securities may be included in the list of securities of that exchange, or be traded, or continue to be traded, on that exchange;
- 1.2.1.45 “**market infrastructure**” means each of the following-

- (a) a licensed central securities depository;
  - (b) a licensed clearing house;
  - (c) a licensed exchange;
  - (d) a licensed trade repository; and
  - (e) a licensed central counter party;
- 1.2.1.46 “**money market securities**” means money market instruments that are uncertificated securities reflected in an uncertificated securities register;
- 1.2.1.47 “**nominee**” means a person approved under section 76 to act as the holder of securities or of an interest in securities on behalf of other persons;
- 1.2.1.48 “**Nominee Omnibus Account (NOA)**” means a central securities account that a Client can instruct its Participant to open in the name of an approved Nominee at the Central Securities Depository and Registered in the name of the Nominee. More than one Beneficial Holder’s Securities can be kept in the same Nominee Omnibus Account;
- 1.2.1.49 “**nominal value**” means-
- (a) in relation to securities other than shares in a public company, the fixed value assigned to securities by the Issuer when it is first issued and is used to assess dividend, capital ownership or interest; or
  - (b) in relation to shares in a public company-
    - (i) prior to the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the fixed value assigned to securities by the Issuer when it is first issued and is used to assess dividend, capital ownership or interest; or
    - (ii) after the conversion of shares issued with a nominal value or par value in accordance with the Companies Act, the value of the shares calculated or determined in accordance with the manner prescribed under the Companies Act;
- 1.2.1.50 “**off-market transactions**” means transactions in securities which are not executed on or reported to an exchange;
- 1.2.1.51 “**official website**” means the website of the board;
- 1.2.1.52 “**on-market transactions**” mean transactions in securities that are executed on an exchange or reported to an exchange;
- 1.2.1.53 “**participant**” means a person authorised by a licensed central securities depository to perform custody and administration services or settlement services or both in terms of the central securities depository rules, and includes an external Participant, where appropriate;

- 1.2.1.54 “**participant senior management**” refers to the level of management that is directly or indirectly accountable to the Head of the Participant;
- 1.2.1.55 “**records**” means the information of the central securities depository, Participants, Issuers, Clients and Nominees which relate to the business of the central securities depository or Participants in terms of the Act;
- 1.2.1.56 “**registered holder**” means when securities are registered in the name of a person who is not the holder of the beneficial interest (beneficial holder) and are held nominee *officii* by another person;
- 1.2.1.57 “**Registered Holder Account (RHA)**” means a Central Securities Account that a Client can instruct its Participant to open in the name of a Beneficial Holder at the Central Securities Depository and Registered in the name of an approved Nominee. Only the same Beneficial Holder Securities can be kept in a single Registered Holder Account;
- 1.2.1.58 “**registrar**” means the Registrar or Deputy Registrar of securities services referred to in section 6 of the Act;
- 1.2.1.59 “**regulated person**” has the meaning assigned to it in the Act;
- 1.2.1.60 “**repurchase transaction (repo)**” means a contract to sell and subsequently repurchase securities at a specified date and price;
- 1.2.1.61 “**the republic**” means the Republic of South Africa;
- 1.2.1.62 “**the rules**” means the central securities depository rules contained herein;
- 1.2.1.63 “**SAMOS**” means the South African Multiple Option Settlement System, the Settlement System established and operated by the South African Reserve Bank;
- 1.2.1.64 “**securities**” means -
- (a) listed and unlisted –
    - (i) shares, depository receipts and other equivalent equities in public companies, other than shares in a share block company as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
    - (ii) debentures, and bonds issued by public companies, public state owned enterprises, the South African Reserve Bank and the Government of the Republic of South Africa;
    - (iii) derivative instruments
    - (iv) notes
    - (v) participatory interests in a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), and units or any other form of participation in a foreign collective investment scheme

approved by the Registrar of Collective Investment Schemes in terms of section 65 of that Act; and

(vi) instruments based on an index;

(b) units or any other form of participation in a collective investment scheme licensed or registered in a country other than the Republic;

(c) the securities contemplated in paragraphs (a)(i) to (vi) and (b) that are listed on an external exchange;

(d) an instrument similar to one or more of the securities contemplated in paragraphs (a) to (c) prescribed by the Registrar to be a security for the purposes of this Act;

(e) rights in the securities referred to in paragraph (a) to (d),

but excludes –

(i) money market securities, except for the purposes of Chapter IV; or if prescribed by the Registrar as contemplated in paragraph (d);

(ii) the share capital of the South African Reserve Bank referred to in section 21 of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989); and

(iii) any security contemplated in paragraph (a) prescribed by the Registrar.

1.2.1.65 “**securities account**” means an account kept by-

(a) a Participant or an authorised user for its own account or for a Client; or

(b) a Nominee for a person for whom it acts as a Nominee,

which reflects the number or nominal value of securities of each kind held for its own account or on behalf of that client or person, as the case may be, and all entries made in respect of such securities;

1.2.1.66 “**securities identifier**” means a unique code that is used to identify securities.

1.2.1.67 “**securities of the same kind**” means securities of the same class and issued by the same Issuer;

1.2.1.68 “**securities register**” means any register of securities required by any law to be established by an Issuer and, in respect of securities issued in terms of the Companies Act, has the meaning assigned to it in section 1 of that Act;

1.2.1.69 “**securities ownership register**” means a register of uncertificated securities maintained by the central securities depository to allow Issuers to review the holder of their securities;

1.2.1.70 “**securities services**” means –

a) the buying and selling of securities for own account or on behalf of another person as a business, a part of a business or incidental to conducting a business;

- b) the use of the trading system or infrastructure of an exchange to buy or sell listed securities;
- c) the furnishing of advice to any person;
- d) the custody and administration of securities by a Participant or Nominee
- e) the management of securities and funds by an authorised user
- f) clearing services; or
- g) settlement services.

1.2.1.71 “**securities settlement system**” – the full set of institutional arrangements for confirmation, clearance and settlement of securities transactions and safekeeping of securities;

1.2.1.72 “**senior management**” refers to the level of management that is directly accountable to the chief executive officer or the person in charge of an entity, and includes the chief executive officer if that person is not a director of the entity;

1.2.1.73 “**settle**” means-

- (a) in respect of listed securities, other than listed derivative instruments, the completion of a transaction by effecting the transfer of a security in the relevant uncertificated securities registers and the payment of funds or any other consideration payable in respect of that transaction, through a securities settlement system as defined in the rules; or
- (b) in respect of a listed derivative instrument, the completion of a transaction by the fulfilment of all contractual obligations associated with the resultant position in the derivative instrument in accordance with the rules; or
- (c) in respect of unlisted securities, other than money market securities or derivative instruments, the crediting and debiting of the accounts of the transferee and transferor, respectively, with the aim of completing a transaction in securities and receipt of a notification that payment has been received, unless-
  - (i) otherwise prescribed by the Registrar; or
  - (ii) the parties have appointed a licensed independent clearing house or a licensed CSD to settle a transaction, in which case it has the meaning assigned in (a);
- (d) in respect of money market securities, the completion of a transaction by effecting the transfer of a security in the relevant uncertificated securities registers and the payment of funds or any other considerations payable in respect of that transaction, through a securities settlement system as defined in the rules;

(e) in respect of an unlisted derivative instrument, the completion of a transaction by the fulfilment of all contractual obligations associated with the resultant position in the derivative instrument, unless otherwise prescribed by the Registrar;

(f) in respect of other Securities, the discharge of the obligations arising from a transaction in such securities;

and "**settling**" or "**settlement**" has a corresponding meaning;

1.2.1.74 "**settlement bank**" means any bank with a SAMOS account;

1.2.1.75 "**supervisory authority**" means a body designated in national legislation to supervise, regulate or enforce legislation or a similar body designated in the laws of a country other than the Republic to supervise, regulate or enforce legislation of that country;

1.2.1.76 "**Taxation**" means both domestic and international taxation laws that may apply to the settlement of securities including corporate events as listed in the depository directive;

1.2.1.77 "**transaction**" means a contract of purchase and sale of securities;

1.2.1.78 "**transfer**" means the transfer of uncertificated securities or an interest in uncertificated securities by debiting the account in the uncertificated securities register from which the transfer is effected and crediting the account in the uncertificated securities register to which the transfer is effected in accordance with the rules, and in respect of securities issued in terms of the Companies Act, in the manner provided for in chapter 2 part E of that Act;

1.2.1.79 "**uncertificated securities**" means-

(a) securities that are not evidenced by a certificate or written instrument, or

(b) certificated securities that are held in collective custody by the central securities depository or its nominee in a separate central securities account,

and are transferable by entry without a certificate or written instrument;

1.2.1.80 "**uncertificated securities register**" means the record of uncertificated securities administered and maintained by a Participant or the central securities depository, as determined in accordance with the rules, and in respect of securities issued in terms of the Companies Act, has the meaning assigned to it in Section 1 of that Act;

1.2.1.81 "**withdraw**" means the conversion of uncertificated securities to certificated securities and **withdrawal** has a corresponding meaning;

## SECTION 2

### **POWERS OF MANAGEMENT AND CONTROLLING BODY**

#### **2.1 CONTROLLING BODY**

- 2.1.1 The strategic direction and control of the CSD shall be exercised by the Controlling Body, which shall have the powers conferred on it by the Act, the rules and depository directives and shall have the authority to do such things as may be necessary for or incidental to the performance of the CSD functions.
- 2.1.2 The Controlling Body shall have the power to appoint various committees and approve the governance structure, to oversee functional areas within the CSD.
- 2.1.3 The Controlling Body may appoint an external service provider to provide services to the CSD, to any person or group of persons approved by the Controlling Body, or a division or department of the CSD.
- 2.1.4 The CSD must conduct its business in a manner that is fair and transparent with due regard to the rights of Participants, Issuers and Clients.

#### **2.2 MANAGEMENT**

- 2.2.1 The senior management shall be responsible for the day to day operations of the CSD.
- 2.2.2 Each senior manager shall meet the fit and proper requirements prescribed by the Registrar.

#### **2.3 COMMITTEES**

- 2.3.1 The Controlling Body has the authority to appoint various committees to carry out the business of the CSD.
- 2.3.2 The Controlling Body may appoint the following committees: -
  - 2.3.2.1 Regulatory committee;
  - 2.3.2.2 Audit and Finance committee;
  - 2.3.2.3 Advisory and Remuneration committee;
  - 2.3.2.4 Disciplinary committee
  - 2.3.2.5 Nominations committee; and
  - 2.3.2.6 Risk and Compliance committee.
  - 2.3.2.7 Conflicts of Interest Committee



- 2.3.3 The committees established by the Controlling Body must refer any decision they make to the Controlling Body for final approval.
- 2.3.4 All decisions made by any committee appointed by the Controlling Body can only be referred to the Controlling Body on the approval of a two-thirds majority by that committee.
- 2.3.5 The Controlling Body, in its discretion, will have the power to make any decision arising out of a recommendation or decision by any committee even if it is in contradiction with the recommendation of the committee.

The Controlling Body must inform the Registrar within 30 (thirty) days of any action taken by such committee.

### **2.4 AD-HOC COMMITTEES**

- 2.4.1 The Controlling Body may, from time to time, appoint one or more additional committees to deal with any urgent issues that may arise due to the manner in which Participants, Issuers, and clients conduct their business.
- 2.4.2 The composition of any additional committee is at the discretion of the Controlling Body.
- 2.4.3 The committee to whom an urgent issue is delegated by the Controlling Body must, within a reasonable time, refer any contraventions of the Act, rules or depository directives to the Head of Risk and Compliance and the Controlling Body.

### **2.5 CONFLICTS OF INTEREST**

- 2.5.1 The Controlling Body must-
  - 2.5.1.1 Establish a Conflicts of Interest Committee which must-
    - 2.5.1.1.1 Be comprised of independent directors, and other suitably qualified individuals who are not employed by the CSD; and
    - 2.5.1.1.2 Be allowed to make recommendations to the Controlling Body where any perceived, potential or actual conflicts of interest are reported to it.
  - 2.5.1.2 Ensure that the Conflicts of Interest committee is able to independently fulfil its functions and that it is not compromised by any duties towards management or the Controlling Body of the CSD.
- 2.5.2 When carrying out the business of the CSD and a perceived, potential or actual conflict of interest arises the Controlling Body must –
  - 2.5.2.1 Report the perceived, potential, or actual conflict of interest to the Conflicts of Interest committee

- 2.5.2.2 Inform all affected conflicted parties of the existence of a perceived, potential or actual conflict of interest which report must include-
  - 2.5.2.2.1 Any recommendations from the Conflicts of Interest committee;
  - 2.5.2.2.2 How the CSD is separating its commercial services from its regulatory functions; and
  - 2.5.2.2.3 How the CSD is preventing any inappropriate access to information by employees that may be responsible for either commercial services or the regulatory functions of the CSD.
- 2.5.2.3 Update all affected parties, in writing, within 20 (twenty) business days as to how the perceived, potential or actual conflict of interest is being managed;
- 2.5.2.4 Inform all affected parties, in writing, within 10 (ten) days of any decision taken when a perceived, potential or actual conflict of interest has arisen, and reasons why such a decision was taken.
- 2.5.3 Where an actual conflict of interest arises, the Controlling Body must take appropriate action including but not limited to –
  - 2.5.3.1 Recommendation(s) made by the Conflicts of Interest Committee;
  - 2.5.3.2 The forced separation of commercial services from regulatory functions of the CSD; and/or
  - 2.5.3.3 The suspension or termination of an employee who may have failed to secure and keep confidential information in a confidential manner in terms of rule 17.4.
- 2.5.4 The Controlling Body must annually assess the efficacy of its conflicts of interest policies, processes and measures and include this in an annual report, which report must include the following-
  - 2.5.4.1 An evaluation of the effectiveness of the Conflicts of Interest committee;
  - 2.5.4.2 Whether the CSD adhered to its conflicts of interest policy;
  - 2.5.4.3 Whether the CSD effectively implemented and supported the policies and procedures as directed by the registrar;
  - 2.5.4.4 Whether the Conflicts of Interest committee performed-
    - 2.5.4.4.1 An annual review of its terms of reference; and
    - 2.5.4.4.2 A self-evaluation of its performance as well as the performance of the members of the committee.
  - 2.5.4.5 Whether the CSD identified, disclosed and recorded the identified conflicts of interest; and
  - 2.5.4.6 Whether the CSD adopted appropriate and effective arrangements to separate its regulatory functions from its commercial services.

- 2.5.5 The Controlling Body must submit the annual conflicts of interest assessment to the registrar and publish the assessment on its website.

## SECTION 3

### **DEPOSITORY RULES AND DIRECTIVES**

- 3.1 The Controlling Body must approve and may amend rules and depository directives that comply with the Act and must supervise compliance with the rules and depository directives by those parties and persons as referred to in section 35(6) of the Act.
- 3.2 The purpose of the rules is to assist the controlling body and management to conduct the business of the CSD in a manner that is consistent with the Act, any applicable laws, the depository directives and the CSD's Memorandum of Incorporation.
- 3.3 In the event of any conflict between the rules and the depository directives, then, to the extent of such conflict, the rules shall prevail.
- 3.4 The Controlling Body shall have the authority to interpret and enforce the rules and depository directives and may impose a penalty or take disciplinary action against any person or entity referred to in section 35(6) of the Act, which fails to execute an instruction given, or take any action required, by the Controlling Body.
- 3.5 The Controlling Body may from time to time issue depository directives in respect of any or all matters relating to or incidental to the Act and the rules.
- 3.6 The depository directives approved by the Controlling Body must be made in terms of the rules and the CSD must-
  - 3.6.1 Consult with Participants and Issuers regarding the issuing of depository directives;
  - 3.6.2 Allow for comments and objections in writing within 20 (twenty) business days to the proposed depository directives. The CSD shall thereafter, within no more than 30 (thirty) days publish a document comprising a consolidation of all comments and objections received from all interested parties and the CSD's responses to such comments and objections;
  - 3.6.3 Consider and respond to any objections made to the proposed depository directives;
  - 3.6.4 Timeously publish to Participants and Issuers, the proposed depository directives which stipulates the effective date that the depository directive becomes enforceable;
- 3.7 The Controlling Body may propose any amendment to the rules or depository directives to Participants and Issuers, and must-
  - 3.7.1 Consult with Participants and Issuers regarding the amendment of any rule or depository directive;

- 3.7.2 Allow for comments and objections in writing within 20 (twenty) business days to the proposed amendment to any rule or depository directive. The CSD shall thereafter, within no more than 30 (thirty) days publish a document comprising a consolidation of all comments and objections received from all interested parties and the CSD's responses to such comments and objections;
- 3.7.3 Consider and respond to any objections made to the proposed amendment to any rule or depository directive;
- 3.7.4 Timeously publish to Participants and Issuers, the proposed amendment to the rule or depository directive which stipulates the effective date of the amendment of any rule or depository directive.
- 3.8 The Controlling Body must notify the Participants or Issuers who objected to the proposed amendment, of its decision with regard to the proposal within 30 (thirty) days of the objection being lodged. However, any amendment made to the rules or depository directives by the Controlling Body is not rendered invalid merely by virtue of the fact that any Participant or Issuer did not receive the notification of the Controlling Body's decision.
- 3.9 The CSD shall submit any new rule or final amendments to existing rules, to the Registrar for approval and this submission must be accompanied by an explanation of the reasons for the proposed new rule or amendment and any concerns raised during the consultation process.
- 3.10 Any depository directive made will be binding and enforceable on the parties as listed in section 35(6) of the Act.

## SECTION 4

### **CO-OPERATION WITH MARKET INFRASTRUCTURES AND OTHER REGULATED PERSONS**

- 4.1 Where required, the CSD will enter into co-operation agreements with any market infrastructure to further the business of the CSD.
- 4.2 The CSD shall also enter into co-operation agreements with market infrastructures to further the objects of the Act.

## SECTION 5

### PARTICIPANTS

#### 5.1 CENTRAL SECURITIES DEPOSITORY PARTICIPATION CRITERIA

- 5.1.1 The CSD may, subject to 5.1.2 and 5.1.3 below, authorise an applicant that holds securities or an interest in securities, as a Participant in terms of the rules and depository directives.
- 5.1.2 An application for authorisation as a Participant must be made in the form and manner prescribed by the Controlling Body and rule 5.2.
- 5.1.3 An applicant must provide the Controlling Body with-
- 5.1.3.1 a copy of the applicant's constitutive documents;
  - 5.1.3.2 a breakdown of the applicant's ownership structure;
  - 5.1.3.3 evidence that the applicant fulfils the financial soundness requirements that are stipulated by depository directive;
  - 5.1.3.4 documentation showing that the applicant has sound administrative and accounting procedures and internal control mechanisms;
  - 5.1.3.5 evidence to the satisfaction of the Controlling Body that the applicant-
    - 5.1.3.5.1 has adequate human resources, operational and technical skills;
    - 5.1.3.5.2 has adequate insurance to cover its liabilities;
    - 5.1.3.5.3 maintains systems, procedures and documentation of all data and information of securities accounts and central securities accounts and protects these against any unauthorised access;
    - 5.1.3.5.4 has implemented, or is to implement, business continuity processes;
    - 5.1.3.5.5 will settle via a settlement bank;
    - 5.1.3.5.6 will appoint a compliance officer, in terms of the rules and depository directives, before commencing business as a Participant;
    - 5.1.3.5.7 has in place a risk and compliance policy to ensure compliance with the rules and depository directives; and
    - 5.1.3.5.8 shall comply with all deliverables stipulated by the Controlling Body including the payment of fees and levies as determined from time to time.
- 5.1.4 All required information as per 5.1.3 above, must be furnished to the Controlling Body within the time and in the manner and form prescribed by depository directive.

- 5.1.5 In deciding whether or not to approve a Participant, the Controlling Body will differentiate between Participants that are registered as banks in terms of the Banks Act and those that are not registered as a Bank and may, by depository directive, issue different participation criteria with respect to each.
- 5.1.6 No Participant may cede, transfer or assign participation, or any rights or obligations in respect thereof without the written consent of the Controlling Body.
- 5.1.7 No person may manage or control a Participant if such person does not meet the fit and proper requirements as set in depository directive;

### **5.2 APPLICATION PROCEDURE**

- 5.2.1 Applications for authorisation as a Participant shall be made to the Controlling Body of the CSD. The Controlling Body will prescribe the manner of the application and the forms that must be submitted to the Controlling Body as per this rule 5.2 and depository directive.
- 5.2.2 No application will be considered unless the CSD has received the non-refundable application fee prescribed by depository directive.
- 5.2.3 In considering the application, the Controlling Body may request any further information and may interview any persons it deems fit, in order to make an informed decision.
- 5.2.4 The Controlling Body may after examining an applicant's compliance with the participation criteria and the information submitted in accordance with the rules and depository directive, decide either to authorise the Participant or to reject the application. The Controlling Body must inform an applicant of any rejection and give reasons to the applicant within a reasonable timeframe.
- 5.2.5 The applicant whose application has been rejected may re-apply as soon as they are satisfied that they have addressed the short-comings of their original application.

### **5.3 DUTIES OF PARTICIPANTS**

- 5.3.1 A Participant must -
  - 5.3.1.1 perform the securities services which it has been authorised to perform in terms of its application;
  - 5.3.1.2 deposit with the CSD, securities that are deposited with the Participant by a Client, where the Client has instructed the Participant to dematerialise the securities. The instruction must specify a CSD;
  - 5.3.1.3 maintain a securities account or a central securities account for a Client in respect of securities deposited;



## GRANITE CSD RULES

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- 5.3.1.4 reflect the number or nominal value of securities of each kind deposited in a securities account or a central securities account;
- 5.3.1.5 administer and maintain a record of all securities deposited with it in accordance with the rules;
- 5.3.1.6 record all securities of the same kind deposited with it in an uncertificated securities register;
- 5.3.1.7 disclose to Clients and Issuers the fees and charges required by it for its services, which disclosure must give the specific monetary amount of each service rendered, or if such amount is not pre-determinable, the basis of the calculation;
- 5.3.1.8 notify a Client in writing, or as otherwise agreed to by the Client, of an entry made in the Client's securities account or central securities account;
- 5.3.1.9 ensure that it has in place the necessary warranties and indemnities required by the Act, the rules and depository directives;
- 5.3.1.10 disclose to the CSD when a Client pledges or cedes an interest in any securities held in a central securities account, in accordance with the rules and depository directives;
- 5.3.1.11 maintain a central securities account with the CSD, and may-
  - 5.3.1.11.1 deposit securities with or withdraw securities from the CSD; or
  - 5.3.1.11.2 transfer, attach, pledge, cede or give effect to any other lawful instruction in respect of securities or an interest in securities through the CSD;
- 5.3.1.12 exercise the rights in respect of securities deposited by it with the CSD in its own name on behalf of a Client when so instructed by the Client;
- 5.3.1.13 balance and reconcile the aggregate of the securities accounts with the CSD on a daily basis;
- 5.3.1.14 balance and reconcile central securities accounts kept at the CSD on behalf of its Clients and its Nominees to the records of the Participant;
- 5.3.1.15 correct discrepancies which are revealed in the reconciliation of the aggregate of its securities accounts and central securities accounts, administered by the Participant on behalf of its Clients, or by the participant for its own account, held at the CSD, within 2 (two) business days, and the Participant must make good or provide any reconciled shortfall for which there are reasonable grounds for concluding that the Participant is responsible;
- 5.3.1.16 deposit securities held by it for its own account and those held for or on behalf of its clients in separate securities accounts and must ensure that securities held for or on behalf of its clients are segregated and identifiable as belonging to that specific person;

- 5.3.1.17 on a daily basis ensure that its securities accounts and central securities accounts do not show a debit balance at close-of-business; and
- 5.3.1.18 perform securities services to the extent necessary to perform the duties referred to in this rule 5.3 and ensure that securities held by the participant on behalf of another person are identifiable as securities belonging to that specific person and are considered to be trust property as defined in the Financial Institutions Act.
- 5.3.2 A Participant must, on request, disclose to-
- 5.3.2.1 the Registrar, information about the securities recorded in a securities account or central securities account;
- 5.3.2.2 an Issuer, information about the securities issued by that Issuer and recorded in a securities account or central securities account in accordance with the rules;
- 5.3.3 A Participant may not alienate, invest, pledge, hypothecate, encumber or otherwise make use of securities held for or on behalf of its clients except with the Client's express consent, and must make adequate arrangements for the safeguarding of Clients' ownership rights, including, but not limited to insolvency proceedings.
- 5.3.4 A Participant must ensure that-
- 5.3.4.1 where the Client elects to deposit securities in the name of an approved Nominee, the Client shall be timeously advised of, and shall be in a position to exercise its rights as a beneficial holder of the securities in the Issuer, as if the Client were the registered holder of the Issuer or beneficial holder of the securities;
- 5.3.4.2 all interest, dividend, capital redemption payments and all other entitlements received by the Participant from an Issuer of securities, will be paid in accordance with the client mandate, rules and depository directives, to the Client upon receipt in accordance with the Client's holdings at the date that the entitlement was calculated;
- 5.3.4.3 all notices, reports and circulars regarding rights and other benefits accruing to the securities which are received by a Participant from the Issuer of securities, except as contemplated in the rules and the depository directive dealing with the processing of corporate actions, are conveyed within a reasonable time to the Client concerned;
- 5.3.4.4 authenticated instructions are sent to the CSD for any settlements, transfers and any other CSD communication matters;
- 5.3.4.5 any fees or charges be disclosed to Clients and Issuers for its services as per section 32(2)(f) of the Act;
- 5.3.4.6 statements in respect of securities accounts or central securities accounts are provided to Clients at least bi-annually;

- 5.3.4.7 all entries in securities accounts or central securities accounts, pursuant to an instruction, are recorded in the statements provided to Clients;
- 5.3.4.8 clients are advised in writing, within 10 (ten) business days, by the Participant, its trustee, liquidator, curator, judicial manager, administrator or other lawful agent, of any suspension, restriction or termination of its participation. Such advice shall include a reference to the Client's obligation to advise the Participant, its trustee, liquidator, curator, judicial manager, administrator or other lawful agent to which Participant the Client's securities shall be transferred within 30 (thirty) calendar days of the Client receiving such notification, failing which rule 5.6.3.1 would apply; and
- 5.3.4.9 where a compliance officer post becomes vacant, that a temporary compliance officer be appointed for a period of no longer than 3 (three) months, unless otherwise directed by the Controlling Body.
- 5.3.5 No Participant may open a securities account or a central securities account for a person for whom a Participant believes or suspects requires approval as a Nominee under section 76 of the Act without having taken measures to ascertain that such person has the necessary approval.
- 5.3.6 Participants must adhere to all these rules and depository directives.

### **5.4 ADMINISTRATION AND MAINTENANCE OF INFORMATION**

- 5.4.1 Participants records must at least reflect the following information of transactions in a Client's securities accounts or central securities accounts-
  - 5.4.1.1 client identifier as stipulated in depository directive;
  - 5.4.1.2 issuer name;
  - 5.4.1.3 securities identifier as stipulated in depository directive;
  - 5.4.1.4 quantity of securities;
  - 5.4.1.5 pledges and cessions;
  - 5.4.1.6 date of transaction entry; and
  - 5.4.1.7 cash amount to be settled.
- 5.4.2 Participants must reconcile balances with the CSD on a daily basis. Any differences that cannot be reconciled within 1 (one) business day must immediately be-
  - 5.4.2.1 reported to the CSD; and
  - 5.4.2.2 investigated and corrected by the CSD, or the Participant.

- 5.4.3 The Participant must ensure the retention of information as per the Act and the rules.

- 5.4.4 The Participant can store information by any means, including electronically, as long as it is compliant with applicable legislation, so long as it is capable of being reproduced.
- 5.4.5 All information must be backed-up and documented in a recovery manual.
- 5.4.6 A Participant must disclose any information to the CSD, which the CSD may reasonably require in order to fulfil its obligations in terms of the Act and the rules.

### **5.5 CLIENT MANDATE**

- 5.5.1 A Participant, before entering into any business relating to securities services with the CSD on behalf of a Client, must enter into a written mandate with its Client.
- 5.5.2 Participants must ensure that all entries are effected on the CSD system when instructed to do so by their client.
- 5.5.3 Clients may instruct their Participant not to send notices, reports and circulars regarding rights and other benefits accruing to them.

### **5.6 PARTICIPANT TERMINATION OR SUSPENSION**

- 5.6.1 Involuntary Termination or Suspension
  - 5.6.1.1 The Controlling Body has the right to terminate or suspend a participant from the CSD in the following instances but not limited to the following –
    - 5.6.1.1.1 where the participant materially fails to comply with the Act, rules, depository directives, or any other applicable law;
    - 5.6.1.1.2 where the participant fails to make full disclosure in its application for participation to the CSD or furnishes any false or misleading information;
    - 5.6.1.1.3 where the participant has any material legal proceedings or legal judgments against it that may impact on the business of the CSD, the participant or the financial market as a whole;
    - 5.6.1.1.4 where the Controlling Body is satisfied, on reasonable grounds, that the manner in which the participant conducts its business is not in the best interests of the CSD, other participants or Clients of participants, and Issuers;
    - 5.6.1.1.5 where the participant has any insolvency proceedings lodged against it;
    - 5.6.1.1.6 where the participant has lodged an application for voluntary liquidation.
    - 5.6.1.1.7 where the participant has failed to pay any fees and charges as stipulated by the Controlling Body in terms of rule 20.5.

- 5.6.1.2 The participant, or its trustee, liquidator, curator, judicial manager, administrator or other lawful agent, as the case requires, shall immediately notify the Risk and Compliance Committee, in writing, upon the happening of any of the events referred to in 5.6.1.1.5 or 5.6.1.1.6 and shall, in addition to their obligation to transfer securities accounts and central securities accounts, immediately upon termination ensure that all of its records are placed in custody as determined by the Controlling Body.
- 5.6.1.3 The Controlling Body has the right to investigate any material complaints against a participant and may take any appropriate action, including but not limited to termination or suspension of participation.
- 5.6.1.4 The controlling body shall inform the participant if it intends to suspend or terminate its participation, in writing, and give reasons for the suspension or termination, and allow the participant a period of 10 (ten) business days or a period as determined by the Controlling Body to remedy its non-compliance.
- 5.6.1.5 The CSD must notify the participant of its termination or suspension, in writing, and give reasons for the participant's termination or suspension and the effective date of such termination or suspension.
- 5.6.1.6 The CSD must notify the Registrar and other participants of the termination or suspension of a participant and the effective date thereof.
- 5.6.2 Voluntary Termination
- 5.6.2.1 A participant may voluntarily terminate its participation by giving the Controlling Body at least 30 (thirty) days written notice of its intention to terminate participation.
- 5.6.2.2 The Controlling Body may, in its sole discretion unconditionally or provisionally accept such notice of termination. The provisional termination is granted in order to afford the participant time to ensure that all its obligations to Clients, Issuers, other Participants and the CSD have been met and to settle all outstanding transactions. The Controlling Body will determine the period of such provisional termination and may prescribe any conditions that it considers necessary to achieve the termination.
- 5.6.2.3 The Controlling Body must notify the Registrar and other Participants of the intention of a Participant to voluntarily terminate its participation having received notification to that effect from a Participant and the effective date of termination.
- 5.6.3 Duties in the event of Participant termination or suspension

- 5.6.3.1 Upon termination or suspension, all the securities accounts and central securities accounts of the Participant, Clients, Issuers and Nominees must be transferred to other Participants as stipulated by the Clients, Issuers or Nominees in the Client mandate or as directed by the Controlling Body. This obligation to transfer the securities shall be binding on any curator, judicial manager or liquidator.
- 5.6.3.2 Participants shall remain liable for all past and current obligations specifically relating to the business of the CSD.
- 5.6.3.3 In the event of the Controlling Body terminating or suspending a Participant, all funds shall be deposited in a trust account held by the CSD and distributed as required.
- 5.6.3.4 A Participant who has been terminated or suspended cannot use the services of the CSD or an approved Nominee unless it has been mandated to perform any outstanding duties by the Controlling Body.
- 5.6.3.5 A Participant who has been terminated or suspended must keep records in accordance with rule 16.2.
- 5.6.3.6 A Participant may not cede or transfer any of its Participant duties or obligations to another Participant or party without the written consent of the Controlling Body.

### **5.7 FINANCIAL SOUNDNESS**

- 5.7.1 Participants must meet the requirements for financial soundness as per depository directive.
- 5.7.2 Participants must hold financial cover in respect of:
  - 5.7.2.1 the Participant's actual and potential liabilities
  - 5.7.2.2 conditional and contingent liabilities associated with its participation to the central securities depository, and
  - 5.7.2.3 liabilities that existed or accrue after a person has ceased to be a Participant.
- 5.7.3 Participants must have systems in place in order to be able to monitor their financial soundness compliance in terms of the rules and depository directives.

## SECTION 6

### **BOND AND MONEY MARKET SECURITIES**

#### **6.1 REGISTRATION OF SECURITIES**

- 6.1.1 Uncertificated securities deposited with the CSD shall be reflected as an entry of securities in the securities account or central securities account of the Participant, Nominee, Client or Issuer.
- 6.1.2 A Participant can open the following accounts within the CSD-
- 6.1.2.1 Central Securities Account in the name of a Participant;
  - 6.1.2.2 Central Securities Account in the name of a Client, administered by a Participant;
  - 6.1.2.3 Central Securities Account in the name of any approved Nominee;
  - 6.1.2.4 An Issuer account in the name of an Issuer of securities.
- 6.1.3 A Client can open a securities account with a Participant.
- 6.1.4 A Nominee is able to open a securities account with a Participant in which case the Nominee must maintain a sub-register.
- 6.1.5 A Nominee or Client can request a Participant to open a central securities account at the CSD in the name of a Nominee or a Client respectively.
- 6.1.6 Where a Nominee opens a central securities account, the sub-register of the Nominee clients will be maintained by that nominee to reflect beneficial holder.
- 6.1.7 A Participant must ensure that all securities deposited with it by a Client are entered in a securities account or central securities account, opened and maintained by the Participant, in terms of the rules and depository directives and that each Client's securities are kept separate from those securities held by Participants in their own name.
- 6.1.8 The Participant is not obliged to accept an application to open a securities account or accept, for dematerialisation, any certificate or document of title by any person.
- 6.1.9 A Participant may request the CSD to open one or more central securities accounts in the name of the Participant with each account reflecting the number or nominal value of securities of each kind deposited with the CSD by that Participant for its own account and all entries made in such account.
- 6.1.10 Only eligible securities can be deposited and held in the CSD.
- 6.1.11 The CSD or its Participants may not become owner, co-owner, holder, pledgee or cessionary for the purpose of securing a debt of securities in terms of section 36(2) of the Act.

6.1.12 Where securities are deposited with the CSD or Participant, or accrue to the beneficial holder of securities held collectively by a Participant or Nominee in a securities account or by the CSD, the person who was the beneficial holder of the securities at the time of deposit or accrual becomes entitled to an interest as determined by Section 37(2) to 37(4) of the Act, as co-owner of all securities of the same kind comprised in the securities account or the central securities account, maintained by the Participant at the CSD, as the case may be.

### **6.2 DEMATERIALISATION OF SECURITIES**

#### *6.2.1 UNCERTIFICATED SECURITIES*

6.2.1.1 Certificated securities may be converted to uncertificated securities and an Issuer may, subject to the provisions of rule 6.2.1.2, issue uncertificated securities despite any contrary provision in-

6.2.1.1.1 any other law;

6.2.1.1.2 the common law;

6.2.1.1.3 an agreement;

6.2.1.1.4 the memorandum of incorporation of an Issuer;

6.2.1.1.5 a prospectus; or

6.2.1.1.6 any other conditions applicable to the issuing of Securities.

6.2.1.2 When any new issue of listed securities is made by an Issuer or when an Issuer issues securities in contemplation of the listing of that Issuer's securities by an exchange, the securities must be issued in uncertificated form.

6.2.1.3 An Issuer and a licensed CSD and its Participants must make arrangements in accordance with the rules for uncertificated securities to be evidenced by way of entry.

6.2.1.4 An Issuer has the same obligations in respect of uncertificated securities as it has in respect of certificated securities except that no certificate or written instrument is issued in respect of uncertificated securities.

#### *6.2.2 DEMATERIALISATION*

6.2.2.1 Clients may apply to a Participant for the dematerialisation of securities. The dematerialisation of securities shall take place in accordance with the Act, the Companies Act, where applicable, and in the manner stipulated by the rules and depository directive.

6.2.2.2 Before accepting such dematerialisation, the Participant must receive from the Client a certificate or document of title and subsequently issue the Client with a receipt recording the name of the securities and the number or nominal value of the securities so received.



- 6.2.2.3 A Participant must check the certificate or document of title which it has in its possession and determine from the face of it whether the Client is the beneficial holder of such securities. If the Client is not, on the face of the certificate or document of title, the beneficial holder of such securities, the Participant may reject the instruction for dematerialisation.
- 6.2.2.4 Following an acceptance of a Client request for dematerialisation, the Participant must lodge a request to the Issuer for dematerialisation.
- 6.2.2.5 The Issuer will inform the Participant if the request for dematerialisation has been accepted or rejected.
- 6.2.2.6 The Issuer must notify the Participant and the CSD of any increase of its dematerialised securities record.
- 6.2.2.7 Where dematerialisation follows an Initial Public Offering ("IPO") or private placement, the following must take place in addition to rule 6.2.2.1 to 6.2.2.6 above-
- 6.2.2.7.1 the Issuer must inform the exchange of an increase in issued capital from the IPO or private placement;
- 6.2.2.7.2 the exchange will notify the CSD and the Issuer of the approval of the IPO or private placement; and
- 6.2.2.7.3 the Issuer notifies the CSD and any Participants involved, of the IPO or private placement approval.
- 6.2.2.8 Nothing in rule 6.2.2 prejudices any Participant or the CSD's power to effect a transfer to a person to whom the right to any uncertificated securities or an interest in uncertificated securities has been transmitted by operation of law.
- 6.2.3 *WITHDRAWAL*
- 6.2.3.1 Any instruction by the Client to the Participant or the CSD, as the case may be, to withdraw uncertificated securities, must be effected in the manner stipulated in the Act, Companies Act, rules and depository directive.
- 6.2.3.2 In the event of a written request by the Client for the withdrawal of uncertificated securities, the Participant will ensure the delivery of a certificate or a written instrument evidencing the same nominal value or number of securities as the securities held on behalf of the Client, in the securities account or central securities account of the Client.
- 6.2.3.3 The Client will be presented with a certificate, issued by the Issuer, representing the same nominal or number of securities that were reflected in the Client's securities account or central securities account.

### 6.3 DEBIT BALANCES

- 6.3.1 A Participant must not-
- 6.3.1.1 make any transfer or withdrawal which would result in any of the securities accounts or central securities accounts, maintained by the Participant, reflecting an end of business day debit balance;
  - 6.3.1.2 give an instruction to the CSD to effect a transaction which would result in an overnight debit balance in any of the securities accounts or central securities accounts without ensuring that the Client has made provision for all settlements to take place.
- 6.3.2 In the event that a Participant allows a transfer or withdrawal that results in a debit balance in any securities accounts or central securities accounts, that Participant is responsible for rectifying such debit balance and may be charged by the CSD, with misconduct, and will be subjected to the investigation and disciplinary procedures set out in these rules.
- 6.3.3 In the instances where a Client requires a facility to be overdrawn in its securities or its central securities account for the sole purpose of settlement, the decision must be made by the Participant, in its discretion, and the Participant will ensure that the Clients debit balance is rectified at the end of the business day.

### 6.4 OPERATION OF SECURITIES ACCOUNTS AND CENTRAL SECURITIES ACCOUNTS

- 6.4.1 A Participant may in accordance with these rules depository directives execute an entry in a securities account or central securities account only if it receives an instruction from a Client to do so.
- 6.4.2 A Participant must keep records of all instructions it receives from Clients and must ensure, at the close of every business day, that the records, as reflected in the securities accounts held by the Participant, correspond with the respective records reflected in the central securities accounts of the Participant and its Clients central securities accounts.
- 6.4.3 A Participant must, upon receipt of a notification from the CSD advising it of the completion of a transaction which affects the balance of a securities account or central securities account held by the Participant, complete a corresponding entry in the relevant securities account or central securities account in accordance with the Client mandate, the rules, chapter 2 of the Companies Act, where applicable, the Act and other relevant legislation.
- 6.4.4 A Participant must make an electronic recording of any issuance, deposit, withdrawal, transfer, attachment, pledge, cession in *securitatem debiti* or other instruction in a securities account or central securities account, in accordance with the provisions of the Client mandate, the Act and the rules.
- 6.4.5 Where a Participant records a pledge or cession to secure a debt on behalf of a Client in a securities account or central securities account-

- 6.4.5.1 the requirements of the Act and the rules shall also be applicable to any securities account or central securities account in which the Client securities are held;
- 6.4.5.2 it must, in accordance with the Act, prevent the securities from being transferred from the securities account or central securities account or the underlying account in which the Client securities are held, except with the written consent of the pledgee or cessionary;
- 6.4.5.3 it must, in its statements to its Clients, indicate which securities have been pledged or ceded and specify the nominal amount or number of such securities; and
- 6.4.5.4 it must, when it sends out statements, send to the person to whom the securities are pledged or ceded, a statement evidencing the existence of the pledge or cession to secure a debt in accordance with depository directive.

### **6.5 OPERATION OF ISSUER ACCOUNTS**

- 6.5.1 Any Issuer may apply through its Participant to open an issuer account in the CSD, for the deposit of its securities.
- 6.5.2 An Issuer must provide all required documentation to the Participant with the application for an issuer account, as prescribed by the rules and depository directives.
- 6.5.3 An Issuer may, electronically or in any other manner acceptable to the CSD, deposit securities into its issuer account to be registered in its name.
- 6.5.4 An Issuer must instruct the Participant to transfer securities from or to its issuer account.
- 6.5.5 An Issuer may keep unutilised balances in its issuer account.
- 6.5.6 An Issuer must regularly reconcile its register of securities deposited in the issuer account, to the register maintained by the issuer.
- 6.5.7 An Issuer must immediately resolve any discrepancies between its issuer account held at the CSD and the register maintained by the issuer of such securities.

### **6.6 ACCOUNT INFORMATION**

- 6.6.1 Every securities account and central securities account must contain the information prescribed by depository directive.
- 6.6.2 Participants must provide client information to the CSD in the manner and frequency stipulated by depository directive.
- 6.6.3 The CSD must provide information to the Issuers of securities as required by the Act, Companies Act, any other law, rules and depository directive.

## SECTION 7

### SETTLEMENT

#### 7.1 MATCHING OF TRANSACTIONS

- 7.1.1 Any transaction, including repurchase transactions, for settlement must be submitted and matched on the CSD securities settlement system as per depository directive;
- 7.1.2 The CSD will make available all information on matched transactions to the Client's Participant for settlement purposes.
- 7.1.3 The CSD must ensure Issuers, Participants, Clients, Nominees or any other stakeholder have access to the CSD securities settlement system, to submit their transactions.
- 7.1.4 Issuers, Clients, Nominees or any other stakeholder can submit transactions directly onto the CSD securities settlement system or instruct their Participant or mandated party to submit transactions, on their behalf, onto the CSD securities settlement system.
- 7.1.5 Issuers, Clients, Nominees and any other stakeholder will not require the permission of its participant to submit transactions directly onto the CSD securities settlement system for confirmation matching purposes..
- 7.1.6 Any costs associated with connectivity to the CSD securities settlement system by Issuers, Clients or Nominees will be for the account of the connecting party.

#### 7.2 SETTLEMENT OF TRANSACTIONS

- 7.2.1 Clients must instruct Participants directly and in a manner that is acceptable to the Participant, of all transactions, including repurchase transactions, to be settled. The Controlling Body will prescribe by depository directive, the manner in which settlement of transactions in securities deposited with the CSD will take place.
- 7.2.2 The Participant must commit to transactions on the CSD securities settlement system.
- 7.2.3 A Participants commitment to settle will become irrevocable, as stipulated in depository directive.
- 7.2.4 A settlement of securities which fails to settle on settlement date is regarded as a failed settlement. Participants must deal with failed settlements in the manner stipulated in depository directive.
- 7.2.5 A Participant may assist their Client in the process of investigating and claiming for losses and damages incurred as a result of failed settlements.

7.2.6 The CSD will report all failed transactions to the exchange where transactions were executed or reported to.

### **7.3 GROSS SETTLEMENT**

7.3.1 Uncertificated securities transactions reported by a Client or a Participant on behalf of its Client on the CSD securities settlement system, may settle on a gross basis.

7.3.2 Clients may instruct Participants to also settle uncertificated securities on a net basis.

7.3.3 Participants may settle client securities on a net basis as per Depository Directive.

### **7.4 TRANSFER OF UNCERTIFICATED SECURITIES**

7.4.1 Any instruction to transfer uncertificated securities must be effected in accordance with depository directive.

7.4.2 A Participant may instruct the Central Securities Depository to transfer uncertificated securities between Central Securities Accounts, where a Participant has more than one Central Securities Account, and such transfer will not affect a change in beneficial ownership.

7.4.3 Transfers from a client's securities account or central securities account may be instructed by the Client in the instances where the Client has:

7.4.3.1 securities accounts or central securities accounts with separate participants; and

7.4.3.2 where the Client is closing its securities accounts or central securities accounts with a Participant and opening securities accounts or central securities accounts with another Participant.

7.4.4 All transfers of uncertificated securities must be reported by the Participant to the CSD securities settlement system.

7.4.5 Issuers may instruct their Participant to transfer uncertificated securities from its issuer account to its securities account or central securities account for the purpose of settlement.

7.4.6 Issuers may instruct the Participant to transfer its own issued uncertificated securities from its Securities Account or Central Securities Account, into its Issuer account, to reduce the nominal or number of securities in issue.

7.4.7 The transfer of uncertificated securities must be evidenced by the processing of debit and credit entries respectively in the securities account, central securities account or Issuer account of the transferor and the transferee, kept by the CSD or the Participant, as the case may be.

- 7.4.8 The transfer of uncertificated securities or of an interest in uncertificated securities on the uncertificated securities register held by a CSD or Participant must be effected in the manner provided for in chapter 2, Part E of the Companies Act.
- 7.4.9 Transfers of securities from one CSD to another CSD must be done as per the Act, rules, exchange rules, depository directives and other relevant legislation.

### **7.5 REVOCATION OF SETTLEMENT INSTRUCTIONS**

- 7.5.1 A Participant or Client may not revoke settlement instructions within the time period stipulated by depository directive where such transactions have an irrevocable commit status.
- 7.5.2 Any Client may instruct its Participant to revoke settlement instructions, if the Client has been instructed by the relevant exchange, where the exchange is investigating any form of irregularities against the Client or its counterpart, in terms of the Act, exchange rules or depository directive.
- 7.5.3 The exchange must notify the CSD of the instances where it has issued an instruction for the revocation of Client transactions.
- 7.5.4 The CSD or the Participant may revoke any transaction in the instance contemplated by section 35A of the Insolvency Act or where they are notified of insolvency proceedings against a Client, except in instances where such notice is provided subsequent to the time period stipulated by the depository directive where the transaction is recognised as having an irrevocable commit status as contemplated in rule 7.5.1.

## SECTION 8

### ISSUERS

#### 8.1 ADMINISTRATION OF ISSUERS

- 8.1.1 An Issuer may be authorised by the Controlling Body in terms of the Act, rules and depository directive.
- 8.1.2 The depository directives will stipulate the fees payable and prescribe forms applicable.
- 8.1.3 An Issuer may only deposit eligible securities with the CSD as per the depository directive.
- 8.1.4 The Controlling Body may take any appropriate action against an Issuer who fails to comply with the Act, rules or depository directives, which includes, but is not limited to, sanction or suspension of the Issuer, by the CSD.
- 8.1.5 The Controlling Body will not take any corrective action without first giving the Issuer appropriate notice and providing the Issuer with an opportunity to make written representations.

#### 8.2 DUTIES OF ISSUERS OF UNCERTIFICATED SECURITIES

- 8.2.1 An Issuer of uncertificated securities must-
  - 8.2.1.1 record in its securities register the total number and, where applicable, the nominal value of each kind of uncertificated securities issued by it;
  - 8.2.1.2 maintain separate records for each CSD holding uncertificated securities unless all those securities are held by one CSD;
  - 8.2.1.3 if required by section 36(1) of the Act, record the name of that CSD, or its wholly owned subsidiary, as the registered holder of the uncertificated securities;
  - 8.2.1.4 balance and reconcile with a CSD the total number of the uncertificated securities and, where applicable, the nominal value of each kind of uncertificated securities issued by it and recorded in its securities register-
    - 8.2.1.4.1 if the register has not changed, not less than once every month;
    - 8.2.1.4.2 if the register has changed, on the first business day after such change;
  - 8.2.1.5 where applicable comply with chapter II, part E and F of the Companies Act.

## SECTION 9

### CORPORATE ACTIONS AND EVENTS

#### 9.1 GENERAL

- 9.1.1 Any rights and benefits regarding securities or an interest in securities to a beneficial holder, will be communicated by the exchange to the CSD where applicable and in the manner prescribed by the exchange rules or by the Issuer or the Issuer's mandated party in the event of unlisted securities.
- 9.1.2 The CSD will communicate all relevant information received from the parties mentioned in rule 9.1.1 regarding rights and benefits of securities or interest in securities to the Participants, who will communicate such information to its Clients.
- 9.1.3 The CSD will communicate all corporate events in:
- 9.1.3.1 its CSD securities settlement system; and
  - 9.1.3.2 as provided by the Issuers listing documentation, to Issuers and Participants in the frequency prescribed in depository directive.
- 9.1.4 All capital, interest and dividend payments and maturities must be made by the Issuer to the CSD before or on the payment day as per the Issuers listing documentation and depository directive.
- 9.1.5 All capital, interest and dividend payments can be made by the Issuer directly to the Participants and / or to the Clients account as prescribed by the depository directive.
- 9.1.6 Any Issuer may effect capital, interest and dividend payments that are payable on a Saturday, should the Saturday not be a public holiday.
- 9.1.7 Issuers may effect payment of capital, interest and dividends in relation to the payment conditions specified in their listing documentation.
- 9.1.8 In the event where an Issuer effects payment on a Saturday, the CSD must be notified of such a decision and the CSD and Participants must process payments on the Saturday for good value to Clients.
- 9.1.9 Where the payment date of capital, interest and dividend falls on a Sunday or public holiday the Issuer can effect payment as per their listing documentation.



## SECTION 10

### **PLEDGE OR CESSION OF UNCERTIFICATED SECURITIES**

- 10.1 Participants must perfect pledges and cessions in *securitatem debiti* in accordance with the rules and depository directives.
- 10.2 A pledge or cession in *securitatem debiti*, as constituted by an agreement, in respect of uncertificated securities or an interest in uncertificated securities held by a CSD, Participant, authorised user or Nominee, as the case may be, must be effected by entry in the securities account or central securities account, as the case may be, of-
- 10.2.1 the pledgor in favour of the pledgee specifying the name of the pledgee, the number or nominal value of the uncertificated securities, the interest in the uncertificated securities pledged and the date of entry; or
- 10.2.2 the cedent in favour of the cessionary specifying the name of the cessionary, the number or nominal value of the uncertificated securities, the interest in the uncertificated securities ceded and the date of entry, as the case may be.
- 10.3 Uncertificated securities or an interest in uncertificated securities referred to in rule 6.1.1 may not be transferred or otherwise dealt with, and no instruction by the pledgor or cedent may be given effect to, without the written consent of the pledgee or cessionary;
- 10.4 The pledgee or cessionary of uncertificated securities or an interest in uncertificated securities referred to in rule 6.1.1 is entitled to all the rights of a pledgee of movable property or cessionary of a right in movable property pledged or ceded to secure a debt.
- 10.5 A pledge or cession in *securitatem debiti* effected in accordance with rule 10.1.1 and 10.1.2 is effective against third parties.
- 10.6 Nothing in this section prejudices any power of a Participant or CSD, as the case may be, to effect a pledge or cession in *securitatem debiti* to a person to whom the right to any uncertificated securities or an interest in uncertificated securities referred to in rule 6.1.1 has been transmitted by operation of law.
- 10.7 A pledge or cession must be uplifted prior to settlement being recognised as irrevocable.
- 10.8 It is the responsibility of the Participant to obtain approval from the pledgee for any movement of pledged securities.

## SECTION 11

### **ATTACHMENT**

- 11.1 The attachment of securities or an interest in securities is only complete when-
- 11.1.1 a written notice of the attachment has been given by the sheriff to the person that holds the securities in a securities account or a central securities account; and
  - 11.1.2 the CSD, Participant, authorised user or Nominee, as the case may be, has made an entry of the attachment on the securities account or central securities account, as the case may be, on behalf of the sheriff.
- 11.2 A CSD, Participant or authorised user, as the case may be, must ensure that only the securities or interest in securities of the person against whom the warrant of execution was granted, are attached.

## SECTION 12

### **NOMINEES**

12.1 A Participant may only open a securities account or central securities account in the name of a Nominee where-

12.1.1 the Nominee has been approved by an exchange in terms of section 76(1)(a) of the Act;

12.1.2 the Nominee has been approved by the CSD in accordance with the rules and depository directives in terms of section 76(1)(b) of the Act;

12.1.3 the Nominee is a foreign Nominee and has satisfied the Participant that it operates within its domestic legal framework with the appropriate regulatory approval required in its home jurisdiction; and

12.1.4 the Nominee has been approved by the Registrar in terms of section 76(3) of the Act.

12.2 The criteria used by the CSD in approving a Nominee must be equivalent to the criteria used by the Registrar in terms of rule 12.1.4.

SECTION 13

<reserved>

SECTION 14

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SECTION 15

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## SECTION 16

### **RECORDS**

- 16.1 If the records of the CSD are inconsistent with those of a Participant regarding securities deposited by that Participant with the CSD, the records of the CSD are deemed to be correct until the contrary is proved.
- 16.2 A Participant must keep client records as prescribed in the Act at any given time, any relevant legislation or as by depository directive..
- 16.3 A Participant must ensure that client records are protected against any form of damage, destruction, unauthorised access, amendment or sabotage.

SECTION 17

**CONFIDENTIAL INFORMATION**

- 17.1 The CSD and Participants shall keep confidential all information relating to the CSD, a Client, a securities account or a central securities account, unless the -
- 17.1.1 CSD or Participant is required to disclose the information before any court or by any law;
  - 17.1.2 CSD or Participant has obtained the prior written consent of the owner of the information;
  - 17.1.3 information is publicly available; or
  - 17.1.4 information must be disclosed to the CSD by the Participant or Issuer in terms of the rules and depository directives.
- 17.2 A Participant which discloses or makes known any confidential information in contravention of this rule 17.1 may be subject to disciplinary action in terms of the rules.
- 17.3 The CSD may make Issuer information available to a third party with prior approval of that Issuer and in terms of the Act and rules.
- 17.4 The CSD must have in place clear guidelines for employees regarding the security and confidentiality of confidential information.
- 17.5 The CSD must to the best of its ability, keep confidential information that it has in its possession arising out of either its commercial services or regulatory functions in a manner that does not allow for a conflict of interest to arise.



## SECTION 18

### RISK MANAGEMENT

#### 18.1 PARTICIPANT COMPLIANCE

18.1.1 A Participant must-

- 18.1.1.1 adopt and implement policies and procedures for the effective delivery of securities services to the satisfaction of the Controlling Body;
- 18.1.1.2 have its policies and procedures regarding securities services reviewed, on an annual basis, by its external auditors;
- 18.1.1.3 submit the external audit findings report issued by the external auditors to the Controlling Body within 60 (sixty) days of the completion of the audit;
- 18.1.1.4 introduce sound and effective internal controls for the delivery of its securities services;
- 18.1.1.5 conduct an annual internal audit review of its securities business;
- 18.1.1.6 submit internal audit confirmation letter reporting any material findings to the Controlling Body within 60 (sixty) days of the completion of the audit but no longer than 120 (one hundred and twenty) days after year end;
- 18.1.1.7 ensure all notifications are communicated within and actioned by the Participant;
- 18.1.1.8 ensure daily reconciliation of Client account balances and holdings;
- 18.1.1.9 ensure corporate actions are executed;
- 18.1.1.10 ensure records of pledges and cessions are maintained;
- 18.1.1.11 ensure client statements are provided as per rule 5.3.4.6;
- 18.1.1.12 ensure segregation of Client holdings from that of the Participant;
- 18.1.1.13 on a daily basis, report any regulatory discrepancies and submit a consolidated regulatory discrepancy report on a monthly basis to the CSD;
- 18.1.1.14 submit, on a monthly basis, all instances where a debit balance occurred at the end of any business day;
- 18.1.1.15 ensure that a Client of a Participant does not perform the function of a Nominee if not approved as a Nominee per the Act, rules and depository directive; and
- 18.1.1.16 ensure that Client settlements are duly instructed to the Participant.

### **18.2 COMPLIANCE OFFICER**

- 18.2.1 Before a Participant can commence business, that Participant must appoint a compliance officer to ensure compliance to the CSD rules and depository directives.
- 18.2.2 A compliance officer must-
- 18.2.2.1 have the requisite experience and qualifications and be deemed fit and proper as stipulated by depository directive;
  - 18.2.2.2 immediately report to the Participant senior management any apparent breach by the Participant, its officers and employees, of the provisions of the Act, rules and depository directive;
  - 18.2.2.3 report any infringement of the Act, rules and depository directives to the senior management of the Participant;
  - 18.2.2.4 report any breach of the Act, rules or depository directives or discrepancy or irregularity to the Head of Risk and Compliance of the CSD;
  - 18.2.2.5 provide any such information that the CSD may require from time to time in order to allow the CSD to perform its functions in line with the Act, its rules and depository directives.;
  - 18.2.2.6 receive all notices issued, on behalf of the Participant and monitor that they are complied with;
  - 18.2.2.7 monitor that Client mandates are in place.

## SECTION 19

### **DISPUTE RESOLUTION**

- 19.1 In the event of any dispute arising out of the rules between any of the CSD, Participants or Issuers, the parties to the dispute must attempt to resolve the dispute bilaterally, and in the instance where no resolution is reached the aggrieved party must refer the matter, in writing, to the Head of Risk and Compliance.
- 19.2 The Head of Risk and Compliance must provide the parties to the dispute with a resolution to the dispute according to the rules.
- 19.3 In the event that the resolution of the dispute is not acceptable, then the matter may be referred to the Controlling Body who may take the appropriate steps, including but not limited to calling a meeting of the respective parties executives.
- 19.4 In the event that no outcome to the dispute is acceptable, then the aggrieved party may refer the dispute for mediation within 7 (seven) business days after being notified by the controlling body of the failure to resolve the dispute.
- 19.5 The mediator may be appointed by the parties involved in the dispute, or by the chairman of the controlling body.
- 19.6 The mediation process must not exceed a period of 20 (twenty) business days.
- 19.7 In the event that no outcome to the mediation is acceptable then the aggrieved party may refer the dispute to arbitration within 10 (ten) business days from the date of the decision received by the mediator.
- 19.8 The arbitrator must be appointed by the Chairperson of the Arbitration Foundation of South Africa (AFSA).
- 19.9 The arbitrator must make decisions around the costs of arbitration in a just manner.
- 19.10 The arbitrator's decision shall be final and binding and can be made an order of court.
- 19.11 Complaints
- 19.11.1 Complaints against Participants
- 19.11.1.1 Any person may submit a complaint in writing against a Participant, officer or employee of a Participant to the Head of Risk and Compliance of the CSD.
- 19.11.1.2 The Head of Risk and Compliance must notify the participant, in writing, of a complaint made against it and the participant must respond, in writing, to the complaint within 10 (ten) business days of receiving such notification.

- 19.11.1.3 The Head of Risk and Compliance shall investigate all complaints received as per rule 19.11.1.1
- 19.11.1.4 The Head of Risk and Compliance must ensure that all complaints are resolved and responded to the complainant within 60 (sixty) days after the complaint has been received. Complaints that cannot be resolved within 60 days must be communicated to the complainant with regular updates regarding the progress of the investigation.
- 19.11.1.5 Complaints that have been fully resolved must be communicated to the complainant in writing by the Head of Risk and Compliance.
- 19.11.1.6 The Head of Risk and Compliance must submit a monthly report to the Controlling Body regarding any complaints submitted against Participants and the status of the investigations.
- 19.11.2 Complaints against the CSD
- 19.11.2.1 A Participant may submit a complaint in writing against the CSD in respect of the exercise of functions by the CSD, to the Head of Risk and Compliance.
- 19.11.2.2 The Head of Risk and Compliance shall investigate the complaints received as per Rule 19.11.2.1, and will also report the complaints to the Controlling Body of the CSD.
- 19.11.2.3 The Controlling Body may decide to appoint a committee to assist the Head of Risk and Compliance with the investigation of any complaint against the CSD by a Participant.
- 19.11.2.4 The Head of Risk and Compliance must ensure that all complaints submitted as per Rule 19.11.2.1 are resolved and responded to the complainant within 60 (sixty) days after the complaint has been received. Complaints that cannot be resolved within 60 days must be communicated to the complainant with regular updates regarding the progress of the investigation.
- 19.11.2.5 A Participant that is not satisfied with the decision of the CSD regarding any complaints submitted against the CSD, may refer the matter to the Registrar.
- 19.11.2.6 Where a participant believes a potential or actual conflict of interest exists, the participant may report such potential or actual conflict of interest in writing to the Controlling Body.

SECTION 20

**FEES AND CHARGES**

- 20.1 The Controlling Body may from time to time determine fees and charges to be paid by Participants, Issuers and other persons as stipulated by the fee schedule.
- 20.2 The Controlling Body must, within 60 (sixty) days, prior to the imposition of fees or charges, notify Participants, Issuers and other persons of the applicable fees and charges.
- 20.3 Fees and charges shall be due and payable within 30 (thirty) days after date of invoice.
- 20.4 The Controlling Body may charge interest on outstanding fees and charges, which interest shall be calculated on the expiry of the period referred to in rule 20.3. The rate of interest charged shall be the prime lending rate offered by the CSD's principal bank.
- 20.5 If the arrears are not paid by the Participant, Issuer or other persons within 14 (fourteen) days of the expiry of the period referred to in rule 20.3, or any extended period granted by the Controlling Body, the Controlling Body may suspend or terminate participation of the Participant, the provision of services by the CSD to the Issuer or other person, or take any other action deemed appropriate by the Controlling Body.

## SECTION 21

### REGULATORY COMPLIANCE

#### 21.1 SURVEILLANCE

- 21.1.1 The surveillance division will monitor compliance of Participants and Issuers to ensure that Participants, Issuers, and any officers, employees, or agents of Participants/Issuers comply with the Act, rules and depository directives.
- 21.1.2 In order to perform its surveillance function the surveillance division has the right to obtain any information, documents and records from any relevant stakeholder subject to any confidentiality laws affecting such party.
- 21.1.3 The surveillance department will be entitled to make on-site inspections of any documents, work stations, data systems, communications, security arrangement and any other information relating to the CSD business of the Participant, Issuer, any officer, employee or agent of Participants or Issuers and must notify the Registrar if it discovers that any party is in violation of the Act.
- 21.1.4 Where appropriate and with due notice, the surveillance department may request any representative of any Participant or Issuer, and any officer, employee or agent of a Participant or Issuer, to appear before the surveillance department to answer questions.
- 21.1.5 The surveillance division must at all times keep any information it has in its possession confidential so as to prevent any conflict of interest arising out of the performance of its regulatory function and the CSD's commercial services.
- 21.1.6 The surveillance department may refer any potential breach of the rules or depository directives to the Controlling Body for consideration.
- 21.1.7 The Controlling Body having reviewed the evidence provided to it of any potential breach of the rules and depository directives may refer the matter to the disciplinary committee for further consideration in order to enforce compliance with the rules and depository directives.

#### 21.2 INVESTIGATION

- 21.2.1 The Risk and Compliance division or any other person appointed by the Controlling Body may investigate any CSD related activities by the entities and persons as per rule 21.1.1.
- 21.2.2 The Controlling Body may, in its discretion, refer any matter to any authority should it be deemed necessary.

21.2.3 Any evidentiary item obtained through the process of investigation in any disciplinary action against any entity or person as set out in rule 21.1.1. can be used in any disciplinary matter or possible contravention of law that concerns the business of the CSD.

### **21.3 THE DISCIPLINARY COMMITTEE**

21.3.1 Any disciplinary committee will be a committee appointed by the Controlling Body as per rule 2.3.2.4.

21.3.2 The disciplinary committee will comprise of at least four persons including-

21.3.2.1 the Head of Risk and Compliance or their chosen nominee or any other employee of the CSD with a law degree and relevant experience;

21.3.2.2 any practising attorney or advocate with not less than five years legal experience, acting as chairperson;

21.3.2.3 at least one other professional person appointed by reason of that person's financial services knowledge as it relates to the matters under consideration; and

21.3.2.4 a person appointed by reason of his practical knowledge in the business of the CSD.

21.3.3 In the instance that the decision of the disciplinary committee is not abided by, the Controlling Body may-

21.3.3.1 recover any fine imposed by the disciplinary committee in a court of competent jurisdiction; and

21.3.3.2 recommend the termination of the participation of the Participant or Issuer or suspend the provision of further services by the CSD to the Participant or Issuer (on such conditions as the Controlling Body may deem fit) or in the case of an officer or employee of a Participant, require such Participant or Issuer to hold a disciplinary enquiry to consider what the appropriate action is that should be taken.

21.3.4 The Controlling Body will, by depository directive, determine-

21.3.4.1 the disciplinary procedures to be followed by the disciplinary committee;

21.3.4.2 the manner in which its decisions will be notified to affected parties;

21.3.4.3 the number of days that the persons and entities listed under section 35(6) of the Act are afforded to comply with a requirement of a fine imposed by the Controlling Body;

21.3.4.4 any other matters relevant to the enforcement of the rules.

21.3.5 The disciplinary committee may recommend to the Controlling Body, the imposition of any one of the following penalties for any contravention of the rules or failure to comply therewith-

21.3.5.1 a reprimand;

- 21.3.5.2 a censure;
  - 21.3.5.3 a fine not exceeding R 7.5 million, to be adjusted by the Registrar annually to reflect the Consumer Price Index, as published by Statistics South Africa;
  - 21.3.5.4 a suspension or cancellation of the right to be a Participant;
  - 21.3.5.5 disqualification, in the case of a natural person, from holding office of a director or officer of a Participant, as the case may be, for any period of time;
  - 21.3.5.6 a restriction on the manner in which a Participant may conduct business or may utilise an officer, employee or agent;
  - 21.3.5.7 suspension or cancellation of the Participant to perform a function in terms of the rules;
  - 21.3.5.8 any other penalty that is appropriate in the circumstances.
- 21.3.6 Any fine and costs paid to the CSD pursuant to an award made in terms of the rules shall be used to further the regulatory and supervisory objectives of the CSD in terms of the Act.

### **21.4 DISCIPLINARY PROCEDURE**

- 21.4.1 Any complaints or disciplinary matters must be brought to the attention of the Head of Risk and Compliance.
- 21.4.2 If during the course of an investigation, the Head of Risk and Compliance is satisfied on the basis of information given that there are grounds for an allegation of improper conduct, they may-
- 21.4.2.1 institute a formal charge against such person setting out a brief statement of facts constituting the alleged offence; and
  - 21.4.2.2 refer the charge to the disciplinary committee in terms of the rules.
- 21.4.3 The Head of Risk and Compliance may refer any matter to the Controlling Body who may refer the matter to the disciplinary committee. Where the Head of Risk and Compliance is of the view that the matter should not be referred to the Controlling Body, any party affected by the alleged offense may bring the matter to the Controlling Body in the best interest of the CSD and the financial market as a whole.
- 21.4.4 If the respondent to the charge does not tender an admission of guilt he must file a defence within 10 (ten) business days from the date of his receipt of the formal charge.
- 21.4.5 The disciplinary committee will determine the date and time on which the matter will be heard, which date shall not be more than 20 (twenty) business days from the date on which the respondent files his defence.



## SECTION 22

### **RIGHT OF APPEAL**

22.1 A person aggrieved by the decision of-

22.1.1 the CSD to refuse an application by a person to be accepted as a Participant;

22.1.2 the CSD to terminate the participation of a Participant, or to direct a Participant to terminate the access to the CSD by an officer or employee of a Participant;

22.1.3 the CSD to impose a penalty on an Issuer or Participant, or an officer or employee of an Issuer or Participant;

may appeal to the appeal board on the conditions determined by or under section 26 of the Financial Services Board Act, subject to section 105(1) of the Act.

## SECTION 23

### **INSOLVENCY**

- 23.1 In the instances where insolvency proceedings are initiated against a Participant, that Participant must-
- 23.1.1 immediately inform the Controlling Body of the CSD of such proceedings;
  - 23.1.2 make arrangements to transfer all securities accounts it holds and central securities accounts it administers, to the CSD, or transfer all such securities to another Participant if so indicated in the Client mandate;
  - 23.1.3 make full disclosure as to the nature and details of all such securities, including who the registered and beneficial holder are, to the CSD or other Participant, as per depository directive
  - 23.1.4 the CSD must ensure that in the event of insolvency the dividends and maturities due to the Participant and its Clients will be deposited into a separate trust account administered by the CSD and distributed when required;
- 23.2 The CSD must ensure that where there is a shortfall in any securities accounts and / or central securities account that have been transferred to the CSD, that such securities are distributed between the beneficial holders on an equitable basis as determined by the Controlling Body.
- 23.3 Where insolvency proceedings are instituted against a Client, the CSD or a Participant may terminate any pending transactions.

SECTION 24

**NOTICES**

- 24.1 A Participant or other person utilising the services of the CSD, where applicable, shall notify the Controlling Body of a physical address, an electronic mail address, a facsimile address and a secured securities delivery mechanism address at which such Participant or other person shall accept the delivery of all notices distributed by the CSD in terms of the rules.
- 24.2 The Controlling Body shall notify Participants or other persons utilising the services of the CSD, where applicable, of a physical address, an electronic mail address, a facsimile address and a secured securities delivery mechanism address at which the CSD shall accept the delivery of all notices from such Participants or other persons utilising the services of the CSD.
- 24.3 Any notice in terms of the rules shall be in writing, and may be delivered by means of a secured securities delivery mechanism and where this is not possible, by means of electronic mail, facsimile, by hand, or by registered post, provided that where a Participant sends a notice in terms of the rules to its Clients, it may do so by means of normal post.
- 24.4 Any notice delivered by hand before 15h00 on a business day at the nominated physical address shall be deemed, until the contrary is proved, to have been received on the date of delivery.
- 24.5 Any notice transmitted by a secured securities delivery mechanism, electronic mail or by facsimile before 15h00 on a business day or such other time agreed upon between the CSD and a Participant, Issuer or any other party shall be deemed, if a confirmation receipt is received, to have been received on the date of confirmation of the transmission, unless an error report is received.
- 24.6 Any notice delivered by registered post shall be deemed, until the contrary is proved, to have been received within seven business days after being dispatched.

SECTION 25

**LIMITATION OF LIABILITY, WARRANTIES AND INDEMNITIES**

- 25.1 The CSD will not be held liable for any losses or damages that result from an act of *Force Majeure*;
- 25.2 Any loss or damage sustained by any person as a result of an action performed by the Controlling Body or an employee of the CSD or a Participant in the execution of their duties and functions as stipulated in the Act, these rules and the depository directives cannot attract liability towards those persons or the CSD and indemnify the CSD and its employees from any such loss and damages.
- 25.3 The CSD shall obtain adequate insurance cover or guarantees to ensure that it is able to meet any potential claim arising against the CSD.
- 25.4 The CSD, any director, executive officer, officer, employee or representative of the CSD, or the Controlling Body or a committee of the Controlling Body is not liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by-
- 25.4.1 the CSD, a director, executive officer, officer, employee or representative of the CSD, Controlling Body or any committee of the Controlling Body; or
- 25.4.2 a Participant in the bona fide or negligent performance of any function under or in terms of the Act, the rules or depository directives of the CSD.
- 25.5 The CSD shall by means of insurance or by any other means acceptable to the Registrar place itself in a position to meet any claim for damages against it or its wholly owned subsidiary by any Participant, or a Client or any Nominee for any loss or damage sustained by such a Participant, Client or Nominee as a result of any claim arising in terms of the Act or the rules.
- 25.6 In addition to the statutory warranties and indemnities provided for in Section 55 of the Companies Act, and the Act, every Participant, Issuer of securities and Client shall be deemed to have indemnified the CSD, its directors, officers, employees or agents against any loss, legal costs, damage or liability suffered or incurred by the CSD, as a result of any grossly negligent or wilful act or omission, on the part of such Participant, Issuer of securities or Client, as the case may be, or any of their officers, employees or agents.
- 25.7 Each Participant, Issuer of securities and Client shall be deemed to have waived any claim that it may have against the CSD, its directors, executive officer, officers, employees or representatives resulting from any negligent performance or failure to perform by the CSD, its directors, executive officer, officers, employees or representatives of any function under or in terms of the Act, the rules or depository directive.

SECTION 26

**APPLICABLE LAWS AND JURISDICTION**

26.1 The rules shall be interpreted in accordance with the laws of the Republic of South Africa.

26.2 All parties submit to the jurisdiction of the High Court of South Africa.