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Your reference	Our reference	Date
Netting Analyser Library	Mr JW Scholtz / Ms N Paige / Mr D de Villiers 2337442	29 January 2013

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Dear Sirs

## NETTING ANALYSER LIBRARY

You have asked us to give an opinion in respect of the laws of the Republic of South Africa ("this jurisdiction") as to the effect of certain netting and set-off provisions and collateral arrangements in relation to SAFEX Clearing Company (Proprietary) Limited (the "**Clearing House**") as between the Clearing House and its clearing members (each a "**Member**").

We understand that your requirement is for the enforceability and validity of such netting and set-off provisions and collateral arrangements to be substantiated by a written and reasoned opinion letter.

References herein to "**this opinion**" are to the opinion given in Section 3.

### 1. Terms of reference

1.1 Except where otherwise defined herein, terms defined in the Rules have the same meaning in this opinion letter.

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1.2 The opinions given in Section 3 are in respect of a Member's powers under the Rules as at the date of this opinion. We express no opinion as any provisions of the Rules other than those on which we expressly opine.

1.3 Where Contracts are governed by laws other than the laws of this jurisdiction, the opinions contained in Section 3 are given in respect of only those Contracts which are capable, under their governing laws, of being terminated and liquidated in accordance with the provisions of the Rules.

#### 1.4 Definitions

1.4.1 In this opinion, unless otherwise indicated:

1.4.1.1 **"Assessment Liability"** means a liability of a Member to pay an amount to the Clearing House (including a contribution to the assets or capital of the Clearing House, or to any default or similar fund maintained by the Clearing House); but excluding:

1.4.1.1.1 any obligations to provide margin or collateral to the Clearing House, where calculated at any time by reference to Contracts open at that time;

1.4.1.1.2 membership fees, fines and charges;

1.4.1.1.3 reimbursement of costs incurred directly or indirectly on behalf of or for the Member or its own clients;

1.4.1.1.4 indemnification for any taxation liabilities;

1.4.1.1.5 payment or delivery obligations under Contracts; or

1.4.1.1.6 any payment of damages awarded by a court or regulator for breach of contract, in respect of any tortious liability or for breach of statutory duty;

1.4.1.2 **"Clearing Agreement"** means a written agreement entered into between a Member and a trading member (ie client) in terms of which the trading member guarantees to the Member the performance of

the obligations arising out of the positions of the trading member and the clients of the trading member (ie the underlying clients);

- 1.4.1.3      **"Clearing House Agreement"** means a written agreement entered into between a Member and the Clearing House in terms of which the Member guarantees to the Clearing House all of the obligations arising out of its proprietary positions, the positions of its clients, the proprietary position of the trading members with which it has entered a clearing agreement and the positions of the clients of such trading members;
- 1.4.1.4      **"Client Account"** has the meaning ascribed to it in the Rules, being a segregated account with the Clearing House opened in the name of a Member in which Contracts relating to contracts made by the Member with one or more segregated clients of such Member are registered and to which monies in respect of such Contracts are credited;
- 1.4.1.5      **"Companies Act"** means the Companies Act, 2008, as amended;
- 1.4.1.6      **"Contract"** means an equity, agricultural or interest rate derivative contract traded on the JSE's Derivatives Market or Interest Rate Market and cleared through the Clearing House;
- 1.4.1.7      **"Derivative Rules"** means the rules of the JSE's Derivatives Market (1 December 2010 version);
- 1.4.1.8      **"House Account"** means an account with the Clearing House opened in the name of a Member that is not a Client Account;
- 1.4.1.9      **"Interest Rate Market"** means the rules of the JSE's Interest Rate Market (9 May 2011 version);
- 1.4.1.10      **"Interest Rate Rules"** means the Interest Rate and Currency Rules of the JSE dated 9 May 2011;
- 1.4.1.11      **"Insolvency Act"** means the Insolvency Act, 1936, as amended;
- 1.4.1.12      **"JSE"** means the Johannesburg Stock Exchange;

- 1.4.1.13                **"Non-cash Collateral"** means collateral comprising of securities or any other asset, excluding cash;
- 1.4.1.14                **"Party"** means the Clearing House or the relevant Member;
- 1.4.1.15                **"Protection of Funds Act"** means the Financial Institutions (Protection of Funds) Act, 2001 as amended;
- 1.4.1.16                references to the word **"enforceable"** and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy;
- 1.4.1.17                **"Rules"** means Derivative Rules and the Interest Rate Rules, collectively;
- 1.4.1.18                references to a **"section"** or to a **"paragraph"** are (except where the context otherwise requires) to a section or paragraph of this opinion (as the case may be).

## 2. Assumptions

### 2.1 We assume the following:

- 2.1.1                That, except with regards to the provisions discussed and opined on in this opinion letter, the Contracts, the Clearing Agreement and the Clearing House Agreement are legally binding and enforceable against the respective Parties to these agreements under their governing laws.
- 2.1.2                That each Party has the capacity, power and authority under all applicable law(s) to enter into the Contracts, the Clearing Agreement and the Clearing House Agreement; to perform its obligations under the Contracts, the Clearing Agreement and the Clearing House Agreement; and that each Party has taken all necessary steps to execute and deliver and perform the Contracts, the Clearing Agreement and the Clearing House Agreement.
- 2.1.3                That each Party has obtained, complied with the terms of and maintained all authorisations, approvals, licences and consents required to enable it



lawfully to enter into and perform its obligations under the Clearing Agreement, the Clearing House Agreement and the Contracts and to ensure the legality, validity, enforceability or admissibility in evidence of the Clearing Agreement, the Clearing House Agreement and the Contracts in this jurisdiction.

- 2.1.4 That each Party acts in accordance with the powers conferred by the Rules, the Clearing Agreement, the Clearing House Agreement and the Contracts and that (save in relation to any non-performance leading to the taking of action by the Members), each Party performs its obligations under the Clearing Agreement, the Clearing House Agreement, the Rules and the Contracts.
- 2.1.5 That, apart from any circulars, notifications and equivalent measures published by the Clearing House in accordance with the Rules, there are no other agreements, instruments or arrangements between the Parties which modify or supersede the terms of the Clearing House Agreement and the Rules.
- 2.1.6 That the Member is at all relevant times solvent and not subject to insolvency proceedings under the laws of any jurisdiction.
- 2.1.7 That the obligations assumed under the Clearing Agreement, the Clearing House Agreement, the Rules and the Contracts are mutual between the Parties, in the sense that the Parties are each personally and solely liable as regards obligations owing by it and is solely entitled to the benefit of obligations owed to it.
- 2.1.8 That no provision of the Clearing House Agreement that is necessary for the giving of our opinions and advice in this opinion has been altered in any material respect.

### **3. Opinion**

- 3.1 On the basis of the foregoing terms of reference and assumptions and subject to the qualifications set out in Section 4 below, we are of the following opinions.

- 3.1.1 **Insolvency Proceedings**

3.1.1.1 The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which the Clearing House could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion, are:

3.1.1.1.1 a winding-up by the court under section 343(1)(a) of the Companies Act;

3.1.1.1.2 a creditors' voluntary winding-up under section 343(2)(a) of the Companies Act; and

3.1.1.1.3 a compromise or arrangement between a company, its members and creditors under section 311 of the Companies Act; and

3.1.1.1.4 business rescue proceedings as contemplated in Chapter 6 of the Companies Act.

3.1.1.2 These procedures are together called "Insolvency Proceedings".

3.1.1.3 The legislation applicable to Insolvency Proceedings is:

3.1.1.3.1 the Companies Act; and

3.1.1.3.2 the Insolvency Act.

## 3.1.2 **Special provisions of law**

3.1.2.1 The following special provisions of law apply to Contracts by virtue of the fact that the Contracts are, or relate to, exchange-traded derivative products and are cleared through a central counterparty: section 35A of the Insolvency Act which provides as follows:

*"35A. Transactions on an exchange.*

*(1) In this section—*

*"exchange" means an exchange as defined in section 1 and licensed under section 10 of the Securities Services Act, 2004, and for the purposes of this section includes a central securities depository as defined in section 1 of*

*that Act and which is also licensed as a clearing house under section 66 of that Act, or a clearing house as defined in section 1 of that Act;*

*"exchange rules" means the exchange rules and depository rules as defined in section 1 of the Securities Services Act, 2004;*

*"market participant" means an authorised user, a participant, a client or a settling party as defined in section 1 of the Securities Services Act, 2004, or any other party to a transaction;*

*"transaction" means any transaction to which the rules of an exchange apply.*

- (2) *If upon the sequestration of the estate of a market participant the obligations of such market participant in respect of any transaction entered into prior to sequestration have not been fulfilled, the exchange in question in respect of any obligation owed to it, or any other market participant in respect of obligations owed to such market participant, shall in accordance with the rules of that exchange applicable to any such transaction be entitled to terminate all such transactions and the trustee of the insolvent estate of the market participant shall be bound by such termination.*
- (3) *No claim as a result of the termination of any transaction as contemplated in subsection (2) shall exceed the amount due upon termination in terms of the rules of the exchange in question.*
- (4) *Any rules of an exchange and the practices thereunder which provide for the netting of a market participant's position or for set-off in respect of transactions concluded by the market participant or for the opening or closing of a market participant's position shall upon sequestration of the estate of the market participant be binding on the trustee in respect of any transaction or contract concluded by the market participant prior to such sequestration, but which is, in terms of such rules and practices, to be settled on a date occurring after the sequestration, or settlement of which was overdue on the date of sequestration.*
- (5) *Section 341 (2) of the Companies Act, 1973 (Act No. 61 of 1973), and sections 26, 29 and 30 of this Act shall not apply to property disposed of in accordance with the rules of an exchange."*

## 3.1.3 Recognition of choice of law

3.1.3.1 Although the Rules and the Clearing House Agreement contain no governing law provision, we are of the view that the laws of the Republic of South Africa will apply in respect of the Rules and the Clearing House Agreement.

3.1.3.2 We are further of the view that the laws of the Republic of South Africa will be used to interpret the Rules and the Clearing House Agreement even if the Member is not incorporated, domiciled or established in this jurisdiction.

## 3.1.4 Netting and Set-off: General

3.1.4.1 While pre-insolvency set-off will generally be permissible (provided that such set off does fall to be set-aside as a voidable preference - refer to 4.1.6 to 4.1.12 below), post-insolvency set-off and netting will not be possible (and is not statutorily recognised) in circumstances where the Clearing House becomes subject to an Insolvency Proceeding.

3.1.4.2 The JSE is currently South Africa's only exchange licensed as such under the SSA.

3.1.4.3 All the JSE's various markets (that is the Equities Market, Derivatives Market and Interest rate and Currency Market) operate on electronic, central order book platforms. Clearing for equities products is done by the JSE in-house.

3.1.4.4 Transactions in equity and agricultural derivatives and interest rate derivative products are cleared through SAFEX Clearing Company (Proprietary) Limited (ie the Clearing House), in which the risk is assumed by the clearing members (Members) which accept the relevant trades.

3.1.4.5 The Clearing House is not a "self-regulatory organisation" as defined in the SSA and therefore does not have the power to make its own rules.

- 3.1.4.6 The legal relationship between Members and the Clearing House is dealt with in the Rules of the JSE. In terms of the Rules, the Members agree to be bound by the provisions contained the Rules.
- 3.1.4.7 The Clearing House acts as the central counterparty to the participants to the transactions in the securities that it clears. By a process of novation the Clearing House interposes itself in transactions between market participants, becoming the buyer from the seller and the seller to the buyer. In this manner, each participant's credit exposure to the other is substituted with an exposure to the Clearing House, thus ensuring that in the event of default of one participant, the other is not affected.
- 3.1.4.8 In order to address the central counterparty risk it takes on, the Clearing House uses a hierarchical risk management structure whereby a client's obligation for the due fulfilment of an exchange contract is guaranteed by its trading member, and the trading member's obligation is in turn guaranteed by its clearing member (ie the Member). The enforcement of these obligations is set out in exchange rules, thus ensuring that the Clearing House only becomes the so-called "guarantor of last resort" if a Member is not able to perform.
- 3.1.4.9 The Clearing House uses a cash margining system to mitigate the market risk inherent in highly-g geared derivative instruments. All participants are required to pay initial margin for their positions in exchange contracts. This "good faith deposit" is paid via participants' trading and clearing members to the Clearing House and is returned once the exposures are closed out. Initial margin is designed to cover all but extreme market movements and is adjusted by the daily mark-to-market process which re-values all open positions. The variation margin that results from the daily mark-to-market process ensures that initial margin levels are maintained. The Clearing House may, in the event of extreme price movements, invoke an intra-day mark-to-market to cover any additional price risk that eventuates.

- 3.1.4.10 Section 35A (quoted in 3.1.2.1 above) governs the consequences of the insolvency of so-called "*market participants*". The term "*market participants*" is defined as "*an authorised user, a participant, a client or a settling party as defined in section 1 of the Securities Services Act or any other party to a transaction*".
- 3.1.4.11 In our opinion, a Member will qualify as a "*market participant*" as contemplated in section 35A by virtue of its status as an "*authorised user*".
- 3.1.4.11.1 Section 35A(2) provides that if, upon the sequestration of the estate of a market participant, the obligations of such market participant in respect of any transaction entered into prior to sequestration have not been fulfilled, the exchange in question in respect of any obligation owed to it, or any other market participant in respect of obligations owed to such market participant, shall "*in accordance with the rules of that exchange applicable to any such transaction*" be entitled to terminate all such transactions and the trustee of the insolvent estate of the market participant shall be bound by such termination.
- 3.1.4.11.2 Section 35A(4) provides that "*any rules of an exchange and the practices thereunder*" which provide for the netting of a market participant's position or for set-off in respect of transactions concluded by the market participant or for the opening or closing of a market participant's position shall upon sequestration of the estate of the market participant be binding on the trustee in respect of any transaction or contract concluded by the market participant prior to such sequestration, but which is, in terms of such rules and practices, to be settled on a date occurring after the sequestration, or settlement of which was overdue on the date of sequestration.
- 3.1.4.12 The Rules focus on the consequences of a default by a Member but are silent as to the consequences arising from a default (or insolvency) of the Clearing House. The Rules therefore contain no

provisions relating to set-off or netting of positions in circumstances where the Clearing House becomes subject to an Insolvency Proceeding (as defined above).

3.1.4.13 The Clearing House will furthermore not qualify as a "market participant" as contemplated in section 35A of the Insolvency Act. As noted above, the term "market participants" is defined as "an authorised user, a participant, a client or a settling party as defined in section 1 of the Securities Services Act or any other party to a transaction". The Clearing House does not fall within any of the groups of persons listed as "market participants".

3.1.4.14 For these reasons, post-insolvency set-off and close-out netting as contemplated in section 35A does not apply in circumstances where the Clearing House becomes subject to an Insolvency Proceeding. There are no other laws or rules that provide for set-off and close-out netting if the Clearing House becomes subject to an Insolvency Proceeding.

### 3.1.5 **Netting and Set-Off: House Accounts and Client Accounts**

As discussed in 3.1.4 above, post-insolvency set-off and netting does not apply (and is not statutorily recognised) in circumstances where the Clearing House becomes subject to an Insolvency Proceeding.

### 3.1.6 **Netting and Set-Off: Cross-Product Netting**

As discussed in 3.1.4 above, post-insolvency set-off and netting does not apply (and is not statutorily recognised) in circumstances where the Clearing House becomes subject to an Insolvency Proceeding.

### 3.1.7 **Cash Collateral**

3.1.7.1 Under South African law, ownership in money passes on commingling (*commixtio*). Accordingly, if cash margin received by the Clearing House is commingled with the Clearing House's own money, ownership will automatically pass to the Clearing House. Accordingly, it is important that the Clearing House maintains

separate trust accounts for the margin it receives. In the event of the insolvency of the Clearing House, the owners of the cash margin will then be able to vindicate the money standing to the credit of the account.

- 3.1.7.2 The Rules do indeed impose an obligation on the Clearing House to ensure that there is a separation between its own funds and those provided to it as margin. These Rules therefore effectively ensure that there is no commingling between the assets / margin belonging to clients and the assets of the Clearing House.
- 3.1.7.3 Clients' right to cash margin will also be protected by the Protection of Funds Act which provides that despite anything to the contrary in any law or the common law, trust property invested, held, kept in safe custody, controlled or administered by a financial institution or a nominee company under no circumstances forms part of the assets or funds of the financial institution or such nominee company. This will also apply in a case where a financial institution invests, holds, keeps in safe custody, controls, administers or alienates trust property under any instrument or agreement jointly with another person. The Protection of Funds Act provides that a financial institution must keep trust property separate from assets belonging to that institution, and must in its books of account clearly indicate the trust property as being property belonging to a specified principal.
- 3.1.7.4 In terms of section 1 of the Protection of Funds Act, "*trust property*" is defined to mean "*any corporeal or incorporeal, movable or immovable asset invested, held, kept in safe custody, controlled, administered or alienated by any person, partnership, company or trust for, or on behalf of, another person, partnership, company or trust.*" Margin will therefore qualify as "*trust property*" under the Protection of Funds Act.
- 3.1.7.5 A "*financial institution*" is defined in the Protection of Funds Act to include, *inter alia*, a Clearing House, and any other person who or which deals with trust property as a regular feature of his, her or its



business, but who is not registered, licensed, recognised, approved or otherwise authorised to deal so in terms of any Act.

3.1.7.6 The Clearing House will therefore qualify as a "*financial institution*" for purposes of the Protection of Funds Act.

#### 3.1.8 **Non-cash Collateral**

There is currently no provision in either the Rules or the Clearing House Agreement for Members to transfer any Non-cash Collateral to the Clearing House. The only type of margin that the Clearing House will receive is cash margin.

#### 3.1.9 **Members' Assessment Liabilities**

The Rules do not provide for any Members' Assessment Liabilities. The Rules do, however, provide that if, following a default by a Member, there are insufficient funds to cover such Member's liabilities, the Clearing House is able to call on all Members for an equitable contribution on a voluntary basis to make good any shortfall. Members are, however, not obliged to make such a contribution.

### 4. **Qualifications**

4.1 The opinions in this opinion letter are subject to the following qualifications:

4.1.1 The Insolvency Act is the fundamental statute which regulates insolvency in South Africa.

4.1.2 Although the Insolvency Act primarily governs the insolvency of natural persons, partnerships and *inter vivos* trusts, many of its provisions are simply incorporated by reference into the legislation governing other South African entities. The winding-up of companies is dealt with in the Companies Act, 1972 (the "**Old Companies Act**") once a winding-up order is granted, the provisions of the Insolvency Act apply to the manner in which the liquidator must deal with the assets of the insolvent company. Section 339 of the Companies Act provides that, in the winding-up of a company unable to pay its debts, the provisions of the law relating to

insolvency must be applied *mutatis mutandis* in so far as they are applicable in respect of any matter not specifically provided for by the Companies Act.

- 4.1.3 The Old Companies Act was repealed and replaced by the Companies Act with effect from 1 May 2012.
- 4.1.4 Existing companies incorporated and registered under the Old Companies Act will continue in existence as if they had been incorporated and registered under the Companies Act and there are detailed transitional provisions that will apply to such existing companies.
- 4.1.5 The transitional arrangements contained in Schedule 5 to the Companies Act provide that, despite the repeal of the Old Companies Act, Chapter 14 of the Companies Act will continue to apply with respect to the winding-up and liquidation of companies under the Companies Act, until the date determined by the Minister of Trade and Industry by notice in the Government Gazette. The Minister may not determine any such date until he is satisfied that alternative legislation has been brought into force adequately providing for the winding-up and liquidation of insolvent companies. Such provisions have, to date, not yet been brought into force. Those provisions of the Old Companies Act which have been discussed above will therefore continue to be of relevance following the implementation of the Companies Act.
- 4.1.6 Set-off is a recognised principle of South African common law whereby contractual debts may be extinguished (Christie, *The Law of Contract in South Africa* (Butterworths, 1991), at 565 to 566). The common law doctrine of set-off operates where two parties are mutually indebted to each other and both the debts are liquidated, due and payable, and of the same nature (*Schierhout v Union Government* 1926 AD 286, at 289 to 290).
- 4.1.7 Although common law set-off operates *ipse iure*, it is only valid and binding if all the requirements for set-off exist *before* the liquidation of one of the parties to an agreement (*In Re Trans-African Insurance Co Ltd (in liquidation)* 1958 (4) SA 324 (W); *Lester Investments (Pty) Ltd v Narshi*

1951 (2) SA 464 (C), at 472; *Roman Catholic Church (Klerksdorp Diocese) v Southern Life Association Ltd* 1992 (2) SA 807 (A)).

- 4.1.8 Under South African law, set-off which is completed prior to liquidation may be set aside in certain circumstances. In this regard, section 46 of the Insolvency Act provides that:

*"if two persons have entered into a transaction the result whereof is a set-off, wholly or in part, of debts which they owe one another and the estate of one of them is sequestrated within a period of six months after the taking place of the set-off, or if a person who had a claim against another person (hereinafter in this section referred to as the debtor) has ceded that claim to a third person against whom the debtor had a claim at the time of the cession, with the result that the one claim has been set-off, wholly or in part, against the other, and within a period of one year after the cession the estate of the debtor is sequestrated, then the trustee of the sequestrated estate may in either case abide by the set-off or he may, if the set-off was not effected in the ordinary course of business, with the approval of the Master, disregard it and call upon the person concerned to pay to the estate the debt which he would owe it but for the set-off, and thereupon that person shall be obliged to pay that debt and may prove his claim against the estate as if no set-off had taken place ..."*

- 4.1.9 Whether set-off has occurred in the ordinary course of business involves an objective consideration of all the relevant facts and, in particular, how ordinary solvent businessmen in the relevant field would normally conduct business (*Hendricks, NO v Swanepoel* 1962 (4) SA 338 (A)). A disposition occurs in the ordinary course of business if it is made in accordance with *"the common and known practice, methods and principles obtaining among solvent men of business"* (*Pretorius' Trustee v Van Blommenstein* 1949 (1) SA 267 (O) at 276). We are of the view that set-off is likely to be regarded as such a *"common and known practice"*.

- 4.1.10 It is also possible for pre-insolvency set-off to be set aside or avoided in terms of sections 26, 29 and 30 of the Insolvency Act in certain circumstances. Section 26 provides that a disposition without value may be avoided if such disposition was made within two years of the *concurso creditorum* becoming effective, and the person benefited by the disposition is unable to prove that immediately thereafter the assets of the insolvent

exceeded its liabilities. If a disposition is made more than two years before the *concurso creditorum* become effective, it may be set aside if, immediately after the disposition, the liabilities of the insolvent exceeded its assets. While a set-off would amount to a disposition, such set-off could, in our view, not be impeached under section 26 in view of the fact that the essence of set-off is to discharge a lawful obligation to pay: value is therefore given.

4.1.11 Section 29 of the Insolvency Act provides that a disposition made within six months of the establishment of the *concurso creditorum* and which has the effect of preferring one creditor above other creditors, may be set aside as a voidable preference if, immediately after making the disposition, the liabilities of the insolvent exceeded its assets, unless the person in whose favour the disposition was made proves that the disposition was made in the ordinary course of business and it was not intended to prefer one creditor above another. As the set-off may well have the effect of preferring the solvent party over other creditors, the essential question remains whether the set-off occurred in the ordinary course of the business of the insolvent party. As stated above, we are of the view that this is likely to be the case.

4.1.12 If a debtor disposes of an asset at a time when his liabilities exceed his assets, with the intention of preferring one of his creditors above another and he is then sequestrated, the court may well set aside the disposition under section 30 of the Insolvency Act. Although this section is similar in ambit to section 29, it is not limited in operation to a period of six months. The relevant intention to prefer must be the dominant intention. We do not believe that a pre-insolvency set-off is likely to be regarded as an action undertaken with the dominant intention to prefer one creditor above the other.

There are no other material issues relevant to the issues addressed in this opinion which we wish to draw to your attention.

This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribe to the Futures and Options

Association's opinions library (and whose terms of subscription give them access to this opinion). This opinion may not be relied upon by any other person unless we otherwise specifically agree with that person in writing, although we consent to it being shown to such Futures and Options Association members' affiliates (being members of such persons' groups, as defined by the UK Financial Services and Markets Act 2000) and to any competent authority supervising such member firms and their affiliates in connection with their compliance with their obligations under prudential regulation.

Yours faithfully,



**WEBBER WENTZEL**

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**WEBBER WENTZEL**

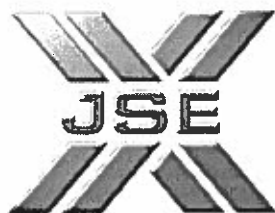
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**Annexe A**

**[Form of Clearing House Agreement]**



## **SAFCOM AGREEMENT**

### **Memorandum of Agreement**

**between**

**SAFEX Clearing Company (Pty) Ltd**

**("SAFCOM")**

**(registration number 1987/02294/07)**

**and**

**JSE Limited**

**("the JSE")**

**(registration number 2005/022939/06)**

**and**

.....

**(the "clearing member")**

**(registration number .....)**

Whereas

- A JSE Limited (JSE) is an exchange licensed in terms of the Securities Services Act ("the Act") to regulate the business of its members of buying and selling IRC securities listed from time to time in the list of securities kept by the JSE Executive Committee;
- B The JSE has entered into an agreement with SAFCOM in terms of which SAFCOM is to ensure the performance of all transactions to be entered into on the Interest Rate and Currency markets in particular with respect to the clearing of IRC securities as contemplated by the Interest Rate and Currency Rules of the JSE ("the rules"); and
- C The clearing member has satisfied, for the time being, the requirements for clearing membership of the Interest Rate and Currency markets and hereby enters into this agreement as required by the rules.

Now therefore it is agreed as follows:

## **1 Interpretation**

- 1.1 In this agreement further, unless otherwise indicated by, or inconsistent with, the context -
  - 1.1.1 a reference to any one gender includes a reference to all other genders; and
  - 1.1.2 the singular includes the plural and vice versa; and
  - 1.1.3 all the terms used in this agreement bear the same meanings as are assigned to such terms in the rules .
- 1.2 In the event of conflict between the rules and the provisions of this agreement then the provisions of the rules shall apply.
- 1.3 The relevant provisions of the rules, decisions of the JSE Executive Committee and established practices of the JSE for the time being shall apply *mutatis mutandis* to this agreement as if incorporated in this agreement.

## **2 Clearing membership**

- 2.1 The clearing member hereby warrants that the information supplied by the clearing member to the JSE in order to determine whether the clearing member satisfies for the time being the requirements for clearing membership of the JSE is at the date of this agreement true and correct in all material respects.
- 2.2 The clearing member shall ensure that it shall at all times during its membership of the JSE satisfy the requirements for clearing membership. If at any time it has reason to believe that it no longer satisfies or may cease to satisfy any of such requirements the clearing member shall immediately notify the JSE in writing of the circumstances in respect thereof.
- 2.3 The clearing member shall give written notice forthwith to the JSE of the occurrence of -



- 2.3.1 any of the reasons contemplated in terms of the rules in respect of termination of membership;
- 2.3.2 the granting, withdrawal or refusal of an application for, or the revocation of, recognition under any statutory enactment of any registration, authorisation or licence under which it operates or wishes to operate;
- 2.3.3 the conviction of the clearing member for any offence under legislation relating to banking or other financial services, building societies, companies, insolvency, insurance and provident societies or for any offence involving fraud or other dishonesty;
- 2.3.4 any person becoming or ceasing to be a director of the clearing member;
- 2.3.5 any change in its name or the address of its head office, or registered office;
- 2.3.6 the clearing member, becoming aware that any person has become or ceased to be, or is to become or ceased to be, or might become or cease to be, a controller of the clearing member and shall in relation to any person becoming a controller of the clearing member state:

2.3.6.1 the controller's name, principal business and address, and

2.3.6.2 the date of the change or proposed change.

In this clause 2.3.6 the "controller" means a person entitled to exercise or control the exercise of 25 percent or more of the voting power in the clearing member, and

- 2.3.7 any change in its business which might reasonably be considered material to the operation of this agreement.
- 2.4 Where the JSE receives notification pursuant to any clauses 2.2 to 2.3, or the JSE reasonably suspects that the clearing member may no longer satisfy the requirements for clearing membership of the JSE, the JSE shall be entitled in its absolute discretion to call for information pertinent to the issue in order to determine whether the clearing member continues to satisfy the requirements for such membership. The clearing member shall forthwith on demand supply such information to the JSE and shall ensure that such information is true and correct in all respects.
- 2.5 The clearing member agrees at all times to abide by the rules, it being recorded that the clearing member hereby acknowledges itself to be conversant with such rules.
- 2.6 The clearing member agrees that in respect of any IRC security which has to be cleared by SAFCOM in the clearing member's name in accordance with the rules, and in respect of any transaction entered into with regard to IRC securities, whether with a member or with a client, the clearing member shall contract as principal and not as an agent, unless it has

advised the client prior thereto that it is not acting as a principal but as an agent in relation to that transaction.

### **3 Clearing facilities provided by SAFCOM**

#### **3.1 Clearing of IRC securities**

Subject to the rules, SAFCOM agrees to clear all IRC securities reported to it by the clearing member, or reported directly to it by a trading member in accordance with the terms of the clearing agreement between the clearing member and such trading member.

#### **3.2 Fees, levies and charges**

Fees, levies and charges for services rendered shall be levied in accordance with the rules and the clearing member hereby undertakes to pay such amounts on the due date for payment thereof.

#### **3.3 Novation**

3.3.1 Upon the clearing by SAFCOM of a transaction in an IRC security, SAFCOM shall by the process of novation take an equal and opposite position to each party to the transaction in IRC securities and SAFCOM shall be liable and responsible for protecting buyers and sellers from financial loss by assuring performance on each transaction.

3.3.2 The clearing member through whom the transaction was cleared shall guarantee all obligations arising from such cleared transactions in accordance with the rules.

#### **3.4 Notification and verification records**

3.4.1 Pursuant to notification by the clearing member to SAFCOM of the details of a transaction, and upon remittance by SAFCOM to the clearing member of a daily report reflecting the details of the day's accepted deals, SAFCOM shall be deemed to have confirmed the transaction.

3.4.2 For the transaction to be correctly reflected in the accounting records of the clearing member, such notification by the trading system shall be identical to the report referred to in clause 3.4.1.

3.4.3 In addition, daily confirmation of positions shall be remitted by SAFCOM to the clearing member. Such confirmation shall confirm the accuracy of the accounting records of the clearing member.

#### **3.5 Margins**

3.5.1 The clearing member shall pay to SAFCOM such sum as SAFCOM shall require from time to time by way of initial, variation, settlement and top-up margin or any other

amount required by SAFCOM in order to maintain existing margin balances in respect of or in connection with any position, such sums shall be placed with financial institutions acceptable to SAFCOM in interest-bearing investments. Clearing members shall be paid interest thereon on the second business day of each month on margins held.

3.5.2 Without in any way limiting the generality of the provisions of clause 3.5.1, SAFCOM shall be entitled to require the clearing member to pay in respect of any transaction either before the clearing thereof, or at any time during the subsistence thereof, a larger or additional margin.

3.5.3 SAFCOM shall pay to the clearing member any amounts due to it in terms of the rules, especially repayment of margin.

#### **4 Maintenance and inspection of records**

4.1 The clearing member undertakes to establish and maintain all records and accounts as are required by the Act and the rules.

4.2 The JSE shall have the right at all reasonable times to inspect the aforesaid records and shall further have the right to investigate the affairs of the clearing member for the purposes of ascertaining whether the clearing member is complying with the provisions of the Act, the rules and this agreement.

#### **5 Trading limits**

SAFCOM shall have the right at any time to limit the proprietary positions of the clearing member and the transactions to be cleared through it in a manner and on a basis agreed upon between the clearing member and SAFCOM.

#### **6 Clearing agreement**

The clearing member hereby undertakes to ensure that any clearing agreement entered into by it with a trading member of the JSE shall conform with the basic terms and conditions for such agreement as determined from time to time by the JSE.

#### **7 Client agreement**

The clearing member hereby undertakes to ensure that any client agreement entered into by it with a client shall conform with the basic terms and conditions for such agreement as determined from time to time by the JSE.

#### **8 Telephone calls**

The parties hereto acknowledge and confirm that they are conversant with the relevant provisions of the rules insofar as the tape recording of telephone calls are concerned and hereby irrevocably consent to such tape recordings being made.

## **9 Termination**

- 9.1 Subject to clause 9.2 hereof any party may terminate this agreement by giving to the other parties thirty days notice (or such other period as the parties may agree) in writing specifying the date of termination ("the termination date") which shall be a business day and this agreement shall terminate on the termination date. By the close of business on the termination date the clearing member shall ensure that all its proprietary positions are closed out and, if such positions are not closed out, the JSE shall be entitled to close out such positions in accordance with the relevant provisions of the rules.
- 9.2 If the clearing member is in breach of any term or provision of this agreement, or the rules, or if the JSE reasonably determines that the clearing member no longer satisfies the requirements for clearing membership, or the clearing member is in any way in default as contemplated by the rules, the JSE may in its absolute discretion terminate this agreement by written notice either summarily or on the expiry of such period as may be specified in the notice, in which event the JSE may take all such action as it deems expedient in its absolute discretion to protect itself or any other clearing member including, without limitation, the closing-out of any or all the clearing member's proprietary positions, but without prejudice to its own rights in respect of such positions. A notice given by the JSE under this clause may at the JSE's discretion allow the clearing member a specified period in which to remedy the breach or default or to satisfy the requirements for membership as the case may be, and may specify what is to be done to that end, and may provide that if the same is done to the satisfaction of the JSE within that period termination of this agreement shall not take effect.
- 9.3 Upon the termination of this agreement for whatever reason the clearing member shall in terms of the rules cease to be a clearing member.
- 9.4 Without in any way limiting the generality of the foregoing provisions of this clause 9, on the breach or default of the clearing member the relevant provisions of the rules shall apply *mutatis mutandis*.

## **10 Arbitration**

Any dispute between the parties emanating or arising from the implementation or interpretation of this agreement shall, unless resolved between the parties hereto, be referred to and decided by arbitration in terms of the relevant provisions of the rules.

## **11 Law**

This agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.

## **12 Relaxation**

No latitude, extension of time or other indulgence which may be given or allowed by any party to any other party in respect of the performance of any obligation under this agreement or the

enforcement of any right arising from this agreement and no single or partial exercise of any right by any party shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect the rights of any party under this agreement or prevent such party from enforcing, at any time without notice, strict and punctual compliance with each and every provision or term hereof.

### **13 Variation**

No addition or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement of its breach or termination shall be of any force or effect unless reduced to writing and signed by all parties or their duly authorised representatives.

### **14 Whole agreement**

This agreement contains the entire agreement between the parties and none of them shall be bound by any undertakings, representations or warranties not recorded herein.

### **15 Notices and domicilia**

15.1 The parties choose as their *domicilia citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this agreement at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties.

15.2 For the purpose of this agreement the parties' respective addresses shall be as regards

***SAFCOM and the JSE:***

One Exchange Square

Gwen Lane

Sandown

***and the clearing member:***

.....  
.....  
.....

or at such other address, not being a post office or box or *poste restante*, of which the party concerned may notify the others in writing.

15.3 Any notice given in terms of this agreement shall be in writing and shall: -

15.2.1 If delivered by hand during normal business hours at the addressee's registered address by deemed, until the contrary is proved, to have been received at the time of delivery; or

15.2.2 if posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at the addressee's registered address be deemed until the contrary is proved by the addressee, to have been received by no later than the seventh day after the date of posting; or

15.2.3 if transmitted by facsimile or electronic means be deemed until the contrary is proved to have been received on confirmation or receipt.

15.4 Notwithstanding anything to the contrary contained in this agreement a written notice or communication actually received by one of the parties from another including by way of telex or facsimile transmission shall be adequate written notice or communication to such party.

Thus done and signed at .....

on this the ..... day of ..... 20.....

.....  
Full name For SAFCOM

.....  
(who warrants that he is duly authorised to bind SAFCOM)

**As Witnesses:**

1. ....

Full name

2. ....

Full name

Thus done and signed at .....

on this the ..... day of ..... 20.....

.....  
Full name For the JSE

(who warrants that he is duly authorised to  
bind the JSE)

**As Witnesses:**

1. ....

Full name

2. ....

Full name

Thus done and signed at .....

on this the ..... day of ..... 20.....

.....  
Full name For the clearing member

(who warrants that he is duly authorised to  
bind the clearing member)

**As Witnesses:**

1. ....

Full name

2. ....

Full name





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**Annexe B**

**[Rules of the JSE's Interest Rate Market and Derivatives Market]**



# JSE Interest Rate and Currency Rules



JOHANNESBURG STOCK EXCHANGE

**Interest Rate and Currency Rules January 2005**  
**As amended by**

Date	Notice No.	Amendment
1 June 2005	Y008	Rule 8.90 - change in option structure from American style to European style.
1 July 2005	Y013	Amendments arising from demutualisation
1 August 2005	Y020	SSA Amendments
24 April 2007	Y079	Amendments to capital adequacy requirements.
6 June 2007	Y089	Amendments regarding introduction of currency derivatives
30 July 2007	Y096	Amendments in respect of recognition under Financial Services Ombud Schemes Act, 2004
8 January 2008	Y273	Amendments to qualification requirements for investment managers, investment advisors and dealers
18 December 2009	Y437	Amendments to the additional margin provisions and the requirements in respect of trading limits
27 October 2010	Y556	Introduction of new rule 4.15 <i>Reporting and assistance by the JSE Surveillance Department-Financial Intelligence Centre Act</i>
9 May 2011	Y657	Amendments regarding the integration of the BESA rules and the Yield-X rules

The term "a Yield-X instrument" wherever the same appeared was substituted by "interest rate security" with effect from 1 August 2005.

The term "a Yield-X instrument" wherever the same appeared was substituted by "an interest rate security" with effect from 1 August 2005.

The term "Yield-X instruments" wherever the same appeared was substituted by "interest rate securities" with effect from 1 August 2005.

The term "Yield-X member" wherever the same appeared was substituted by "member" with effect from 1 August 2005.

The term "broking member" wherever the same appeared was substituted by "trading member" with effect from 1 August 2005.

The term "non-clearing member" wherever the same appeared was substituted by "trading member" with effect from 1 August 2005.

The term "an interest rate security" wherever the same appeared was substituted by "a Yield-X security" with effect from 4 June 2007.

The term "interest rate security" wherever the same appeared was substituted by "Yield-X security" with effect from 4 June 2007.

The term "interest rate securities" wherever the same appeared was substituted by "Yield-X securities" with effect from 4 June 2007.

The term "loan stock" wherever the same appeared was substituted by "bonds" with effect from 4 June 2007.

The term "a Yield-X security" wherever the same appears is substituted by "an IRC security" with effect from 9 May 2011.

The term "Yield-X securities" wherever the same appears is substituted by "IRC securities" with effect from 9 May 2011.

The term "Yield-X trading system" wherever the same appears is substituted by "trading system" with effect from 9 May 2011.

The term "the Yield-X rules" wherever the same appears is substituted by "these rules" with effect from 9 May 2011.

The term "these Yield-X rules" wherever the same appears is substituted by "these rules" with effect from 9 May 2011.

The term "settlement agent" wherever the same appears is substituted by "CSDP" with effect from 9 May 2011.

The term "STRATE settled bonds" wherever the same appears is substituted by "bonds" with effect from 9 May 2011.

The term "STRATE" wherever the same appears is substituted by "Strate" with effect from 9 May 2011.

The term "JSE Gazette" wherever the same appears is substituted by "JSE Market Notice" with effect from 9 May 2011.

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**SECTION**

**1**

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**Section 1: General Provisions**

**Scope of section**

- 1.10 Reserved
- 1.20 Reserved
- 1.30 Reserved
- 1.40 Powers exercisable by the controlling body
- 1.41 Advisory Committees
- 1.50 These rules and directives
- 1.60 Transactions subject to provisions of the Act, these rules and directives
- 1.70 Interpretation of these rules and directives
- 1.80 Proposals for amendments to these rules and directives
- 1.90 JSE not responsible for any losses
- 1.100 Indemnification
- 1.110 Appointment of a clearing house
- 1.120 Transitional provisions
- 1.130 Compensation Funds
- 1.140 Settlement System



**1.10 Reserved**

**1.20 Reserved**

**1.30 Reserved**

**1.40 Powers exercisable by the controlling body**

1.40.1 The management and control of the JSE shall be exercised by the controlling body which shall be the governing body managing the affairs of the JSE.

1.40.2 The controlling body may, in addition to the powers and authorities expressly conferred upon it by the Act, the JSE's Memorandum and Articles of Association and these rules, exercise all such powers and do all such things as may be exercised or done by the JSE.

**1.41 Advisory Committees**

1.41.1 The controlling body shall procure the appointment of advisory committees.

1.41.2 The function of the advisory committees will be to make recommendations to the JSE Executive on operational issues.

1.41.3 The advisory committees shall consist of –

1.41.3.1 a chairperson, who shall be the JSE Executive member responsible for the area in question; and

1.41.3.2 such persons as the chairperson, in consultation with the JSE Executive and the controlling body, shall appoint by reason of their knowledge of or experience in the securities or other relevant markets and which shall include representatives of authorised users of the JSE.

1.41.4 The advisory committees shall make recommendations by reasonable consensus.

1.41.5 In the event that an advisory committee is not able to reach reasonable consensus on any issue considered by it, the conflicting views on the issue in question shall be advised to the JSE Executive.

**1.50 These rules and directives**

1.50.1 Purpose of these rules and directives

The purpose of these rules and directives is to achieve the objects of the JSE as set out in its Memorandum and Articles of Association by providing the procedures necessary to establish and regulate fair and efficient markets and to ensure that the business of the JSE is carried out in an orderly manner and with due regard to the objects of the Act.

---

1.10 amended with effect from 1 July 2005

1.10 deleted with effect from 1 August 2005

1.20 deleted with effect from 1 July 2005

1.30 deleted with effect from 1 July 2005

1.40.2 amended with effect from 1 July 2005

1.40.3 and 1.40.4 deleted with effect from 1 August 2005

1.41.2 amended with effect from 1 August 2005

1.41.3.1 amended with effect from 1 August 2005

1.41.3.2 amended with effect from 1 August 2005

1.41.5 amended with effect from 1 August 2005

1.50 amended with effect from 1 August 2005

1.50.1 amended with effect from 1 July 2005

1.50.1 amended with effect from 1 August 2005

- 1.50.2 Rules and directives are binding
  - 1.50.2.1 These rules and directives are binding upon all members, officers and their employees.
  - 1.50.2.2 Reserved.
  - 1.50.2.3 These rules are binding on clients of a member and any other person who concludes a transaction with a member in the course of that member's business.
  - 1.50.2.4 These rules are binding on CSDPs acting on behalf of members and their clients.
  - 1.50.2.5 The controlling body shall notify members of any decisions or determinations made under these rules.

**1.60 Transactions subject to provisions of the Act, these rules and directives**

Every transaction in IRC securities entered into by a member must be concluded on the specific condition that the transaction is entered into subject to the provisions of the Act, these rules and the directives.

**1.70 Interpretation of these rules and directives**

The interpretation and enforcement of these rules and directives vests in the controlling body.

**1.80 Proposals for amendments to these rules and directives**

- 1.80.1 Any member of the JSE Executive may propose in writing any amendment of these rules or directives.
- 1.80.2 The JSE Executive shall consider the proposed amendment to these rules or directives and notify members by way of notice of its decision in regard thereto.
- 1.80.3 If, within ten days of the announcement of the JSE Executive's decision to adopt the proposal, 5 or more members object in writing to the decision, the objection together with the reasons for such objection will be referred to the controlling body for determination.
- 1.80.4 If, in respect of a proposal with regard to these rules, an objection as referred to in rule 1.80.3 has not been lodged, or the controlling body upholds the JSE Executive's decision to adopt the proposal, the proposal will be submitted to the Registrar for his approval.
- 1.80.5 If an objection to a proposed amendment to the directives has not been lodged within the prescribed period, or the controlling body upholds the JSE Executive's decision to adopt the proposal, the proposal will take effect immediately.

**1.90 JSE not liable for any losses**

Subject to section 62 of the Act, the JSE and SAFCOM shall not be liable to any person for any loss or damage resulting from –

- 1.90.1 negligence, on the part of the JSE, SAFCOM or on the part of any employee or agent of the JSE or SAFCOM;
- 1.90.2 any act or omission on the part of any third party;

1.50.2.1 amended with effect from 1 August 2005  
 1.50.2.2 deleted with effect from 1 August 2005  
 1.60 amended with effect from 1 August 2005  
 1.80 amended with effect from 1 August 2005  
 1.80.1 amended with effect from 1 August 2005  
 1.80.2 amended with effect from 1 August 2005  
 1.80.3 amended with effect from 1 August 2005  
 1.80.4 amended with effect from 1 August 2005  
 1.80.5 amended with effect from 1 August 2005  
 1.90.1.1 to 1.90.1.6 renumbered 1.90.1 to 1.90.6 with effect from 1 August 2005

- 1.90.3 incorrect, inaccurate, defective or misleading information furnished or supplied by the JSE, SAFCOM or any employee or agent of the JSE, SAFCOM or any third party;
- 1.90.4 equipment breakdown or the breakdown, interruption, suspension, termination or failure of or defect in any system, including but not limited to any trading system, or service rendered by or on behalf of the JSE;
- 1.90.5 computer system malfunction, the interruption or failure of communications links, power failure, the failure of or defect in any software or hardware, whether owned by, licensed or leased to the JSE, the loss or destruction of any data and natural disaster, riot, insurrection, acts of vandalism, sabotage or similar cause; and
- 1.90.6 the termination, for any reason whatsoever, of any licence or other agreement to which the JSE is a party.

#### 1.100 Indemnification

A member of an advisory committee, trustee of the Compensation Funds and employee of the JSE shall be indemnified by the JSE out of the funds of the JSE against any liability, loss or, damage incurred or suffered as a result of any *bona fide* or negligent, but not grossly negligent or wilful, act or omission in the execution of their duties. For the purposes of this rule, such member, trustee or employee shall not be regarded as having been grossly negligent or having acted in wilful breach of duty or trust if the act or omission resulted from incorrect information supplied to such member, trustee or employee by a source from which the member, trustee or employee would normally accept the information as correct and which can be expected to provide the correct information.

#### 1.110 Appointment of clearing house

The JSE may acquire the services of a clearing house with the purpose of clearing IRC securities on the JSE in accordance with these rules and to provide any other services or facilities as may be required by the JSE. The JSE may delegate any function of the JSE to such clearing house.

#### 1.120 Transitional Provisions

- 1.120.1 The markets operated by the JSE in which interest rate securities and currency derivatives were listed, namely, Yield-X and BESA, have been integrated with effect from the date as advised by the JSE ("the effective date"). The effect of the integration is that the Yield-X and BESA rules and directives, as well as the membership of the two markets, have been integrated.
- 1.120.2 The Yield-X rules and directives form the basis of the rules and directives for the integrated markets, with appropriate amendments having been made to give effect to the integration, and the integrated rules and directives have been re-named the JSE interest rate and currency ("IRC") rules and directives. The transitional provisions in 1.120.2 to 1.120.15 are necessary to give effect to the integration of the Yield-X and BESA rules and directives.
- 1.120.3 For the purpose of these rules and directives-
  - 1.120.3.1 authorised users of the integrated interest rate and currency markets are referred to as Interest Rate and Currency ("IRC") members; and
  - 1.120.3.2 securities listed in the integrated interest rate and currency markets are referred to as Interest Rate and Currency ("IRC") securities.
- 1.120.4 The rules and directives of the BESA market are repealed with effect from the effective date.
- 1.120.5 Anything done under any provision of the BESA rules prior to the repeal in rule 1.120.4, in respect of interest rate securities previously listed under such rules, shall be effective from the effective date as if done under or pursuant to these rules and directives.

1.100 amended with effect from 1 August 2005

1.100.1 and 1.100.2 deleted with effect from 1 August 2005

1.100 amended with effect from 9 May 2011

1.120.3 deleted with effect from 1 August 2005

1.120.3 deleted with effect from 1 August 2005

Old 1.120.1 and 1.120.2 deleted and replaced with New 1.120.1 to 1.120.15 with effect from 9 May 2011

- 1.120.6 The disciplinary procedure set out in section 4 may, from the effective date, and at the discretion of the JSE, be applied in the investigation and prosecution of any offence committed in terms of the BESA rules, prior to the repeal of such rules in terms of rule 1.120.4.
- 1.120.7 The dispute resolution procedures set out in section 5 must, from the effective date, be applied in the resolution of complaints and disputes referred in terms of the BESA rules, prior to the repeal of such rules in terms of rule 1.120.4.
- 1.120.8 All authorised users of the BESA market who were not members of the Yield-X market shall, as at the effective date, become IRC members, and shall be authorised to trade in bonds, subject to any condition of membership that may be imposed by the JSE.
- 1.120.9 All members of the Yield-X market who were not members of the BESA market shall, as at the effective date, become IRC members, and shall be authorised to trade in IRC securities, subject to any condition of membership that may be imposed by the JSE.
- 1.120.10 A registered bond trader under the BESA rules who was authorised to execute transactions in bonds under such rules, as at the effective date, is automatically authorised to act as a dealer in bonds in terms of these IRC rules and directives.
- 1.120.11 A registered derivatives trader under the BESA rules who was authorised to execute transactions in derivatives under such rules, as at the effective date, is automatically authorised to act as a dealer in interest rate derivatives, other than currency derivatives, in terms of these IRC rules and directives.
- 1.120.12 A registered dealer under the Yield-X rules who was authorised to execute transactions in derivative securities under such rules, as at the effective date, is automatically authorised to act as a dealer in derivative securities in terms of these IRC rules and directives.
- 1.120.13 A registered compliance officer under the BESA rules, as at the effective date, shall be recognised as a compliance officer under these IRC rules and directives, subject to such compliance officer being required to obtain any additional qualification as may be required by the JSE in terms of the directives if the trading member is subsequently granted authorisation to trade in interest rate or currency derivatives.
- 1.120.14 Notwithstanding the provisions of rule 1.120.5, all client agreements concluded between BESA members and their clients in terms of the BESA rules shall, as at the effective date, remain in effect: Provided that those members must ensure that the agreements comply with the requirements regarding client agreements as prescribed in these IRC rules and directives.
- 1.120.15 For the purpose of the trust deed of the Guarantee Fund, any reference in the trust deed to the "Rules" shall include these IRC rules, as the IRC rules effectively replace the BESA rules.

#### **1.130 Compensation Funds**

- 1.130.1 The JSE shall have the power to—
  - 1.130.1.1 establish and maintain, to the satisfaction of the Registrar, one or more Compensation Funds out of which shall be paid claims up to an amount specified in the respective rules of such funds in respect of liabilities arising prior to the default of a member. Such payment shall be limited to claims arising out of transactions in IRC securities with or on behalf of other persons by such member and such other liabilities as may be specified in the rules of the Compensation Funds and shall be subject to any defences which the defaulting member may have against a claimant; and
  - 1.130.1.2 determine a levy to be payable by every member to the Compensation Funds on transactions in IRC securities.
- 1.130.2 Where a member has effected a transaction on behalf of a buyer or a seller of IRC securities, such member may recover the levy imposed in terms of rule 1.130.1.2 from such buyer or seller.
- 1.130.3 The trustees of the Compensation Funds, in their capacity as trustees, acquire, incur and administer the assets and liabilities of the Compensation Funds.

1.130 introduced with effect from 1 August 2005 and amended with effect from 9 May 2011

1.130.1 to 1.130.4 amended with effect from 9 May 2011

- 1.130.4 The income of the Compensation Funds, including but not limited to levy contributions by members, vests in the trustees and is administered by the trustees as part of the Compensation Funds.

**1.140 Settlement System**

- 1.140.1 The JSE may operate, or contract with a third party to operate, one or more settlement systems and the JSE may prescribe –
- 1.140.1.1 procedures and requirements with which members must comply when using such settlement systems; and
  - 1.140.1.2 the fees payable by the members for the use of such settlement systems.

**SECTION**

**2**

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**Section 2: Definitions and Interpretation**

**Scope of section**

- 2.10 Definitions
- 2.20 Interpretation

## 2.10 Definitions

In these rules, unless otherwise clearly indicated by, or inconsistent with the context, the following terms shall have the meanings that are assigned to them hereunder, namely –

<b>"Act"</b>	means the Securities Services Act (Act No. 36 of 2004) and any measure prescribed thereunder by the Minister of Finance or the Registrar ;
<b>"additional margin"</b>	means the margin paid to a clearing member by a trading member over and above that required by SAFCOM or to a trading member by a client over and above that required by the clearing member concerned;
<b>"advertisement"</b>	means any written, printed, electronic or oral communication, including a communication by means of a public radio service, television broadcast or any other media by a member, which communication is directed to the general public, or any section thereof, or to any client, and is intended to call attention to, or to market or promote, the services offered by a member, and which does not purport to provide detailed information about such services; and "advertising" has a corresponding meaning;
<b>"agent"</b>	means a trading member who has traded on behalf of a client other than for its own account in terms of these rules;
<b>"aggregate position"</b>	means collectively all the proprietary positions in IRC securities registered in the name of a trading member or, collectively, all the positions in IRC securities registered in the name of a client;
<b>"agricultural derivatives"</b>	means those commodity securities which are derivative instruments and the financial terms of which are determined by an underlying agricultural product which is physically settled in terms of the derivatives rules;
<b>"allocation"</b>	means a transfer of a trade or divided trade, or a transfer of aggregated trades, executed on the central order book of the trading system or reported to the trading system in an agency capacity, from a trading member's suspense account to a client at the price or the average price of the original trade or trades;
<b>"alternate settlement officer"</b>	means the person appointed by a member in terms of rule 3.120.4;
<b>"assign"</b>	means the exercise by SAFCOM of its right in terms of an option contract to buy or sell the underlying instrument of the option contract from or to a person holding a short position in the option contract;
<b>"authorised bank"</b>	means a branch of an Authorised Dealer which, in terms of Exchange Control Regulation 14, has been appointed to administer securities control;

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"Act" amended with effect from 1 August 2005

"advice" deleted with effect from 1 August 2005

"affiliated officer" deleted with effect from 1 August 2005

"agricultural derivatives" introduced with effect from 24 December 2008

"Arbitration Act" deleted with effect from 1 August 2005

"arbitrator" deleted with effect from 1 August 2005

"alternate settlement officer" introduced with effect from 9 May 2011

"authorised bank" amended with effect from 24 December 2008

<b>"Authorised Dealer"</b>	means, in relation to any transaction in respect of gold, a person authorised by the Treasury to deal in gold and, in relation to any transactions in respect of foreign exchange, a person authorised by the Treasury to deal in foreign exchange;
<b>"authorised user"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"bank"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"board of appeal"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"BESA"</b>	means a market in bonds operated by the JSE prior to the effective date of the integration of the JSE's interest rate and currency markets;
<b>"bonds"</b>	means those IRC securities which create or acknowledge indebtedness of the issuer, and "bond" has a corresponding meaning;
<b>"branch of a foreign bank"</b>	means a foreign institution which is authorised in terms of the Banks Act, 1990 (Act No. 94 of 1990) to conduct the business of a bank by means of a branch in the Republic;
<b>"broadcast"</b>	means the communication or dissemination of bid and offer prices on an effective one-to-many and non-discriminatory basis, excluding requests for quotes where the information is disseminated to a specific recipient;
<b>"business day" or day"</b>	means any day except a Saturday, Sunday, public holiday or any other day on which the JSE is closed;
<b>"buy"</b>	means, in relation to IRC securities, to enter into either – <ul style="list-style-type: none"> <li>(a) a purchase of a futures contract in terms of which the buyer is obliged to take delivery of the underlying instrument at the agreed price on the future date or to pay an amount of money if, on the future date, the price or value of the underlying instrument is less than the agreed price; or</li> <li>(b) a purchase of an option contract in terms of which the buyer obtains the right to buy or sell the underlying instrument of the option contract at the agreed price before or on the future date; or</li> <li>(c) a purchase of bonds in terms of which the buyer is obliged to make payment for the bonds and receive delivery of such bonds at the agreed price on the settlement date;</li> </ul>

"authorised dealer" amended with effect from 24 December 2008

"authorised user" introduced with effect from 1 August 2005

"broking member" deleted with effect from 1 August 2005

"bank" introduced with effect from 1 August 2005

"board of appeal" introduced with effect from 1 August 2005

"BESA" introduced with effect from 9 May 2011

"bonds" introduced with effect from 4 June 2007

"bonds" amended with effect from 9 May 2011

"branch of a foreign bank" introduced with effect from 26 April 2007

"broadcast" introduced with effect from 9 May 2011

"business day" amended with effect from 1 August 2005



<b>"call option contract"</b>	means a contract, in terms of which the holder of a long position in the call option contract has obtained the right to buy, and the holder of a short position shall, if the option is exercised, be obliged to sell, the underlying instrument of the option contract from or to SAFCOM on or before the future date at the strike price in accordance with these rules and the contract specification of the option contract;
<b>"capital adequacy requirement"</b>	means the sum of the greater of a member's initial capital or one quarter of its annual fixed operating costs plus its risk requirements as determined by the JSE;
<b>"capital adequacy return"</b>	means the submission by a member of its capital adequacy requirement to the JSE in the manner and form specified by the JSE;
<b>"carry transaction"</b>	means a buy/sell back transaction between two parties in terms of which one party agrees to buy bonds from the other party while simultaneously agreeing to sell the bonds back on an agreed future date at an agreed price;
<b>"cash root"</b>	means the source of the funds due by the ultimate buyer of the bonds;
<b>"cash settled futures contract"</b>	means a futures contract contemplated in part (b) of the definition of a "futures contract";
<b>"central order book"</b>	means the order matching mechanism of the trading system where orders are matched anonymously on the basis of price-time priority;
<b>"central securities depository"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"clearing"</b>	means the process in terms of which SAFCOM becomes the buyer from the seller and the seller to the buyer in every matched transaction in an IRC security executed on the central order book or where a clearing member accepts a reported transaction for risk management, whereupon the clearing member guarantees to SAFCOM all obligations arising out of any position resulting from such transaction in terms of these rules;
<b>"clearing agreement"</b>	means a written agreement entered into between a clearing member and a trading member in terms of which the trading member guarantees to the clearing member the performance of the obligations arising out of the positions of the trading member and the clients of the trading member;
<b>"clearing house"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"clearing member"</b>	means a sub-category of authorised user of the JSE, registered to perform clearing in the IRC markets and who has entered into a SAFCOM agreement with SAFCOM;

"capital adequacy requirement" amended with effect from 1 August 2005

"cash settled futures contract" amended with effect from 1 August 2005

"central securities depository" introduced with effect from 9 May 2011

"clear" amended to "clearing" with effect from 1 August 2005

"clearing" amended with effect from 9 May 2011

"clearing house" amended with effect from 1 August 2005

"clearing house" amended with effect from 1 August 2005

"clearing member" amended with effect from 1 August 2005 and 9 May 2011

<b>"client"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"client agreement"</b>	means an agreement between a trading member and a client entered into before the trading member becomes entitled to trade for or on behalf of the client, the basic terms and formal requirements of which have been prescribed by the JSE;
<b>"client application"</b>	means an electronic system used by a client to submit orders to a trading member;
<b>"close out"</b>	means the cancellation of a position in one direction by an equal and opposite position (e.g. a long position in an IRC security is cancelled by a short position in the same IRC security);
<b>"collateral"</b>	means the cash provided to the Settlement Authority by a trading member or client as security for the due return of equivalent bonds in terms of a lending transaction; or the bonds provided to the Settlement Authority as security for the due return of the funds lent to a trading member or client, as the context may require;
<b>"commodity securities"</b>	means those JSE listed securities traded on the JSE commodities trading system;
<b>"common monetary area"</b>	means the Republic of South Africa, Lesotho, Namibia and Swaziland;
<b>"Companies Act"</b>	means the Companies Act, 1973 (Act No. 61 of 1973), as amended from time to time;
<b>"company"</b>	means a company as defined in Section 1 of the Companies Act, and registered in terms of that Act;
<b>"Compensation Funds"</b>	means collectively, the Fidelity Fund and the Guarantee Fund, as contemplated in section 9(1)(e) of the Act;
<b>"compliance officer"</b>	means the person appointed by a member in terms of rule 3.120.2;
<b>"contract specification"</b>	means the standard terms and formal requirements of a futures or option contract as determined by the JSE;
<b>"contractual settlement"</b>	means the market convention whereby the parties to a transaction in bonds have a contractual obligation to cause such transaction to be settled on the settlement day;
<b>"controlling body"</b>	means the board of directors of the JSE which is the governing body managing the affairs of the JSE;

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"client" amended with effect from 1 August 2005

"commodity securities" introduced with effect from 24 December 2008

"Companies Act" introduced with effect from 1 August 2005

"Companies Act" amended with effect from 9 May 2011

"company" amended with effect from 1 August 2005

"Compensation Funds" introduced with effect from 9 May 2011

"compliance officer" amended with effect from 9 May 2011

"derivative rules" amended with effect from 1 August 2005

"contract specification" amended with effect from 1 August 2005

"Constitution" deleted with effect from 1 July 2005

<b>"corporate action"</b>	means any economic right or benefit flowing from ownership of bonds;
<b>"counterparty risk requirement"</b>	means the risk requirement in relation to the unsettled obligations of third parties, as determined by the JSE;
<b>"CSDP"</b>	means a central securities depository participant that has been accepted by the central securities depository as a participant in that central securities depository, and who is appointed to settle transactions in bonds on behalf of a trading member or a client of a trading member;
<b>"currency derivatives"</b>	means those IRC securities which are derivative instruments and the financial terms of which are determined by a rate of exchange;
<b>"dealer "</b>	means a person registered to trade for a trading member in terms of these rules;
<b>"default"</b>	means a default by a client or trading member or clearing member as contemplated in Section 11;
<b>"derivative instrument"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"derivative rules"</b>	means the rules and directives of the JSE applicable to the equity derivatives and commodity derivatives markets;
<b>"derivative securities"</b>	means those JSE listed securities traded on the applicable JSE derivatives trading system;
<b>"discretionary basis"</b>	in relation to the management of investments, means to trade, without it being necessary to obtain further authority or consent from the client involved, other than the discretionary client agreement;
<b>"discretionary client agreement"</b>	means the client agreement as prescribed by the JSE that entitles the trading member to trade for a client on a discretionary basis;
<b>"discretionary financial services provider"</b>	has the same meaning as that contained in section 2.1 of the Code of Conduct for Administrative Financial Services Providers issued by the Registrar of Financial Services Providers;
<b>"dispute"</b>	means any dispute arising between any of the persons bound by these rules and which the JSE declares to be a dispute in terms of rule 5.90;
<b>"emigrant"</b>	means a natural person who has emigrated from the common monetary area;
<b>"emigrant client"</b>	means an emigrant who has concluded a client agreement with a

"counterparty risk requirement" amended with effect from 1 August 2005

"CSDP" introduced with effect from 9 May 2011

"currency derivatives" introduced with effect from 4 June 2007

"derivative instrument" introduced with effect from 1 August 2005

"derivatives rules" amended with effect from 9 May 2011

"derivative rules" amended with effect from 1 August 2005

"derivative securities" introduced with effect from 24 December 2008

"directive" deleted with effect from 1 August 2005

"dispute" amended with effect from 1 August 2005

"effective date" deleted with effect from 9 May 2011

	trading member and who has been registered by SAFCOM as an emigrant client of the trading member;
<b>"emigrant's blocked account"</b>	means the account of an emigrant to which exchange control restrictions have been applied;
<b>"emigrant's blocked account clearance certificate"</b>	means the certificate, the terms of which are determined by the JSE in agreement with the South African Reserve Bank and which confirms, to the authorised bank concerned, the details of the amount of the margin to be paid into or out of an emigrant's blocked account as a result of a position registered in the name of that emigrant client;
<b>"employee"</b>	means a person engaged by a member within that area of business that operates as a member;
<b>"equity securities"</b>	means those JSE listed securities traded on the JSE equities trading system;
<b>"equivalent bonds"</b>	means uncertificated securities of an identical type, nominal value, description and amount to the loaned bonds duly adjusted for any corporate action
<b>"exchange"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"Exchange Control Regulations"</b>	means the Exchange Control Regulations, 1961, as promulgated by Government Notice R1111 of 1 December 1961, made in terms of Section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933);
<b>"executive director"</b>	means in respect of a corporate entity a person appointed as a director of a member and who, in terms of a contract of employment with such member is in its full-time employ;
<b>"Executive Officer"</b>	means the person appointed by the controlling body as the Chief Executive Officer in terms of these rules or, in that persons absence, that person's deputy;
<b>"exercise"</b>	means, in relation to the registered holder of a long position in an option contract, to exercise its right to buy or sell the underlying instrument of the option contract at the strike price on or before the future date;
<b>"expire"</b>	means the closing out of a position in an IRC security by way of a transaction generated by SAFCOM between the registered holder of a position and SAFCOM in terms of these rules;
<b>"expiry month"</b>	means in relation to a futures or option contract, the month in which the positions in such IRC securities expire on the date and at the time as contained in the contract specification of the futures or option contract;
<b>"external company"</b>	means an external company as defined in Section 1 of the Companies

"employee" amended with effect from 1 August 2005  
 "equities rules" deleted with effect from 1 August 2005  
 "equivalent STRATE settled bonds with effect from 1 August 2005  
 "exchange" introduced with effect from 1 August 2005  
 "executive director" amended with effect from 1 August 2005  
 "external company" amended with effect from 1 August 2005

	Act, registered in terms of Section 322(2) of the Companies Act;
<b>"external exchange"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"failed trade"</b>	means a trade in bonds which the Settlement Authority deems to be a failed trade on the basis that neither the client, the member nor the Settlement Authority is able to ensure that such trade will settle on the settlement date;
<b>"FAIS Act"</b>	means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);
<b>"Fidelity Fund"</b>	means a Compensation Fund as contemplated in terms of Section 9(1)(e) of the Act, out of which shall be paid claims arising from the default of a member in accordance with the rules of the fund;
<b>"financial products"</b>	has the same meaning as that contained in section 1 of the FAIS Act, and by definition includes JSE authorised investments;
<b>"financial services provider"</b>	has the same meaning as that contained in section 1 of the FAIS Act;
<b>"foreign commodity derivatives"</b>	means those commodity securities which are cash settled derivative instruments and the financial terms of which are determined by an underlying foreign referenced commodity;
<b>"foreign exchange risk requirement"</b>	means the risk requirement of a member in relation to positions or client obligations which are exposed to changes in the value of foreign currencies relative to the Rand, determined by the JSE by directive;
<b>"forward transaction"</b>	means a transaction in bonds in which the counterparties to the transaction agree to settle the transaction on a settlement date which is more than three business days after the trade date;
<b>"futures contract"</b>	<p>means a contract, the effect of which is that -</p> <ul style="list-style-type: none"> <li>(a) a person agrees to deliver the underlying instrument to or receive it from another person at an agreed price on a future date; or</li> <li>(b) a person will pay to or receive from another person an amount of money according to whether, on the future date, the price or value of the underlying instrument is higher or lower than the agreed price on that future date,</li> </ul> <p>in accordance with these rules and the contract specification of the futures contract and which is included in the list of IRC securities kept by the JSE in terms of the Act;</p>
<b>"Guarantee Fund"</b>	means a Compensation Fund as contemplated in terms of Section 9(1)(e) of the Act, out of which shall be paid claims arising from the

"external exchange" introduced with effect from 1 August 2005

"Fidelity Fund" amended with effect from 9 May 2011

"financial products" amended with effect from 1 August 2005

"foreign commodity derivatives" introduced with effect from 24 December 2008

"foreign exchange" deleted with effect from 1 August 2005

"forward transaction" introduced with effect from 9 May 2011

"futures contract" amended with effect from 1 August 2005

"Guarantee Fund" introduced with effect from 9 May 2011

	default of a trading member in accordance with the rules of the fund;
<b>"in writing"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"initial capital"</b>	means the minimum capital as specified by the JSE;
<b>"initial margin"</b>	means the value determined by SAFCOM on the basis specified by the JSE and held in respect of the aggregate position of a trading member or a client;
<b>"inter-dealer broker" or "IDB"</b>	means a sub-category of trading member authorised to trade and to provide services in respect of the buying and selling of IRC securities, subject to the rules pertaining to inter-dealer brokers;
<b>"interest rate derivatives"</b>	means those IRC securities which are derivative instruments and the financial terms of which are determined by a rate of interest;
<b>"intermediary services"</b>	has the same meaning as that contained in section 1 of the FAIS Act;
<b>"investment advice"</b>	<p>means any recommendation, guidance or proposal of a financial nature furnished by a member, by any means or medium, to any client or group of clients –</p> <ol style="list-style-type: none"> <li>in respect of the purchase or sale of JSE authorised investments; or</li> <li>on any corporate action or other event affecting any rights or benefits in respect of any JSE authorised investments; or</li> <li>on the exercise or lapse of any rights in respect of any JSE authorised investments;</li> </ol> <p>and irrespective of whether or not such investment advice results in any transaction being effected</p> <p>Investment advice does not include -</p> <ul style="list-style-type: none"> <li>factual advice given merely – <ol style="list-style-type: none"> <li>on the procedure for entering into a transaction in respect of any JSE authorised investments;</li> <li>in relation to the description of any JSE authorised investments;</li> <li>in answer to routine administrative queries;</li> <li>in the form of objective information about JSE authorised investments; or</li> <li>by the display or distribution of promotional material;</li> </ol> </li> <li>an analysis or report on any JSE authorised investments without any express or implied recommendation, guidance or proposal that any particular transaction in respect of the relevant product is</li> </ul>

"in writing" amended with effect from 1 August 2005

"initial capital" amended with effect from 1 August 2005

"interest rate securities" introduced with effect from 1 August 2005

"interest rate securities" amended and replaced with 'Yield-X securities' with effect from 4 June 2007

"inter-dealer broker" or "IDB" introduced with effect from 9 May 2011

"interest rate derivatives" introduced with effect from 4 June 2007

"investment advice" introduced with effect from 1 August 2005

	appropriate to the particular investment objectives, financial situation or particular needs of a client;
<b>"investment manager"</b>	means a member who is authorised in terms of section 10 of these rules to undertake the management of investments on a discretionary basis;
<b>"IRC securities"</b>	means the interest rate and currency securities listed on the JSE and traded on the trading system;
<b>"JSE"</b>	means JSE Limited, a company duly registered and incorporated with limited liability under the company laws of the Republic, licensed to operate an exchange under the Act;
<b>"JSE authorised investments"</b>	means – <ul style="list-style-type: none"> <li>(a) IRC securities;</li> <li>(b) JSE listed securities traded on the JSE equities trading system or the JSE derivatives trading system;</li> <li>(c) securities listed on an exchange in the Republic other than the JSE;</li> <li>(d) securities listed on an external exchange;</li> <li>(e) participatory interests in a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), and units or any other form of participation in a foreign collective investment scheme approved by the Registrar of Collective Investment Schemes in terms of section 65 of that Act;</li> <li>(f) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country; and</li> <li>(g) funds intended for the purchase of such securities, units or participation;</li> </ul>
<b>"JSE commodities trading system"</b>	means the computer system or systems and associated network or networks operated or used by the JSE for the purpose of providing a market for the trading of commodity securities;
<b>"JSE derivatives trading system"</b>	means the computer system or systems and associated network or networks operated or used by the JSE for the purpose of providing a market for the trading of derivative securities;
<b>"JSE equities trading system"</b>	means the computer system or systems and associated network or networks operated or used by the JSE for the purpose of providing a market for the trading of equity securities;
<b>"JSE listed securities"</b>	means those securities included in the list of securities kept by the JSE;

"investment manager" amended with effect from 1 August 2005

"IRC securities" introduced with effect from 9 May 2011

"JSE" amended with effect from 1 July 2005

"JSE authorised investments" introduced with effect from 1 August 2005

"JSE commodities trading system" introduced with effect from 24 December 2008

"JSE derivatives trading system" introduced with effect from 24 December 2008

"JSE equities trading system" introduced with effect from 24 December 2008

"JSE listed securities" introduced with effect from 1 August 2005

<b>"JSE Executive"</b>	means the Executive Officer and such other officials of the JSE as the Executive Officer may decide shall serve on the JSE's top management ;
<b>"JSE Market Notice"</b>	means the notice published by the JSE under the authority of the JSE Executive;
<b>"JSE systems"</b>	means any system, device or network which is operated by or on behalf of the JSE for the purpose of providing a market;
<b>"large exposure risk"</b>	means the risk requirement of a member in relation to large exposures to a third party or a connected group of third parties, as determined by the JSE;
<b>"listed securities"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"lender"</b>	means the third party from which the Settlement Authority, as agent for the trading member or client as undisclosed principal, has borrowed the bonds;
<b>"lending fees"</b>	means the fees due by the trading member or client in respect of loaned bonds;
<b>"lending margin"</b>	means the amount or percentage by which the value of the collateral is required to exceed the initial loan value or the current ruling price value or the highest mark-to-market value during the loan period, whichever is the greatest, of the loaned bonds or the amount or percentage by which the value of the collateral is required to exceed the value of the loaned funds, as the context may require;
<b>"loaned funds"</b>	means the funds borrowed by a trading member or client from the Settlement Authority;
<b>"loaned bonds"</b>	means the uncertificated securities borrowed by a trading member or client through the Settlement Authority;
<b>"loan date"</b>	means the date on which loaned bonds are transferred by the Settlement Authority into the custody account of a trading member or client; or the date on which funds are transferred by the Settlement Authority into the funds settlement account of a trading member or client, as the context may require;
<b>"loan fees"</b>	means the interest and fees due to the Settlement Authority by a trading member or client in respect of loaned funds provided;
<b>"loan period"</b>	means the period of time expressed in days from the loan date to the return date;
<b>"loan recall"</b>	means a demand by the Settlement Authority for the return of equivalent bonds in terms of a lending transaction;

"JSE Market Notice" introduced with effect from 9 May 2011

"large exposure risk" amended with effect from 1 August 2005

"listed securities" introduced with effect from 1 August 2005

"loaned bonds" amended with effect from 1 August 2005

"loan date" amended with effect from 9 May 2011

"loan stock" amended with effect from 1 August 2005



<b>"long position"</b>	means a number of IRC securities registered by SAFCOM in the name of a trading member or client in terms of which - <ul style="list-style-type: none"> <li>(a) in relation to futures contracts, the trading member or the client is obliged to take delivery of the underlying instrument on a future date at the agreed price, or to pay an amount of money on a future date if the price or value of the underlying instrument on that future date is less than the agreed price; or</li> <li>(b) in relation to option contracts, the trading member or client has acquired the right to buy or sell the underlying instrument of the option contract before or on the future date at the agreed price; or</li> <li>(c) in relation to bonds, the trading member or client is obliged to make payment for, and take delivery of, the bonds on the settlement date at the agreed price;</li> </ul>
<b>"manage"</b>	in relation to JSE authorised investments, means any arrangement entered into between a client and a member which authorises the member to buy or sell JSE authorised investments on behalf of the client, either with full discretion or with prior reference to the client;
<b>"margin"</b>	means either initial margin, settlement margin, variation margin, top-up margin, additional margin or retained margin as the context may require;
<b>"margin category"</b>	means the margin category, expressed as a percentage of the initial margin or settlement margin, which is allocated to a non-resident or emigrant client by the member when the non-resident or emigrant client is registered;
<b>"Market Controller"</b>	means the person appointed by the JSE, to supervise, administer and control the daily operations of the trading system;
<b>"market corner"</b>	has the same meaning as that contained in section 72 of the Act;
<b>"mark-to-market"</b>	means the revaluation of a position in an IRC security to its current market value;
<b>"match"</b>	means the matching of a buy order with a sell order on the central order book or the matching of reported transactions executed by trading members;
<b>"matched principal"</b>	means a transaction in bonds which is facilitated by a trading member (including but not limited to an IDB), in terms of which the facilitating trading member- <ul style="list-style-type: none"> <li>(a) trades with or on behalf of two other trading members or on behalf of a client and another trading member;</li> <li>(b) does not disclose the identity of the two counterparties to</li> </ul>

"loan stock" amended and replaced with "bonds" with effect from 4 June 2007

"manage" introduced with effect from 24 December 2008

"market corner" introduced with effect from 1 August 2005

"mediation" deleted with effect from 1 August 2005

"mediator" deleted with effect from 1 August 2005

"matched principal" introduced with effect from 9 May 2011

	each other; and
	(c) reports to the trading system a purchase transaction and a sale transaction with or on behalf of the two counterparties through the trading member's stock account;
<b>"member "</b>	means an interest rate and currency member, which is a category of authorised user admitted to membership of the JSE under these rules;
<b>"member application"</b>	means an electronic system used by a trading member to submit orders to the trading system;
<b>"member settled client"</b>	means a client who has appointed a trading member to settle transactions in bonds on his behalf via the CSDP of the trading member;
<b>"name give-up"</b>	means a transaction in bonds which is facilitated by a trading member (including but not limited to an IDB), in terms of which the facilitating trading member- <ul style="list-style-type: none"> <li>(a) arranges the transaction between two counterparties (either two other trading members or a client and another trading member);</li> <li>(b) discloses the identity of the two counterparties to the transaction to each other; and</li> <li>(c) leaves it to those counterparties to report the transaction between them to the trading system;</li> </ul>
<b>"non-executive director"</b>	means a person appointed under the Companies Act as a director of a member, but who is not employed by such member;
<b>"non-member settled client"</b>	means a client other than a member settled client who has appointed his own CSDP to settle transactions in bonds on his behalf;
<b>"non-resident"</b>	means a person (i.e. a natural person or legal entity) whose normal place of residence or domicile or registration is outside the common monetary area;
<b>"non-resident account"</b>	means the account of a non-resident;
<b>"non-resident account clearance certificate"</b>	means the certificate, the terms of which are determined by the JSE in agreement with the South African Reserve Bank and which is to confirm to the authorised bank concerned the monthly amount of interest on any margin held by SAFCOM, due to a non-resident;
<b>"non-resident client"</b>	means a non-resident who has concluded a client agreement with a trading member and who has been registered by SAFCOM as a non-resident client of such trading member;
<b>"option contract"</b>	means a put option contract or a call option contract, as the context

"member" introduced with effect from 1 August 2005

"member" amended with effect from 9 May 2011

"non-broking member" deleted with effect from 1 August 2005

"non-clearing member" deleted with effect from 1 August 2005

"name give-up" introduced with effect from 9 May 2011

"non-executive director" amended with effect from 1 August 2005

	may require;
<b>"order"</b>	means a commitment to buy or sell a specified quantity of futures and option contracts or a specified nominal value of bonds;
<b>"own funds"</b>	means the net financial worth of a member calculated in the manner determined by the JSE;
<b>"physically settled futures contract"</b>	means a futures contract contemplated in part (a) of the definition of a "futures contract";
<b>"position"</b>	means either a long position or a short position;
<b>"position risk requirement"</b>	means the risk requirement in relation to the member's own positions in securities, as determined by the JSE;
<b>"prescribed agreements"</b>	means the agreements, the basic terms and formal requirements of which have been specified by the JSE;
<b>"price"</b>	means price, rate or yield as the context may require;
<b>"principal"</b>	means a trading member who has traded with a client or another member for its own account;
<b>"principal assignment trade"</b>	means the assignment of a trade or divided trade or aggregated trades, executed on the central order book of the trading system for a trading member's principal assignment stock account to a client or clients as a separate trade at a price or at an average price which includes such trading member's profit;
<b>"product supplier"</b>	has the same meaning as that contained in section 1 of the FAIS Act;
<b>"professional client"</b>	in relation to a trading member, means – <ul style="list-style-type: none"> <li>(a) another authorised user;</li> <li>(b) a bank;</li> <li>(c) a long-term or short-term insurer registered as such under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or the Short-term Insurance Act, 1998 (Act No. 53 of 1998), respectively;</li> <li>(d) a person outside the Republic who –               <ul style="list-style-type: none"> <li>(i) as a regular feature of the person's business, renders a service similar to a "securities service" as defined in section 1 of the Act or conducts the business of a bank or a business referred to in paragraph (c); and</li> <li>(ii) is registered, licensed, recognised, approved or otherwise authorised to render the service or conduct the business referred to in paragraph (d)(i) by a foreign regulator with functions similar to those of the</li> </ul> </li> </ul>

"option contract" amended with effect from 1 August 2005

"other investments" deleted with effect from 1 August 2005

"own funds" amended with effect from 1 August 2005

"physically settled futures contract" amended with effect from 1 August 2005

"position risk requirement" amended with effect from 1 August 2005

"professional client" introduced with effect from 1 August 2005

Registrar, the Registrar of Banks or the Registrar of Long-term or Short-term Insurance;

- (e) any person who is mandated to manage assets and who has confirmed to the satisfaction of the member that the market value of the assets managed by the person will exceed R1 billion at all times during the rendering of securities services to the person;
- (f) any other client, who has confirmed to the satisfaction of the member that the person will have assets of which the net asset value will exceed R20 million at all times during the rendering of securities services to the person, but who is not –
  - (iii) a natural person;
  - (iv) a pension fund organisation as defined in section 1 (1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);
  - (v) a friendly society referred to in the Friendly Societies Act, 1956 (Act No. 25 of 1956);
  - (vi) a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act No.131 of 1998).

**"proprietary position"**

means a position registered by SAFCOM in the name of a trading member for the trading member's own account;

**"put option contract"**

means a contract, in terms of which the holder of a long position in the put option contract has obtained the right to sell, and the holder of a short position shall, if the option is exercised, buy, the underlying instrument of the option contract to or from SAFCOM on or before the future date at the strike price in accordance with these rules and the contract specification of the option contract;

**"registered officer"**

means a compliance officer, settlement officer, alternate settlement officer or a dealer registered by the JSE as such in the name of the member;

**"regulation"**

means any regulation which may be made by the Minister under section 113 of the Act;

**"related IRC securities"**

means those IRC securities which the JSE decides have such characteristics in common that the risk of loss in one of the IRC securities may be reduced by an off-setting position in any of the other or a combination of the other IRC securities in the group of related IRC securities;

**"reported transaction"**

means a value eligible transaction in IRC securities or such other eligible transactions that the JSE may determine, as set out in rule 7.120.1, which may be conducted off the central order book of the trading system but must be reported through the trading system;

**"Republic"**

means the Republic of South Africa;

**"repurchase transaction"**

means a sale and repurchase transaction between two parties in terms

"registered officer" amended with effect from 9 May 2011

"regulation" amended with effect from 1 August 2005

"Republic" introduced with effect from 1 August 2005

"repurchase transaction" introduced with effect from 9 May 2011

	of which one party agrees to buy bonds from the other party while simultaneously agreeing to sell the bonds back on an agreed future date at an agreed price;
<b>"resident"</b>	means a natural person who is resident in the common monetary area or a legal entity registered in such area, and includes a partnership or an external company;
<b>"resident client"</b>	means a resident who has concluded a client agreement with a trading member, and who has been registered by SAFCOM as a resident client of the trading member;
<b>"retained margin"</b>	means the margin paid by a client to a trading member for an intended transaction or margin due to a client which the trading member has retained in anticipation of a transaction as contemplated in rule 8.50.6;
<b>"return date"</b>	means the date on which a trading member or client returns equivalent bonds or the loaned funds to the Settlement Authority, as the context may require;
<b>"risk disclosure statement"</b>	means the risk disclosure statement annexed to the client agreement;
<b>"rolling settlement"</b>	means a settlement environment where transactions become due to be settled a prescribed number of days after the trade date;
<b>"rolling of settlement"</b>	means the process initiated by the Settlement Authority in terms of which the settlement date of a transaction in bonds is postponed to a later date as determined by the Settlement Authority;
<b>"SAFCOM"</b>	means SAFEX Clearing Company (Proprietary) Limited, licensed by the Registrar as a clearing house in terms of the Act;
<b>"SAFCOM agreement"</b>	means a written agreement entered into between a clearing member and SAFCOM in terms of which the clearing member guarantees to SAFCOM all of the obligations arising out of its proprietary positions, the positions of its clients, the proprietary position of the trading members with which it has entered into a clearing agreement and the positions of the clients of such trading members;
<b>"safeguard"</b>	means, in relation to JSE authorised investments, – (a) the holding of such investments in safe custody by a member on behalf of a client; or (b) being accountable as a member to a client for such investments held by another financial services provider;
<b>"scrip root"</b>	means the source of bonds delivered by the ultimate seller of the bonds;
<b>"securities"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"securities services"</b>	has the same meaning as that contained in section 1 of the Act;

"resolution" deleted with effect from 1 August 2005

"rolling of settlement" introduced with effect from 9 May 2011

"SAFCOM" amended with effect from 1 August 2005

"safeguard" amended with effect from 1 August 2005

"securities" amended with effect from 1 August 2005

<b>"sell"</b>	means, in relation to IRC securities, to enter into either – <ul style="list-style-type: none"><li>(a) a sale of a futures contract in terms of which the seller is obliged to make delivery of the underlying instrument at the agreed price on the future date; or to pay an amount of money if, on the future date the price or value of the underlying instrument is greater than the agreed price; or</li><li>(b) a sale of an option contract in terms of which the seller grants the right to the buyer to buy or sell the underlying instrument of the option contract at the agreed price on or before the future date; or</li><li>(c) a sale of bonds in terms of which the seller is obliged to make delivery of the bonds and receive payment for such bonds at the agreed price on the settlement date;</li></ul>
<b>"Settlement Authority"</b>	means the person or persons appointed by the JSE to manage the settlement of transactions in bonds effected through the trading system in terms of these rules and directives and the Strate rules;
<b>"settlement commitment"</b>	means an electronic undertaking by a CSDP to settle a transaction in bonds for a trading member or a client;
<b>"settlement date"</b>	means in respect of a transaction in bonds, the date on which the transaction is due to be settled;
<b>"settlement margin"</b>	means the amount of money determined by SAFCOM on the basis specified by the JSE and held in respect of bonds positions of a trading member or a client, for the purpose of providing for compensation payable in respect of a potential failed trade;
<b>"settlement officer"</b>	means the person appointed by each member in terms of rule 3.120.3;
<b>"short position"</b>	means a number of IRC securities registered by SAFCOM in the name of a trading member or client in terms of which – <ul style="list-style-type: none"><li>(a) in relation to futures contracts, the trading member or a client is obliged to make delivery of the underlying instrument on a future date at the agreed price or to pay an amount of money on a future date if the price or value of the underlying instrument on that future date is greater than the agreed price; or</li><li>(b) in relation to option contracts, the trading member or client has granted the right to another person to buy or sell the underlying instrument of the option contract before or on the future date at the agreed price; or</li><li>(c) in relation to bonds, the trading member or client is obliged to make delivery of, and receive payment for, the bonds on the settlement date at the agreed price;</li></ul>
<b>"Strate"</b>	means Strate Limited, a public company licensed as a central securities depository in terms of the Act;

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"securities services" introduced with effect from 1 August 2005

"Securities Services Act" deleted with effect from 1 August 2005

"settlement agent" deleted and replaced by CSDP with effect from 9 May 2011

"STRATE" amended with effect from 1 August 2005

<b>"Strate rules"</b>	means the rules made, and directives issued by Strate, in terms of the Act;
<b>"strike price"</b>	means the price or yield at which the person in whose name a long position in an option contract is registered has the right to buy or sell the underlying instrument of the option contract;
<b>"SWIFT"</b>	means the Society for Worldwide Interbank Financial Telecommunication;
<b>"SWIFT emigrant's blocked account notification"</b>	means the notification, utilising the SWIFT network, to the authorised bank, instructing the authorised bank to make or accept payment of margin to or from an emigrant's blocked account in the amount specified in the notification;
<b>"SWIFT non-resident account notification"</b>	means the notification, utilising the SWIFT network to the authorised bank, instructing the authorised bank to receive payment of interest into a non-resident account in the amount specified in the notification;
<b>"the Registrar"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"the Registrar of Banks"</b>	means the Registrar of Banks designated under section 4 of the Banks Act, 1990 (Act No. 94 of 1990);
<b>"these rules"</b>	means the JSE interest rate and currency rules issued in pursuance of section 18 of the Act, including any alteration, addition or amendment thereof;
<b>"top-up margin"</b>	means the amount of margin payable as a result of an adverse mark-to-market of unsettled positions in bonds executed on the central order book or reported to the trading system and accepted by the respective clearing members as a reported transaction for risk management purposes;
<b>"trading member"</b>	means a sub-category of authorised user of the JSE, authorised to trade in IRC securities and to provide services in respect of the buying and selling of IRC securities in terms of these rules;
<b>"trading system"</b>	means the computer system or systems and associated network or networks operated or used by the JSE for the purpose of providing a market for the trading of IRC securities;
<b>"transaction"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"trustees"</b>	means the trustees of one or both of the Compensation Funds, as the

"STRATE rules" amended with effect from 1 August 2005

"STRATE settled bonds" deleted with effect from 9 May 2011

"SWIFT emigrant's blocked account notification" amended with effect from 9 May 2011

"SWIFT non-resident account notification" amended with effect from 9 May 2011

"the Registrar" amended with effect from 1 August 2005

"these rules" introduced with effect from 9 May 2011

"top-up margin" amended with effect from 9 May 2011

"trading member" amended with effect from 1 August 2005

"trading member" amended with effect from 9 May 2011

"trading system" introduced with effect from 9 May 2011

"transaction" amended with effect from 1 August 2005

	context may require;
<b>"uncertificated securities "</b>	has the same meaning as that contained in section 29 of the Act;
<b>"underlying instrument"</b>	means the corporeal or incorporeal thing, asset, index, currency, rate of interest or any other factor which is the subject matter of a futures contract or an option contract, or the futures contract that is the subject matter of an option contract;
<b>"unsolicited call"</b>	means any first communication made to a person by a member or an employee of a member, without an express or tacit invitation from such person;
<b>"variation margin"</b>	means the amount of margin payable as a result of the marking-to-market of positions in futures and option contracts;
<b>"Yield-X"</b>	means a market in interest rate and currency securities operated by the JSE prior to the effective date of the integration of the JSE's interest rate and currency markets ;

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"trustees" introduced with effect from 1 August 2005  
 "trustees" amended with effect from 9 May 2011  
 "uncertificated financial instruments" deleted with effect from 1 August 2005  
 "uncertificated securities" introduced with effect from 1 August 2005  
 "unsolicited call" introduced with effect from 1 August 2005  
 "Yield-X rules" deleted with effect from 9 May 2011  
 "Yield-X lending and borrowing system" deleted with effect from 9 May 2011  
 "Yield-X securities" deleted with effect from 9 May 2011  
 "Yield-X trading system" deleted with effect from 9 May 2011  
 "Yield-X" amended with effect from 9 May 2011



**2.20 Interpretation**

2.20.1 In these rules, unless otherwise clearly indicated by, or inconsistent with the context –

2.20.1.1 a reference to one gender includes a reference to all other genders;

2.20.1.2 the singular includes the plural, and *vice versa*;

2.20.1.3 all terms defined in the Act bear the same meaning as are assigned to them in the Act.

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2.20.2 deleted with effect from 1 August 2005

**SECTION**

**3**

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**Section 3: Membership**

**Scope of section**

*General*

- 3.10 Membership of the JSE
- 3.20 Categories of membership
- 3.30 General requirements
- 3.35 Specific requirements applicable to inter-dealer brokers
- 3.40 Capital adequacy requirements
- 3.50 Applications for membership
- 3.60 Reserved
- 3.70 Voluntary changes to, or termination of, membership
- 3.80 Involuntary termination of membership
- 3.90 Duty to furnish information
- 3.100 Fees, levies and charges
- 3.110 Notices

*Registered officers*

- 3.120 Member's obligation to ensure registration of officers
- 3.130 Registration and termination of officers by the JSE
- 3.140 Member remains responsible
- 3.150 Reserved
- 3.160 Lien over proceeds of sale of JSE shares

**Membership****3.10 Membership of the JSE**

- 3.10.1 In order to qualify to be a member, an applicant must comply with the requirements set out in this rule and such other requirements as the JSE may determine.
- 3.10.2 The JSE shall keep a register of members and shall in such register indicate in which category or sub-category of authorised user the member has been authorised to operate.

**3.20 Categories of membership**

- 3.20.1 An IRC member is a category of authorised user of the JSE and may be authorised by the JSE to provide securities services in one of two sub-categories, either as a clearing member or a trading member, or in both.
- 3.20.2 A trading member may only enter into a clearing agreement with one clearing member to perform the clearing and settlement of the transactions of that trading member.
- 3.20.3 A trading member –
  - 3.20.3.1 may be a clearing member; and
  - 3.20.3.2 may trade for and on behalf of clients.
- 3.20.4 An IDB-
  - 3.20.4.1 is a sub-category of trading member that is subject to the rules pertaining to IDBs; and
  - 3.20.4.2 may not be a clearing member.
- 3.20.5 In authorising an IRC member to provide securities services, the JSE may impose restrictions or conditions on the IRC member in relation to the particular securities services that the IRC member is authorised to provide or the particular IRC securities for which the IRC member is authorised to provide securities services, or both.

**3.30 General requirements**

- 3.30.1 A member must, in the opinion of the JSE and at all times, be managed and controlled by persons with a good reputation and high business standing.
- 3.30.2 Officers of members shall, subject to any waiver by the JSE –
  - 3.30.2.1 be of full legal capacity;
  - 3.30.2.2 comply with such criteria of good character and high business integrity as the JSE deems fit;
  - 3.30.2.3 not be an unrehabilitated insolvent; and
  - 3.30.2.4 not in the period preceding the application as the JSE in its discretion deems fit, have been –

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3.10.1 amended with effect from 1 July 2005  
3.10.2 amended with effect from 1 July 2005  
3.10.2 amended with effect from 1 August 2005  
3.20 amended with effect from 1 August 2005  
3.20.1 amended with effect from 9 May 2011  
3.20.2 amended with effect from 1 August 2005  
3.20.3 amended with effect from 1 August 2005  
3.20.4 deleted with effect from 1 August 2005  
3.20.3.2 amended with effect from 9 May 2011  
3.20.4 introduced with effect from 9 May 2011  
3.20.5 introduced with effect from 9 May 2011  
3.30.2.2 amended with effect from 1 August 2005

- 3.30.2.4.1 convicted of a criminal offence, whether in the Republic or elsewhere;
  - 3.30.2.4.2 the subject of a formal investigation by any regulatory or government agency;
  - 3.30.2.4.3 expelled, whether as a member or otherwise, from any exchange or external exchange;
  - 3.30.2.4.4 employed by or associated with a member of any exchange or external exchange, which member was expelled from that exchange and where the person or officer has, in the opinion of the JSE, contributed to the circumstances leading to the expulsion;
  - 3.30.2.4.5 declared a defaulting member of the JSE or any other exchange or external exchange;
  - 3.30.2.4.6 refused entry to or expelled from any profession or vocation or been dismissed or requested to resign from any office or employment, or from any fiduciary office or position of trust; or
  - 3.30.2.4.7 refused approval to operate as a financial services provider in terms of the FAIS Act or any other act.
- 3.30.3 Any waiver by the JSE in terms of rule 3.30.2 may be for a limited period and may be withdrawn at any time: Provided the JSE gives the member one calendar month's notice of its intention to withdraw such waiver.
- 3.30.4 All members shall at all times have and maintain the necessary administrative and other systems, facilities, resources and expertise to ensure that –
- 3.30.4.1 the management of their own and/or clients' funds is adequate and in accordance with the rules relating to the management or separation of funds;
  - 3.30.4.2 an accurate record of their own and/or clients' positions is kept at all times;
  - 3.30.4.3 where a trading member transacts for or on behalf of clients, their clients' transactions, cash balances and any other information relating to their positions are timeously reported to the clients; and
  - 3.30.4.4 it complies with all the financial resources requirements pertaining to the relevant category of authorised user as prescribed in these rules.
- 3.30.5 A trading member that intends to enter into transactions which will be cleared by SAFCOM in terms of section 8 of these rules must have appointed a clearing member or have been authorised as a clearing member.
- 3.30.6 A trading member that intends to enter into transactions in bonds on the trading system must have appointed a CSDP.

### 3.35 Specific requirements applicable to inter-dealer brokers

A trading member authorised to operate as an IDB in terms of these rules shall meet the following requirements in order to maintain its status as an IDB-

- 3.30.2.4.1 amended with effect from 1 August 2005
- 3.30.2.4.3 amended with effect from 1 August 2005
- 3.30.2.4.4 amended with effect from 1 August 2005
- 3.30.2.4.5 amended with effect from 1 August 2005
- 3.30.2.4.7 amended with effect from 1 August 2005
- 3.30.4.4 amended with effect from 1 August 2005
- 3.30.5 introduced with effect from 9 May 2011
- 3.30.6 introduced with effect from 9 May 2011
- 3.35 introduced with effect from 9 May 2011

- 3.35.1 its business activities in the JSE listed bonds must be limited to arranging transactions between two counterparties on a name give-up basis or trading with or on behalf of two other parties on a matched principal basis;
- 3.35.2 when transacting in bonds with or on behalf of other trading members or clients on a matched principal basis, it may not take a proprietary position against the other member or the client; and
- 3.35.3 it must, on request from any member with or on whose behalf it is going to trade in bonds as a matched principal, provide the list of clients who may be the opposite counterparties to such transactions.

#### 3.40 Capital adequacy requirements

- 3.40.1 Subject to rules 3.40.3, 3.40.4, 3.40.5 and 3.40.8, member shall at all times have own funds equal to the greater of –
  - 3.40.1.1 the initial capital referred to in rule 3.40.6 or 3.40.7 as the case may be; or
  - 3.40.1.2 thirteen weeks fixed operating costs; plus
  - 3.40.1.3 the position risk requirement; and
  - 3.40.1.4 the counterparty risk requirement; and
  - 3.40.1.5 the large exposure risk requirement; and
  - 3.40.1.6 the foreign exchange risk requirement;
  - such that the following formula is satisfied –
  - 3.40.1.7  $ONF \geq CAR$   
and  
 $CAR = (\text{greater of ICR or } AOC/4) + PRR + CRR + FXR + LPR$   
 where  
 $ONF = \text{Own funds}$   
 $CAR = \text{Capital adequacy requirement}$   
 $ICR = \text{Initial capital requirement}$   
 $AOC = \text{Annual operating costs}$   
 $PRR = \text{Position risk requirement}$   
 $CRR = \text{Counterparty risk requirement}$   
 $FXR = \text{Foreign exchange risk requirement}$   
 $LPR = \text{Large position risk requirement}$
- 3.40.2 The following provisions shall apply to a member that is an external company, other than a branch of a foreign bank –
  - 3.40.2.1 the own funds of the local branch of the external company shall at all times be equal to or greater than the amount provided for in rule 3.40.1.2, 3.40.6, 3.40.7 or 3.40.8, as the case may be;
  - 3.40.2.2 the foreign parent of the local branch of the external company shall in writing confirm to the JSE that it is required to comply with capital adequacy requirements similar to

3.40.1 amended with effect from 26 April 2007  
 3.40.1.1 amended with effect from 26 April 2007  
 3.40.2 amended with effect from 26 April 2007  
 3.40.2.1 amended with effect from 26 April 2007  
 3.40.2.2 amended with effect from 26 April 2007

- those in the Republic, and that they are reporting such as required to an appropriate foreign regulator; and
- 3.40.2.3 the thirteen weeks fixed operating costs requirement in rule 3.40.1.2 shall relate to the operating costs of the local branch of the external company in the Republic.
- 3.40.3 A trading member that is a branch of a foreign bank, and is exempt from the requirement to submit monthly capital adequacy returns to the Director: Surveillance, in terms of rule 3.90.5, is not required to comply with the requirements of rule 3.40.1 but is instead required to comply with the capital adequacy requirements as prescribed by the Banks Act, 1990 (Act No. 94 of 1990) and the regulations made under that Act.
- 3.40.4 A trading member that does not trade in bonds and that trades in derivative instruments listed on the JSE solely for its own account, and is exempt from the requirement to submit monthly capital adequacy returns to the Director: Surveillance, in terms of rule 3.90.5, is not required to comply with the requirements of rule 3.40.1 but shall ensure that its assets (excluding goodwill and other intangible assets) exceed its liabilities (excluding loans validly subordinated in favour of all other creditors).
- 3.40.5 A trading member that is an authorised user of another exchange and is exempt from the requirement to submit monthly capital adequacy returns to the Director: Surveillance, in terms of rule 3.90.6, is not required to comply with the requirements of rule 3.40.1 but shall comply with the capital adequacy requirements as prescribed by such other exchange.
- 3.40.6 A trading member who trades on behalf of clients but does not receive a client's margins or hold the client's margins or who does not receive any other assets of a client with respect to the client's buying and selling of JSE authorised investments, shall have an initial capital of at least R200 000 or such other minimum amount that the JSE may decide.
- 3.40.7 A trading member who receives a client's margins or holds the clients' margins, or that receives any other assets of a client with respect to the client's buying and selling of JSE authorised investments, shall have an initial capital of at least R400 000, or such other minimum amount that the JSE may decide.
- 3.40.8 A clearing member shall have own funds of R200 000 000, or such other sum as the JSE may determine: Provided that the JSE may, at its discretion, impose additional suretyship, guarantee or other requirement on a clearing member if –
- 3.40.8.1 the sum of the initial margin or settlement margin with respect to the positions of the clearing member, its clients, the trading members with which the clearing member has entered into clearing agreements and the clients of such trading members, reaches the limit as contemplated in rule 10.10.1; or
- 3.40.8.2 the own funds of the clearing member as specified in this rule 3.40.8 have decreased to the limit referred to in rule 10.10.1.
- 3.40.9 A clearing member shall provide, maintain and keep in force a suretyship in favour of SAFCOM by a financial or other institution acceptable to the JSE, in such form and upon such terms and conditions as the JSE may determine, for the due performance of all or any of its obligations to SAFCOM in terms of these rules, jointly and severally, for an amount of not less than R10 000 000 or such other sum as the JSE may determine.

3.40.2.3 amended with effect from 26 April 2007

3.40.2.4 deleted with effect from 26 April 2007

3.40.3 replaced with effect from 26 April 2007

3.40.4 introduced with effect from 26 April 2007 and amended with effect from 9 May 2011

3.40.5 introduced with effect from 26 April 2007

3.40.5 amended with effect from 1 August 2005, renumbered 3.40.7 and amended with effect from 26 April 2007

3.40.6 renumbered 3.40.8 with effect from 26 April 2007

3.40.6.1 renumbered 3.40.8.1 with effect from 26 April 2007

3.40.6.2 renumbered 3.40.8.2 and amended with effect from 26 April 2007

3.40.7 renumbered 3.40.9 with effect from 26 April 2007

3.40.10 The JSE may suspend a member if there is a deficiency in the capital adequacy of the member.

### 3.50 Application for membership

3.50.1 An application for membership shall be made to the JSE in the manner and in the form prescribed by the JSE and shall indicate in what category or categories of membership the applicant wishes to apply. The application must be accompanied by any application fee prescribed by the JSE.

3.50.2 Applicants shall include a signed copy of –

3.50.2.1 the memorandum and articles of association of the company;

3.50.2.2 a copy of any agreement entered into or proposed to be entered into between the shareholders of the company relative to the shares thereof; and

3.50.2.3 any other information as the JSE may require.

The provisions of this rule shall apply *mutatis mutandis* to the amendment or substitution of the aforementioned documents.

3.50.3 The applicant shall include with its application, the following information:

3.50.3.1 the applications for registration as registered officers of the applicant;

3.50.3.2 the most recent financial statements of the applicant as well as a completed capital adequacy return;

3.50.3.3 the details of the applicant's auditor; and

3.50.3.4 a completed clearing agreement, in the case of a trading member application where the applicant intends to execute transactions in IRC securities on the central order book or execute reported transactions that will require risk management by a clearing member, or a completed SAFCOM agreement, in the case of a clearing member application.

3.50.4 An external company shall, when submitting its application for membership, submit proof of compliance with the requirements of Section 322 of the Companies Act, by furnishing the JSE with the certificate of registration as provided for in section 322(2) of the Companies Act.

3.50.5 Notwithstanding any provision in these rules and directives, the JSE may require the applicant to furnish further information, and may institute any investigation that it deems necessary, to verify information submitted by the applicant in support of an application. Such investigation may include without limitation, a request for the applicant or one or more representatives of the applicant, to be interviewed by the Executive Officer or any person appointed by the JSE for that purpose.

3.50.6 The JSE shall have the sole discretion to accept or reject the application, or to accept an application subject to certain conditions to be fulfilled as determined by the JSE: Provided that the JSE shall reach a decision within 60 (sixty) days of the first meeting at which the application was considered.

3.50.7 The JSE shall notify the applicant in writing of its decision and of any restrictions that will be applicable to its business activities as an IRC member, and any conditions that are required to be fulfilled.

3.50.8 Any person aggrieved by the decision of the JSE to reject an application, shall have a right of appeal to the board of appeal in terms of the Act.

3.40.8 renumbered 3.40.10 and amended with effect from 26 April 2007

3.50.1 amended with effect from 1 August 2005 and with effect from 9 May 2011

3.50.1 amended with effect from 9 May 2011

3.50.3.4 amended with effect from 9 May 2011

3.50.4 amended with effect from 1 August 2005

3.50.7 amended with effect from 9 May 2011

3.50.8 amended with effect from 1 August 2005

- 3.50.9 If an application for membership has been refused, and the applicant did not exercise its right of appeal or if the appeal is unsuccessful, such applicant may not re-apply for membership for a period of 1 (one) year from the date of refusal, or such shorter period as the JSE may determine.
- 3.50.10 The JSE may refuse any applicant approval of membership, if the JSE deems the name under which the applicant proposes to operate, to be inappropriate or unacceptable for any reason.
- 3.50.11 The JSE shall notify all members of the admission of a new member.
- 3.50.12 Upon approval of the application of the member, such member shall obtain membership and the status in such sub-category or categories of authorised user as determined by the JSE.

### 3.60 Reserved

### 3.70 Voluntary changes to, or termination of, membership

- 3.70.1 A member may apply to terminate its membership by giving 30 days written notice to the JSE.
- 3.70.2 The JSE may accept the termination unconditionally or subject to such conditions as it may deem fit, or may refuse to accept the termination until it is satisfied that all outstanding contractual or other obligations of the member have been met.
- 3.70.3 If a member wishes to change its authorised user status or wishes to obtain authorisation to operate in another sub-category of authorised user, the provisions of rule 3.50 shall apply *mutatis mutandis*.
- 3.70.4 A member undergoing any of the changes in name or corporate structure as set out below shall forthwith inform the JSE in writing of the change –
  - 3.70.4.1 in the case of a company changing its name, the notification shall be accompanied by the relevant certificate of name change;
  - 3.70.4.2 in the event that a trading member's business or infrastructure relating to trading in IRC securities, is transferred to another legal entity in any manner, including but not limited to a merger, take-over, transfer of business or corporate restructuring, the trading member shall inform the JSE of the change at least one month before it takes effect, and the notification shall be accompanied by such information as would be required in the case of a new application for membership: Provided that the JSE may, at its discretion, request full particulars regarding the change and the reasons therefore, and provided further that the JSE may determine that a new application for membership must be made.

The JSE shall notify members of the termination of or change in membership, and the termination shall become effective on the date and time of the notice, unless stated otherwise in the notice.

### 3.80 Involuntary termination of membership

- 3.80.1 Membership shall terminate when –
  - 3.80.1.1 a member is liquidated or placed under curatorship or judicial management, whether provisionally or finally;
  - 3.80.1.2 the member compromises or attempts to compromise with its creditors;
  - 3.80.1.3 the member fails to satisfy or to initiate steps to set aside a judgement, award or determination against it within the time periods provided for in the rules of the relevant body;

3.50.12 introduced with effect from 1 July 2005  
 3.50.12 amended with effect from 1 August 2005  
 3.60 deleted with effect from 1 July 2005  
 3.70.1 amended with effect from 1 August 2005  
 3.70.3 amended with effect from 1 August 2005  
 3.70.4.2 amended with effect from 1 August 2005



- 3.80.1.4 the disciplinary tribunal has decided in terms of rule 4.60 that membership should be terminated;
  - 3.80.1.5 the member defaults;
  - 3.80.1.6 Reserved;
  - 3.80.1.7 a trading member fails to enter into a clearing agreement with a clearing member within 30 days or such other period which the JSE may determine after the termination for whatever reason of its clearing agreement with a clearing member; or
  - 3.80.1.8 the controlling body has resolved to terminate the membership of the member after taking into account the member's representations in this regard.
- 3.80.2 The JSE shall publish the termination in a notice to members, and the termination shall become effective on the date and time of the notice, unless stated otherwise in the notice.

### 3.90 Duty to furnish information

- 3.90.1 A member shall forthwith advise the JSE in writing of –
- 3.90.1.1 the granting of an application for, or the revocation of, or the recognition under any statutory enactment of any registration, authorisation or licence which may bear upon or be associated with its business as a member of the JSE;
  - 3.90.1.2 conviction of the member or any of its officers of any offence under legislation relating to banking, or other financial services, companies, insolvency, insurance and pension and provident societies or of any offence involving fraud or dishonesty;
  - 3.90.1.3 any person becoming or ceasing to be a director of the member;
  - 3.90.1.4 any change in the name or address of any office of the member, and of any change in the member's telephone or facsimile numbers or electronic mailing addresses;
  - 3.90.1.5 any change in the particulars relating to an officer, and of the event that any officer is found guilty of any improper conduct by any licensed exchange, a previous or current employer, a professional association or a court of law; or
  - 3.90.1.6 the dismissal of an employee for committing or attempting to commit an act which is dishonest, fraudulent, dishonourable or disgraceful.
- 3.90.2 A member shall in addition inform the JSE in writing –
- 3.90.2.1 of any person holding, or having a beneficial interest in, 20% or more of any class of the share capital of a member and of any change in such holding;
  - 3.90.2.2 if it or any employee thereof holds, or has a beneficial interest in, any class of the share capital of a client that is a company or in the membership interest of a client that is a close corporation.
- 3.90.3 A member shall submit to the Director: Surveillance within three months after the end of its financial year, a copy of its audited annual financial statements, and the audit report prescribed by the Act, in respect of such period.
- 3.90.4 Subject to rules 3.90.5 and 3.90.6, a member shall submit the prescribed monthly capital adequacy return monthly to the Director: Surveillance within ten business days of the end of the month or within such other period that the JSE may require: Provided that the member shall at all times comply with the capital adequacy requirements referred to in these rules, and provided further that the JSE may suspend a member from trading, if the return is not submitted timeously.

3.80.1.6 deleted with effect from 1 July 2005

3.90.2.2 amended with effect from 1 August 2005

3.90.3 amended with effect from 26 April 2007

3.90.4 amended with effect from 26 April 2007

- 3.90.5 A member that–
- 3.90.5.1 is a bank;
  - 3.90.5.2 is a branch of a foreign bank;
  - 3.90.5.3 does not trade in bonds and that trades in derivative instruments listed on the JSE solely for its own account; or
  - 3.90.5.4 is a state owned entity,
- shall be exempt from the requirement to submit the monthly capital adequacy return referred to in rule 3.90.4, provided the member has advised the JSE, in writing, that it meets the requirements of rule 3.90.5.1, 3.90.5.2, 3.90.5.3 or 3.90.5.4.
- 3.90.6 A member that is an authorised user of another exchange may apply in writing to the Director: Surveillance for exemption from the requirement to submit the monthly capital adequacy return referred to in rule 3.90.4 provided the capital requirements of the other exchange are, in the opinion of the Director: Surveillance, similar to those imposed by the JSE and the member is required to submit a return to the other exchange.
- 3.90.7 In considering an application for an exemption in terms of rule 3.90.6, the Director: Surveillance will take into account the relative activity undertaken by the member on the JSE and the other exchange in order to determine whether it is preferable for the other exchange to act as the lead regulator in relation to the supervision of compliance with capital adequacy requirements by the member.
- 3.90.8 If a member is granted an exemption in terms of rule 3.90.6, the member may be required at any time to submit, to the Director: Surveillance, a copy of any capital adequacy return submitted to the other exchange.
- 3.90.9 Despite the fact that a member may be exempt from submitting monthly capital adequacy returns to the Director: Surveillance, in terms of rules 3.90.5 or 3.90.6, the member is required to advise the Director: Surveillance, in writing, as soon as it becomes aware that it has failed to meet the relevant capital adequacy requirements set out in rules 3.40.3 to 3.40.5.

### 3.100 Fees, levies and charges

- 3.100.1 A member which uses the services of the JSE shall pay to the JSE such subscription fees and charges as may be prescribed by the JSE.
- 3.100.2 The JSE may, in addition to the subscriptions, fees and charges prescribed by these rules, impose upon every member a levy which shall be paid to the JSE or any of its Compensation Funds on such conditions as the JSE may decide. Such levy may be recovered from the clients of the member.
- 3.100.3 Any subscription, fee, charge, contribution or levy to be paid or which may be imposed in terms of these rules, shall be paid as determined by the JSE and any member failing to make such payment when due shall, unless the same be paid within one month after written demand has been made by the JSE, cease to be a member.

### 3.110 Notices

- 3.110.1 Notice to the JSE by members

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3.90.5 replaced with effect from 26 April 2007  
 3.90.5.1 to 3.90.5.3 introduced with effect from 26 April 2007  
 3.90.5.3 amended with effect from 9 May 2011  
 3.90.5.4 introduced with effect from 9 May 2011  
 3.90.5.4 amended with effect from 9 May 2011  
 3.90.6 introduced with effect from 26 April 2007  
 3.90.7 introduced with effect from 26 April 2007  
 3.90.8 introduced with effect from 26 April 2007  
 3.90.9 introduced with effect from 26 April 2007  
 3.100.2 amended with effect from 9 May 2011

Every member shall notify the JSE of a business and postal address, and a secured electronic delivery mechanism address at which that member shall accept the delivery of all notices issued by the JSE in terms of these rules.

**3.110.2 Notice to members**

- 3.110.2.1 Any notice given by the JSE in terms of these rules and directives shall be in writing.
- 3.110.2.2 A notice may be delivered by means of an electronic delivery mechanism or by hand or by registered post.
- 3.110.2.3 Any notice delivered by the JSE by hand before 16h00 on a business day at the physical address of the member, shall be deemed, unless the contrary is proved, to have been received on the date of delivery.
- 3.110.2.4 Any notice transmitted by an electronic delivery mechanism before 16h00 on a business day, shall be deemed, unless the contrary is proved, to have been received on the date of the transmission.
- 3.110.2.5 Any notice delivered by the JSE by registered post shall be deemed, unless the contrary is proved, to have been received within seven business days after being dispatched.

***Registered officers***

**3.120 Member's obligation to ensure registration of officers**

- 3.120.1 Each member must ensure the registration by the JSE of a compliance officer, a settlement officer and an alternate settlement officer.
- 3.120.2 A compliance officer shall –
  - 3.120.2.1 without relieving the member from its responsibility to comply with the provisions of the Act and these rules, be responsible for ensuring compliance by that member with the provisions of the Act and these rules;
  - 3.120.2.2 have obtained such qualification as may be required by the JSE;
  - 3.120.2.3 in the event of any breach of these rules or problem or query arising in respect of any transaction or alleged transaction or position of the member or any of its clients or any trading member with which the clearing member has entered into a clearing agreement in terms of these rules, immediately on the request of the JSE or SAFCOM or its clearing member, take such steps as may be necessary to rectify the breach or to eliminate the problem or to satisfy the query;
  - 3.120.2.4 receive all notices to the member from the JSE or SAFCOM or the clearing member and be responsible to ensure that all such notices are complied with; and
  - 3.120.2.5 ensure compliance with all prescribed agreements set out in the directives to these rules.
- 3.120.3 A settlement officer must –
  - 3.120.3.1 have obtained such qualification as may be required by the JSE;
  - 3.120.3.2 deal with all queries by the JSE in relation to settlement;
  - 3.120.3.3 ensure that all transactions are settled in terms of these rules and directives;
  - 3.120.3.4 advise the JSE of any issue that may potentially impact on the settlement of a transaction; and
  - 3.120.3.5 cooperate with the Settlement Authority to ensure the efficient and timeous settlement of all transactions.
- 3.120.4 An alternate settlement officer must –

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3.120.1 amended with effect from 1 August 2005 and with effect from 9 May 2011

- 3.120.4.1 have obtained such qualification as may be required by the JSE;
  - 3.120.4.2 in the absence of the settlement officer deal with all queries by the JSE in relation to settlement;
  - 3.120.4.3 in the absence of the settlement officer ensure that all transactions are settled in terms of these rules and directives;
  - 3.120.4.4 in the absence of the settlement officer advise the JSE of any issue that may potentially impact on the settlement of a transaction; and
  - 3.120.4.5 in the absence of the settlement officer cooperate with the Settlement Authority to ensure the efficient and timeous settlement of all transactions.
- 3.120.5 A member shall not carry on business for more than two months in any continuous period of twelve months unless such member has registered a compliance officer, a settlement officer and an alternate settlement officer in terms of rule 3.120.1: Provided that in the absence of a duly appointed compliance or settlement officer or alternate settlement officer, or where the post has become vacant, a senior director shall temporarily assume the responsibility of the compliance or settlement or alternate settlement officer as referred to in rule 3.120.2, rule 3.120.3 and rule 3.120.4 respectively, for no longer than 2 months.
- 3.120.6 A trading member shall ensure the registration by the JSE of dealers who shall be the only persons entitled to trade for a member's own account and for and on behalf of clients and who shall have obtained such qualification that may be required by the JSE. A trading member may not trade without having at least one dealer present at the trading member's place of business unless the JSE has in writing granted temporary registration to a person nominated in writing by the trading member to trade for a period not exceeding 15 business days in the absence of such dealer. The JSE shall publish the name of such nominee in a notice to members.

### **3.130 Registration of officers by the JSE**

- 3.130.1 An application for the first registration as a registered officer shall be made to the JSE in the manner and on the form prescribed by the JSE.
- 3.130.2 Reserved .
- 3.130.3 The JSE Executive shall consider the application referred to in rule 3.130.1 and either accept or reject the application.
- 3.130.4 An application to change the registration of a registered officer from one member to another or from one office to another shall be made in writing to the JSE by the member intending to register the officer and the JSE Executive shall consider the application and either accept or reject it: Provided that, if aggrieved by the decision of the JSE Executive, the member concerned shall have the right of appeal to the board of appeal.
- 3.130.5 The JSE may, in its discretion, for a period not exceeding 90 days, grant the temporary registration of a registered officer pending the attainment by him of the qualifications required for the office in question.
- 3.130.6 A member shall notify the JSE in writing of its decision to terminate the registration of a registered officer in its name, in which event the JSE may request full details of the circumstances of the termination.
- 3.130.7 The registration, whether permanent or temporary, or termination of the registration of a registered officer in the name of a particular member in a particular office shall become effective on the date

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3.120.4 introduced with effect from 9 May 2011

3.120.4 renumbered 3.120.5 with effect from 9 May 2011

3.120.5 renumbered 3.120.6 with effect from 9 May 2011

3.120.6 deleted with effect from 1 August 2005

3.130.2 deleted with effect from 9 May 2011

3.130.3 amended with effect from 9 May 2011

3.130.4 amended with effect from 1 August 2005 and with effect from 9 May 2011

stipulated in the written notification to the member by the JSE, confirming the registration or termination of registration of the registered officer.

**3.140 Member remains responsible**

The appointment or registration of any registered officer referred to in rules 3.120 and 3.130 shall not in any way relieve a member from any of its duties and responsibilities in terms of the Act and these rules, and the member's liability to fulfil those duties and responsibilities shall remain a principal liability and shall not be accessory or subordinate to the liabilities of such officer.

**3.150 Reserved**

**3.160 Reserved**

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3.130.7 amended with effect from 9 May 2011  
3.150 deleted with effect from 1 August 2005  
3.160 deleted with effect from 9 May 2011

**SECTION**

**4**

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**Section 4: Disciplinary Matters**

**Scope of section**

- 4.10 Surveillance and investigation by the JSE's Surveillance Department
- 4.15 Reporting and assistance by the JSE Surveillance Department - Financial Intelligence Centre Act
- 4.20 Use of information obtained by the JSE's Surveillance Department
- 4.30 Improper conduct
- 4.40 Disciplinary procedures
- 4.50 Procedure and evidence
- 4.60 Penalties
- 4.70 Urgent issues
- 4.80 Open transactions and positions
- 4.90 JSE's powers of publication

#### 4.10 Surveillance and investigation by the JSE's Surveillance Department

##### 4.10.1 Surveillance

The JSE's Surveillance Department may set up and maintain systems for-

- 4.10.1.1 monitoring compliance by members with the Act, the rules and directives and any arrangements made with SAFCOM for the provision of services and facilities;
- 4.10.1.2 the surveillance of any matter relevant for the objectives of the Act and these rules and directives; and
- 4.10.1.3 supervising compliance by the interest rate members with the Financial Intelligence Centre Act, 2001 (Act No.38 of 2001).

##### 4.10.2 Investigation

The Director: Surveillance, and any other person designated by him, may –

- 4.10.2.1 investigate any JSE related activities of any person who at the relevant time was a director, employee or officer of a member;
- 4.10.2.2 investigate whether that member or any of its employees complies with the Act, these rules, directives and the Financial Intelligence Centre Act;
- 4.10.2.3 investigate whether the trading member is trading in such a manner that there is a danger that such trading member may not be able to meet its commitments to clients, other members or SAFCOM;
- 4.10.2.4 investigate whether a member is conducting its business in a manner which could be detrimental to the interest, good name or welfare of the JSE or its members; and
- 4.10.2.5 require any person who is subject to the jurisdiction of the JSE and who is believed to be able to furnish any information on the subject of any investigation or to have in his or her possession or under his or her control any book, document, tape or electronic record or other object which has a bearing on the subject of the investigation, to produce such book, document, tape or electronic record or other object or to appear at a time and place specified, to be questioned by the Director: Surveillance, to furnish such information or to produce such book, document, tape, electronic record or other object: Provided that the subject of the investigation has first been put to such person. Such person may, if he or she is not an executive director of the member, request to be assisted by an executive director of the member by which the person is employed.

- 4.10.3 The Director: Surveillance may delegate the power granted to him by rule 4.10.2 to any member of his staff.

##### 4.10.4 Referral to another authority

If the JSE's Surveillance Department become aware of any possible contravention of law by a person over whom the JSE does not have jurisdiction, the JSE's Surveillance Department may refer such matter to the appropriate authority, whether outside or within the Republic.

#### 4.15 Reporting and assistance by the JSE Surveillance Department - Financial Intelligence Centre Act

The Director: Surveillance will report to the Registrar any non-compliance by a member or its employees with the duties imposed on the member and its employees in terms of the Financial Intelligence Centre Act if the Director: Surveillance becomes aware of such non-compliance through the surveillance and investigation procedures undertaken in terms of rule 4.10. The JSE Surveillance Department will also assist the Registrar in any enforcement action that may be taken by the Registrar against a member or its employees in relation to non-compliance with the Financial Intelligence Centre Act.

4.10.1.2 amended with effect from 1 August 2005

4.10.2.2 amended with effect from 1 August 2005

**4.20 Use of information obtained by the JSE's Surveillance Department**

Any information, document, book, tape or electronic record or other object obtained by the JSE's Surveillance Department, whether by investigation or otherwise, may be used in evidence in any disciplinary proceedings contemplated in rule 4.40 and may be furnished by the JSE's Surveillance Department to any other body which may have jurisdiction over the matter under consideration, whether outside or within the Republic.

**4.30 Improper conduct**

The following acts and practices whether of commission or omission, on the part of any person who at the time of the alleged act or practice was a member, a director, employee or registered officer of a member shall constitute improper conduct: Provided that the acts and practices so specified are not intended to be a complete list of acts and practices which may constitute improper conduct –

- 4.30.1 committing or attempting to commit any act which is dishonest or fraudulent;
- 4.30.2 being a party to, or facilitating or conducting a transaction which is fictitious or has a dishonest or unlawful motive;
- 4.30.3 contravening, attempting to contravene, or failing to comply with any provision of the Act, a rule or a directive;
- 4.30.4 negligently or recklessly conducting the business or affairs of the member in such a way that actual or potential prejudice is, or may be, caused to the JSE, any other member, a client of a member or the general public. The failure by a member to introduce appropriate and reasonable safeguards or controls to avoid such prejudice may, depending on the circumstances, be either negligent or reckless;
- 4.30.5 committing or attempting to commit any act which is detrimental to the interest, good name or welfare of the JSE or its members;
- 4.30.6 knowingly obstructing the business of the JSE or its members;
- 4.30.7 failing, when requested, to assist the JSE Surveillance Department in the exercise of its duties (which shall include failure without sufficient cause to provide information in accordance with rule 4.10.2.5).

**4.40 Disciplinary procedures****4.40.1 Conclusion of investigation**

On conclusion of any investigation in terms of rule 4.10 and if, after having considered all the relevant information in his possession, the Director: Surveillance is of the opinion that there are grounds for an allegation of improper conduct, the Director: Surveillance may –

- 4.40.1.1 refer the matter for determination to a Disciplinary Committee; or
- 4.40.1.2 if he considers that the alleged conduct is so serious that it might warrant the imposition of a fine in excess of the amount referred to in rule 4.40.2.4 or suspension or termination of membership or employment with a member, prefer a formal charge against such person ("the respondent") setting out in a brief statement the facts constituting the alleged conduct. Such charge shall be referred to a disciplinary tribunal ("a Tribunal"), to be heard in terms of these rules. Such charge may further, in the discretion of the Director: Surveillance, make provision for an admission of guilt.

**4.40.2 Disciplinary Committee**

- 4.40.2.1 The Chairman of the JSE may appoint one or more Disciplinary Committees. Each Disciplinary Committee shall consist of three persons, as follows: any one of the Chairman of the JSE, Deputy Chairman of the JSE, Executive Officer or acting Executive Officer of the JSE, and at least one appropriate representative from each of

4.30 amended with effect from 9 May 2011

4.30.1 amended with effect from 1 August 2005

4.30.3 amended with effect from 1 August 2005

4.30.7 amended with effect from 1 August 2005



two members. The Chairman of the JSE, Deputy Chairman of the JSE, Executive Officer or acting Executive Officer who is a member of the Disciplinary Committee shall be the chairman. A Disciplinary Committee may co-opt additional members, when necessary and appropriate.

- 4.40.2.2 A Disciplinary Committee may, subject to rule 4.40.2.3 -
- 4.40.2.2.1 issue instructions to the person whose conduct is under consideration concerning action which must be taken, or not be taken, to remedy the matter referred to the Disciplinary Committee;
  - 4.40.2.2.2 warn, reprimand, censure or, subject to rule 4.40.2.4, impose a fine (with or without ordering that a contribution be made towards the JSE's costs) on any person who has, in the reasonable opinion of the Disciplinary Committee, been guilty of improper conduct;
  - 4.40.2.2.3 in relation to an officer or employee of a member, direct the member to conduct a disciplinary enquiry into the conduct of such person;
  - 4.40.2.2.4 direct a member to ensure that any sanction imposed on an officer or employee of that member is complied with by such officer or employee;
  - 4.40.2.2.5 direct a member to prevent or relieve an officer or employee of that member from carrying out any specified activity, function or duty for such reasonable period as the Disciplinary Committee deems appropriate; or
  - 4.40.2.2.6 if at any stage it determines that the matter referred to it is sufficiently serious to be heard by a Tribunal, stop the proceedings, and refer the matter to a Tribunal.
- 4.40.2.3 A Disciplinary Committee may not impose any penalty contemplated in rule 4.40.2 unless –
- 4.40.2.3.1 the alleged improper conduct has first been put to the person who is alleged to have committed it. If such person is a director, the alleged improper conduct shall be put to an executive director or otherwise to a duly authorised employee of the member; and
  - 4.40.2.3.2 such person has been given an opportunity (orally or in writing) of explaining his or her conduct after being warned that any explanation furnished pursuant to these rules may be used in evidence against him or her.
- 4.40.2.4 No fine imposed by a Disciplinary Committee may exceed R25 000 per contravention, or such other amount as the JSE may determine by directive. A Disciplinary Committee may direct that any action taken in terms of rule 4.40.2 be published.
- 4.40.2.5 Any person in respect of whom a Disciplinary Committee has imposed a reprimand, censure, or fine (but not a warning) may demand, within a period of three days after the imposition of such reprimand, censure, or fine, that the matter be heard *de novo* by a Tribunal. The Tribunal may, if it finds the person guilty of the conduct which forms the subject of the charge, impose a penalty more severe than that imposed by the Disciplinary Committee.
- 4.40.3 Preferring charges to be heard by a Tribunal
- 4.40.3.1 Where the Director: Surveillance has preferred a formal charge against a respondent, the charge sheet shall, in addition to the matters listed in rule 4.40.1.2, be in a form prescribed by the Director: Surveillance, be signed by the Director: Surveillance or his Deputy, and be served on the respondent in such manner as the Director: Surveillance may determine.

4.40.2.4 amended with effect from 1 August 2005

- 4.40.3.2 Where the Director: Surveillance has decided to make provision for an admission of guilt, he shall stipulate –
- 4.40.3.2.1 the amount of the fine payable pursuant to the admission of guilt and any required contribution towards the JSE's costs as well as the period within which such amounts must be paid. Where the respondent has benefited financially as a result of the alleged transgression, the Director: Surveillance shall take such benefit into consideration in determining the amount of such fine. The admission of guilt may, in particular, provide for the fine to be suspended for a period;
  - 4.40.3.2.2 the manner and time in which the admission of guilt may be made, which time shall not be a period in excess of 50 business days from the date on which the charge sheet is served on the respondent; and
  - 4.40.3.2.3 whether the terms of the admission of guilt should be published.
- 4.40.3.3 A respondent –
- 4.40.3.3.1 may, if the respondent is given an opportunity to sign an admission of guilt, admit guilt to such charges within the period set out in the charge sheet; or
  - 4.40.3.3.2 may within 20 business days after receipt of the charge sheet request particulars to the charges, to which the Director: Surveillance must respond within 20 business days after receipt of such request; and
  - 4.40.3.3.3 shall, if the Director: Surveillance did not provide for admission of guilt or if the respondent decides not to admit guilt to the charges, file a defence to such charges on or before 50 business days after the date on which the charge sheet was served on the respondent or within 20 days after the date on which the Director: Surveillance has responded to the request for further particulars.
- 4.40.3.4 Thereafter the chairman of the Tribunal shall determine the date on which the charges shall be heard, which date shall not without good reason be later than six months after the charge sheet was served on the respondent.
- 4.40.3.5 No extension of the time periods set out in rule 4.40.3, including the date for the hearing of the charges shall be allowed without good reason. Furthermore no such extension shall be allowed unless the consent of the chairman of the Tribunal is obtained.
- 4.40.3.6 Tribunal
- 4.40.3.6.1 The Chairman of the JSE may appoint one or more Tribunals each comprised of three members.
  - 4.40.3.6.2 The members of a Tribunal shall be:
    - 4.40.3.6.2.1 a retired judge, or a practising or retired senior counsel, or a practising or retired attorney with not less than fifteen years experience. Such person shall act as chairman of the Tribunal;
    - 4.40.3.6.2.2 a professional person appointed by reason of that person's knowledge of financial services as it relates to the matter under consideration; and
    - 4.40.3.6.2.3 a person appointed by reason of that person's knowledge of or experience in the financial markets.

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4.40.3.2.3 amended with effect from 1 August 2005

#### 4.50 Procedure and evidence

- 4.50.1 Any charges preferred shall be decided on a balance of probabilities.
- 4.50.2 In a hearing before a Tribunal –
  - 4.50.2.1 the chairman of the Tribunal shall decide all matters of law which may arise during the hearing, and whether any matter constitutes a question of law or a question of fact, but all three members of the Tribunal shall by a simple majority decide all other matters arising during the hearing;
  - 4.50.2.2 the chairman of the Tribunal shall determine the procedure which the Tribunal shall follow both in respect of preliminary issues and in respect of the hearing itself, subject to these rules and to the principles of natural justice;
  - 4.50.2.3 the JSE may instruct attorneys or counsel to prefer and prosecute the charges on behalf of the JSE, or the charges may be prosecuted by an employee of the JSE; and
  - 4.50.2.4 a lawyer may represent the respondent at the respondent's own cost and an executive director of the member by which the respondent is employed may assist the respondent if the respondent is not an executive director of a member.
- 4.50.3 If a respondent without good cause fails to attend a hearing before a Tribunal at the time and place stated in the charge sheet, the Tribunal may proceed with its consideration of the charge in the absence of the respondent.
- 4.50.4 If, at any stage during a hearing before a Disciplinary Committee or a Tribunal, one member of the body hearing the matter dies or retires or becomes otherwise incapable of acting or is absent, the hearing shall proceed before the remaining two members and, provided that the remaining two members are in agreement, their finding shall be the finding of the body concerned. In any other case, the matter shall be heard *de novo*.
- 4.50.5 If a Tribunal finds a respondent guilty of improper conduct, the Tribunal shall have the powers set out in and shall apply rule 4.60.
- 4.50.6 If the proceedings before a Disciplinary Committee or a Tribunal are recorded, any person charged shall be entitled to be supplied with a record of the hearing of such charges, and any person who has made oral representations shall be entitled to be supplied with a record of that portion of the proceedings which related to that person's oral representations.
- 4.50.7 A report on the findings of a Disciplinary Committee or a Tribunal will be furnished to the Registrar within 30 days after the completion of the proceedings.

#### 4.60 Penalties

- 4.60.1 When any person has been found guilty of improper conduct by a Tribunal pursuant to these rules, the Tribunal –
  - 4.60.1.1 may warn, reprimand, censure or impose a fine upon the respondent, which fine shall in respect of each contravention not exceed R1 million, or such other amount as may be stipulated in the Act or in any regulations promulgated in terms of the Act;
  - 4.60.1.2 shall in determining an appropriate penalty take into account –
    - 4.60.1.2.1 any previous conviction in terms of the rules of the JSE or in a court of law;
    - 4.60.1.2.2 the harm or prejudice which is caused by the improper conduct;
    - 4.60.1.2.3 any other aggravating or mitigating circumstances; and
    - 4.60.1.2.4 where it is possible that the membership of the respondent may be terminated, the representations of such person in this regard;

4.50.7 introduced with effect from 1 August 2005

4.60.1.1 amended with effect from 1 August 2005 and with effect from 9 May 2011

- 4.60.1.3 may on such conditions as the Tribunal may deem fit, suspend or terminate the membership of a member who has been found guilty of improper conduct or in the case of an employee of a member, require such member to hold a disciplinary enquiry to consider terminating or suspending the employment of such person;
- 4.60.1.4 may direct a member to prevent or relieve an officer or employee of that member from carrying out any specified activity, function or duty for such reasonable period as the Tribunal deems appropriate;
- 4.60.1.5 may direct a member to ensure that any sanction imposed by the Tribunal on an officer or employee of that member is complied with by such officer or employee;
- 4.60.1.6 may make a fair and reasonable order as to costs; and
- 4.60.1.7 may order that particulars of the improper conduct and/or finding of the Tribunal and/or the penalty imposed be published: Provided that if publication is ordered, the respondent shall be given an opportunity to make representations to the Tribunal in this regard.
- 4.60.2 A Tribunal may impose any one or more of the penalties referred to in rule 4.60.1.
- 4.60.3 Any penalty or part thereof may be suspended on such conditions as the Tribunal may determine.
- 4.60.4 If an officer or employee of a member fails to pay any fine imposed by a Disciplinary Committee or a Tribunal, within 7 days after being informed of the amount of the fine, the JSE may –
  - 4.60.4.1 recover such fine from such officer or employee, as the case may be, in a court of competent jurisdiction;
  - 4.60.4.2 terminate or suspend (on such conditions as the JSE may deem fit) the membership of such member, or in the case of an officer or employee of a member, require such member to hold a disciplinary enquiry to consider terminating or suspending the employment of such person; or
  - 4.60.4.3 direct a member to prevent or relieve an officer or employee of that member from carrying out any specified activity, function or duty for such reasonable period as the JSE deems appropriate.
- 4.60.5 The amount of any fine paid to the JSE pursuant to these rules shall be paid into the Fidelity Fund. Any costs paid to the JSE pursuant to an award made by a Disciplinary Committee or a Tribunal shall be paid into the general funds of the JSE.
- 4.60.6 A Tribunal may, upon good cause shown and subject to such conditions as the Tribunal may impose, vary or modify any penalty which it may have previously imposed on any person: Provided that in modifying or varying such penalty, the Tribunal shall under no circumstances increase such penalty.
- 4.60.7 If any termination of the membership of a member be suspended as a result of an appeal being lodged in terms of the Act, such suspension may be made subject to such conditions as the JSE may determine. A member whose membership has been terminated and who lodges an appeal in terms of the Act shall simultaneously inform the Director: Surveillance that an appeal has been lodged.

#### 4.70 Urgent issues

- 4.70.1 In order to ensure that the business of the JSE is carried on with due regard to the public interest, the Chairman of the JSE may appoint one or more Urgent Issues Committees. The Executive Officer or the acting Executive Officer, the Chairman or a Deputy Chairman of the JSE and at least two other members of the controlling body shall constitute an Urgent Issues Committee.
- 4.70.2 An Urgent Issues Committee shall consider whether a member is operating in such a manner that there is imminent danger that such member may be unable to meet its commitments to clients, other

4.60.1.4 introduced with effect from 1 August 2005

4.60.1.4 to 4.60.1.6 renumbered 4.60.1.5 to 4.60.1.7 with effect from 1 August 2005

4.60.1.7 amended with effect from 1 August 2005

4.60.4 amended with effect from 1 August 2005

members or to a settlement system of the JSE or any other exchange, or that it is conducting business in a manner which could be detrimental to the interests of the JSE or to the interests of the members of the JSE and the public.

- 4.70.3 If an Urgent Issues Committee resolves by a two-thirds majority that an investigation into the affairs of a member in terms of these rules has revealed that the member is operating in such a manner that there is such imminent danger as is referred to in rule 4.70.2, the Urgent Issues Committee may call upon senior representatives of the member to attend a meeting of the Urgent Issues Committee, which meeting may be called on not less than one hour's notice, to hear the concerns of the Urgent Issues Committee and to discuss how such concerns may be resolved.
- 4.70.4 With the agreement of the member concerned or, should the outcome of such meeting fail to satisfy the Urgent Issues Committee with regard to rule 4.70.3, the Urgent Issues Committee may by a two-thirds majority and subject to this rule 4.70
  - 4.70.4.1 prohibit such member from trading;
  - 4.70.4.2 restrict the trading activities of such member in such manner as it deems fit, or by applying rule 4.70.5; or
  - 4.70.4.3 give such member such instructions as it may deem necessary in the interests of the member's clients, other members, any settlement system of the JSE or any other exchange.
- 4.70.5 The Urgent Issues Committee may during the period of any order in terms of rule 4.70.4 appoint a registered public accountant and auditor or another member or an employee of the JSE to supervise and control the activities of the member, at the member's cost. Such member may further be prohibited from entering into transactions without the prior consent of the person appointed as aforesaid to control and supervise the member, which consent may be given upon such terms and conditions as the said appointee may determine.
- 4.70.6 Reserved.
- 4.70.7 Any action taken by an Urgent Issues Committee in terms of this rule may continue until such time as that Committee is satisfied as to the financial position and business conduct of the member in question.

**4.80 Reserved**

**4.90 JSE's powers of publication**

- 4.90.1 The JSE may in such manner as it may deem fit, notify the public of any fact that the JSE considers to be in the public interest, including, but not limited to, the name of a member or any employee or registered officer of a member who has been found guilty of any charge and of the sentence imposed on such member, employee or officer of a member.
- 4.90.2 No action or other proceeding shall in any circumstances be taken by any member or any employee or officer of a member referred to in any notification referred to in rule 4.90.1 or in a JSE Market Notice, against the JSE or any controlling body or committee member or employee thereof or any person publishing or circulating the same.

4.70.2 amended with effect from 1 August 2005

4.70.5 amended with effect from 1 August 2005

4.70.6 deleted with effect from 1 August 2005

4.70.7 amended with effect from 1 August 2005

4.80 deleted with effect from 1 August 2005

4.90.1 amended with effect from 1 August 2005 and with effect from 9 May 2011

4.90.2 amended with effect from 1 August 2005

**SECTION**

**5**

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**Section 5: Dispute Resolution**

**Scope of section**

***Complaints***

- 5.10 Client complaints
- 5.20 Internal complaint handling procedures
- 5.30 Timeous response to complaints
- 5.40 Redress
- 5.50 Recording of complaints
- 5.60 Unresolved client complaints

***Disputes***

- 5.70 Applicability of dispute resolution rules
- 5.80 Reporting of a dispute
- 5.90 Declaration of a dispute
- 5.100 Consideration by an ombud
- 5.110 Costs
- 5.120 Limitation of liability

**Complaints****5.10 Client complaints**

- 5.10.1 For the purposes of Section 5 of the rules, a client complaint is defined as any complaint in relation to the provision of regulated services, in which the client alleges that he has suffered, or is likely to suffer, financial prejudice as a result of the member –
- 5.10.1.1 contravening or failing to comply with any instruction given by the client, or any agreement or mandate entered into with the client;
  - 5.10.1.2 contravening or failing to comply with the rules and the directives;
  - 5.10.1.3 acting dishonestly, negligently or recklessly; or
  - 5.10.1.4 treating the client unreasonably or unfairly.
- 5.10.2 Every member must establish and maintain appropriate procedures for the handling of client complaints.

**5.20 Internal complaint handling procedures**

- 5.20.1 A member's internal complaint handling procedures must provide for –
- 5.20.1.1 the receipt of oral or written complaints;
  - 5.20.1.2 the appropriate investigation of complaints;
  - 5.20.1.3 an appropriate decision-making process in relation to the response to a client complaint;
  - 5.20.1.4 notification of the decision to the client; and
  - 5.20.1.5 the recording of complaints.
- 5.20.2 A member's internal complaint handling procedures must be designed to ensure that –
- 5.20.2.1 all complaints are handled fairly, effectively and promptly;
  - 5.20.2.2 recurring or systemic problems are identified, investigated and remedied;
  - 5.20.2.3 the number of unresolved complaints to be referred to the JSE in terms of the rule 5.60 are minimised;
  - 5.20.2.4 complaints are investigated by an employee of sufficient competence who, where appropriate, was not directly involved in the matter which is the subject of a complaint;
  - 5.20.2.5 the employee responsible for the resolution of complaints has the necessary authority to resolve complaints or has ready access to an employee who has the necessary authority; and
  - 5.20.2.6 relevant employees are aware of the member's internal complaint handling procedures and comply with them.

**5.30 Timeous response to complaints**

A member must respond to a client complaint within 4 weeks of receiving the complaint in terms of rule 5.20.1.1 or, within such period, provide the complainant with an appropriate explanation as to why the member is not, at that time, in a position to respond and must indicate by when the member will respond.

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Section 5 deleted in entirety and replaced with Dispute Resolution with effect from 1 August 2005

New 5.10.1 introduced with effect from 25 June 2007

5.10.1 renumbered 5.10.1.1 with effect from 25 June 2007

5.10.2 renumbered 5.10.1.2 with effect from 25 June 2007

5.10.3 renumbered 5.10.1.3 with effect from 25 June 2007

5.10.4 amended and renumbered 5.10.1.4 with effect from 25 June 2007

New 5.10.2 introduced with effect from 25 June 2007

5.30 amended with effect from 25 June 2007

**5.40 Redress**

- 5.40.1 Where a member decides that redress in the form of compensation is appropriate in resolving a complaint, the member must provide the complainant with fair compensation and must comply with any offer of compensation made by it which the complainant accepts.
- 5.40.2 Where a member decides that redress in a form other than compensation is appropriate in resolving a complaint, the member must provide the redress as soon as practicable.

**5.50 Recording of complaints**

- 5.50.1 A member must maintain a record of all client complaints. The record of each complaint must include-
  - 5.50.1.1 the identity of the complainant;
  - 5.50.1.2 the substance of the complaint; and
  - 5.50.1.3 all correspondence in relation to the complaint.
- 5.50.2 The records referred to in rule 5.50.1 must be retained by the member for a period of 5 years from the date of the receipt of the complaint.

**5.60 Unresolved client complaints**

- 5.60.1 A client complaint will be deemed to be unresolved if the complainant is not satisfied with the resolution of the complaint proposed by the member.
- 5.60.2 A complainant may lodge an unresolved complaint, in writing, with the Director: Surveillance giving full particulars of the matter concerned.
- 5.60.3 In order for an unresolved complaint to be considered by the JSE Surveillance Department, the complaint must be lodged with the Director: Surveillance within 4 weeks of the receipt by the complainant of the member's response referred to in rule 5.30 and within 6 months of the conduct by the member giving rise to the complaint.
- 5.60.4 An unresolved complaint which is lodged subsequent to the period referred to in rule 5.60.3 will be considered, provided that failure to lodge the complaint within the relevant period was through no fault of the client.
- 5.60.5 The JSE Surveillance Department may request the member and the complainant to provide copies of all relevant correspondence and documentation that is required to review the complaint.
- 5.60.6 The JSE Surveillance Department will endeavour to facilitate a resolution of the complaint between the member and the complainant.
- 5.60.7 If the JSE Surveillance Department is unable to facilitate a resolution of the complaint within 4 weeks of lodgement of the complaint with it, the Director: Surveillance will refer the unresolved complaint to the Company Secretary of the JSE to be dealt with in terms of the dispute resolution rules.

**Disputes**

**5.70 Applicability of dispute resolution rules**

- 5.70.1 Rules 5.70 to 5.120 ("the dispute resolution rules") are intended to facilitate the equitable and expeditious settlement of disputes that –
  - 5.70.1.1 a client has with a member, in respect of an unresolved complaint;
  - 5.70.1.2 a member has with another member, in respect of transactions in IRC securities; or
  - 5.70.1.3 a member has with a client, in respect of transactions in IRC securities.
- 5.70.2 The dispute resolution rules only apply –
  - 5.70.2.1 where the amount in dispute is in excess of R2 000;
  - 5.70.2.2 where the dispute is not the subject of existing litigation;

5.60.3 amended with effect from 25 June 2007



- 5.70.2.3 in the case of a dispute that a client has with a member, where the amount in dispute either does not exceed R500 000 or, where the amount in dispute exceeds R500 000, if the consent of both parties to proceed has been obtained;
- 5.70.2.4 in the case of a dispute that a member has with another member, and the members are able to evidence to the satisfaction of the Director: Surveillance that reasonable endeavours have been made by the said members to resolve the dispute, if the consent of both parties to proceed has been obtained;
- 5.70.2.5 in the case of a dispute that a member has with a client, if the consent of the client to proceed has been obtained.

#### **5.80 Reporting of a dispute**

- 5.80.1 An unresolved client complaint that the JSE Surveillance Department is not able to resolve in terms of rule 5.60 will be reported as a dispute by the Director: Surveillance to the Company Secretary of the JSE if the client elects to pursue the dispute resolution process.
- 5.80.2 A dispute between two members in respect of transactions in IRC securities must be reported, in writing, by either member, to the Company Secretary of the JSE, within 1 week of the circumstance giving rise to the dispute having arisen.
- 5.80.3 A dispute that a member has with a client in respect of transactions in IRC securities must be reported, in writing, by the member, in writing to the Company Secretary of the JSE, within 6 months of the circumstance giving rise to the dispute having arisen.
- 5.80.4 The Company Secretary of the JSE may, at any time, request any of the parties to a dispute to furnish him with such further information relating to the dispute as may be required.

#### **5.90 Declaration of a dispute**

A dispute reported in terms of rule 5.80 will, subject to criteria set out in rule 5.70.2 having been met, be declared a dispute by the Company Secretary and will be referred by the Company Secretary to a duly appointed ombud for consideration.

#### **5.100 Consideration by an ombud**

- 5.100.1 The JSE will appoint an ombud to consider a dispute, who is a retired judge of the High Court of South Africa or a Senior Counsel.
- 5.100.2 Within 3 weeks of the dispute having been referred to the ombud for consideration, the claimant must set out the subject matter of the claim in a written statement, including all the material facts, and furnish this statement, along with all relevant documentation upon which the claim is based, to the ombud.
- 5.100.3 The ombud may require the claimant to expand upon his statement of claim or provide further evidence or particulars as he deems necessary within such reasonable time as is specified by the ombud.
- 5.100.4 The other party to the dispute, hereafter referred to as the defendant, must be provided with a copy of the written statement of claim by the ombud. The defendant must furnish the ombud with its written response to the statement of claim within 3 weeks of having received such. In addition to the defendant's written response, the defendant must attach thereto all other evidence relating to the dispute.
- 5.100.5 The ombud may require the defendant to expand upon its response or provide further evidence or particulars as he deems necessary within such reasonable time as specified by the ombud and may require the claimant to provide a written reply to the defendant's response within such reasonable time as he may specify.
- 5.100.6 The ombud may at his discretion decide that a number of disputes based on similar occurrences or similar facts be consolidated and treated as a single dispute.

5.100.4 amended with effect from 25 June 2007

- 5.100.7 After ascertaining the parties availability, the ombud will, subject to rule 5.100.8, furnish the parties with written notification of the date on which the dispute will be heard.
- 5.100.8 The ombud may make a decision regarding any issues relating to the dispute or consider the dispute on the basis of the documents submitted in terms of rules 5.100.2 to 5.100.5 without the necessity of a hearing.
- 5.100.9 The dispute resolution proceedings will be conducted without legal representation of any of the parties, unless the ombud in his sole discretion decides otherwise.
- 5.100.10 The ombud, in reaching a decision, may consult with any third party regarding any issue relating to the dispute. The ombud has the discretion to call upon any third party to participate in the dispute resolution proceedings.
- 5.100.11 The ombud will, after having considered the information as presented to him by the parties and such other information as he may request, make his decision within 3 weeks of having considered the dispute. The ombud must, at the request of any party to the dispute, provide written reasons for his decision.
- 5.100.12 The ombud's decision will be furnished to the parties in writing.
- 5.100.13 The ombud is not obliged to provide a ruling on a dispute if he is of the view that the dispute is of such a complex nature that it cannot be resolved expeditiously by means of the dispute resolution process and can only be properly considered by a court of law.
- 5.100.14 Any decision made in terms of rule 5.100.12 must be complied with by the party against whom the decision is made within seven days of the decision having been made by the ombud.
- 5.100.15 Unless the JSE, the ombud and the parties to the dispute agree otherwise, the identity of the parties, the nature of the evidence and the details of the ombud's deliberations and finding, and all other information pertaining to the proceedings will be kept confidential by all parties thereto, unless disclosure by the JSE is required by law.

#### **5.110 Costs of the proceedings**

- 5.110.1 The parties to any dispute resolution proceeding in terms of rule 5.100 may be required to pay to the JSE, before the proceedings commence, such amount as the JSE may determine as a deposit to cover a portion of the costs of the proceedings.
- 5.110.2 The ombud may, as part of his award and as he deems appropriate in the circumstances, make an order on costs which may include an order against the unsuccessful party for payment of all the costs of the proceedings.

#### **5.120 Limitation of liability**

No officer, employee or representative of the JSE or any member of the controlling body, or the ombud appointed in terms of these rules shall be liable for any loss sustained by, or damage caused to any person as a result of anything done or omitted by them in the *bona fide* or negligent performance of any function under or in terms of this rule 5.

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5.100.7 amended with effect from 25 June 2007  
 5.100.8 renumbered 5.100.9 with effect from 25 June 2007  
 5.100.9 renumbered 5.100.10 with effect from 25 June 2007  
 5.100.11 amended and renumbered 5.100.12 with effect from 25 June 2007  
 5.100.12 renumbered 5.100.13 with effect from 25 June 2007  
 5.100.13 amended and renumbered 5.100.14 with effect from 25 June 2007  
 5.100.14 renumbered 5.100.15 with effect from 25 June 2007  
 Old 5.110.1 deleted with effect from 25 June 2007  
 5.110.2 amended and renumbered 5.110.1 with effect from 25 June 2007  
 5.110.3 deleted with effect from 25 June 2007  
 5.110.4 renumbered 5.110.2 with effect from 25 June 2007  
 5.120 replaced with effect from 25 June 2007

**SECTION**

**6**

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**Section 6: IRC securities**

**Scope of Section**

- 6.10 List of IRC securities
- 6.20 Contract specifications of IRC securities
- 6.30 Listing of futures and option contracts
- 6.40 Reserved
- 6.50 Reserved
- 6.60 Investigation or suspension of listing

**6.10 List of IRC securities**

The record of IRC securities which may be bought or sold on the IRC markets shall be kept by the JSE in the list of the securities in terms of section 12(6)(a) of the Act.

**6.20 Contract specifications of IRC securities**

6.20.1 The contract specifications of interest rate derivatives and currency derivatives contained in the list of IRC securities kept in terms of these rules shall be determined by the JSE Executive.

6.20.2 The JSE may conduct surveys and research, call for the views of members and any committee and take such other steps as it may deem appropriate in determining the contract specifications of IRC securities listed by the JSE.

6.20.3 The JSE may decide which expiry months shall be specified for the futures and option contracts contained in the list referred to in rule 6.10 and it shall publish such futures and option contracts in a notice to members: Provided that where the expiry date of a futures or option contract is longer than one year the JSE shall specify the expiry date.

6.20.4 Option contracts having strike prices as contained in the contract specification of the particular option contract may be traded when the expiry month of the underlying futures contract is specified as contemplated in rule 6.20.1.

**6.30 Listing of futures and option contracts**

6.30.1 The JSE may –

6.30.1.1 add futures and option contracts to, or remove futures and option contracts from, the list of IRC securities kept in terms of these rules, or suspend futures and option contracts from such list;

6.30.1.2 impose new conditions on or amend the existing conditions of such futures and option contracts.

6.30.2 The JSE shall notify all members of any actions performed by the JSE in terms of rule 6.30.1, and shall stipulate a date for the coming into operation of an addition, removal or suspension of futures and option contracts or new or amended conditions relating to futures and option contracts.

**6.40 Reserved****6.50 Reserved****6.60 Investigation or suspension of listing**

It shall be a condition of a listing that -

6.60.1 the JSE may in such manner as it deems fit, notify the public that it has –

6.60.1.1 removed any IRC security from the list;

6.60.1.2 suspended the listing of any IRC security;

6.60.1.3 investigated dealings in any IRC security,

and it shall publish the reasons for such removal, suspension or investigation, as the case may be, and so much of its conclusions or findings as it may deem advisable;

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6.10 amended with effect from 1 August 2005

6.20 amended with effect from 1 August 2005

6.20.1 amended with effect from 1 August 2005

6.20.1 amended with effect from 4 June 2007

6.30.1 amended with effect from 1 August 2005

6.40 deleted with effect from 9 May 2011

6.50 deleted with effect from 9 May 2011

- 6.60.2 the JSE may publish or cause, permit or authorise the proprietor or publisher of any newspaper or other periodical publication to publish any statement made in terms of rule 6.60.1.

**SECTION**

**7**

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**Section 7: Trading**

**Scope of section**

- 7.10 Buying and selling of IRC securities
- 7.20 Trading system
- 7.30 Trading members' obligations
- 7.40 Market integrity
- 7.50 Manipulative or deceptive transactions
- 7.55 False, misleading or deceptive statements, promises and forecasts
- 7.60 Orders
- 7.70 Trading capacity
- 7.80 Trading with or on behalf of clients
- 7.90 Affiliated officers and trading members trading as clients
- 7.100 Aggregation, division and allocation of trades
- 7.110 Principal assignment trades
- 7.120 Reported transactions
- 7.130 Correction trades
- 7.140 Emergency provisions

**7.10 Buying and selling of IRC securities**

- 7.10.1 The business of the buying and selling of IRC securities by trading members as contemplated by section 19(a) and (b) of the Act must be conducted on the trading system: Provided that –
- 7.10.1.1 a trading member may execute transactions in IRC securities on another exchange as an authorised user or as a client of an authorised user of such exchange; or
  - 7.10.1.2 transactions in IRC securities which meet the criteria set out in rule 7.120 may be negotiated off the trading system and reported to the trading system
- 7.10.2 A transaction negotiated off the trading system in terms of rule 7.10.1.2 is only deemed to be a valid transaction once the transaction has been reported to the trading system by the member or members who are party to the transaction.

**7.20 Trading system**

- 7.20.1 In accordance with the directives, other than in relation to the transactions exempted in terms of rule 7.10, a trading member must execute trades in IRC securities, either for its own account or for the account of a client, on the trading system.
- 7.20.2 The trading system will operate on every business day according to standard periods and times as set out in the directives.

**7.30 Trading members' obligations**

- 7.30.1 Access to and utilisation of the trading system
- 7.30.1.1 Trading members may only access and utilise the trading system with the required approval of the Market Controller and subject to such instructions as may be issued by the Market Controller.
  - 7.30.1.2 In order to utilise the services of, and access the trading system a trading member must:
    - 7.30.1.2.1 enter into and sign such agreements; and
    - 7.30.1.2.2 adhere to such requirements and specifications, as may be prescribed by the JSE Executive.
  - 7.30.1.3 Trading members accessing the trading system must at all times –
    - 7.30.1.3.1 maintain and enforce appropriate security procedures which are designed to prevent unauthorised persons from having access to any JSE systems, member applications or client applications; and
    - 7.30.1.3.2 have the necessary resources to ensure that any data sent to or received from the trading system does not interfere with the efficiency and integrity of the IRC markets or the proper functioning of the JSE systems.
- 7.30.2 Data integrity
- 7.30.2.1 A trading member is responsible for identifying the origin and the accuracy, integrity, and *bona fides* of all data submitted to the trading system by or on behalf of that trading member. Any information received by the trading system is deemed for all purposes under these rules and directives to have been submitted to the trading system by, and with the knowledge of, the trading member.

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7.10 amended with effect from 9 May 2011

7.10 amended with effect from 1 August 2005

7.10 renumbered 7.10.1 and amended with effect from 9 May 2011

7.10.1 amended with effect from 1 August 2005

7.10.2 introduced with effect from 9 May 2011

- 7.30.2.2 Data from or submitted on behalf of trading members may only be submitted to the trading system in a manner approved by the JSE.
- 7.30.3 Reserved
- 7.30.4 Authorised personnel
  - 7.30.4.1 A trading member represents and warrants to the JSE and to persons with or on behalf of whom the trading member executes transactions in IRC securities, that any person employed by the trading member to deal with such persons in relation to such transactions, has full authority to act on the trading member's behalf.
  - 7.30.4.2 A trading member must ensure that all registered dealers meet the requirements of rule 3.120.
- 7.30.5 Recording of transactions
 

Every trading member must, as set out in rule 10.220.5, record, report and retain details of every transaction in IRC securities entered into by it or on its behalf and it shall be the duty of every person executing a transaction on behalf of a trading member to ensure that these rules are complied with.
- 7.30.6 Broadcast of market prices
  - 7.30.6.1 Any member that broadcasts bid and offer prices in JSE listed bonds or spreads comprising two bonds, either on its own behalf or on behalf of clients, must make such prices available to the JSE on request.
  - 7.30.6.2 The JSE may use the broadcast prices for the purpose of promoting liquidity and the effective regulation of trading in JSE listed bonds.

#### 7.40 Market Integrity

- 7.40.1 Where, from a lack of clarity in the published information available at the time of the transaction, a trading member trades in a quantity or at a price which in the opinion of the JSE Executive is unreasonable, the JSE Executive may declare such transaction void. Such declaration is binding on the trading members who entered into such transaction and on the clients for or on whose behalf the transaction was executed.
- 7.40.2 The JSE Executive may prohibit trading by trading members in any particular IRC security either for a specified or for an indefinite period.
- 7.40.3 If, in the opinion of the Director: Surveillance, an automated trade, auction trade or reported transaction materially impacts the integrity or transparency of the IRC markets, or the correctness of the statistics, the Director: Surveillance may cancel such trade or reported transaction without having received a formal request to do so by any trading member. The Director: Surveillance may –
  - 7.40.3.1 instruct the member or members to enter an equal and opposite correction trade on the trade date of the original trade; or
  - 7.40.3.1 instruct the Settlement Authority to effect an equal and opposite correction trade on behalf of the member or members on the day after the original trade.
- 7.40.4 The Market Controller and any one member of the JSE Executive may decide that the IRC markets be closed in the event that a fair and realistic market does not exist. A fair and realistic market will be deemed not to exist at the discretion of the Market Controller after consideration of the percentage of trading members not able to access the trading system, the reasons for such lack of access and their contribution to price formation.
- 7.40.5 Notwithstanding any other provision of these rules or any directive and subject to rule 1.40, the JSE Executive, in accordance with prevailing circumstances may –
  - 7.40.5.1 reduce or extend the hours of operation of the trading system for any particular business day;

7.30.3 deleted with effect from 9 May 2011

7.30.6 introduced with effect from 9 May 2011



- 7.40.5.2 without prior notice to any person, halt or close the trading system for trading at any time and for any period;
- 7.40.5.3 without prior notice to any person suspend automated trading;
- 7.40.5.4 if there has been any failure of the trading system, for any reason, or if the trading system has been closed, suspended or halted, declare that a transaction executed through or by the trading system is void. Such declaration is binding on the trading members who entered into such transaction and on the clients for or on whose behalf the transaction was executed;
- 7.40.5.5 exercise such further powers and take such further action as may be exercised or taken by the JSE in terms of these rules and directives, and as may be necessary to resolve any issue which may arise from the closure, suspension, halt or failure of the trading system; and
- 7.40.5.6 take such other steps as may be necessary to ensure an orderly market.
- 7.40.6 Notwithstanding any other provisions of the rules and directives –
  - 7.40.6.1 the Market Controller may instruct a trading member to immediately discontinue using a member or client application; or
  - 7.40.6.2 the Market Controller may restrict the usage by a trading member of any or all components of a member or client application.
- 7.40.7 The Director: Surveillance or his deputy, in conjunction with the Executive Officer or acting Executive Officer or failing the Executive Officer or acting Executive Officer, the Director: Issuer Services, may declare a trading halt in an IRC security in circumstances where the Director: Surveillance or his deputy determines that the trading activity in an IRC security -
  - 7.40.7.1 is being or could be undertaken by persons possessing unpublished price-sensitive information that relates to the underlying instrument to which the IRC security relates; or
  - 7.40.7.2 is being influenced by a manipulative or deceptive trading practice; or
  - 7.40.7.3 may otherwise give rise to an artificial price in that IRC security.
- 7.40.8 No trading member may trade an IRC security for the duration of a trading halt referred to in rule 7.40.7, but may delete orders from the trading system.

#### **7.50 Manipulative or deceptive transactions**

- 7.50.1 No trading members shall use, or knowingly participate in the use of any manipulative or deceptive trading practice in an IRC security, either for its own account or on behalf of clients, which creates or may create –
  - 7.50.1.1 a false or misleading appearance of trading activity; or
  - 7.50.1.2 an artificial value for such IRC security.
- 7.50.2 A trading member must give consideration to the circumstances of orders placed by clients before entering such orders in the trading system and is responsible for the integrity of such orders.
- 7.50.3 A trading member or employee of a trading member may not place an order in the trading system to buy or sell IRC securities which to the knowledge of the trading member or employee of a trading member will, if executed, have the effect contemplated in rule 7.50.1.

7.40.6.2 amended with effect from 1 August 2005

7.40.6.3 deleted with effect from 1 August 2005

7.40.7 and 7.40.7.1 to 7.40.7.3 introduced with effect from 1 August 2005

7.40.7 amended with effect from 9 May 2011

7.50.1 amended with effect from 1 August 2005

7.50.2 amended with effect from 1 August 2005

7.50.3 introduced with effect from 1 August 2005

- 7.50.4 Without in any way limiting the generality of the foregoing, the following shall be deemed to be manipulative or deceptive methods of trading
- 7.50.4.1 Approving or entering on the trading system –
- 7.50.4.1.1 an order to buy or sell an IRC security with the knowledge that an opposite order of substantially the same size at substantially the same time and at substantially the same price, has been or will be entered by or for the same or different persons with the intention of creating a false or misleading appearance of active public trading in connection with, or an artificial market price for such IRC security;
  - 7.50.4.1.2 orders to buy any IRC security at successively higher prices, or orders to sell any security at successively lower prices for the purpose of unduly or improperly influencing the market price of such IRC security;
  - 7.50.4.1.3 an order at or near the close of the market, the primary purpose of which is to change or maintain the closing price of such IRC security;
  - 7.50.4.1.4 an order to buy or sell any IRC security during the pre-opening session and cancelling such order immediately prior to the market opening, for the purpose of creating or inducing a false or misleading appearance of demand for or supply of such IRC security;
  - 7.50.4.1.5 an order to buy or sell an IRC security which involves no change in the beneficial ownership of that IRC security; or
  - 7.50.4.1.6 reported transactions which would result in a contravention of rule 7.50.1;
- 7.50.4.2 Effecting or assisting in effecting a market corner;
- 7.50.4.3 Maintaining the price of an IRC security at a level that is artificial;
- 7.50.4.4 Employing any device, scheme or artifice to defraud any other person as a result of a transaction effected through the trading system; or
- 7.50.4.5 Engaging in any act, practice or course of business in respect of trading in IRC securities which is deceptive or which is likely to have such an effect.

#### **7.55 False, misleading or deceptive statements, promises and forecasts**

A member or employee of a member may not, directly or indirectly, make or publish in respect of IRC securities, or in respect of the past or future performance of a listed company –

- 7.55.1 any statement, promise or forecast which is, at the time and in the light of the circumstances in which it is made, false or misleading or deceptive in respect of any material fact and which the member or employee of a member knows, or ought reasonably to know, is false, misleading or deceptive; or
- 7.55.2 any statement, promise or forecast which is, by reason of the omission of a material fact, rendered false, misleading or deceptive and which the member or employee of a member knows, or ought reasonably to know, is rendered false, misleading or deceptive by reason of the omission of that fact.

7.50.4.1.1 amended with effect from 1 August 2005

7.50.3 renumbered 7.50.4 with effect from 1 August 2005

7.50.4.1.4 amended with effect from 1 August 2005

7.50.4.1.5 introduced with effect from 1 August 2005

7.50.3.5 renumbered 7.50.4.1.6 and amended with effect from 1 August 2005

7.50.4.2 introduced with effect from 1 August 2005

7.50.4.3 introduced with effect from 1 August 2005

7.50.4.5 introduced with effect from 1 August 2005

7.55 introduced with effect from 1 August 2005

**7.60 Orders**

- 7.60.1 All orders received by a trading member which are to be executed in the central order book of the trading system must be recorded in price or yield and then time priority by the trading member and be submitted to the trading system in such order. Orders from clients will always be given time priority over such trading member's own account orders except where that trading member had already entered own account orders into the trading system at the time that a client order was received by that trading member.
- 7.60.2 Orders received by a trading member after hours will have the time priority of entry of the order into the trading system.
- 7.60.3 Orders entered individually will carry their own time priority.
- 7.60.4 A trading member must keep a record of an order received for a period of not less than six months after the order was received, in terms of rule 10.220.5, whether the order was entered into the central order book of the trading system or resulted in a transaction reported to the trading system.

**7.70 Trading capacity**

- 7.70.1 A trading member may trade on behalf of a client as an agent or may trade with a client as a principal.
- 7.70.2 A trading member may only deal as principal with a client if the trading member has, prior to trading, obtained the consent of its client.
- 7.70.3 A trading member may not make a profit in respect of an agency transaction executed on behalf of a client other than commission or brokerage.
- 7.70.4 A trading member may trade for a client as principal by-
  - 7.70.4.1 entering the client's order directly in the trading system for the client's account and where such order matches with an opposite order entered in the trading system for the trading member's own account; or
  - 7.70.4.2 entering the client's order in the trading system for the member's principal assignment stock account and assigning the resultant trade or trades to the client, either with or without aggregating such trades, by reporting a principal assignment trade to the trading system; or
  - 7.70.4.3 executing a principal trade with a client off the central order book and reporting such trade to the trading system, provided such trade qualifies as a reported transaction in terms of rule 7.120.
- 7.70.5 A trading member may trade for a client as agent by –
  - 7.70.5.1 entering the client's order directly in the trading system for the client's account and where such order matches with an opposite order of another trading member or another client; or
  - 7.70.5.2 entering the client's order in the trading system for the member's agency suspense account and allocating the resultant trade or trades to the client, after aggregating and/or dividing such trades; or
  - 7.70.5.3 executing an agency trade between two clients or between a client and another trading member off the central order book and reporting such trade to the trading system, provided such trade qualifies as a reported transaction in terms of rule 7.120.

**7.80 Trading with or on behalf of clients**

- 7.80.1 Client agreement

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7.60.1 amended with effect from 9 May 2011

7.60.4 amended with effect from 9 May 2011

7.70.5.3 amended with effect from 9 May 2011

7.80 amended with effect from 9 May 2011

- 7.80.1.1 A trading member may not trade with or on behalf of a client in IRC securities unless the trading member has entered into a client agreement with the client. The terms and conditions of the client agreement must have substantially the same effect in law as the terms and conditions contained in the *pro forma* agreement in Directive DC.
- 7.80.2 Client acceptance and maintenance procedures
- 7.80.2.1 A trading member must ensure that it obtains and maintains sufficient information on each client account so as to be able to identify the beneficiary of the account and the person or persons responsible for placing instructions on the account at all times, in accordance with the directives.
- 7.80.2.2 Before undertaking to execute any transaction for a new client, a trading member must, as a minimum, authenticate the identity of such client and maintain a record of the means of such authentication.
- 7.80.2.3 A trading member may not trade with or on behalf of a client in IRC securities until the member has loaded the client on the trading system by recording the client's particulars that are required by the trading system.
- 7.80.2.4 The JSE will maintain a record of the clients which are loaded as clients of trading members and will keep a record of the particulars associated with each client as required under rule 7.80.2.3.
- 7.80.2.5 A trading member must ensure that the particulars relating to its clients are correct and up to date at all times.
- 7.80.2.6 The trading member must ensure that clients which have ceased trading with the trading member are removed from the record of clients of the trading member on the trading system.
- 7.80.2.7 The client's particulars will be retained by the JSE for as long as it deems necessary after the client has ceased trading.
- 7.80.3 Best execution
- When acting for a client in the buying or selling of IRC securities, a trading member must at all times adhere to the best execution principle taking reasonable care to obtain the result which is the best available in the market for the client: Provided that the trading member must at all times act in accordance with the terms and conditions of the client agreement or mandate.
- 7.80.4 Notification of transactions
- 7.80.4.1 A trading member must ensure that clients are notified of all transactions executed on or reported to the trading system, for or on behalf of such clients, in the manner and within the time period as set out in the directives.
- 7.80.4.2 The transaction notification referred to in rule 7.80.4.1 must set out –
- 7.80.4.2.1 the terms of the transaction;
- 7.80.4.2.2 the capacity in which the trading member acted; and
- 7.80.4.2.3 if the transaction is executed by the member in an agency capacity, the details of any commission charged by the trading member.

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7.80.1.1 amended with effect from 9 May 2011

7.80.2 amended with effect from 1 August 2005 and with effect from 9 May 2011

7.80.2.3 amended with effect from 9 May 2011

7.80.2.4 amended with effect from 1 August 2005 and with effect from 9 May 2011

7.80.2.6 amended with effect from 9 May 2011

7.80.2.7 amended with effect from 1 August 2005 and with effect from 9 May 2011

7.80.4.2.2 amended with effect from 9 May 2011

7.80.4.2.3 deleted and 7.80.4.2.4 renumbered 7.80.4.2.3 with effect from 9 May 2011

**7.90 Employees and trading members trading as clients**

- 7.90.1 An employee of a trading member may be a client of that trading member or another trading member; provided that such client fulfils all his obligations in terms of these rules.
- 7.90.2 A trading member must establish and maintain controls and procedures in relation to transactions executed for the direct or indirect benefit of employees of the trading member, in order to avoid such transactions conflicting with the interests of the trading member's clients, whether such transactions are executed by the trading member or by another trading member.
- 7.90.3 The controls and procedures in relation to the transactions referred to in rule 7.90.2, should as a minimum, make provision for the review by the trading member of those transactions, in order to identify any transactions which are in conflict with the interests of that trading member's clients.

**7.100 Aggregation, division and allocation of trades**

- 7.100.1 When bulking or aggregating agency client orders and trades, trading members are required to use designated agency suspense accounts, as specified in the directives, for the order entry, trading, consolidation, division or allocation of such orders and trades.
- 7.100.2 Trading members are precluded from trading on the designated agency suspense accounts for their own account or for any accounts in which employees have a direct or indirect beneficial interest.
- 7.100.3 A trading member may aggregate a number of trades that were executed on the trading system for an agency suspense account and allocate such aggregated trades to a client at a price equal to the average price of the original trades: Provided that a trading member may not aggregate reported transactions with trades executed in the central order book of the trading system.
- 7.100.4 A trading member may divide a trade that was executed on the trading system for an agency suspense account: Provided the trading member allocates such subdivided trades to two or more clients at the price of the original trade.
- 7.100.5 Trading members are responsible for the time priority of allocations of the trades in respect of which orders have been bulked.
- 7.100.6 All trades on the designated agency suspense accounts must be allocated to the relevant clients on the day of the trading and no positions must remain on such suspense accounts overnight.
- 7.100.7 If a trading member uses an agency suspense account dedicated to a particular client for the allocation of trades to underlying accounts under the control of that client, the allocation of a trade to the dedicated suspense account is deemed to be an allocation to the client for the purpose of rule 7.100.6.
- 7.100.8 A trading member may allocate a trade in futures or option contracts executed on the trading system for an agency suspense account to another trading member, provided that the trade is pursuant to a tripartite agreement, as set out in the directives, and that the trade is allocated to the other trading member at the price of the original trade.

**7.110 Principal assignment trades**

- 7.110.1 When filling a client's order through a principal assignment trade, trading members are required to use designated principal assignment stock accounts, as specified in the directives, for the order entry, trading, consolidation, division and assignment of such orders and trades.

7.85 introduced with effect from 4 June 2007 and deleted with effect from 24 December 2008

7.90 amended with effect from 1 August 2005

7.90.1 amended with effect from 9 May 2011

7.90.2 amended and 7.90.2.1 to 7.90.2.4 deleted with effect from 9 May 2011

7.90.3 introduced with effect from 9 May 2011

7.100.1 amended with effect from 9 May 2011

7.100.2 amended with effect from 1 August 2005

New 7.100.7 introduced and Old 7.110.7 renumbered 7.100.8 with effect from 9 May 2011

7.110.1 amended with effect from 9 May 2011

- 7.110.2 A trading member may aggregate a number of trades that were executed on the trading system for a principal assignment stock account and assign the resultant aggregated trades to a client as a separate trade at a price which includes such trading member's profit: Provided that a trading member may not aggregate reported transactions with trades executed in the central order book of the trading system.
- 7.110.3 A trading member may divide a trade that was executed on the trading system for a principal assignment stock account and assign the resultant subdivided trades to two or more clients as separate trades at a price which includes such trading member's profit.
- 7.110.4 Trading members are responsible for the time priority of principal assignment trades in respect of which orders have been bulked.
- 7.110.5 A trading member may assign a trade in futures or option contracts executed on the trading system for a principal assignment stock account to another trading member as a separate trade, provided that the trade is pursuant to a tripartite agreement, as set out in the directives, and the assignment trade may include the assigning member's profit.
- 7.110.6 All trades on the principal assignment stock accounts must be assigned to the relevant clients or member on the day of the trade.
- 7.110.7 If a trading member uses a suspense account dedicated to a particular client for the allocation of trades to underlying accounts under the control of that client, the assignment of a trade to the dedicated suspense account is deemed to be an assignment to the client for the purpose of rule 7.110.6.

#### **7.120 Reported transactions**

- 7.120.1 Reported transactions do not have to be executed through the central order book. The following transactions may be validly reported to the trading system—
  - 7.120.1.1 value eligible reported transactions, where the nominal or contract value of the transaction is equal to, or greater than the value determined by the JSE, as set out in the directives;
  - 7.120.1.2 expiry of physically settled futures contracts, as instructed by the Market Controller, in terms of rule 8.30.7; and
  - 7.120.1.3 principal assignment trades.
- 7.120.2 Subject to rule 7.120.3 and rule 7.120.6, reported transactions between two trading members must be reported to the trading system, by the trading members who are party to the transaction, within 30 minutes of the transaction being concluded.
- 7.120.3 Trading members must take reasonable steps to ensure that all reported transactions between two trading members that are concluded within the 30 minute period before the trading system closing time, as stipulated in the directives, are reported to the trading system before the system closing time. If despite taking all reasonable steps, trading members are unable to report transactions concluded during this 30 minute period to the trading system before the system closing time, the transaction must be reported by no later than 09h00 on the following business day.
- 7.120.4 Subject to rule 7.120.5 and rule 7.120.6, reported transactions between a trading member and a client must be reported to the trading system without delay but by no later than the trading system closing time on the trade date.
- 7.120.5 Trading members must take reasonable steps to ensure that all reported transactions between the trading member and a client that are concluded within the 2 hour period before the trading system closing time, as stipulated in the directives, are reported to the trading system before the system closing time. If despite taking all reasonable steps, trading members are unable to report transactions

7.110.7 introduced with effect from 9 May 2011

7.120.1.2 amended with effect from 9 May 2011

7.120.2 amended with effect from 9 May 2011

7.120.3 to 7.120.8 introduced with effect from 9 May 2011

concluded within this 2 hour period to the trading system before the system closing time, the transaction must be reported by no later than 09h00 on the following business day.

- 7.120.6 All reported transactions that are concluded by trading members after the closing time of the trading system, as stipulated in the directives, must be reported to the trading system by no later than 09h00 on the following business day.
- 7.120.7 A trading member who reports a transaction in bonds must ensure that the date and time at which the transaction was concluded is included when the transaction is reported to the trading system.
- 7.120.8 If a reported transaction in bonds is reported to the trading system by a person other than a dealer, the trading member must retain a record identifying the dealer who was responsible for executing the transaction.

### 7.130 Correction trades

- 7.130.1 Notwithstanding any other provision of these rules or any directive, the Director: Surveillance may, where in his opinion a central order book trade has been matched as a result of a clear error by a trading member grant permission to the relevant trading member or members to cancel the trade and may –
  - 7.130.1.1 instruct the member or members to enter an equal and opposite correction trade on the original trade date; or
  - 7.130.1.2 instruct the Settlement Authority to effect an equal and opposite correction trade on behalf of the member or members on the day after the original trade date.
- 7.130.2 Equal and opposite correction trades in respect of central order book trades will only be considered in exceptional circumstances and provided the trade meets at least the following requirements –
  - 7.130.2.1 the request is received by the Director: Surveillance within 20 minutes from the time of the erroneous trade;
  - 7.130.2.2 the consideration or contract value of the trade or trades for which the correction trade is requested is 5% or more away from the consideration or contract value immediately before the erroneous trade occurred, or, if there were no automated or auction trades on that day, the consideration or contract value per the previous day's closing price; and
  - 7.130.2.3 the difference between the aggregate consideration or contract value of the trades that qualify in terms of rule 7.130.2.2 and the consideration or contract value that would have resulted had such trades been executed at the reference price is R50 000 (fifty thousand Rand) or more.
- 7.130.3 If a trading member has reported a trade in error to the trading system, the trading member may correct the error either by-
  - 7.130.3.1 reporting an equal and opposite correction trade to the trading system by 17h00 on the second business day after the trade date; or
  - 7.130.3.2 in exceptional circumstances where the trading member is unable to correct the error by 17h00 on the second business day after the trade date, requesting the Settlement Authority to effect an equal and opposite correction trade on behalf of the relevant member or members on that business day.

7.130.1 amended with effect from 9 May 2011

7.130.1 renumbered 7.130.1.1 and amended with effect from 9 May 2011

7.130.1 renumbered 7.130.1.2 and amended with effect from 9 May 2011

7.130.2 amended with effect from 9 May 2011

7.130 and 7.130.1 to 7.130.2 introduced with effect from 9 May 2011

**7.140 Emergency provisions**

- 7.140.1 In order that the business of the JSE be carried out with due regard to the interests of the public in a fair and orderly market, the JSE may, in addition to the powers given in terms of the Act in circumstances of emergency, restrict or suspend trading in any or all of the instruments kept by it in its list of IRC securities for such period as the JSE may deem necessary.
- 7.140.2 Circumstances of emergency shall include but are not limited to the closing of any other exchange, a state of war or threatening hostilities, acts of state affecting the IRC markets or the due performance of transactions or any position, any change in the law affecting the IRC markets or the due performance of transactions or positions and any other situation or circumstances affecting, in the opinion of the JSE Executive, a fair and orderly market for the trading in IRC securities.
- 7.140.3 If the trading in any security or commodity on any exchange or market ceases, the JSE Executive shall consider the cessation of trading in IRC securities for which such security or commodity comprises the underlying instrument of the IRC Security concerned.
- 7.140.4 In the event of any of the circumstances contemplated in this rule 7.140 occurring, the Executive Officer shall notify the Registrar of such circumstances and shall co-operate with the Registrar to restore and maintain a fair and orderly market.

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7.140.1 amended with effect from 9 May 2011

7.140.2 amended with effect from 1 August 2005

7.140.3 amended with effect from 1 August 2005

7.140.4 amended with effect from 1 August 2005



<b>SECTION</b> <b>8</b>
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**Section 8: Clearing**

**Scope of Section**

- 8.10      Applicability of Section 8
- 8.20      Clearing
- 8.30      Opening and closing-out a position
- 8.40      Mark-to-market
- 8.50      Margin payments
- 8.60      Interest payments
- 8.70      Trading and clearing fees
- 8.80      Settlement procedures
- 8.90      Exercise and assignment of option contracts

### 8.10 Applicability of Section 8

Section 8 shall apply to transactions in IRC securities that qualify to be cleared in terms of this section.

### 8.20 Clearing

8.20.1 SAFCOM shall perform the clearing and ensure the performance of –

- 8.20.1.1 trades in IRC securities executed on the central order book of the trading system;
- 8.20.1.2 reported transactions in futures and options contracts reported to and matched by the trading system;
- 8.20.1.3 reported transactions in bonds reported to the trading system, where the respective clearing members accept the reported transactions for risk management purposes ; and
- 8.20.1.4 principal assignment trades in bonds reported to the trading system, where the original trade being assigned is cleared in terms of rule 8.20.1.1 or rule 8.20.1.3.

8.20.2 Upon the transaction being cleared, SAFCOM shall replace the buyer and become the counterparty to the seller and it shall replace the seller and become the counterparty to the buyer.

### 8.30 Opening and closing-out a position

8.30.1 When there is no position in a futures or option contract prior to a transaction in the futures or option contract being cleared, a position in the futures or option contract shall be opened and registered in the name of the trading member or its client when the transaction is cleared.

8.30.2 The futures or option contracts comprising a transaction which has been cleared, shall be added to or off-set against an existing position registered in the name of the party concerned and the position shall be increased, decreased, closed out or a position in the opposite direction shall be opened, as the case may be.

8.30.3 On the expiry of an option contract of which the strike price is not better by a certain amount determined by the JSE, as set out in the directives, than the expiry price of the underlying instrument of the option contract –

- 8.30.3.1 the person in whose name a long position in the option contract is registered by SAFCOM shall be deemed to have sold the number of the futures contracts equal to the number comprising the position, to SAFCOM; and
- 8.30.3.2 the person in whose name a short position in the option contract is registered by SAFCOM shall be deemed to have bought a number of the futures contracts equal to the number comprising the position, from SAFCOM.

8.30.4 The price of the futures contract which shall apply to the sale contemplated in rule 8.30.3.1 and the purchase contemplated in rule 8.30.3.2 shall be the expiry price determined in the manner prescribed in the contract specification of the futures contract in question and the price of an option contract which shall apply to such purchase or sale shall be zero.

8.30.5 Rule 8.30.2 shall apply *ipso facto* to the futures or option contracts comprising the purchases and sales referred to in rule 8.30.3.

8.30.6 Where the strike price of an option contract is, on expiry, better by a certain amount determined by the JSE, as set out in the directives, than the expiry price of the futures contract underlying the option contract, the person in whose name a position in the futures or option contract is registered shall be deemed to have exercised the option contract in terms of rule 8.90.3.

8.10 amended with effect from 9 May 2011

8.20.1 amended with effect from 1 August 2005

8.20.1.2 amended with effect from 9 May 2011

8.20.1.3 amended with effect from 9 May 2011

8.20.1.4 amended with effect from 9 May 2011

- 8.30.7 On the expiry of a physically settled futures contract and on instruction from the Market Controller, the holder of a long position in the futures contract shall, through the trading system, report a purchase of the underlying bonds and the holder of a short position shall, through the trading system, report a sale of the underlying bonds at the price equal to that referred to in rule 8.30.4 and the purchase, sale, delivery and receipt of the underlying bonds shall take place in accordance with rule 9.

#### 8.40 Mark-to-market

- 8.40.1 At 17h30 on each business day, or such other time as SAFCOM may determine on a particular business day, the positions in each IRC security of all trading members and their clients shall be marked-to-market on such basis as SAFCOM may determine.
- 8.40.2 SAFCOM may at any time on any business day mark-to-market the position in any IRC security of any trading member or client if, in its sole discretion, the conditions in the IRC markets for the security or its underlying instrument warrants such additional mark-to-market.

#### 8.50 Margin payments

##### 8.50.1 Initial margin

Initial margin shall be paid by a trading member or client whenever the risk of loss, as determined by SAFCOM, changes with respect to the aggregate positions of such trading member or client.

##### 8.50.2 Settlement margin

Settlement margin shall be paid by a trading member or client where the trading member or client has unsettled bonds positions and where such positions arose either from transactions executed on the central order book of the trading system or from reported transactions reported to the trading system where the respective clearing members accept the reported transactions for risk management purposes.

##### 8.50.3 Variation margin

Variation margin shall be paid to or by a trading member or client in whose name a position in a futures or option contract is registered as the result of the marking-to-market of a position in terms of rule 8.40 or the closing out of a position or part thereof as contemplated in rule 8.30.2 or the closing out of a position as contemplated in rule 8.30.3.

##### 8.50.4 Top-up margin

Top-up margin shall be paid by a trading member or client where the trading member or client has unsettled bonds positions and where such positions arose either from transactions executed on the central order book of the trading system or from reported transactions reported to the trading system where the respective clearing members accept the reported transactions for risk management purposes, as the result of an adverse mark-to-market of a position in terms of rule 8.40.

##### 8.50.5 Additional margin

8.50.5.1 A clearing member may require a trading member with whom it has entered into a clearing agreement to deposit with it, with respect to the proprietary position of the trading member or the position of any of the clients of the trading member, an amount of additional margin as agreed upon between the parties in terms of the clearing agreement.

8.50.5.2 A trading member may require a resident client to deposit with it, with respect to the resident client's position, an amount of additional margin as agreed upon between the parties in terms of the client agreement.

8.50.1 amended with effect from 1 August 2005

8.50.2 amended with effect from 9 May 2011

8.50.4 amended with effect from 9 May 2011

8.50.5.1 amended with effect from 12 December 2009 and with effect from 9 May 2011

8.50.5.2 amended with effect from 12 December 2009

**8.50.6 Retained margin**

A trading member, with respect to a resident client, may with the client's prior written agreement -

8.50.6.1 require the client to deposit an amount of money with such trading member to be used to furnish initial margin, settlement margin or additional margin before the trading member shall trade with the client; and/or

8.50.6.2 retain initial margin, settlement margin, variation margin or top-up margin payable to the client, or interest accruing in terms of rule 8.60.3, in anticipation of future transactions:

Provided that the money so deposited or retained shall be repaid to the client if the client has not traded with the trading member within thirty days.

**8.50.7 Maintenance margin level**

A trading member may agree, where a client has additional margin deposited with such trading member, that the client shall pay an amount of money to restore the additional margin when the additional margin has been used to meet payments of variation margin.

**8.60 Interest payments**

8.60.1 SAFCOM shall manage and invest all margins held by it in terms of rule 10.50 and it shall no later than the second day of the month following the month in which interest was received or accrued, remit such interest, net of the interest consideration referred to in rule 10.50.2, to each clearing member in relation to the margin held in respect of the positions of the clearing member, its clients and trading members and the clients of such trading members for the previous month.

8.60.2 Monthly in arrears a clearing member may remit the interest received in terms of rule 8.60.1, or any part thereof, to the trading members with whom it has entered into clearing agreements in relation to the positions of the trading member and their clients.

8.60.3 Subject to rule 8.50.5.2, monthly in arrears a trading member may remit the interest received in terms of rules 8.60.1 or 8.60.2, or any part thereof, to its clients in relation to the positions of such clients at any time during the preceding month.

**8.70 Trading, clearing and settlement fees**

8.70.1 With the exception of transactions in bonds, the JSE shall levy trading and clearing fees on a clearing member in respect of the trades of the clearing member, its clients and the trading members with whom the clearing member has entered into clearing agreements, in an amount and in a manner as decided by the JSE Executive, and such fees may be recovered from the clearing member on behalf of the JSE by SAFCOM.

8.70.2 A clearing member may levy such fees and charges as it deems fit on trading members with whom it has entered into a clearing agreement: Provided that such fees and charges shall be in accordance with the schedule of fees which shall form part of the said clearing agreement.

8.70.3 A trading member may levy such fees and charges for different categories of transactions as it deems fit on clients with whom it trades: Provided that such fees and charges shall be in accordance with the schedule of fees and charges which shall form part of the client agreement.

8.70.4 A trading member shall not levy a fee or any other charge on a client in respect of a transaction in terms of which it has traded as a principal with the client without the prior written agreement of the client having been recorded in the client agreement.

8.70.5 With regards to transactions in bonds, the JSE shall levy trading and clearing fees on a trading member in respect of trades of the trading member and its clients, in an amount and in a manner determined by the JSE Executive.

8.70.1 amended with effect from 9 May 2011

8.70.3 amended with effect from 1 August 2005

8.70.5 introduced with effect from 9 May 2011

**8.80 Payment procedures**

- 8.80.1 With respect to its proprietary positions, the positions of its clients, the positions of the trading members with whom it has entered into clearing agreements and the positions of the clients of such trading members, the clearing member shall pay to or receive from SAFCOM the net amount of –
- 8.80.1.1 subject to rule 10.130.1 in respect of non-resident and emigrant clients, the sum of the initial margin, settlement margin and top-up margin;
  - 8.80.1.2 the variation margin; and
  - 8.80.1.3 the trading, clearing and settlement fees for transactions in interest rate and currency derivatives.
- 8.80.2 An amount due from a clearing member in terms of rule 8.80.1 shall be paid to SAFCOM not later than 12h00 on the business day following the day on which such payment accrued or such other time as SAFCOM may in its sole discretion determine.
- 8.80.3 With respect to any proprietary position, the position of any of its clients, the position of a trading member with whom it has entered into a clearing agreement and the position of a client of such trading member which SAFCOM has marked-to-market in terms of rule 8.40.2, the clearing member shall pay to SAFCOM the amount of variation margin or top-up margin at the time stipulated by SAFCOM when the clearing member is notified by it of the mark-to-market.
- 8.80.4 With respect to its proprietary positions and the positions of its clients, a trading member shall pay to or receive from the clearing member the net amount of –
- 8.80.4.1 subject to rule 10.130.2 in respect of non-resident and emigrant clients, the initial margin, settlement margin and top-up margin referred to in rule 8.50;
  - 8.80.4.2 the additional margin referred to in rule 8.50.5.1;
  - 8.80.4.3 the variation margin referred to in rule 8.50.3; and
  - 8.80.4.4 the trading, clearing and settlement fees for transactions in interest rate and currency derivatives, referred to in rule 8.70.2.
- 8.80.5 An amount due to or from a clearing member in terms of rule 8.80.4 shall be paid not later than 12h00 on the business day following the day on which such payment accrued, or at such other time as the trading member and the clearing member have specifically agreed upon with respect to a particular payment.
- 8.80.6 With respect to any proprietary position or the position of any of its clients, which SAFCOM has marked-to-market in terms of rule 8.40.2, the trading member shall pay to the clearing member the amount of variation margin or top-up margin by the time referred to in rule 8.80.3, as stipulated by SAFCOM and as notified to the trading member by the clearing member, and no relaxation shall be given to a trading member without the prior approval of SAFCOM.
- 8.80.7 Subject to rule 10.130.1 in respect of non-resident and emigrant clients, with respect to his positions a client shall pay to or receive from the trading member with whom he traded to open such positions the net amount of –
- 8.80.7.1 the total of the initial margin, settlement margin and top-up margin referred to in rule 8.50 for all his aggregate positions: Provided that any amount so due from the resident client shall be off-set against any retained margin referred to in rule 8.50.6;
  - 8.80.7.2 the additional margin referred to in rule 8.50.5.2;

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8.80.1.3 amended with effect from 9 May 2011

8.80.4.1 amended with effect from 12 December 2009

New 8.80.4.2 introduced with effect from 12 December 2009

Existing 8.80.4.2 renumbered 8.80.4.3 and amended with effect from 12 December 2009

8.80.4.3 renumbered 8.80.4.4 and amended with effect from 12 December 2009

8.80.4.4 amended with effect from 9 May 2011

8.80.7.1 amended with effect from 12 December 2009

- 8.80.7.3 the variation margin referred to in rule 8.50.3; and
- 8.80.7.4 the trading, clearing and settlement fees for transactions in interest rate and currency derivatives, referred to in rules 8.70.3 and 8.70.4.
- 8.80.8 An amount due to or from a trading member in terms of rule 8.80.7 shall be paid not later than 12h00 on the business day following the day on which such payment accrued or such other time as the trading member and the client have specifically agreed upon with respect to a particular payment.
- 8.80.9 With respect to the position of any client, which SAFCOM has marked-to-market in terms of rule 8.40.2, the client shall pay to the trading member the amount of variation margin or top-up margin by the time referred to in rule 8.80.3 stipulated by SAFCOM and notified to the client by the trading member and no relaxation shall be given without the prior approval of the JSE.

#### **8.90 Exercise and assignment of option contracts**

##### **8.90.1 Exercise**

- 8.90.1.1 A client in whose name a long position in an option contract is registered may exercise the option on the expiry date up to the expiry time of the option contract by either verbal or written notice to the trading member with whom he dealt in order to open the long position.
- 8.90.1.2 A trading member who has a proprietary long position in an option contract registered in its name may exercise the option on the expiry date up to the expiry time of the option contract, and shall exercise such options, or options registered in the name of a client which are exercised on the instruction of the client, by executing the exercise on the trading system in the manner prescribed by the JSE or as set out in the directives.

- 8.90.2 Upon the exercise of an option in terms of rule 8.90.1.2 the person in whose name the long position in the option contract was registered shall be deemed to have bought or sold the underlying instrument of the option contract in question at the strike price from or to SAFCOM.

##### **8.90.3 Assignment**

When an option is exercised in terms of rule 8.90.1.2 or when an option is deemed to have been exercised in terms of rule 8.30.6, SAFCOM shall in turn exercise its option to buy or sell the underlying instrument in question to or from the holder of a short position in the option contract in question: Provided that –

- 8.90.3.1 SAFCOM shall in its sole discretion assign the exercise of the option contract or contracts to the registered holders of short positions in the option contract; and
- 8.90.3.2 the person to whom the exercise of the option contract is assigned in terms of rule 8.90.3.1 shall be deemed to have bought or sold the underlying instrument of the option contract.

New 8.80.7.2 introduced with effect from 12 December 2009

Existing 8.80.7.2 renumbered 8.80.7.3 and amended with effect from 12 December 2009

8.80.7.3 renumbered 8.80.7.4 and amended with effect from 12 December 2009

8.80.7.4 amended with effect from 9 May 2011

8.90.1.1 and 8.90.1.2 amended with effect from 1 June 2005

**SECTION**  
**9**

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**Section 9: Settlement****Scope of Section**

- 9.10      Applicability of Section 9
- 9.15      Settlement assurance
- 9.20      Settlement principles for bonds
- 9.30      Settlement Authority
- 9.40      Trading in bonds
- 9.50      Borrowing, lending or use of clients' bonds
- 9.60      Recording of bonds
- 9.70      Settlement of bonds
- 9.80      Non-member settled client settlement obligations
- 9.90      Member settled client settlement obligations
- 9.100     Trading Member settlement obligations
- 9.110     Reserved
- 9.115     Reserved
- 9.120     Margin on bond transactions
- 9.125     Rolling of settlement
- 9.130     Failed trade procedure applicable to trades cleared by SAFCOM
- 9.135     Failed trade procedure applicable to reported transactions not cleared by SAFCOM
- 9.140     Borrowing of bonds to prevent a transaction from failing
- 9.150     Lending of funds to prevent a transaction from failing
- 9.160     Carry and repurchase transactions in bonds to prevent a transaction from failing
- 9.170     Penalties and fees

#### 9.10 Applicability of Section 9

Section 9 shall apply to the settlement of transactions in bonds.

#### 9.15 Settlement assurance

- 9.15.1 Subject to rule 9.15.2, a trading member shall guarantee the fulfilment of all transactions in IRC securities entered into by the trading member for its own account and on behalf of a client or another member, executed on the central order book of the trading system or reported to the trading system.
- 9.15.2 Rule 9.15.1 shall not apply to reported transactions where-
  - 9.15.2.1 only one trading member is involved and where the clients who are parties to such transaction have, between themselves, concluded the terms of the transaction and instructed the trading member to report the transaction to the trading system. A client shall have no recourse against a trading member in respect of such transaction; or
  - 9.15.2.2 a trading member facilitates a transaction in bonds on a name give-up basis on behalf of a client or another trading member, and the trading member is not recorded as a counterparty to the transaction reported to the trading system. The client or the other trading member shall have no recourse against the facilitating trading member in respect of such transaction.
- 9.15.3 Except in the circumstances set out in rule 9.15.2, any action by a client in respect of a market transaction shall be against the trading member who entered into the transaction on the instruction of such client and not against any other trading member or a client of such trading member.
- 9.15.4 A trading member shall ensure that buyers and sellers of bonds are aware of their settlement obligations in terms of these rules. However, if a client is not aware of such settlement obligations, the client remains bound by the settlement rules contained in this section 9.

#### 9.20 Settlement principles for bonds

Settlement of bonds shall be effected in accordance with the following principles –

- 9.20.1 trade by trade;
- 9.20.2 between the scrip root and the cash root;
- 9.20.3 rolling and contractual; and
- 9.20.4 on a net basis per trading member, per settlement date, per listed bond whereby individual transactions are consolidated and offset into net amounts of bonds and funds for settlement by State.

#### 9.30 Settlement Authority

- 9.30.1 The Settlement Authority will manage –
  - 9.30.1.1 the settlement of transactions in bonds executed on the central order book of the trading system as referred to in rule 8.20.1.1;
  - 9.30.1.2 the settlement of transactions in bonds reported to the trading system, where the respective clearing members accept the reported transactions for risk management purposes as referred to in rule 8.20.1.3;
  - 9.30.1.3 the settlement of principal assignment trades in bonds reported to the trading system as referred to in rule 8.20.1.4;

9.10 amended with effect from 9 May 2011

9.15 and 9.15.1 to 9.15.4 introduced with effect from 9 May 2011

7.30.3.4 amended with effect from 1 August 2005

9.20.4 amended with effect from 9 May 2011

9.30.1 amended with effect from 9 May 2011

9.30.1.2 amended with effect from 9 May 2011



- 9.30.1.4 the settlement of all other reported transactions in bonds reported to the trading system as contemplated in rule 7.120; and
- 9.30.1.5 the risks associated with the settlement of the transactions referred to in rules 9.30.1.1 to 9.30.1.4.
- 9.30.2 In order to perform its functions in terms of rule 9.30.1, the Settlement Authority may –
  - 9.30.2.1 Reserved
  - 9.30.2.2 Reserved ;
  - 9.30.2.3 Reserved
  - 9.30.2.4 take action when the settlement of a transaction in bonds is unlikely to take place on settlement date;
  - 9.30.2.5 enter into a carry or repurchase transaction through the trading system on behalf of a trading member or client in order to facilitate the settlement process and manage the risk associated with such process ;
  - 9.30.2.6 borrow, as agent, on behalf of a trading member or client as undisclosed principal, bonds from third parties to facilitate the settlement process and manage the risks associated with such process;
  - 9.30.2.7 levy fees, as prescribed by directive, on trading members for the loan of bonds or funds to trading members or clients in order to facilitate the settlement process;
  - 9.30.2.8 impose penalties, as prescribed by directive, on trading members for any action or omission by a trading member which is potentially disruptive or has the effect of disrupting the settlement process and the functions of the Settlement Authority;
  - 9.30.2.9 instruct a trading member or a client (via the trading member) to close a purchase or sale transaction at a price and on the basis set out in rule 9.130 or rule 9.135 ;
  - 9.30.2.10 in its sole discretion and in exceptional circumstances, instruct a trading member or client (via the trading member) to roll the settlement of a purchase or sale transaction on the basis set out in rule 9.125; and
  - 9.30.2.11 if at any stage it becomes aware of a transaction not being able to settle which may, in its sole discretion, cause systemic risk, defer the settlement of such transaction by notifying Strate accordingly and extending the times referred to in rules 9.70, 9.80, 9.90, 9.100, 9.130 and 9.135.

#### 9.40 Trading in bonds

- 9.40.1 A client shall only place an order in respect of bonds with a trading member if –
  - 9.40.1.1 the client has directly or indirectly appointed a CSDP; and
  - 9.40.1.2 the client has taken the appropriate steps to ensure that settlement of the transaction will occur on settlement date.

9.30.1.3 amended with effect from 9 May 2011

New 9.30.1.4 introduced and Old 9.30.1.4 renumbered 9.30.1.5 with effect from 9 May 2011

9.30.2 amended with effect from 9 May 2011

9.30.2.1 to 9.30.2.3 deleted with effect from 9 May 2011

9.30.2.5 amended with effect from 9 May 2011

9.30.2.6 amended with effect from 9 May 2011

9.30.2.9 amended with effect from 9 May 2011

New 9.30.2.10 introduced with effect from 9 May 2011

Old 9.30.2.10 renumbered 9.30.2.11 and amended with effect from 9 May 2011

9.40.1.2 amended and 9.40.1.2.1 to 9.40.1.2.3 deleted with effect from 9 May 2011

9.40.2 A trading member shall only place an order or report a transaction in respect of bonds on the trading system if such member has appointed a clearing member, where applicable, and a CSDP as prescribed by directive, and has taken reasonable steps to satisfy itself that –

9.40.2.1 if a client with whom or on whose behalf the trading member is trading is not a member settled client, the client has appointed a CSDP and the appointed CSDP has confirmed, in the manner determined by the JSE, that the details of that client held by the CSDP correspond with and match the details of the client held by the trading member; and

9.40.2.2 settlement of the transaction will occur on settlement date.

#### 9.50 Borrowing, lending or use of clients' bonds

With regard to the borrowing, lending or use of any bonds referred to in rule 9.60 or 10.90, a trading member may –

9.50.1 deliver such bonds to the client on whose behalf they are being held or to his order; or

9.50.2 satisfy a sale made on behalf of the client concerned; or

9.50.3 sell the bonds being held on behalf of a client, under any of the circumstances set out in rule 9.100; or

9.50.4 otherwise deal with the bonds, including the borrowing, lending or use of such bonds, in a manner set out in the mandate signed by the client and held by the trading member in terms of rule 10.90.4.

#### 9.60 Recording of bonds

All bonds received which has been purchased on behalf of member settled clients shall be recorded in the member's accounting records on that day, so as to establish the identity of the client entitled thereto.

#### 9.70 Settlement of bonds

9.70.1 All transactions in bonds shall only be settled electronically through Strate in accordance with the principles set out in rule 9.20.

9.70.2 A trade in bonds by a trading member shall –

9.70.2.1 in accordance with rule 7.100, be allocated to a client or a trading member's proprietary account on the trade date: Provided that where a trade on a suspense account dedicated to a particular client has not been allocated on the trade date to underlying accounts under the control of that client, to ensure that the trade still settles on settlement date, allocations to the underlying accounts may be made up to 17h00 on the second business day after the original trade. All late allocations after 17h00 on the second business day after the trade date, in contravention of this rule, will be effected by the Settlement Authority subject to the payment of the fee as prescribed by directive. Any late allocation shall be communicated to and accepted by the client within sufficient time to allow for the CSDP of the client to comply with rule 9.70.2.5;

9.70.2.2 if the trade is effected through a principal assignment stock account, be assigned to a client on the trade date in accordance with rule 7.110: Provided that where a trade has not been assigned on the trade date in contravention of rule 7.110, to ensure that the trade still settles on settlement date, late principal assignment trades must be effected by the trading member up to 17h00 on the second business day after the original trade. All late principal assignment trades after 17h00 on the second business day after the trade date will be effected by the Settlement Authority subject to the payment of the fee as prescribed by directive. Any late principal assignment trades shall be

9.40.2 amended with effect from 9 May 2011

9.40.2.2.1 to 9.40.2.2.3 deleted with effect from 9 May 2011

9.70.2 amended with effect from 9 May 2011

9.70.2.1 amended with effect from 9 May 2011

- communicated to and accepted by the client within sufficient time to allow for the CSDP of the client to comply with rule 9.70.2.5;
- 9.70.2.3 be communicated to a client on the trade date, subject to rules 9.70.2.1 and 9.70.2.2;
- 9.70.2.4 in the absence of notification from the client to the contrary by no later than 12h00 on the business day after the original trade, be deemed to have been accepted by the client;
- 9.70.2.5 be committed to by the CSDP of the trading member or client by no later than 11h00 on the settlement date;
- 9.70.2.6 with the exception of trades referred to in rules 9.70.2.7 and 9.70.2.8, be settled on the third business day after the trade date in accordance with the settlement timetable as prescribed by directive;
- 9.70.2.7 if the counterparties to a reported trade agree thereto, be settled on the trade date or on the first or second business day after the trade date; and
- 9.70.2.8 if the trade is a carry transaction or a forward transaction, be settled on such date as may be agreed to by the counterparties to the transaction.
- 9.70.3 Notwithstanding rules 9.70.2.1 to 9.70.2.3 –
- 9.70.3.1 allocation corrections in respect of trades due to settle on the third business day after the trade date or a later settlement date may be effected up to 17h00 on the second business day after the trade date if they have not been effected on the trade date. All late allocation corrections after 17h00 on the second business day after the trade date will be corrected by the Settlement Authority subject to the payment of the fee as prescribed by directive. Any late allocation corrections shall be communicated to and accepted by the client within sufficient time to allow for the CSDP of the client to comply with rule 9.70.2.5;
- 9.70.3.2 principal assignment corrections in respect of trades due to settle on the third business day after the trade date or a later settlement date may be effected up to 17h00 on the second business day after the trade date if they have not been effected on the trade date. All late principal assignment corrections after 17h00 on the second business day after the trade date will be corrected by the Settlement Authority subject to the payment of the fee as prescribed by directive. Any late principal assignment corrections shall be communicated to and accepted by the client within sufficient time to allow for the CSDP of the client to comply with rule 9.70.2.5;
- 9.70.3.3 allocations corrections and principal assignment corrections in respect of trades due to settle on the first or the second business day after the trade date may be effected up to 17h00 on the business day preceding the settlement day. All late allocation corrections and late principal assignment corrections after 17h00 on the business day preceding the settlement date will be corrected by the Settlement Authority subject to the payment of the fee as prescribed by directive. Any late allocation corrections or late principal assignment corrections shall be communicated to and accepted by the client within sufficient time to allow for the CSDP of the client to comply with rule 9.70.2.5.
- 9.70.4 If a CSDP has not committed to settle a transaction by 11h00 (for transactions due to settle in the first settlement run) or by 14h30 (for transactions due to settle in the second settlement run) on the

9.70.2.2 amended with effect from 9 May 2011  
 9.70.2.5 amended with effect from 9 May 2011  
 9.70.2.6 amended with effect from 9 May 2011  
 9.70.2.7 introduced with effect from 9 May 2011  
 9.70.2.8 introduced with effect from 9 May 2011  
 9.70.3.1 amended with effect from 9 May 2011  
 9.70.3.2 amended with effect from 9 May 2011  
 9.70.3.3 introduced with effect from 9 May 2011

settlement date, in accordance with the settlement timetable as prescribed by directive, the transaction shall be a failed trade and shall be dealt with in terms of the failed trade procedure as set out in rule 9.130 or 9.135, unless the Settlement Authority rolls the settlement of the transaction to a subsequent date as set out in rule 9.125.

- 9.70.5 If a trading member advises the Settlement Authority at any stage that the CSDP of the trading member or the CSDP of a client will not be in a position to settle a transaction on settlement day and the Settlement Authority is not able to procure that the settlement of the transaction will take place on settlement day, or the Settlement Authority does not roll the settlement to a subsequent date, the transaction shall be declared a failed trade by no later than 09h00 on the next business day and shall be dealt with in terms of the failed trade procedure as set out in rule 9.130 or rule 9.135.

#### **9.80 Non-member settled client settlement obligations**

- 9.80.1 A non-member settled client shall, by no later than 12h00 on the business day after the transaction, give instructions to his CSDP to settle the transaction.
- 9.80.2 A non-member settled client shall, by no later than 16h30 on the business day preceding the settlement date, ensure and procure that his CSDP is in a position to commit to settle the transaction on his behalf on the settlement date.
- 9.80.3 A commitment by a CSDP to settle a transaction on behalf of a non-member settled client in terms of rule 9.80.2 shall become unconditional as at 11h00 on the settlement date.
- 9.80.4 In the event that a non-member settled client fails to comply with rule 9.80.2, or is advised by the Settlement Authority that the transaction may not settle at 11h00 on the settlement date, the trading member which effected the transaction –
- 9.80.4.1 is obliged in terms of rule 9.100.8 to take the necessary steps to ensure that the transaction settles on settlement day, including the borrowing or lending of bonds or funds or entering into a carry or repurchase transaction on such non-member settled client's account; and
- 9.80.4.2 may proceed in the manner set out in rule 9.80.5.
- 9.80.5 Subject to any agreement between the trading member and the client to the contrary and the action of the Settlement Authority in terms of rule 9.100.11 or 9.100.12, in the event that a non-member settled client fails to comply with the provisions of rule 9.80.2, the trading member may –
- 9.80.5.1 in respect of a sale transaction, buy such bonds for the account of the client; or
- 9.80.5.2 in respect of a purchase transaction, sell such bonds for the account of the client.
- 9.80.6. The non-member settled client shall remain liable for any losses, costs and charges incurred, or charges imposed, by the trading member as a result of the member acting in accordance with rule 9.80.4 or 9.80.5 or any action taken by the Settlement Authority in terms of rule 9.130 or rule 9.135.

#### **9.90 Member settled client settlement obligations**

- 9.90.1 A member settled client shall, by no later than 12h00 on the business day after the transaction, ensure that the trading member which effected the transaction for or on behalf of such client will be in a position to settle the transaction on settlement day.
- 9.90.2 In the event that a member settled client fails to comply with the provisions of rule 9.90.1, the trading member which effected the transaction –

9.70.4 amended with effect from 9 May 2011

9.70.5 amended with effect from 9 May 2011

9.80.2 amended with effect from 9 May 2011

9.80.3 amended with effect from 9 May 2011

9.80.4 amended with effect from 9 May 2011

9.80.4.1 amended with effect from 9 May 2011

9.80.6 amended with effect from 9 May 2011

- 9.90.2.1 is obliged in terms of rule 9.100.4 to take the necessary steps to ensure that the transaction settles on settlement day, including the borrowing or lending of bonds or funds or entering into a carry or repurchase transaction on such member settled client's account; and
- 9.90.2.2 may proceed in the manner set out in rule 9.90.3.
- 9.90.3 Subject to any agreement between the trading member and the client to the contrary and the action of the Settlement Authority in terms of rule 9.100.11 or 9.100.12, in the event that a member settled client fails to comply with the provisions of rule 9.90.1, the trading member may –
  - 9.90.3.1 in respect of a sale transaction, buy such bonds for the account of the client; or
  - 9.90.3.2 in respect of a purchase transaction, sell such bonds for the account of the client.
- 9.90.4 The member settled client shall remain liable for any losses, costs and charges incurred, or charges imposed, by the trading member as a result of the trading member acting in accordance with rules 9.90.2 or 9.90.3 or any action taken by the Settlement Authority in terms of rule 9.130 or rule 9.135.

#### **9.100 Trading member settlement obligations**

- 9.100.1 A trading member shall at all times endeavour to ensure that the settlement of a transaction in bonds effected by the member takes place.
- 9.100.2 The settlement officer of a trading member must immediately inform the Settlement Authority when any transaction in a bond is unlikely to settle.
- 9.100.3 No trading member may, on settlement day, stop payment in respect of a Strate settlement.
- 9.100.4 If a member settled client fails to comply with the provisions of rule 9.90.1 the trading member must take the necessary steps to ensure that the transaction settles on settlement day, which may include the borrowing or lending of bonds or funds or entering into a carry transaction on the said client's account.
- 9.100.5 A trading member shall endeavour to ensure that by no later than 16h30 on the business day preceding the settlement date, the CSDP of that trading member is in a position to commit to settle the transactions in respect of member settled clients and the proprietary transactions of that trading member on the settlement date.
- 9.100.6 A commitment by a CSDP to settle a transaction in respect of a member settled client and the proprietary transactions of a trading member in terms of rule 9.100.5 shall become unconditional as at 11h00 on the settlement date.
- 9.100.7 If by 16h30 on the business day preceding the settlement date, a member settled client remains unable to settle a transaction on the settlement date, the trading member shall continue to take the necessary steps to ensure that, by no later than 11h00 on the settlement date, the CSDP of the trading member commits to settle any transactions in respect of that member settled client.
- 9.100.8 If a non-member settled client fails to comply with rule 9.80.2, or is advised by the Settlement Authority that the transaction may not settle at 11h00 on the settlement date, the trading member must take the necessary steps to ensure that the transaction settles on settlement day, which may include the borrowing or lending of bonds or funds or entering into a carry transaction on the said client's account.
- 9.100.9 If by 16h30 on the business day preceding the settlement date, a non-member settled client remains unable to ensure and procure that his CSDP will be in a position to commit to settling a transaction on the settlement date, the trading member shall continue to take the necessary steps to ensure that, by

9.90.2 amended with effect from 9 May 2011

9.90.4 amended with effect from 9 May 2011

9.100.3 amended with effect from 9 May 2011

9.100.5 amended with effect from 9 May 2011

9.100.6 amended with effect from 9 May 2011

9.100.7 amended with effect from 9 May 2011

9.100.8 amended with effect from 9 May 2011

no later than 11h00 on the settlement date, the CSDP of the non-member settled client commits to settling the transaction.

- 9.100.10 If a client, at any stage, advises a trading member or the trading member otherwise becomes aware, that the client is not able to settle a transaction, the trading member shall endeavour to enter into an arrangement to ensure that the transaction settles on settlement day. If the trading member is unable to enter into such an arrangement, the trading member shall immediately notify the Settlement Authority.
- 9.100.11 If the Settlement Authority receives notification in terms of rule 9.100.10 and is able to procure the settlement of the transaction by means of the borrowing of bonds or funds or effecting a carry or repurchase transaction, the trading member shall by no later than the close of business on the next business day –
- 9.100.11.1 in respect of a sale transaction, buy such bonds for the account of the client and advise the Settlement Authority accordingly; or;
  - 9.100.11.2 in respect of a purchase transaction, sell such bonds for the account of the client and advise the Settlement Authority accordingly.
- 9.100.12 If the Settlement Authority receives notification in terms of rule 9.100.10, and either rolls the settlement in terms of rule 9.125 or is able to close the transaction in terms of rule 9.30.2.9 or declares the transaction to be a failed trade in terms of rule 9.70.4, the trading member shall act in accordance with the instructions received from the Settlement Authority in terms of rule 9.130 or 9.135 respectively.
- 9.100.13 A trading member shall not use a client's bonds balances to settle the obligations of –
- 9.100.13.1 another client; or
  - 9.100.13.2 the trading member.
- 9.100.14 A contravention of rule 9.100.13 by a trading member may, in the discretion of the JSE, be deemed to constitute an act of default in terms of rule 11.10.2.

#### **9.110 Reserved**

#### **9.115 Reserved**

#### **9.120 Margin on bond transactions**

- 9.120.1 Clearing members shall be required to provide margin to SAFCOM as follows in respect of unsettled trades in bonds which are cleared by SAFCOM in terms of rule 8.20.1 -
- 9.120.1.1 settlement margin shall be payable by a clearing member before 12h00 on the business day after the original trade in respect of the clearing member's proprietary positions, the positions of its clients, the positions of trading members with which it has entered into clearing agreements and the positions of clients of such trading members;
  - 9.120.1.2 top-up margin shall be payable by a clearing member before 12h00 on the second business day after the original trade in respect of the clearing member's proprietary positions, the positions of its clients, the positions of trading members with which it has entered into clearing agreements and the positions of clients of such trading members.

9.100.9 amended with effect from 9 May 2011

9.100.11 amended with effect from 9 May 2011

9.100.12 amended with effect from 9 May 2011

9.110 and 9.110.1 to 9.110.8 deleted with effect from 9 May 2011

9.115 and 9.115.1 to 9.115.7 deleted with effect from 9 May 2011

9.120 amended with effect from 9 May 2011

9.120.1 amended with effect from 9 May 2011

9.120.1.1 amended with effect from 9 May 2011

- 9.120.2 Margin shall be calculated in accordance with principles set out in the directives and shall be payable and repayable on such dates as may be prescribed in rule 8.80 and in the directives.
- 9.120.3 Failure by a clearing member to pay margin, in contravention of these rules and directives may, in the discretion of the JSE, be deemed to constitute an act of default in terms of rule 11.10.

#### **9.125 Rolling of settlement**

- 9.125.1 The rolling of settlement will be carried out in the following manner:
  - 9.125.1.1 The Settlement Authority will obtain a list of the settlements excluded for settlement by the CSDPs, which will include the failed trade leg as well as the opposite trade leg;
  - 9.125.1.2 The Settlement Authority will advise the failing and non-failing trading members that the transaction will be rolled to a revised settlement date determined by the Settlement Authority;
  - 9.125.1.3 The failing and non-failing trading members will be instructed to re-book the original transaction for settlement on the revised settlement date.
- 9.125.2 If settlement does not take place on the revised settlement date, the transaction may, at the discretion of the Settlement Authority, either be rolled to another revised settlement date, under exceptional circumstances, or be declared to be a failed trade, and the affected trading members must act in accordance with the instructions received from the Settlement Authority in terms of rule 9.130 or rule 9.135.
- 9.125.3 The failing trading member or non-failing trading member must, before the close of business on the business day following that on which the rolling of settlement has been completed, submit a statement, in writing, to the Settlement Authority detailing any expenses incurred or income foregone by the member or the client as a consequence of the rolling of settlement, including interest.
- 9.125.4 The non-failing trading member shall in respect of a reported transaction, claim any losses and compensation resulting from the rolling of settlement from the failing trading member. Failure by the failing trading member to pay such funds shall be in contravention of these rules and directives, and may, in the discretion of the JSE, be deemed to constitute an act of default in terms of rule 11.10.
- 9.125.5 In the case of transactions which are cleared by SAFCOM in terms of rule 8.20.1, any margin taken on the original transaction will be retained by the Settlement Authority until payment of any claims on the rolled settlement has been made.

#### **9.130 Failed trade procedure applicable to trades cleared by SAFCOM**

- 9.130.1 A failed trade arising out of a transaction which is cleared by SAFCOM in terms of rule 8.20.1, shall be dealt with in the following manner-
  - 9.130.1.1 the Settlement Authority will obtain a list of the settlements excluded for settlement by the CSDPs, which will include the failed trade leg as well as the opposite trade leg;
  - 9.130.1.2 Reserved
  - 9.130.1.3 the transactions selected in terms of rule 9.130.1.1 shall be closed at a price to be determined by the Settlement Authority in accordance with principles set out in the directives. This price may differ from the original transaction price and will include compensation for the trading members or clients whose transactions are being closed;

9.125 introduced with effect from 9 May 2011

9.125.1 to 9.125.5 introduced with effect from 12 July 2010

9.130 amended with effect from 9 May 2011

9.130.1 amended with effect from 9 May 2011

9.130.1.1 amended with effect from 9 May 2011

9.130.1.2 deleted with effect from 9 May 2011

9.130.1.3 amended with effect from 9 May 2011

- 9.130.1.4 the difference between the original value of the trade that failed and the value based on the close out price as established in rule 9.130.1.3 shall be paid by the Settlement Authority to the CSDP of the trading member or client who effected the failed trade, to enable the CSDP to commit to the failed trade settlement in terms of the procedures as set out in the directives;
- 9.130.1.5 the settlement margin and top-up margin held by SAFCOM in respect of the relevant trading member or non-member settled client will be applied by the Settlement Authority to pay the amount referred to in rule 9.130.1.4 to the CSDP of the trading member or client whose transactions failed;
- 9.130.1.6 the clearing member of the trading member who effected the failed trade will pay any resultant shortfall between the margin referred to in rule 9.130.1.5 and the amount referred to in rule 9.130.1.4 to the Settlement Authority and may claim such shortfall from the trading member. Any resultant surplus between the margin referred to in rule 9.130.1.5 and the amount referred to in rule 9.130.1.4 will be paid by the Settlement Authority to the clearing member of the trading member who effected the failed trade; and
- 9.130.1.7 If the failed trade was effected by the trading member on behalf of a client, the shortfall owed by the trading member to the clearing member in terms of rule 9.130.1.6 may be claimed by the trading member from the client.
- 9.130.2 This rule 9.130 shall be binding on SAFCOM, clearing members, trading members, clients and CSDPs.

#### **9.135 Failed trade procedure applicable to reported transactions not cleared by SAFCOM**

- 9.135.1 A failed trade arising out of a reported transaction not cleared by SAFCOM shall be dealt with in the following manner:
  - 9.135.1.1 the Settlement Authority will obtain a list of the settlements excluded for settlement by the CSDPs, which will include the failed trade leg as well as the opposite trade leg;
  - 9.135.1.2 the transactions selected in terms of rule 9.135.1.1 shall be closed at a price to be determined by the Settlement Authority in accordance with principles set out in the directives. This price may differ from the original transaction price and will include compensation for the trading members or clients whose transactions are being closed;
  - 9.135.1.3 the non-failing trading member shall claim any losses and compensation resulting from the close out of the transaction from the failing trading member. Failure by the failing trading member to pay such funds shall be in contravention of these rules and directives, and may, in the discretion of the JSE, be deemed to constitute an act of default in terms of rule 11.10.

#### **9.140 Borrowing of bonds to prevent a trade from failing**

- 9.140.1 If a trading member –
  - 9.140.1.1 is not able to comply with rule 9.100.7 or 9.100.9 in respect of a sale transaction; or
  - 9.140.1.2 at any time notifies the Settlement Authority or the Settlement Authority otherwise becomes aware, that a trading member or client will not be able to settle a sale transaction on settlement day,

the Settlement Authority will endeavour to borrow, as agent, on behalf of the trading member or client as undisclosed principal, the bonds required by the trading member or client to comply with its obligations to settle the transaction.
- 9.140.2 The arrangement whereby the Settlement Authority facilitates the borrowing of bonds, as contemplated in rule 9.140.1, shall be on the following terms and conditions:

9.135 introduced with effect from 9 May 2011

9.135.1 introduced with effect from 9 May 2011



- 9.140.2.1 The trading member or client shall ensure that sufficient cash is available in their funds settlement account with their CSDP to meet the initial and any subsequent collateral requirement;
- 9.140.2.2 The Settlement Authority shall initiate the borrowing by sending the necessary settlement instructions to Strate through the lending and borrowing system, and shall advise the trading member of the transactions giving rise to the loaned bonds and the collateral requirement;
- 9.140.2.3 The collateral provided shall continue during the loan period and shall be held by the Settlement Authority until equivalent bonds are returned to the Settlement Authority;
- 9.140.2.4 The collateral amount shall be equivalent to the initial loan value or current ruling price value or highest mark-to-market value during the loan period, whichever is the greatest, of each loaned bonds position plus the margin applicable thereto as set out in the directives;
- 9.140.2.5 If on any business day, the collateral value falls below the value set out in rule 9.140.2.4, the Settlement Authority may request the trading member or client to immediately provide further collateral in the amount of any shortfall. The trading member or client shall only be entitled to a refund of the collateral amount at the time of and in proportion to, the amount of the loan returned;
- 9.140.2.6 The trading member or client shall ensure the return of the loaned bonds within 3 business days of a loan recall;
- 9.140.2.7 The trading member or client shall return equivalent bonds in no more than two deliveries, the first delivery being not less than 50% of the loaned bonds;
- 9.140.2.8 The trading member or client shall make good any corporate action arising on the loaned bonds during the loan period and the effects of taxation in the hands of the lender, where applicable, within 3 business days of the payment date of the relevant corporate action;
- 9.140.2.9 The trading member shall pay to the Settlement Authority the lending fees as defined by directive, which shall accrue over the loan period and be paid monthly in arrears; and
- 9.140.2.10 The trading member or a client shall be entitled to interest on the lending margin of the collateral.
- 9.140.3 A client must pay any costs or fees that may be incurred as a result of the borrowing of bonds to effect settlement and any penalty imposed on the trading member by the Settlement Authority as set out in the directives, where the client failed to deliver the bonds required to settle the transaction.
- 9.140.4 Failure by a trading member or a client to –
  - 9.140.4.1 provide collateral for the borrowed bonds; or
  - 9.140.4.2 timeously return the borrowed bonds,
 in contravention of the rules and directives may, in the discretion of the JSE, be deemed to constitute an act of default in terms of rule 11.10 or 11.20 respectively.

#### **9.150 Lending of funds to prevent a trade from failing**

- 9.150.1 If a trading member –
  - 9.150.1.1 is not able to comply with rule 9.100.7 or 9.100.9 in respect of a purchase transaction; or
  - 9.150.1.2 at any time notifies the Settlement Authority or the Settlement Authority otherwise becomes aware, that a trading member or a client will not be able to settle a purchase transaction on settlement day, the Settlement Authority may lend to the trading member or client the funds required by the trading member or client to comply with its obligations to settle the transaction.

- 9.150.2 The arrangement whereby the Settlement Authority lends funds, as contemplated in rule 9.150.1, shall be on the following terms and conditions:
- 9.150.2.1 The trading member or client shall ensure that the bonds which constitutes the failing transaction shall form the initial collateral for the funds advanced;
  - 9.150.2.2 The Settlement Authority shall initiate the funding by sending the necessary settlement instructions to Strate through the lending and borrowing system, and shall advise the trading member of the transactions giving rise to the loaned funds and the collateral requirements;
  - 9.150.2.3 The collateral provided shall continue during the loan period and shall be held by the Settlement Authority until the loaned funds are returned to the Settlement Authority;
  - 9.150.2.4 The collateral value shall be equivalent to the ruling price value of the collateral less the applicable lending margin as set out in the directives and shall be at least equivalent in value to the loaned funds;
  - 9.150.2.5 If on any business day –
    - 9.150.2.5.1 the collateral value falls below the value of the loaned funds, the Settlement Authority may –
      - 9.150.2.5.1.1 request the trading member or client to immediately provide additional collateral acceptable to the Settlement Authority, to cover such shortfall, or
      - 9.150.2.5.1.2 require the trading member or client to repay so much of the loaned funds so as to ensure that the shortfall is removed;
    - 9.150.2.5.2 the collateral value exceeds the value of the loaned funds, the trading member or client shall not be entitled to the return of the excess collateral except at the time of and in proportion to, the loaned funds repaid by the trading member or client;
  - 9.150.2.6 A trading member shall pay to the Settlement Authority the loan fees as defined by directive, which shall accrue over the loan period and be paid monthly in arrears.
- 9.150.3 A client must pay any costs or fees that may be incurred as a result of the borrowing of funds to effect settlement and any penalty imposed on the trading member by the Settlement Authority as set out in the directives, where the client failed to pay the funds required to settle the transaction.
- 9.150.4 Failure by a trading member or a client to –
- 9.150.4.1 provide collateral for the borrowed funds; or
  - 9.150.4.2 timeously return the borrowed funds,
- in contravention of these rules and directives may, in the discretion of the JSE, be deemed to constitute an act of default in terms of rule 11.10 or 11.20 respectively.

#### **9.160 Carry and repurchase transactions in bonds to prevent a trade from failing**

- 9.160.1 In the event that a trading member –
- 9.160.1.1 is not able to comply with rule 9.100.7 or 9.100.9 in respect of a transaction; or
  - 9.160.1.2 at any time notifies the Settlement Authority or the Settlement Authority otherwise becomes aware, that a trading member or client will not be able to settle a transaction on settlement day; and
  - 9.160.1.3 the Settlement Authority is unable to enter into a securities borrowing or funds borrowing transaction, as the case may be, in terms of rule 9.140 or 9.150,

9.160 amended with effect from 9 May 2011

the Settlement Authority will endeavour to enter into a carry or repurchase transaction, as agent, on behalf of the trading member or client as undisclosed principal, as required by the trading member or client to comply with its obligations to settle the transaction.

- 9.160.2 The arrangement whereby the Settlement Authority facilitates a carry or repurchase transaction as contemplated in rule 9.160.1 shall be on the terms and conditions set out in the directives.
- 9.160.3 A client must pay any costs that may be incurred in relation to a carry or repurchase transaction in bonds to effect settlement and any penalty imposed on the trading member by the Settlement Authority as set out in the directives, where the client failed to meet his obligations to settle the transaction.
- 9.160.4 Failure by a trading member or a client to –
  - 9.160.4.1 provide margin required for the carry or repurchase transaction; or
  - 9.160.4.2 timeously settle the carry or repurchase transaction,
 in contravention of these rules and directives may, in the discretion of the JSE, be deemed to constitute an act of default in terms of rule 11.10 or 11.20 respectively.

#### 9.170 Penalties and fees

- 9.170.1 The Settlement Authority may –
  - 9.170.1.1 impose a penalty on a trading member which fails to effect instructions or settlement in accordance with the settlement timetable as prescribed by directive; and
  - 9.170.1.2 charge any trading member the fees associated with settlement of bonds as prescribed by directive.
- 9.170.2 The penalty referred to in rule 9.170.1.1 shall be levied in accordance with a schedule as prescribed by directive.
- 9.170.3 Payment of the penalty imposed or fees charged in terms of rule 9.170.1 shall be made to the Settlement Authority within five business days of notification.
- 9.170.4 A client must pay any penalty imposed on the trading member by the Settlement Authority where the client was at fault or where the client was responsible for causing a failed trade.

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9.160.1.3 amended with effect from 9 May 2011

9.160.2 amended with effect from 9 May 2011

9.160.3 amended with effect from 9 May 2011

9.160.4.1 amended with effect from 9 May 2011

9.160.4.2 amended with effect from 9 May 2011

# SECTION 10

## Section 10: Conduct of Business

### Scope of Section

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- 10.20 Trading and position records
- 10.30 Telephone recordings

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- 10.50 Management of funds by SAFCOM
- 10.60 Clearing member bank accounts
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**General provisions**

**10.10 Trading and position limits**

- 10.10.1 SAFCOM may limit the aggregate exposure arising from the proprietary positions of a clearing member, the positions of the clients of the clearing member, the positions of trading members with which the clearing member has entered into clearing agreements and the positions of the clients of such trading members in relation to the net financial worth of the clearing member plus its suretyship referred to in rule 3.40.7 in a manner determined by the JSE.
- 10.10.2 The clearing member may limit the aggregate exposure arising from the proprietary positions of a trading member and the positions of the clients of such trading member.
- 10.10.3 A clearing member may stipulate a limit to the number of futures and option contracts or a nominal value of bonds that may constitute a transaction by a particular trading member at any one time.

**10.20 Trading and position records**

- 10.20.1 A member shall at all times maintain records of –
  - 10.20.1.1 its proprietary transactions and transactions for or on behalf of other members and clients;
  - 10.20.1.2 margin and other payments to and from SAFCOM, other members and their clients.
- 10.20.2 A member shall confirm to a client at least once a month –
  - 10.20.2.1 the transactions done with or on behalf of the client during the period;
  - 10.20.2.2 the futures and option contract positions of the client at the time of reporting;
  - 10.20.2.3 the bonds positions of the client at the time of reporting, where a trading member has custody and control over such instruments;
  - 10.20.2.4 the balances of additional and retained margin held for the client at the time of reporting; and
  - 10.20.2.5 all payments to and from the client made or accrued during the period, including payments of margin, fees and interest.
- 10.20.3 The records referred to in rule 10.20.1 shall be kept for a period of at least five years.

**10.30 Telephone recordings**

- 10.30.1 The JSE, SAFCOM and members may tape-record all telephone calls.
- 10.30.2 A trading member must tape-record all telephonic orders received from or made to clients.
- 10.30.3 With respect to such telephone calls, the tape-recording shall be admissible as evidence in any disciplinary or dispute resolution proceedings contemplated in these rules: Provided that the person who intends to rely on such tape recordings in evidence shall bear the onus of proving the authenticity thereof.
- 10.30.4 All parties to the prescribed agreements shall in such agreement acknowledge and confirm that they are aware that telephone calls may be recorded, and they shall be deemed to have irrevocably consented thereto.
- 10.30.5 No member shall tamper with any tape-recording of any telephone call.
- 10.30.6 Tape-recordings contemplated in rule 10.30.2 shall be retained by the trading member for a period of at least 14 days.

10.10.1 amended with effect from 12 December 2009

10.10.2 amended with effect from 12 December 2009

10.10.3 amended with effect from 12 December 2009

10.30.3 amended with effect from 1 August 2005

10.30.6 amended with effect from 9 May 2011

**Management of members' and clients' accounts**

**10.40 Separation of funds and IRC securities**

A member –

- 10.40.1 shall at all times separate a client's or other member's assets, including funds, the IRC securities and other corporeal and incorporeal things of the client or other member, from its own assets;
- 10.40.2 may not co-mingle the funds or IRC securities of any client or another member with its own;
- 10.40.3 may not allow the use of funds or IRC securities or corporeal or incorporeal things belonging to any client or other member to finance its own transactions or the transactions of any other person;
- 10.40.4 may not allow the use of funds or IRC securities or corporeal or incorporeal things of any client or other member to operate its own business; and
- 10.40.5 in respect of the transactions or positions of a member or client, may not retain any funds, IRC securities or other corporeal or incorporeal things given by such member or client or received by the member on behalf of any person other than additional margin or retained margin, or IRC securities as contemplated in terms of rule 10.90.1.

**10.50 Management of funds by SAFCOM**

- 10.50.1 SAFCOM shall separate the margins and other monies, IRC securities and other corporeal and incorporeal things of any clearing member from its own assets and shall manage and invest such margins and other monies in a manner and subject to such terms and conditions as the JSE shall determine.
  - 10.50.1.1 A clearing member may deposit any additional margin kept by it in terms of rule 8.50.5.1 with SAFCOM.
  - 10.50.1.2 A trading member may deposit any additional or retained margin kept by it in respect of its resident clients in terms of rule 8.50.5.2 with SAFCOM.
- 10.50.2 SAFCOM, on behalf of the JSE, shall monthly in arrears, retain an interest consideration as determined by the JSE of not more than 2% per annum on any margins held by it in respect of any position registered in the name of any person during the month.

**10.60 Clearing member bank accounts**

- 10.60.1 The provisions of this rule 10.60 shall apply in respect of additional margin not deposited by a clearing member with SAFCOM.
- 10.60.2 A clearing member shall at all times keep a separate bank account into which it shall deposit any additional margin kept by it.
- 10.60.3 A clearing member shall at all times ensure that the correct amount of additional margin as required by its clearing agreement with the trading member is held in respect of each trading member with

10.40 amended with effect from 1 August 2005  
 10.40.1 amended with effect from 1 August 2005  
 10.40.2 amended with effect from 1 August 2005  
 10.40.3 amended with effect from 1 August 2005  
 10.40.4 amended with effect from 1 August 2005  
 10.40.5 amended with effect from 1 August 2005  
 10.50.1 amended with effect from 1 August 2005  
 10.50.1.1 introduced with effect from 12 December 2009  
 10.50.1.2 introduced with effect from 12 December 2009  
 New 10.60.1 introduced with effect from 12 December 2009  
 10.60.1 amended with effect from 1 August 2005  
 Existing 10.60.1 renumbered 10.60.2 with effect from 12 December 2009

which it has entered into a clearing agreement and its records shall at all times reflect the amount of additional margin held in respect of each such trading member.

#### **10.70 Trading members' bank accounts**

- 10.70.1 The provisions of this rule 10.70 shall apply in respect of additional and/or retained margin not deposited by a member with SAFCOM.
- 10.70.2 A trading member shall keep a separate trust account with a bank into which it shall deposit directly or ensure the direct deposit of all client money either held or received by it with respect to its resident clients.
- 10.70.3 A trading member shall at all times keep records that shall show the amount held in respect of each client with respect to additional margin and with respect to retained margin and it shall at all times ensure that the correct amount of additional margin as required in terms of the relevant client agreement is held in respect of each client's positions.
- 10.70.4 Other than in respect of the payment for fees and services rendered, a member shall at all times ensure that there is no deposit or receipt of client funds into its own proprietary account.

#### **10.80 Members' accounts at CSDPs for bonds**

A member which has control over and custody of the bonds holdings of one or more of its clients shall operate separate accounts at its CSDP for the purpose of segregating the custody positions of its clients from its proprietary positions.

#### **10.90 Trading members' control of client holdings in bonds**

- 10.90.1 Where a trading member has control over the bonds holdings of its clients, the details of such client bonds holdings shall be recorded in its accounting records in a manner that will render it possible at any time to establish readily the identity of the persons entitled to the ownership of such bonds.
- 10.90.2 A trading member that controls bonds holdings on behalf of its clients must balance and reconcile, on at least a monthly basis, its own client holdings records with the custody balances as reflected by its CSDP. Any reconciling differences identified between the respective records must be rectified forthwith.
- 10.90.3 At the request of the JSE, the trading member shall provide the JSE with a copy of the reconciliations performed in terms of rule 10.90.2 above, together with full details and explanations of reconciling items.
- 10.90.4 Any arrangements entered into between a client and a trading member whereby the member exercises control over the client's bonds holdings, shall be provided for in the client agreement that shall contain the minimum requirements as set out in Directive DD.
- 10.90.5 A trading member shall ensure that only suitably authorised persons are able to withdraw or transfer a member settled client's bonds from a client custody account held with the CSDP of the trading member.
- 10.90.6 A trading member shall be precluded from controlling or having custody over the holdings of its non-resident or emigrant clients in bonds unless it is an authorised bank.

#### **10.100 Relaxation or indulgence given by a member**

A member who gives any relaxation or indulgence to a client regarding the payment of margin, whether initial margin, settlement margin, variation margin, top-up margin or additional margin, shall be deemed to have granted the client a loan repayable on demand in the amount of the shortfall for the period of the relaxation or

10.60.2 renumbered 10.60.3 with effect from 12 December 2009

New 10.70.1 introduced with effect from 12 December 2009

Existing 10.70.1 renumbered 10.70.2 with effect from 12 December 2009

10.70.2 renumbered 10.70.3 with effect from 12 December 2009

10.70.3 renumbered 10.70.4 with effect from 12 December 2009

10.90.4 amended with effect from 9 May 2011

indulgence at a rate of interest specified in the client agreement between them. If no rate is specified, the member's customary rate shall apply or if there is no customary rate, the rate determined in terms of the Prescribed Rate of Interest Act No. 55 of 1975 shall apply. The member shall, if such loan is for a period exceeding two business days, immediately inform the client thereof in writing.

#### **10.105 Acceptance of cash deposits**

No member shall knowingly receive or accept a deposit of cash from any person exceeding an amount of R5 000. For the purpose of this rule "cash" shall mean coin and paper money of the Republic or any other country. A member shall not receive or accept two or more cash amounts exceeding R5 000 in total with the purpose of avoiding compliance with this rule.

#### ***Non-Resident and Emigrant Clients***

#### **10.110 Bank accounts**

Before a trading member trades with a non-resident or emigrant client, the non-resident client shall open a non-resident account at an authorised bank or, in the case of an emigrant client, an emigrant's blocked account and a non-resident account, both with the same authorised bank, to be used for the purposes of trading in IRC securities.

#### **10.120 Margins payable**

The initial margin, settlement margin or top-up margin payable with respect to the open futures and option contract positions or unsettled bonds positions, as the case may be, of a non-resident or emigrant client shall be the initial margin, settlement margin or top-up margin that would otherwise have been payable by or to a member or a resident client in relation to equivalent positions, adjusted by the margin category assigned by the member in question to the non-resident or emigrant client, and a trading member may not hold any retained or additional margins in relation to the positions of any non-resident or emigrant client.

#### **10.130 Settlements**

10.130.1 With respect to his open futures and option contract positions or unsettled bonds positions a non-resident client shall pay from his non-resident account to, or receive into his non-resident account from, or an emigrant client shall pay from his emigrant's blocked account to, or receive into his emigrant's blocked account from, the client trust account of the trading member with whom he traded to open such positions, the net amount of the initial margin, settlement margin, variation margin and top-up margin: Provided that –

10.130.1.1 the initial margin, settlement margin or top-up margin to be paid in terms of this rule 10.130.1 shall be the initial margin, settlement margin or top-up margin that would otherwise be required to be paid to SAFCOM in respect of equivalent positions of a trading member or a resident client adjusted by the margin category assigned by the trading member to the non-resident or emigrant client in question;

10.130.1.2 interest may not be included in the payment but shall be treated separately as contemplated in rule 10.130.6;

10.130.1.3 trading, clearing and settlement fees may not be included in the payment but shall be treated separately as contemplated in rule 10.140; and

10.130.1.4 a trading member may not hold any retained or additional margin with respect to the positions of a non-resident or an emigrant client.

10.130.2 The confirmation contained in the SWIFT non-resident account notification or the SWIFT emigrant's blocked account notification to the authorised bank shall confirm the net settlement amounts to be

10.105 introduced with effect from 1 August 2005

10.110 amended with effect from 1 August 2005

10.120 amended with effect from 9 May 2011

10.130.1.1 amended with effect from 9 May 2011



paid or received in terms of rule 10.130.1 or 10.130.2, and shall require the authorised bank to release or accept this amount to or from the trading member concerned.

- 10.130.3 The clearing member or SAFCOM, as the case may be, may off-set amounts due to it against amounts due by it to or from a trading member: Provided that it can be ascertained from the statements passing between them that no margins or other monies of a non-resident or an emigrant client are being held by either SAFCOM or the clearing member.
- 10.130.4 A trading member may not off-set the amounts due to a non-resident client or an emigrant client against any amount due from any other non-resident client or emigrant client, nor may a trading member off-set any amount due to an emigrant client for credit of that emigrant client's emigrant's blocked account against any amount due from that emigrant client from that emigrant's non-resident account, or vice versa.
- 10.130.5 A trading member shall not retain any interest paid to it by SAFCOM or its clearing member with respect to the open futures and option contract positions or unsettled bonds positions of a non-resident or an emigrant client, and on the second business day following the end of each month during which a non-resident client or emigrant client had a position registered in his name, the trading member shall pay to the authorised bank concerned for the credit of that non-resident client's or emigrant client's non-resident account an amount equal to the amount received by it from its clearing member or SAFCOM, as the case may be, in respect of interest on margins: Provided that a clearing member who has a clearing agreement with the trading member concerned shall pay to the trading member an amount equal to that which it received in respect of the non-resident client's or emigrant client's position from SAFCOM.
- 10.130.6 A trading member may not off-set amounts due to be paid from a non-resident client's non-resident account or, in the case of an emigrant client, amounts due to be paid from the emigrant client's blocked account against amounts to be paid into that non-resident or emigrant client's non-resident account.
- 10.130.7 The amount of interest referred to in rule 10.130.6 shall be paid by the trading member to the authorised bank concerned by midday on the next business day after the business day on which the SWIFT non-resident account notification was received by the authorised bank concerned.

#### **10.140 Trading, clearing and settlement fees**

The trading member shall be entitled in terms of rule 8.70.3 to claim payment for trading, clearing and settlement fees in respect of transactions with a non-resident or emigrant client from the authorised bank concerned out of that non-resident client's non-resident account or, in the case of an emigrant client, out of the emigrant client's blocked account: Provided that—

- 10.140.1 a trading member shall not be entitled to off-set such fees against margin due by it to a non-resident client or emigrant client contemplated in rule 10.130.1 or 10.130.2 or against any balance due to the non-resident client or emigrant client as contemplated in rule 11.30.5; and
- 10.140.2 the authorised bank concerned shall compare the transactions referred to in the non-resident account clearance certificate or emigrant's blocked account clearance certificate against the transactions referred to in the member's statement claiming such fees in respect of such transactions and may inform the JSE of any discrepancy.

#### **10.150 Trading restriction**

An emigrant client who is also a non-resident client, or who has a beneficial interest in a non-resident client, shall not open a futures and option contract position or unsettled bonds position, the effect of which aggregate position is opposite to an aggregate position that is or that shall be registered in the name of such non-resident client, nor shall a non-resident client who is also an emigrant client or a non-resident client in which such an emigrant client has a beneficial interest open a position, the effect of which aggregate position is opposite to an aggregate position that is or shall be registered in the name of such emigrant client concerned, and no trading member shall knowingly trade with a client in contravention of this rule.

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10.140 amended with effect from 9 May 2011

**Management of Investments****10.160 Authority to manage investments in IRC securities**

All trading members are authorised to manage investments comprising IRC securities: Provided that they comply with the provisions of this rule, and all other applicable rules, and undertake such management in compliance with the client agreement referred to in rule 7.80.1. This rule shall, however, not apply to a trading member if the member is a bank or if the majority of such trading member's intermediary services do not relate to trading in JSE listed securities as an authorised user of any of the JSE markets. Such a trading member shall be required to obtain a licence to operate as a financial services provider in terms of the FAIS Act in respect of any advice or intermediary services which it provides to clients relating to IRC securities, and the relevant provisions of that Act shall apply to such advice or intermediary services.

**10.170 Trading as an investment manager in IRC securities**

- 10.170.1 A trading member may not trade as an investment manager in IRC securities for or on behalf of a client unless it has concluded a discretionary client agreement with the client and the client has been registered with the JSE as a client of that member in terms of rule 7.80.2.
- 10.170.2 An investment manager may not directly or indirectly buy or sell IRC securities for or from its own account or any account in which an employee has a direct or indirect beneficial interest, to or from a client.

**10.180 Management and investment advice in respect of JSE authorised investments other than IRC securities**

- 10.180.1 This rule is only applicable to trading members whose investment management activities in relation to IRC securities are regulated by the JSE in terms of rule 10.160.
- 10.180.2 The provisions of rules 10.180.4 to 10.180.13 shall not apply to a trading member if the trading member is a bank or if the majority of such member's intermediary services do not relate to trading in JSE listed securities as an authorised user of any of the JSE markets. Such a member shall be required to obtain a licence to operate as a financial services provider in terms of the FAIS Act in respect of any advice or intermediary services which it provides to clients relating to JSE authorised investments other than IRC securities and the relevant provisions of that Act shall apply to such advice or intermediary services.
- 10.180.3 The provisions of rules 10.180.4 to 10.180.13 shall not apply to a trading member in respect of transactions in JSE authorised investments other than IRC securities where such transactions relate to securities listed on an exchange other than the JSE, and where such transactions are conducted as an authorised user of such exchange. Such transactions will instead be subject to the rules of the relevant exchange.
- 10.180.4 A trading member may not enter into transactions as an investment manager in JSE authorised investments other than IRC securities on behalf of clients or provide investment advice to any clients in respect of such investments unless it has notified the Director: Surveillance, in writing, of its intention to effect such transactions or provide such investment advice.
- 10.180.5 In order for the JSE to identify the scope of an investment manager's activities in JSE authorised investments other than IRC securities, the written notification to the Director: Surveillance referred to in rule 10.180.4 shall indicate which specific investments the investment manager is intending either to transact in on behalf of its clients or to provide investment advice on, or both.

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10.160 amended with effect from 1 August 2005

10.160 amended with effect from 9 May 2011

10.170 amended with effect from 1 August 2005

10.170.1 amended with effect from 9 May 2011

10.170.2 amended with effect from 1 August 2005

10.180 amended with effect from 1 August 2005

10.180.1 to 10.180.3 introduced with effect from 1 August 2005

10.180.3 amended with effect from 9 May 2011

10.180.1 to 10.180.10 renumbered 10.180.4 to 10.180.13 and amended with effect from 1 August 2005

- 10.180.6 The details which are required to be submitted to the Director: Surveillance in terms of rule 10.180.5 shall specify the particular types of JSE authorised investments other than IRC securities in which activity is to be conducted, but need not include the name of the particular investments.
- 10.180.7 The failure by an investment manager to provide the notification referred to in rules 10.180.4 and 10.180.5 prior to undertaking the relevant activity may result in the JSE imposing restrictions or a prohibition on the investment manager's activities in JSE authorised investments other than IRC securities.
- 10.180.8 If an investment manager has previously notified the Director: Surveillance in terms of rules 10.180.4 and 10.180.5 of its intention to conduct activity in any JSE authorised investments other than IRC securities and the investment manager ceases to conduct activity in respect of one or more particular types of investments, with no intention of resuming activity in such investments in the foreseeable future, the investment manager shall notify the Director: Surveillance forthwith, in writing, of such cessation of activity.
- 10.180.9 Any decision by an investment manager to invest in JSE authorised investments other than IRC securities on behalf of a client shall be made with due regard to the relevant provisions of rule 10.220 regarding the conduct of members, particularly the provisions relating to the general conduct towards clients in rule 10.220.2 and the exercise of discretion in rule 10.220.3.
- 10.180.10 An investment manager shall not effect transactions in JSE authorised investments other than IRC securities on behalf of a client unless the client has given his general consent to such transactions being effected in a written mandate.
- 10.180.11 Every investment manager who purchases JSE authorised investments other than IRC securities on behalf of a client and who is accountable to the client for the client's investment in such instruments shall comply with the following requirements –
- 10.180.11.1 the relevant investments shall be segregated from the investment manager's own assets at all times. If the JSE authorised investments other than IRC securities are held in an account maintained by another financial services provider, the account shall either be opened in the client's own name or, if the investment manager opens a single account in respect of transactions executed on behalf of more than one client, the investment manager shall procure that the account is clearly designated in the records of the relevant financial services provider as being an account utilised for investments made by the investment manager on behalf of its clients;
  - 10.180.11.2 the investment manager shall maintain proper accounting records in respect of all JSE authorised investments other than IRC securities purchased or sold on behalf of clients. These records shall be updated forthwith in respect of any transactions in JSE authorised investments other than IRC securities and shall clearly identify the beneficial owners of all such investments at all times; and
  - 10.180.11.3 the investment manager must balance its clients' holdings in JSE authorised investments other than IRC securities, as reflected in the investment manager's records, with the accounts maintained by the other financial services providers who hold such investments, on a monthly basis. Any differences identified between the respective records must be rectified forthwith.
- 10.180.12 Every investment manager who holds JSE authorised investments other than IRC securities on behalf of a client or who is accountable to a client for such investments shall implement and maintain an effective system of internal controls to safeguard such investments and prevent unauthorised access thereto.
- 10.180.13 Transactions by an investment manager in JSE authorised investments other than IRC securities which constitute foreign investments shall also be subject to rule 10.190.

#### **10.190 Management of Foreign Investments**

- 10.190.1 For the purpose of this rule, foreign investments means –

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10.180.11 and 10.180.12 deleted with effect from 1 August 2005

- 10.190.1.1 securities listed on an external exchange;
- 10.190.1.2 units or any other form of participation in a foreign collective investment scheme approved by the Registrar of Collective Investment Schemes in terms of section 65 of the Collective Investment Schemes Control Act, 2002;
- 10.190.1.3 units or any other form of participation in a collective investment scheme licensed or registered in a foreign country; and
- 10.190.1.4 foreign funds intended for the purchase of such securities, units or participation.
- 10.190.2 An investment manager shall not enter into transactions in foreign investments on behalf of a client unless:
  - 10.190.2.1 the mandate entered into between the investment manager and the client in terms of 10.180.10 –
    - 10.190.2.1.1 stipulates that the investment manager is authorised to invest in foreign investments;
    - 10.190.2.1.2 contains a statement pertaining to the risks associated with foreign investments, with particular reference to any currency risk;
    - 10.190.2.1.3 states whether there are any jurisdiction restrictions in respect of the particular foreign investments; and
    - 10.190.2.1.4 contains full particulars of the manner in which such investments shall be made and in whose name such investments shall be held or registered;
  - 10.190.2.2 the client has obtained the prescribed tax clearance certificate from the South African Revenue Service.
- 10.190.3 An investment manager must, on request by a client, furnish the client with the following information regarding any foreign investments made by the investment manager on behalf of the client –
  - 10.190.3.1 the name of the licensed external exchange on which the foreign investments are listed, if applicable;
  - 10.190.3.2 the country in which the foreign investments are licensed or registered and the name and address of the relevant licensing or registration authority, if applicable;
  - 10.190.3.3 the name and address of the foreign financial services provider used by the investment manager to purchase or hold the foreign investments, if applicable; and
  - 10.190.3.4 the name and address of the regulator of the foreign financial services provider referred to in rule 10.190.3.3 and whether such foreign financial services provider is approved or registered by such regulator.

#### 10.200 Trading with a discretionary financial services provider

A trading member shall not effect a transaction with a person whom the trading member reasonably believes requires authorisation as a discretionary financial services provider or the status of a representative in terms of the FAIS Act, without having taken reasonable measures to ascertain that such person has the required authorisation or status.

#### 10.210 Client statements

- 10.210.1 An investment manager must provide a written statement to a client on a monthly basis which complies with rules 10.210.2 and 10.210.3.
- 10.210.2 A client statement must contain such information as is reasonably necessary to enable the client to –

10.190.1.1 amended with effect from 1 August 2005

10.190.1.4 amended with effect from 1 August 2005

10.190.2.1 amended with effect from 1 August 2005

10.190.3.1 amended with effect from 1 August 2005

- 10.210.2.1 produce a set of financial statements;
- 10.210.2.2 determine the composition of the investments comprising the portfolio held by the member or for which the member is accountable to the client and the changes thereto over the reporting period, if applicable; and
- 10.210.2.3 determine the market value of the investments comprising the portfolio held by the member or for which the member is accountable to the client and the changes therein over the reporting period, if applicable.
- 10.210.3 Pursuant to rule 10.210.2, and 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:
  - 10.210.3.1 the quantity, description and market value of each investment comprising the portfolio held by the member or for which the member is accountable to the client, at the reporting date;
  - 10.210.3.2 the amount of funds held by the member or which has been invested by the member on behalf of the client and for which the member is accountable to the client, at the reporting date;
  - 10.210.3.3 if any of the investments or funds are reflected in a foreign currency, the relevant currency exchange rate at the reporting date must also be reflected;
  - 10.210.3.4 investments purchased or sold during the reporting period;
  - 10.210.3.5 receipts and payments of funds during the reporting period;
  - 10.210.3.6 details of income earned and expenditure incurred during the reporting period;
  - 10.210.3.7 non-cash transactions during the reporting period, including non-cash components of corporate actions and option expiries;
  - 10.210.3.8 investments transferred into and out of the portfolio during the reporting period;
  - 10.210.3.9 identification of those investments which at the reporting date were loaned to any third party but for which the member is still accountable to the client;
  - 10.210.3.10 the quantity, description and market value of any financial products, or the amount of funds, held as collateral by the member on behalf of the client in respect of any loans made by the client;
  - 10.210.3.11 identification of those investments or funds which at the reporting date were utilised to secure loans to the client or borrowings made on behalf of the client;
  - 10.210.3.12 identification of those investments or funds which at the reporting date were utilised as margin in respect of open positions in any financial product;
  - 10.210.3.13 in respect of investments in derivative instruments, a description of the underlying financial product, index, commodity or thing, the expiry month and in the case of options, the exercise or strike price; and
  - 10.210.3.14 if the statement reflects any investments or funds which are not held by the member and for which the member is not accountable to the client, it should clearly indicate that fact in relation to such investments or funds.
- 10.210.4 The information referred to in rule 10.210.3 may be provided to the client in separate statements either during the reporting period or as at the reporting date.
- 10.210.5 A client statement shall be provided either to the client or to an agent or third party nominated by the client in writing.

10.210.3.13 amended with effect from 1 August 2005

**10.215 Exercising of discretion and provision of investment advice by employees**

A member shall, in the course of its business, exercise discretion in the management of JSE authorised investments and provide investment advice to its clients on the buying and selling of JSE authorised investments only through an employee who has obtained such qualification as may be prescribed in the directives.

**Ethics and conduct****10.220 Code of conduct****10.220.1 Standards of integrity**

A member shall, in the conduct of its business, observe high standards of integrity and fair dealing. It must –

- 10.220.1.1 not provide, or accept material inducements of a non-business nature to, or from any person to obtain business;
- 10.220.1.2 not knowingly circulate information or submit information to the JSE or SAFCOM which is false or misleading, or which affects or tends to affect unfairly the price of any an IRC security;
- 10.220.1.3 not knowingly countenance any attempt to manipulate the market, nor to influence persons for such a purpose;
- 10.220.1.4 not be a party to or facilitate or enter into a transaction which is fictitious or which has a dishonest or unlawful motive;
- 10.220.1.5 conduct its activities in a manner that is compatible with the objects of the Act and with full respect for the dignity of the JSE; and
- 10.220.1.6 not participate in any dealings with other members, clients, the media or other persons, which may be of such a nature as to discredit the JSE.

**10.220.2 General conduct towards clients**

In its dealings with clients, a member shall –

- 10.220.2.1 act honestly and fairly;
- 10.220.2.2 act with due skill, care and diligence, and in the interests of clients;
- 10.220.2.3 exercise independent professional judgement;
- 10.220.2.4 act promptly on and in accordance with the instructions of a client, and exercise any discretion in a responsible manner;
- 10.220.2.5 avoid conflicts of interest and when they cannot be avoided, ensure fair treatment to clients by disclosure, confidentiality or declining to act. A member shall not unfairly place its interests above those of its clients; and
- 10.220.2.6 not make any statement, promise or forecast which it knows to be misleading or is likely to be misleading and that has the effect or may have the effect of inducing a client to enter into a client agreement.

**10.220.3 Furnishing of investment advice and exercise of discretion-**

In providing investment advice to a client or exercising discretion in relation to the management of JSE authorised investments, a member shall –

- 10.220.3.1 take reasonable steps to seek from the client information regarding the client's financial situation, investment experience, particular needs and objectives in

10.215 introduced with effect from 1 August 2005

10.220.1.1 amended with effect from 1 August 2005

10.220.1.2 amended with effect from 1 August 2005

10.220.1.5 amended with effect from 1 August 2005

10.220.3 amended with effect from 1 August 2005

- connection with the services required, to enable the member to provide the client with sound investment advice or make an appropriate investment decision;
- 10.220.3.2 conduct an analysis, based on the information obtained, for the purpose of advising the client or making an investment decision;
  - 10.220.3.3 identify the JSE authorised investments that will suit the client's risk profile and financial needs, subject to the terms of any client agreement entered into between the client and the member or any other mandate provided to the member by the client;
  - 10.220.3.4 take reasonable steps to ensure that the client understands any investment advice that has been provided, as well as the nature and material terms and risks involved in the relevant transaction, so as to enable the client to make an informed decision; and
  - 10.220.3.5 ensure that any investment advice provided or discretion exercised is not for the sole purpose of maximising the income of the member.
- 10.220.4 Disclosure to clients
- 10.220.4.1 In rendering a service to a client, any representations made and information provided by a member –
    - 10.220.4.1.1 must be factually correct;
    - 10.220.4.1.2 must be provided in plain language, avoid uncertainty or confusion and not be misleading;
    - 10.220.4.1.3 must be adequate and appropriate in the circumstances of the particular service, taking into account the factually established or reasonably assumed level of knowledge of the client;
    - 10.220.4.1.4 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;
    - 10.220.4.1.5 need not be duplicated or repeated to the same client unless material or significant changes affecting that client occur, or the relevant service renders it necessary, in which case a disclosure of the changes must be made to the client without delay.
  - 10.220.4.2 A member –
    - 10.220.4.2.1 must disclose full and accurate information about the fees and any other charges that may be levied on clients;
    - 10.220.4.2.2 may 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;
    - 10.220.4.2.3 must advise a client in advance of any restrictions or limitations that may affect the access of that client to their funds or JSE authorised investments.
- 10.220.5 Maintenance of client records

10.220.3.1 amended with effect from 1 August 2005  
 10.220.3.3 amended with effect from 1 August 2005  
 10.220.3.4 amended with effect from 1 August 2005  
 10.220.3.5 amended with effect from 1 August 2005  
 10.220.4.2.3 amended with effect from 1 August 2005

- 10.220.5.1 A member must maintain proper, complete, accurate and secure records in relation to the services rendered to its clients.
- 10.220.5.2 A member must have appropriate procedures and systems in place to store and retrieve, in a manner safe from destruction, a record of all –
- 10.220.5.2.1 communications relating to a service rendered to a client, including instructions given by the client to the member;
  - 10.220.5.2.2 transaction documentation relating to clients;
  - 10.220.5.2.3 contractual arrangements between the member and its clients, including client agreements and mandates prescribed by these rules; and
  - 10.220.5.2.4 client particulars required to be provided in terms of these rules or which are necessary for the effective operation of client accounts.
- 10.220.5.3 The client records in 10.220.5.2 may be kept in printed, electronic or voice-recorded format.
- 10.220.5.4 Members need not keep the records in 10.220.5.2 themselves but must be capable of making such records available for inspection within seven days.
- 10.220.5.5 All instructions given by clients to execute transactions must be kept for a period of at least six months after the relevant transactions and all other client records in 10.220.5.2 must be kept for at least five years after the rendering of the services concerned.
- 10.220.6 **Contact with the member**
- A member must provide for the necessary resources and functionality to ensure that clients are able to readily contact the member.
- 10.220.7 **Waiver of rights**
- A member may not request or induce in any manner a client to waive any right or benefit conferred on the client by or in terms of this code or these rules, or recognise, accept or act on any such waiver by the client, and any such waiver is void.
- 10.220.8 **Adequacy of financial resources**
- A member shall ensure that it maintains adequate financial resources to meet its business commitments and to withstand the risks to which its business is subject.
- 10.220.9 **Internal resources and risk management**
- A member shall employ effectively the resources and procedures that are necessary for the proper performance of its business activities and to eliminate, as far as is reasonably possible, the risk that clients will suffer financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions. It shall organise and control its internal affairs in a reasonable manner and keep proper records. Its staff shall be suitable, adequately trained and properly supervised.
- 10.220.10 **Co-operation with regulators**
- A member shall deal with the JSE as its regulator in an open co-operative manner and keep the JSE promptly informed of anything concerning the JSE which might reasonably be expected to be disclosed to it. A member shall also provide reasonable co-operation to any other regulatory body or any law enforcement agency in respect of any matters which are the subject of an investigation by such body or agency relating to an alleged contravention of the Act, or any equivalent foreign legislation or any other law governing the activities of the member.
- 10.220.11 **Enforcement of code on employees**

10.220.6 amended with effect from 1 August 2005

10.220.9 amended with effect from 9 May 2011



A member shall enforce the provisions of this code on all its employees.

#### 10.225 Unsolicited calls

A member may enter into a transaction with or on behalf of a person where the transaction is as a result of an unsolicited call, provided that the member has complied with the requirements set out in rules 10.220.3 and 10.220.4.

#### 10.230 Advertising by members

##### 10.230.1 Advertising material of a member –

- 10.230.1.1 must provide accurate, complete and unambiguous information about any JSE authorised investment or any service rendered by the member;
- 10.230.1.2 must emphasise the risk of loss and uncertainty of future results;
- 10.230.1.3 must discern fact from opinion;
- 10.230.1.4 may not be comparative in relation to another member; and
- 10.230.1.5 may not make the statement or suggest that trading in derivative instruments on the JSE is appropriate for all persons.

##### 10.230.2 An advertisement by a member –

- 10.230.2.1 may not contain any statement, promise or forecast which is fraudulent, untrue or misleading;
- 10.230.2.2 must, if it contains –
  - 10.230.2.2.1 performance data (including awards and rankings), include references to their source and date;
  - 10.230.2.2.2 illustrations, forecasts or hypothetical data –
    - 10.230.2.2.2.1 contain support in the form of clearly stated basic assumptions (including, but not limited to, any relevant assumptions in respect of performance, returns, costs and charges) with a reasonable prospect of being met under current circumstances;
    - 10.230.2.2.2.2 make it clear that they are not guaranteed and are provided for illustrative purposes only; and
    - 10.230.2.2.2.3 also contain, where returns or benefits are dependent on the performance of underlying assets or other variable market factors, clear indications of such dependence;
  - 10.230.2.2.3 a warning statement about risks involved in buying or selling a JSE authorised investment, prominently display such statement; and
  - 10.230.2.2.4 information about past performances, also contain a warning that past performances are not necessarily indicative of future performances; and
- 10.230.2.3 must, if the investment value of a JSE authorised investment mentioned in the advertisement is not guaranteed, contain a warning that no guarantees are provided.

10.220.11 amended with effect from 1 August 2005

10.225 introduced with effect from 1 August 2005

10.230.1.1 amended with effect from 1 August 2005

10.230.2.2.3 amended with effect from 1 August 2005

10.240.2.3 amended with effect from 1 August 2005

- 10.230.3 In the event that the JSE considers that a member has failed to conform to any of the advertising requirements published by the JSE under rule 10.230.1 or 10.230.2, it may at its discretion (without prejudice to its other powers under these rules) require that no further advertising material or other promotional or marketing material shall be published by or on behalf of such member unless it has been submitted to the JSE in advance and the JSE has notified the member that the material is suitable for publication.

**10.240 Contraventions to be reported**

Every member shall report to the JSE any contravention of the Act, these rules, and the directives that comes to its attention.

**SECTION**

**11**

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**Section 11: Defaults**

**Scope of Section**

- 11.10 Default by a member
- 11.20 Default by a client
- 11.30 Consequences of default by a client
- 11.40 Consequences of default by a trading member
- 11.50 Consequences of default by a clearing member
- 11.60 Settlement Default and the Guarantee Fund

#### 11.10 Default by a member

11.10.1 A member shall default if –

11.10.1.1 it is unable to meet its commitments to SAFCOM, another trading member, its clearing member, its CSDP, or its clients arising out of an IRC security transaction or position; or

11.10.1.2 the JSE, in its sole discretion, considers that it has defaulted.

11.10.2 If a member is unable to meet its commitments in terms of rule 11.10.1.1 or the JSE considers that the member has defaulted in terms of rule 11.10.1.2, the JSE executive will declare the member to be a defaulter as from the time when the act of default occurred.

#### 11.20 Default by a client

A client shall default if –

11.20.1 he fails to fulfil any of his obligations in terms of an IRC security transaction or position; or

11.20.2 the JSE, in its sole discretion, considers that he has defaulted; or

11.20.3 he is in default with respect to one particular member and the JSE in its discretion decides that he is in default with respect to another member.

#### 11.30 Consequences of default by a client

Without limiting or detracting from any other remedies and rights which a trading member may have against a client, in the event of default by a client –

11.30.1 the client shall, save as provided in this rule, be suspended from trading through the trading member;

11.30.2 the trading member shall close out the futures and option contract positions of the client through the trading system;

11.30.3 any amount payable by the trading member to the client as a result of such close out of futures and option contract positions or arising from any suretyship, cession, pledge or other security or from any other cause shall be set off against any amount payable by the client in terms of rule 8.80.7;

11.30.4 the closing of transactions of the defaulting client in bonds shall be dealt with as follows:

11.30.4.1 The trading member shall use its best endeavours to procure that all open transactions of the defaulter that are guaranteed by the trading member in terms of rule 9.15.1 are settled, by taking such steps as may reasonably be necessary; and

11.30.4.2 If the trading member is unable to procure the settlement of any open transactions to which rule 9.15.1 applies, the failed trade procedures set out in rule 9.130 or rule 9.135 will be applied;

11.30.5 any amount payable by the trading member to the client as a result of failed trade procedures shall be set off against any amount payable by the client in terms of rules 9.80.6, 9.90.4, 9.140.3, 9.150.2, 9.160.3 and 9.170.4; and

11.30.6 any amount payable by the trading member in terms of rules 11.30.3, 11.30.4 or 11.30.5 will be set-off against any of the obligations of the client in terms of these default rules, and any shortfall remaining after the application of this rule 11.30 shall be recovered from the client and any surplus shall be paid to the client.

#### 11.40 Consequences of default by a trading member

11.40.1 Without limiting or detracting from any other remedies and rights which a member or client may have against a trading member, in the event of default by a trading member –

11.30.4.1 amended with effect from 9 May 2011

11.30.4.2 amended with effect from 9 May 2011

11.30.6 amended with effect from 9 May 2011

- 11.40.1.1 the trading member shall, save as provided in this rule, be suspended from trading;
- 11.40.1.2 the clearing member shall transfer the proprietary futures and option contract positions of the trading member to itself and for its own account at a price approved by the JSE within two business days or such other period as may be determined by the JSE from the date of default;
- 11.40.1.3 any amount payable to the trading member as a result of such transfer of futures and option contract positions or arising from any suretyship, cession, pledge or other security or any other cause shall be set off against any amount payable by the trading member in terms of rule 8.80.4 or in terms of any failure by the trading member to meet its obligations in respect of transactions in bonds as referred to in rule 9.100, including related penalties imposed by the JSE;
- 11.40.1.4 the closing of transactions of the defaulting trading member in bonds shall be dealt with as follows:
  - 11.40.1.4.1 The Settlement Authority shall use its best endeavours to procure that all open transactions between the defaulter and other trading members and clients to which rules 8.20.1.1, 8.20.1.2 and 8.20.1.4 apply are settled, by taking such steps as may reasonably be necessary;
  - 11.40.1.4.2 In procuring settlement of these open transactions, the Settlement Authority shall require clients of the defaulter to meet their settlement obligations in respect of all open transactions executed on their behalf;
  - 11.40.1.4.3 Where possible, any funds or securities held by the defaulter or their CSDP on behalf of member settled clients or received by the defaulter or the clearing member from member settled clients subsequent to the default, which are required to effect settlement of open transactions conducted on behalf of those clients, will be applied by the Settlement Authority to settle such transactions;
  - 11.40.1.4.4 In attempting to procure that open transactions in bonds are settled in terms of rule 11.40.1.4.1, the Settlement Authority shall be entitled to buy in or sell out bonds which cannot be either delivered or paid for by the defaulter or its client, in those instances where the Settlement Authority is able to, and deems it appropriate to, procure the settlement of a transaction by means of the borrowing of securities or funds;
  - 11.40.1.4.5 If the Settlement Authority is unable to procure the settlement of any open transactions to which rules 8.20.1.1, 8.20.1.2 and 8.20.1.4 apply, the failed trade procedures set out in rule 9.130 or rule 9.135 will be applied;
  - 11.40.1.4.6 Any loss or costs arising from the application of rule 11.40.1.4 will be recovered by the Settlement Authority from the clearing member;
  - 11.40.1.4.7 The clearing member shall, in the first instance, recover any loss or cost referred to in rule 11.40.1.4.6 from any margin provided to the clearing member by the defaulter in respect of the defaulter's proprietary positions in bonds;
  - 11.40.1.4.8 Any loss or costs not recovered by the clearing member in terms of rule 11.40.1.4.7 shall be claimed by the clearing member from the defaulter;
  - 11.40.1.4.9 In claiming any loss or costs from the defaulter in terms of rule 11.40.1.4.8, any such loss or costs which were incurred by the Settlement Authority in either settling or closing out transactions in bonds by the defaulter on behalf of a client may, in the first instance,

11.40.1.4.5 amended with effect from 9 May 2011

- be recovered by the clearing member from any margin provided by such client in respect of bonds positions; and
- 11.40.1.4.10 In the event that the margin referred to in rule 11.40.1.4.9 is insufficient to cover any loss or costs associated with the settling or closing out of a client's transactions in bonds, the clearing member may, notwithstanding its claim for such a shortfall from the defaulter in terms of rule 11.40.1.4.8, claim the shortfall from the client;
- 11.40.1.5 the clients of the trading member with futures and option contract positions shall, without notice to such clients, become the clients of the clearing member, and -
- 11.40.1.5.1 the clearing member shall assume the obligations of the trading member in terms of rule 8.80.7 that accrued on the date of default or on the previous business day;
- 11.40.1.5.2 all clients who did not previously have client agreements with the clearing member shall conclude client agreements with the clearing member to cover the futures and option contract positions and obligations assumed by the clearing member;
- 11.40.1.5.3 where the clearing member previously had a client agreement with the client of the defaulting trading member, such futures and option contract positions and obligations and subsequent transactions shall be subject to that agreement;
- 11.40.1.5.4 the JSE shall on request provide the clearing member with the registration and contact details of the clients of a defaulting member as supplied to the JSE; and
- 11.40.1.5.5 on the default of a trading member, the clearing member shall contact the clients of such defaulting trading member immediately, to inform them of the default and to make arrangements for the transfer of their existing futures and option contract positions to the clearing member or to another trading member.
- 11.40.2 After consultation with other relevant regulators and exchanges, the JSE may require the defaulting trading member to hand over to the JSE all books and accounting records of the trading member, all cheque books, and all funds, bonds and other assets relating to the business including funds and control of bonds held on behalf of clients by the trading member in safe custody with a bank or a CSDP.
- 11.40.3 The JSE Executive may grant authority to the Director: Surveillance or his nominated deputy to assume control of the funds and bonds which are owned by clients as referred to in rule 11.40.2.
- 11.40.4 The Director: Surveillance shall take reasonable steps to ensure that -
- 11.40.4.1 any client bonds or funds under the control of the defaulting trading member are identified as the client's property; and
- 11.40.4.2 only bonds or funds identified as belonging to the client and which are unencumbered are returned to the client or to his order if so authorised by the client in writing.
- 11.40.5 The client shall warrant in writing to the Director: Surveillance that he is the lawful owner of any bonds or funds before such assets are returned to him in terms of rule 11.40.4.
- 11.40.6 Before any bonds or funds are returned to the client, the client shall indemnify the Director: Surveillance in writing for any loss sustained by or damage caused to any person, including, but not limited to the client, as a result of anything done or omitted by the Director: Surveillance in the *bona fide* exercise of any power, or performance of any duty or function under or by virtue of the above rules, as a result of the return of such assets to the client and the alienation by the client of such returned assets in respect of which he is not the lawful owner.
- 11.40.7 Where bonds or funds are returned to clients in terms of rule 11.40.5 and it is thereafter established that ownership of such assets does not vest in the client, the client shall immediately return such assets to the control of the Director: Surveillance, upon written notification of the Director. Where such returned bonds or funds have been alienated by the client, the client shall immediately and in so

far as he is able to, effect the return of such assets to the control of the Director: Surveillance, upon written notification by the Director.

#### 11.50 Consequences of default by a clearing member

Without limiting or detracting from any other remedies and rights which a trading member or client or SAFCOM may have against a clearing member, in the event of default by a clearing member –

- 11.50.1 the clearing member shall, save as provided in this rule, be suspended from trading;
- 11.50.2 SAFCOM shall open a separate trust account with a bank (hereinafter referred to as the "trust account"), into which shall be paid all margin due and payable, the proceeds from the suretyship referred to in rule 3.40.8 and any other monies or securities held by SAFCOM in favour of or on behalf of or for the account of the clearing member;
- 11.50.3 SAFCOM shall manage the trust account and all the affairs of the clearing member arising from and relating to its membership of the JSE and –
  - 11.50.3.1 shall assume control of all assets held or administered by the clearing member on behalf of or for the account or benefit of any trading member or client, and, when requested by the JSE, render such reports to the JSE as the JSE may require;
  - 11.50.3.2 shall, without prior notice to the clearing member, close out all the futures and option contract positions of the clearing member, and all unsettled bond transactions of the clearing member cleared through SAFCOM, at the best price it can obtain when, in its sole discretion, it so decides;
  - 11.50.3.4 any amount payable to the clearing member as a result of such close out or arising from any suretyship, cession, pledge or other security or from any other cause, shall be set off against any amount payable by the clearing member in terms of rule 8.80.1;
  - 11.50.3.5 Reserved
  - 11.50.3.6 any shortfall remaining after the application of rule 11.50.3.4 shall be recovered from the clearing member and any surplus shall be paid to the clearing member; and
  - 11.50.3.7 shall transfer all open futures and option contract positions of clients and trading members being cleared through the clearing member to another clearing member until such time as the provisions of rule 11.50.5 have been complied with: Provided that SAFCOM shall be entitled to appoint a trustee to exercise all its powers in terms of this rule subject to the trustee being entitled to the same indemnity as SAFCOM;
- 11.50.4 within a period decided by the JSE, each trading member with whom the defaulting clearing member had a clearing agreement shall conclude a clearing agreement with another clearing member, failing which the trading member shall be deemed to be in default and its membership shall terminate;
- 11.50.5 the clients of the defaulting clearing member shall within a period determined by the JSE enter into client agreements with other trading members; and
- 11.50.6 after all liabilities of the defaulting clearing member have been settled, the amounts paid by any surety in terms of these rules shall be refunded from any balance remaining in the trust account and any further balance remaining shall be paid to the defaulting clearing member: Provided that if there are insufficient funds to cover such liabilities, SAFCOM shall call on all clearing members for an equitable contribution on a voluntary basis to make good any shortfall and, in the event of such contributions being insufficient, the funds of the Fidelity Fund shall be applied.

11.50.2 amended with effect from 1 July 2005

11.50.2 amended with effect from 1 August 2005

11.50.2 amended with effect from 9 May 2011

11.50.3.2 amended with effect from 9 May 2011

11.50.3.5 amended with effect from 1 July 2005

11.50.3.5 deleted with effect from 9 May 2011

11.50.3.6 amended with effect from 9 May 2011

**11.60 Settlement Defaults and the Guarantee Fund**

- 11.60.1 The Guarantee Fund shall be maintained and be made available primarily for the purpose of-
- 11.60.1.1 paying compensation to a trading member or a client as a result of a settlement default by a trading member arising out of a transaction in bonds; and
  - 11.60.1.2 facilitating settlement of a transaction in bonds to avoid an imminent settlement default by a trading member,
- provided the relevant bond transaction was not executed on the central order book or has not been accepted for risk management purposes as contemplated in these rules.
- 11.60.2 The Guarantee Fund may also be utilised, subject to rule 11.60.6.1, for the purpose of reducing the risk of claims or the quantum of claims against the Guarantee Fund.
- 11.60.3 For the purpose of these rules, a settlement default refers to the failure by a trading member to pay any amounts claimed by another member or a client in terms of the failed trade procedures in rule 9.135.
- 11.60.4 The JSE shall determine the amount of funds which it recommends the Guarantee Fund should have available and the amount to be reserved exclusively for settlement defaults (the “**exclusive funds**”). The exclusive funds shall at no time be less than R30 million.
- 11.60.5 The exclusive funds shall be reserved exclusively, on the further terms and conditions of these rules, for-
- 11.60.5.1 compensating claimants for settlement defaults;
  - 11.60.5.2 compensating any person (other than the trading member or client who is at risk of defaulting) who, at the request of the Settlement Authority, takes any action to facilitate settlement to avoid an imminent settlement default; and
  - 11.60.5.3 insuring the Guarantee Fund against any claims contemplated in rule 11.60.5.1.
- 11.60.6 To the extent that the total funds in the Guarantee Fund exceed the exclusive funds, the excess portion (the “**excess funds**”) may be distributed as follows by the trustees in their sole discretion:
- 11.60.6.1 in consultation with the Registrar, to any person that the trustees consider will use the funds so distributed to them in order to attempt to reduce the risk of claims being made at all, or reducing the quantum of claims made, pursuant to a settlement default; or
  - 11.60.6.2 for the purposes contemplated in rule 11.60.5.
- 11.60.7 Upon declaration by the Settlement Authority of a settlement default by a trading member, the Settlement Authority must -
- 11.60.7.1 determine the defaulting trading member's net settlement obligations and other open positions of the defaulting trading member in respect of each bond transaction;
  - 11.60.7.2 determine a list of potential claimants;
  - 11.60.7.3 inform the controlling body and the trustees;
  - 11.60.7.4 lodge a claim with the trustees on behalf of a trading member or a client or any other party who has suffered a loss and who is a beneficiary under the Guarantee Fund; and
  - 11.60.7.5 pay over to the relevant claimant any such payment received from the Guarantee Fund in respect of such claim.
- 11.60.8 The Settlement Authority may lodge a claim with the trustees provided the claimant has submitted copies of the claim to the Settlement Authority in writing which must include -
- 11.60.8.1 full details of the amount claimed as computed in terms of the failed trade principles and procedures in rule 9.135 and directive EG; and

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11.60 introduced with effect from 9 May 2011

11.60.1 to 11.60.17 introduced with effect from 9 May 2011



- 11.60.8.2 any further evidence that the Settlement Authority or the trustees may require.
- 11.60.9 Failure by a claimant to comply within a reasonable period with any requirements of the Guarantee Fund or the JSE, or any requirement in these rules is grounds upon which the trustees may reject the claim.
- 11.60.10 Payment of any amount may only be made by the trustees against a valid out and out cession to the Guarantee Fund by the claimant in respect of claims against the defaulting trading member. In this regard, the claimant in question shall be deemed to have ceded the claim in question to the Guarantee Fund on the Guarantee Fund making the aforesaid payment.
- 11.60.11 The aggregate of all payments made by the Guarantee Fund pursuant to a settlement default shall not exceed the amount available from the exclusive funds, unless otherwise determined by the trustees.
- 11.60.12 All claims must be met on a pro rata basis in proportion to the total claims by all members and clients lodging claims in respect of a settlement default.
- 11.60.13 Payment of claims accepted by the trustees must be paid to the JSE and the trustees must receive an acknowledgement of receipt of payment from the claimant once the JSE has paid over the relevant amount to the claimant.
- 11.60.14 Payment must be effected by cheque or electronic transfer of funds to a nominated account held at a registered bank of the relevant claimant.
- 11.60.15 All claims lodged pursuant to this rule 11.60 must be lodged against the Guarantee Fund and no trading member or client may have any claim against the trustees or the JSE.
- 11.60.16 Except for trading members who only execute transactions on a name give-up basis, all trading members who execute reported transactions in bonds must contribute to the Guarantee Fund an amount determined by the JSE in accordance with rule 1.130.1.2.
- 11.60.17 Any contribution made by a member towards the Guarantee Fund shall have no impact on the quantum of claims to which the trading member may be entitled from the Guarantee Fund.

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[illegible]

# Derivatives Rules January 2005

## As amended by

Date	Notice No.	Amendment
1 July 2005	F710 and A587	Amendments arising from demutualisation
1 August 2005	F732 and A603	Amendments to accommodate the introduction of the Securities Services Act.
24 April 2007	F1247 and A786	Amendments to the capital adequacy requirements.
30 July 2007	F1342 and A811	Amendments in respect of recognition under Financial Services Ombud Schemes Act, 2004
8 January 2009	F2013 and A1006	Amendments to accommodate the introduction of foreign commodity derivatives
7 December 2009	F4113 and A1150	Amendments to accommodate the name change from "commodities market" to "commodity derivatives market"
17 December 2009	F4140 and A1164	Amendments to the additional margin provisions and the requirements in respect of trading limits
27 October 2010	F4515 and A1313	Introduction of rule 3.276 <i>Reporting and assistance by the JSE Surveillance Department – Financial Intelligence Centre Act</i>

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The term "derivatives member" wherever the same appeared was substituted by "member" with effect from 1 August 2005.

The term "broking member (derivatives)" wherever the same appeared was substituted by "trading member" with effect from 1 August 2005.

The term "non-broking member (derivatives)" wherever the same appeared was substituted by "trading member" with effect from 1 August 2005.

The term "clearing member (derivatives)" wherever the same appeared was substituted by "clearing member" with effect from 1 August 2005.

The term "non-clearing member (derivatives)" wherever the same appeared was substituted by "trading member" with effect from 1 August 2005.

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**SECTION**

**1**

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**Section 1: Derivatives rules**

**Scope of section**

- 1.10 Reserved
- 1.20 Reserved
- 1.30 Reserved
- 1.40 Powers exercisable by the controlling body
- 1.41 Advisory Committees
- 1.50 Derivative rules and directives
- 1.60 Transactions subject to provisions of the Act, derivatives rules and directives
- 1.70 Interpretation of the Derivatives rules and directives
- 1.80 Proposals for amendments to derivatives rules and directives
- 1.90 JSE not responsible for any losses
- 1.100 Indemnification
- 1.110 Appointment of a clearing house
- 1.120 Fidelity Fund



**1.10 Reserved**

**1.20 Reserved**

**1.30 Reserved**

**1.40 Powers exercisable by the controlling body**

- 1.40.1 The management and control of the JSE shall be exercised by the controlling body which shall be the governing body managing the affairs of the JSE.
- 1.40.2 The controlling body may, in addition to the powers and authorities expressly conferred upon it by the Act, the JSE's Memorandum and Articles of Association and these derivatives rules, exercise all such powers and do all such things as may be exercised or done by the JSE.

**1.41 Advisory Committees**

- 1.41.1 The controlling body shall procure the appointment of advisory committees.
- 1.41.2 The function of the advisory committees will be to make recommendations to the JSE Executive on operational issues.
- 1.41.3 The advisory committees shall consist of –
  - 1.41.3.1 a chairperson, who shall be the JSE Executive member responsible for the area in question; and
  - 1.41.3.2 such persons as the chairperson, in consultation with the JSE Executive and the controlling body, shall appoint by reason of their knowledge of or experience in the securities or other relevant markets and which shall include representatives of authorised users of the JSE.
- 1.41.4 The advisory committees shall make recommendations by reasonable consensus.
- 1.41.5 In the event that an advisory committee is not able to reach reasonable consensus on any issue considered by it, the conflicting views on the issue in question shall be advised to the JSE Executive.

**1.50 Derivative rules and directives**

- 1.50.1 Purpose of the derivatives rules and directives

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1.10 amended with effect from 1 July 2005.  
 1.10 deleted with effect from 1 August 2005.  
 1.20 deleted with effect from 1 July 2005.  
 1.30 deleted with effect from 1 July 2005.  
 1.40 amended with effect from 1 July 2005.  
 1.40 amended with effect from 1 August 2005.  
 1.40.1 amended with effect from 1 August 2005.  
 1.40.2 amended with effect from 1 August 2005.  
 1.40.3 deleted with effect from 1 August 2005.  
 1.41.1 amended with effect from 1 August 2005.  
 1.41.2 amended with effect from 1 August 2005.  
 1.41.3.1 amended with effect from 1 August 2005.  
 1.41.3.2 amended with effect from 1 August 2005.  
 1.41.5 amended with effect from 1 August 2005.  
 1.50 amended with effect from 1 August 2005.  
 1.50.1 amended with effect from 1 August 2005.

The purpose of the derivatives rules and directives is to achieve the objects of the JSE as set out in its Memorandum and Articles of Association by providing the procedures necessary to establish and regulate fair and efficient markets and to ensure that the business of the JSE is carried out in an orderly manner and with due regard to the objects of the Act.

- 1.50.2 Derivatives rules and directives are binding
  - 1.50.2.1 The derivatives rules and directives are binding on members, officers and their employees.
  - 1.50.2.2 Reserved.
  - 1.50.2.3 The derivatives rules are binding on any person utilising the services of a member or who concludes a transaction with a member in the course of that member's business.
  - 1.50.2.4 The controlling body shall notify members of any decision or determinations made under the derivatives rules and directives.

#### **1.60 Transactions subject to provisions of the Act, the derivatives rules and directives**

Every transaction in derivative securities entered into by a trading member must be concluded on the specific condition that the transaction is entered into subject to the provisions of the Act, these derivatives rules and the directives.

#### **1.70 Interpretation of the derivatives rules and directives**

The interpretation and enforcement of the derivatives rules and directives vests in the controlling body.

#### **1.80 Proposals for amendments to derivatives rules and directives**

- 1.80.1 Any member of the JSE Executive may propose in writing any amendment to the derivatives rules or directives.
- 1.80.2 The JSE Executive shall consider the proposed amendment to the derivatives rules or directives and notify members by way of notice of its decision in regard thereto.
- 1.80.3 If, within ten days of the announcement of the JSE Executive's decision to adopt the proposal, 5 or more members object in writing to the decision, the objection together with the reasons for such objection will be referred to the controlling body for determination.
- 1.80.4 If, in respect of a proposal with regard to the derivatives rules, an objection as referred to in rule 1.80.3 has not been lodged, or the controlling body upholds the JSE Executive's decision to adopt the proposal, the proposal will be submitted to the Registrar for his approval.
- 1.80.5 If an objection to a proposed amendment to the directives has not been lodged within the prescribed period, or the controlling body upholds the JSE Executive's decision to adopt the proposal, the proposal will take effect immediately.

1.50.1 amended with effect from 1 July 2005.

1.50.2.1 amended with effect from 1 August 2005.

1.50.2.2 deleted with effect from 1 August 2005.

1.50.2.3 amended with effect from 1 August 2005.

1.50.2.4 amended with effect from 1 August 2005.

1.60 amended with effect from 1 August 2005.

1.70 amended with effect from 1 August 2005.

1.80 amended with effect from 1 August 2005.

1.80.1 amended with effect from 1 August 2005.

1.80.2 amended with effect from 1 August 2005.

1.80.3 amended with effect from 1 August 2005.

1.80.4 amended with effect from 1 August 2005.

1.80.5 amended with effect from 1 August 2005.

### 1.90 JSE not responsible for any losses

Subject to section 62 of the Act, the JSE and the clearing house shall not be liable to any person for loss or damage resulting from –

- 1.90.1 negligence, on the part of the JSE, the clearing house or on the part of any employee or agent of the JSE or the clearing house;
- 1.90.2 any act of omission on the part of any third party;
- 1.90.3 incorrect, inaccurate, defective or misleading information furnished or supplied by the JSE, the clearing house or any employee or agent of the JSE, the clearing house or any third party;
- 1.90.4 equipment breakdown or the breakdown, interruption, suspension, termination or failure of or defect in any system, including but not limited to any trading system, or service owned or operated by or on behalf of the JSE;
- 1.90.5 computer system malfunction, the interruption or failure of communications links, power failure, the failure of or defect in any software or hardware, whether owned by, licensed or leased to the JSE, the loss or destruction of any data and any loss or damage caused by natural disaster, riot, insurrection, acts of vandalism, sabotage or similar cause; and
- 1.90.6 the termination, for any reason whatsoever, of any licence or other agreement to which the JSE is a party.

### 1.100 Indemnification

A member of an advisory committee, trustee of the Fidelity Fund and employee of the JSE shall be indemnified by the JSE out of the funds of the JSE against any liability, loss or, damage incurred or suffered as a result of any *bona fide* or negligent, but not grossly negligent or wilful, act or omission in the execution of their duties. For the purposes of this rule, such member, trustee or employee shall not be regarded as having been grossly negligent or having acted in wilful breach of duty or trust if the act or omission resulted from incorrect information supplied to such member, trustee or employee by a source from which the member, trustee or employee would normally accept the information as correct and which can be expected to provide the correct information.

### 1.110 Appointment of a clearing house

The JSE may acquire the services of a clearing house with the purpose of clearing contracts on the JSE in accordance with the derivatives rules and to provide any other services or facilities as may be required by the JSE. Any services required by the JSE and any duties and responsibilities of the JSE may be delegated by the JSE to such clearing house.

### 1.120 Fidelity Fund

- 1.120.1 The JSE shall have the power to –
  - 1.120.1.1 establish and maintain, to the satisfaction of the Registrar, a Fidelity Fund out of which shall be paid claims up to an amount specified in the rules of such fund in respect of liabilities arising prior to the default of a member. Such payment shall be limited to claims arising out of transactions in derivative securities with or on behalf of other persons by such member and such other liabilities as may be specified in the rules of the Fidelity Fund and shall be subject to any defences which the defaulting member may have against a claimant; and
  - 1.120.1.2 determine a levy to be payable by every member to the Fidelity Fund on all transactions in derivative securities.

1.90 amended with effect from 1 July 2005.

1.90 amended with effect from 1 August 2005.

1.100 amended with effect from 1 August 2005.

1.100.1 and 1.100.2 deleted with effect from 1 August 2005.

1.120 deleted in entirety and replaced with new rule 1.120; including rules 1.120.1 to 1.120.4 with effect from 1 August 2005.

- 1.120.2 Where a trading member has effected a transaction on behalf of a buyer or a seller of derivatives securities, such member may recover the levy imposed in terms of rule 1.120.1.2 from such buyer or seller.
- 1.120.3 The trustees of the Fidelity Fund, in their capacity as trustees, acquire, incur and administer the assets and liabilities of the Fidelity Fund.
- 1.120.4 The income of the Fidelity Fund, including but not limited to levy contributions by members, vests in the trustees and is administered by the trustees as part of the Fidelity Fund.

**SECTION**

**2**

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**Section 2: Interpretation and definitions**

**Scope of section**

- 2.10 Definitions
- 2.20 Interpretation

## 2.10 Definitions

In these derivatives rules, unless otherwise clearly indicated by, or inconsistent with the context, the following terms shall have the meanings that are assigned to them hereunder, namely -

<b>"Act"</b>	means the Securities Services Act (Act No. 36 of 2004) and any measure prescribed thereunder by the Minister of Finance or the Registrar;
<b>"additional margin"</b>	means the margin paid to a clearing member over and above that required by the clearing house or to a trading member over and above that required by the clearing member concerned;
<b>"advertisement"</b>	means any written, printed, electronic or oral communication, including a communication by means of a public radio service, television broadcast or any other media by a member, which communication is directed to the general public, or any section thereof, or to any client, and is intended to call attention to, or to market or promote, the services offered by a member, and which does not purport to provide detailed information about such services; and "advertising" has a corresponding meaning;
<b>"agent"</b>	means a trading member who has traded with a client other than for his own account in terms of the derivatives rules;
<b>"aggregate position"</b>	means collectively all the proprietary positions in related exchange contracts registered in the name of a member or, collectively, all the positions in related exchange contracts registered in the name of a client who has traded with a particular member to open such positions;
<b>"agricultural derivatives"</b>	means those commodity securities which are derivative instruments and the financial terms of which are determined by an underlying agricultural product which is physically settled in terms of the derivatives rules;
<b>"agricultural product"</b>	has the same meaning as contemplated in the Marketing of Agricultural Products Act, 1996 (Act No. 47 of 1996);
<b>"assign"</b>	means the exercise by the clearing house of its right in terms of an option contract to buy or sell the underlying instrument of the option contract from or to a person holding a short position in the option contract;

"Act" amended with effect from 1 August 2005.

"administrators" deleted with effect from 1 August 2005.

"advertisement" introduced with effect from 5 January 2005.

"advice" deleted with effect from 1 August 2005.

"affiliated officer" deleted with effect from 1 August 2005.

"agricultural derivatives" introduced with effect from 24 December 2008.

"agricultural commodity" replaced with "agricultural product" with effect from 24 December 2008.

"agricultural commodity contract" deleted with effect from 24 December 2008.

"agricultural commodity futures contract" deleted with effect from 24 December 2008.

"agricultural commodity option contract" deleted with effect from 24 December 2008.

"agricultural products market" deleted with effect from 24 December 2008.

<b>"authorised bank"</b>	means a branch of an Authorised Dealer which, in terms of Exchange Control Regulation 14, has been appointed to administer securities control;
<b>"Authorised Dealer"</b>	means, in relation to any transaction in respect of gold, a person authorised by the Treasury to deal in gold and, in relation to any transactions in respect of foreign exchange, a person authorised by the Treasury to deal in foreign exchange;
<b>"authorised user"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"automated trading system" or "ATS"</b>	means the computerised facility of the JSE by means of which a member shall make an offer in respect of a trade in derivative securities that shall, in terms of the derivatives rules, be done on the ATS or reports an off-ATS trade to the clearing house and on which the JSE and the clearing house may display notices to members;
<b>"bank"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"board of appeal"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"bonds"</b>	means those Yield-X securities which create or acknowledge indebtedness of the issuer;
<b>"branch of a foreign bank"</b>	means a foreign institution which is authorised in terms of the Banks Act, 1990 (Act No. 94 of 1990) to conduct the business of a bank by means of a branch in the Republic;
<b>"business day" or "day"</b>	means any day except a Saturday, Sunday, public holiday or any other day on which the JSE is closed;
<b>"buy"</b>	means, in relation to derivative securities, to enter into either - <ul style="list-style-type: none"> <li>(a) a futures contract in terms of which the buyer is obliged to take delivery of the underlying instrument from the seller at the agreed price on the future date or to pay an amount of money to the seller if, on the future date, the price or value of the underlying instrument is less than the agreed price; or</li> <li>(b) an option contract in terms of which the buyer obtains the right from the seller to buy or sell the underlying instrument of the option contract at the agreed price</li> </ul>

"authorised bank" amended with effect from 24 December 2008.

"authorised dealer" amended with effect from 24 December 2008.

"authorised user" introduced with effect from 1 August 2005.

"automated trading system" or "ATS" amended with effect from 1 August 2005.

"bank" introduced with effect from 1 August 2005.

"Board" deleted with effect from 1 August 2005.

"board of appeal" introduced with effect from 1 August 2005.

"broking member (derivatives)" deleted with effect from 1 August 2005.

"bonds" introduced with effect from 24 December 2008.

"branch of a foreign bank" introduced with effect from 26 April 2007.

"business day" amended with effect from 1 August 2005.

	from or to the seller on or before the future date;
<b>"call option contract"</b>	means a contract, in terms of which the holder of a long position in the call option contract has obtained the right to buy, and the holder of a short position shall, if the option is exercised, sell, the underlying instrument of the option contract from or to the clearing house on or before the future date at the strike price in accordance with these derivatives rules and the contract specification of the option contract;
<b>"capital adequacy requirement"</b>	means the sum of the greater of a member's initial capital or one quarter of its annual fixed operating costs plus the risk requirements as determined by the JSE by directive;
<b>"capital adequacy return"</b>	means the submission by a member of his capital adequacy requirement to the JSE in the manner and form specified by the JSE;
<b>"cash settled futures contract"</b>	means a futures contract contemplated in part (b) of the definition of futures contract in this rule 2.10;
<b>"Chief Executive Officer"</b>	means the person appointed by the controlling body as the Chief Executive Officer of the JSE;
<b>"clearing"</b>	means the process in terms of which the clearing house becomes the buyer from the seller and the seller to the buyer in every trade whereupon the clearing member guarantees to the clearing house all obligations arising out of any position resulting from such trade in terms of these derivatives rules;
<b>"clearing agreement"</b>	means a written agreement entered into between a clearing member and a trading member in terms of which the trading member guarantees to the clearing member the performance of the obligations arising out of the positions of the trading member and the clients of the trading member;
<b>"clearing house"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"clearing house agreement"</b>	means a written agreement entered into between a clearing member and the clearing house in terms of which the clearing member guarantees to the clearing house all of the obligations arising out of his proprietary positions, the positions of his clients, the proprietary position of the trading members with which he has entered a clearing agreement and the positions of the clients of such trading members ;
<b>"clearing member"</b>	means a sub-category of authorised user of the JSE, registered to perform clearing in the equity derivatives market or the commodity derivatives market or both and who has entered into a clearing house agreement with the clearing house;
<b>"client"</b>	has the same meaning as that contained in section 1 of the

"buy" amended with effect from 1 August 2005.

"capital adequacy requirement" amended with effect from 1 August 2005.

"capital adequacy return" amended with effect from 1 August 2005.

"Chief Executive Officer" amended with effect from 1 July 2005.

"Chief Executive Officer" amended with effect from 1 August 2005.

"clear" amended to "clearing" with effect from 1 August 2005.

"clearing house" amended with effect from 1 August 2005.

"clearing member" amended with effect from 1 August 2005, 24 December 2008 and 20 November 2009.

"client" amended with effect from 5 January 2005.



	Act;
<b>"client agreement"</b>	means an agreement between a member and a client entered into before the member becomes entitled to trade with the client, the basic terms and formal requirements of which have been prescribed by the JSE;
<b>"close out"</b>	means the cancellation of a position in one direction with an equal and opposite position (e.g. a long position in an exchange contract is cancelled by a short position in the same exchange contract);
<b>"commodity derivatives market"</b>	means the market operated by the JSE in terms of the Act to facilitate trading in commodity securities;
<b>"commodity securities"</b>	means those JSE listed securities traded on the JSE commodities trading system;
<b>"common monetary area"</b>	means the Republic of South Africa, Lesotho, Namibia and Swaziland;
<b>"Companies Act"</b>	means the Companies Act, 1973 (Act No. 61 of 1973);
<b>"compliance officer"</b>	means the person appointed in terms of Section 5;
<b>"contract specification"</b>	means the standard terms and formal requirements of a futures or option contract as determined by the JSE;
<b>"controlling body"</b>	means the board of directors of the JSE which is the governing body managing the affairs of the JSE;
<b>"corporate action"</b>	means an action taken by an issuer or any other entity or third party, which affects the registered owner and the beneficial owner of derivative securities in terms of an entitlement;
<b>"counterparty risk requirement"</b>	means the own funds that a member shall have in relation to the risk to the member of unsettled transactions with other parties as calculated in a manner determined from time to time by the JSE;
<b>"currency derivatives"</b>	means those Yield-X securities which are derivative instruments and the financial terms of which are determined by a rate of exchange;
<b>"dealer "</b>	means an employee of a trading member who is registered in terms of these derivatives rules to trade either for the member's own account or for or on behalf of clients, or for both;
<b>"default"</b>	means a default by a client or member as contemplated in

"Constitution" deleted with effect from 1 July 2005.

"client" amended with effect from 1 August 2005.

"commodities market" introduced with effect from 24 December 2008 and renamed "commodity derivatives market" with effect from 20 November 2009.

"commodity securities" introduced with effect from 24 December 2008.

"Companies Act" introduced with effect from 1 August 2005.

"contract specification" amended with effect from 1 August 2005.

"controlling body" introduced with effect from 1 August 2005.

"corporate action" introduced with effect from 1 August 2005.

"counterparty risk requirement" amended with effect from 1 August 2005.

"corporate entity (limited liability)" deleted with effect from 1 August 2005.

"corporate entity (unlimited liability)" deleted with effect from 1 August 2005.

"currency derivatives" introduced with effect from 24 December 2008.

"dealer" amended with effect from 26 April 2007.

	Section 12;
<b>"derivative instruments"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"derivatives rules"</b>	means these derivatives rules issued in pursuance of section 18 of the Act;
<b>"derivative securities"</b>	means those derivative instruments listed on the JSE and traded on the JSE derivatives trading system;
<b>"Disciplinary Committee"</b>	means the committee appointed in terms of rule 3.290.2;
<b>"discretionary basis"</b>	in relation to the management of investments, means to trade, without it being necessary to obtain further authority or consent from the client involved, other than the discretionary client agreement;
<b>"discretionary client agreement"</b>	means the client agreement as prescribed by the JSE that entitles the member to trade for a client on a discretionary basis;
<b>"discretionary financial services provider"</b>	shall have the same meaning as that contained in section 2.1 of the Code of Conduct for Administrative Financial Services Providers issued by the Registrar of Financial Services Providers;
<b>"dispute"</b>	means any dispute arising between any of the persons bound by these derivatives rules and which the JSE declares to be a dispute in terms of rule 17.90;
<b>"effective date"</b>	means the date of the coming into operation of these derivatives rules;
<b>"emigrant"</b>	means a natural person who has emigrated from the common monetary area;
<b>"emigrant client"</b>	means an emigrant who is not a member who has concluded a client agreement with a trading member and who has been registered by the clearing house as an emigrant client of the member;
<b>"emigrant's blocked account"</b>	means the account of an emigrant from the common monetary area to which exchange control restrictions have been applied;
<b>"emigrant's blocked account clearance certificate"</b>	means the certificate, the terms of which are determined by the JSE in agreement with the South African Reserve Bank and which confirms to the authorised bank concerned the details of the amount of the margin to be paid into or out of an emigrant's blocked account as a result of a position registered in the name of that emigrant client;

"derivatives member" deleted with effect from 1 August 2005.

"derivative instruments" introduced with effect from 1 August 2005.

"derivatives rules" amended with effect from 1 August 2005.

"derivative securities" introduced with effect from 1 August 2005.

"directive" deleted with effect from 1 August 2005.

"Disciplinary Committee" introduced with effect from 1 August 2005.

"discretionary financial services provider" introduced with effect from 5 January 2005.

"dispute" amended with effect from 1 August 2005.

"equities rules" deleted with effect from 1 August 2005.

<b>"employee"</b>	means a person engaged by a member within that area of its business that operates as a member;
<b>"equity derivatives market"</b>	means the market operated by the JSE in terms of the Act to facilitate trading in equity derivatives;
<b>"equity securities"</b>	means those JSE listed securities traded on the JSE equities trading system;
<b>"exchange"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"exchange contract"</b>	means either a futures contract in terms of which the expiry month is specified or an option contract in terms of which the expiry month, the strike price, and whether it is a put option contract or a call option contract, is specified;
<b>"Exchange Control Regulations"</b>	means the Exchange Control Regulations, 1961, as promulgated by Government Notice R1111 of 1 December 1961, as amended, made in terms of Section 9 of the Currency and Exchanges Act, 1933 (Act No 9 of 1933);
<b>"executive director"</b>	means a person appointed as a director of a member, under the Companies Act and who, in terms of a contract of employment with such member is in its full-time employ;
<b>"exercise"</b>	means, in relation to the registered holder of a long position in an option contract, to exercise its right to buy or sell the underlying instrument of the option contract at the strike price on or before the future date;
<b>"expire"</b>	means the closing out of an exchange contract by a trade between the registered holder of a position and the clearing house in terms of these derivatives rules;
<b>"expiry month"</b>	means in relation to a futures or option contract, the month in which the positions in such exchange contracts expire on the date and at the time as contained in the contract specification of the futures or option contract;
<b>"external company"</b>	means an external company as defined in Section 1 of the Companies Act and registered in terms of Section 322(2) of the Companies Act;
<b>"external exchange"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"FAIS Act"</b>	means the Financial Advisory and Intermediary Services Act, 2002 (Act No.37 of 2002);
<b>"Fidelity Fund"</b>	means the JSE Fidelity Fund contemplated in terms of Section 9(1)(e) of the Act;

"employee" introduced with effect from 1 August 2005.

"equity derivatives market" introduced with effect from 1 August 2005.

"equity securities" introduced with effect from 24 December 2008.

"exchange" introduced with effect from 1 August 2005.

"executive director" amended with effect from 1 August 2005.

"external company" amended with effect from 1 August 2005.

"external exchange" introduced with effect from 1 August 2005.

"FAIS Act" introduced with effect from 5 January 2005.

"Fidelity Fund" amended with effect from 1 August 2005.

"financial derivatives market" deleted with effect from 1 August 2005.

"financial instruments" deleted with effect from 1 August 2005.

<b>"financial products"</b>	shall have the same meaning as that contained in section 1 of the FAIS Act, and by definition includes JSE authorised investments;
<b>"financial services provider"</b>	shall have the same meaning as that contained in section 1 of the FAIS Act;
<b>"foreign commodity derivatives"</b>	means those commodity securities which are cash settled derivative instruments and the financial terms of which are determined by an underlying foreign referenced commodity;
<b>"foreign exchange risk requirement"</b>	means the amount of own funds required in relation to the member's risk exposure arising from dealings in foreign exchange, or exposure to changes in the value of foreign currencies relative to the Rand as calculated in a manner determined by the JSE by directive;
<b>"futures contract"</b>	means a contract, the effect of which is that - <ul style="list-style-type: none"> <li>(a) a person agrees to deliver the underlying instrument to or receive it from another person at an agreed price on a future date; or</li> <li>(b) a person will pay to or receive from another person an amount of money according to whether, on the future date, the price or value of the underlying instrument is higher or lower than the agreed price on that future date,</li> </ul> in accordance with these derivatives rules and the contract specification of the futures contract and which is included in the list of derivatives securities kept by the JSE in terms of the Act;
<b>"initial capital"</b>	means the minimum capital as specified from time to time by the JSE;
<b>"initial margin"</b>	means the amount of money determined by the clearing house on the basis specified by the JSE and held in respect of the aggregate position of a member or a client;
<b>"interest rate derivatives"</b>	means those Yield-X securities which are derivative instruments and the financial terms of which are determined by a rate of interest;
<b>"intermediary services"</b>	shall have the same meaning as that contained in section 1 of the FAIS Act;
<b>"international derivatives"</b>	means those derivative securities the financial terms of which are determined by a security listed on an external exchange;

"financial products" introduced with effect from 5 January 2005.

"financial products" amended with effect from 1 August 2005.

"financial services provider" introduced with effect from 5 January 2005.

"foreign exchange" deleted with effect from 1 August 2005.

"foreign commodity derivatives" introduced with effect from 24 December 2008.

"foreign exchange risk requirement" amended with effect from 1 August 2005.

"futures contract" amended with effect from 1 August 2005.

"initial capital" amended with effect from 1 August 2005.

"investment management agreement" deleted with effect from 1 August 2005.

"interest rate derivatives" introduced with effect from 24 December 2008.

"intermediary services" introduced with effect from 5 January 2005.

"international derivatives" introduced with effect from 24 December 2008.

**"investment advice"**

means any recommendation, guidance or proposal of a financial nature furnished by a member, by any means or medium, to any client or group of clients –

- a) in respect of the purchase or sale of JSE authorised investments; or
- b) on any corporate action or other event affecting any rights or benefits in respect of any JSE authorised investments; or
- c) on the exercise or lapse of any rights in respect of any JSE authorised investments;

and irrespective of whether or not such investment advice results in any transaction being effected.

Investment advice does not include -

- factual advice given merely –
  - (i) on the procedure for entering into a transaction in respect of any JSE authorised investments;
  - (ii) in relation to the description of any JSE authorised investments;
  - (iii) in answer to routine administrative queries;
  - (iv) in the form of objective information about JSE authorised investments; or
  - (v) by the display or distribution of promotional material;
- an analysis or report on any JSE authorised investments without any express or implied recommendation, guidance or proposal that any particular transaction in respect of the relevant product is appropriate to the particular investment objectives, financial situation or particular needs of a client;

**"investment manager"**

means a trading member who is authorised in terms of Section 15 of the derivatives rules to undertake the management of investments on a discretionary basis;

**"in writing"**

has the same meaning as that contained in section 1 of the Act;

**"JSE"**

means JSE Limited, a company duly registered and incorporated with limited liability under the company laws of the Republic, licensed to operate an exchange under the Act;

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"investment advice" introduced with effect from 5 January 2005.

"investment manager" amended with effect from 1 August 2005.

"in writing" introduced with effect from 5 January 2005.

"in writing" amended with effect from 1 August 2005.

"JSE" amended with effect from 1 July 2005.

"JSE" amended with effect from 1 August 2005.

<b>"JSE authorised investments"</b>	means – <ul style="list-style-type: none"> <li>(a) derivative securities;</li> <li>(b) JSE listed securities traded on the JSE equities trading system or the Yield-X trading system;</li> <li>(c) securities listed on an exchange in the Republic other than the JSE;</li> <li>(d) securities listed on an external exchange;</li> <li>(e) participatory interests in a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), and units or any other form of participation in a foreign collective investment scheme approved by the Registrar of Collective Investment Schemes in terms of section 65 of that Act;</li> <li>(f) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country; and</li> <li>(g) funds intended for the purchase of such securities, units or participation;</li> </ul>
<b>"JSE commodities trading system"</b>	means the computer system or systems and associated network or networks operated or used by the JSE for the purpose of providing a market for the trading of commodity securities;
<b>"JSE derivatives trading system "</b>	means the computer system or systems and associated network or networks operated or used by the JSE for the purpose of providing a market for the trading of derivative securities, including the ATS;
<b>"JSE equities trading system"</b>	means the computer system or systems and associated network or networks operated or used by the JSE for the purpose of providing a market for the trading of equity securities;
<b>"JSE Gazette"</b>	means the gazette published by the JSE under the authority of the JSE Executive;
<b>"JSE listed securities"</b>	means those securities included in the list of securities kept by the JSE;
<b>"JSE Executive"</b>	means the Chief Executive Officer and such other officials of the JSE as the Chief Executive Officer may from time to time decide shall serve on the JSE's top management ;
<b>"JSE share"</b>	means a share in the JSE itself or in any company that owns or

"JSE authorised investments" introduced with effect from 1 August 2005.

"JSE commodities trading system" introduced with effect from 24 December 2008.

"JSE derivatives trading system" introduced with effect from 1 August 2005.

"JSE equities trading system" introduced with effect from 24 December 2008.

"JSE Gazette" introduced with effect from 1 August 2005.

"JSE listed securities" introduced with effect from 1 August 2005.

"JSE trading system" deleted with effect from 1 August 2005.

"JSE right" deleted with effect from 1 July 2005.

"JSE share" introduced with effect from 1 July 2005.

	operates the JSE;
<b>"JSE year"</b>	means the financial year of the JSE which shall end on the last day in December in each year or such other date as the JSE may determine;
<b>"large exposure risk"</b>	means the amount of own funds required in relation to the member's risk arising from large exposures to a third party or a connected group of third parties as calculated in a manner determined by the JSE;
<b>"listed securities"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"long position"</b>	means a number of exchange contracts registered by the clearing house in the name of a member or client in terms of which - <ul style="list-style-type: none"> <li>(a) in relation to futures contracts, the member or the client is obliged to take delivery of the underlying instrument from the seller at the agreed price on the future date; or to pay an amount of money to the seller if, on the future date, the price or value of the underlying instrument is less than the agreed price; or</li> <li>(b) in relation to option contracts, the member or client has the right to buy or sell the underlying instrument of the option contract at the agreed price on or before the future date;</li> </ul>
<b>"manage"</b>	in relation to JSE authorised investments, means any arrangement entered into between a client and a member which authorises the member to buy or sell JSE authorised investments on behalf of the client, either with full discretion or with prior reference to the client;
<b>"margin"</b>	means either initial margin or variation margin or additional margin or retained margin as the context may require;
<b>"margin category"</b>	means the margin category, expressed as a percentage of the initial margin, which is allocated to a non-resident or emigrant client by the member when the non-resident or emigrant client is registered;
<b>"Market Controller"</b>	means the person appointed by the JSE, to supervise, administer and control the daily operations of the ATS;
<b>"market corner"</b>	has the same meaning as that contained in section 72 of the Act;
<b>"mark-to-market"</b>	means the revaluation of a position in the exchange contract at its current market value;
<b>"match"</b>	means to match one member's trade with that of another member in terms of certain criteria contained in their

"JSE year" amended with effect from 1 August 2005.

"junior dealer" deleted with effect from 26 April 2007.

"large exposure risk" deleted with effect from 1 August 2005.

"listed products" deleted with effect from 1 August 2005.

"listed securities" introduced with effect from 1 August 2005.

"manage" introduced with effect from 24 December 2008.

"Market Controller" introduced with effect from 16 April 2005.

"market corner" introduced with effect from 1 August 2005.

	independent reports of the trades;
<b>"member"</b>	means a derivatives member, which is a category of authorised user admitted to membership of the JSE under these rules;
<b>"non-executive director"</b>	means a person appointed as a director of a member, under the Companies Act but who is not employed by such member;
<b>"non-resident"</b>	means a person (i.e. a natural person or legal entity) whose normal place of residency or domicile or registration is outside the common monetary area;
<b>"non-resident account"</b>	means the account of a non-resident;
<b>"non-resident account clearance certificate"</b>	means the certificate, the terms of which are determined by the JSE in agreement with the South African Reserve Bank and which is to confirm to the authorised bank concerned the monthly amount of interest on the initial margin due to a non-resident or an emigrant client;
<b>"non-resident client"</b>	means a non-resident who is not a member and who has concluded a client agreement with a trading member and who has been registered by the clearing house as a non-resident client of the trading member ;
<b>"off-ATS"</b>	means, in relation to an offer, acceptance of an offer or a trade, that the offer is made by one member to another verbally or in writing and not on the ATS;
<b>"officer"</b>	means an executive director or a registered officer of a member;
<b>"offer"</b>	means an offer to buy or to sell;
<b>"option contract"</b>	means a put option contract or a call option contract, as the context may require;
<b>"order"</b>	means an offer in terms of which there is a period of time within which to accept the offer;
<b>"own funds"</b>	means the net financial worth of a member calculated in the manner as decided by the JSE;
<b>"physically settled futures contract"</b>	means a futures contract contemplated in part (a) of the definition of a futures contract in this rule 2.10;
<b>"position"</b>	means either a long position or a short position;
<b>"position risk requirement"</b>	means the amount of own funds required in relation to the member's open positions in securities as determined by the JSE;

"mediation" deleted with effect from 1 August 2005.

"mediator" deleted with effect from 1 August 2005.

"member" amended with effect from 1 August 2005.

"non-broking member (derivatives)" deleted with effect from 1 August 2005.

"non-clearing member (derivatives)" deleted with effect from 1 August 2005.

"non-executive director" amended with effect from 1 August 2005.

"officer" introduced with effect from 1 August 2005.

"old rules and directives" deleted with effect from 1 August 2005.

"option contract" amended with effect from 1 August 2005.

"other investments" deleted with effect from 1 August 2005.

"own funds" amended with effect from 1 August 2005.

"position risk requirement" amended with effect from 1 August 2005.



<b>"prescribed agreements"</b>	means the agreements, the basic terms and formal requirements of which have been specified by the JSE;
<b>"principal"</b>	means a member who has traded with a client or another member for his own account;
<b>"product supplier"</b>	shall have the same meaning as that contained in section 1 of the FAIS Act;
<b>"professional client"</b>	in relation to a trading member , means – <ul style="list-style-type: none"> <li>(a) another authorised user;</li> <li>(b) a bank;</li> <li>(c) a long-term or short-term insurer registered as such under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or the Short-term Insurance Act, 1998 (Act No. 53 of 1998), respectively;</li> <li>(d) a person outside the Republic who –               <ul style="list-style-type: none"> <li>(i) as a regular feature of the person's business, renders a service similar to a "securities service" as defined in section 1 of the Act or conducts the business of a bank or a business referred to in paragraph (c); and</li> <li>(ii) is registered, licensed, recognised, approved or otherwise authorised to render the service or conduct the business referred to in paragraph (d)(i) by a foreign regulator with functions similar to those of the Registrar, the Registrar of Banks or the Registrar of Long-term or Short-term Insurance;</li> </ul> </li> <li>(e) any person who is mandated to manage assets and who has confirmed to the satisfaction of the authorised user that the market value of the assets managed by the person will exceed R1 billion at all times during the rendering of securities services to the person;</li> <li>(f) any other client, who has confirmed to the satisfaction of the member that the person will have assets of which the net asset value will exceed R20 million at all times during the rendering of securities services to the person, but who is not –               <ul style="list-style-type: none"> <li>(iii) a natural person;</li> <li>(iv) a pension fund organisation as defined in section 1 (1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);</li> <li>(v) a friendly society referred to in the Friendly Societies Act, 1956 (Act No. 25 of 1956);</li> <li>(vi) a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act No.131 of 1998);</li> </ul> </li> </ul>

"product supplier" introduced with effect from 5 January 2005.

"professional client" introduced with effect from 1 August 2005.

<b>"proprietary position"</b>	means a position registered by the clearing house in the name of a member for the member's own account;
<b>"put option contract"</b>	means a contract, in terms of which the holder of a long position in the put option contract has obtained the right to sell, and the holder of a short position shall, if the option is exercised, buy, the underlying instrument of the option contract to or from the clearing house on or before the future date at the strike price in accordance with these derivatives rules and the contract specification of the option contract;
<b>"registered officer"</b>	means a compliance officer or a dealer registered by the JSE as such in the name of the member;
<b>"Registrar"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"Registrar of Banks"</b>	means the Registrar of Banks designated under section 4 of the Banks Act, 1990 (Act No 94 of 1990);
<b>"regulation"</b>	means any regulation which may be made by the Minister in terms of section 113 of the Act;
<b>"related exchange contracts"</b>	means those exchange contracts which the JSE decides have such characteristics in common that the risk of loss in one of the exchange contracts may be reduced by an off-setting position in any of the other or a combination of the other exchange contracts in the group of related exchange contracts;
<b>"Republic"</b>	means the Republic of South Africa;
<b>"resident"</b>	means a natural person who is resident in the common monetary area or a legal entity registered in such area, and includes a partnership or an external company;
<b>"resident client"</b>	means a resident who is not a member and who has concluded a client agreement with a trading member, and who has been registered by the clearing house as a resident client of the trading member ;
<b>"retained margin"</b>	means the margin paid by a client to a member for an intended trade or margin due to a client which the member has retained in anticipation of a trade;
<b>"risk disclosure statement"</b>	means the risk disclosure statement annexed to the client agreement;
<b>"safeguard"</b>	means in relation to JSE authorised investments– (a) the holding of such investments in safe custody by a member on behalf of a client; or being accountable as a member to a client for such investments held by another financial services provider;

"Registrar" introduced with effect from 1 August 2005.

"Registrar of Banks" introduced with effect from 1 August 2005.

"regulation" amended with effect from 1 August 2005.

"Republic" introduced with effect from 1 August 2005.

"resolution" deleted with effect from 1 August 2005.

"safeguard" introduced with effect from 5 January 2005.

<b>"securities"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"securities services"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"sell"</b>	means, in relation to derivative securities, to enter into either - <ul style="list-style-type: none"> <li>(a) a futures contract in terms of which the seller is obliged to make delivery of the underlying instrument to the buyer at the agreed price on the future date; or to pay an amount of money to the buyer if, on the future date the price or value of the underlying instrument is greater than the agreed price; or</li> <li>(b) an option contract in terms of which the seller grants the right to the buyer to buy or sell the underlying instrument of the option contract from, or sell it to, the seller at the agreed price on or before the future date;</li> </ul>
<b>"short position"</b>	means a number of derivatives exchange contracts registered by the clearing house in the name of a member or client in terms of which - <ul style="list-style-type: none"> <li>(a) in relation to futures contracts, the member or client is obliged to make delivery of the underlying instrument at the agreed price on the future date or to pay an amount of money if, on the future date, the price or value of the underlying instrument is greater than the agreed price; or</li> <li>(b) in relation to option contracts, the member or client has granted the right to another person to buy or sell the underlying instrument of the option contract at the agreed price on or before the future date;</li> </ul>
<b>"standard lot size"</b>	means the number of a particular exchange contract that is traded in a single trade as determined by the JSE;
<b>"strike price"</b>	means the price or yield at which the person in whose name a long position in an option contract is registered has the right to buy or sell the underlying instrument of the option contract;
<b>"SWIFT"</b>	means the Society for Worldwide Interbank Financial Telecommunications;
<b>"SWIFT emigrant's blocked account notification"</b>	means the notification, utilising the SWIFT network, from the clearing house's nominated SWIFT agent to the authorised bank, instructing the authorised bank to make or accept payment of margin to or from an emigrant's blocked account in

"safeguard" amended with effect from 1 August 2005.

"SAFEX" deleted with effect from 1 August 2005.

"securities" introduced with effect from 5 January 2005.

"securities" amended with effect from 1 August 2005.

"Securities Services Act" deleted with effect from 1 August 2005.

"securities services" introduced with effect from 1 August 2005.

"sell" amended with effect from 1 August 2005.

"senior dealer" deleted with effect from 26 April 2007.

the amount specified in the notification;

<b>"SWIFT non-resident account notification"</b>	means the notification, utilising the SWIFT network, from the clearing house's nominated SWIFT agent to the authorised bank, instructing the authorised bank to receive payment of interest into a non-resident account in the amount specified in the notification;
<b>"trade"</b>	means to buy or to sell derivative securities whether by means of the ATS or off-ATS;
<b>"trading member"</b>	means a sub-category of authorised user of the JSE, registered to trade in the equity derivatives market or the commodity derivatives market or in both under the derivatives rules;
<b>"transaction"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"trustees"</b>	means the trustees of the Fidelity Fund;
<b>"underlying instrument"</b>	means the corporeal or incorporeal thing, asset, index as referred to in the definition of "securities" in section 1 of the Act, currency, rate of interest or any other factor which is the subject matter of a futures contract or an option contract, or the futures contract that is the subject matter of an option contract;
<b>"unsolicited call"</b>	means any first communication made to a person by a trading member or an employee of a trading member, without an express or tacit invitation from such person;
<b>"variation margin"</b>	means the amount of margin payable in terms of rule 8.60.2;
<b>"Yield-X securities"</b>	means those JSE listed securities traded on the Yield-X trading system;
<b>"Yield-X trading system"</b>	means the computer system or systems and associated network or networks operated or used by the JSE for the purpose of providing a market for the trading of Yield-X securities.

## 2.20 Interpretation

In these derivatives rules, unless otherwise clearly indicated by, or inconsistent with the context -

2.20.1 a reference to one gender includes a reference to all other genders;

2.20.2 the singular includes the plural, and vice versa;

"the Registrar" deleted with effect from 1 August 2005.

"the Registrar of Banks" deleted with effect from 1 August 2005.

"trade" amended with effect from 1 August 2005.

"trading member" introduced with effect from 1 August 2005 and amended with effect from 24 December 2008 and 20 November 2009.

"transaction" introduced with effect from 1 August 2005.

"trustees" introduced with effect from 1 August 2005.

"underlying instrument" amended with effect from 1 August 2005.

"unsolicited call" introduced with effect from 1 August 2005.

"Yield-X securities" introduced with effect from 24 December 2008.

"Yield-X trading system" introduced with effect from 24 December 2008.

2.20.3 all the terms defined in the Act bear the same meaning as are assigned to them in the Act.

**SECTION**

**3**

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**Section 3: General membership and disciplinary procedures**

**Scope of section**

- 3.10 General Membership of the JSE
- 3.20 General requirements
- 3.30 Membership transitional provisions
- 3.40 Applications for membership
- 3.50 Voluntary changes to, or termination of, membership
- 3.60 Involuntary termination of membership
- 3.70 Duty to furnish information
- 3.80 Fees, levies and charges
- 3.90 Reserved
- 3.100-3.110 Reserved
- 3.120 Consent required for employment of certain persons
- 3.130 Trading name
- 3.140 Notices
- 3.150-3.270 Reserved
- 3.275 Surveillance and investigation by the JSE's Surveillance Department
- 3.276 Reporting and assistance by the JSE Surveillance Department – Financial Intelligence Centre Act
- 3.280 Use of information obtained by the JSE's Surveillance Department
- 3.285 Improper Conduct
- 3.290 Disciplinary procedures
- 3.295 Procedure and Evidence – Disciplinary matters
- 3.300 Disciplinary Matters – Penalties
- 3.305 Urgent Issues
- 3.310 Disciplinary matters – Transactions Open
- 3.325 Default, suspension or termination of membership – Control of assets and accounting records
- 3.330 Lien over proceeds of sale of JSE shares
- 3.340 Reserved
- 3.350 JSE's powers of publication

**3.10 General Membership of the JSE**

- 3.10.1 In order to qualify to be a member, an applicant must:
  - 3.10.1.1 Reserved;
  - 3.10.1.2 comply with the general requirements set out in this rule; and
  - 3.10.1.3 comply with any specific requirements applicable to members who participate in the commodity derivatives market and in the equity derivatives market.
- 3.10.2 The JSE shall keep a register of members and shall in such register indicate in which category or sub-category of authorised user the member has been authorised to operate.
- 3.10.3 Depending on the category of membership enjoyed by a member, a member may –
  - 3.10.3.1 trade in one or more of the product categories; and/or
  - 3.10.3.2 perform clearing and settlement in one or more product categories; and/or
  - 3.10.3.3 otherwise access or utilise the operational services of the JSE.

**3.20 General requirements**

- 3.20.1 Officers of members shall, subject to any waiver by the JSE–
  - 3.20.1.1 be of full legal capacity;
  - 3.20.1.2 comply with such criteria of good character and high business integrity as the JSE deems fit;
  - 3.20.1.3 not be an unrehabilitated insolvent; and
  - 3.20.1.4 not in the period preceding the application as the JSE in its discretion deems fit, have been –
    - 3.20.1.4.1 convicted of activities constituting a criminal offence, whether in the Republic or elsewhere;
    - 3.20.1.4.2 the subject of a formal investigation by any regulatory or government agency;
    - 3.20.1.4.3 expelled, whether as a member or otherwise, from any exchange or external exchange;
    - 3.20.1.4.4 employed by or associated with a member of any exchange or external exchange, which member was expelled from that exchange and where the person or officer has, in the opinion of the JSE, contributed to the circumstances leading to the expulsion;
    - 3.20.1.4.5 declared a defaulting member of the JSE or any other exchange or external exchange; or

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3.10.1.1 deleted with effect from 1 July 2005.

3.10.1.3 amended with effect from 1 August 2005, 24 December 2008 and 20 November 2009.

3.10.2 amended with effect from 1 July 2005.

3.10.2 amended with effect from 1 August 2005.

3.10.3 amended with effect from 1 August 2005.

3.10.3.2 amended with effect from 1 August 2005.

3.20.1 amended with effect from 1 August 2005.

3.20.1.2 amended with effect from 1 August 2005.

3.20.1.4.1 amended with effect from 1 August 2005.

3.20.1.4.3 amended with effect from 1 August 2005.

3.20.1.4.4 amended with effect from 1 August 2005.

3.20.1.4.5 amended with effect from 1 August 2005.

### SECTION 3: GENERAL MEMBERSHIP & DISCIPLINARY PROCEEDINGS

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- 3.20.1.4.6 refused entry to or expelled from any profession or vocation or been dismissed or requested to resign from any office or employment, or from any fiduciary office or position of trust.
- 3.20.2 Members who are partnerships shall comprise of two or more partners each of whom shall be a natural person, and who shall comply with the requirements set out in rule 3.20.1.
- 3.20.3 Members who are corporate entities shall–
  - 3.20.3.1 not employ, register or permit association with an officer who does not fulfil the requirements of rule 3.20.1 without the prior approval of the JSE; and
  - 3.20.3.2 have, in the opinion of the JSE, a good reputation and high business standing.
- 3.20.4 In addition to the requirements set out in this rule 3.20, members seeking admission within a specific membership category shall comply with any additional requirements applicable to such membership category set out in the derivatives rules.
- 3.20.5 Members shall at all times have and maintain the necessary administrative and other systems, facilities, resources and expertise to ensure that –
  - 3.20.5.1 the management of their own and clients' funds is adequate and in accordance with the derivatives rules relating to the management or separation of funds;
  - 3.20.5.2 an accurate record of their own and clients' positions is kept at all times;
  - 3.20.5.3 their clients' trades, cash balances and any other information relating to their positions are timeously reported to the clients; and
  - 3.20.5.4 they comply with all the financial resources requirements pertaining to the relevant category of authorised user as prescribed in the derivatives rules.

#### 3.30 Reserved

#### 3.40 Applications for membership

- 3.40.1 An application for membership shall be made to the JSE in the manner and in the form prescribed by the JSE and shall indicate in what category or categories of membership the applicant wishes to apply.
- 3.40.2 The following provisions shall apply to applicant members who are partnerships:
  - 3.40.2.1 applications shall include a signed copy of the deed of partnership and any other information as the JSE may require;
  - 3.40.2.2 the JSE shall not grant its consent for the admission of a partnership unless it is satisfied that all the partners are jointly and severally liable for the debts and obligations of the partnership in terms of the provisions of the deed of partnership, which shall comply with the Act, the derivatives rules and directives.
- 3.40.3 Applicants who are close corporations or corporate entities shall include a signed copy of the founding statement or the memorandum and articles of association, as the case may be, a copy of any agreement entered into or proposed to be entered into between the members of the entity relative to the members' interest or shares thereof and any other information as the JSE may require. The provisions of this rule shall apply *mutatis mutandis* to the amendment or substitution of the aforementioned document.
- 3.40.4 The applicant shall include with its application, the following information:

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3.20.4 amended with effect from 1 August 2005.

3.20.5.1 amended with effect from 1 August 2005.

3.20.5.4 amended with effect from 1 August 2005.

3.30 deleted with effect from 1 July 2005.

3.40.2.2 amended with effect from 1 August 2005.



### SECTION 3: GENERAL MEMBERSHIP & DISCIPLINARY PROCEEDINGS

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- 3.40.4.1 the applications for registration as registered officers of the applicant;
- 3.40.4.2 the most recent financial statements of the applicant as well as a completed capital adequacy return;
- 3.40.4.3 the details of the applicant's auditor;
- 3.40.4.4 a completed clearing agreement, in the case of a trading member; and
- 3.40.4.5 a completed clearing house agreement, in the case of a clearing member.
- 3.40.5 Notwithstanding any provision in the derivatives rules and directives, the JSE may require the applicant to furnish further information, and may institute any investigation that it deems necessary, to verify information submitted by the applicant in support of an application. Such investigation may include without limitation, a request for the applicant or one or more representatives of the applicant, to be interviewed by the Chief Executive Officer or any person appointed by the JSE for that purpose.
- 3.40.6 The JSE shall have the sole discretion to accept or reject the application, or to accept an application subject to certain conditions to be fulfilled as determined by the JSE from time to time: Provided that the JSE shall reach a decision within 60 (sixty) days of the first meeting at which the application was considered.
- 3.40.7 The JSE shall notify the applicant in writing of its decision and of any conditions that are required to be fulfilled.
- 3.40.8 Any person aggrieved by the decision of the JSE to reject an application, shall have a right of appeal to the board of appeal in terms of the Act.
- 3.40.9 If an application for membership has been refused, and the applicant did not exercise his right of appeal or if the appeal is unsuccessful, such applicant shall not be entitled to re-apply for membership for a period of 1 (one) year from the date of refusal, or such shorter period as the JSE may determine.
- 3.40.10 Reserved.
- 3.40.11 Reserved.
- 3.40.12 Reserved.
- 3.40.13 Reserved.
- 3.40.14 Upon approval of the application of the member, such member shall obtain membership and the status in such sub-category or categories of authorised user as determined by the JSE shall be activated.
- 3.40.15 The JSE shall notify members of the admission of a new member.

#### 3.50 Voluntary changes to, or termination of, membership

- 3.50.1 A member may apply to terminate its membership by giving the JSE 30 days written notice.
- 3.50.2 The JSE may accept the termination unconditionally or subject to such conditions as it may deem fit, or may refuse to accept the termination until it is satisfied that all outstanding contractual or other obligations of the member have been satisfied.
- 3.50.3 Should a member wish to change its authorised user status or wish to obtain authorisation to operate in another sub-category of authorised user, the provisions of rule 3.40 shall apply *mutatis mutandis*.

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3.40.8 amended with effect from 1 August 2005.

3.40.10 deleted with effect from 1 July 2005.

3.40.11 deleted with effect from 1 July 2005.

3.40.12 deleted with effect from 1 July 2005.

3.40.13 deleted with effect from 1 July 2005.

3.40.14 amended with effect from 1 July 2005.

3.40.14 amended with effect from 1 August 2005.

3.50.3A Changes in name or corporate structure:

3.50.3A.1 A member undergoing any of the changes set out below shall forthwith inform the JSE in writing of the change.

3.50.3A.2 The notification referred to in rule 3.50.3A.1 shall be accompanied by such information as the JSE may determine from time to time. Provided that -

3.50.3A.2.1 in the case of a corporate entity changing its name, the notification shall be accompanied by the relevant certificate of name change;

3.50.3A.2.2 in the event that a trading member's business or infrastructure relating to trading in derivative securities is transferred to another legal entity in any manner, including but not limited to a merger, take-over, transfer of business or corporate restructuring, the trading member shall inform the JSE of the change at least one month before it takes effect, and the notification shall be accompanied by such information as would be required in the case of a new application for membership: Provided that the JSE may, at its discretion, request full particulars regarding the change and the reasons therefor, and provided further that the JSE may determine that a new application for membership must be made.

3.50.4 The JSE shall notify members of the termination of or change in membership, and the termination shall become effective on the date and time of the notice, unless otherwise stated in the notice.

**3.60 Involuntary termination of membership**

3.60.1 Membership shall terminate when –

3.60.1.1 a member which is a natural person, or a partner in the case of a member who is a partnership, dies, or is placed under curatorship, or his estate is sequestrated, whether provisionally or finally;

3.60.1.2 a member who is a corporate entity is liquidated or placed under judicial management, whether provisionally or finally;

3.60.1.3 the member compromises or attempts to compromise with his creditors;

3.60.1.4 the member fails to satisfy or to initiate steps to set aside a judgement, award or determination against it within the time periods provided for in the rules of the relevant body;

3.60.1.5 the disciplinary tribunal has decided in terms of rule 3.300 that membership should be terminated;

3.60.1.6 the member defaults;

3.60.1.7 Reserved ;

3.60.1.8 a trading member fails to enter into a clearing agreement with a clearing member within thirty days or such other period which the JSE may determine after the termination for whatever reason of his clearing agreement with a clearing member ; or

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3.50.3 amended with effect from 1 August 2005.

3.50.3A.2.2 amended with effect from 1 August 2005.

3.50.4 amended with effect from 1 August 2005.

3.60.1.7 deleted with effect from 1 July 2005.

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- 3.60.1.9 the controlling body has resolved to terminate the membership of the member after taking into account the member's representations in this regard.
- 3.60.2 The JSE shall publish the termination in a notice to members, and the termination shall become effective on the date and time of the notice, unless stated otherwise in the notice.

#### 3.70 Duty to furnish information

- 3.70.1 A member shall forthwith advise the JSE in writing of –
- 3.70.1.1 the granting of an application for, or the revocation of, recognition under any statutory enactment or any registration, authorisation or licence which may bear upon or be associated with its business as a member of the JSE;
  - 3.70.1.2 the commission by or the conviction of the member or any of its officers for any offence under legislation relating to banking, or other financial services, companies, insolvency, insurance and pension and provident societies or of any offence involving fraud or dishonesty;
  - 3.70.1.3 any person becoming or ceasing to be a director of a corporate member, or a partner of a partnership;
  - 3.70.1.4 any change in the name or address of any office of the member, and of any change in the member's telex, telephone or facsimile numbers or electronic mailing addresses;
  - 3.70.1.5 any change in the particulars relating to an officer, and of the event that any officer is found guilty of any improper conduct by any licensed exchange, a previous or current employer, a professional association or a court of law;
  - 3.70.1.6 any of the circumstances referred to in rules 3.60.1.1 to 3.60.1.4 arising; or
  - 3.70.1.7 the dismissal of an employee for committing or attempting to commit an act which is dishonest, fraudulent, dishonourable or disgraceful.
- 3.70.2 A member shall in addition inform the JSE in writing –
- 3.70.2.1 of any person holding, or having a beneficial interest in 20% or more of any class of the share capital of a member that is a company or in the member's interest of a member that is a close corporation, as the case may be, and of any change in such holding;
  - 3.70.2.2 if it or any employee thereof holds, or has a beneficial interest in, any class of the share capital of a client that is a company or in the membership interest of a client that is a close corporation or in a client that is a partnership.
- 3.70.3 A member shall submit to the Director: Surveillance within three months after the end of its financial year, a copy of its audited financial statements, and the audit report prescribed by the Act, in respect of such period.
- 3.70.4 Subject to rules 3.70.5 and 3.70.6, a member shall submit the prescribed monthly capital adequacy return monthly to the Director: Surveillance within ten business days of the end of the month or within such other period that the JSE may require: Provided that the member shall at all times comply with the capital adequacy requirements referred to in these derivatives rules, and provided further that the JSE shall be entitled to suspend a member from trading, should the return not be submitted timeously.

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3.60.1.9 amended with effect from 1 August 2005.

3.70.2.2 amended with effect from 1 August 2005.

3.70.3 amended with effect from 26 April 2007.

3.70.4 amended with effect from 26 April 2007.

- 3.70.5 A member that -
- 3.70.5.1 is a bank;
- 3.70.5.2 is a branch of a foreign bank; or
- 3.70.5.3 trades in derivative securities solely for its own account,
- shall be exempt from the requirement to submit the monthly capital adequacy return referred to in rule 3.70.4, provided the member has advised the JSE, in writing, that it meets the requirements of rule 3.70.5.1, 3.70.5.2, or 3.70.5.3.
- 3.70.6 A member that is an authorised user of another exchange may apply in writing to the Director: Surveillance for exemption from the requirement to submit the monthly capital adequacy return referred to in rule 3.70.4, provided the capital requirements of the other exchange are, in the opinion of the Director: Surveillance, similar to those imposed by the JSE and the member is required to submit a return to the other exchange.
- 3.70.7 In considering an application for an exemption in terms of rule 3.70.6, the Director: Surveillance will take into account the relative activity undertaken by the member on the JSE and the other exchange in order to determine whether it is preferable for the other exchange to act as the lead regulator in relation to the supervision of compliance with capital adequacy requirements by the member.
- 3.70.8 If a member is granted an exemption in terms of rule 3.70.6, the member may be required at any time to submit, to the Director: Surveillance, a copy of any capital adequacy return submitted to the other exchange.
- 3.70.9 Despite the fact that a member may be exempt from submitting monthly capital adequacy returns to the Director: Surveillance, in terms of rules 3.70.5 or 3.70.6, the member is required to advise the Director: Surveillance, in writing, as soon as it becomes aware that it has failed to meet the relevant capital adequacy requirements set out in rules 4.20.2 to 4.20.4.

### **3.80 Fees, levies and charges**

- 3.80.1 A member which uses the services of the JSE shall pay to the JSE such fees and charges as may be prescribed by the JSE from time to time.
- 3.80.2 The JSE may prescribe by directive, subscriptions which shall be paid by members. Such subscriptions –
- 3.80.2.1 shall be paid annually in advance during January and shall be in respect of each JSE financial year;
- 3.80.2.2 in respect of a new member, shall be payable from and including the month in which the member is admitted;
- 3.80.2.3 in respect of a member which ceases to be a member, shall not be refunded.
- 3.80.3 In the event of any change in the amount of subscription payable by a member, such changed subscription shall apply with effect from the date on which the change took place.
- 3.80.4 The JSE may, in addition to the subscriptions, fees and charges prescribed by these derivatives rules, from time to time impose upon every member a levy which shall be paid to the JSE or any of its funds on such conditions as the JSE may decide. Such levy may be recovered from the clients of the member.

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3.70.5 amended with effect from 26 April 2007.  
 3.70.5.1 introduced with effect from 26 April 2007.  
 3.70.5.2 introduced with effect from 26 April 2007.  
 3.70.5.3 introduced with effect from 26 April 2007.  
 3.70.6 introduced with effect from 26 April 2007.  
 3.70.7 introduced with effect from 26 April 2007.  
 3.70.8 introduced with effect from 26 April 2007.  
 3.70.9 introduced with effect from 26 April 2007.

- 3.80.5 Any subscription, fee, charge, contribution or levy to be paid or which may be imposed in terms of these derivatives rules, shall be paid as determined by the JSE from time to time and any member failing to make such payment when due shall, unless the same be paid within one month after written demand has been made by the JSE, cease to be a member.

**3.90 Reserved**

**3.100 Reserved**

**3.110 Reserved**

**3.120 Consent required for employment of certain persons**

- 3.120.1 No member shall without the written consent of the JSE take into or continue in its employment in any capacity in any business carried on by it as a member –
- 3.120.1.1 any sole proprietor, partner, officer or employee of a member expelled from the JSE;
  - 3.120.1.2 or any such sole proprietor, or partner whose membership has been terminated by the JSE,
  - 3.120.1.3 any person refused approval to operate as a financial services provider in terms of the FAIS Act or any other act;
  - 3.120.1.4 any person expelled, whether as an authorised user or otherwise, from any other exchange; or
  - 3.120.1.5 any person who is an unrehabilitated insolvent or has been a defaulter or has been convicted of theft, fraud, forgery, or any other crime involving dishonesty.
- 3.120.2 The consent of the JSE may be given for a limited period and may be withdrawn at any time: Provided the JSE gives the member one calendar month's notice of its intention to withdraw such consent.

**3.130 Trading name**

The JSE shall be entitled to refuse any member approval of membership, should the JSE in its sole discretion deem the name under which the member proposes to operate, to be inappropriate or unacceptable for any reason.

**3.140 Notices**

- 3.140.1 Notice to the JSE by members
- Every member shall notify the JSE of a business and postal address, and a secured electronic delivery mechanism address at which that member shall accept the delivery of all notices issued by the JSE in terms of the derivatives rules.
- 3.140.2 Notice to members
- 3.140.2.1 Any notice given by the JSE in terms of the derivatives rules and directives shall be in writing.
  - 3.140.2.2 A notice may be delivered by means of an electronic delivery mechanism or by hand or by registered post.
  - 3.140.2.3 Any notice delivered by the JSE by hand before 16:00 on a business day at the physical address of the member, shall be deemed, unless the contrary is proved, to have been received on the date of delivery.

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3.120.1.3 amended with effect from 1 August 2005.

3.120.1.4 amended with effect from 1 August 2005.

3.140.2.4 Any notice transmitted by an electronic delivery mechanism before 16:00 on a business day, shall be deemed, unless the contrary is proved, to have been received on the date of the transmission.

3.140.2.5 Any notice delivered by the JSE by registered post shall be deemed, unless the contrary is proved, to have been received within seven business days after being dispatched.

**3.150–3.270 Reserved**

**3.275 Surveillance and investigation by the JSE's Surveillance Department**

**3.275.1 Surveillance**

The JSE's Surveillance Department shall at all times have the power to set up and maintain systems for-

3.275.1.1 monitoring compliance by members with the provisions of the Act, the derivatives rules and directives and any arrangements made with a clearing house for the provision of services and facilities;

3.275.1.2 the surveillance of any matter relevant for the purposes of the Act and these derivatives rules; and

3.275.1.3 supervising compliance by members with the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).

**3.275.2 Investigation**

3.275.2.1 The Director: Surveillance, and any other person designated by him, shall at all times have the power to:

3.275.2.1.1 investigate any JSE related activities of any person who at the relevant time was a member or a partner, employee or officer of a member;

3.275.2.1.2 investigate whether that member or any of its employees complies with all the provisions of the Act, these derivatives rules, directives and the Financial Intelligence Centre Act;

3.275.2.1.3 investigate whether the member is trading in such a manner that there is a danger that such member may not be able to meet its commitments to clients, other members or the clearing house;

3.275.2.1.4 investigate whether such member is conducting its business in a manner which could be detrimental to the interest, good name or welfare of the JSE or its members; and

3.275.2.1.5 require any person who is subject to the jurisdiction of the JSE and who is believed to be able to furnish any information on the subject of any investigation or to have in his or her possession or under his or her control any book, document, tape or electronic record or other object which has a bearing on the subject of the investigation, to produce such book, document, tape or electronic record or other object or to appear at a time and place specified, to be questioned by any of the abovementioned persons, to

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3.275.1.1 amended with effect from 1 August 2005.

3.275.1.2 amended with effect from 1 August 2005.

3.275.1.3 introduced with effect from 1 August 2005.

3.275.2.1.2 amended with effect from 1 August 2005.

furnish such information or to produce such book, document, tape, electronic record or other object: Provided that the subject of the investigation has first been put to such person. Such person may, if he or she is not a sole proprietor or an executive director or senior partner of a member, request to be assisted by the sole proprietor or by an executive director or senior partner of the member by which the person is employed.

3.275.3 The Director: Surveillance may delegate the power granted to him in terms of rule 3.275.2.1 to any member of his staff.

3.275.4 Referral to another authority

Should the JSE's Surveillance Department become aware of any possible contravention of law by a person over whom the JSE does not have jurisdiction, the JSE's Surveillance Department shall be entitled to refer such matter to the appropriate authority or authorities, whether outside or within the Republic.

### **3.276 Reporting and assistance by the JSE Surveillance Department – Financial Intelligence Centre Act**

The Director: Surveillance will report to the Registrar any non-compliance by a member or its employees with the duties imposed on the member and its employees in terms of the Financial Intelligence Centre Act if the Director: Surveillance becomes aware of such non-compliance through the surveillance and investigation procedures undertaken in terms of rule 3.275.1. The JSE Surveillance Department will also assist the Registrar in any enforcement action that may be taken by the Registrar against a member or its employees in relation to non-compliance with the Financial Intelligence Centre Act.

### **3.280 Use Of Information Obtained By the JSE's Surveillance Department**

Any information, document, book, tape or electronic record or other object obtained by the JSE's Surveillance Department, whether by investigation or otherwise, may be used in evidence in any disciplinary proceedings contemplated in rule 3.290 below and may be furnished by the JSE's Surveillance Department to any other body which may have jurisdiction over the matter under consideration, whether outside or within the Republic.

### **3.285 Improper Conduct**

The following acts and practices whether of commission or omission on the part of any person who at the time of the alleged act or practice was a member or a partner, employee or officer of a member shall constitute improper conduct: Provided that the acts and practices so specified are not intended to be a complete list of acts and practices which may constitute improper conduct:

3.285.1 committing or attempting to commit any act which is dishonest or fraudulent;

3.285.2 being a party to, or facilitating or conducting a transaction which is fictitious and/or has a dishonest or unlawful motive;

3.285.3 contravening, attempting to contravene, or failing to comply with any one or more of any provision of the Act, a derivatives rule or a directive;

3.285.4 negligently or recklessly conducting the business or affairs of the member in such a way that actual or potential prejudice is, or may be, caused to the JSE, any other member, a client of a member or the general public. The failure by a member to introduce appropriate and reasonable safeguards or controls to avoid such prejudice may be treated where appropriate as constituting either negligence or recklessness;

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3.275.4 amended with effect from 1 August 2005.

3.276 introduced with effect from 1 December 2010.

3.280 amended with effect from 1 August 2005.

3.285.1 amended with effect from 1 August 2005.

3.285.3 amended with effect from 1 August 2005.

- 3.285.5 committing or attempting to commit any act which is detrimental to any one or more of the interest, good name or welfare of the JSE or its members;
- 3.285.6 knowingly obstructing the business of the JSE or its members;
- 3.285.7 failing, when requested, to assist the JSE Surveillance Department in the exercise of its duties (which shall include, but shall not be limited to, failure without sufficient cause to provide information in accordance with the provisions of rule 3.275.2.1.5).

### **3.290 Disciplinary procedures**

#### **3.290.1 Conclusion of investigation**

On conclusion of any investigation in terms of rule 3.275 and if, after having considered all the relevant information in his possession, the Director: Surveillance is of the opinion that there are grounds for an allegation of improper conduct, the Director: Surveillance may:

- 3.290.1.1 refer the matter for determination to a Disciplinary Committee; or
- 3.290.1.2 if he considers that the alleged conduct is so serious that it might warrant the imposition of a fine in excess of the amount referred to in rule 3.290.2.4 or suspension or termination of membership or employment with a member, prefer a formal charge against such person ("the respondent") setting out a brief statement of facts constituting the alleged offence. Such charge shall be referred to a disciplinary tribunal ("a Tribunal"), to be heard in terms of these derivatives rules. Such charge may further, in the discretion of the Director: Surveillance, make provision for an admission of guilt.

#### **3.290.2 Disciplinary Committee**

- 3.290.2.1 The Chairman may from time to time appoint one or more Disciplinary Committees. Each Disciplinary Committee shall consist of three persons, as follows: any one of the Chairman or a Deputy Chairman or the Chief Executive Officer or acting Chief Executive Officer of the JSE, and at least two appropriate representatives of two members. The Chairman, Deputy Chairman, Chief Executive Officer or acting Chief Executive Officer who is a member of the Disciplinary Committee shall be the chairman. A Disciplinary Committee may at any time co-opt additional members, whenever it deems such additional appointments to be necessary and appropriate.
- 3.290.2.2 A Disciplinary Committee may, subject to the provisions of rule 3.290.2.3:
  - 3.290.2.2.1 issue instructions to the person whose conduct or omission is under consideration concerning action which must be taken, or not be taken, to remedy the matter referred to the Disciplinary Committee;
  - 3.290.2.2.2 warn, reprimand, censure or, subject to the provisions of rule 3.290.2.4, impose a fine (with or without ordering that a contribution be made towards the JSE's costs) on any person who has, in the reasonable opinion of the Disciplinary Committee, been guilty of improper conduct;
  - 3.290.2.2.3 in relation to a partner, officer or employee of a member, direct the member to conduct a disciplinary enquiry into the acts or omissions of such person;
  - 3.290.2.2.4 direct a member to ensure that any sanction imposed on a partner, officer or employee of that member is complied with by such partner, officer or employee;

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3.285.7 amended with effect from 1 August 2005.

3.290.2 amended with effect from 1 August 2005.



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- 3.290.2.2.5 direct a member to prevent or relieve a partner or officer or employee of that member from carrying out any specified activity, function or duty for such reasonable period as the Disciplinary Committee deems appropriate; and/or
    - 3.290.2.2.6 if at any stage it determines that the matter referred to it is sufficiently serious to be heard by a Tribunal, stop the proceedings, and refer the matter to a Tribunal.
  - 3.290.2.3 A Disciplinary Committee may not impose any penalty contemplated in rule 3.290.2 unless:
    - 3.290.2.3.1 the alleged improper conduct has first been put to the person who is alleged to have committed it. If such person is a sole proprietor, partnership or corporate member, the alleged improper conduct shall be put to the sole proprietor or to the executive director or senior partner as the case may be or otherwise to a duly authorised employee of the member; and
    - 3.290.2.3.2 such person has been given an opportunity (orally or in writing) of explaining his or her conduct after being warned that any explanation furnished pursuant to these derivatives rules may be used in evidence against him or her.
  - 3.290.2.4 No fine imposed by a Disciplinary Committee may exceed R25 000 per contravention, or such other amount as the JSE may determine by directive from time to time. A Disciplinary Committee may direct that any action taken in terms of rule 3.290.2 be published.
  - 3.290.2.5 Any person in respect of whom a Disciplinary Committee has imposed a reprimand, censure, or fine (but not a warning) shall have the right to demand, within a period of three days after the imposition of such reprimand, censure, or fine, that the matter shall be heard de novo by a Tribunal. The Tribunal shall, if it finds the person guilty of the conduct which forms the subject of the charge, be entitled to impose a penalty more severe than that imposed by the Disciplinary Committee.
- 3.290.3 Preferring charges to be heard by a Tribunal
  - 3.290.3.1 Where the Director: Surveillance has preferred a formal charge against a respondent, the charge sheet shall, in addition to the matters listed in rule 3.290.1.2, be in a form prescribed by the Director: Surveillance, be signed by the Director: Surveillance or his Deputy, and be served on the respondent in such manner as the Director: Surveillance may determine.
  - 3.290.3.2 Where the Director: Surveillance has decided to make provision for an admission of guilt, he shall stipulate:
    - 3.290.3.2.1 the amount of the fine payable pursuant to the admission of guilt and any required contribution towards the JSE's costs as well as the period within which such amounts must be paid. In determining the amount of such fine and where the person has benefited financially as a result of the alleged transgression, the Director: Surveillance shall take such benefit into consideration. The admission of guilt may, in particular, provide for the fine to be suspended for a period;

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3.290.2.4 amended with effect from 1 August 2005.

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- 3.290.3.2.2 the manner and time in which the admission of guilt may be made, which time shall not be a period in excess of 50 business days from the date on which the charge sheet is served on the respondent; and
  - 3.290.3.2.3 whether the terms of the admission of guilt should be published in a JSE Gazette and/or in the media.
- 3.290.3.3 A respondent:
  - 3.290.3.3.1 may, if the respondent is given an opportunity to sign an admission of guilt, admit guilt to such charges within the period set out in the charge sheet; or
  - 3.290.3.3.2 may within 20 business days after receipt of the charge sheet request particulars to the charges, to which the Director: Surveillance shall be obliged to respond within 20 business days after receipt of such request; and
  - 3.290.3.3.3 shall, if no admission of guilt is tendered by the Director: Surveillance or if the respondent decides not to admit guilt to the charges, file a defence to such charges on or before 50 business days after the date on which the charge sheet was served on the respondent or within 20 days after the date on which the JSE has responded to the request for further particulars, whichever is later.
- 3.290.3.4 Thereafter the chairman of the Tribunal shall determine the date on which the charges shall be heard, which date shall not without good reason be later than six months after the charge sheet was served on the respondent.
- 3.290.3.5 No extension of the time periods set out in rule 3.290.3, including the date for the hearing of the charges shall be allowed without good reason. Furthermore no such extension shall be allowed unless the consent of the chairman of the Tribunal is obtained.
- 3.290.3.6 Tribunal
  - 3.290.3.6.1 The Chairman may from time to time appoint one or more Tribunals each comprised of three members.
  - 3.290.3.6.2 The members of a Tribunal shall be:
    - 3.290.3.6.2.1 a retired judge, or a practising or retired senior counsel, or a practising or retired attorney with not less than fifteen years experience. Such person shall act as chairman of the Tribunal;
    - 3.290.3.6.2.2 a professional person appointed by reason of that person's knowledge of financial services as it relates to the matter under consideration; and
    - 3.290.3.6.2.3 a person appointed by reason of that person's knowledge of or experience in the financial markets.

**3.295 Procedure and Evidence – Disciplinary Matters**

- 3.295.1 Any charges preferred shall be decided on a balance of probabilities.
- 3.295.2 In a hearing before a Tribunal:
  - 3.295.2.1 the chairman of the Tribunal shall decide all matters of law which may arise during the hearing, and whether any matter constitutes a question of law or a question of fact, but all three members of the Tribunal shall by a simple majority decide all other matters arising during the hearing;
  - 3.295.2.2 the chairman of the Tribunal shall determine the procedure which the Tribunal shall follow both in respect of preliminary issues and in respect of the hearing itself, subject to these derivatives rules, the directives and to the principles of natural justice;
  - 3.295.2.3 the JSE may instruct attorneys or counsel to prefer and prosecute the charges on behalf of the JSE, or the charges may be prosecuted by an employee of the JSE; and
  - 3.295.2.4 the respondent shall be entitled to be legally represented at the respondent's own cost and shall, where the respondent is not a sole proprietor or an executive director or senior partner of a member firm, be entitled to be assisted by an executive director or senior partner of the member by which the respondent is employed.
- 3.295.3 Should a respondent without good cause fail to attend a hearing before a Tribunal at the time and place stated in the charge sheet, the Tribunal shall be entitled to proceed with its consideration of the charge in the absence of the respondent.
- 3.295.4 If, at any stage during a hearing before the Disciplinary Committee or a Tribunal, one or more of the members of the body hearing the matter dies or retires or becomes otherwise incapable of acting or is absent, the hearing shall, where the remaining members constitute a majority of the body before whom the hearing was commenced, proceed before such remaining members and, provided that the remaining members are in agreement, their finding shall be the finding of the body concerned. In any other case, the matter shall be heard de novo.
- 3.295.5 If a Tribunal finds a respondent guilty of an offence, the Tribunal shall have the powers set out in and shall apply rule 3.300.
- 3.295.6 If the proceedings before a Disciplinary Committee or a Tribunal are recorded, any person charged shall be entitled to be supplied with a record of the hearing of such charges, and any person who has made oral representations shall be entitled to be supplied with a record of that portion of the proceedings which related to that person's oral representations.
- 3.295.7 A report on the findings of a Disciplinary Committee or a Tribunal will be furnished to the Registrar within 30 days after the completion of the proceedings.

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3.295.2.2 amended with effect from 1 August 2005.

3.295.7 amended with effect from 1 August 2005.

**3.300 Disciplinary Matters – Penalties**

- 3.300.1 When any person has been found guilty of improper conduct by a Tribunal pursuant to these derivatives rules, the Tribunal:
- 3.300.1.1 may warn or impose a reprimand, censure or fine upon the respondent, which fine shall in respect of each contravention not exceed R1 million, or such other amount as may be stipulated in the Act or in any regulations promulgated in terms of the Act;
  - 3.300.1.2 shall in determining an appropriate penalty take into account:
    - 3.300.1.2.1 any previous conviction in terms of the rules of the JSE or in a court of law;
    - 3.300.1.2.2 the harm or prejudice which is caused by the offence;
    - 3.300.1.2.3 any other aggravating, mitigating or extenuating circumstances; and
    - 3.300.1.2.4 where it is possible that the membership of the respondent may be terminated, the representations of such person in this regard;
  - 3.300.1.3 may, on such conditions as the Tribunal may deem fit, suspend or terminate the membership of a member who has been found guilty of improper conduct or in the case of a partner or an officer or employee of a member, require such member to hold a disciplinary enquiry to consider terminating or suspending the employment of such person;
  - 3.300.1.4 may direct a member to prevent or relieve an officer or employee of that member from carrying out any specified activity, function or duty for such reasonable period as the Tribunal deems appropriate;
  - 3.300.1.5 may direct a member to ensure that any sanction imposed by the Tribunal on a partner, officer or employee of that member is complied with by such partner, officer or employee;
  - 3.300.1.6 may make a fair and reasonable order as to costs; and
  - 3.300.1.7 may order that particulars of the offence, the finding of the Tribunal and the penalty imposed be published: Provided that if publication is ordered, the respondent shall be given an opportunity to make representations to the Tribunal in this regard.
- 3.300.2 A Tribunal may impose any one or more of the penalties referred to in rule 3.300.1.
- 3.300.3 Any penalty or part thereof may be suspended on such conditions as the Tribunal may determine.

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3.300.1 amended with effect from 1 August 2005.

3.300.1.3 amended with effect from 1 August 2005.

3.300.1.4 introduced with effect from 1 August 2005.

3.300.1.4 to 3.300.1.6 renumbered 3.300.1.5 to 3.300.1.7 with effect from 1 August 2005.

3.300.1.7 amended with effect from 1 August 2005.

- 3.300.4 If a member or a partner, officer or employee of a member fails to pay any fine imposed by a Disciplinary Committee or a Tribunal, within 7 days after being informed of the amount of the fine, the JSE shall have the right to:
- 3.300.4.1 recover such fine from such member, partner, officer or employee, as the case may be, in a court of competent jurisdiction;
  - 3.300.4.2 terminate or suspend (on such conditions as the JSE may deem fit) the membership of such member, or in the case of a partner, officer or employee of a member, require such member to hold a disciplinary enquiry to consider terminating or suspending the employment of such person; and/or
  - 3.300.4.3 direct a member to prevent or relieve a partner or officer or employee of that member from carrying out any specified activity, function or duty for such reasonable period as the JSE deems appropriate.
- 3.300.5 The amount of any fine paid to the JSE pursuant to these derivatives rules shall be paid into the Fidelity Fund. Any costs paid to the JSE pursuant to an award made by a Disciplinary Committee or a Tribunal shall be paid into the general funds of the JSE.
- 3.300.6 A Tribunal may, upon good cause shown and subject to such conditions as the Tribunal may impose, vary or modify any penalty which it may have previously imposed on any person: Provided that in modifying or varying such penalty, the Tribunal shall under no circumstances increase such penalty.
- 3.300.7 [Reserved]
- 3.300.8 Should any termination of the membership of a member be suspended as a result of an appeal being lodged in terms of the Act, such suspension may be made subject to such conditions as the JSE may determine. Any member whose membership has been terminated and who lodges an appeal in terms of the Act shall simultaneously inform the Director: Surveillance that an appeal has been lodged.

**3.305 Urgent Issues**

- 3.305.1 In order to ensure that the business of the JSE is carried on with due regard to the public interest, the Chairman may from time to time appoint one or more Urgent Issues Committees. The Chief Executive Officer or the acting Chief Executive Officer, the Chairman and/or a Deputy Chairman of the JSE and at least two other members of the controlling body shall constitute an Urgent Issues Committee.
- 3.305.2 An Urgent Issues Committee shall consider whether a member is operating in such a manner that there is imminent danger that such member may be unable to meet its commitments to clients, counterparties, other members or to a settlement system of the JSE or any other exchange, or that it is conducting business in a manner which could be detrimental to the interests of the JSE or to the interests of the members of the JSE and the public.
- 3.305.3 If an Urgent Issues Committee resolves by a two-thirds majority that an investigation into the affairs of a member in terms of these derivatives rules has revealed that the member is operating in such a manner that there is such imminent danger as is referred to in rule 3.305.2, the Urgent Issues Committee may call upon senior representatives of the member to attend a meeting of the Urgent Issues Committee, which meeting may be called on not less than one hour's notice, to hear the concerns of the Urgent Issues Committee and to discuss how such concerns may be resolved.

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3.300.4 amended with effect from 1 August 2005.

3.305.1 amended with effect from 1 August 2005.

3.305.2 amended with effect from 1 August 2005.

### SECTION 3: GENERAL MEMBERSHIP & DISCIPLINARY PROCEEDINGS

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- 3.305.4 With the agreement of the member concerned or, if the outcome of such meeting fails to satisfy the Urgent Issues Committee with regard to the above, the Urgent Issues Committee may by a two-thirds majority and subject to this rule 3.305:
- 3.305.4.1 prohibit such member from trading;
  - 3.305.4.2 restrict the trading activities of such member in such manner as it deems fit, including applying of rule 3.305.5; and/or
  - 3.305.4.3 give such member such instructions as it may deem necessary in the interests of the member's clients and counterparties or other members or any settlement system of the JSE or any other exchange.
- 3.305.5 The Urgent Issues Committee shall during the period of any order in terms of rule 3.305.4 have such power as it in its discretion may deem fit to appoint a registered public accountant and auditor or a member or employee of the JSE to supervise and control the activities of the member, at the member's cost. Such member may further be prohibited from entering into JSE related contracts without the prior consent of the person appointed as aforesaid to control and supervise the member which consent may be given upon such terms and conditions as the Urgent Issues Committee or the said appointee shall determine.
- 3.305.6 **Reserved.**
- 3.305.7 Any action taken by an Urgent Issues Committee in terms of this rule may continue until such time as that Committee is satisfied as to the financial position and business conduct of the member in question.

#### 3.310 **Reserved**

#### 3.325 **Default or termination of membership – Control of assets and accounting records**

- 3.325.1 In the event of any member being declared a defaulting member or ceasing to enjoy membership by termination –
- 3.325.1.1 the member shall hand over to the JSE all books and accounting records of the member including all scrip registers, safe custody ledgers and cheque books, and all cash, securities and other assets relating to the business of the member including cash and control of securities held on behalf of clients in safe custody in a banking institution;
  - 3.325.1.2 the controlling body may grant authority to the Director: Surveillance or his nominated deputy to assume control of such cash and securities referred to in rule 3.325.1.1 which are owned by clients, including securities held on behalf of clients in safe custody and cash held on behalf of clients in JSE Trustees (Pty) Limited.
- 3.325.2 The Director: Surveillance shall take reasonable steps to ensure that any market scrip held by a member ("the scrip") or funds held either by a bank in terms of the Financial Institutions (Investment of Funds) Act, 1984, or by JSE Trustees (Pty) Limited on behalf of a client ("the funds"), are identified as the client's property. The Director: Surveillance shall take reasonable steps to ensure that only the scrip or funds which are identified as the client's property and which are unencumbered are returned to a client or to his order if so authorised in terms of rule 3.325.2 by the client in writing.

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3.305.4 amended with effect from 1 August 2005.  
3.305.5 amended with effect from 1 August 2005.  
3.305.6 deleted with effect from 1 August 2005.  
3.305.7 amended with effect from 1 August 2005.  
3.310 deleted with effect from 1 August 2005.  
3.325 amended with effect from 1 August 2005.  
3.325.1 amended with effect from 1 August 2005.  
3.325.1.1 amended with effect from 1 August 2005.  
3.325.1.2 amended with effect from 1 August 2005.

- 3.325.2.1 A client of a member who has been suspended or declared a defaulter, or who has ceased to enjoy membership by termination under this rule, shall warrant in writing to the Director: Surveillance that he is the lawful owner of any scrip or funds returned to him before such scrip or funds are returned to him, by the Director: Surveillance under rule 3.325.2.
- 3.325.2.2 If any scrip or funds are returned to a client, under the provisions of rule 3.325.2, and it is thereafter established that ownership of such returned scrip or funds does not vest in the client, the client shall immediately return such scrip or funds to the Director: Surveillance, upon written notification by the Director.
- 3.325.2.3 Where such returned scrip or funds under rule 3.325.2 have been alienated by the client, the client shall immediately, and insofar as he is able to, effect the return of such scrip (or the equivalent amount of such scrip) or funds to the Director: Surveillance, upon written notification by the Director.
- 3.325.3 The client shall, before any scrip or funds are returned to him under rule 3.325.2, indemnify the Director: Surveillance in writing for any loss sustained by or damage caused to any person, including, but not limited to, the client, as a result of anything done or omitted by the Director: Surveillance in the bona fide exercise of any power, or performance of any duty or function under or by virtue of rule 3.325.2, as a result of the return of the scrip or funds to the client and the alienation by the client of such returned scrip or funds in respect of which he is not the lawful owner.
- 3.325.4 In the event of the default of a member, the authority referred to in rule 3.325.1.2 shall endure until such time as the member is placed under provisional sequestration or liquidation when control of the assets in the possession of the member shall vest in the appointed trustee or liquidator.

**3.330 Lien over proceeds of sale of JSE shares**

The JSE shall have a first lien on the proceeds of the sale or other disposition of any JSE shares held by a member in the event that the member selling or disposing of such JSE shares is in any way indebted to the JSE. The Fidelity Fund or Funds of the JSE shall have a second lien on the proceeds of the sale or other disposition of such JSE shares in the event that the member selling or disposing of such shares has defaulted and the Fidelity Fund or Funds have discharged any of the member's obligations. After the satisfaction of the lien or liens, the balance of the proceeds of the sale or other disposition will revert to the selling or disposing member or the estate of the selling or disposing member as the case may be.

**3.340 Reserved****3.350 JSE's powers of publication**

- 3.350.1 The JSE may in such manner as it may deem fit, notify the public of any fact that the JSE considers to be in the public interest, including, but not limited to the name of a member or any employee or officer of a member and the fact that any such employee or officer has been found guilty of any charge and of the sentence so imposed on such member, employee or officer of a member.
- 3.350.2 No action or other proceeding shall in any circumstances be taken by any member or any employee or officer of a member referred to in any notification referred to above or in a JSE Gazette, against the JSE or any controlling body or JSE Executive member or employee thereof or any person publishing or circulating the same.

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3.330 introduced with effect from 1 July 2005.

3.330 amended with effect from 1 August 2005.

3.350.1 amended with effect from 1 August 2005.

3.350.2 amended with effect from 1 August 2005.

**SECTION**

**4**

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**Section 4: Derivatives membership**

**Scope of section**

4.10 Categories of authorised users

4.20 Capital adequacy requirements



#### 4.10 Categories of authorised users

- 4.10.1 A derivatives member is a category of authorised user of the JSE and may be authorised by the JSE to operate in one of two sub-categories, either as a clearing member or a trading member, or both.
- 4.10.2 A trading member may be authorised to trade in the equity derivatives market or the commodity derivatives market, or both, and a clearing member may be authorised to perform clearing in the equity derivatives market or the commodity derivatives market, or both.
- 4.10.3 A trading member may only enter into a clearing agreement with one clearing member to perform clearing and settlement of the trades of that trading member.
- 4.10.4 A trading member -
  - 4.10.4.1 may be a clearing member ;
  - 4.10.4.2 shall not be a natural person; and
  - 4.10.4.3 shall have and continuously maintain the administrative systems and expertise to ensure -
    - 4.10.4.3.1 the adequate management of his own and his clients' funds in accordance with these derivatives rules;
    - 4.10.4.3.2 that an accurate record of his own and his clients' positions is kept at all times; and
    - 4.10.4.3.3 that his clients' trades, positions and cash balances under control of the trading member are timeously reported to such clients.

#### 4.20 Capital adequacy requirements

- 4.20.1 Subject to rules 4.20.2, 4.20.3, 4.20.4 and 4.20.7, a member shall at all times have own funds equal to the greater of -
  - 4.20.1.1 the initial capital referred to in rule 4.20.5 or 4.20.6 as the case may be; or
  - 4.20.1.2 thirteen weeks operating costs; plus
  - 4.20.1.3 the position risk requirement; and
  - 4.20.1.4 the settlement risk requirement; and
  - 4.20.1.5 the large exposure risk requirement; and
  - 4.20.1.6 the foreign exchange risk requirement;
 such that the following formula is satisfied -
  - 4.20.1.7  $ONF \geq CAR$
 And
  - $CAR = (\text{greater of ICR or AOC/4}) + PRR + CRR + FXR + LPR$
 where
  - $ONF = \text{Own funds}$
  - $CAR = \text{Capital adequacy requirement}$

4.10 amended with effect from 1 August 2005.

4.10.1 amended with effect from 1 August 2005 and 24 December 2008.

4.10.2 deleted with effect from 1 July 2005.

4.10.2 introduced with effect from 1 August 2005 and amended with effect 24 December 2008 and 20 November 2009.

4.10.3 amended with effect from 1 August 2005.

4.10.4.1 amended with effect from 1 August 2005.

4.10.5 deleted with effect from 1 August 2005.

4.20.1 amended with effect from 26 April 2007.

4.20.1.1 amended with effect from 26 April 2007.

ICR	=	Initial capital requirement
AOC	=	Annual operating costs
PRR	=	Position risk requirement
CRR	=	Counterparty risk requirement
FXR	=	Foreign exchange risk requirement
LPR	=	Large position risk requirement

- 4.20.1A The following provisions shall apply to a member that is an external company, other than a branch of a foreign bank -
- 4.20.1A.1 the external company shall, when submitting its application for membership, submit proof of compliance with the requirements of Section 322 of the Companies Act by furnishing the JSE with the certificate of registration as provided for in Section 322(2) of the Companies Act;
  - 4.20.1A.2 the own funds of the local branch of the external company shall at all times be equal to or greater than the amount provided for in rule 4.20.1.2, 4.20.5, 4.20.6 or 4.20.7, as the case may be;
  - 4.20.1A.3 the foreign parent of the local branch of the external company shall in writing confirm to the JSE that it is required to comply with capital adequacy requirements similar to those in the Republic, and that they are reporting such as required to an appropriate foreign regulator; and
  - 4.20.1A.4 the thirteen weeks operating costs requirement in rule 4.20.1.2 shall relate to the operating costs of the local branch of the external company in the Republic.
- 4.20.2 A trading member that is a branch of a foreign bank, and is exempt from the requirement to submit monthly capital adequacy returns to the Director: Surveillance, in terms of rule 3.70.5, is not required to comply with the requirements of rule 4.20.1 but is instead required to comply with the capital adequacy requirements as prescribed by the Banks Act, 1990 (Act No. 94 of 1990) and the regulations made under that Act.
- 4.20.3 A trading member that trades in derivative securities solely for its own account and is exempt from the requirement to submit monthly capital adequacy returns to the Director: Surveillance, in terms of rule 3.70.5, is not required to comply with the requirements of rule 4.20.1 but shall ensure that its assets (excluding goodwill and other intangible assets) exceed its liabilities (excluding loans validly subordinated in favour of all other creditors).
- 4.20.4 A trading member that is an authorised user of another exchange and is exempt from the requirement to submit monthly capital adequacy returns to the Director: Surveillance, in terms of rule 3.70.6, is not required to comply with the requirements of rule 4.20.1 but shall comply with the capital adequacy requirements as prescribed by such other exchange.
- 4.20.5 A trading member who trades on behalf of clients but does not receive a client's margins or hold the client's margins in terms of rule 8.60.4 or who does not receive any other assets of a client with respect to the client's buying and selling of JSE authorised investments, shall have an initial capital of at least R200 000 or such other minimum amount that the JSE may decide.

4.20.1A amended with effect from 26 April 2007.

4.20.1A.1 amended with effect from 1 August 2005.

4.20.1A.2 amended with effect from 26 April 2007.

4.20.1A.3 amended with effect from 1 August 2005 and with effect from 26 April 2007.

4.20.1A.4 amended with effect from 26 April 2007.

4.20.1A.5 deleted with effect from 26 April 2007.

4.20.2 amended with effect from 1 August 2005 and replaced with effect from 26 April 2007.

New 4.20.3 introduced with effect from 26 April 2007.

New 4.20.4 introduced with effect from 26 April 2007.

4.20.3 amended with effect from 1 August 2005 and amended and renumbered 4.20.5 with effect from 26 April 2007.

- 4.20.6 A trading member who receives client's margins or holds clients' margins in terms of rule 8.60.4, or that receives any other assets of his client with respect to the client's buying and selling of JSE authorised investments, shall have an initial capital of at least R400 000, or such other minimum amount that the JSE may decide.
- 4.20.7 A clearing member shall have own funds of R200 000 000, or such other sum as the JSE may determine: Provided that the JSE may, at its discretion, impose additional suretyship, guarantee or other requirement on a clearing member if -
  - 4.20.7.1 the sum of the initial margin with respect to the positions of the clearing member, its clients, the trading members with which the clearing member has entered into clearing agreements and the clients of such trading members, reaches the limit as contemplated in rule 10.10.1; or
  - 4.20.7.2 the own funds of the clearing member as specified in rule 4.20.7 have decreased to the limit referred to in rule 10.10.1.
- 4.20.8 A clearing member shall provide, maintain and keep in force a suretyship in favour of the clearing house by a financial or other institution acceptable to the JSE, in such form and upon such terms and conditions as the JSE may determine, for the due performance of all or any of its obligations to the clearing house in terms of these derivatives rules, jointly and severally, for an amount of not less than R10 000 000 or such other sum as the JSE may determine.
- 4.20.9 The JSE shall be entitled to suspend a member should there be a deficiency in the capital adequacy of the member.

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4.20.4 amended with effect from 1 August 2005 and renumbered 4.20.6 with effect from 26 April 2007..  
 4.20.5 amended with effect from 1 August 2005 and renumbered 4.20.7 with effect from 26 April 2007..  
 4.20.5.1 renumbered 4.20.7.1 with effect from 26 April 2007..  
 4.20.5.2 renumbered 4.20.7.2 and amended with effect from 26 April 2007..  
 4.20.6 amended with effect from 1 August 2005 and renumbered 4.20.8 with effect from 26 April 2007..  
 4.20.7 renumbered 4.20.9 with effect from 26 April 2007..

**SECTION**

**5**

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**Section 5: Registered officers**

**Scope of section**

- 5.10 Members' obligation to ensure registration of officers
- 5.20 Registered dealers to trade for a member
- 5.30 Dealers to trade only with other registered dealers
- 5.40 Natural persons functioning as registered officers
- 5.50 Registration of officers by the JSE
- 5.60 Termination of the registration of an officer
- 5.70 Registration and termination effective
- 5.80 Member remains responsible
- 5.90 Reserved

### 5.10 Members' obligation to ensure registration of officers

Each member which is a body corporate or a partnership -

- 5.10.1 shall ensure the registration by the JSE of a compliance officer who shall -
  - 5.10.1.1 without relieving that member from his responsibility to comply with the provisions of the Act and these derivatives rules, be responsible for ensuring compliance by that member with the provisions of the Act and these derivatives rules;
  - 5.10.1.2 have obtained such qualification as may be required by the JSE;
  - 5.10.1.3 in the event of any breach of these derivatives rules or problem or query arising in respect of any trade or alleged trade or position of the member or any of his clients or any trading member with which the clearing member has entered into a clearing agreement in terms of these derivatives rules, immediately on the request of the JSE or the clearing house or his clearing member, take such steps as may be necessary to rectify the breach or to eliminate the problem or to satisfy the query;
  - 5.10.1.4 receive all notices to the member from the JSE or the clearing house or the clearing member and be responsible to ensure that all such notices are complied with; and
  - 5.10.1.5 ensure compliance with all prescribed agreements referred to in section 14 of these derivatives rules.
- 5.10.2 shall not carry on business for more than two months in any continuous period of twelve months unless such member has registered a compliance officer in terms of rule 5.10.1: Provided that in the absence of a duly appointed compliance officer, or where the post has become vacant, the sole proprietor, or the senior partner, or the senior director, as the case may be, shall temporarily assume the responsibility of the compliance officer as referred to in rule 5.10.1, for no longer than 2 months.
- 5.10.3 shall ensure the registration by the JSE of dealers who, subject to rule 5.20, shall be the only persons entitled to trade for a trading member's own account and for or on behalf of clients and who shall have obtained such qualification as may be required by the JSE.
- 5.10.4 Reserved.

### 5.20 Reserved

### 5.30 Dealers to trade only with other registered dealers

No dealer shall trade with a person whom they know or ought reasonably to know is not registered as a dealer of the other member concerned or person authorised to trade for the member in terms of rule 5.20.

### 5.40 Reserved

### 5.50 Registration of officers by the JSE

- 5.50.1 An application for the first registration as a registered officer shall be made to the JSE in the manner and on the form prescribed by the JSE.
- 5.50.2 The JSE shall in a notice to members publish the name of the applicant, and members shall within ten business days of such notice notify the JSE in writing of objections to or comments on the application.

5.10.3 amended with effect from 26 April 2007.

5.10.3.1 and 5.10.3.2 deleted with effect from 26 April 2007.

5.10.4 deleted with effect from 1 August 2005.

5.20 deleted with effect from 26 April 2007.

5.40 deleted with effect from 26 April 2007.

- 5.50.3 The JSE shall convene a meeting of the JSE Executive to consider the application referred to in rule 5.50.1 and any objection to or comment on it in order to recommend to the JSE to accept or reject the application.
- 5.50.4 An application to change the registration of a registered officer from one member to another or from one office to another shall be made in writing to the Chief Executive Officer by the member intending to register the officer and the Chief Executive Officer shall, in his discretion, decide to grant such change in registration or to refer the application to the JSE Executive for consideration at its next meeting: Provided that, if aggrieved by the decision of the JSE Executive, the member concerned shall have the right of appeal to the board of appeal.
- 5.50.5 The JSE may, in its discretion, for a period not exceeding ninety (90) days, grant the temporary registration of an officer pending the attainment by him of the qualifications required for the office in question.

**5.60 Termination of the registration of an officer**

A member shall notify the JSE in writing of its decision to terminate the registration of a registered officer in its name, in which event the JSE shall be entitled to request full details of the circumstances of the termination.

**5.70 Registration and termination effective**

The registration, whether permanent or temporary, or termination of the registration of a registered officer in the name of a particular member in a particular office shall become effective on the date and the time of the notice to members by the JSE, unless it is stated otherwise in the notice.

**5.80 Member remains responsible**

The appointment or registration of any officer referred to in this rule 5 shall not in any way relieve a member from any of his duties and responsibilities in terms of the Act and these derivatives rules, and the member's liability to fulfil those duties and responsibilities shall remain a principal liability and shall not be accessory or subordinate to the liabilities of such officer.

**5.90 Reserved**

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5.50.4 amended with effect from 1 August 2005.

5.90 deleted with effect from 1 August 2005.

**SECTION**  
**6**

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**Section 6: Reserved**

<b>SECTION</b> <b>7</b>
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## Section 7: Trading

### Scope of section

- 7.10 Financial market
- 7.20 Offers and acceptances
- 7.30 Order priority
- 7.40 Trading capacity
- 7.50 Employees and members trading as clients
- 7.60 Trading for or on behalf of clients
- 7.70 Automated trading system
- 7.80 Members obligations in relation to the ATS
- 7.90 Trading times
- 7.100 Cross trades
- 7.110 Pre-arranged trades
- 7.120 Solicitation of offers
- 7.130 Delta trades
- 7.139 ATS 4 Digit Sub Account
- 7.140 Aggregation and division of trades
- 7.150 Trade allocation
- 7.160 Trading restriction
- 7.170 Rules of trading that are particular to the physical delivery of agricultural products
- 7.180 Declarations of transactions being void
- 7.190 Suspension or halting of trading in derivative securities
- 7.200 Manipulative or deceptive trading practices
- 7.210 False, misleading or deceptive statements, promises and forecasts



**7.10 Financial exchange**

The business of the buying and selling of exchange contracts as contemplated by section 10(2) of the Act shall be conducted both on the ATS and off-ATS. Trading in all exchange contracts shall be conducted by means of the ATS: Provided that -

- 7.10.1 trading in option contracts or combinations of option and futures contracts and in futures in a number of contracts larger than the number determined by the JSE may be conducted off-ATS until such time as the JSE may determine;
- 7.10.2 trading by a member with another member as principals pursuant to an order executed for the other member on the ATS may be conducted off-ATS, subject to rule 7.160.

**7.20 Offers and acceptances**

- 7.20.1 Two members trading off-ATS or a member and a client shall have concluded a trade when a valid offer made by one of them is accepted by the other.
- 7.20.2 An offer in terms of rule 7.20.1 may include the following specifications -
  - 7.20.2.1 the particular exchange contract;
  - 7.20.2.2 the number of exchange contracts to be bought or sold;
  - 7.20.2.3 a clear indication of whether the offer is to buy or sell;
  - 7.20.2.4 the price at which the offeror is prepared to trade expressed as -
    - 7.20.2.4.1 the best price; or
    - 7.20.2.4.2 any price that is better than a specified worst price; or
    - 7.20.2.4.3 a specific price;
  - 7.20.2.5 a clear indication of whether the member to whom the offer is made is to exercise his discretion in terms of either rule 7.20.2.4.1 or rule 7.20.2.4.2;
  - 7.20.2.6 the period of time for which the offer will remain open: Provided that in the case of -
    - 7.20.2.6.1 a verbal offer, if no such period is specified and if the offer is not accepted immediately, it shall be deemed to have been withdrawn on termination of the verbal communication;
    - 7.20.2.6.2 a written offer, a period of time shall be specified;
  - 7.20.2.7 subject to rule 7.20.2.10, a clear indication of whether the member is to trade with the client as an agent or as a principal: Provided that, if no such stipulation is made, the member shall trade with the client in the capacity specified in the client agreement or, if no such specification is made in the client agreement, then the member may trade with the client as a principal in terms of the derivatives rules;
  - 7.20.2.8 the date and precise time when the offer is made or varied;
  - 7.20.2.9 a clear indication of whether in the case of an order the member is allowed any discretion as to the number of exchange contracts more or less than those specified under rule 7.20.2.2 that the offeror shall be prepared to buy or sell;
  - 7.20.2.10 a clear indication of whether in the case of an order the member shall be entitled to fill the order in more than one purchase or sale in the market and whether or not such purchases or sales are to be concluded by the member as the offeror's agent as specified in rule 7.40.3 or as the offeror's principal, as specified in rule 7.40.2;
  - 7.20.2.11 a clear indication of whether in the case of an order the acceptance of the offer shall be conditional upon the acceptance of an offer to buy or sell another exchange contract;

7.10 amended with effect from 1 August 2005.

7.20.2.10 amended with effect from 1 August 2005.

- 7.20.2.12 the place where and/or telephone or facsimile number or electronic mail address at which the client is to be contacted to confirm the acceptance of the offer; and
- 7.20.2.13 any other particular which the JSE may require.
- 7.20.3 For an offer made in terms of rule 7.20.1 to be valid the terms contained in rules 7.20.2.1, 7.20.2.2, 7.20.2.3, 7.20.2.4 and 7.20.2.8 shall be specified.
- 7.20.4 An offer may be made by a client to a member either telephonically or in writing; and
  - 7.20.4.1 the member shall ensure that the requirements set out in rule 7.20.3 are clearly and unambiguously confirmed to or by the client; and
  - 7.20.4.2 the member shall keep a tape recording of a telephonic offer in terms of rule 10.20.4; and
  - 7.20.4.3 the member shall keep a record of the offer for a period of not less than six months after the offer was made, in terms of rule 16.10.5.
- 7.20.5 A member may make an offer in respect of a trade exempted in terms of rule 7.10 of at least the standard lot size off-ATS by displaying, on the Reuters screen designated for that exchange contract, the price at which he is prepared to buy or sell, and any other member shall be entitled to accept the offer telephonically, unless -
  - 7.20.5.1 the member has, within a period of not more than two minutes, or such other period as the JSE may decide, prior to the verbal acceptance, traded with another member at the same price or, with respect to the member making the offer, at a worse price; or
  - 7.20.5.2 for a period of not less than two minutes the offering member has been unable to remove its offer due to a technical fault of the screen.
- 7.20.6 Member may only address offers to clients with whom they have entered into client agreements or to other members.
- 7.20.7 When accepting an offer to effect an off-ATS trade, a member shall clearly and unambiguously state to the offeror and not to an intermediary that he has accepted the offer, and in the case of an order he shall repeat the following details -
  - 7.20.7.1 the particular exchange contract;
  - 7.20.7.2 the number of the exchange contracts being bought or sold;
  - 7.20.7.3 the price at which the exchange contracts are being bought or sold; and
  - 7.20.7.4 the date and the precise time when the offer was accepted.
- 7.20.8 If a member trades for or on behalf of a client pursuant to an order from the client, he shall, provided the client can be reached at the address or telephone number stated in the client agreement or at any other place or at any other telephone number given by the client at the time the offer was made, use his best endeavours to confirm the acceptance of the offer -
  - 7.20.8.1 within the period agreed upon for confirmation of the trade; or
  - 7.20.8.2 if no time was agreed upon, within the period as specified in the client agreement; or
  - 7.20.8.3 if no such period is stipulated in the client agreement, within the period specified for the acceptance of the offer as contemplated in rule 7.20.2.6.

### 7.30 Order priority

- 7.30.1 A member shall not trade with another member if the trade could satisfy an order from a client.
- 7.30.2 Subject to rule 7.30.1, a member shall not trade with a client if the trade could satisfy a previously received order from another client.
- 7.30.3 Subject to rule 7.30.1, a member shall not trade with another member, if the trade could satisfy a previously received order from another member.

7.20.2.12 amended with effect from 1 August 2005.

- 7.30.4 A member shall not trade for his own account or for the account of an employee of the member or any account in which the member or employee of the member has a beneficial interest if the trade could satisfy an order from a client or another member.

#### 7.40 Trading capacity

- 7.40.1 Where a member trades with a client (as agent or principal) or with another member -
- 7.40.1.1 the member shall be liable to the client or other member for the due fulfilment of all obligations arising out of the trade; and
  - 7.40.1.2 any claims by the client or a member in respect of a trade shall be against the member with whom he traded and not against any other person with whom the member may have traded as contemplated by rule 7.40.2.
- 7.40.2.1 A member will trade with his client as principal, as defined in these rules, by trading with his client for his own account and by -
- 7.40.2.1.1 entering the client order directly on the client account; or
  - 7.40.2.1.2 filling the client's order by trading and aggregating the contracts in the members' client sub account, before allocating to the client; or
  - 7.40.2.1.3 employing another member to fill the client order on behalf of such a member.
- 7.40.2.2 A member will trade for his client as agent, as defined in these rules, by trading with another member or with another client and by -
- 7.40.2.2.1 entering the client order directly on the client account; or
  - 7.40.2.2.2 filling the client's order by trading and aggregating the contracts in the members' client sub account, before allocating to the client; or
  - 7.40.2.2.3 employing another member to fill the client order on behalf of such member.
- 7.40.3 Notwithstanding the provisions of rule 7.40.2, if for any reason, after the member has reported an off-ATS trade to the clearing house, a mistake has occurred, the member may trade with the client as principal in order to correct the mistake.
- 7.40.4 Subject to rule 7.10, a member who has an offer from one client to buy and an offer from another client to sell the same exchange contract, may simultaneously trade off-ATS with both clients as agent: Provided that -
- 7.40.4.1 offers to buy and sell the particular contract are reflected on the Reuters screen as contemplated by rule 7.20.5; and
  - 7.40.4.2 if the price of the offer from both clients is as contemplated by rules 7.20.2.4.1 or 7.20.2.4.2, the price at which the member shall trade with both clients shall be the midpoint between the prices reflected on the Reuters screen as contemplated by rule 7.40.4.1; or
  - 7.40.4.3 if the price of one offer is specified as contemplated by rule 7.20.2.4.3, the member shall trade with both clients at that price: Provided it is better than or equal to the prices on the Reuters screen.
- 7.40.5 A member off-setting an off-ATS trade with another member with an equal and opposite off-ATS trade with a third member, shall not, for a valuable consideration, remove himself from the trades with the two members concerned, but shall, in order to receive any valuable consideration, trade with both members as a principal at different prices.

7.30.4 amended with effect from 1 August 2005.

7.40.2. deleted and replaced with new rules 7.40.2.1 and 7.40.2.2 with effect from 31 October 2002.

**7.50 Employees and members trading as clients**

- 7.50.1 An employee of a trading member may be a client of the trading member: Provided that such client fulfils all his obligations in terms of these derivatives rules.
- 7.50.2 Except with the written approval of the JSE and subject to such conditions as it may impose-
- 7.50.2.1 An employee of a member may not have a beneficial interest in another member;
- 7.50.2.2 An employee of a trading member may not be a client of another member or have a beneficial interest in a client;
- 7.50.2.3 A member may not be a client of another member or have a beneficial interest in a client;
- 7.50.2.4 A member may not accept an employee of another member or another member as a client.
- 7.50.3 Reserved.

**7.60 Trading for or on behalf of clients**

- 7.60.1 Client agreement
- A member shall not trade for or on behalf of a client, unless he has entered into a client agreement, the minimum terms and conditions of which are prescribed in terms of section 14 of these derivatives rules.
- 7.60.2 Client registration
- 7.60.2.1 A member shall not trade for or on behalf of a client until registration of the client has been effected.
- 7.60.2.2 To register a client, a member shall submit the following details:
- 7.60.2.2.1 The full name and description of legal capacity and a clear indication whether the person is a resident, non-resident or emigrant client;
- 7.60.2.2.2 the identity number, or registration number of a company or close corporation;
- 7.60.2.2.3 the address;
- 7.60.2.2.4 the telephone, facsimile or telex number;
- 7.60.2.2.5 the duly authorised contact person;
- 7.60.2.2.6 the name of the authorised bank at which the non-resident client has opened a non-resident account or, in the case of an emigrant client, the name of the authorised bank at which the emigrant client has opened an emigrant's blocked

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7.50 amended with effect from 1 August 2005.

7.50.1 amended with effect from 1 August 2005.

7.50.2.1 amended with effect from 1 August 2005.

7.50.2.2 amended with effect from 1 August 2005.

7.50.2.4 amended with effect from 1 August 2005.

7.50.3 deleted with effect from 1 August 2005.

- ### 7.70 Automated trading system

## 7.80 Members obligations in relation to the ATS

7.80.1 by keeping all codes, passes, passwords or other security devices confidential and privy only to the compliance officer and the registered dealer for whom they are intended, control access to the ATS; and

7.80.2 ensure that only the registered dealer to whom a valid password is allocated by the clearing house, or the compliance officer, shall use such password to gain access to the ATS.

7.60.3.1 and 7.60.3.2 introduced with effect from 1 August 2005.

**7.90 Trading times**

- 7.90.1 The ATS will operate on every business day according to standard periods and times as set out in the directives.
- 7.90.2 The Market Controller and any one of the JSE Executive may decide that the commodity derivatives market or equity derivatives market be closed in the event that a fair and realistic market does not exist. A fair and realistic market will be deemed not to exist after consideration of the percentage of members not able to access the ATS, their contribution to price formation and the reasons for such lack of access.
- 7.90.3 Despite any other provision of the derivatives rules or any directive and subject to rule 1.40, the JSE Executive, in accordance with prevailing circumstances, may –
  - 7.90.3.1 reduce or extend the hours of operation of the ATS for any particular business day;
  - 7.90.3.2 without prior notice to any person, halt or close the ATS for trading at any time and for any period;
  - 7.90.3.3 without prior notice to any person suspend automated trading;
  - 7.90.3.4 if there has been any failure of the ATS, for any reason, or if the ATS has been closed, suspended or halted, declare that a transaction executed through or by the ATS is void. Such declaration is binding on the members who entered into such transaction and on the clients for or on whose behalf the transaction was executed;
  - 7.90.3.5 exercise such further powers and take such further action as may be exercised or taken by the JSE in terms of the derivatives rules and directives, and as may be necessary to resolve any issue which may arise from the closure, suspension, halt or failure of the ATS; and
  - 7.90.3.6 take such other steps as may be necessary to ensure an orderly market.

**7.100 Cross trades**

A member who has an order from one client to buy and an order from another client to sell the same exchange contract shall, where such orders are to be executed by means of offers that shall be made on the ATS, acting as the agent of the clients -

- 7.100.1 first offer to buy or sell the particular contract for the client that first placed the order; and
- 7.100.2 after a period of time determined by the JSE, enter an offer for the second client in the opposite direction at the same price in order to ensure that the first client's order shall be fulfilled.

**7.110 Pre-arranged trades**

Two members shall not trade on the ATS pursuant to a prior agreement between them without a period of at least 30 seconds, or such other time as the JSE may determine, having elapsed between entering the offer on the ATS and the acceptance thereof.

**7.120 Solicitation of offers**

- 7.120.1 In the manner determined by the JSE and/or as set out in the user manual, a member may solicit offers that will be made on the ATS from the other members to both buy and sell an exchange contract according to the terms and conditions determined by the JSE in relation to such futures or option contract. Such solicitation of an offer shall be referred to as a "request for a double".
- 7.120.2 In the manner determined by the JSE and/or as set out in the user manual a member may solicit offers to buy or sell an exchange contract where such purchase or sale is contingent upon the

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7.90.1 amended with effect from 26 April 2007.

7.90.2 replaced with effect from 26 April 2007.

7.90.2 amended with effect from 24 December 2008 and 20 November 2009.

7.90.3 replaced with effect from 26 April 2007.

7.90.4 deleted with effect from 26 April 2007.

purchase or sale of another exchange contract or contracts. Such a solicitation of an offer shall be referred to as a "request for a quote".

#### **7.130 Delta trades**

A member may offer to buy or sell an option in combination with the underlying futures contract in a specific ratio and/or at a specific price. Such a combined trade shall be referred to as a "delta trade".

#### **7.139 ATS 4-Digit Sub Account**

- 7.139.1 When bulking or aggregating client orders, or orders received from other members, members are required to use dedicated 4-digit sub accounts, as specified by the JSE, for the order entry, trading, consolidation, division or allocation of such orders and trades;
- 7.139.2 Members are responsible for the time priority of allocations of the transactions in respect of which orders have been bulked;
- 7.139.3 Members are precluded from trading on the dedicated sub account for their own accounts or for any accounts in which employees have a direct or indirect beneficial interest; and
- 7.139.4 All trades on the sub account shall be allocated to the relevant clients or members on the day of the trading and no positions must remain on such sub account overnight.

#### **7.140 Aggregation and division of trades**

A member may -

- 7.140.1 aggregate a number of trades that were done on the ATS by means of offers made by the member for his 4-digit sub account/s and, in terms of rule 7.150, allocate such aggregated trade to a client or other member in terms of an order from the client or other member at a price, calculated by the ATS equal to the average price of the original trades; or
- 7.140.2 divide a trade that was done on the ATS by means of an offer made by the member for his 4-digit sub account/s and, in terms of rule 7.150, allocate such subdivided trades to two or more clients and/or other members in terms of orders from such clients or other members.

#### **7.150 Trade allocation**

A member shall allocate a trade that has been done on the ATS on the particular business day for his 4-digit sub account/s to a client or another member -

- 7.150.1 pursuant to a tripartite agreement that was executed by means of an offer made on the ATS by the member for his 4-digit sub account;
- 7.150.2 when the member has aggregated or divided trades done in terms of an order from a client or another member as contemplated in rule 7.140; or
- 7.150.3 as a result of an order from the other member which has been executed on his behalf by means of the offer on the ATS: Provided that:
  - 7.150.3.1 the allocation of a single trade or a subdivided trade shall take place within a period of time determined by the JSE; and

7.20.4.3 amended with effect from 5 January 2005.

7.139.3 amended with effect from 1 August 2005.

7.140.1 amended with effect from 31 October 2002.

7.140.2 amended with effect from 31 October 2002.

7.150 amended with effect from 31 October 2002.

7.150.1 amended with effect from 31 October 2002.

7.150.3 amended with effect from 31 October 2002.

- 7.150.3.2 the JSE may determine that the original price or average of the original prices or the price prevailing at the time of the allocation shall be made known to the client or the member giving the order referred to in rule 7.10.2.

#### **7.160 Trading restriction**

It shall be a contravention in terms of rule 3.285.3 for a member to

- 7.160.1 make or accept an offer on the ATS when he has placed an order with another member in terms of rule 7.10.2 in the opposite direction in the same or a related exchange contract; or
- 7.160.2 to place an order with another member in terms of the said rule if he has made an offer on the ATS in the opposite direction in the same or a related exchange contract.

#### **7.170 Rules of trading that are particular to the physical delivery of agricultural products**

- 7.170.1 The contract specification of an agricultural derivatives futures contract may provide for performance by means of physical delivery and may set out the conditions and terms under which physical delivery shall be effected.
- 7.170.2 The JSE may issue directives in respect of delivery procedures, settlement and delivery agents, delivery locations, inspections of agricultural products sold and delivered and other matters relating to trading in agricultural derivatives and may appoint settlement agents on such terms as it may deem fit to facilitate performance of agricultural derivatives.
- 7.170.3 Unless otherwise specified in the contract, the holder of every short position in an agricultural derivatives futures contract shall on expiry have an obligation to make delivery of the underlying agricultural product at the expiry price, and the holder of every long position on expiry shall have an obligation to take delivery of the underlying agricultural product at the expiry price.
- 7.170.4 The clearing house shall, unless otherwise specified in the contract specification, have the sole discretion in allocating delivery to long position holders.
- 7.170.5 In the event of a default by a party to an agricultural derivatives futures contract, the contract may be closed out by the non-defaulting party by booking the quantity in default back to the defaulting party at a market price determined by the JSE.

#### **7.180 Declarations of transactions being void**

- 7.180.1 Despite any other provision of the derivatives rules or any directive, the JSE Executive may, if there has been any failure of the JSE systems for any reason, or if JSE systems have been closed, suspended or halted, declare that a transaction effected through or by the JSE derivatives trading system is void. Such declaration shall bind a trading member and a client of a trading member on behalf of or with whom the transaction was effected.
- 7.180.2 Where, from a lack of clarity in the published information available at the time of the transaction, a trading member deals in a quantity or at a price which in the opinion of the Director: Surveillance is unreasonable, the Director: Surveillance may declare such transaction void. Such declaration shall be binding on the trading members who entered into such transaction and on the clients for or on whose behalf the transaction was executed.

#### **7.190 Suspension or halting of trading in derivative securities**

- 7.190.1 The Director: Surveillance or his deputy, in conjunction with the Chief Executive Officer or acting Chief Executive Officer or, failing the Chief Executive Officer or acting Chief Executive Officer, the

7.170 amended with effect from 24 December 2008.

7.170.1 amended with effect from 24 December 2008.

7.170.2 amended with effect from 24 December 2008.

7.170.3 amended with effect from 24 December 2008.

7.170.5 amended with effect from 24 December 2008.

7.180 introduced with effect from 1 August 2005.

7.190 introduced with effect from 1 August 2005.



Director: Issuer Services, may declare a trading halt in a derivative security in circumstances where the Director : Surveillance determines that the trading activity in a derivative security –

- 7.190.1.1 is being or could be undertaken by persons possessing unpublished price-sensitive information that relates to the underlying instrument to which the derivative security relates; or
  - 7.190.1.2 is being influenced by a manipulative or deceptive trading practice; or
  - 7.190.1.3 may otherwise give rise to an artificial price in that derivative security.
- 7.190.2 No trading member may trade that derivative security for the duration of the trading halt but may delete orders from the derivatives trading system.

#### 7.200 Manipulative or deceptive trading practices

- 7.200.1 No trading members shall use, or knowingly participate in the use of any manipulative or deceptive trading practice in a derivative security, either for its own account or on behalf of clients, which creates or may create –
  - 7.200.1.1 a false or misleading appearance of trading activity; or
  - 7.200.1.2 an artificial value for such derivative security.
- 7.200.2 A trading member must give consideration to the circumstances of orders placed by clients before entering such orders in the JSE derivatives trading system and is responsible for the integrity of such orders.
- 7.200.3 A trading member or employee of a member may not place an order in the JSE derivatives trading system to buy or sell derivative securities which to the knowledge of the trading member or employee of a trading member will, if executed, have the effect contemplated in rule 7.200.1.
- 7.200.4 Without in any way limiting the generality of the foregoing, the following shall be deemed to be manipulative or deceptive methods of trading:
  - 7.200.4.1 Approving or entering on the JSE derivatives trading system –
    - 7.200.4.1.1 an order to buy or sell a derivative security with the knowledge that an opposite order of substantially the same size at substantially the same time and at substantially the same price, has been or will be entered by or for the same or different persons with the intention of creating a false or misleading appearance of active public trading in connection with, or an artificial market price for, such derivative security;
    - 7.200.4.1.2 orders to buy any derivative security at successively higher prices, or orders to sell any derivative security at successively lower prices for the purpose of unduly or improperly influencing the market price of such derivative security;
    - 7.200.4.1.3 an order at or near the close of the market, the primary purpose of which is to change or maintain the closing price of such derivative security;
    - 7.200.4.1.4 an order to buy or sell a derivative security which involves no change in the beneficial ownership of that derivative security; or
    - 7.200.4.1.5 reported transactions which would result in a contravention of rule 7.200.1;
  - 7.200.4.2 Effecting or assisting in effecting a market corner;
  - 7.200.4.3 Maintaining the price of a derivative security at a level that is artificial;
  - 7.200.4.4 Employing any device, scheme or artifice to defraud any other person as a result of a transaction effected through the JSE derivatives trading system; or

7.200 introduced with effect from 1 August 2005.

7.200.4.5 Engaging in any act, practice or course of business in respect of trading in derivative securities which is deceptive or which is likely to have such an effect.

**7.210 False, misleading or deceptive statements, promises and forecasts**

A member or employee of a member may not, directly or indirectly, make or publish in respect of derivative securities, or in respect of the past or future performance of a listed company –

- 7.210.1 any statement, promise or forecast which is, at the time and in the light of the circumstances in which it is made, false or misleading or deceptive in respect of any material fact and which the member or employee of a member knows, or ought reasonably to know, is false, misleading or deceptive; or
- 7.210.2 any statement, promise or forecast which is, by reason of the omission of a material fact, rendered false, misleading or deceptive and which the member or employee of a member knows, or ought reasonably to know, is rendered false, misleading or deceptive by reason of the omission of that fact.

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7.210 introduced with effect from 1 August 2005.

**SECTION**

**8**

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**Section 8: Positions**

**Scope of section**

- 8.10 Reporting
- 8.20 Matching
- 8.30 Clearing
- 8.40 Opening and closing-out a position
- 8.50 Mark-to-market
- 8.60 Margin payments
- 8.70 Interest payments
- 8.80 Trading fees
- 8.90 Settlement procedures
- 8.100 Exercise and assignment of option contracts

### 8.10 Reporting

- 8.10.1 Within ten minutes of trading, or such other time as the JSE may decide, a member shall report his off-ATS trade to the clearing house through the ATS in the manner and form prescribed by the clearing house.
- 8.10.2 Off-ATS trades concluded after 17:30, or such later time on a business day as the JSE may determine, shall be reported to the clearing house in such manner no later than 09:00 on the following business day.
- 8.10.3 In the event of a failure of the ATS or in circumstances beyond the control of the member preventing him from complying with the provisions of this rule 8.10, the member may, with the prior written approval of the JSE and for the duration of such failure or circumstances, report his off-ATS trades to the clearing house by fax or other means acceptable to the JSE.

### 8.20 Matching

- 8.20.1 Off-ATS trades involving two members shall be matched by the clearing house in terms of the date and time of the trade, the name of the counterparty, the particular exchange contract and the price at which the trade was done.
- 8.20.2 If an off-ATS trade with another member is reported and does not match all the particulars referred to in rule 8.20.1, or if no counterparty trade is reported, the clearing house shall report the mismatched or unmatched trade as soon as possible to both members nominated in the report and both members shall correct the details causing the mismatch or the party which failed to report the counterparty trade, shall do so.
- 8.20.3 In the event of any off-ATS trade not being matched by 17:30 or such later time that the clearing house determines on the day it is reported, it shall be reported anew by both members on the following business day.

### 8.30 Clearing

- 8.30.1 Trades will be cleared by the clearing house -
  - 8.30.1.1 when an off-ATS trade between the member and a client is reported to the clearing house; or
  - 8.30.1.2 when an off-ATS trade involving two members has been reported and matched as contemplated by rule 8.20; or
  - 8.30.1.3 when a trade is done as the result of an offer made on the ATS or an allocation of a trade in accordance with rule 7.150.
- 8.30.2 Upon the trade being cleared, by novation, the clearing house shall replace the buyer and become the counterparty to the seller and it shall replace the seller and become the counterparty to the buyer.
- 8.30.3 The clearing house may refuse to accept for clearing a trade at a price that is, in the discretion of the Chief Executive Officer, substantially different from the current market price.

### 8.40 Opening and closing-out a position

- 8.40.1 When there was no position in an exchange contract prior to a trade in the exchange contract being cleared, a position in the exchange contract shall be opened and registered in the name of the member or his client when the trade is cleared.
- 8.40.2 The exchange contracts comprising a trade which has been cleared, shall be added to or off-set against an existing position registered in the name of the party concerned and the position shall be increased, decreased, closed out or a position in the opposite direction shall be opened, as the case may be.

8.10.2 amended with effect from 10 May 2002.

8.10.3 amended with effect from 10 May 2002.

- 8.40.3 On the expiry of a futures contract or an option contract of which the strike price is not better by a certain amount determined by the JSE than the expiry price of the underlying instrument of the option contract -
- 8.40.3.1 the person in whose name a long position in the exchange contract is registered by the clearing house shall be deemed to have sold the number of the exchange contracts equal to the number comprising the position, to the clearing house; and
- 8.40.3.2 the person in whose name a short position in the exchange contract is registered by the clearing house shall be deemed to have bought a number of the exchange contracts equal to the number comprising the position, from the clearing house.
- 8.40.4 The price of the futures contract which shall apply to the purchase contemplated in rule 8.40.3.1 and the sale contemplated in rule 8.40.3.2 shall be the expiry price determined in the manner prescribed in the contract specification of the futures contract in question and the price of an option contract which shall apply to such purchase or sale shall be zero.
- 8.40.5 Rule 8.40.2 shall apply ipso facto to the exchange contracts comprising the purchases and sales referred to in rule 8.40.3.
- 8.40.6 Where the strike price of an option contract is, on expiry, better by a certain amount determined by the JSE, than the expiry price of the futures contract underlying the option contract, the person in whose name a position in the exchange contract is registered shall be deemed to have exercised the option contract in terms of rule 8.100.3.
- 8.40.7 On the expiry as contemplated in rule 8.40.3 of a physically settled futures contract the holder of a long position in the exchange contract shall buy the underlying instrument and the holder of a short position shall sell the underlying instrument at the price equal to that referred to in rule 8.40.4 and the purchase, sale, delivery and receipt of the underlying instrument shall take place pursuant to the contract specification applicable to such futures contract: Provided that a physically settled agricultural derivatives futures contract shall be regulated by rule 7.170.

#### 8.50 Mark-to-market

- 8.50.1 At 17:00 on each business day, or such other time as the JSE may determine on a particular business day, the positions in each exchange contract of all members and their clients shall be marked-to-market on such basis as the JSE may determine.
- 8.50.2 The JSE or the clearing house, as the case may be, may at any time on any business day mark-to-market the position in any exchange contract of any member or client if, in its sole discretion, the conditions in the market for the exchange contract or its underlying instrument warrant such additional mark-to-market.

#### 8.60 Margin payments

- 8.60.1 Initial margin
- Initial margin shall be paid to or by a member or client whenever the risk of loss, as determined by the JSE, changes with respect to the aggregate position of such member or client.
- 8.60.2 Variation margin
- Variation margin shall be paid to or by a member or client in whose name a position in an exchange contract is registered as the result of the marking-to-market of a position in terms of rule 8.50 or the closing out of a position or part thereof as contemplated in rule 8.40.2 or the closing out of a position as contemplated in rule 8.40.3.

8.40.7 amended with effect from 24 December 2008.

8.50.1 amended with effect from 10 May 2002.

**8.60.3 Additional margin**

8.60.3.1 A clearing member may require a trading member with whom he has entered into a clearing agreement to deposit with him, with respect to the proprietary position of the trading member or the position of any of the clients of the trading member, an amount of additional margin as agreed upon between the parties in terms of the clearing agreement.

8.60.3.2 A member may require a resident client to deposit with him, with respect to the resident client's position, an amount of additional margin as agreed upon between the parties in terms of the client agreement.

**8.60.4 Retained margin**

A member, with respect to a resident client, may with the client's prior written agreement -

8.60.4.1 require the client to deposit an amount of money with him to be used to furnish initial and additional margin before the member shall trade with the client; and/or

8.60.4.2 retain initial and variation margin payable to the client or interest accruing in terms of rule 8.70.3, in anticipation of future trades:

Provided that the money so deposited and/or retained shall be repaid to the client if the client has not traded with the member within thirty days.

**8.60.5 Maintenance margin level**

A member may agree, where a client has an amount of money deposited with the member as contemplated in rule 8.60.3.2, that the client shall pay an amount of money to restore the additional margin to the amount contemplated by rule 8.60.3.2 when the additional margin has been used to meet payments of variation margin in terms of rule 8.60.2.

**8.70 Interest payments**

8.70.1 The clearing house shall manage and invest all margins held by it in terms of rule 11.10 and it shall on the second day of the month following the month in which interest was received or accrued, remit such interest, net of the interest consideration referred to in rule 11.10.2, to each clearing member in relation to the margin held in respect of the positions of the clearing member, its clients and trading members and the clients of such trading members.

8.70.2 Monthly in arrears a clearing member may remit the interest received in terms of rule 8.70.1, or any part thereof, to the trading members with whom he has entered into clearing agreements in relation to the positions of the trading member and their clients.

8.70.3 Subject to rule 8.60.4.2, monthly in arrears a member may remit the interest received in terms of rules 8.70.1 or 8.70.2, or any part thereof, to his clients in relation to the positions of such clients at any time during the preceding month.

**8.80 Trading fees**

8.80.1 The JSE shall levy fees on a clearing member in respect of the trades of the clearing member, his clients and the members with whom the clearing member has entered into clearing agreements, in an amount and in a manner as decided by the JSE, and such fees may be recovered from the clearing member on behalf of the JSE by the clearing house.

8.80.2 A clearing member may levy such fees and charges as he deems fit on trading member with whom he has entered into a clearing agreement: Provided that such fees and charges shall be in accordance with the schedule of fees which shall form part of the said clearing agreement.

8.80.3 A member may levy such fees and charges for different categories of transactions as he deems fit on clients with whom he trades: Provided that such fees and charges shall be in accordance with the schedule of fees and charges which shall form part of the client agreement.

8.60.3.1 amended with effect from 12 December 2009.

8.60.3.2 amended with effect from 12 December 2009.

- 8.80.4 A member shall not levy a fee or any commission or other charge on a client in respect of a trade in terms of which he has traded as a principal with the client without the prior written agreement of the client having been recorded in the client agreement.

#### 8.90 Settlement procedures

- 8.90.1 With respect to his proprietary positions, the positions of his clients, the positions of the trading members with whom he has entered into clearing agreements and the positions of the clients of such trading members, the clearing member shall pay to or receive from, the clearing house the net amount of -
- 8.90.1.1 subject to rule 9.20, the sum of the initial margin referred to in rule 8.60.1;
  - 8.90.1.2 the sum of the variation margin referred to in rule 8.60.2;
  - 8.90.1.3 any interest payable in terms of rule 8.70.1; and
  - 8.90.1.4 the fees referred to in rule 8.80.1.
- 8.90.2 An amount due from a clearing member in terms of rule 8.90.1 shall be paid to the clearing house not later than 12:00 on the business day following the day on which such payment accrued or such other time as the JSE may in its sole discretion determine.
- 8.90.3 With respect to any proprietary position, the position of any of his clients, the position of a trading member with whom he has entered into a clearing agreement and the position of a client of such trading member whom the JSE has marked-to-market in terms of rule 8.50.2, the clearing member shall pay to the clearing house the amount of variation margin as contemplated in rule 8.60.2 at the time stipulated by the JSE when the clearing member is notified by him of the mark-to-market.
- 8.90.4 With respect to his proprietary positions, and the positions of his clients, a trading member shall pay to or receive from the clearing member the net amount of -
- 8.90.4.1 subject to rule 9.20, the initial margin referred to in rule 8.60.1;
  - 8.90.4.2 the additional margin referred to in rule 8.60.3.1;
  - 8.90.4.3 the variation margin referred to in rule 8.60.2;
  - 8.90.4.4 any interest payable in terms of rule 8.70.2; and
  - 8.90.4.5 the fees referred to in rule 8.80.2.
- 8.90.5 An amount due to or from a clearing member in terms of rule 8.90.4 shall be paid not later than 12:00 on the business day following the day on which such payment accrued, or at such other time as the trading member and the clearing member have specifically agreed upon with respect to a particular payment.
- 8.90.6 With respect to any proprietary position or the position of any of his clients, which the JSE has marked-to-market in terms of rule 8.50.2, the trading member shall pay to the clearing member the amount of variation margin as contemplated in rule 8.60.2 by the time referred to in rule 8.90.3, as stipulated by the JSE and as notified to the trading member by the clearing member, and no relaxation shall be given to a trading member without the prior approval of the JSE.

8.80.3 amended with effect from 1 August 2005.

8.90.1.1 amended with effect from 1 August 2005.

8.90.4.1 amended with effect from 1 August 2005.

8.90.4.1 amended with effect from 12 December 2009.

New 8.90.4.2 introduced with effect from 12 December 2009.

8.90.4.2 to 8.90.4.4 renumbered 8.90.4.3 to 8.90.4.5 with effect from 12 December 2009.

- 8.90.7 Subject to rule 9.30.1, with respect to his positions a client shall pay to or receive from the trading member with whom he traded to open such positions the net amount of -
- 8.90.7.1 the total of the initial margin referred to in rule 8.60.1 for all its aggregate positions: Provided that any amount so due from the resident client shall be off-set against any retained margin referred to in rule 8.60.4;
  - 8.90.7.2 the additional margin referred to in rule 8.60.3.2;
  - 8.90.7.3 the variation margin referred to in rule 8.60.2;
  - 8.90.7.5 any interest payable in terms of rule 8.70.3; and
  - 8.90.7.5 the fees referred to in rule 8.80.3.
- 8.90.8 An amount due to or from a trading member in terms of rule 8.90.7 shall be paid not later than 12:00 on the business day following the day on which such payment accrued or such other time as the trading member and the client have specifically agreed upon with respect to a particular payment.
- 8.90.9 With respect to the position of any client, which the JSE has marked-to-market in terms of rule 8.50.2, the client shall pay to the trading member the amount of variation margin as contemplated in rule 8.60.2 by the time referred to in rule 8.90.3 stipulated by the JSE and notified to the client by the trading member and no relaxation shall be given without the prior approval of the JSE.

#### 8.100 Exercise and assignment of option contracts

- 8.100.1 Exercise
- 8.100.1.1 A client in whose name a long position in an option contract is registered may exercise the option at any time until the expiry of the exchange contract by either verbal or written notice to the member with whom he dealt in order to open the long position.
  - 8.100.1.2 A member who has a proprietary long position in an option contract registered in his name may exercise the option at any time until the expiry of the exchange contract, and shall exercise the option on a client's behalf on the instruction of the client by executing the exercise on the ATS in the manner prescribed by the JSE and/or as set out in the user manual.
- 8.100.2 Upon the exercise of the option in terms of rule 8.100.1.2 the person in whose name the long position in the exchange contract was registered shall be deemed to have bought or sold the underlying instrument of the option contract in question at the strike price from or to the clearing house.
- 8.100.3 Assignment
- When an option is exercised in terms of rule 8.100.1.1 or when an option is deemed to have been exercised in terms of rule 8.40.6, the clearing house shall in turn exercise its option to buy or sell the underlying instrument in question to or from the holder of a short position in the option contract in question: Provided that -
- 8.100.3.1 the clearing house shall in its sole discretion assign the exercise of the exchange contract or contracts to the registered holders of short positions in the exchange contract; and
  - 8.100.3.2 the person to whom the exercise of the exchange contract is assigned in terms of rule 8.100 shall be deemed to have bought or sold the underlying instrument of the option contract.

8.90.7.1 amended with effect from 12 December 2009.

New 8.90.7.2 introduced with effect from 12 December 2009.

8.90.7.2 to 8.90.7.4 renumbered 8.90.7.3 to 8.90.7.5 with effect from 12 December 2009.



**SECTION**

**9**

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**Section 9: Non-resident and emigrant clients**

**Scope of section**

- 9.10 Bank accounts
- 9.20 Initial margin
- 9.30 Settlements
- 9.40 Fees
- 9.50 Trading restriction

### 9.10 Bank accounts

Before a member trades with a non-resident or emigrant client, the non-resident client shall open a non-resident account at an authorised bank or, in the case of an emigrant client, an emigrant's blocked account and a non-resident account, both with the same authorised bank, to be used for the purposes of trading in exchange contracts.

### 9.20 Initial margin

The initial margin payable with respect to the positions of a non-resident or emigrant client shall be the initial margin that would otherwise have been payable by or to a member or a resident client in relation to equivalent positions, adjusted by the margin category assigned by the member in question to the non-resident or emigrant client, and a member shall not be entitled to hold any retained or additional margins in relation to the positions of any non-resident or emigrant client.

### 9.30 Settlements

- 9.30.1 With respect to his positions a non-resident client shall pay from his non-resident account to, or receive into his non-resident account from, or an emigrant client shall pay from his emigrant's blocked account to, or receive into his emigrant's blocked account from, the client trust account of the member with whom he traded to open such positions, the net amount of the initial margin referred to in rule 8.60.1 and the variation margin referred to in rule 8.60.2: Provided that –
  - 9.30.1.1 the initial margin to be paid in terms of this rule 9.30.1 shall be the initial margin that would otherwise be required to be paid to the clearing house in respect of equivalent positions of a member or a resident client adjusted by the margin category assigned by the member to the non-resident or emigrant client in question;
  - 9.30.1.2 interest shall not be included in the payment as contemplated in rule 8.90.7.3 but shall be treated separately as contemplated in rule 9.30.6;
  - 9.30.1.3 fees shall not be included in the payment but shall be treated separately as contemplated in rule 9.50; and
  - 9.30.1.4 a member shall not be entitled to hold any retained or additional margin with respect to the positions of a non-resident or an emigrant client.
- 9.30.2 With respect to his positions a non-resident client shall pay from his non-resident account to or receive into his non-resident account from, or an emigrant client shall pay from his emigrant's blocked account to or receive into his emigrant's blocked account from, the client trust account of the member with which he traded to open such positions the variation margin referred to in rule 8.90.9.
- 9.30.3 The confirmation contained in the SWIFT non-resident account notification or the SWIFT emigrant's blocked account notification to the authorised bank shall confirm the net settlement amounts to be paid or received in terms of rule 9.30.1 or 9.30.2, and shall require the authorised bank to release or accept this amount to or from the member concerned.
- 9.30.4 The clearing member or the clearing house, as the case may be, may off-set amounts due to him against amounts due by him to or from a member: Provided that it can be ascertained from the statements passing between them that no margins or other moneys of a non-resident or an emigrant client are being held by either the clearing house or the clearing member .
- 9.30.5 A member may not off-set the amounts due to a non-resident client or any emigrant client against any amount due from any other non-resident client or emigrant client, nor may a member off-set any amount due to an emigrant client for credit of that emigrant client's emigrant's blocked account against any amount due from that emigrant client from that emigrant's non-resident account, or vice versa.
- 9.30.6 A member shall not retain any interest paid to him by the clearing house or his clearing member with respect to the positions of a non-resident or an emigrant client, and on the second business day

9.30.1 amended with effect from 31 October 2002.

9.30.2 amended with effect from 31 October 2002.

following the end of each month during which a non-resident client or emigrant client had a position registered in his name, the member shall pay to the authorised bank concerned for the credit of that non-resident client's or emigrant client's non-resident account an amount equal to the amount received by him from his clearing member or the clearing house, as the case may be, in respect of interest on margins: Provided that a clearing member who has a clearing agreement with the trading member concerned shall pay to the trading member an amount equal to that which he received in respect of the non-resident client's or emigrant client's position from the clearing house.

- 9.30.7 A member may not off-set amounts due to be paid from a non-resident client's non-resident account or, in the case of an emigrant client, amounts due to be paid from the emigrant client's blocked account against amounts to be paid into that non-resident or emigrant client's non-resident account.
- 9.30.8 The amount of interest referred to in rule 9.30.6 shall be paid by the member to the authorised bank concerned by midday on the next business day after the business day on which the SWIFT non-resident account notification was received by the authorised bank concerned.

#### 9.40 Fees

In terms of rule 8.80 the member shall be entitled to claim fees in respect of trades with a non-resident or emigrant client for payment by the authorised bank concerned from that non-resident client's non-resident account or, in the case of an emigrant client, from the emigrant client's emigrant's blocked account to the member: Provided that -

- 9.40.1 a member shall not be entitled to off-set fees against margin due by him to a non-resident client or emigrant client contemplated in rule 9.30.1 or 9.30.2 or against any balance due to the non-resident client or emigrant client as contemplated in rule 12.20.3; and
- 9.40.2 the authorised bank concerned shall compare the trades referred to in the non-resident account clearance certificate or emigrant's blocked account clearance certificate against the trades referred to in the member's statement claiming fees in respect of such trades and may inform the JSE of any discrepancy.

#### 9.50 Trading restriction

An emigrant client who is also a non-resident client, or who has a beneficial interest in a non-resident client, shall not open a position, the effect of which aggregate position is opposite to an aggregate position that is or that shall be registered in the name of such non-resident client, nor shall a non-resident client who is also an emigrant client or a non-resident client in which such an emigrant client has a beneficial interest open a position, the effect of which aggregate position is opposite to an aggregate position that is or shall be registered in the name of such emigrant client concerned, and no member shall knowingly trade with a client in contravention of this rule.

<p><b>SECTION</b></p> <p><b>10</b></p>
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**Section 10: Trading and positions – sundry provisions**

**Scope of section**

- 10.10 Trading and position limits
- 10.20 Trading and position records
- 10.30 Emergency provisions
- 10.40 Speculative positions

#### 10.10 Trading and position limits

- 10.10.1 The clearing house may limit the aggregate exposure arising from the proprietary positions of a clearing member, the positions of the clients of the clearing member, the positions of trading members with which the clearing member has entered into clearing agreements and the positions of the clients of such trading members in relation to the net financial worth of the clearing member plus his suretyship referred to in rule 4.20.6 in a manner determined by the JSE.
- 10.10.2 The clearing member may limit the aggregate exposure arising from the proprietary positions of a trading member and the positions of the clients of such trading member.
- 10.10.3 A clearing member may stipulate a limit to the number of exchange contracts that may constitute a trade by a particular trading member at any one time.

#### 10.20 Trading and position records

- 10.20.1 A member shall at all times maintain records of -
  - 10.20.1.1 his trades with members and clients;
  - 10.20.1.2 margin and other payments to and from other members and their clients.
- 10.20.2 A member shall confirm to a client at least once a month -
  - 10.20.2.1 the trades done with the client during the period;
  - 10.20.2.2 the positions of the client at the time of reporting;
  - 10.20.2.3 the balances of additional and retained margin held for the client at the time of reporting; and
  - 10.20.2.4 all payments to and from the client made or accrued during the period, including payments of margin, fees and interest.
- 10.20.3 The records referred to in rule 10.20.1 shall be kept for a period of at least three years.
- 10.20.4 Telephone recordings
  - 10.20.4.1 the JSE, the clearing house and members shall have the right to tape-record all telephone calls.
  - 10.20.4.2 A member shall tape-record all telephonic offers received from or made to clients.
  - 10.20.4.3 With respect to such telephone calls, the tape-recording shall be admissible as evidence in any disciplinary or dispute resolution proceedings contemplated in these derivatives rules: Provided that the person who intends to rely on such tape recordings in evidence shall bear the onus of proving the authenticity thereof.
  - 10.20.4.4 All parties to the prescribed agreements shall in such agreement acknowledge and confirm that they are aware that telephone calls may be recorded, and they shall be deemed to have irrevocably consented thereto.
  - 10.20.4.5 No member shall tamper with any tape-recording of any telephone call.
- 10.20.5 Tape-recordings contemplated in rule 10.20.4 shall be kept in safe custody for a period of at least 14 days.

10.10.1 amended with effect from 12 December 2009

10.10.2 amended with effect from 12 December 2009

10.10.3 amended with effect from 12 December 2009

10.20.4.1 amended with effect from 1 August 2005

10.20.4.3 amended with effect from 1 August 2005

### 10.30 Emergency provisions

- 10.30.1 In order that the business of the JSE be carried out with due regard to the interests of the public in a fair and orderly market the JSE may, in addition to the powers given in terms of the Act, in circumstances of emergency restrict or suspend trading in any or all of the derivative securities kept by it in its list of derivative securities.
- 10.30.2 Circumstances of emergency shall include but are not limited to the closing of any other exchange, a state of war or threatening hostilities, acts of state affecting the market or the due performance of trades or any position, any change in the law affecting the market or the due performance of trades or positions and any other situation or circumstances affecting, in the opinion of the JSE, a fair and orderly market for the trading in derivative securities.
- 10.30.3 If the trading in any security or commodity on any exchange or market ceases, the JSE Executive shall consider the cessation of trading in derivative securities for which such security or commodity comprises the underlying instrument of the derivative security concerned.
- 10.30.4 In the event of any of the circumstances contemplated in this rule 10.30 occurring, the Chief Executive Officer shall notify the Registrar of such circumstances and shall co-operate with the Registrar to restore and maintain a fair and orderly market.

### 10.40 Speculative position limits

- 10.40.1 This rule applies only to trading members authorised to trade in agricultural derivatives. For the purposes of this rule, the following definitions are applicable -

"hedging positions"

means positions in futures or options on the JSE, where such positions normally represent a substitute for positions to be made or positions to be taken at a later time in an agricultural product, and where they are appropriate to the reduction of risks in the conduct and management of a commercial enterprise. The primary purpose for hedging positions must be to offset price risks incidental to the commercial cash or spot operations. These risks may arise from: -

- (a) potential changes in the value of assets which a person owns, produces, processes, manufactures or anticipates owning, producing, processing or manufacturing; or
- (b) potential changes in the value of liabilities which a person owns or anticipates incurring; or
- (c) potential changes in the value of services which a person provides, purchases or anticipates providing or purchasing.

For the purposes of this definition, hedging positions include, but are not limited to, the following specific positions:

- (a) Sales for future delivery, purchases of any put options on futures contracts and/or sales of any call options on futures contracts, which do not exceed in quantity -
  - (i) Ownership of the same agricultural product by the same person; and
  - (ii) Fixed-price purchases of the same agricultural product by the same person;

10.30.1 amended with effect from 1 August 2005.

10.30.2 amended with effect from 1 August 2005.

10.30.3 amended with effect from 1 August 2005.

10.30.4 amended with effect from 1 August 2005.

10.40 introduced with effect from 1 August 2005.

10.40.1 amended with effect from 24 December 2008.

"hedging positions" amended with effect from 24 December 2008.

- (b) Purchases of any agricultural product for future delivery, sales of any put options on futures contracts and/or purchases of any call options on futures contracts, which do not exceed in quantity fixed-price sales of the same agricultural product by the same person;
  - (c) Short-hedging positions of unsold anticipated positions or anticipated production of the same agricultural product by the same person;
  - (d) Long-hedging positions of unfilled anticipated requirements of the same agricultural product by the same person for processing, manufacturing or feeding;
- "spot month limit" means the spot month futures equivalent position limit net long or short effective at the start of trading on the first delivery day of the spot month as determined by directive;
- "single month limit" means the futures equivalent position limit net long or short in any one month other than the spot month as determined by directive;
- "all month limit" means the futures equivalent position limit either long or short in all months as determined by directive;
- "futures equivalent positions" means the futures positions plus or minus option contracts that have been adjusted for the delta coefficient as calculated at the close of trading by the JSE -
- (a) Long futures contracts shall have positive delta factor of +1 and short futures shall have a negative delta factor of -1;
  - (b) Long call option and short put option positions shall have positive delta factors; and
  - (c) Short call option and long put option positions shall have negative delta factors.

#### 10.40.2 Duty to furnish information

The JSE may at its discretion request trading members or clients to provide it with written statements in relation to agricultural derivative positions owned, controlled or carried by the trading member or a client of the trading member. On receipt of a written request from the JSE, a trading member or client must within two business days, furnish the JSE with a written statement in the form, manner and content prescribed by the JSE. Statements submitted to the JSE must include information necessary to enable the clearing house, or any person or committee authorised by the JSE to make a determination as to whether the relevant position of a trading member or client should be limited or reduced in terms of this rule.

#### 10.40.3 Net limits

- 10.40.3.1 No trading member or client may hold or control positions separately or in combination, net long or net short for the purchase or sale of a commodity for future delivery, or on a futures equivalent basis, options thereon, in excess of the limits as set out in the directives.
- 10.40.3.2 The clearing house or any person authorised by the JSE may direct any trading member owning, controlling or carrying a position for a client, whose total net speculative position as determined by the JSE exceeds the position limits as set out in the directives, to liquidate or otherwise reduce the position within a time period stipulated by the JSE.
- 10.40.3.3 For the purposes of determining whether a trading member or client has exceeded these position limits, the JSE will include all positions that such member or client by power of attorney or otherwise, directly or indirectly, owns or controls or where positions are held by two or more persons acting pursuant to an express or implied agreement or understanding the same as if the positions were held or trading positions were done by a single individual.

- 10.40.3.4            The term "net" shall mean the long or short position held after offsetting long futures equivalent positions against short futures equivalent positions.
- 10.40.4    Exceeding position limits
- The position limits set out in rule 10.40.3 may be exceeded to the extent that such positions are -
- 10.40.4.1            *bona fide* hedging positions in futures and options; or
- 10.40.4.2            spread or arbitrage positions between single months of a futures contract or, on a futures equivalent basis, options thereon, outside of the spot month, provided that such spread or arbitrage positions, when combined with other net positions in the single month, do not exceed the all months limit.



**SECTION**

**11**

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**Section 11: Management of members' and clients' funds**

**Scope of section**

- 11.10 Management of funds by the clearing house
- 11.20 Separation of funds
- 11.30 Clearing member bank accounts
- 11.40 Members' bank accounts
- 11.50 Relaxation or indulgence given by members
- 11.60 Acceptance of cash deposits

### 11.10 Management of funds by the clearing house

- 11.10.1 The clearing house shall separate the margins and other moneys, securities and other corporeal and incorporeal things of any member or client from its own assets and shall manage and invest such margins and other moneys in a manner and subject to such terms and conditions as the JSE shall decide.
  - 11.10.1.1 A clearing member may deposit any additional margin kept by him in terms of rule 8.60.3.1 with the clearing house.
  - 11.10.1.2 A member may deposit any additional or retained margin kept by him in terms of rule 8.60.3.2 in respect of his resident clients with the clearing house.
- 11.10.2 The clearing house, on behalf of the JSE, shall monthly in arrears, retain an interest consideration as determined by the JSE of not more than 2% per annum on any margins held by it in respect of any position registered in the name of any person during the month.

### 11.20 Separation of funds

A member shall -

- 11.20.1 at all times separate a client's or other member's funds, including money, securities and other corporeal and incorporeal things of the client or other member, from his own assets;
- 11.20.2 not co-mingle the funds of any client or another member with his own;
- 11.20.3 not allow the use of funds, securities or corporeal or incorporeal things belonging to any client or other member to finance his own trades or the trades of any other person;
- 11.20.4 not allow the use of funds, securities or corporeal or incorporeal things of any client or other member to operate his own business; and
- 11.20.5 in respect of the trades or positions of a member or client, not retain any money, securities or other corporeal or incorporeal things given by such member or client or received by the member on behalf of any person other than additional margin contemplated in rule 8.60.3 or retained margin contemplated in rule 8.60.4.

### 11.30 Clearing member bank accounts

- 11.30.1 The provisions of this section 11.30 shall apply in respect of additional margin not deposited by a clearing member with the clearing house.
- 11.30.2 A clearing member shall at all times keep a separate bank account into which he shall deposit any additional margin kept by him in terms of rule 8.60.3.1 and he shall at all times ensure that the correct amount of additional margin as required by his clearing agreement with the trading member is held in respect of each trading member with which he has entered into a clearing agreement and his records shall at all times reflect the amount of additional margin held in respect of each such trading member.

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11.10.1 amended with effect from 1 August 2005

11.10.1.1 introduced with effect from 12 December 2009

11.10.1.2 introduced with effect from 12 December 2009

11.20.1 amended with effect from 1 August 2005

11.20.2 amended with effect from 1 August 2005

11.20.4 amended with effect from 1 August 2005

11.20.5 amended with effect from 1 August 2005

11.30.1 introduced with effect from 12 December 2009

11.30 renumbered 11.30.2 with effect from 12 December 2009

**11.40 Members' bank accounts**

- 11.40.1 The provisions of this section 11.40 shall apply in respect of additional and/or retained margin not deposited by a member with the clearing house.
- 11.40.2 A member shall keep a separate trust account with a bank into which he shall deposit all additional and retained margin held by him with respect to his resident clients and he shall at all times keep records that shall show the amount held in respect of each client with respect to additional margin and with respect to retained margin and he shall at all times ensure that the correct amount of additional margin as required in terms of the relevant client agreement is held in respect of each client's positions.
- 11.40.2.1 A member shall keep a separate trust account with a bank into which he shall deposit directly or ensure the direct deposit of all client money either held or received by him with respect to his clients and he shall at all times ensure that the correct amount of additional margin as required in terms of the relevant client agreement is held in respect of each client's positions.
- 11.40.2.2 Other than in respect of the payment for fees and services rendered, a member shall at all times ensure that there is no deposit or receipt of client funds into his own proprietary account.

**11.50 Relaxation or indulgence given by members**

A member who gives any relaxation or indulgence to a client regarding the payment of margin, whether initial margin, variation margin or additional margin, shall be deemed to have granted the client a loan repayable on demand in the amount of the shortfall for the period of the relaxation or indulgence at a rate of interest specified in the client agreement between them or, if no rate is specified, at the member's customary rate or, if there is no customary rate, at the rate determined in terms of the Prescribed Rate of Interest Act 55 of 1975 and the member shall, if such loan is for a period exceeding two business days, immediately inform the client thereof in writing.

**11.60 Acceptance of cash deposits**

No member shall knowingly receive or accept a deposit of cash from any person exceeding an amount of R5 000. For the purpose of this rule "cash" shall mean coin and paper money of the Republic or any other country. A member shall not receive or accept two or more cash amounts exceeding R5 000 in total with the purpose of avoiding compliance with this rule.

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11.40 renumbered 11.40.1 amended with effect from 31 October 2002

New 11.40.1 introduced with effect from 12 December 2009

11.40 (2<sup>nd</sup> paragraph) renumbered 11.40 and amended with effect from 31 October 2002

11.40 (1<sup>st</sup> paragraph) renumbered 11.40.2 with effect from 12 December 2009

11.40.1 renumbered 11.40.2 .1 with effect from 12 December 2009

11.40.2 introduced with effect from 31 October 2002.

11.40.2 renumbered 11.40.2 .2 with effect from 12 December 2009

11.60 introduced with effect from 1 August 2005.

**SECTION**

**12**

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## Section 12: Defaults

### Scope of section

- 12.10 Default by a member
- 12.10A Default by a client
- 12.20 Consequences of a client's default
- 12.30 Consequences of default by a trading member
- 12.40 Consequences of default by a clearing member

### 12.10 Default by a member

A member shall default if -

- 12.10.1 he fails to fulfil any of his obligations in terms of a trade or a position; or
- 12.10.2 his membership is terminated; or
- 12.10.3 the JSE, in its sole discretion, considers that he has defaulted.

### 12.10A Default by a client

A client shall default if –

- 12.10A.1 he fails to fulfil any of his obligations in terms of a trade or a position; or
- 12.10A.2 the JSE, in its sole discretion, considers that he has defaulted; or
- 12.10A.3 he is in default with respect to one particular member and the JSE in its discretion decides that he is in default with respect to any other member.

### 12.20 Consequences of a client's default

Without limiting or detracting from any other remedies and rights which a member may have against a client, in the event of default by a client -

- 12.20.1 the client shall, save as provided in this rule, be suspended from trading through the member;
- 12.20.2 the member shall close out the positions of the client by trading to transfer those positions to himself and for his own account at a price approved by the JSE within two business days or such other period as may be determined by the JSE from the date of default;
- 12.20.3 any amount payable by the member to the client as a result of such close out or arising from any suretyship, cession, pledge or other security or from any other cause shall be set off against any amount payable by the client in terms of rule 8.90.7;
- 12.20.4 any shortfall remaining after the application of these derivatives rules shall be recovered from and any balance paid to the client.

### 12.30 Consequences of default by a trading member

Without limiting or detracting from any other remedies and rights which a member or client or the clearing house may have against a trading member, in the event of default by a trading member -

- 12.30.1 the trading member shall, save as provided in this rule, be suspended from trading;
- 12.30.2 the clearing member shall close out the proprietary positions of the trading member by trading to transfer those positions to himself and for his own account at a price approved by the JSE within two business days or such other period as may be determined by the JSE from the date of default;
- 12.30.3 any amount payable to the trading member as a result of such close out or arising from any suretyship, cession, pledge or other security or from any other cause shall be set off against any amount payable by the trading member in terms of rule 8.90.4;
- 12.30.4 if after all the above rules have been exhausted a shortfall remains, any JSE shares held by the trading member may be sold by the JSE and the proceeds utilised towards settlement of any remaining shortfall, and any surplus paid to the trading member;
- 12.30.5 any shortfall remaining after the application of these derivatives rules shall be recovered from and any balance paid to the trading member;
- 12.30.6 the clients of the trading member shall, without notice to such clients, become the clients of the clearing member, and-

12.30.4 amended with effect from 1 July 2005.

- 12.30.6.1 the clearing member shall assume the obligations of the trading member in terms of rule 8.90.7 that accrued on the date of default or on the previous business day;
- 12.30.6.2 all clients who did not previously have client agreements with the clearing member shall conclude client agreements with the clearing member to cover the positions and obligations assumed by the clearing member ; and
- 12.30.6.3 where the clearing member previously had a client agreement with the client of the trading member , such positions and obligations and subsequent trades shall be subject to that agreement;
- 12.30.6.4 the JSE shall on request provide the clearing member with the registration and contact details of the clients of a defaulting member as supplied to the JSE; and
- 12.30.6.5 on the default of a trading member, the clearing member shall contact the clients of such defaulting member immediately, to inform them of the default and to make arrangements for the transfer of existing client positions to the trading division of the clearing member or to another trading member.

#### 12.40 Consequences of default by a clearing member

Without limiting or detracting from any other remedies and rights which a member or client or the clearing house may have against a clearing member, in the event of default by a clearing member -

- 12.40.1 the clearing member shall, save as provided in this rule, be suspended from trading;
- 12.40.2 the clearing house shall open a separate trust account with a bank (hereinafter referred to as the "trust account"), into which shall be paid all margin due and payable, the proceeds from the sale of any JSE shares held by the clearing member, the proceeds from the suretyship referred to in rule 4.20.6 and any other moneys or securities held by the clearing house in favour of or on behalf of or for the account of the clearing member;
- 12.40.3 the clearing house shall manage the trust account and all the affairs of the clearing member arising from and relating to his membership of the JSE and -
  - 12.40.3.1 shall assume control of all assets held or administered by the clearing member on behalf of or for the account or benefit of any member or client, and, when requested by the JSE, render such reports to the JSE as the JSE may require;
  - 12.40.3.2 shall, without prior notice to the clearing member, close out all the proprietary positions of the clearing member at the best price it can obtain when, in its sole discretion, it so decides;
  - 12.40.3.3 any amount payable to the clearing member as a result of such close out or arising from any suretyship, cession, pledge or other security or from any other cause, shall be set off against any amount payable by the clearing member in terms of rule 8.90.1;
  - 12.40.3.4 if after all the above rules have been exhausted a shortfall remains, any JSE shares held by the clearing member may be sold by the JSE and the proceeds utilised towards settlement of any remaining shortfall, and any surplus paid to the clearing member;
  - 12.40.3.5 any shortfall remaining after the application of these derivatives rules shall be recovered from and any balance paid to the clearing member;
  - 12.40.3.6 transfer all positions of clients and trading members cleared through the clearing member to another clearing member until such time as the provisions of rule

12.30.6.4 introduced with effect from 31 October 2002.

12.30.6.5 introduced with effect from 31 October 2002.

12.40.2 amended with effect from 1 July 2005.

12.40.2 amended with effect from 1 August 2005.

12.40.3.4 amended with effect from 1 July 2005.

- 12.40.5 have been complied with: Provided that the clearing house shall be entitled to appoint a trustee to exercise all its powers in terms of this rule subject to the trustee being entitled to the same indemnity as the clearing house.
- 12.40.4 within a period decided by the JSE each trading member with whom the defaulting clearing member had a clearing agreement shall conclude a clearing agreement with another clearing member, failing which the trading member shall be deemed to be in default and his membership shall terminate;
- 12.40.5 the clients of the clearing member shall within a period determined by the JSE -
- 12.40.5.1 enter into client agreements with other members and trade with the clearing house and such other members to transfer their positions to them, or
- 12.40.5.2 trade with the clearing house to close out their positions;
- 12.40.6 after all liabilities of the defaulting clearing member have been settled, the amounts paid by any surety in terms of the derivatives rules shall be refunded from any balance remaining in the trust account and any further balance remaining shall be paid to the defaulting clearing member: Provided that if there are insufficient funds to cover such liabilities, the clearing house shall call on all clearing members for an equitable contribution on a voluntary basis to make good any shortfall and, in the event of such contributions being insufficient, the funds of the Fidelity Fund shall be applied.

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12.40.6 amended with effect from 2 November 2004.

12.40.6 amended with effect from 1 August 2005.

<p><b>SECTION</b></p> <p><b>13</b></p>
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**Section 13: Derivative securities**

**Scope of section**

- 13.10 List of derivative securities
- 13.20 Contract specification of the derivative securities
- 13.30 Listing of derivative securities
- 13.40 Exchange contracts



### 13.10 List of derivative securities

The derivative securities which may be bought or sold as provided for in rule 7.10 shall be kept by the JSE in the list of derivative securities in terms of section 12(6)(a) of the Act.

### 13.20 Contract specification of the derivative securities

- 13.20.1 The contract specification of derivative securities contained in the list of derivative securities kept in terms of these derivatives rules shall be determined by the JSE.
- 13.20.2 The JSE may, in its discretion, conduct surveys and research, call for the views of members and any committee and take such other steps as it may deem appropriate in determining the contract specification of derivative securities.

### 13.30 Listing of derivative securities

- 13.30.1 The JSE shall have the power to -
  - 13.30.1.1 add derivative securities to, or remove derivative securities from, the list of derivative securities kept in terms of these derivatives rules, or suspend derivative securities from such list;
  - 13.30.1.2 impose new conditions on or amend the existing conditions of such derivative securities.
- 13.30.2 The JSE shall notify all members of the approval of an application in terms of this rule, and shall stipulate a date for the coming into operation of an addition, removal or suspension of derivative securities or new or amended conditions relating to derivative securities.

### 13.40 Exchange contracts

- 13.40.1 The JSE may, in its sole discretion, decide which expiry months shall be specified for the futures and options contracts contained in the list referred to in rule 13.10 and it shall publish such exchange contracts in a notice to members: Provided that where the expiry date of a futures or options contract is longer than one year hence the JSE shall specify the expiry date.
- 13.40.2 Options contracts having strike prices as contained in the contract specification of the particular option contract may be traded when the expiry month of the underlying futures contract is specified as contemplated in rule 13.40.1.

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13.10 amended with effect from 1 August 2005.

13.20 amended with effect from 1 August 2005.

13.20.1 amended with effect from 1 August 2005.

13.20.1 amended with effect from 1 August 2005.

13.30 amended with effect from 1 August 2005.

13.30.1 amended with effect from 1 August 2005.

13.30.1.1 amended with effect from 1 August 2005.

13.30.1.2 amended with effect from 1 August 2005.

13.30.2 amended with effect from 1 August 2005.

**SECTION**

**14**

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**Section 14: Prescribed agreements**

The JSE shall prescribe and specify the basic terms and formal requirements of the agreements for dealing in derivative securities, including, but not limited to the clearing house agreement, the clearing agreement and the client agreement.

**SECTION**

**15**

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**Section 15: Management of investments**

**Scope of section**

- 15.10 Authority to manage investments in derivative securities
- 15.20 Trading as an investment manager in derivative securities
- 15.30 Management and investment advice in respect of JSE authorised investments other than derivative securities
- 15.35 Management of foreign investments
- 15.40 Trading with a discretionary financial services provider
- 15.50 Client statements
- 15.60 Exercising of discretion and provision of investment advice by employees

**15.10 Authority to manage investments in derivative securities**

All trading members are authorised to manage investments comprising derivative securities: Provided that they comply with the provisions of this rule, and other applicable derivatives rules, and undertake such management in compliance with the prescribed client agreement. This rule shall, however, not apply to a member if the member is a bank or if the majority of such member's intermediary services do not relate to trading in JSE listed securities as an authorised user of any of the JSE markets. Such a member shall be required to obtain a licence to operate as a financial services provider in terms of the FAIS Act in respect of any advice or intermediary services which it provides to clients relating to derivative securities, and the relevant provisions of that Act shall apply to such advice or intermediary services.

**15.20 Trading as an investment manager in derivative securities**

- 15.20.1 A member may not trade as an investment manager in derivative securities for or on behalf of a client unless he or she has concluded a discretionary client agreement with the client and the client has been registered as a client of that member with the clearing house in terms of rule 7.60.2.
- 15.20.2 An investment manager may not directly or indirectly buy or sell derivative securities for or from his own account or any account in which an employee has a direct or indirect beneficial interest, to or from a client.

**15.30 Management and investment advice in respect of JSE authorised investments other than derivative securities**

- 15.30.1 This rule is only applicable to trading members whose investment management activities in relation to derivative securities are regulated by the JSE in terms of rule 15.10.
- 15.30.2 The provisions of rules 15.30.4 to 15.30.13 shall not apply to a trading member if the trading member is a bank or if the majority of such member's intermediary services do not relate to trading in JSE listed securities as an authorised user of any of the JSE markets. Such a member shall be required to obtain a licence to operate as a financial services provider in terms of the FAIS Act in respect of any advice or intermediary services which it provides to clients relating to JSE authorised investments other than derivative securities and the relevant provisions of that Act shall apply to such advice or intermediary services.
- 15.30.3 The provisions of rules 15.30.4 to 15.30.13 shall not apply to a trading member in respect of transactions in JSE authorised investments other than derivative securities where such transactions relate to securities listed on an exchange other than the JSE, including the Bond Exchange of South Africa, and where such transactions are conducted as an authorised user of such exchange. Such transactions will instead be subject to the rules of the relevant exchange.
- 15.30.4 A trading member may not enter into transactions as an investment manager in JSE authorised investments other than derivative securities on behalf of clients or provide investment advice to any clients in respect of such investments unless it has notified the Director: Surveillance, in writing, of its intention to effect such transactions or provide such investment advice.
- 15.30.5 In order for the JSE to identify the scope of an investment manager's activities in JSE authorised investments other than derivative securities, the written notification to the Director: Surveillance

15.10 amended with effect from 1 August 2005.

15.20 deleted and replaced with rule 15.30 with effect from 5 January 2005.

15.30 renumbered 15.20 and amended with effect from 5 January 2005.

15.20 amended with effect from 1 August 2005.

15.30.1 renumbered 15.20.1 and amended with effect from 5 January 2005.

15.20.1 amended with effect from 1 August 2005.

15.30.2 amended with effect from 10 October 2002; renumbered 15.20.2 and amended with effect from 5 January 2005.

15.20.2 amended with effect from 1 August 2005.

15.30 new rule introduced with effect from 5 January 2005.

15.30 amended with effect from 1 August 2005.

15.30.1 to 15.30.3 introduced with effect from 1 August 2005.

15.30.1 to 15.30.10 renumbered 15.30.4 to 15.30.13 and amended with effect from 1 August 2005.

- referred to in rule 15.30.4 shall indicate which specific investments the investment manager is intending either to transact in on behalf of its clients or to provide investment advice on, or both.
- 15.30.6 The details which are required to be submitted to the Director: Surveillance in terms of rule 15.30.5 shall specify the particular types of JSE authorised investments other than derivative securities in which activity is to be conducted, but need not include the name of the particular investments.
- 15.30.7 The failure by an investment manager to provide the notification referred to in rules 15.30.4 and 15.30.5 prior to undertaking the relevant activity may result in the JSE imposing restrictions or a prohibition on the investment manager's activities in JSE authorised investments other than derivative securities.
- 15.30.8 If an investment manager has previously notified the Director: Surveillance in terms of rules 15.30.4 and 15.30.5 of its intention to conduct activity in any JSE authorised investments other than derivative securities and the investment manager ceases to conduct activity in respect of one or more particular types of investments, with no intention of resuming activity in such investments in the foreseeable future, the investment manager shall notify the Director: Surveillance forthwith, in writing, of such cessation of activity.
- 15.30.9 Any decision by an investment manager to invest in JSE authorised investments other than derivative securities on behalf of a client shall be made with due regard to the relevant provisions of rule 16.10 regarding the conduct of members, particularly the provisions relating to the General Conduct Towards Clients in rule 16.10.2 and the Exercise of Discretion in rule 16.10.3.
- 15.30.10 An investment manager shall not effect transactions in JSE authorised investments other than derivative securities on behalf of a client unless the client has given his general consent to such transactions being effected in a written mandate.
- 15.30.11 Every investment manager who purchases JSE authorised investments other than derivative securities on behalf of a client and who is accountable to the client for the client's investment in such JSE authorised investments shall comply with the following requirements:
- 15.30.11.1 the relevant investments shall be segregated from the investment manager's own assets at all times. If the JSE authorised investments other than derivative securities are held in an account maintained by another financial services provider, the account shall either be opened in the client's own name or, if the investment manager opens a single account in respect of transactions executed on behalf of more than one client, the investment manager shall procure that the account is clearly designated in the records of the relevant financial services provider as being an account utilised for investments made by the investment manager on behalf of its clients;
  - 15.30.11.2 the investment manager shall maintain proper accounting records in respect of all JSE authorised investments other than derivative securities purchased or sold on behalf of clients. These records shall be updated forthwith in respect of any transactions in JSE authorised investments other than derivative securities and shall clearly identify the beneficial owners of all such investments at all times;
  - 15.30.11.3 the investment manager must balance its clients' holdings in JSE authorised investments other than derivative securities, as reflected in the investment manager's records, with the accounts maintained by the other financial services providers who hold such investments, on a monthly basis. Any differences identified between the respective records must be rectified forthwith.
- 15.30.12 Every investment manager who holds JSE authorised investments other than derivative securities on behalf of a client or who is accountable to a client for such investments shall implement and maintain an effective system of internal controls to safeguard such investments and prevent unauthorised access thereto.
- 15.30.13 Transactions by an investment manager in JSE authorised investments other than derivative securities which constitute foreign investments shall also be subject to 15.35.

15.30.11 and 15.30.12 deleted with effect from 1 August 2005.

### 15.35 Management of foreign investments

- 15.35.1 For the purpose of this rule, foreign investments means the following JSE authorised investments –
  - 15.35.1.1 securities listed on an external exchange;
  - 15.35.1.2 units or any other form of participation in a foreign collective investment scheme approved by the Registrar of Collective Investment Schemes in terms of section 65 of the Collective Investment Schemes Control Act, 2002;
  - 15.35.1.3 units or any other form of participation in a collective investment scheme licensed or registered in a foreign country; and
  - 15.35.1.4 foreign funds intended for the purchase of such securities, units or participation.
- 15.35.2 An investment manager shall not enter into transactions in foreign investments on behalf of a client unless:
  - 15.35.2.1 the mandate entered into between the investment manager and the client in terms of rule 15.30.10 –
    - 15.35.2.1.1 stipulates that the investment manager is authorised to invest in foreign investments;
    - 15.35.2.1.2 contains a statement pertaining to the risks associated with foreign investments, with particular reference to any currency risk;
    - 15.35.2.1.3 states whether there are any jurisdiction restrictions in respect of the particular foreign investments; and
    - 15.35.2.1.4 contains full particulars of the manner in which such investments shall be made and in whose name such investments shall be held or registered;
  - 15.35.2.2 the client has obtained the prescribed tax clearance certificate from the South African Revenue Service.
- 15.35.3 An investment manager must, on request by a client, furnish the client with the following information regarding any foreign investments made by the investment manager on behalf of the client –
  - 15.35.3.1 the name of the licensed external exchange on which the foreign investments are listed, if applicable;
  - 15.35.3.2 the country in which the foreign investments are licensed or registered and the name and address of the relevant licensing or registration authority, if applicable;
  - 15.35.3.3 the name and address of the foreign financial services provider used by the investment manager to purchase or hold the foreign investments, if applicable; and
  - 15.35.3.4 the name and address of the regulator of the foreign financial services provider referred to in rule 15.35.3.3 and whether such foreign financial services provider is approved or registered by such regulator.

### 15.40 Trading with a discretionary financial services provider

A member shall not effect a transaction with a person whom the member reasonably believes requires authorisation as a discretionary financial services provider or the status of a representative in terms of the FAIS Act, without having taken reasonable measures to ascertain that such person has the required authorisation or status.

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15.35.1 amended with effect from 1 August 2005.  
 15.35.1.1 amended with effect from 1 August 2005.  
 15.35.1.4 amended with effect from 1 August 2005.  
 15.35.2.1 amended with effect from 1 August 2005.  
 15.35.3.1 amended with effect from 1 August 2005.  
 15.35.3.4 amended with effect from 1 August 2005.  
 15.40 deleted and replaced with new rule with effect from 5 January 2005.

**15.50 Client statements**

- 15.50.1 An investment manager must provide a written statement to a client on a monthly basis which complies with 15.50.2 and 15.50.3.
- 15.50.2 A client statement must contain such information as is reasonably necessary to enable the client to –
  - 15.50.2.1 produce a set of financial statements;
  - 15.50.2.2 determine the composition of the investments comprising the portfolio held by the member or for which the member is accountable to the client and the changes thereto over the reporting period, if applicable; and
  - 15.50.2.3 determine the market value of the investments comprising the portfolio held by the member or for which the member is accountable to the client and the changes therein over the reporting period, if applicable.
- 15.50.3 Pursuant to rule 15.50.2, and 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:
  - 15.50.3.1 the quantity, description and market value of each investment comprising the portfolio held by the member or for which the member is accountable to the client, at the reporting date;
  - 15.50.3.2 the amount of funds held by the member or which has been invested by the member on behalf of the client and for which the member is accountable to the client, at the reporting date;
  - 15.50.3.3 if any of the investments or funds are reflected in a foreign currency, the relevant currency exchange rate at the reporting date must also be reflected;
  - 15.50.3.4 investments purchased or sold during the reporting period;
  - 15.50.3.5 receipts and payments of funds during the reporting period;
  - 15.50.3.6 details of income earned and expenditure incurred during the reporting period;
  - 15.50.3.7 non-cash transactions during the reporting period, including non-cash components of corporate actions and option expiries;
  - 15.50.3.8 investments transferred into and out of the portfolio during the reporting period;
  - 15.50.3.9 identification of those investments which at the reporting date were loaned to any third party but for which the member is still accountable to the client;
  - 15.50.3.10 the quantity, description and market value of any financial products, or the amount of funds, held as collateral by the member on behalf of the client in respect of any loans made by the client;
  - 15.50.3.11 identification of those investments or funds which at the reporting date were utilised to secure loans to the client or borrowings made on behalf of the client;
  - 15.50.3.12 identification of those investments or funds which at the reporting date were utilised as margin in respect of open positions in any financial product;
  - 15.50.3.13 in respect of investments in derivative instruments, a description of the underlying financial product, index, commodity or thing, the expiry month and in the case of options, the exercise or strike price; and
  - 15.50.3.14 if the statement reflects any investments or funds which are not held by the member and for which the member is not accountable to the client, it should clearly indicate that fact in relation to such investments or funds.

15.50 deleted and replaced with new rule with effect from 5 January 2005.

15.50.3 amended with effect from 1 August 2005.

15.50.3.13 amended with effect from 1 August 2005.

- 15.50.4 The information referred to in rule 15.50.3 may be provided to the client in separate statements either during the reporting period or as at the reporting date.
- 15.50.5 A client statement shall be provided either to the client or to an agent or third party nominated by the client in writing.

**15.60 Exercising of discretion and provision of investment advice by employees**

A trading member shall, in the course of its business, exercise discretion in the management of JSE authorised investments and provide investment advice to its clients on the buying and selling of JSE authorised investments only through an employee who has obtained such qualification as may be prescribed in the directives.

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15.50.4 amended with effect from 1 August 2005.

15.60 introduced with effect from 1 August 2005.



**SECTION**

**16**

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**Section 16: Ethics and conduct**

**Scope of section**

- 16.10 Code of conduct
- 16.15 Unsolicited calls
- 16.20 Advertising by members
- 16.30 Contraventions to be reported

**16.10 Code of conduct****16.10.1 Standards of Integrity**

A member shall, in the conduct of its business, observe high standards of integrity and fair dealing. It must –

- 16.10.1.1 not provide, or accept material inducements of a non-business nature to, or from any person to obtain business;
- 16.10.1.2 not knowingly circulate information or submit information to the JSE or the clearing house which is false or misleading, or which affects or tends to affect unfairly the price of any derivative security;
- 16.10.1.3 not knowingly countenance any attempt to manipulate the market, nor to influence persons for such a purpose;
- 16.10.1.4 not be a party to or facilitate or enter into a trade which is fictitious or which has a dishonest or unlawful motive;
- 16.10.1.5 conduct its activities in a manner that is compatible with the objects of the Act and with full respect for the dignity of the JSE; and
- 16.10.1.6 not participate in any dealings with other members, clients, the media or other persons, which may be of such a nature as to discredit the JSE.

**16.10.2 General conduct towards clients**

In its dealings with clients, a member shall –

- 16.10.2.1 act honestly and fairly;
- 16.10.2.2 act with due skill, care and diligence, and in the interests of clients;
- 16.10.2.3 exercise independent professional judgement;
- 16.10.2.4 act promptly on and in accordance with the instructions of a client, and exercise any discretion in a responsible manner;
- 16.10.2.5 avoid conflicts of interest and when they cannot be avoided, ensure fair treatment to clients by disclosure, confidentiality or declining to act. A member shall not unfairly place its interests above those of its clients; and
- 16.10.2.6 not make any statement, promise or forecast which it knows to be misleading or is likely to be misleading and that has the effect or may have the effect of inducing a client to enter into a client agreement.

**16.10.3 Furnishing of investment advice and exercise of discretion**

In providing investment advice to a client, other than a professional client, or exercising discretion in relation to the management of JSE authorised investments, a member shall –

- 16.10.3.1 take reasonable steps to seek from the client information regarding the client's financial situation, investment experience, particular needs and objectives in connection with the services required, to enable the member to provide the client with sound investment advice or make an appropriate investment decision;

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16.10 deleted and replaced with new rule with effect from 5 January 2005.

16.10.1 amended with effect from 1 August 2005.

16.10.1.1 amended with effect from 1 August 2005.

16.10.1.2 amended with effect from 1 August 2005.

16.10.1.5 amended with effect from 1 August 2005.

16.10.3 amended with effect from 1 August 2005.

16.10.3.1 amended with effect from 1 August 2005.

- 16.10.3.2 conduct an analysis, based on the information obtained, for the purpose of advising the client or making an investment decision;
- 16.10.3.3 identify the JSE authorised investments that will suit the client's risk profile and financial needs, subject to the terms of any client agreement entered into between the client and the member or any other mandate provided to the member by the client;
- 16.10.3.4 take reasonable steps to ensure that the client understands any investment advice that has been provided, as well as the nature and material terms and risks involved in the relevant transaction, so as to enable the client to make an informed decision; and
- 16.10.3.5 ensure that any investment advice provided or discretion exercised is not for the sole purpose of maximising the income of the member.
- 16.10.4 Disclosure to clients
  - 16.10.4.1 In rendering a service to a client, any representations made and information provided by a member -
    - 16.10.4.1.1 must be factually correct;
    - 16.10.4.1.2 must be provided in plain language, avoid uncertainty or confusion and not be misleading;
    - 16.10.4.1.3 must be adequate and appropriate in the circumstances of the particular service, taking into account the factually established or reasonably assumed level of knowledge of the client;
    - 16.10.4.1.4 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;
    - 16.10.4.1.5 need not be duplicated or repeated to the same client unless material or significant changes affecting that client occur, or the relevant service renders it necessary, in which case a disclosure of the changes must be made to the client without delay.
  - 16.10.4.2 A member –
    - 16.10.4.2.1 must disclose full and accurate information about the fees and any other charges that may be levied on clients;
    - 16.10.4.2.2 may 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 objectives of the Act or is required under any law;
    - 16.10.4.2.3 must advise a client in advance of any restrictions or limitations that may affect the access of that client to their funds or JSE authorised investments.
- 16.10.5 Maintenance of client records
  - 16.10.5.1 A member must maintain proper, complete, accurate and secure records in relation to the services rendered to its clients.
  - 16.10.5.2 A member must have appropriate procedures and systems in place to store and retrieve, in a manner safe from destruction, a record of all –

16.10.3.3 amended with effect from 1 August 2005.

16.10.3.4 amended with effect from 1 August 2005.

16.10.3.5 amended with effect from 1 August 2005.

16.10.4.2.3 amended with effect from 1 August 2005.

- 16.10.5.2.1 communications relating to a service rendered to a client, including instructions given by the client to the member;
- 16.10.5.2.2 transaction documentation relating to clients;
- 16.10.5.2.3 contractual arrangements between the member and its clients, including client agreements and mandates prescribed by the rules; and
- 16.10.5.2.4 client particulars required to be provided in terms of the rules or which are necessary for the effective operation of client accounts.
- 16.10.5.3 The client records in rule 16.10.5.2 may be kept in printed, electronic or voice-recorded format.
- 16.10.5.4 Members need not keep the records in 16.10.5.2 themselves but must be capable of making such records available for inspection within seven days.
- 16.10.5.5 All instructions given by clients to execute transactions must be kept for a period of at least six months after the relevant transactions and all other client records in 16.10.5.2 must be kept for at least five years after the rendering of the services concerned.
- 16.10.6 Contact with the member
 

A member must provide for the necessary resources and functionality to ensure that clients are able to readily contact the member.
- 16.10.7 Waiver of rights
 

A member may not request or induce in any manner a client to waive any right or benefit conferred on the client by or in terms of this code or the derivatives rules, or recognise, accept or act on any such waiver by the client, and any such waiver is void.
- 16.10.8 Adequacy of financial resources
 

A member shall ensure that it maintains adequate financial resources to meet its business commitments and to withstand the risks to which its business is subject.
- 16.10.9 Internal resources and risk management
 

A member shall employ effectively the resources and procedures that are necessary for the proper performance of its business activities and to eliminate, as far as is reasonably possible, the risk that clients will suffer financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions. It shall organise and control its internal affairs in a reasonable manner and keep proper records. Its staff shall be suitable, adequately trained and properly supervised.
- 16.10.10 Co-operation with regulators
 

A member shall deal with the JSE as its regulator in an open co-operative manner and keep the JSE promptly informed of anything concerning the JSE which might reasonably be expected to be disclosed to it. A member shall also provide reasonable co-operation to any other regulatory body or any law enforcement agency in respect of any matters which are the subject of an investigation by such body or agency relating to an alleged contravention of the Act, or any equivalent foreign legislation or any other law governing the activities of the member.
- 16.10.11 Enforcement of code on employees
 

A member shall enforce the provisions of this code on all its employees.

16.10.5.3 amended with effect from 1 August 2005.

16.10.6 amended with effect from 1 August 2005.

16.10.7 amended with effect from 1 August 2005.

16.10.11 amended with effect from 1 August 2005.

### 16.15 Unsolicited calls

A member may enter into a transaction with or on behalf of a person where the transaction is as a result of an unsolicited call, provided that the member has complied with the requirements set out in rules 16.10.3 and 16.10.4.

### 16.20 Advertising by members

#### 16.20.1 Advertising material of a member –

- 16.20.1.1 must provide accurate, complete and unambiguous information about any JSE authorised investment or any service rendered by the member;
- 16.20.1.2 must emphasise the risk of loss and uncertainty of future results;
- 16.20.1.3 must discern fact from opinion;
- 16.20.1.4 may not be comparative in relation to another member; and
- 16.20.1.5 may not make the statement or suggest that trading in derivatives securities on the JSE is appropriate for all persons.

#### 16.20.2 An advertisement by a member –

- 16.20.2.1 may not contain any statement, promise or forecast which is fraudulent, untrue or misleading;
- 16.20.2.2 must, if it contains –
  - 16.20.2.2.1 performance data (including awards and rankings), include references to their source and date;
  - 16.20.2.2.2 illustrations, forecasts or hypothetical data –
    - 16.20.2.2.2.1 contain support in the form of clearly stated basic assumptions (including, but not limited to, any relevant assumptions in respect of performance, returns, costs and charges) with a reasonable prospect of being met under current circumstances;
    - 16.20.2.2.2.2 make it clear that they are not guaranteed and are provided for illustrative purposes only; and
    - 16.20.2.2.2.3 also contain, where returns or benefits are dependent on the performance of underlying assets or other variable market factors, clear indications of such dependence;
  - 16.20.2.2.3 a warning statement about risks involved in buying or selling a JSE authorised investment, prominently display such statement; and
  - 16.20.2.2.4 information about past performances, also contain a warning that past performances are not necessarily indicative of future performances; and
- 16.20.2.3 must, if the investment value of a JSE authorised investment mentioned in the advertisement is not guaranteed, contain a warning that no guarantees are provided.

16.15 introduced with effect from 1 August 2005.

16.20.1 deleted and replaced with new rule with effect from 5 January 2005.

16.20.1.1 amended with effect from 1 August 2005.

16.20.1.5 amended with effect from 1 August 2005.

16.20.2 re-numbered 16.20.3 new rule 16.20.2 introduced with effect from 5 January 2005.

16.20.2.2.3 amended with effect from 1 August 2005.

16.20.2.3 amended with effect from 1 August 2005.

- 16.20.3 In the event that the JSE considers that a member has failed to conform to any of the advertising requirements published by the JSE under rule 16.20.1 or 16.20.2, it may at its discretion (without prejudice to its other powers under these derivatives rules) require that no further advertising material or other promotional or marketing material shall be published by or on behalf of such member unless it has been submitted to the JSE in advance and the JSE has notified the member that the material is suitable for publication.

**16.30 Contraventions to be reported**

Every member shall report to the JSE any contravention of the Act, the derivatives rules and directives that comes to its attention.

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16.20.2 re-numbered 16.20.3 and amended with effect from 5 January 2005.

16.30 amended with effect from 1 August 2005.

<p><b>SECTION</b></p> <p><b>17</b></p>
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## Section 17: Resolution of disputes

### Scope of section

#### *Complaints*

- 17.10 Client complaints
- 17.20 Internal complaint handling procedures
- 17.30 Timely response to complaints
- 17.40 Redress
- 17.50 Recording of complaints
- 17.60 Unresolved client complaints

#### *Disputes*

- 17.70 Applicability of dispute resolution rules
- 17.80 Reporting of a dispute
- 17.90 Declaration of a dispute
- 17.100 Consideration by an ombud
- 17.110 Costs
- 17.120 Limitation of liability

## Complaints

### 17.10 Client complaints

- 17.10.1 For the purposes of Section 17 of the rules, a client complaint is defined as any complaint in relation to the provision of regulated services, in which the client alleges that he has suffered, or is likely to suffer, financial prejudice as a result of the member –
- 17.10.1.1 contravening or failing to comply with any instruction given by the client, or any agreement or mandate entered into with the client;
  - 17.10.1.2 contravening or failing to comply with the rules and the directives;
  - 17.10.1.3 acting dishonestly, negligently or recklessly; or
  - 17.10.1.4 treating the client unreasonably or unfairly.
- 17.10.2 Every member must establish and maintain appropriate procedures for the handling of client complaints.

### 17.20 Internal complaint handling procedures

- 17.20.1 A member's internal complaint handling procedures must provide for –
- 17.20.1.1 the receipt of oral or written complaints;
  - 17.20.1.2 the appropriate investigation of complaints;
  - 17.20.1.3 an appropriate decision-making process in relation to the response to a client complaint;
  - 17.20.1.4 notification of the decision to the client; and
  - 17.20.1.5 the recording of complaints.
- 17.20.2 A member's internal complaint handling procedures must be designed to ensure that –
- 17.20.2.1 all complaints are handled fairly, effectively and promptly;
  - 17.20.2.2 recurring or systemic problems are identified, investigated and remedied;
  - 17.20.2.3 the number of unresolved complaints to be referred to the JSE in terms of the rule 17.60 are minimised;
  - 17.20.2.4 complaints are investigated by an employee of sufficient competence who, where appropriate, was not directly involved in the matter which is the subject of a complaint;
  - 17.20.2.5 the employee responsible for the resolution of complaints has the necessary authority to resolve complaints or has ready access to an employee who has the necessary authority; and
  - 17.20.2.6 relevant employees are aware of the member's internal complaint handling procedures and comply with them.

### 17.30 Timeous response to complaints

A member must respond to a client complaint within 4 weeks of receiving the complaint in terms of rule 5.20.1.1 or, within such period, provide the complainant with an appropriate explanation as to why the member is not, at that time, in a position to respond and must indicate by when the member will respond.

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Section 17 deleted in entirety and replaced with effect from 1 August 2005

New 17.10.1 introduced with effect from 25 June 2007

17.10.1 renumbered 17.10.1.1 with effect from 25 June 2007

17.10.2 renumbered 17.10.1.2 with effect from 25 June 2007

17.10.3 renumbered 17.10.1.3 with effect from 25 June 2007

17.10.4 amended and renumbered 17.10.1.4 with effect from 25 June 2007

New 17.10.2 introduced with effect from 25 June 2007

17.30 amended with effect from 25 June 2007



**17.40 Redress**

- 17.40.1 Where a member decides that redress in the form of compensation is appropriate in resolving a complaint, the member must provide the complainant with fair compensation and must comply with any offer of compensation made by it which the complainant accepts.
- 17.40.2 Where a member decides that redress in a form other than compensation is appropriate in resolving a complaint, the member must provide the redress as soon as practicable.

**17.50 Recording of complaints**

- 17.50.1 A member must maintain a record of all client complaints. The record of each complaint must include –
  - 17.50.1.1 the identity of the complainant;
  - 17.50.1.2 the substance of the complaint; and
  - 17.50.1.3 all correspondence in relation to the complaint.
- 17.50.2 The records referred to in rule 17.50.1 must be retained by the member for a period of 5 years from the date of the receipt of the complaint.

**17.60 Unresolved client complaints**

- 17.60.1 A client complaint will be deemed to be unresolved if the complainant is not satisfied with the resolution of the complaint proposed by the member.
- 17.60.2 A complainant may lodge an unresolved complaint, in writing, with the Director: Surveillance giving full particulars of the matter concerned.
- 17.60.3 In order for an unresolved complaint to be considered by the JSE Surveillance Department, the complaint must be lodged with the Director: Surveillance within 4 weeks of the receipt by the complainant of the member's response referred to in rule 17.30 and within 6 months of the conduct by the member giving rise to the complaint.
- 17.60.4 An unresolved complaint which is lodged subsequent to the period referred to in rule 17.60.3 will be considered, provided that failure to lodge the complaint within the relevant period was through no fault of the client.
- 17.60.5 The JSE Surveillance Department may request the member and the complainant to provide copies of all relevant correspondence and documentation that is required to review the complaint.
- 17.60.6 The JSE Surveillance Department will endeavour to facilitate a resolution of the complaint between the member and the complainant.
- 17.60.7 If the JSE Surveillance Department is unable to facilitate a resolution of the complaint within 4 weeks of lodgement of the complaint with it, the Director: Surveillance will refer the unresolved complaint to the Company Secretary of the JSE to be dealt with in terms of the dispute resolution rules.

**Disputes**

**17.70 Applicability of dispute resolution rules**

- 17.70.1 Rules 17.70 to 17.120 ("the dispute resolution rules") are intended to facilitate the equitable and expeditious settlement of disputes that –
  - 17.70.1.1 a client has with a member, in respect of an unresolved complaint;
  - 17.70.1.2 a member has with another member, in respect of transactions in derivative securities; or
  - 17.70.1.3 a member has with a client, in respect of transactions in derivative securities.

17.60.3 amended with effect from 25 June 2007

- 17.70.2 The dispute resolution rules only apply –
- 17.70.2.1 where the amount in dispute is in excess of R2 000;
  - 17.70.2.2 where the dispute is not the subject of existing litigation;
  - 17.70.2.3 in the case of a dispute that a client has with a member, where the amount in dispute either does not exceed R500 000 or, where the amount in dispute exceeds R500 000, if the consent of both parties to proceed has been obtained;
  - 17.70.2.4 in the case of a dispute that a member has with another member, if the members are able to evidence to the satisfaction of the Director: Surveillance that reasonable endeavours have been made by the said members to resolve the dispute, and if the consent of both parties to proceed has been obtained;
  - 17.70.2.5 in the case of a dispute that a member has with a client, if the consent of the client to proceed has been obtained.

#### 17.80 Reporting of a dispute

- 17.80.1 An unresolved client complaint that the JSE Surveillance Department is not able to resolve in terms of rule 17.60 will be reported as a dispute by the Director: Surveillance to the Company Secretary of the JSE if the client elects to pursue the dispute resolution process.
- 17.80.2 A dispute between two members in respect of transactions in derivative securities must be reported in writing, by either member, to the Company Secretary of the JSE, within 1 week of the circumstance giving rise to the dispute having arisen.
- 17.80.3 A dispute that a member has with a client in respect of transactions in derivative securities must be reported in writing, by the member, to the Company Secretary of the JSE, within 6 months of the circumstance giving rise to the dispute having arisen.
- 17.80.4 The Company Secretary of the JSE may, at any time, request any of the parties to a dispute to furnish him with such further information relating to the dispute as may be required.

#### 17.90 Declaration of a dispute

A dispute reported in terms of rule 17.80 will, subject to the criteria set out in rule 17.70.2 having been met, be declared a dispute by the Company Secretary and will be referred by the Company Secretary to a duly appointed ombud for consideration.

#### 17.100 Consideration by an ombud

- 17.100.1 The JSE will appoint an ombud to consider a dispute, who is a retired judge of the High Court of South Africa or a Senior Counsel.
- 17.100.2 Within 3 weeks of the dispute having been referred to the ombud for consideration, the claimant must set out the subject matter of the claim in a written statement, including all the material facts, and furnish this statement, along with all relevant documentation upon which the claim is based, to the ombud.
- 17.100.3 The ombud may require the claimant to expand upon his statement of claim or provide further evidence or particulars as he deems necessary within such reasonable time as is specified by the ombud.
- 17.100.4 The other party to the dispute, hereafter referred to as the defendant, must be provided with a copy of the written statement of claim by the ombud. The defendant must furnish the ombud with its written response to the statement of claim within 3 weeks of having received such. In addition to the defendant's written response, the defendant must attach thereto all other evidence relating to the dispute.
- 17.100.5 The ombud may require the defendant to expand upon its response or provide further evidence or particulars as he deems necessary within such reasonable time as specified by the ombud and

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17.100.4 amended with effect from 25 June 2007

may require the claimant to provide a written reply to the defendant's response within such reasonable time as he may specify.

- 17.100.6 The ombud may at his discretion decide that a number of disputes based on similar occurrences or similar facts be consolidated and treated as a single dispute.
- 17.100.7 After ascertaining the parties availability, the ombud will, subject to rule 17.100.8, furnish the parties with written notification of the date on which the dispute will be heard.
- 17.100.8 The ombud may make a decision regarding any issues relating to the dispute or consider the dispute on the basis of the documents submitted in terms of rules 17.100.2 to 17.100.5 without the necessity of a hearing.
- 17.100.9 The dispute resolution proceedings will be conducted without legal representation of any of the parties, unless the ombud in his sole discretion decides otherwise.
- 17.100.10 The ombud, in reaching a decision, may consult with any third party regarding any issue relating to the dispute. The ombud has the discretion to call upon any third party to participate in the dispute resolution proceedings.
- 17.100.11 The ombud will, after having considered the information as presented to him by the parties and such other information as he may request, make his decision within 3 weeks of having considered the dispute. The ombud must, at the request of any party to the dispute, provide written reasons for his decision.
- 17.100.12 The ombud's decision will be furnished to the parties in writing.
- 17.100.13 The ombud is not obliged to provide a ruling on a dispute if he is of the view that the dispute is of such a complex nature that it cannot be resolved expeditiously by means of the dispute resolution process and can only be properly considered by a court of law.
- 17.100.14 Any decision made in terms of rule 17.100.12 must be complied with by the party against whom the decision is made within seven days of the decision having been made by the ombud.
- 17.100.15 Unless the JSE, the ombud and the parties to the dispute agree otherwise, the identity of the parties, the nature of the evidence and the details of the ombud's deliberations and finding, and all other information pertaining to the proceedings will be kept confidential by all parties thereto, unless disclosure by the JSE is required by law.

#### **17.110 Costs of the proceedings**

- 17.110.1 The parties to any dispute resolution proceeding in terms of rule 17.100 may be required to pay to the JSE, before the proceedings commence, such amount as the JSE may determine as a deposit to cover a portion of the costs of the proceedings.
- 17.110.2 The ombud may, as part of his award and as he deems appropriate in the circumstances, make an order on costs which may include an order against the unsuccessful party for payment of all the costs of the proceedings.

17.100.7 amended with effect from 25 June 2007

New 17.100.8 introduced with effect from 25 June 2007

17.100.8 renumbered 17.100.9 with effect from 25 June 2007

17.100.9 renumbered 17.100.10 with effect from 25 June 2007

17.100.10 amended and renumbered 17.100.11 with effect from 25 June 2007

17.100.11 amended and renumbered 17.100.12 with effect from 25 June 2007

17.100.12 renumbered 17.100.13 with effect from 25 June 2007

17.100.13 amended and renumbered 17.100.14 with effect from 25 June 2007

17.100.14 renumbered 17.100.15 with effect from 25 June 2007

Old 17.110.1 deleted with effect from 25 June 2007

17.110.2 amended and renumbered 17.110.1 with effect from 25 June 2007

17.110.3 deleted with effect from 25 June 2007

17.110.4 renumbered 17.110.2 with effect from 25 June 2007

**17.120 Limitation of Liability**

No officer, employee or representative of the JSE or any member of the controlling body, or the ombud appointed in terms of these rules shall be liable for any loss sustained by, or damage caused to any person as a result of anything done or omitted by them in the *bona fide* or negligent performance of any function under or in terms of this rule 17.