



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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WINDHOEK - 15 October 2005

No. 3518

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## General Notice

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### NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

No. 251 2005

#### NOTIFICATION OF APPLICATION FOR APPROVAL OF AMENDMENT OF RULES OF THE NAMIBIAN STOCK EXCHANGE

In terms of section 12(6) of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985) -

- (a) notice is given that the Namibian Stock Exchange has applied for approval of the amendment of the Namibian Stock Exchanges Rules, particulars of which are as set forth in the Schedule; and
- (b) all interested persons who have any objections to the amendments referred to in paragraph (a), are called upon to lodge their objections with the Registrar of Stock Exchanges, at P.O Box 21250, Windhoek, within a period of 30 days from the date of publication of this notice.

### SCHEDULE

1. In this Schedule, "the Rules" means the Namibian Stock Exchange Rules

promulgated under Government Notice No. 151 of 12 September 1995, as amended by Government Notices No. 145 of 15 July 1997, No. 81 of 5 May 1999, No. 12 of 1 February 2002 and General Notice No. 203 of 16 August 2002.

### **Amendment to Section 1 of the Rules**

2. Rule 1.4 of the Rules is amended -
- (a) by the insertion after the definition of block trade of the following definition:
- “ ‘Board’ means the committee of the Namibia Stock Exchange, as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985) ;”;
- (b) by the deletion of the definition of ‘General Manager’;”;
- (c) by the insertion after the definition of “certified transfer deed” of the following definition:
- “ ‘Chief Executive Officer’ means the president as defined in section 1 of the Act;”;
- (d) by the insertion after the definition of ‘letter of right’ of the following definition:
- “ ‘listing requirements’ means the requirements for the listing of securities on the NSX as issued by the Board from time to time;”;
- (e) “by the substitution of the definition of ‘NSX Executive’ for the following definition;”;
- “ ‘NSX Executive’ means the Chief Executive Officer and such other officials of the NSX as the Board may from time to time designate;”;
- (f) by the insertion after the definition of ‘NSX year’ of the following definition:
- “ ‘NSX directive’ means a resolution of the Board as provided for in the Rules;”;
- and
- (g) by the insertion after the definition of ‘NSX directive’ of the following definition:
- “ ‘Operations Manager’ means a person acting as a Operations Manager in connection with the accounting, administration, surveillance of trading on the NSX and transfer of securities;”.
- (h) by the insertion after the definition of ‘professional market participant’ of the following definition:
- “ ‘provisionally approved members’ means the prospective member who has been approved in terms of the rules to be become a member subject to the acquisition of the necessary NSX rights”.

## General amendment of the Rules

3. The Rules are amended by substitution for the expressions “General Manager” and “President” wherever they occur in the Rules of the expression “Chief Executive Officer”.

## Substitution of Section 2 of the Rules

4. The following Section is substituted for Section 2 of the Rules -

### “SECTION 2

### NAMIBIAN STOCK EXCHANGE CONSTITUTION

#### Arrangement of Section

2.1	Introduction
2.2	Nature of NSX
2.3	The objects of the NSX
2.4	The powers of the NSX
2.5	Compliance with the rules
2.6	Rights holders
2.7	NSX rights
2.8	The Board
2.9	Annual General Meetings
2.10	Special General Meetings
2.11	Proceedings at annual and special general meetings
2.12	Amendments to this section
2.13	Auditors, financial year end and accounting records
2.14	Winding up
2.15	Liability of Board members and officers

#### 2.1 Introduction

This Section represents the Constitution of the NSX and shall be the founding document of the NSX until the NSX is wound up in terms of 2.14.

#### 2.2 Nature of NSX

The NSX shall be a non-proprietary voluntary association of rights holders referred to in 2.6.1, -

- 2.2.1 having juristic personality and perpetual succession;
- 2.2.2 constituted separately from its rights holders;
- 2.2.3 in which rights holders have a limited beneficial interest contemplated in 2.7.2.1 and 2.7.2.2; and
- 2.2.4 capable of acquiring rights, obligations and duties in law apart from those of its rights holders.

#### 2.3 The objects of the NSX

The objects of the NSX are -

- 2.3.1 to carry on the business of a stock exchange in the Republic of Namibia subject to the Act and the Rules;
- 2.3.2 to adapt, modify or extend its business or to establish, develop and maintain any related business as may seem necessary or desirable in the future;
- 2.3.3 to do all things necessary for the lawful conduct of its business, including the making of an application for the grant, extension or renewal of any licence and the obtaining of permissions or authorisations that may be required by the Act and any applicable law and ensuring compliance with the Act and any applicable law;
- 2.3.4 to undertake and to discharge all the functions of a stock exchange;
- 2.3.5 to provide facilities and any goods and services associated with the carrying on of the business of a stock exchange;
- 2.3.6 to provide, either through the NSX or through an entity created or registered in terms of any law such services, facilities and goods as the NSX may from time to time determine to provide or make available to broking members in order to facilitate the orderly performance of such members' functions which is consistent with the Act;
- 2.3.7 to provide a market for any listed securities and to grant, review, suspend or terminate a listing of any listed security or article available for trade on the NSX and for this purpose to prescribe, suspend, alter or rescind from time to time listings requirements;
- 2.3.8 to provide, insofar as it may be necessary or desirable in the opinion of the Board, for -
  - 2.3.8.1 the protection of all persons who utilise the services of broking members or who conclude transactions in listed securities with or through broking members in the course of such member's business;
  - 2.3.8.2 the establishment and maintenance of one or more Guarantee Funds in accordance with Section 30 of the Act and Section 9 of the Rules;
  - 2.3.8.3 the surveillance of all activities by broking members of the NSX in the buying or selling of listed securities; and
  - 2.3.8.4 the advancement of the NSX's international competitiveness and of the interests of securities and financial markets of Southern Africa;
- 2.3.9 to do any other thing which the Board considers appropriate for the NSX to do, provided that such thing falls within the ambit of the Act; and
- 2.3.10 to do all other things which are necessary, incidental or conducive to the attainment of the above objects or in pursuance of its powers, provided that such things are consistent with the Act.

**2.4 The powers of the NSX**

2.4.1 The NSX shall exercise its powers subject to the Act and the Act shall override the Rules inconsistent with the Act.

2.4.2 The NSX may sue or be sued in any court of law or other tribunal in its own name. All powers of attorney, bonds, deeds, contracts and other documents which may have to be executed shall be signed by any person who is authorised to do so by a resolution of the Board.

2.4.3 The NSX shall have the power -

2.4.3.1 to do all such things and to enter into all such arrangements and contracts as are necessary or desirable to achieve the objects of the NSX or are incidental or conducive to the attainment of such objects;

2.4.3.2 to adopt, make, amend and rescind the Rules, NSX directives and listings requirements to ensure that the Rules, NSX directives and listing requirements comply with the Act and generally to govern, control, manage and regulate the affairs of the NSX and to regulate the affairs of its broking members and issuers of listed securities;

2.4.3.3 to merge or amalgamate with, take over, purchase, take transfer of the whole or part of the business of, or transfer part or the whole of its business to or otherwise acquire -

2.4.3.3.1 a stock exchange licensed in terms of the laws of the country from which that stock exchange operates;

2.4.3.3.2 the owner or holding company of any stock exchange or the holding company or subsidiary of the owner of any stock exchange or the subsidiary of any stock exchange or a person mentioned in this rule;

2.4.3.3.3 the provider of any service or product to any person mentioned in this rule;

2.4.3.3.4 any other person in the attainment of the objects of the NSX; or

2.4.3.3.5 any one or more of the businesses, licences or assets of any stock exchange, provider or person mentioned in this rule;

2.4.3.4 to purchase or acquire, alienate, sell or lease land, buildings, securities or any other kind or description

- of movable or immovable property;
- 2.4.3.5 to develop and operate new markets for any listed securities as the Board considers appropriate;
- 2.4.3.6 to enter into local or international alliances, joint ventures or business relationships which are incidental or conducive to the attainment of the objects of the NSX;
- 2.4.3.7 to manage its assets;
- 2.4.3.8 to borrow or raise such sums of money from time to time for purposes of the NSX as the NSX deems fit. The NSX may raise or secure the payment or repayment of such money in such manner and upon such terms and conditions in all respects, as the NSX considers appropriate;
- 2.4.3.9 to open and operate banking accounts;
- 2.4.3.10 to secure the payment of monies borrowed in any manner including the mortgage and pledge of property and, without detracting from the generality thereof, in particular by the issue of any kind of debt instrument, with or without security;
- 2.4.3.11 to lend money to any person or company or to guarantee the obligations of any person or company on such terms as the NSX deems fit;
- 2.4.3.12 to invest money in any manner;
- 2.4.3.13 to authorise persons to obtain broking membership, to trade on, clear and settle for or otherwise access or utilise the facilities and services of the NSX and to refuse, review or withdraw such authorisation;
- 2.4.3.14 to create, issue, make available, hold and cancel NSX rights as provided for in 2.7 -
- 2.4.3.14.1 in respect of a broking member provisionally admitted as a member in terms of 4.6.7; and
- 2.4.3.14.2 generally, as may be approved from time to time by a majority of the rights holders present in person or by proxy at a special general meeting; and
- 2.4.3.15 for the purposes of managing the settlement of transactions in uncertificated securities by the Companies Act, 2004 (Act No. 28 of 2004), once the provisions of this Act come into operation and managing the risk associated with such transaction,

to buy and sell uncertificated securities and to enter into uncertificated securities borrowing and lending arrangements.

## **2.5. Compliance with the Rules**

The Chief Executive Officer shall ensure that the Rules comply with the Act and that the Rules are amended when necessary to effectively regulate the activities of the NSX, its broking members and persons who deal with or through the broking members.

## **2.6. Rights holders**

2.6.1 Rights holders of the NSX shall be those persons, including companies, partners of partnerships approved by the Board, who hold at least one NSX right in terms of 4.6.

2.6.2 The Board shall keep a register of the names of the rights holders of the NSX and shall in such register indicate the number of NSX rights that such person hold.

## **2.7. NSX rights**

2.7.1 A NSX right represents a right holder's entitlement to shared ownership of the NSX and the number of NSX rights that a rights holders holds indicates that rights holder's proportionate interest to the total rights issued by the NSX at any time.

2.7.2 A NSX right entitles the right holder -

2.7.2.1 to vote at any meeting of the rights holders; and

2.7.2.2 to participate in surplus funds or assets of the NSX on the winding up of the NSX in terms of 2.14, and in no other circumstances.

2.7.3 In addition to, and if the additional requirements set out in the Rules have been met, a NSX right may entitle the rights holder to be admitted to membership as a stock-broker in terms of 4.6.

2.7.4 A NSX right may be obtained only in terms of -

2.7.4.1 2.7.6; and

2.7.4.2 2.7.7 and 2.7.9, after the prospective member has been provisionally admitted as a member in terms of 4.6.7.

2.7.5 The NSX shall not be entitled to exercise the voting rights attached to NSX rights when holding such rights.

2.7.6 Existing NSX rights shall be held by -

2.7.6.1 persons who were founder members of the NSX immediately before the commencement of these Rules

- and which rights shall be non-redeemable and not transferable;
- 2.7.6.2 persons who, immediately before the commencement of these rules, were registered with the NSX as broking members of the NSX.
- 2.7.7 Where a new NSX right is created and issued -
- 2.7.7.1 the NSX shall not create and issue any new NSX right unless a broking member who is provisionally approved as a member, and who requires such right has been unable for 14 (fourteen) days immediately before requesting the NSX to create and issue a new NSX right, to purchase an existing NSX right at any price from a broking member;
- 2.7.7.2 the NSX shall issue a new NSX right to the broking member referred to in 2.7.7.1, for immediate payment at a price to be determined by establishing the net asset value of the existing rights, which net value shall include the founder members' contribution, according to the latest audited financial statements.
- 2.7.7.3 the NSX may only create and issue to a broking member referred to in 2.7.7.1 the minimum number of NSX rights required to be held by the broking member who requires the NSX to issue such NSX rights in terms of this sub-rule.
- 2.7.8 A rights holder may not hold more than 10 (ten) percent of all issued NSX rights.
- 2.7.9 NSX rights shall be transferable subject to the Rules and may only be sold or otherwise disposed of by private treaty or by public auction and only to a broking member who is a rights holder or a member provisionally approved member in terms of 4.6.7.
- 2.7.10 NSX rights may not be used as security in any form.
- 2.7.11 Every transfer deed in respect of a NSX right shall be signed by or on behalf of the transferor and the Chief Executive Officer and the transferor shall be deemed to remain the holder of such NSX right until the name of the transferee is entered in the register specified in 2.6.2.
- 2.7.12 A rights holder shall register in the rights holder's own name all NSX rights of which such rights holder is the beneficial owner. A rights holder shall not have registered in the right holder's name any NSX right of which that right holder is not the beneficial owner and only the registered rights holder shall be recognised for the purposes of exercising any entitlement of ownership of a NSX right.
- 2.7.13 The seller or disposer of a NSX right shall immediately notify the Chief Executive Officer in writing of the sale or disposal, giving the date of sale, the name of the acquiring party and the price. The seller or disposer



shall in the notice request the Board to transfer the NSX right to the acquiring party, and the notice shall be accompanied by a completed transfer deed which shall be in such form as the Board may determine from time to time. The purchase price of all NSX rights sold shall be paid by the purchaser to the NSX upon establishing a lien in terms of 2.7.14.

- 2.7.14 The NSX shall have a first lien on the proceeds of the sale or other disposition of a NSX right in the event that the seller or disposer of such NSX right is in any way indebted to the NSX. The Guarantee Fund or Funds of the NSX shall have a second lien on the proceeds of the sale or other disposition of a NSX if the seller of such NSX right has defaulted and the Guarantee Fund or Funds have discharged any of the seller's obligations. After the satisfaction of the lien, the balance of the proceeds of the sale or other disposition will revert to the seller or disposer or the estate of the seller or disposer, as the case may be.
- 2.7.15 The rights attaching to NSX rights may only be modified or abrogated with the sanction of a resolution passed by 75 (seventy five) percent of rights holders present in person or by proxy at a general meeting.
- 2.7.16 A broking member who ceases to be a member due to death, sequestration, insolvency, liquidation or default or for any other reason is no longer employed, a director or shareholder or is no longer residing within the Republic of Namibia, shall be obliged to sell its NSX rights within a period of three months from the date on which it ceases to be a member, failing which the NSX shall cancel such rights and pay to such member the amount of the original issue price or the price as determined by the auditor in terms of 2.7.7.2 whichever is the lesser.

## **2.8. The Board**

### **2.8.1 Powers of the Board**

2.8.1.1 The management and control of the NSX shall vest in the Board which shall have the powers conferred upon it by the Act and the Rules.

2.8.1.2 Except where the consent of a general meeting of rights holders is required as provided in 2.8.1.3, the Board may by resolution in accordance with 2.8.2.10.8 exercise all the powers of the NSX. A resolution of a general meeting shall not invalidate any prior act of the Board which would have been valid if such resolution had not been passed.

2.8.1.3 The Board shall not, without the prior authorisation of the general meeting, be entitled, for and on behalf of the NSX -

2.8.1.3.1 to make any decisions or take actions which in terms of the Rules are specifically required to be taken or approved by the rights holders of the NSX in a general meeting as provided for in 2.4.3.14.2, 2.7.15, 2.8.2.5, 2.12 and 2.14.

2.8.1.3.2 to borrow money for purposes other than in pursuance of the objects and within the powers of the NSX.

- 2.8.1.4 The Board shall have the power without the consent of a general meeting but subject to the Act and the Rules -
- 2.8.1.4.1 to delegate or assign any power or duty conferred upon or assigned to it under the Act or the Rules or other applicable laws or the common law to the extent and on the terms and conditions determined by it in its discretion, to one or more Sub-committees or persons appointed by it for that purpose, but shall not be divested or relieved of any power or duty so delegated or assigned;
  - 2.8.1.4.2 to authorise any person to sign all documents required from time to time to give effect to any act which may be performed by the NSX and without detracting from the generality thereof, including all powers of attorney and documents required for the registration of transfer of any immovable property owned by the NSX or any mortgage bonds to be registered over any immovable property owned by the NSX;
  - 2.8.1.4.3 to authorise the payment of such donations by the NSX to such religious, charitable, public or other bodies, clubs, funds or associations or persons as the Board may consider advisable or desirable and in the interests of the NSX;
  - 2.8.1.4.4 in the ordinary course of business, to lend money to any company of which the NSX is a shareholder or other entity in which the NSX has a proprietary or membership interest for the purposes of funding that company's or entity's business activities; and
  - 2.8.1.4.5 to invest the funds of the NSX for the benefit of the NSX.
- 2.8.2 Election of Board members and Appointment of Chief Executive Officer, their term of office and remuneration**
- 2.8.2.1 **Composition**
- 2.8.2.1.1 The Board shall consist of 9 (nine) natural persons resident in Namibia, constituted as follows:
- 2.8.2.1.1.1 7 (seven) members, who shall be elected from the following categories and each category must have at least one representative:
    - 2.8.2.1.1.1.1 investing public (pension funds, asset and unit trust managers)
    - 2.8.2.1.1.1.2 financial sector (banks, short and long-term insurance, investment companies, real estate and speciality finance)

- 2.8.2.1.1.3 primary listed companies;
- 2.8.2.1.1.4 general business community;
- 2.8.2.1.1.5 a registered auditor;
- 2.8.2.1.1.6 practicing lawyer; and
- 2.8.2.1.1.2 2 (two) members elected from the stockbroking community.
- 2.8.2.1.3 Board members elected under 2.8.2.1.1 shall be non-executive as defined in the Code of Corporate Practices and Conduct contained in the King II Report on Corporate Governance.
- 2.8.2.1.4 A person disqualified from being appointed or acting as a director of a company in terms of the Companies Act, 1973 (Act No. 61 of 1973), shall not be elected as a Board member.
- 2.8.2.1.5 Board members shall not be obliged to hold any NSX rights to be elected as Board members.
- 2.8.2.1.6 The first Board of the NSX consisting of the following members shall be deemed to have been constituted after the commencement of these rules:
- P.F. Koep (Chairperson),  
J. Gawaxab (Deputy Chairperson),  
A.B. Bertolini,  
P.S. Hango,  
H-H. Müseler,  
D. Nuyoma,  
B. van Rensburg,  
S. Bloch von Blottnitz,  
B.C. Weichert.
- 2.8.2.1.7 The Board referred to in 2.8.2.1.6 shall be subject to these rules.
- 2.8.2.2 **Chief Executive Officer**
- 2.8.2.2.1 The Chief Executive Officer shall be appointed by the Board and the Board shall determine his or her term of office, conditions of employment and dismissal.
- 2.8.2.2.2 The Chief Executive Officer shall have the powers assigned to him or her in terms of the Rules or such other powers as the Board may consider appropriate and the Board may confer such powers for such time and to be exercised for such objects and purposes and subject to such terms and conditions and with such restrictions as it may consider expedient, provided that the Board may, from time to time, revoke or vary all or any such power.
- 2.8.2.2.3 The Chief Executive Officer may, from time to time, appoint one of the full time employees of the NSX to act as the Chief Executive Officer in his or her absence.

2.8.2.3 **Chairperson and Deputy Chairperson**

The Chairperson and Deputy Chairperson of the Board shall be elected from the members of the Board by an ordinary majority of the Board members.

2.8.2.4 Board members -

2.8.2.4.1 shall, in the case of members nominated to replace those retiring by rotation in terms of 2.8.6, be elected at the annual general meeting of the NSX; and

2.8.2.4.2 may, in the case of the other members, be elected at any general meeting of the NSX.

2.8.2.5 Rights holders who are not in arrears in respect of any debt owing to the NSX shall be entitled to vote in an election of Board members.

2.8.2.6 Rights holders referred to in 2.8.2.5 shall be entitled to one vote on a ballot in respect of each NSX right held by such a rights holder.

2.8.2.7 **Vacancies and additional members**

2.8.2.7.1 Subject to 2.8.2.1.1, Board members shall at any time appoint any person as a member of the Board to fill a vacancy in the respective category. A person appointed to fill a vacancy shall remain in office until the following annual general meeting of the NSX and may be eligible for re-election.

2.8.2.7.2 A decision taken by or an act performed under the authority of the Board shall not be invalid by reason only of a vacancy on the Board or of the fact that a person who is not entitled to sit as a member of the Board sits as such a member at the time when the decision is taken or the act is authorised, if such decision is taken or the act is authorised by the majority of the members of the Board who are present at the time and entitled to vote.

2.8.2.8 **Reconstitution of Board**

If the Board, for any reason, require re-constitution in its entirety such reconstitution shall be in accordance with the procedure set out for the election of Board members, the Chairperson and the Deputy-Chairperson.

2.8.2.9 **Remuneration and expenses**

2.8.2.9.1 The remuneration of Board members and the Chief executive Officer shall be determined by a remuneration sub-committee appointed by the Board from time to time and consisting of a minimum of 3 (three) Board members.

2.8.2.9.2 The Board members shall be paid all travelling and other expenses properly and necessarily incurred by them in attending to the affairs of the NSX and in attending the meetings and conducting the business of the Board.

- 2.8.2.9.3 If any Board member is required to perform extra service or if any Board member is occupied with the NSX's affairs or performs services which, in the opinion of the Board members, are outside the scope of the ordinary duties of a Board member, such member may receive such extra remuneration as determined by the Chief Executive Officer and the Chairperson or the remuneration committee. Extra remuneration may be either in addition to or in substitution of the remuneration referred to in 2.8.2.9.1.
- 2.8.2.10 **Meetings of the Board**
- 2.8.2.10.1 The Board members may meet for the despatch of business and may adjourn and otherwise regulate their meetings as they consider appropriate, provided that there shall be at least 4 (four) Board meetings annually.
- 2.8.2.10.2 Until NSX otherwise determines in a general meeting, 50% of the Board members shall constitute a quorum for any meeting of the Board. If, within half an hour from the time appointed for a meeting, a quorum is not present, the meeting shall stand adjourned for 30 (thirty) minutes, and if after such adjournment, there is still no quorum, the Board members present at that meeting shall constitute a quorum for that meeting.
- 2.8.2.10.3 A Board member may at any time request the Chief Executive Officer to convene a meeting of the Board.
- 2.8.2.10.4 Notice of a meeting of the Board shall be given at the business address, of each Board member, nominated in writing by that Board member.
- 2.8.2.10.5 At least 48 (forty eight) hours' notice is required for calling a meeting, but if Board members waive such notice or if the Chief Executive Officer and Chairperson or Deputy Chairperson determine in their discretion that the business to be conducted is so urgent that shorter notice is required or if three-quarters of the Board members waive such notice, a meeting may be called on shorter notice. The minutes of a meeting called on less than 48 (forty eight) hours' notice shall, as soon as is reasonably possible after the meeting, be delivered to all Board members.
- 2.8.2.10.6 Meetings of the Board may be held by means of telephone, electronic or other communications facilities only if such methods of communication permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously.
- 2.8.2.10.7 Subject to 2.8.5.3, all Board members shall have voting rights in respect of matters raised at meetings of the Board.
- 2.8.2.10.8 All issues before a Board meeting shall be decided by an ordinary majority of votes, and in case of an equality of votes, the Chairperson shall have a casting vote.
- 2.8.2.10.9 A duly convened and constituted meeting of the Board shall exercise all or any of the authorities, powers and discretions conferred by the Rules.

- 2.8.2.10.10 Board members shall be entitled to receive notice of, attend and speak at any general meeting of the NSX.
- 2.8.2.10.11 Minutes shall be kept of proceedings at all duly convened and constituted meetings of the Board and Sub-committee's of the Board .
- 2.8.2.10.12 A defect in the appointment or election of one or more Board member or of disqualification of appointment or vacation of office or disqualification to vote of one or more Board member shall not invalidate acts carried out at any meeting of the Board or of a sub-committee of the Board or by a Board member and all acts carried out at any such meeting shall be valid as if such Board member had been duly appointed or elected and was qualified to be a Board member and to act and vote as a Board member.
- 2.8.2.11 **Round robin resolution**
- 2.8.2.11.1 A round robin resolution may be taken without a meeting in the following manner:
- 2.8.2.11.1.1 a resolution in writing and signed by all members of the Board; and
- 2.8.2.11.1.2 a resolution referred to in 2.8.2.11.1.1 inserted in the Board's minute book,
- shall be valid as if it had been passed at a duly convened and constituted meeting of the Board members and such resolution may consist of several documents in like form each signed by one or more Board members.
- 2.8.2.11.2 A resolution signed by a majority of Board members who were connected, with each other by means of telephone, video, electronic or similar communications facilities in circumstances where -
- 2.8.2.11.2.1 the Board members so connected remained connected for the duration of the meeting and constituted all the Board members of the NSX or the member's respective alternates; or
- 2.8.2.11.2.2 all Board members have been given or reasonable attempts have been made to give notification, whether electronic or otherwise, of the proposed meeting and the Board members so connected constituted a quorum at a meeting of the Board; and
- 2.8.2.11.2.3 the subject matter of the resolution has been discussed during the meeting; and
- 2.8.2.11.2.4 the Chairperson or failing him or her the Deputy Chairperson or failing him or her any other Board member so connected, certifies in writing that the requirements 2.8.2.11.2.1, 2.8.2.11.2.2 and 2.8.2.11.2.3 have been complied with,
- shall, unless a statement to the contrary is made in that resolution, be

deemed to have been passed on the date on which it was signed by the Board member who last signed it and such resolution may include several documents, each of which may be signed by one or more of the Board members participating in such meeting.

#### **2.8.4 Disqualification as a Board member**

2.8.4.1 A member shall cease to hold office -

2.8.4.1.1 if such member -

2.8.4.1.1.1 becomes insolvent or applies for the sequestration of his estate, or surrenders his or her estate, or compromises or attempts to compromise with his or her creditors as provided in the Insolvency Act, 1936 (Act No. 24 of 1936); or

2.8.4.1.1.2 is sequestrated, whether provisionally or finally;

2.8.4.1.2 if such member is a member of the NSX and such member defaults as contemplated in rule 8.1, is expelled or suspended or loses his or her membership;

2.8.4.1.3 if such member becomes of unsound mind;

2.8.4.1.4 if such member is absent from three consecutive meetings of the Board without leave of the Board and the Board resolves that the office be vacated, provided that the Board shall have the power to grant any Board member leave of absence in advance or retroactively for any period;

2.8.4.1.5 if the rights holders by ordinary resolution remove such Board member before the expiration of his or her term of office, provided that the rights holders shall afford such Board member a reasonable opportunity to be heard before doing so. If the right holders have removed a Board member from office the rights holders may by ordinary resolution elect another person in his or her stead in terms of 2.8.2.7, and the person so elected shall hold office during such time only as the Board member in whose place he or she is elected would have held office;

2.8.4.1.6 immediately upon the Board member's resignation;

2.8.4.1.7 if he or she is disqualified from being appointed or acting as a director of a company in terms of the Companies Act, 1973 (Act No.61 of 1973); or

2.8.4.1.8 if such member takes up employment with the NSX, or, without leave from the Board, takes up employment with or accepts a position on a Board of a stock exchange other than the NSX .

#### **2.8.5 Interest of Board members to be declared**

2.8.5.1 A Board member shall not be disqualified by virtue of his or her office from contracting with the NSX, whether with regard to such office or as vendor or purchaser or otherwise; and

2.8.5.1.1 any contract referred to in 2.8.5.1, or any other contract or arrangement entered into by or on behalf of the NSX, in which any Board member shall in any way have an interest, shall not be void or be liable to be avoided; or

2.8.5.1.2 any Board member so contracting or having such interest referred to in 2.8.5.1.1, shall not be liable to account to the NSX for any profit realised by any such contract or arrangement by reason of such Board member holding that office, or of the fiduciary relationship thereby established,

provided that the Board member shall declare full details of his or her interest to the Board before a decision is taken on whether any such contract or arrangement shall be entered into.

2.8.5.2 A Board member shall disclose, in respect of any matter other than a matter referred to in 2.8.5.1, relating to the NSX, any personal or financial interest such member may have in that matter.

2.8.5.3 A Board member shall not vote as a Board member in respect of any contract or arrangement or any other matter in which he or she has a personal, financial or any other interest and if he or she does so vote his or her vote shall not be counted and for the purpose of any resolution regarding any such contract, arrangement or any other matter he or she shall not be counted in the quorum present at the meeting.

2.8.5.4 The prohibitions in 2.8.5.3 shall not apply to -

2.8.5.4.1 any resolution determining the remuneration of the Board members; and

2.8.5.4.2 any proposal concerning the adoption, modification or operation of a superannuation fund or retirement benefits scheme under which a Board member may benefit and which has been approved by or is subject to and conditional upon approval by the Registrar of Pension Funds, or the relevant revenue authority for taxation purposes.

2.8.5.5 This sub rule does not prevent any Board member in his or her capacity as a member of the NSX from taking part in and voting as a rights holder on all questions submitted to a general meeting of the rights holders whether such Board member has an interest in or is concerned with such question.

## 2.8.6 Retirement of Board members

2.8.6.1 At least one third in number of the members of the Board shall retire by rotation each year at the NSX's annual general meeting, and the retiring Board members may be re-elected by the rights holders at that annual general meeting.

2.8.6.2 The Board members to retire in terms of 2.8.6.1 at each annual general meeting shall -



2.8.6.2.1 be the Board members who have been in office for the longest period since they were last elected; and

2.8.6.2.2 in respect of Board members of equal seniority, and in the absence of an agreement as to which members are to retire, be selected from among them by lot,

provided that, notwithstanding 2.8.6.2, if, at the date of any annual general meeting any Board member have held office for a period of 3 (three) years since the member's last election, that member shall retire at such meeting, either as one of the Board members to retire as contemplated in 2.8.6.1 or 2.8.6.2. A retiring Board member shall act as a Board member throughout the meeting at which he or she retires.

2.8.6.3 A person, other than a member retiring at the annual general meeting, shall not be eligible for election as a Board member at any general meeting, unless, not less than 7 (seven) days and not more than 14 (fourteen) days before the day appointed for the meeting, notice in writing is given to the Chief Executive Officer by a rights holder duly qualified to be present and to vote at the meeting for which such notice is given, of the intention of such rights holder to nominate such person for election as well as a written notice of acceptance of the nomination signed by the nominee.

2.8.6.4 Notwithstanding 2.8.6.1, if at any annual general meeting convened for the purpose of electing Board members, the position of any retiring Board member is not filled, such retiring Board member shall, if willing, continue in office until the dissolution of the annual general meeting in the next year or from year to year until his or her place is filled, unless it is determined at such meeting not to fill such vacancy.

## 2.8.7 **Alternate Board members**

2.8.7.1 Each Board member may appoint an alternate Board member to act in his or her place and may remove such alternate Board member and appoint another in his or her place, provided that the appointment of an alternate Board member shall be approved by the Board members and on such appointment being made and approved. The alternate Board member shall in all respects be subject to the Act and the Rules. An alternate Board member may act at all meetings and in all proceedings in which, and on all occasions when, the Board member who appointed him or her is unable to act personally. An alternate Board member shall claim his or her remuneration from the Board member who appointed him or her and shall have not have a claim for remuneration against the NSX.

2.8.7.2 An alternate Board member acting in the place of the Board member who appointed him or her, shall exercise and perform all the duties and functions of that Board member. The appointment of an alternate Board member ends whenever the Board member who appointed such alternate Board member ceases to be a Board member or gives notice in writing to the Board that the alternate Board member representing him or her ceased to do so, and a Board member retiring at any annual general meeting and re-elected shall not for this purpose be deemed to have ceased to be a Board member.

**2.9 Annual General Meetings**

2.9.1 An annual general meeting shall be held once in every calendar year at a date to be determined by the Board which date shall not be later than 4 (four) months after the end of each financial year referred to in 2.13.2.

2.9.2 At an annual general meeting -

2.9.2.1 the ordinary business of the Board shall be to -

2.9.2.1.1 receive and consider the financial statements of the NSX and the reports of the Board and auditors;

2.9.2.1.2 elect Board members to replace Board members retiring by rotation in accordance with 2.8.6.1;

2.9.2.1.3 decide on the appointment and remuneration of the auditors; and

2.9.2.1.4 discuss any matter relating to finances;

2.9.2.2 business other than business set out in sub rule 2.9.2.1 shall be special, to be dealt with at a special general meeting, and shall not be dealt with at any annual general meeting unless the nature of such business has been specified in the notice convening the meeting or in a notice given under sub rule 2.9.4.

2.9.3 An annual general meeting shall be called by not less than 21 (twenty one) days' notice in writing to rights holders, which notice shall specify the place, date and time of the annual general meeting and the nature of the business to be transacted at the meeting, provided that any unintended failure to give notice to any rights holder shall not invalidate any such meeting or any resolution passed at such meeting.

2.9.4 Notice of any resolution to be proposed at an annual general meeting other than a resolution contained in the notice convening the meeting shall be signed by at least 2 (two) rights holders and lodged with the Chief Executive Officer at least 14 (fourteen) days before the meeting and shall immediately be posted or delivered by the proposing rights holders to all the rights holders.

2.9.5 Board members shall be entitled to receive notice of, attend and speak at any annual general meeting of the NSX.

**2.10 Special General Meetings**

2.10.1 In addition to an annual general meeting, the Board may, if the Board considers it appropriate, or upon a request made in writing and signed by not less than 10 (ten) rights holders representing at least 15 (fifteen) percent in number of all issued NSX rights, convene a special general meeting.

- 2.10.2 A request referred to in 2.10.1 shall specify the objects of the meeting and shall be lodged with the Chief Executive Officer.
- 2.10.3 On the lodging of a request in terms of 2.10.1, a meeting shall be convened by the Board for the objects specified in the request, and if the Board fails to convene such meeting within 21 (twenty-one) days' after the request is lodged, which meeting is to be held within 60 (sixty) days' of the request been lodged, the rights holders may themselves, giving not less than 21 (twenty one) days notice of the meeting convene the meeting for the objects specified in the request which meeting is to be held within 120 (one hundred and twenty) days after such lodgement.
- 2.10.4 A special general meeting called for the passing of a special resolution shall be called by not less than 21 (twenty-one) days' notice in writing and a special general meeting called for the passing of an ordinary resolution shall be called by not less than 14 (fourteen) day's notice in writing, which notices shall specify the place, date and time of the special general meeting and the nature of the business to be transacted at the meeting, provided that an unintentional failure to give notice to any rights holder shall not invalidate any meeting or any resolution passed at such meeting.
- 2.10.5 Notice of any resolution to be proposed at a special general meeting other than a resolution contained in the notice convening the meeting shall be signed by at least 2 (two) rights holders and lodged with the Chief Executive Officer at least 7 (seven) days before the meeting and shall immediately be delivered or posted by the proposing rights holders to all rights holders.
- 2.10.6 Board members shall be entitled to receive notice of, attend and speak at any special general meeting of the NSX.

## **2.11 Proceedings at annual and special general meetings**

### **2.11.1 Quorum**

10 (ten) rights holders shall constitute a quorum for all annual and special general meetings, including at least 1 broker member represented in person or by proxy at such meeting. If, within half an hour from the time appointed for a meeting a quorum is not present, the meeting, if such meeting was convened on the request of rights holders, shall be dissolved, and in any other case the meeting shall stand adjourned for 30 minutes and if at an adjourned meeting a quorum is not present the rights holders represented at the meeting shall constitute a quorum.

### **2.11.2 Chairperson at annual or special general meeting**

The Chairperson or failing him or her, the Deputy Chairperson or other Board member designated by the Board shall be the Chairperson at an annual or special general meetings and if such official is not present within 15 (fifteen) minutes from the time appointed for the meeting or if that official does not intend to chair such meeting, rights holders present at the meeting shall by ordinary resolution elect a

Chairperson for that meeting or any adjournment of such meeting.

2.11.3 **Condonation of shorter notice period**

Any annual or special general meeting called on shorter notice than the notice required in 2.9.3 and 2.10.4, shall be deemed to have been duly called if it is so agreed by a majority of 60 (sixty) percent of the rights holders present in person or by proxy and entitled to vote at the meeting for which the notice is given.

2.11.4 **Voting**

2.11.4.1 Rights holders represented in person or by proxy are entitled to vote and speak at annual and special general meetings of the NSX.

2.11.4.2 All issues before annual or special general meetings, except issues referred to in 2.4.3.14.2, 2.7.15, 2.12 and 2.14, which issues may only be decided on by a poll, shall be decided by an ordinary majority of the votes cast and shall be decided by a show of hands unless a poll is demanded in terms of 2.11.5.

2.11.4.3 On a show of hands, every rights holder shall have one vote only irrespective of the number of NSX rights held by such rights holder. On a poll, every rights holder shall have one vote in respect of each NSX right held by such rights holder. On a poll, a rights holder entitled to more than one vote, need not cast any or all his votes, or if such person casts a vote, need not cast every vote in the same way.

2.11.4.4 Where there is an equality of votes on a show of hands, a resolution put to the vote shall automatically be decided on a poll. Where there is an equality of votes on a poll, the relevant resolution shall again be put to the vote at a meeting specially called for that purpose 14 (fourteen) days from the date of the meeting at which the equality of votes was recorded. In the case of an equality of votes on a poll taken at the second meeting called for that purpose, the notice shall lapse and if a vote is again required, a new notice shall be sent out in accordance with the Rules.

2.11.5 **Polling**

2.11.5.1 A poll may be demanded -

2.11.5.1.1 by the Chairperson of the meeting; or

2.11.5.1.2 on a show of hands by 20 (twenty) percent of the number of rights holders represented at the meeting in person or by proxy,

before or after the result of a resolution voted on by the show of hands is declared, but in any event before the adjournment of the meeting. A demand for a poll may be withdrawn by the persons who demanded the poll.

2.11.5.2 Unless a poll is demanded in terms of 2.11.5.1, a declaration by the Chairperson of the meeting that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be binding on the meeting and an entry

to that effect in the minute book of the meeting shall be prima facie evidence of the number of votes recorded in favour of or against the resolution.

2.11.5.3 If a poll is demanded in terms of 2.11.5.1, the Chairperson of the meeting shall appoint 2 (two) independent persons as scrutinisers to check the voting and to determine the result of the voting.

2.11.5.4 A poll demanded on the election of a Chairperson for the meeting, on a question of adjournment or on condonation of a shorter notice period shall be taken immediately. A poll demanded on any other question shall be taken at such time as the Chairperson of the meeting directs. A demand for a poll does not prevent the continuation of a meeting for the transaction of any business other than the question on which the poll has been demanded.

2.11.6. **Voting by proxy**

2.11.6.1 On a poll, rights holders may vote either personally or by proxy. The instrument appointing a proxy shall be in writing under the hand of the appointer or his or her agent duly authorised in writing. A person shall not act as proxy unless he or she is properly authorised by a rights holder to be present and vote at the meeting at which he or she acts as proxy. The holder of a general or special power of attorney given by a rights holder shall be entitled to vote if duly authorised under that power to attend and take part in meetings, provided such holder of a general or special power of attorney is entitled to be present and to vote as a representative of a rights holder at the meeting.

2.11.6.2 The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or in terms of which a rights holder proposes to vote, or a notarially certified copy of such power or authority shall be lodged with the Chief Executive Officer not less than 24 (twenty four) hours before the meeting at which the person named in the instrument proposes to vote, failing which the instrument of proxy or power of attorney shall not be valid. An instrument appointing a proxy ceases to be valid after the expiration of 6 (six) months from the date when it was signed unless so specifically stated in the instrument itself and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting. The instrument appointing the proxy shall be in the form prescribed by the Board from time to time.

2.11.7 **Adjournment**

2.11.7.1 Any annual or special general meeting may be adjourned for such period as the majority of the rights holders represented at such meeting in person or by proxy shall determine by an ordinary resolution provided that if a meeting is adjourned for a period exceeding 17 (seventeen) days, at least 14 (fourteen) days' notice of the adjourned meeting shall be given. Business shall not be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.

2.11.7.2 A decision to adjourn in terms of 2.11.7.1 does not prevent the

continuation of a meeting for the transaction of any business other than that business in respect of which the decision to adjourn has been made.

**2.11.8 Minutes**

The minutes of all annual and special general meetings shall be read and confirmed at the next meeting of the Board and shall be available for inspection by rights holders at the place at which the NSX ordinarily conducts business.

**2.12 Amendments to this Section**

**2.12.1 Any -**

2.12.1.1 two members of the Board; or

2.12.1.2 rights holder supported by at least 5 (five) other rights holders representing at least 10 (ten) percent in number of all issued rights,

may in writing propose an amendment to these rules and such proposal must be lodged with the Chief Executive Officer.

**2.12.2 Subject to the Act, a proposal referred to in 2.12.1 may be adopted -**

2.12.2.1 by means of a resolution passed by the rights holders holding at least 75 (seventy five) percent in number of the NSX rights of those rights holders present in person or by proxy at a special general meeting called for this purpose or at an annual general meeting with the notice required in terms of sub rule 2.9 or 2.10; and

2.12.2.2 with the concurrence of the Registrar of Stock Exchanges.

**2.13 Auditors, financial year end and accounting records**

2.13.1 The Board shall appoint an auditor for the NSX.

2.13.2 The financial year of the NSX ends on 31 December in each year.

2.13.3 The NSX shall keep such proper accounting records as are necessary to present the state of affairs and business of the NSX and to reflect the transactions and financial position of the NSX.

2.13.4 The NSX shall prepare and table the audited annual financial statements of the NSX at the annual general meeting.

**2.14 Winding up**

2.14.1 The NSX shall not be wound up, except -

2.14.1.1 if it appears from the closing financial statements

- referred to in 2.14.2.2, that the NSX is insolvent as defined in 2.14.2.1 and the rights holders decide not to contribute such amount of money as is necessary to make the NSX solvent as defined in 2.14.2.1; or
- 2.14.1.2 by a resolution of 75 (seventy five) percent or more of rights holders present in person or by proxy at a meeting specially convened for that purpose and with the approval of the Registrar of Stock Exchanges.
- 2.14.2 For the purposes of this rule -
- 2.14.2.1 the NSX shall be considered solvent if the NSX is able to discharge its obligations to the public arising out of the business of an stock exchange carried on by the NSX as and when those obligations fall due for payment up to the closing date referred to in 2.14.2.2. If the NSX is not so able to discharge its obligations, the NSX shall, for this purposes, be considered insolvent at the closing date. For the purposes of considering whether the assets of the NSX are sufficient to discharge the obligations of the NSX to the public, the word “assets” shall include the NSX’s Guarantee Fund or Funds.
- 2.14.2.2 the closing date shall be the date of the notice in terms of which the meeting of rights holders of the NSX is called to consider the winding up of the NSX;
- 2.14.2.3 the closing financial statements shall be the audited income statement of the NSX for the period from the day following the last day of the financial year referred to in 2.13.2 for which annual financial statements have been published up to the closing date together with an audited statement of assets and liabilities of the NSX as at the closing date.
- 2.14.3 If the NSX ceases to be licensed to carry on the business of a stock exchange in terms of the Act, the Board shall immediately convene a meeting of rights holders to be held within 30 (thirty) days from the date on which the NSX ceases to be licensed under the Act, to consider whether the NSX or a portion of the NSX’s business should be wound up.
- 2.14.4 If a meeting of the rights holders of the NSX is called to consider the winding up of the NSX or a portion of its business, the Board shall, at least 7 (seven) days prior to that meeting send to all rights holders copies of the closing financial statements and a written statement explaining why it is necessary to consider winding up the NSX and include an alternative to winding up in such statement.
- 2.14.5 At a meeting called to consider whether the NSX should be wound up in terms of 2.14.3, the rights holders shall consider the closing financial statements to ascertain whether the NSX is solvent or insolvent.

- 2.14.6 If it appears from the closing financial statements referred to in 2.14.5 that the NSX is insolvent, rights holders may -
- 2.14.6.1 by a resolution of 75 (seventy five) percent or more of rights holders present in person or by proxy decide at the meeting referred to in 2.14.5 to contribute to the NSX such amount of money as may be necessary to make the NSX solvent as defined in 2.14.2.1, provided that:
- a stock-broking rights holder's contribution will be calculated pro rata to the number of NSX rights that such rights holder holds and in exchange for such contribution the NSX will offer new NSX rights, which shall be referred to as "the NSX contribution rights", to a broking member pro rata to the amount of the contribution so made, and that each rights holder may offer its NSX contribution rights to another broking member, who upon acceptance thereof shall then be obliged to contribute the corresponding amount; or
- 2.14.6.2 decide not to contribute to the NSX such amount of money as shall be necessary to make the NSX solvent, in which event the NSX shall be wound up by the Court *mutatis mutandis* in accordance with the Companies Act, 1973 (Act No. 61 of 1973), or the Insolvency Act, 1936 (Act No. 24 of 1936), provided that upon any resolution for the winding up of the NSX being made, the Board shall immediately cause an application to be made to the Court for the winding up of the NSX.
- 2.14.7 If it appears from the closing financial statements that the NSX is solvent or if the broking rights holders decide to contribute the amount of any shortfall of assets over liabilities as envisaged in 2.14.6.1 -
- 2.14.7.1 at the meeting referred to in 2.14.5, rights holders may by a resolution of 75 (seventy five) percent or more of rights holders present in person or by proxy decide that the assets of the NSX, after discharging the obligations of the NSX to the public arising out of the business of an stock exchange carried on by the NSX up to the closing date shall be used by the NSX in any other business venture; and
- 2.14.7.2 the Board shall ensure that the obligations of the NSX to the public arising out of the business of an exchange carried on by the NSX up to the closing date shall immediately be discharged.
- 2.14.8 If the rights holders decide that the net assets of the NSX shall be used in another business venture -
- 2.14.8.1 the Board shall ensure that the name of the NSX is



- changed to another name acceptable to rights holders;  
and
- 2.14.8.2 the objects of the NSX shall be amended accordingly and the NSX shall have the power to apply the net assets of the NSX in furtherance of any other business venture selected by the rights holders.
- 2.14.9 If it appears from the closing financial statements that the NSX is solvent, rights holders may by resolution to that effect passed by not less than 75 (seventy five) percent or more of rights holders present at the meeting in person or by proxy, resolve to wind up the NSX notwithstanding the NSX being solvent.
- 2.14.10 If the rights holders decide that the NSX shall be wound up in terms of 2.14.9 and after the approval of the Registrar of Stock Exchanges has been obtained -
- 2.14.10.1 and within 7 (seven) days of such decision being made, the Board, in consultation with the Registrar of Stock Exchanges, shall appoint a liquidator to conduct the winding up of the NSX and such liquidator shall give security to the satisfaction of the Board and the Registrar of Stock Exchanges for the proper performance of his or her duties as a liquidator;
- 2.14.10.2 immediately upon his appointment and after the security referred to in 2.14.10.1 has been furnished the liquidator shall realise the assets of the NSX in his capacity as the duly appointed agent of the NSX;
- 2.14.10.3 the liquidator shall, within 30 (thirty) days after the assets of the NSX have been realised, circulate to all rights holders a proposed distribution account showing the manner in which the net assets and liabilities of the NSX are to be applied and discharged and in addition to the circulation of the distribution account the liquidator shall publish in the official language in 2 (two) national daily newspapers a notice to the effect that the proposed distribution account is open for inspection within a period of not less than 14 (fourteen) days from the date of such publication and indicating in such notice an address at which interested persons may inspect that account and calling upon all persons interested to lodge in writing with the liquidator before a stated day, not being earlier than 7 (seven) days after the close of the said period, any objection to the proposed distribution account with the reasons for such objection;
- 2.14.10.4 if the liquidator is of the opinion, in consultation with the Board and the Registrar of Stock Exchanges, that any objection lodged with the liquidator must be sustained or if no objection has been lodged with the liquidator, that any improper charge has been made

- against the assets of the NSX or that the financial statements of the NSX are in any respect incorrect and should be amended, the liquidator shall amend the proposed distribution account and, if any such amendment should affect the interests of a person who has not lodged an objection with the liquidator, the accounts as amended shall again lie open for inspection and be advertised in the manner prescribed above unless the person affected consents in writing to the immediate confirmation of the distribution account;
- 2.14.10.5 after the proposed distribution account lay open for inspection for the prescribed period, the Board and the Registrar of Stock Exchanges shall, if they are satisfied that the distribution account is correct and that the procedures contained in this Rule have been adhered to, confirm the distribution account;
- 2.14.10.6 immediately after the confirmation of the distribution account the liquidator shall proceed to distribute the assets in accordance with the distribution account and shall without delay lodge with the Board receipts for any payments made in pursuance with such distribution;
- 2.14.10.7 if any amount payable in terms of the distribution account remains unclaimed for a period of 2 (two) months after the confirmation of the distribution account the liquidator shall immediately pay such amount into the Guardian's Fund and submit proof of such payment to the Board;
- 2.14.10.8 if the liquidator, the Board and the Registrar of Stock Exchanges are satisfied that the winding up is complete they shall certify that the NSX has been wound up and shall circulate a copy of the joint certificate to all rights holders, and on such circulation the NSX shall be dissolved.
- 2.14.11 On winding up, the net assets of the NSX shall not be distributed to rights holders but the requirements of 2.14.7.1, 2.14.8 and 2.14.10.5, shall be followed.
- 2.15 Liability of Board members and officers**
- 2.15.1 Every member of the Board and every officer and employee of the NSX is deemed to be indemnified by the NSX against all actions, liabilities, costs, charges, losses, damages and expenses which they or any of them may incur or become liable for in respect of any act carried out, concurred in, or omitted, in or about the carrying out of their duties in their respective offices and trusts as a member of the Board or an employee of the NSX, whether in their capacity as a member of the Board, trustee of the Guarantee Fund or Funds, Board member of any company as a representative of the NSX or otherwise, and whether they are acting in terms of the Rules, including all such

actions, liabilities, costs, charges, losses, damages and expenses which arise as a result of any mistake, oversight or omission on the part of such member or employee other than through his or her gross negligence or wilful breach of duty or trust and it shall be the duty of the Board to pay and discharge all such actions, liabilities, costs, charges, losses, damages and expenses from the funds of the NSX.

- 2.15.2 A Board member or an employee referred to in 2.15.1 shall not be regarded as having been grossly negligent or having acted in wilful breach of duty or trust if such apparent negligence or breach was solely or mainly the result of reliance by such member or employee on incorrect information supplied to such member or employee by a source from which the Board member or employee would normally accept the information as correct and which can be expected to provide the correct information.
- 2.15.3 A person referred to in 2.15.1 shall not answer for the acts, neglects or defaults of any other such person or of any bankers or other persons with whom monies or effects of the NSX may, subject to this rule, be or have been lodged or deposited for safe custody or for the insufficiency or deficiency of any security accepted by the Board or for any other loss, misfortune or damage which may happen in the execution of their respective offices or trusts or in relation thereto, except as may happen by or through their own wilful breach of duty or breach of trust or gross negligence.
- 2.15.4 Rights holders shall not be liable for any of the debts of the NSX except for debts in terms of 2.14.6.1.”.

### **Substitution of Section 3 of the Rules**

5. The following Section is substituted for Section 3 of the Rules -

#### **“SECTION 3**

##### **GENERAL**

#### **3.1 Rules Binding on Members**

- 3.1.1 The Rules, NSX directives and decisions of a Board constituted in terms of these Rules shall be binding on all members.
- 3.1.2 The Board shall notify a member of a decision of the Board and a member notified of such decision must comply with the decision.
- 3.1.3 For the purpose of this rule a notice posted on the Stock Exchange Notice Board or published in the NSX Gazette and which contains particulars of such decision shall constitute notification by the Board to members.

#### **3.2 Interpretation of Rules**

The interpretation and enforcement of the Rules, NSX directives, listing requirements and decisions of the Board shall vest in the Board.

### **3.3 NSX Not Responsible for any Losses**

The NSX shall not be responsible or liable to any person for direct, indirect or consequential liability, loss or damage of any kind or nature, arising or incurred as a result of -

- 3.3.1 negligence on the part of the NSX or on the part of any employee or agent of the NSX;
- 3.3.2 incorrect, inaccurate, defective or misleading information furnished or supplied by the NSX or any employee or agent of the NSX;
- 3.3.3 equipment breakdown or the breakdown, interruption, suspension, termination or failure of any system or service owned or operated by the NSX; or
- 3.3.4 computer system malfunction, the interruption or failure of communications links, power failure, the failure of any software or hardware, the loss or destruction of any data and any loss or damage caused by natural disaster, riot, insurrection, acts of vandalism, sabotage or similar cause.

### **3.4 Transactions Subject to Provisions of the Act, Rules, etc.**

Notwithstanding anything to the contrary contained in the Rules, every transaction in securities entered into by a broking member with or on behalf of another broking member or a member of the public shall be concluded on the specific condition that the transaction is entered into subject to the provisions of applicable laws, these rules, the NSX directives and decisions of the Board in force at the time the transaction was concluded and every brokers note and advice note shall state that the transaction to which such note relates has been concluded subject to the Act, the Rules and directives of the NSX and the decisions of the Board which were in force on the date the transaction was entered into.

### **3.5 Signing Powers**

A document or proceeding requiring signature or authentication by the NSX shall be signed by -

- 3.5.1 the Chairperson or the Deputy-Chairperson;
- 3.5.2 the Chairperson of the meeting at which the relative matter was dealt with; or
- 3.5.3 two other members of the Board or Sub-committee who were present at the meeting at which the relative matter was dealt with; or
- 3.5.4 the Chief Executive Officer, his deputy or such other person as is authorised by the Board.

### **3.6 Disciplinary Matters**

- 3.6.1 Any member who -

- 3.6.1.1 contravenes, attempts to contravene or fails to comply with any of the Act, the Rules, NSX directive or a Board decision;
- 3.6.1.2 acts contrary to the usages or practices of the NSX;
- 3.6.1.3 commits or attempts to commit any act which is detrimental to the interest, good name or welfare of the NSX or its members;
- 3.6.1.4 commits or attempts to commit any act which is dishonest, fraudulent, dishonourable or disgraceful;
- 3.6.1.5 knowingly obstructs the business of the NSX or its members;
- 3.6.1.6 is a party to or who has facilitated or conducted a transaction which is fictitious or which has a dishonest or unlawful motive,
- commits a misconduct.
- 3.6.2 Whenever the Board has reason to believe that a member has committed misconduct in terms of 3.6.1, the Board may take such disciplinary action as is provided for by the Board in terms of the Rules or if the member has committed a criminal act the Board may institute criminal proceedings against such member.
- 3.6.3 The Board, the Chief Executive Officer and his deputy may investigate the affairs of a broking firm for the purpose of ascertaining -
- 3.6.3.1 whether that firm or any of its employees complies with the Act, the Rules, NSX directives and Board decisions;
- 3.6.3.2 whether the firm is trading in such a manner that there is a likelihood that such firm may not be able to meet its commitments to clients, other broking firms or a NSX settlement system;
- 3.6.3.3 whether such firm is conducting its business in a manner which could be detrimental to the interest, good name or welfare of the NSX or its members.
- 3.6.4 The Chief Executive Officer and his deputy may delegate the power granted to him or her in terms of this rule to the Operations Manager or such other staff member of the Surveillance Department of the NSX as he or she deems fit.
- 3.6.5 A member or an employee of a member together with such member shall attend to a meeting of the Board when required to do so and shall give such information and answer such questions as the Board may consider relevant to the matter under investigation. A member shall if requested to do so by the Board and within a period laid down by it furnish it with such information or documents, together with a report thereon by its auditor, if so requested, as it may require.

### **3.7 Members Responsible for Acts of Employees**

- 3.7.1 If any employee of a broking firm when acting on behalf of his or her employer or any duly authorised person acting on behalf of a broking firm does any act or omits to do any act which act or omission if done or omitted by that firm employing or authorising such employee or person would constitute a breach of the Act, the Rules, a NSX directive or a Board decision, the broking firm employing such employee or authorising such person shall in the discretion of the Board be deemed to have committed such breach in the same manner as if it had itself done or omitted to do such act.
- 3.7.2 If a broking firm commits a breach of the Act, the Rules, a NSX directive or a Board decision, the broking firm and some or all members of such firm at the time the offence was committed shall in the discretion of the Board be deemed to have committed such breach.
- 3.7.3 Rules 3.6 and 3.7 shall apply mutatis mutandis to any employee of a broking firm when such employee acts on behalf of his employer, and to any person acting on behalf of a broking firm and authorised by such firm to do so in respect of any act or omission in respect of which the Board may suspend, expel or fine a broking firm.
- 3.7.4 If any member of a partnership or corporate member when acting on behalf of the partnership or corporate member commits a breach of the Act, the Rules, a NSX directive or a Board decision, some or all members of the partnership or corporate member at the time such breach was committed as well as the corporate member may, in the discretion of the Board, be deemed to have committed the same breach of the Act, the Rules, NSX directive, Board decision or as the case may be, or if any member of a partnership or corporate member when acting on behalf of the partnership or corporate member does any other act or omits to do any other act which would entitle the Board to censure, expel, suspend, fine or prohibit him from trading, then the Board shall be entitled to censure, expel or fine some or all members of the partnership or corporate member and the corporate member, or to suspend or prohibit from trading all members of the partnership or corporate member and the corporate member when all members of such partnership or corporate member are found guilty under 3.8.

### **3.8 Misconduct or Criminal Charges**

- 3.8.1 If any member has been found guilty of misconduct, the Board may, subject to 3.7.4 -
- 3.8.2 by a simple majority of members present censure or fine such member or by a two-thirds majority of members present suspend or expel such member, provided that where a sentence of suspension is imposed upon a member, the Board may by a two-thirds majority of members present, suspend such sentence for such period of time and on such conditions as it may determine. If during this period the member is found guilty of an offence, which in the opinion of the Board is similar, the Board shall in passing sentence, determine -

- 3.8.2.1 whether the suspended sentence or part of it shall be brought into effect, and in addition or as an alternative thereto; or
- 3.8.2.2 what punishment, if any, is to be imposed in respect of a misconduct of similar nature.
- 3.8.3 The Board may expel any Board member guilty of misconduct. The resolution for such expulsion must be carried by a two-thirds majority at a meeting specially called for that purpose. This power shall be additional to the power under 3.8.1.
- 3.8.4 A fine imposed on a member who has been found guilty of contravening sections 22, 23, 24, 25, 26 and 27 of the Act, NSX directive or Board decision made or issued in respect of that section, shall not exceed N\$2 000 and the Board may require that such fine shall be paid either by a broking firm or by one or more of its members. The fine referred to in this rule shall not be imposed in respect of each individual contravention where a member is found guilty of more than one contravention at any one hearing, and in such cases the fine shall be imposed in respect of a number of contraventions collectively.
- 3.8.5 Should a member or broking firm fail to pay any fine imposed by the Board within one month after the Chief Executive Officer has informed the member or broking firm of the amount of the fine, the Board shall have the right to recover such fine from such member or firm in a Court of competent jurisdiction or expel or suspend such member or the members of such firm including the members of a corporate member.
- 3.8.6 The amount of any fine received by the Board in terms of the Rules shall be paid into the Guarantee Fund.
- 3.8.7 If, in the opinion of the Board the misconduct does not warrant the imposition of any of the penalties referred to in this sub rule, the Board may resolve that the member concerned be reprimanded, and such a resolution need not be published or be the subject of a notice in the NSX Gazette unless the Board decides otherwise.
- 3.8.8 If the Board resolves by a two thirds majority that an investigation of the affairs of a broking firm reveals that it is trading in such a manner that there is a likelihood that such firm may not be able to meet its commitments to clients or to other broking firms or to a NSX settlement system or that it is conducting its business in a manner which could be detrimental to the interests of the NSX or the welfare of its members, the Board shall be entitled by such majority to -
- 3.8.8.1 prohibit such firm from trading;
- 3.8.8.2 restrict the trading activities of such firm in such manner as the Board deems fit;
- 3.8.8.3 give such firm such instruction as it may deem necessary in the interests of its clients or other broking firms or a NSX settlement system.

- 3.8.9 Notice of a prohibition, restriction or instruction in terms of 3.8.8 shall be accompanied by particulars of the alleged breach of the Act, the Rules, NSX directives and special gazettes governing broking firms. The Board's requirements for rectification of the alleged breach shall be stated to enable the firm in question to apply to the Board for the removal of the order.
- 3.8.10 Any action taken by the Board in terms of this rule may continue until such time as the Board is satisfied as to the financial position and business conduct of the firm in question, provided that such action shall be reviewed by the Board at least once each month and shall thereafter only continue to the extent that such continuation is resolved upon by a two-thirds majority.
- 3.8.11 If a broking firm has been prohibited from trading in terms of 3.8.8.1, the Board shall forthwith require that such firm hand over to the Board all books and accounting records of the firm including all scrip registers, safe custody ledgers, cheque books and all cash and securities held by and in the possession of the firm including cash and securities held on behalf of clients in safe custody in a banking institution. The Board shall during the period of prohibited trading have power to control such assets of the firm as the Board may deem fit.
- 3.8.12 A resolution for the censure, expulsion, suspension or fining of a member may be passed at the meeting of the Board at which the member is found guilty of misconduct or at a subsequent meeting.
- 3.8.13 On the expulsion of a member, the Board may resolve that such expulsion shall be suspended for 10 days or if an appeal is lodged in terms of the Act during that period until the appeal has been decided. During the period that the expulsion has been suspended, the member shall be deemed to have been suspended in terms of the Rules. Any expelled member lodging an appeal in terms of the Act shall at the same time inform the Chief Executive Officer.
- 3.8.14 8.1.5 to 8.1.7 applies to a broking member who has been expelled in the same manner as if such member were a defaulter.
- 3.8.15 A notice shall be published in the NSX Gazette setting out details of any charge of which a member is found guilty and of the sentence imposed, except as provided in 3.8.7.
- 3.8.16 No penalty shall be imposed on a member in respect of a matter in connection with which he has not had an opportunity of making representations to the and a member who has so made representations to the shall be entitled to be supplied with a copy of a record of the meeting at which such representations were considered.
- 3.9 Transactions Open**
- 3.9.1 Where any member is suspended or ceases to be a member other than by death, expulsion or resignation, and having stock exchange transactions open with another broking firm under the Rules, such transactions shall be dealt with in terms of 8.1.8, save that any transactions which are not closed off by the Board shall be dealt with



by the member who has been suspended or the person who has ceased to be a member according to the terms of the transaction.

### **3.10 Consent Required for Employment of Certain Persons**

3.10.1 A broking firm shall not without the written consent of the Board take into or continue in its employment in any capacity in any business carried on by it as a member, any person expelled from the NSX or from a clerkship or any person refused admission either as a member or clerk, or any person whose clerkship has been suspended or withdrawn by the Board, or any person who is a member of or has a direct or indirect interest in any business of any other stock exchange, or of any person who is a member of any other stock exchange, or any person who is an unrehabilitated insolvent or has been a defaulter or has been convicted of theft, fraud, forgery, or any other crime involving dishonesty, provided that the consent of the Board may be given for a limited period and may be withdrawn at any time provided the Board gives the member one calendar month's notice of its intention to withdraw such consent.

3.10.2 A broking firm which dismisses an employee for committing or attempting to commit an act which is dishonest, fraudulent, dishonourable or disgraceful shall report details of the act and the name of the person concerned to the Chief Executive Officer.

### **3.11 Recusals, Absence from a Hearing or Enquiry**

3.11.1 If a member of the Board has an interest in a hearing or an enquiry before the Board, he or she shall not -

3.11.1.1 take part in the deliberations of the Board; or

3.11.1.2 vote on that matter.

3.11.2 If a member of the Board is absent from any hearing or enquiry or portion of such hearing, he or she shall not -

3.11.2.1 attend any subsequent hearing or enquiry of the case;  
or

3.11.2.2 vote on the matter.

3.11.3 All members of the Board present at any meeting shall record their votes except as provided in 3.11.1 and 3.11.2.

3.11.4 The Board may grant leave of absence to any of its members.

### **3.12 Public Notification of Suspension or Expulsion**

3.12.1 The Board may in such manner as the Board deems fit notify or cause to be notified to the public -

3.12.1.1 that a member has been expelled or has been suspended or has ceased to be a member and the name of such member; and

3.12.1.2 a member declared to be a defaulter and the name of such member.

3.12.2 The publication of a notification referred to in 3.12.1 shall not constitute a cause of action against any person publishing or circulating such notification.”.

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