

## **SECTION 1**

### **GENERAL**

#### **1.1 Role of the CSE Clear (Private) Limited as a Clearing House**

The Clearing House, a wholly owned subsidiary of the CSE, was incorporated on 28<sup>th</sup> March 2016 as a private company with limited liability under the Companies Act No. 07 of 2007.

The Clearing House has been licensed by the SEC in terms of the SEC Act to operate and maintain a clearing facility for the purpose of clearing and settlement of securities transactions on the CSE.

The Clearing House provides clearing and settlement services as the Central Counterparty that guarantees clearing and settlement of securities transactions, other than for certain securities transactions identified by the Clearing House in Rule 2.3. With regard to those securities transactions which are identified in Rule 2.3, the Clearing House will provide clearing and settlement services by making available the clearing and settlement facility to Clearing Members for the clearing and settlement of such securities transactions. The Clearing House will not act as a Central Counterparty or guarantee clearing and settlement of securities transactions on the CSE which are identified in Rule 2.3.

#### **1.2 Application of the Rules**

The Clearing House Rules are issued by the Clearing House in terms of Section 36 (4) of the SEC Act in the discharge of its duties as a licensed clearing house under the SEC Act, including the obligation to act in the public interest having regard to the need to protect investors.

These Rules;

- (a) apply to all transactions that are cleared or settled through the Clearing House; and,
- (b) operate as a binding contract between the Clearing House and each Clearing Member, and between the Clearing Members of the Clearing House.

A Clearing Member who utilizes the clearing and settlement services of the Clearing House shall be liable as principal for all obligations incurred in relation to that service, whether the Clearing Member is acting on its own behalf or on behalf of another person or is acting through another person.

#### **1.3 Waivers or Variation**

##### **(a) Power of the Clearing House to Waive/Vary the Rules**

The Clearing House may, at its discretion, waive the application of a Rule governing matters of a procedural nature (in whole or part) to suit particular circumstances, with prior notice to the SEC, unless the Rule specifically prohibits such waiver. Such waivers may be granted subject to conditions as the Clearing House considers appropriate.

**(b) Failure or delay to not deemed a waiver**

No failure or delay by the Clearing House to exercise or enforce any rights conferred upon it by these Rules shall be deemed to be a waiver of any such rights or operate so as to bar the subsequent exercise or enforcement thereof.

**1.4 Circulars and Operational Guidelines/Procedures**

The Clearing House may, from time to time, issue;

- (a) circulars to the Clearing Members of the Clearing House to supplement or explain these Rules (Circulars); and
- (b) operational guidelines and procedures in the form of letters to the Clearing Members for administrative purposes (Operational Guidelines).

These Circulars and Operational guidelines and procedures issued by the Clearing House, may be unilaterally issued, amended or revoked by the Clearing House subject to the SEC Act and shall be effective on the date specified by the Clearing House.

**1.5 Limitation of Liability**

Neither the Clearing House, its successors and/or assignees, nor its directors, officers, employees or agents will be liable to the Clearing Members or any person for any loss or damage (including consequential or indirect loss or damage), however caused or arising, including but not limited to any loss or damage arising directly or indirectly from or in connection with the following or anything done or not done as a direct or indirect consequence of the following:

- (a) any failure, error, delay, security breach or malfunction of the Clearing or Settlement facilities operated by the Clearing House whether or not identified or identifiable provided the Clearing House is able to demonstrate that it has taken due care to ensure the non-occurrence or mitigation of such failure, delay, security breach or malfunction;
- (b) the access to, use of or inability to use the Clearing or Settlement facilities operated by the Clearing House other than due to the negligence or fault of the Clearing House;
- (c) anything done (including any statement made) or omitted to be done in the course of, or in connection with the exercise of rights or the discharge or purported discharge of the Clearing House's obligations or rights under the SEC Act, any other applicable law, or under these Rules;
- (d) any breach or failure of any Clearing Member to comply with these Rules;
- (e) the insolvency or the acts or omissions of any of the Clearing Members;
- (f) the insolvency or the acts or omission of the appointed settlement bank(s) of the Clearing House;
- (g) the acts or omission of the CSE and the CDS;

- (h) any failure, security breach, inoperability or malfunction of equipment, software or any other product supplied to a Clearing Member or in respect of its installation, maintenance or removal, provided the Clearing House is able to demonstrate that it has taken due care to ensure the non-occurrence or mitigation of such failure, security breach, inoperability or malfunction;
- (i) the exercise of a decision-making or regulatory power or discretion under these Rules;
- (j) any virus or other destructive, malicious, or corrupting program, code, agent, script or macro other than due to the negligence or fault of the Clearing House;
- (k) any errors, inaccuracy, omissions or delay in the calculation of margins;
- (l) the originality, accuracy, adequacy, timeliness or completeness of the settlement system or any content, information, materials, images, sounds, graphics, video and other materials displayed therein or any functionalities or applications, programs or services provided therein other than due to the fault or negligence of the Clearing House;
- (m) any information transmitted or received by or on behalf of the Clearing House or a Clearing Member, including through the settlement system, or the interception of or access to such information by unauthorized persons.

Further and for the avoidance of doubt, the Clearing House has no obligations or liabilities under these Rules or otherwise, to any person other than a Clearing Member or its settlement banks, as the Clearing House has no contractual relationship with the Clients of a Clearing Member.

## **1.6 Indemnity**

Each Clearing Member shall indemnify the Clearing House, its directors and employees and hold each of them harmless against all costs, fees, expenses, liabilities and damages of any nature whatsoever suffered or incurred by them directly or indirectly as a result of or in connection with the following matters:

- (a) the participation in any of the services or facilities of the Clearing House by the Clearing Member or the Clearing Member's activities in any of the services or facilities and all matters relating thereto as contemplated in these Rules;
- (b) the failure by the Clearing Member to comply with these Rules, Circulars, Operational Guidelines/Procedures and any Agreement (including without limitation the representations and warranties contained therein) or to comply with any conditions imposed on the Clearing Member by the Clearing House;

the actions and/or omission by the Clearing House, its directors and employees in reliance on any instructions or communication believed in good faith by any of them to have been given by or on behalf of the Clearing Member, or the failure of the Clearing Member to give instructions to the Clearing House as contemplated in these Rules.

## **1.7 Action by the Clearing House**

Except where action of the Board of Directors is specifically required by these Rules, the Chief Executive Officer of the Clearing House or any person acting on his or her behalf shall act on behalf of the Clearing House in respect of its Clearing or Settlement functions.

No act carried out or omitted to be carried out by the Clearing House in good faith in connection with or for the purpose of these Rules shall subject any person acting on behalf of the Clearing House, including;

- (a) any member of the Board of Directors, or any member of any committee established by any the Board of Directors,
- (b) any officer assigned to carry out Clearing or Settlement functions of the Clearing House, and
- (c) any agent of, or any person acting under the direction of the Clearing House, to any liability whether personally or otherwise.

If any matter which arises in connection with or relating to Clearing or Settlement functions of the Clearing House is not provided for in these Rules, the Clearing House shall have the right to determine such matter. Any such determination shall be binding on the Clearing Members.

## **1.8 Notices and communications with Clearing Members**

Any notice and/or communication by the Clearing House to any Clearing Member in terms of these Rules or otherwise may be issued through any method or means of communication available to and as may be deemed appropriate by the Clearing House. Such notice and/or communication shall be deemed to have been received by and/or delivered to the Clearing Member, if:

- (a) by email, upon its dispatch from the server of the Clearing House,
- (b) by fax, upon generation of transmission confirmation by the facsimile transmitter,
- (c) by courier, upon delivery to the Clearing Member.

## **1.9 Forms**

All forms and other documents issued and/or prescribed by the Clearing House in connection with carrying out the Clearing or Settlement functions of the Clearing House in terms of these Rules, may be varied by additions, deletions, exclusions at the sole discretion of the Clearing House.

## **1.10 Amendments to these Rules**

Subject to the approval of the SEC in terms of the SEC Act, the Clearing House may amend the provisions of these Rules from time to time

## **1.11 Transitional Provisions**

From the Commencement Date, all securities transactions on the CSE shall be cleared and settled by CSE Clear (Private) Limited as the Licensed Clearing House and clearing and settlement services in respect of securities transactions on the CSE by Central Depository Systems (Private) Limited, after such date, shall be limited to and only be in respect of those securities transactions on the CSE carried out prior to the Commencement Date which remain outstanding as at end of trading of the Market day immediately preceding the Commencement Date.

Further, the SBL Module referred to in Rule 16 hereof, which was previously operated by Central Depository Systems (Private) Limited shall, from the Commencement Date, be operated exclusively by CSE Clear (Private) Limited. In pursuance thereof, all rights, powers, duties and obligations of Central Depository Systems (Private) Limited in respect of any outstanding SBL Transactions carried out prior to the Commencement Date on the SBL Module, have been transferred to and assumed by CSE Clear (Private) Limited. All requirements imposed by Central Depository Systems (Private) Limited in terms of the Clearing House Rules of the Central Depository Systems (Private) Limited in respect of such outstanding SBL Transactions shall be deemed to be requirements imposed by CSE Clear (Private) Limited in terms of these Rules and all actions of the Clearing Members and Central Depository Systems (Private) Limited taken under Clearing House Rules of the Central Depository Systems (Private) Limited in respect of such outstanding SBL Transactions shall be deemed to be actions taken by such Clearing Members and CSE Clear (Private) Limited under these Rules.