

## MARKET NOTICE

**Number:** 552/2020  
**Relates to:**  Equity Market  
 Equity Derivatives  
 Commodity Derivatives  
 Interest Rate and Currency Derivatives  
**Date:** 13 October 2020

**SUBJECT:** AMENDMENTS TO THE DETAILED AGRICULTURAL CONTRACT SPECIFICATIONS

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Dear Stakeholder,

### Amendments to the detailed Agricultural Contract Specifications

The JSE has embarked on an extensive consultative process with all market participants to obtain their views and to gather information about the manner in which short position holders have complied with its delivery obligations at the expiry of futures contracts listed on the JSE. The JSE is mindful of its obligations as licensed exchange, one of which is to ensure a fair, efficient and transparent market in the futures contracts listed and traded on its exchange. The delivery of, and access to the commodities covered by listed physically settled futures contracts are critical in ensuring accurate price formation in these commodities. Price convergence between the futures and spot price at expiry of these contracts is an equally important element of all fair, efficient and transparent markets.

A foundational cornerstone of the JSE's agricultural derivatives market is the integrity of JSE silo receipts – the warranties and representations made by storage operators in issuing JSE receipts, coupled with the terms in which commodities are stored through these receipts, have to ensure that commodities stored in terms of JSE receipts are sacrosanct. Put differently, if a storage operator issues a receipt the entire market must have complete confidence that the quantity and quality of the commodity is stored at the location indicated on the receipt and that the holder of the receipt will be able to obtain delivery of its commodity without delay. The proposed amendments are aimed, on a practical level, to further advance these important objectives.

Careful consideration of out loading criteria for JSE approved storage operators has also resulted in proposed changes that will be discussed in detail below. Ultimately, the delivery process strives to ensure clients taking delivery from the JSE are able to obtain delivery of the quantity and quality of the commodity stored as set out in the contract specifications and in accordance with the obligations of the JSE approved storage operator.

The JSE is in the process of finalizing its investigation into the deliveries of white maize during the March 2020 expiry month and will communicate its findings shortly.

In addition to the content included in Appendix K that was proposed earlier this year, the further enhancements are categorized into four main areas:

#### A. Trading

1. Bring the last trading day forward to the 15<sup>th</sup> calendar day of each month: should this fall on a non-trading day then the business day prior will be the last trading day. The day after last trading day will be last notice day followed by last delivery day.

The impact of this means the number of trading days will reduce between 5 to 7 business days depending on the calendar month. As an example the Jul21 expiry will no longer see the last trading day as 23 July but rather 15 July.

This change will aim to balance the number of days where short position holders have to make delivery and long position holders have to access their product within the same delivery month. Last notice will be the business day after last trading day and last delivery day is then the business day that follows. So in the Jul21 example last notice day is 16 July and last delivery day is Monday 19 July.

**ACTION ITEM:** JSE intends implementing this however, since this change does impact reference data, the JSE would like to co-ordinate this change to take effect as soon as possible in the New Year. A final implementation date will be forwarded in due course.

2. Stricter out loading tempo for JSE receipts owned and issued by the JSE approved storage operator or any of its affiliated entities making delivery in completion of a futures contract. Since the operator is in control of the product and also has sight of out loading requests already booked, the operator must recognize that JSE receipts issued in its own name will have to be out loaded within 30 days following a request for product.

Should this not be possible due to existing out loading slots already booked by other clients, the Storage Operator will undertake to out load product outside of the standard working hours at their own cost in order to meet the out loading time frame of 30 days. Should there be a delay that extends beyond the 30 day period, the storage operator will not be able to charge the client storage during this period and will do their best to ensure access to the physical product in the shortest possible time.

The JSE must be notified of all instances where delivery within the 30 day time period was not met.

The JSE undertakes to inform the long position holder at the time of receiving delivery that the JSE receipts has a specified time period within which out loading must be completed.

**ACTION ITEM:** This recommendation be effective from the Dec20 expiry month for all grain products.

3. Consider creating a Fidelity Fund that will be specifically focused at physical deliveries where JSE receipts are involved. The fund will be available to owners of JSE silo receipts who continue to suffer a financial loss ONLY after exhausting all their legal actions against the defaulting storage operator. The fidelity fund in no way takes away the responsibility and obligations of the registered storage operator to honour and guarantee all JSE receipts issued. As recommended by various market participants, this Fund will be supported via a contribution with each ton delivered onto the JSE.

**PROPOSAL:** We encourage the market to reconsider this concept. The JSE already administers various Fidelity Funds. Experience has shown that this mechanism may have been good when the various markets were established to help build confidence in the market however over the years it does involve extensive administration with exceptional few applicants qualifying for any of its funds. The JSE would like to reach out to those who suggested it to reconsider the suggestion. The JSE through the enhancements that will be implemented should address a number of the concerns raised earlier in the year.

## B. Storage

1. Move to reflect an 8 hour working day instead of the current 9, this will impact on out loading capacity as currently calculated per day however aligns to the current labour practice.

**ACTION ITEM:** This is implemented as soon as updated contract specifications are published.

2. The JSE has decided not to proceed with its suggestion to link out loading at a registered site to storage capacity, but rather update all registered sites with actual road out loading capabilities and publish this per registered site to the market. This manages the expectation of the client wanting to out load. Storage Operators then also commit to out loading based on what their infrastructure can accommodate. Please also note that the JSE, working with its registered storage operators, will only recognize road out loading capabilities and has removed any capabilities around rail. This has resulted in a number of existing registered sites no longer meeting the minimum out loading criteria of 500 tons per day.

**ACTION ITEM:** The JSE will start to publish the actual road out loading capabilities for each registered site as from 1 November 2020

3. In consultation with the market the initial preference is to keep the minimum road out load capacity at 500 tons however this will be over an 8 hour day. Since the working hours are reduced and rail out loading capabilities removed, a number of existing registered sites no longer meet this criteria, these are:

Storage Operator	Site	Tons per day	Storage Operator	Site	Tons per day
AFG	Arnot	480.00	KAA	Riebeeck Wes	448.00
AFG	Balfour	480.00	KAA	Malmesbury	448.00
AFG	Bloekomspruit	480.00	KAA	<b>Ruststasie*</b>	488.00
AFG	Eloff	480.00	KAA	Doornkuil bunker	448.00
AFG	Endicott	480.00	NWK	Barberspan	240.00
AFG	Glenroy	480.00	NWK	Syferbult	256.00
AFG	Goeiehoek	480.00	NWK	Swartruggens	304.00
AFG	Greylingstad	480.00	NWK	Bossies	240.00
AFG	Harvard	480.00	NWK	Derby	440.00
AFG	Kaalfontein	480.00	NWK	Boons	200.00
AFG	Kinross	480.00	NWK	Koster	360.00
AFG	Middelburg	480.00	NWK	Halfpad	264.00
AFG	Pretoria West	360.00	NWK	Mareetsane	360.00
AFG	Standerton	480.00	OAB	Leliedam	496.00
AFG	Val	480.00	OAB	Napier	480.00
AFG	Wonderfontein	480.00	OAB	Ouplaas Bunker	480.00
GWK	Stoffelshoek	400.00	OAB	Protem	480.00
KAA	Ceres	224.00	OVK	Westminster	480.00
KAA	Graafwater	224.00	SWL	Amalia	400.00
KAA	Gouda	224.00	SWL	Vryburg	400.00
KAA	Eendekuil	352.00	SWL	Hertzogville	400.00
KAA	Piketberg	352.00	SWL	Hallatshope	400.00
KAA	Halfmanshof	352.00	SWL	Hoopstad	400.00
KAA	Darling	352.00	SWL	Bloemhof	480.00
KAA	Pools	352.00	VRY	Potgietersrus	480.00
KAA	Porterville	352.00	VRY	Settlers	480.00
KAA	Klipheuwel	448.00	VRY	Naboomspruit	480.00
			VRY	Roedtan	480.00

**PROPOSAL:** Due to the number of sites impacted, the JSE proposes reducing the minimum road out loading capacity to 400 tons per day on a maize equivalent basis however remains open to feedback on this. By recognizing the 8 hour working day, an equivalent out load rate would have been 444 tons per day and so to ensure the JSE is still able to keep a number of sites registered, we suggest 400 tons per day as the new minimum threshold for existing and any new sites. Please note that point 2 above still remains in place where the JSE will expect the operator to out load on the basis of what the actual infrastructure can perform at. Once the feedback period is concluded the JSE will make the final decision considering the feedback received and will confirm the storage sites that remain registered.

4. Minimum storage capacity remains at 10000 tons. Those sites that do not meet this could add flexible storage or decide to deregister.

**ACTION ITEM:** Keep to the minimum 10000 ton storage criteria and inform the market of the decision of the storage operator before end of October, should they deregister this will be managed with the storage operators and any JSE silo receipt holders.

5. Maintain all weather out loading requirement within “inclement weather” definition. The JSE will continue to accept storage sites where there is flexible storage however the operator must be able to demonstrate that they able to out load product during light rain showers.

**ACTION ITEM:** Reconfirm capabilities of all registered sites and through the audit of out loading schedules identify if this remains a concern to access product.

6. Confirm that the storage operator is only responsible for the terrain within their depot and not for the road network to the storage site, however for the site to remain registered commercial transport operators must be willing to move product from the site.

**ACTION ITEM:** This process remains unchanged in the contract specifications however any new delivery points would need to receive support from at least two commercial transport companies that they prepared to move product from this new site.

7. JSE can audit out loading schedules of individual Storage Operators at its request and at any time. This will further instill confidence with the market whereby an independent party is able to confirm fair and consistent treatment of all out loading instructions.

**ACTION ITEM:** JSE appreciates the co-operation of registered storage operators and proposes to implement as soon as updated contract specifications are published.

8. If the buyer does not arrive to collect the product as per secured out loading slot/date, the allocated slot will be considered as part of the storage operators daily out loading commitments and the buyer will lose their slot and go to the next available slot as per the storage operators booking system.

**ACTION ITEM:** This is implemented as soon as updated contract specifications are published.

9. Ensure storage operators are obligated, within labour law, to provide overtime out loading slots at reasonable overtime rates. If the client does not arrive to collect the product they will remain responsible for all overtime costs. Overtime rates will be provided to the JSE if these are not already published on the storage operator's website. Similarly, should the client arrive to out load and the storage operator is not able to perform, then the storage operator is responsible for any reasonable costs suffered by the owner of the grain.

**ACTION ITEM:** This will be implemented as soon as updated contract specifications are published.

10. A "hub model" was suggested where a group of storage sites are grouped together. The JSE has received one request for this from GWK. When consulting the trade they indicated they would consider this provided the location differential was incorporated in the final price adjustment. Therefore although the sites form part of a hub, they continue to reflect their own individual location differential. The aim of the hub is therefore to provide greater clarity to the market where a storage operator may swap out loading instructions to assist client's access their product quicker. The GWK suggested hubs meeting the 500 tons out loading criteria are as follows:

	Facility	JSE REGISTERED	Silo	Intake mass (ton per	Outloadi
H U B 1	Douglas	Yes, Wheat	90 000	450	500
H U 2 B	Prieska	Yes, Wheat and Maize	90 000	850	500
	Marydale	No, part of HUB	5 800	80	500
	HUB Total		95 800		
H U 3 B	Stoffelshoek	Yes, Wheat and Maize	55 000	250	400
	Trans Oranje	Yes, Wheat and Maize	20 900	150	500
	HUB Total		75 900		
H U 4 B	Barkly West	Yes, Wheat and Maize	27 000	460	500
	Rietrivier	No, part of Hub	14 000	100	500
	Modderrivier	Yes, Wheat	70 000	600	500
	HUB Total		111 000		

**PROPOSAL:** please consider this and provide your feedback within the comment period. Since the JSE has only received one such request, the JSE strongly proposes we keep with the current status quo and do not introduce formal hubs. The JSE has serious reservations about the introduction of a “hub” as it will detract from and dilute the very important warranty provided by the silo owner that the commodity is stored and available at the location indicated on the face of the receipt.

- As requested by storage operators, the JSE will publish the Food Business Operator (FBO) number as and when provided alongside the SAGIS allocated silo number with the JSE’s details of registered storage sites. The JSE in no way regulates compliance in terms of the FBO requirements and will simply publish the information.

**ACTION ITEM:** JSE will commence publishing this as soon as it is received.

- We considered what CME had implemented in Chapter 10 of their delivery rules whereby they restrict the number of shipping certificates issued at any one time. In section 10109 of chapter 10 it refers to limiting certificates to 20 times daily out loading rate or in some key storage sites their total registered storage capacity. The rules also limit certificates issued where the value is greater than 50% the operator’s net worth. In our opinion, the JSE would prefer to introduce the updated requirements as mentioned in this document which includes more onerous out loading tempo for stock issued for the storage operator own account. Also in years when there is significant surplus product it will not be prudent to reduce the ability to make delivery as this will then also have a negative impact on price convergence.

**PROPOSAL:** We therefore propose this is not included as a recommendation going forward.

- Storage Operators refrain from undertaking critical maintenance particularly over changeover from old to new season. Should maintenance be required during this time as the exception, and the owner of product is not able to out load all product before the end of the marketing season whilst having submitted all the required out loading instructions, the storage operator is obligated to reference the JSE’s previous season grade or origin discounts where applicable.

**PROPOSAL:** We had hoped the enhancements would be published sooner to clarify the position for the wheat marketing season however we propose this be in place as soon as the updated contract specifications are published.

14. In order to assist storage operators manage their administrative commitments they have requested that once a JSE silo receipt is requested for out loading, the owner has a 60 day timeframe in which all products must be removed, failing this time frame the JSE silo receipt expires and product will be subject to the terms and conditions of the storage operator. This is to prevent small quantities of product remaining in the silo indefinitely still linked to a JSE silo receipt. This therefore encourages clients out loading product to ensure they remove the full tonnages or be mindful of the expiry process for the JSE receipt. Please take note that the JSE silo receipt as such has no expiry date and provided outstanding storage is paid up, will continue from one marketing season to the next. This specific change ONLY relates to the JSE silo receipts where stock has commenced out loading.

**PROPOSAL:** The JSE has received the firm undertaking from the storage operators that, should out loading slots already be committed that will prevent the client out loading all product within the 60 day time frame, they will inform the client and as such not commence with the out loading instructions for the specific JSE receipts until they are able to assist. The JSE therefore proposes this comes in place when the updated contract specifications are published.

### C. Reporting

1. JSE will continue to publish the out loading unavailability information on the JSE webpage as per this link: <https://www.jse.co.za/trade/derivative-market/commodity-derivatives/agricultural-derivatives/agriculture-futures-and-options/silo-unavailability>

Whilst the JSE appreciates the limitations around the dynamic nature of the excel spread sheet, the JSE will explore other alternatives to display this information to the market.

**ACTION ITEM:** this remains on going as before with the JSE to explore a more efficient reporting mechanism in due course.

2. JSE to start publishing details of the monthly audit of silos it has undertaken. This will provide the market with further insight into the JSE's audit activities with the initial feedback simply to indicate if the silo received a clean audit or if there were issues identified, high level summary of issues identified and actions taken to resolve these.

**ACTION ITEM:** The JSE to commence publishing this immediately and will include all inspections going back to 2019. The web page link where this can be found will be distributed to all members.

3. JSE to start publishing confirmation of Storage Operators annual audit and confirmation of compliance of audit requirements. This will include a checklist of what was reviewed during the annual audit process.

**ACTION ITEM:** The JSE to commence publishing this as from 1 November 2020.

4. The JSE will continue to work with Storage Operators to secure support for the publishing of a new report that will highlight to the market the concentration of product particularly towards the end of the marketing season.

The JSE already receives all the information from storage operators to publish this report however has agreed to only publish JSE silo receipt information. Ideally the JSE reporting could be triggered when the indicative stock levels in the country reach a level where there is only 3 months of supply left in the country. Once the JSE has secured the storage operators support for this it would provide a sample report for broader market consideration.

**PROPOSAL:** JSE will prepare suggested reports for each individual storage operator to consider. Should the JSE receive support from each storage operator for publishing this information on its website it will inform the market of such.

5. A request was made to the JSE to strive to publish detailed physical delivery reports similar to the CME; this includes details of JSE silo receipts out loaded daily. The JSE supports any initiative that will add further transparency to the market however this is a significant change in its current reporting obligations with registered storage operators and would prefer to explore this request further before committing to its adoption.

**ACTION ITEM:** the JSE will explore how this could be achieved technically and at the same time invites market participants for comments. For the current CME reporting visit this link:

<https://www.cmegroup.com/clearing/operations-and-deliveries/cbot-delivery-reports.html>

#### D. Legal

1. Reaffirm with each approved storage operator that the terms and conditions of a JSE silo receipt cannot be transferred to a folio or any other account. Whilst the JSE appreciates each storage operator may have different administrative systems in place to facilitate the invoicing of outstanding storage on JSE silo receipts, at no point may the storage terms and conditions differ from that of the JSE Rules and Contract Specifications. It is also not lawful to purport to “cancel” a JSE receipt as a pre-requisite of an enquiry as to the availability of outloading slots and/or a request for delivery of the commodity.

**ACTION ITEM:** distribute a market notice to all storage operators to reiterate the JSE requirements

2. Reaffirm with each approved storage operator that a JSE silo receipt can only be issued once stock of the required quantity, quality is available and that it is in the place of storage as mentioned on the face of the JSE receipt as articulated in clause 6.3 and 6.4 of Appendix C.

**ACTION ITEM:** distribute a market notice to all storage operators to reaffirm the JSE requirements

3. The JSE legal has reviewed the request that the JSE require all registered storage operators to issue JSE receipts with a storage date that reflects seasonal storage, in other words where they able to pay a seasonal tariff. The JSE with its current regulatory responsibilities is not in a position to force approved storage operators to offer



this facility. The JSE only requires a standard storage rate to determine the value of the outstanding storage when product is delivered in completion of a futures contract.

**NO ACTION TO BE TAKEN.**

4. The JSE legal did review clause 3.1 i of the detailed agricultural contract specifications at the request of market participants alleging this clause was ambiguous. In the JSE’s opinion this clause specifically relates to the short and long position holder and their responsibilities in making good delivery. The trigger for this action is highlighted and refers to the default by a storage operator. The JSE has recognized some uncertainty amongst stakeholders around what triggers a default by a storage operator as well as the legal process involved. The JSE therefore proposes undertaking a simulated storage operator default incident including working through this step by step with those market participants interested in appreciating the detail.

**3.1 i) Valid delivery against an open futures position**

*Valid and acceptable delivery against an open futures position will only be accomplished if the delivery of the JSE silo receipt enables the long position holder to take possession of the underlying commodity as detailed on the receipt. Valid and acceptable delivery will not be accomplished if a short position holder delivers a JSE silo receipt against an open futures position and the long position holder cannot take possession of the underlying commodity **due to the default of the storage operator**, unless the short position holder can prove that, at the time of the delivery of the receipt, the long position holder could have obtained possession of the underlying commodity from the storage operator.*

**ACTION ITEM:** prepare a simulated storage operator default and allow market participants to experience the process flow.

5. The JSE Legal did consider the request from market participants to explore if there was any simpler manner in which to identify the position holder whom did not make good delivery and whom would have a claim against the storage operator. Based on sound legal principles and the legal requirements for the transfer of ownership of a JSE silo receipt it remains the short position holder’s responsibility making delivery to ensure good delivery was made. If it is not possible to prove this, the short position holder will be expected to lodge the claim against the storage operator taking into account the financial settlement requirements as mentioned in the point 6 below.

**NO FURTHER ACTION REQUIRED.**

6. The JSE Legal also reviewed clause 1.5 and 1.6 of Appendix C to ascertain if any enhancements could be added to the description. The JSE appreciate the complexity of managing client’s expectation of receiving physical delivery versus the practical infrastructure available to out load the product.

This is the focus for enhancing the detailed agricultural contract specifications in this document. Also to reemphasize that at no point may a JSE silo receipt be issued for a specific location where there is no product of the mentioned quality and quantity. The JSE is of the opinion that the clauses in Appendix C included below adequately describes the process of default by a storage operator.

- 1.5 *If a storage operator, for any reason fails to deliver the quantity and quality of the commodity as reflected on the face of the receipt, apart from the exceptional circumstances mentioned in section 6.4 and 6.5 of the same appendix, and as stipulated in the Agricultural Derivatives Contract Specifications, the storage operator shall within 24 hours of notification by the JSE pay a cash settlement to the holder of the receipt. The cash settlement value will be determined by the JSE by referencing the near month mark-to-market price of the applicable product as traded on the JSE, discounting any differentials and grade premiums or discounts that may be applicable. In addition thereto, the storage operator will be liable for a cash penalty of an additional 30% of the cash settlement value as determined by the JSE, of which a portion will be payable to the holder of the receipt.*
- 1.6 *In the event of any dispute between the storage operator and the holder of the receipt, the storage operator agrees and warrants that, apart from its lien for outstanding storage as indicated on the receipt, it will not raise any defense that will or may result in a delay or failure to deliver the commodity covered by the JSE silo receipt to the holder thereof. The storage operator agrees and undertakes that it shall only pursue any claims that it may have against the holder of the commodity stored in terms of JSE silo receipts after delivery of the commodity or payment of the cash settlement contemplated in paragraph 1.5 of Appendix C. The storage operator further agrees that set-off may not be applied between any claim that it may have against the holder of the silo receipt and the cash settlement contemplated in paragraph 1.5 above.*

**ACTION ITEM:** prepare a simulated storage operator default and allow market participants to experience the process flow.

7. The JSE does not regulate storage operators under the FMA as these entities are not recognized within the Act. That said, storage operators form an integral part of the JSE's agricultural derivatives market and so any remedies against storage operators will not form any sanction in terms of the FMA. Each storage operator does enter into a storage agreement with the JSE and so it is under this contractual agreement that storage operators are bound.

The proposal is therefore to update section 4 of Appendix C to allow the JSE in terms of its contract with an approved storage operator to recognize the following recourse:

- 4.3 The JSE may impose any one or more of the following penalties should a storage operator breach its contractual agreement with the JSE to store product and issue JSE silo receipts as the guarantor:
- i. Provide additional financial guarantees to the JSE to the maximum value representing all JSE receipts currently in issue;
  - ii. A fine to the maximum of R 5 million;
  - iii. Deregistration as a JSE approved storage operator including all registered delivery points.

This concludes the ACTION ITEMS and PROPOSALS for consideration with this round of market feedback.

The integrity of the physical delivery process remains critical to the JSE agricultural market and so the proposed changes are a result of balancing different requests from a broad sector of stakeholders. Whilst we have tried to address most of the points raised in previous correspondence, we accept not all suggestions have been included as we balance enhancing the delivery process against what is practically possible with the infrastructure and controls that we have available.

We would especially like to thank each of the market participants whom responded in writing during the previous consultation period. We have discussed much of the above content through virtual meetings and would value your final input on the proposals as mentioned.

Please review the above points and provide your final feedback no later than **30 October 2020** to [commodities@jse.co.za](mailto:commodities@jse.co.za). The JSE will already start to action those items identified in this notice and where there is feedback required, it will wait for this. In the interim, the detailed agricultural contract specifications document will also be updated awaiting final input with the intention that this document is distributed and implemented in November 2020.

Should you have any questions regarding the above, please do not hesitate to contact the Commodities Team at 011 520 7039 or email [commodities@jse.co.za](mailto:commodities@jse.co.za).

This Market Notice will be available on the website at <https://www.jse.co.za/redirects/market-notices-and-circulars>