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PROPOSED AMENDMENTS TO THE JSE EQUITIES RULES

General explanatory notes:

1. The proposed amendments to the JSE equities rules set out below give effect to the requirements of the Financial Markets Act (Act No.19 of 2012).
2. Words underlined with a solid line (___) indicate the insertions in the existing rules.
3. Words in bold and in square brackets ([]) indicate deletions from the existing rules.

Section 1: Interpretation and definitions

1.40 In the rules –

"Act"	means the [Securities Services Act, 2004 (Act No. 36 of 2004)] <u>Financial Markets Act, 2012 (Act No. 19 of 2012)</u> and any measure prescribed thereunder by the Minister of Finance or the Registrar;
<u>"advice"</u>	<u>has the same meaning as that contained in Section 1 of the Act;</u>
<u>"appeal board"</u>	<u>has the same meaning as that contained in Section 1 of the Act;</u>
["board of appeal"]	[has the same meaning as that contained in section 1 of the Act;]
"certificated equity securities"	means equity securities evidenced by a certificate [or written instrument];
"client"	[has the same meaning as that contained in Section 1 of the Act] <u>means any person to whom a member provides securities services in terms of the rules, and includes a person that acts as an agent for another person in relation to those services in which case it will include the agent or exclude the other person if the contractual arrangement between the parties indicates this to be the intention;</u>
"Companies Act"	means the [Companies Act, 1973 (Act No. 61 of 1973)] <u>Companies Act, 2008 (Act No. 71 of 2008);</u>
<u>"Financial Intelligence Centre Act"</u>	<u>means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);</u>
<u>"insolvency administrator"</u>	<u>has the same meaning as that contained in Section 1 of the Act;</u>
<u>"insolvency proceeding"</u>	<u>has the same meaning as that contained in Section 1 of the Act;</u>
["investment advice"]	[means any recommendation, guidance or proposal of a financial nature furnished by a member, by any means or medium, to any client or group of clients – (a) in respect of the purchase or sale of any JSE authorised investments; or (b) on any corporate action or other event affecting any rights or benefits in respect of any JSE authorised investments; or (c) on the exercise or lapse of any rights in respect of any JSE authorised investments; and irrespective of whether or not such advice results in any transaction being effected. Investment advice does not include – <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

	<p>investments;</p> <p>(iii) in answer to routine administrative queries;</p> <p>(iv) in the form of objective information about any JSE authorised investments; or</p> <p>(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;]</p>
"investment services"	<p>means the services provided by an investment services provider to its clients, and includes:</p> <p>(a) exercising discretion in the management of JSE authorised investments on behalf of clients;</p> <p>(b) providing [investment] advice to a client in respect of JSE authorised investments; [and]</p> <p>(c) <u>executing transactions in JSE authorised investments other than equity securities; and</u></p> <p><u>(d)[(c)]safeguarding JSE authorised investments[,] other than uncertificated equity securities and funds intended for the purchase of equity securities;</u></p>
"manage"	<p>"manage" in relation to JSE authorised investments, means any arrangement entered into between a client and a member which authorises such member to buy or sell JSE authorised investments <u>or exercise any rights attached to those investments</u> on behalf of such client, either with full discretion or with prior reference to the client;</p>
["market corner"]	[has the same meaning as that contained in section 72 of the Act;]
"registered owner"	<p>means a person or entity which appears on the main register of an issuer kept in terms of the Companies Act, and a person or entity which appears on the [sub-register] <u>uncertificated securities register</u> of that issuer kept by a CSDP in terms of the Companies Act;</p>
["safeguard"]	<p>[in relation to client assets, means:</p> <p>(a) the holding of such assets in safe custody by a member or a nominee company controlled by a member, on behalf of a client; or</p> <p>(b) being accountable as a member to a client for such assets held by another financial services provider;]</p>
<u>"safeguarding"</u>	<u>has the same meaning as that contained in section 1 of the Act;</u>
<u>"settle"</u>	<u>has the same meaning as that contained in section 1 of the Act;</u>
<u>"SRO Oversight Committee"</u>	<u>means the JSE Board sub-committee responsible for overseeing the issuer regulation and market regulation functions of the JSE;</u>
["sub-register"]	[means a sub-register maintained by a CSDP recording ownership of equity securities, as defined in section 91A of the Companies Act;]
"uncertificated equity securities"	<p>means equity securities that are not evidenced by a certificate [or written instrument] and are transferable by book entry without a [written instrument] certificate;</p>
<u>"uncertificated securities register"</u>	<u>has the same meaning as that contained in section 1 of the Act;</u>

Section 2: General Provisions

Scope of section

2.160 Fees, levies, charges, penalties and subscriptions

2.70 JSE not responsible for any losses

Subject to section ~~[62]~~72 of the Act, the JSE shall not be responsible or liable to any person for any loss or damage arising from –

2.70.1 ...

2.100 JSE Trustees (Pty) Limited

2.100.6 In the event of a loss of any or all of such funds, including interest on such funds, such loss will be defrayed gradually as circumstances and the liabilities of JSET may permit, by retaining a portion of the interest payable to members from time to time in terms of rule ~~[2.110.7]~~2.100.8 or by any other equitable and practicable method of general application to clients of members from time to time, determined by the directors of JSET in their sole discretion.

Section 3: Authorisations and approvals

Scope of section

~~[3.180]~~ ~~[Fees, levies, charges penalties and subscriptions]~~

3.30 Specific conditions of membership

3.30.1 Resources, procedures and systems

3.30.1.1 A member must employ adequate resources, procedures and systems that are necessary for –

3.30.1.1.1 the effective performance of the regulated services that it [which the member] provides;

3.30.1.1.2 **[and for]** ensuring compliance with the Act and the rules and directives that are relevant to the performance of such regulated services; and

3.30.1.1.3 ensuring compliance with the Financial Intelligence Centre Act.

3.60 Requirements to perform investment services

3.60.1 An applicant for membership or a member may request authorisation to perform one or more investment services in respect of JSE authorised investments provided that the applicant is authorised to perform trading services and can evidence to the satisfaction of the JSE that it has employed or will employ adequate resources, procedures and systems necessary for the effective performance of investment services and for ensuring compliance with the Act, the rules and the directives that are relevant to the performance of investment services.

3.60.3 An authorised ISP may not conduct transactions in JSE authorised investments other than equity securities on behalf of clients or provide **[investment]** advice to any clients in respect of such investments without prior notification to the Director: Surveillance, in writing, of its intention to conduct such transactions or provide such advice. Such notification is not required if the member

will be conducting transactions in listed securities on another JSE market or another exchange as an authorised user of such market or exchange.

- 3.60.4 In order for the JSE to identify the scope of an ISP's activities in JSE authorised investments other than equity securities, the written notification to the Director: Surveillance referred to in rule 3.60.3 must indicate which specific investments the member is intending either to trade in on behalf of its clients or to provide **[investment]** advice on, or both.

3.100 Application process

- 3.100.5 A person aggrieved by a decision of the JSE to reject an application to be admitted as a member may appeal to the appeal board **[of appeal]** in terms of section **[111 (1)]105(1)** of the Act.

3.130 Involuntary termination of membership

The JSE may provisionally or finally terminate membership if –

- 3.130.1 the member is placed in liquidation, whether provisional or final, or placed under **[judicial management]** business rescue proceedings or if any other judicial proceeding or court application for an insolvency proceeding is initiated, or the company files a resolution to such effect or has an insolvency administrator appointed to it;
- 3.130.5 the member fails to make payment of any fees, levies, charges, penalties or subscriptions in terms of rule **[3.180.2] 2.160.2.**

Section 4: Management and control

Scope of section

- 4.50 Qualifications to manage investments and provide **[investment]** advice

4.10 Fit and proper requirements

- 4.10.2 In determining whether a person complies with rule 4.10.1.3, the JSE will take into account, inter alia, whether the person has been –
- 4.10.2.1 convicted of an activity constituting a criminal offence involving fraud, **[or]** theft, dishonesty or market abuse, whether in the Republic or elsewhere;
- 4.10.2.2 held civilly or administratively liable for, *inter alia*, fraud, theft, dishonesty or market abuse, whether in the Republic or elsewhere;
- 4.10.2.3 declared to have contravened legislation in respect of market abuse, money laundering or terrorist or related activity, with or without the imposition of an administrative penalty, whether in the Republic or elsewhere;
- 4.10.2.4**[3]** disqualified by a court from acting as a director of a company;
- 4.10.2.5**[4]** the subject of a formal investigation by any regulatory or government agency;
- 4.10.2.6**[5]** expelled, whether as an authorised user or otherwise, from any exchange or external exchange;
- 4.10.2.7**[6]** employed by or associated with an authorised user of any exchange or external exchange, which authorised user was expelled from that exchange and where the person has, in the opinion of the JSE, contributed to the circumstances leading to the expulsion;
- 4.10.2.8**[7]** declared a defaulter on the JSE or any other exchange or external exchange;
- 4.10.2.9**[8]** 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 similar position of trust; or

- 4.10.2.10[9] refused approval or had approval involuntarily withdrawn in respect of any status granted by a regulatory authority.

4.50 Qualifications to manage investments and provide [investment] advice

No employee of a member may exercise discretion in the management of JSE authorised investments on behalf of clients or provide [investment] advice to clients on the buying or selling of JSE authorised investments unless the employee has obtained such qualification as may be prescribed in the directives.

Section 7: Market conduct

7.10 [Manipulative or deceptive trading practices] Prevention and detection of market abuse

7.10.1 A member must give consideration to the circumstances of orders placed by clients before entering such orders in the JSE equities trading system and **[is responsible for the integrity of such orders] must take reasonable steps to satisfy itself that such orders and any resultant trades will not result in a breach of the provisions of section 80 of the Act (Prohibited trading practices).**

7.10.2 **[A member or employee of a member may not use, or knowingly participate in the use of any manipulative or deceptive trading practice in an equity security, either for the account of the member or employee of a member, or on behalf of clients, which creates or may create –**

7.10.2.1 a false or deceptive appearance of trading activity; or

7.10.2.2 an artificial price for such equity security.]

A member must ensure that all of its employees who are involved in the receipt of orders from clients and the execution of transactions in equity securities on the JSE equities trading system are familiar with the market abuse provisions in sections 77 to 80 of the Act and that those employees receive adequate training and guidance to enable them to recognise and avoid entering into any transaction on behalf of the member or its clients which will result in, or is likely to result in, a breach of those provisions.

7.10.3 **[A member or employee of a member may not place an order in the JSE equities trading system to buy or sell equity securities which, to the knowledge of the member or employee of a member will, if executed, have the effect contemplated in rule 7.10.2.]**

A member's compliance monitoring procedures must specifically include procedures to monitor orders entered into, and transactions executed on, the JSE equities trading system by the member and its employees, with the objective of identifying and taking appropriate action in relation to orders or trades that, in the reasonable opinion of the member, may constitute a breach of the provisions of sections 78 and 80 of the Act.

7.10.4 **[Without in any way limiting the generality of the foregoing, the following are deemed to be manipulative or deceptive trading practices:**

7.10.4.1 Approving or entering on the JSE equities trading system –

7.10.4.1.1 an order to buy or sell an equity security with the knowledge that an opposite order or orders of substantially the same size at substantially the same time and at substantially the same price, have 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 equity security;

7.10.4.1.2 orders to buy any equity security at successively higher prices or orders to sell any equity security at successively lower prices for the purpose of unduly or improperly influencing the market price of such equity security;

7.10.4.1.3 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 equity security;

- 7.10.4.1.4 an order to buy or sell any equity security during an auction call session and cancelling such order immediately prior to the auction matching, for the purpose of creating or inducing a false or deceptive appearance of demand for or supply of such equity security;
- 7.10.4.1.5 an order to buy or sell an equity security which involves no change in the beneficial ownership of that equity security; or
- 7.10.4.1.6 an off book trade which would result in a contravention of rule 7.10.2;
- 7.10.4.2 effecting or assisting in effecting a market corner;
- 7.10.4.3 maintaining the price of an equity security at a level which is artificial;
- 7.10.4.4 employing any device, scheme or artifice to defraud any other person as a result of a transaction effected through the JSE equities trading system; or
- 7.10.4.5 engaging in any act, practice or course of business in respect of trading in equity securities which is deceptive or which is likely to have such an effect.]

In formulating and implementing the compliance monitoring procedures referred to in rule 7.10.3, a member is not expected to monitor every order entered into, and every trade executed on, the JSE equities trading system by the member, for the purpose of identifying potential market abuse. Nevertheless, whilst members are encouraged to implement monitoring procedures to detect any activity undertaken by the member's employees or its clients which may constitute a breach of the provisions of sections 78 and 80 of the Act, the procedures should, as a minimum, aim to detect activity which, to a reasonable person observing or reviewing such activity, would constitute a blatant breach of the provisions of sections 78 and 80 of the Act taking into account all relevant factors such as:

- 7.10.4.1 the identity of the parties to the transaction;
- 7.10.4.2 the perceived intention of the parties to the transaction;
- 7.10.4.3 the frequency and pattern of transactions over a period of time;
- 7.10.4.4 the effect of the transaction on market prices or volumes;
- 7.10.4.5 the size and timing of the transaction; or
- 7.10.4.6 a combination of two or more of these factors.

[7.20] [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 equity securities, or in respect of the past or future performance of a listed company –

- 7.20.1 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**
- 7.20.2 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.]**

Section 8: Conduct of business

8.75 Conducting business with a nominee

A member may not operate a controlled client account on behalf of a person whom the member believes or suspects requires approval to act as a nominee under section 76 of the Act without having taken reasonable measures to ascertain that such person has the necessary approval.

8.130 **Advice on JSE authorised investments**

8.130.1 In providing **[investment]** advice to a client, other than a professional client, in respect of JSE authorised investments, an ISP must –

8.130.1.1 take reasonable steps to obtain 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;

8.130.1.4 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

8.130.1.5 ensure that any **[investment]** advice provided is not for the primary purpose of maximising the income of the member.

8.130.2 A member may not provide any unsolicited **[investment]** advice to a client with the purpose of encouraging or inducing the client to transact in derivative instruments unless the member has –

...

8.160 **Authorisation of investments other than equity securities under other regulation**

8.160.1 Although these rules provide for the JSE authorising ISPs to manage JSE authorised investments other than equity securities, or provide **[investment]** advice on such investments, the authorisation by the JSE under these rules will only apply if –

...

Section 9: Client assets

9.10 **Safeguarding of assets in controlled client accounts**

Safeguarding of controlled clients' equity securities

9.10.7 A CSP that controls a nominee register must balance the equity securities daily with the securities custody account at the CSDP. Reconciling differences must be rectified within one day, unless there are circumstances beyond the control of the CSP that prevent a difference from being resolved within one day, in which case the difference must be rectified as soon as is reasonably possible. A monthly certificate must be furnished by the third business day after the BDA system month end to the Director: Surveillance, confirming that –

9.10.7.2 the equities securities balances in the nominee register have been reconciled daily with the CSDP custody account balances and that all **[the]** differences **[have been resolved]** occurring during the month were either rectified within one day or if circumstances beyond the control of the CSP prevented any differences from being rectified within one day, those differences were rectified as soon as was reasonably possible; and

- 9.10.9 **[Equity securities belonging to a controlled client which are held as collateral in respect of a loan of funds or securities to the client must be held in the manner set out in this rule 9.10, and –**
- 9.10.9.1 **a CSP must record in the nominee register those equity securities which are held as collateral for a loan. Full details of any change in the equity securities held must be recorded forthwith in the nominee register;**
- 9.10.9.2 **when equity securities of a client are designated in a nominee register as collateral, the client may be required by the member to lodge with it a pledge in such form as may be determined by the member; and**
- 9.10.9.3 **a member must keep a record or register of the pledges so held.]**
- In accordance with section 39 of the Act, a pledge or cession in *securitatem debiti* of equity securities held by a member on behalf of a controlled client must be effected by means of an entry by a CSP in the pledgor or cedent's account in the BDA system specifying –
- 9.10.9.1 the name of the pledgee or cessionary (either the member or a third party);
- 9.10.9.2 the quantity of equity securities pledged or ceded; and
- 9.10.9.3 the date of the entry.
- 9.10.10 A pledge or cession referred to in rule 9.10.9 should not be effected without a written agreement between the parties to the pledge or cession and the member should keep a record of such agreements.

Safeguarding of controlled clients' funds

- 9.10.11[10] Funds received in respect of or arising from the operation of an account for a controlled client which are not paid over to the client upon receipt of such funds, must be deposited for the account and in the name of the client with JSET.
- 9.10.12[11] The difference between the total of the funds balances on all controlled client accounts in the books of account of the member as at the close of business on the preceding business day and the total amount held by JSET on behalf of the clients of such member as at the same date must be paid to or received from JSET forthwith.

9.60 Separation of client assets

- 9.60.3 A member must open and maintain one or more trust bank accounts as prescribed in section [27]21 of the Act to ensure that any funds received by the member from a client are segregated from the member's own funds from the time that such funds are deposited.

Section 10: Clearing and settlement

10.70 Non-controlled client settlement obligations

- 10.70.7 If a non-controlled client's CSDP has committed to settling a transaction on behalf of the non-controlled client, the non-controlled client may not instruct the CSDP to revoke their commitment to settle the transaction, unless they receive an instruction to do so from the Settlement Authority.

10.90 Member settlement obligations

- 10.90.8 If a member's CSDP has committed to settling a transaction on behalf of the member, the member may not instruct the CSDP to revoke their commitment to settle the transaction, unless they receive an instruction to do so from the Settlement Authority.

- 10.90.9[8] If a client, at any stage, advises a member, or the member otherwise becomes aware, that the client is not able to settle a transaction, the member must endeavour to enter into an arrangement to ensure that the transaction settles on settlement date. If the member is unable to enter into such arrangement, the member must immediately notify the Settlement Authority.
- 10.90.10[9] If the Settlement Authority receives notification in terms of rule 10.90.9[8] and is able to procure the settlement of the transaction by means of the borrowing of equity securities or funds, as the case may be, then the member must by no later than the close of business on the next business day –
- 10.90.10[9].1 in respect of a sale transaction, buy such securities either for the account of the relevant client or for the member's own account; or
- 10.90.10[9].2 in respect of a purchase transaction, sell such securities either for the account of the relevant client or for the member's own account;
- in order to ensure the return of the securities or funds to the Settlement Authority.
- 10.90.11[10] If the Settlement Authority receives notification in terms of rule 10.90.9[8], and the Settlement Authority either rolls the settlement in terms of rule 10.105 or declares the transaction to be a failed trade in terms of rule 10.60.3, the member must act in accordance with the instructions received from the Settlement Authority in terms of rule 10.105 or rule 10.110, respectively.
- 10.90.12[11] A member must not use a client's equity securities to settle the obligations of –
- 10.90.12[11].1 another client; or
- 10.90.12[11].2 a proprietary position.

Section 11: Complaints and disputes

11.130 Member complaints against the JSE

- 11.130.1 Subject to rule 11.130.2, if a member wishes to lodge a complaint against the JSE in respect of the exercise by the JSE of any exchange functions in terms of section 10 of the Act and the member requires a written response to their complaint, the member should lodge the complaint in writing with the JSE Company Secretary.
- 11.130.2 If a member wishes to lodge a complaint against the JSE in respect of conduct by the JSE which, in the opinion of the member, evidences a failure by the JSE to avoid or otherwise appropriately manage a potential conflict between the JSE's regulatory functions and its commercial functions, the member should lodge the complaint in writing with the JSE Company Secretary for the attention of the Chairman of the SRO Oversight Committee.
- 11.130.3 The JSE or the Chairman of the SRO Oversight Committee will respond to a complaint received in terms of rule 11.130.1 or 11.130.2 respectively within 4 weeks of receiving the complaint or, within such period, will provide the complainant with an appropriate explanation as to why they are not, at that time, in a position to respond and will indicate by when they will respond.

Section 12: Supervision and enforcement

12.10 Surveillance and investigation by the JSE Surveillance Department

12.10.1 Surveillance

- 12.10.1.3 supervising compliance by members with the Financial Intelligence Centre Act[, 2001 (Act No. 38 of 2001)].

12.80 Involuntary termination of membership – Supervision and control

- 12.80.2 The intervention by the JSE referred to in rule 12.80.1 may, in appropriate circumstances, involve the JSE following the procedures set out in rule ~~[13.40.5.2]~~13.30.2, as if the member had been declared to be in default.

Section 13: Default**13.20 Consequences of default**

- 13.20.2 Without limiting or detracting from any other remedies and rights which the JSE may have against a member, upon a member being declared to be in default –
- 13.20.2.2 any amount payable by the JSE to the member arising from any suretyship, cession, pledge or other security or any other cause shall be set off against any amount payable by the member in terms of rule ~~[3.180]~~2.160, including related penalties imposed by the JSE;
- 13.20.3 The JSE is entitled to recover any amounts due by the defaulting member to the JSE in terms of rule ~~[3.180]~~2.160 from the assets of the defaulting member.

13.40 Return of client assets

- 13.40.4 In the event of a shortfall in clients' equity securities held by the defaulting member that is the result of a difference between the aggregate quantity of equity securities of a particular kind reflected in the member's BDA nominee register and the aggregate quantity of equity securities of the same kind reflected in the controlled client custody account at the member's CSDP, such shortfall shall be borne by all of the clients who hold equity securities of that kind collectively, in proportion to the interest allocated to each of the clients in the BDA nominee register at the time immediately preceding the occurrence of the default.
- 13.40.~~5~~4 Before any client assets are returned to the client, the client shall indemnify the Director: Surveillance in writing for any loss sustained by or damage caused to any person, including, but not limited to the client, as a result of anything done or omitted by the Director: Surveillance in the bona fide exercise of any power, or performance of any duty or function under or by virtue of the above rules, as a result of the return of such assets to the client and the alienation by the client of such returned assets in respect of which he is not the lawful owner.
- 13.40.~~6~~5 Where client assets are returned to clients in terms of rule 13.40.3 and it is thereafter established that ownership of such assets does not vest in the client, the client shall immediately return such assets to the control of the Director: Surveillance, upon written notification of the Director. Where such returned client assets have been alienated by the client, the client shall immediately and in so far as he is able to, effect the return of such assets to the control of the Director: Surveillance, upon written notification by the Director.
- 13.40.~~7~~6 The JSE shall be entitled to recover the costs of returning clients assets to the client from the defaulting member.

Section 14 – Transitional provisions**14.20 Prevention and detection of market abuse**

Members will have 6 months from the date of the approval by the registrar of the amended rules 7.10.2 to 7.10.4 within which to conduct the relevant training and formulate and implement the compliance monitoring procedures referred to in those rules.