

Y1347B

APPROVED AMENDMENTS TO THE JSE INTEREST RATE AND CURRENCY RULES

General explanatory notes:

1. Words underlined with a solid line (___) indicate the insertions in the existing rules.
2. Words in bold and in square brackets ([]) indicate deletions from the existing rules.

Section 1: General provisions

1.90 JSE not liable for any losses

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

190.1 ...

1.120 Transitional provisions

1.120.16 Trading members will have 6 months from the date of approval by the registrar of the amended rules 7.50.2 to 7.50.4 within which to conduct the relevant training and formulate and implement the compliance monitoring procedures referred to in those rules.

Section 2: Definitions and interpretation

2.10 Definitions

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

“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;
"advice"	<u>has the same meaning as that contained in Section 1 of the Act;</u>
"appeal board"	<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;]
“broadcast”	means the communication or dissemination of bid and offer prices on an effective one-to-many [and non-discriminatory] basis, excluding requests for quotes where the information is disseminated to a specific recipient;
“clearing member”	means a sub-category of authorised user of the JSE, [registered] <u>authorised</u> to perform clearing <u>services</u> in the IRC markets and who has entered into a SAFCOM agreement with SAFCOM;
"clearing services"	<u>has the same meaning as that contained in Section 1 of the Act;</u>
"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>
"Compensation Funds"	means collectively, the Fidelity Fund and the Guarantee Fund, as

	contemplated in section [9(1)(e)]8(1)(h) of the Act;
"external company"	means an external company as defined in Section 1 of the Companies Act, registered in terms of Section [322(2)]23 of the Companies Act;
"Fidelity Fund"	means a Compensation Fund as contemplated in terms of Section [9(1)(e)]8(1)(h) of the Act, out of which shall be paid claims arising from the default of a member in accordance with the rules of the fund;
<u>"Financial Intelligence Centre Act"</u>	<u>means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);</u>
"Guarantee Fund"	means a Compensation Fund as contemplated in terms of Section [9(1)(e)]8(1)(h) of the Act, out of which shall be paid claims arising from the default of a trading member in accordance with the rules of the fund;
<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>
"inter-dealer broker" or "IDB"	means a sub-category of trading member authorised to [trade and to provide services in respect of the buying and selling of IRC securities, subject to the rules pertaining to inter-dealer brokers;] <u>act as an intermediary between two other trading members or between a trading member and another person in relation to the purchase and sale of IRC securities;</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 – <ul 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 any 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;]
"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;
["market corner"]	[has the same meaning as that contained in section 72 of the Act;]
"registrar"	<u>has the same meaning as that contained in section 1 of the Act;</u>
"regulation"	[means any regulation which may be made by the Minister under section 113 of the Act;] <u>has the same meaning as that contained in section 1 of the Act;</u>
["safeguard"]	[in relation to client assets, means: (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 (b) being accountable as a member to a client for such assets held by another financial services provider;]
"safeguarding"	<u>has the same meaning as that contained in section 1 of the Act;</u>
"settle"	<u>has the same meaning as that contained in section 1 of the Act;</u>
"SRO Oversight Committee"	<u>means the JSE Board sub-committee responsible for overseeing the issuer regulation and market regulation functions of the JSE;</u>
["the registrar"]	[has the same meaning as that contained in section 1 of the Act;]
"these rules"	means the JSE interest rate and currency rules issued in pursuance of section [18]17 of the Act, including any alteration, addition or amendment thereof;
"uncertificated securities"	has the same meaning as that contained in section [29]1 of the Act;

Section 3: Membership

3.30 General requirements

- 3.30.2 Officers of members shall, subject to any waiver by the JSE –
- 3.30.2.4 not in the period preceding the application as the JSE in its discretion deems fit, have been –
- 3.30.2.4.1 convicted of an activity constituting a criminal offence involving fraud, theft, dishonesty or market abuse, whether in the Republic or elsewhere;
- 3.30.2.4.2 held civilly or administratively liable for, inter alia, fraud, theft, dishonesty or market abuse, whether in the Republic or elsewhere;
- 3.30.2.4.3 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;
- 3.30.2.4.4 disqualified by a court from acting as a director of a company;
- 3.30.2.4.5**[2]** the subject of a formal investigation by any regulatory or government agency;
- 3.30.2.4.6**[3]** expelled, whether as a member or otherwise, from any exchange or external exchange;
- 3.30.2.4.7**[4]** employed by or associated with a member of any exchange or external exchange, which member was expelled from that exchange

and where the person or officer has, in the opinion of the JSE, contributed to the circumstances leading to the expulsion;

3.30.2.4.8[5] declared a defaulting member of the JSE or any other exchange or external exchange;

3.30.2.4.9[6] refused entry to or expelled from any profession or vocation or been dismissed or requested to resign from any office or employment, or from any fiduciary office or position of trust; or

3.30.2.4.10[7] refused approval to operate as a financial services provider in terms of the FAIS Act or any other act.

3.30.4 All members shall at all times have and maintain the necessary procedures, administrative and other systems, facilities, resources and expertise to ensure **[that]** –

3.30.4.1 the effective performance of the regulated services that they provide;

3.30.4.2 compliance with the Act and the rules and directives that are relevant to the performance of such regulated services;

3.30.4.3 compliance with the Financial Intelligence Centre Act;

3.30.4.4[1] that the management of their own and/or clients' funds is adequate and in accordance with the rules relating to the management or separation of funds;

3.30.4.5[2] that an accurate record of their own and/or clients' positions is kept at all times;

3.30.4.6[3] that where a trading member transacts for or on behalf of clients, their clients' transactions, cash balances and any other information relating to their positions are timeously reported to the clients; and

3.30.4.7[4] that they comply[ies] with all the financial resources requirements pertaining to the relevant category of authorised user as prescribed in these rules.

3.50 Application for membership

3.50.4 An external company shall, when submitting its application for membership, submit proof of compliance with the requirements of Section **[322]23** of the Companies Act, by furnishing the JSE with the certificate of registration as provided for in section **[322(2)]14(1)(b)(iii)** of the Companies Act.

3.80 Involuntary termination of membership

3.80.1 Membership shall terminate when –

3.80.1.1 a member is **[liquidated or placed under curatorship or judicial management, whether provisionally or finally;]** placed in liquidation, whether provisional or final, or under business rescue proceedings or 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;

3.90 Duty to furnish information

3.90.1 A member shall forthwith advise the JSE in writing of –

3.90.1.2 any of the circumstances referred to in rule 3.80.1.1 arising;

3.90.1.3[2] conviction of the member or any of its officers of any offence under legislation relating to banking, or other financial services, companies, insolvency, insurance and pension and provident societies or of any offence involving fraud or dishonesty;

3.90.1.4[3] any person becoming or ceasing to be a director of the member;

3.90.1.5[4] any change in the name or address of any office of the member, and of any change in the member's telephone or facsimile numbers or electronic mailing addresses;

- 3.90.1.6[5] any change in the particulars relating to an officer, and of the event that any officer is found guilty of any improper conduct by any licensed exchange, a previous or current employer, a professional association or a court of law; or
- 3.90.1.7[6] the dismissal of an employee for committing or attempting to commit an act which is dishonest, fraudulent, dishonourable or disgraceful.

Section 4: Disciplinary Matters

4.10 Surveillance and investigation by the JSE's Surveillance Department

4.10.1 Surveillance

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

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

Section 5: Complaints and Disputes [Dispute resolution]

5.130 Member complaints against the JSE

5.130.1 Subject to rule 5.130.2, 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.

5.130.2 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.

5.130.3 The JSE or the Chairman of the SRO Oversight Committee will respond to a complaint received in terms of rule 5.130.1 or 5.130.2 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 6: IRC securities

6.10 List of IRC securities

The record of IRC securities which may be bought or sold on the IRC markets shall be kept by the JSE in the list of the securities in terms of section [12(6)(a)]11(8)(a) of the Act.

Section 7: Trading

7.10 Buying and selling of IRC securities

7.10.1 The business of the buying and selling of IRC securities by trading members as contemplated by sections [19]24(a) and (b) of the Act must be conducted on the trading system: Provided that –

7.10.1.1 ...

7.30 Trading members' obligations

7.30.6 Broadcasting of market prices

- 7.30.6.1 Subject to authorisation from its clients, an IDB must broadcast bid and offer prices in relation to its clients' orders to buy and sell JSE listed bonds in a non-discriminatory manner which ensures that such bid and offer prices are accessible at the same time to all other trading members with whom the IDB transacts who wish to access those prices.
- 7.30.6.2 A member may only broadcast a bid or offer price in a JSE listed bond if it has the intention of trading at that particular price either for its own account or based on an order received from a client to buy or sell the JSE listed bond, subject to any counterparty limits, contractual provisions and regulatory or internal compliance restrictions that may prevent the member from trading with a person who wishes to trade at the broadcast price.
- 7.30.6.3[1] Any member that broadcasts bid and offer prices in JSE listed bonds or spreads comprising two bonds, either on its own behalf or on behalf of clients, must make such prices available to the JSE on request.
- 7.30.6.4[2] The JSE may use the broadcast prices for the purpose of **[promoting liquidity and the]** effective regulation of trading in JSE listed bonds and may also specifically use prices broadcast by IDBs to promote liquidity and transparency of trading in JSE listed bonds.

7.50 **[Manipulative or deceptive transactions]** Prevention and detection of market abuse

- 7.50.1 **[No trading members shall use, or knowingly participate in the use of any manipulative or deceptive trading practice in an IRC security, either for its own account or on behalf of clients, which creates or may create –**
- 7.50.1.1 a false or misleading appearance of trading activity; or
- 7.50.1.2 an artificial value for such IRC security.]
- A member must give consideration to the circumstances of orders placed by clients before entering such orders in the trading system and 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).
- 7.50.2 **[A trading member must give consideration to the circumstances of orders placed by clients before entering such orders in the trading system and is responsible for the integrity of such orders.]**
- 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 IRC securities on the 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.
- 7.50.3 **[A trading member or employee of a trading member may not place an order in the trading system to buy or sell IRC securities which to the knowledge of the trading member or employee of a trading member will, if executed, have the effect contemplated in rule 7.50.1.]**
- A member's compliance monitoring procedures must specifically include procedures to monitor orders entered into, and transactions executed on, the 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.
- 7.50.4 **[Without in any way limiting the generality of the foregoing, the following shall be deemed to be manipulative or deceptive methods of trading**

- 7.50.4.1 Approving or entering on the trading system –**
- 7.50.4.1.1** an order to buy or sell an IRC security with the knowledge that an opposite order of substantially the same size at substantially the same time and at substantially the same price, has been or will be entered by or for the same or different persons with the intention of creating a false or misleading appearance of active public trading in connection with, or an artificial market price for such IRC security;
 - 7.50.4.1.2** orders to buy any IRC security at successively higher prices, or orders to sell any security at successively lower prices for the purpose of unduly or improperly influencing the market price of such IRC security;
 - 7.50.4.1.3** an order at or near the close of the market, the primary purpose of which is to change or maintain the closing price of such IRC security;
 - 7.50.4.1.4** an order to buy or sell any IRC security during the pre-opening session and cancelling such order immediately prior to the market opening, for the purpose of creating or inducing a false or misleading appearance of demand for or supply of such IRC security;
 - 7.50.4.1.5** an order to buy or sell an IRC security which involves no change in the beneficial ownership of that IRC security; or
 - 7.50.4.1.6** reported transactions which would result in a contravention of rule 7.50.1;
- 7.50.4.1 Effecting or assisting in effecting a market corner;**
- 7.50.4.2 Maintaining the price of an IRC security at a level that is artificial;**
- 7.50.4.3 Employing any device, scheme or artifice to defraud any other person as a result of a transaction effected through the trading system; or**
- 7.50.4.4 Engaging in any act, practice or course of business in respect of trading in IRC securities which is deceptive or which is likely to have such an effect.]**

In formulating and implementing the compliance monitoring procedures referred to in rule 7.50.3, a member is not expected to monitor every order entered into and every trade executed on the 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:

- 7.50.4.1 the identity of the parties to the transaction;
- 7.50.4.2 the perceived intention of the parties to the transaction;
- 7.50.4.3 the timing of the transaction;
- 7.50.4.4 the frequency and pattern of transactions over a period of time;
- 7.50.4.5 the effect of the transaction on market prices or volumes; or
- 7.50.4.6 a combination of two or more of these factors.

[7.55] [False, misleading or deceptive statements, promises and forecasts

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

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

7.125 Transactions with inter-dealer brokers

An inter-dealer broker performs an important function in relation to the determination of market prices of bonds listed on the JSE. Therefore it is important that inter-dealer brokers are subject to these IRC rules in relation to the intermediary services that they provide to trading members and clients. Accordingly, a trading member may not trade in bonds with a person whom the member knows or has reason to believe:

- 7.125.1 would be performing the function of an inter-dealer broker in relation to the relevant transaction; and
- 7.125.2 is in turn transacting with another trading member or any other resident on the opposite leg of the transaction.

if that person is not authorised as an inter-dealer broker in terms of these IRC rules.

Section 10: Conduct of business

10.90 Trading members' control of client holdings in bonds

- 10.90.2 A trading member that controls bonds holdings on behalf of its clients must balance and reconcile, on at least a **[monthly]** weekly basis, its own client holdings records with the custody balances as reflected by its CSDP. Any reconciling differences identified between the respective records must be rectified **[forthwith]** within one day, unless there are circumstances beyond the control of the trading member that prevent a difference from being resolved within one day, in which case the difference must be rectified as soon as is reasonably possible.

10.95 IRC securities held as collateral

10.95.1 In accordance with section 39 of the Act, a pledge or cession in *securitatem debiti* of uncertificated bonds held by a trading member on behalf of a client must be effected by means of an entry by the trading member in the pledgor or cedent's account in the trading member's accounting records specifying –

- 10.95.1.1 the name of the pledgee or cessionary (either the member or a third party);
- 10.95.1.2 the quantity of uncertificated bonds pledged or ceded; and
- 10.95.1.3 the date of the entry.

10.95.2 A pledge or cession referred to in rule 10.95.1 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.

10.205 Conducting business with a nominee

A trading member may not operate a 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.

Section 11: Defaults

11.40 Consequences of default by a trading member

11.40.6 In the event of a shortfall in clients' bonds held by the defaulting trading member that is the result of a difference between the aggregate quantity of bonds of a particular kind reflected in the trading member's accounting records and the aggregate quantity of bonds of the same kind reflected in the client custody account at the trading member's CSDP, such shortfall shall be borne by all of the clients who hold bonds of that kind collectively in proportion to the interest allocated to each of the clients in the trading member's accounting records at the time immediately preceding the occurrence of the default.

11.40.7[6] Before any bonds or funds are returned to the client, the client shall indemnify the Director: Surveillance in writing for any loss sustained by or damage caused to any person, including, but not limited to the client, as a result of anything done or omitted by the Director: Surveillance in the *bona fide* exercise of any power, or performance of any duty or function under or by virtue of the above rules, as a result of the return of such assets to the client and the alienation by the client of such returned assets in respect of which he is not the lawful owner.

11.40.8[7] Where bonds or funds are returned to clients in terms of rule 11.40.5 and it is thereafter established that ownership of such assets does not vest in the client, the client shall immediately return such assets to the control of the Director: Surveillance, upon written notification of the Director. Where such returned bonds or funds have been alienated by the client, the client shall immediately and in so far as he is able to, effect the return of such assets to the control of the Director: Surveillance, upon written notification by the Director.