



## JSE Guarantee Fund Rules

### Scope of Rules

1	Name
2	Separate Identity and Ownership
3-4	Trustees
5	Definitions
6-9	Administration and Investments
10-11	Fund Assets
12-15	Contributions
16	Liability of the Fund for Losses
17-18	Claims
19-24	General
25.1	Winding Up

### As amended by:

Effective Date	Notice Number	Amendment
1 July 2005	039 of 13 May 2005	Demutualisation rule changes
1 August 2005	059 of 29 July 2005	Incorporating requirements of the Securities Services Act, 2004
5 June 2006	036 of 21 June 2006	Provision for the use of derivative instruments for hedging purposes.

*Name*

1. The name of the fund shall be the JSE Guarantee Fund, hereafter referred to as "the Fund".

*Separate Identity and Ownership*

- 2.1 The Fund shall consist of assets acquired and liabilities incurred by the trustees of the JSE Guarantee Fund Trust, with Master's reference number IT 9150/2003 ("the Trust"), which vest in the trustees.
- 2.2 The trustees will acquire, hold and administer the assets of the Fund subject to and in accordance with these Rules.

*Trustees*

3. The trustees of the Fund shall be those independent non-stockbroking members of the controlling body of the JSE as nominated and elected by that controlling body from time to time. The JSE shall act as the secretary of the Fund.
4. The affairs of the Fund shall be administered by the trustees at meetings convened for this purpose.

*Definitions*

5. For the purpose of these Rules –

"Act"	shall mean the Securities Services Act, 2004 (Act No. 36 of 2004) and any measure prescribed thereunder by the Minister of Finance or the Registrar;
"authorised user"	shall have the same meaning as that contained in section 1 of the Act;
"bank"	shall have the same meaning as that contained in section 1 of the Act;
"central securities depository"	shall have the same meaning as that contained in section 1 of the Act;
"client"	shall have the same meaning as that contained in section 1 of the Act;
"controlled client"	shall mean a client or an account holder on whose behalf a client is acting, whose funds and uncertificated equity securities are under the control of a custody services provider or whose settlements take place via the participant of a member;
"custody services provider"	shall mean a member which has been authorised by the JSE to perform custody services in terms of the equities rules;
"derivative instrument"	shall have the same meaning as that contained in section 1 of the Act;
"equities rules"	shall mean the rules and the directives of the JSE applicable to equity securities;
"equity securities"	shall mean those JSE listed securities traded on the JSE equities trading system;
"financial services provider"	shall have the same meaning as that contained in section 1 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);
"JSE"	shall mean 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;
"JSE listed securities"	shall mean those listed securities included in the list of securities kept by the JSE;

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2.2 amended with effect from 5 June 2006  
 "authorised user" introduced with effect from 5 June 2006  
 "bank" introduced with effect from 5 June 2006  
 "Banks Act" deleted with effect from 5 June 2006  
 "controlled client" amended with effect from 5 June 2006  
 "CSDP" deleted with effect from 5 June 2006  
 "custody account" deleted with effect from 5 June 2006  
 "derivative instrument" introduced with effect from 5 June 2006  
 "financial services provider" introduced with effect from 5 June 2006

"listed securities"	shall have the same meaning as that contained in section 1 of the Act;
"member"	shall mean an equities member, which is a category of authorised user admitted to membership of the JSE under the equities rules;
"participant"	shall have the same meaning as that contained in section 1 of the Act;
"Registrar"	shall have the same meaning as that contained in section 1 of the Act;
"securities"	shall have the same meaning as that contained in section 1 of the Act;
"Settlement Authority"	shall mean the person or persons appointed by the JSE to manage the settlement of transactions in equity securities effected through the JSE equities trading system in terms of the equities rules; and
"uncertificated equity securities"	shall mean equity securities that are not evidenced by a certificate or written instrument and are transferable by book entry without a written instrument.

**Administration and Investments**

6. The trustees shall open a banking account with a bank in the name of the Fund and shall have the power to draw and endorse cheques and other negotiable instruments or effect electronic fund transfers connected with the business of the Fund. All monies constituting or accruing to the Fund shall, pending the investment or application thereof, in accordance with these Rules, be paid into the said banking account. The trustees shall have power to close the banking account and open an account with another bank.
7. Subject to these Rules, the trustees shall have exclusive administration and control of all assets belonging to the Fund and of the income arising therefrom. Such assets or income shall be applied or invested by the trustees in the manner hereafter provided and in no other manner, that is to say –
  - 7.1 the assets of the Fund shall be invested –
    - 7.1.1 in cash or cash equivalents;
    - 7.1.2 in bills, bonds, debentures or stock issued or guaranteed by the government of the Republic;
    - 7.1.3 in stock of any local authority in the Republic authorised by law to levy rates upon immovable property;
    - 7.1.4 in debentures or stock of the Reserve Bank, the Rand Water Board, Eskom or such other similar body constituted or established by or under law;
    - 7.1.5 in equity securities
    - 7.1.6 in derivative instruments for hedging purposes only; and
    - 7.1.7 in any other listed security as determined by the trustees;
  - 7.2 the assets of the Fund shall be used to meet claims on the Fund in terms of these Rules;
  - 7.3 all contributions levied in terms of these Rules together with the income arising from the Fund shall from time to time be invested in the manner set forth in Rule 7.1 until the net value of the assets of the Fund has reached the amount determined by the Registrar in terms of Rule 11.3 after which the assets of the Fund in excess of that amount may be applied for the purposes set forth in that Rule.
- 8.1 In investing the assets of the Fund, the trustees shall follow an investment policy which should be aimed at the enhancement of the assets of the Fund in the medium term.
- 8.2 Such assets shall be held in the name of the Fund or in the name of a nominee company and shall be held and administered on behalf of the trustees by a bank, a participant, an authorised user or a financial services provider who is authorised by law to hold and administer such assets.

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6. amended with effect from 5 June 2006  
 7.1 replaced with effect from 5 June 2006  
 7.2 replaced with effect from 5 June 2006  
 7.3 deleted with effect from 5 June 2006  
 7.4 renumbered 7.3 and amended with effect from 5 June 2006  
 8.1 amended with effect from 5 June 2006  
 8.2 amended with effect from 5 June 2006

- 8.3 Notwithstanding anything contained in these Rules, the trustees shall be empowered to sell, exchange, or redeem any investment. The trustees may, from time to time, determine what proportion of the monies in the Fund may be retained for the immediate requirements of the Fund and what proportion may be invested.
9. Save as may otherwise be determined by the trustees from time to time, all contracts, deeds and instruments of a like nature and all drafts, cheques or orders drawn on banks against any account of the Fund in any bank shall be signed by one of the trustees and the secretary of the Fund.

**Fund Assets**

10. The trustees shall apply the assets of the Fund solely for the purposes set forth in these Rules. No withdrawal or appropriation of any part of the assets of the Fund shall be made without special authorisation by the trustees.
- 11.1 For the purposes of this Rule 11, the expression “the net assets of the Fund” shall mean the assets of the Fund, valued at market value from time to time, less provisions made from time to time by the trustees in their discretion for all actual and contingent liabilities of the Fund.
- 11.2 It is the intention that the net assets of the Fund shall at all times be at least R50 million or such other amount as the Registrar may determine from time to time, after consultation with the trustees. Should the net assets of the Fund at any time fall below R50 million, the trustees shall levy contributions from members sufficient to bring the net assets of the Fund to R50 million.
- 11.3 The trustees may, until such time as the net assets of the Fund are reduced to less than R50 million, in accordance with such conditions as the Registrar may determine, apply the assets of the Fund –
- 11.3.1 for maintaining or for strengthening the financial resources of the JSE as an institution;
  - 11.3.2 for reducing the listing fees payable by the issuers of JSE listed securities;
  - 11.3.3 to pay the premium in respect of any “In and Out” fidelity insurance policy which the JSE may arrange or procure;
  - 11.3.4 to provide funding and/or collateral security to enable the JSE to facilitate the settlement of transactions in terms of the equities rules; and
  - 11.3.5 to reimburse the JSE for any amounts that may have been disbursed by the JSE pursuant to any action taken by the Settlement Authority in terms of the equities rules to facilitate the settlement of transactions in JSE listed securities.

**Contributions**

12. Members shall contribute to the Fund as hereinafter provided, and such contributions together with assets already in the Fund and all other sums which may accrue to the Fund shall constitute the assets of the Fund.
- 13.1 All contributions referred to in these Rules shall be made –
- 13.1.1 not later than one month after the trustees have informed the member of the amount it is liable to contribute; or
  - 13.1.2 on such basis, for such period and upon such rate as the trustees may determine.
- 13.2 The trustees may recover in a court of competent jurisdiction any amount due to the Fund but not paid by a member in accordance with Rule 13.1, which shall constitute a liquidated amount of money due by a member to the Fund. A certificate issued by the trustees shall be *prima facie* proof of any amount so due and payable.
14. The trustees may levy contributions for the purpose of making up any diminution in the Fund or of increasing the size of the Fund from members on such basis as the trustees may decide.
15. Subject to Rule 25, no member shall be entitled at any time to any refund of contributions paid in terms of these Rules, except where the trustees may determine that an overpayment of a contribution levied in terms of Rule 14 has been made by a member.

**Liability of the Fund for Losses**

- 16.1 Where a member has been declared to be in default by the JSE in terms of the equities rules, the Fund shall be liable subject to the limit of liability referred to in Rule 16.5 –
- 16.1.1 for the reimbursement of –
    - 16.1.1.1 funds owed by the defaulting member to a controlled client in respect of which the client is unable to obtain a refund from such member; and

- 16.1.1.2 equity securities due to a client by a defaulting member in respect of which the client is unable to obtain delivery from such member; and
- 16.1.2 for any outstanding obligations of a defaulting member to a client in respect of a decision made by an ombud in terms of the equities rules.
- 16.2 The liability of the Fund shall not necessarily be restricted to the types of losses described in the various categories referred to in Rule 16.1 and may be extended to such other losses as the trustees may determine.
- 16.3 Payment of any amount in terms of these Rules shall only be made against a valid out and out cession to the trustees of the respective claims that the client has against the defaulting member.
- 16.4 Subject to Rule 16.5 and notwithstanding anything else contained in these Rules, the liability of the Fund shall be –
  - 16.4.1 in relation to funds, the amount owed to a client at the date of default; and
  - 16.4.2 in relation to equity securities, the value based on the closing price on the date of default;
 provided that any amount payable by the Fund to a claimant shall be reduced by any amount which such claimant owed to the member at the time of default.
- 16.5 Reimbursement of the losses referred to in Rule 16.1 shall not exceed the sum of R500 000 per claimant in aggregate. If the aggregate of all claims admissible against the Fund exceeds the total net assets of the Fund, the liability of the Fund shall be distributed in the ratio, pro rata, which the total net assets of the Fund bears to the total claims of the claimants admissible against the Fund.
- 16.6 A claim by a client in terms of Rule 16.1 or Rule 16.2 shall, in the first instance, be against the defaulting member. The Fund shall only be liable for such claims which the defaulting member is unable to meet and which are not covered by an insurance policy which indemnifies the member against such a claim.
- 16.7 If the trustees are of the view that there may be circumstances which could cause an unreasonable delay by the defaulting member or the insurance policy in the settlement of a claim, the trustees may proceed to consider such claim.

**Claims**

- 17. All claims on the Fund by or on behalf of clients of the defaulting member –
  - 17.1 shall be submitted in writing to the trustees, within a period of one year of such claim arising, who may require such evidence as they deem sufficient as proof of the liabilities referred to in Rule 16;
  - 17.2 shall, if accepted by the trustees, be paid subject to these Rules directly to such claimants and the amount of such payments shall not form part of the assets of the member;
  - 17.3 shall be satisfied by payment by cheque or by electronic funds transfer and in no other manner; and
  - 17.4 shall be decided in the discretion of the trustees, who may reject a claim which does not conform with any of the categories referred to in Rule 16.1.
- 18. Failure by a claimant to comply within a reasonable period with any of the requirements of the trustees under Rule 17 shall be grounds upon which the trustees may reject a claim.

**General**

- 19. The whole of the expenses in connection with or incidental to the management or administration of the Fund including the cost of audit and legal expenses shall be borne by the Fund.
- 20. The trustees shall cause proper accounting records relating to the Fund to be kept and shall cause such accounting records to be audited every year by a person registered as an accountant and auditor under the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991) or any replacement Act.
- 21. Any notice to be given to members in terms of these Rules shall be properly given if given in terms of rule 2.150 of the equities rules.
- 22. The Rules of this Fund may be amended in the same manner as the equities rules may be amended, provided that every amendment shall be subject to the approval of the Registrar.
- 23. Subject to the Act and these Rules, the decision of the trustees in regard to the administration of the Fund and other matters arising therefrom shall be final.
- 24. In all disputes or queries other than those referred to a court of law, the interpretation of these Rules shall vest with the trustees, whose interpretation shall be final.

*Winding Up*

- 25.1 If the JSE should be wound up, the assets of the Fund shall be used, subject to these Rules, in discharging –
  - 25.1.1 all claims against the Fund which are accepted by the trustees in terms of these Rules; and
  - 25.1.2 thereafter all obligations of the JSE to the public arising out of the business of an exchange carried on by the JSE.
- 25.2 The balance (if any) of the assets of the Fund shall be deemed to become assets of the JSE.
- 25.3 In the event of a merger, amalgamation or transfer of business by or to the JSE:
  - 25.3.1 the assets of the Fund shall not be dealt with pursuant to Rules 25.1 or 25.2, notwithstanding that the JSE may be wound up pursuant to such merger or transfer;
  - 25.3.2 at the discretion of the trustees, the Fund may merge or amalgamate with or be transferred to any other fidelity or guarantee fund of the merged, amalgamated or transferee exchange.

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