

297B/2015

PROPOSED AMENDMENTS TO THE JSE EQUITIES RULES AND DIRECTIVES

General explanatory notes:

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

Proposed amendments to the equities rules

Section1: Interpretation and definitions

1.40 In the rules –

“BEE Act”	means the Broad-Based Black Economic Empowerment Act, 2003(Act No. 53 of 2003);
“BEE certificate”	means a certificate issued by a verification agency accredited by the accreditation body contemplated in the BEE Codes, certifying that the person identified in the certificate is a BEE compliant person;
“BEE Codes”	means the Broad-Based Black Economic Empowerment Codes of Good Practice gazetted from time to time under the BEE Act;
“BEE compliant person”	means as interpreted by the courts, from time to time – <ol style="list-style-type: none"> (a) as regards a natural person, one who falls within the ambit of the definition of “<i>black people</i>” in the <u>relevant BEE ownership scheme [BEE Codes]</u>; (b) as regards a juristic person having a shareholding or similar member’s interest[s], one who falls within the ambit of the definitions of BEE controlled company or BEE owned company, using the [flow-through] principles <u>for determining control or ownership as contemplated in the relevant BEE ownership scheme[BEE Codes]</u>; (c) as regards any other entity, any entity similar to a BEE controlled company or BEE owned company using the [flowthrough] principles <u>for determining control or ownership as contemplated in the relevant BEE ownership scheme, [BEE Codes]</u> which would enable the issuer of securities owned or controlled by such entity to claim points <u>or obtain similar BEE recognition</u> attributable to the entity’s ownership of the securities pursuant to the BEE Codes <u>or applicable legislation imposing a BEE obligation</u>;
“BEE contract”	means the prescribed contract which the proposed registered owner of BEE securities and, if the registered owner will act as a nominee on behalf of a beneficial owner, the proposed beneficial owner of those BEE securities must conclude, in terms of which, <i>inter alia</i> – <ol style="list-style-type: none"> (a) the registered owner or, if the registered owner will act as a nominee on behalf of a beneficial owner, the beneficial owner warrants that he is a BEE compliant person;

- (b) the necessary restrictions, limitations and requirements are imposed by the issuer on the registered owner and the beneficial owner in order to achieve the continued ownership of BEE securities by BEE compliant persons;
- (c) the parties to the contract are bound by generic terms applicable to all issuers and by additional specific terms relevant to a particular issuer's BEE securities contained in the issuer's constitution; and
- (d) the beneficial owner indemnifies the registered owner against any claim made against the registered owner in the event that, in terms of the BEE contract, –
 - (i) the registered owner is obliged to dispose of the BEE securities; or
 - (ii) the issuer of the BEE securities exercises its right to repurchase or its right to nominate its nominee to purchase the BEE securities from the registered owner thereof;

“BEE controlled company”	<u>means a juristic person, having shareholding or similar members interest, in which black participants enjoy a right to exercisable voting rights of an amount specified in the rules of the BEE ownership scheme; [has the same meaning as defined in Schedule 1 of the BEE Codes];</u>
“BEE issuer verification agent”	<u>means the agent appointed by an issuer of BEE securities in terms of the relevant BEE ownership scheme that is responsible for –</u> <ul style="list-style-type: none"> (a) <u>ensuring that the prevailing BEE terms and conditions of the BEE ownership scheme have been accepted by the proposed registered owner or, if the registered owner will act as a nominee on behalf of a beneficial owner, the proposed beneficial owner; and</u> (b) <u>verifying that persons wishing to acquire BEE securities issued by that issuer qualify as BEE compliant persons as set out in the BEE ownership scheme and providing confirmation of that verification to the member through whom the BEE securities are being purchased;</u>
“BEE owned company”	<u>means a juristic person, having shareholding or similar members interest, that is BEE controlled, in which black participants enjoy a right to economic interest in an amount specified in the rules of the BEE ownership scheme; [has the same meaning as defined in Schedule 1 of the BEE Codes];</u>
“BEE ownership scheme”	<u>means an issuer ownership scheme that –</u> <ul style="list-style-type: none"> (i) <u>complies with the rules prescribed for broad-based ownership schemes as set out in Annexe 100 B of the BEE Codes and specifies the means of verification to be adopted in determining the eligibility of beneficial owners in respect of BEE securities;</u> <li style="text-align: center;"><u>or</u> (ii) <u>is governed by its own BEE scheme documents in accordance with applicable BEE legislation, to the satisfaction of the JSE;</u>
“BEE securities”	means the securities in respect of which the issuer requires that the registered owners or, if the registered owners are nominees for beneficial owners, the beneficial owners, are BEE compliant persons for a period of time as prescribed by the issuer;

“BEE terms and conditions” means the prevailing terms and conditions of the BEE ownership scheme entered into, amongst others, between the issuer of BEE securities and the proposed registered owner of BEE securities and, if the registered owner will act as a nominee on behalf of a beneficial owner, the proposed beneficial owner of those BEE securities, in terms of which, *inter alia* –

- (a) the registered owner or, if the registered owner will act as a nominee on behalf of a beneficial owner, the beneficial owner warrants that he is a BEE compliant person; and
- (b) the necessary restrictions, limitations and requirements are imposed by the issuer on the registered owner and the beneficial owner in order to achieve the continued ownership of BEE securities by BEE compliant persons;

Section 8: Conduct of business

8.65 Transactions in BEE securities

8.65.1 As trading in BEE securities is restricted to BEE compliant persons, no person may purchase BEE securities unless -

8.65.1.1 the person who will be the registered owner; or

8.65.1.2 if the proposed registered owner will be acting as a nominee on behalf of a beneficial owner, the beneficial owner,

qualifies as a BEE compliant person. **[and that person has signed a BEE contract as provided for in these rules.]**

8.65.2 A member may not purchase BEE securities for its own account unless the member qualifies as a BEE compliant person and, subject to the manner of verification specified in the relevant BEE ownership scheme, has –

8.65.2.1 signed a BEE contract as provided for in these rules; or

8.65.2.2 obtained confirmation from the issuer of the BEE securities or the relevant BEE issuer verification agent that they have accepted the terms and conditions of the BEE ownership scheme and qualify as a BEE compliant person.

8.65.3 A member may not sell BEE securities to a client, or purchase BEE securities on behalf of a client unless, subject to the manner of verification specified in the relevant BEE ownership scheme, the member has –

8.65.3.1 in respect of a controlled client, -

8.65.3.1.1 **[the member has]** ensured that the BEE contract has been signed, *inter alia*, by the proposed beneficial owner of the BEE securities and has obtained a copy of a valid BEE certificate if the proposed beneficial owner is not a natural person; or

8.65.3.1.2 obtained confirmation from the issuer of the BEE securities or the relevant BEE issuer verification agent that the proposed beneficial owner has accepted the BEE terms and conditions of the BEE ownership scheme and qualifies as a BEE compliant person.

8.65.3.2 in respect of a non-controlled client, - **[, the member has obtained a copy of]**

- 8.65.3.2.1 obtained a copy of –
- 8.65.3.2.1.1 the BEE contract signed, *inter alia*, by the proposed registered owner and, if the proposed registered owner will be acting as a nominee on behalf of a proposed beneficial owner, the proposed beneficial owner of the BEE securities; and
- 8.65.3.2.1.2~~[8.65.3.2.2]~~ a valid BEE certificate in respect of the proposed registered owner or proposed beneficial owner, if that person is not a natural person; or
- 8.65.3.2.2 obtained confirmation from the issuer of the BEE securities or the relevant BEE issuer verification agent that the registered owner or proposed beneficial owner, as applicable, has accepted the BEE terms and conditions of the BEE ownership scheme and qualifies as a BEE compliant person.
- 8.65.4 For the purposes of rule 8.65, -
- 8.65.4.1 if the particular rule requires a course of action to be taken in respect of either the registered owner or the beneficial owner of BEE securities, the course of action will be applicable to the beneficial owner if the registered owner is acting as a nominee on behalf of the beneficial owner;
- 8.65.4.2 the proposed registered owner or beneficial owner of BEE securities may be a client or an account holder on whose behalf the client is acting as agent.
- 8.65.5 The procedures to ensure and record that a proposed registered owner or proposed beneficial owner of BEE securities qualifies as a BEE compliant person are set out in Directive BM.
- 8.65.6 In the event that the Settlement Authority identifies a purchase of BEE securities on an account for which the member has not recorded, as required in Directive BM 1, that the proposed registered owner or the proposed beneficial owner is a BEE compliant person, the Settlement Authority will instruct the member to transfer the transaction from that account to the member's misdeals account and the member will assume responsibility for settling the transaction on settlement day.
- 8.65.7 If it is determined that at the time of the purchase of the BEE securities –
- 8.65.7.1 a beneficial owner has not signed a BEE contract in terms of rule 8.65.3.1.1 or that a registered owner and, if applicable, a beneficial owner have not signed a BEE contract in terms of rule 8.65.3.2.1, or
- 8.65.7.2 the member has not obtained confirmation from the issuer of the BEE securities or the relevant BEE issuer verification agent that the registered owner or beneficial owner, as applicable, has accepted the BEE terms and conditions of the BEE ownership scheme and qualifies as a BEE compliant person in terms of rule 8.65.3.1.2 or rule 8.65.3.2.2,
- the Director: Surveillance, in his sole discretion, may cancel the purchase transaction of the BEE securities and such cancellation will be binding on the member who executed the transaction and on the registered owner and the beneficial owner, as the case may be.
- 8.65.8 Where a purchase transaction is cancelled by the Director: Surveillance, -
- 8.65.8.1 the member who executed the transaction will be responsible for the recovery of the BEE securities from the registered owner or from the beneficial owner, as the case may be, and will be required to return the transaction consideration to such person;

- 8.65.8.2 the registered owner or the beneficial owner will be obliged to accept the return of the purchase consideration and will be obliged to dispose of the BEE securities to the member who executed the transaction; and
- 8.65.8.3 the member will be required to sell the recovered BEE securities to a BEE compliant person in the market for the member's own account as soon as possible.
- 8.65.9 If the member is unable to sell the recovered BEE securities to a BEE compliant person in the market, the member may offer to dispose of those securities to the issuer, **[or]** the issuer's nominee or the person who is specified as entitled to purchase such securities in the BEE terms and conditions of the relevant BEE ownership scheme, or their nominee, for the consideration provided for in that issuer's constitution or the BEE terms and conditions of the relevant BEE ownership scheme, as the case may be. The issuer or specified person may accept or reject the member's offer to dispose of the BEE securities. If the issuer or specified person reject**[s]** the member's offer to dispose of the BEE securities, the member will continue to be required to sell those securities to a BEE compliant person in the market for the member's own account as soon as possible.
- 8.65.10 If the member or the registered owner or the beneficial owner of BEE securities fails to comply with any of the provisions of rules 8.65.7, 8.65.8 or 8.65.9, the JSE may take any steps or action necessary to ensure that the member, the registered owner and the beneficial owner complies with these rules.

Proposed amendments to the equities directives

BM Transactions in BEE securities

1. Prior to placing an order in the trading system to purchase BEE securities, a member must confirm, by recording in the BDA system, that –
 - 1.1 a BEE contract has been duly signed by the relevant parties thereto; or **[prior to placing an order in the trading system to purchase BEE securities]**
 - 1.2 confirmation has been received from the issuer of the BEE securities or the relevant BEE issuer verification agent that the registered owner or beneficial owner, as applicable, has accepted the BEE terms and conditions of the BEE ownership scheme and qualifies as a BEE compliant person.
2. A member must ensure that the BEE certificate referred to in rules 8.65.3.1.1 and 8.65.3.2.1.2 is valid (unexpired) at the time of the acceptance of the controlled client or non-controlled client and prior to each purchase transaction in BEE securities, and must record the date of expiry of the BEE certificate in the BDA system.
3. The JSE will issue JSE Gazettes from time to time to provide members with –
 - 3.1 the prescribed BEE contracts;
 - 3.2 a list of verification agencies accredited by the accreditation body contemplated in the BEE Codes;
 - 3.3 pro-forma BEE certificates; **[and]**
 - 3.4 the identity of the BEE issuer verification agent appointed by an issuer of BEE securities, if such an agent has been appointed; and
 - 3.5**[4]** guidance in respect of the procedures to confirm and record that a proposed registered owner or, if the proposed registered owner will be acting as a nominee on behalf of a beneficial owner, the proposed beneficial owner of BEE securities qualifies as a BEE compliant person.