

## BOARD NOTICE

### BOARD NOTICE 4 OF 2011

#### SECURITIES SERVICES ACT, 2004

#### PROPOSED AMENDMENTS TO THE RULES OF THE JSE LIMITED

1. In terms of section 61(5) of the Securities Services Act, 2004 (Act No. 36 of 2004), it is hereby notified that the JSE Limited has applied to the Registrar of Securities Services for approval of proposed amendments of its rules, which amendments are set out in the Schedule.
2. In terms of section 61(5) of the said Act, all interested persons who have any objections to the proposed amendments are hereby called upon to lodge their objections with the Registrar of Securities Services, PO Box 35655, Menlo Park, 0102, or at the following email address: [normanm@fsb.co.za](mailto:normanm@fsb.co.za), within a period of 14 days from the date of publication of this notice.
3. In terms of section 61(6) of the said Act, I, Dube Tshidi, hereby determine 1 February 2011 as the date on which the rules in the Schedule come into operation. If any objections are received, another commencement date may be determined by notice in the Gazette.

DP TSHIDI  
REGISTRAR OF SECURITIES SERVICES

#### SCHEDULE

#### PROPOSED AMENDMENTS TO THE JSE RULES

##### General explanatory notes

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

##### Section 1 Definitions

"Act"	...
"BEE Act"	<u>means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);</u>
"BEE certificate"	<u>means a certificate issued by a verification agency accredited by the accreditation body contemplated in the BEE Codes, certifying that the person identified in the certificate is a BEE compliant person;</u>
"BEE Codes"	<u>means the Broad-Based Black Economic Empowerment Codes of Good Practice gazetted from time to time under the BEE Act;</u>
"BEE compliant person"	<u>means as interpreted by the courts, from time to time –</u> <ol style="list-style-type: none"> <li>(a) <u>as regards a natural person, one who falls within the ambit of the definition of "black people" in the BEE Codes;</u></li> <li>(b) <u>as regards a juristic person having a shareholding or similar member's interests, one who falls within the ambit of the definitions of BEE controlled company or BEE owned company, using the flow-through principle contemplated in the BEE Codes;</u></li> <li>(c) <u>as regards any other entity, any entity similar to a BEE controlled company or BEE owned company using the flow-through principle contemplated in the BEE Codes which would enable the issuer of securities owned or controlled by such entity to claim points attributable to the entity's ownership of the</u></li> </ol>

	securities pursuant to the BEE Codes;
<u>"BEE contract"</u>	<p>means the prescribed contract which the proposed registered owner of BEE securities and, if the registered owner will act as a nominee on behalf of a beneficial owner, the proposed beneficial owner of those BEE securities must conclude, in terms of which, <i>inter alia</i> –</p> <ul style="list-style-type: none"> <li>(a) the registered owner or, if the registered owner will act as a nominee on behalf of a beneficial owner, the beneficial owner warrants that he is a BEE compliant person;</li> <li>(b) the necessary restrictions, limitations and requirements are imposed by the issuer on the registered owner and the beneficial owner in order to achieve the continued ownership of BEE securities by BEE compliant persons;</li> <li>(c) the parties to the contract are bound by generic terms applicable to all issuers and by additional specific terms relevant to a particular issuer's BEE securities contained in the issuer's constitution; and</li> <li>(d) the beneficial owner indemnifies the registered owner against any claim made against the registered owner in the event that, in terms of the BEE contract, – <ul style="list-style-type: none"> <li>(i) the registered owner is obliged to dispose of the BEE securities; or</li> <li>(ii) the issuer of the BEE securities exercises its right to repurchase or its right to nominate its nominee to purchase the BEE securities from the registered owner thereof;</li> </ul> </li> </ul>
<u>"BEE controlled company"</u>	has the same meaning as defined in Schedule 1 of the BEE Codes;
<u>"BEE owned company"</u>	has the same meaning as defined in Schedule 1 of the BEE Codes;
<u>"BEE securities"</u>	means the securities in respect of which the issuer requires that the registered owners or, if the registered owners are nominees for beneficial owners, the beneficial owners, are BEE compliant persons for a period of time as prescribed by the issuer;
<u>"beneficial owner"</u>	<p><b>[means a person or entity on whose behalf any equity security is held by a CSDP in the name of a nominee company owned by the CSDP, a member or any other entity;]</b></p> <p>means, in respect of equity securities, the person in whom the benefits of the bundle of rights attaching to equity securities vest, which is typically evidenced by one or more of the following –</p> <ul style="list-style-type: none"> <li>(a) the right or entitlement to receive any dividend or interest payable in respect of those equity securities;</li> <li>(b) the right to exercise or cause to be exercised in the ordinary course of events, any or all of the voting, conversion, redemption or other rights attached to those equity securities;</li> <li>(c) the right to dispose or direct the disposition of those equity securities, or any part of a distribution in respect of those equity securities, and to have the benefit of the proceeds,</li> </ul> <p>and whose securities are held in the name of a registered owner acting as a nominee for that person;</p>
8.60.1	Every member shall ensure that it obtains and maintains sufficient information on each client account and each account operated by a client so as to be able to identify –
8.60.1.1	the client;
8.60.1.2	the <b>[beneficial owner]</b> account holder of a controlled client account if the account holder is not a client of the member but is a person on whose behalf a client is acting as agent; and

- 8.60.1.3 the person or persons responsible for placing instructions on the account, subject to rule 8.60.4.
- 8.60.2 As a minimum, the member shall obtain the following information in respect of each client and the **[beneficial owner]** account holder of each controlled client account if the account holder is not a client of the member but is a person on whose behalf a client is acting as agent -
  - 8.60.2.1 full name; and
  - 8.60.2.2 identity number or registration number, as the case may be.

#### **8.65 Transactions in BEE securities**

- 8.65.1 As trading in BEE securities is restricted to BEE compliant persons, no person may purchase BEE securities unless -
  - 8.65.1.1 the person who will be the registered owner; or
  - 8.65.1.2 if the proposed registered owner will be acting as a nominee on behalf of a beneficial owner, the beneficial owner,  
qualifies as a BEE compliant person and that person has signed a BEE contract as provided for in these rules.
- 8.65.2 A member may not purchase BEE securities for its own account unless the member qualifies as a BEE compliant person and has signed a BEE contract as provided for in these rules.
- 8.65.3 A member may not sell BEE securities to a client, or purchase BEE securities on behalf of a client unless -
  - 8.65.3.1 in respect of a controlled client, the member has ensured that the BEE contract has been signed, *inter alia*, by the proposed beneficial owner of the BEE securities and has obtained a copy of a valid BEE certificate if the proposed beneficial owner is not a natural person; or
  - 8.65.3.2 in respect of a non-controlled client, the member has obtained a copy of -
    - 8.65.3.2.1 the BEE contract signed, *inter alia*, by the proposed registered owner and, if the proposed registered owner will be acting as a nominee on behalf of a proposed beneficial owner, the proposed beneficial owner of the BEE securities; and
    - 8.65.3.2.2 a valid BEE certificate in respect of the proposed registered owner or proposed beneficial owner, if that person is not a natural person.
- 8.65.4 For the purposes of rule 8.65, -
  - 8.65.4.1 if the particular rule requires a course of action to be taken in respect of either the registered owner or the beneficial owner of BEE securities, the course of action will be applicable to the beneficial owner if the registered owner is acting as a nominee on behalf of the beneficial owner;
  - 8.65.4.2 the proposed registered owner or beneficial owner of BEE securities may be a client or an account holder on whose behalf the client is acting as agent.
- 8.65.5 The procedures to ensure and record that a proposed registered owner or proposed beneficial owner of BEE securities qualifies as a BEE compliant person are set out in Directive BM.
- 8.65.6 In the event that the Settlement Authority identifies a purchase of BEE securities on an account for which the member has not recorded, as required in Directive BM 1, that the proposed registered owner or the proposed beneficial owner is a BEE compliant person, the Settlement Authority will instruct the member to transfer the transaction from that account to the member's misdeals account and the member will assume responsibility for settling the transaction on settlement day.
- 8.65.7 If it is determined that a beneficial owner has not signed a BEE contract in terms of rule 8.65.3.1 or that a registered owner and, if applicable, a beneficial owner have not signed a

BEE contract in terms of rule 8.65.3.2, at the time of the purchase of the BEE securities, the Director: Surveillance, in his sole discretion, may cancel the purchase transaction of the BEE securities and such cancellation will be binding on the member who executed the transaction and on the registered owner and the beneficial owner, as the case may be.

8.65.8 Where a purchase transaction is cancelled by the Director: Surveillance, -

8.65.8.1 the member who executed the transaction will be responsible for the recovery of the BEE securities from the registered owner or from the beneficial owner, as the case may be, and will be required to return the transaction consideration to such person;

8.65.8.2 the registered owner or the beneficial owner will be obliged to accept the return of the purchase consideration and will be obliged to dispose of the BEE securities to the member who executed the transaction; and

8.65.8.3 the member will be required to sell the recovered BEE securities to a BEE compliant person in the market for the member's own account as soon as possible.

8.65.9 If the member is unable to sell the recovered BEE securities to a BEE compliant person in the market, the member may offer to dispose of those securities to the issuer or the issuer's nominee for the consideration provided for in that issuer's constitution. The issuer may accept or reject the member's offer to dispose of the BEE securities. If the issuer rejects the member's offer to dispose of the BEE securities, the member will continue to be required to sell those securities to a BEE compliant person in the market for the member's own account as soon as possible.

8.65.10 If the member or the registered owner or the beneficial owner of BEE securities fails to comply with any of the provisions of rules 8.65.7, 8.65.8 or 8.65.9, the JSE may take any steps or action necessary to ensure that the member, the registered owner and the beneficial owner complies with these rules.

9.30.3 A member who is responsible for safeguarding client assets other than equity securities must comply with the following requirements -

9.30.3.1 ...

9.30.3.2 a member must maintain proper accounting records in respect of all such assets purchased, sold or held on behalf of clients. These records must be updated forthwith in respect of any transactions in respect of such assets and must clearly identify the [beneficial] owners of all such assets at all times; and 9.30.3.3...