

## 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

### **Proposed amendments to the JSE Equities Rules**

## **Section 1: Interpretation and definitions**

<u>“Collective Investment Schemes Control Act”</u>	<u>means the Collective Investment Schemes Control Act, 2002, (Act No. 45 of 2002);</u>
<u>“crypto asset”</u>	<u>has the same meaning as that contained in section 1 of the FAIS Act;</u>
<u>“crypto ETF”</u>	<u>means an ETF that directly or indirectly, wholly or partially, tracks or references the performance of one or more spot crypto assets;</u>
<u>“crypto ETN”</u>	<u>means an ETN that directly or indirectly, wholly or partially, tracks or references the performance of one or more spot crypto assets;</u>
<u>“ETF”</u>	<u>means a fully funded (unleveraged) fund, registered in terms of the Collective Investment Schemes Control Act, tracking the performance of a specified security, index or currency, or a company or another structure acceptable to the JSE tracking the performance of a commodity, a spot crypto asset, or a combination of spot crypto assets and commodities;</u>
<u>“ETN”</u>	<u>means an investment product, in the form of a note, that reflects the linear (on a one for one basis) performance of underlying securities or benchmarks, such as shares or bonds, an index, an exchange rate, a commodity, a spot crypto asset, or a combination of any of these, and is backed by the creditworthiness of the issuer;</u>

## **Section 8: Conduct of business**

### **8.120      Management of JSE authorised investments**

#### *Investment mandates*

- 8.120.1      The arrangement whereby an ISP manages JSE authorised investments on behalf of a client must be recorded in a written mandate. The mandate must contain the minimum requirements as prescribed by the JSE and the client must accept the terms of the mandate and communicate such acceptance to the member before acceptance of any JSE authorised investments. The mandate may be in electronic form and its acceptance may be expressed by electronic means, provided that if acceptance occurs otherwise than by electronic means, the expression of acceptance must be evidenced by the physical signature of the client.

- 8.120.2      Every ISP must keep a register of each investment mandate in the form as prescribed by the JSE.

#### *Investment objectives and needs analysis*

- 8.120.3 In exercising discretion in the management of JSE authorised investments on behalf of clients, an ISP must –
- 8.120.3.1 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 make an appropriate investment decision;
  - 8.120.3.2 conduct an analysis, based on the information obtained, for the purpose of making an investment decision;
  - 8.120.3.3 identify the JSE authorised investments that will suit the client's risk profile and financial needs, subject to the terms of any mandate provided to the member by the client; and
  - 8.120.3.4 ensure that any discretion exercised is not for the primary purpose of maximising the income of the member.

*Identification of investment management accounts*

- 8.120.4 Every ISP must distinguish, in its books of account, those client accounts in respect of which the ISP manages investments, so that they can be easily identified as such at all times.

*Management of investments in derivative instruments, crypto ETFs and crypto ETNs*

- 8.120.5 Despite the fact that a client may have given his general consent to an ISP in an investment mandate to effect transactions in JSE authorised investments on behalf of the client and may have given discretion to the ISP to conduct such transactions, an ISP may not conduct transactions in derivative instruments, crypto ETFs or crypto ETNs, whether such investments are equity securities or other JSE authorised investments, without the specific prior consent of the client. Such consent must be obtained from the client in writing and must specifically state that the ISP is authorised to invest in derivative instruments, crypto ETFs and/or crypto ETNs on behalf of the client, as well as indicating whether there are any specific conditions or restrictions applicable to such investments which are not otherwise contained in the mandate.
- 8.120.6 The specific consent to be obtained from the client in respect of transactions in derivative instruments, crypto ETFs or crypto ETNs, as referred to in rule 8.120.5, may only be elicited once the ISP has –
- 8.120.6.1 considered whether such investments are appropriate for the client in relation to the client's financial situation, investment experience and investment objectives; and
  - 8.120.6.2 advised the client, in writing, of the risks associated with trading in derivative instruments, crypto ETFs and/or crypto ETNs.

*Management of JSE authorised investments other than equity securities*

- 8.120.7 An ISP who manages JSE authorised investments other than equity securities may not effect transactions in such investments on behalf of a client unless the client has given his general consent to such transactions being effected in the mandate referred to in rule 8.120.1.
- 8.120.8 Any decision by an ISP to invest in JSE authorised investments other than equity securities on behalf of a client must be made with due regard to the relevant provisions of the general standards of conduct set out in rule 8.10, particularly the provisions relating to the general conduct towards clients in rule 8.10.2 and disclosure to clients in rule 8.10.3, and the requirements of rule 8.120.3 in relation to investment objectives and a needs analysis.

*Management of foreign investments*

- 8.120.9 An ISP who manages foreign investments on behalf of a client may not enter into transactions in foreign investments unless –
- 8.120.9.1 the mandate entered into between the ISP and the client in terms of rule 8.120.1 –
    - 8.120.9.1.1 stipulates that the ISP is authorised to invest in foreign investments;
    - 8.120.9.1.2 contains a statement pertaining to the risks associated with foreign investments, with particular reference to any currency risk;
    - 8.120.9.1.3 states whether there are any jurisdictional restrictions in respect of the particular foreign investments; and

- 8.120.9.1.4 contains full particulars of the manner in which such foreign investments shall be made and in whose name such investments shall be held or registered;
  - 8.120.9.2 the client has obtained the prescribed tax clearance certificate from the South African Revenue Service, subject to the provisions of rule 8.120.10.
- 8.120.10 An ISP who manages foreign investments may apply to the Exchange Control Department of the South African Reserve Bank to acquire Foreign Portfolio Investments for such percentage as may be determined by the Department of the total assets under the ISP's management. Such Foreign Portfolio Investments shall at all times comply with the regulations which the Department may from time to time determine. The provisions of rule 8.120.9.2 regarding the tax clearance certificate to be obtained by the client from the South African Revenue Service shall not apply to Foreign Portfolio Investments authorised by the Exchange Control Department of the South African Reserve Bank.
- 8.120.11 An ISP who manages foreign investments must, on request by a client, furnish the client with the following information regarding any foreign investments made by the ISP on behalf of the client –
  - 8.120.11.1 the name of the licensed external exchange on which the foreign investments are listed, if applicable;
  - 8.120.11.2 the country in which the foreign investments are licensed or registered and the name and address of the relevant licensing or registration authority, if applicable;
  - 8.120.11.3 the name and address of the foreign financial services provider used by the ISP to purchase or hold the foreign investments, if applicable; and
  - 8.120.11.4 the name and address of the regulator of the foreign financial services provider referred to in rule 8.120.11.3 and whether such foreign financial services provider is approved or registered by such regulator.

## **8.130 Advice on JSE authorised investments**

- 8.130.1 In providing 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 advice;
  - 8.130.1.2 conduct an analysis, based on the information obtained, for the purpose of advising the client;
  - 8.130.1.3 identify the JSE authorised investments that will suit the client's risk profile and financial needs, subject to the terms of any mandate provided to the member by the client;
  - 8.130.1.4 take reasonable steps to ensure that the client understands any 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 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 advice to a client with the purpose of encouraging or inducing the client to transact in derivative instruments, crypto ETFs or crypto ETNs unless the member has –
  - 8.130.2.1 considered whether such investments are appropriate for the client in relation to the client's financial situation, investment experience and investment objectives; and
  - 8.130.2.2 advised the client, in writing, of the risks associated with trading in derivative instruments, crypto ETFs and/or crypto ETNs.