

— OUT OF THE ORDINARY

# Terms and Conditions



# Introduction

This document contains the terms and conditions which regulate the relationship between you and Investec Wealth & Investment International (Pty) Ltd ("W&I") ("Terms and Conditions") and which form part of our Agreement (as defined below). You should therefore read and ensure that you understand the contents of these Terms and Conditions and ensure that you are in possession of all of the documents which make up the Agreement. If there is any part of this document, or any other related document which you do not understand, you should contact W&I accordingly.

You hereby acknowledge and agree that any and all of the Services (as defined below) will be provided by W&I on the terms and subject to the conditions set out in these Terms and Conditions, as amended from time to time, and accordingly by accepting the provision of any Services by W&I, you hereby acknowledge and agree that you shall be bound by these Terms and Conditions in respect of the Services.

You hereby further acknowledge that you are aware and agree that these Terms and Conditions are available on Investec's website [https://www.investec.com/en\\_za/investment.html](https://www.investec.com/en_za/investment.html) and as such, it is not necessary for you to sign or accept these Terms and Conditions in order for them to become binding on you. You hereby acknowledge and agree that by accepting the provision of any Services by W&I you shall be deemed to have accepted these Terms and Conditions and shall be legally bound by these Terms and Conditions.

By accepting the provision of any Services by W&I, you agree that your relationship with W&I in relation to those Services shall be governed solely by the terms and conditions set out in the Agreement.



# Table of Contents

04	Legal Status	20	Limitation of Liability
04	Definitions	20	Taxation
06	Interpretation	21	Power to sell or close out
06	General	21	Client Warranties
07	Services	21	Set off and lien
08	Where the Client is not a natural person	22	Third parties and nominated persons
09	Processing of Personal Information	22	Force majeure
09	Custody and Settlement Services	22	Use of the Account
10	Investments	22	Dormant Accounts
11	Exchange-Traded Derivative Instruments	23	Illegality
12	Investment Advice	23	Changes
12	Instructions	23	Commencement
13	Telephone calls	23	Termination
14	Orders and transactions	24	Notices
14	Statements and Valuations	24	Complaints and disputes
15	Fees	24	Assignment
15	Interest	24	Governing law
16	Conflicts of Interest	24	Indulgences
16	Market Information, Views and Opinions	25	Whole Agreement, No Amendment
16	Benchmarking	25	Certificate
17	Foreign Investments	25	Currency Indemnity
17	Cash Deposits	26	Schedule 1 – Risk Disclosures
18	Payments	32	Schedule 2 – Settlement Obligation
18	Corporate Actions and Shareholder’s Rights	33	Settlement Obligations for Controlled Clients
19	Online Trading	36	Settlement Obligations for Non-Controlled Clients
20	Market Abuse	40	Applicable Definitions

## 01. Legal Status

- 1.1. The Agreement between you and W&I constitutes a mandate as contemplated in the Applicable Legislation.
- 1.2. Upon entering into the Agreement, and at any other time during which the Agreement is in force, we may require that you provide us with documents and other information in order for us to provide Services under the Agreement. This may include providing us with:
  - 1.2.1. prompt notification of changes to your details provided to W&I;
  - 1.2.2. information relating to your knowledge and experience, your financial situation and your investment objectives, so as to enable us to recommend Services and Financial Products that are suitable for you; and
- 1.2.3. documents and information which we are required to obtain from time to time to ensure compliance with the Applicable Legislation and/or our internal know-your client ("KYC") and other governance protocols.
 

You agree to promptly, upon request by W&I, provide us with any such information or documents.
- 1.3. The Agreement shall supersede W&I's previous agreements or terms of business with you in respect of the Services. Any such agreement or terms of business or arrangement shall, insofar as it relates to any of the Services, cease to have effect except to the extent of any accrued rights and obligations thereunder.

## 02. Definitions

**In these Terms and Conditions the following expressions shall, unless the context otherwise requires, have the following meanings:**

- 2.1. **"Agreement"** means the agreement between you and W&I made up of these Terms and Conditions, the Schedules, the Client Application Form and the Investment Selection Form;
- 2.2. **"Applicable Legislation"** means legislation and regulations, directives, rules, licensing conditions, codes and guidelines issued thereunder, as amended or replaced from time to time, which applies to the implementation of this Agreement and/or to W&I providing the Services, including but not limited to the following legislation as at the date of drafting of this Agreement, namely the Companies Act No 71 of 2008 ("Companies Act"), the Financial Advisory and Intermediary Services Act No. 37 of 2002 ("FAIS"), the Financial Institutions Protection of Funds Act No. 28 of 2001 ("FIPFA"), the Financial Intelligence Centre Act 38 of 2001 ("FICA"), the Financial Markets Act 19 of 2012 ("FMA"), the Financial Sector Regulation Act 9 of 2017 ("FSRA"), the Collective Investment Schemes Control Act 45 of 2002 ("CISCA"); the National Credit Act 34 of 2005 ("NCA") the Pension Funds Act 24 of 1956 ("PFA"); the Protection of Personal Information Act 4 of 2013 ("POPIA") and the Long Term Insurance Act 52 of 1998 ("LTIA") and any regulations, prudential standards, conduct standards, directives, rules, licensing conditions, codes and guidelines issued thereunder;
- 2.3. **"Bank"** means a public company registered as a "bank" as contemplated in the Banks Act No 94 of 1990 and which may include Investec Bank Limited;
- 2.4. **"Business Day"** means any day from Monday to Friday, excluding a day which is, from time to time, proclaimed a public holiday in the Republic of South Africa;
- 2.5. **"Client"** means a client of W&I;
- 2.6. **"Client Application Form"** means the application form completed by you in engaging with W&I;
- 2.7. **"Client Financial Assessment"** means the document which gathers information about you to ensure that we undertake a reasonable analysis of your personal requirements and assists you in selecting appropriate services, products and investments;
- 2.8. **"Collateral"** means any security for the performance of any obligation by the Client in the form of Securities or cash or a combination of the foregoing, in the form and in a quantum that may be required by any lender, or W&I, when accepting to make a loan or funding available to the Client;
- 2.9. **"Corporate Action"** means any action, taken by an issuer or any other entity or third party which affects the registered owner and the beneficial owner of Securities in terms of any rights or benefits which flow from, or accrue in respect of, the Securities, other than the right to ownership of the Securities themselves. These are, for example, cash or scrip dividends, conversion, split and consolidations, name changes, rights offers, unbundlings and schemes of arrangement;
- 2.10. **"CSDP"** means the Central Security Depository Participant;
- 2.11. **"Custodial Agent"** means a third party custodian agent appointed by W&I and/or its agents;
- 2.12. **"Derivative Contract"** means a contract in respect of a particular instrument (listed or unlisted) and which provides you with exposure to the market movement or daily difference in such underlying instrument whether favourable or not;
- 2.13. **"Derivative Instrument"** means any financial instrument or contract, including a contract for difference and over the counter contract, which creates rights and obligations deriving its value from the price or value of the underlying product, financial instrument or thing, or the value of which may vary depending on the change in the price or value of the underlying product, financial instrument or thing. This Agreement also applies to exchange traded Derivatives Instruments, including but not limited to warrants and instalment shares traded on the JSE Limited, single stock futures and international derivative futures traded on SAFEX, or currency futures traded on the IRC market;

## 02. Definitions continued

- 2.14. "Exchange"** means a regulated infrastructure for bringing together buyers and sellers, for matching Securities bids and offers for Securities of multiple buyers and sellers and whereby a matched bid and offer for Securities constitutes a transaction;
- 2.15. "Fee Schedule"** means the schedule setting out the Fees charged by us to you in respect of the Services provided, a copy can be obtained from your Investment Manager.
- 2.16. "Financial Services Provider"** shall have the meaning given to it in section 1 of FAIS;
- 2.17. "Financial Products"** shall have the same meaning as given to it in section 1 of FAIS;
- 2.18. "Foreign Investments"** means the purchase, sale and entering into transactions in Investments that are issued, listed or traded primarily outside the Republic of South Africa or domiciled outside the Republic of South Africa;
- 2.19. "FSCA"** means the Financial Sector Conduct Authority established in terms of the FSRA and any successor thereto;
- 2.20. "Information Regulator"** means the regulator as contemplated in POPIA;
- 2.21. "Initial Margin"** means the margin paid by you to the relevant exchange and W&I on the purchase of a Derivative Contract. This cash amount remains on deposit with the relevant exchange and W&I for as long as you hold a Derivatives Contract;
- 2.22. "Instruction"** has the meaning ascribed thereto in clause 12.1;
- 2.23. "Investec"** means the Investec group of companies being Investec Limited and Investec Plc and their respective subsidiaries;
- 2.24. "Investment/s"** means investment/s as defined in clause 9;
- 2.25. "Investment Selection Form"** means the form completed by you in which you select the Services and Products you wish W&I to provide to you;
- 2.26. "JSE"** means the JSE Limited;
- 2.27. "JSET"** means JSE Trustees (Pty) Ltd;
- 2.28. "Margin" or "Variation Margin"** means the cash payment required to maintain an initial market position. This is determined daily by the relevant exchange via a process of marking to market;
- 2.29. "Marking-to-market"** means the revaluation of a futures or options position at its current market price. All positions are marked-to-market by the relevant exchanges' clearing house at least once a day. The profit/loss revealed by the revaluation is received by or paid to the clearing house;
- 2.30. "Nominee Company"** means Ferbros Nominees (Pty) Ltd with registration number 1946/023363/07, a nominee approved under the Applicable Legislation;
- 2.31. "Online"** means any information system or platform used by Investec Clients;
- 2.32. "Online Share Trading"** means the online share trading services provided by W&I Online to Clients;
- 2.33. "Online Share Trading Terms"** means the terms and conditions which govern the use by a Client of W&I's Online Share Trading activities;
- 2.34. "Personal Information"** shall have the meaning given to it in section 1 of POPIA;
- 2.35. "POPIA"** means the Protection of Personal Information Act 4 of 2013, together with any regulations published in terms thereof;
- 2.36. "Products"** means the Financial Products offered by us to you;
- 2.37. "Sanctions"** means the economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any Sanctioning Body;
- 2.38. "Sanctioning Body"** means any one or a combination of the following entities:
- 2.38.1. The Office of Foreign Assets Control of the Department of Treasury of the United States of America;
  - 2.38.2. The United Nations Security Council;
  - 2.38.3. The European Union or any participating member state of the European Union; and
  - 2.38.4. Her Majesty's Treasury of the United Kingdom;
- 2.39. "SARB"** means the South African Reserve Bank;
- 2.40. "SARS"** means the South African Revenue Service;
- 2.41. "Schedules"** means the schedules which form part of the Agreement;
- 2.42. "Securities"** has the meaning given to it in section 1 of FMA;
- 2.43. "Services"** means the financial services offered by us to you as detailed in clause 5 below;
- 2.44. "Shareholder's Rights"** means any right or entitlement that may be exercisable by the registered holder and/or beneficial holder of any shares in terms of the common law, the Companies Act, 71 of 2008 (such as an application for relief from oppressive conduct in terms of section 163 of the Companies Act or the exercise of the appraisal rights in terms of section 164 of the Companies Act) and/or the constitutional documents or bylaws of the issuer company, in respect of those shares and/or which may arise in respect of any Corporate Action which may affect any such shares;
- 2.45. "Short Sale"** means any transaction where the effect or primary purpose of the transaction is to confer a financial advantage on the person entering into that transaction in the event of a decrease in the price or reduction in the value of the share or debt instrument;

## 02. Definitions continued

- 2.46. "Third Party"** means any other party than the named person or entity on the Client Application Form;
- 2.47. "W&I"** means Investec Wealth & Investment International (Pty) Ltd with registration number: 1972/008905/07, a private company incorporated in accordance with the laws of the Republic of South Africa;
- 2.48. "Written"** includes communications transmitted by way of fax or e-mail or that is handwritten; and
- 2.49. "you"** means you/the Client, our customer, to whom W&I has agreed to provide Services and Products under the Agreement or, in the event of your death, your appointed executor/s.

## 03. Interpretation

**This Agreement and all transactions undertaken in accordance with it shall be subject to the terms of any Investment Selection Form provided to you on from time to time, as well as any product application form and related agreement entered into between W&I and yourself, and:**

- 3.1. all South African and applicable foreign laws and in particular the Applicable Legislation;
- 3.2. rules, statements of principle and directives of applicable authorities (including self-regulating organisations) responsible for the regulation of investment and advisory services;
- 3.3. all statutory and other requirements relating to money laundering locally and abroad;
- 3.4. all rules, regulations and by-laws of any relevant exchange and/or clearing institution;
- 3.5. applicable accepted market practice and custom; and
- 3.6. circulars or practice notes issued by any regulatory body.

## 04. General

- 4.1. The main business of W&I is the provision of private client stockbroking, portfolio management, wealth management and non-discretionary trading services. For the avoidance of doubt, any reference to Investec shall include a reference to W&I, unless expressly indicated to the contrary.
- 4.2. W&I is a member of the securities' exchanges operated by JSE. As such it is regulated by the rules and directives of JSE, other applicable exchanges and all other Applicable Legislation in the conduct of its investment business in South Africa. W&I is a registered credit provider, registration number NCRCP 2621 and FSP No 15886.
- 4.3. W&I's registered office is 100 Grayston Drive, Sandown, Sandton, Johannesburg, 2196.
- 4.4. W&I may, at its sole discretion, determine a minimum investment amount required for any Product and/or Service offered and amend such minima from time to time.
- 4.5. These Terms and Conditions shall apply to all and any Services provided to you or on your behalf by W&I. These Terms and Conditions and all transactions undertaken in accordance with them shall be read with the terms of any product sheet, the Investment Selection Form or mandate and/or provided to you on a case by case basis, as well as any related agreement entered into between W&I and you. Where there is a conflict between any product sheet, application form or mandate and these Terms and Conditions, the provisions in these Terms and Conditions shall prevail to the extent of the conflict, save where the applicable product sheet, application form or mandate expressly provides the contrary, in which case the relevant provisions of any such document shall prevail.
- 4.6. Where W&I is required by Applicable Legislation to make written disclosures to you, W&I shall be entitled to make and from time to time revise such disclosures in the manner permitted and/or required by Applicable Legislation.

## 05. Services

**The Services you mandate W&I to provide will be only those selected by you in the Investment Selection Form. W&I sets out below a short summary of the full range of Services provided by W&I and the duties, authorities and entitlements of W&I relating to each Service. Please note the Risk Disclosures, which are detailed in the attached Schedule 1 and form part of the Agreement.**

### 5.1. Discretionary Portfolio Management

By selecting this service, the Client appoints W&I to act as the Client's discretionary portfolio manager. W&I will have full discretion to make investment decisions on behalf of the Client based on their selected discretionary investment mandate, according to the Client's specified investment objectives and strategy, and risk profile. W&I has full authority at its discretion and without prior reference to the Client to enter into any kind of transaction or arrangement for the Client's account in relation to any Investments and cash portion according to the investment mandate selected by the Client in the Investment Selection Form and the Client Application Form, or any replacement form or document. In addition, W&I shall be entitled to exercise any voting rights attaching to Securities held by the Client and to exercise any right and/or election relating to Corporate Actions relating and/or any Shareholders' Rights which attach to Securities held by W&I, or the Nominee Company, on behalf of the Client at the discretion of W&I. W&I shall be entitled to provide the Services utilising its own staff or that of another financial services provider. W&I shall not be required to notify or consult the Client in respect of any investment decision, transaction or arrangement relating to the Investments or the underlying assets of the Portfolio, nor is it required to obtain and transmit to the Client any information relating to the Securities in the Client's Portfolio and/or any Corporate Action and/or any Shareholder's Rights in respect thereof or which a Financial Product supplier must disclose in terms of any law (such as company reports, proxy forms, notices, circulars, listing particulars and other issuer communications) unless the Client specifically indicates otherwise in the Client Application Form.

### 5.2. Wealth Management W&I offers its Client either:

5.2.1. a Product specific service which may include a single investment Product or a range of investment Products which are selected taking into account the suitability of the Product(s) in meeting an identified specific investment need or holistic investment needs; or

5.2.2. an intermediary service, where it will facilitate the transactions between the Client and a third party Financial Services Provider without W&I providing its Client with any advisory services.

By selecting these Services, the Client appoints W&I to provide holistic advice and active management of the Client's overall Investments or to provide advice in relation to a specific need or investment Product. The architecture of a holistic wealth management strategy includes exposure to various traditional asset classes and alternative investment strategies (respectively capital guaranteed equity structured products and private equity investments), set up on a core and satellite approach whereby the core of the portfolio is invested in the traditional asset classes.

The core portfolio is supplemented by satellite exposures aiming to enhance the risk adjusted return of the aggregate portfolio. The asset allocation and the selection of underlying investment Products and instruments aims to match a client's risk profile in terms of the overall portfolio but may contain individual financial instruments that do not meet the client's stated risk profile in isolation and instruments aims to match a client's risk profile in terms of the overall portfolio but may contain individual financial instruments that do not meet the client's stated risk profile in isolation.

### 5.3. Non-discretionary Trading Services W&I provides trading services to its Client with the Client being solely responsible for all the investment decisions relating to their Investments:

5.3.1. Dealing with Advice Service: W&I provides an execution and advice service, based on the Client's Instructions and may render certain advisory services should the Client so require. Any information, advice, views and/or recommendations given by W&I to the Client will be in respect of specific Securities or separate individual transactions, as requested by the Client from time to time and without considering the Client's whole portfolio or any of the Client's specific needs and objectives. Notwithstanding any information, advice, views and/or recommendations shared by W&I with the Client, the Client is solely responsible for its Investment decisions and for managing its portfolio as a whole. W&I is not responsible for the suitability or appropriateness to the circumstances of the Client or for our view on any individual Security and/or any Corporate Action in relation to any such Security and/or any Shareholder's Rights which may attach to that security. W&I will not be obliged to, or responsible for, contacting the Client with regard to any Corporate Actions and/or any Shareholder's Rights which may from time to time attach to any Security. Unless the Client takes action on the Corporate Actions automated notifications sent via the medium selected by the Client on the Client Application Form, the Client's election will be automatically defaulted to the issuer's default option. Likewise, unless the Client confirms in writing to W&I by the due date noted in the corporate action notification that it wishes to exercise any of the Shareholder's Rights which attach to that Client's Securities, the Client will be deemed to have elected not to exercise any of its Shareholder's Rights.

5.3.2. Execution Service: W&I provides an execution only service where W&I will only act on the Client's Instruction and/or with the Client's prior consent in relation to its Investments and will not furnish advice in respect of the Client's Investments. W&I is not responsible for the suitability or appropriateness to the circumstances of the Client or our view or recommendation on any individual Security and/or Corporate Action in relation thereto. W&I will not be responsible for contacting the Client with regard to any Corporate Actions and/or Shareholder's Rights. Unless the Client takes action



## 05. Services continued

on the Corporate Actions automated notifications sent via the medium selected by the Client on the Client Application Form, the Client's election will be automatically defaulted to the issuer's default option. Likewise, unless the Client confirms in writing to W&I that it wishes to exercise any of the Shareholder's Rights which attach to that Client's Securities, the Client will be deemed to have elected not to exercise any of its Shareholder's Rights.

5.4. Our Services may not be available to Clients who are citizens or residents in countries where such Services are prohibited by law. If you are in any doubt as to whether this will apply to you as a Client of a specific country, you should contact your financial or legal advisor. W&I will not be responsible for the use of our Services, and the consequences thereof, where the provision of such Services is prohibited by any such law.

## 06. Where the Client is not a natural person

6.1. Trustee(s)/Executor(s)/Curator(s) – where “you” are one or more trustee(s)/executor(s)/curator(s), you warrant and undertake that:

- 6.1.1. each signatory to the Client Application Form and the Services and Investment Selection Form has all the necessary powers and authorisation to enter into the Agreement on behalf of the applicable trust/estate/curatorship; and
- 6.1.2. you will promptly notify W&I of any changes in trustee(s)/executor(s)/curator(s) of the relevant entity and provide letters of authority/letters of executorship/court order as applicable as well as all necessary documentation reflecting such changes.

6.2. Joint Customers – where “you” are two or more persons, whether related or forming part of any arrangement such as an investment club, as set out in the Client Application Form, the following provisions shall apply:

- 6.2.1. Each joint customer shall be jointly and severally liable to W&I for the due performance of all obligations of the Client under the Agreement.

In the absence of notification to the contrary signed by all joint customers:

- 6.2.1.1. each joint customer will (without notice to the other joint customers) have authority to issue Instructions to W&I; to receive reports, confirmations and statements relating to the Investments; to receive delivery of the Investments and any funds relating thereto and to dispose thereof; to execute on behalf of all joint customers any agreement relating to the Investments and to terminate or modify or waive any provisions of such agreements; and generally to deal with the Investments completely as if he or she alone were interested in the Investments;
- 6.2.1.2. W&I shall be entitled to follow the Instructions of any one joint customer and to make delivery or payment relating to the Investments to any of the joint customers in accordance with such Instructions, even if delivery and/or payment shall be made to him or her personally and not for the joint account of the joint customers. W&I shall have no duty

or obligation to enquire into the purpose or propriety of any such Instruction, payment or delivery.

6.2.2. In the event that all joint customers have in writing, using such form as W&I may prescribe, appointed an agent (“Agent”) to act on their behalf in all matters connected with this Agreement and the Services provided by W&I, the following provisions shall apply:

- 6.2.2.1. the Agent will (without notice to the joint customers) have authority to issue Instructions to W&I; to receive reports, confirmations and statements relating to the Investments; to receive delivery of the Investments and any funds relating thereto and to dispose thereof; to execute on behalf of all joint customers any agreement relating to the Investments and to terminate or modify or waive any provisions of such agreements; and generally to deal with the Investments completely as if he or she alone were interested in the Investments;

6.2.2.2. W&I shall be entitled to follow the Instructions of the Agent and to make delivery or payment relating to the Investments to the Agent in accordance with such Instructions, even if delivery and/or payment shall be made to him or her personally and not for the joint account of the joint customers. W&I shall have no duty or obligation to enquire into the purpose or propriety of any such Instruction, payment or delivery.

6.2.3. Each joint customer hereby indemnifies and agrees to hold W&I harmless against any and all liability, loss, cost or expense W&I may suffer or incur as a consequence of acting in accordance with the provisions of this clause 6.2.

6.2.4. The authorities and indemnity contained in this clause 6.2 may not be revoked without the prior written agreement of W&I.

6.2.5. Upon death of any one or more of the joint customers, the share belonging to the deceased will vest with his/her executor for distribution to the beneficiaries under the deceased's will or intestate heirs. W&I shall, save if it receives proof to the



## 06. Where the Client is not a natural person continued

- contrary, be entitled to assume that the deceased held an equal share in the applicable Investments together with all other joint holders.
- 6.2.6. It is W&I's current practice to only open joint customer accounts for individuals.
- 6.2.7. It is W&I's practice to report on and process all tax related administration on the basis that any joint customer account is the sole property of the individual customer listed first in our records. W&I shall be entitled to change this practice at any time
- (and with retrospective effect) in its discretion, subject only to Applicable Legislation.
- 6.3. Corporate Customers – where “you” are a company or other legal entity, you warrant and undertake that you will forthwith notify W&I of any changes in shareholding, director(s) or authorised signatories of the company/ institution. In the absence of such notification supported by a copy of a director's resolution confirming such change, W&I will be entitled to act on any Instruction given to them by any authorised signatory previously notified to W&I.

## 07. Processing of Personal Information

Investec takes privacy and data protection seriously. The processing of your personal information is subject to the provisions of our Data Protection Statement, as amended from time to time found at [https://www.investec.com/en\\_za/legal/data-protection-statement.html](https://www.investec.com/en_za/legal/data-protection-statement.html). By submitting any personal information to Investec you consent to the provisions of the Data Protection Statement.

Despite the security measures Investec has in place to protect Client's personal information or data, firewalls, password access and encryption methods and the like, the Client acknowledges that his/her/its personal information stored by Investec, may be accessed by an unauthorised third party, e.g. as a result of an illegal activity. In the unlikely event of such access by an unauthorised third party, Investec will use its best endeavours to notify the Client of such occurrence. The Client shall bear all risk of transmitting such information in this manner and under no circumstances will Investec be liable for any loss, harm or damage suffered by them as a result thereof. Investec reserves the right to request independent verification of any information transmitted via Investec's website or e-mail. Investec will not intentionally deviate from its privacy policy as published on Investec's website from time to time.

## 08. Custody and Settlement Services

- 8.1. W&I provides or arranges safe custody for its Client's Investments in South Africa and/or offshore. These services are provided to all Clients except for non-custodied Clients, being Clients who instruct W&I to deal on their behalf in South African listed equities, offshore equities and offshore units, but appoint their own central securities depository participant (“CSDP”) or other custodian. (Such non-custodied Clients are responsible for verifying their Investments (including the value thereof) with their CSDP or other custodian). All JSE Investments other than cash, non-controlled Investments, and Financial Products of third party providers held in approved nominee companies affiliated with such providers will be registered in the name of our Nominee Company and shall be held by W&I's CSDP on your behalf. All foreign Investments will be held in the name of a nominee company of W&I's choice or as selected by W&I's agents.
- 8.2. Your Investments or any part thereof, will be deposited by W&I or the applicable nominee company for safekeeping in a Central Securities Depository or electronic scrip registry. If W&I is not a participant in such a depository or registry, W&I or the applicable nominee company may deposit the Investment in the depository or registry through a participant chosen by W&I. These Investments will be held in an electronic, uncertificated form known as dematerialised scrip.
- 8.3. W&I may transfer such Investments from one electronic record to another or withdraw any such Investment from safe custody but only for the purposes of:
- 8.3.1. transferring the Investments to you or to an account in your name held by another JSE member or at another provider, upon termination of the Agreement;
- 8.3.2. dealing with Investments as may actually be required in fulfilling the terms of the Agreement;
- 8.3.3. any other lawful purpose in terms of our Agreement.
- 8.4. Should Investments accepted by W&I for deposit be credited to your account prior to actual receipt by W&I or its Custodial Agent and should they subsequently not be received, W&I shall be entitled to reverse such credits.
- 8.5. Unless Instructions are received from you to the contrary, W&I shall, as soon as it is reasonably practical, credit to your account all dividends, interest, capital and other rights accruing to you and received by W&I or its Custodial Agent. W&I shall be authorised to deduct or withhold any tax which is required to be so deducted or withheld, or where W&I is liable or accountable to do so by law or practice of any relevant revenue authority of any jurisdiction.
- 8.6. W&I will not accept liability or responsibility for the default of a CSDP, the Nominee Company or any other nominee company or Custodial Agent.
- 8.7. You agree that legal title to an Investment accepted for deposit may be registered or recorded in the record of legal entitlement in the name of the Nominee Company, a Custodial Agent or such other person as may be necessary

## 08. Custody and Settlement Services continued

- for the Services you have selected.
- 8.8. Where Investments purchased, held or sold on your behalf are held by another Financial Services Provider or its offshore equivalent, and W&I reasonably believes that it shall be in your best interests, or it is not feasible to do otherwise, due to the nature of the law or market practice of an overseas jurisdiction, legal title to an investment accepted for deposit may be registered or recorded in the name of a Custodial Agent or the name of W&I or its agent (this information will be disclosed on request). In such circumstances, the Investments may not be segregated from those of W&I, or its agent, and in the event of default by W&I or its agent, you may not be recognised as the owner of the Investments in the applicable foreign jurisdiction.
- 8.9. You accept all applicable obligations in terms of the settlement rules of the respective markets and/or Exchanges in which you wish to transact or in which transactions are to be undertaken on your behalf and agree to comply with such. These may result in an obligation on you to pay or deliver within specific time frames over which W&I, or its agent, has no control. Should you place W&I, or its agent, in a position where it cannot effect settlement on your behalf or close-out any Short Position on your behalf, you hereby acknowledge that you may suffer losses and/or be liable for interest, margin, charges and/or penalties levied by any settlement authority due to your failure to settle or deliver. You hereby acknowledge that in relation to any Short-Position it may not be possible for W&I to procure the requisite Securities to close-out a Short Position or cover such Short Position and the failure to procure such Securities may result in a failed transaction, in which event you shall be liable for the costs of such failed transaction. In such event, you agree that W&I may recover these directly from your account without prior notice to you.
- 8.10. The JSE Settlement Obligations are detailed in the attached Schedule 2 and form part of the Agreement.
- 8.10.1. Where compensation applies to you as the non-failing party, W&I is requested to submit full details of a claim on your behalf by the day following the day where the rollover trade or re-transacted trade has been completed or where the JSE has notified us that only compensation will apply. When we inform you that you are the non-failing party to a rolled over or failed trade, you must immediately bring to our attention in writing any relevant factor to such claim, including tax consequences. We will endeavor to claim accordingly, subject to the JSE timeframe to submit such claim. We cannot be held liable for any consequence that may emerge at a later stage.
- 8.10.2. In order to avoid the consequences of not meeting the JSE settlement obligations and/or the consequences of not closing-out or settling any Short Position, you hereby agree that W&I will be entitled to automatically arrange for a scrip lending agreement in respect of any transaction, where W&I can reasonably conclude in its sole discretion that you have not put in place such scrip lending agreement. All costs and charges relating to such scrip lending agreement shall be for your account and you authorise W&I to debit such charges from your account.

## 09. Investments

**Subject to the Services and Products selected by you, and any specific supplementary Schedules as may be required by Applicable Legislation or our processes, you hereby appoint W&I to enter into transactions on your behalf, both in the Republic of South Africa and, if and when permitted by law, in foreign countries in respect of the following Securities and Financial Products:**

- 9.1. listed and unlisted Securities, including any derivatives thereof;
- 9.2. money market instruments, including but not limited to, notes, negotiable certificates of deposit, commercial paper or other debt instruments, including any derivatives thereof;
- 9.3. bonds and other fixed income instruments including but not limited to depository receipts;
- 9.4. units or participatory interests in collective investment schemes approved under CISCAs or in any other collective investment schemes licensed or registered in a foreign country;
- 9.5. foreign currencies and derivatives on foreign currencies, subject to any Applicable Legislation;
- 9.6. short and long term bank deposits, and/or money broking transactions on your behalf;
- 9.7. linked investment policies and living annuity policies provided under the LTIA or equivalent foreign legislation;
- 9.8. retirement fund products provided under the provisions of the PFA; and
- 9.9. any other Securities, Financial Products, alternative investments, (including structured products and private equity instruments) or transactions as W&I may from time to time agree with you in writing;
- 9.10. a facility or arrangement that includes one or more of the Financial Products listed at 9.1 to 9.9; and
- 9.11. any other facility or arrangement designated by Applicable Legislation, (together, "Investments").

## 10. Exchange-Traded Derivative Instruments

### 10.1. Obligations of W&I

- 10.1.1. Unless W&I has received an instruction to the contrary from you, W&I will roll all outstanding contracts on the expiry date into the next contract period. If you wish to let your contract expire, you must instruct your W&I broker in relation to such expiration by close of business on the second Wednesday of each quarter end, being March, June, September and December.
- 10.1.2. Where you instruct Single Stock Futures ("SSF") contracts to expire, please note that you are also obliged to ensure that sufficient funds are available in your W&I account for the take up of the underlying shares. Should such cash not be available by the roll over date, W&I will take whatever steps necessary to reduce our risk and exposure. You will be liable for any remaining outstanding amounts plus interest and costs.
- 10.1.3. Where you instruct International Derivatives Futures (IDX) Futures and Currency Futures contracts to expire, the underlying cannot be taken up, therefore cash settlement will occur on close out.

### 10.2. You hereby warrant and represent:

- 10.2.1. that your investment objectives as set out in the investment assessment provided to us in no way constitutes a contravention of the Applicable Legislation or your constitutional rights where applicable and you hereby indemnify and hold W&I harmless for any and all losses whether direct or consequential as a result of W&I acting in accordance with such stated investment objectives or for investing in any Derivatives Contract at your request;
- 10.2.2. that you are fully aware of the risks, obligations and significant aspects of investment into Derivatives Instruments, including the risks of significant losses;
- 10.2.3. that you are fully responsible for understanding and monitoring the specific characteristics of such Derivative Contract, including but not limited to the applicable conditions and restrictions on expiry, exercise or lapse of such instrument;
- 10.2.4. that you further understand the risks of dealing in foreign markets, including currency and equities risks;
- 10.2.5. that you remain responsible for communicating timeously to W&I, prior to the applicable due date, any course of action to be taken in terms of specific conditions attached to the relevant Derivative Instrument;
- 10.2.6. that you are solely responsible for any loss resulting from trading in Derivatives Instruments and for obtaining appropriate legal, regulatory, tax and accounting advice prior to entering into any Derivative Instrument;
- 10.2.7. that you hereby indemnify and hold W&I harmless against any loss incurred pursuant to having requested W&I to carry out any Services in relation to any Derivative Instruments.

### 10.3. Margin

In relation to the IDR Futures, Currency Futures and IDX Futures, the following shall apply in relation to initial margin and variation margin:

- 10.3.1. Initial margin shall be paid to or by a client whenever the risk of loss, as determined by SAFEX/Yield-X, changes with respect to the aggregate position of the client. This initial margin charged by SAFEX/Yield-X varies according to the volatility of the market and is required and controlled by SAFEX/Yield-X and not W&I.
- 10.3.2. Additional margin will be requested by W&I (to be determined in its sole discretion);
- 10.3.3. If you fail to pay any amount due to us, W&I will be entitled to sell out your position at any time within our discretion and without further notice;
- 10.3.4. Variation margin shall be paid to or by a client in whose name a position in an exchange contract is registered as the result of the marking-to-market of a position on a daily basis, or the closing out of a position or part of a position. Additional margin may not be used to fund variation margin.

### 10.4. Margin and withdrawals from Client's account

- 10.4.1. W&I is authorised to withdraw from your account, as permitted by the relevant exchange rules, such amounts as are required from time to time to settle any amounts due in the course of opening, closing or maintaining any positions on your behalf and to effect such other payments as are necessary in the operation of your account.
- 10.4.2. In terms of the rules of the relevant exchange, you shall pay to the member (in this case W&I) an amount of additional margin determined as a percentage of the initial margin maintained by the clearing house on behalf of the relevant exchange (as determined by W&I from time to time and notified to you prior to the execution of any order), by 12pm on the day that such margin is due. This additional margin is an upfront margin payment made to W&I at the outset.
- 10.4.3. W&I may liquidate or realise any of your other investments, Securities or holdings as W&I deems fit in order to offset and settle any outstanding obligations resulting from your trading in Derivative Instruments.

### 10.5. Trading limits

- 10.5.1. W&I shall use its reasonable endeavors to advise you of all trading or position limits imposed upon you by the relevant exchange, if any, and of all limits imposed by W&I. In addition, W&I shall have discretion to amend any minimum contract size as may be applicable. Notwithstanding the foregoing or anything to contrary contained herein, you hereby acknowledge and agree that it shall be your responsibility to be aware of and comply with any trading or position limits applied by the relevant exchange.
- 10.5.2. If you are trading IDX Futures, you are limited to the following trading restrictions:

## 10. Exchange-Traded Derivative Instruments continued

10.5.2.1. you may only trade during South African market times;

10.5.2.2. the underlying security must be an internationally listed security and must be SAFEX approved;

10.5.2.3. the minimum trade size is R100 000,00 (one hundred thousand rand) nominal exposure.

### 10.6. Differences between IDX, Single Stock and Currency Futures

Futures Single Stock	Exposure 1 future = 100 shares	Currency exposure Rand denominated on foreign referenced assets	Settlement Cash
IDX	1 future = 1 share	Rand denominated on locally referenced assets implying no currency exposure	Cash
Currency	1 future = 1000 units of currency	Full exposure to underlying exchange rate.	Cash

## 11. Investment Advice

**(This section is not applicable if you have selected execution only services or dealing with advice services and confirmed to W&I in writing that you do not require any advice).**

- 11.1. Where our Services include W&I providing you with advice, such Services shall be conducted on the basis set out in the sections relevant to the Services you have selected, subject to the Applicable Legislation and subject to you providing W&I with a completed and signed Financial Assessment Questionnaire or similar document which will enable W&I to obtain an understanding of your needs and investment objectives as well as your risk tolerance and your capacity for capital loss.
- 11.2. Should your financial circumstances, needs or objectives change at any time, you should advise W&I of such change immediately.
- 11.3. Where you have not provided all information requested by W&I or you have provided W&I with inaccurate and

incomplete information for the purposes of W&I furnishing advice to you or where W&I has been unable to conduct such an analysis because in the light of the circumstances surrounding the case, there was not reasonably sufficient time to do so, W&I will not be in a position to perform a full analysis of the suitability of a particular transaction and there may be limitations on the appropriateness of the advice provided. In such circumstances you should take particular care to consider whether the advice is appropriate considering your objectives, financial situation and particular needs. In addition, where you elect to conclude a transaction that differs from that recommended by W&I, or otherwise elect not to follow the advice furnished by W&I, or elect to receive more limited information or advice than W&I is able to provide, then you must, in order to manage the risks to you, take particular care to consider whether any product selected is appropriate to your needs, objectives and circumstances.

## 12. Instructions

- 12.1. W&I will accept your written, where required, and/or oral Instructions ("Instructions"). For security purposes, you acknowledge that W&I has the right to delay carrying out any Instructions from you whilst W&I verifies the authenticity or correctness of such Instruction, in our discretion. Your Instruction will be formally acknowledged by issuing a contract note or confirmation of the transaction(s) through the document distribution method as selected by you in the Client Application Form. The contract note or confirmation will supersede any oral acknowledgement of your order given at the time and you should contact W&I immediately if the contract note or confirmation does not accord with your Instructions. In the absence of manifest error, contract notes or confirmations shall be conclusive and binding on you. Please note that once an order or Instruction has been accepted for immediate execution by us, it may not be possible to amend or withdraw it and you will remain responsible for its settlement until W&I has provided confirmation that it has been successfully amended or withdrawn.
- 12.2. Where Instructions are given by e-mail, you should not assume that any e-mail has been received by W&I and/or actioned unless you received either an e-mail and/or telephone call acknowledging our receipt. You should also be aware that e-mail is not a secure medium and therefore any Instructions received by W&I purporting to be from you by e-mail may be actioned. W&I will accept no liability for any false Instructions or delay whatsoever.
- 12.3. At all times, you shall be responsible for promptly giving any Instructions to W&I as required. It is your duty to ensure that any Instructions given to W&I are correct, complete, clear and intelligible. W&I shall not be responsible or liable for any reason whatsoever for any loss or damage (whether direct or consequential) as a result of not receiving Instructions or receiving Instructions which are late, incomplete, ambiguous or incorrect with respect to your Investments. In such cases, W&I may, in its sole discretion, take such reasonable steps as W&I considers necessary or desirable for its own or your protection.

## 12. Instructions continued

- 12.4. W&I will be entitled but not bound to act on a request from you to effect a transaction in accordance with these Terms and Conditions. If W&I declines to accept Instructions from you, W&I will notify you.
- 12.5. W&I is entitled but not bound to require confirmation (in such form as W&I may request) of any Instruction:
- 12.5.1. which is given orally;
  - 12.5.2. if it appears to W&I that such confirmation is necessary or desirable; or
  - 12.5.3. if such Instruction is to close an account or remit money due to you.
- 12.6. Where you require a change to your Personal Information in relation to any of your accounts, W&I may require you to make such a request in writing supported by appropriate documentary evidence. We may not proceed to act, until we have positively confirmed the amendment with you.
- 12.7. Where the Agreement is entered into with any entity other than an individual, a resolution from the entity (trust/ company/close corporation or any unincorporated entity or partnership) giving the signatory authority to sign on behalf of the legal entity and authorising nominated signatories to provide Instructions on its behalf will be required and any changes thereto shall be communicated to W&I in writing. W&I shall be entitled to prescribe from time to time the documents or proof required in order for it to accept changes in authorised signatories. W&I shall not be liable or responsible for any reason, in the event that the signatory to the Agreement or authorised signatories is/are not duly authorised and the signatory indemnifies W&I against any and all damages and/or loss arising from such event.
- 12.8. If the Client is an individual, W&I shall, following the death of the Client, act on the instructions of the appointed executor(s). W&I shall continue to act in accordance with the mandate agreed at the outset until such appointment has been made.
- 12.9. You may withdraw money from the Investments managed and/or administered by W&I by giving W&I written notice. W&I undertakes to pay from the available cash managed and/or administered by W&I on your behalf the amount to which your withdrawal relates within 3 (three) Business Days of receipt of such notice. If Investments must be realised in order to fund the amount of such withdrawal, W&I shall use reasonable endeavors to realise the applicable Investments in accordance with your instructions. Payment to you will only be possible when Investments have been redeemed and credited to your account in South Africa. You accept that the realisation of Investments may lead to delay in payment of the withdrawal amount.
- 12.10. If the Client is a director of a listed company locally or offshore, it is the Client's sole responsibility to inform W&I in writing of any restrictions of shares in the company in which s/he is a director. W&I will assume no responsibility as it relates to any exchange notification request e.g. SENS announcement.
- 12.11. Without prejudice to the above, you agree that W&I may deem any such Instruction purported to be given by you as authentic, valid and properly executed on your behalf and that it will be binding on you notwithstanding that such Instruction may have been made without or in excess of authority from you and/or any error, misunderstanding, fault, forgery or lack of clarity that may have been made or contained in the terms of such Instruction. You further agree that W&I shall be under no duty to verify the authenticity of such Instruction or to enquire whether such Instruction has been made properly or with due authority. W&I shall not be liable for relying on any such Instruction and you agree to indemnify and hold W&I harmless in full, against all claims, liabilities, damages, losses, costs and expenses of any kind arising from W&I acting or omitting or refusing to act on such instruction.

## 13. Telephone calls

- 13.1. In order to assist in monitoring compliance with the Applicable Legislation and to avoid misunderstandings, telephone conversations between you and employees of W&I may be recorded with or without the use of an automatic tone warning device.
- 13.2. Our recordings shall remain the sole property of W&I and will be accepted by you as evidence of the orders, Instructions or conversations so recorded. You accept that a certificate confirming the content of such recording and certified to be correct by an officer in the service of W&I shall constitute rebuttable proof of the facts contained in such recording.
- 13.3. You agree that W&I may deliver copies or transcripts of such recordings to any court or regulatory authorities, when requested to do so.



## 14. Orders and transactions

- 14.1. Orders may be passed to overseas branches or associate companies of W&I for execution. Other brokers (selected at W&I's discretion) may also be used. Orders are subject to the terms and conditions of any such broker and to the Applicable Legislation. Please note that the legal, compliance and risk conditions may differ from our own, and on this basis we are obliged to comply accordingly.
- 14.2. You hereby authorise W&I to take any action which it, in its discretion, considers to be in your best interest in circumstances of an emergency, market failure, market disruption, trading suspension or issuer financial distress. You further agree that if any Exchange, clearing house, CSDP, custodian, third party service provider or agent takes any action which affects a transaction, W&I may take such action in response which it, in its discretion, considers to be in your best interest. W&I will not be liable for any loss suffered by you as a result of the acts or omissions of any Exchange, clearing house, CSDP, custodian, third party service provider or agent or any action reasonably taken by W&I.
- 14.3. W&I shall not be required to do anything or refrain from doing anything which would, in its opinion, infringe the Applicable Legislation. W&I may at any time and without notice, do whatever it considers necessary to comply with the Applicable Legislation.
- 14.4. Best execution – W&I will adhere to the best execution principle in respect of transactions which it undertakes for you in that it will take reasonable care to obtain the best possible result when executing client orders or placing orders with (or transmitting orders to) other entities to execute, taking into account the terms and conditions agreed with you.
- 14.5. Orders placed in offshore markets are subject to the best execution rules of the jurisdiction concerned and agents used by W&I and its agents.
- 14.6. Aggregation of orders – W&I may combine any of your orders with orders of other clients (including employees or customers), as permitted by the Applicable Legislation. Although orders will only be aggregated where W&I reasonably believes it to be in the overall best interest of its Clients, aggregation may in some cases result in you obtaining a less favourable price than if your order had been executed separately.
- 14.7. Dealing in Investec shares – W&I may provide you with advice on, or carry out transaction in Investec shares at your request or on your behalf. However in certain circumstances, W&I may be restricted or prohibited by law or regulatory rules to provide advice or carry out certain transactions in relation to Investec shares. You accept that when notified of such restriction or prohibition, you will not hold W&I liable for any delay, loss or damages.

Prior to taking any Short Position, the Client shall be obliged to notify W&I that he/she/it intends to take a Short Position and that he/she/it is in possession of the securities required to settle its obligations to the lending party, alternatively that he/she/it is not in possession of the requisite securities and that he/she/it requires W&I to facilitate the lending transaction. Any Client which intends to undertake a Short Position hereby acknowledges that he/she/it is aware of the risks associated with a Short Position and hereby indemnifies W&I against and holds it harmless from any losses, damages, costs or expenses of whatsoever nature arising out or in connection with the Short Position taken by the Client. The Client hereby acknowledges that W&I will not undertake a Short Position unless its settlement team has confirmed that it is in possession of the shares that may be required to close- out the short position.

## 15. Statements and Valuations

- 15.1. Subject to the Applicable Legislation, W&I shall furnish you with a statement of account at regular intervals of at least every three months but not more than monthly unless:
- 15.1.1. you consent in writing not to receive the statements because they are made available to you through electronic means on a continuous basis; or
- 15.1.2. your portfolio includes any transactions in derivative instruments during the course of a month and/or open positions in derivative instruments in which case a statement shall be supplied to you daily.
- 15.2. W&I may provide information to you in separate statements either during the reporting period or as at the reporting date, on request by you.
- 15.3. W&I may provide a statement to you and/or to an agent or third party nominated by you in writing.
- 15.4. Statements provided by W&I will provide you with the quantity, description and market value of Investments forming part of your portfolio at the reporting date.
- 15.5. Where statements are provided to you by a third party, such statements will be provided in accordance with the relevant third party's terms and conditions as agreed to by you.
- 15.6. In the event that you request ad hoc valuations, such valuations will be provided on the basis stated at the time, which should not be taken to imply that the valuation represents a market value or that any market professional would quote the same or similar values or that any transaction or position can be realised for that value.

## 15. Statements and Valuations continued

- 15.7. Provision of a valuation does not constitute either a bid or an offer by W&I or a member of Investec. If W&I subsequently agrees to quote a firm price, that firm price may differ from the most recent valuation provided to you.
- 15.8. Valuations will be provided solely for your information and are not intended for the benefit of any other party. W&I specifically disclaims liability for any use you may make of any valuation. You should discuss with your external advisors the extent to which any valuation provided by W&I may be used to value your or any other person's Investments. Providing valuations to you on one or more occasions does not create an obligation for W&I to continue to do so in the future.
- 15.9. Valuations for deceased estates are provided subject to the relevant fee as set out in the Fee Schedule.
- 15.10. Valuations of listed South African Investments will be prepared on the basis of the ruling prices disseminated by the relevant Exchange on the date specified. Unlisted Investments will be valued at the most recent estimate if, in the opinion of W&I, it is reasonable to do so, otherwise they may be excluded from the valuation. Valuation of non-South African Investments will be based on the latest closing prices available to us.

## 16. Fees

- 16.1. Fee schedule available from your Investment Manager.
- 16.2. W&I may amend any of the fees set out in the Fee Schedule from time to time provided only that W&I gives you at least thirty days' prior notice.
- 16.3. In addition to the fees stipulated, you will be responsible for payment of any taxes, duties, charges (including bank charges) or expenses incurred by W&I or levied on W&I by any Exchange or other agent or third party in relation to your Investments.
- 16.4. You agree that W&I shall be entitled at its discretion to debit any of your accounts with any amount due by you to it under the Agreement, including any expenses or taxes incurred on your behalf, as well as any other agreed fees and expenses, or to deduct or withhold such fees, charges or expenses from any amount received by W&I for your account and payable by W&I to you.
- 16.5. You acknowledge that W&I may, at its absolute discretion, charge negotiated or discounted fees and commissions without this amounting to treating certain clients unfairly.
- 16.6. W&I is specifically authorised to realise any investment that may be held by us in terms of this Agreement should there be insufficient cash available to settle any outstanding fee, charge or commission.
- 16.7. Should this Agreement be terminated at any time, our pro-rata fee for the applicable period shall be computed and payable on the date of termination.

## 17. Interest

- 17.1. Payable to you:
- 17.1.1. Interest earned on your available cash will be paid to you, calculated according to JSET rates or, money market rates as applicable to your Investments.
- 17.1.2. W&I may charge you an administration fee relating to such cash or cash equivalent Investments as disclosed in our Fee Schedule, as amended from time to time.
- 17.1.3. Offshore: Interest will be paid based on the specific terms and conditions applicable.
- 17.2. Payable by you:
- 17.2.1. If you are in default in paying any amount when it is due to W&I, W&I will charge you interest, which will accrue and be levied on a daily basis at the prevailing prime lending rate, as published by Investec from time to time.
- 17.2.2. Offshore: If in default, interest will be payable by you to the broker concerned, subject to their terms and conditions.



## 18. Conflicts of Interest

- 18.1. W&I is committed to ensuring that its business and relationships with Clients are conducted in an ethical and equitable manner in accordance with good business practice and principles and policies relating to treating customers fairly, in a way that safeguards the interests of all stakeholders. W&I will not knowingly place its own interest above those of its Clients. In terms of our policies and practices, information barriers separate W&I from other divisions within W&I and other companies or divisions within the Investec Group. This may result in W&I not being aware of services or transactions undertaken by other Investec companies or divisions.
- 18.2. W&I forms part of the Investec Group, an international specialist banking group that provides a diverse range of Financial Products and Services to a select client base and potential conflicts of interest may arise. As such, the avoidance, and where avoidance is not possible, the mitigation and management of conflicts of interest are inherent to the Investec business. Given the nature of W&I's business, and other divisions or Investec companies conducting investment banking activities such as investment research, proprietary trading and corporate finance business, conflict of interest management is paramount.
- W&I distributes products created by various Investec companies or divisions such as Investec Corporate & Institutional Banking, Investec Private Bank; and Investec Wealth & Investment International (offshore entities), amongst others.
- 18.3. You understand and accept that W&I or Investec may have, directly or indirectly, an interest, arrangement or relationship which could be in conflict with your transactions. You agree that W&I or Investec may transact such business or perform other services, without prior reference to you and/or approval from you, save where Applicable Legislation requires W&I to provide further disclosures to you or to seek your consent to a specific matter.
- 18.4. The full W&I Conflicts of Interest Policy and any related reports can be accessed on [www.investec.co.za/wi](http://www.investec.co.za/wi) or sent to you at your request.
- 18.5. W&I may receive commission, incentives, fee reductions or rebates from an administrative financial service provider or product supplier for placing client funds with them. W&I shall provide information in relation to such arrangements relating to your Investments to you on request.

## 19. Market Information, Views and Opinions

- 19.1. W&I may provide you with market information, views and opinions which W&I prepares from internal sources and/or external sources W&I believes to be reliable.
- 19.2. Market information, views and opinions provided to you are of a general investment nature, are not personal recommendations and are not intended to address the specific circumstances of any particular individual or entity. No one should act upon such information, view or opinion without appropriate professional advice and after examination of their particular needs and circumstances.
- 19.3. W&I endeavors to provide accurate and timely information but W&I makes no representation or warranty, express or implied, with respect to the correctness, accuracy or completeness of the applicable market information, views and/or opinions provided by W&I. Accordingly, W&I shall not be liable for any direct or consequential loss arising from the use of our market information, views or opinions, or arising out of errors, omissions or changes in market factors. Information, views and opinions are provided for your personal use only and you may not copy, distribute, redistribute, sell, resell, retransmit or otherwise make market information, views or opinions available to third parties and W&I will not be liable for the misuse of such information.

## 20. Benchmarking

- 20.1. W&I may provide you with a benchmark in relation to your portfolio or certain Products. A benchmark is a reference point for your portfolio designed to assist you in assessing the performance of your portfolio or the Products. It is not a promise that your portfolio or product will perform in line with or follow the benchmark. It does not mean that your portfolio or the Products are based on the Investments making up such benchmark.
- 20.2. For performance measurement purpose, W&I may select a benchmark as W&I deems appropriate to your portfolio or our Products. In some circumstances, W&I may decide to amend the benchmark to reflect a more appropriate measure.

## 21. Foreign Investments

**Where you authorise W&I to invest on your behalf in Foreign Investments, you agree to the terms below.**

- 21.1. You acknowledge that Foreign Investments are subject to specific limits, conditions and forms as determined from time to time by the South African Reserve Bank ("SARB") and/or the South African Revenue Service ("SARS"). Where you request W&I to make Foreign Investments on your behalf by using your individual offshore investment allowance, you warrant that you do not exceed the permitted maximum amount per annum as granted or approved by SARB and/or SARS.
- 21.2. Foreign Investments can be made directly under the Foreign Investment allowance granted to individual taxpayers or under W&I's foreign portfolio investment allowance ("Asset Swaps").
- 21.3. In executing Foreign Investments, W&I may transact through any agent or third party of its choice, subject to their terms and conditions.
- 21.4. All currency transactions effected on your behalf in the Republic of South Africa will be effected by Investec Bank Limited. W&I will not accept limit orders for currency transactions. W&I may add an administration fee which will be disclosed to you at the time of dealing and the all-in exchange rate charged to you will be reflected on your transaction confirmation note.
- 21.5. W&I has no control over currency transactions effected by foreign counterparties.
- 21.6. You accept that the conversion of South African Rand is subject to receipt of the investment amount, approval of the application by W&I and/or the relevant foreign agent or third party or their delegates, who may decline the application at their discretion or until their requirements such as anti-money laundering verifications are met.
- 21.7. Orders or any other transaction in Foreign Investments may be passed to W&I or agents of Investec for execution, or to any other third-party broker, investment manager or administrator selected at W&I's discretion and you will be bound by the terms and conditions of service of such third party.
- 21.8. W&I will submit to you for payment or may recoup from you, any administration fees, charge or management fees charged by the relevant offshore Investec company or third party broker, investment manager, administrator or custodian of your Foreign Investments and/or any taxation which is levied on such Foreign Investments and was required to be paid or withheld by W&I for and on behalf of the client .
- 21.9. Where you make use of W&I's Asset Swaps approval to acquire Investments on your behalf, you understand and agree that there may be restrictions or limitations imposed by applicable exchange control regulations. W&I will not have any responsibility or liability should exchange control regulations change or the application thereof by SARB change and such changes add to the restrictions applicable to your foreign investments.
- 21.10. Under the current SARB approval framework, you will not have direct access to your offshore investments implemented through Asset Swaps and will at all times be obliged to deal through W&I as your authorised agent. Such Foreign Investments will only be repaid to you via a domestic payment in South African Rands, as required by the exchange control regulations as amended from time to time. Therefore, you will not be able to directly transfer or transact on any of such Foreign Investments and all your instructions relating to such Foreign Investments must be through W&I.
- 21.11. You acknowledge that changes in the requirements relating to Asset Swaps may require W&I to unwind foreign investments made on your behalf and to repatriate applicable funds to South Africa.

## 22. Cash Deposits

- 22.1. In respect of South African Investments, all of your deposits, including interest, dividends, proceeds of disposals and cash ("Client Funds") received by us, will either be:
  - 22.1.1. paid by W&I for your credit and in your name into JSET, in which case you will be afforded the protection under the JSE rules; or
  - 22.1.2. on your Instruction, transferred to a third party Bank of your choice, to be held on deposit in a client trust account, in which case, you confirm that W&I will act as agent on your behalf; and
  - 22.1.3. you acknowledge that you bear the risk and benefit and that W&I will not assume any responsibility in terms of the third party Bank's failure to meet its commitments in terms of any such transaction; and
  - 22.1.4. you agree that you will consider all statements received and advise W&I immediately should there be any inaccuracies.
- 22.2. You authorise W&I to retain or to withdraw from any cash deposited on your behalf in JSET or any other client trust account as actually required:
  - 22.2.1. to pay for Investments purchased on your behalf from time to time;
  - 22.2.2. to effect such payments as are necessary in terms of the Agreement;
  - 22.2.3. to discharge a debt due by you to us, whether in respect of fees or charges due under the Agreement or otherwise.

## 22. Cash Deposits continued

- 22.3. In terms of the JSE rules, W&I is not permitted to receive deposits paid in cash.
- 22.4. In respect of Foreign Investments, your deposits, including interest, dividends, proceeds of disposals and cash ("Foreign Client Funds") received by our nominated third party in respect of your Foreign Investments, will be held in accordance with applicable laws. The interest earned on such Foreign Client Funds will be currency dependent and therefore, in certain circumstances, may yield zero to possibly negative interest.

## 23. Payments

- 23.1. Client funds deposited by W&I on your behalf in JSET or any other Client trust account in terms of the Agreement, as permitted by the Applicable Legislation, will only be paid to a bank account in your name as designated by you in the Client Application Form or as advised by you in writing and include acceptable proof of such bank details.
- 23.2. Where W&I transacts on your behalf, W&I will not make any third party payment (except for payment to an account in your name held at another broker, Bank, asset manager, Financial Service Provider or offshore equivalent or as may be required when exercising our discretion in managing your Investments).

## 24. Corporate Actions and Shareholder's Rights

- 24.1. This section does not apply to you if you have selected a discretionary portfolio management service as W&I will have full discretion with regards to any Corporate Action or any Shareholder's Rights, event, or exercise of any right.
- 24.2. You may, as indicated in clause 5.1, elect to receive or not receive company reports directly from the issuer, however W&I will have no control over such distribution of company records and shall incur no liability if such reports are not received by you.
- 24.3. It is your sole responsibility to monitor Corporation Actions and inform W&I of your instruction in respect of that Corporate Action at least two Business Days prior to the applicable response date. It is also your sole responsibility to inform W&I of your instruction with regard to any Shareholder's Rights. In this regard, you hereby acknowledge that there may be statutorily prescribed time limits in which you are required to exercise your Shareholder's Rights and that you shall be responsible for ensuring that W&I receives your instruction timeously and, with sufficient time to ensure that W&I is able to exercise your Shareholder's Rights.
- 24.4. In respect of non-discretionary accounts you are required to instruct W&I as to your selection option as it relates to corporate actions. Should you fail to do so in terms of W&I stipulated timelines, W&I will select the issuer default.
- 24.5. W&I shall not exercise voting rights or any Shareholder's Rights in respect of non-discretionary accounts without your instruction per the prescribed formalities.
- 24.6. You agree that where an Investment is held by a Custodial Agent or third party provider, W&I shall only be obligated to pass on your Corporate Action Instructions or your instructions in relation to any Shareholder's Rights promptly to the Custodial Agent or third party provider. You acknowledge that the terms of business of a Custodial Agent may contain provisions relating to the giving of Instructions and any action permitted in the absence of such Instructions and that such provisions shall be binding on you. You hereby acknowledge and agree that W&I does not wish to become engaged in protracted legal proceedings in respect of any Shareholder's Rights and W&I shall be entitled, in its sole and absolute discretion, to elect that any Securities which are the subject matter of the Shareholder's Rights are rematerialized and registered in the name of the Client. You hereby also agree that it shall be your responsibility to ensure that you provide sufficient time in order to enable W&I procure that such Securities are rematerialized and registered in your name, well in advance of the expiry of any period which is prescribed for the exercise of any such Shareholder's Rights.

## 25. Online Trading

- 25.1. W&I may make Online Share Trading services available to Clients who have requested to be provided with access to such Online Trading services. W&I shall be entitled, in its sole and absolute discretion, to elect only to make such Online Share Trading services available to Clients who have provided W&I with all of the information that is required by W&I and who satisfy the eligibility criteria developed by W&I from time to time for such Online Share Trading services.
- 25.2. If W&I elects to make Online Share Trading services available to any Client, such Online Share Trading services shall be provided by W&I in accordance with the terms of this Agreement and on the terms and subject to the conditions set out in W&I's then prevailing Online Share Trading Terms. Any Client who elects to use the Online Share Trading services shall be obliged to accept and shall in any event be deemed to have accepted, the then prevailing Online Trading Terms.
- 25.3. Any Online Share Trading services shall be provided by W&I on mutatis mutandis the same basis as the basis upon which Investec provides Non-discretionary Trading Services to its Clients, as set out in clause 5.3 of this Agreement. Accordingly, W&I does not act as financial advisor in relation to any Online Share Trading services.
- 25.4. W&I makes Online Share Trading available to Clients subject to the principle of technology neutrality, which principle the Client hereby accepts. Accordingly, in terms of the principle of neutrality, unless otherwise stated in the Online Share Trading Terms, Online Share Trading is subject to the same business fundamentals and principles governing W&I's relationship with its Clients, being the terms and principles which are set out in this Agreement, and Online Share Trading is subject to the same processing turn-around times.
- 25.5. In order to enable the Client to use the Online Share Trading services, Investec will provide the Client with a unique access code upon W&I granting the Client access to the Online Share Trading services. It shall be the responsibility of the Client to ensure that the Client's unique access code is not: (i) disclosed to any third party; (ii) accessible to any third party; and (iii) used without being authorised by the Client. The Client shall also be responsible for ensuring that it logs-out of his/her/its Online Share Trading account. W&I shall not be liable for any unauthorised use of the Client's unique access code to perform Online Share Trading activities and the Client shall be solely liable for any unauthorised use of its unique access code.
- 25.6. The Client hereby acknowledges that by entering his/her/its unique access code he/she/it shall be deemed to have authorised and signed any instruction and all subsequent instructions that are issued by the Client whilst his/her/its unique access code is being used during any online session. The Client hereby acknowledges and agrees that if the Client has used his/her/its unique access code, W&I shall not be obliged to require the Client to sign any document unless the signature of the Client is required in terms of the Applicable Legislation. To the extent legally permissible, whenever required in this Agreement or applicable legislation, the submission of his/her/its unique access code, together with the submission of an instruction shall, collectively, constitute and have the same effect as a written, signed authority by the Client in favour of W&I. Whenever the Client's unique access code is submitted, W&I shall be entitled to regard all Instructions as actually originating from or authorised by the Client and to act on such Instruction. Under no circumstances shall W&I be held liable for any actions taken on unauthorised Instructions. An Instruction becomes irrevocable once submitted to W&I. Prior to final submission of an Instruction to W&I, the Client is entitled to review the entire electronic transaction contemplated by the Instruction, to correct any mistakes and to withdraw from the Instruction before finally submitting the Instruction.
- 25.7. If an Instruction sent by e-mail and that Instruction is not acknowledged by W&I, the Client shall not re-submit or send the same Instruction before contacting W&I. W&I shall not be liable for the Client executing the same Instruction more than once and neither Instruction shall be reversible once submitted to W&I.
- 25.8. All material published on Investec's website for the purpose of assisting Clients with Online Share Trading is only intended to provide general information regarding W&I and its Investments and does not constitute professional advice of whatever nature. All material published on Investec's Website including, without limitation, research, opinions, figures, prices, projections or other content are provided "as is" and Clients shall not place reliance thereon in taking actions which might affect their personal finances without consulting W&I directly. Investec's website may contain certain statements or information with respect to:
- 25.8.1. the projection of revenues, income, earnings per share, capital expenditures, dividends, capital structure, or other financial items;
- 25.8.2. the plans, objectives and/or projections of W&I for future operations, including those relating to the services of W&I; or
- 25.8.3. future economic performance; and W&I wishes to caution Clients that such projections are only predictions and that actual events or results may differ materially and accordingly these projections should not be relied on by Clients. Unless clearly otherwise stated, no material should be construed as an offer of whatever kind made by W&I. All material on Investec's website merely constitutes an invitation to do business with Investec.
- 25.9. W&I shall at all times and for whatever reason, have the sole and exclusive right to suspend or terminate Online Share Trading without any prior notification or giving any reasons for such termination or suspension.
- 25.10. The Client hereby acknowledges and accepts that Online Share Trading may become unavailable from time to time due to various circumstances, including: technical failure or problems with the Investec system and Online Share Trading; technical failure or problems with third party information technology systems; unavailability of telecommunication or electricity services; other circumstances beyond the control of Investec or routine maintenance of the Website, in which event Clients are encouraged to contact W&I directly and to make use of Investec's other services.

## 26. Market Abuse

You agree that you will not, by deliberate or negligent act or omission, commit any market abuse offence as described in the Applicable Legislation. This means distorting, misleading or taking unfair advantage of the market and includes insider trading, market manipulation, prohibited trading practices and making false, misleading or deceptive statements, promises and forecasts. Market abuse is an offence for which you may be liable to pay an administrative sanction, a fine and/or to imprisonment.

## 27. Limitation of Liability

- 27.1. Subject to 27.2 and 27.6 below, W&I and its directors, officers, employees and agents, whether forming part of Investec or not, will not be liable for any losses, liabilities, costs, expenses, claims or damages (whether direct, indirect or consequential) suffered or incurred by you in connection with the Services or your Investments.
- 27.2. The exclusion of liability in clause 27.1 shall not apply in circumstances where the applicable losses, liabilities, costs, expenses, claims or damages are attributable to the wilful default, fraud or gross negligence of W&I or any director, officer, employee or agent of W&I, provided that such director, officer, employee or agent is acting within the scope and course of his employment and provided further that W&I shall not be liable for any loss of profits or indirect or consequential damages.
- 27.3. In the event that you instruct W&I to sell or purchase any Investment, W&I, its directors, officers, employees and agents shall have no liability for any loss or expense you may incur by reason of any change in market conditions before the particular transaction is effected.
- 27.4. W&I has legal obligations regarding the detection, reporting and prevention of financial crime, fraud, money laundering and terrorist activity. W&I is required to take action where W&I has suspicions about the use of, or any activity concerning, any accounts or funds W&I holds or any facilities W&I provides. W&I may be obliged to refuse transactions or instructions. W&I will not be liable to you or any third party for any loss or damage arising from any action W&I may take as a result of our legal obligations.
- 27.5. Nothing contained in these Terms and Conditions shall exclude or restrict or amount to a waiver of any obligations which W&I has under the Applicable Legislation in relation to you, the Client, or any liability which W&I may incur under the Applicable Legislation in respect of a breach of any such obligations. Nor shall anything in these Terms and Conditions require you to indemnify or compensate W&I to any extent prohibited by the Applicable Legislation.
- 27.6. Any director, officer, employee and agent shall be entitled to accept the benefit of the provisions of this clause 27 accorded to such person by written notice to W&I at any time.

## 28. Taxation

- 28.1. W&I does not advise in relation to tax matters. It is your responsibility to ensure that you are familiar with or take advice in respect of the tax implications of your Investments, changes in tax laws and your tax status.
- 28.2. You will be responsible for the submission of any exemption or declaration form in relation to any tax requirement such as dividend withholding tax. W&I will not be liable or responsible for the re-imburement of tax paid in the event that you fail to provide the relevant form.
- 28.3. W&I shall provide you with the relevant tax certificates for South African investments at the end of each tax year and may provide you with tax certificates for certain Foreign Investments, as advised.
- 28.4. You acknowledge that details of your Investment may be reported to tax authorities of South Africa and potentially other countries, in accordance with legal requirements.
- 28.5. W&I may, as part of its services to you, offer computations or information to assist you in managing your tax affairs. Whilst such information will always be provided in the utmost good faith, W&I gives no representation, warranty or guarantee as to its completeness, accuracy or appropriateness to you.

## 29. Power to sell or close out

- 29.1. If at any time, W&I has any reason to believe that you may be unable or unwilling to meet any liabilities which you have incurred to W&I or which W&I may have incurred on your behalf, or to comply with any other of your obligations under the Agreement, W&I shall be entitled (and W&I is hereby irrevocably authorised by you) to take all or any of the following actions:
- 29.1.1. sell Investments bought on your behalf but which you have not paid;
- 29.1.2. close any Short Positions (by buying-in Investments or otherwise) in the event that the relevant Securities have not been delivered by you;
- 29.1.3. sell any Securities held or registered by W&I or in our Nominee Company or another custodian to our order or acquired on your behalf; and
- 29.1.4. take any other steps (whether or not similar to the above) W&I may consider to be necessary to protect W&I's position.

## 30. Client Warranties

- 30.1. You warrant to and for the benefit of W&I that:
- 30.1.1. you have full power and authority and are validly existing under the laws of your jurisdiction of establishment to enter into this Agreement and to carry out all the transactions contemplated in this Agreement;
- 30.1.2. you have taken all necessary action (including the obtaining of all necessary consents, authorisations, registrations and the like, with any government or other regulatory body or authority) and such consents or authorisations are of full force and effect;
- 30.1.3. the execution, delivery and performance of this Agreement will not constitute a breach or result in any default under any other terms of business, memorandum, agreement, constitution, and does not conflict or violate any other obligation, judgment or rules by which you are bound;
- 30.1.4. all details of your financial position and any other information given to W&I are and will remain complete, accurate and not misleading in any material respect;
- 30.1.5. you will notify W&I forthwith of any material change in any information provided to us; and
- 30.1.6. you will comply with all Applicable Legislation, including but not limited to anti money laundering legislation.
- 30.2. In relation to any assets managed or held by W&I on your behalf, you warrant and undertake to W&I that:
- 30.2.1. all such assets are and at all times shall remain free from any restrictions on transfer;
- 30.2.2. all such assets are and at all times shall remain free from any third party lien, charge, bond, pledge, encumbrance or other similar interest (unless otherwise agreed);
- 30.2.3. no person other than you has any rights or interest in any such assets;
- 30.2.4. you are free to deal with such assets, as the owner thereof.

## 31. Set off and lien

- 31.1. W&I shall be entitled at any time and without notice to you, to retain or make deductions from, or to apply set off against, amounts or credit balances which W&I may owe to you or are holding for you, in order to meet any liabilities which you may have incurred to W&I or which W&I may have incurred on your behalf. In addition, W&I may exercise a right of retention over any or all of your assets in our possession and shall be entitled to apply such assets or sell such assets and apply the proceeds of the sale to your liabilities (whether actual or contingent) owing to us.
- 31.2. For the avoidance of doubt, the provisions of subparagraph 31.1 shall apply to the proceeds of any sale or closing out of a position or other sum arising pursuant to the implementation of clause 29 above.
- 31.3. In addition, W&I shall have the right at any time without notice, to combine and/or consolidate all or any of your accounts maintained with W&I held in your name, in such manner as W&I may determine.



## 32. Third parties and nominated persons

- 32.1. W&I may accept Instructions from third parties or provide information to other professional advisors or other third parties where you have confirmed in writing, that W&I may do so.
- 32.2. W&I may accept these Instructions from third parties either orally or in writing, but W&I accepts no responsibility for any errors or omissions resulting from misunderstandings in respect of oral Instructions. W&I will not accept Instructions from third parties, nor provide information to professional or other advisers without such written authority from you.

## 33. Force majeure

W&I shall not be liable to you or in breach of the Agreement, if there is any total or partial failure of performance of our duties and obligations as a consequence of an act of God, terrorism, fire, act of government or state, war, civil commotion, load-shedding, insurrection, embargo, breakdown of computer systems or other machine failure, inability to communicate with exchanges and other service providers for whatever reason, beyond our control.

## 34. Use of the Account

W&I, as part of Investec, is obliged to comply with laws and policies relating to international and local anti-money laundering and Sanctions. W&I will therefore screen, verify and process all your information and thereafter monitor all information, Instructions and transactions by and on behalf of you and our business relationship with you on a continuous basis. This may result in the non-implementation of your Instructions and even in the suspension of your account and in the termination of transactions or our business relationship with you.

To the extent permitted, W&I will advise you of any such action it intends to take. You acknowledge and confirm that neither Investec, nor its employees, officers, or directors, shall be liable for any direct, indirect or consequential loss, damage, cost or expense whatsoever that may be suffered or incurred by you as a result of, arising from or relating to W&I's compliance with such laws or policies.

## 35. Dormant Accounts

- 35.1. You are responsible to ensure you maintain complete and accurate contact details with W&I at all times. W&I shall be entitled to classify your account as a dormant account in the following circumstances:
- 35.1.1. no transactions have taken place for a period of twelve months; and/or
  - 35.1.2. the cash balance or market value of your Investments is equal to or lower than a threshold determined from time to time by W&I and notified to you; and/or
  - 35.1.3. our reasonable efforts to make contact with you are unsuccessful.
- 35.2. If your account is classified as dormant in accordance with 35.1, W&I may at its absolute discretion:
- 35.2.1. sell any Investments held or administered by W&I (without being liable for any resulting loss or diminution in value) in the market at the best price reasonably obtainable to set-off any debit balance on your account whereupon your only right against W&I shall be an entitlement to claim a sum equal to the net process of sale after deduction of the dealing costs and outstanding fees due to W&I; and/or
  - 35.2.2. transfer any credit balance to a suspense account, where it will be retained until W&I receives a valid claim from you for such balance; and/or
  - 35.2.3. close your account; and/or
  - 35.2.4. transfer any credit balance to your bank account last known to W&I.
- 35.3. W&I shall be entitled to continue to charge fees to dormant accounts and may also charge any tracing or other fees incurred by W&I in order to locate you to the credit balance in the dormant account.



## 36. Illegality

- 36.1. If any provision or term of the Agreement or any part thereof shall become or be declared illegal, invalid, or unenforceable for any reason whatsoever, such term or provision shall be deemed to be deleted from the Agreement, but the legality, validity or enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired. Should any such deletion substantially affect or alter the commercial basis of the Agreement, you undertake to negotiate in good faith with W&I to amend and modify the provisions of the Agreement as may be necessary or desirable in the circumstances.
- 36.2. These terms shall be subject to the rules of the Exchange under whose rules or using facilities W&I enters into any transaction on your behalf. Such rules shall be deemed to be incorporated herein and shall form part of the Agreement. In the event of any conflict between such rules and these Terms and Conditions, the provisions of such rules shall take precedence over these Terms and Conditions.

## 37. Changes

W&I may amend any provision of the Agreement or our other arrangements with you by sending you a written notice describing the relevant changes. Unless W&I agrees otherwise in writing, such changes will become effective on the date specified in the notice, which shall be at least thirty Business Days after the notice is sent to you.

## 38. Commencement

- 38.1. In respect of new Clients or new accounts, before W&I can begin to manage or advise in respect of any of your Investments, the following must have taken place:
- 38.1.1. you must have signed the Investment Selection Form ; and
  - 38.1.2. W&I must have received from you a completed and signed Client Application Form; and
  - 38.1.3. the requirements under all applicable anti money laundering legislation and regulations and/or W&I's policies, from time to time, in respect thereof must have been satisfied.
- 38.2. Notwithstanding anything to the contrary herein contained, if W&I elects to provide you with any Services without having complied with the provisions of clause 38.1, you hereby acknowledge and agree that, upon requesting the provision of any Services by W&I, you shall be deemed to have accepted the terms and conditions set out in these Terms and Conditions and hereby further acknowledge and agree that any and all such Services shall be provided to you by W&I in accordance with the terms and conditions set out in these Terms and Conditions
- 38.3. Without limiting any of the requirements set out at clause 38.1, clause 12 shall be of no force and effect unless the Client has:
- 38.3.1. completed and signed the applicable exchange client registration form and been registered by the clearing house in terms of the rules of the relevant exchange;
  - 38.3.2. completed an investment assessment with W&I, if you are not exempt in terms of the definition of a "Professional Client" under the rules of the relevant exchange.

## 39. Termination

- 39.1. Either party may terminate the Agreement for any reason (and without having to provide reasons) with immediate effect by giving written notice to the other in accordance with 40 below.
- 39.2. If the Agreement is terminated by either you or W&I, W&I undertakes to ensure that any outstanding orders or transactions initiated by W&I prior to receiving the termination notice are completed in a timely fashion and in accordance with best practice.
- 39.3. Any legal rights or obligations of either you or W&I which may have arisen prior to termination shall survive termination of the Agreement.
- 39.4. If, in any instance the Agreement is terminated by W&I, W&I reserves the right to accept or reject any subsequent Instruction relating to holdings in your account, prior to closing your account.
- 39.5. Upon notice of termination, W&I shall pay to you any cash balances due to you, after deducting relevant fees, charges and costs payable by you. Our fees shall be calculated pro-rata up until the date of termination.

## 40. Notices

- 40.1. All notices given pursuant to the Agreement shall be in writing and shall be sent to:
- 40.1.1. W&I at the address stated in clause 4.3;
  - 40.1.2. you at the address (whether physical or electronic) stated in the Client Application Form, or such other electronic or physical address which either party may notify the other in writing.
- 40.2. Notices shall be sent in writing by the following means and shall be deemed to have been received at the following times:
- 40.2.1. by hand on the date of delivery;
  - 40.2.2. by pre-paid post on the third Business Day after posting; or
  - 40.2.3. by e-mail on the expiration of 24 (twenty four) hours after the time of transmission.
- 40.3. For the avoidance of doubt:
- 40.3.1. notice may not be served by means of e-mail to W&I;
  - 40.3.2. notice may be served by means of e-mail to you.
- 40.4. Please note that where the Agreement is with more than one client, notice need only be served by W&I on one of those clients, unless otherwise agreed in writing.

## 41. Complaints and disputes

- 41.1. W&I will deal with all complaints in accordance with the Applicable Legislation.
- 41.2. Information on W&I's complaints procedure is available on [www.investec.co.za/wi](http://www.investec.co.za/wi) or may be sent to you at your request.
- 41.3. W&I will consider all complaints within the timeframe determined by the Applicable Legislation.
- 41.4. If you are dissatisfied with our response, you may refer the complaint to the JSE or the FAIS Ombud, as may be applicable.

## 42. Assignment

- 42.1. The Agreement and all rights and obligations thereunder are personal to you and shall not be capable of assignment or transfer by you without our prior written consent.
- 42.2. W&I may cede, delegate and/or assign any or all of our rights and obligations under the Agreement to any company, person or other legal entity on giving at least ten Business Days written notice to you to that effect. You consent to any splitting of claims which may result from such transfer.

## 43. Governing law

The provisions of the Agreement and the relationship created by it shall be governed by South African Law, and are subject to the exclusive jurisdiction of the South African courts.

## 44. Indulgences

Our failure to seek redress for violation or to insist upon strict performance of any condition or provision of the Agreement, or our failure to exercise any right or remedy to which W&I is entitled under it, shall not constitute a waiver thereof.

## 45. Whole Agreement, No Amendment

- 45.1. The Agreement constitutes the whole agreement between W&I and you relating to the subject matter hereof. No oral agreement not to strictly enforce any term thereof shall be of any force or effect. No amendment or consensual cancellation of the Agreement shall be binding unless recorded in a written document signed or approved by W&I in accordance with the provisions of clause 37 or otherwise.
- 45.2. No extension of time or waiver or relaxation of any of the provisions or terms of the Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of the Agreement, shall operate as an estoppel against W&I in respect of its rights under such agreement or document, nor shall it operate so as to preclude W&I thereafter from exercising its rights strictly in accordance with the Agreement.
- 45.3. W&I shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

## 46. Certificate

A certificate signed by any manager of W&I (whose designation, appointment or authority as such it shall not be necessary to prove) certifying any amount owing by you to W&I in terms of the Agreement which has become due and payable shall, in the absence of manifest error, be prima facie proof of the matters therein stated for all purposes, including for the purposes of furnishing further particulars, obtaining provisional sentence or other judgment against you.

## 47. Currency Indemnity

- 47.1. If any sum due by you under the Agreement (a "Sum"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "First Currency") in which that Sum is payable to W&I into another currency (the "Second Currency") for the purpose of:
- 47.1.1. making or filing a claim or proof against you; or
- 47.1.2. obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings, you shall as an independent obligation, within three business days of demand, indemnify W&I against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to W&I at the time of its receipt of that Sum.
- 47.2. You waive any right you may have in any jurisdiction to pay any amount under the Agreement in a currency or currency unit other than that in which it is expressed to be payable

# Schedule 1 - Risk Disclosures



## 01. Disclosures relating to risks

- 1.1. The Services under the Agreement may present specific risks due to their intrinsic nature, the markets or jurisdictions in which they operate or other factors outside our control. The list detailed below is not exhaustive.
- 1.2. Please be aware that you may not be allowed to deal in some of the Investments or some Investments may not be eligible for sale in all jurisdictions or to certain categories of Clients.
- 1.3. All Investments involve risks, and Clients should exercise prudence and their own judgment in making Investment decisions.
- 1.4. General
  - 1.4.1. Below are general risks which may be applicable to your Investments.
  - 1.4.2. The value of the assets, and the income received from them, may go down as well as up and you may not receive all the money invested. Past performance is no indication of future performance. There are a number of reasons why this might happen:
    - 1.4.2.1. Market risk  
Investments are subject to the laws of supply and demand and are capable of significant price movements irrespective of market, economic and corporate factors.
    - 1.4.2.2. Liquidity risk  
Investments may be difficult to sell and as a result, may not be bought or sold quickly enough to prevent or minimise a loss.
    - 1.4.2.3. Currency risk  
Investments may be denominated in other currencies. Where an Investment is denominated in a different currency, you are exposed to fluctuations in the exchange rate of that currency as well as to the movement in the price of the Investment itself. Changes in the exchange rate can cause the overall value of an Investment to fall as well as rise.
    - 1.4.2.4. Country and political risk  
Investments or underlying components of your Investments may be affected by their link or relationship to specific countries which could be exposed to political or economic events affecting companies, interest rates or currencies.
    - 1.4.2.5. Counterparty or credit risk  
Your Investments may be exposed to the risk of a counterparty such as an issuer, product supplier, credit provider, custodian or manager defaulting or going insolvent.
    - 1.4.2.6. Regulatory risk  
Investments may be subject to different styles and qualities of regulation. Regulations may change and affect the predicted outcomes or viability of certain Investments.
    - 1.4.2.7. Taxation risk  
The tax treatment of any Investment is determined by the specific circumstances of each Client. Taxation may change during the lifetime of an Investment. This may result in unanticipated tax liabilities. You should obtain tax advice in order to be aware of any potential liability before making an Investment. If your circumstances change or you are uncertain of how an Investment might affect your own tax position, you should seek professional advice.
- 1.5. Assessing the relative risk of any of the factors referred to above is highly subjective and can change over time in response to specific events or revised social or economic forecasts. It is not possible to lay down precise guidelines for the measurement of risk or the potential impact, whether positive or negative, upon an Investment portfolio.
- 1.6. Discretionary Portfolios  
The risks of investing directly in equities may be spread by investing in discretionary portfolios with different investment strategies. Investment strategies are subject to different styles and qualities of regulation. Changes to the manager of the portfolio/fund or the investment team may affect the strategy and risk profile of the portfolio or fund.
- 1.7. Unitised Portfolios – Hedge Funds and Unit Trusts
  - 1.7.1. Hedge Funds: These investments employ a wide variety of trading strategies. The strategies vary from fund to fund and may include borrowing money in order to increase the gearing of Investments, the use of derivatives to either increase or reduce risk and the short selling of Securities. As a consequence, the overall risk of each fund varies considerably.
  - 1.7.2. Unit prices may fluctuate relative to the market value of the Securities comprising the relevant portfolios. Should a portfolio have underlying international Investments, movements in exchange rates may cause the value of those underlying Investments to fluctuate.
- 1.8. Equities
  - 1.8.1. Equities are units of ownership in individual companies. By investing in equities, clients will participate in the economic success or failure of the company. As a consequence, the equities in the company may fall as well as rise.
  - 1.8.2. Volatility in equity markets can change quickly and does not necessarily follow historical trends. If a company becomes insolvent, the value of its equities will also fall, potentially to the point where it has no value at all.
  - 1.8.3. Liquidity may be limited in the shares of certain companies which means that you may not be able to sell when you want or at the price you wish to sell.

## 01. Disclosures relating to risks continued

### 1.9. Derivatives

Examples of Derivative Instruments include (but are not limited to) Single Stock Futures ("SSF"), International Derivative Futures ("IDR"), Equity Index Futures, Options, Futures, Currency Futures, Interest Rate Derivatives and Warrants (the term Warrants shall include Warrant Alternative Vehicles otherwise known as "waves" which are short term options listed over the JSE Top 40 Index and leading shares on the JSE).

Derivatives, whether listed or Over-The-Counter ("OTC") Derivative Instruments, such as Contracts for Difference ("CFDs"), and Investments structured with underlying derivatives ("Structured Investments") present additional risks:

#### 1.9.1. Gearing or leverage risk

Options, derivative products and futures are not suitable for all Clients, and trading in these instruments is considered risky. Markets in Derivative Instruments can be highly volatile. Investments may make use of trading strategies including borrowing, Short Selling/Short Positions or use of derivatives which may result in stems from the payment of what is a comparatively modest deposit or margin when compared with the overall contract exposure. As a result, a relatively small market movement can, in addition to achieving substantial gains where the market moves in your favour, result in substantial losses which may exceed your original investment.

This can work for or against you.

#### 1.9.2. You may lose more than your initial margin

You are required to deposit a percentage of the total trade value ("Initial Margin"). Profits and losses can exceed the Initial Margin, requiring you to make further margin payments. If the market moves against your position, you may, in a relatively short time, sustain more than a total loss of the funds placed by way of margin with the relevant exchange or with W&I.

A decline in the exposure of the underlying securities where margin is paid may require you to provide a substantial additional sum, on the same day, to maintain your margin balance and avoid the close out of the futures contract or the forced sale of other securities in your account(s). If you do not maintain your margin balances, your position may be closed out at a loss and you will be liable for any resulting deficit.

Irrespective of whether you are notified of a margin call or not, you are solely responsible for monitoring your open positions and margin calls and for maintaining sufficient funds in your account to meet any payment obligation including margin and additional margin.

#### 1.9.3. Changes in margin requirements

As may be required by market conditions, or as the exchange and clearing member may deem necessary, margin requirements and rates may be increased at any time, and without written notice.

Such changes may take effect immediately and may result in the issuance of a margin call. Your failure to satisfy the call may cause us to liquidate or sell securities in your account(s).

W&I may also increase its additional margin requirements at any time, without prior written notice to you. You are not entitled to an automatic extension of time on a margin call, although W&I may in specific circumstances and at its sole discretion grant you such an extension. Should W&I grant an extension to you on one or more occasion, such extension/s will not create an obligation for W&I to continue to do so in the future.

#### 1.9.4. Close out

1.9.4.1. If you do not meet a margin call, or any other obligation, your positions may be sold (closed out) immediately and you will be liable for any resulting deficit. In this regard, W&I may sell your Investments without contacting you. Some investors mistakenly believe that they must be contacted for a margin call to be valid, and that securities in their accounts cannot be liquidated to meet the call unless they are contacted first. This is not the case. We will attempt to notify you of margin calls but we are not required to do so. Even if we have contacted you and provide a specific date by which you can meet a margin call, we can still take necessary steps to protect our financial interest including immediately selling the securities without notice to you. W&I shall be entitled to choose which Securities W&I shall sell to meet the margin call.

1.9.4.2. Under certain market conditions, it may be difficult or impossible to close out a position. This may occur, for example, where trading is suspended or restricted at times of rapid price movement.

1.9.4.3. In the event of your death, W&I shall be entitled, in its sole and absolute discretion, to minimise any risk and close out any and all positions that may still be open at the time of W&I becoming aware of your death.

1.9.4.4. W&I shall, following the death of the Client, act on the instructions of the appointed executor.

#### 1.9.5. Circumstances beyond W&I's control

In certain circumstances, W&I may be prohibited or restricted with regards to a trade, or forced or instructed to reverse a trade. This could happen in various circumstances, as a result of an instruction from any Exchange or as a result of the inability to find sufficient shares to cover a Short Position (directly or as a result of a derivative transaction), which will result in a failed transaction. Regulators or Exchanges may impose specific prohibitions or restrictions on Short Sales/Short Positions. In the event that securities have been borrowed in order to cover a Short Sale/Short Position and the lender

## 01. Disclosures relating to risks continued

- recalls the borrowed securities, then replacement securities may have to be purchased in the market at prices then prevailing.
- 1.9.6. Lack of liquidity  
Certain derivatives may not quote bid and offer prices, and even if they are, they may be established by the issuer of the derivative, and consequently it may be difficult to establish a fair price. Under certain market conditions, it may be difficult or impossible to close out a position e.g., where trading is suspended or restricted at times of rapid price movement.
- 1.9.7. Restricted hours
- 1.9.7.1. Trading in certain derivatives may expose your Investments to events which occur outside the trading hours of these Investments and may have a significant influence on the price of such Investments.
- 1.9.7.2. Should you be trading in currency or IDX futures, please note that events happening outside the IRC/SAFEX trading hours may have a significant influence on the price of such futures. You may not be able to close a position after 17h00 and before 09h00.
- 1.9.8. No right in respect of the underlying share or instrument
- 1.9.8.1. Some derivatives may allow or force or prohibit physical delivery of the underlying and may or may not confer on either party, any right, title or interest in any shares (including dividends and voting rights), or entitle or oblige either party to acquire, receive, hold, deliver or dispose of any particular shares or other Securities.
- 1.9.8.2. Corporate Actions such as dividends, mergers, subdivision or consolidation may affect the operation and conditions relating to derivatives.
- 1.9.9. Trading limits
- 1.9.9.1. Trading limits and contract specifications such as minimum contract size may be imposed by the Exchanges or issuers or W&I and may be changed at short notice. W&I will use reasonable endeavours to inform you of such changes, but shall not be obliged to do so.
- 1.9.9.2. W&I may refuse to allow you to enter into another derivative contract until you have fully settled any outstanding settlement obligation.
- 1.9.10. Trading strategies  
Certain trading strategies may be more risky than a long or Short Position and may be more complex as you could be exposed to both legs of the strategy.
- 1.9.11. Derivatives contracts conditions relating to settlement, expiry, lapse, exercise, rollover
- 1.9.11.1. It is your responsibility to understand the conditions applicable to the derivatives you have instructed W&I to buy on your behalf.
- Some derivatives or Investments with underlying derivatives may have a limited life span, or become worthless under certain conditions. It is your responsibility to monitor and meet the conditions under which they settle (cash or physical), expire, lapse or become valueless or maybe rolled over.
- 1.9.11.2. You are also responsible for providing W&I with timely Instructions in respect of any course of action related to derivatives conditions such as expiry and/or rollover, failing which the default provisions will apply.
- 1.9.11.3. Where permitted, placing a stop-loss order will not necessarily limit your losses to the intended amounts, for market conditions may make it impossible to execute such orders at the stipulated price.
- 1.9.12. Over-the-counter (OTC) derivatives OTC derivatives are unlisted Investments (such as unlisted CFDs) which may not be subject to the rules and protection of an Exchange. You may not be able to transfer OTC contracts or trade these with other parties.
- You may also be exposed to the risk of the issuer or clearing house or member defaulting.
- 1.9.13. With respect to warrants we wish to draw your attention to additional risks associated with warrants:
- 1.9.13.1. It is your responsibility to read and understand the offering circular setting out terms and conditions on which warrants will be issued or will expire.
- 1.9.13.2. A warrant is a right to acquire securities, which in certain circumstances is exercisable against someone other than the original issuer of the securities. As such it should be considered to be similar to an option.
- 1.9.13.3. Warrants often involve a high degree of gearing so that a relatively small movement in the price of the underlying security might result in a disproportionately large movement in the price of the warrant. This can work against you as well as for you.
- 1.9.13.4. Warrants have a limited life and may be worthless on the expiry thereof. It is your responsibility to monitor the conditions under which warrants may expire or become worthless.
- 1.9.13.5. It might be difficult for you to sell your warrants. Bid and offer prices may not be quoted, and even where they are, they may be established by the issuer of the covered warrant and consequently, it may be difficult to establish a fair price.
- 1.9.13.6. A member of the Investec group of companies may be the sole market maker in these.



## 01. Disclosures relating to risks continued

- 1.9.14. If, you are a holder of an IDX Future you will be exposed to currency fluctuations, although this exposure can be hedged through trading currency futures which are also available through the IRC market
- 1.10. Bonds
- 1.10.1. Bonds tend to provide a lower but more predictable overall return than equities. The interest payable on these may be fixed or variable, the former providing a greater certainty of return.
- 1.10.2. The return for a fixed income bond is dependent upon the rate of interest paid and the price paid for that bond.
- 1.10.3. The market prices of bonds with different credit ratings may behave in different ways as the assessment of the economic cycle changes.
- 1.11. Cash Investment  
Cash deposited with JSET, will be protected under the JSE rules, however, cash placed with third party institutions, including Investec Bank Limited, is subject to that institution's ability to meet its commitments to you, and the various terms which regulate its relationship with you.
- 1.12. Offshore discretionary portfolios and Offshore unitised portfolios
- 1.12.1. Where an Investment accepted for custody is held outside South Africa, you accept that the practice of separate identification of your Investment and that the settlement, legal and regulatory regimes applying in the particular jurisdiction may be different from those applying in the Republic of South Africa.
- 1.12.2. If you deal in Investments priced in foreign currencies, this involves you entering into a related foreign exchange transaction in connection with the purchase or sale of the investment concerned. This involves the risk that a change in the rates of exchange between currencies may cause your Investment, or the income from it, to go down or up beyond that of expected market fluctuations.
- 1.12.3. Risk of counterparty default- a foreign counterparty, custodian, or manager may default or become insolvent.
- 1.12.4. You should be aware that certain Investments may only deal on certain dates and it may take a certain period of time before you can access your proceeds of sale.
- 1.13. Structured Products
- 1.13.1. A structured product is used to describe Investments which provide exposure to a wide range of asset classes through a combination of financial instruments brought together to provide a single investment product. Structured products range from alternatives to cash deposits to instruments of varied complexity referencing multiple financial assets or indices.
- 1.13.2. Structured products are not suitable for all Clients, especially those with no capacity for loss. Structured products can be very differently designed. You must ensure that you read and fully understand the terms and conditions applicable to the structured product and that you have considered and understood the risks that you may be exposed to before investing in a structured product.
- 1.13.3. Risks when purchasing a structured product include but are not limited to capital loss, market risk, currency risk, regulatory risk and counterparty or credit risk. Certain structured products are dependent on the performance of an index or indices, with or without pre-determined levels and a fall in the index or any of indices below a predetermined level may result in irrecoverable capital loss. You may be exposed to several counterparties' risk, such as the risk that the issuer of the underlying derivatives in the product, or the issuer of the structure, or other parties relating to instruments referenced or included in the structure, may default.
- 1.13.4. The return scenarios and calculations in structured products may be complex and depend for example on the occurrence or non-occurrence of certain events and on the performance of underlying Securities, indices or baskets of indices or Securities. Some products may have specific conditions to be met, or have a lock-in period during which there may be a limited secondary market or no market at all meaning that you may only be able to redeem and access your funds at maturity. Structured products may become worthless under certain conditions. It is your responsibility to understand and monitor the workings and conditions applicable to structured products or to seek appropriate advice.
- 1.13.5. In general, structured products should only be considered as part of your overall investment portfolio. You should not place all, nor a large part, of the money you have available for investment into any one structured product to avoid over exposure to a counterparty or structured product type.
- 1.14. Unregulated Investments  
W&I will only enter into transactions with unapproved collective schemes or unregulated instruments at your specific written request unless such Investments have been approved by W&I investment managers and you have given W&I full discretion to manage your Investments. If you are acting as a trustee or authorised signatory for any South African regulated entity, it is your responsibility to ensure that you comply with any Applicable Legislation, including but not limited to prudential and tax legislation.

## 01. Disclosures relating to risks continued

### 1.15. Short Positions/Short Selling

1.15.1. A Short Sale involves a transaction which is intended to confer a financial benefit or advantage on the person entering into the transaction if the price or value of a share or debt instrument/bond decreases. Generally speaking, a Short Sale involves a transaction where a person, who believes that the value of the share or debt instrument will decrease, will borrow a security from a third party for sale to another third party at the then prevailing trading price and will thereafter purchase securities in the issuer company at a lower price to enable it to discharge its debt to the lending party.

1.15.2. Any person who takes a Short Sale shall be liable for all taxation in respect thereof. In particular such person shall be liable for any securities transfer tax and/or other taxes that may be levied on the trades to give effect to the Short Sale.

1.15.3. Any person who undertakes a Short Sale shall be liable to the lending party for any corporate action such as any dividend or distribution that may be declared by the issuer company. To the extent that a person has taken a Short Position on any debt instrument or bond, that person is likely to be liable to the lending party for any interest that accrues on that debt instrument, which may be a substantial sum of money. The Client must ensure that it has the means and has sufficient liquid assets to make these payments to the lending party.

1.15.4. A lending party may require the person that is undertaking the Short Sale to provide it with collateral as security for the lending transaction. In this regard, it should be noted that the lending parties will prescribe the nature and the value of the security that is required to be given to it by the person undertaking the Short Sale. The lending party is generally entitled to require any additional collateral to be provided by the party engaging in the Short Sale. To the extent that the lending party requires collateral in the form of cash, the lending party is generally entitled to receive all of the interest which accrues on such amounts whilst it is being held as collateral.

1.15.5. A person who intends to undertake a Short Sale should be alive to the risk that-

- it may not be possible for that person to acquire securities to discharge its debt to the lending party;
- the price of the securities in question may not decrease, in which event the person undertaking the Short Sale is likely to sustain a significant loss. It is also possible that at the time when the person engaging in the Short Sale is required to discharge its obligations to the lending party, the value of the securities in question may be higher than the value at which those securities were acquired by the person undertaking the Short Sale;

1.15.6. W&I does not facilitate any Short Sales in any foreign jurisdiction.

# Schedule 2 - JSE Settlement Obligations



## Introduction

This document sets out the settlement obligations of clients who enter into transactions in JSE listed equity securities that settle electronically through STRATE. The requirement for JSE equity members to make their clients aware of their settlement obligations is set out in the JSE Rules.

- **a controlled client** is a client, or an account holder, on whose behalf a broker is acting, who does not appoint a CSDP of their own, since their funds and equity securities are under the control of a custody services provider (such as W&I), are reflected on the BDA system and are settled via the CSDP of a member (such as W&I). As a result, the settlement of their transactions is conducted by the member of the client via accounts belonging to the member in the records of the CSDP of that member;

- **a non- controlled client** is a client, or an account holder on whose behalf a broker is acting, who has appointed its own CSDP. As a result, the settlement of their transactions is conducted by the CSDP of the client via the accounts belonging to the client in the records of the CSDP.

The relevant rules that create the settlement obligations and penalties for the transgression of these rules are available on the JSE website, and can be downloaded from the addresses [www.jse.co.za](http://www.jse.co.za) and [www.strate.co.za](http://www.strate.co.za). Relevant definitions are set out in the last section of this document.

## Settlement Obligations for Controlled Clients

### 01. Settlement principles for transactions in equity securities

All transactions in equity securities must be settled electronically through STRATE in accordance with the following principles –

- 1.1. contract note by contract note;
- 1.2. between the ultimate buyer and the ultimate seller;
- 1.3. on a rolling and contractual basis, whereby transactions become contractually due to be settled a prescribed number of days after the trade date; and
- 1.4. on a net basis per member and per equity security, whereby individual contract notes are consolidated and offset into net amounts of securities and funds for settlement.

### 02. Custody mandates for controlled client accounts

- 2.1. A controlled client must sign a mandate in favour of a member before any cash or securities are received by the member.
- 2.2. A controlled client must obtain a receipt from the member when securities in certificated form are placed under the control of the member.
- 2.3. A controlled client must receive a statement on at least a quarterly basis or more frequently if the client so requests, but not more than monthly, and reconcile the equity securities and funds reflected on the statement with his records. Any discrepancies should immediately be raised with their member for investigation.
- 2.4. A controlled client must advise a member of its choice for an elective corporate action as set out in the client mandate or agreed with their member.
- 2.5. The arrangement between a member and a controlled client regarding issues pertaining to corporate actions must be recorded in writing. The written arrangement must, as a minimum, incorporate the instructions from the controlled client and the terms and conditions which will apply to various issues pertaining to corporate actions. Please refer to section 22 on page 16 of the Terms & Conditions.

### 03. General pre-trade settlement requirements

A controlled client may not place an order to sell equity securities unless:

- 3.1. the securities to be sold are in the custody of the member in uncertificated form; or
- 3.2. the controlled client can evidence to their member that they own the equity securities to be sold and that such securities will be available for settlement on T+3; or
- 3.3. another transaction has been entered into by the client for the equivalent number of equity securities to be available for settlement on T+3 or before; or
- 3.4. the controlled client has made arrangements to borrow the equivalent number of equity securities and the equivalent securities will be available for settlement to take place on T+3; or
- 3.5. a corporate action provides for an equivalent amount of equity securities being available for settlement on settlement date; or
- 3.6. the equity securities are being moved between registers and the securities will be available on the South African register for settlement; or
- 3.7. Penalties may apply and may be charged to the client.

### 04. Controlled client settlement obligations

By no later than 16h00 on T+1, a controlled client must ensure that their member is in a position to settle the transaction on T+3, either by providing the necessary funds or equity securities to the member or entering into an arrangement with the member to ensure that settlement takes place on settlement day.

Where the controlled client does not provide the necessary funds or equity securities to the member by end of day on T+1, the transaction will be margined and, where margin is called, the member may call for the margin from the controlled client. If the

transaction is subject to rolling of settlement and the failed trade procedures, the margin will be held until the future settlement date of the rolling of settlement or when the failed trade is resolved.

Where a controlled client fails to meet their settlement obligations for a sale transaction, the transaction will be reversed to the member's account at 16h00 on T+2 and the member will assume the obligation to settle.

### 05. General settlement provisions

- 5.1. Where the controlled client fails to put the member in a position before 16h00 on T plus 1 to settle the transaction on settlement day, the member may close out the client's transaction and claim the difference between the original transaction value and the close out value from the client, including interest, subject to any agreement with the client or notification to the client to the contrary, and to any action taken by the Settlement Authority in terms of the failed trade procedures set out in the rules. The member may sell for the account of the client so many of any other equity securities held on the client's account as is necessary to cover any loss that may be incurred by the client as a result of the close out of the original transaction.
- 5.2. Where the controlled client has not complied with its obligation to put the member in a position to effect settlement and neither the member nor the Settlement Authority is able to effect settlement, the Settlement Authority shall at 10h00 on T +3 declare the transaction to be a failed trade.
- 5.3. Notwithstanding 5.1 and 5.2 above, the notification at any stage by a controlled client to a member of its inability to put the member in a position to settle a transaction, may result in the declaration of a failed trade by 09h00 on the following business day, if neither the member nor the Settlement Authority is able to ensure that settlement will take place on settlement day by doing a securities lending and borrowing.
- 5.4. The client shall also remain liable for any losses, penalties, costs and charges incurred, or charge imposed by the member, in respect of any of the aforementioned transactions.
- 5.5. Any compensation, costs, losses (including loss of income) and corporate action entitlements payable to the non-failing party in respect of the trade being failed, shall be for the account of the failing client.

## 06. Failed trade procedures

- 6.1. If a controlled client is unable to meet her/his settlement obligations and the member is unable to enter into an arrangement to ensure that settlement takes place, the member must advise the Settlement Authority.
- 6.2. If the Settlement Authority is able to lend the necessary funds or equity securities to the member to ensure that settlement takes place, the member must close out the original transaction before the close of business on the next business day.

## 07. Member settlement obligations

Where a member borrows securities from the Settlement Authority to effect settlement on behalf of a controlled client, the controlled client is responsible for any costs that may be incurred by the member in this regard and any penalties imposed on the member by the Settlement Authority. These costs include the costs related to manufactured dividends.

## 08. Borrowing of equity securities to prevent a trade from failing

Where a member borrows securities from the Settlement Authority to effect settlement on behalf of a controlled client who has not delivered the securities in question to the member timeously, the controlled client is responsible for any costs.

## 09. Lending of funds to prevent a trade from failing

- 9.1. Where a controlled client does not meet his settlement obligations timeously and neither the member nor the Settlement Authority are able to borrow the necessary funds or equity securities to ensure that settlement of the transaction takes place, the transaction of the failing controlled client may be rolled or failed in accordance with instructions provided by the Settlement Authority to the member.
- 9.2. A failing controlled client, in the case of a rolled or failed trade, will in addition to any fees and penalties, be responsible for any corporate action entitlements or losses that is claimed and paid to the non-failing party.

## 10. Closing out a trade and compensation

- 10.1. A controlled client may be instructed by the JSE, via their member, to roll settlement of their transaction, where the rolling of the settlement will allow the transactions to settle on a future settlement date.
- 10.2. The failed transaction may only be rolled twice which should not be more than 6 business days from the original settlement date.
- 10.3. If the transaction is rolled in accordance with 10.1, then the controlled client will be entitled to claim for any corporate action entitlement or losses incurred.

## 11. Give-up procedures

- 11.1. If there is a failed trade which will result in a transaction not settling, a controlled client must, if instructed by the JSE via their member, fail the transaction.
- 11.2. Subsequent to the failing of the transaction, the JSE will decide if the controlled client, via their member, should re- transact or if the transaction should be settled by compensation.
- 11.3. Compensation in respect of a failed trade will be dealt with in the following manner:
- In determining the compensation referred to in the rule the following factors may be considered –
- 1.13.1. the price at which the equity securities were originally transacted;
  - 1.13.2. the prevailing market conditions at the time the equity securities were originally transacted;
  - 1.13.3. the circumstances of the original transaction;
  - 1.13.4. the nature and pattern of trading in the equity security since the original transaction;
  - 1.13.5. the current market conditions;
  - 1.13.6. any publicly available information regarding the equity security or the issuer of the equity security;
  - 1.13.7. any corporate action which the equity security is subject to from the day of the original transaction;
  - 1.13.8. any expenses incurred or income foregone by the member or the client as a consequence of the failed trade,
  - 1.13.9. including interest; and
  - 1.13.10. any other factors deemed relevant.
- 11.4. If the transaction is failed, and re-transacted or settled via compensation, in accordance with 11.2, then the controlled client will be entitled to claim for any corporate action entitlement or losses incurred.

# Settlement Obligations for Non-Controlled Clients

## 01. Settlement principles for transactions in equity securities

As per Settlement Obligations for controlled clients

## 02. Appointment of a CSDP

A non-controlled client may only place an order with a member to transact in equity markets if she has appointed a CSDP and notified the member of the following details or any changes to such details:

- 2.1. the CSDP of the client;
- 2.2. the branch code of the CSDP of the client;
- 2.3. the uncertificated securities account name of the client;
- 2.4. the uncertificated securities account number of the client;
- 2.5. the name of the bank where the clients' funds bank account is held and the branch code;
- 2.6. the funds bank account name of the client;
- 2.7. the funds bank account number of the client; and
- 2.8. the funds bank account type of the client.

## 03. General pre-trade settlement requirements

A non-controlled client may not place an order to sell equity securities unless:

- 3.1. the securities to be sold are in the custody of the non-controlled client's CSDP in uncertificated form; or
- 3.2. another transaction has been entered into by the client for the equivalent number of equity securities to be available for settlement on T+3 or before; or
- 3.3. the client has made arrangements to borrow the equivalent number of equity securities and the equivalent securities will be available for settlement to take place on T+3; or
- 3.4. a corporate action provides for an equivalent amount of equity securities being available for settlement on settlement date; or
- 3.5. the equity securities are being moved between registers and the securities will be available on the South African register for settlement;
- 3.6. any applicable penalties will be charged to the client.



## 04. General settlement provisions

- 4.1. A non-controlled client must notify the member of the account to which a transaction is to be allocated in sufficient time to allow the member to process such allocation on the trade date.
- 4.2. A non-controlled client must by no later than 12h00 on T+1 instruct its CSDP to settle the transaction.
- 4.3. A non-controlled client must immediately notify the member where the details of the transaction as advised to the client by the member are not correct but, in any event, the notification must take place by no later than 18h00 on T+1. If the client does not notify the member of any corrections to be made to the transaction, the member may assume that the details of the transaction as advised to the client are correct.
- 4.4. If the details of the transaction are not correct, the appropriate correction will then be made by the member by no later than 18h00 on T+1. The details of the correction will be advised by the member to the non-controlled client immediately.
- 4.5. The non-controlled client must affirm to its CSDP that the new details of the transaction are correct within sufficient time to allow the CSDP of the client to commit timeously to settling the transaction.
- 4.6. Where the CSDP of the non-controlled client does not commit to the transaction by end of day on T+1, the transaction will be margined by the JSE and, where margin is called the member may call for the margin from the non-controlled client. If the transaction is subject to rolling of settlement and failed trade procedures, the margin will be held until the future settlement date of the rolling of settlement or when the failed trade is resolved.

## 05. CSDP commit

By no later than 12h00 on T+2, a non-controlled client must ensure that its CSDP has committed to settle the transaction on behalf of the client.

## 06. Non-commit by CSDP

- 6.1. Where the CSDP of a non-controlled client fails by 12h00 on T+2 to commit to settle the transaction on settlement day, the member may close out the client's transaction and claim the difference between the original transaction value and the close out value from the client, including interest, subject to any agreement with the client or notification to the client to the contrary, and to any action taken by the Settlement Authority in terms of the failed trade procedures set out in the rules. The client shall also remain liable for any losses, costs and charges incurred, or charges imposed by the member in respect of any of the aforementioned transactions.
- 6.2. A member shall have the right but not the obligation to allow a non-controlled client to honour his obligations until 15h00 on T+2 after which the obligation to settle reverts to the member.
- 6.3. Where the non-controlled client has not complied with its obligation to ensure settlement and neither the member nor the Settlement Authority is able to effect settlement, the Settlement Authority shall as at 10h00 on T+3 declare the transaction to be a failed trade.
- 6.4. Notwithstanding 6.2 and 6.3 above, the notification at any stage by a non-controlled client to a member of its inability to procure settlement may result in the declaration of a failed trade by 09h00 on the following business day.

## 07. Failed trade principles and procedures

- 7.1. Where the non-controlled client fails to meet their obligations and the member assumes the obligations to settle the transaction, the member may close out the client's transaction and claim the difference between the original transaction value and the close out value from the client, including interest, subject to any agreement with the client or notification to the client to the contrary, and to any action taken by the Settlement Authority in terms of the failed trade procedures set out in the rules. The member may sell for the account of the client so many of any other equity securities held on the client's account as is necessary to cover any loss that may be incurred by the client as a result of the close out of the original transaction. The client shall also remain liable for any losses, costs and charges incurred, or charge imposed by the member, in respect of any of the aforementioned transactions.
- 7.2. Where the non-controlled client has not complied with its obligation to put the member in a position to effect settlement and neither the member nor the Settlement Authority is able to effect settlement, the Settlement Authority shall as at 10h00 on T+3 declare the transaction to be a failed trade.
- 7.3. Notwithstanding 7.1 and 7.2 above, the notification at any stage by a non-controlled client to a member of its inability to put the member in a position to settle a transaction may result in the declaration of a failed trade by 09h00 on the following business day, if neither the member nor the Settlement Authority is able to ensure that settlement will take place on settlement day through a securities lending & borrowing arrangement.
- 7.4. The client will be liable for any corporate action entitlements, losses, costs and charges incurred, or charges imposed, as consequence of a breach and the member may charge interest in relation thereto.
- 7.5. The client will be liable for the repayment of any corporate action entitlement received in respect of a failed purchase transaction, which entitlement has incorrectly accrued to the failing party.

## 08. Member settlement obligations

If a non-controlled client is unable to meet his settlement obligations and the member is unable to enter into an arrangement to ensure that settlement takes place, the member must advise the Settlement Authority.

If the Settlement Authority is able to lend the necessary funds or equity securities to the member to ensure that settlement takes place, the member must close out the original transaction before the close of business on the next business day.

## 09. Borrowing of equity securities to prevent a trade from failing

Where the CSDP of a non-controlled client has not committed timeously to settle a sale of securities, and the member borrows securities from the Settlement Authority to effect settlement, the non-controlled client is responsible for any costs that may be incurred by the member in this regard and any penalties imposed on the member by the Settlement Authority. These costs include the costs related to manufactured dividends.

## 10. Lending of funds to prevent a trade from failing

Where a member borrows funds from the Settlement Authority to effect settlement on behalf of a non-controlled client who has not made payment of the required funds timeously, the non-controlled client is responsible for any costs incurred by the member and any penalties imposed on the member by the Settlement Authority in this regard.

## 11. Closing out a trade and compensation

- 11.1. Where a non-controlled client does not meet his settlement obligations timeously and neither the member nor the Settlement Authority are able to borrow the necessary funds or equity securities to ensure that settlement of the transaction takes place, the transaction of the failing non-controlled client may be rolled or failed in accordance with instructions provided by the Settlement Authority to the member.
- 11.2. A failing non-controlled client, in the case of a rolled or failed trade, will in addition to any fees and penalties, be responsible for any compensation that is paid to the non-failing party.

## 12. Give-up procedures

- 12.1. A client may be instructed by the JSE, via their member, to roll settlement of their transaction, where the rolling of the settlement will allow the transactions to settle on a future settlement date.
- 12.2. The failed transaction may only be rolled twice which should not be more than 6 business days from the original settlement date.
- 12.3. Any margin that was calculated at EOD T+1 and collected on T+2 from the failing member will be held by the JSE until the future rolled settlement has settled.
- 12.4. If the transaction is rolled in accordance with 11.1, then the client will be entitled to claim for any corporate action entitlement or losses incurred.
- 12.5. If the failed transaction is as a result of clients' action or inaction, the member that transacted on behalf of the client must re-book the original transaction to the client for settlement on the revised settlement date.

## 13. Failed trades

- 13.1. If there is a failed trade which will result in a transaction not settling, a non-controlled client must, if instructed by the JSE via their member, fail the transaction.
- 13.2. Subsequent to the failing of the transaction, the JSE will decide if the non-controlled client, via their member should re-transact or if the transaction should be settled by compensation.
- 13.3. If the transaction is failed, and re-transacted or settled via compensation, in accordance with 11.2, then the non-controlled client will be entitled to claim for any corporate action entitlement or losses incurred.
- 13.4. Compensation in respect of a failed trade will be dealt with in the following manner:
- 13.4.1. In determining the compensation referred to in the rules, the following factors may be considered –
- 13.4.1.1. the price at which the equity securities were originally transacted;
- 13.4.1.2. the prevailing market conditions at the time the equity securities were originally transacted;
- 13.4.1.3. the circumstances of the original transaction;
- 13.4.1.4. the nature and pattern of trading in the equity security since the original transaction;
- 13.4.1.5. the current market conditions;
- 13.4.1.6. any publicly available information regarding the equity security or the issuer of the equity security;
- 13.4.1.7. any corporate action which the equity security is subject to from the day of the original transaction;
- 13.4.1.8. any expenses incurred or income foregone by the member or the client as a consequence of the failed trade,
- 13.4.1.9. including interest; and
- 13.4.1.10. any other factors deemed relevant.

## Applicable Definitions

TERM	DEFINITION
“business day” or “day”	any day except a Saturday, Sunday, public holiday or any other day on which the JSE is closed;
“client”	a controlled client or a non-controlled client
“client assets”	JSE authorised investments safeguarded by a member on behalf of clients;
“contract note”	in respect of trades executed on the JSE equities trading system by a member on any particular day – (a) on behalf of a client, a confirmation from the member to the client in respect of such trades; and (b) on behalf of a member’s proprietary account, the aggregate trades executed on such account;
“contractual settlement”	the market convention whereby the parties to a transaction in equity securities have a contractual obligation to cause such transaction to be settled on the settlement date;
“controlled account”	an account reflecting the equity securities and funds of a controlled client or the equity securities of a member;
“controlled client”	a client or an account holder on whose behalf a client is acting, whose funds and uncertificated equity securities are under the control of a CSP, or whose settlements take place via the CSDP of a member;
“corporate action”	an action taken by an issuer or any other entity or third party, which affects the registered owner and the beneficial owner of equity securities in terms of an entitlement;
“CSDP”	a central securities depository participant that has been accepted by a central securities depository as a participant in that central securities depository;
“custody account”	an equity securities account with a CSDP which reflects the uncertificated equity securities balances of controlled accounts of a member and through which settlement of transactions in equity securities is effected;
“custody services provider” or “CSP”	a member which has been authorised by the JSE to perform custody services in terms of the rules;
“dematerialisation”	the process of converting a certificated equity security into an uncertificated equity security;
“equity securities”	those JSE listed securities traded on the JSE equities trading system;
“exchange”	a person who constitutes, maintains and provides an infrastructure – (a) for bringing together buyers and sellers of securities; (b) for matching the orders for securities of multiple buyers and sellers; and (c) whereby a matched order for securities constitutes a transaction;
“failed trade”	a transaction in equity securities which the Settlement Authority deems to be a failed trade on the basis that neither the client, the member nor the Settlement Authority is able to ensure that such transaction will settle on the settlement date or any revised settlement date;
“JSE”	JSE Limited, a company duly registered and incorporated with limited liability under the company laws of the Republic, licensed to operate as an exchange under the Act;
“margin”	a payment made or guarantee provided by a member to the JSE to assure settlement of transactions in equity securities by that member or its clients;
“Market Controller”	the person appointed by the JSE to supervise, administer and control the daily operations of the JSE equities trading system;
“member”	an equities member, which is a category of authorised user admitted to membership of the JSE under these rules;
“non-controlled client”	a client or an account holder on whose behalf a client is acting, who has appointed his own CSDP to settle transactions in equity securities on his behalf;

## Applicable Definitions continued

TERM	DEFINITION
“rolling of settlement”	the process initiated by the Settlement Authority in terms of which the settlement date of a transaction in equity securities is rolled to a later date;
“securities”	has the same meaning as that contained in section 1 of the Act;
“settle”	to discharge the obligations arising from a transaction in listed securities;
“Settlement Authority”	the person or persons appointed by the JSE to manage the settlement of transactions in equity securities effected through the JSE equities trading system in terms of the rules and directives;
“settlement commitment”	an electronic undertaking by a CSDP to settle a transaction in equity securities;
“settlement date”	in respect of a transaction in equity securities, the date on which the transaction is due to be settled;
“settling party”	a buyer or seller of listed securities who settles a transaction or any person appointed in terms of exchange rules by such buyer or seller to settle a transaction on behalf of such buyer or seller;
“STRATE”	STRATE Limited, a public company licensed as a central securities depository in terms of the Act;
“terminating transaction”	a purchase of equity securities which have not subsequently been sold or a sale of equity securities which have not subsequently been purchased;
“trade date”	in respect of a transaction in equity securities, the date reflected as such on the contract note or an electronic confirmation thereof;
“T+1”	the first business day after the trade date;
“T+2”	the second business day after the trade date;
“T+3”	the third business day after the trade date;
“transaction”	contract of purchase and sale of securities;
“uncertificated equity securities”	equity securities that are not evidenced by a certificate or written instrument and are transferable by book entry without a written instrument;
“uncommitted settlement”	settlement obligation for which a CSDP has not provided a settlement undertaking.