

JSE CLEAR DEFAULT MANAGEMENT POLICY

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1. VERSION CONTROL

Created By:	Post Trade Services Division
Creation Date:	13 April 2018
To be approved by:	JSE Clear Risk Committee JSE Clear Board
Version:	3.0
Last update:	May 2021

2. VERSION HISTORY

Version	Date	Summary of changes	Author
1.0	April 2018	Initial draft of policy	Post-trade Risk
2.0	April 2020	Regular review, minor updates	Post-trade Risk
3.0	May 2021	Regular review. Updates to the management of the healthy trading member's under a defaulted clearing member. Inclusion of the management of trading member and client defaults.	Post-trade Risk

3. INTRODUCTION

JSE Clear is a central counterparty (CCP) which clears exchange traded derivative products in the South African financial market. Through novation, JSE Clear becomes the seller to every buyer and the buyer to every seller. Clearing members guarantee, process and clear payments of their trading members, and the clients of those trading members, to the CCP. JSE Clear has designed its risk management framework to ensure that in the unlikely event of a clearing member default, JSE Clear will have sufficient pre-funded resources to ensure that the defaulter's obligations are still fulfilled.

This policy covers how JSE Clear will manage the default of a clearing member in accordance with the JSE Derivative Rules¹.

4. OBJECTIVE OF THE DEFAULT MANAGEMENT POLICY

The objective of the default management policy is to ensure that the actions required to resolve a default event are executed in an orderly and timely fashion, and that disruption to the markets operated by JSE Clear is minimised to the greatest extent possible. The desired outcome of successfully managing a default event is the maintenance of business-as-usual clearing activities for the market throughout the resolution of the Clearing Member default and close out of its portfolio.

The default management policy should make the resolution process of a default transparent while ensuring that there is sufficient flexibility for the CCP and decision makers to manage the default process effectively while still maintaining the market. The policy assigns clear responsibilities and accountabilities for actions required for the resolution of the default.

5. POLICY GOVERNANCE

This policy is owned by the JSE Clear Responsible Officer and will be reviewed at least annually or when there are any material changes.

The JSEC Risk Committee will recommend the initial approval of this policy by the JSEC Board or when there are material changes. The regular annual review of this policy will be approved by the JSE Clear Risk Committee.

6. ROLES AND RESPONSIBILITIES

It is the responsibility of the JSE Clear Chief Risk Officer (CRO) to ensure that this policy is kept relevant and up to date.

¹ References to the Rules or JSE Derivatives Rules include the JSE Interest Rate and Currency Rules

The Default Management Group Committee (DMGC) of JSE Clear is responsible for carrying out the activities required for the management of a clearing member default. The members of the DMGC are:

- JSE Clear Responsible Officer (chairman);
- JSE Director of Market Regulation;
- JSE Clear Chief Risk Officer; and
- JSE Clear Chief Operations Officer

7. PRE-DEFAULT ACTIVITIES

7.1. Fire Drills

JSE Clear should, in accordance with the Financial Markets Act Regulations (section 40.10 2(h)), perform a clearing member default simulation, or fire-drill, at least annually and these tests should ensure that all clearing members and where appropriate other clients and stakeholders are informed of and know the procedures involved in a default scenario. The primary purpose of the fire-drill is to ensure market readiness, including testing of processes and tools, should a default event actually occur.

The JSE Clear Risk Committee should agree on the scenario to be tested prior to the fire-drill date, and JSE Clear will advise all market participants of the scenario, along with the expectation of their involvement prior to the fire-drill date. Sufficient time will be afforded for all market participants to prepare adequately for the fire-drill. Different aspects of the default process may be tested, but generally the test will include testing of one or more of:

- Convening of DMGC and decision to invoke default proceedings;
- Lines of communication between JSE Clear, Clearing Members and the Regulators, and other stakeholders as applicable;
- Suspension of defaulting parties from trading and clearing;
- Closeout of positions, including the prices at which closeout occurs;
- Porting of non-defaulting clients to alternative clearing members;
- Management of payments to and from JSE Clear; and
- Usage and availability of dedicated lines of liquidity.

Enhancements to the default management processes and tools are to be identified and implemented appropriately. The JSE Clear Risk Committee should be briefed on the outcome of the fire-drills shortly after their completion. A report summarising the fire-drill and its outcomes will also be provided to the Regulators.

7.2. General risk management activities & reporting readiness

JSE Clear should ensure that at all times it maintains, in a readily accessible manner, all information required to manage a clearing member default in a prudent manner. Such information includes:

- Derivative positions for each account (trading member house and client accounts) cleared through each clearing member;
- Variation margin obligations for each account (trading member house and client accounts) cleared through each clearing member;
- Initial margin balances (including cash and securities) for each account (trading member house and client accounts) cleared through each clearing member;
- Reports indicating the potential variation margin obligations, under stressed market conditions, for each account (trading member house and client accounts) cleared through each clearing member;
- Contact lists for representatives and alternate representatives of relevant impacted parties, which could include clearing members, regulators and bankers. The required contact details will include after-hours and cellular telephone numbers.

7.3. Consultation with the authorities

A single communication protocol has been established with the Prudential Authority and the Financial Sector Conduct Authority ('the authorities') to be used during clearing member default management. All clearing members are regulated by both authorities under the Financial Sector Regulation Act and hence both should be consulted in the process of default resolution.

8. INVOKING OF DEFAULT MANAGEMENT ACTIVITIES

The DMGC will convene to assess a potential default of a clearing member and will make the decision to commence default management activities, in accordance with the DMGC Terms of Reference, and after obtaining the SARB's concurrence. The DMGC will engage with the SARB in accordance with the Memorandum of Understanding between the JSE and the SARB which governs the process that must be followed by the JSE in order to seek the SARB's concurrence on the default of a clearing member in terms of section 31 of the FSR Act.

A default of a clearing member occurs when a clearing member fails to make full payment of its obligation due to JSE Clear by the time that payment is due; or the clearing member or regulatory authorities, informs JSE Clear that it will be unable to make a payment that will become due; or their membership is involuntarily terminated.

It is the clearing member's responsibility to ensure that payment obligations are met regardless of any operational impediment they may be experiencing to processes or systems. The clearing member remains responsible to find an alternative means of making the payment to JSE Clear within the expected timeframes.

Involuntary membership termination may occur if a clearing member is placed under business rescue or curatorship.

Once default has been established by the RO in consultation with the DMGC, the JSE Clear default management activities will be invoked, and the defaulting trading members and/or clients of the defaulting clearing member will be identified and dealt with according to the JSE Derivatives Rules.

9. DEFAULT MANAGEMENT

The actions of the DMGC will be to protect non-defaulting market participants and to ensure that the obligations of the defaulting clearing member are fulfilled, to the extent reasonably possible.

9.1. Ability to continue trading and collateral movement restriction

The DMGC will ensure that permission to trade for the defaulting clearing member and all defaulting parties for whom it clears is revoked and they will be suspended from trading and performing deal management. The affected entities will no longer be allowed to register accounts in their name and movement of collateral out of their accounts will be blocked.

Upon determination of the clearing member default JSE Clear will immediately suspend non-defaulting trading members of the defaulted clearing member. Once the DMGC has had sufficient time to assess the impact of the default and initiate the necessary steps to close out the defaulter's portfolio as expediently as possible to limit losses, it may at its discretion, considering the best interests of the market, the need to contain the impact of the clearing member default and the need to limit risk to the central counterparty, allow trading members of the defaulting clearing member who continue to fulfil their obligations directly to JSE Clear to resume trading out of their existing accounts for a period of time. This period of time will be the time given to trading members to transfer to another clearing member or such other time as JSE Clear may determine. During this period these trading members will only be allowed to enter trades which close down or reduce their exposures.

9.2. Unallocated positions

In instances where there are unallocated positions for the defaulting clearing member's own trading member, or any other defaulting trading member of the defaulting clearing member, the DMGC will attempt to identify the underlying clients for whom the trades were executed. Should there remain unallocated positions after a reasonable time, the unallocated positions will be moved to defaulting trading member's house account and netted against the other positions within this account.

9.3. Position termination

The DMGC will re-establish a matched book as soon as is practical. The DMGC will request JSE Clear to facilitate auctions, per asset class, for the derivative positions within the particular asset class belonging to all defaulting entities. All trades resulting from the auction will be booked by JSE Clear on behalf of the defaulting entities and auction winners. The DMGC will repeat this exercise until all positions are sold. If auction bids received are such that a reasonable price, as determined by JSE Clear, is not obtained for a position or positions through the auction, JSE Clear may close out the position/s at a price that it determines.

9.4. Liquidity

JSE Clear will use the defaulters' cash initial margin to pay variation margin which is immediately due as a result of market moves and as a result of the sale of the portfolio. The DMGC may decide to invoke JSE Clear's liquidity facilities to ensure variation margin payments are met timeously. These facilities provide a mitigant against the portion of margin invested on a term basis, and is a mechanism to manage liquidity risk that may arise if obligations arising from a clearing member default exceed the margin immediately available (i.e. the margin available on call). The liquidity facilities would be used to immediately pay obligations due, whilst, in parallel, margin term investments are terminated. JSE Clear will call on the liquidity facilities upon the sale of collateral to fund any variation margin requirements, in line with the Rules and liquidity policy. JSE Clear will re-pay the liquidity facilities upon receipt of the proceeds from the sale of collateral.

10. COMMUNICATION

The DMGC will, immediately upon the decision to invoke default management activities (after obtaining SARB's concurrence within the agreed timeframe specified within the MoU), communicate such information to the other regulatory authorities, in accordance with paragraph 6.3 of this policy. Throughout the default management process, the DMGC will communicate key activities to the authorities. Events and activities that will be communicated will include the decision to invoke default management activities, the initiation of the sale of the defaulter's portfolio, the completion thereof, the accessing of any liquidity lines, and the finalization of default activities.

The DMGC will also immediately communicate the decision to invoke default management activities to the JSE Clear Board and JSE Clear Risk Committee, and will keep members of both committees abreast of actions being taken throughout the default management process.

The DMGC will also be responsible for communication with the JSE, JSE Clear's clearing members and the wider market. The DMGC will consider the nature and extent of its communication in line with relevant law, the rules and the objectives of this policy.

11. POST DEFAULT ACTIVITIES

After the resolution of the default, when all profit and losses have been funded by the defaulter's prefunded resources (in line with the Rules), any remaining funds will be returned to the defaulter. Prior to any unutilized funds being released back to the defaulter, all applicable fees and charges that arose during the default management process will be settled.

After the conclusion of default activities, a full reconciliation of the default management process will be conducted. This reconciliation will include a review of the actions of the DMGC, the sale of the defaulter's portfolio in terms of process, prices and proceeds, and the sale of collateral.

The default fund will be replenished as prescribed in the JSE Clear Default Fund Policy.

JSE Clear will conduct a solvency assessment on its own operations, which will include regulatory and economic capital, and will implement appropriate actions to ensure that the prescribed thresholds are re-established.

JSE Clear will check that all accounts that were ported have appropriate legal documentation concluded.

12. TRADING MEMBER DEFAULT

A trading member shall default if he fails to fulfil any of his obligations in terms of a trade or a position; or his membership is terminated; or the JSE, in its sole discretion, considers that he has defaulted.

The defaulted Trading Member (and its clients) will be suspended from trading and deal management activity.

In instances where there are unallocated positions the DMGC in conjunction with the Clearing Member of the defaulted Trading Member will attempt to identify the underlying clients for whom the trades were executed. Should there remain unallocated positions after a reasonable time, the unallocated positions will be moved to defaulting trading member's house account and netted against the other positions within this account.

The clearing member shall close out the proprietary positions of the trading member by trading to transfer those positions to himself and for his own account at a price approved by the JSE within two business days or such other period as may be determined by the JSE from the date of default.

The clients of the defaulted trading member shall, without notice to such clients, become the clients of the clearing member, and the clearing member shall assume the obligations of the trading member that accrued on the date of default or on the previous business day. All clients who did not previously have client agreements with the clearing member shall conclude client agreements with the clearing member to cover the positions and obligations assumed by the clearing member. Where the clearing member previously had a client agreement with the client of the trading member, such positions and obligations and subsequent trades shall be subject to that agreement.

13. CLIENT DEFAULT

A client shall default if he fails to fulfil any of his obligations in terms of a trade or a position; or the JSE, in its sole discretion, considers that he has defaulted; or he is in default with respect to one particular member and the JSE in its discretion decides that he is in default with respect to any other member.

The client shall be suspended from trading through the trading member.

The member shall close out the positions of the client by trading to transfer those positions to himself and for his own account at a price approved by the JSE within two business days or such other period as may be determined by the JSE from the date of default.

Appendix 1 – JSE Clear Risk Committee and Board actions

No.	Ref	Action Item	Frequency	Applicable Governance Forum
1.	5	<p>The Default Management Policy is owned by the JSE Clear Responsible Officer and will be reviewed at least annually or when there are any material changes.</p> <p>The regular annual review of this policy will be approved by the JSE Clear Risk Committee.</p>	Annual	<ul style="list-style-type: none"> • JSE Clear Risk Committee • JSE Clear Board
2.	5	The JSEC Risk Committee will recommend the initial approval of this policy by the JSEC Board or when there are material changes.	Not specified	<ul style="list-style-type: none"> • JSE Clear Risk Committee
3.	10	The DMGC will also immediately communicate the decision to institute default management activities to the JSE Clear Board and JSE Clear Risk Committee, and will keep members of both committees abreast of actions being taken throughout the default management process.	Not specified	<ul style="list-style-type: none"> • DMGC