

CENTRAL DEPOSITORY (GUARANTEE FUND) RULES, 2019

IN EXERCISE of the powers conferred by Section 60C of the Central Depositories Act No 4 of 2000, the Central Depositories and Settlement Corporation Limited makes the following Rules –

THE CENTRAL DEPOSITORY (GUARANTEE FUND) RULES 2019

PART I – PRELIMINARY

Citation 1. These rules may be cited as the Central Depository (Guarantee Fund) Rules 2019

Interpretation 2. In this Rules unless the context otherwise requires-

“Account” means a securities account; and account holder shall be construed accordingly;

"Act" means the Central Depositories Act, and any Rules and Regulations made there under;

“Authority” means the Capital Markets Authority

“CDA” means a Central Depository Agent

“CDSC” means Central Depository and Settlement Corporation Limited; and

“Fund” means the Guarantee Fund

PART II – PURPOSE OF THE GUARANTEE FUND

Purpose of the Guarantee Fund 3. (1) The purpose of the Guarantee fund is to guarantee the settlement of all transactions relating to securities through the central depository system.

(2) The guarantee fund mechanism ensures that payment will be effected for all securities bought.

(3) For the avoidance of doubt, the guarantee fund does not protect investors against losses they may suffer as a result of a stockbroker failure or malpractice.

PART III – CONTRIBUTIONS TO THE GUARANTEE FUND

Contributions to the guarantee fund – Section 60B of the Act 4. Contributions to the Guarantee Fund shall include:

(1) Initial contributions by CDAs as set out in the Guarantee Fund Procedures;

(2) A variable risk based contribution payable by the CDAs, as determined by CDSC in consultation with the Authority and the relevant securities

- exchange from time to time;
 - (3) A levy for every transaction on the securities exchange of which CDSC is the central depository;
 - (4) All penalties and fines imposed by CDSC;
 - (5) Such sums of money as accrued from interest and profits from investing any of the Fund's assets;
 - (6) Additional contributions levied against CDAs in accordance with this Rules and the Guarantee Fund Procedures;
 - (7) Such other amounts as CDSC, with the approval of the Authority, may determine.
5. (1)The minimum contributions by a CDA to the Fund may be revised by CDSC from time to time;
- (2)CDSC shall give written notification of the revision of a CDA's minimum contribution to the fund;
- (3)A revision of a CDA's minimum contributions to the fund shall become effective fourteen business days after notification by CDSC to the CDA
- (4) The CDA shall be required to deposit the additional contribution within fourteen (14) business days of the revision becoming effective.

PART IV – PREVENTION OF SETTLEMENT FAILURE

Prevention of securities and funds settlement failure

- 6.
- (1) For purposes of funds settlement, CDSC shall set a settlement limit for each CDA in accordance with the Guarantee Fund Procedures;
 - (2) A CDA who has reached or exceeded its settlement limit may regularize their position as provided in the Guarantee Fund Procedures.
 - (3) A CDA who fails to regularize their position in accordance with Rule 5 (2) above is liable to pay a daily penalty of 1% of the of the uncovered position until the CDA regularizes its position.
 - (4) A CDA may make a written request to CDSC for a higher settlement limit
 - (5) The criteria and guidelines for calculating and setting higher settlement limits shall be as provided in the Guarantee Fund Procedures.
7. Subject to written acceptance by CDSC, a CDA may deposit a letter of credit issued by a commercial bank covering a proportion of or the entire higher settlement limit granted in accordance with rule 6(4) above

Letter of credit

8. CDSC may negotiate an unsecured line of credit with a commercial bank for an amount to be agreed on from time to time to supplement the CDAs' contribution to the Guarantee Fund.

PART IV – APPLICATION OF THE GUARANTEE FUND

Application of
the Guarantee
Fund

9. (1) CDSC will apply the guarantee fund to discharge settlement obligations of a CDA that fails to meet its settlement obligations in accordance with the procedure laid down in the Guarantee Fund Procedures.
 - (2) The fund may also be applied to discharge expenses and losses arising from a CDA's failure to meet its funds settlement obligations.
 - (3) The amount of any deficiency, obligation, expense or loss referred to in Rule 8-9(1) and (2) shall be determined by CDSC without reference to the possibility of any subsequent recovery thereof.
10. If a CDA ceases to be a central depository agent, its contribution to the guarantee fund shall be refunded inclusive of any profits accrued from investments of the fund, pro rata to the CDA's contributions, less any loss attributable to the CDA.
11. For the avoidance of doubt no refund will be made to a CDA on monies remitted as transaction levies or on any other amounts the cost of which was passed on by a CDA to its clients.

PART V – MANAGEMENT OF THE GUARANTEE FUND

Management of
the guarantee
fund

12. (1)The guarantee fund will be managed in accordance with the CDSC Guarantee Fund Investment Policy.
 - (2) CDSC may establish the guarantee fund as a separate legal entity for purposes of managing it as a separate fund in accordance with section 60C of the Act.
 - (3) CDSC shall keep or cause to be kept proper accounts and records of the Fund and shall, in each financial year, prepare a statement of accounts showing the financial position of the Fund in its annual report.
 - (4) The accounts and records of the Fund shall be audited by the auditor appointed by CDSC to audit its annual accounts.
 - (5) The board committee responsible for risk at CDSC shall be responsible for the oversight of risk management for the Fund

PART VI – DISSOLUTION AND WINDING UP

13. (1) The Guarantee Fund may only be wound up by a resolution passed by the Trustees of the Fund

(2) Upon winding up all proceeds of the Fund shall be paid to the Capital Markets Investor Compensation Fund.

PROVIDED that proceeds directly reimbursable to CDAs, being CDAs contribution to the guarantee fund inclusive of any profits accrued from investments of the fund, shall be reimbursed to the CDAs.

Dated theday of.....2019

Charles Ogalo

Chairman

Central Depository & Settlement
Corporation Limited

Rose Mambo

Chief Executive

Central Depository & Settlement
Corporation Limited