

PROPOSED AMENDMENTS TO THE JSE EQUITIES 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.

The terms "Surveillance Department" and "Director: Surveillance" shall be substituted with "Market Regulation Division" and "Director: Market Regulation" respectively wherever these appear in the JSE Equities Rules and Directives.

Section 1: Interpretations and definitions

"Disciplinary Committee" means the committee appointed in terms of rule 12.40.~~[2]~~4;

Section 2: General Provisions

2.20 ~~[Advisory]~~ [c] Committees

2.20.1 Advisory committee

~~[2.20.1]~~ 2.20.1.1

~~[2.20.2]~~ 2.20.1.2

~~[2.20.3]~~ 2.20.1.3

The controlling body may appoint advisory committees. The function of the advisory committees is to make recommendations to the JSE Executive on operational issues.

The advisory committees shall consist of –

~~[2.20.3.1]~~ 2.20.1.3.1 a chairperson, who shall be the JSE Executive member responsible for the area in question; and

~~[2.20.3.2]~~ 2.20.1.3.2 such persons as the chairperson, in consultation with the JSE Executive and the controlling body, shall appoint by reason of their knowledge of or experience in the equity securities market or other relevant markets and which shall include representatives of authorised users of the JSE.

~~[2.20.4]~~ 2.20.1.4

The advisory committees shall make recommendations by reasonable consensus.

~~[2.20.5]~~ 2.20.1.5

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

2.20.2 Rules committee

2.20.2.1 The SRO Oversight Committee shall appoint a Rules Committee to consider and adopt all proposed amendments to the rules and directives in accordance with rule 2.60.

2.20.2.2 The Rules Committee shall consist of the Director: Market Regulation and the Legal Counsel of the JSE.

2.20.3 Membership Committee

2.20.3.1 The SRO Oversight Committee shall appoint a Membership Committee to consider applications for membership and the provision of regulated services, as well as the termination of membership and the withdrawal of authority to perform regulated services.

2.20.3.2 The functions of the Membership Committee shall be to

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2.20.3.2.1 authorise applications for membership and for the provision of regulated services in accordance with rule 3.100;

2.20.3.2.2 terminate membership on a voluntary basis following notice from the member to do so, in accordance with rule 3.120;

2.20.3.2.3 provisionally or finally terminate membership on an involuntary basis in accordance with rule 3.130; and

2.20.3.2.4 withdraw the authority of a member to perform a regulated service.

2.20.3.3 The Membership Committee shall consist of -

2.20.3.3.1 the Legal Counsel of the JSE ;and

2.20.3.3.2 the Director: Market Regulation.

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2.60 Proposals for amendment to the rules and the directives

2.60.1 Any member of the JSE Executive or the Director: Market Regulation may propose in writing any amendment of the rules or directives.

2.60.2 The **[JSE Executive]** Rules Committee will consider the proposed amendment of the rules or directives and notify members, by JSE Gazette, of its decision in regard thereto.

- 2.60.3 If, within ten days of the notification **[announcement]** of the **[JSE Executive's]** decision of the Rules Committee to adopt the proposal, 5 or more members object, in writing, to the decision, the objection, together with the reasons submitted by the relevant members for such objection, will be referred to the controlling body for determination.
- 2.60.4 If an objection to a proposed amendment of the rules has not been lodged within the prescribed period, or the controlling body upholds the **[JSE Executive's]** decision of the Rules Committee to adopt a proposal referred to the controlling body in terms of rule 2.60.3, the proposal must be submitted to the Registrar for his approval.
- 2.60.5 If an objection to a proposed amendment of the directives has not been lodged within the prescribed period, or the controlling body upholds the **[JSE Executive's]** decision of the Rules Committee to adopt a proposal referred to the controlling body in terms of rule 2.60.3, the proposal will take effect immediately.

Section 3: Authorisations and approvals

3.100 Application process

- 3.100.1 An applicant for membership or for authorisation to perform one or more regulated services must apply to the JSE in the form and manner prescribed by the JSE. The application must be accompanied by any application fee prescribed by the JSE.
- 3.100.2 The JSE may require the applicant to provide further information and may institute an investigation to verify information submitted by the applicant in support of an application. The investigation may include a request for one or more representatives of the applicant to be interviewed by the JSE.
- 3.100.3 The **[JSE] Membership Committee** has the sole discretion to accept or reject the application, or to accept an application subject to certain conditions being met.
- 3.100.4 The JSE must notify the applicant in writing of **[its] the** decision of the Membership Committee and of any conditions that are required to be met.
- 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 in terms of section 105 (1) of the Act.

3.110 Changes in control of a member

...

3.120 Voluntary termination of membership

- 3.120.1 ...
- 3.120.2 The **[JSE] Membership Committee**, in its sole discretion, may –
- 3.120.2.1 ...
- 3.120.2.2 ...

3.130 Involuntary termination of membership

- 3.130.1 The **[JSE] Membership Committee** may provisionally or finally terminate membership if -
- [3.130.1] 3.130.1.1** the member is placed in liquidation, whether provisional or final, or placed under 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;

- [3.130.2] 3.130.1.2 a Disciplinary Committee **[Tribunal]** terminates membership in terms of rule 12.60.1.3;
- [3.130.3] 3.130.1.3 the member defaults in terms of rule 13.10;
- [3.130.4] 3.130.1.4 the member fails to meet the membership requirements in rule 3.20; or
- [3.130.5] 3.130.1.5 the member fails to make payment of any fees, levies, charges, penalties or subscriptions in terms of rule 2.160.2.

3.130.2 The JSE must notify the member in writing of the decision of the Membership Committee to finally terminate the membership of a member.

3.130.3 A member aggrieved by a decision of the JSE to finally terminate its membership may appeal to the appeal board in terms of section 105(1) of the Act.

3.140 Provisional termination of membership

- 3.140.1 ...
- 3.140.2 The **[JSE Executive]** Membership Committee will determine the period of provisional termination and the effective date of termination of membership and may prescribe any conditions that it considers necessary to achieve the purpose set out in rule 3.140.1.
- 3.140.3 ...

Section 12: Supervision and enforcement

12.10 Surveillance and investigation by the JSE **[Surveillance Department]** Market Regulation Division

12.10.1 Surveillance

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12.10.2 Investigation

12.10.2.1 The Director: **[Surveillance]** Market Regulation, and any other person designated by him, may -

12.10.2.1.1 investigate any JSE related activities of any person who at the relevant time was a member or an employee of a member;

12.10.2.1.2 investigate whether that member or any of its employees complies with the Act, the rules, the directives and the Financial Intelligence Centre Act;

12.10.2.1.3 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 a settlement system;

12.10.2.1.4 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

12.10.2.1.5 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.

12.10.2.2 The Director: **[Surveillance]** Market Regulation may delegate the power granted to him in terms of rule 12.10.2.1 to any member of **[his staff]** the Market Regulation Division.

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12.40 Disciplinary procedures

12.40.1 Conclusion of investigation

On conclusion of any investigation in terms of rule 12.10 and if, after having considered all the relevant information in his possession, the Director: **[Surveillance]** Market Regulation is of the opinion that there are grounds for an allegation of improper conduct, the Director: **[Surveillance]** Market Regulation may[:]

[12.40.1.1 refer the matter for determination to a Disciplinary Committee; or

12.40.1.2 if he considers that the alleged conduct is so serious that it might warrant the imposition of a fine in excess of the amount referred to in rule 12.40.2.4 or suspension or termination of membership or employment with a member,] prefer a formal charge against such person (“the respondent”) setting out a brief statement of facts constituting the alleged offence. Such charge shall be referred to a Disciplinary Committee **[tribunal (“a Tribunal”)]**, to be heard in terms of the rules. Such charge may further, in the discretion of the Director: **[Surveillance]** Market Regulation, make provision for an admission of guilt.

[12.40.2 Disciplinary Committee

12.40.2.1 The Chairman may from time to time appoint one or more Disciplinary Committees. Each Disciplinary Committee shall consist of three persons, as follows: any one of the Chairman or the Deputy Chairman or the Chief Executive Officer or acting Chief Executive Officer of the JSE, and at least two practising members of the Institute. The Chairman, Deputy Chairman, Chief Executive Officer or acting Chief Executive Officer who is a member of the Disciplinary Committee shall be the chairman of the Disciplinary Committee. A Disciplinary Committee may at any time co-opt additional members for the Disciplinary Committee, whether members of the Institute or not, whenever it deems such additional appointments to be necessary and appropriate.

12.40.2.2 A Disciplinary Committee may, subject to rule 12.40.2.3-

12.40.2.2.1 issue instructions to the person whose conduct or omission is under consideration concerning action which must be taken, or not be taken, to remedy the matter referred to the Disciplinary Committee;

- 12.40.2.2.2 warn, reprimand, censure or, subject to rule 12.40.2.4, impose a fine (with or without ordering that a contribution be made towards the JSE's costs) on any person who has, in the reasonable opinion of the Disciplinary Committee, been guilty of improper conduct;
- 12.40.2.2.3 in relation to an employee of a member, direct the member to conduct a disciplinary enquiry into the acts or omissions of such person;
- 12.40.2.2.4 direct a member to ensure that any sanction imposed on an employee of that member is complied with by such employee;
- 12.40.2.2.5 direct a member to prevent or relieve an employee of that member from carrying out any specified activity, function or duty for such reasonable period as the Disciplinary Committee deems appropriate; and
- 12.40.2.2.6 if at any stage it determines that the matter referred to it is sufficiently serious to be heard by a Tribunal, stop the proceedings, and refer the matter to a Tribunal.
- 12.40.2.3 A Disciplinary Committee may not impose any penalty contemplated in rule 12.40.2 unless:
- 12.40.2.3.1 the alleged improper conduct has first been put to the person who is alleged to have committed it. If such person is a member, the alleged improper conduct shall be put to an executive director or otherwise to a duly authorised employee of the member; and

- 12.40.2.3.2 such person has been given an opportunity, orally or in writing, of explaining his or her conduct after being warned that any explanation furnished pursuant to the rules may be used in evidence against him or her.
- 12.40.2.4 No fine imposed by a Disciplinary Committee may exceed R25 000 per contravention or such other amount as the JSE may determine by directive. A Disciplinary Committee may direct that any action taken in terms of rule 12.40.2 be published.
- 12.40.2.5 Any person in respect of whom a Disciplinary Committee has imposed a reprimand, censure, or fine (but not a warning) shall have the right to demand, within a period of three days after the imposition of such reprimand, censure, or fine, that the matter shall be heard de novo by a Tribunal. The Tribunal may, if it finds the person guilty of the conduct which forms the subject of the charge, impose a penalty more severe than that imposed by the Disciplinary Committee.]
- 12.40.2 Reserved
- 12.40.3 **Preferring charges to be heard by a [Tribunal] Disciplinary Committee**
- 12.40.3.1 Where the Director: **[Surveillance] Market Regulation** has preferred a formal charge against a respondent, the charge sheet shall, in addition to the matters listed in rule 12.40.1[.2], be in a form prescribed by the Director: **[Surveillance] Market Regulation**, be signed by the Director: **[Surveillance] Market Regulation** or his Deputy and be served on the respondent in such manner as the Director: **[Surveillance] Market Regulation** may determine.
- 12.40.3.2 Where the Director: **[Surveillance] Market Regulation** has decided to make provision for an admission of guilt, he shall stipulate:
- 12.40.3.2.1 the amount of the fine payable pursuant to the admission of guilt and any required contribution towards the JSE's costs as well as the period within which such amounts must be paid. In determining the amount of such fine and where the person has benefited financially as a result of the alleged transgression,

- the Director: **[Surveillance]** Market Regulation shall take such benefit into consideration. The admission of guilt may, in particular, provide for the fine to be suspended for a period;
- 12.40.3.2.2 the manner and time in which the admission of guilt may be made, which time shall not be a period in excess of 10 weeks from the date on which the charge sheet is served on the respondent; and
- 12.40.3.2.3 whether the terms of the admission of guilt should be published in a JSE Gazette and in the media.
- 12.40.3.3 A respondent:
- 12.40.3.3.1 may, if the respondent is given an opportunity to sign an admission of guilt, admit guilt to such charges within the period set out in the charge sheet; or
- 12.40.3.3.2 may within 4 weeks after receipt of the charge sheet request particulars to the charges, to which the Director: **[Surveillance]** Market Regulation must respond within 4 weeks after receipt of such request; and
- 12.40.3.3.3 shall, if no admission of guilt is tendered by the Director: **[Surveillance]** Market Regulation or if the respondent decides not to admit guilt to the charges, file a defence to such charges on or before 10 weeks after the date on which the charge sheet was served on the respondent or within 4 weeks after the date on which the JSE has responded to the request for further particulars, whichever is later.

- 12.40.3.4 Thereafter the chairman of the **[Tribunal] Disciplinary Committee** shall determine the date on which the charges shall be heard, which date shall not without good reason be later than six months after the charge sheet was served on the respondent.
- 12.40.3.5 No extension of the time periods set out in rule 12.40.3, including the date for the hearing of the charges, shall be allowed without good reason. Furthermore, no such extension shall be allowed without the consent of the chairman of the **[Tribunal] Disciplinary Committee**.
- 12.40.4 **[Tribunal] Disciplinary Committee**
- 12.40.4.1 The Director: Market Regulation **[Chairman]** may from time to time appoint one or more **[Tribunals] Disciplinary Committees** each comprised of three members.
- 12.40.4.2 The members of a **[Tribunal] Disciplinary Committee** shall be:
- 12.40.4.2.1 a retired judge, or a practising or retired senior counsel, or a practising or retired attorney with not less than fifteen years' experience. Such person shall act as chairman of the **[Tribunal] Disciplinary Committee**;
- 12.40.4.2.2 a professional person appointed by reason of that person's knowledge of financial services as it relates to the matter under consideration; and
- 12.40.4.2.3 a person appointed by reason of that person's knowledge or experience of stockbroking.

12.50 Procedure and evidence – Disciplinary Matters

- 12.50.1 Any charges preferred shall be decided on a balance of probabilities.
- 12.50.2 In a hearing before a **[Tribunal] Disciplinary Committee**:
- 12.50.2.1 the chairman of the **[Tribunal] Disciplinary Committee** shall decide all matters of law which may arise during the hearing, and whether any matter constitutes a question of law or a question of fact, but all three members of the **[Tribunal] Disciplinary Committee** shall by a simple majority decide all other matters arising during the hearing;
- 12.50.2.2 the chairman of the **[Tribunal] Disciplinary Committee** shall determine the procedure which the **[Tribunal] Disciplinary Committee** shall follow both in respect of

- preliminary issues and in respect of the hearing itself, subject to the rules and to the principles of natural justice;
- 12.50.2.3 the JSE may instruct attorneys or counsel to prefer and prosecute the charges on behalf of the JSE, or the charges may be prosecuted by an employee of the JSE; and
- 12.50.2.4 the respondent is entitled to be legally represented at the respondent's own cost.
- 12.50.3 If a respondent without good cause fails to attend a hearing before a **[Tribunal]** Disciplinary Committee at the time and place stated in the charge sheet, the **[Tribunal]** Disciplinary Committee may proceed with its consideration of the charge in the absence of the respondent.
- 12.50.4 If, at any stage during a hearing before the Disciplinary Committee **[or a Tribunal]**, one or more of the members of the Disciplinary Committee **[body hearing the matter]** dies or retires or becomes otherwise incapable of acting or is absent, the hearing shall, where the remaining members constitute a majority of the body before whom the hearing was commenced, proceed before such remaining members and, provided that the remaining members are in agreement, their finding shall be the finding of the Disciplinary Committee **[body concerned]**. In any other case, the matter shall be heard de novo.
- 12.50.5 If a **[Tribunal]** Disciplinary Committee finds a respondent guilty of an offence, the **[Tribunal]** Disciplinary Committee shall have the powers set out in and shall apply rule 12.60.
- 12.50.6 A person charged is entitled to be supplied with a record of the hearing of such charges, and any person who has made oral representations is entitled to be supplied with a record of that portion of the proceedings which related to that person's oral representations.
- 12.50.7 The JSE may make available to the Institute such documents, including extracts from meetings, verbatim records of proceedings and exhibits, as are presented at any disciplinary hearing against a stockbroker or former stockbroker.
- 12.50.8 Whenever the Institute or any committee of the Institute investigates or deals with any complaint against a stockbroker or former stockbroker and finds such person guilty on one or more of the charges laid against such person:
- 12.50.8.1 the JSE **[Surveillance Department]** Market Regulation Division is authorised at any time at the expense of the JSE to apply to and obtain from the Institute a copy of the relevant extracts from the minutes of meetings of the Institute and its committees and the verbatim record of any proceedings at enquiries or hearings in respect of such complaint, as well as copies of any relevant documents, including correspondence, and, where applicable and practicable, exhibits tabled at such enquiries or hearings. All of the documents so made available to the JSE shall be retained by the JSE **[Surveillance Department]** Market Regulation Division for its own purposes; and

12.50.8.2 the Director: **[Surveillance]** Market Regulation may consider and take cognisance of such documents for the purpose of initiating, investigating or adjudicating on any complaint against the stockbroker or former stockbroker or any member of the JSE with which such stockbroker or former stockbroker was in any way associated, and all such documents may be admitted in any proceedings under the rules as if the facts stated therein had been led as evidence in the proceedings in terms of the rules.

12.60 Disciplinary matters – Penalties

12.60.1 When any person has been found guilty of improper conduct by a **[Tribunal]** Disciplinary Committee pursuant to the rules, the **[Tribunal]** Disciplinary Committee -

12.60.1.1 may warn or impose a reprimand, censure or fine upon the respondent, which fine shall in respect of each contravention not exceed R[5]7.5 million, or such other amount as may be stipulated in the Act;

12.60.1.2 shall in determining an appropriate penalty take into account:

12.60.1.2.1 any previous conviction in terms of the rules of the JSE, the by-laws of the Institute or in a court of law;

12.60.1.2.2 the harm or prejudice which is caused by the offence;

12.60.1.2.3 any other aggravating or mitigating circumstances; and

12.60.1.2.4 where it is possible that the membership of the respondent may be terminated, the representations of such person in this regard;

12.60.1.3 may, on such conditions as the **[Tribunal]** Disciplinary Committee may deem fit, terminate the membership of a member who has been found guilty of improper conduct or in the case of an employee of a member, require such member to hold a disciplinary enquiry to consider terminating or suspending the employment of such person;

12.60.1.4 may direct a member to prevent or relieve an employee of that member from carrying out any specified activity, function or duty for such reasonable period as the **[Tribunal]** Disciplinary Committee deems appropriate;

12.60.1.5 may find that an officer or a registered securities trader does not meet the fit and proper requirements set out in rule 4.10;

- 12.60.1.6 may direct a member to ensure that any sanction imposed by the **[Tribunal] Disciplinary Committee** on an employee of that member is complied with by such employee;
- 12.60.1.7 may make a fair and reasonable order as to costs; and
- 12.60.1.8 may order that particulars of the offence and finding of the **[Tribunal] Disciplinary Committee** and the penalty imposed be published, provided that if publication is ordered, the respondent shall be given an opportunity to make representations to the **[Tribunal] Disciplinary Committee** in this regard.
- 12.60.2 A **[Tribunal] Disciplinary Committee** may impose any one or more of the penalties referred to in rule 12.60.1.
- 12.60.3 Any penalty or part thereof may be suspended on such conditions as the **[Tribunal] Disciplinary Committee** determine.
- 12.60.4 If a member or an employee of a member fails to pay any fine imposed by a Disciplinary Committee **[or a Tribunal]**, within 7 days after being informed of the amount of the fine, the JSE may, after serving notice of not less than 3 days on such person, calculated from the expiration of the last of the 7 days within which payment must be made, -
- 12.60.4.1 recover such fine from such member or employee, as the case may be, in a court of competent jurisdiction;
- 12.60.4.2 terminate the membership of such member on such conditions as the JSE may deem fit, or in the case of an employee of a member, require such member to hold a disciplinary enquiry to consider terminating or suspending the employment of such person; and/or
- 12.60.4.3 direct a member to prevent or relieve an employee of that member from carrying out any specified activity, function or duty for such reasonable period as the JSE deems appropriate.
- 12.60.5 The amount of any fine paid to the JSE pursuant to the rules shall be paid into the JSE Guarantee Fund. Any costs paid to the JSE pursuant to an award made by a Disciplinary Committee **[or a Tribunal]** shall be paid into the general funds of the JSE.
- 12.60.6 A **[Tribunal] Disciplinary Committee** may, upon good cause shown and subject to such conditions as the **[Tribunal] Disciplinary Committee** may impose, vary or modify any penalty which it may have previously imposed on any person provided that in modifying or varying such penalty, the **[Tribunal] Disciplinary Committee** shall under no circumstances increase such penalty.
- 12.60.7 A report of the findings of a Disciplinary Committee **[or a Tribunal]** will be forwarded to the Registrar, by the JSE, within 30 days after the completion of the proceedings.
- 12.60.8 Should any termination of the membership of a member be suspended as a result of an appeal being lodged in terms of the Act, such suspension may be made subject to such conditions as the JSE may determine. Any member whose membership has been terminated and who lodges an appeal in terms of the Act

shall simultaneously inform the Director: **[Surveillance]** Market Regulation that an appeal has been lodged.