



JSE Derivatives Compliance Officer Examination
Examination Material
October 2010

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1. Introduction

This booklet sets out the syllabus of the JSE Derivatives Compliance Officer Examination (as prescribed by the JSE in terms of rule 5.10.1.2 of the Derivatives rules. The examination is in the form of multiple-choice questions that have been designed to assess whether the candidate has mastered the required outcomes.

2. Structure of the JSE Derivatives Compliance Officer Examination

The examination consists of 50 multiple-choice questions randomly selected from the syllabus. There is no negative marking and a correct answer scores 1 mark. The duration of the examination is one hour. A total of 50 questions for 50 marks will be asked and a candidate must achieve 64% to pass the examination.

Each multiple-choice question contains a key (correct answer or statement/s) and certain distracters (incorrect answers or statements). The drafter of multiple choice questions strives to make the distracters appear plausible i.e. they look correct to a person who did not read the material properly, but they are actually incorrect.

The purpose of Learning Outcomes Statements is to advise a learner what will be expected of him or her in an assessment (exam) situation. The Learning Outcomes Statements state what a learner should know, understand or be able to apply after he/she has completed studying the course material. In the actual assessment, these Learning Outcomes Statements have been used to formulate the questions to test the agreed outcome. A learner must therefore use these Learning Outcomes Statements as a guide as to what and how he/she should study.

As the syllabus has been prescribed at a point in time, the questions will be based on the selected extracts of the Securities Services Act, the Board Notices and the Derivatives rules (“the material”) provided in this booklet. Candidates will not be required to supplement the material with the changes to the Securities Services Act, the Board Notices or the Derivatives rules when studying for the examination. However, for the purposes of completeness the complete documents are available on the JSE’s website. <http://www.jse.co.za/Regulation.aspx>

3. Disclaimer

This booklet has been produced as a guide, at a given point of time and in an abbreviated form, to the more important provisions of the Securities Services Act, Board Notices and the JSE Derivatives rules, for the purpose of the JSE Derivatives Compliance Officer Examination. Given the compressed and dated nature of the contents of a document such as this it should not be construed as the JSE’s full and official interpretation of the Act, rules and directives. The JSE does not accept any responsibility or liability for any errors or omissions in the formulation of the answers to the questions given, nor for any consequential claims arising therefrom. Accordingly, the JSE accepts no responsibility for any transactions or actions entered into as a result of the contents thereof.

4. Version Control

Date	Version updates
20 October 2010	Development of examination material based on: <ul style="list-style-type: none"> ▪ Securities Services Act (Act No. 36 of 2004), as amended by: nancial Services Laws General Amendment Act, No. 22 of 2008 (with effect from 1 January 2009) ▪ Board Notice 20 of 2005, as published by the Financial Services Board in Government Gazette 27231 dated 31 January 2005; ▪ Board Notice 58 of 2005, as published by the Financial Services Board as Board Notice 19 of 2005 in Government Gazette 27231 dated 31 January 2005, and replaced by Board Notice 58 of 2005 published in Government Gazette 27735 dated 8 July 2005; and ▪ Derivative Rules, as amended at 12 December 2009;

5. Learning Outcome Statements

Securities Services Act and Board Notices

1. Know and understand the objects and achievements of the Securities Services Act, the important role players, applicability of the Act and relevant definitions.
2. Understand restrictions on the business of buying and selling of securities as well as prohibitions in this regard.
3. Know, understand and be able to apply the principles regarding the offence of insider trading and important market abuse definitions.
4. Know and understand the civil liability that results from insider trading.
5. Know and understand the powers and functions of the Financial Services Board.
6. Know and understand the general duties of an authorised user and the duties of an authorised user with regard to furnishing advice to clients.
7. Know and understand the duties of disclosure of an authorised user.
8. Know and understand the record-keeping duties of an authorised user.
9. Know, understand and be able to apply the prohibitions and restrictions with regard to the giving and receiving of inducements.
10. Know, understand and be able to apply the requirements with regard to the safe-keeping of funds and assets and the separation of clients' funds and assets from that of the authorised user.
11. Know and understand the requirements with regard to internal control and risk management.
12. Know and understand that it is prohibited to ask a client to waive any rights or benefits conferred in terms of the Code of Conduct.
13. Know and understand the accounting records that must be maintained by regulated persons and in particular authorised users.

Derivatives Rules – Section 1 General

14. Know the purpose of the rules and derivatives, whom they are binding on and in whom the interpretation and enforcement vests.
15. Know that all transactions are subject to the Act, the rules and directives.
16. Know who may propose additions or amendments to the rules and the procedure that must be followed to have such additions or amendments adopted.
17. Know and understand in which cases the JSE will not be liable for losses.

Derivatives Rules – Section 2 Definitions

18. Know and understand relevant terms.

Derivatives Rules – Section 3 General Membership & Disciplinary Procedures

19. Know and understand the requirements for maintaining membership including the prerequisites for registration of officers of members and that membership can be refused if the trading name is deemed unacceptable by the JSE.
20. Know and understand the circumstances under which membership may voluntarily be terminated or changed, including name changes or changes in corporate structure of a member, as well as the circumstances under which membership may involuntarily be terminated.
21. Know what information a member is obliged to furnish to the JSE.
22. Know in which cases consent will be required for the employment of certain persons.
23. Know and understand the JSE's Surveillance Department powers in respect of surveillance.
24. Know and understand the Director: Surveillance powers in respect of investigations.
25. Know, understand and be able to apply the principles underlying improper conduct.

Derivatives Rules – Section 4 Derivatives Membership

26. Know, understand and be able to apply the requirements with regard to capital adequacy and the action the JSE may take for non-compliance.

Derivatives Rules – Section 5 Registered Officers

27. Know the obligation of a member to ensure the registration of a compliance officer and dealers.
28. Know and understand the responsibilities and obligations of a compliance officer.
29. Know the procedures followed for the registration of an officer, the changing of a registration from one member to another, the temporary registration of an officer, the termination of registration and understand that the appointment and registration do not relieve a member from duties and responsibilities of members in terms of the Act and Rules.

Derivatives Rules – Section 7 Trading

30. Know and understand in which cases transactions may take place on the ATS and Off-ATS.
31. Know, understand and be able to apply the order priority requirements
32. Know, understand and be able to apply the restrictions regarding employees and members trading as clients.
33. Know that a member has the obligation to enter into an agreement, containing prescribed terms and conditions, with a client.
34. Know, understand and be able to apply the requirements with regard to when ATS-4 Digit sub-accounts should be used, the time priority of allocations, restrictions on trading on those accounts and that no positions may remain on the sub account overnight.
35. Know, understand and be able to apply the principles underlying the different forms of market abuse, including prohibited trading practices and making false, misleading or deceptive statements, promises.

Derivatives Rules – Section 8 Positions

36. Know when off-ATS trades should be reported to the clearing house.
37. Know, understand and be able to apply principles underlying initial margin, variation margin and additional margin and when and how long margin may be retained.
38. Know when amounts due from clearing members and amounts due to and from trading members are payable.

Derivatives Rules – Section 9 Non-resident & emigrant clients

39. Know what bank account must be opened when trading with non-resident or emigrant clients.

Derivatives Rules – Section 10 Sundry provisions

40. Know and understand what trading records members should confirm to clients and how often, what telephone recordings may be made and how long they should be kept.
41. Know, understand or be able to apply commodity derivatives market speculative position limits of trading members authorized to trade agricultural derivatives and when those positions may be exceeded.

Derivatives Rules – Section 11 Members' and clients' funds

42. Know and understand how funds must be managed by the clearing house.
43. Know, understand and be able to apply how members must treat client funds and the restriction on using or retaining client funds, securities or other things.
44. Know and understand that a member must open a separate trust account and what funds must be deposited in the trust account.
45. Know and understand the conditions that will apply when relaxation is given by members regarding payment of margin.
46. Know the limitation on the acceptance of cash.

Derivatives Rules – Section 12 Defaults

47. Know, understand and be able to apply the conditions under which clients and members will default and what the consequences thereof will be.

Derivatives Rules – Section 15 Management of investments

48. Know, understand and be able to apply the requirements for and restrictions on acting as an investment manager by trading members, including the requirements with regard to the holding of the investments, the accounting records and balancing clients' holdings with the accounts of other financial services providers.
49. Know and understand what constitutes foreign investments, the restrictions on entering into transactions in foreign investments on behalf of clients and the information that must be furnished to client in respect of those investments.
50. Know and understand the condition with regard to trading with a discretionary financial service provider.
51. Know and understand what client statements should be provided, what they should enable the client to do and what information it should, as a minimum, contain.
52. Know the condition under which a trading member will be allowed to provide investment advice and exercise discretion in the management of JSE authorised investments.

Derivatives Rules – Section 16 Ethics and conduct

53. Know, understand and be able to apply the provisions of the code of conduct including the standards of integrity, general conduct towards clients, the conduct with regard to providing investment advice and the exercise of discretion, the disclosure to clients and maintenance of client records.
54. Know and understand and be able to apply under which circumstances a member may enter into a transaction as a result of an unsolicited call.
55. Know and understand and be able to apply the requirements, prohibitions and restrictions with regard to advertising.
56. Know that the member is obliged to report contraventions of the rules, directives or the Securities Services Act.

Derivatives Rules – Section 17 Resolution of disputes

57. Know and understand and be able to apply the requirements with regard to client complaints, the internal complaint handling procedures and the period within which a response must be given to a client.
58. Know and understand and be able to apply the requirements with regard to recording of complaints, the handling of unresolved complaints and the escalation of an unresolved complaint.
59. Know and understand and be able to apply the requirements with regard to the settlement applicability of the dispute resolution rules, the reporting of and declaration of a dispute, the consideration of a dispute by an Ombud and the costs of the proceedings.

6. Selected Extracts of the Securities Services Act

CHAPTER I PRELIMINARY PROVISIONS

1. Definitions

In this Act, unless the context indicates otherwise –

“**advice**” means any recommendation, guidance or proposal of a financial nature furnished, by any means or medium, to a client or group of clients in respect of the buying and selling of listed securities and irrespective of whether or not such advice results in any such transaction being effected, but does not include –

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

...

“**authorised user**” means a person authorised by an exchange in terms of the exchange rules to perform such securities services as the exchange rules may permit;

“**bank**” means a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), and a mutual bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993);

“**board**” means the Financial Services Board established by section 2 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);

“**board of appeal**” means the board of appeal established by section 26 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);

...

“**clear**”, in relation to a transaction or group of transactions in listed securities, means –

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

“**clearing house**” means a person licensed in terms of section 66 as a clearing house and appointed by an exchange to provide clearing house services to such exchange;

“**clearing house services**” means either clearing services or settlement services or both clearing and settlement services provided to an exchange by a clearing house;

“**client**” means any person who uses the services of an authorised user or a participant, as the case may be;

“**Companies Act**” means the Companies Act, 1973 (Act No. 61 of 1973);

...

“**derivative instrument**” means any –

- (a) financial instrument; or
- (b) contract,

that creates rights and obligations and that derives its value from the price or value, or the value of which may vary depending on a change in the price or value, of some other particular product or thing;

“**directive**” means a directive issued by a self-regulatory organisation in accordance with its rules;

“**director**” means the Director of Market Abuse referred to in section 83;

“**electronic**” includes created, recorded, transmitted or stored in digital or other intangible but visible form by electronic, magnetic, optical or any similar means;

...

“**exchange**” means a person who constitutes, maintains and provides an infrastructure –

- (a) for bringing together buyers and sellers of securities;
- (b) for matching the orders for securities of multiple buyers and sellers; and

(c) whereby a matched order for securities constitutes a transaction;

“**exchange rules**” means the rules made by an exchange in accordance with this Act;

“**external exchange**” means a person authorised to function as an exchange in terms of the laws of a country other than the Republic;

“**financial institution**” means –

- (a) any pension fund organisation registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), or any person referred to in section 13B of that Act administering the securities of such a pension fund or the disposition of benefits provided for in the rules of such a pension fund;
- (b) any friendly society registered in terms of the Friendly Societies Act, 1956 (Act No. 25 of 1956), or any person in charge of the management of the affairs of such a society;
- (c) any collective investment scheme as defined in section 1 of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), or any manager or nominee in relation to such a scheme;
- (d) any 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;
- (e) any intermediary rendering the services contemplated in section 72(1)(d) of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or section 70(e) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998); and
- (f) a bank;

...

“**foreign collective investment scheme**” means a scheme, in whatever form, carried on in a country other than the Republic, in pursuance of which members of the public –

- (a) are invited or permitted to invest money or other assets in one or more groups of assets (whether called a portfolio or by any other name) of such scheme;
- (b) acquire an interest or undivided share (whether called a unit or by any other name) in such a group of assets upon such investment; and
- (c) participate proportionately in the income or profits and the risk derived from such investment;

...

“**Insider Trading Act**” means the Insider Trading Act, 1998 (Act No. 135 of 1998);

“**in writing**”, in relation to anything which, in terms of this Act must be done in writing, includes any such thing done in electronic form;

...

“**listed securities**” means securities included in the list of securities kept by an exchange in terms of section 12;

“**management of securities**” means –

- (a) the giving of instructions, on behalf of another person, to buy or sell securities on behalf of that other person;
- (b) the buying or selling of securities on behalf of another person on the instructions of that other person;
- (c) an agreement to buy or sell securities on behalf of another person;
- (d) the furnishing of advice to any person in connection with the buying and selling of securities; or
- (e) the handling of another person’s funds intended for the purchase of securities on behalf of that other person;

“**Minister**” means the Minister of Finance;

“**nominee**” means a person that acts as the registered holder of securities or an interest in securities on behalf of other persons;

“**participant**” means a person that holds in custody and administers securities or an interest in securities and that has been accepted in terms of section 34 by a central securities depository as a participant in that central securities depository;

“**prescribed by the Minister**” means prescribed by the Minister by regulation;

“**prescribed by the registrar**” means prescribed by the registrar by notice in the *Gazette*;

“**Public Accountants’ and Auditors’ Act**” means the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991);

“**registrar**” means the Registrar or Deputy Registrar of Securities Services referred to in section 5;

“**regulated person**” means a self-regulatory organisation or any other person who provides or who previously provided securities services;

“**regulation**” means a regulation made under section 113;

“securities” –

(a) means –

- (i) shares, stocks and depository receipts in public companies and other equivalent equities, other than shares in a share block company as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
- (ii) notes;
- (iii) derivative instruments;
- (iv) bonds;
- (v) debentures;
- (vi) 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;
- (vii) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country;
- (viii) instruments based on an index;
- (ix) the securities contemplated in subparagraphs (i) to (viii) that are listed on an external exchange; and
- (x) an instrument similar to one or more of the securities contemplated in subparagraphs (i) to (ix) declared by the registrar by notice in the *Gazette* to be a security for the purposes of this Act;
- (xi) rights in the securities referred to in subparagraphs (i) to (x);

(b) excludes -

- (i) money market instruments except for the purposes of Chapter IV; and
- (ii) any security contemplated in paragraph (a) specified by the registrar by notice in the *Gazette*;

“securities services” means services provided in terms of this Act in respect of –

- (a) the buying and selling of securities;
- (b) the custody and administration of securities;
- (c) the management of securities by an authorised user;
- (d) the clearing of transactions in listed securities; and
- (e) the settlement of transactions in listed securities;

“self-regulatory organisation” means an exchange or a central securities depository;

“settle” means to discharge the obligations arising from a transaction in listed securities;

“settling party” means a buyer or seller of listed securities who settles a transaction or any person appointed in terms of exchange rules by such buyer or seller to settle a transaction on behalf of such buyer or seller;

“stockbroker” means a natural person who is a member of the South African Institute of Stockbrokers;

“systemic risk” means the danger of a failure or disruption of the Republic’s financial system as a whole;

“this Act” includes any measure prescribed by the Minister or by the registrar;

“transaction” means a contract of purchase and sale of securities.

2. Objects of Act

This Act aims to –

- (a) increase confidence in the South African financial markets by –
 - (i) requiring that securities services be provided in a fair, efficient and transparent manner; and
 - (ii) contributing to the maintenance of a stable financial market environment;
- (b) promote the protection of regulated persons and clients;
- (c) reduce systemic risk; and
- (d) promote the international competitiveness of securities services in the Republic.

3. Application of Act

(1) This Act applies to –

- (a) regulated persons and the securities services provided by regulated persons;
- (b) issuers;
- (c) clients;
- (d) market abuse; and
- (e) matters incidental to the matters referred to in paragraphs (a) to (d).

(2) This Act does not apply to –

- (a) a collective investment scheme regulated by or under the Collective Investment Schemes Control Act, 2002 (Act No. 5 of 2002); and
- (b) the activities regulated by or under the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002).

(3) Any law or the common law relating to gambling or wagering does not apply to any activity regulated by or under this Act.

4. Prohibitions

- (1) No person may –
- (a) operate as an exchange unless that person is licensed under section 10;
 - (b) operate as a central securities depository unless that person is licensed under section 32;
 - (c) operate as a clearing house unless that person is licensed under section 66;
 - (d) act as an authorised user unless authorised by an exchange in terms of the exchange rules;
 - (e) carry on the business of buying or selling listed securities unless that person complies with section 19;
 - (f) carry on the business of buying or selling unlisted securities if prohibited under section 20 or in contravention of conditions imposed or prescribed under that section;
 - (g) act as a participant unless accepted in terms of section 34 as a participant by a central securities depository;
 - (h) if the person is an authorised user, undertake the management of listed securities unless that person complies with exchange rules regulating the management of listed securities.
- (2) Subject to any contrary provision in any other law, a person who is not –
- (a) licensed as an exchange, a central securities depository, or a clearing house;
 - (b) a participant; or
 - (c) an authorised user,
- may not purport to be an exchange, central securities depository, clearing house, participant, or authorised user, as the case may be, or behave in a manner or use a name or description which suggests, signifies or implies that there is some connection between that person and an exchange, a central securities depository, clearing house, participant or authorised user, as the case may be.

...

CHAPTER VIII
MARKET ABUSE

72. Definitions

In this Chapter, unless the context indicates otherwise –

“claims officer” means the person appointed by the board to be responsible for considering and determining claims in terms of sections 77(8) and (9);

“deal” includes conveying or giving an instruction to deal;

“document” includes a book, record, security or account, and any information stored or recorded electronically, photographically, magnetically, mechanically, electro-mechanically or optically or in any other form;

“executive director” means a person appointed as such in terms of section 83(12);

“inside information” means specific or precise information, which has not been made public and which –

- (a) is obtained or learned as an insider; and
- (b) if it were made public would be likely to have a material effect on the price or value of any security listed on a regulated market;

“insider” means a person who has inside information –

- (a) through –
 - (i) being a director, employee or shareholder of an issuer of securities listed on a regulated market to which the inside information relates; or
 - (ii) having access to such information by virtue of employment, office or profession; or
- (b) where such person knows that the direct or indirect source of the information was a person contemplated in paragraph (a);

“market abuse rules” means the rules made under section 82(2)(g);

“market corner” means any arrangement, agreement, commitment or understanding involving the purchasing, selling or issuing of securities listed on a regulated market -

- (a) by which a person, or a group of persons acting in concert, acquires direct or indirect beneficial ownership of, or exercises control over, or is able to influence the price of, securities listed on a regulated market; and
- (b) where the effect of the arrangement, agreement, commitment or understanding is or is likely to be that the trading price of the securities listed on a regulated market, as reflected through the facilities of a regulated market, is or is likely to be abnormally influenced or arbitrarily dictated by such person or group of persons in that the said trading price deviates or is likely to deviate materially from the trading price which would otherwise likely have been reflected through the facilities of the regulated market on which the particular securities are traded;

“person” includes a partnership and any trust;

“public sector body” means –

- (a) all spheres of the government of the Republic or of any other country or territory;
- (b) the South African Reserve Bank; or
- (c) the central bank of any country or territory outside the Republic,

but does not include the Public Investment Commissioners established by section 2 of the Public Investment Commissioners Act, 1984 (Act No. 45 of 1984);

“**regional court**” means a court established for a regional division under the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);

“**regulated market**” means any market, whether domestic or foreign, which is regulated in terms of the laws of the country in which the market conducts business as a market for dealing in securities listed on that market.

Offences

73. Insider trading

- (1) (a) An insider who knows that he or she has inside information and who deals directly or indirectly or through an agent, for his or her own account in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it, commits an offence.
- (b) An insider is, despite paragraph (a), not guilty of any offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she –
 - (i) was acting in pursuit of the completion of an affected transaction as defined in section 440A of the Companies Act;
 - (ii) only became an insider after he or she had given the instruction to deal to an authorised user and the instruction was not changed in any manner after he or she became an insider.
- (2) (a) An insider who knows that he or she has inside information and who deals, directly or indirectly, for any other person in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it, commits an offence.
- (b) An insider is, despite paragraph (a), not guilty of any offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she –
 - (i) is an authorised user and was acting on specific instructions from a client, save where the inside information was disclosed to him or her by that client;
 - (ii) was acting on behalf of a public sector body in pursuit of monetary policy, policies in respect of exchange rates, the management of public debt or external exchange reserves; or
 - (iii) was acting in pursuit of the completion of an affected transaction as defined in section 440A of the Companies Act
 - (iv) only became an insider after he or she had given the instruction to deal to an authorised user and the instruction was not changed in any manner after he or she became an insider.
- (3) (a) An insider who knows that he or she has inside information and who discloses the inside information to another person, commits an offence.
- (b) An insider is, despite paragraph (a), not guilty of the offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she disclosed the inside information because it was necessary to do so for the purpose of in the proper performance of the functions of his or her employment, office or profession in circumstances unrelated to dealing in any security listed on a regulated market and that he or she at the same time disclosed that the information was inside information.
- (4) An insider who knows that he or she has inside information and who encourages or causes another person to deal or discourages or stops another person from dealing in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it, commits an offence.

74. Publication

- (1) For the purposes of the definition of “inside information”, information is regarded as having been made public in circumstances, which include, but are not limited to, the following:
 - (a) When the information is published in accordance with the rules of the relevant regulated market for the purpose of informing clients and their professional advisers;
 - (b) when the information is contained in records which by virtue of any enactment are open to inspection by the public; or
 - (c) when the information can be readily acquired by those likely to deal in any listed securities -
 - (i) to which the information relates; or
 - (ii) of an issuer to which the information relates; or
 - (d) when the information is derived from information which has been made public.

- (2) Inside information which would otherwise be regarded as having been made public must still be so regarded even though –
- (a) it can be acquired only by persons exercising diligence or observation, or having expertise;
 - (b) it is communicated only on payment of a fee; or
 - (c) it is only published outside the Republic.

...

Civil liability

77. Civil liability resulting from insider trading

- (1) An insider who knows that he or she has inside information and who –
- (a) deals directly or indirectly or through an agent, for his or her own account in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it;
 - (b) makes a profit or would have made a profit if he or she had sold the securities at any stage, or avoids a loss, through such dealing; and
 - (c) fails to prove, on a balance of probabilities, any one of the defences set out in section 73(1)(b), is liable, at the suit of the board in any court of competent jurisdiction, to pay to the board –
 - (i) the equivalent of the profit or loss referred to in paragraph (b);
 - (ii) a penalty, for compensatory and punitive purposes, in a sum determined in the discretion of the court but not exceeding three times the amount referred to in paragraph (i);
 - (iii) interest; and
 - (iv) costs of suit on such scale as may be determined by the court.
- (2) An insider who knows that he or she has inside information and who –
- (a) deals, directly or indirectly, for any other person in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it;
 - (b) makes a profit for that other person or would have made a profit if the securities had been sold at any stage, or avoids a loss, through such dealing; and
 - (c) fails to prove any one of the defences set out in section 73(2)(b) on a balance of probabilities, is, subject to subsection (5), liable, at the suit of the board in any court of competent jurisdiction, to pay to the board –
 - (i) the equivalent of the profit or loss referred to in paragraph (b);
 - (ii) a penalty, for compensatory and punitive purposes, in a sum determined in the discretion of the court but not exceeding three times the amount referred to in paragraph (i);
 - (iii) interest;
 - (iv) the commission or consideration received for such dealing; and
 - (v) cost of suit on such scale as may be determined by the court.
- (3) An insider who knows that he or she has inside information and who –
- (a) discloses the inside information to any other person; and
 - (b) fails to prove on a balance of probabilities the defence set out in section 73(3)(b), is, subject to subsection (5), liable, at the suit of the board in any court of competent jurisdiction, to pay to the board –
 - (i) if the other person dealt in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it, the equivalent of the profit which the person made or would have made if the securities had been sold at any stage, or the equivalent of the loss avoided, as a result of such dealing;
 - (ii) a penalty, for compensatory and punitive purposes, in a sum determined in the discretion of the court but not exceeding three times the amount referred to in paragraph (i);
 - (iii) interest;
 - (iv) the commission or consideration received for such disclosure; and
 - (v) cost of suit on such scale as may be determined by the court.

- (4) An insider who knows that he or she has inside information and who encourages or causes any other person to deal in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it, is, subject to subsection (5), liable, at the suit of the board in any court of competent jurisdiction, to pay to the board –
- (a) if the other person dealt in such securities, the equivalent of the profit which the person made or would have made if the securities had been sold at any stage, or the equivalent of the loss avoided, as a result of such dealing;
 - (b) a penalty, for compensatory and punitive purposes, in a sum determined in the discretion of the court but not exceeding three times the amount referred to in paragraph (a);
 - (c) interest;
 - (d) the commission or consideration received for such encouragement; and
 - (e) cost of suit on such scale as may be determined by the court.
- (5) If the other person referred to in subsections (2), (3) and (4) is liable as an insider in terms of subsection (1), the insider referred to in subsections (2), (3) and (4) is jointly and severally liable together with that other person to pay the amounts set out in subsection (2)(i), (iii) and (v), (3)(i), (iii) and (v), or (4)(a), (c) and (d), as the case may be.
- (6) The profit made, or the profit that would have been made if the listed securities had been sold at any stage, or the loss avoided, is determined in the discretion of the court which must have regard to factors such as the consideration for the dealing referred to in subsections (2), (3) and (4), the time between the relevant dealing and the publication of the inside information and any other relevant factors.
- (7) Any amount recovered by the board as a result of the proceedings contemplated in this section or as a result of an agreement of settlement must be deposited by the board directly into a specially designated trust account and –
- (a) the board is, as a first charge against the trust account, entitled to reimbursement of all expenses reasonably incurred by it in bringing such proceedings and in administering the distributions made to claimants in terms of subsection (8) and an additional sum equal to 10% of the gross amount so recovered less any amount of costs actually recovered from the other party prior to the finalisation of the distribution account;
 - (b) the balance, if any, must be distributed by the claims officer to the claimants referred to in subsection (8) in accordance with subsection (9);
 - (c) any amount not paid out in terms of paragraph (b) accrues to the board.
- (8) The balance referred to in subsection (7)(b) must be distributed to all claimants who –
- (a) submit claims to the directorate within 90 days from the date of publication of a notice in two national newspapers inviting persons who are affected by the dealings referred to in subsections (1) to (4) to submit their claims; and
 - (b) prove to the reasonable satisfaction of the claims officer that –
 - (i) they were affected by the dealings referred to in subsections (1) to (4); and
 - (ii) in the case where the inside information was made public within five trading days from the time the insider referred to in subsections (1) and (2), or the other person referred to in subsections (3) and (4) dealt, they dealt in the same securities at the same time or any time after the insider or other person so dealt and before the inside information was made public; or
 - (iii) in every other case, they dealt in the same securities at the same time or any time thereafter on the same day, as the insider or other person referred to in subparagraph (ii).
- (9) Subject to subsection (10), a claimant must receive an amount –
- (a) equal to the difference between the price at which the claimant dealt and the price, determined by the court or a settlement, that the claimant would have dealt if the inside information had been published at the time of dealing; or
 - (b) equal to the *pro rata* portion of the balance referred to in subsection (7)(b), calculated according to the relationship which the amount contemplated in paragraph (a) bears to all amounts proved in terms of subsection (8) by claimants, whichever is the lesser, unless the claims officer in his or her discretion determines that the claimant should receive a lesser or no amount.
- (10) An amount awarded in proceedings contemplated in section 85 must be deducted from any amount claimed in terms of this section.
- (11) The common law principles of vicarious liability apply to the civil liability established by this section.

...

Administration of this Chapter

82. Powers and duties of Financial Services Board

- (1) The board is responsible for the supervision of compliance with this Chapter.
- (2) In addition to its powers in terms of the Financial Services Board Act the board may, subject to section 83 –
 - (a) investigate any matter relating to an offence referred to in sections 73, 75 and 76, including insider trading in terms of section 440F of the Companies Act and the Insider Trading Act committed before the repeal of that section and that Act;
 - (b) institute such proceedings as are contemplated in this Chapter;
 - (c) administer the proof of claims and distribution of payments in terms of section 77;
 - (d) summon any person who is believed to be able to furnish any information on the subject of any investigation or to have in such person's possession or under such person's control any document which has bearing upon that subject, to lodge such document with the board, or to appear at a time and place specified in the summons, to be interrogated or to produce such document; and
 - (e) interrogate any such person under oath or affirmation duly administered, and examine or retain for examination any such document: Provided that any person from whom any document has been taken and retained under this subsection must, so long as such document is in possession of the board, at that person's request and expense be allowed to make copies thereof or to take extracts therefrom at any reasonable time and under the supervision of the person in charge of the investigation;
 - (f) in relation to a matter investigated in terms of paragraph (a), on the authority of a warrant, at any time without prior notice –
 - (i) enter any premises and require the production of any document;
 - (ii) enter and search any premises for any document;
 - (iii) open any strongroom, safe or other container which he or she suspects contains any document;
 - (iv) examine, make extracts from and copy any document or, against the issue of a receipt, remove such document temporarily for that purpose;
 - (v) against the issue of a receipt, seize any document;
 - (vi) retain any seized document for as long as it may be required for criminal or other proceedings, but the board may proceed without a warrant, if the person in control of any premises consents to the actions contemplated in this paragraph;
 - (g) make market abuse rules after consultation with the directorate –
 - (i) concerning the administration of this Chapter by the board and the directorate;
 - (ii) concerning the manner in which investigations in terms of this Chapter are to be conducted;
 - (iii) concerning the notification of amounts received in terms of sections 77, the procedure for the lodging and proof of claims, the administration of trust accounts and the distribution of payments in respect of claims;
 - (iv) concerning meetings of the directorate;
 - (v) which are generally designed to ensure that the board and the directorate are able to perform their functions in terms of this Chapter;
 - (vi) dealing with the manner in which inside information should be disclosed and, generally, with the conduct expected of persons with regard to such information; and
 - (h) after consultation with the relevant regulated markets in the Republic, require such markets to implement such systems as are necessary for the effective monitoring and identification of possible contraventions of this Chapter.
- (3)
 - (a) A warrant contemplated in subsection (2)(f) may be issued, on application by the board, by a judge or magistrate who has jurisdiction in the area where the premises in question are located.
 - (b) Such a warrant may only be issued if it appears from information under oath that there is reason to believe that a document relating to the matter being investigated in terms of subsection (2)(a), is kept at the premises in question.
 - (c) Any person from whom a document has been seized under subsection (2)(f), or such person's authorised representative, may examine such document and make extracts therefrom under the supervision of the board during normal office hours.
 - (d) Any person who has been duly summoned under subsection (2)(d) and who, without sufficient cause –
 - (i) fails to appear at the time and place specified in the summons;
 - (ii) fails to remain in attendance until excused by the board from further attendance;

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- (iii) refuses to take the oath or to make an affirmation as contemplated in subsection (2)(e);
 - (iv) fails to answer fully and satisfactorily any question lawfully put to him or her under subsection (2)(e); or
 - (v) fails to furnish information or to produce a document in terms of subsection (2)(d),
- commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.
- (4) The board may, subject to the conditions it may determine, delegate the power to investigate an alleged contravention of this Chapter to any fit person and such person has the powers set out in subsections (2)(d), (e) and (f).
 - (5) The board must cause the publication in the *Gazette* of a notice of any proposed market abuse rule or amendment of such a rule, calling upon all interested persons who have any objections to the proposed rule or amendment, to lodge their objections with the board within a period of 14 days from the date of publication of the notice.
 - (6) If there are no such objections or if the board has, after consultation with the directorate, considered the objections and has decided to introduce the proposed rule or amendment in the form published in the *Gazette* in terms of subsection (5), the rule or amendment comes into operation on a date determined by the board by notice in the *Gazette*.
 - (7) If the board has, after considering such objections, decided after consultation with the directorate to amend the proposed rule or amendment as published in the *Gazette* in terms of subsection (5), the proposed rule or amendment thus amended must be published by the board in the *Gazette* and comes into operation on a date determined by the board by notice in the *Gazette*.
 - (8) A rule made under subsection (2) is binding on regulated persons and members of the public.
 - (9) If the Director of Public Prosecutions declines to prosecute for an alleged offence in terms of this Chapter, the board may prosecute in respect of such offence in any court competent to try that offence and section 8(2) and (3) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), does not apply to such a prosecution.
 - (10) The board must, at the request of the directorate, investigate any matter and summon and interrogate any person in respect of the matters referred to in subsections (2)(a), (d) and (e).

7. Board Notice 20 of 2005

Code of conduct for authorised users

(As published by the Financial Services Board in Government Gazette 27231 dated 31 January 2005)

The Registrar of Securities Services has under section 70 of the Securities Services Act, 2004 (Act No. 36 of 2004), determined the Code of Conduct, as set out in the Schedule, with which authorised users must comply.

SCHEDULE

Code of Conduct for Authorised Users

1. Definitions, construction and application

- (1) In this Code **“the Act”** means the Securities Services Act, 2004 (Act No. 36 of 2004), and a word or expression to which a meaning has been assigned in the Act bears that meaning, and, unless the context indicates otherwise -
- “advertisement”**, in relation to an authorised user, means any written, printed, electronic or oral communication, including a communication by means of a public radio service, television broadcast or any other media effected by an authorised user, 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 securities services offered by an authorised user, and which does not purport to provide detailed information about such services; and **“advertising”** has a corresponding meaning;
- “internal controls”** means those internal controls established in order to provide reasonable assurance of -
- (a) the safeguarding of assets against unauthorised use or disposition; and
 - (b) the maintenance of proper accounting records and the reliability of financial information used within the business or for publication;
- “professional client”**, in relation to an authorised user, means -
- (a) another authorised user;
 - (b) a bank;
 - (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;
 - (d) a person outside the Republic who -
 - (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
 - (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 of Securities Services, 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 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;
 - (f) any other person included in the definition of ‘client’ in section 1 of the Act, who has confirmed to the satisfaction of the authorised user 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 -
 - (i) a natural person;
 - (ii) a pension fund organisation as defined in section 1 (1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);
 - (iii) a friendly society referred to in the Friendly Societies Act, 1956 (Act No. 25 of 1956);
 - (iv) a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act No.131 of 1998).
- (2) This Code is supplementary to the Act and exchange rules and must be construed in conjunction with the Act and such rules.
- (3) This Code is binding on authorised users, their officers and employees and clients. For the purposes of this Code a reference to an authorised user includes a reference to an officer and employee of an authorised user.

2. General duties of authorised users

- (1) An authorised user must –
 - (a) at all times render securities services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the securities services industry;
 - (b) at all times exercise independent professional judgement;
 - (c) conduct him- or herself in such a manner and implement such actions to further the objects of the Act; and
 - (d) maintain knowledge of and comply with all applicable laws, rules and regulations governing his or her activities.
- (2) No authorised user may engage in any conduct likely to bring the securities services industry into disrepute.

3. Furnishing of advice

- (1) An authorised user must, before advising a client -
 - (a) take reasonable steps to seek from the client information about the client's financial situation, investment experience, particular needs and objectives in connection with the securities service required, to enable the authorised user to provide the client with sound advice;
 - (b) conduct an analysis, based on the information obtained, for the purpose of advising the client;
 - (c) identify the securities that will suit the client's risk profile and financial needs, subject to any contractual arrangement.
- (2) An authorised user must take reasonable steps to ensure that the client understands the advice and the risks involved and that the client is in a position to make an informed decision.

4. Disclosure to clients

- (1) When an authorised user renders a securities service, representations made and information provided to a client by the authorised user -
 - (a) must be factually correct;
 - (b) must be provided in plain language, avoid uncertainty or confusion and not be misleading;
 - (c) must be adequate and appropriate in the circumstances of the particular securities service, taking into account the factually established or reasonably assumed level of knowledge of the client;
 - (d) must be provided timeously so as to afford the client reasonably sufficient time to make an informed decision about the proposed transaction;
 - (e) may be provided orally and must, if the client so requests, be confirmed in writing within a reasonable time after such request;
 - (f) must, if provided in writing or by means of standard forms, be in a clear and readable print size, spacing and format;
 - (g) must, as regards all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein, be reflected in specific monetary terms: Provided that where any such amount, sum, value, charge, fee, remuneration or monetary obligation is not reasonably pre-determinable, its basis of calculation must be adequately described; and
 - (h) need not be duplicated or repeated to the same client unless material or significant changes affecting that client occur, or the relevant securities service renders it necessary, in which case a disclosure of the changes to the client must be made without delay.
- (2) An authorised user –
 - (a) must disclose full and accurate information about the fees and any other charges that may be levied on clients;
 - (b) must provide best advice taking into account the desires and circumstances of a particular client, and may not advise clients with the sole purpose of maximising the income of the authorised user;
 - (c) 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;
 - (d) must act promptly on and in accordance with the instructions of a client, and exercise any discretion in a responsible manner;
 - (e) must advise a client in advance of any restrictions or limitations that may affect the access of that client to his or her funds or securities;
 - (f) must provide a general explanation of the nature and material terms and risks of a relevant transaction to a client, so as to enable the client to make an informed decision; and
 - (g) must disclose to the client the existence of any personal interest in the relevant service, or of any circumstance which gives rise to an actual or potential conflict of interest in relation to such service, and take all reasonable steps to ensure fair treatment of the client.

5. Record-keeping

- (1) An authorised user must maintain proper, complete, accurate and secure records.
- (2) (a) An authorised user must have appropriate procedures and systems in place to store and retrieve in a manner safe from destruction a record of all -
 - (i) instructions relating to a securities service rendered to a client, including verbal instructions given by the client to the authorised user; and
 - (ii) documentation relating to the contractual arrangement between the authorised user and the client.
- (b) Records may be kept in electronic or voice recorded format.
- (c) Authorised users need not keep the records themselves but must be capable of making such records available for inspection within seven days.
- (d) A record referred to in 5(2)(a)(i) must be kept for a period of at least six months after the instruction has been given. A record referred to in 5(2)(a)(ii) must be kept for a period of at least five years after the contractual relationship has been terminated.

6. Inducements

- (1) An authorised user must take reasonable steps to ensure that it and any person acting on its behalf does not offer, give, solicit or accept any incentive, remuneration, consideration, commission, fee or brokerage ("valuable consideration") as an inducement if it is likely to conflict with any duty that the authorised user owes to its clients in respect of securities services provided to those clients or any duty that the recipient of the inducement owes to its clients.
- (2) Without limiting the generality of 6(1), any valuable consideration offered, given, solicited or accepted as an inducement by an authorised user or any person acting on its behalf, in terms of an agreement with a third party or a client which relates to the provision of securities services by the authorised user to one or more clients, and which does not directly relate to, and assist in the provision of, such services to such clients or does not otherwise directly benefit the clients of the recipient of such valuable consideration, shall constitute an inducement prohibited in terms of 6(1).
- (3) An authorised user who, in terms of an agreement with a third party, directly or indirectly accepts any valuable consideration as an inducement in respect of a securities service rendered to a client, or for which the authorised user may become eligible, must disclose to the client in writing before the rendering of such service, the existence of the agreement, the nature, extent, value and frequency of receipt of such valuable consideration to the extent that such information is known prior to the rendering of the service, and the identity of the other person providing or offering the valuable consideration.

7. Advertisements

- (1) Advertising material of an authorised user -
 - (a) must provide accurate, complete and unambiguous information about any security or security service;
 - (b) must emphasise the risk of loss and uncertainty of future results;
 - (c) must discern fact from opinion; and
 - (d) may not be comparative in relation to another authorised user.
- (2) An advertisement by an authorised user -
 - (a) may not contain any statement, promise or forecast which is fraudulent, untrue or misleading;
 - (b) must, if it contains -
 - (i) performance data (including awards and rankings), include references to their source and date;
 - (ii) illustrations, forecasts or hypothetical data -
 - (aa) 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;
 - (bb) make it clear that they are not guaranteed and are provided for illustrative purposes only; and
 - (cc) also contain, where returns or benefits are dependent on the performance of underlying assets or other variable market factors, clear indications of such dependence;
 - (iii) a warning statement about risks involved in buying or selling a security, prominently render or display such statement; and
 - (iv) information about past performances, also contain a warning that past performances are not necessarily indicative of future performances; and
 - (c) must, if the investment value of a financial product mentioned in the advertisement is not guaranteed, contain a warning that no guarantees are provided.

8. Safekeeping and separation of funds and assets

- (1) An authorised user must provide for -
 - (a) the necessary resources and functionality to ensure that clients are able to contact the authorised user easily and timely;
 - (b) the separation and identification of the assets of a client and the assets of the authorised user; and
 - (c) the proper accounting for the assets of each client.
- (2) An authorised user may not utilise the assets of clients to finance its business activities.

9. Client statements

- (1) An authorised user must provide to a client a written statement which complies with this Code of Conduct.
- (2) Statements shall be provided to clients –
 - (a) at regular intervals which may not exceed three months, unless the client consents in writing not to receive the statements because they are able to access the information made available by the authorised user through electronic means, such as the internet, on a continuous basis; or
 - (b) at such intervals of less than three months as the client requests, although the authorised user shall not be obliged to provide statements more frequently than monthly; or
 - (c) monthly if the client's portfolio as managed by the authorised user includes any open positions in listed derivative instruments; or
 - (d) at such intervals as may be agreed between the authorised user and a professional client.
- (3) A client statement must contain such information as is reasonably necessary to enable the client to –
 - (a) produce a set of financial statements;
 - (b) determine the composition of the securities comprising the portfolio held by the authorised user or for which the authorised user is accountable to the client and the changes thereto over the reporting period, if applicable; and
 - (c) determine the market value of the securities comprising the portfolio held by the authorised user or for which the authorised user is accountable to the client and the changes therein over the reporting period, if applicable.
- (4) 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:
 - (a) the quantity, description and market value of each investment comprising the portfolio held by the authorised user or for which the authorised user is accountable to the client, at the reporting date;
 - (b) the amount of funds held by the authorised user or which has been invested by the authorised user on behalf of the client and for which the authorised user is accountable to the client, at the reporting date;
 - (c) if any of the securities are reflected in a foreign currency, the relevant currency exchange rate at the reporting date must be reflected;
 - (d) securities purchased or sold during the reporting period;
 - (e) receipts and payments of funds during the reporting period;
 - (f) details of income earned and expenditure incurred during the reporting period;
 - (g) non-cash transactions during the reporting period, including non-cash components of corporate actions and option expiries;
 - (h) securities transferred into and out of the portfolio during the reporting period;
 - (i) identification of those securities which at the reporting date were loaned to any third party but for which the authorised user is still accountable to the client;
 - (j) the quantity, description and market value of any securities, or the amount of funds, held as collateral by the authorised user on behalf of the client in respect of any loans made by the client;
 - (k) identification of those securities or funds which at the reporting date were utilised to secure loans to the client or borrowings made on behalf of the client;
 - (l) identification of those securities or funds which at the reporting date were utilised as margin in respect of open positions in any financial product;
 - (m) in respect of investments in listed 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
 - (n) if the statement reflects any securities or funds which are not held by the authorised user and for which the authorised user is not accountable to the client, it should clearly indicate that fact in relation to such securities or funds.
- (5) The information referred to in subparagraph (4) may be provided to the client in separate statements either during the reporting period or as at the reporting date.
- (6) A client statement shall be provided either to the client or to an agent or third party nominated by the client in writing.

10. Internal control and risk management

- (1) An authorised user shall employ the resources, procedures and technological systems necessary for the effective conduct of its business.
- (2) The system of internal control employed by the authorised user shall be designed to ensure that –
 - (a) the relevant business can be carried on in an orderly and efficient manner;
 - (b) financial and other information used or provided by the authorised user is reliable;
 - (c) all transactions and financial commitments entered into are recorded and are within the scope of authority of the authorised user or the officer or employee acting on behalf of the authorised user;
 - (d) there are procedures to safeguard the assets of the authorised user and assets belonging to any other person for which the authorised user is accountable, and to control liabilities; and
 - (e) there are measures, so far as is reasonably practicable, to minimize the risk of loss to the authorised user or the clients of the authorised user from any irregularity, fraud or error and to detect any irregularity, fraud or error should they occur so that prompt remedial action may be taken by the authorised user or the management of the authorised user.
- (3) An authorised user shall as far as is reasonable adopt sound risk management principles and procedures.
- (4) The principles and procedures of risk management shall be designed to ensure that the records of the authorised user are maintained in such a manner as to promptly disclose financial and business information that will enable the authorised user or the management of the authorised user to –
 - (a) identify, quantify, control and manage the risk exposures of the authorised user;
 - (b) make timely and informed business decisions;
 - (c) monitor the performance and all aspects of the business of the authorised user;
 - (d) monitor the capital of the authorised user to ensure compliance with the capital adequacy requirements imposed in terms of the rules of the applicable self-regulatory organisation.
- (5) An authorised user must be able to describe and demonstrate the objectives and operation of such systems, principles and procedures referred to in paragraphs (1) to (4) above to its auditor, the applicable self-regulatory organisation and the registrar.

11. Guarantees and insurance cover

An authorised user must, if, and to the extent required by the exchange, maintain appropriate guarantees or professional indemnity or fidelity insurance cover to mitigate the risks inherent in his or her business and to which clients are exposed.

12. Waiver of rights

An authorised user 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 recognise, accept or act on any such waiver by the client, and any such waiver is void.

13. Exemption

An authorised user is exempted from complying with the requirements of paragraphs 3, 4(2)(b) and 4(2)(f) of this Code when dealing with a professional client.

14. Commencement

This Notice comes into operation on the same date on which the Securities Services Act, 2004, comes into operation.

8. Board Notice 58 of 2005

Accounting records to be maintained by a regulated person

(As published by the Financial Services Board as Board Notice 19 of 2005 in Government Gazette 27231 dated 31 January 2005, and replaced by Board Notice 58 of 2005 published in Government Gazette 27735 dated 8 July 2005)

The Registrar of Securities Services has under section 89(a) of the Securities Services Act, 2004 (Act No. 36 of 2004), prescribed in the Schedule the accounting records to be maintained by a regulated person.

SCHEDULE

1. Definitions

In this Schedule -

"the Act" means the Securities Services Act, 2004 (Act No. 36 of 2004), and any word or expression to which a meaning has been assigned in the Act bears the meaning so assigned to it and, unless the context otherwise indicates -

"generally accepted accounting practice" means accounting practices which are in accordance with South African Statements of Generally Accepted Accounting Practice issued by the Accounting Practices Board or, in the absence of any such statement, accounting practices which are generally accepted in the Republic;

"internal controls" means those internal controls established in order to provide reasonable assurance of -

- (a) the safeguarding of assets against unauthorised use or disposition; and
- (b) the maintenance of proper accounting records and the reliability of financial information used within the business or for publication.

2. Accounting records to be maintained by regulated persons, where applicable

- (1) The accounting records of a regulated person must show the transactions and financial commitments of a regulated person, and transactions and payments relating to clients in such a manner that they disclose with substantial accuracy the financial position, performance and cash flows of the regulated person, and separately the position of clients of the regulated person, at the close of business on any day.
- (2) Accounts of clients must be designated as such and must be clearly distinguishable from the business accounts of a regulated person.
- (3) A regulated person may keep computerised records provided that such records are subject to acceptable back-up and recovery procedures and can be reproduced in printed form.

3. Accounting records to be maintained by exchange

- (1) An exchange must maintain -
 - (a) entries from day to day of all sums of money received and expended by the exchange and the matters in respect of which the receipt and expenditure took place;
 - (b) a record of funds held in trust for authorised users;
 - (c) a record of all income and expenditure of the exchange explaining the nature thereof;
 - (d) a record of all assets and liabilities of the exchange, including any provision for financial commitments or contingent liabilities;
 - (e) a record of all purchases and sales of securities listed on the exchange, which reflects the -
 - (i) date and time of each transaction concluded on the exchange;
 - (ii) identification of the authorised users that are counterparties to the transaction;
 - (iii) name of the issuer of the securities;
 - (i) name or description of the securities; and
 - (v) the price per unit and quantity of the securities bought and sold.

4. Accounting records to be maintained by central securities depository

- (1) A central securities depository must maintain a record of –
 - (a) the central securities accounts held by it;
 - (b) all moneys, assets and rights received or distributed by it, including dividends and other distributions made by the issuer of securities deposited, and the disbursement of such dividends and distributions to clients;
 - (c) its income, expenses, funds, assets and liabilities in respect of the holding of securities in safe custody;
 - (d) certificated and uncertificated securities deposited with it; and
 - (e) its participants.

5. Accounting records to be maintained by clearing house

- (1) A clearing house must maintain –
 - (a) entries from day to day of all sums of money received and expended by the clearing house and the matters in respect of which the receipt and expenditure took place;
 - (b) a record of funds held in trust for regulated persons;
 - (c) a record of all income and expenditure of the clearing house explaining the nature thereof;
 - (d) a record of all assets and liabilities of the clearing house, including any provision for financial commitments or contingent liabilities;
 - (e) a record of all purchases and sales of securities cleared by the clearing house, which reflects the -
 - (i) date of each transaction;
 - (ii) identification of the regulated persons that are counterparties to the transaction;
 - (iii) name or description of the securities; and
 - (iv) price per security and quantity of the securities cleared.

6. Accounting records to be maintained by authorised users, participants and regulated persons not covered by paragraphs 3, 4 and 5

- (1) An authorised user, participant and other regulated person not covered by paragraphs 3, 4 and 5 must maintain, where applicable, accounting records which must as a minimum contain -
 - (a) a daily record of all sums of money received and expended;
 - (b) a record of funds held in trust;
 - (c) a record of all income and expenditure;
 - (d) a record of all assets and liabilities, including any provisions for financial commitments or contingent liabilities;
 - (e) a record of all purchases and sales of securities which reflects the -
 - (i) date and time of each transaction;
 - (ii) person from whom securities were bought or to whom they were sold unless it is processed through an automated trading system recognised by the relevant exchange;
 - (iii) name of the person on whose behalf the securities were bought or sold;
 - (iv) quantity and description of the securities which were bought or sold;
 - (v) name of the issuer of the securities;
 - (vi) price per security and the total consideration;
 - (vii) brokerage;
 - (viii) taxes that are payable in respect of each transaction;
 - (ix) terms of the contract;
 - (x) capacity (principal or agent) in which the transaction was entered into; and
 - (xi) the following additional information in respect of transactions in options:
 - (aa) the reference number of the transaction and option number, where applicable;
 - (bb) whether the option is a put or call option;
 - (cc) the terms and conditions under which the option may be exercised, including the type of option, the strike price or yield, the strike date and time and the settlement date;
 - (dd) the identity of the writer of the option;
 - (ee) the quantity and description of the listed security to which the option relates;
 - (ff) the option premium and settlement date; and
 - (gg) whether the option was exercised or lapsed and the exercise date, if applicable;

- (f) a record of all securities and documents of title which are in the possession, safe custody or under the control of the regulated person, in which is reflected the -
 - (i) name of the issuer of the securities;
 - (ii) quantity and description of the securities;
 - (iii) identification numbers of the securities and documents of title, where applicable;
 - (iv) name of the registered holder and if the registered holder is a nominee controlled by the regulated person, the name of the person on whose behalf the nominee is holding the securities;
 - (v) person from whom the securities were received and to whom the securities were delivered;
 - (vi) date of receipt and delivery;
 - (vii) location where the securities or documents of title are kept;
 - (viii) details of any pledge to which the securities may be subject;
 - (ix) person on whose behalf securities or documents of title have been received or delivered;
 - (x) purpose for which the securities or documents of title are held.
 - (g) a record of securities held by the regulated person on behalf of its clients which must be made available to its clients, in the case of a participant, at least on a bi-annual basis, and in the case of another regulated person, other than an authorised user, at least on a quarterly basis, and which must contain as a minimum -
 - (i) the name of the client;
 - (ii) the quantity and a description of securities held;
 - (iii) a description of transaction movements within the securities accounts during the period since the previous report;
 - (h) a record of the reconciliation of the securities accounts maintained by a participant and the central securities account maintained by the central securities depository.
- (2) An authorised user or participant must reconcile balances with exchanges, clearing houses, central securities depositories and banks, if applicable, as frequently as is appropriate for the volume of transactions on accounts. Any differences, other than differences in timing between the records of the authorised user or participant and the exchanges, clearing houses, central securities depositories or banks, as the case may be, must be investigated forthwith and corrected as soon as is practicable.
- (3) Authorised users must reconcile securities under their control with the accounting records relating to securities held by the authorised user on a daily basis. Correcting entries must be made immediately.

7. Internal control and risk management

- (1) A participant shall, as far as it is reasonably practicable, establish and maintain adequate systems of internal control.
- (2) The system of internal control shall be designed to ensure that –
 - (a) the relevant business can be carried on in an orderly and efficient manner;
 - (b) financial and other information used or provided by the participant is reliable;
 - (c) all transactions and financial commitments entered into are recorded and are within the scope of authority of the participant or the officer or employee acting on behalf of the participant;
 - (d) there are procedures to safeguard the assets of the participant and assets belonging to any other person for which the participant is accountable, and to control liabilities; and
 - (e) there are measures, as far as it is reasonably practicable, to minimize the risk of loss to the participant or the clients of the participant from any irregularity, fraud or error and to detect any irregularity, fraud or error should they occur so that prompt remedial action may be taken by the participant or the management of the participant.
- (3) A participant shall, as far as it is reasonably practicable, adopt sound risk management principles and procedures.
- (4) The principles and procedures of risk management shall be designed to ensure that the records of the participant are maintained in such a manner as to promptly disclose financial and business information that will enable the participant or the management of the participant to –
 - (a) identify, quantify, control and manage the risk exposures of the participant;
 - (b) make timely and informed business decisions;
 - (c) monitor the performance and all aspects of the business of the participant;
 - (d) monitor the capital of the participant to ensure compliance with the capital adequacy requirements imposed in terms of the rules of the applicable self-regulatory organisation.
- (5) A participant must be able to describe and demonstrate the objectives and operation of such systems, principles and procedures referred to in paragraphs (1) to (4) above to its auditor, the applicable self-regulatory organisation and the registrar.

8. Accounting records as it pertains to authorised user or participant that ceases business

- (1) An authorised user or participant that ceases business must maintain a record of funds or assets held in trust, which funds or assets must be transferred to a client or another person authorised to deal in or hold custody of securities, until such transfer has been fully effected.
- (2) An authorised user or participant that ceases business must -
 - (a) notify the respective exchange or central securities depository of the intended or actual date of cessation of business;
 - (b) notify the clients for whom they hold assets or funds, in writing, of the intended or actual date of cessation of business, provide those clients with statements reflecting the assets and funds held on their behalf and indicate to which authorised user, participant or other person authorised to deal in or hold custody of securities their assets and funds will be delivered in the absence of an instruction from the client to the contrary; and
 - (c) deliver the client assets and funds in accordance with the information available or obtained in terms of paragraph (b) above.

9. Repeal

Notice 19 of 2005 is hereby repealed.

9. Selected Extracts of the Derivative Rules

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1.50 Derivative rules and directives

1.50.1 Purpose of the derivatives rules and directives

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.

1.90 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.

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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 -

"Act"	means the Securities Services Act (Act No. 36 of 2004) and any measure prescribed thereunder by the Minister of Finance or the Registrar;
"additional margin"	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;
"advertisement"	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;
"agent"	means a trading member who has traded with a client other than for his own account in terms of the derivatives rules;
"aggregate position"	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;
"agricultural derivatives"	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;
"agricultural product"	has the same meaning as contemplated in the Marketing of Agricultural Products Act, 1996 (Act No. 47 of 1996);
"assign"	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;
"authorised bank"	means a branch of an Authorised Dealer which, in terms of Exchange Control Regulation 14, has been appointed to administer securities control;
"Authorised Dealer"	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;
"authorised user"	has the same meaning as that contained in section 1 of the Act;
"automated trading system" or "ATS"	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;
"bank"	has the same meaning as that contained in section 1 of the Act;
"board of appeal"	has the same meaning as that contained in section 1 of the Act;
"bonds"	means those Yield-X securities which create or acknowledge indebtedness of the issuer;
"branch of a foreign bank"	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;
"business day" or "day"	means any day except a Saturday, Sunday, public holiday or any other day on which the JSE is closed;

"buy"	means, in relation to derivative securities, to enter into either - (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 (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 from or to the seller on or before the future date;
"call option contract"	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;
"capital adequacy requirement"	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;
"capital adequacy return"	means the submission by a member of his capital adequacy requirement to the JSE in the manner and form specified by the JSE;
"cash settled futures contract"	means a futures contract contemplated in part (b) of the definition of futures contract in this rule 2.10;
"Chief Executive Officer"	means the person appointed by the controlling body as the Chief Executive Officer of the JSE;
"clearing"	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;
"clearing agreement"	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;
"clearing house"	has the same meaning as that contained in section 1 of the Act;
"clearing house agreement"	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 ;
"clearing member"	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;
"client"	has the same meaning as that contained in section 1 of the Act;
"client agreement"	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;
"close out"	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);
"commodity derivatives market"	means the market operated by the JSE in terms of the Act to facilitate trading in commodity securities;
"commodity securities"	means those JSE listed securities traded on the JSE commodities trading system;
"common monetary area"	means the Republic of South Africa, Lesotho, Namibia and Swaziland;
"Companies Act"	means the Companies Act, 1973 (Act No. 61 of 1973);
"compliance officer"	means the person appointed in terms of Section 5;
"contract specification"	means the standard terms and formal requirements of a futures or option contract as determined by the JSE;

"controlling body"	means the board of directors of the JSE which is the governing body managing the affairs of the JSE;
"corporate action"	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;
"counterparty risk requirement"	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;
"currency derivatives"	means those Yield-X securities which are derivative instruments and the financial terms of which are determined by a rate of exchange;
"dealer "	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;
"default"	means a default by a client or member as contemplated in Section 12;
"derivative instruments"	has the same meaning as that contained in section 1 of the Act;
"derivatives rules"	means these derivatives rules issued in pursuance of section 18 of the Act;
"derivative securities"	means those derivative instruments listed on the JSE and traded on the JSE derivatives trading system;
"Disciplinary Committee"	means the committee appointed in terms of rule 3.290.2;
"discretionary basis"	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;
"discretionary client agreement"	means the client agreement as prescribed by the JSE that entitles the member to trade for a client on a discretionary basis;
"discretionary financial services provider"	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;
"dispute"	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;
"effective date"	means the date of the coming into operation of these derivatives rules;
"emigrant"	means a natural person who has emigrated from the common monetary area;
"emigrant client"	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;
"emigrant's blocked account"	means the account of an emigrant from the common monetary area to which exchange control restrictions have been applied;
"emigrant's blocked account clearance certificate"	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;
"employee"	means a person engaged by a member within that area of its business that operates as a member;
"equity derivatives market"	means the market operated by the JSE in terms of the Act to facilitate trading in equity derivatives;
"equity securities"	means those JSE listed securities traded on the JSE equities trading system;
"exchange"	has the same meaning as that contained in section 1 of the Act;
"exchange contract"	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;

"Exchange Control Regulations"	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);
"executive director"	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;
"exercise"	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;
"expire"	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;
"expiry month"	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;
"external company"	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;
"external exchange"	has the same meaning as that contained in section 1 of the Act;
"FAIS Act"	means the Financial Advisory and Intermediary Services Act, 2002 (Act No.37 of 2002);
"Fidelity Fund"	means the JSE Fidelity Fund contemplated in terms of Section 9(1)(e) of the Act;
"financial products"	shall have the same meaning as that contained in section 1 of the FAIS Act, and by definition includes JSE authorised investments;
"financial services provider"	shall have the same meaning as that contained in section 1 of the FAIS Act;
"foreign commodity derivatives"	means those commodity securities which are cash settled derivative instruments and the financial terms of which are determined by an underlying foreign referenced commodity;
"foreign exchange risk requirement"	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;
"futures contract"	means a contract, the effect of which is that - <ul style="list-style-type: none"> (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 (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, 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;
"initial capital"	means the minimum capital as specified from time to time by the JSE;
"initial margin"	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;
"interest rate derivatives"	means those Yield-X securities which are derivative instruments and the financial terms of which are determined by a rate of interest;
"intermediary services"	shall have the same meaning as that contained in section 1 of the FAIS Act;
"international derivatives"	means those derivative securities the financial terms of which are determined by a security listed on an external exchange;

"investment advice"	<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"> 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; <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"> • factual advice given merely – <ol style="list-style-type: none"> (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"	<p>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;</p>
"in writing"	<p>has the same meaning as that contained in section 1 of the Act;</p>
"JSE"	<p>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;</p>
"JSE authorised investments"	<p>means –</p> <ol style="list-style-type: none"> (a) derivative securities; (b) JSE listed securities traded on the JSE equities trading system or the Yield-X trading system; (c) securities listed on an exchange in the Republic other than the JSE; (d) securities listed on an external exchange; (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; (f) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country; and (g) funds intended for the purchase of such securities, units or participation;
"JSE commodities trading system"	<p>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;</p>
"JSE derivatives trading system"	<p>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;</p>
"JSE equities trading system"	<p>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;</p>
"JSE Gazette"	<p>means the gazette published by the JSE under the authority of the JSE Executive;</p>

"JSE listed securities"	means those securities included in the list of securities kept by the JSE;
"JSE Executive"	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;
"JSE share"	means a share in the JSE itself or in any company that owns or operates the JSE;
"JSE year"	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;
"large exposure risk"	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;
"listed securities"	has the same meaning as that contained in section 1 of the Act;
"long position"	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"> (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 (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;
"manage"	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;
"margin"	means either initial margin or variation margin or additional margin or retained margin as the context may require;
"margin category"	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;
"Market Controller"	means the person appointed by the JSE, to supervise, administer and control the daily operations of the ATS;
"market corner"	has the same meaning as that contained in section 72 of the Act;
"mark-to-market"	means the revaluation of a position in the exchange contract at its current market value;
"match"	means to match one member's trade with that of another member in terms of certain criteria contained in their independent reports of the trades;
"member"	means a derivatives member, which is a category of authorised user admitted to membership of the JSE under these rules;
"non-executive director"	means a person appointed as a director of a member, under the Companies Act but who is not employed by such member;
"non-resident"	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;
"non-resident account"	means the account of a non-resident;
"non-resident account clearance certificate"	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;
"non-resident client"	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 ;
"off-ATS"	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;
"officer"	means an executive director or a registered officer of a member;

"offer"	means an offer to buy or to sell;
"option contract"	means a put option contract or a call option contract, as the context may require;
"order"	means an offer in terms of which there is a period of time within which to accept the offer;
"own funds"	means the net financial worth of a member calculated in the manner as decided by the JSE;
"physically settled futures contract"	means a futures contract contemplated in part (a) of the definition of a futures contract in this rule 2.10;
"position"	means either a long position or a short position;
"position risk requirement"	means the amount of own funds required in relation to the member's open positions in securities as determined by the JSE;
"prescribed agreements"	means the agreements, the basic terms and formal requirements of which have been specified by the JSE;
"principal"	means a member who has traded with a client or another member for his own account;
"product supplier"	shall have the same meaning as that contained in section 1 of the FAIS Act;
"professional client"	<p>in relation to a trading member , means –</p> <ul style="list-style-type: none"> (a) another authorised user; (b) a bank; (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; (d) a person outside the Republic who – <ul style="list-style-type: none"> (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 (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; (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; (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"> (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 the clearing house in the name of a member for the member's own account;
...	
"registered officer"	means a compliance officer or a dealer registered by the JSE as such in the name of the member;
"Registrar"	has the same meaning as that contained in section 1 of the Act;

"Registrar of Banks"	means the Registrar of Banks designated under section 4 of the Banks Act, 1990 (Act No 94 of 1990);
"regulation"	means any regulation which may be made by the Minister in terms of section 113 of the Act;
"related exchange contracts"	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;
"Republic"	means the Republic of South Africa;
"resident"	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;
"resident client"	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;
"retained margin"	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;
"risk disclosure statement"	means the risk disclosure statement annexed to the client agreement;
"safeguard"	means in relation to JSE authorised investments– <ul style="list-style-type: none"> (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;
"securities"	has the same meaning as that contained in section 1 of the Act;
"securities services"	has the same meaning as that contained in section 1 of the Act;
"sell"	means, in relation to derivative securities, to enter into either - <ul style="list-style-type: none"> (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 (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;
"short position"	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"> (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 (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;
...	
"strike price"	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;
...	
"trade"	means to buy or to sell derivative securities whether by means of the ATS or off-ATS;
"trading member"	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;

"transaction"	has the same meaning as that contained in section 1 of the Act;
"trustees"	means the trustees of the Fidelity Fund;
"underlying instrument"	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;
"unsolicited call"	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;
"variation margin"	means the amount of margin payable in terms of rule 8.60.2;
...	

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
 - 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 ...
- 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.

3.50 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.
- 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
 - 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;
- 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;
- any of the circumstances referred to in rules 3.60.1.1 to 3.60.1.4 arising; or
- 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.
- 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.

...

3.120 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.

...

3.275 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 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.

3.280 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;

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).

...

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 = Own funds
 - CAR = Capital adequacy requirement
 - 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.
- 4.20.6 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.

...

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.

...

5.50 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.
- 5.50.3 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.

...

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.

...

7.30 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.
- 7.30.4 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.

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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 ...

7.139 ATS 4-Digit Sub Account

- 7.139.1 When bulking or aggregating client orders, or orders received from other members, members are require 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.

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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
- 7.200.4.5 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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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 ...

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.
- 8.60.3 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.

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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.

8.90.7 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.

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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.

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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.

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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”	<p>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: -</p> <ul style="list-style-type: none"> (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. <p>For the purposes of this definition, hedging positions include, but are not limited to, the following specific positions:</p> <ul style="list-style-type: none"> (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 – <ul style="list-style-type: none"> (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; (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”	<p>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 -</p> <ul style="list-style-type: none"> (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.

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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.

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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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-
 - 12.30.6.1 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.

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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 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.

15.35 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;
 - 15.35.2.1.1 states whether there are any jurisdiction restrictions in respect of the particular foreign investments; and
 - 15.35.2.1.1 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.

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.

15.50.4 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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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;
- 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 –

16.10.5.2.1 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.

16.15 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.

16.20.3 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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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.

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.
- 17.70.2 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 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.

17.120 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.