



# **GOVERNMENT GAZETTE**

OF THE

# **REPUBLIC OF NAMIBIA**

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# **Namibian Stock Exchange**

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## ***Rules***





## SECTION 1 INTERPRETATIONS AND DEFINITIONS

- 1.1 Unless inconsistent with the context, the singular shall include the plural and the use of any one gender shall be interpreted as required to include any other.
- 1.2 The words defined in the Act shall, if not inconsistent with the subject or context, and unless they are defined in these rules, bear the same meaning in these rules.
- 1.3 Chapter headings and subheadings shall not be taken into account in the interpretation of any of these rules.
- 1.4 In these rules -

*Act* means the Stock Exchanges Control Act, No. 1 of 1985, and any amendments thereto or any regulations which may be issued thereunder;

*associate member* means a non-broking member who is admitted as such under 4.4;

*authorized clerk* [which includes authorized clerk (gilts)] means an employee of a broking firm who, subject to the consent of and on the conditions imposed by the Committee, is permitted to deal in securities on behalf of such firm;

*balance receipt* means an official receipt issued by the company in respect of securities represented in the share certificate lodged with it which are in excess of the quantity of securities represented in certified transfer deeds issued against such share certificate;

*branch manager* means a non-broking member who is employed by a broking firm on the basis of a salary and who is the member in charge of its branch office;

*broker or broking member* means a member of the NSE, including a corporate member, authorized by the Committee to carry on in the Republic the business of a stockbroker or carrier against shares;

*brokers transfer form* means the brokers transfer form prescribed by the Companies Act, 1973, as amended from time to time;

*broking firm* includes a broking member, a partnership, and a corporate member;

*buyer* means, in relation to the settlement of transactions, the buying broking firm or user;

*buyers option time bargain* - see 5.9.1.4;

*certified transfer deed* means a securities transfer form or a brokers transfer form unaccompanied by a share certificate, and bearing a certification by or on behalf of the company whose securities are represented in the transfer deed that the relative share certificate has been lodged with the company;

*Clearing House security* means any security the subject of a transaction which has been or is to be cleared through the Clearing House;

*contract price or transaction price* means the price per unit of security at which the transaction was entered into;

*contract value* means the consideration due to be paid by the purchasing broker to the selling broker in respect of any transaction for the purchase of securities;

*corporate member* means an incorporated company which is a broking member of the NSE and whose directors and shareholders are normally all members of the NSE (see 4.3.3);

*country broking firm* means a broking firm which is not a Windhoek broking firm;

*Data Processing Department* includes any NSE settlement system;

*dealer* means a broking member, junior member or an authorized clerk who deals in securities or other items on behalf of the broking firm of which he is the proprietor, partner, director or employee;

*deliverer* means, in relation to the settlement of transactions, the delivering broking firm or user;

*discretionary account* - see *managed account*;

*failed user* means a user that has been declared a failed user as contemplated in Section 11;

*foreign dealer* means a person in another country any part of whose regular business in such country is the buying and selling of securities;

*founder member* means a natural person nominated by a company registered in Namibia according to the laws of Namibia and which company contributed an amount of N\$10 000,00 to the Stock Exchange;

*General Manager* means the person who is the chief administrative officer of the NSE irrespective of any subsequent change in the title by which his position may be designated and shall include any other official of the NSE to whom authority has been delegated by the said chief administrative officer;

*gilt broking firm* means a broking firm that has been admitted as a gilt broking firm by the Committee;

*Gilt Clearing House transaction* means a transaction which is -

- (a) in gilts, whether listed or otherwise, the issuer of which the Committee has admitted for the purpose of clearing;
- and either a transaction -
- (b) between a broker and another person; or
- (c) between users which has been notified to the Gilt Clearing House as provided by NSE directives;

*gilts* means any security issued by the Government or any statutory body, municipality, local authority or other similar body or institution recognized by the Committee as issuers of such securities;

*How Many* - see 5.4.1;

*immediate deal* means -

- (a) a transaction in gilts where delivery is to take place on the day of the transaction or the following business day;
- (b) a transaction in any other listed security where delivery is to take place before the next settlement period;

*incidental accrual* means any one or more of the rights or benefits which flow from the ownership of the securities with which the rights or benefits are integrated and any other rights or benefits accruing in respect of such securities other than the right to ownership of the securities themselves (see rule 5.11.2.1);

*incorporated company* means a company which complies with Section 13 of the Act;

*issuer* means an issuer of securities;

*letter of acceptance* means a letter of right;

*letter of allocation* means a letter of right;

*letter of allotment* means a letter of right;

*letter of right* means a document (normally renounceable) relating to an offer by a company to take up securities at a specified price and before a specified date and may be either nil paid, partly paid or fully paid;

*managed account* means -

- (a) any arrangement entered into between a client and a broking firm, which authorizes such firm either to hold securities on behalf of such client in safe custody or to receive cash arising from the operation of the account for deposit with NSE Trustees (Pty) Limited, or both; and
- (b) any discretionary account operated by a broking firm in the manner set out in (a) above;

*member* means a natural or legal person or group of natural persons, as the case may be, admitted to membership of the NSE under the rules and which may include any broking firm;

*monetary accrual* means an incidental accrual involving the payment of money;

*non-broking member* means a member who is not a broking member;

*NSE* means the Namibian Stock Exchange;

*NSE Executive* means the President, the Chief Operating Officer and the General Manager;

*NSE Gazette* means the official Gazette published under the authority of the Committee;

*NSE Official* means any permanent member of the NSE;

*NSE year* means the financial year of the NSE which shall end on the last Friday in February in each year or such other date as the Committee may determine;

*odd lot* means -

- (a) in respect of gilts, a quantity of less than N\$100 000 of nominal value;
- (b) in respect of shares, a quantity which is not divisible by 100;

*options* - the following terms relate only to traditional option transactions including gilt options and do not relate to traded option transactions which are governed in terms of Section 14 of these rules and mean -

- (a) *call option* - the purchased right to buy specified securities other than gilts at a specified price within a specified period;
- (b) *call option (gilts)* - the purchased right to buy a specified amount of gilt stock at a specified yield within a specified period (American) or on a specified date (European);
- (c) *put option* - the purchased right to sell specified securities other than gilts at a specified price within a specified period;
- (d) *put option (gilts)* - the purchased right to sell a specified amount of gilt stock at a specified yield within a specified period (American) or on a specified date (European);
- (e) *put or call option (double option)* - the purchased right to buy or sell specified securities other than gilts at a specified price within a specified period;
- (f) *put or call option (gilts)* - the purchased right to buy or sell a specified amount of gilt stock at a specified yield within a specified period;
- (g) *call of more option* or *put of more option* - the right to buy or to sell additional securities other than gilts to a purchase or sale. The "call of more option" or the "put of more option" is exercised in the same manner as a normal "call option" or "put option";
- (h) *gilt option* - a call option (gilts) or a put option (gilts);

- (i) *gilt traded option* - an option, the document of title of which passes from the writer or seller to the purchaser against payment of the option money, giving the purchaser the right to exercise direct against the writer of the option;
- (j) *striking price* - the price at which the security under option will change hands should the option be exercised;

*overs and unders* means the cash difference between the contract value and the settlement value of bargains;

*put-through* transaction means a transaction where the buyer and seller is the client of the same broker;

*receiver* means, in relation to the settlement of transactions, the receiving broking firm or user;

*record date* in relation to a company means the last day to lodge securities for registration prior to the accrual of an incidental accrual;

*republic* means the Republic of Namibia;

*right* means an entitlement, represented by a letter of right, flowing from an existing holding of securities;

*rights issue* means an issue of rights;

*scrip* shall include a share or stock certificate, temporary document of title or letter of right, in negotiable order;

*scrip accrual* means an incidental accrual settled by delivery of fully paid scrip or a nil paid document of title of limited duration, whichever is applicable;

*securities, shares or stocks* means securities, shares, stocks, debentures, gilts, notes, listed options, units of stock issued in place of shares, letters of right and other documents of title including any form of right or option to obtain any of the aforesaid and such other document of title as the Committee may recognize as such from time to time;

*securities transfer form* means the securities transfer form prescribed by the Companies Act, 1973, as amended from time to time;

*securities transfer stamp* - see 5.7.10;

*seller* means, in relation to the settlement of transactions, the selling broking firm or user;

*sellers option time bargain* - see 5.9.1.4;

*settlement period* means one of the prescribed portions of the year for the settlement of bargains;

*settlement price* in respect of each Clearing House security means the price determined by the Clearing House for use in the settlement of bargains in that security in a particular settlement period;

*settlement system* means a system referred to in Section 11;

*settlement value* means the multiple of the settlement price and the units of security involved;

*shares* - see *securities*;

*Stock Exchange Notice Board* means the notice board bearing the title "Stock Exchange Official Notice";

*stock exchange transaction* means any transaction entered into by a broking member -

- (a) with another broking member; or
- (b) on behalf of a client with another broking member or a foreign dealer; or
- (c) in the case of gilts, with another person, for the purchase, sale, borrowing, lending or hypothecation of securities or other items that may be traded on the trading floor in terms of these rules, or for the borrowing, lending or payment of money, whether the transaction occurred on the trading floor or elsewhere;

*stocks* - see *securities*;

*temporary document of title* means a certified transfer deed or balance receipt or any instrument of transfer endorsed in terms of Section 136 of the Companies Act, 1973, or any other form of company acknowledgment or document of title approved by the Committee;

*trading floor* means the place in the NSE building where dealings in listed securities take place during trading hours, including any system, electronic or other system that may be approved by the executive committee;

*transaction* means a stock exchange transaction unless otherwise required by the context;

*unauthorized clerk* means an employee of a broking firm who, subject to the consent of and on the conditions imposed by the Committee, is allowed to enter the trading floor but who is not permitted to deal in securities;

*user* means a non-member of the NSE which has applied to and been accepted by the Committee as a direct participant in any NSE settlement system.

## SECTION 2 GENERAL

### 2.1 Name

The name of the Association is the "Namibian Stock Exchange", hereinafter referred to as "the NSE".

### 2.2 Corporate Body

2.2.1 The NSE shall be and continue as body corporate constituted separately from its members and shall have perpetual succession and be capable of acquiring rights and duties in law apart from those of its members.

2.2.2 Legal process issued against the NSE shall be validly served if served at the office of the NSE.

### 2.3 Objects

The objects of the NSE are to -

2.3.1 carry on the business of a stock exchange in the Republic of Namibia and to do all things necessary in terms of the Act to carry on such business and to obtain and maintain a licence to carry on the business;

2.3.2 provide members of the NSE, as an integral part of the administration of the NSE or through a company registered in terms of the Companies Act, 1973, with the facilities and services necessary for such members to carry on the business of stockbrokers in an orderly manner and to transact any other business not inconsistent with the rules or the Act;

2.3.3 acquire or retain the ownership of any land or any lease of land and to erect buildings thereon primarily required for the administration of the NSE's affairs, including the housing of members of its staff, and from time to time to alienate any such land or terminate or cede any such lease and to acquire or hire other or further land for like purposes and to let such portion of the buildings in which the business of the NSE is carried on as may not be required for the purpose of the NSE;

2.3.4 provide facilities for the listing of the securities which may be dealt in by members on the NSE; and

2.3.5 do all other things which are incidental or conducive to the attainment of the above objects or which are in the interest of members or the public and which are not inconsistent with the provisions of the Act.

### 2.4 Powers of the NSE

2.4.1 The NSE shall be subject to all the provisions of the Act and such provisions shall override any provision in these rules which is inconsistent therewith.

2.4.2 The NSE shall have power to -

(a) do all such things and to enter into all such arrangements and contracts as are necessary or desirable to achieve the intentions and objects of the NSE;

(b) make, alter and rescind rules to comply with the provisions of the Act and generally to govern, control, manage and regulate the affairs of the NSE and of its members and without prejudice to the generality thereof -

(i) the admission of members and the termination of membership and to prescribe the conditions with which a person must comply to become and remain a member of the NSE, and the membership fees and other contributions which must be made to the NSE and



- the conditions and circumstances under which a member may be suspended and membership terminated;
- (ii) the business conduct of members and other persons authorized by the rules to buy and sell securities on the NSE including the brokerage which may be charged by members;
  - (iii) the manner in which and the conditions in terms of which members or the approved persons shall deal on the NSE-systems;
  - (iv) the partnership and corporate arrangements of members;
  - (v) the inclusion of securities in the list of securities which may be traded on the NSE and to prescribe the conditions in terms of which a listing is granted and the listing and revision fees which must be paid in respect of such securities by the issuers of the securities;
  - (vi) the maintenance of an orderly market for trading in securities and to invoke only those sections of these rules when the market has reached sophistication and maturity to make such rules needed;
- (c) purchase or acquire, alienate or sell land, buildings, securities and every other kind or description of movable and immovable property;
  - (d) deal with its property and assets;
  - (e) borrow money;
  - (f) open and operate banking accounts and to overdraw such accounts;
  - (g) secure the payment of monies borrowed in any manner including the mortgaging and pledging of property and, without detracting from the generality thereof, in particular by the issue of any kind of debenture or debenture stock, with or without security;
  - (h) lend money to any person or company and to guarantee the obligations of any person or company on such terms as it deems fit;
  - (i) invest money in any manner;
  - (j) make donations;
  - (k) undertake and execute any trust;
  - (l) appoint or dismiss staff and to delegate to persons so appointed specific or general powers and to impose on them the duties which the Committee may from time to time prescribe and to remunerate them out of the funds of the NSE;
  - (m) pay gratuities and pensions and establish pension schemes in respect of its officers, clerks and employees;
  - (n) operate a Data Processing Department and to prescribe the fees and charges which members of the NSE and members of the public must pay to the NSE for services rendered and information furnished to them by the Data Processing Department or a member of its staff;
  - (o) render to members and the public any other service as the Committee may from time to time determine such as trading systems to function as a stock exchange, and to prescribe the fees and charges for such services;
  - (p) vest in the Committee all or any of the powers of the NSE;
  - (q) alter, add to, rescind or suspend any of the rules of the NSE;
  - (r) operate a traded options market and a clearing and settlement system for traded option transactions; to determine the underlying securities and indices for options; to set premium and margin requirements; to promulgate requirements for the regulation of such market and the protection of the NSE; and to do all other things necessary for the operation of such a market.

## 2.5 Powers Exercisable by the Committee

The management and control of the NSE shall be exercised by the Committee which, in addition to the powers and authorities expressly conferred upon it by the Act and these rules, may exercise all such powers and do all such acts and things as may be exercised or done by the NSE, and are not by the Act or these rules expressly directed or required to be exercised or done by the members in general meeting: provided that -

- 2.5.1 no resolution passed by the members in general meeting shall invalidate any prior act of the Committee;
- 2.5.2 the Committee shall not, without the authority of a general meeting, be entitled, for and on behalf of the NSE -

- (a) to borrow money for purposes other than those of the NSE;
- (b) to invest funds of the NSE other than -
  - (i) on deposit with any commercial bank, merchant bank, savings bank, building society, deposit receiving institution or other similar financial institution which the Committee may consider suitable;
  - (ii) in shares, stock, debentures, notes, rights and options of any kind issued or guaranteed by any company, corporation or undertaking or by any government, trust, authority or other body of whatever nature including stock exchange rights;
  - (iii) on the security of mortgage bonds over immovable property and participation in such bonds;
- (c) to issue any guarantee other than in the normal course of the business of the NSE.

## **2.6 Rules Binding on Members**

- 2.6.1 The rules, NSE directives and decisions of the Committee now or hereafter in force shall be binding upon all members.
- 2.6.2 The Committee shall notify a member or members of a decision of the Committee with which such member or members must comply. For the purpose of this rule a notice posted on the Stock Exchange Notice Board or published in the NSE Gazette and which contains particulars of such decision shall constitute notification by the Committee to a member or members.

## **2.7 Interpretation of Rules**

The interpretation and enforcement of the rules, NSE directives, listing requirements and decisions of the Committee shall vest in the Committee.

## **2.8 NSE Not Responsible for any Losses**

The NSE shall not be responsible or liable to any person for (or in respect of) direct, indirect or consequential liability, loss or damage of any kind or nature, howsoever arising, incurred as a result of -

- (a) negligence on the part of the NSE or on the part of any employee or agent of the NSE;
- (b) incorrect, inaccurate, defective or misleading information furnished or supplied by the NSE or any employee or agent of the NSE;
- (c) equipment breakdown or the breakdown, interruption, suspension, termination or failure of any system or service owned or operated by the NSE;
- (d) 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.

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

Notwithstanding anything contained in these 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 the Act, these rules, the NSE directives and decisions of the Committee in force at the time the bargain was struck, and every brokers note and advice note shall state that the transaction to which such note relates has been concluded subject to the provisions of the Stock Exchanges Control Act, 1985, the rules and directives of the NSE, and the decisions of the Committee which were in force on the date the transaction was entered into.



## 2.10 Winding Up

- 2.10.1 If the NSE should cease to be licensed to carry on the business of a stock exchange in terms of the Act -
- (a) the Committee shall forthwith convene a meeting of broking members to be held within 90 days from the date on which the NSE ceases to be licensed under the Act (the "effective date");
  - (b) at least seven days prior to that meeting the Committee shall send to all broking members copies of an audited revenue and expenditure account of the NSE for the period from the last day of the financial year of the NSE for which annual financial statements have been published up to the effective date together with an audited statement of assets and liabilities of the NSE as at the effective date (such revenue and expenditure account and statement of assets and liabilities being hereafter called "the effective financial statements");
  - (c) at the meeting referred to in 2.10.1(a) the broking members shall consider the effective financial statements to ascertain whether the assets of the NSE exceed the liabilities of the NSE to such an extent that the NSE is able forthwith to discharge its obligations to the public arising out of the business of a stock exchange carried on by the NSE up to the effective date. If so the NSE shall, for the purposes of this rule, be considered solvent at the effective date and if not the NSE shall, for the purposes of this rule, be considered insolvent at the effective date.
- 2.10.2 Should it appear from the effective financial statements that the NSE is insolvent [as defined in 2.10.1(c)] -
- (a) broking members may decide at the meeting referred to in 2.10.1(a) to contribute to the NSE such amount of money as shall be necessary to make the NSE solvent [as defined in 2.10.1(c)] failing which the NSE shall be wound up and in the absence of any formal resolution to that effect passed by not less than 75 per cent of broking members present at the meeting, the meeting shall be deemed to have resolved by a majority of 75 per cent of broking members present at the meeting that the NSE shall be wound up by the court in accordance with the provisions of the Companies Act, 1973;
  - (b) for the purposes of 2.10.2(a) the meeting referred to in 2.10.1(a) shall be deemed to have been duly constituted and held notwithstanding that less broking members were present than are sufficient to form a quorum;
  - (c) upon any resolution for the winding up of the NSE being made or deemed to have been made in terms of 2.10.2(a), the Committee shall forthwith cause application to be made to the court for the winding up of the NSE.
- 2.10.3 If it appears from the effective financial statements that the NSE is solvent [as defined in 2.10.1(c)] or if the broking members shall decide to contribute the amount of any shortfall of assets over liabilities as envisaged in 2.10.2(a) -
- (a) at the meeting referred to in 2.10.1(a) broking members shall decide whether the NSE shall be wound up or whether the assets of the NSE, after discharging the obligations of the NSE to the public arising out of the business of a stock exchange carried on by the NSE up to the effective date, shall be used by the NSE in any other business venture;
  - (b) the Committee shall procure that the obligations of the NSE to the public arising out of the business of a stock exchange carried on by the NSE up to the effective date shall forthwith be discharged.
- 2.10.4 If the broking members should decide that the net assets of the NSE shall be used in another business venture -
- (a) the Committee shall procure that the name of the NSE is changed to another name acceptable to broking members which name shall not contain the words "stock exchange";
  - (b) the objects of the NSE shall be amended accordingly and the NSE shall have the power to apply the net assets of the NSE in furtherance of any other business venture selected by the broking members.

- 2.10.5 If broking members shall decide that the NSE shall be wound up notwithstanding that it is not insolvent [as defined in 2.10.1(c)] -
- (a) within seven days of the decision the Committee shall appoint a liquidator to conduct the winding up of the NSE who shall give security to the satisfaction of the Committee for the proper performance of his duties as liquidator;
  - (b) forthwith upon his appointment and after his security has been furnished, the liquidator shall realize the assets of the NSE in his capacity as the duly appointed agent of the NSE;
  - (c) the liquidator shall, within 30 days after the assets of the NSE have been realized, circulate to all broking members a proposed distribution account showing the manner in which the net assets and liabilities of the NSE are to be applied and discharged. In addition the liquidator shall publish in two issues of an English national daily newspaper a notice to the effect that the proposed distribution account is open for inspection within a period of not less than 14 days from the date of such publication and indicating the address at which interested persons may inspect the same and calling upon all persons interested to lodge in writing with the liquidator before a stated day, not being earlier than 7 days after the close of the said period, any objection to the proposed distribution account with the reasons therefor;
  - (d) if the liquidator is of the opinion, in consultation with the Committee, that any objection lodged with the liquidator ought to be sustained or, even though no objection has been lodged with the liquidator, that any improper charge has been made against the assets or that the financial statements of the NSE 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 account 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;
  - (e) after the proposed distribution account has been open to inspection for the prescribed period the Committee shall, if it is satisfied that the distribution account is correct and that the procedures contained in this rule have been adhered to, confirm the distribution account;
  - (f) the liquidator shall immediately after the confirmation of the distribution account proceed to distribute the assets in accordance therewith and shall without delay lodge with the Committee receipts for any payments in pursuance of the distribution;
  - (g) if any amount payable in terms of the distribution account remains unclaimed for a period of 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 Committee;
  - (h) if the liquidator and the Committee are satisfied that the winding up is complete they shall certify that the NSE has been wound up and shall circulate a copy of the joint certificate to all broking members, whereupon the NSE shall be dissolved.
- 2.10.6 For the purposes of considering whether the assets of the NSE are sufficient to discharge the obligations of the NSE to the public as envisaged in 2.10.1(c) the words "assets" shall include the NSE Guarantee Fund.

## SECTION 3 COMMITTEE

### 3.1 Power and Authority

- 3.1.1 Any decision of the Committee on a matter before it shall be final unless and until (in cases where an appeal to that body lies) the Appeal Board established under the Act shall have reversed such decision.
- 3.1.2
- (a) Any action, procedure, directive, instruction or decision of the Committee in relation to the administration, management, control, conduct or procedures for the orderly functioning of the NSE as an efficient market place for securities which is in accordance with the provisions and powers contained in the rules shall be binding upon broking members, their employees, clients and other parties with whom members are permitted to deal.
  - (b) The Committee may pass a NSE directive governing all aspects of the business of the NSE including dealing in items or instruments other than securities, and the responsibilities of members therefor, provided such directive does not affect the public.
  - (c) The Committee may from time to time prescribe the examination requirements with which a candidate must comply for membership.
  - (d) The committee may prescribe trading systems and pass those rules and directives necessary for the effective running of the prescribed systems, rules inconsistent with systems may be set aside until such time as they can be complied with.
- 3.1.3 Subject to the consent of the Minister or that of any person to whom he has delegated such power, the Committee may close the NSE for trading purposes at any time and for any period. The Committee shall have the power to -
- (a) prohibit broking members from trading in their offices or elsewhere during such period;
  - (b) determine from time to time the conditions upon which transactions open at the time of such closure shall be completed and whether or not deliveries of securities shall continue during such period.

### 3.2 Number of Committee Members

- 3.2.1 The Committee shall consist of representatives of founder members as well as broking members who shall together vote for and appoint the Committee for a period of one year at a time.
- 3.2.2 The Committee shall consist of a maximum of 10 natural persons all with full voting rights. The Committee shall determine annually the number of members - being members not under surety - to be elected. The maximum shall be 7 if, under 3.2.2(b), a President is already in office whose conditions of service cover the period of both the previous Committee and the Committee to be elected. If the number of nominations exceeds the number of members so determined by the Committee, a ballot to elect the members of the Committee shall be held not later than four months after the end of each financial year.

The elected members may, at their discretion, and provided there are vacancies, appoint to the Committee -

- (a) non-members who shall hold office for one year and shall be called outside members and who shall be represented by one auditor, one lawyer and co-opted persons;
  - (b) a President.
- 3.2.3 Committee members shall hold office until a new Committee has been elected.

- 3.2.4 The Committee shall at all times be representative of the stakeholders in the NSE and shall consist of one member each representing the -

- (a) investor public;
- (b) financial sector;
- (c) listed companies;
- (d) general business community;
- (e) broker sector.

### 3.3 Resignations

- 3.3.1 A member of the Committee may retire from office upon giving notice in writing to the Committee of his intention to do so.
- 3.3.2 If any member of the Committee resigns, he may at the request of the Committee continue to hold office and exercise all the powers vested in him as a member of the Committee until the vacancy caused by his resignation has been filled. Notwithstanding any vacancy in their number the continuing members of the Committee may act as the Committee and may do all things which the Act and these rules empower the Committee to do: provided that if more than half of the members of the Committee resign and do not accede to a request to continue in office pending the filling of the resulting vacancies, the Committee members remaining in office shall not be entitled to take any decisions other than those required to continue the day-to-day business of the NSE except to call forthwith for nominations to fill the vacancies in the Committee in the manner set forth in these rules. If all members of the Committee resign such members shall continue to hold office and exercise all the powers vested in them as members of the Committee until a new Committee has been elected.
- 3.3.3 Any casual vacancy in the Committee among the elected members shall be filled by the election of a new member. A ballot shall be held if necessary.

### 3.4 Calling for Nominations (Casual Vacancy)

It shall be at the Committee's discretion whether or not to call for nominations should a casual vacancy occur between the 1st April and the date of the next annual election of the Committee, unless more than half of the Committee have resigned.

### 3.5 Notice of Ballot

- 3.5.1 The Committee shall give notice of a ballot to all broking members as soon as possible after a casual vacancy occurs and at least 21 days before the ballot date fixed by the Committee for an annual election.
- 3.5.2 Such notice shall be published in the NSE Gazette. Ten days before the ballot is held, a second notice shall be published in the Gazette which shall contain -
- (a) in the case of the annual election or when the Committee resigns en bloc -
    - (i) the names of those persons on the Committee willing to serve again, and
    - (ii) the names of all new candidates, their proposers and seconders;and
  - (b) in the case of an election to fill a vacancy, -
    - (i) the names of candidates, their proposers and seconders.
- 3.5.3 No person not being a member retiring at the end of the Committee's term of office shall be eligible for election as a member of the Committee unless a nomination signed by two natural broking members and the nominee or, in his absence, by his duly authorized representative, is delivered to the General Manager at least ten days before the ballot.

3.5.4 Should the period of ten days referred to above commence on a Saturday, Sunday or public holiday, the time of commencement of the period of ten days shall be deemed to be 16:00 on the preceding business day.

3.5.5 Where nominations do not exceed the number of vacancies to be filled a ballot shall not be necessary and the nominees shall be deemed to be elected.

### 3.6 Power to Co-opt

Where there are insufficient nominations to fill all the vacancies, the Committee shall fill the remaining vacancies by co-opting to the Committee sufficient persons or such other specialist as they may see fit. These may be voting or non-voting members and shall be determined by the Committee.

### 3.7 Conditions for a Ballot

The terms, conditions, and procedure for the calling of nominations and the conduct of a ballot shall be as follows:

3.7.1 The Committee shall determine any matter in connection with the calling for nominations and a ballot which is not specifically provided for in these rules including the procedure to be adopted in the event of the death or withdrawal of a candidate for election.

3.7.2 The ballot shall be held at the office of the General Manager or at such other place as the Committee may appoint.

3.7.3 The ballot shall be held on the day and between the hours determined by the Committee.

3.7.4 The ballot shall be held notwithstanding that the Stock Exchange may be closed for trading purposes on that day.

3.7.5 The form of voting paper shall be approved by the Committee.

3.7.6 Two scrutineers for any ballot shall be appointed and their duties determined by the Committee. Such scrutineers, if members, shall not propose or second a candidate for election to the Committee.

3.7.7 Every vote shall be recorded by means of a cross (X) on a voting paper supplied to the member for that purpose by a scrutineer.

3.7.8 The number of votes which must be cast on every voting paper shall be no less and no more than the number of vacancies which are to be filled.

3.7.9 All associate members in good standing, except corporate members, shall be entitled to vote.

3.7.10 Any member who spoils his voting paper when completing it may be issued with a further paper upon his handing the original paper to the scrutineer who shall immediately destroy such paper.

3.7.11 Any voting paper shall be null and void which does not comply with this rule, or which contains a signature, initials, alterations or any mark other than a cross against the name of any candidate.

### 3.8 Voting Papers

3.8.1 Voting papers shall be sent by the General Manager to broking members, other than corporate members, whose registered addresses are -

- (a) in Windhoek but who will not be attending their place of business during the period the ballot is open and who personally make written application therefor to the General Manager to be received on a business day at least four days before the date of the ballot;
- (b) outside Windhoek.



3.8.2 The voting paper duly completed by the member shall be placed in an envelope marked "Voting Paper Only" and sealed. The sealed envelope shall be returned to the General Manager in a larger envelope which shall be signed personally by the member entitled to vote and shall be received by the General Manager before the close of the ballot.

3.8.3 No further voting paper shall be issued unless the member to whom the paper was sent satisfies the scrutineer that the paper was destroyed, or lost in the post.

### 3.9 Equality of Votes

If two or more candidates for election receive an equal number of votes and the number of vacancies is less than the number of such candidates they shall on the day of the ballot decide by drawing of lots, in the presence of the scrutineer, which of them shall fill the vacancies on the Committee. In the absence of one or more of the candidates the drawing of lots shall be performed by the General Manager in the presence of the candidates available and the scrutineer.

### 3.10 Meetings (When Held, Notices, etc.)

3.10.1 The Committee shall meet at such time and place as it may determine and in addition the Committee or the President may determine that a specific matter be dealt with at a special meeting to be called for that purpose.

3.10.2 Notices of meetings shall be given either to the members of the Committee personally or by leaving the notice at an office of the member or by communicating such notice verbally, including by telephone, to some person at an office or the home of the member, provided that no notice need be given to a member of the Committee of any meeting to be held during a period in respect of which he has been granted leave of absence in terms of these rules.

3.10.3 The notice of a special meeting shall give particulars of the business to be conducted at the meeting and no business other than that set forth in the notice shall be conducted at the meeting.

3.10.4 The President, or in his absence, the General Manager shall call a special meeting upon the written request of any three members of the Committee.

### 3.11 Quorum

3.11.1 Three members of the Committee present shall be a quorum at meetings of the Committee.

3.11.2 The quorum for meetings of subcommittees shall be two members of the Committee unless otherwise resolved by the Committee.

3.11.3 If a quorum be not assembled within a quarter of an hour after the time appointed for the meeting, the meeting shall be cancelled.

3.11.4 Save as is otherwise provided in the rules, members of the Committee may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they deem fit.

3.11.5 Questions arising at any meeting of the Committee or any subcommittee shall be decided by a majority of votes unless a specific rule requires a larger majority.

3.11.6 In case of an equality of votes, the chairman of the meeting of the Committee, other than a meeting of a subcommittee, shall have a second or casting vote.

### 3.12 Election of Office-bearers, Subcommittees, etc.

3.12.1 Before the second business day after -

(a) the election of the Committee in terms of 3.2.2, or

- (b) the election of the appropriate number of members of the Committee to fill vacancies created by the resignation of 50 per cent or more of the members of the Committee,

the voting members of the Committee shall meet for the purpose of electing, from amongst themselves, a Chairman who shall hold office until the next annual election (but not for more than two consecutive terms) and who shall act as a Chairman at Committee meetings except where by resolution of the Committee, the President acts as Chairman. The Chairman shall *ex officio* be a member of all subcommittees.

The members of the Committee may at the same meeting elect one or more Vice Chairman, but not more than two. A secret ballot shall be held for the election of the Chairman or Vice-Chairmen in the event of there being more than one nomination for either of these offices.

- 3.12.2 When the office of the Chairman becomes vacant, it shall be filled by the Committee as soon as possible. The filling or otherwise of the office of a Vice-Chairman which becomes vacant shall be at the discretion of the Committee.

- 3.12.3 During the absence of the Chairman -

- (a) the Vice-Chairman, if only one is appointed, shall act in his stead. In the event of the appointment of more than one Vice-Chairman, the Committee shall determine which Vice-Chairman shall act in the absence of the Chairman; or  
(b) where a Vice-Chairman has not been appointed, the members of the Committee shall appoint an Acting Chairman from among their number.

- 3.12.4 In the absence from duty of a Vice-Chairman the members of the Committee may appoint an Acting Vice-Chairman from among their number.

- 3.12.5 In the absence of both the Chairman and the Vice-Chairman or persons acting in those capacities from any meeting, the members of the Committee shall appoint a Chairman for such meeting from among their number.

- 3.12.6 The Committee shall be empowered to appoint subcommittees and to appoint Chairmen and Vice-Chairmen of such subcommittees, and subject to the provisions of the Act and these rules may delegate any of the Committee's powers and duties to them. A secret ballot shall be held in the event of there being more than one nomination for any of these offices.

### 3.13 Minutes shall be Kept

- 3.13.1 The Committee shall cause minutes of all proceedings at its meetings, whether of the Committee or a subcommittee, to be entered as a permanent record in one or more books kept for that purpose.

- 3.13.2 Minutes shall be evidence of the proceedings of Committee meetings or subcommittee meetings if purporting to be signed -

- (a) in relation to Committee minutes, by the Chairman of a subsequent Committee meeting at which they are confirmed;  
(b) in relation to subcommittee minutes, by the Chairman of any subsequent meeting of the subcommittee or of the Committee at which they are confirmed.

### 3.14 Signing Powers

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

- (a) the Chairman or Vice-Chairman;  
(b) the Chairman of the meeting at which the relative matter was dealt with;  
or

- (c) two other members of the Committee or Subcommittee who were present at the meeting at which the relative matter was dealt with; or
- (d) the President, his deputy or such other person as is authorized by the Committee.

### **3.15 Committee Members and Others Indemnified**

- 3.15.1 Every member of the Committee and every employee of the NSE shall be indemnified by the NSE 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 done, concurred in, or omitted, in or about the execution of their duties in their respective offices and trusts, as a member of the Committee or an employee of the NSE, whether in their capacity as a member of the Committee, trustee of the Guarantee Fund, director of any company as a representative of the NSE or otherwise, including all such actions, liabilities, costs, charges, losses, damages and expenses which arise consequent on any mistake, oversight or omission on the part of such member or employee other than through his negligence or wilful breach of duty or trust and it shall be the duty of the Committee to pay and discharge all such actions, liabilities, costs, charges, losses, damages and expenses out of the funds of the NSE. For the purposes of this rule such member or employee shall not be regarded as having been negligent or having acted in wilful breach of duty or trust if such apparent negligence or breach was solely or mainly the result of incorrect information supplied to such member or employee by a source from which the Committee member or employee would normally accept the information as correct and which can be expected to provide the correct information.
- 3.15.2 No person mentioned in 3.15.1 shall be answerable for the acts, rights, neglects or defaults of any other such person or of any bankers or other persons with whom monies or effects of the NSE may, subject to the provisions hereof, be or have been lodged or deposited for safe custody, or for joining in any action for the sake of conformity or for the insufficiency or deficiency of any security accepted by the Committee 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.

### **3.16 Proposals for Alterations and Additions to Rules**

- 3.16.1 Any member of the Committee may propose in writing any alteration or addition to the rules. The proposal shall be lodged with the General Manager who shall submit it to the Committee for noting at its next ordinary meeting.
- 3.16.2 The proposed alteration or addition shall be published in the NSE Gazette on the day following its noting by the Committee.
- 3.16.3 Not earlier than 14 days after publication in the NSE Gazette the Committee shall consider the proposed alteration or addition to the rules and announce in the NSE Gazette its decision in regard thereto.
- 3.16.4 A ballot of broking members shall be taken if, within ten days of the announcement of the Committee's decision to adopt the proposal, a ballot is demanded by a requisition signed by as many broking members as the committee may determine. Such ballot shall be conducted in terms of the relevant provisions of 3.7.
- 3.16.5 No corporate member shall be entitled to sign any such requisition.
- 3.16.6 If at such ballot a majority of votes be recorded against the adoption of the proposal, then the proposal will be deemed to have been rejected.
- 3.16.7 If a ballot is not demanded or if at such ballot a majority is recorded in favour of any proposal, the Committee shall submit the accepted proposal to the Registrar for his approval in terms of the Act.



### 3.17 Disciplinary Matters

#### 3.17.1 Contravention of Act, Rules, etc.

##### 3.17.1.1 Any member who -

- (a) contravenes, attempts to contravene or fails to comply with any of the provisions of the Act, a rule, a NSE directive or a Committee decision;
- (b) acts contrary to the usages or practices of the NSE;
- (c) commits or attempts to commit any act which is detrimental to the interest, good name or welfare of the NSE or its members;
- (d) commits or attempts to commit any act which is dishonest, fraudulent, dishonourable or disgraceful;
- (e) knowingly obstructs the business of the NSE or its members;
- (f) is a party to or who has facilitated or conducted a transaction which is fictitious or which has a dishonest or unlawful motive;

shall be guilty of an offence.

3.17.1.2 Whenever the Committee has reason to believe that a member has committed an offence in terms of 3.17.1.1, it may in its discretion prefer charges against the member and take such disciplinary action as is provided for and may be imposed by the Committee in terms of these rules.

3.17.1.3 The Committee, the President and his deputy shall have the power to investigate the affairs of a broking firm for the purpose of ascertaining -

- (a) whether that firm or any of its employees complies with all the provisions of the Act, these rules, NSE directives and Committee decisions;
- (b) whether the firm is trading in such a manner that there is a danger that such firm may not be able to meet its commitments to clients, other broking firms or a NSE settlement system;
- (c) whether such firm is conducting its business in a manner which could be detrimental to the interest, good name or welfare of the NSE or its members.

3.17.1.4 The President and his deputy may delegate the power granted to him in terms of this rule to the Manager (Inspectorate) or such other staff member of the Inspectorate Department of the NSE as he deems fit.

3.17.1.5 A member or an employee of a member together with such member shall attend the Committee when required to do so and give such information and answer such questions as the Committee may consider relevant to the matter under investigation. A member shall if requested to do so by the Committee and within a period laid down by it furnish the Committee with such information or documents (together with a report thereon by his auditor, if so requested) as the Committee may require.

#### 3.17.2 Members Responsible for Acts of Employees

3.17.2.1 If any employee of a broking firm when acting on behalf of his employer or any duly authorized 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 authorizing such employee or person would constitute a breach of the Act, a rule, a NSE directive or a Committee decision, then the broking firm employing such employee or authorizing such person shall in the discretion of the Committee be deemed to have committed such breach in the same manner as if it had itself done or omitted to do such act.

3.17.2.2 If a broking firm commits a breach of the Act, a rule, a NSE directive or a Committee decision, then the broking firm and some or all members thereof at the time the offence was committed shall in the discretion of the Committee be deemed to have committed the said breach.

- 3.17.2.3 The provisions of 3.17.1 and 3.17.3 shall apply *mutatis mutandis* to any employee of a broking firm when acting on behalf of his employer and to any person acting on behalf of a broking firm and authorized by such firm to do so in respect of any act or omission in respect of which the Committee may suspend, expel or fine a broking firm.
- 3.17.2.4 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, a rule, a NSE directive or a Committee decision, then some or all members of the partnership or corporate member at the time the offence was committed as well as the corporate member may, in the discretion of the Committee, be deemed to have committed the same breach of the said rule, NSE directive, Committee decision or the Act, 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 Committee to censure, expel, suspend, fine or prohibit him from trading, then the Committee 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 3.17.3.
- 3.17.3 Charges, Sentences, etc.
- 3.17.3.1 When any member of the NSE has been found guilty of an offence, the Committee may, subject to 3.17.2.4 -
- (a) by a simple majority of members present censure or fine such member; or
  - (b) 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 Committee may, in its discretion and 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 sole opinion of the Committee is similar, it shall in passing sentence rule -
    - (i) whether the suspended sentence or part of it shall be brought into effect, and in addition or as an alternative thereto;
    - (ii) what punishment, if any, is imposed in respect of the similar offence.
- 3.17.3.2 The Committee may expel from the Committee any of its number who shall have been guilty of improper conduct. The resolution for such expulsion must be carried by a two-thirds majority at a meeting specially called for that purpose. This power is additional to the power under 3.17.3.1.
- 3.17.3.3 A fine imposed on a member who has been found guilty of a charge of contravening Sections 22, 23, 24, 25, 26 and 27 of the Act, NSE directive or Committee decision made or issued in respect of that Section shall not exceed N\$2 000 and the Committee may require that such fine shall be paid either by a broking firm or by one or more of its members and 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. In such cases the fine shall be imposed in respect of a number of contraventions collectively.
- 3.17.3.4 Should a member or broking firm fail to pay any fine imposed by the Committee within one month after the General Manager has informed the member or broking firm of the amount of the fine, the Committee shall have the right to -
- (a) recover such fine from such member or firm in a court of competent jurisdiction; or
  - (b) expel or suspend such member or the members of such firm including the members of a corporate member.
- 3.17.3.5 The amount of any fine received by the Committee in terms of these rules shall be paid into the Guarantee Fund.

- 3.17.3.6 Where in the opinion of the Committee the offence does not warrant the imposition of any of the penalties referred to above it may resolve in its discretion that the member concerned be reprimanded. Such a resolution need not be publicized or be the subject of a notice in the NSE Gazette unless the Committee decides otherwise.
- 3.17.3.7 If the Committee should resolve 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 danger that such firm may not be able to meet its commitments to clients or to other broking firms or to a NSE settlement system or that it is conducting its business in a manner which could be detrimental to the interests of the NSE or the welfare of its members, the Committee shall be entitled by such majority to -

- (a) prohibit such firm from trading;
- (b) restrict the trading activities of such firm in such manner as it deems fit;
- (c) give such firm such instruction as it may deem necessary in the interests of its clients or other broking firms or a NSE settlement system.

Notice of such prohibition, restriction or instruction shall be accompanied by particulars of the alleged breaches of the Act, rules, directives and special gazettes governing broking firms. The Committee's requirements for rectification of the alleged breaches shall be stated to enable the firm in question to apply to the Committee for the removal of the order.

In any event, any action taken by the Committee in terms of this rule may continue until such time as the Committee is satisfied as to the financial position and business conduct of the firm in question provided that such action shall be reviewed by the Committee at least once each month and shall thereafter only continue to the extent that such continuation is resolved upon by a two-thirds majority.

- 3.17.3.8 Immediately upon a broking firm being prohibited from trading the Committee may require that such firm hands over to it 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 Committee shall during the period of prohibited trading have power to control such assets as it may in its discretion deem fit.
- 3.17.3.9 A resolution for the censure, expulsion, suspension or fining of a member may be passed at the meeting of the Committee at which the member is found guilty of an offence or at a subsequent meeting.
- 3.17.3.10 Upon expelling a member, the Committee may resolve that such expulsion shall be suspended for 10 days or (if an appeal in terms of the Act is lodged 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 these rules. Any expelled member lodging an appeal in terms of the Act shall simultaneously inform the General Manager.
- 3.17.3.11 Rules 8.1.5 to 8.1.7 (inclusive) shall apply to a broking member who has been expelled in the same manner as if such member were a defaulter.
- 3.17.3.12 A notice shall be published in the NSE Gazette setting out details of any charge of which a member is found guilty and of the sentence imposed, except as provided in 3.17.3.6.
- 3.17.3.13 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 Committee and a member who has so made representations to the Committee shall be entitled to be supplied with a copy of a record of the meeting at which such representations were considered.

**3.17.4 Transactions Open**

In the event of any member being suspended or ceasing to be a member other than by death, expulsion or resignation, and having stock exchange transactions open with another broking firm under these rules, such transactions shall be dealt with in terms of 8.1.8 save that any transactions which are not closed off by the Committee 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.

**3.17.5 Consent Required for Employment of Certain Persons**

3.17.5.1 No broking firm shall without the written consent of the Committee 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 NSE 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 Committee, or any person who is a member of or is directly or indirectly in any way interested 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. The consent of the Committee may be given for a limited period and may be withdrawn at any time provided the Committee gives the member one calendar month's notice of its intention to withdraw such consent.

3.17.5.2 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 General Manager.

**3.18 Recusals, Absence from a Hearing or Enquiry**

3.18.1 When a member of the Committee has an interest in a matter before the Committee he shall not take part in the deliberations of the Committee, nor shall he vote on the matter.

3.18.2 When a member of the Committee is absent from any hearing or enquiry or portion thereof, he shall not attend the hearing or enquiry thereafter, nor any subsequent hearing or enquiry of the case, nor shall he vote on the matter.

3.18.3 All members of the Committee present at any meeting shall record their votes except as provided in 3.18.1 and 3.18.2.

3.18.4 The Committee may grant leave of absence to any of its members.

**3.19 Public Notification of Suspension or Expulsion**

The Committee may in its discretion and in such manner as it may deem fit, notify or cause to be notified to the public, that any member has been expelled or has been suspended or has ceased to be a member, and the name of such member, and should any member be declared a defaulter the Committee shall notify or cause the public to be notified thereof. No action or other proceeding shall under any circumstances be maintainable by the person referred to in such notification against any person publishing or circulating the same, and this rule shall operate as leave to any person to publish and circulate such notification, and be pleadable accordingly.

## SECTION 4

### MEMBERSHIP

#### 4.1 Applications, Admissions, Change of Status and Resignations

##### 4.1.1 No person shall be admitted as or allowed to continue to be a member unless -

- (a) such person is a company in respect of which the provisions of 4.3 are complied with, or is a natural person who -
  - (i) is a resident in Namibia, of at least 21 years of age who has full legal capacity without the assistance of any other person,
  - (ii) satisfies the Committee that he is of good character and high business integrity, and
  - (iii) complies with the following minimum requirements with regard to experience and education:
    - Have passed qualifying examinations and/or requirements for a stockbroker on a recognised stock exchange;
    - or
    - (This alternative is only available until 1 March 1996) Have an appropriate degree or a qualification deemed equivalent to a degree by the Registrar and the Executive Committee, from a recognised university or institution; and
- (b) if he is to be admitted as a natural broking member, he holds assets in the Republic which exceed his liabilities by at least N\$20 000;
- (c) being a -
  - (i) broking member trading as a sole proprietor, he has liquid assets in his stock-broking business which exceed his liabilities in such business by at least N\$20 000;
  - (ii) corporate member, it has liquid assets, the aggregate value of which exceeds the amount of its liabilities by at least N\$40 000 in respect of the first shareholder, plus N\$40 000 in respect of the next shareholder plus N\$10 000 multiplied by the number of shareholders in excess of two;
  - (iii) a partnership of which he is a member, has liquid assets, the aggregate value of which shall exceed the amount of its liabilities by at least N\$40 000, plus N\$10 000 multiplied by the number of partners in excess of two;
- (d) the assets referred to in 4.1.1(c) are held at the time of his admission and while he is authorized thereafter under these rules to carry on the business of a broking member, and are of the classes prescribed from time to time by the Act, these rules, NSE directives or Committee decisions and of which the aggregate value exceeds his liabilities by the appropriate amount laid down in 4.1.1(c). For the purpose of calculating the value of such assets goodwill shall not be taken into account as an asset.

##### 4.1.2 No natural person shall first be admitted to membership other than as a broking member.

##### 4.1.3 Before an application for membership or junior membership is submitted, the candidate shall have passed such qualifying examination as may, from time to time, be determined by the Committee.

##### 4.1.4 Every candidate, other than a corporate member, seeking admission as a member shall make application on the form prescribed.

- 4.1.5
  - (a) Every applicant for membership or junior membership, other than an applicant for corporate membership, shall be proposed and seconded by broking members except for the first broking members who shall be appointed by the Executive Committee.
  - (b) Proposers and seconders of applicants for admission to membership or junior membership are required to have a personal knowledge of the past and present circumstances of the applicant whom they recommend for admission, and whenever it appears to the Committee that a wilful misstatement upon a material point has been made by a member or applicant for admission, it may expel the offender or deal with the matter in terms of these rules.
  - (c) Two members of the same broking firm may not propose or second an application for membership or junior membership.

- (d) No member of the Committee shall propose or second an applicant for membership or junior membership, except where it is established to the satisfaction of the Committee that an applicant is unable to find a suitable proposer or seconder, when a Committee member may propose or second such applicant.
- 4.1.6
- (a) Notice of every application for membership or junior membership, other than an application for corporate membership, shall be posted on the Stock Exchange Notice Board for not less than three weeks. Any member may lodge an objection to the admission of the applicant as a member or junior member in writing with the General Manager as laid down in 4.1.8. Such an application and any objection thereto shall then be considered by the Committee and the applicant shall, if required, appear before the Committee prior to election. The Committee shall decide, by secret ballot, by a majority vote, to grant or reject the application: provided, however, that nothing contained in these rules shall prohibit the Committee from deferring consideration of an application.
  - (b) The provisions set out in 4.1.6(a) shall apply *mutatis mutandis* to an application by a non-broking member to become a broking member and vice versa and to an application by a broking member to trade as a sole proprietor.
- 4.1.7
- If any application referred to in 4.1.6 be rejected, it shall not be put to the ballot again within six months from the date of such rejection. This rule shall not apply to an application for admission of a corporate member.
- 4.1.8
- A member may impart to the Committee any information, whether favourable or otherwise, concerning an applicant for admission as a member, junior member or clerk or in respect of a change of status of a member. A broking member wishing to object to the admission of an applicant shall lodge his objection with the Committee in writing prior to the start of the meeting at which the ballot for election takes place. Such information shall be privileged and confidential to the Committee.
- 4.1.9
- (a) Before any application for admission as a broking member shall be considered the applicant shall provide security to the satisfaction of the Committee by means of a surety bond for the sum of N\$8 000, or cash of not less than N\$8 000, or securities acceptable to the Committee with a market value of not less than N\$8 000.
  - (b) An applicant or a member making a deposit of cash or securities shall vest in the Committee by means of a bond executed in the form prescribed by the Committee the sole and absolute right to apply such cash and to sell such securities and apply the proceeds thereof for the discharge, during the first three years in which he carries on the business of a stockbroker, after he has been excused, of the liabilities arising out of stock exchange transactions entered into by him.
  - (c) Any person standing surety under such surety bond shall bind himself as surety and co-principal debtor for the discharge during the first three years in which the applicant carries on the business of a stockbroker, after he has been excused, of the applicant's liabilities arising out of stock exchange transactions entered into by him.
  - (d) The liability of a surety shall cease and the bond shall be automatically cancelled and be of no further force and effect on receipt by the General Manager of an auditor's certificate either after the termination of the aforesaid period of three years if the applicant is still then a broking member, or in the event of the termination of broking membership prior to the expiry of such period, to the effect that the assets in the stockbroking business exceed the liabilities by the prescribed margin.
  - (e) Receipt of the bond, cash or securities referred to in 4.1.9(a) shall be acknowledged by the General Manager or any other person authorized to do so by the Committee.
  - (f) When the aforesaid bond has been cancelled through the effluxion of time, it shall be returned to the member.
  - (g) Cash received as security shall be placed with a nominee of the NSE and securities shall be transferred into the name of that nominee and held as security until the bond has lapsed or until a claim arises and a portion or the full amount so deposited is required to meet liabilities secured by such cash or securities or both.
  - (h) In the event of a member who is under surety being declared a defaulter the Committee shall in its sole discretion apply the cash and securities deposited in terms of the rules to pay his liabilities. Nothing contained in these rules shall restrict the Committee in realizing any securities



lodged by a member under surety when the proceeds of such securities are required to satisfy liabilities incurred by such member during the period to which the bond applies.

- (i) Notwithstanding anything contained in these rules a member who has made a deposit in terms of 4.1.9(a) or on whose behalf such a deposit has been made shall ensure that the value of the deposit shall at all times be not less than the amount prescribed in 4.1.9(a).
- (j) With the approval and consent of the Committee, but not otherwise, a member may withdraw any security lodged by him under the provision of this rule, and substitute in the place thereof other securities of at least equal value, or provide a surety bond in substitution of that already accepted by the Committee, or provide security for the substitution of such surety bond, or provide a surety bond for the substitution of securities.
- (k) If at any time the value of the securities provided is in the opinion of the Committee less than N\$8 000, the Committee may call upon the member by notice in writing -
  - (i) to make good the deficiency by providing further cash or securities approved by the Committee, or
  - (ii) to replace securities so provided in part or in full with securities acceptable to the Committee and which have a market value of not less than the deficiency which is to be made good,

and if the member fails to comply with such notice within a period of 14 days from the date thereof, or within the further period as the Committee may allow, he shall cease to carry on the business of a stockbroker and shall automatically become a non-broking member.

- (l) All further and other security provided by a member either at the request of the Committee or in substitution shall be subject to the same conditions as the original security deposited by such member.

- 4.1.10 (a) Where a broking member becomes a non-broking member and then reverts to broking membership and who has not previously completed a continuous period of three years as a broking member he shall again provide security in terms of 4.1.9 for a further period of three years as a broking member: provided, however, that where a broking member becomes a non-broking member and then reverts to broking membership within a period of six months, such member may be required at the Committee's discretion to provide security only for the uncompleted portion of the said three-year period.
- (b) No broking member shall be surety for more than two broking members at the same time, nor may two broking members of the same broking firm act as surety for the same applicant.

- 4.1.11 (a) The Committee in granting an application for broking membership including corporate membership may stipulate that the broking member shall serve a probationary period under the supervision of another broking member not under surety and approved by the Committee. The member supervising such probationary member shall submit a written report to the Committee before the termination of the probationary period, on such member's knowledge and ability to carry on independently the business of a stockbroker. The Committee may at any time extend such probationary period until it is satisfied that the member is fit to carry on the business of a stockbroker on his own.
- (b) A member serving a probationary period shall keep the books of account and records as prescribed in terms of the Act, these rules, NSE directives and Committee decisions and shall issue his own brokers notes.
- (c) Should any such supervisory arrangement be discontinued during the probationary period, the probationary member shall immediately revert to the status of a non-broking member until such time as he receives the consent of the Committee to enter into a similar arrangement with another broking member or receives permission from the Committee to carry on the business of a stockbroker on his own.
- (d) Neither of the parties to such supervisory arrangement shall discontinue the arrangement unless he has first received the consent of the Committee. Any dispute that may arise between a probationary member and his supervisory member shall be submitted to the Committee which shall have the right to adjudicate thereon.
- (e) The supervisory member and the probationary member shall accept joint and several liability both to members and clients in respect of all transactions undertaken by the probationary member.
- (f) The provisions of this rule shall also apply where the Committee grants an application in respect of a change of status of a non-broking member to a broking member.

- 4.1.12 No applicant for membership shall be elected a member and no member may remain a member if at any time, whether directly or indirectly, he is employed by, associated with, a member of or has a proprietary interest in any other stock exchange or other institution in the Republic which is not a member of the NSE and in which dealings in securities are publicly carried on as a business, but this shall not prohibit a member from acquiring and holding listed securities for his own account.
- 4.1.13 The Committee may grant honorary life membership to -
- (a) past Chairmen and any other member who, in the opinion of the Committee, deserves to be made an honorary life member, and
  - (b) every member who is a natural person, irrespective of his status, and has been a member for a period of at least 50 years.
- 4.1.14 A member wishing to resign must tender his resignation in writing to the General Manager who shall post a notice to that effect on the Stock Exchange Notice Board and publish it in the NSE Gazette for at least four weeks before the Committee considers such resignation. The Committee may accept such resignation either unconditionally or on such conditions as it may think fit, or may refuse to accept such resignation and in particular may refuse to accept such resignation until it is satisfied that all outstanding deals with such member have been settled. No application for resignation shall be withdrawn without the consent of the Committee.
- 4.1.15
- (a) When a broking member desires to become a non-broking member, notification in writing thereof must be sent to the General Manager and subject to the consent of the Committee to such change of status being obtained, notice of such change shall be posted on the Stock Exchange Notice Board and published in the NSE Gazette.
  - (b)
    - (i) A non-broking member who desires to become a broking member shall apply to the Committee to carry on the business of a stockbroker and support his application by submitting such financial information as may be required by the Committee to enable it to determine whether or not he is in a position to comply with the requirements of the Act, these rules, NSE directives and Committee decisions.
    - (ii) A person who has been a non-broking member for more than three years shall cease to be eligible to become a broking member unless -
      - (aa) while he was a non-broking member he was continuously in the full-time employment of a broking firm; or
      - (bb) he has obtained a pass in the Membership examination within three years of his application to become a broking member; or
      - (cc) having passed the Membership examination more than three years before his application to become a broking member he has obtained a further pass in such subjects of the Membership examination as may, from time to time, be determined by the Committee.
- 4.1.16 A broking firm shall not be entitled to trade in gilts on the Gilt Trading Floor or settle directly with the Gilt Clearing House unless it has been admitted by the Committee as a gilt broking firm.
- 4.2 Partnerships**
- 4.2.1 Only a natural person who is a broking member shall be a partner in a partnership and no person shall be a partner in more than one partnership.
- 4.2.2 No broking member shall enter into a partnership to carry on the business of a stockbroker unless he has -
- (a) obtained the consent of the Committee thereto; and
  - (b) entered into a deed of partnership with the broking member with whom he proposes to enter into partnership.
- 4.2.3 An application to the Committee for consent to enter into a partnership or to alter an existing deed of partnership shall be in the prescribed form and accompanied by a copy of the proposed deed of



partnership or alteration and such other documents and information as the Committee may require. The Committee shall in due course be furnished with a signed copy and the deed of partnership entered into shall not be altered without the prior approval of the Committee.

- 4.2.4 The Committee shall not grant its consent unless it is satisfied that all the partners are liable jointly and severally for the debts and obligations of the partnership in terms of the provisions of the deed of partnership and that such deed and the financial position of the partnership comply with the provisions of the Act, these rules, NSE directives and Committee decisions.
- 4.2.5 A letter setting out such joint and several liability, signed by all the partners, shall be displayed on the Stock Exchange Notice Board. When a change in the composition of a partnership is proposed a letter signed by the broking members concerned setting out who shall be responsible for the completion of bargains entered into by the old partnership shall be displayed on the Stock Exchange Notice Board.
- 4.2.6 The Committee may at any time call upon the partners in a partnership to amend their deed of partnership in such manner as the Committee may determine and the partners shall make such amendments within such time as the Committee prescribes. The Committee shall in due course be furnished with a signed copy of the amendment.
- 4.2.7 No partner in a partnership shall trade for his own account or on behalf of clients except through that partnership.
- 4.2.8 No partnership shall be considered to have been dissolved until notice of dissolution, signed by every partner, has been lodged with the General Manager, and the Committee has granted permission for such dissolution: provided that a partnership shall be dissolved automatically on the death or expulsion of a partner from the partnership or upon a partner ceasing to be a broking member or if the partnership is unable to comply with the financial requirements of the Act.
- 4.2.9 No member who has ceased to be a partner in a partnership shall carry on the business of a stockbroker unless he has first obtained the consent of the Committee who shall not grant such consent unless such member complies with the provisions of the Act, these rules, NSE directives and Committee decisions, and the Committee may determine that such member shall serve a probationary period as provided in 4.1.11.
- 4.2.10 Notwithstanding anything in these rules contained, the Committee may in its sole discretion determine that an arrangement or scheme entered into or a practice followed by a member is to be deemed for the purposes of these rules a partnership. The decision of the Committee in the matter shall be final and no member shall after he has been advised of such decision carry on such arrangement, scheme or practice without the consent of the Committee.

#### 4.3 Corporate Members

- 4.3.1 An application for corporate membership shall be accompanied by a copy of the Memorandum and Articles of Association of the incorporated company, a copy of any agreement entered into or proposed to be entered into between the members of the company relative to the affairs and the shares thereof and such other documents as the Committee may require. In the event of a copy of a proposed agreement being submitted, the Committee shall be furnished with a signed copy as soon as possible.

The provisions of this rule shall apply *mutatis mutandis* to any alteration to or substitution of the documents referred to above.

- 4.3.2 The Committee shall not grant any such application unless the constitution and the financial position of the incorporated company comply with the Act, these rules, NSE directives and Committee decisions.

- 4.3.3 Only a natural person who is a broking member of the NSE may be a shareholder of a corporate member or have any interest in the shares thereof, provided that if a shareholder dies or ceases to be a broking member, such person or his estate may continue to hold the shares for such time as the Committee may determine, but shall not exercise his right to vote in respect of such shares during such period. If a corporate member should at any time cease to have at least one shareholder and director who is a broking member, such corporate member shall *ipso facto* cease to be a broking member.
- 4.3.4 Every shareholder of a corporate member, other than a person referred to in the proviso to 4.3.3, shall be a director of the corporate member and no other person shall be a director of such member.
- 4.3.5 Such shareholder shall not dispose of any of his shares without the prior consent of the Committee unless the disposal is to another shareholder of the corporate member who is a broking member.
- 4.3.6 No person shall become a shareholder of a corporate member without the prior consent of the Committee.
- 4.3.7 No shareholder of a corporate member shall trade for his own account or on behalf of clients except through that corporate member.
- 4.3.8 No member who has ceased to be a shareholder of a corporate member shall carry on the business of a stockbroker unless he has first obtained the consent of the Committee who shall not grant such consent unless such member complies with the provisions of the Act, these rules, NSE directives and Committee decisions, and the Committee may determine that such member shall serve a probationary period as provided in 4.1.11.
- 4.3.9 A corporate member may not have a subsidiary company except -
- (a) a nominee company referred to in 4.9, and
  - (b) a property-owning company formed or acquired primarily for the purpose of owning premises occupied or to be occupied by the corporate member.
- 4.3.10 No member shall own shares in more than one corporate member.
- 4.3.11 No corporate member shall, without the consent of the Committee, allot or register transfer of any of its shares except to its existing shareholders who are broking members or pass any special resolution.
- 4.3.12 No corporate member shall be entitled to vote at a meeting of members or at a ballot in terms of these rules.
- 4.3.13 The Committee may at any time call upon the shareholders of a corporate member to amend its Memorandum and Articles of Association in such manner as the Committee may determine and such amendment shall be made within such time as the Committee prescribes.

#### 4.4 Associate Members

- 4.4.1 An associate member of the NSE shall be a non-broking member who -
- (a) has ceased to be a broking member because his financial resources were no longer sufficient to comply with all financial requirements for broking membership; or
  - (b) has been admitted as such by the Committee;
  - (c) a person acting as a marketing agent for a broking member, who has been approved by the Committee and has obtained a pass in the prescribed examination.
- 4.4.2 Application for associate membership shall only be considered by the Committee if made by a non-broking member within 30 days of his ceasing to be a broking member, and the applicant shall appear before the Committee for examination if called upon to do so.

- 4.4.3 The Committee shall vote upon an application for associate membership by secret ballot.
- 4.4.4 An associate member shall be entitled to be remunerated with a share, not exceeding 60 per cent, of the brokerage earned by his employer on business introduced by the associate member.
- 4.4.5 No broking firm may employ more than one associate member.
- 4.4.6 An associate member shall not be entitled to employ an authorized, unauthorized or scrip clerk; he shall not conduct a joint account or arbitrage business, nor enter into a joint deal with his employer. He may not act as an underwriter, sub-underwriter or sponsoring broker. He may not have a teleprinter or market desk, nor may he have a nameplate outside his office.
- 4.4.7 An associate member may have his own office accommodation separate from the accommodation of his employer, and he may have separate entries identifying himself as an associate member in telephone or other business directories. An associate member may have his own business letterhead.
- 4.4.8 A list of associate members and their employers shall be posted in the market hall for the information of members.
- 4.4.9 No associate member shall sign advice or brokers notes of his employer unless he is so authorized by his employer in terms of 5.13.2(d).
- 4.4.10 In the event of the default of his employer an associate member shall immediately cease to be an associate member.
- 4.4.11 An associate member shall in all respects be a non-broking member and subject to these rules, NSE directives and Committee decisions.
- 4.4.12 The Committee may at any time resolve that any associate member shall cease to be an associate member.
- 4.4.13 Brokers notes, statements and similar documents issued by the employer shall bear no special endorsement to indicate that the order was given to the associate member, who shall under no circumstances hold himself out as acting otherwise than on behalf of his employer.
- 4.4.14 Every associate member shall furnish the Committee upon request with such information regarding his financial position as it may require. Normally the Committee will withdraw permission for a non-broking member to remain an associate member if he has the financial resources to qualify for broking membership.

#### 4.5 Junior Members

- 4.5.1 Notwithstanding the use of the word "member" a junior member shall not be a member of the NSE and shall not be entitled to any of the privileges of membership except as specially provided for in these rules.
- 4.5.2 A person who has been continuously in the employ of a broking firm for at least 12 months and who is not less than 21 years nor more than 30 years of age shall be eligible to be elected a junior member.
- 4.5.3
- (a) A junior member shall be an employee of a broking firm in terms of a written contract of employment which shall be approved by the Committee.
  - (b) A natural broking member or a corporate member having only one director may not employ more than two junior members.
  - (c) A partnership consisting of two or more natural broking members and a corporate member having more than one director may not employ more than two junior members plus one junior member in respect of each partner or director, as the case may be, in excess of one subject to a maximum of ten junior members employed by any partnership or corporate member.

- (d) If the aforesaid maximum is exceeded as a result of a partnership or corporate member being reconstituted by one or more members ceasing to be members thereof, or as a result of any amalgamation of two or more broking firms, the Committee may agree to such excess on such terms and conditions as it deems fit or may stipulate a period within which the number of junior members employed by the broking firm shall be reduced to the maximum laid down in 4.5.3(c).
- (e) A candidate seeking election as a junior member shall make application to the General Manager on the form prescribed which application shall be countersigned by his employer.

4.5.4 Rule 4.1.12 shall apply *mutatis mutandis* to the election of a junior member.

4.5.5 An employer of a junior member shall pay him a salary plus a percentage of his profits which percentage shall be approved by the Committee. A junior member shall not enter into partnership with his employer, nor be responsible for the losses of such employer.

- 4.5.6
- (a) A junior member shall, as and when it accrues to him, lend to his employer, at such rate of interest as may be stipulated in the contract of employment, the whole of the percentage of profits accruing to him as provided for in 4.5.5: provided that the junior member shall be entitled, as and when it is required for such purposes, to repayment of so much of such loan as is required by him for the purpose of -
    - (i) payment of any additional income tax he has become liable for as a result of the inclusion in his income of such percentage of the profits;
    - (ii) payment for any stock exchange right he may acquire in terms of these rules.
  - (b) The balance of the loan referred to in 4.5.6(a) shall be repaid in full -
    - (i) if the junior member becomes a member and remains with the broking firm which employs him;
    - (ii) when the junior member has been a junior member for seven years and ceases to be a junior member in terms of 4.5.8;
    - (iii) if the junior member leaves the employ of the employer after he has been a junior member for not less than three years;
    - (iv) if the junior member dies.
  - (c) If a junior member ceases to be a junior member during the first three years of his junior membership and does not become a member with the broking firm which employs him, he shall forfeit in favour of the employer 50 per cent of an amount arrived at by deducting from the aggregate of such loans to the employer any amounts paid to him in terms of 4.5.6(a)(i). The remaining balance of the loan shall forthwith be repaid to the junior member subject to the deduction of any amount paid in terms of 4.5.6(a)(ii).
  - (d) If a junior member ceases to be a junior member during the first three years of his junior membership and leaves the broking firm which employs him for the specific purpose of becoming a member, it shall be at the discretion of the employer to decide whether the provisions of 4.5.6(b) or 4.5.6(c) shall apply.
  - (e) If the junior member while continuing to be a junior member transfers from the employ of one employer to another employer within three years it shall be at the discretion of the former employer to decide whether the balance of a loan shall be repaid in the manner set forth in 4.5.6(b) or 4.5.6(c). If in the opinion of the Committee the new employer is a reconstruction of the former employer the balance of the loan shall be transferred to the new employer and be held by the new employer in terms of this rule.

4.5.7 A junior member shall not transfer from one employer to another without first obtaining the consent of the Committee. The Committee may require such junior member to appear before it.

4.5.8 No person shall be a junior member for more than seven years. A junior member's membership will be subject to automatic termination on the expiry of those seven years.

4.5.9 Rules 4.7.3, 4.7.4, 4.7.5, 4.7.7, 4.7.8 and 4.10.6 shall apply to a junior member in the same manner as if he were an authorized clerk.

#### 4.6 Stock Exchange Rights

4.6.1 Subject to the provisions of 4.6.4, every member shall hold at least three stock exchange rights. Provided that a member who, at the date of introduction of this rule, is -

- (a) a broking member and such broking member subsequently becomes a non-broking member, or
- (b) a non-broking member,

then such non-broking member shall hold at least one stock exchange right.

4.6.2 A junior member shall be entitled to acquire no more than two stock exchange rights provided that he may acquire stock exchange rights in excess of two if such acquisition is by means of a capitalization issue of rights. Any stock exchange rights acquired by the junior member shall be registered in the name of a nominee of the NSE and held in trust for the junior member until he becomes a member: provided, however, that a junior member may dispose of any stock exchange rights in excess of two if such stock exchange rights were acquired as a result of a capitalization issue of rights.

4.6.3 In the event of a junior member ceasing to be a junior member and not forthwith becoming a member he shall dispose of his stock exchange rights within three months of his ceasing to be a junior member and in the event of his failure to do so the NSE shall immediately sell such stock exchange rights on his behalf.

4.6.4 A junior member who has been a junior member for not less than three years and who is elected a broking member, and becomes a partner or employee of the broking firm which employed him as a junior member shall hold at least two stock exchange rights provided that -

- (a) such broking member shall, before the fifth anniversary of his election as a broking member, acquire and procure transfer into his name of a third stock exchange right;
- (b) in the event of his leaving such firm within two years of his becoming a broking member, the provisions of 4.6.1 shall apply to him and he shall be obliged to hold three stock exchange rights within 45 days of his so leaving, failing which he shall cease to be a broking member and shall automatically cease to be a member.

4.6.5 (a) The Committee shall create and make available at N\$5 000 per stock exchange right the number of rights needed by any member to enable him to comply with the provisions of 4.6.1 and 4.6.4, where such member has been unable to obtain the number of rights required, at or below a price of N\$5 000 per right, during a period of 30 days from the date of his election to membership or the date upon which it became obligatory to hold a third stock exchange right.

(b) If it is of the opinion that the price of stock exchange rights is unjustifiably low, the Committee shall have the power to purchase stock exchange rights on the trading floor. The Committee may, from time to time, announce a price at which it is prepared to buy stock exchange rights.

(c) The Committee shall, in its discretion, be empowered to sell any stock exchange rights which it has purchased in terms of these rules and, in addition, may cancel the rights held by any member upon the receipt of a written request to that effect from such member or in the case of rights purchased by the Committee, by resolution to that effect.

4.6.6 Notwithstanding the provisions of these rules, a corporate member and an honorary life member who is a non-broking member shall not be obliged to hold a stock exchange right.

4.6.7 (a) An applicant elected by the Committee as a member shall not be entitled to any of the privileges of membership until he acquires the number of stock exchange rights he is required to hold in terms of these rules.

(b) If such rights are not acquired by such member and transferred into his name within 45 days of his election he shall automatically cease to be a member.



**4.7 Clerks and Clerkships**

- 4.7.1 (a) All clerks admitted by the Committee shall be subject in all respects to the rules, NSE directives and Committee decisions now or hereafter in force.
- (b) Authorized clerks and unauthorized clerks shall be employees of a broking firm, admitted as such by the Committee and who, subject to such conditions as the Committee may impose, are permitted to enter the trading floor.
- (c) Application for admission of a clerk shall be made by the employing broking firm on the prescribed form. Such application shall be dealt with in the manner prescribed in 4.1.6, except that the notice shall be posted for one week only.
- 4.7.2 No person who is ineligible on account of any cause other than age, financial standing or citizenship, for admission as a member shall be admitted as a clerk.
- 4.7.3 No clerk shall enter the trading floor until his employer has received notice of his admission as a clerk from the General Manager.
- 4.7.4 (a) A broking firm desirous of withdrawing a clerk shall give notice in writing to the General Manager to this effect.
- (b) Members shall be advised of such withdrawal by publication of a notice in the NSE Gazette.
- (c) The broking firm withdrawing the clerk shall write a separate letter to the General Manager stating whether or not the clerk's services were satisfactory. In the event of the clerk's services being unsatisfactory the broking firm shall give an adequate explanation of the circumstances which led to the formulation of this opinion.
- (d) The General Manager shall upon request disclose to any broking firm desirous of employing a clerk whose services have been withdrawn, the information provided in terms of 4.7.4(c), and such information shall be furnished to the Committee when it ballots upon an application for the clerk's readmission.
- (e) The Committee in its discretion and without assigning any reason therefor may order the withdrawal or suspension of any clerk.
- 4.7.5 A list of authorized clerks and the names of their employers shall be posted on the Stock Exchange Notice Board.
- 4.7.6 The maximum number of clerks which any broking firm shall be permitted to employ shall be determined by the Committee from time to time.
- 4.7.7 A defaulter may be admitted as a clerk only by a resolution passed by a two-thirds majority of the members present at a Committee meeting at which not less than a quorum shall be present.
- 4.7.8 Clerks employed by defaulters or by members under suspension are not permitted to enter the trading floor without the permission of the Committee.

**4.8 Subscriptions, Fees and Charges**

- 4.8.1 An entrance fee of N\$5 000 shall be paid to the NSE by a member other than a corporate member: provided that where the applicant is a junior member or an authorized clerk with at least three years' continuous service immediately prior to his election as a member or is a person who for a period of five years immediately prior to his election as a member has been continuously employed by a broking firm, the entrance fee shall be two-thirds of the above amount.
- 4.8.2 A broking firm making application for the admission of any clerk shall, if the Committee decides to examine such clerk, pay a fee of N\$25. In the event of the clerk failing to satisfy the Committee in regard to his knowledge of the rules a further fee of N\$25 shall be paid prior to each appearance before the Committee for re-examination.

- 4.8.3 Every NSE year, every member shall pay to the NSE the following membership subscription -
- (a) (i) A broking member (other than a corporate member and a member of a corporate member) - N\$2 000 per annum;
  - (ii) A corporate member - N\$2 000 per annum multiplied by the number of its broking members;
  - (iii) A branch manager - N\$2 000 per annum;
  - (iv) An associate member - N\$2 000 per annum;
  - (v) An honorary life member - Nil.
  - (b) Every other non-broking member including a member authorized clerk or a member unauthorized clerk - N\$500 per annum: provided that the Committee may determine from time to time that due to special circumstances any specified non-broking member may pay a smaller annual subscription. A non-broking member who falls within this category and is over the age of 60 years shall not be required to pay a membership subscription.
- 4.8.4 A broking firm shall pay an annual licence fee of N\$5 000 for admission to the equity trading floor. The Committee may from time to time change the amount of the licence fee payable.
- 4.8.5
- (a) A broking firm shall pay to the NSE a turnover subscription as determined by the Committee from time to time in respect of all dealings in gilts.
  - (b) A broking firm shall not pay the turnover subscription in respect of a purchase executed on its behalf by another broking firm.
  - (c) Where a Namibian broking firm executes a transaction on behalf of a country broking firm, the latter shall refund to the former a portion of the turnover subscription paid in respect of the transaction proportional to the percentage of brokerage shared.
  - (d) No turnover subscription shall be payable by the counterpart broker to a put-through transaction.
- 4.8.6 A broking firm which uses the services of the Data Processing Department shall pay to the NSE such fees and charges for clearing and other services as may be prescribed by the Committee from time to time.
- 4.8.7
- (a) The Committee may determine from time to time the procedure to be adopted with regard to the calculation and payment of subscriptions, fees and charges referred to in 4.8.5 and 4.8.6.
  - (b) A new member shall pay a subscription from and including the month in which he is elected. A portion of the subscription referred to in 4.8.3 shall be paid upon his election.
  - (c) A member who ceases to be a member shall not be refunded any portion of the subscription paid in terms of 4.8.3.
- 4.8.8
- (a) A broking firm shall pay an annual subscription of N\$180 in respect of each junior member, each member authorized clerk and each authorized clerk employed by it, and N\$96 in respect of each member unauthorized clerk and each unauthorized clerk employed by it.
  - (b) A subscription in respect of a new junior member or clerk shall be payable for the period calculated from the month in which he is appointed to the end of the NSE year.
  - (c) Should a member cease to be a member or should a broking firm cease to employ a junior member or a clerk the subscription paid shall be refunded in respect of the junior member or clerk for the period from the first of the month following the date on which he ceased to be a member or it ceased to employ the junior member or clerk to the date up to which the subscription has been paid. In the case of a defaulter such refund shall be paid to and form part of his Stock Exchange Estate.
- 4.8.9 If through any change in status or otherwise, any increased subscription is payable in respect of any member, junior member or clerk, such increased subscription shall apply with effect from the date on which the change took place.
- 4.8.10 The Committee may, in addition to the subscriptions, fees and charges prescribed by these rules, from time to time impose upon every broking firm a levy which shall be paid to the NSE or any of its funds on such conditions as the Committee may decide.



- 4.8.11 Any subscription, licence or other fee, charge, contribution or levy to be paid or which may be imposed in terms of these rules, except for the subscription payable in terms of 4.8.7, shall be paid as determined by the Committee from time to time and any member failing to make such payment when due shall, unless the same be paid within one month after written demand has been made by the Committee, cease to be a member. The subscriptions payable in terms of 4.8.3 and 4.8.8 and the licence fee payable in terms of 4.8.4 shall be paid annually in advance during March and shall be in respect of each NSE year.

#### 4.9 Nominee Companies

- 4.9.1 A broking firm may establish or maintain a company with the main object of being the registered holder of securities exclusively on behalf of such firm or on behalf of its clients.
- 4.9.2 Only broking members in the same broking firm or the corporate member may hold shares in that firm's nominee company.
- 4.9.3 The directors shall ensure that such company incurs no liabilities other than those normally incurred as a result of its acting as a nominee in respect of securities.
- 4.9.4 Such company's powers shall be limited to the main object set forth in 4.9.1, and such other acts as may be necessary to achieve the said object.

#### 4.10 General Requirements for and Responsibilities of Members and their Staffs

- 4.10.1 (a) No broking firm or its employee shall either directly or indirectly do a bargain or any other business normally conducted by a stockbroker for -
- (i) an employee of another broking firm; or
  - (ii) any person, firm, partnership, company or syndicate at the instance or request or on the instructions of an employee of another broking firm; or
  - (iii) the personal account of a broking member or associate member of any other broking firm.

Notwithstanding anything contained in this rule the General Manager may in special circumstances and with the prior written consent of both the firms concerned, consent that such bargains or business may be transacted. Any consent so given shall be valid for only one year from the date on which it is given, but may be withdrawn at any time without assigning any reason therefor.

- (b) The provisions of 4.10.1(a) shall not be construed as prohibiting a broking firm from conducting normal stockbroking business with another broking firm: provided that such business shall not be conducted on behalf of anyone partner of a broking firm consisting of more than one partner or of any one director of a corporate member which has more than one director.
- (c) If any broking firm or its employee is approached to do a bargain or business for any one of the persons referred to in 4.10.1(a), except where such bargain or business is permitted by the said rule and 4.10.1(b), it shall immediately furnish the General Manager with full particulars of the proposal or request.
- (d) No broking member or employee shall, either directly or indirectly, for his own account or for the account of any other person, conduct any business normally conducted by or with a stockbroker or, but without in any way limiting the generality of the foregoing, purchase, sell, or otherwise deal in any way in securities, listed gold coins, money market instruments, futures contracts, traded option contracts or any other financial instrument other than through the broking firm of which he is a partner, director, member or employee, save -
- (i) in respect of any prior written exemption that may be granted by the General Manager in special circumstances in terms of 4.10.1; and
  - (ii) with the prior written approval of the senior partner or senior director of that firm, as the case may be.

Any such dealings effected through a broking firm shall have the prior approval of the senior partner/director or sole proprietor of that broking firm.

- (e) Any purchase for or sale to the account of an employee other than a director of a corporate member, shall be transacted on the basis of -
- (i) cash or minimum cover to be provided on the business day following the transaction; or
  - (ii) an order placed by a banking institution in its own name on behalf of an employee of a broking firm which shall be executed through the broking firm employing him. Brokers notes issued in the name of the banking institution shall specify the name of the employee on whose behalf the transaction has been executed. In regard to a transaction in gilts, the requirements of this sub-rule shall apply equally whether the broker acts as agent or principal.
- (f) Notwithstanding the provisions of 4.10.1(e), where an employee has purchased a put or call option on a gilt stock and the underlying gilt stock is subsequently purchased or sold the employee shall, prior to settlement date, pay on the day following the date of the transaction any loss equal to the difference between the striking price of the option and the spot price dealt at multiplied by the nominal value of the stock: provided that this concession shall only apply if -

- (i) the option transaction and the purchase or sale of the underlying gilt stock is for settlement on the same date or the purchase or sale of the underlying gilt stock is for earlier settlement than that of the option transaction; and
- (ii) the transaction for the purchase or sale of the underlying gilt stock is effected on a principal-to-principal basis.

An employee shall not be required to pay for the purchase of the underlying gilt stock until settlement date and in the case of a sale the stock shall not be required to be delivered until settlement date.

- (g) No order on behalf of an employee of a broking firm may be put through with an order on behalf of a client.

- 4.10.2 (a) Every authorized clerk, junior member, associate member and branch manager shall while in the employ of a broking firm act as the agent of such broking firm, and such firm shall be responsible for all transactions of such agent.
- (b) No employee of a broking firm shall make any bargain in his own name. The employer shall be responsible for all transactions concluded by an employee in contravention of these rules.

- 4.10.3 On the formation of a partnership or the admission of a corporate member, such partnership or corporate member may, with the consent of the Committee, take over any junior member or clerk of the individual members, previous partnership or corporate member.

- 4.10.4 No broking firm shall trade under a name which has not been approved by the Committee.

- 4.10.5 (a) Subject to the prohibitions contained in these rules, no broking, associate or junior member shall carry on or be interested in any business other than that of a stockbroker unless the consent of the Committee has first been obtained, provided that nothing contained in these rules shall in any way prohibit a broking member from being a non-executive director of or holding a financial interest in any company which is not of the kind referred to in 4.1.12.
- (b) Where the name of a broking firm appears in a prospectus, offer for sale, or newspaper advertisement as broker to the issue there shall be added after its name "Member of the Namibian Stock Exchange" or "Stockbroker" or both.
- (c) Subject to the provisions of this rule -
- (i) a broking member, who is a director of a company, shall be permitted to describe his occupation as a "Stockbroker" where a prescribed list of directors and occupations appears in any document;
  - (ii) a non-broking member who is a director of a company shall not be permitted to describe himself as "A Member of the Namibian Stock Exchange" or as a "Stockbroker" where a prescribed list of directors appears in any document.
- (d) No broking firm shall without the written consent of the Committee permit the name of any employee other than one of its directors or the address of such employee to appear in any prospectus, offer for sale or other similar document or in any advertisement relating to securities.

- (e) (i) Subject to the provisions of 4.10.5(e)(ii)(bb), no broking member or an employee of a broking firm shall be a director, shareholder, partner, employee or participator in or otherwise be interested directly or indirectly in the activities or operations of any company, corporation, partnership, business or other concern which acts as agent for any Management Company of a Unit Trust Scheme or for any person who is otherwise concerned with the promotion or advancement of any such company or scheme or for the sale of any unit or certificate or other document of title relating thereto.
  - (ii) Nothing in these rules shall prohibit -
    - (aa) any broking firm or employee of a broking firm from placing business for investment in any Unit Trust Scheme where such broking firm is the authorized agent of the Management Company concerned and from receiving therefrom normal agency commission in respect of the business so placed;
    - (bb) any such broking member or employee from being a director or shareholder of a company of the kind referred to in 4.10.5(e)(i) the securities of which are contained in a list kept by a stock exchange in terms of Section 16 of the Act or a director or policyholder of any company registered in terms of the Insurance Act, 1943, which carries on the business referred to in 4.10.5(e)(i).
  - (f) No broking firm or its employee shall send, despatch or otherwise deliver any literature or other documents directly or indirectly relating to a Management Company or Unit Trust Scheme save only where such literature or other document shall bear the rubber stamp impression of the broking firm concerned and shall relate to a Management Company or Unit Trust Scheme which shall have received the prior approval of the Committee: provided that nothing contained herein shall prohibit a broking firm from carrying on the normal business of a stockbroker.
  - (g) No broking firm or its employee shall accept appointment as agent for a Management Company for the purpose of selling or promoting the sale of units in a Unit Trust Scheme managed by such company unless the said Scheme has received the prior approval of the Committee.
  - (h) A broking firm shall be permitted for a fee or commission applicable to each class of organization, to place clients funds with the Treasury or institutions or organizations approved of by the Committee including *inter alia* building societies and merchant banks in the name of the client.
  - (i) No broking firm or its employee shall act as agent for, a director of or shareholder in, a person administering or who keeps in safe custody listed securities, as a regular feature of his business, in terms of Section 4 of the Act, for the purpose of promoting the business carried on by such person: provided that nothing contained in this rule shall prohibit a broking firm from carrying on his normal business as a stockbroker on behalf of such person or from being a director of or shareholder in a listed company.
- 4.10.6
- (a) No broking member shall give a power of attorney to carry on or supervise his NSE business to a person who is not a member or an authorized clerk unless the person to whom he proposes to give such power of attorney is approved by the Committee.
  - (b) Such power of attorney shall be in the manner and form prescribed by the Committee.
  - (c) Such information and details as may be required by the Committee shall be submitted regarding the person to whom the mandate is to be granted.
  - (d) The terms and conditions which apply to the grant of powers of attorney shall apply also to any substitution under a power of attorney where the substitute is not a member or the accredited representative of the grantor of the power of attorney.
  - (e) Any power of attorney granted and any substitute thereunder shall be registered with the General Manager and a copy thereof shall be delivered to him.
  - (f) Nothing in this rule shall absolve the member granting the power of attorney from responsibility for the acts of his attorney or substitute.
  - (g) The approval of the Committee, or any renewal thereof, of the person to whom a power of attorney has been granted shall have a specific period of currency and application shall be made for renewal, if so required, and approval shall be obtained prior to the expiry date.
- 4.10.7
- (a) No broking firm shall enter into a joint account with a member of a foreign stock exchange save with the consent of and on the conditions imposed by the Committee, which consent may be withdrawn by the Committee at any time in its sole discretion.
  - (b) An application to conduct a joint account shall be in the form and contain the information prescribed by the Committee from time to time.

- (c) A joint account shall not be carried on with more than one counterpart in the same town.
- (d) No brokerage shall be charged to a joint account.
- (e) A broking firm may transact clients' business with a counterpart in a joint account provided such business is recorded in a separate account not forming part of the joint account and brokerage is charged to the client.

- 4.10.8 (a) Every broking member shall register with the General Manager his business address and post office box number, the business address and post office box number of every branch office, if applicable, and any change of such business address or post office box number. Such business address shall be the registered address for all matters connected with the member's business, provided that -
- (i) a Windhoek business address at which securities may be delivered shall be subject to the approval of the Committee;
  - (ii) no address at any club, hotel or similar place shall be considered a compliance with this rule;
  - (iii) the NSE may address any written matter to the post office box of a member conducting business in centres other than Windhoek, in which event the post office box number shall be deemed to be the registered address of the member concerned for delivery of the documents so addressed;
  - (iv) a member of a country broking firm may make an arrangement for the delivery of the written matter referred to in 4.10.8(a)(iii) to his Windhoek agent;
  - (v) all written matter may be delivered by placing it in the boxes provided in the NSE building for that purpose;
  - (vi) a notice from a NSE settlement system to a broking firm shall be properly delivered if the notice is placed in his box in the relevant NSE settlement system;
  - (vii) notice of a change of address shall be lodged in writing with the General Manager with the minimum of delay.
- (b) Any notice required to be given under these rules to any member shall be properly given if posted to the last known registered business address.

- 4.10.9 (a) A broking firm may not carry on business for more than two months in any calendar year unless such business is under the direct and personal control of a broking member who may be either the sole proprietor of such firm, a partner therein or a director thereof. Should a broking firm not be under such control, such firm shall notify the General Manager of the name of another broking member, excluding a corporate member, who with the consent of the Committee shall be responsible for its direct and personal supervision during the absence of such broking member. Subject to the provisions of 4.10.9(b) every place of business of every broking firm shall be under the direct and personal control of such a broking member during the first two months of its establishment.
- (b) The provisions of 4.10.9(a) shall apply to a branch office of a broking firm save that such branch office may with the consent of the Committee be placed under the direct and personal supervision of a non-broking member in the full-time employ of such broking firm.
- (c) Every broking firm shall notify the General Manager of the name of the broking member or non-broking member, as the case may be, responsible for the direct and personal supervision of every branch office.

## SECTION 5

# TRANSACTIONS, TRADING PROCEDURES AND DISPUTES

### 5.1 The Trading Floor, Notices, etc.

In respect of the trading floor -

- 5.1.1 No notice shall be posted anywhere otherwise than with the consent of or by the General Manager.
- 5.1.2 There shall be kept posted on the Stock Exchange Notice Board a list of members.
- 5.1.3 Any person who takes away, defaces or damages any property, tears down or defaces any lawfully posted notice, shall be liable to disciplinary action.
- 5.1.4 No person other than the President shall be allowed on the rostrum unless authorized by the General Manager.
- 5.1.5 The hours of business on the trading floor shall be decided by the Committee from time to time.
- 5.1.6 The following persons only shall be permitted to deal in securities on behalf of a broking firm:
  - (a) a broking member;
  - (b) an associate member;
  - (c) a junior member;
  - (d) an authorized clerk; and
  - (e) an approved NSE official.

### 5.2 Prices Board

The following provisions shall apply to the recording on the prices board of prices made on the trading floor during trading hours:

- 5.2.1 Sale prices in respect of every transaction during trading hours shall be recorded on the prices board and the buyer and the seller shall independently of each other ensure that the prices are so recorded provided that the sale price shall not be restated on the prices board where it is the same as the immediately preceding recorded sale price in the same trading period.
- 5.2.2 The bid or offered prices may be recorded on the prices board provided settlement of the transaction will be effected during a settlement period of not more than three periods ahead.
- 5.2.3 A dealer may record a bid or offered price on time on a special section of the prices board headed "Bids and Offers on time". Such a bid or offer may only be recorded on this section of the prices board -
  - (a) where it is the same as or more favourable than the price recorded on the regular prices board; or
  - (b) where no bid or offered price is recorded on the regular prices board.
- 5.2.4 For the purposes of the prices board, bids or offers or sales prices shall be regarded as being "on time" where settlement will be effected during a settlement period more than three ahead.

### 5.3 Publication of Prices

- 5.3.1 The publication and distribution of stock exchange prices are the prerogative of the Committee and shall be effected in such manner as the Committee deems fit.

5.3.2 The Committee may enter into such agreements for the publication and distribution of prices as it deems necessary.

5.3.3 Save with the consent of the Committee no broking firm shall report prices to persons other than clients of such firm.

#### 5.4 Trading Terms

The following obligations will be incurred by the use of special terms when dealing on the trading floor:

5.4.1 The expression "How Many" shall be binding upon the user to deal in up to 500 shares at the choice of the challenged party;

5.4.2 Any offer to buy or sell shares at a price named, when no quantity is stated, is binding to the amount of 100 shares. When it is intended to deal in less than 100 shares the number of shares must be disclosed;

5.4.3 A dealer who is keeping an order on for another dealer and who has complied with the requirements for maintaining and recording the double price shall satisfy the challenger by dealing in at least half, in hundreds, of the order he has on if challenged by any other dealer wishing to deal at the price at which the order was left with him. The challenger shall confirm with the dealer on whose behalf the order was kept on.

#### 5.5 Transactions

5.5.1 Every broking firm shall transact its business in a just and equitable manner and every transaction, whether for the account of the member effecting it, or for the account of a client, must be fulfilled according to the provisions of the Act, these rules, NSE directives, Committee decisions and usage of the NSE in force at the time a bargain is struck.

5.5.2 No member shall be entitled to stop payment of any cheque given to another member or to a NSE settlement system.

5.5.3 A buying broking firm shall be responsible to a selling broking firm, and vice versa, for the due fulfilment of all transactions in securities entered into between them. Compliance with a NSE settlement system procedure shall constitute such fulfilment.

5.5.4 A broking firm shall be responsible to its client for the due fulfilment of all transactions in securities entered into on his behalf. A broking firm shall guarantee the fulfilment of the bargain by the counterpart to the transaction, including a counterpart to a put-through.

5.5.5 Any action by a client in respect of a stock exchange transaction shall be against the broking firm who entered into the transaction on the instruction of such client, and not against any other broking firm or a client of such firm.

#### 5.6 Disputes, etc.

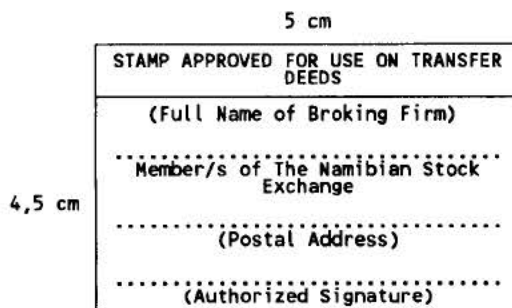
5.6.1 In regard to disputes between members or broking firms arising out of stock exchange transactions or otherwise in connection with their rights and obligations as members, no member or firm shall institute legal, arbitration or other proceedings against another member or firm without first obtaining the consent of the Committee and subject to the provisions of the Act.

5.6.2 No person shall institute any legal proceedings against the Committee or any member thereof which is likely to have the effect of altering or rescinding any decision of the Committee relating to a dispute in regard to a transaction.

- 5.6.3 The Committee shall have the power to intervene or join in any legal, arbitration or other proceedings relating to the buying or selling of securities by a broking firm or any other matter affecting the NSE.
- 5.6.4 Any person who refers to the Committee for adjudication of a dispute relating to a stock exchange transaction shall before the date fixed by the Committee for the hearing of such adjudication -
- (a) pay the fee prescribed by the Committee for an adjudication;
  - (b) accept in writing the terms and conditions of adjudication laid down by the Committee and in force at the time such dispute is referred to the Committee.
- 5.6.5 The Committee may refuse to adjudicate or may, on hearing any case, apportion damages between parties as it deems fit.
- 5.6.6 In the case of adjudication by the Committee where a member of the public is concerned, he or his legal successor will be the only person recognized as the complainant in any complaint against a broking member.
- 5.6.7 A person referring a matter for adjudication may appear at a hearing but shall not be entitled to be represented at the hearing or to be accompanied by a legal representative.
- 5.6.8 The Committee may from time to time and in its sole discretion determine the type of dispute in which it will adjudicate.
- 5.6.9 Every stock exchange transaction shall be subject to the condition that no client shall be entitled to claim or demand from a broking firm scrip which can be related to or identified with any specific transaction, nor may a client of a selling broking firm insist that the scrip he delivers shall be delivered to a specific broking firm in settlement of a particular transaction.
- 5.6.10 Notwithstanding the provisions of 5.6.1 to 5.6.9, the Committee shall have the power to prescribe specific procedures for dealing with disputes between members, broking firms and other persons which relate to traded option transactions.
- 5.7 Good Delivery**
- 5.7.1 A broking firm or user shall be responsible for the genuineness and regularity of every document, including a document of title, delivered by it in respect of a stock exchange transaction.
- 5.7.2
- (a) It shall be the duty of a seller to ensure that good delivery of securities is made and it shall be the duty of a buyer on behalf of a client to make good delivery to such client or to his order.
  - (b) For the purpose of these rules "good delivery" means the delivery of every document, including a document of title, required by the buyer to effect transfer into his name of the securities bought without the further assistance of the seller.
- 5.7.3 The NSE settlement system shall not be responsible for rectifying or ensuring rectification of faulty or tainted scrip delivered to it.
- 5.7.4 Any return and replacement of faulty or tainted scrip shall be effected through the relevant settlement system.
- 5.7.5 The Committee may from time to time prescribe -
- (a) a document to be used and the procedure to be followed by a broking firm for the transfer and good delivery of securities; and
  - (b) the quantities and denominations in which securities are to be delivered and accepted as full or part delivery.
- 5.7.6 A broking firm shall refer any dispute regarding good delivery to the General Manager for a ruling.



- 5.7.7 Immediately a broking member has reason to believe or it comes to his notice that any document of title relating to any securities in his possession or which has passed through his hands or otherwise been dealt with by him, has been stolen or otherwise misappropriated, such member shall report that fact, in writing, to the General Manager. Such report shall be accompanied by a schedule of the securities concerned and shall give all such particulars and other relevant information relating thereto as may be known to him, including the approximate date of the theft or misappropriation. The information and particulars will in each case be reported to the members by means of the NSE Gazette and on receipt of same, members shall forthwith cause a search of their registers and other records to be made. Should it be found that any such document of title is in their possession or has passed through their hands or otherwise has been dealt with, the members concerned shall forthwith so advise the General Manager in writing, furnishing him with all relevant information.
- 5.7.8 (a) A broking firm which receives faulty or tainted scrip shall have recourse against the broking firm which delivered such scrip to it.  
 (b) Where a broking firm has introduced faulty or tainted scrip and has been declared a defaulter before replacing such scrip, the NSE shall replace such scrip to the broking firm which first received it against -  
 (i) delivery to the NSE of the defective scrip and transfer deeds; and  
 (ii) cession to the NSE of all rights of the broking firm which first received the faulty or tainted scrip in respect of such scrip, whether against the broking firm which delivered such scrip to it or that firm's insurers or against any other party.
- 5.7.9 Where any securities are sold which cannot be acquired or cannot be transferred without the consent or approval of the directors or of any representative of the company or association concerned, the buying broking firm shall be responsible for obtaining such consent or approval.
- 5.7.10 (a) For the purpose of these rules, a "securities transfer stamp" is the rubber stamp which is used on transfer forms and similar documents by the broking firm or other agent whose name and authorized signature it bears, and which indicates that the broking firm or agent warrants -  
 (i) the authenticity of the signature of the transferor or other signatory;  
 (ii) the power of the transferor or other signatory to sign and to contract;  
 (iii) the validity of any power of attorney;  
 (iv) the authority of signatories of any company to sign on its behalf.  
 (b) No broking firm shall use upon or cause to be used upon any transfer form or similar document a securities transfer stamp unless an imprint thereof has been lodged with the General Manager and is in a form approved by the Committee from time to time.  
 (c) (i) The signature by or on behalf of the deliverer or seller in the appropriate blank space provided in a securities transfer stamp shall be either autographic or a facsimile signature, provided that the specimen signatures of all persons authorized to sign on behalf of the broking firm shall first have been lodged with the General Manager.  
 (ii) Where another agent such as a bank, accountant or attorney, has placed his stamp on the face of the securities transfer form, the broking firm which introduces such scrip to the market shall place its stamp on the back of the form in the same approximate position.  
 (d) The dimensions and text of the securities transfer stamp shall be as follows:



## 5.8 Part Deliveries

The Committee shall determine the conditions and extent to which part deliveries shall be made.

## 5.9 Settlement of Transactions

- 5.9.1.1 Any offer to buy or sell a security other than a gilt at a price named shall be deemed to be for settlement during the next settlement period unless prefaced by a statement of the specific settlement period during which settlement will be effected.
- 5.9.1.2 Any sale between broking firms shall be for settlement during the settlement period determined in terms of 5.9.1.1: provided that the date of settlement of a deal in gilts and of an immediate deal shall be a date which is mutually agreed between the buyer and the seller.
- 5.9.1.3 Broking firms may, by mutual agreement -
- (a) amend the stated settlement period for the completion of any transaction: provided that clients shall not be bound by any alteration unless they consent thereto;
  - (b) cancel any deal in order to rectify a mistake.
- The broking firms concerned shall complete and submit to the Clearing House the forms prescribed by the Committee from time to time to record such amendment or cancellation.
- 5.9.1.4 When a stock exchange transaction has been executed on the condition that it is a "Sellers Option Time Bargain" such transaction shall be settled in the thirteenth settlement period after the contract is made: provided that at the instance of the seller settlement may be brought forward to not earlier than the second settlement period after the contract is made, and the buyer shall not have the right to object.
- 5.9.1.5 When a stock exchange transaction has been executed on the condition that it is a "Buyers Option Time Bargain" such transaction shall be settled in such settlement period as the buyer may stipulate at the time the bargain is entered into, or such earlier settlement period as the buyer may subsequently require.
- 5.9.1.6 Where a broking firm purchases securities outside the Republic on behalf of and with the consent of a client it shall issue its brokers note to the client in respect of such a transaction and shall be entitled to adjust the price at which the securities were purchased to cover any compulsory charges which it incurred in respect of the transaction and, in addition, shall charge the client brokerage as provided for in these rules. Such brokers note shall stipulate the centre in which the order was executed.
- 5.9.1.7 If a broking firm sells any securities on behalf of any person, such person shall deliver the securities in negotiable form to that broking firm. Unless there is an arrangement under 5.20.1.1, such broking firm shall forthwith, but not before such delivery, pay to such person or his order the amount payable for such securities in full or alternatively any resulting credit balance in the account of such person with the broking firm: provided that -
- (a) where a person delivers securities to a broking firm in the form of a document which shows title to more securities than have been sold or if the correct number of securities are delivered but in the form of a company office counter receipt with a signed transfer deed attached, then, unless the receiving broker or client is willing to accept the scrip in that form, payment shall not be made to that person until such time as the broking firm receives from the company's transfer office scrip which is good delivery to the market;
  - (b) such payment shall not be made prior to the settlement period stipulated in terms of the bargain unless in special circumstances the General Manager otherwise agrees.
- 5.9.1.8 The retention for the account of such person by the broking member of so much of the amount payable as is required, in terms of a written instruction given by such person to the broking firm for the purchase of other securities immediately following the delivery of the securities sold shall constitute payment by the member for the securities sold and the provisions of 5.20.1.1 shall apply *mutatis mutandis* to the money retained for payment for securities purchased or to be purchased.

- 5.9.1.9 The provisions of 5.9.1.7 and 5.9.1.8 shall not apply -
- (a) if the person on whose behalf the securities are sold is another broking firm or is a foreign dealer; or
  - (b) where a managed account is involved.
- 5.9.1.10
- (a) A broking firm to whom securities are due to be delivered (the receiver) in terms of its Clearing House settlement statement may, on or before 10:00 on the business day next following the day of issue of the settlement statement, give notice in writing to the firm which is responsible for delivery (the deliverer) that it requires delivery during the current settlement period, which the deliverer shall acknowledge by signing and returning a copy of such notice.
  - (b) The receiver shall have the right to request the General Manager in writing to cause the securities to be bought in for the account of the deliverer should the deliverer fail to deliver by 12:30 on the last day of the settlement period in which such notice is given.
  - (c) Whenever any listed securities cannot be obtained for delivery in terms of any outstanding bargain except at a price which is considered by the delivering broking firm to be unreasonable, the delivering broking firm shall have the right to request the General Manager in writing to cause the securities to be bought in for the account of that firm in which event the provisions of 5.9.1.13(a)(ii) shall not be applicable.
- 5.9.1.11 When a deal in listed securities is not subject to settlement in terms of an instruction from a NSE settlement system and the relative securities are not delivered in terms of such deal, the purchaser or receiver shall have the right to cause the securities to be bought in for the account of the seller or deliverer, and the provisions of 5.9.1.10 shall apply *mutatis mutandis*.
- 5.9.1.12 A broking firm issuing a calling-up notice in terms of 5.9.1.10 or 5.9.1.11 shall be obliged to accept a part delivery. Such part delivery shall not restrict the right of such broking firm to have the undelivered balance of the securities bought in.
- 5.9.1.13
- (a) A request to buy in securities which are subject to settlement through a NSE settlement system shall be -
    - (i) submitted by not later than 14:30 on the business day referred to in 5.9.1.10;
    - (ii) accompanied by a photostat copy of the calling up notice showing the signature of the deliverer.
  - (b) The General Manager shall forthwith advise the broking firm concerned of the receipt of such request to buy in.
- 5.9.1.14 Securities shall be bought in -
- (a) by the General Manager on the trading floor at 12:00 on the business day following the day of receipt of the request;
  - (b) as a transaction entered into between the broking firm which has been bought in against and the broking firm which sold at the buying in;
  - (c) for settlement between the broking firms referred to in 5.9.1.14(b) by 11:00 on the business day following the buying in.
- 5.9.1.15
- (a) If, in the opinion of the General Manager, the price to be paid for the securities is excessive or if such securities are unobtainable on the trading floor for immediate delivery, the General Manager shall forthwith call a meeting of the Committee to decide upon a price at which the difference due by the deliverer/seller to the receiver/ purchaser, or vice versa, shall be determined.
  - (b) Differences shall be settled by not later than 12:30 on the business day following the date of the meeting of the Committee.
- 5.9.1.16 In the event of a multiple "buying in" operation in the same security the General Manager shall determine the procedure for the buying in.

- 5.9.1.17 The names of broking firms who are to be bought in against shall be disclosed at the time of the buying in.
- 5.9.1.18 The buying in transaction shall be reported forthwith to the relevant NSE settlement system by the broking firms concerned.
- 5.9.1.19 The broking firm against which the securities have been bought in, upon receiving them, shall deliver such securities to the broking firm which requested the buy in. Delivery shall be effected through the relevant NSE settlement system notwithstanding any changed instructions which may subsequently have been issued by the NSE settlement system.
- 5.9.1.20 A calling up notice cannot be invalidated by any purchase effected by the delivering broking firm for settlement through the relevant NSE settlement system.
- 5.9.1.21 The buying in shall fall away either in whole or in part in respect of such quantities of the relevant securities as the delivering broking firm may have succeeded in delivering to the receiving broking firm prior to 11:00 on the day the securities are due to be bought in.
- 5.9.1.22 A subsequent changed NSE settlement system delivery instruction does not invalidate the responsibility of the deliverer to deliver in terms of his calling up notice.
- 5.9.1.23 Where it is apparent that a number of calling up notices resulting from "no offset" deals relate to the same securities there shall be one buying in only, against the first broking firm due to deliver.
- 5.9.2.1 Whenever in the opinion of the Committee any person has control of a listed security to an extent where the same cannot be obtained for delivery in terms of any outstanding bargain except at a price and on terms dictated by such person, the Committee may, in terms of 5.9.3, postpone the time for delivery of and payment for such security in terms of any bargain. The Committee may, subject to the provisions of the Act, suspend the listing of such securities.
- 5.9.2.2 Whenever the Committee is of the opinion that any listed securities cannot be obtained except as provided in 5.9.2.1 and whenever any securities have been removed from the list of securities which may be dealt in on the NSE or whenever any listing in respect thereof has been suspended, the Committee may close any outstanding bargains entered into in respect of such securities and all differences shall be settled at a price to be fixed by the Committee.
- 5.9.3 Subject to the provisions of the Act, the Committee may postpone the time for delivery and payment in terms of any bargain outstanding in respect of any securities and may from time to time further postpone such time until further action is taken by the Committee. The Committee may also, subject to the provisions of the Act, suspend the listing of any securities for such period as it deems fit and may extend the period of such suspension from time to time. The Committee may also close any outstanding bargain in such securities and all differences shall be settled at a price to be fixed by the Committee.
- 5.9.4.1 The Committee shall have the power to determine the conditions upon which uncompleted transactions in securities, the listing of which has been terminated or suspended or which is under consideration or investigation, shall be completed. It may in particular, subject to the provisions of the Act, extend or postpone the time for delivery and payment whenever in its opinion such action is called for in the public interest or under just and equitable principles of trade.
- 5.9.4.2 Save with the consent of the Committee no broking member shall deal in securities in respect of which the listing has been suspended.
- 5.9.4.3 Rules 5.9.2.1, 5.9.2.2, 5.2.3, 5.9.4.1 and 5.9.4.2 shall be binding upon a broking firm and its client or counterparty.

**5.10 NSE Settlement Systems**

- 5.10.1 (a) NSE settlement systems will be open to receive securities from a deliverer between such hours as the Committee may from time to time prescribe.
- (b) Only securities shown on the settlement statement for the period shall be valid delivery during that period.
- 5.10.2 If a broking firm sells a security which is not subject to settlement through a NSE settlement system, and on the due date fails to deliver such security to the purchaser during the hours prescribed for delivery, the purchaser need not accept and pay for the security until the ensuing business day.
- 5.10.3 (a) A broking firm which sells a security and subsequently parts with it (other than to a NSE settlement system) to the purchaser without receiving payment shall be deemed to have given credit for the consideration due.
- (b) Other than in respect of amounts due from a NSE settlement system, a broking firm may at any time require a bank certified cheque or a bank cheque in payment for the securities sold.

**5.11 Incidental Accruals**

- 5.11.1.1 Where delivery following a bargain, transacted cum an incidental accrual, takes place at a time that allows the receiver reasonable opportunity to lodge the security for registration on or before the record date, such transactions shall be regarded as closed, and the deliverer shall have no responsibility to the receiver in connection with the incidental accrual. The latter's claim, if any, shall be against the registered holder.
- 5.11.1.2 Where delivery following a bargain, transacted cum an incidental accrual, takes place on or before the record date but the receiver does not have a reasonable opportunity to lodge the security for registration on the record date, the receiver shall advise the deliverer that he was unable to obtain registration, whereupon responsibility for delivery of such accrual shall rest with the deliverer. Such transaction shall then be deemed to be partially completed and the following shall apply:
- (a) If the incidental accrual is a Monetary Accrual - the deliverer shall pay the receiver such monetary accrual on the first day of the settlement period following the date of payment by the company.
- (b) If the incidental accrual is a Scrip Accrual - the deliverer shall deliver the scrip accrual to the receiver during the settlement period following the date on which the relevant document is ready for issue by the company.
- 5.11.1.3 The time of delivery of scrip through a NSE settlement system shall be deemed to be the time at which the envelope containing the scrip was delivered to the NSE settlement system.
- 5.11.1.4 Where cum incidental accrual transactions are due for settlement after the record date of such an incidental accrual, the seller or deliverer shall be responsible for such incidental accrual which shall be implemented as follows:
- (a) If the incidental accrual is a Monetary Accrual - payment shall be made on the first day of the settlement period following the date of payment by the company -
- (i) in Clearing House securities to the Clearing House for the benefit of the purchaser or receiver;
- (ii) in all other securities to the purchaser.
- (b) (i) If the incidental accrual is a Scrip Accrual it shall become the subject of a new and separate bargain between broking firms which shall be settled in terms of such bargain provided that such bargain shall be due for settlement not earlier than the next settlement period following the date upon which the relevant document of title will be ready for issue. Subject to 5.11.1.5 the provisions of this rule shall apply to all scrip accruals whether or not the transaction is due for settlement through the Clearing House.



- (ii) The provisions of the rules which relate to letters of right shall apply, *inter alia*, to any bargain in nil paid letters of right which arises in circumstances set out in 5.11.1.4(b)(i).

5.11.1.5 In the case of a rights issue where no renounceable letter of right is issued or where the renounceable letter of right is not listed, the purchaser must advise the seller in writing if the purchaser desires to exercise such right and, if so, must tender the subscription money in sufficient time for the right to be protected. Delivery of such letter of right shall be made within seven days of its issue or on completion of the original bargain whichever is the later date.

- 5.11.1.6
- (a) Should an incidental accrual free of countervalue (such as a dividend, bonus or capitalization issue) accrue during the currency of a call option, the seller of the option shall only be obliged to pay the dividend or deliver the documents of title representing such incidental accrual upon exercise of the option, in which case delivery shall be made upon exercise of the option or within seven days of the relevant payment or issue of shares whichever is the later date.
  - (b) Should an incidental accrual which is not free of countervalue accrue during the currency of a call option but not a gilt option, the purchaser of the option shall tender the subscription money to the seller in sufficient time to enable the right accruing to be exercised before the closing of the offer. Should the option be exercised, the purchaser shall be entitled to the delivery of the documents of title representing such incidental accrual forthwith or within seven days of the relevant issue of such documents of title, whichever is the later date. If the option is not exercised, the seller shall have the choice either of refunding the subscription money to the purchaser or delivering to it the document of title thereby acquired.
  - (c) Should an incidental accrual which is not free of countervalue accrue during the currency of a put option but not a gilt option, the seller of the option shall notify, in writing, the purchaser of the option 24 hours prior to the closing of the offer whether, in the event of the option being exercised, it will require the incidental accrual. If so, upon exercise of the option, the purchaser shall deliver and the seller shall accept the documents of title representing such incidental accrual against payment of the subscription money.
  - (d) Should an incidental accrual free of countervalue (such as a dividend, bonus or capitalization issue) accrue during the currency of a put option, the purchaser of the option shall only be obliged to pay the dividend or deliver the documents of title representing such incidental accrual upon exercise of the option, in which case delivery shall be made upon exercise of the option or within seven days of the relevant payment or issue of shares whichever is the later date.

5.11.1.7 Where a security is subject to a call option and an offer to acquire is made generally to holders of such security either in whole or in part and such offer expires during the period of the call option, the purchaser of the option shall, if it wishes the offer to be accepted, not less than twenty-four hours before such expiry, so advise the seller of the option. The seller shall be obliged to act in accordance with such advice and the purchaser shall be obliged to exercise the option. If the purchaser does not so advise the seller, the latter shall be entitled to act upon such offer as it decides and in the event of the option being exercised, the exercise shall be subject to such act.

5.11.2.1 The provisions of 5.11.2.2 shall govern the procedure for dealing with and the record date for any of the undermentioned benefits, rights, events and other incidental accruals which flow from the ownership of securities:

- (a) dividend;
- (b) bonus;
- (c) return of capital;
- (d) liquidation distribution;
- (e) interest;
- (f) rights;
- (g) conversion right;
- (h) capitalization issue;

- (i) reconstruction of capital;
- (j) take-over bid;
- (k) offer to purchase;
- (l) exchange of securities;
- (m) amalgamations; and
- (n) options on securities.

In the event of an incidental accrual which is not provided for above, the security in question will be declared ex such incidental accrual in such manner as the Committee may determine.

5.11.2.2 Unless otherwise determined by the Committee, the General Manager shall quote a listed security ex an incidental accrual as follows:

- (a) Where the record date is a date subsequent to the date of declaration and in cases where, in addition, the declaration is subject to confirmation subsequent to the record date, the security shall be declared ex the incidental accrual on the first business day following the record date or the day of receipt of the confirmation by the General Manager whichever is the earlier: provided that if notification or confirmation from the company is not received by the General Manager in sufficient time for it to be dealt with at the opening of the market on that day, the security shall be declared ex on the following day.
- (b) Where the record date is a date prior to the date of declaration the security shall be declared ex the incidental accrual on the first business day following the day of receipt by the General Manager of the company's notification of the declaration or confirmation, but the security may be declared ex the incidental accrual on the day of receipt of notification of the declaration or confirmation, provided it is received in sufficient time for it to be dealt with prior to the opening of the market.
- (c) Where there is an exception to the procedures contained in 5.11.2.2(a) and 5.11.2.2(b) it shall be dealt with in such manner as the Committee may determine.

5.11.3 A purchaser of a security cum an incidental accrual shall be entitled to such accrual unless it was specifically excluded at the time of the transaction.

## 5.12 Trading Procedures

### 5.12.1 Call and Put Options

In option transactions -

- (a) the option money payable by the purchaser shall be settled in the next settlement period. This provision shall apply *mutatis mutandis* to the client and the purchaser;
- (b) every option shall terminate on the last day of a specific settlement period;
- (c) unless the purchaser has exercised the option, the seller, by not later than 12:00 on the date of expiry, shall remind the purchaser that the option is due;
- (d) notice in writing of the exercise of the option may be given on any day up to and including 13:00 on the expiry date;
- (e) delivery of the securities shall be for the next settlement period unless both purchaser and seller of the option agree otherwise;
- (f) both the purchaser and the seller shall ensure that the official form is completed and handed to the Market Supervisor who shall record the option transaction on the Option Board. No member shall make an entry on the Option Board;
- (g) a broking firm shall only sell securities on behalf of a client against a call option previously purchased if the call option was bought through it.

### 5.12.2 Gilt Options

5.12.2.1 Requirements in regard to trading in gilt options are set out in 5.23.

5.12.2.2 All options traded on the gilt trading floor shall be American unless specified as European.



- 5.12.2.3 A gilt broking firm may not write a gilt traded option except under such conditions as may be determined by the Committee from time to time.
- 5.12.2.4 A gilt option shall not accrue any incidental accruals.
- 5.12.2.5 When dealing in gilt options with a person as a principal, a gilt broking firm shall disclose to such person before the transaction is concluded that it acts as a principal, and the advice note relating to the transaction shall bear an endorsement to that effect.

5.12.3 Dealings - General

- 5.12.3.1 Dealings on the trading floor shall be confined to dealings in listed securities (not being under suspension) and other items authorized by the Committee.
- 5.12.3.2 Broking firms may not deal away from the trading floor during trading hours except -
- (a) as provided in 5.12.4, 5.12.6, 5.23 and 5.25;
  - (b) in unlisted securities.
- 5.12.3.3 The Committee may prohibit dealings by members in any particular security either for a specified or for an indefinite period.
- 5.12.3.4 The trading floor shall not, without the prior consent of the Committee, be used for any meeting or any purpose other than the business of dealings in listed securities.
- 5.12.3.5 Rules 3.17.4, 5.5.1, 5.9.1, 5.9.2, 5.9.3 and 5.9.4 shall only apply in respect of securities and other items which may be dealt in on the trading floor.

5.12.4 Dealings on the Trading Floor and Elsewhere

- 5.12.4.1 For the purpose of this rule a "foreign transaction" shall mean a transaction which results from a bid or offer by or from a broking firm on behalf of a client and which is entered into with a foreign dealer.
- 5.12.4.2
- (a) No broking member shall deal directly or indirectly for his own account in listed securities except with a broking member, unless such deal is -
    - (i) for the purpose of correcting a mistake; or
    - (ii) to effect a carrying transaction, the securities involved having been purchased by the member in the market for the express purpose of the transaction; or
    - (iii) to effect an odd-lot transaction in less than 100 shares; or
    - (iv) a purchase from or a sale to a foreign dealer; or
    - (v) in respect of gilts.
  - (b) No broking firm shall trade or participate in any transaction in a listed security during trading hours unless such business has on that day been exposed to the trading floor, except in the case of a special bargain as provided for in 5.12.6.
  - (c) All announcements to buy or sell a listed security on the trading floor shall be made in a clear audible voice.
  - (d) Subject to the provisions of 5.12.4.2(a), a broking firm receiving an order from a client (including a company in which the broking firm, its members or directors have an interest) either to buy or sell any securities shall only deal therewith as an agent and it shall not be or become interested either directly or indirectly as a principal in such securities and no broking firm shall for the purpose of any joint account or arbitrage transaction to which it is a party sell or purchase directly or indirectly securities to or from a client: provided that nothing contained herein shall prohibit a broking firm from dealing as a principal with another broking firm on behalf of its client.
  - (e) A broking firm shall not act as an agent in a stock exchange transaction unless it is able to comply fully with the provisions contained herein in concluding such transaction.

**5.12.4.3 During trading hours on any one business day a broking firm -**

- (a)
  - (i) having an order to deal in listed securities may not canvass an opposite order in respect thereof unless it has immediately prior to doing so recorded a price on the board and tried to execute the order on the trading floor at that price;
  - (ii) which succeeds in canvassing such an opposite order shall carry out the procedures laid down in 5.12.5;
  - (iii) may not [subject to the provisions of 5.12.4.2(a)] execute an order on behalf of a client except with a broking firm provided that, if a broking firm is unable to execute an order on the trading floor at the price which it has recorded on the board, it may execute the order by means of a foreign transaction at a price so recorded or at a better price. Before it may execute the order by means of a foreign transaction at a less favourable price than that recorded on the board it must again endeavour to execute the business on the trading floor at such less favourable price which shall be recorded on the board. If the foreign dealer reacts with a counter-bid or counter-offer, or if the broking firm requests him to make a bid or offer, such bid or offer shall not be dealt with in terms of 5.12.4.5 but in terms of this paragraph.
- (b) A broking firm which has executed an order on behalf of a client by means of a foreign transaction shall forthwith record the price on the prices board as a "foreign purchase transaction" or a "foreign sale transaction", as the case may be. Brokerage and MST, where applicable, shall be charged in respect of such transaction, and the brokers note shall stipulate the centre in which the foreign dealer operates for the purpose of the transaction.
- (c) A broking firm which deals for its own account with a foreign dealer shall not record such sales price on the prices board on the trading floor. It shall, however, record the price at which it sells to or buys from another broking firm.

**5.12.4.4 (a) "After trading hours" is defined as a period from the close of business on the trading floor until 00:01 on the next trading day or such other period as the Committee may determine from time to time. No broking firm shall conduct any trading before the commencement of trading hours on any business day.**

- (b) **After trading hours on any one business day a broking firm -**
  - (i) having an order from a client which was exposed to the trading floor during trading hours by recording the price on the board but not executed or completed or which receives an order after trading hours may execute or complete such order with another broking firm or with a foreign dealer either directly or through another broking firm;
  - (ii) may deal directly or indirectly for its own account with another broking firm or with a foreign dealer;
  - (iii) which executes an order in terms of 5.12.4.4(b)(i) shall before the commencement of trading on the next business day record the sale price on the prices board. In the case of a foreign transaction the sale price must be recorded as a "foreign purchase transaction" or a "foreign sale transaction", as the case may be.

**5.12.4.5 A broking firm which on any one business day receives a bid or offer from a foreign dealer may only deal with the securities involved as a principal provided, however, that -**

- (a) **if such bid or offer is received before or during trading hours -**
  - (i) where prior to receipt of such bid or offer, such broking firm has a firm order from a client in respect of the security in question which has been exposed that day to the trading floor and in respect of which a price has been recorded, it may, acting as an agent, transact or complete the business on behalf of the client at the price recorded on the board or at a better price. Before it may transact the business at a less favourable price than that recorded it must record such less favourable price and endeavour to execute or complete the client's order on the trading floor at such less favourable price;
  - (ii) if the broking firm has no firm order from a client, it must expose the business to the trading floor and record the price. Having been unable to transact or complete the business on the trading floor at the price recorded, it may then offer the business to

a client provided it does not deal at a more favourable price than that recorded on the trading floor;

- (b) if such bid or offer is received after trading hours, it shall first satisfy equally any order which it may have and any order a broking firm has left with it. It may offer any balance of the business to a client.

- 5.12.4.6
- (a) Where a foreign transaction is effected during trading hours directly between a Namibian person and an overseas counterparty the broking member -
    - (i) shall lodge with the General Manager forthwith a prescribed form detailing the transaction and stating that he is satisfied that the price of the deal is reasonable in the light of the circumstances prevailing at the time the transaction was effected; and
    - (ii) shall forthwith record the sale price on the prices board suitably annotated as a "nominated deal".
  - (b) Where a foreign transaction is effected after trading hours directly between a Namibian person and an overseas counterparty the broking member -
    - (i) shall lodge with the General Manager before 12:00 on the next business day a prescribed form detailing the transaction and stating that he is satisfied that the price of the deal is reasonable in the light of the circumstances prevailing at the time the transaction was effected; and
    - (ii) shall before the commencement of trading on the next business day record the sale price on the prices board suitably annotated as a "nominated deal".

#### 5.12.5 Put-troughs

- 5.12.5.1 A broking firm which has an order to buy and an order to sell the same listed security on behalf of clients (excluding an order on behalf of a company in which the broking firm, its members or directors have an interest and an order on behalf of a member of its staff) may, whether or not a sale has been recorded on the prices board, put these transactions through another broking firm subject to -

- (a) the transaction being put through a counterparty broking firm during trading hours only; and
- (b) compliance with the following procedures:
  - (i) the broker or his agent shall investigate the market in the security in question on the trading floor in order to establish what bid and offer prices appear to be appropriate in the prevailing market conditions. If such broker or agent is possessed of knowledge or ought to be reasonably possessed of knowledge gained through his own enquiry on that day in the market indicating that there is a firm buyer or seller of the securities to be put through, he shall have due regard to such knowledge when executing the transaction and take reasonable steps to alert the persons concerned of his intended action. He shall then position himself in proximity to that section of the prices board where the security is listed and call the name of the security (prefaced by the words "what are") three times in a loud and clear voice. If in so doing the broker or his agent is not approached, he may then proceed in terms of 5.12.5.1(b)(ii);
  - (ii) The broker or his agent shall in a loud voice make a double price (that is, a price at which he is willing to buy and a price at which he is willing to sell) naming the security and shall ensure that such prices are recorded on the prices board.
  - (iii) **If challenged**  
If any other broker offers to buy the securities or any portion thereof at the offered price, or to sell the securities or any portion thereof at the bid price, the broker shall deal with the challenger in up to half, in round hundreds, of his relevant order. He may put through the balance of his order at the price thus established.
  - (iv) **If there is competition**  
For the purposes of this rule "better price" is defined as a higher bid price or a lower offered price.  
If any other broker offers to buy or sell the securities at a better price than that made by the broker, the latter -

- (aa) may conclude a deal with that broker at such better price in respect of his relevant order and only after he satisfies the competing broker may he put through the balance of his order at the price so established; or
  - (bb) may raise his bid or lower his offered price to the better price made by the other broker, in which event, if he puts through at the price so made, he shall be obliged to deal with such other broker in up to half, in round hundreds, of the relevant order. He may put through the balance of his order only at the price thus established; or
  - (cc) may raise his bid or lower his offered price to a better price than that made by the other broker, in which event he may put through his orders at such better price.
- (v) **If no challenge or competition**  
If the broker is not challenged or if his bid or offered price is better than that made by another broker he may put through the orders at either his bid or his offered price but not at any other price and he shall not be obliged to give up any part of his relevant order.
- (vi) The price of every put-through transaction (suitably annotated as such) shall be recorded forthwith in the sales column on the prices board unless the sales price last recorded on the board is a put-through at the same price.
- (vii) Where the buying leg or the selling leg of the put-through transaction exceeds a value to be determined by the Committee, the broker or his agent shall complete the put-through form forthwith and hand it to the Stock Exchange official who shall time-stamp the form. The counterparty broker shall not be required to sign the form.
- (viii) The form shall be displayed on the board provided for that purpose for one-half hour from the time stamped thereon. Forms handed in within half an hour before the closing of trading shall be displayed forthwith and for one-half hour before the start of trading on the next trading day.
- (ix) On the conclusion of the put-through and in the case of Clearing House securities, the originating broker or his agent shall report both purchase and sale to the Clearing House in the prescribed manner. The counterparty broker shall report the transaction to the Clearing House in the prescribed manner.
- (x) Subject to the provisions of 5.12.6, no broking firm shall conclude a put-through except in terms of this rule.
- (xi) Either party to the put-through may act through his agent as referred to in 4.10.2(a).
- (xii) Brokerage shall be charged in respect of both purchase and sale comprising the put-through.

5.12.5.2 The provisions of 5.12.5.1 shall apply to country broking firms in respect of put-through transactions subject to the following -

- (a) the investigation of the market in terms of 5.12.5.1(b)(i) shall be effected through a Windhoek broking firm which shall act as agent or counterparty in the transaction;
- (b) a Windhoek broking firm may act as both agent and counterparty, but when acting in the capacity of counterparty in respect of a put-through transaction, no charge shall be made by the Windhoek broking firm to the originating broking firm for this service;
- (c) the originating broking firm will be responsible for rendering a country deal return to the Clearing House as prescribed by a NSE directive.

## 5.12.6 Special Bargains

5.12.6.1 Notwithstanding the provisions of 5.12.4 and 5.12.5, and subject to the provisions hereinafter set out, a special bargain and a special bargain put-through may be executed by a broking firm at a price agreed upon by both buying and selling clients.

5.12.6.2 A special bargain is a stock exchange transaction entered into between a buying and a selling broking firm in the same security, each initially acting for a single client in respect of a single order -

- (a) having an aggregate value in excess of N\$500 000 (or such other amount as the Committee may from time to time determine with the approval of the Registrar) based on the last sale price in the security or the price at which the transaction is to be concluded; or
- (b) involving more than 10 per cent in number of the issued shares of a company.

5.12.6.3 Where a special bargain is to be entered into and the buyer proposes to use the securities in whole or in part with the intention or effect of -

- (a) bringing about a change in the control of a company;
- (b) retaining control of a company; or
- (c) bringing about a rearrangement within control of a company, where effective control is exercised by a readily identifiable group of shareholders, and where the transaction constitutes a sale of securities by one member of the group to another;

either the buyer or seller concerned shall, through his broking firm, obtain the consent of the General Manager before the special bargain is transacted, unless the buyer in the circumstances of 5.12.6.3(a) simultaneously undertakes to extend a similar offer to the remaining shareholders.

5.12.6.4 In special circumstances the General Manager may exempt a broking firm from the provisions of 5.12.6.5 and 5.12.6.6 if in the absence of such an exemption the deal would not be consummated.

5.12.6.5 In respect of a special bargain to be effected between two broking firms the following procedures shall apply:

- (a) Both the buying and the selling broker or their agents who are the parties to a proposed special bargain shall station themselves in proximity to that section of the prices board where the security is listed, where either shall declare in a loud voice that he is about to effect a special bargain, naming the security but without disclosing the price;
- (b) Any other brokers on hearing the declaration of intent and being in possession of a firm order at that time to buy or to sell the security of the value or quantity referred to in 5.12.6.2, may challenge the broker who made the declaration by making a bid or offer. If the bid or offer is better than that proposed, then the buying broker or the selling broker, as the case may be, shall deal with the challenger to the extent of at least half of the value laid down in 5.12.6.2 or such larger value as the challenger is willing to accept up to a maximum of half of the total value of the special bargain order. Such deal shall be in round hundreds of shares and shall be subject to the provisions of 5.12.6.5(c). The original brokers may then complete the special bargain order at the price thus established.
- (c) If the buying or the selling broker, as the case may be, after immediate consultation with his client is unable to complete the order at the better price, then the buying or the selling broker, as the case may be, shall offer to deal with the challenging broker in the balance of his order and the challenger shall take a minimum of the other half of the value laid down in 5.12.6.2 at the price thus established.
- (d) Any balance of either original order not satisfied may be completed by the original broking firms at the original price at which they intended to deal.
- (e) The aggregate value of the combined deals referred to in 5.12.6.5(b), 5.12.6.5(c) and 5.12.6.5(d) shall not be less than the value or quantity referred to in 5.12.6.2.
- (f) **If no challenge**  
If the buying and selling broking firms to the special bargain are not challenged they may complete the special bargain at the price agreed by both buying and selling clients.

5.12.6.6 In respect of a special bargain put-through the following procedures shall apply:

- (a) The transaction shall be put through a counterparty broking firm during trading hours only;

- (b) The broker or his agent shall station himself in proximity to that section of the prices board where the security is listed;
- (c) The broker or his agent shall in a loud voice declare that he is about to effect a special bargain put-through, naming the security but without disclosing the price;
- (d) **If challenged**
  - (i) Any other broker on hearing the declaration of intent and being in possession of a firm order to buy or to sell the security of the value or quantity referred to in 5.12.6.2, may challenge the first broker by making a bid or offer. If the bid or offer is better than that proposed then the broker shall deal with the challenger in at least half, in round hundreds, of the value laid down in 5.12.6.2 or such larger value as the challenger is willing to accept up to a maximum of half of the total value of the special bargain order. He may put through the balance of his order at the price thus established.
  - (ii) If the first broker after immediate consultation with his client is unable to put through the balance of his order at the better price he shall offer to deal with the challenging broker in the balance of his order and the challenger shall take a minimum of the other half of the value laid down in 5.12.6.2 at the price thus established.
  - (iii) Any balance of the original order not then satisfied may be put through by the first broker at the original price at which he intended to deal.
  - (iv) The aggregate value of the combined deals referred to in 5.12.6.6(d)(i), 5.12.6.6(d)(ii) and 5.12.6.6(d)(iii) shall not be less than the value or quantity referred to in 5.12.6.2.
- (e) **If no challenge**

If the broker is not challenged he may put through the special bargain at the price agreed by both buying and selling clients.

5.12.6.7 When a broking firm desires to execute a special bargain or special bargain put-through it shall prepare the relevant special bargain form in the following respects:

- (a) name of security;
- (b) the code of the originating broking firm or agent;
- (c) quantity of securities dealt in;
- (d) the price at which the transaction is concluded; and
- (e) opposite broking firm (if applicable).

5.12.6.8 The Stock Exchange official shall time-stamp the official form after the quantity and the price of the special bargain or special bargain put-through have been filled in, and the form shall be displayed on the board provided for that purpose for one hour from the time stamped thereon. Forms handed in within one hour before the close of trading shall be displayed forthwith and for one-half hour before the start of trading on the next trading day.

5.12.6.9 The price of every special bargain and every special bargain put-through transaction executed shall be recorded as such in the sale column on the prices board.

5.12.6.10 The provisions of 5.12.5.1(a), 5.12.5.1(b)(ix) and 5.12.5.1(b)(xii), 5.12.5.2(b) and 5.12.5.2(c) shall apply *mutatis mutandis* to a special bargain put-through and in the application thereof a reference to a put-through shall be construed as a reference to a special bargain put-through.

### 5.13 Advice Notes and Brokers Notes

5.13.1 An advice note shall not be required where a transaction between broking firms is to be settled through a NSE settlement system. In any other transaction an advice note shall be delivered before 12:30 on the business day following the transaction.

5.13.2 An advice note and a brokers note shall be signed by one of the following:

- (a) a member of the broking firm issuing them;
- (b) a junior member or authorized clerk employed by such firm;



- (c) a branch manager;
- (d) any person in whose favour a power of attorney has been granted by such firm provided such power of attorney has been submitted to and approved by the Committee.

5.13.3 Notwithstanding the provisions of this rule, an advice note or a brokers note signed by any person in the employ of a broking firm shall be binding on such firm in the same manner as if it had been signed in terms of 5.13.2.

#### 5.14 Recording Transactions

Every broking firm shall, in the manner prescribed by the Committee, record, report and retain details of every transaction in securities entered into by it or on its behalf and it shall be the duty of every person executing a transaction on behalf of a broking firm to ensure that the provisions of these rules are complied with.

#### 5.15 Unreasonable Transactions

Where, from a lack of clarity in the published information available at the time of the transaction, a broking firm deals in a quantity or at a price which in the opinion of the Committee is unreasonable, the Committee may declare such bargain void. Such declaration shall be binding on the broking firms who entered into such bargain and on the clients on whose behalf the transaction was executed.

#### 5.16 Partly Paid Securities

5.16.1 A security, other than a letter of right, which has been partly paid for on subscription shall be designated as a partly paid security.

5.16.2 The settlement price of a contract in partly paid securities shall be determined by deducting from the contract price the unpaid portion of the subscription price as at the date of delivery.

5.16.3 No partly paid securities shall be good delivery unless all calls due at the time of delivery have been paid.

5.16.4 Before any bargain in partly paid securities is concluded the selling broking firm shall inform the buying broking firm of any calls that have been paid in advance.

5.16.5 Where any calls on partly paid securities have been paid in advance any interest or dividend due on such securities by virtue of such payment in advance shall be added to the contract price. Where any calls have been paid after due date any interest or dividend forfeited by virtue thereof shall be deducted from the contract price.

5.16.6 Where partly paid securities are sold on call or on time, the selling broking firm shall be responsible for paying all calls falling due before delivery.

#### 5.17 Safe Custody Scrip

5.17.1.1 No broking firm shall hold securities as defined in 5.17.1.2 on behalf of any person without the prior written approval of the Committee, which approval shall be granted on an annual basis, and on the condition that such broking firm complies at all times to the satisfaction of the Committee with the provisions of 5.17.2.

5.17.1.2 Securities which a client has requested a broking firm to hold for him in safe custody and which are fully paid for and not subject to any lien or charge in favour of the broking firm shall only be held by the broking firm on the conditions laid down in 5.17.2 and after receipt of the written approval referred to in 5.17.1.1.



- 5.17.1.3 Securities which a broking firm is holding as minimum cover in terms of Section 23(1) and (2) or 24 or 34(2) of the Act or otherwise as security for a loan shall only be held in the manner and on the conditions prescribed in 5.18.
- 5.17.1.4 The provisions of 5.17.1.1, 5.17.1.2 and 5.17.1.3 shall not apply if the person on whose behalf the securities are held is another broking firm or is a foreign dealer.
- 5.17.2.1 The arrangements made by a client with a broking firm for the retention of securities in safe custody shall be recorded in a form of mandate approved by the Committee. The mandate shall contain the minimum requirements prescribed by the Committee and shall be signed by the client before any securities are accepted by the broking firm for such purpose.
- 5.17.2.2 The client shall indicate on the mandate whether the securities shall be registered in his own name or in the name of a nominee company of the broking firm or in the name of any other person.
- 5.17.2.3 Every broking firm holding Committee approval in terms of 5.17.2.1 shall keep a register (in the form prescribed) of each mandate and a safe custody ledger of the securities that are being held from time to time in terms of the mandate. Full details of any change in the securities held on behalf of a client shall be recorded forthwith in the safe custody ledger.
- 5.17.2.4
- (a) A broking firm holding Committee approval in terms of 5.17.1.1 shall require its auditor to audit the register of mandates and carry out a complete scrip audit and verification to clients of the securities so held and such verification of the remaining accounts as the auditor deems necessary four times a year (one of which shall be as at the end of February and one as at the end of August and two others on "surprise" occasions): provided that where a broking firm commences business -
    - (i) after 31 May, but not later than 31 August in any year, then for the period ending on the last day of the following February three such complete scrip audits and verifications to clients shall be carried out, one of which shall be as at the end of August and one as at the end of February and the other on a "surprise" occasion;
    - (ii) after 31 August, but on or before 30 November in any year, then for the period ending on the last day of the following February, two such complete scrip audits and verifications to clients shall be carried out, one of which shall be as at the end of February and the other on a "surprise" occasion;
    - (iii) after 30 November, but before the end of February in the following year, then one such complete scrip audit and verification to clients shall be carried out as at the end of February.
  - (b) The auditor shall, within three months of the date to which the report relates, report in writing to the broking firm and to the Committee on every such audit and such report shall state -
    - (i) the results of the audit;
    - (ii) whether the broking firm held a mandate signed by each client for whom the securities are held; and
    - (iii) any material matter which has come to the notice of the auditor to which, in his opinion, the broking firm should give attention.
- 5.17.2.5 Any securities entrusted to a broking firm for retention in safe custody shall be marked by tagging with the client's name and shall be deposited by the broking firm in a safe custody account with a banking institution or with another organization as may be approved by the Committee after consultation with the Registrar. Securities so deposited shall not be withdrawn from that account except by the joint signatures of two partners or directors or of a partner or director of the broking firm which holds the securities in safe custody and a senior official in its employ or in the case of a one-man firm, the proprietor and a senior official in the employ of the broking firm or such other persons as the Committee may, in special circumstances, approve. The names of the persons other than sole proprietors, partners and directors who may sign such withdrawals shall be approved by the Committee on an annual basis.

- 5.17.2.6 No transfer deed shall be attached to any securities retained in safe custody until such securities are prepared by the broking member for disposal on behalf of the client or for delivery to the client. The name of the issuer of the security and the number of shares involved must be inserted on the transfer deed before it is signed by the registered owner of the security. A broking firm shall not retain a blank signed transfer deed in respect of securities held in safe custody.
- 5.17.2.7 Every broking firm which holds safe custody scrip must balance the securities monthly with the safe custody ledger. As evidence that the securities have been balanced, the broking firm shall furnish the Committee with a certificate to that effect. The certificate shall be signed by two partners or directors and shall be lodged with the Committee on or before the 15th day of the month following the month to which the certificate relates. In the case of a one-man firm, the certificate must be signed by the proprietor and a senior official in his employ. Certificates may, in special circumstances, be signed by such other persons as the Committee may approve.
- 5.17.2.8 Employees of a broking firm who are granted signing powers on the broking firm's safe custody deposit account or on behalf of nominee companies shall not be authorized to sign any cheques or other instruments of payment drawn by the broking firm or its nominee company.
- 5.17.2.9 A firm which retains securities in safe custody shall satisfy the Registrar and the Committee on an annual basis that it holds adequate insurance cover relative to the value of the securities so held against losses resulting from the negligence, dishonesty or fraud of any person in the employ of such broking firm.
- 5.2.17.10 No partner in or a director or employee of a broking firm shall directly or indirectly hold securities on behalf of a person administering or who keeps in safe custody listed securities as a regular feature of his business, except under the control of the broking firm and in accordance with these rules.

#### 5.18 Minimum Cover - Pledges

- 5.18.1 When securities are deposited by a person with a broking firm as minimum cover in terms of Section 23(1) and (2) or 24 or 34(2) of the Act, or otherwise as security for a loan, that person may be required by such broking firm to lodge with it a pledge in such form as may from time to time be prescribed by the Committee.
- 5.18.2 Every broking firm shall keep a record or register of the pledges so held, and a safe custody ledger of the securities that are from time to time held as minimum cover. Full details of any change in the securities held on behalf of a person shall be recorded forthwith by the broking firm in the safe custody ledger.
- 5.18.3 (a) A broking firm which holds securities for the purposes referred to in 5.18.1 shall require its auditor to carry out a complete scrip audit and verification to clients of the securities so held and such verification of the remaining accounts as the auditor deems necessary four times a year (one of which shall be as at the end of February and one as at the end of August and two others on "surprise" occasions): provided that where a broking firm commences business -
- (i) after 31 May, but not later than 31 August in any year, then for the period ending on the last day of the following February three such complete scrip audits and verifications to clients shall be carried out, one of which shall be as at the end of August and one as at the end of February and the other on a "surprise" occasion;
  - (ii) after 31 August, but on or before 30 November in any year, then for the period ending on the last day of the following February, two such complete scrip audits and verifications to clients shall be carried out, one of which shall be as at the end of February and the other on a "surprise" occasion;
  - (iii) after 30 November, but before the end of February in the following year, then one such complete scrip audit and verification to clients shall be carried out as at the end of February.
- (b) The auditor shall, within three months of the date to which the report relates, report in writing to the broking firm and the Committee on the results of such audit and the report shall state any

material matter which has come to the notice of the auditor to which, in his opinion, the broking firm should give attention.

- 5.18.4 Any securities deposited with or pledged to a broking firm as minimum cover shall be marked by tagging with the client's name and shall be held by the broking firm in a separate deposit account with a recognized banking institution. Such securities shall be so recorded, segregated and distinguished that they can at all times be identified as the cover so held. Securities so deposited shall not be withdrawn from that account except by the joint signatures of two partners or directors or of a partner or director of the broking firm who holds the securities as minimum cover and a senior official in the employ of the broking firm or, in the case of a one-man firm, the proprietor and a senior official in the employ of a broking firm or such other person as the Committee may, in special circumstances, approve. The name of a person other than the sole proprietor, partner or director who may sign such withdrawal shall be approved by the Committee on an annual basis.
- 5.18.5 An employee of a broking firm who is granted power to sign on the broking firm's minimum cover deposit account or on behalf of nominee companies shall not be authorized to sign any cheque or other instrument of payment drawn by the broking firm or its nominee company.
- 5.18.6 Where a broking firm retains securities in safe custody in terms of 5.17.1.2 it may hold any securities deposited with it as minimum cover in terms of 5.18.1 in the same deposit account with an approved organization as that in which the safe custody securities are held, and in that case the provision of 5.17.2.7 shall apply to such securities lodged as minimum cover.

#### 5.19 Managed Accounts

- 5.19.1 A broking firm shall not operate a managed account without prior written approval of the Committee which approval when granted shall be on an annual basis and on the condition that -
- (a) such broking firm complies at all times to the satisfaction of the Committee with the provisions of 5.19.2;
  - (b) securities received in respect of or arising from the operation of a managed account and which are retained by the broking firm which operates such account shall constitute securities which a client has requested the broking firm to hold for him in safekeeping and shall be dealt with at all times in the manner set forth in 5.17.1 and 5.17.2; and
  - (c) the mandate provides that all cash received by a broking firm in respect of or arising from the operation of a managed account and which is not paid over to the client or to his order by the broking firm upon receipt of such cash, shall be deposited by the broking firm for the account and in the name of the client with NSE Trustees (Pty) Limited.
- 5.19.2.1 The arrangement whereby a broking firm manages a client's account in terms of 5.19.1 shall be recorded in a form of mandate approved by the Committee. The mandate shall contain the minimum requirements prescribed by the Committee and shall be signed by the client before cash or securities are accepted from the client for the operation of the managed account.
- 5.19.2.2 The client shall indicate on the mandate whether any securities held or to be held are to be registered in his own name or in the name of a nominee company of the broking firm or in the name of any other person.
- 5.19.2.3 Every broking firm holding Committee approval in terms of 5.19.1 shall keep a register (in a form prescribed by the Committee) of each mandate and a safe custody ledger of the securities that are being held from time to time in terms of the mandate. Full details of any change in the securities held on behalf of a client shall be recorded forthwith in the safe custody ledger.
- 5.19.2.4 (a) A broking firm holding Committee approval in terms of 5.19.1 shall require its auditor to audit the register of mandates and carry out a complete scrip audit and confirmation that cash held by NSE Trustees (Pty) Limited is in accordance with the managed accounts of clients in the books of account of such broking firm at least four times a year, (one of which shall be as at the end of February and one as at the end of August and two others on "surprise"

occasions) and send statements to these clients and such other clients as the auditor deems necessary for verification on each of these occasions: provided that where a broking firm commences business -

- (i) after 31 May, but not later than 31 August in any year, then for the period ending on the last day of the following February three such complete scrip and cash audits and verifications to clients shall be carried out, one of which shall be as at the end of August and one as at the end of February and the other on a "surprise" occasion;
  - (ii) after 31 August, but on or before 30 November in any year, then for the period ending on the last day of the following February, two such complete scrip and cash audits and verifications to clients shall be carried out, one of which shall be as at the end of February and the other on a "surprise" occasion;
  - (iii) after 30 November, but before the end of February in the following year, then one such complete scrip and cash audit and verification to clients shall be carried out as at the end of February.
- (b) The auditor shall, within three months of the date to which the report relates, report in writing to the broking firm and the Committee on every such audit and the report shall state -
- (i) the results of the audit;
  - (ii) whether the broking firm held a mandate signed by each client for whom a managed account is maintained;
  - (iii) any material matter which has come to the notice of the auditor to which, in his opinion, the broking firm should give attention; and
  - (iv) in instances where 5.19.2.5 applies, the fact that no verification of securities was undertaken.

**5.19.2.5** Where a broking firm has received the approval of the Committee to operate managed accounts in terms of 5.19.1 but does not retain any of the securities arising from such operation, the provisions of 5.19.2.4 relating to the verification of securities by the auditor shall not apply. The statements referred to in 5.19.2.4 shall contain a note to the effect that on the date to which the statements relate no securities were held by the broking firm on behalf of the client in respect of the existing managed account arrangement.

**5.19.2.6** Every broking firm shall distinguish, in its books of account, managed accounts held in terms of 5.19.1 so that they can be easily identified as such at all times.

**5.19.2.7** Every broking firm holding Committee approval in terms of 5.18.2 shall -

- (a) on the first business day of each settlement period, furnish NSE Trustees (Pty) Limited with a schedule of individual clients' cash balances on all managed accounts in the books of account of the broking firm as at the close of business on the last day of the preceding settlement period; and
- (b) on the second business day of each settlement period, pay to or receive from NSE Trustees (Pty) Limited the difference between the total of the schedule of cash balances referred to in 5.19.2.7(a) and the total amount held by NSE Trustees (Pty) Limited on behalf of the clients of such broking firm as at the close of business on the last day of the preceding settlement period.

**5.19.2.8** Every request by a broking firm to withdraw cash other than a payment in terms of 5.19.2.7(b) or 5.20.1.2(b) on behalf of clients from NSE Trustees (Pty) Limited and every schedule referred to in 5.19.2.7(a) and 5.20.1.2(a) shall be signed by two partners or directors or by a partner or director of the broking firm and a senior official in the employ of the broking firm or, in the case of a one-man firm, the proprietor and a senior official in the employ of the broking firm or such other persons as the Committee may, in special circumstances, approve. The name of the person other than the sole proprietor, partner or director who may sign such withdrawal shall be approved by the Committee on an annual basis.

- 5.19.2.9 Statements of account sent to managed account clients by a broking firm shall include approved wording to the effect that the credit balance reflected on the statement is held by NSE Trustees (Pty) Limited for the account of the client.

## 5.20 Arrangements other than Managed Accounts

- 5.20.1.1 Where a broking firm and a client (other than a foreign dealer or another broking firm) enter into an arrangement whereby the broking firm holds on behalf of the client cash for the purpose of buying securities, or securities for the purpose of selling the same (and where such arrangement is not a managed account or one whereby securities are held as minimum cover or in safe custody) and where the proposed purchase or sale has not been transacted by the close of business on the last day of the settlement period during which such cash or securities were received, the following provisions shall apply:

- (a) Any cash thereby held by the broking firm shall forthwith be repaid to the client or his order, or be dealt with under 5.20.1.2 and may only be withdrawn under the signature of two persons referred to in 5.19.2.8;
- (b) any securities so held by the broking firm on behalf of the client shall forthwith be delivered to such client or to his order, or be deposited by the broking firm on behalf of the client in safe custody with a banking institution and the provisions of 5.17.2.6, 5.17.2.7 and 5.17.2.8 only shall apply thereto;
- (c) any cash or securities held in terms of 5.20.1.2(a) and 5.20.1.2(b) at the close of business on the last day of the fourth settlement period following the settlement period in which such cash or securities were received by the broking firm shall forthwith be returned to the client.

- 5.20.1.2 Every broking firm holding cash on behalf of clients in terms of 5.20.1.1 shall -

- (a) on the first business day of each settlement period furnish NSE Trustees (Pty) Limited with a schedule of such individual clients' cash balances in the books of the broking firm as at the close of business on the last day of the preceding settlement period; and
- (b) on the second business day of each settlement period pay to or receive from NSE Trustees (Pty) Limited the difference between the total of the schedule of cash balances referred to in 5.20.1.2(a) and the total held by NSE Trustees (Pty) Limited on behalf of the clients of such broking firm as at the close of business on the last day of the preceding settlement period.

- 5.20.2.1 (a) Where a broking firm receives a cash dividend or other monetary accrual on behalf of a client whose account is not a managed account, such broking firm shall on the second business day of the settlement period following such receipt either -
- (i) pay the net amount of such dividend or other monetary accrual to such client or his order; or
  - (ii) furnish NSE Trustees (Pty) Limited with a schedule of individual clients' cash balances on all such accounts in the books of the broking firm as at the close of business on the last day of the preceding settlement period accompanied by payment to NSE Trustees (Pty) Limited of such sum as is required to equate the total of monies so deposited with the total of the schedule of cash balances referred to above.
- (b) Deposits with NSE Trustees (Pty) Limited in terms of 5.20.2.1(a)(ii) shall be made in terms of a request in writing by the client and for such period as the client may stipulate.

- 5.20.2.2 Monies to which the provisions governing a managed account apply shall not be dealt with in terms of this rule.

- 5.20.3.1 Where a broking firm accepts monies on behalf of a client for deposit with an institution in terms of 5.25 and where the proposed deposit cannot be effected by the close of business on the day on which the monies were received, such monies shall be paid to NSE Trustees (Pty) Limited.

- 5.20.3.2 Monies deposited with NSE Trustees (Pty) Limited in terms of this arrangement shall be withdrawn by the broking firm as soon as practicable for deposit with an institution in terms of the client's mandate but in any event such deposit shall be withdrawn prior to the close of business



on the third business day subsequent to the initial deposit having been made and directed either to the institution that has accepted it, or back to the client, or to his order.

- 5.20.3.3 Monies to which the provisions of rule 5.19.1(c) governing a managed account apply, shall not be dealt with in terms of this rule.

#### 5.21 Payment of Surplus Monies to NSET

- 5.21.1 Where a broking firm holds surplus margin and other payments or receipts for the account of a client for the purpose of entering into futures contracts, such monies shall, before the close of business on the day on which the monies were received, be paid to NSE Trustees (Pty) Limited.

- 5.21.2 Monies deposited with NSE Trustees (Pty) Limited in terms of this arrangement shall be withdrawn by the broking firm immediately upon such broking firm being entitled to withdraw such monies by virtue of the provisions of the Rules of the Namibian Futures Exchange in which event the broking firm shall -

- (a) utilize any monies so withdrawn to settle any liabilities or losses arising from futures contracts entered into on behalf of the client; or
- (b) in the event of all futures positions being closed out and no liabilities remaining in respect thereof, repay such monies to the client forthwith.

- 5.21.3 Monies to which the provisions governing a managed account apply shall not be dealt with in terms of this rule.

#### 5.22 General

- 5.22.1 Monies deposited with NSE Trustees (Pty) Limited by a broking firm on behalf of a client in terms of these rules shall not form part of the assets of such broking firm but shall at all times be a liability of NSE Trustees (Pty) Limited to the client concerned: provided that nothing contained in these rules shall prohibit a client from empowering a broking firm to make withdrawals from his account with the said Trustees solely for the purposes of complying with the provisions of 5.19, 5.20.1, 5.20.2 and 5.20.3.

- 5.22.2.1 A broking firm shall not borrow or lend or use any securities referred to in 5.17.1.2, 5.17.1.3 or 5.22.3 except that it may deliver such securities to the client on whose behalf they are being held or to his order or to satisfy a sale made on behalf of the client concerned or may accept an offer on behalf of a client where such offer flows from the securities held or may otherwise deal with the securities in a manner set forth in the mandate signed by the client and held by the broking firm in terms of 5.17.2 or any pledge held in terms of 5.18. Notwithstanding anything contained in this rule a broking firm shall have the right to sell the securities which are being held on behalf of a client or which have been allocated to a client under any of the circumstances set forth in Sections 22, 23, 24, 25, 26 and 27 of the Act or in any pledge.

- 5.22.2.2 Notwithstanding the provisions of 5.22.2.1, a broking firm may, in isolated cases, be permitted by the Committee with the written agreement of the client (which shall not be required by the firm as a condition precedent to transacting business on behalf of the client) to utilize the client's securities for specified purposes. The agreement shall be subject to the prior approval of the Committee and shall stipulate the number of shares or nominal value of stocks which may be used by the member, the name of the issuer of such securities and the purposes for which such securities may be used.

- 5.22.3 All securities purchased on behalf of clients which come into the possession of a broking firm shall be allocated as soon as is practicable so as to establish the identity of the purchaser entitled thereto and such securities, being fully paid for and not the subject of any lien or charge in favour of the broking firm (other than those referred to in 5.17.1.2 and 5.17.1.3), shall be delivered to the purchaser or to his order without delay.



**5.22.4 No broking member shall without the consent of the Committee -**

- (a) pledge, cede or assign any debt owing or which may become owing to him in terms of any Stock Exchange business;
- (b) pledge, cede, assign or in any way encumber the whole or any part of the assets in his stockbroking business in respect of any debts or liabilities incurred by him outside his stockbroking business,

and no member shall without the consent of the Committee accept any such pledge, cession, assignment or encumbrance.

**5.23 Dealings in Gilts and Gilt Options****5.23.1 A broking firm which is not a gilt broking firm -**

- (a) shall not deal in gilts or gilt options on the Gilt Trading floor nor settle directly with the Gilt Clearing House;
- (b) shall only deal in gilts or gilt options through or with a gilt broking firm;
- (c) shall only deal in gilts or gilt options as an agent on behalf of a client or as a principal with a gilt broking firm;
- (d) shall not deal in gilts or gilt options as a principal directly with his client.

**5.23.2 Notwithstanding anything to the contrary contained in these rules, the following provisions shall apply to stock exchange transactions in gilts and gilt options:**

- (a) A gilt broking firm may deal in gilts or gilt options with any person either as an agent or as a principal.
- (b) An order to buy or sell gilts or gilt options as an agent on behalf of a client or a broking firm which is not a gilt broking firm shall have priority over a purchase or sale of the same gilt or gilt option as a principal.
- (c) No broking firm shall trade or participate in any transaction in gilts (but not gilt options) during trading hours either as an agent or as a principal unless such business has on that day been exposed to the trading floor by making a bid or an offer, as the case may be, and recording the appropriate yield to redemption on the board: provided that a gilt broking firm may accept a bid or offer from a person outside the market where the yield to redemption excluding a reasonable turn is within the range of the bid and offered yields recorded on the board at that moment or, if no yield is so recorded, is at a market-related yield. In the case of a transaction where this proviso applies, the gilt broking firm shall immediately record the transaction yield on the prices board and, if it has purchased stock, simultaneously offer to resell the stock at a yield which represents for it a turn of a magnitude which in all the circumstances can be regarded as reasonable, or if it has sold stock, simultaneously offer to repurchase the stock at a yield which represents a similarly reasonable turn.
- (d)
  - (i) If a transaction takes place between two gilt broking firms, the yield to redemption in the transaction between the two gilt broking firms shall be recorded on the prices board on the trading floor.
  - (ii) In transactions where the gilt broking firm acts as a principal, the yields to redemption for each transaction shall be recorded.

**5.23.3 During business hours on any one business day, a gilt broking firm -**

- (a) wishing to trade as a principal in gilts (but not in gilt options) may not canvass an opposite transaction unless it has immediately prior to doing so recorded on the board a bid or offered yield to redemption for the gilt or class of gilt and has tried to execute the transaction on the trading floor;
- (b) having an order to deal as an agent in gilts (but not in gilt options) may not canvass an opposite order in respect thereof unless it has immediately prior to doing so recorded on the board a bid or offered yield to redemption for the gilt or class of gilt and has tried to execute the transaction on the trading floor;

- (c) who has succeeded in canvassing such an opposite order may proceed to put the orders through in terms of 5.23.4.

5.23.4 A broking firm which has an order to buy and an order to sell the same gilt (but not gilt option) on behalf of clients (excluding an order on behalf of a company in which a member of that broking firm has an interest and an order on behalf of a member of its staff) may, whether or not a sale has been recorded on the prices board, put these transactions through another broking firm subject to -

- (a) the transactions being put through a counterparty gilt broking firm during trading hours only; and
- (b) compliance with the following procedures:
  - (i) The gilt broking firm shall investigate the market in the gilt in question on the trading floor in order to establish what yield to redemption would appear in the prevailing conditions to be equitable to both buying and selling client and shall after it has so satisfied itself complete the transaction at a yield to redemption acceptable to both of them.
  - (ii) The gilt broking firm shall forthwith record the yield to redemption at which the put-through took place with a suitable annotation to denote that the transaction is a put-through transaction.
  - (iii) Brokerage may be charged in respect of both the purchase and sale comprising the put-through.

5.23.5 For the purpose of this rule a gilt broking firm dealing in gilts (but not in gilt options) -

- (a) shall act as agent on behalf of a client in respect of a put-through;
- (b) may act as principal or as an agent in every other instance; and
- (c) shall be deemed to be dealing as a principal where -
  - (i) the gilt broking firm buys gilts from or sells gilts to a person for its own account at a yield to redemption agreed between that person and such firm;
  - (ii) a gilt broking firm buys gilts from or sells them to another gilt broking firm for its own account.

5.23.6 When dealing in gilts or gilt options with a person as a principal, a broking firm shall disclose to such person before the transaction is concluded that it acts as a principal and the advice note relating to the transaction shall bear an endorsement to that effect.

5.23.7 When acting as an agent on behalf of a client a broking firm may, in the case of a transaction in gilts, in its discretion determine the brokerage to be charged. Such charge may not exceed that set forth in 6.2.6. Brokerage and any other mandatory charge shall be identified separately on the brokers note, which must be issued in respect of every agency transaction.

5.23.8 A gilt broking firm shall not charge brokerage when acting as a principal.

5.23.9 Only listed gilts shall be dealt in on the trading floor, unless otherwise determined by the Committee as a temporary measure in special circumstances.

## 5.24 Dealings in Listed Gold Coins

5.24.1 A broking firm -

- (a) shall deal as an agent on behalf of a client; or
- (b) shall deal as a principal for its own account with an institution referred to in 5.24.1(c);
- (c) may deal as a principal with an institution classified as a prime supplier of listed gold coins to the market and designated as such in the NSE Gazette, in satisfying a firm order placed by a client: provided that -
  - (i) the requirements of rule 5.12.4.3(a)(iii) shall apply except where that rule refers to a "foreign transaction" or "foreign dealer", the phrases "off-market transaction" and "prime supplier of listed gold coins" shall be substituted;

- (ii) such transaction shall be recorded on the prices board as an "off-market sale" or an "off-market purchase", as the case may be, and the broker's note shall indicate that the transaction was executed off-market; and
- (iii) the price paid in the agency transaction with the client shall be identical with that in the transaction between the broking firm and the prime supplier.

5.24.2 For the purpose of this rule only, listed gold coins shall be a Clearing House security. A transaction effected by means of an immediate deal shall be governed by the provisions of 5.24.12.

5.24.3 Deliveries of listed gold coins in terms of Clearing House settlement instructions shall be effected directly between broking firms on any business day of the new settlement period during the hours laid down by NSE directives. A purchasing broker shall not be obliged to accept a part delivery in respect of a listed gold coin transaction.

5.24.4 When making delivery to the receiving broking firm, the delivering broking firm shall affix the firm's rubber stamp to and sign each of the three delivery slips issued by the Clearing House in pursuance of the transaction. Upon acceptance of the listed gold coins the receiving firm shall forthwith affix the firm's rubber stamp to and countersign each of the three delivery slips, and retain for its record the receiver's copy marked "3" (orange). The deliverer's copy marked "1" (white) shall be returned to the delivering broking firm together with the NSECH copy marked "2" (yellow), which the delivering broking firm shall lodge with the Clearing House. Payment in respect of such deliveries shall be effected through the Clearing House.

5.24.5 Acceptance of coins by the broking firm or client shall constitute an acknowledgement by such firm or client that the coins have been inspected and are genuine: provided that such release of responsibility in respect of listed gold coins shall only become effective upon acceptance by a client of listed gold coins out of safe custody.

Upon such acceptance of delivery, payment shall be made forthwith -

- (a) to the client by the broking firm which has sold on his behalf;
  - (b) by the client to the broking firm which has bought on his behalf;
- except that -
- (c) payment shall not be made prior to the settlement period stipulated in terms of the bargain unless in special circumstances the General Manager agrees otherwise;
  - (d) where a client enters into an agreement with a broking firm to hold the listed gold coins in safe custody in terms of 5.24.14, the client shall pay the broking firm which has bought the coins on his behalf against an acknowledgement by the broking firm that the coins have so been placed in safe custody.

5.24.6 A brokers note shall be issued by a broking firm to its client in respect of each transaction.

5.24.7 A broking firm acting for both the buyer and seller in the same transaction shall charge brokerage to both clients.

5.24.8 Prices for listed gold coins shall be made in Rands per coin. Sales shall be recorded on the board.

5.24.9 A broking firm dealing for its own account shall include listed gold coin positions as a risk operation in the monthly return.

5.24.10 A broking firm shall record all transactions in listed gold coins in its books on the same basis as a record is maintained in respect of transactions in securities save that it shall not be obliged to enter coin movements in a securities scrip register but may use a separate register for that purpose.

5.24.11 While the Exchange Control Regulations permit Namibian residents to deal freely in listed gold coins within Namibia, the exportation or importation of gold coins is subject to authorization by Exchange Control. A broking firm should therefore under no circumstances deal in listed gold coins on behalf of non-residents.

- 5.24.12 Where a transaction is effected by means of an immediate deal, the provisions of 5.24.1 and 5.24.5 to 5.24.11 inclusive shall apply, and in addition the following provisions shall also apply:
- (a) Transactions between broking firms shall be settled directly between the firms on a date to be mutually agreed between them at the offices of the buying broking firm;
  - (b) When making payment for the listed gold coins purchased the buying broking firm shall issue to the counterparty a specific receipt recording -
    - (i) the date of the transaction;
    - (ii) the number of coins;
    - (iii) the consideration; and
    - (iv) the number of the cheque issued in respect of such transaction;
  - (c) Advice notes shall be issued by both the buying broking firm and the selling broking firm by not later than 12:30 on the business day following the transaction;
  - (d) Details of every immediate deal in listed gold coins shall be reported to the Clearing House by both the buying and the selling broking firm on the normal trading sheet.
- 5.24.13 Subject to the provisions of 5.24.5, listed gold coins purchased on behalf of clients, on coming into possession of a broking firm, shall be allocated as soon as is practicable so as to establish the identity of the purchaser entitled thereto and, except in cases where an arrangement exists as envisaged in 5.24.14, shall thereafter without delay be delivered (if they are fully paid for) or offered for delivery (if they are not fully paid for) to the purchaser or to his order: provided that any listed gold coins which such firm may continue to hold at the close of business on the last day of the fourth settlement period following the settlement period in which the listed gold coins were received shall constitute listed gold coins which the client has requested the firm to hold in safe custody and accordingly the provisions of 5.24.14 shall apply.
- 5.24.14 Where a broking firm and a client enter into an agreement which authorizes such firm to hold on behalf of the client listed gold coins in safe custody, the following provisions shall apply:
- (a) The arrangement shall be recorded in a form of mandate approved by the Committee unless such a mandate already exists in respect of securities held in safe custody in terms of 5.17.2;
  - (b) The listed gold coins shall be placed in a sealed envelope marked with the client's name and shall be deposited by the firm in a safe custody container with a banking institution or alternatively in a suitable container in the firm's safe or in the firm's safe in a strongroom. The act of placing listed gold coins in a sealed envelope suitably marked with the client's name shall be deemed to be equivalent to the act of tagging the listed gold coins as belonging to the client;
  - (c) The broking firm shall keep a register of each mandate and a safe custody ledger of the listed gold coins that are being held from time to time in terms of the mandates.
- 5.24.15 Broking firms may enter into option transactions in listed gold coins subject to the provisions of 5.12.1 which shall apply as if listed gold coins were classified as securities.
- 5.24.16 Broking firms may enter into bear sales in listed gold coins, provided that the transactions between the broking firm and its clients shall be subject to the terms of Sections 24(1), (2), (3), (4) and (6), 26(1) and (3) and 27(2) of the Act as if references to securities in those subsections were references to listed gold coins, and as if the expressions "bear sale" and "minimum cover" used in those subsections were as defined in Section 1 of the Act but including listed gold coins.
- 5.24.17 The following provisions of the Act and the rules shall apply to transactions in listed gold coins, references to securities being construed as references to listed gold coins:  
Sections 22, 23, 25, 26(1) and (2), and 27(2), (3) and (4) of the Act;  
Rules 5.9.1.10, 5.9.1.12 through to 5.9.1.23 with the exception of 5.9.1.19, and 5.12.5.

## 5.25 Money-market Transactions

- 5.25.1 (a) A broking firm shall act only as an agent in accepting monies on behalf of a client for deposit direct with an institution in the name of such client and shall obtain a signed mandate from the

client in a form prescribed by the Committee. A commission may be charged for such service: provided that -

- (i) the institution acknowledges the receipt of such deposit and the client is advised of this acknowledgement. The onus is on the broking firm to see that this is complied with;
  - (ii) the broking firm shall inform the client that it is acting as an agent and that the client has no recourse to the broking firm for repayment of the deposit;
  - (iii) such monies are deposited direct with an institution on the day of receipt thereof, failing which the monies shall be dealt with in terms of rule 5.20.3.
- (b) For the purpose of this rule, *institution* means any -
- (i) bank, mutual building society or building society registered in terms of the relevant act;
  - (ii) company or any subsidiary of a company whose shares are listed on the NSE;
  - (iii) government body, local authority or public corporation.
- (c) No broking firm may syndicate deposits on behalf of clients except as provided for in 5.25.1(a).
- (d) A private company in which broking members or broking firms have a direct interest may act as an agent in the placement of monies on behalf of a client with an institution, provided that members or their firms have no liability and do not issue any guarantee for the due payment of the capital or interest involved. Under no circumstances may clients' funds be deposited with such a private company for onward transmission to an institution.

- 5.25.2
- (a) In purchasing or selling short-term money market instruments a broking firm may act only as an agent on behalf of clients unless the client is -
- (i) an institution required to be registered by the Registrar of Financial Institutions, the Registrar of Banks and the Registrar of Building Societies; or
  - (ii) a government body, local authority or public corporation; or
  - (iii) (aa) a company, having a share capital and reserves of more than N\$50 million, or  
(bb) a person approved by the Committee which can, in all the circumstances, be generally regarded as undoubted for its commercial and financial commitments, in which case the broking firm may act as a principal.
- (b) The syndication of monies for the purpose of purchasing a short-term money market instrument is not permissible.
- (c) Money market instruments shall include negotiable certificates of deposit, bankers acceptances, bridging bonds issued by municipal and public corporations, other bills of exchange, treasury bills and other similar money market instruments excluding promissory notes which are not bank endorsed except where the issuer or subsequent endorser is -
- (i) a company, having a share capital and reserves of more than N\$50 million, or
  - (ii) a person approved by the Committee which can, in all the circumstances, be generally regarded as undoubted for its commercial and financial commitments.
- (d) Money market instruments purchased on behalf of a client shall either be forwarded to the client or his order or held by the broker in safe custody on behalf of the client. The broker's records shall reflect such a holding.

5.25.3 Notwithstanding anything contained herein, no broking firm is permitted to act as a principal in dealing for clients in terms of 5.25.1(a).

5.25.4 All such transactions shall be conducted in a manner in accordance with the provisions of the Act, these rules, NSE directives and Committee decisions.

## SECTION 6

### BROKERAGE AND OTHER MANDATORY CHARGES

#### 6.1 Sharing of Profits or Brokerage with Non-members Prohibited

- 6.1.1 Except as provided in these rules, a broking firm shall not, either directly or indirectly, share its brokerage with or make over such brokerage either wholly or in part to any person other than a partner or director, nor shall it, without the consent of the Committee, save as is provided in these rules, divide its profits with or make over such profits either wholly or in part to any person who is not a broking member.
- 6.1.2 Except as provided for in 4.4.4, 4.5.5 and 6.1.5, an agreement in terms of which a person other than a broking member -
- (a) receives a share or percentage of the profits of a broking firm's business;
  - (b) receives a valuable consideration from a broking member or firm with the object or effect of retaining the business of such person or increasing the business of such broking member;
  - (c) makes a loan of a sum of money to a broking member or firm at a rate of interest or for a consideration which the Committee considers to be excessive or unreasonable;
  - (d) receives from a broking member or firm a loan of a sum of money at a rate of interest which the Committee considers to be inadequate or unreasonable,
- shall be deemed to be a contravention of these rules.
- 6.1.3 A broking firm shall not borrow money or securities from a person who is not a broking member on terms that the lender shall receive a consideration for such money or securities related to profits arising from the borrower's stockbroking business.
- 6.1.4 Nothing in 6.1.1, 6.1.2 or 6.1.3 shall in any way affect the rights of members to make bona fide payments to their wives, families or dependants for their maintenance, support or otherwise or to make payments of a charitable or philanthropic nature, provided that no such payment is made with the object or effect of evading the provisions of these rules.
- 6.1.5 Except as provided for in 4.4.4 and 4.5.5, an agreement in terms of which an employee receives, other than by way of a salary or bonus which the Committee considers to be reasonable, any profits of a member is prohibited. A broking firm may with the permission of the Committee enter into an arrangement with an employee in terms of which such employee shall receive a benefit which is not directly linked or related to the firm's brokerage or profits.
- 6.1.6 A broking firm or member shall not purchase from a person a service whether for the use of such firm or members or otherwise, with the object or effect of acquiring or retaining the stockbroking business of such person or of any person on whose behalf he acts. This shall not prohibit a broking firm or member from purchasing a publication or from using a service in the normal course of business at the price at which it is generally available.
- 6.1.7 No broking firm shall in connection with its broking business enter into a joint venture or other agreement of like nature without the consent of the Committee.
- 6.1.8
- (a) Where two broking firms act jointly for the same client in connection with a specific deal, notwithstanding anything contained in these rules, such firms may share brokerage payable in respect of such deal where the deal is concluded for such client and where the client has directed that brokerage earned in respect of the deal is to be shared between the two firms.
  - (b) It shall not be permissible for three or more broking firms to share brokerage in the circumstances set forth in 6.1.8(a).
  - (c) Where two broking firms share a substantial portion of their brokerage with one another in the manner and in the circumstances set forth in 6.1.8(a), the Committee may direct that the



practice of sharing brokerage shall cease forthwith or that the firms shall be deemed to be trading as partners and the firms concerned shall with effect from a date stipulated by the Committee comply with the provisions of the Act and the rules applicable to partnerships.

- 6.1.9 Subject to the provisions of 4.2.10, a broking firm acting on behalf of another broking firm may share brokerage with such firm in such proportion as may be decided between the two firms concerned. The executing broking firm shall not be entitled to pay any valuable consideration, other than brokerage, to the originating broking firm.
- 6.1.10 In respect of an order executed on behalf of a broking firm which has received the order from a member of a foreign stock exchange entitled to share brokerage in terms of 6.2.11, the amount allowed to the member of the foreign stock exchange shall be deducted before the balance is split between the executing broking firm and the originating broking firm in terms of their arrangement.

## 6.2 Rates of Brokerage on Securities, Option Transactions and Listed Gold Coins

- 6.2.1 A broking firm when acting on behalf of a client shall, where applicable, charge the prescribed brokerage and basic charge.
- 6.2.2 For transactions in shares and listed options and in debentures and notes which have inherent option rights or which are convertible either in whole or in part, or which are capable of paying a variable rate of interest dependent on any profit performance or proportional to the dividend on any related ordinary share, or a mixture of loan stock and equity with interest rate variable dependent on the profit performance, the charges shall be -
- (a) a flat basic charge of N\$15, plus
- (b) a brokerage rate in terms of the following scale:

Purchase or Sale Consideration	Brokerage
Up to N\$ 10 000	1,00%
Over N\$ 10 000 up to N\$ 20 000	0,85% on excess over N\$ 10 000
Over N\$ 20 000 up to N\$ 100 000	0,65% on excess over N\$ 20 000
Over N\$ 100 000 up to N\$ 500 000	0,50% on excess over N\$ 100 000
Over N\$ 500 000 up to N\$1 000 000	0,40% on excess over N\$ 500 000
Over N\$1 000 000	0,20% on excess over N\$1 000 000

(The above rates shall be subject to a minimum charge of N\$2,20 for any transaction);

- (c) limited in respect of both the basic charge and the applicable brokerage rate to each of the following categories:
- (i) All orders or portions of orders to buy the same security for the same principal which are executed during any one day;
- (ii) All orders or portions of orders to sell the same security for the same principal which are executed during any one day.

- 6.2.3 For transactions in letters of right, brokerage, depending upon the category for which the right to apply is afforded, shall be charged as if each right were a share or debenture or note, as the case may be.

- 6.2.4 (a) For capital stock carrying a fixed rate of interest, the charges shall be -
- (i) a flat basic charge of N\$15, plus
- (ii) a brokerage of 0,60 per cent of the purchase or sale consideration,
- (iii) limited in respect of both the basic charge and the applicable brokerage rate to each of the following categories:
- (aa) All orders or portions of orders to buy the same security for the same principal which are executed during any one day;
- (bb) All orders or portions of orders to sell the same security for the same principal which are executed during any one day;



The above rates shall be subject to a minimum charge for any transaction equal to the brokerage on 100 shares at N\$1 per share plus a flat basic charge of N\$30.

- (b) For debentures, notes and other loans with no inherent option or conversion rights and bearing a fixed rate of interest or a rate which varies solely with factors other than the profit performance of the company or any related ordinary shares, brokerage not exceeding 0,60 per cent of the purchase or sale consideration shall be charged. No basic charge shall be made.

6.2.5 In an option transaction brokerage and basic charge in terms of 6.2.2 shall be payable as follows:

- (a) brokerage on a call and on a put or call shall be payable -
- (i) on the amount of the option consideration at the time of the purchase of the option;
  - (ii) on the amount of the consideration for the securities when the option is exercised;
- (b) brokerage on a put shall be payable -
- (i) on the amount of the option consideration at the time of the purchase of the option;
  - (ii) on the amount of the consideration for the securities when the option is exercised;
- (c) in a transaction in a call, a put or a put or call, the basic charge shall be payable upon the exercise of the option.

6.2.6 (a) For transactions in gilts where the broking firm acts as an agent brokerage shall not exceed the following rates:

In transactions where the nominal value is -	Brokerage rate as a function of the yield to maturity
Up to N\$ 100 000	0,065 per cent
Up to N\$1 000 000	0,05 per cent
Over N\$1 000 000	0,03 per cent or at discretion

Broking firms may, at their discretion, charge a minimum brokerage of N\$10, and in transactions of under N\$100 000 nominal shall pass on to the client the relevant Gilt Clearing House charge (if any), which shall be separately shown on the brokers note.

- (b) No basic charge shall be payable in respect of transactions in gilts.
- (c) A gilt broking firm acting on behalf of a broking firm which is not a gilt broking firm may share brokerage with such firm in such proportion as may be decided between the two firms concerned.

6.2.7 Whenever any person requesting that a broking firm enter into any transaction -

- (a) aggregates a transaction on his own account with any transaction on behalf of a person for whom he is acting as an agent; or
- (b) aggregates the transactions of two or more persons for whom he is acting as an agent; or
- (c) while dealing in the securities on his own account intends to acquire or sell such securities or part of them on behalf of or to one or more persons whose investments are administered by him and otherwise than through a broking firm;

then that person shall disclose the nature of the transaction and the shapes which go to make the entire transaction and the prescribed brokerage shall be calculated and the basic charge made by the broking firm separately on each portion of the entire transaction. A separate broker's note shall be issued for each of the shapes.

6.2.8 In respect of dealings in listed gold coins, a flat basic charge of N\$15 and a brokerage rate in terms of the scale set forth in 6.2.2(b) shall be charged.

6.2.9 Notwithstanding anything in these rules contained broking firms may, in their discretion, make no charge or may charge a lesser amount than is herein provided only in transactions where the total consideration is not more than N\$200, or in any transaction entered into by a corporate member on behalf of a member of that corporate member who is a broking member or in any transaction entered into by a partnership on behalf of a partner.

6.2.10 The brokerage calculated in terms of these rules shall, where the amount thereof includes a fraction of a cent, be rounded up to the next highest cent.

6.2.11 The Committee may permit broking firms to allow members of a foreign stock exchange a share of brokerage in such circumstances as the Committee may direct and to the same extent that the members of such foreign stock exchange are permitted to share with the broking firms of the NSE: provided that -

- (a) such share of brokerage shall apply only to brokerage referred to in 6.2.2(b) and 6.2.4(b);
- (b) such share of brokerage shall be limited to one-third of the brokerage.

### 6.3 Marketable Securities Tax Chargeable to Clients

Any amount payable in terms of the Marketable Securities Tax Act, 1948, shall in every case be charged to clients.

### 6.4 Sworn Valuations

6.4.1 Every broking member who makes a sworn valuation of any securities shall charge therefor at the rate of N\$25 in respect of valuations up to and including five different securities and thereafter N\$2 for each additional different security valued.

6.4.2 Notwithstanding the provisions of 6.4.1 a broking member may, at his discretion, make no charge or may charge a lesser amount than provided therein only where the total value of the securities in any one valuation is less than N\$1 000.

## SECTION 7 BROKERS ASSETS AND ACCOUNTING RECORDS

7.1 The Committee may prescribe from time to time -

- (a) the classes of assets which shall be held by a broking firm for the purposes of the Act or the assets which shall be held as part of or in addition to the assets which a broking firm is required to hold in terms of the Act;
- (b) the basis on which such assets shall be valued;
- (c) the accounts and records which a broking firm shall maintain for the purposes of or in addition to the requirements of the Act and the period of time for which they shall be preserved;
- (d) whether such additional accounts and records shall be audited by the auditor approved by the Registrar in terms of the Act and lodged with the General Manager;
- (e) the period within which such accounts and records, duly certified by the said auditor, shall be lodged with the General Manager;
- (f) the certificates, statements or additional information which shall be lodged with the General Manager and the period within which such lodgement shall be made.

## SECTION 8 DEFAULTS/DEATHS

### 8.1 Defaults

- 8.1.1 A broking firm shall, as soon as it finds itself unable to meet its commitments, notify the General Manager in writing to that effect and, failing to make such notification, in the event of its members or directors being declared defaulters, they shall be ineligible for re-admission as broking members.
- 8.1.2 Should any broking firm default in respect of any stock exchange transaction or transaction in an unlisted gilt or in respect of any commitment to a broking firm, a user or the NSE arising from a NSE settlement system instruction, the counterparty broking firms or users shall forthwith notify the General Manager in writing of such default. No broking firm shall compromise with or accept a payment on account from any other broking firm in connection with any stock exchange transaction, a transaction in an unlisted gilt or a NSE settlement system instruction. A broking firm so compromising with or accepting payment on account from any other broking firm shall, in the event of the members or directors of such other broking firm being declared defaulters within six months from the date of such compromise or payment be liable at the discretion of the Committee to pay into the Stock Exchange Estate of the defaulters any money or securities received from such defaulters at the time of and subsequent to such compromise or payment, and the monies and securities so paid in shall be applied to liquidate the claims of broking firms who have become creditors of the defaulters subsequent to the date of such compromise or payment.
- 8.1.3 After a broking firm has given the notification provided for in 8.1.1 and 8.1.2, no arrangement entered into between such broking firm and its creditors, being broking firms, shall be binding or of effect against either party unless approved by the Committee.
- 8.1.4 (a) (i) If a broking firm is unable to meet its commitments to broking members, a NSE settlement system, or a non-member arising out of a stock exchange transaction, a transaction in an unlisted gilt, or a NSE settlement system instruction, the Committee shall declare -
- (aa) the broking member; or
  - (bb) the broking members who are partners in a partnership; or
  - (cc) the corporate member and the broking members who are its directors,
- to be defaulters as from the time at which the act of default occurred.
- (ii) If a broking firm fails to meet any particular commitment to a broking member, a NSE settlement system, or a non-member arising from a stock exchange transaction, a transaction in an unlisted gilt or a NSE settlement system instruction, the Committee may treat such broking firm as though it were unable to meet its commitments.
- (b) A broking member shall cease to be a broking member upon the passing of the resolution declaring him to be a defaulter. A defaulter shall cease to be a member upon being finally sequestrated or excused or, in the case of a corporate member, upon its final liquidation.
- (c) A notice to the effect that a broking member has been declared a defaulter shall be posted on the Stock Exchange Notice Board.
- (d) The Clearing House shall cease to act for a defaulter from the time at which the act of default occurred.
- (e) Immediately upon a broking member being declared a defaulter -
- (i) he shall hand over to the Committee all books and accounting records of his firm including all scrip registers, safe custody ledgers and cheque books, and all cash, securities and other assets relating to his stockbroking business including cash and control of securities held on behalf of clients in safe custody in a banking institution;
  - (ii) the Committee shall appoint an independent firm of chartered accountants at the cost of the NSE to audit the defaulter's books and accounting records in respect of the period ending on the date of default and to compile a list of creditors and debtors of the defaulter as at the day of default arising out of the stock exchange business carried on by the defaulter and to compile a statement of assets and liabilities of the defaulter as at the

- day of default in respect of that business. The Committee and the defaulter shall co-operate fully with the accountants in all respects in connection with that audit, including, but not limited to the production of the list of creditors and debtors and the statement of assets and liabilities as soon as is reasonably possible but in any event within three months from the date of default;
- (iii) the Committee shall, notwithstanding anything to the contrary contained in any lease between the defaulter and the lessor of the premises, have the right to occupy and forthwith take possession of any premises in which the defaulter carried on business at the date of default and the defaulter and his employees shall only enter these premises under the supervision of the Committee;
- but the Committee shall not withhold from the defaulter reasonable access to the books and accounting records of such defaulter or to the premises where the books and accounting records are held.
- (f) If it should appear from the statement of assets and liabilities referred to in 8.1.4(e)(ii) that the liabilities exceed the assets, and if within 14 days from the date of finalization of that statement of assets and liabilities no application has been made to a court of competent jurisdiction for the sequestration of the estate of the defaulter or, in the case of the default of a corporate member, for the liquidation of that corporate member, the defaulter shall by not later than 28 days after the said date take all requisite steps to the satisfaction of the Committee -
- (i) in the case of a natural member, for the surrender of his estate in accordance with the provisions of the Insolvency Act, 1936;
- (ii) in the case of a corporate member, for the winding up of that corporate member by the court in accordance with the provisions of the Companies Act, 1973,
- unless the Committee decide within that period by a majority of three-quarters of the members present at a meeting specially called for the purpose that special circumstances exist which make it undesirable for such action to be taken.
- (g) Upon receipt of the list of debtors and creditors referred to in 8.1.4(e)(ii) the Committee shall within five business days thereafter send to each creditor a notice informing him, inter alia -
- (i) of the amount owing to him by the defaulter according to the books and accounting records of the defaulter;
- (ii) of the powers conferred upon the Committee and the NSE by these rules;
- (iii) that he is entitled to institute, in his own right and at his own expense, action against the defaulter to recover the amount owing to him by such defaulter; and
- (iv) if he intends taking action in his own right, that he shall advise the Committee thereof within 30 days from the date of the notice by means of a letter sent by registered post or handed over personally to the Committee.
- (h) It shall be a specific condition of membership of the NSE and all stock exchange transactions shall be subject to a condition that -
- (i) should any creditor of the defaulter, other than the NSE, within 30 days from the date of the notice referred to in 8.1.4(g) not serve notice upon the NSE advising them that he is pursuing his claim against the defaulter in his own right, the NSE may at any time, and shall if the defaulter has not complied with the provisions of 8.1.4(f), at its own cost, take sole charge of and conduct in the name of such creditor any legal proceedings which it seems desirable to protect the interests of the Guarantee Fund, the NSE or the clients of the defaulter: provided that the NSE shall not be obliged to take or proceed with any such action if three-quarters of those present at a meeting of the Committee specially called for the purpose should decide that special circumstances exist which make it undesirable that any such action be taken;
- (ii) a creditor of the defaulter who has not served the notice referred to in 8.1.4(h)(i) shall be deemed to have given express irrevocable authority to any member of the Committee to sign all and any documents required for the purpose of any legal proceedings including the power of attorney to commence proceedings on behalf of the creditor;
- (iii) notwithstanding that a defaulter ceases to be a member on sequestration or excussion or, in the case of a corporate member on liquidation, the provisions of Section 8 shall continue to bind every defaulter after he ceases to be a member.

- 8.1.5 (a) In the event of a default the Committee shall appoint a Subcommittee of not less than three of its members to which it shall delegate the power -

- (i) to call meetings of creditors in the Stock Exchange Estate;
  - (ii) to summon the defaulter before such meetings;
  - (iii) to enter into an examination of every account;
  - (iv) to report irregularities to the Committee; and
  - (v) to manage and deal with the Stock Exchange Estate in conformity with these rules, NSE directives, Committee decisions and the usage of the NSE.
- (b) The Subcommittee shall cause a notice to be placed on the Stock Exchange Notice Board calling upon all broking members interested in the Stock Exchange Estate of the defaulter to file statements by a stated date of all amounts owing to and claims against the defaulter's Stock Exchange Estate.
- (c) Broking members who are debtors or creditors of the defaulter shall submit such statements by the stated date whether or not they consider that the Subcommittee will admit any or all transactions enumerated in such statements.
- (d) NSE settlement systems default procedures shall be binding upon defaulters, failed users, broking firms and users.
- (e) All claims shall be supported by such evidence from a NSE settlement system as may be considered necessary or, in respect of deals not subject to settlement through a NSE settlement system, by advice notes from the defaulter or advice notes from the claimant duly accepted when necessary by or on behalf of the defaulter. This shall not apply in the case of claims arising from loans of scrip against money, loans of money against scrip, general advances accounts and accounts of a similar nature.
- (f) No loan without reasonable security shall be admitted as a claim against the Stock Exchange Estate. Should any creditor in such Estate receive repayment in whole or in part of his loan from a member on the day of his default, he shall refund the amount so received for the benefit of the defaulter's Stock Exchange Estate. A secured creditor shall be entitled to claim from the Stock Exchange Estate the amount so refunded to the defaulter.
- (g) The Subcommittee shall accept as proof of claims arising from loans such evidence as it deems sufficient.
- (h) Amounts due by the defaulter to the NSE in terms of 4.8 shall be a first charge against such defaulter's Stock Exchange Estate.
- (i) Scrip lent to or borrowed from the defaulter and loans of money made upon security of scrip shall be treated as stock exchange transactions and prices fixed in accordance with 8.1.6.
- (j) A broking firm which is a creditor in a defaulter's Stock Exchange Estate shall not sell, assign, pledge or encumber its claim against such Estate to a non-member without the consent of the Subcommittee.

**8.1.6**

- (a) The Subcommittee shall decide on all claims to be admitted against and contributions to be made to the Stock Exchange Estate of the defaulter.
- (b) For the purpose of Section 8 -
- (i) Open transactions for settlement through the Clearing House between broking firms, users and the defaulter shall include -
    - (aa) all transactions that are not due for settlement in the current settlement period;
    - (bb) all uncompleted delivery instructions between nominated deliverers and receivers in the current settlement period;and shall exclude -
    - (cc) special bargains;
    - (dd) special bargain put-throughs;
    - (ee) partially completed transactions.
  - (ii) A nominated receiver or deliverer which, because of Clearing House procedures, incurs a loss in closing open transactions shall be reimbursed by the NSE and the NSE shall be entitled to claim the amount of such reimbursement from the Stock Exchange Estate of the defaulter.
  - (iii) "Partially completed transactions" means a transaction involving broking firms or users entered into in terms of these rules which have been completed except for the payment of a monetary accrual or delivery of a scrip accrual.
  - (iv) A defaulting broking firm shall not be entitled to any scrip that has been delivered to the Clearing House for its account by a deliverer and which is still in the defaulter's Clearing House box and has not been paid for by the defaulter. The General Manager shall

have the power to retrieve any scrip that such defaulter may have taken from the Clearing House box and for which the Clearing House has not been paid in full and which has not been pinned up so as to be identifiable as a client's property. Such scrip shall be returned to the deliverer by placing it in his Clearing House box and debiting his Delivery Account. The transaction to which such scrip relates shall be regarded as an open transaction and dealt with in accordance with 8.1.6(c).

- (v) In the event of a broking firm or the members of a broking firm being declared defaulters or a broking firm or user failing to pay its debit balance by the time required under the rules and directives or on demand or in the event of the securities and other property held for its account by the Clearing House being in the opinion of the General Manager insufficient to afford adequate security for its obligation to the Clearing House or failing on demand to furnish additional collateral, the General Manager in his discretion, having been unable to return the scrip to the deliverer under 8.1.6(b)(iv), may cause all or any of the securities or other property held by the Clearing House for the account of that broking firm or user to be sold. The proceeds of such sale shall be applied to the repayment of the defaulter's, broking firm's or user's debit and any surplus shall be paid over to the broking firm, user or the defaulter's Stock Exchange Estate, as the case may be.
- (c) The closing of transactions for settlement through the Clearing House shall be dealt with as follows:
  - (i) All open transactions and the uncompleted portions of partially completed transactions shall be closed on the day of default.
  - (ii) All differences shall be based on a price to be fixed by the Subcommittee.
  - (iii) Notwithstanding the provisions of this rule special bargains whether concluded by means of a put-through or otherwise and deals in unlisted securities with the exception of unlisted gilts shall be dealt with by the Subcommittee as it deems fit in the circumstances attaching to the bargain, deal and the default.
- (d) Monetary accruals on transactions for settlement through the Clearing House shall be dealt with as follows:
  - (i) Subject to the provisions of 8.1.6(d)(ii), particulars of all monetary accruals due to or by a broking firm in default as at the date and time of default shall be withdrawn from the Clearing House records and the broking firms concerned shall deal with claims or contributions in connection with such monetary accruals in accordance with this rule.
  - (ii) All monetary accruals due to or by a broking firm in default which have been included in a Clearing House statement for the settlement period current on that date shall be dealt with in terms of that statement. Settlement by other broking firms shall proceed normally. Any cash shortfall in respect of such defaulter's dividend settlement account shall be met by the NSE which shall claim the shortfall from the defaulter's Stock Exchange Estate. Any cash surplus shall be paid by the Clearing House to the Stock Exchange Estate of the defaulter.
  - (iii) In cases where a transaction has been completed except for the payment of a monetary accrual to the defaulter, the accrual shall not form part of the defaulter's Stock Exchange Estate but shall be paid or delivered by the broking firm concerned to the defaulter or to his executor or trustee, as the case may be.
  - (iv) In cases where a transaction has been completed except for the payment of a monetary accrual by the defaulter, the broking firm to whom the accrual is due, whether or not the accrual has been paid by the company, shall claim on the Stock Exchange Estate of the defaulter for the amount of the accrual: provided that no claim in respect of an accrual on a partially completed transaction shall be admitted if the accrual had been paid by the company more than seven business days prior to the default.
  - (v) In cases where a monetary accrual is due to the defaulter on an open transaction, whether or not the accrual has been paid by the issuer, the amount of the accrual shall be paid to the defaulter's Stock Exchange Estate.
  - (vi) Subject to the provisions of 5.11.1.1, in cases where a monetary accrual is due by the defaulter on an open transaction, whether or not the accrual has been paid by the issuer, the broking firm to whom the accrual is due shall claim on the defaulter's Stock Exchange Estate for the amount of the accrual.



- (e) Scrip accruals on transactions for settlement through the Clearing House shall be dealt with as follows: Scrip accruals which have not been converted into new and separate transactions in terms of 5.11.1.4 -
- (i) where a transaction has been completed except for the delivery to the defaulter of a scrip accrual on which no payment is due, such scrip accrual shall not form part of the defaulter's Stock Exchange Estate but shall be delivered by the deliverer to the defaulter or his executor or trustee, as the case may be;
  - (ii) where a transaction has been completed except for the delivery by the defaulter of a scrip accrual on which no payment is due, the broking firm or user to whom the accrual is due, whether or not the accrual has been delivered by the issuer, shall claim on the Stock Exchange Estate of the defaulter for the value of the accrual as fixed by the Subcommittee: provided that no claim in respect of an accrual due on a partially completed transaction shall be admitted if the accrual was delivered by the issuer more than seven business days prior to the default;
  - (iii) where an accrual is due to the defaulter on an open transaction whether or not the accrual has been delivered by the issuer, the value of the accrual as fixed by the Subcommittee shall be paid to the defaulter's Stock Exchange Estate;
  - (iv) where an accrual is due by the defaulter on an open transaction whether or not the accrual has been delivered by the issuer, the broking firm or user to whom it is due shall claim on the defaulter's Stock Exchange Estate for the value of the accrual as fixed by the Subcommittee.
- (f) In the event of the default of either party to a transaction in which one broking firm is acting as agent for the other, the Subcommittee may, provided it is satisfied that there has been no negligence on the part of the non-defaulting broking firm, admit claims based on balances due whether for cash or securities.
- (g) Open transactions for settlement through the Gilt Clearing House shall be dealt with as follows:
- (i) The Gilt Clearing House -
    - (aa) shall cease to act for a defaulter from the time at which the act of default occurred;
    - (bb) should the Committee so determine in terms of 11.3.6, shall cease to act for a failed user from the time of such determination;
    - (cc) in respect of an open transaction for settlement during the guarantee period, shall proceed in terms of 11.3.4.
  - (ii) All open transactions for settlement outside the guarantee period or which are not for offset shall be dealt with in terms of 8.1.6(c).
  - (iii) A nominated receiver or deliverer which, because of Gilt Clearing House procedures, incurs a loss in closing open transactions shall be reimbursed by the NSE and the NSE shall be entitled to claim the amount of such reimbursement from the Stock Exchange Estate of the defaulter.
  - (iv) A defaulting broking firm or a failed user shall not be entitled to any scrip that has been delivered to the Gilt Clearing House for its account by a deliverer or user and which is still in the Gilt Clearing House box of the defaulter or failed user and has not been paid for. The General Manager shall have the power to retrieve any scrip that such defaulter or failed user may have taken from the Gilt Clearing House box and for which the Gilt Clearing House has not been paid in full and which has not been pinned up so as to be identifiable as a client's property. Such scrip shall be retained by the Gilt Clearing House and sold out. The proceeds of such sale shall be applied to the repayment of any debit balance of the defaulter or failed user and any surplus shall be paid over to the defaulter's Stock Exchange Estate or to the failed user.
- (h) Open option positions shall be dealt with as follows:
- (i) TOCH shall administer open positions of the defaulter immediately upon receiving notice of default.
  - (ii) Open positions registered with TOCH by the defaulting broker on behalf of clients may be transferred to such other broking firm or firms as TOCH may designate after consultation with the client. Client margin records shall be transferred to the successor broking firm on behalf of the client. If no broking firm will accept such transfer timeously, TOCH shall have the power to close these positions.

- (iii) Open positions held in the defaulting broker's own account shall be promptly closed by TOCH.

8.1.7 General

- 8.1.7.1 (a) A broking firm owing an amount to and having a claim against the Stock Exchange Estate of a defaulter shall have the right of set-off in respect thereof.
- (b) In the event of a transaction between broking firms being in dispute and unsettled at the time of default, the Subcommittee shall have the power to investigate and decide such dispute, such decision being binding on both the defaulter and the counterparty to the deal.
- (c) Differences arising out of buying in securities in terms of 5.9.1.10 shall be allowed as claims in the defaulter's Stock Exchange Estate and any profit made thereon shall be paid to the defaulter's Stock Exchange Estate.
- (d) Subject to any right it may have to repudiate the contract for any lawful reason, a broking firm shall be responsible to its client for the due fulfilment of a transaction in the same manner as if such transaction had not been closed by the Subcommittee.
- (e) Notwithstanding 5.12.3.5, the admission or otherwise of claims against or contributions to the Stock Exchange Estate of a defaulter, which arise from transactions in securities the listing of which is suspended or terminated as at the time of default, shall be at the discretion of the Subcommittee. The Subcommittee shall have discretion also to fix prices at which such transactions shall be closed if admitted, irrespective of any action which may have been taken in terms of 3.1.3, 5.9.2, 5.9.3 and 5.9.4.
- (f) The NSE shall fund any shortfall between the amount of a defaulter's guarantees in respect of the NSE settlement systems and its actual liability to these systems. In such case the NSE shall have a claim for such amount against the defaulter and against its Stock Exchange Estate.
- 8.1.7.2 (a) A broking member whose estate is provisionally sequestrated or a corporate member which is placed in provisional liquidation or under provisional judicial management shall be automatically suspended during the period of such provisional sequestration, liquidation or judicial management. The broking members who are directors of that corporate member shall likewise be suspended.
- (b) A broking member whose estate is finally sequestrated or a corporate member which is finally placed in liquidation or under judicial management shall *ipso facto* cease to be a broking member and 3.19, 8.1.1 to 8.1.6, 8.1.7.3 and 8.1.7.4 shall apply in the same manner as if such insolvent were a defaulter.
- 8.1.7.3 The assets of the Stock Exchange Estate of a defaulter or insolvent shall consist of -
- (a) any stock exchange rights held by the defaulter or insolvent;
- (b) any difference paid to the General Manager in terms of 8.1.6;
- (c) any money or security paid to such Estate in terms of 8.1.2;
- (d) any amounts refunded in terms of 8.1.5(f);
- (e) any profit accruing to such Estate in terms of 8.2;
- (f) any dividend accruing from the Stock Exchange Estate of another defaulter or insolvent;
- (g) any cheque received from another member in respect of stock exchange transactions and which cheque has not been paid;
- (h) any amounts paid to such Estate in terms of 4.8.8;
- (i) any amount paid by a NSE settlement system to the Stock Exchange Estate.
- 8.1.7.4 Claims in respect of dishonoured cheques may, provided they otherwise comply with these rules, be admitted in a defaulter's or insolvent's Stock Exchange Estate if such cheques are dishonoured on the day of default or insolvency or within a reasonable time thereafter.
- 8.1.8 Rules 8.1.1 to 8.1.7 shall apply in respect of securities and other items which may be dealt in on the trading floor and in respect of unlisted gilts.

## 8.2 Deaths

- 8.2.1 On the death of a broking member having transactions open with a broking firm under these rules the Committee may, in its discretion, close any or all transactions on learning of the death of the broking member or on the date when each of such transactions would otherwise have respectively matured, and all differences shall be settled on a price to be fixed by the Committee. Should there be a profit on any of such transactions in favour of the deceased member such profit shall be paid by the General Manager to the executor of the deceased member if the Committee considers the deceased member's estate to be solvent. If the Committee considers the deceased member's estate to be insolvent such profit shall form part of such deceased member's Stock Exchange Estate and be dealt with in terms of the rules relating thereto.
- 8.2.2 Any transactions which are not closed by the Committee shall be dealt with by the executors in accordance with the terms of the transactions.
- 8.2.3 On the death of the sole proprietor of a broking firm or of a former broking member who had a residue of unsettled transactions, all transactions with the deceased that were recorded by a NSE settlement system but were not due for settlement at the date of death shall be withdrawn from the records of the relevant NSE settlement system. The counterparty broking firms shall settle all such transactions with the executor of the deceased member's estate. All uncompleted delivery instructions in the current settlement account of the Clearing House or that are due to be settled on the date of death and on the next business day in the case of settlement through the Gilt Clearing House, between a nominated deliverer or receiver, as the case may be, and the deceased shall be settled by such party direct with the executor of the deceased member's estate. Should the nominated deliverer or receiver incur a loss by so doing it shall be reimbursed by the NSE.

## SECTION 9

### GUARANTEE FUND

#### 9.1 The Executive Committee shall -

- (a) establish and maintain, to the satisfaction of the Registrar, a Guarantee Fund ("the Fund") out of which shall be paid claims up to an amount specified in the rules of such Fund in respect of liabilities arising while such member or corporate member was a broking member. Such payment shall be limited to claims arising out of transactions in securities with or on behalf of other persons by such member or corporate member of which such member was a director and such other liabilities as may be specified in this section;
- (b) administer the Fund according to the Rules of the Guarantee Fund (attached in Annexure 1 to these Rules).

#### 9.2 Subject to the provisions of 9.6.3(a) and 9.6.3(b) no payment in respect of a claim shall be made from the Fund until a broking member has been excused.

#### 9.3 For the purpose of this rule and the rules of the Fund -

- (a) *excused* means when the final liquidation and distribution account of the insolvent broking member, former broking member or corporate member or former corporate member has been confirmed by the Master of the Supreme Court in terms of the Insolvency Act (No. 24 of 1936) as amended;
- (b) *former broking member* shall include a deceased broking member where the context permits; and
- (c) *broking member* shall for the time being include to mean the NSE, until such time as there are three or more broking members, when the NSE shall no longer be included in this definition.

#### 9.4 The members of the Executive Committee shall be Trustees of the Fund and shall remain so for as long as they are members of the Executive Committee.

#### 9.5.1 Every broking member shall contribute from time to time to the Fund the amounts determined by the Trustees to make up any diminution in the Fund or to increase the size of the Fund.

#### 9.5.2 Every former broking member shall contribute from time to time to the Fund the amounts determined by the Trustees in order to make up any diminution in the Fund arising in respect of a default by a broking member which occurred while such former member was a broking member.

#### 9.5.3 All broking members shall be liable jointly to maintain the assets of the Fund at or above the minimum prescribed by the rules of the Fund.

#### 9.5.4 The Trustees shall have the right to recover in a court of competent jurisdiction any amount levied by the Trustees but not paid within the period laid down by the rules of the Fund.

#### 9.6.1 All broking members shall be liable jointly for any shortfall following the exhaustion of the assets of the Fund arising at any time.

#### 9.6.2 All former broking members shall be liable jointly with all broking members for any shortfall following the exhaustion of the assets of the Fund arising in respect of a default by a broking member which occurred while such former members were broking members.

#### 9.6.3 The liability of broking members and former broking members referred to in 9.6.1 and 9.6.2 shall be limited to the amount which together with the assets of the Fund, is required -

- (a) for the reimbursement in full, following the granting of a final sequestration order of the estate of a broking member or a former broking member or the final liquidation order of a corporate member or former corporate member, to the buyer or seller of securities, of monies paid by

such buyer or due to such seller in compliance with the provisions of Sections 22, 23, 24, 25, 26 and 27 of the Act in respect of -

- (i) securities that have not been allocated to such buyer by such member's broking firm as at the date of his default, and
  - (ii) securities of which such buyer is unable to obtain delivery and which he had not authorized such member's broking firm to retain for him in terms of 5.17.1.1, 5.17.1.2 and 5.17.1.3, and
  - (iii) cash received from a client with a written buying order and held by such member's broking firm for the purchase of securities prior to the purchase transaction being effected, and
  - (iv) any amount owing to a client in respect of securities sold by and delivered to such member's broking firm, and
  - (v) cash and securities lodged with such member's broking firm in respect of minimum cover;
- (b) for the reimbursement in full, following the granting of a final sequestration order of the estate of a broking member or former broking member or the final liquidation order of a corporate member or former corporate member to the buyer or seller of securities, of -
- (i) any cash retained by such member's broking firm on behalf of a client in terms of 5.9.1.7 and 5.9.1.8 for the purchase of other securities and any cash balance remaining after such purchase has been effected and which has not been deposited in the name of the client with NSE Trustees (Pty) Limited, and
  - (ii) cash and securities lodged with such member's broking firm as cover in addition to minimum cover as defined by the Act, including cover in respect of option transactions, and
  - (iii) option monies due to a client and held by such member's broking firm prior to the exercise of the option;
- (c) to reimburse losses other than those arising under 9.6.3(a) and 9.6.3(b), sustained by clients of the insolvent, deceased member or former member and arising out of transactions in securities entered into by such member's broking firm with or on behalf of other persons which reimbursement shall not exceed -
- (i) in the case of a natural person who was trading as a sole proprietor of his stockbroking business when he ceased to be a member, for transactions in all securities other than gilts, the sum of N\$100 000 and for transactions in gilts, a further sum of N\$100 000;
  - (ii) in the case of natural persons who were trading in partnership when any of them ceased to be members, for transactions in all securities other than gilts, the sum of N\$100 000 in the aggregate in respect of all the persons who were trading in partnership on the date any of them ceased to be members and for transactions in gilts, a further sum of N\$100 000 in the aggregate in respect of all the persons who were trading in partnership on the date any of them ceased to be members;
  - (iii) in the case of a corporate member or former corporate member for transactions in all securities other than gilts, the sum of N\$100 000 and for transactions in gilts, a further sum of N\$100 000;
- or a lesser amount which together with -
- (iv) any dividend which is paid or payable by the estate of the insolvent, deceased member or former member and by the estate of any previous partner of the insolvent, deceased member or former member and by the liquidator of any corporate member in liquidation and by the estate of any director or previous director of a corporate member in liquidation;
  - (v) any amount paid by any surety or in terms of any security provided in terms of 4.1.9; and -
  - (vi) any amount paid in terms of any insurance policy taken out by the NSE is sufficient to discharge the liabilities of the insolvent, deceased or corporate member in liquidation arising out of transactions in securities entered into by such member's broking firm with or on behalf of other persons.

9.6.4 For the purposes of 9.6.3(a) and 9.6.3(b), any cash held by a member's broking firm on behalf of a client in terms of a managed account or any other arrangement of the kind referred to in 5.20.1 and 5.20.2 at the time a purchase is made and any money which has been withdrawn from NSE Trustees (Pty) Limited to pay for a purchase made on behalf of a client shall constitute monies paid by a buyer

to a member's or former member's broking firm in compliance with the provisions of Sections 22, 23, 24, 25, 26 and 27 of the Act.

9.7 Without prejudice to the generality of the expression "losses" referred to in 9.6.3(c) the liability includes losses relating to -

- (a) any cash balance held by a broking firm, other than cash mentioned in 9.6.3(b)(i), on behalf of a client for the purchase of securities prior to the purchase transaction being effected or following a purchase of securities;
- (b) securities lodged by a client with a broking firm with instructions to sell such securities and where the securities remain unsold and of which the client is unable to obtain delivery from the broking firm;
- (c) securities accepted by a broking firm for safekeeping on behalf of a client in terms of 5.17.1.1, 5.17.1.2 and 5.17.1.3 and of which the client is unable to obtain delivery from the broking firm;
- (d) cash [other than cash referred to in 9.6.3(a), 9.6.3(b) and 9.6.4] and securities held by a broking firm in respect of managed accounts and of which the client is unable to obtain refund or delivery from the broking firm;
- (e) securities lodged by a client with a broking firm in excess of the number or amount sold as portion of a block certificate or similar document of title of which a client is unable to obtain delivery from such broking firm and which securities the client had not authorized the broking firm to sell for him or to retain in terms of 5.17.1.1, 5.17.1.2 and 5.17.1.3 on condition that the client cedes to the Fund his/her assets against payment from the Fund.

9.8 The rules of the Fund shall prescribe -

- (a) the basis upon which broking members shall contribute to the Fund and the period within which contributions shall be paid;
- (b) that the assets of the Fund shall at all times be at least N\$15 000 after provision has been made for all liabilities and contingent liabilities of the Fund;
- (c) the terms and conditions upon which all claims made upon the Fund shall be determined and paid. Such claims shall only relate to liabilities of an insolvent broking member or firm or former broking member arising out of transactions in respect of securities entered into by him or it with or on behalf of other persons while a broking member;
- (d) that no payment shall be made out of the assets of the Fund in respect of any claim relating to any liability to a person incurred when such person was -
  - (i) a broking member, or a former broking member; or
  - (ii) a member of a foreign stock exchange or a foreign dealer.

9.9 All claims on the Fund shall first be paid out of the proceeds of any claim on any insurance policy taken out by the NSE and any claims not so satisfied shall be claims against the assets of the Fund.

9.10.1 For the purposes of these rules and the rules of the Fund and subject to the provisions of 9.6 the maximum liability of the Fund to any person shall be -

- (a) the amount which a broking member owes such person at the time of the default of such member in respect of a transaction arising from the buying and selling of securities; and
- (b) in the case of a liability arising from securities held by a broking member in safe custody or as minimum cover or for any other purpose on behalf of such person, an amount equal to the market value at the time of default of such member of the securities which were not available for delivery to such person at the said time;

provided that any amount payable by the Fund to a person shall be reduced by any amount which such person owed the member at the time of default.

9.10.2 The Fund shall not be liable for any consequential loss suffered by a person as a result of any default including breach of contract, negligence or fraud by the member or for any loss of income or profits or for any loss sustained as a result of fluctuations in the market price of securities after the time of the default of such member.



- 9.10.3 All liabilities of the Fund shall be satisfied by payment by cheque and in no other manner.
- 9.10.4 The provisions of this rule shall apply *mutatis mutandis* in the case of the insolvency or liquidation of a broking member, a former member or a deceased member.

## SECTION 10 LISTINGS

### 10.1 Power to List Securities

The Committee shall have the sole and unfettered power -

- (a) subject to the provisions of the Act to grant a listing of securities, to review a listing annually and to suspend or terminate a listing of securities;
- (b) to prescribe from time to time the minimum requirements (including requirements relating to the financial standing, profit history and minimum number of shareholders) with which an issuer shall comply before each security issued by such issuer is granted a listing;
- (c) to prescribe from time to time the minimum requirements with which an issuer shall comply while a security issued by it remains listed;
- (d) to suspend, alter or rescind a requirement prescribed before or after a listing has been granted and to prescribe additional requirements from time to time;
- (e) to prescribe the circumstances under which a listing of a security shall or may be suspended or terminated;
- (f) subject to the provisions of the Act, to grant listings for series of options based on listed underlying securities.

### 10.2 Listings Fees

Until otherwise determined by the Committee, the fees for listing of securities shall be as follows:

- (a) Initial listing fee -
  - (i) in respect of gilts a fee of N\$1 000 when the listing is granted;
  - (ii) in respect of all other securities listed a fee, payable when the listing is granted, of a minimum of N\$10 000, calculated at N\$250,00 per N\$500 000 of issued equity shares listed on the NSE.
- (b) Notwithstanding the above, no such fee shall be payable in respect of -
  - (i) the listing of securities issued in exchange for any of the listed securities of another company;
  - (ii) the listing of a new security that is a direct replacement for a security already listed in respect of which a fee has been paid in terms of 10.2(a)(ii).
- (c) Annual revision fee

With effect from the commencement of the 1994 NSE year in respect of each class of security listed a revision fee in terms of the Act shall be paid in respect of each NSE year and which fee is not refundable if the listing is terminated. The fee shall be payable in March of each year except during the year in which the listing is granted and which shall be calculated as follows:

  - (i) In respect of gilts, a fee equivalent to 0,01 per cent of the nominal value of the class of security, with a minimum fee of N\$200 and a maximum fee of N\$5 000 and calculated to the nearest N\$10. The aggregate amount of fees payable by a single issuer of such stock shall be subject to a maximum of N\$10 000 in each year;
  - (ii) in respect of equity shares listed, a minimum of N\$1 000 and a maximum of N\$5 000 per year;
  - (iii) in respect of issuers with preference shares listed, an amount of N\$1 000;
  - (iv) in respect of issuers of any type of security other than ordinary shares, an extra amount of N\$1 000 per type of security.
- (d) Securities may be removed from the list unless fees due and unpaid are paid within one month after written notice of demand has been given under authority of the Committee.
- (e) The provisions of this rule shall not apply to the listing of traded options.

**10.3 Investigation or Suspension of Listing**

It shall be a condition of a listing of a security that -

- (a) the Committee may in its discretion and in such manner as it may deem fit, notify or cause to be notified to the public that it has -
  - (i) removed any security from the list,
  - (ii) suspended the listing of any security,
  - (iii) investigated dealings in a listed security,and it shall publish, as the case may be, the reasons for such removal, suspension or investigation or so much of its conclusions or findings as it may deem advisable;
- (b) no issuer of securities or its directors or officers may institute proceedings against the Committee or any member thereof or any person employed by the NSE or the Committee for damages where such proceedings arise by virtue of the publication of any statement made in terms of 10.3(a), unless it be proved by the complainant that such statement was published with the intention of injuring such complainant;
- (c) the Committee may at any time in its absolute discretion publish or cause, permit or authorize the proprietor or publisher of any newspaper or other periodical publication to publish any statement made in terms of 10.3(a).

**10.4 Application for a Listing**

- 10.4.1 In respect of an application for a listing, a notice of such application shall be posted on the Stock Exchange Notice Board and from the time of posting of such notice until the listing commences or the application is refused no member shall deal in the securities in respect of which the application is made.
- 10.4.2 In the event of the application being refused a notice to that effect shall be posted on such notice board.
- 10.4.3 Unless the Committee otherwise directs notice of an application for a listing shall not be posted on such notice board during trading hours. If such notice is placed on such notice board during trading hours an announcement to that effect shall immediately be made from the rostrum.
- 10.4.4 The provisions of this rule shall not apply to -
  - (a) an application in respect of additional shares of a class already listed;
  - (b) gilts;
  - (c) traded options.

## SECTION 11 SETTLEMENT SYSTEMS

- 11.1.1 The NSE may operate one or more settlement systems for broking firms and users and the Committee shall have the power from time to time to prescribe procedures and requirements with which broking firms and users shall comply and fees payable by them for the use of each settlement system.
- 11.1.2 In any matter relating to the settlement of a transaction through a settlement system where a user is involved, which is not specifically covered by these rules or NSE directives, the Committee shall, except in cases of extreme urgency, consult with any relevant consultative committee of users before reaching a decision. All decisions of the Committee shall be final and binding on users.
- 11.1.3 The NSE shall have a lien on any and all securities and other property of any broking firm or user held by any settlement system at any time for the account of a broking firm or user as security for all amounts due or which may from time to time become due to it and from the said broking firm or user.
- 11.1.4 A broking firm shall refund to the NSE any interest or other charge incurred through its failure to deposit timeously its cheque with a settlement system in full payment for the securities uplifted from that settlement system.
- 11.1.5 In the settlement of transactions, the NSE shall be the agent for the broking firms or users concerned.
- 11.1.6 Users may transact business with the NSE and through the NSE settlement systems as such only upon the basis that they are liable as principals in respect of such transactions, and by participating as users are deemed to have accepted such liability.
- 11.2 *The Clearing House* means the settlement system through the medium of which all transactions in Clearing House securities other than gilts and traded options are settled, and the following shall apply:
  - 11.2.1 A broking firm or user shall receive or deliver only the net balance of a particular security or incidental accrual as a consequence of its trading for settlement in the next settlement period, together with any undelivered items from previous settlement periods;
  - 11.2.2 All net cash payments shall be made to and by the Clearing House and scrip balances delivered to or received from the Clearing House;
  - 11.2.3 The Clearing House shall nominate broking firms and users which receive or deliver scrip, irrespective of who were the counterparties to the transactions being settled.
- 11.3 *The Gilt Clearing House* means the settlement system through the medium of which all Gilt Clearing House transactions shall be settled and the following shall apply:
  - 11.3.1 Settlement shall be either of individual transactions or of net balances due to or by brokers and users as a result of Gilt Clearing House transactions in a particular gilt for settlement on the same settlement day, as the Committee may decide. Payment shall accordingly be of net cash to or by the Gilt Clearing House or of cash in respect of individual transactions. In case settlement be of net balances due, the Gilt Clearing House shall nominate broking firms and users which receive or deliver scrip, irrespective of who were the counterparties to the transaction being settled.
  - 11.3.2 In connection with Gilt Clearing House transactions, users shall be bound by rules 5.5.2, 5.5.3 and 5.7.1 through to 5.7.9 inclusive, as if users were the broking firms or broking members referred to in those rules as appropriate.

- 11.3.3 *The guarantee period* means the day upon which a broking firms defaults or a user is declared a failed user, and the two succeeding business days, or such longer period as may be specified in NSE directives.
- 11.3.4 The NSE and broking firms and users concerned shall procure that except insofar as obligations to the defaulter or failed user are involved, every open transaction or settlement instruction due for settlement on any day during the guarantee period which involves a defaulter or a failed user is settled by the NSE buying in or selling out of stock or taking such other steps as may be necessary to procure that the obligations of the defaulter or failed user under such open transactions or settlement instructions are met. If it does not prove reasonably possible for the NSE to do so at a price which the Committee considers reasonable within a period which shall be stipulated in the NSE directives, the NSE and the broking firms or users concerned shall procure that the open transactions or settlement instructions referred to above are reversed at a make-up price, fixed by the Committee at a meeting called by the General Manager. The defaulter or failed user shall indemnify the NSE in respect of costs, charges and expenses thereby incurred by the NSE.
- 11.3.5 The Committee may declare a user a failed user if it fails to comply with any settlement instruction.
- 11.3.6 Upon a user being declared a failed user, it shall cease to be a direct participant in any NSE settlement system, unless the Committee determines otherwise, but shall continue to be bound by these rules or NSE directives insofar as applicable.
- 11.3.7
- (a) A margin arises when, between the date of a transaction in gilts to be settled through the Gilt Clearing House and the settlement of that transaction, there is a movement in interest rates such as to create a difference between the deal value and the current value of the stock.
  - (b) Broking firms shall cover on a daily basis adverse margins arising on open GCH transactions in which they are concerned, by paying in or guaranteeing funds to or by depositing stock with the Gilt Clearing House as provided by NSE directives. Broking firms shall have the right to call for corresponding cover on a similar basis from parties with whom they deal, other than users.
  - (c) Deposits with or guarantees given to the Gilt Clearing House shall constitute security to the NSE and to all participants in the Gilt Clearing House for the performance of the obligations of the covering broking firm in relation to the specific transaction in respect of which it was given, including the indemnity referred to in rule 11.3.4.
- 11.4 *The Traded Options Clearing House (TOCH)* means the settlement system through which all traded option transactions shall be settled.
- 11.4.1 Settlement shall occur on the business day immediately following the trade or assignment of an option exercise. Settlement of traded option transactions shall be on net balances due.
- 11.4.2 Payment shall be of net cash to or by TOCH or of scrip balances delivered to or received from TOCH or its agent.
- 11.4.3 TOCH shall have the power to allocate assignments of exercised options to clients of broking firms and TOCH participants who are option writers irrespective of whether these persons were parties to the original transactions with the option holder.

## SECTION 12

### NSE TRUSTEES (PTY) LIMITED

- 12.1 The Committee shall establish a company to be known as NSE Trustees (Pty) Limited to accept from clients of broking firms of the NSE all monies arising from time to time from managed accounts operated by broking members on behalf of such clients and from arrangements of the kind referred to in 5.20.1, 5.20.2, 5.20.3 and 5.21 and to repay to such clients or their order monies so accepted.
- 12.2 The NSE shall subscribe for and hold for its own account all the shares in the company.
- 12.3 The members of the Committee for the time being of the NSE shall be responsible for the operation of the company and shall nominate and elect members of the Committee as directors of the company.
- 12.4 The Committee shall satisfy the Registrar on an annual basis that the company holds adequate insurance cover against losses arising from the negligence, dishonesty or fraud of any person in the employ of the company or the NSE, or from theft.
- 12.5 All monies accepted by NSE Trustees (Pty) Limited shall be deposited with banking institutions and building societies (registered otherwise than provisionally in terms of the relevant acts) approved by the directors.
- 12.6 NSE Trustees (Pty) Limited holding monies on behalf of clients of a broking firm in terms of these rules shall pay to such broking firm the rate of interest which it may from time to time determine on such monies and may make a charge to such broking firm in respect of the services so rendered by that company.



## SECTION 13 MISCELLANEOUS

### 13.1 Acceptance of Signature of Issuer

Should any letter be received on the letterhead of any issuer purporting to be signed by a director, officer or other representative thereof, the Committee shall be entitled to accept such letter as evidence that such person was authorized to write and sign such letter on behalf of that issuer.

### 13.2 Effective Date of Rules

- 13.2.1 A rule which was in force immediately prior to the commencement of any of these rules shall be of full force and effect in regard to all contraventions or breaches of the said rule and all such contraventions or breaches shall be dealt with in terms of such rule.
- 13.2.2 Any transaction and other agreement entered into and any obligation assumed by a broking member in terms of a rule, directive, instruction or decision of the Committee which was in force and of effect immediately prior to the date of commencement of any of these rules (including a rule, directive, instruction or decision pertaining to membership of the NSE and the stock exchange rights of a member) shall remain in force and of effect as fully as if the provisions set forth in the rule, directive, instruction or decision under which such transaction or agreement was entered into or obligation assumed, as the case may be, were contained in these rules as an integral part thereof.
- 13.2.3 Save where otherwise provided the provisions of any of these rules and any amendment thereto shall apply to any transaction or agreement entered into on or after the date of commencement of the rule or any amendment thereto.
- 13.2.4 Until the Committee determines otherwise, settlement of transactions entered into prior to any amendment of the rules for completion after the effective date for the coming into force of such amendment shall be governed by the rules in force as at the date upon which the transaction was entered into.

## SECTION 14

### TRADED OPTIONS MARKET

- 14.1 The rules in this section are applicable to all traded options transactions: save that rules 14.13 and 14.14 specifically govern traded index options and shall prevail over the general rules in this section in the event of a conflict.

14.2 **Definitions**

In this Section 14 -

*American option* means an option that can be exercised at any time prior to its expiry;

*assigned writer* means the writer assigned by TOCH to perform the contractual obligation under the option;

*assignment* means notification given by TOCH to a writer that a holder has exercised an option written by the writer and that the writer is, therefore, obliged to perform under the terms of the option;

*at-the-money* means a call or put whose exercise price is approximately the same as the current market price of the underlying security;

*authorized bank* means a financial institution which has been approved by the Committee and has entered into an agreement with TOCH in respect of -

- (a) the issuing of guarantees for a TOCH participant's margin requirements, and
- (b) such other services as may be determined by the Committee;

*bank account* means a bank account established by a TOCH participant with the TOCH bank for traded option transactions;

*call* means an option under which the holder has the right to require a writer assigned by TOCH to sell the underlying security;

*cash-settled* means that the obligation of the writer of an option is settled by delivery of cash;

*class or class of option* means all options of the same type (either puts or calls) covering the same underlying security;

*closing index value* means the last index value calculated on a business day;

*closing purchase transaction* means a traded option transaction which reduces or eliminates a short position;

*closing sale transaction* means a traded option transaction which reduces or eliminates a long position;

*direct participant* means any person permitted by the Committee to establish a direct contractual relationship with TOCH;

*European option* means an option that can be exercised only on its expiry;

*exercise* means notification given to TOCH that the holder of an option requires a writer to perform in terms of such option;

*exercise price or strike price* means the specified price at which the underlying security may be purchased or sold upon the exercise of an option;

*exercise settlement date* means the date for settlement of a traded option transaction resulting from exercise of an option;

*expiry* means the time at which the option expires;

*holder* means the owner of an option contract;

*index* means the value of a portfolio of underlying securities based on a weighted arithmetic formula so that changes in the value of the index correlate with changes in the value of the portfolio;

*index multiplier* means the amount specified in the index option by which the difference between the index settlement value and the exercise price is multiplied to determine the settlement consideration;

*index settlement value* means, in respect of a particular index, the level of the index as published by the NSE and designated as the settlement price;

*index value* means the official value published by the NSE for any index;

*in-the-money* means a call whose exercise price is below the current market price of the underlying security or a put whose exercise price is above the current market price of the underlying security;

*long position* means a person's ownership as the holder of one or more options;

*margin* means cash or collateral which is deposited to the order of TOCH to ensure that the writer of an option can at all times fulfil his obligations;

*mark-to-market* means determination of the market value of an underlying security at periodic intervals;

*net daily premium* means the net premium payable to or by TOCH on settlement of a traded option transaction;

*open* or *open position* means an option which has been registered by TOCH and has not -

- (a) been the subject of a closing transaction,
- (b) been exercised or assigned, or
- (c) expired;

*opening purchase transaction* means a traded option transaction which creates or increases a long position;

*opening sale transaction* means a traded option transaction which creates or increases a short position;

*option* or *traded option* means a standardized option contract issued by the NSE, listed and traded on TOM, and cleared and settled through TOCH;

*out-of-the-money* means a call whose exercise price is above the current market price of the underlying security or a put whose exercise price is below the current market price of the underlying security;

*person* means an individual, partnership, association, company, trust or any other form of legal entity;

*premium* means the price of an option agreed upon between the purchaser and the seller in a traded option transaction;

*put* means an option under which the holder has the right to require a writer assigned by TOCH to buy the underlying security;

*registered* means that a traded option transaction has been -

- (a) confirmed by the executing broking firms and, if applicable, the direct participant,
- (b) recorded with TOCH, and

- (c) the required premium and margin payments have been received by TOCH and credited by TOCH to the appropriate accounts;

*scrip-settled* means that the obligation of the writer of the option is settled by delivery of the underlying security;

*series* or *series of option* means all options of the same class having the same exercise price and expiry date;

*settlement price* means the value of the underlying security of an exercised cash-settled option determined daily by TOCH for the day TOCH receives the notice of exercise;

*short position* means a person's interest as the writer of one or more options;

*strike price* or *exercise price* means the specified price at which the underlying security may be purchased or sold upon the exercise of an option;

*TOCH* means the Traded Options Clearing House which is the system through which all traded option transactions are registered, cleared and settled;

*TOCH bank* means a bank which has been registered, other than provisionally, in terms of the relevant act, and which has been approved by the Committee and has entered into agreements with TOCH to create a system of accounts under the control of TOCH;

*TOCH participant* means any broking firm or any direct participant;

*TOM* means the Traded Options Market;

*TOM floor* means the trading floor determined by the Committee upon which options are traded;

*TOM rules* means the rules, directives, practice and usage of TOM in effect from time to time;

*traded option transaction* means a transaction for the purchase or sale of an option, or involving the exercise and assignment of such option;

*Trading Authorization Agreement* means either -

- (a) the contract between a broking firm and its client, in the form prescribed by the Committee, which defines the relationship among TOCH, the broking firm and its client in regard to traded option transactions and which requires (among other things) that the account be operated in accordance with NSE rules, directives and the custom and practices of TOM and that such client agrees to abide by such rules directives and practices; or
- (b) the contract between TOCH and a direct participant, in the form prescribed by the Committee, which defines the relationship among TOCH, the direct participant and the broking firm in regard to traded option transactions and identifies the services to be provided by TOCH, and which requires (among other things) that the account be operated in accordance with NSE rules, directives and the custom and practice of TOM and that such client agrees to abide by such rules, directives and practices;

*underlying security* means -

- (a) in respect of an option other than an index option, a security (or its equivalent value) which the assigned writer shall be obliged to sell or purchase upon the valid exercise of the option, or
- (b) in respect of an index option, the index value;

*writer* means the person who, directly or indirectly, executes an opening sale transaction thus agreeing to perform the obligations under an option written pursuant to TOM Rules.

### 14.3 Business Conduct

- 14.3.1 Any broking firm may deal in options provided that it complies at all times to the satisfaction of the Committee with such rules, directives and Committee decisions as may be currently in force in relation to traded options.
- 14.3.2 A broking firm shall take all reasonable steps to ensure that in executing business on behalf of a client it deals to the best advantage of that client.
- 14.3.3 A broking firm may deal in options as an agent on behalf of a client or as a principal for its own account. No broking firm shall deal directly or indirectly for its own account except with another broking firm, provided that the provisions of 5.12.4.2(a)(i) (relating to correction of a mistake) shall apply when necessary.
- 14.3.4 (a) All transactions in options shall be done on the TOM floor by means of open outcry during the trading hours determined from time to time by the Committee.  
(b) No transactions in options shall be concluded outside the specified trading hours.  
(c) An order to deal in an option as an agent on behalf of a client shall have priority over an order to deal in an option in the same series at the same price for a broking firm dealing as a principal for its own account.

### 14.4 Underlying Securities

- 14.4.1 The underlying securities of options traded in TOM shall be approved by the Committee.
- 14.4.2 The approval of the underlying security for any option may be withdrawn by the Committee if such underlying security fails to meet current requirements for listing or for any other reason deemed by the Committee to warrant such withdrawal.

### 14.5 Terms of Options Contracts

- 14.5.1 The terms of each option shall be determined by the Committee prior to the time the series is opened for trading.
- 14.5.2 The Committee shall determine when new series of options are to be created and the terms of such series. The opening of a new series shall not affect the terms of other series of the same class previously opened.
- 14.5.3 (a) Notwithstanding the provisions of 14.5.2, the Committee, in its sole discretion may, where there has been a fundamental change in the underlying security, adjust the terms of the option and the exercise price initially established for a series.  
(b) No adjustment shall be made in respect of a declaration of a dividend unless otherwise determined by the Committee.  
(c) Notice of any adjustment shall be posted on the TOM floor and advised to all broking firms.

### 14.6 General Business

- 14.6.1.1 No broking firm shall accept an order from a client to purchase or write an option unless the client's account has been opened in accordance with the provisions of the rules and directives.
- 14.6.1.2 (a) A broking firm shall not deal on behalf of a client, other than a client who is a direct participant, unless the prescribed Trading Authorization Agreement has first been signed by the client, recorded by TOCH and is in the possession of the broking firm concerned.  
(b) No broking firm shall deal on behalf of a direct participant unless the prescribed Trading Authorization Agreement has first been signed by the direct participant and TOCH has issued the required direct participant authorization number.

- 14.6.1.3 TOCH, on behalf of broking firms, shall promptly furnish a statement of account and, if so determined by the Committee, a brokers note to a client confirming each traded option transaction executed. The statement of account and brokers note shall state the underlying security, type of option, expiry, exercise price, number of contracts, premium, charges, brokerage, any applicable tax, date of transaction and settlement date, and shall indicate whether the transaction is a purchase or sale, and whether an opening or closing transaction.
- 14.6.1.4 No broking firm shall, in respect of a traded option transaction, indemnify a client against any trading loss arising after the execution of the transaction.
- 14.6.2.1 Securities and financial instruments approved by the Committee which are lodged as margin for a traded option transaction shall be deposited with the TOCH bank and shall be -
- (a) registered as directed by TOCH,
  - (b) recorded and so distinguished that ownership can be established at all times, and
  - (c) irrevocably held to the order of TOCH.
- 14.6.2.2 All dividends and interest payments attributable to securities deposited pursuant to 14.6.2.1, shall be the property of the client or the broking firm, as the case may be, and, if payment of such amounts is made to the TOCH bank, the amounts shall be held or distributed according to the instructions of the client.

#### **14.7 Monies and Securities Lodged with TOCH**

- 14.7.1 Monies and securities received by a broking firm from a client for the purpose of engaging in traded option transactions shall be deposited with TOCH by the broking firm before the end of the business day immediately following receipt of such monies and securities by the broking firm.
- 14.7.2 Monies deposited with TOCH on behalf of a client or by a TOCH participant for the purpose of traded option transactions shall be deposited with NSE Trustees (Pty) Limited on behalf of TOCH and the client/TOCH participant and identified by the name of the client or TOCH participant.
- 14.7.3 All rights in respect of these monies shall vest in TOCH absolutely and the client's/TOCH participant's rights in respect of such monies shall be limited to the right to receive payment of an amount equal to the balance after discharge of all obligations owed by the client/TOCH participant to TOCH or the broking firm. All rights in respect of the monies are in addition ceded to TOCH as security.
- 14.7.4 TOCH may make withdrawals of these monies to cover any obligations of the client/TOCH participant arising from traded option transactions without requiring the client/ TOCH participant to authorize each such withdrawal.

#### **14.8 Trading Practices and Procedures**

- 14.8.1 The unit of trading in each series of option traded on TOM shall be one contract.
- 14.8.1.1 Bids and offers to be effective shall be made by public outcry on the TOM floor.
- 14.8.1.2 Bids and offers shall be expressed in terms of cents per share of the underlying security.
- 14.8.1.3 Changes in bids and offers shall be in amounts prescribed from time to time.
- 14.8.1.4 Bids and offers made on the TOM floor shall be deemed to be for one contract unless a specific number is expressed in the bid or offer.
- 14.8.1.5 All bids or offers made and accepted in accordance with these rules shall constitute binding contracts.



- 14.8.2.1 No broking firm shall trade or participate in any traded option transaction unless such business has on that day been exposed to the TOM floor by making a bid or an offer, as the case may be.
- 14.8.2.2 Bids or offers that do not immediately result in a traded option transaction may be recorded on the price displays on the TOM floor.
- 14.8.2.3 Sales prices in respect of every traded option transaction shall be recorded in the TOM trading system and the buyer and the seller shall independently of each other ensure that the prices are so recorded.
- 14.8.3.1 The number of contracts in a single series or class which may be held or written by any person or several persons acting in concert may be limited to such number as may be prescribed from time to time.
- 14.8.3.2 The number of contracts in a single series or class which may be exercised during a business day by any person or several persons acting in concert, may be limited to such number as the Committee may from time to time determine.
- 14.8.4 The Committee shall provide a separate system to be known as "TOCH" through which all traded option transactions shall be registered, cleared and settled.
- 14.8.5 The Committee, in its sole discretion, may temporarily halt trading in any option in the interests of a fair and orderly market. Among the factors that may be considered by the Committee in effecting such a halt are when -
- (a) trading in the underlying security has been halted or suspended;
  - (b) trading in such underlying security has been delayed because of unusual circumstances; or
  - (c) other unusual conditions or circumstances are present.
- 14.8.6 Trading in an option that has been halted under 14.8.5 may be resumed upon a determination by the Committee that the conditions which led to the halt are no longer present or that the interests of a fair and orderly market are best served by a resumption of trading.
- 14.8.6.1 If the listing of an underlying security is suspended or terminated, the option may, nevertheless, be exercised. (This may be necessary where the option expires during the period of suspension.) In such event, the time of settlement and settlement consideration shall be prescribed by the Committee.
- 14.8.6.2 Trading halts shall not extend the term of an option.
- 14.8.6.3 Where the approval of the underlying security is withdrawn in terms of 14.4.2, no trading may take place in the option unless otherwise determined by the Committee provided that a closing purchase or closing sale transaction in respect of such option may be executed.

#### 14.9 Put-through Transactions

Rules 5.12.5.1 through to 5.12.5.1(b)(xii) shall apply to traded option transactions. The provisions of 5.12.5.1(b)(vii) and 5.12.5.1(b)(viii) shall apply to all put-through traded option transactions irrespective of value. As used in rule 5.12.5.1(b)(i), the reference to "prices board" shall mean the TOM price displays and the term "stock" shall mean the option. The recording of prices for put-through transactions shall, in respect of options, be recorded on the TOM price displays and not on the equity trading prices board. The clearing house referred to in 5.12.5.1(b)(ix) shall mean TOCH.

#### 14.10 Foreign Transactions

A traded option transaction effected with a foreign counterparty shall be executed on a client basis and TOM rules shall be applicable to any such transaction including margin requirements, brokerage and other charges.

#### 14.11 Margin

- 14.11.1.1 No person may enter into an opening sale transaction for or on behalf of any person without first depositing with TOCH the prescribed margin. A broking firm shall be responsible for the collection of margin from a client and depositing it with TOCH; except that in the case of a direct participant margin shall be deposited directly with TOCH. Margin requirements for TOM transactions shall be set by the Committee from time to time taking into account the need for protection of the NSE, broking firms and their clients.
- 14.11.1.2 The Committee may, from time to time, change the amount and type of margin which may be required in respect of any option.
- 14.11.2 The margin required to be furnished by a TOCH participant shall be deposited at the times set by the Committee.
- 14.11.3 Securities deposited as margin with TOCH shall be registered in the name of TOCH Nominees (Pty) Limited and shall be deposited with the TOCH bank. Such securities shall be recorded and distinguished so that they can at all times be identified as belonging to the person who has deposited such margin.
- 14.11.4 The Committee may waive, in whole or in part, conditionally or unconditionally, the lodgement of margin that would otherwise be required to be made by a TOCH participant upon a determination that such waiver -
- (a) is advisable in the interests of maintaining a fair and orderly market or is otherwise advisable in the public interest or for the protection of investors; and
  - (b) is consistent with maintaining the financial integrity of TOCH and the NSE.
- 14.11.5.1 On the assignment of an option, margin held by TOCH shall not be returned to the writer until he has discharged his liability under the option.
- 14.11.5.2
- (a) Subject to 14.11.5.1, margin may be withdrawn only upon written request by a TOCH participant.
  - (b) If the account holder is a direct participant, return of margin may be made direct to the direct participant.
  - (c) Where a client is not a direct participant, return of margin shall be made to the client through his broking firm.
  - (d) Provided that in respect of a scrip-settled call option where the margin is in the form of the underlying security it may be released by TOCH to the broking firm which is due to deliver it to the Clearing House against payment to TOCH, in a form determined by the Committee from time to time, of the net consideration of the option exercise transaction.

#### 14.12 Exercise, Assignment and Delivery

- 14.12.1 The Committee shall establish procedures for the exercise of options including procedures whereby options are automatically exercised by TOCH and may prescribe special requirements in certain circumstances for the exercise of any option.
- 14.12.1.1 Settlement after the exercise of a cash-settled option shall take place on the business day immediately following the lodgment of an exercise notice with TOCH and amounts payable by an assigned writer for cash-settled options shall be paid on such day.
- 14.12.1.2 The exercise of a scrip-settled option shall result in a transaction being recorded in the Clearing House at close of business on the exercise settlement date and settlement shall be effected according to the procedures of the Clearing House. Such settlement shall be subject to Clearing House fees, charges and brokerage.

- 14.12.2 The holder of a scrip-settled option shall only be entitled to a dividend or any other accrual in respect of which the underlying security is "cum" dividend if he has exercised the option at least one business day prior to the record date.

#### 14.13 Index Options

- 14.13.1 A particular index upon which an index option is traded shall be created and approved by the Committee. All securities that are the basis for the calculation of the index shall meet the requirements set out in 14.4.

- 14.13.1.1 The NSE shall disseminate the index value on a basis to be determined by the Committee.

- 14.13.1.2 The NSE shall record and maintain information identifying the securities whose prices are the basis for calculation of the index and the method used to determine the index value and the settlement consideration.

- 14.13.2.1 Trading in index options shall be temporarily halted whenever the Committee deems such action appropriate in the interests of a fair and orderly market. Among the factors that may be considered by the Committee in effecting such halt are when -

- (a) all trading has been halted or suspended in some or all of the underlying securities;
- (b) the current calculation of the index derived from the current market prices of the securities is not available; or
- (c) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

- 14.13.2.2 Trading in index options of a class or series that has been the subject of a halt or suspension by the Committee may resume if the Committee determines that the conditions which led to the halt or suspension are no longer present or that the interests of a fair and orderly market are best served by a resumption of trading.

- 14.13.3.1 Bids and offers for index options shall be expressed in terms of cents for the index.

- 14.13.3.2 Minimum amounts of changes to premium bids and offers and other contract specifications for index options shall be set by the Committee from time to time.

#### 14.14 Disclaimers

- 14.14.1 Notwithstanding anything to the contrary contained in these Rules, directives or decisions of the Committee, the NSE shall not be responsible or liable to any person for the accuracy, integrity or value of the NSE indices or any data included therein in connection with the trading of index options, or for any other use.

- 14.14.2 The NSE shall not be responsible or liable to any person for any damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating the index value or in the dissemination of prices resulting from an act, condition or cause beyond the control of the NSE, including, but not limited to, an act of God, fire, flood, extraordinary weather conditions, war, insurrection, riot, strike, accident, action of government, communications or power failure; equipment or software malfunction, any error, omission or delay in the reporting of transactions in one or more underlying securities, or any error, omission or delay in the reporting of any index value of the NSE.

#### 14.15 Brokerage, Fees and Other Charges

- 14.15.1 For TOM transactions brokerage, fees and other charges shall be levied as follows:

- (a) A basic charge equal to the charges of TOCH as determined by the Committee from time to time, plus

(b) Brokerage calculated as follows -

Option Premium	Brokerage
Up to N\$10 000	3,0%
Over N\$10 000 and up to N\$25 000	N\$300 plus 2,0% on excess over N\$10 000
Over N\$25 000 and up to N\$50 000	N\$600 plus 1,5% on excess over N\$25 000
Over N\$50 000	N\$975 plus 1,0% on excess over N\$50 000

The above rates shall be subject to a minimum charge of N\$20 for any transaction or such other amount as the Committee may from time to time determine.

(c) The above charges shall be limited in respect of both the basic charge and the applicable brokerage rate to each of the following categories -

- (i) where all orders or portions of orders to buy the same series of an option for the same principal which are executed during any one day through the same broking firm, or
- (ii) where all orders or portions of orders to sell the same series of an option for the same principal which are executed during any one day through the same broking firm.

14.15.2 Rule 6.2.10 (rounding a fraction of a cent) shall apply to all agency transactions in options.

14.15.3 No brokerage or basic charge in terms of 14.15.1 shall be charged for the exercise of a scrip-settled option.

14.15.4 Any fees and charges incurred as a result of lodging margin shall be paid by the client.

14.15.5 The holder of a cash-settled option who exercises the option or where such option is automatically exercised, shall incur the same charges as the buyer or seller of an option. In calculating these charges, the premium shall be based upon the intrinsic value of the option which shall be defined as the difference between the exercise price and the settlement price. The assigned writer shall not incur any charges.

#### 14.16 Restriction or Suspension of Trading of a TOCH Participant

14.16.1 A TOCH participant or client which is unable to meet its obligations when due or which is insolvent shall immediately notify TOCH by telephone and confirm such notification immediately by telefax or telegram or cause such notification and confirmation to be made on its or his behalf.

14.16.2 The Committee may summarily restrict or suspend the trading of a TOCH participant which is in default of delivery of funds or margin to TOCH, or is in such financial or operating difficulty that the Committee, in its sole discretion, believes that restriction or suspension is necessary for the protection of TOCH, the NSE, other TOCH participants and investors.

14.16.3 Upon the restriction or suspension of trading of a TOCH participant, TOCH shall immediately notify all other TOCH participants accordingly. Such notice shall state, in general terms, how pending transactions, open positions, exercised contracts and other matters shall be dealt with.

## **Annexure 1**

# **Namibian Stock Exchange**

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## ***Rules of the Guarantee Fund***





## **RULES OF THE NSE GUARANTEE FUND**

### **1. Name**

The name of the Fund shall be the Namibian Stock Exchange Guarantee Fund, hereafter referred to as "the Fund".

### **2. Separate Identity**

The Fund shall be a separate legal person capable of owning property in its own name and of suing and being sued in its own name.

### **3. Trustees**

3.1 The members of the Committee for the time being of the Namibian Stock Exchange ("NSE") shall be the Trustees of the Fund. The NSE shall be the secretary of the Fund.

3.2 The affairs of the Fund shall be administered by the Trustees at meetings of the Committee of the NSE held in terms of the Rules of the NSE ("the NSE Rules").

### **4. Administration and Investments**

4.1 The Trustees shall open a banking account with a banking institution (registered otherwise than provisionally in terms of the Banks Act, 1965) in Windhoek in the name of the Fund and shall have the power to draw and endorse cheques and other negotiable instruments connected with the business of the Fund. All monies constituting or accruing to the Fund shall, pending the investment or application thereof, in accordance with the Stock Exchanges Control Act, 1985 ("the Act"), or these Rules, be paid into the said banking account. The Trustees shall have power to close the banking account and open an account with another banking institution so registered.

4.2 Subject to these Rules the Trustees shall have exclusive administration and control of all assets belonging to the Fund and of the income arising therefrom. Such assets or income shall be applied or invested by the Trustees in the manner hereafter provided and in no other manner, that is to say-

- (a) if necessary all the assets of the Fund shall be used to meet claims on the Fund in terms of these Rules;
- (b) not less than 50 per cent of the total assets of the Fund shall be invested -
  - (i) on deposit with a banking institution or a building society (registered otherwise than provisionally in terms of the relevant Act);
  - (ii) in bills, bonds, debentures or stock issued or guaranteed by the Government of the Republic;
  - (iii) in stock of any local authority in the Republic authorized by law to levy rates upon immovable property;
  - (iv) in debentures or stock of the Reserve Bank or such other similar body constituted or established by/or under law.
- (c) monies not invested in the manner set forth in 4.2(b) above shall be invested in accordance with sound financial principles in securities as defined in the Act, in such manner as the Trustees deem fit;
- (d) all contributions levied in terms of these Rules together with the income arising from the Fund shall from time to time be invested in the manner set forth in 4.2(b) and 4.2(c) until the aggregate value of the assets of the Fund has reached the amount determined by the Registrar of Financial Institutions ("the Registrar") in terms of 5.2.3, after which such income may be applied for the purposes set forth in that Rule.

- 4.3.1 In selecting securities for the Fund, the Trustees shall follow an investment policy which shall have as its primary objectives a reasonable level of current income and maximum stability for capital invested. To achieve this objective, the securities normally to be included in the Fund shall consist of financially sound ordinary shares, to be acquired at fair market prices, and financially sound fixed income securities embracing stock, preference shares, debenture stock, debenture bonds or unsecured notes.
- 4.3.2 The securities shall be registered in the name of the Fund and shall be deposited in a safe custody account in the name of the Fund with a banking institution (registered otherwise than provisionally in terms of the relevant Act).
- 4.3.3 Notwithstanding anything contained in these Rules the Trustees shall be empowered to sell, exchange, or redeem any investment. The Trustees may, from time to time, determine what proportion of the monies in the Fund may be retained for the immediate requirements of the Fund and what proportion may be invested.
- 4.4 Save as may otherwise be determined by the Trustees from time to time, all contracts, deeds and instruments of a like nature and all drafts, cheques or orders drawn on banks or building societies against any account of the Fund in any bank or building society shall be signed by one of the Trustees and the secretary of the Fund.

## 5. Fund Assets

- 5.1 The Trustees shall hold the assets of the Fund in trust and shall apply such assets for the purposes set forth in these Rules read with the relevant Rules contained in Section 9 of the NSE Rules on the basis that if there should be any conflict or discrepancy between the NSE Rules and these Rules, the NSE Rules shall prevail. No withdrawal or appropriation of any part of the assets of the Fund shall be made without special authorization by the Trustees.
- 5.2.1 For the purposes of this Rule 5.2 and 6.3.2(b) the expression "the net assets of the Fund" shall mean the assets of the Fund, valued at market value from time to time, less provisions made from time to time by the Trustees at their discretion for all actual and contingent liabilities of the Fund.
- 5.2.2 The net assets of the Fund shall at all times be at least R15 000. Should the net assets of the Fund at any time fall below R15 000 the Trustees shall levy contributions from broking members or broking firms or both sufficient to bring the net assets of the Fund to R15 000.
- 5.2.3 When the net assets of the Fund exceed R10 million or such other amount as the Registrar may determine from time to time, after consultation with the Trustees, the Trustees shall, until such time as the net assets of the Fund are diminished to less than R7,5 million -
- (a) cease to levy contributions other than the initial contributions referred to in 6.3.1; and
  - (b) be entitled at their discretion, but in accordance with such conditions as the Registrar may determine, to apply the income arising from the assets of the Fund and any initial contributions referred to in 6.3.1 which may be received from time to time -
    - (i) for strengthening the financial resources of the NSE as an institution, or
    - (ii) for reducing the cost of buying and selling listed securities by members of the public through members of the NSE, or
    - (iii) for reducing the listing and revision fees payable by the issuers of securities listed on the NSE.
- 5.2.4 If for any reason the net assets of the Fund are diminished to less than R7,5 million, the Trustees shall again levy contributions and shall in terms of 4.2(b) and 4.2(c) again invest the income arising from the assets of the Fund and all contributions received by the Trustees, subject always to the provisions of 5.2.3.

## 6. Contributions

- 6.1 Broking members or broking firms or both shall contribute to the Fund as hereinafter provided, and such contributions together with assets already in the Fund and all other sums which may accrue to the Fund shall constitute the assets of the Fund.
- 6.2.1 All contributions referred to in these Rules (other than the initial contributions referred to in 6.3.1) shall be made not later than one month after the Trustees have informed the member or former member or broking firm of the amount he or it is liable to contribute.
- 6.2.2 The Trustees shall have the right to recover in a court of competent jurisdiction any amount levied by the Trustees but not paid within the period referred to in 6.2.1 or 6.3.1.
- 6.3.1 Any natural person who becomes a broking member shall forthwith pay an initial contribution of R800 to the Fund, provided that should a broking member become a non-broking member and within two years thereafter while still a non-broking member revert to a broking member, he shall not be liable to again contribute a sum of R800 but shall be liable for all contributions levied while he was a non-broking member which he would have been liable to pay if he had remained a broking member.
- 6.3.2 In addition to the initial contribution referred to in 6.3.1 -
- (a) all broking members shall be liable jointly for any shortfall following the exhaustion of the assets of the Fund at any time and all former broking members shall be liable jointly with all broking members for any shortfall following the exhaustion of the assets of the Fund arising in respect of a default by a broking member which occurred while such former members were broking members;
  - (b) all broking members shall be liable jointly to build the net assets of the Fund up to and maintain them at the minimum referred to in 5.2.2;
- 6.3.3 Notwithstanding any liability which may arise in terms of 6.3.2(a) and 6.3.2(b), the Trustees may, at any time in their discretion, levy contributions for the purpose of making up any diminution in the Fund or of increasing the size of the Fund -
- (a) from broking members on a per capita basis or from broking firms on a turnover basis or both;
  - (b) from former broking members in respect of any diminution in the Fund arising in respect of a default by a broking member which occurred while such former member was a broking member;
  - (c) separately on a basis relative to turnover in equities or relative to turnover in gilts or together on a basis of total turnover of equities and gilts; or
  - (d) on such other basis as the Trustees may decide in their absolute discretion from time to time.
- 6.4 Subject to 10, no broking member, broking firm or former broking member shall be entitled at any time to any refund of contributions paid in terms of these Rules.

## 7. Liabilities of the Fund

- 7.1 With the exception of payment of the liabilities referred to in 7.2(a) and 7.2(b), no payment shall be made from the Fund in respect of a claim -
- (a) against a natural person who was trading as a sole proprietor of his stockbroking business when he defaulted, until his estate has been sequestrated and excused;
  - (b) against natural persons who were trading in partnership when any of them defaulted, until the estates of all the partners have been sequestrated and excused;
  - (c) against a corporate member, until the corporate member has been wound up and excused and the estates of all the persons who were directors of the corporate member when it defaulted have been sequestrated and excused;

- (d) against the executor of a deceased broking member or of a deceased former broking member, until the executor of the estate of such deceased member elects to wind up the estate as an insolvent estate and the estate has been excused;

and for the purposes of the Rules, "excused" shall have the same meaning as contained in Rule 9.3 of the NSE Rules.

- 7.2 The liability of broking members and former broking members referred to in 6.3.2(a) shall be limited to the amount which, together with the assets of the Fund, is required -

- (a) notwithstanding 7.1 and against receipt of the cessions referred to in 7.3, for the reimbursement in full, following the granting of a final sequestration order of the estate of a broking member or a former broking member or the final liquidation order of a corporate member or former corporate member, to the buyer or seller of securities, of monies paid by such buyer or due to such seller in compliance with the provisions of Sections 22, 23, 24, 25, 26 and 27 of the Act in respect of -
  - (i) securities that have not been allocated to such buyer by such member's broking firm as at the date of his default; and
  - (ii) securities of which such buyer is unable to obtain delivery and which he had not authorized such member's broking firm to retain for him in terms of Rules 5.17.1.1, 5.17.1.2 and 5.17.1.3 of the NSE Rules; and
  - (iii) cash received from a client with a written buying order and held by such member's broking firm for the purchase of securities prior to the purchase transaction being effected; and
  - (iv) any amount owing to a client in respect of securities sold by and delivered to such member's broking firm; and
  - (v) cash and securities lodged with such member's broking firm in respect of minimum cover.
- (b) notwithstanding 7.1 and against receipt of the cessions referred to in 7.3, for the reimbursement in full, following the granting of a final sequestration order of the estate of a broking member or former broking member or the final liquidation order of a corporate member or former corporate member, to the buyer or seller of securities, of -
  - (i) any cash retained by such member's broking firm on behalf of a client in terms of Rules 5.9.1.7 and 5.9.1.8 of the NSE Rules for the purchase of other securities and any cash balance remaining after such purchase has been effected and which has not been deposited in the name of the client with NSE Trustees (Pty) Limited; and
  - (ii) cash and securities lodged with such member's broking firm as cover in addition to minimum cover as defined by the Act, including cover in respect of option transactions; and
  - (iii) option monies due to a client and held by such member's broking firm prior to the exercise of the option.
- (c) to reimburse losses other than those referred to in 7.2(a) and 7.2(b) sustained by clients of the insolvent, deceased member or former member and arising out of transactions in securities entered into by such member's broking firm with or on behalf of other persons which reimbursement shall not exceed -
  - (i) in the case of a natural person referred to in 7.1(a), for transactions in all securities other than gilts, the sum of R1 million;
  - (ii) in the case of a partnership referred to in 7.1(b), for transactions in all securities other than gilts the sum of R1 million in the aggregate in respect of all the persons who were trading in partnership on the date any of them ceased to be members and for transactions in gilts, a further sum of R1 million in the aggregate in respect of all the persons who were trading in partnership on the date any of them ceased to be members;
  - (iii) in the case of a corporate member or former corporate member, for transactions in all securities other than gilts, the sum of R1 million and for transactions in gilts, a further sum of R1 million;or lesser amount which together with -
  - (iv) any dividend which is paid or payable by the estate of the insolvent, deceased member or former member and by the estate of any previous partner of the insolvent, deceased member or former member and by the liquidator of any corporate member in liquidation and by the estate of any director or previous director of a corporate member in liquidation;
  - (v) any amount paid by any surety or in terms of any security provided in terms of Rule 4.1.9 of the NSE Rules; and

(vi) any amount paid in terms of any insurance policy referred to in 8.1(d), is sufficient to discharge the liabilities of the insolvent, deceased or corporate member in liquidation arising out of transactions in securities entered into by such member's broking firm with or on behalf of other persons.

7.3 Payment of any amount payable in terms of 7.2(a) or 7.2(b) shall only be made against a valid cession to the Trustees of all claims that the client has against the insolvent, deceased member or former member.

7.4 For the purposes of 7.2(a) and 7.2(b) any cash held by a member's broking firm on behalf of a client in terms of a managed account or any other arrangement of the kind referred to in Rules 5.20.1 and 5.20.2 of the NSE Rules at the time a purchase is made and any money which has been withdrawn from NSE Trustees (Pty) Limited to pay for a purchase made on behalf of a client shall constitute monies paid by a buyer to a member's or former member's broking firm in compliance with the provisions of Sections 22, 23, 24, 25, 26, and 27 of the Act.

7.5 The liability of broking members, former broking members and the Fund -

- (a) shall, without prejudice to the expression "losses" referred to in 7.2(c), include the losses referred to in Rule 9.7 of the NSE Rules;
- (b) shall be limited as set out in Rule 9.10.1 of the NSE Rules;
- (c) shall not include consequential loss, as set out in Rule 9.10.2 of the NSE Rules.

## 8. Claims

All claims on the Fund by or on behalf of clients of the insolvent's or deceased's broking firm -

- 8.1
- (a) shall be submitted in writing to the Trustees who shall be entitled to accept such evidence as they deem sufficient as proof of the liabilities referred to in 8;
  - (b) shall, if accepted by the Trustees, be paid subject to these Rules direct to such clients and the amount of such payments shall not form part of the assets of the insolvent's or deceased's estate or of the corporate member in liquidation;
  - (c) shall be satisfied by payment by cheque and in no other manner;
  - (d) shall first be paid out of the proceeds of any insurance policy taken out by the NSE and the balance of any accepted claims not so met shall be paid out of the assets of the Fund.

8.2 No payment shall be made out of the assets of the Fund in respect of any claim relating to any liability to a person incurred when such person was -

- (a) another broking member or firm, or
- (b) a member of a foreign stock exchange or a foreign dealer as defined in Rule 1.4 of the NSE Rules.

## 9. General

9.1 For the purpose of these Rules -

- (a) a partnership shall be deemed to have continued in existence until it has been dissolved with the consent of the Committee of the NSE, and
- (b) "broking firm" and "broking member" shall have the same meaning respectively as contained in Rule 1.4 of the NSE Rules;
- (c) "former broking member" shall include a deceased broking member where the context permits.

9.2.1 The Trustees may, as a condition on which they may settle any claim under 8 require evidence or affidavits sworn to by the claimant, his Trustee in insolvency or any other persons in support of such claim, and the production for inspection of all documents in the possession or power of the claimant relating to the claim.

- 9.2.2 Failure by the claimant to comply within a reasonable period with any of the requirements of the Trustee under this Rule shall be ground upon which the Trustees may reject his claim.
- 9.3 The whole of the expenses in connection with or incidental to the management or administration of the Fund including the cost of audit and legal expenses shall be borne by the Fund.
- 9.4 The Trustees shall cause proper accounting records relating to the Fund to be kept and shall cause such accounting records to be audited in respect of each year ended on the last day of February by a person registered as an accountant and auditor under the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951) and who publicly carries on the profession of an accountant and auditor and shall not later than three months after the said date in each year, or within such further period as the Registrar may allow, transmit to the Registrar a copy of the accounts and balance sheet of the Fund for the said year certified by the said auditor and accompanied by a copy of his report.
- 9.5 Any notice to be given to broking members shall be properly given if given in terms of Rule 4.10.8 of the NSE Rules or any amendment thereof.
- 9.6 The Rules of this Fund may be amended in the same manner as the Rules of the NSE may now or hereafter be amended, provided that every amendment shall be subject to the approval of the Registrar.
- 9.7 Subject to the Act and these Rules, the decision of the Trustees in regard to the administration of the Fund and other matters arising thereout shall be final.

#### 10. Winding Up

If the NSE should be wound up or otherwise dealt with as envisaged in Rule 2.10 of the NSE Rules -

- (a) the assets of the Fund shall be used, subject to these Rules, in discharging -
  - (i) first all claims against the Fund which are accepted by the Trustees in terms of these Rules;
  - (ii) thereafter all claims against the NSE as envisaged in Rule 2.10.6 of the NSE Rules,
- (b) the balance (if any) of the assets of the Fund shall be deemed to become assets of the NSE.