

## PROPOSED AMENDMENTS TO THE JSE DERIVATIVES RULES

### General explanatory notes:

1. Words underlined with a solid line and highlighted in yellow (        ) indicate new proposed insertions in the existing rules
2. Words underlined with a solid line but not highlighted in yellow (        ) indicate previous proposed insertions in the existing rules that have not yet been approved by the Registrar
3. Words in bold, in square brackets, and highlighted in yellow ( **[ ]** ) indicate new proposed deletions from the existing rules
4. Words in bold, in square brackets, and not highlighted in yellow ( **[ ]** ) indicate previous proposed deletions from the existing rules that have not yet been approved by the Registrar
5. Words underlined with a solid line, in bold, in square brackets, and highlighted in yellow ( **[        ]** ) indicate previous proposed insertions in the existing rules that have not yet been approved by the Registrar, but which are proposed to be deleted after the Registrar has approved their insertion and once the Registrar has subsequently approved their replacement with the proposed new insertion

### 2.10 Definitions

In these derivatives 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 –

"initial margin"

**[means the amount of money determined by JSE Clear on the basis specified by the JSE and held in respect of the aggregate position of a member or a client;]**

**[means the amount of money paid, as determined by JSE Clear and held in respect of the aggregate position of a trading member or a client;]**

means the amount of money paid, or securities pledged, to JSE Clear in accordance with section 39 of the Act, as determined by JSE Clear and held in respect of the aggregate position of a trading member or a client;

### 8.60 Margin payments

8.60.1 Initial margin

**[Initial margin shall be paid to or by a trading member or client whenever the risk of loss, as determined by [the] JSE Clear, changes with respect to the aggregate position of such trading member or client.]**

Initial margin shall be paid to or by a trading member or client whenever the risk of loss, as determined by JSE Clear, changes with respect to the aggregate position of such trading member or client. Initial margin shall be paid in cash and/or may be posted by pledging securities to JSE Clear in accordance with section 39 of the Act, subject to the rules, policies and procedures of JSE Clear. Pledged securities may be substituted by the pledge of other qualifying securities in accordance with the rules, policies and procedures of JSE Clear. JSE

---

"investment management agreement" deleted with effect from 1 August 2005.

Clear may at any time and forthwith call for payment of cash from market participants that have pledged securities and/or have withdrawn and/or substituted securities pledged in terms of the JSE Clear Rules, to ensure that they comply with their initial margin obligations.

## 8.90 Settlement procedures

- 8.90.1 With respect to **[his] its** proprietary positions as a trading member, the positions of **[his] its** clients as a trading member, the positions of the trading members with whom **[he] it** has entered into clearing agreements and the positions of the clients of such trading members, the clearing member **[shall] will**, in terms of the JSE Clear rules, pay to or receive from JSE Clear the net amount of -
- 8.90.1.1 subject to JSE Clear rule [9.20] 5.11.1, the sum of the initial margin referred to in JSE Clear rule [8.60.1] 5.4.1;
- 8.90.1.2 the sum of the variation margin referred to in JSE Clear rule [8.60.2] 5.4.2;
- 8.90.1.3 any interest payable in terms of JSE Clear rule [8.70.1]5.5.1; and
- 8.90.1.4 the fees referred to in JSE Clear rule [8.80.1]5.6.1.
- 8.90.2 An amount due from a clearing member in terms of JSE Clear rule [8.90.1 shall] 5.7.1 will be paid to JSE Clear not later than 10:00 [12:00] on the business day following the day on which such payment accrued or such other time as **[the] JSE Clear** may in its sole discretion determine.
- 8.90.3 With respect to any proprietary position as a trading member, the position of any of its [his] clients as a trading member, the position of a trading member with whom **[he] it** has entered into a clearing agreement and the positions of **[a] the** clients of such trading member **[whom the] that** JSE Clear has marked-to-market in terms of JSE Clear rule [8.50.2] 5.3.2, the clearing member **[shall] will**, in terms of the JSE Clear rules, pay to JSE Clear the amount of variation margin as contemplated in JSE Clear rule [8.60.2] 5.4.2 at the time stipulated by **[the] JSE Clear** when the clearing member is notified **[by him]** of the mark-to-market.
- 8.90.4 With respect to the positions of its clients as a trading member, the positions of any other trading members with whom it has entered into a clearing agreement and the positions of the clients of such trading members, the clearing member is acting as a settlement agent on behalf of those parties in relation to any amounts paid to or received from JSE Clear in terms of JSE Clear rules 5.7.1 and 5.7.3.
- 8.90.5[4] With respect to **[his] its** proprietary positions, and the positions of **[his] its** clients, a trading member shall pay to or receive from the clearing member the net amount of -
- 8.90.5[4].1 subject to rule 9.20, the initial margin referred to in rule 8.60.1;
- 8.90.5[4].2 the additional margin referred to in rule 8.60.3.1;
- 8.90.5[4].3 the variation margin referred to in rule 8.60.2;
- 8.90.5[4].4 any interest payable in terms of rule 8.70.2; and
- 8.90.5[4].5 the fees referred to in rule 8.80.2.
- 8.90.6[5] An amount due to or from a clearing member in terms of rule 8.90.5[4] shall be paid [not later than 12:00 on the business day following the day on which such payment accrued, or at] by such **[other]** time as the trading member and the clearing member have specifically agreed upon with respect to a particular payment, provided that any payment due to a clearing member is made at a time which enables the clearing member to pay the amount due to the clearing house by no later than 10:00 on the business day following the day on which such payment accrued.

8.80.4 amended with effect from 29 April 2019

8.80.5 introduced with effect from 29 April 2019

8.90.1.1 amended with effect from 1 August 2005.

8.90.4.1 amended with effect from 1 August 2005.

8.90.4.1 amended with effect from 12 December 2009.

New 8.90.4.2 introduced with effect from 12 December 2009.

8.90.4.2 to 8.90.4.4 renumbered 8.90.4.3 to 8.90.4.5 with effect from 12 December 2009.

- 8.90.7[6] With respect to any proprietary position or the position of any of [his] its clients, which [the] JSE Clear has marked-to-market in terms of JSE Clear rule [8.50.2] 5.3.2, the trading member shall pay to the clearing member the amount of variation margin as contemplated in rule 8.60.2 by the time referred to in rule 8.90.3, as stipulated by [the] JSE Clear and as notified to the trading member by the clearing member, **and no relaxation shall be given to a trading member without the prior approval of the JSE].**
- 8.90.8[7] Subject to rule 9.30.1, with respect to his positions a client shall pay to or receive from the trading member with whom he traded to open such positions the net amount of -
- 8.90.8[7].1 the total of the initial margin referred to in rule 8.60.1 for all its aggregate positions: Provided that any amount so due from the resident client shall be off-set against any retained margin referred to in rule 8.60.4;
- 8.90.8[7].2 the additional margin referred to in rule 8.60.3.2;
- 8.90.8[7].3 the variation margin referred to in rule 8.60.2;
- 8.90.8[7].5 any interest payable in terms of rule 8.70.3; and
- 8.90.8[7].5 the fees referred to in rule 8.80.2[3].
- 8.90.9[8] An amount due to or from a trading member in terms of rule 8.90.8[7] shall be paid **[not later than 12:00 on the business day following the day on which such payment accrued or] by such [other] time as the trading member and the client have specifically agreed upon with respect to a particular payment, provided that any payment due to an exchange member is made at a time that enables the exchange member to pay the amount due to the clearing member and ultimately enables the clearing member to pay the amount due to the clearing house by no later than 10:00 on the business day following the day on which such payment accrued.**
- 8.90.10[9] With respect to the position of any client, which [the] JSE Clear has marked-to-market in terms of JSE Clear rule [8.50.2] 5.3.2, the client shall pay to the trading member the amount of variation margin as contemplated in rule 8.60.2 by the time referred to in rule 8.90.3 stipulated by [the] JSE Clear and notified to the client by the trading member **[and no relaxation shall be given without the prior approval of the JSE].**

#### [12.40 Consequences of default by a clearing member]

[Without limiting or detracting from any other remedies and rights which a member or client or JSE Clear may have against a clearing member, in the event of default by a clearing member -

- 12.40.1 the clearing member shall, save as provided in this rule, be suspended from trading;
- 12.40.2 JSE Clear shall open a separate trust account with a bank (hereinafter referred to as the “trust account”), into which shall be paid all margin due and payable and any other moneys or securities held by JSE Clear in favour of or on behalf of or for the account of the clearing member;
- 12.40.3 JSE Clear shall manage the trust account and all the affairs of the clearing member arising from and relating to his membership of the JSE and -
- 12.40.3.1 shall assume control of all assets held or administered by the clearing member on behalf of or for the account or benefit of any member or client, and, when requested by the JSE, render such reports to the JSE as the JSE may require;

8.90.7.1 amended with effect from 12 December 2009.

New 8.90.7.2 introduced with effect from 12 December 2009.

8.90.7.2 to 8.90.7.4 renumbered 8.90.7.3 to 8.90.7.5 with effect from 12 December 2009.

12.40.2 amended with effect from 1 July 2005.

12.40.2 amended with effect from 1 August 2005.

12.40.2 amended with effect from 11 March 2013

12.40.3.4 deleted with effect from 11 March 2013

12.40.3.5 deleted with effect from 11 March 2013

12.40.3.6 renumbered 12.40.3.4 with effect from 11 March 2013

- 12.40.3.2 shall, without prior notice to the clearing member, close out all the proprietary positions of the clearing member at the best price it can obtain when, in its sole discretion, it so decides;
- 12.40.3.3 any amount payable to the clearing member as a result of such close out or arising from any suretyship, cession, pledge or other security or from any other cause, shall be set off against any amount payable by the clearing member in terms of rule 8.90.1;
- 12.40.3.4 transfer all positions of clients and trading members cleared through the clearing member to another clearing member until such time as the provisions of rule 12.40.5 have been complied with: Provided that JSE Clear shall be entitled to appoint a trustee to exercise all its powers in terms of this rule subject to the trustee being entitled to the same indemnity as JSE Clear.
- 12.40.4 within a period decided by the JSE each trading member with whom the clearing member had a clearing agreement shall conclude a clearing agreement with another clearing member, failing which the trading member shall be deemed to be in default and his membership shall terminate;
- 12.40.5 the clients of the clearing member shall within a period determined by the JSE -
  - 12.40.5.1 enter into client agreements with other members and trade with JSE Clear and such other members to transfer their positions to them, or
  - 12.40.5.2 trade with JSE Clear to close out their positions;
- 12.40.6 after all liabilities of the clearing member have been settled, the amounts paid by any surety in terms of the derivatives rules shall be refunded from any balance remaining in the trust account and any further balance remaining in the trust account, together with any funds of the clearing member obtained through the realisation of any of its assets, shall be paid to the clearing member;
- 12.40.7 if there are insufficient funds or other assets of the clearing member to meet all its obligations and liabilities as set out in these rules and the clearing agreement, the funds of the Default Fund shall be applied in the following sequence to make good any such shortfall –
  - 12.40.7.1 the contributions to the Default Fund by the defaulting clearing member;
  - 12.40.7.2 the contributions to the Default Fund by the JSE and/or JSE Clear, as the case may be, subject to the provisions of rule 12.40.8; and
  - 12.40.7.3 the contributions to the Default Fund by all the other clearing members, subject to the provisions of rules 12.40.9 and 12.40.10;
- 12.40.8 if the contributions to the Default Fund referred to in rule 12.40.7.2 have been wholly or partially utilised following one or more clearing member defaults, the JSE and/or JSE Clear shall be obliged to make a contribution to the Default Fund equal to the amount so utilised. The obligation to make such contributions in any twelve month period shall be limited to an amount equal to the value of the collateral held by the Default Fund on behalf of the JSE and/or JSE Clear, as determined in terms of the rules, immediately prior to the most recent clearing member default. This obligation is not an additional obligation to that contemplated and imposed in terms of rule 11.50.8 of the Interest Rate and Currency Rules;
- 12.40.9 to the extent that the defaulting clearing member's obligations as set out in these rules have been met by utilising some or all of the contributions to the Default Fund by the other clearing members, referred to in rule 12.40.7.3, in order to re-establish the size of the Default Fund at an appropriate level, as determined by the JSE, the JSE shall determine the amount of additional margin payable by the other clearing members in terms of rule 4.20.8;

- 12.40.10 in any twelve month period, where the total contributions to the Default Fund by clearing members have been fully utilised twice-over in terms of rule 12.40.7.3 as a result of one or more clearing member defaults, the remaining clearing members shall still be obliged to re-contribute additional margin to the Default Fund as calculated in terms of rule 4.20.8 but such re-contributed additional margin shall only be utilised to meet the obligations of a clearing member in terms of rule 12.40.7.1 and not rule 12.40.7.3. The obligation to contribute additional margin referred to in this rule is not an additional obligation to that contemplated and imposed in terms of rule 11.50.10 of the Interest Rate and Currency Rules;
- 12.40.11 any losses suffered by the JSE, JSE Clear, the Default Fund or any market participant as a result of the default of a clearing member shall be recovered from that clearing member. ]

#### **12.40 Securities pledged to JSE Clear**

- 12.40.1 Securities pledged by trading members and clients to JSE Clear in accordance with rule 8.60.1 are pledged in accordance with the JSE Clear rules, the applicable agreements and JSE Clear's policies and procedures, and on the basis that *parate executie* is expressly permitted. The securities pledged by defaulting trading members and clients will be sold by JSE Clear within three business days from the date of default, without the intervention of the courts. JSE Clear will sell the pledged securities at a market related price at the time of such sale.
- 12.40.2 Securities pledged by a clearing member to JSE Clear as payment of default margin to the Default Fund are pledged in accordance with the JSE Clear rules, the JSE Clear agreement and JSE Clear's policies and procedures, and on the basis that *parate executie* is expressly permitted. The securities pledged by defaulting clearing members will be sold by JSE Clear within three business days from the date of default, without the intervention of the courts. JSE Clear will sell the pledged securities at a market related price at the time of such sale.
- 12.40.3 Clearing members, trading members and clients that have elected to pledge securities to JSE Clear in terms of the JSE Clear rules provide JSE Clear with express consent to instruct their CSDPs to move the pledged securities to JSE Clear's account to sell the pledged securities as contemplated in rules 12.40.1 and 12.40.2.