

Market Notice

Number: 124
Date 22 November 2010

Proposed Amendments to the equities rules and directives

Members are advised that the amendments to the equities rules and directives, attached as Annexure B and C respectively, were adopted by the Executive Committee on 22 November 2010.

The purpose of these amendments is to provide for the implementation of the listing and trading of BEE securities in the equities market. The background to the JSE's BEE segment initiative and specifically the arrangements to manage the trading and settlement of BEE securities is set out in Annexure A.

Unless objections are lodged in terms of rule 2.60.3 within 10 days of this Notice, the proposed amendments to the rules will be submitted to the Registrar for his approval and the proposed amendments to the directives will take effect on the date the amendments to the rules are implemented.

Should you have any queries in respect of the proposed amendments to the rules and directives, please do not hesitate to contact the undersigned.



Anne Clayton

Designation Senior Manager
Division Surveillance
Tel +27 11 520 7034
Fax +27 11 520 8034
E-mail address: annec@jse.co.za

Distributed by the Company Secretariat +27 11 520 7346



JSE Limited Registration Number: 2005/022939/06
One Exchange Square, Gwen Lane, Sandown, South Africa.
Private Bag X991174, Sandton, 2146, South Africa. Telephone:
+27 11 520 7000, Facsimile: +27 11 520 8584, www.jse.co.za

Executive Directors: RM Loubser (CEO), NF Newton-King, F Evans (CFO), JH Burke, LV Parsons
Non-Executive Directors: HJ Borkum (Chairman), AD Botha, ZL Combi, MR Johnston, DM Lawrence, W Luhabe, A Mazwai, NS Nematswerani, N Nyembezi-Heita, N Payne, G Serobe
Alternate Director: J Berman

The JSE's BEE Segment Initiative

1. Executive Summary

A number of listed companies are committed to South Africa's transformation and wish to make broad-based black economic empowerment a reality. These companies believe empowerment is about creating opportunities and delivering processes that will directly contribute to market education and economic transformation.

The JSE is planning to launch a segment of the JSE's Main Board ("the BEE segment"), in February 2011, where an issuer may list its BEE securities and where trading in the securities is restricted to BEE compliant persons. The establishment of the BEE segment was initiated by Sasol, who required a transparent and efficient mechanism for the trading of the securities whilst, more importantly, retaining their BEE status. The key feature of the BEE segment is that the requirements are as generic as possible to allow future companies to list their BEE share schemes: an issuer will list a separate class of securities (BEE securities) on the BEE segment of the JSE's Main Board.

The BEE segment should enable broad based share ownership and give momentum to skills development within the financial markets via market education and access to the exchange. The JSE Listings Requirements will incorporate some changes to facilitate this and ensure that issuers are aware of their obligations in this regard. The definition under the Broad-Based Black Economic Empowerment Act No. 53, 2003 ("BEE Act") and the Broad-Based Black Economic Empowerment Codes of Good Practice under the BEE Act ("BEE Codes") will be used to determine whether an investor who purchases BEE shares is compliant ("BEE compliant person").

Each issuer may have different terms and conditions relating to their BEE securities and as the Companies Act provides that the memorandum and articles of association ("constitution") is binding on a registered owner, it is necessary to introduce an instrument that binds a beneficial owner of BEE securities to the issuer's constitution. A generic contract ("BEE contract"), to be signed by the proposed beneficial owner and the proposed registered owner of BEE securities, has been developed. The BEE contract provides standard terms regarding the holding and trading of BEE securities and incorporates, by reference, the constitution of an issuer of BEE securities, to ensure that an issuer has recourse to the beneficial owner in the event that it is determined that he/she is not a BEE compliant person.

The JSE has enhanced systems to monitor that only BEE compliant persons trade in BEE securities and the proposed amendments to the JSE equities rules provide the JSE with authority to take action in certain circumstances of non-compliance.

The JSE will educate the market, specifically the JSE equities members and CSDPs, regarding the requirements associated with the trading of BEE securities and any actions that may be taken by the Director: Surveillance or the Settlement Authority. As part of the JSE's retail strategy, the JSE will provide assistance to the BEE segment issuers in their education and marketing campaigns to investors via a series of road shows.

2. Listing of BEE securities

The JSE will list, on the BEE segment, only securities which are able to be held by persons defined as "BEE compliant" in the Listing Requirements and JSE Equities rules.

The current Listings Requirements criteria, as set out in either section 4, 19, 20 or 21, will be applied to the listing of BEE securities and the applicable section will be determined by the specific vehicle or structure used by the issuer to facilitate the scheme.

3. Issuer Participants Contract

The first issuer whose BEE securities are listed on the BEE Segment will sign the Issuers Participant Contract and every subsequent issuer whose BEE Securities are listed on the BEE Segment, will become a party to the Issuers Participants Contract by signing an Issuer Deed of Adherence, the form of which is attached to the Issuers Participants Contract. The duly signed Deed of Adherence must be included with the listing application letter.

4. Trading of BEE securities

All the existing trading rules are applicable to the trading of BEE securities. In addition, BEE securities will be traded in a separate designated segment of the market and will be assigned a unique ISIN code and a unique Alpha code which will include a special BEE symbol. The JSE will also notify the market, by way of a market notice, when a new BEE security is listed on the BEE segment.

5. Operation of a BEE compliant person's account

5.1 Client take-on

The JSE has made system changes to BDA and members will be required to flag accounts in a specific field that indicates that the account holder is a BEE compliant person. An additional date field has also been provided and members will be required to populate this field with the expiry date of the BEE certificate obtained by the member in respect of a BEE compliant person who is not a natural person (i.e. juristic person).

5.2 BEE Certificate

A member will be required to obtain a BEE certificate for a proposed beneficial owner of BEE securities if the proposed beneficial owner is not a natural person. The JSE has consulted with the DTI who has approved the concept of the BEE segment and is considering requesting SANAS (the accreditation body contemplated in the BEE Codes) agencies to issue BEE certificates specifically for the purpose of trading in BEE securities. The JSE will issue guidance to members in respect of the BEE certificates and, if necessary, will illustrate different types of certificates to assist members.

5.3 BEE Contract

The primary purpose of the introduction of a BEE contract is to bind investors to the standard terms and conditions regarding trading and holding BEE securities and specifically to each individual issuer of BEE securities' constitution, to ensure that an issuer has recourse to the beneficial owner (through the registered holder) in the event that it is determined that he/she is not a BEE compliant person or in the case of a juristic person, ceases to maintain its BEE status.

6. Settlement of BEE securities

The BEE securities will be settled in the same manner as other equity securities on a T+5 rolling contractual settlement basis with the JSE guaranteeing transactions executed on the central order book.

7. Compliance Monitoring

JSE Settlement Authority will conduct post-trade monitoring of on-market transactions in BEE securities to determine whether the account holders on which transactions in BEE securities have been executed have been flagged on BDA as BEE compliant persons. If the Settlement Authority determines that a member has traded on an account where the BEE compliant person flag has not been indicated, the Settlement Authority will instruct the member to reverse the trade to their misdeal account and to trade the position out immediately for their own account and the member will assume responsibility for settling the transaction on settlement day.

In addition, the Settlement Authority will send each issuer of BEE securities a daily file listing all settled positions. An issuer will have the right to review the settled trades and/or positions and may contact an account holder (or registered shareholder) and request that they prove that they are BEE compliant. Where the issuer determines that a purchase transaction has been executed for a non-BEE compliant person, the issuer may take action against the beneficial owner of the BEE securities, in accordance with the terms of the signed BEE contract and the rules of that issuer's constitution.

8. Director: Surveillance

Where a beneficial owner of BEE securities is not a BEE compliant person and has not signed the BEE contract, the relevant issuer is unable to ensure that its BEE status remains intact as the issuer is unable to take action against that beneficial owner. If the transaction has been executed on-market, the Director: Surveillance may cancel the purchase transaction. The member who executed the purchase transaction will be responsible for the recovery of the BEE securities and will be required to sell those securities in the market for the member's own account.

Provision has also been made for the circumstances in which a member is unable to sell recovered BEE securities in the market: the member may offer to dispose of the BEE securities to the issuer.

9. Statistics

The JSE's trading statistics will be maintained for BEE securities so that the activity in those securities can be separately reflected in the JSE's statistical reports. Activity in BEE securities will also be included in the JSE's overall trading statistics;

10. Classification of Indices

BEE securities will be classified under the FTSE/JSE Africa Index Series Ground Rules and could, in time, form part of a new BEE Index.

11. Newspaper publication

The JSE has requested key newspapers to reflect the trading information in respect of BEE securities in a separate and clearly named category of the Main Board in the daily newspapers, to enable investors to easily identify the statistics pertaining to BEE securities.

PROPOSED AMENDMENTS TO THE EQUITIES RULES

General explanatory notes

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

Section 1 Definitions

“Act”	...
<u>“BEE Act”</u>	<u>means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);</u>
<u>“BEE certificate”</u>	<u>means a certificate issued by a verification agency accredited by the accreditation body contemplated in the BEE Codes, certifying that the person identified in the certificate is a BEE compliant person;</u>
<u>“BEE Codes”</u>	<u>means the Broad-Based Black Economic Empowerment Codes of Good Practice gazetted from time to time under the BEE Act;</u>
<u>“BEE compliant person”</u>	<p>means as interpreted by the courts, from time to time –</p> <p>(a) <u>as regards a natural person, one who falls within the ambit of the definition of “black people” in the BEE Codes;</u></p> <p>(b) <u>as regards a juristic person having a shareholding or similar member’s interests, one who falls within the ambit of the definitions of BEE controlled company or BEE owned company, using the flow-through principle contemplated in the BEE Codes;</u></p> <p>(c) <u>as regards any other entity, any entity similar to a BEE controlled company or BEE owned company using the flow-through principle contemplated in the BEE Codes which would enable the issuer of securities owned or controlled by such entity to claim points attributable to the entity’s ownership of the securities pursuant to the BEE Codes;</u></p>
<u>“BEE contract”</u>	<p><u>means the prescribed contract which the proposed beneficial owner of BEE securities and, if the beneficial owner is not to be the registered owner, the proposed registered owner of BEE securities must conclude, in terms of which, <i>inter alia</i> –</u></p> <p>(a) <u>the beneficial owner warrants that he is a BEE compliant person;</u></p> <p>(b) <u>the necessary restrictions, limitations and requirements are imposed by the issuer on the proposed beneficial owner in order to achieve the continued ownership of BEE securities by BEE compliant persons;</u></p> <p>(c) <u>the BEE contract is made up of generic terms applicable to all issuers and by incorporation additional specific terms relevant to a particular issuer’s BEE securities which are contained in the issuer’s constitution; and</u></p> <p>(d) <u>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, –</u></p> <p style="margin-left: 20px;">(i) <u>the registered owner is obliged to dispose of the BEE securities; or</u></p> <p style="margin-left: 20px;">(ii) <u>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;</u></p>

<u>"BEE controlled company"</u>	<u>has the same meaning as defined in the BEE Codes;</u>
<u>"BEE owned company"</u>	<u>has the same meaning as defined in the BEE Codes;</u>
<u>"BEE securities"</u>	<u>means the securities in respect of which the issuer requires that the beneficial owners are BEE compliant persons for a period of time as prescribed by the issuer;</u>
"beneficial owner"	[means a person or entity on whose behalf any equity security is held by a CSDP in the name of a nominee company owned by the CSDP, a member or any other entity;] <u>means, in respect of equity securities, the person or entity to whom the risks and rewards of ownership are attributable which is typically evidenced by -</u> <ul style="list-style-type: none"> <u>(a) the right or entitlement to receive any dividend or interest payable in respect of those equity securities; or</u> <u>(b) the right to exercise or cause to be exercised in the ordinary course of events, any or all of the voting, conversion, redemption or other rights attached to those equity securities; or</u> <u>(c) the right to dispose or direct the disposition of those equity securities, or any part of a distribution in respect of those equity securities and to have the benefit of the proceeds;</u>

...

- 8.60.1 Every member shall ensure that it obtains and maintains sufficient information on each client account and each account operated by a client so as to be able to identify –
- 8.60.1.1 the client;
 - 8.60.1.2 the **[beneficial owner]** account holder of a controlled client account if the account holder is not a client of the member but is a person on whose behalf a client is acting as agent; and
 - 8.60.1.3 the person or persons responsible for placing instructions on the account, subject to rule 8.60.4.
- 8.60.2 As a minimum, the member shall obtain the following information in respect of each client and the **[beneficial owner]** account holder of each controlled client account if the account holder is not a client of the member but is a person on whose behalf a client is acting as agent -
- 8.60.2.1 full name; and
 - 8.60.2.2 identity number or registration number, as the case may be.

...

8.65 Transactions in BEE securities

- 8.65.1 As trading in BEE securities is restricted to BEE compliant persons, no person may purchase BEE securities unless the person who is to be the beneficial owner qualifies as a BEE compliant person and that person has signed a BEE contract as provided for in these rules.
- 8.65.2 A member may not purchase BEE securities for its own account unless the member qualifies as a BEE compliant person and has signed a BEE contract as provided for in these rules.
- 8.65.3 A member may not sell BEE securities to a client, or purchase BEE securities on behalf of a client unless –
- 8.65.3.1 in respect of a controlled client, the member has ensured that the BEE contract has been signed, *inter alia*, by the proposed beneficial owner of the BEE securities and has obtained a copy of a valid BEE certificate if the proposed beneficial owner is not a natural person; or
 - 8.65.3.2 in respect of a non-controlled client, the member has obtained a copy of the BEE contract 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.
- 8.65.4 For the purposes of rule 8.65, the proposed 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 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 beneficial owner is a BEE compliant person, the Settlement Authority will instruct the member to transfer the transaction from that account to the member's misdeals account and the member will assume responsibility for settling the transaction on settlement day.

8.65.7 If it is determined that a beneficial owner has not signed a BEE contract as provided in rule 8.65.3.1 or 8.65.3.2 at the time of the purchase of the BEE securities, the Director: Surveillance, in his sole discretion, may cancel the purchase transaction of the BEE securities and such cancellation will be binding on the member who executed the transaction and on the beneficial owner.

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 beneficial owner and will be required to return the transaction consideration to the beneficial owner;

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

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

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

8.65.10 If the member or the 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 or the beneficial owner complies with these rules.

...

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

9.30.3.1 ...

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

9.30.3.3

PROPOSED AMENDMENTS TO THE EQUITIES DIRECTIVES

General explanatory notes

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

BM Transactions in BEE securities

1. A member must confirm that a proposed beneficial owner of BEE securities is a BEE compliant person by recording in the BDA system that a BEE contract has been duly signed by the relevant parties thereto prior to placing an order in the trading system to purchase BEE securities for that person.
2. A member must ensure that the BEE certificate referred to in rules 8.65.3.1 and 8.65.3.2 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 guidance in respect of the procedures to confirm and record that a proposed beneficial owner of BEE securities qualifies as a BEE compliant person.

...

DA

1. **Financial Records**

...

- 1.4 A member's accounting records shall comply with the requirements of the Act and as a minimum shall contain –
 - 1.4.1 ...
 - 1.4.6 a record of all securities and documents of title in the possession or control of the member showing the physical location, the **[beneficial]** owner, the purpose for which they are held and whether they are subject to any charge.