

AfriClear Limited

("the clearing agency")

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CLEARING AGENCY RULES

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PREFACE

These **Rules** have been specifically written according to the **Securities Act** of 2007 of the Republic of Seychelles.

These **clearing agency Rules** (“**the Rules**”) specifically cater for **Listed Securities** traded on **Securities Exchanges** operated in **Designated Markets** and for the **clearing agency participants** (“**Participants**”) of the **clearing agency Limited** (“**the clearing agency**”), and govern the eligibility, responsibilities, **clearing, settlement** and disciplinary procedures of these **participants**.

LIMITATION OF LIABILITY

The members of the **Controlling Body**, other committees, the Chief Executive and other officers and employees of the **clearing agency** are not liable for any loss sustained by damage caused to any **persons, service providers or participants**, as a result of any action or omission of action by the **clearing agency**, its appointed **Securities Facility**, approved **participants** and their agents, contractors and employees, in the *bona fide* or negligent exercise of any power or carrying out of any duty or performance of any function under **the Act, these Rules** or any **Directive** issued in terms of **these Rules**. No failure by the **clearing agency** to exercise any of its rights in whole or in part under **these Rules** or **Directives** shall constitute a waiver of its rights or remedies under **these Rules**.

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DEFINITIONS

In these Rules, unless otherwise stated or the context requires otherwise, any expression which denotes any gender includes the other genders, and the singular includes the plural and *vice versa*.

TERM	MEANING
“additional margin”	means the margin held by a participant on behalf of a client over and above that required by the clearing agency ;
“AMLA”	means the Seychelles Anti-Money Laundering Act, 2006 (as amended);
“AfriClear”	means AfriClear Limited, a licensed clearing agency in the Seychelles;
“AfriDep”	means AfriDep Limited, a licensed securities facility in the Seychelles;
“applicant”	means a person who applies for acceptance as a participant in terms of Section 2 of these Rules ;
“approved securities”	means uncertificated securities or immobilised securities which the clearing agency permits to be held in a securities account;
“ARTECS”	means the AfriClear Real Time Electronic Clearing and Settlement System that facilitates the presenting and exchanging of transfer instructions regarding funds, securities or other financial instruments and the settlement of those transfer instructions between participants of the system;
“Automated Trading System or ATS”	means the trading system which comprises the software, hardware, communications and network systems, which are used to carry out the trading and reporting of transactions or other operations related to transactions on a designated

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	market;
“authenticated instruction”	means any instruction sent or received through the ARTECS system or other system being used by the clearing agency ;
“authorising instruction”	means a separate written instruction given by a client or a participant in respect of every entry to be affected by the participant on behalf of the client in that client’s securities account ;
“bank”	means as defined in the Act ;
“business day”	means any day except for Saturday and Sunday, public holidays within the meaning of the Public Holidays Act 1976 , or any other day on which the clearing agency is closed;
“Central Bank”	means the Central Bank of Seychelles as established in the Central Bank of Seychelles Act, 2004;
“central derivatives account”	means an account maintained by the clearing agency for derivative market contracts, funds, margins and market collateral for which the clearing agency is the counterparty ;
“central securities account”	means an account maintained for securities other than derivatives securities by the clearing agency with a securities facility used exclusively for reporting of the clearing of these securities to the securities facility for the recording of changes in beneficial ownership in securities maintained in the securities ownership register by the securities facility ;
“clear” or “cleared” or “clearing”	in relation to a transaction or group of transactions in approved securities , means: a) the process in terms of which the clearing agency becomes the buyer from the seller and the seller to the buyer in

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every **trade** whereupon the **participant** guarantees to the **clearing agency** all obligations arising out of any position resulting from such **trade**; and

- b) to calculate and determine, before each **settlement** process:
 - i) the exact number or nominal value of **securities** of each kind to be transferred by or on behalf of a seller;
 - ii) the amount of money to be paid by or on behalf of a buyer, to enable **settlement** of a **transaction** or group of **transactions**; or
- c) where applicable, the process by means of which:
 - i) the functions referred to in paragraph a) are performed; and
 - ii) the due performance of the **transaction** is underwritten from the time of trade to the time of **settlement**;

“clearing agency” means AfriClear Limited, a licensed and regulated clearing agency in Seychelles;

“clearing agreement” means a written agreement entered into between a **participant** and a **client** in terms of which the **client** guarantees to the **participant** the performance of the **obligations** arising out of the **client’s** principal and agency positions;

“clearing and settlement services” means **clearing** and **settlement** of **transactions** in **securities**;

“clearing agency agreement” means a written agreement entered into between a **participant** and the **clearing agency** in terms of which the **participant** guarantees to the **clearing agency** all of the

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	obligations arising out of his proprietary positions and the positions of their clients ;
“client”	means a natural or juristic person who uses the services of a participant ;
“client derivatives account”	means a client account that includes funds and derivative securities which is held by a participant and used exclusively for the settlement of transactions in derivative securities ;
“client securities account”	means a client ’ account which include funds and securities other than derivative securities , which is held by a participant and used exclusively for the settlement of transactions in securities other than derivatives securities ;
“Companies Act”	means the Companies Ordinance, 1972 of the Seychelles or any subsequent revision thereof;
“Compliance Officer”	means the officer registered with the clearing agency by a participant to ensure compliance with the Act and these Rules by a participant ;
“contract for difference” or “CFD”	means an arrangement where the seller will pay the buyer the difference in value of a particular instrument on a daily basis for the period between when the contract is opened and when it is closed. The buyer will in return pay the seller the difference in price if its value decreases. The difference is determined by referring to an underlying instrument;
“contract interest”	means the interest cost that is paid or received, on a daily basis, by holders of net long positions and holders of net short positions, respectively;
“Controlling Body”	means the board of directors of the clearing agency ;
“counterparty”	means the other party to a trade in approved securities ;

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“custody”	means the safekeeping of securities with an appointed securities facility , a securities facility member, transfer secretary or company secretary or any other nominee appointed in respect of approved securities in terms of the Act and these Rules ;
“daily settlement price”	means the daily settlement price of the derivative security as determined by the approved designated market ;
“default proceedings”	means any proceedings or other action taken by the clearing agency under its Default Rules ;
“default rules”	means the rules of the clearing agency as prescribed by Section 26 of the Act ;
“Defaulter”	means a participant who is the subject of any Default Proceedings under these Rules ;
“derivative securities ”	means securities that have the same meaning as: <ul style="list-style-type: none">i) Options per Schedule 1 paragraph 5 of the Act;ii) Futures per Schedule 1 paragraph 6 of the Act;iii) contracts for difference per Schedule1 paragraph 8 of the Act;
“designated market”	means a Seychelles Securities Exchange or Recognized Overseas Securities Exchange ;
“director”	means a director or alternate director as defined in the Companies Act or any equivalent legislation in the country of incorporation;
“Directive”	means an instruction issued by the clearing agency in accordance with these Rules ;
“Disciplinary Committee”	means the committee appointed by the clearing agency to

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	enforce disciplinary procedures according to these Rules ;
"entity"	means any incorporated or unincorporated entity either domiciled in Seychelles or domiciled in a foreign country;
"entry"	includes an electronic recording of any deposit, withdrawal, transfer, attachment, pledge, cession to secure a debt or other transaction in respect of securities ;
"executive"	means an employee of the clearing agency appointed to the Executive Committee ;
"Executive Committee"	means the committee appointed to manage the day-to-day affairs of the clearing agency ;
"executive director"	means a person who is a participant of the Controlling Body and an employee of the clearing agency ;
"fees" and "levies"	means the fees or levies published by the clearing agency from time to time;
"funds"	means the full monetary consideration not including securities , held in a securities account.
"Head of Compliance"	means the person who manages and directs the Compliance Division of the clearing agency and who monitors the clearing and settlement functions of participants in terms of these Rules ;
"immobilise"	means the storage of certified physical scrip in a vault to be converted to electronic format;
"in writing"	means, in relation to anything which, in terms of the Act and these Rules must be done in writing and includes any such correspondence done in electronic form;
"index"	means an indicator that reflects changes in the value of a group of securities on one or more financial markets or securities exchanges ;

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“initial margin requirement”	means the amount of market collateral deposited or provided by a participant to the clearing agency , the initial margin amount is calculated so as to cover the worst probable loss on a relevant position over one day;
“internal controls”	means those internal controls established in order to provide reasonable assurance of: <ul style="list-style-type: none">i) the safeguarding of assets against unauthorised use or disposition; andii) the maintenance of proper accounting records and the reliability of financial information used within the business or for publication;
“listed securities ”	means: <ul style="list-style-type: none">i) a public company whose securities are listed and quoted on a designated market and included in the list of securities of the designated market and “listed company” shall be construed accordingly; andii) other securities as defined in Schedule 1 of the Act admitted for trading on a Seychelles Securities Exchange or other designated market;
“Managing Director”	means the person appointed by the Controlling Body of the clearing agency as the Managing Director who manages the day-to-day affairs of the clearing agency ;
“market charge”	means as defined in the Act ;
“market collateral”	means as defined in the Act ;
“market contract”	means as defined in the Act ;
“match" or “matched”	means any trade that has been matched on the approved designated market ATS during the continuous trading

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	period or auction period matching processes in a listed security which then becomes a matched transaction and is legally binding;
“member”	means a securities dealer or recognized overseas securities dealer that has been admitted as a member of the approved designated market.
“Minister”	means as defined in the Act ;
“net” or “netting”	means an agreed offsetting of positions or obligations of participants either on a bilateral or multilateral basis that reduces a large number of individual positions or obligations to a smaller number of positions;
“nominee” or “nominee Company”	means a person who acts as the registered holder of securities or has an interest in securities on behalf of other persons in terms of Section 62 of the Act and these Rules ;
“Notice”	means a general announcement published by the clearing agency in printed or electronic form to its participants ;
“Novation” or “Novate”	means the process whereby the rights and liabilities, arising out of an original transaction between the buyer and the seller of an approved security matched or reported on the approved designated market ATS , is extinguished and taken up by the participant and the clearing agency ;
“obligation”	means a duty imposed by contract or law;
“off-market trade”	means a transaction in a listed security that is not matched on the approved designated market ATS , which is subsequently reported and accepted on the ATS of the approved designated market ;
“open interest charge”	means the daily cost charged to clients , by the approved designated market for holding an open position in CFD . The OIC rate is set by the approved designated market and is

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paid daily on both long and short positions by **clients**;

“participant”	means as defined in Section 22 of the Act ;
“Participant Derivatives Account”	means an account that includes funds and derivative securities , which is held at the clearing agency , for the participant and used exclusively for the settlement of transactions in derivative securities ;
“Participant Securities Account”	means an account that includes funds and securities other than derivative securities , which is held at the clearing agency , for the participant and used exclusively for the settlement of transactions in securities other than derivative securities ;
“person”	means an individual, corporation, partnership, association, trust or other entity as the context admits or permits;
“pre-validated trade”	means a trade that is validated by a designated market prior to execution in order for the clearing agency to provide real time clearing and settlement services ;
“Recognized jurisdiction”	means a country or territory as listed in Schedule 2 of the Act ;
“Recognized Overseas Regulatory Authority”	means a regulatory authority which exercises one or more functions corresponding to the functions corresponding to the functions of the Securities Authority under the Act : a) in a recognized jurisdiction ; or b) in such country or territory outside Seychelles and which the Securities Authority has declared by notice published in the Gazette to be recognized for the purposes of the Act ;
“Recognized Overseas	means as defined in the Act .

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Securities Exchange”

“records”	means the records of the clearing agency and its participants , which relate to the business of the clearing agency or participants ;
“Securities”	means as defined in Schedule 1 of the Act ;
“Securities Authority”	means the Seychelles International Business Authority;
“securities exchange”	means a market, exchange, place or facility which provides for bringing together on a regular basis purchasers and sellers of securities , and sets rules for the execution of securities transactions or for the negotiation or conclusion of sales and purchases of securities but does not include the office of a participant , clearing agency or securities facility ;
“securities facility”	means a securities registry business or securities depository which provides services to a securities exchange as defined in Section 41 of the Act ;
“Securities Ownership Register”	means the central securities register kept by AfriDep reflecting the number and/or nominal value of securities of each kind and all entries made in respect of each securities account;
“service provider”	means any person who provides a service to the clearing agency or a participant in relation to clearing and settlement services ;
“Seychelles Securities Exchange”	means a company operating in a market or other place in the Seychelles at or on which securities are offered for sale, purchase or exchange and which is licensed by the Securities Authority in accordance with Section 9 of the Act ;
“standing instruction”	means a general instruction in writing given by a client to a participant authorising the participant to effect entries on

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	behalf of the client in that client securities account and / or client derivatives securities account ;
“settlement” or “settle”	means to discharge the obligations arising from a transaction in approved securities ;
“Settlement Date” or “s”	means the day on which a transaction effected through a designated market is due to be settled ;
“Settlement Officer”	means an officer of a participant who is registered with the clearing agency to manage the settlement of transactions in listed securities ;
“the Act”	means The Securities Act , 2007 of the Republic of Seychelles;
“the Rules” or “these Rules”	means these Rules of the clearing agency approved by the Securities Authority and includes the Directives ;
“trade” or “transaction”	means a matched trade or an off-market trade in respect of an approved security ;
“Trop-X”	means Trop-X (Seychelles) Limited , a company incorporated under the laws of the Seychelles (Company Number 879858-1) and licensed to operate as a securities exchange in terms of the Act ;
“uncertificated securities”	means securities that are not evidenced by a certificate or written instrument and are transferable by entry without a written instrument;
“variation margin”	means a variable margin payment made between a participant and the clearing agency based upon price movements of derivative securities held by the participant . Payments are made between participants and the clearing agency on a daily basis in order to reduce the exposure created by positions.

SECTION 1

GENERAL PROVISIONS OF THE RULES

1.1 Legal status of AfriClear

AfriClear Limited is a legal entity with limited liability, registered and **incorporated** in terms of the **Companies Act** of the Republic of the **Seychelles**.

1.2 Domicilium Address

a) The registered office of Africlear:

**Suite 305
Capital City Building
Victoria
Mahé
Republic of Seychelles**

b) The Physical Address of Africlear:

**Office F28
1st Floor
Eden Plaza
Eden Island
Republic of Seychelles**

Africlear's domicilium citandi et executandi is its registered address stated above.

1.3 Status of the Rules and the Directives

a) **the Rules** govern the operations of the **clearing agency** as prescribed by Section 26 of **the Act**.

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- b) In the event of any conflict:
 - i) between **the Act** and **the Rules**, **the Act** shall prevail;
 - ii) between **the Rules** and any **Directive**, **the Rules** shall prevail; or
 - iii) between these **Rules** and any other rules of a **designated market**, these **Rules** shall prevail.
- c) These Rules shall be binding on:
 - i) the **clearing agency**;
 - ii) the officers and employees of the **clearing agency** and its **service providers**; and
 - iii) **participants**, all their officers, employees and **clients**.
- d) These Rules are binding between:
 - i) the **clearing agency** and **participants**;
 - ii) **service providers** and **participants**;
 - iii) **service providers** and the **clearing agency**; and
 - iv) **participants** and **clients**.

1.4 Amendments to the Rules

- a) The **Executive Committee** may, lodge a written proposal to the **Controlling Body** for approval in respect of amendments to the existing **Rules** or **Directives**.
- b) A **participant** may lodge a written proposal to the **Executive Committee** of the **clearing agency** in respect of amendments to the existing **Rules** or **Directives**.

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- c) Upon receipt of a proposal from a **participant**, the **Executive Committee** of the **clearing agency** shall respond **in writing** to the **participant** within 20 (twenty) **business days** of receipt of the proposal for the amendment.
 - d) Thereafter the **Executive Committee** shall consider the proposed amendment within a further period of 20 (twenty) **business days** and may:
 - i) request further information **in writing** from the **participant** and upon receipt thereof consider the proposed amendment fully within a further period of 30 (thirty) **business days** and thereafter deal with the proposed amendment in terms of Rule 1.5 (d) (ii) or 1.5 (d) (iii) as the case may be; or
 - ii) reject the proposal and provide reasons for the rejection **in writing** to the **participant**; or;
 - iii) in the event that the **Executive Committee** considers the proposed amendment to be one which will enhance and/or improve the business efficiency and/or operations of the **clearing agency** it may submit the proposed amendment together with a recommendation by the **Executive Committee** to the **Controlling Body** for consideration in which case the **Controlling Body** may -
 - a. if the proposed amendment to **these Rules** is accepted and approved by the **Controlling Body** submit the proposed amendment to the **Securities Authority** in terms of **the Act** for approval, accompanied by an explanation of the reasons for the proposed amendment; or
 - b. reject the proposal and provide reasons for the rejection **in writing**;
 - e) the **clearing agency** shall issue a **notice** detailing any changes to **these Rules**.
 - f) If the **Executive Committee** and/or the **Controlling Body** rejects a proposed amendment then this decision will be final.
 - g) Any proposed amendments to **the Rules** require the final approval of the **Securities Authority**.
-

1.5 Directives

For the purposes of giving effect to **these Rules**, to achieve all things that are necessary for, incidental or conducive to the proper operation of its business and fulfilling its functions, responsibilities and duties as a **clearing agency**, the **clearing agency** may issue **Directives** in terms of **the Act** and **these Rules** provided such **Directives** are not inconsistent with **the Act**.

1.6 Notices to participants

- a) For the purpose of issuing **notices** to **participants**, every **participant** must notify the **clearing agency** of its business address, postal address, facsimile number and electronic mail address where a **notice** issued by the **clearing agency** may be delivered.
- b) A **notice** issued by the **clearing agency** to **participants** must be **in writing** and may be transmitted in electronic form to **participants**, to the nominated electronic mail address of the **Compliance officer**.
- c) A **notice in writing** is deemed to have been received on the date of transmission unless proved to the contrary by the **participant**.

SECTION 2

PARTICIPANTS

2.1 Categories of Participants of the clearing agency

- a) Pre-validated Trade Clearing Agency Participant (“PCAP”) – is a **participant** that is authorised to provide **clearing and settlement services** exclusively for **securities** designated for **trading** only on a **pre-validated trade** basis.
- b) Derivatives Clearing Agency Participant (“DCAP”) – is a **participant** that is authorised to provide **clearing and settlement services** for **derivatives securities** only.
- c) General Clearing Agency Participant (“GCAP”) – is a **participant** that is authorised to provide **clearing and settlement services** for all **approved securities**.

2.2 Participant criteria

- a) Any **persons** wishing to be a **participant** of the **clearing agency** shall be deemed eligible if they meet the following criteria:
- b) A PCAP must:
 - i) be a corporation with the requisite financial and business standing and repute and is or will upon admission be carrying on the business of a PCAP whether in Seychelles or elsewhere;
 - ii) have **directors** who are all at least 21 (twenty-one) years of age having full legal capacity;
 - iii) have **directors** and officers of good character and high business integrity, and the **applicant** shall never have been:
 - a. convicted of an offence resulting from dishonesty, fraud or embezzlement;

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- b. barred from entry for reasons relating to their profession or occupation; or
- c. convicted in any jurisdiction of any criminal offence under any legislation, or was a **director** or officer of a company at the time such company was convicted of any similar offence;
- vi) demonstrate adequate compliance with **these Rules**;
- vii) have adequate procedures and supervisory duties imposed by any other relevant legislation;
- viii) maintain appropriate guarantees, professional indemnity cover or Fidelity Insurance Cover for its **clients'** benefit in respect of negligence, fraud and misappropriation by **directors**, officers or employees involved in performance of **clearing and settlement services**;
- ix) have officers that are registered with the **clearing agency** and meet competency requirements for these officers stipulated in the **Directives**;
- x) have a **person** in charge of its **clearing** operations and activities who meets the competency criteria stipulated in **Directive 1** to these **Rules**;
- xi) have managerial or executive staff of high standard, integrity and a level of knowledge (as may be deemed acceptable by the **clearing agency**) on the nature, risks and **obligations** in respect of the market or **trades** that it wishes to **clear**;
- xii) maintain staff, facilities and adequate internal control and risk management policies, procedures and systems for its **clearing** operations and activities;
- xiii) maintain segregated and adequate back office functions;
- xiv) have in place sufficient resources and establish and maintain adequate systems for preserving a sound liquidity and financial position at all times including the maintaining of adequate staff and facilities for monitoring

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- its cash-flow and funding requirements and maintaining sufficient liquidity for its day to day operations;
- iv) have appropriate internal control and risk management processes and procedures that are documented and at a minimum covers the identification, management, measurement and oversight of various business risks. The identified risks should include but are not limited to areas such as proprietary trading, business interruption, technology, key **person**, credit, liquidity, market fraud, **settlement**, physical security and new products. Senior management must play a significant role in the adoption and maintenance of a comprehensive system of internal controls and risk management practices. This role should include the recognition of risk management as an essential part of the business process, management's willingness to fund the necessary elements of a risk management system, including personnel and information technology costs, and recognition that risk management is a dynamic function that must be modified and improved as the **participant's** business changes and improved processes and procedures become available.
 - v) comply with the requirements for PCAP's as stipulated in the **Directives**.
- c) A DCAP must:
- i) be authorised to conduct banking business in Seychelles or a **recognized jurisdiction**;
 - ii) be a corporation with the requisite financial and business standing and repute and is or will upon admission be carrying on the business of a DCAP whether in Seychelles or elsewhere;
 - iii) have **directors** who are all at least 21 (twenty-one) years of age having full legal capacity;

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- iv) have **directors** and officers of good character and high business integrity, and the **applicant** shall never have been:
 - a. convicted of an offence resulting from dishonesty, fraud or embezzlement;
 - b. barred from entry for reasons relating to their profession or occupation; or
 - c. convicted in any jurisdiction of any criminal offence under any legislation, or was a **director** or officer of a company at the time such company was convicted of any similar offence;
 - v) demonstrate adequate compliance with **these Rules**;
 - vi) have adequate procedures and supervisory duties imposed by any other relevant legislation;
 - vii) maintain appropriate guarantees, professional indemnity cover or Fidelity Insurance Cover for its **clients'** benefit in respect of negligence, fraud and misappropriation by **directors**, officers or employees involved in performance of **clearing and settlement services**;
 - viii) have officers that are registered with the **clearing agency** and meet competency requirements for these officers stipulated in **Directives**;
 - ix) have a **person** in charge of its **clearing** operations and activities who meets the competency criteria stipulated in the **Directive 1** to **these Rules**;
 - x) have managerial or executive staff of high standard, integrity and a level of knowledge (as may be deemed acceptable by the **clearing agency**) on the nature, risks and **obligations** in respect of the market or **trades** that it wishes to **clear**;
 - xi) maintain staff, facilities and adequate internal control and risk management policies, procedures and systems for its **clearing** operations and activities;
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- xii) maintain segregated and adequate back office functions;
 - xiii) have in place sufficient resources and establish and maintain adequate systems for preserving a sound liquidity and financial position at all times including the maintaining of adequate staff and facilities for monitoring its cash-flow and funding requirements and maintaining sufficient liquidity for its day to day operations;
 - xiv) have paid up capital of not less than US\$ 5,000,000 (five million US Dollars); or
 - xv) its holding company has group paid up capital of at least US \$100,000,000 (one hundred million US Dollars); or
 - xvi) such other amount as may be prescribed by the **clearing agency** hereafter, from time to time;
 - xvii) have, and upon admission will maintain, minimum capital and financial requirements pursuant to Rule 2.2 b) xv), xvi) or xvii); and
 - xviii) satisfy any and all other requirements and criteria for such **participant** status, which the **clearing agency** may prescribe from time to time.
- d) A GCAP must:
- i) be a corporation with the requisite financial and business standing and repute and is or will upon admission be carrying on the business whether in Seychelles or elsewhere;
 - ii) have **directors** who are all at least 21 (twenty-one) years of age having full legal capacity;
 - iii) have **directors** and officers of good character and high business integrity, and the **applicant** shall never have been:
 - a. convicted of an offence resulting from dishonesty, fraud or embezzlement;

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- b. barred from entry for reasons relating to their profession or occupation; or
- c. convicted in any jurisdiction of any criminal offence under any legislation, or was a **director** or officer of a company at the time such company was convicted of any similar offence;
- iv) demonstrate adequate compliance with **these Rules**;
- v) have adequate procedures and supervisory duties imposed by any other relevant legislation;
- vi) maintain appropriate guarantees, professional indemnity cover or Fidelity Insurance Cover for its **clients'** benefit in respect of negligence, fraud and misappropriation by **directors**, officers or employees involved in performance of **clearing and settlement services**;
- vii) have officers that are registered with the **clearing agency** and meet competency requirements for these officers stipulated in **Directive 1**;
- viii) have a **person** in charge of its **clearing** operations and activities who meets the competency criteria stipulated in **Directive 1** to **these Rules**;
- ix) have managerial or executive staff of high standard, integrity and a level of knowledge (as may be deemed acceptable by the **clearing agency**) on the nature, risks and **obligations** in respect of the market or **trades** that it wishes to **clear**;
- x) maintain staff, facilities and adequate internal control and risk management policies, procedures and systems for its **clearing** operations and activities;
- xi) maintain segregated and adequate back office functions;
- xii) have in place sufficient resources and establish and maintain adequate systems for preserving a sound liquidity and financial position at all times including the maintaining of adequate staff and facilities for

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monitoring its cash-flow and funding requirements and maintaining sufficient liquidity for its day to day operations;

- xiii) be a **bank** registered in **Seychelles** which will have no capital requirements other than those already imposed by the Seychelles Financial Institutions Act (2004) (as amended); or
- xiv) be a **bank** registered in a **recognized jurisdiction** that meets the capital requirements of **Rule 2.2 (b) (xiv) or (xv)**; or
- xv) a **participant** not meeting **Rules 2.2 (c) (xii) or (xiv)** must have base capital as follows:
 - a. the base requirements which is an amount required to meet the **participant's** operating expenditure requirements for a period of 6 (six) months and this amount shall be agreed with the **Managing Director** of the **clearing agency**;
 - b. in order to comply with this requirement the **participant** must provide the **clearing agency** with a **bank** guarantee:-
 - i. for an amount equal to no less than the Base Requirement;
 - ii. issued by a **bank** acceptable to the **clearing agency**;
 - iii. issued in accordance with wording approved by the **clearing agency**;
 - iv. have a minimum duration of 12 (twelve) months (renewable); and
 - v. be subject to a minimum cancellation period of 3 (three) months.
 - c. The holding of **securities** in **custody** introduces risk for which a **participant** is required to hold capital. The amount of capital required is based on the market value of assets held under **custody** ("AUC") by that **participant**.

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- d. A **participant's** total Custody Risk Requirement (CRR) shall be not less than the sum of the following:
- i. A minimum of US\$50,000 (fifty thousand US Dollars);
 - ii. 0,1% of the market value of assets under **custody** where this value exceeds US\$30,000,000 (thirty million US Dollars) but is less than US\$250,000,000 (two hundred fifty million US Dollars); and
 - iii. 0,01% of the market value of assets under **custody** in excess of US\$250,000,000; and

for the purpose of this **Rule**, assets under **custody** shall include all Equities, Bonds and/or Money Market **securities** held by the **participant**;

- xvi) such other amount as may be prescribed by the **clearing agency** hereafter, from time to time;
- xvii) have, and upon admission will maintain, minimum capital and financial requirements pursuant to Rule 2.2 c) xii) or xiv) or xv; and
- xviii) satisfy any and all other requirements and criteria for such **participant** status, which the **clearing agency** may prescribe from time to time.

2.3 Application for authorisation of a PCAP, DCAP or GCAP

- a) An application for **participant** status shall be subject to:
- i) **the Act**, and **these Rules**;
 - ii) the application being made to the **clearing agency in writing** using the **clearing agency** prescribed application form;
 - iii) the application being accompanied by a non-refundable fee as determined by the **clearing agency** in **Directive 5**;

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- iv) the **applicant** agreeing **in writing** to be bound by the provisions of **the Act, these Rules** and **Directives** on making the application; and
- v) any other information as required by the **clearing agency**.
- b) the **clearing agency** may request further information which it deems necessary, to verify information submitted by the **applicant** to support an application.
- c) the **clearing agency** shall be entitled to refuse an application and **notice in writing** will be given to the **applicant**, with reasons for the rejection.
- d) No exemptions shall be allowed for **participants** unless stipulated in **the Act, these Rules** or **Directives**.
- e) An **applicant** refused participation has the right to appeal under the **CRS** in terms of Section 8 of **these Rules**.

2.4 Termination of Participant status

- a) A **participant** may terminate its status on the **clearing agency** by giving twenty (20) **business days, in writing** of such termination and the reasons thereof to the **clearing agency**.
 - b) The **clearing agency** shall the **Compliance Officer** of the **participant in writing** within ten (10) **business days** of receipt of such termination **notice** confirming the intention of that **participant** to terminate.
 - c) The **clearing agency** may accept the **notice** of termination unconditionally or conditionally or upon such conditions as it may deem fit, provided that the **clearing agency** is satisfied that all outstanding **obligations** in terms of **these Rules** and **Directives** have been resolved.
 - d) The termination of that **participant** shall only be effected once a **notice** has been received **in writing** from the **clearing agency**.
 - e) Instant termination of that **participant's** status shall be at the sole discretion of the **clearing agency**, and may result if the **participant** is:
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- i) placed under curatorship;
 - ii) placed under business rescue in terms of the **Companies Act** or the Bankruptcy and Insolvency Act 1991 or similar relevant laws of the jurisdiction of incorporation of the **participant**;
 - iii) liquidated;
 - iv) granted any judgement against it that is not set aside by a Court of Law;
 - v) as a consequence of its application for admission, the material submitted for **participant** status is found to be misleading or untrue;
 - vi) in the case of a PCAP if it loses its membership status of the approved designated market for which the **clearing agency** provides **clearing and settlement services**;
 - vii) in the case of a DCAP or GCAP if it loses its license to conduct banking business or license to be a participant in an **recognized jurisdiction**;
 - viii) found to have submitted misleading or untrue material in support of its application for admission; or
 - ix) has its license suspended or rejected by the **Securities Authority**.
- f) The **Securities Authority** will be notified **in writing** of the termination of any **participant** status and the reasons thereof within one (1) **business day** of receipt of termination by a **participant** or termination of a **participant** at the discretion of the **clearing agency**.
- g) The **clearing agency** will notify all other **participants in writing** of the termination of a **participant** within ten (10) **business days** for termination by a **participant** and within one (1) **business day** for termination of a **participant** by the **clearing agency**.

2.5 Registration and duties of Officers

- a) Every **participant** shall have a **Compliance Officer** who shall:
- i) meet the qualifications and experience levels as prescribed by the **clearing agency** in **Directive 1**;
 - ii) be responsible for the communication between the **clearing agency** and the **participant**;
 - iii) comply with these **Rules** and **Directives**;
 - iv) at all times be registered with the **clearing agency**;
 - v) be responsible for any communication with the **clearing agency**, which must be confirmed **in writing** with the **clearing agency**;
 - vi) receive all **notices** from the **clearing agency**;
 - vii) at all times comply with **these Rules**;
 - viii) ensure compliance of these **Rules** and **Directives** by the **participant** at all times;
 - ix) ensure the compliance of the **participant** with all legislations relevant and binding to the **participant**; and
 - x) report **in writing** to the **clearing agency** any breaches by the **participant** and its **clients** of the provisions of **the Act** and **these Rules** and **Directives**.
- b) Each **participant** shall have a **Settlement Officer** who shall:
- i) be registered with the **clearing agency** and meet the competency requirements prescribed by the **clearing agency** in **Directive 1** to **these Rules**;
 - ii) ensure **settlement** takes place as prescribed by **these Rules** and **Directive 2** and **Directive 3**;

- iii) immediately report any **clearing** and **settlement** transgressions in terms of **the Act, these Rules, Directive 2** and **Directive 3** to the **Compliance Officer**; and
- iv) at all times comply with **these Rules**.

SECTION 3

CLEARING AGENCY FUNCTIONS AND DUTIES

3.1 General

- a) The **clearing agency** shall facilitate the prompt adjustment of **market contract obligations** arising out of transactions on an **approved designated market** insofar as the same are duly accepted by the **clearing agency** or with respect to which the **clearing agency** is otherwise obligated to accept and to protect the integrity of such **market contracts** in accordance with **these Rules**.
- b) Wherever **these Rules** and/or the **rules** of the relevant **designated market** create a right in favour of the **clearing agency** or impose a liability on the **clearing agency**, such right or liability shall prior to the **settlement date** be construed as the right or liability of the **designated market**, and shall be enforced by or against the **designated market** and on or after the **settlement date**, shall be construed as the right or liability of the **clearing agency**, and shall be enforced by or against the **clearing agency**.
- c) The **clearing agency** shall from time to time prescribe in **these Rules** the rights and **obligations** of **participants** and all requisite matters in relation to the operation and management of the **clearing agency** (including but not limited to systems of **clearing**, deposits, margins, delivery, charges, **settlement** prices, payments and **settlement**).

3.2 Limitation of liability

- a) Without prejudice to any other limitation or exclusion of liability (including liability with respect to **market contracts** liable to delivery as opposed to cash **settlement**) the liability of the **clearing agency** shall be limited to net losses to **participants** resulting from the **novation** of the **clearing agency** described in Rule 5.1.
- b) Without prejudice to the generality of the foregoing, the **clearing agency** shall not be liable for **obligations** of a **participant** to any third party, **obligations** of a **participant** to another **participant** that is acting for it as **participant** or **obligations** to a **client** by a **participant**, nor shall the **clearing agency** become liable to make deliveries whether from any third party or any **participant**.

3.3 Registration of listed securities with the clearing agency

- a) A **designated market** may apply **in writing** to the **Head of Compliance** and request the registration of a **listed security** with the **clearing agency**.
- b) The **Head of Compliance** has five (5) **business days** to respond to this request.
- c) All **approved securities** are automatically eligible for **clearing** and **settlement** by the **clearing agency**.
- d) With regard to **approved securities**, **participants** shall comply with requirements as set forth in the rules of the relevant **designated market**.

3.4 Client Clearing and Settlements Accounts

- a) A **client derivatives account** may only be maintained by a DCAP or GCAP and must be used exclusively for the **clearing** and **settlement** of **transactions** in **derivative securities**.

- b) A **client securities account** may only be maintained by a PCAP or GCAP and must be used exclusively for the **clearing** and **settlement** of **transactions** in **securities** other than **derivatives securities**.

In respect of either a **client derivatives account** or a **client securities account**, the **entry** must be made in the **client's** own name in these accounts held by the **participant**.

- c) If applicable, the **participant** may hold these **securities** with a **nominee** which must be approved **in writing** by a **client** and is subject to the criteria stipulated in the **Directives**.

3.5 Participant Clearing and Settlements Accounts

- a) A **participant derivatives account** must be maintained by the **clearing agency** for a DCAP or GCAP and used exclusively for the **clearing** and **settlement** of **transactions** in **derivative securities** ;
- b) A **participant securities account** must be maintained by the **clearing agency** for a PCAP or GCAP and used exclusively for the **clearing** and **settlement** of **transactions** in **securities** other than **derivative securities** ;
- c) In respect of either a **participant derivatives account** or a **participant securities account**, the **entry** must be made in the **participant's** own name in these accounts held by the **clearing agency**; and
- d) If applicable, the **clearing agency** may hold these **securities** with a **nominee** which must be approved **in writing** by a **participant** and is subject to the criteria stipulated in the **Directives**.

3.6 Central Clearing and Settlement Accounts

- a) The **clearing agency** shall maintain a **Central Derivatives Account** for all DCAP's and GCAP's; and

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- b) the **clearing agency** shall maintain a **Central Securities Account** at all times with one or more approved **securities facilities**.

SECTION 4

DUTIES AND CONDUCT OF PARTICIPANTS

4.1 General duties

- a) Each **clearing agency participant** must:
- i) be responsible for the **clearing** and **settlement** of **transactions** in a fair, efficient and transparent manner;
 - ii) have a **clearing agreement** in place to provide **clearing and settlement services** to its **clients**;
 - iii) abide to the terms & conditions of the **clearing agency agreement**;
 - iv) be authorised and registered with the **clearing agency** all times;
 - v) **clear** and **settle** all **transactions** in **approved securities** through the **ARTECS**;
 - vi) ensure that all the **clearing** and **settlement** reporting requirements for the **approved securities** are met and are submitted timeously in terms of these **Rules** and **Directives 2** and **3**;
 - vii) ensure that the **participant** employs a **clearing agency** approved **Compliance Officer** and **Settlement Officer** at all times that meet the criteria for these officers stipulated in **Directive 1**;
 - viii) have the financial resources to meet its financial **obligations** under **these Rules**;
 - ix) comply with all the responsibilities and duties as prescribed for **participants** in these **Rules** and **Directives**;
 - x) ensure that it is responsible for the fulfilment of **obligations** by all its **clients**;

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- xii) at all times render **clearing and settlement services** honestly, fairly, with due skill, care and diligence, and in the interests of **clients** and the integrity of the **securities** services industry;
 - xiii) at all times exercise independent professional judgment;
 - xiv) conduct itself in such a manner and implement such actions to further the objects of **the Act**; and
 - xv) maintain knowledge of and comply with all applicable laws, rules and regulations governing its activities.
- b) No **participant** may engage in any conduct likely to bring the **securities** services industry or the **clearing agency** into disrepute.
- c) If there is at any time any downgrade in the credit rating of a DCAP, GCAP or any holding company or group company of a DCAP or GCAP approved by the **clearing agency** to **clear** derivative **transactions** such that it falls below the minimum prescribed rating, the **clearing agency** may, in its absolute discretion, impose additional conditions as it deems fit for permitting the DCAP or GCAP to continue to **clear** derivative **transactions**.
- d) If a DCAP or GCAP falls below the minimum prescribed base capital or group paid up capital requirements, the **clearing agency** may, in its absolute discretion, impose additional conditions as it deems fit for permitting the DCAP or GCAP to continue as a **participant**.

4.2 Disclosure to clients

- a) When a **participant** renders **clearing and settlement services**, representations made and information provided to a **client** by the **participant**:
- i) must be factually correct;
 - ii) must be provided in plain language to avoid uncertainty or confusion and not be misleading;

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- iii) must be adequate and appropriate in the circumstances of the relevant **clearing and settlement services**, taking into account the factually established or reasonably assumed level of knowledge of the **client**;
 - iv) must be provided timeously so as to afford the **client** reasonably sufficient time to make an informed decision about the proposed **transaction**;
 - v) may be provided orally and must, if the **client** so requests, be confirmed **in writing** within a reasonable time after such request;
 - vi) must, if provided **in writing** or by means of standard forms, be in a **clear** and readable print size, spacing and format;
 - vii) must, as regards all amounts, sums, values, charges, fees, remuneration or monetary **obligations** mentioned or referred to therein, be reflected in specific monetary terms; provided that where any such amount, sum, value, charge, fee, remuneration or monetary **obligation** is not reasonably pre-determinable, its basis of calculation must be adequately described; and
 - viii) need not be duplicated or repeated to the same **client** unless material or significant changes affecting that **client** occur, or the relevant **securities** service renders it necessary, in which case a disclosure of the changes to the **client** must be made without delay.
- b) A **participant** must:
- i) disclose full and accurate information about the fees and any other charges that may be levied on **clients**;
 - ii) not disclose any confidential information acquired or obtained from a **client** about such **client**, unless the written consent of the **client** has been obtained beforehand or disclosure of the information is required to further the objects of **the Act** or is required under any law;
 - iii) act promptly on and in accordance with the instructions of a **client**, and exercise any discretion in a responsible manner;
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- iv) advise a **client** in advance of any restrictions or limitations that may affect the access of that **client** to his or her **funds** or **securities** ;
- v) provide a general explanation of the nature and material terms and risks of a relevant **transaction** to a **client**, so as to enable the **client** to make an informed decision; and
- vi) disclose to the **client** the existence of any personal interest in the relevant service, or of any circumstance which gives rise to an actual or potential conflict of interest in relation to such service, and take all reasonable steps to ensure fair treatment of the **client**.

4.3 Record-Keeping

- a) A **participant** must maintain proper, complete, accurate and secure **records**.
- b) A **participant** must have appropriate procedures and systems in place to store and retrieve, in a manner approved by the **clearing agency**, a record of all:
 - i) **authenticated instructions** and **authorising instructions** relating to **clearing and settlement services** rendered to a **client**, including verbal instructions given by the **client** to the **participant**; and
 - ii) documentation relating to the contractual arrangement between the **participant** and the **client**.
- c) **Records** may be kept in electronic or voice recorded format. **Participants** need not keep the **records** themselves but must be capable of making such **records** available for inspection within seven (7) days.
- d) A record referred to in 4.3 (b) (i) must be kept for a period of at least six (6) months after the instruction has been given.
- e) A record referred to in 4.3 (b) (ii) must be kept for a period of at least seven (7) years after the contractual relationship has been terminated.

4.4 Inducements

- a) A **participant** must take reasonable steps to ensure that it and any **person** acting on its behalf does not offer, give, solicit or accept any incentive, remuneration, consideration, commission, fee or brokerage (“valuable consideration”) as an inducement if it is likely to conflict with any duty that the **participant** owes to its **clients** in respect of **clearing and settlement services** provided to those **clients** or any duty that the recipient of the inducement owes to its **clients**.
- b) Any valuable consideration offered, given, solicited or accepted as an inducement by a **participant** or any **person** acting on its behalf, in terms of an agreement with a third party or a **client** which relates to the provision of **clearing and settlement services** by the **participant** to one or more **clients**, and which does not directly relate to, and assist in the provision of, such services to such **clients** or does not otherwise directly benefit the **clients** of the recipient of such valuable consideration, shall constitute an inducement prohibited in terms of **these Rules**.
- c) A **participant** who, in terms of an agreement with a third party, directly or indirectly accepts any valuable consideration as an inducement in respect of **clearing and settlement services** rendered to a **client**, or for which the **participant** may become eligible, must disclose to the **client in writing** before the rendering of such service, the existence of the agreement, the nature, extent, value and frequency of receipt of such valuable consideration to the extent that such information is known prior to the rendering of the service, and the identity of the other **person** providing or offering the valuable consideration.

4.5 Advertisements

Advertising material of a **participant**:

- a) must provide accurate, complete and unambiguous information about any **security** or **clearing and settlement services**;
- b) must discern fact from opinion; and

- c) may not be comparative in relation to another **participant**.

4.6 Participant bookkeeping and separation of funds and assets

- a) A **participant** must provide for:
 - i) the necessary resources and functionality to ensure that **clients** are able to contact the **participant** easily and timeously;
 - ii) the separation and identification of the assets of a **client** and the assets of the **participant**; and
 - iii) the proper accounting for the assets of each **client**.
- b) A **participant** may not utilise the assets of **clients** to finance its business activities.

4.7 Client Statements

- a) A **participant** must provide a daily statement **in writing** to each **client**.
- b) A **client** statement must contain such information as is reasonably necessary to enable the **client** to:
 - i) produce a set of financial statements;
 - ii) determine the composition of the **securities** and **funds** comprising the portfolio held by the **participant** or for which the **participant** is accountable to the **client** and the changes thereto over the reporting period, if applicable; and
 - iii) determine the market value of the **securities** comprising the portfolio held by the **participant** or for which the **participant** is accountable to the **client** and the changes therein over the reporting period, if applicable.

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- c) To provide the **client** with the information necessary for them to review the operation of their account and make appropriate investment decisions, a **client** statement must contain at least the following information:
- i) the quantity, description and market value of each investment comprising the portfolio held by the **participant** or for which the **participant** is accountable to the **client**, at the reporting date;
 - ii) the amount of **funds** held by the **participant** for which the **participant** is accountable to the **client** at the reporting date;
 - iii) the relevant currency exchange rate at the reporting date must be reflected;
 - iv) **securities** purchased or sold during the reporting period;
 - v) receipts and payments of **funds** during the reporting period;
 - vi) details of income earned and expenditure incurred during the reporting period;
 - vii) non-cash **transactions** during the reporting period, including non-cash components of corporate actions and option expiries;
 - viii) **securities** transferred into and out of the portfolio during the reporting period;
 - ix) identification of those **securities** which at the reporting date were loaned to any third party but for which the **participant** is still accountable to the **client**;
 - x) the quantity, description and market value of any **securities**, or the amount of **funds**, held as collateral by the **participant** on behalf of the **client** in respect of any loans made by the **client**;
 - xi) identification of those **securities** or **funds** which at the reporting date were utilised to secure loans to the **client** or borrowings made on behalf of the **client**;
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- xii) identification of those **securities** or **funds** which at the reporting date were utilised as margin in respect of open positions in any financial product;
 - xiii) in respect of investments in listed derivative instruments, a description of the underlying financial product, **index**, or commodity, any other instrument, the expiry month and in the case of options, the exercise or strike price; and
 - xiv) if the statement reflects any **securities** or **funds** which are not held by the **participant** and for which the **participant** is not accountable to the **client**, it should clearly indicate that fact in relation to such **securities** or **funds**.
- d) The information referred to in Rule 4.7 (a) may be provided to the **client** in separate statements either during the reporting period or as at the reporting date.
- e) A **client** statement shall be provided either to the **client** or to an agent or third party nominated by the **client in writing**.

4.8 Internal Control and Risk Management

- a) A **participant** shall employ the resources, procedures and technological systems necessary for the effective conduct of its business.
- b) The system of internal control employed by the **participant** shall be designed to ensure that:
 - i) the relevant business can be carried on in an orderly and efficient manner;
 - ii) financial and other information used or provided by the **participant** is complete and accurate;
 - iii) all **transactions** and financial commitments entered into by the **participant** are recorded, reliable and are within the scope of authority of

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- the **participant** or the officer or employee acting on behalf of the **participant**;
- iv) there are procedures to safeguard the assets of the **participant** and the assets belonging to any other **person** for which the **participant** is accountable;
 - v) there are procedures to control liabilities; and
 - vi) there are measures, so far as is reasonably practicable to minimize the risk of loss to the **participant** or the **clients** of the **participant** from any irregularity, fraud or error and to detect any irregularity, fraud or error should they occur so that prompt remedial action may be taken by the **participant**.
- c) A **participant** shall as far as is reasonable adopt sound risk management principles and procedures.
- d) The principles and procedures of risk management shall be designed to ensure that the **records** of the **participant** are maintained in such a manner as to promptly disclose financial and business information that will enable the **participant** to:
- i) identify, quantify, control and manage the risk exposures of the **participant**;
 - ii) make timely and informed business decisions;
 - iii) monitor the performance and all aspects of the business of the **participant**; and
 - iv) monitor the capital of the **participant** to ensure compliance with the capital requirements imposed in terms of **these Rules**.
- e) A **participant** must be able to describe and demonstrate the objectives and operation of such systems, principles and procedures referred to in **these Rules**.
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4.9 Waiver of Rights

A **participant** may not request or induce a **client** in any manner to waive any right or benefit conferred on the **client** by or in terms of **these Rules**, or recognize, accept or act on any such waiver by the **client**, and any such waiver is void.

4.10 Inspections

The **clearing agency** may inspect the affairs of a **participant**, its officers or any **person** involved in the provision of **clearing** and **settlement** services in a **listed security** at any time and any documentation held on their behalf by third parties.

4.11 Fees and Levies

- a) **Participants** may charge a different fee for different categories of clearing and settlement services.
- b) **Participants** may negotiate directly with the **clearing agency**, **securities facilities**, other **participants** and any other services facilitators the fees that may be charged for **clearing and settlement services**.

SECTION 5

DERIVATIVES CLEARING, MARGIN AND SETTLEMENT

5.1 Clearing

- a) The **clearing agency** will **clear** all eligible **trades** that are **matched** on an **approved designated market**.
- b) The **clearing agency** will assume the role of buyer to every seller and seller to every buyer, for all **matched trades**, thereby taking the rights and liabilities of the original **transaction**.
- c) The **members** will **novate**, by virtue of **clearing agreements**, their rights and liabilities on the original **transaction** to the **participant**.
- d) Upon **novation**, the **clearing agency** and the **participant** will have entered into a **market contract**.
- e) A **participant** long or short any **market contract** to the **clearing agency** as a result of **novation** may liquidate the position by acquiring an appropriate opposite position related to the **market contract**.
- f) the **clearing agency** may refuse to accept the **clearing** of a **trade** at its discretion due to adverse market movement or excessive price movement that may result from:
 - i) a catastrophe of any description;
 - ii) a natural event of nature or force majeure;
 - iii) a state of war, threatened hostilities acts of terrorism or state of emergency;
 - iv) a correction in any domestic or global market; or
 - v) any other unforeseen event, and any other matter or event that impacts upon the **clearing agency** operations.

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- g) Nothing in **these Rules** shall be regarded, treated or otherwise interpreted as obliging or requiring the **clearing agency** to recognise any right or entitlement of any third party.

5.2 Positions

- a) the **clearing agency** will produce a ledger for each **participant** which will itemise:
- i) the day's **trades** in respect of any **market contract**;
 - ii) the position changes for the previous **business day**;
 - iii) the net **settlements** to be paid or collected;
 - iv) margins required at the close of the **business day**;
 - v) the current day's margin balance; and
 - vi) the combined net debit or credit balance for the **business day**.
- b) If a **participant** believes that there is any error in the ledger including an **entry** or debit balance, the **participant** must immediately notify the **clearing agency in writing** upon discovering the event but in any case not later than market open the following **business day**.

5.3 Recording of Trades in Clearing System

- a) **Trades** are recorded with the **clearing agency** in the name of:
- i) the **participant** (who may also be a **member**) as the principal to the **trade**;
 - ii) the **member** which executed the **trade** as the **client** of the **participant**;
 - iii) the other party to the **transaction** which may be another **member** or a **participant** to whom the **trade** is allocated.
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- b) **Trades** may only be recorded against the **participant** as principal and between the **participant** and its **client** who is a **member** as the case may be.
- c) All **trades** recorded as having been **traded** on the **approved designated market** shall be deemed confirmed by both parties immediately upon such recording by the **clearing agency**.
- d) Where a **trade** is recorded by the **clearing agency** as a **trade** between the **client** and the **participant**, the **client** shall:
 - i) designate the **trade** as a 'House Trade' or a 'Client Trade'; or
 - ii) allocate the **trade** to another **client** entitled to receive allocations.
- e) Where a **client** receives an allocation of a **trade** by the **clearing agency** it may either:
 - i) designate the **trade** as a 'House Trade' or a 'Client Trade'; or
 - ii) allocate the **trade** to another **member** entitled to receive allocations.
- f) Where a **client** is not a **participant** of the **clearing agency**, then confirmation of the **trade** shall also be deemed to be a confirmation by the **participant** of the **client** and shall be deemed to be immediately allocated to the **participant** of that **client**.

5.4 Daily Valuation

For the calculation of **variation margins**, the Daily Valuation of a **market contract** shall be determined in accordance with the relevant formula and process applicable to each **market contract**, as determined by the **clearing agency** in its **Directive 3.1**. In arriving at such formula the **clearing agency** may take into account factors, including but not limited to:

- a) the last traded price;
- b) bid and offer spread at the close of market;

- c) where no bid and offer spread is available, then the price determined by the relevant **securities exchange** apply; and
- d) price data derived from pricing models, as selected or established by the **clearing agency** from time to time.

5.5 Mark to market daily Settlement of Variation Margin

- a) When a **participant** is long or short any amount of any **market contract** at the end of the **business day**, as indicated by the **clearing agency** position ledger, **settlement of variation margin** shall be made with the **clearing agency** to the valuation for that **business day**, based on the daily settlement price, and such **participant** shall be liable to pay to, or entitled to receive from, the **clearing agency** any loss or profit, as the case may be, represented by the difference between the price at which the trade was executed and the valuation of the **market contract** at the end of the **business day**.
- b) **Settlement** must be paid in cash in the respective currencies of the positions.
- c) The **clearing agency** shall not be required to pay any profit to a **participant** in the event that such **participant** fails to meet any required **settlement** or margin call for that **business day** with the **clearing agency**.
- d) Mark to market gains of an account may be utilised by the **participant** or the **clearing agency**, as the case may be, to meet margin requirements for the same account.

5.6 Initial Margin

- a) The **initial margin requirement** is the amount of **market collateral** required to be posted by a **participant**, as the holder of a **market contract**, with the **clearing agency** in order to open and maintain a position and cover some or all of the credit risk of their **counterparty**.

- b) Initial margin shall be paid by a **participant** whenever the risk of market movement and **counterparty** credit risk, as determined by the **clearing agency**, changes with respect to the open positions of such **participant**.
- c) The **clearing agency** shall hold a **market charge** over **market collateral** required to be posted by a **participant** with the **clearing agency**.
- d) A **participant** is entitled to require a **client** to place an amount of **additional margin** as agreed upon between the parties in terms of the **clearing agreement**.
- e) All margins deposited with the **clearing agency** by a **participant** shall be retained by the **clearing agency** in whole or in part, as the **clearing agency** may deem necessary, but subject to these **Rules**, and may be returned to the **participant** when the **obligations** under the market contracts for which such margins have been deposited have been met.

5.7 Acceptable market collateral for Initial Margin

- a) **Initial margins** must be met in the form of **market collateral** as prescribed by the **clearing agency** from time to time.
- b) Valuation of such **market collateral** must be in accordance with the haircut rates in **Directive 3.2** as specified by the **clearing agency**, which is a measure that reduces the value of any **market collateral** to ensure that when the effects of volatility and adverse price are taken into consideration, the **market collateral** will still have enough value so that the **clearing agency** does not realize any loss.
- c) A **participant** may on approval and as prescribed by the **clearing agency** deposit such collateral, subject to such terms and conditions as shall have been approved by the **clearing agency** and in such denominations as may be prescribed by the **clearing agency** from time to time, towards the satisfaction of margin requirements prescribed by the **clearing agency**.
- d) The **clearing agency** shall value such collateral for margin purposes as it deems appropriate and the **clearing agency** shall, at its sole discretion, determine when any collateral will cease to be acceptable as margin.

- e) If any collateral lodged by any **participant** is found in any way to be unacceptable by the **clearing agency**, such collateral will immediately be given zero value for the purposes of satisfying the **participant's** margin requirements under **these Rules** and replacement margin may be immediately required from the **participant** in such an event.
- f) The **clearing agency's** decision in relation to any matter under this **Rule** shall be final and binding.
- g) The aggregate amount of **market collateral** deposited with the **clearing agency** in respect of the total margin requirements in relation to **participant derivatives accounts** and **participant securities accounts** must be in cash or other **market collateral** as agreed **in writing** between the **clearing agency** and the **participant**.

5.8 Market collateral, use and set-off

The **clearing agency** shall be entitled to use and deal with any **market collateral** acceptable to the **clearing agency**, which has been received by the **clearing agency** from a **participant**, in such manner as the **clearing agency** shall in its absolute discretion in terms of **these Rules**.

5.9 Charges

The following charges are administered by the **clearing agency** for a **CFD** listed on an **approved designated market**:

- a) **Open Interest Charge (OIC)** is a **charge** that granted in favour of the **clearing agency**, on open positions held by the **participants** on behalf of their **clients**.
- b) **Contract Interest** is a daily interest cost that is administered by the **clearing agency** whereby long position holders and short position holders pay and receive an interest cost, respectively. The interest cost is determined in accordance with CFD contract specifications.

5.10 Safekeeping Indemnity

- a) Any **market collateral** accepted by the **clearing agency** as margin shall be, where necessary, deposited with the appropriate custodian(s) designated by the **clearing agency** for safekeeping in the **clearing agency** account and the **clearing agency** shall retain control over such collateral as a part of the margin of such **participant**.
- b) The **clearing agency** shall not have any **obligation** or responsibility to preserve, protect, collect or realise, and under no circumstances shall the **clearing agency** be liable for any loss or diminution in value or depreciation in or in connection with, the collateral maintained pursuant to this Rule.
- c) A **participant** who maintains collateral with the **clearing agency** shall indemnify and hold the **clearing agency** harmless from any loss, damage, costs, charges and/or expenses of any nature whatsoever and howsoever arising (hereinafter a "Loss"), suffered or incurred by the **clearing agency** to any designated custodian, which may result from or arise with respect to:
 - i) any act, delay or omission in connection with collateral (whether by such **participant** or the **clearing agency**) deposited with such designated custodian; or
 - ii) any contract or agreement between the **clearing agency** and any designated custodian, or any representation, warranty or undertaking given by the **clearing agency** to any designated custodian, in relation to or otherwise in connection with collateral deposited with such designated custodian,

PROVIDED THAT this indemnity shall not cover any Loss and/or liability of the **clearing agency** attributable or referable to the gross negligence or wilful misconduct of the **clearing agency** or any of the **clearing agency's** officers, agents and/or employees.

- d) Each **participant** shall pay the **clearing agency** for all fees, expenses, charges and costs incurred by the **clearing agency** in relation to its acceptance of collateral as the **clearing agency** may determine from time to time, and shall make such
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deposits of margins (in such form as may be acceptable to the **clearing agency**) as may be required by the **clearing agency** by reason of any depreciation in the market value of such collateral.

- e) If a **participant** defaults in fulfilling its **obligations** to the **clearing agency** in accordance with the provisions of Section 6 of these **Rules**, the **market collateral** maintained in the **clearing agency's** account may be disposed of, without **notice**, in any manner deemed appropriate by the **clearing agency** and the proceeds from the sale of the collateral shall be applied in accordance with **Rule 5.9**.

5.11 Margin Returns

The **clearing agency** shall credit all **participant** margins required pursuant to **Rules 5.5, 5.6 and 5.7** which a **participant** has on deposit with the **clearing agency** pursuant to **these Rules** with interest and any other entitlements on the full amount in accordance with a **Directive** to be prescribed by the **clearing agency** from time to time except for money continued to be held pursuant to Section 6 consequent/subsequent to a **participant's** default.

5.12 Regulatory Information

Participants shall provide the **clearing agency** with any information necessary for regulatory purposes.

SECTION 6

DEFAULTS

6.1 Default Protocol

- a) In the event of a default, the provisions of these default procedures prevail over any other provisions of **these Rules** and **Directives 3 and 4** for **clearing and settlement**.
- b) If a **participant** suspects a default in the **clearing agency approved securities** and the default is not reported immediately, that **participant** shall be in breach of **these Rules**.

6.2 Events of Default

A default may be deemed to have occurred where:

- a) a **participant** has committed to a **market contract** on a **client's** behalf and fails to fulfil any of its **settlement obligations** in respect of a **transaction**, and the **participant** cannot fulfil the **client's settlement obligations** in terms of **these Rules**;
 - b) a **participant** is unable to fulfil any of its **obligations** in respect of a **transaction**;
 - c) a **participant** is declared insolvent or an application is made to liquidate or sequestrate a **participant** in a court of law;
 - d) a **participant** fails to provide adequate assurance to the **clearing agency** under **these Rules** that the **participant** can fulfil its **obligations** in respect of any **transaction**;
 - e) a **participant** is unable or appears to be unable to fulfil any **obligations** in terms of **these Rules** and applicable **settlement** procedures at the sole discretion of the **clearing agency**;
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- f) a **participant** registration is terminated by **the approved designated market** and the **participant** is a PCAP of the **clearing agency**; or
- g) a **participant's** registration as a **participant** is terminated by the **clearing agency**.

6.3 Declaration of Default

- a) Any **participant** who becomes aware of a **default** or suspects that a **default** or pending default on a **clearing agency approved security** may occur must immediately notify the **clearing agency in writing** to the **Head of Compliance** of the default or pending default.
- b) The **clearing agency** shall confirm **in writing** to the **Settlement Officer** and the **Compliance Officer** of the **participant** the **notice** of the default or suspected default.
- c) The acknowledgement of the **notice** of default or pending default shall only occur once the **clearing agency** has confirmed **in writing** that the **notice** of the default from the **Compliance Officer** of the **participant** has been received.
- d) The **Head of Compliance** must notify the **Executive Committee** and the relevant **approved designated market** immediately of a default or suspected default.
- e) The **Head of Compliance** may declare a default at any time.
- f) The **participant** may not appeal against the declaration of default.
- g) Any default or suspected default which comes to the attention of a **participant** must immediately inform the **clearing agency** of the default or pending default.

6.4 Appointment of Default Official

- a) Upon declaration of default by the **clearing agency**, it shall appoint a Default Official who shall have the power to represent the **clearing agency** in relation to the **participant** and complete the **default proceedings** .
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- b) The powers and duties of the Default Official shall include but not be limited to:
 - i) obtaining access to all necessary documents of the **participant** to perform their duties and responsibilities in terms of **these Rules**;
 - ii) attending all meetings including meetings of creditors;
 - iii) summoning any **participant** and **client** of a **participant** to attend these meetings; and
 - iv) requiring any **participant**, its officers, employees and **clients** to assist with any investigation.

6.5 Suspension of a Participant for failure to Settle

- a) A **participant** may be suspended at any time if it cannot effect **settlement**.
- b) A **participant's** registration may be suspended at any time after the **clearing agency** has declared the **participant** a **Defaulter**.
- c) The **participant** has ten (10) **business days** from date of suspension to appeal under **Section 9** of **these Rules** against the decision by the **clearing agency** regarding its suspension.
- d) Where the **Defaulter** does not object to the decision within the specified time or an objection to the suspension is dismissed the decision of the **clearing agency** is regarded as final.
- e) Any objection lodged with the **clearing agency** will dealt with per 8.4 to 8.7 of **these Rules**.

6.6 Default Amount or Net Amount Due

- a) The Default Official shall, in conjunction with the **clearing agency**, establish the net amounts due as a result of the default.
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- b) The Default Official shall aggregate all amounts due by each **participant** in relation to such **clearing agency approved securities**.
- c) The Default Official shall, in conjunction with the **clearing agency**, establish the net amount to be paid by the **Defaulter** or to be claimed from the **Defaulter** by the other party to the **transaction**.
- d) All amounts to be paid as a result of a default shall be determined at the sole discretion of the **clearing agency**.
- e) The **clearing agency** shall notify the **Securities Authority, Central Bank** and any other applicable regulatory authority, **designated market**, other clearing agency, **participants** and their **clients**, and **participants** of the public the name of the **Defaulter** and other material information as the **clearing agency** deems fit or which may otherwise be required by any law or regulation in force in **Seychelles** or any other country.

6.7 Participant default procedure

- a) Where a **participant** is declared in default, the **clearing agency**, together with the Default Official, may assist in fulfilling any **obligations** on behalf of the **defaulter**.
- b) In addition to assisting and fulfilling the **obligations** of a **Defaulter**, the **clearing agency** and the Default Official will:
 - i) determine the extent of the **Defaulter's obligations**;
 - ii) determine the default amounts and net **settlement obligations**; and
 - iii) on a best endeavours basis utilise any **securities, funds**, lending agreements, guarantees, margin, or any assets held at the **clearing agency** or any other clearing agency or **designated market** on behalf of the **Defaulter** to fulfil the **obligations** of the **Defaulter** or appoint an independent party to fulfil these **obligations**.

- c) A **participant** shall not compromise or accept payment on account from, or with, any other **participant** or its **client** in connection with any **trade** from the time the **participant** is declared a **Defaulter**.
- d) The Default Official together with the **clearing agency** shall determine the defaulting net **settlement** amounts of the **Defaulter** or **participants** in respect of the **clearing agency approved securities**.

6.8 Client default procedure

Defaulting Clients are **clients** which have defaulted in terms of their **settlement obligations** under **these Rules** and are subject to the following:

- a) the name of the Defaulting Client will be included in a register of defaults;
- b) the name of the Defaulting Client will be circulated by way of a **notice** to all **participants**; and
- c) no other **participant** shall do business with a Defaulting Client of a **participant**.

SECTION 7

COMPLIANCE AND REGULATORY FRAMEWORK

7.1 Objects of the Regulatory Framework

The chief objective of the Compliance Division is to:

- a) ensure that the **clearing** and **settlement** of the **clearing agency approved securities** is conducted in an orderly, fair, efficient and transparent manner in line with **the Act, these Rules** and **Directives**.
- b) give effect to the surveillance of any matter relevant for the purpose of **the Act, these Rules** and the **Directives**;
- c) supervise that the **clearing agency** and its **participants** comply with the **obligations** of **AMLA**; and
- d) supervise that all **participants** and their **clients** comply with any other relevant legislation referred to in **the Act**.

7.2 Supervision, Compliance and Surveillance

The Compliance Division will implement generally accepted systems and/ or procedures (which may include the use of external audit services):

- a) to monitor compliance and perform supervision and surveillance in terms of **the Act, these Rules** and **Directives** and with the **AMLA**; and
- b) to perform surveillance for the detection of disorderly **clearing** and **settlement** patterns and any conduct that may involve market abuse in terms of **the Act** and **these Rules** and the **Directives**.

7.3 Powers, duties and procedures for enforcement

The **Head of Compliance** or its delegate will have the following powers:

- a) to call for any documentation and / or **records** which it may require from any **person** and / or **participant** (including any **directors**, officers, Traders, employees or agents thereof) that is subject to **these Rules** and **Directives**;
- b) to access the premises and / or **records** of any **person** and / or **participant** (including any **directors**, officers, employees or agents thereof) that is subject to these **Rules** and **Directives**; and
- c) to refer any of its findings (including evidence gathered) to the **Disciplinary Committee** in terms of Section 9 of **the Rules**.

7.4 Co-operation with the Securities Authority and other applicable Regulatory Organisations

The **Head of Compliance** or his delegate shall:

- a) be responsible for the **clearing agency** communication with the **Securities Authority** and **the approved designated market**;
- b) immediately report to the **Securities Authority**, and the relevant **designated market** any breaches arising from breaches arising from disorderly **clearing** and **settlement** in terms of **the Act** and **these Rules**;
- c) assist the **Securities Authority** and any other competent authority with any investigation of such a breach of **the Act** and **these Rules** or any other regulatory requirements required by the **clearing agency**; and
- d) meet on a regular basis with the **Securities Authority** to assist the **Securities Authority** in detecting irregularities in the **clearing** and **settlement** of **approved securities**;

7.5 Confidentiality

The Compliance Division shall treat as confidential any information received from **participants** when a **transaction** in a **listed security** is under investigation or the **participant** or their **client** is under investigation, except where:

- a) the information is publicly available;
- b) disclosure is required by law and by any other regulatory authority or applicable legislation;
- c) disclosure is expressly permitted by law and **the Act**;
- d) disclosure is required by **these Rules** and **Directives**; or
- e) authority has been granted **in writing** by the **participant** and where appropriate the **participant's client**.

SECTION 8

COMPLAINTS, DISPUTE RESOLUTION

8.1 Definitions

For the purposes of this section, the following terms shall have the following meanings:

- a) **“Complainant”** means the person that lodges the **Complaint**;
- b) **“complaint”** means a complaint by a **Complainant** relating to any agreement with, or a service or product of, a **Defendant** in which it is alleged that the **Complainant** has suffered or is likely to suffer financial prejudice or damage as a result of the **Defendants** actions or inaction:
 - i) having contravened or failed to comply with a provision of any agreement, law or code of conduct subscribed to by the **Defendant**;
 - ii) having wilfully or negligently supplied, or failed to supply, a **securities** service or a product to the **Complainant**;
 - iii) having treated the party unreasonably or inequitably; or
 - iv) having mis-administered the implementation of an agreement for the supply of services in terms of **these Rules**.
- c) **“Defendant”** means the participant that is the subject of the **Complaint**;

8.2 Internal Complaints Resolution Process

- a) **Participants** shall implement and maintain internal procedures approved by the **clearing agency**, hereinafter referred to as the internal complaint resolution process for dealing with any **complaints**.
- b) Where the internal complaint resolution process fails to resolve the **complaint** to the satisfaction of the **Complainant**, the **Complainant** may institute the dispute reporting protocol subject to the requirements of **Rule 8.4** being met.

8.3 Internal complaint resolution procedures

The internal procedures to address **complaints** shall at a minimum consist of the following:

- a) having the systems in place to record and investigate all client **complaints**;
- b) written or oral **complaints** must be dealt with timeously;
- c) the employee responsible for the resolution of **complaints** must have the necessary authority to resolve **complaints**;
- d) a notification procedure must be in place for the **client**; and
- e) any recurring or systematic problems must be remedied.

8.4 Disputes

Disputes are categorized and defined as:

- a) unresolved **complaints** where the financial loss is greater than \$1,500 (one thousand five hundred US Dollars) or equivalent in a different currency between the **Complainant** and the **Defendant**; or
- b) a decision or action of the **clearing agency** which excludes any decision or action relating to a dispute brought under **Rule 8.4(a)**.

8.5 Composition of the Dispute Resolution Body

- a) The Dispute Resolution Body shall not comprise less than 3 (three) persons and shall be appointed by the **Executive Committee**.
- b) The Dispute Resolution Body shall consist of:
 - i) the **Head of Compliance** who shall act as the Chairperson;
 - ii) the **clearing agency** Legal Officer or the **clearing agency** nominated counsel;

- iii) an individual appointed by virtue of that individual's knowledge or an expert or experts of the financial markets in the **Seychelles**;
 - iv) a secretary who shall perform all administrative duties and such other functions as entrusted to this individual by the Chairperson, and may be a person already serving on the Dispute Resolution Body; and
 - v) the Dispute Resolution Body may co-opt any individual it considers appropriate to assist with administrative duties and functions required by the Chairperson.
- c) Dispute Resolution Body exclusions and exemptions include:
- i) an employee of the **clearing agency** who may not be appointed or co-opted unless required in terms of any statute and **the Rules** or to perform administrative duties;
 - ii) members of the Dispute Resolution Body shall not have any conflict of interest or potential conflict of interest with the **participant** charged; and
 - iii) **Controlling Body** members, with the exception of the **Head of Compliance**, who may not be entitled to serve on the Dispute Resolution Body or be present at a hearing provided for in **Rule 5.6** unless such member of the **Controlling Body** is party to the hearing.
- d) The **Executive Committee** may co-opt an individual or appoint an individual to replace a member because of illness, conflict of interest or otherwise.

8.6 Dispute Resolution Body Procedures

- a) All procedures for disputes will be handled in terms of **Rule 8.4** through **8.6**;
- b) All disputes must be presented **in writing** to the **Head of Compliance**;
- c) A dispute cannot be the subject of any existing litigation.
- d) The **Head of Compliance** will confirm receipt of the dispute **in writing**.

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- e) The **Complainant** shall deliver a written memorandum to the **Head of Compliance** with a clear and concise summary of the matter in dispute as well as the redress sought, and the **Head of Compliance** shall also circulate this to the other party within seven (7) **business days**.
- f) The **Defendant** shall then have seven (7) **business days** to file a written statement containing its summary of the matter in dispute, which shall again be forwarded to the **Head of Compliance** and the **Complainant** within seven (7) **business days**.
- g) The Dispute Resolution Body may request all parties involved in the dispute to provide copies of additional relevant documentation and correspondence required to review the dispute as it deems necessary.
- h) The Dispute Resolution Body will investigate the dispute and attempt to facilitate a resolution to the dispute within fifteen (15) business days and issue a recommendation notice to the parties.
- i) Where a **Complainant** or **Defendant** is dissatisfied with the recommendation, it must inform the **Head of Compliance in writing** within five (5) **business days** of the receipt of the recommendation notice and upon receipt thereof, the unresolved dispute shall be dealt with by the Dispute Appeals Body.
- j) The **Executive Committee** reserves the right to refer the matter to the **Disciplinary Committee** at any time after the dispute has been received **in writing** from the **Complainant**.
- k) Nothing contained in **these Rules** shall be interpreted as subjugating any obligations between a **participant** and the **clearing agency** or its appointed **securities facility** and all parties to the dispute shall comply promptly and fully with all such **obligations** notwithstanding the fact that a dispute is submitted under **these Rules**.
- l) The outcome of all disputes, including those of the Dispute Appeals Body will be forwarded to the **Securities Authority**.
- m) All costs associated with the hearing of the dispute before the Dispute Resolution Body relating to venue, recording, refreshments, transcribing and

any independent arbitrator shall be borne in equal proportions by the parties respectively.

- n) For the purposes of achieving fairness between the parties, the Dispute Resolution Body shall in its sole discretion be entitled to make an award against the losing party to pay the legal costs that the successful party has incurred in addition to the proportionate costs due by the successful party in terms of Requirement 8.6 (m) above.

8.7 Dispute Appeal Body (DAB)

- a) In the event of any unresolved dispute, the party to the dispute may submit all relevant documentation to the Chairperson of the Dispute Resolution Body within 5 (five) **business days** of receipt of the notice in terms of **Rule 8.6(i)**.
 - b) The Chairperson of the Dispute Resolution Body shall notify both parties to the dispute of the referral to the DAB and request each party to inform the DAB as to their respective legal representatives, within ten (10) **business days**.
 - c) The DAB shall be chaired by the **Head of Compliance** or his nominee and two (2) other persons to be appointed by the **Executive Committee**
 - d) If either or both of the parties to the dispute fail to reply in terms of **Rule 8.6(c)** above, such party or both as the case may be, will be deemed not to have a legal representative and be deemed to act on their own behalf.
 - e) The DAB shall have the following powers:
 - i) to notify the parties or their legal representatives of the time and location of the meeting;
 - ii) to resolve a dispute through mediation, conciliation, recommendation or determination;
 - iii) to act independently in resolving a dispute or in making a determination;
 - iv) to follow informal, fair and cost-effective procedures;
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- v) to, where appropriate, apply principles of equity in resolving a **Complaint**;
- vi) to report to the **Securities Authority** and to a body representative of the relevant category of financial institutions on matters that may be of interest to them;
- vii) in making any determination, to provide for the effective enforcement of the determination in his discretion;
- viii) allocate settlement costs as appropriate including costs arising out of this dispute;
- f) in exercising the above powers, the DAB must ensure that the questions, concerns and disputes of the parties are treated equitably and consistently in a timely, efficient and courteous manner; and
- g) any decision arrived at by the DAB shall be final and binding on the parties.

SECTION 9

DISCIPLINARY ACTIONS AND SANCTIONS

9.1 General Powers of the Disciplinary committee

- a) The **Disciplinary Committee** derives its powers from its appointment by the **Executive Committee** *inter alia*, to oversee and direct all disciplinary matters relating to these **Rules**.
 - b) Disciplinary actions and sanctions shall be administered by the **Disciplinary Committee** of the **clearing agency** or any person to whom it has delegated its powers. The purpose of any disciplinary actions or sanctions imposed under this section are to facilitate and promote a well regulated and orderly market as well as deter any actions that may increase systemic risk in the market. The powers and functions of the **Disciplinary Committee** as it relates to **these Rules** include the following:
 - i) The **Disciplinary Committee** may investigate and take disciplinary action at any time against a **participant** (which in this section for the purposes of disciplinary proceedings shall include a **participant** or a **participant's directors**, officers or employees) who contravene or fail to comply with **these Rules** or any **Directive**.
 - ii) The **Disciplinary Committee** may suspend or restrict the **participant's** activities as they relate to the services being provided through the **clearing agency** on an interim basis when a matter is under investigation.
 - iii) The **Disciplinary Committee** has the power to receive, consider and deal with any referrals to it.
 - c) Any disciplinary action brought against a **participant** by the **Disciplinary Committee** will be brought to the attention of the **Executive Committee** and **Securities Authority** and a report on the disciplinary proceedings shall be
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furnished to the **Securities Authority in writing** within thirty (30) days after the completion of the disciplinary proceedings.

9.2 Co-operation of Participants

- a) **Participants** must co-operate with the **Disciplinary Committee** in regard to any investigation pertaining to the contravention or non-compliance with **these Rules**.
- b) The **Disciplinary Committee** may require a **participant** to disclose information or produce documents and evidence relevant to the suspected breach of **these Rules**, whether in the **participant's** possession or in the custody of any other party.
- c) The **Disciplinary Committee** may prescribe the format required for the purpose of investigating compliance with **these Rules**.
- d) The level of co-operation afforded by the **participant** will be taken into account upon the sanctioning of the **participant**.

9.3 Investigation protocol

- a) The **Disciplinary Committee** may appoint an official, who may be an employee of the **clearing agency**, to inspect the affairs of a **participant**, or any **director**, officer or employee of a **participant**, to ascertain whether the affairs of the **participant** comply with **these Rules**.
 - b) The **clearing agency** shall have the right to:
 - i) gain access to the premises of any **participant**;
 - ii) have access to any records, recordings, documents, or any information required to complete the investigation or to make copies of or take extracts of documents and information, including electronic documents and recordings;
 - iii) question any **director**, officer, or employee or agent of the **participant**; and
 - iv) request information from any third parties providing services to the **clearing agency** or its **participants**.
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- c) On completion of an inspection, a report shall be submitted by the **Disciplinary Committee** to the **Executive Committee**.

9.4 Burden of proof

The burden of proof rests solely with the **clearing agency**, and the **Disciplinary Committee** shall not find an allegation proven unless it is satisfied on a balance of probabilities on consideration of the evidence that the **participant** has contravened or not complied with **these Rules**.

9.5 Composition of the Disciplinary Committee

- a) The **Disciplinary Committee** shall not comprise less than three (3) persons and shall be appointed by the **Executive Committee**.
- b) The **Disciplinary Committee** shall consist of:
 - i) the **clearing agency** Legal Officer or the **clearing agency** nominated counsel who shall act as the Chairperson;
 - ii) the **Head of Compliance**;
 - iii) a **person** or **persons** appointed by virtue of that person's knowledge or an expert or experts of the financial markets in the Seychelles;
 - iv) a secretary who shall perform all administrative duties and such other functions as entrusted to this **person** by the Chairperson; and
 - v) the **Disciplinary Committee** may co-opt any **person** it considers appropriate to assist with administrative duties and functions required by the Chairperson.
- c) **Disciplinary Committee** exclusions and exemptions include:
 - i) an employee of the **clearing agency** who may not be appointed or co-opted unless required in terms of any statute and **these Rules**;

- ii) members of the **Disciplinary Committee** shall not have any possible conflict of interest or potential conflict of interest with the **participant** charged; and
 - iii) **Controlling Body** members may not be entitled to serve on the **Disciplinary Committee** or be present at a hearing unless such member of the **Controlling Body** is party to the hearing.
- d) The **Executive Committee** may co-opt a **person** or appoint a **person** to replace a member because of illness, conflict of interest or otherwise.

9.6 Disciplinary Committee protocol

- a) The **Disciplinary Committee** may vary any of its procedures to adapt to the circumstance of any particular alleged contravention or non-compliance of these **Rules**.
- b) The **Disciplinary Committee** shall:
 - i) consider any contraventions by a **participant** in respect of a breach of **these Rules**;
 - ii) consider the contravention tabled in respect of the breach;
 - iii) consider the charge tabled against a **participant** in respect of the breach; and
 - iv) consider its responsibilities in respect of any allegation that the integrity and reputation of the **clearing agency** has been or may be impaired as a result of the conduct of the **participant** involved.
- c) The **Disciplinary Committee** shall produce a disciplinary report including:
 - i) the nature of the disciplinary proceeding;
 - ii) the facts referred to it;
 - iii) the investigations undertaken by it; and

iv) any other relevant facts that it has ascertained,

in contemplation of the hearing to be held in terms of 6.7 a) to j).

9.7 The hearing

- a) The hearing of the **Disciplinary Committee** shall commence within twenty (20) **business days** after the completion of the initial disciplinary report.
 - b) Parties involved in the disciplinary investigation will be given notice of the time and place of a hearing.
 - c) A representative of the **participant** concerned must be present at the hearing.
 - d) Disciplinary hearings will be conducted in private.
 - e) The **Defendant** is entitled to legal representation at its own cost.
 - f) Evidence admitted from the Defendant may be oral or written.
 - g) The **Defendant** to a disciplinary hearing may submit evidence to the **Disciplinary Committee** at any time up until ten (10) days before the hearing.
 - h) The **Disciplinary Committee** may in the interest of fairness and transparency require any **director**, officer or employee of the **Defendant** and/or other parties involved in the investigation to appear before the **Disciplinary Committee**.
 - i) The **Defendant** may appear in person or be legally represented at any pre-hearing review or hearing and shall be entitled to:
 - i) be heard in argument;
 - ii) give evidence in their own defence; and
 - iii) give evidence in mitigation.
 - j) At a hearing, the **clearing agency** may take into account information obtained by the **Securities Authority**.
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- k) The **Disciplinary Committee** may grant consent order in respect of any **settlement** negotiated between the **clearing agency** and the **Defendant** either prior to the start or before the conclusion of the hearing in relation to any disciplinary outcome on the **clearing agency**.

9.8 Sanctions

- a) Where the **Defendant** has been found guilty of a contravention or non-compliance in terms of **these Rules** the **Disciplinary Committee** may:
- i) issue a warning or reprimand notice **in writing** to a **participant**;
 - ii) in levy a fine not exceeding \$500,000 (five hundred thousand US Dollars);
 - iii) temporarily suspend the **participant** for a period not exceeding six (6)months;
 - iv) issue a cease and desist order;
 - v) terminate the registration of the **participant**;
 - vi) direct the **participant** to terminate the **director** and/or the employment of an officer or employee found to be party to the contravention or non-compliance;
 - vii) require a **participant** to cancel the registration of the employee found to be party to the contravention or non-compliance;
 - viii) issue an order directing restitution to any injured person;
 - ix) require a **participant** that is the subject of an investigation or a hearing as a result of a contravention or failure to comply with **these Rules**, to pay the costs incurred of such investigation or hearing;
 - x) require the **participant** to take steps and give **in writing** an undertaking or any other remedy to prevent the recurrence of the contravention or non-compliance that has given rise to the disciplinary proceeding;
 - xi) in urgent cases, such as criminal activity, refer the matter immediately to the **Executive Committee** of the **clearing agency**, who may suspend the
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participant for such period as the **Executive Committee** deems necessary; or

- xii) at any stage refer the matter to the **Executive Committee** of the **clearing agency**, which may in its sole discretion publish by way of a **notice** or announcement to other **participants** the outcome of any disciplinary hearing.

- b) Where a **participant** is aggrieved with the outcome of the disciplinary hearing and/or the sanction imposed, the **participant** may appeal against the outcome and/or sanction imposed to the Disciplinary Appeal Committee within fourteen (14) **business days** by filing with the Chairperson of the **Disciplinary Committee** a notice of the intention to appeal, setting out the grounds upon which the appeal is founded.

- c) The Disciplinary Appeal Committee shall convene the appeal hearing within thirty (30) **business days** of the notice of appeal being filed and notify the parties to the hearing of the date and time of the appeal hearing.

- d) In the appeal hearing the appeal shall be limited to the evidence that was adduced in the disciplinary hearing and no new evidence shall be permitted.

- e) The parties to the appeal hearing shall be entitled to be legally represented and may make submissions orally or **in writing**, which shall be limited to the evidence that was adduced in the disciplinary hearing.

- f) The Disciplinary Appeal Committee shall be constituted by three (3) persons nominated by the Chairperson of the **Disciplinary Committee** who were not members of the **Disciplinary Committee** that is subject to the appeal.

- g) The decision made by the Disciplinary Appeal Committee is final and binding on all parties and may not form the subject matter of any appeal process or litigation process in **Seychelles** or any international jurisdiction.

- h) The level of co-operation afforded by the **participant** will be taken into account upon the sanctioning of the **participant**.

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- i) the **clearing agency** may, upon the imposition of any sanctions contemplated in this section, disclose these particulars in the Gazette, other national newspapers in the Seychelles or through **ARTECS**.

SECTION 10

FEES AND LEVIES

In terms of **these Rules** and **Directives**, the **clearing agency** may charge **fees** and levies:

- a) for any agreed activity, which are to be paid by **participants** and may be varied from time to time at the discretion of the **Executive Committee**;
- b) by way of announcement of **fees** and levies that shall be forwarded to the **participant** at least twenty (20) **business days** prior to implementation thereof;
- c) that shall be paid within thirty (30) **business days** of notification thereof;
- d) that shall be notified **in writing** within five (5) **business days** of any such arrears and increases; and
- e) that outstanding monies shall include interest to be paid as determined by the **clearing agency**.