

## MARKET NOTICE

**Number:** 629/2020  
**Relates to:**  Equity Market  
 Equity Derivatives  
 Commodity Derivatives  
 Interest Rate and Currency Derivatives  
**Date:** 27 November 2020

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

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**Designation:** Head - Commodities

Dear Stakeholder,

[With reference to JSE notice 552/2020, final decision by the JSE on way forward.](#)

The JSE values and appreciates the feedback received from committed market participants during this consultation process. Although the JSE had hoped to reach consensus amongst the different stakeholders it is very clear there are some very divergent expectations from the various stakeholders. This is of course unavoidable as there is a wide conspectus of market participants and stakeholders each with their own unique commercial and other interests.

The JSE has therefore carefully considered all the feedback received and made a final decision on the amendments proposed via notice 552/2020. It would have been impossible to satisfy each and every market participant due to the competing and sometimes conflicting interests of the various stakeholders. However, we are of the view that the amendments are appropriate and that they strike a fair and equitable balance between the various competing interests. In addition hereto, these changes will improve the efficiency, transparency and integrity of the JSE commodity derivatives market and it will also strengthen the operational effectiveness of the market in respect of the transparency of audit information.

The JSE also plans to formalize the process around issues logged specifically to physical delivery and access to product on JSE silo receipts. These records will be referenced to assess the effectiveness of these amendments. Please continue to raise issues experienced regarding access to product on JSE silo receipts via an email to [commodities@jse.co.za](mailto:commodities@jse.co.za)

The final decision regards the proposed amendments is as follows:

## A. Trading

1. Bring the last trading day forward to the 15<sup>th</sup> calendar day of each month.

Whilst the JSE could see merit in this change, the feedback received from a number of stakeholders subsequent to the proposal highlighted the impact to current hedging strategies. The JSE has decided to keep the current status quo and will therefore not make any changes to the last trading day at this point in time. The JSE may consider this change in due course but would prefer to assess the recent enhancements and their impact first.

### **NO FURTHER ACTION TAKEN**

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 business 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 business days.

The practical procedure in informing the long position holder that they have received deliveries with a stricter out loading tempo will be as follows:

- a. All physical deliveries over 10,000 tons per registered site delivered by the Storage Operator or its affiliated entities will be flagged by the JSE;
- b. The JSE will, at the end of each delivery month, review the consolidated deliveries for the month in order to identify the stock subject to the stricter out loading schedule;
- c. The long position holder/s will be notified by the JSE they received stock that has a stricter out loading commitment;
- d. The storage operator will already be aware of the JSE silo receipt details as they issued the receipts;
- e. Only the initial long position holder taking delivery from the JSE will have access to the stricter out loading schedule, should the JSE silo receipts be traded this out loading tempo will not remain an obligation for the storage operator;
- f. The long position holder must follow due process to request out loading of the product from the storage operator and identify upfront they require the full consignment within the 30 day period. The long position holder reserves the right to request a slower out loading schedule to suite their own requirements to which this stricter out loading commitment by the Storage Operator will lapse;
- g. Should the long position holder not receive their full delivery within the 30 day period, the Storage Operator will not be able to charge the client storage for the remainder of the period it takes to out load the full tonnages;
- h. The Storage Operator is required to inform the JSE in writing if they failed to meet the 30 day commitment and confirm when the tonnages are finally out loaded.

### **DETAILED AGRICULTURAL CONTRACT SPECIFICATIONS WILL BE UPDATED TO REFLECT THE CHANGE.**

3. Consider creating a Fidelity Fund that will be specifically focused at physical deliveries where JSE receipts are involved.

The JSE has decided not to pursue this further however during the last round of consultation there was a suggestion for the JSE to consider a pooled insurance structure to cover stock held by Storage Operators. This may be explored further in due course.

#### **NO FURTHER ACTION AT THIS POINT**

#### **B. Storage**

1. Move to reflect an 8 hour working day instead of the current 9; this aligns to the current labour practice.

#### **DETAILED AGRICULTURAL CONTRACT SPECIFICATIONS WILL BE UPDATED TO REFLECT THE CHANGE.**

2. Update all registered sites to record actual road out loading capabilities and this per registered site to the market.

The expectation is that each registered site will perform as per its published out loading capabilities. This list will be published in the same place where all the registered storage capacities are published on the JSE website.

#### **JSE WEBSITE UPDATED TOGETHER WITH DETAILED AGRICULTURAL CONTRACT SPECIFICATIONS TO REFLECT THE CHANGE.**

3. To qualify as a JSE approved delivery site the minimum out load capability must be 500 tons per day measure on a road basis.

The JSE has considered the diverse feedback and the various motivations. In considering all the responses, the JSE has decided in order for a delivery point to be JSE registered the Storage Operator must commit a minimum out loading infrastructure capability of 500 tons per day. Where there are current sites that do not meet this road out loading criteria the Storage Operator may decide to:

- extend their working hours to meet the requirement at their own cost;
- improve infrastructure to meet the required minimum out load rate;
- add flexible storage on premises with added out load tempo; or alternatively
- decide to deregister.

The JSE will approach those Storage Operators identified as not meeting the requirement and communicate the way forward. All new applications will have to meet the minimum road only out loading capabilities. A grace period of 12 months, effective 1 December 2020, will be granted to all storage sites that do not meet the minimum road out load rate.

Again just to reiterate, the reason that a number of the existing sites do not meet the minimum 500 ton out loading rate is because we have removed the rail capabilities that we previously included. We sincerely hope this clarifies the situation.

#### **DETAILED AGRICULTURAL CONTRACT SPECIFICATIONS WILL BE UPDATED TO REFLECT THE CHANGE.**

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

**NO CHANGES REQUIRED TO THE CONTRACT SPECIFICATIONS**

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.*

**WILL ADD THIS VALIDATION TO THE INTERNAL AUDIT PROCESS**

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.*

**UPDATE THE “NEW APPLICATION PROCESS” TO CONFIRM ACCESS FROM AT LEAST TWO COMMERCIAL TRANSPORT COMPANIES.**

7. *JSE can audit out loading schedules of individual Storage Operators at its request and at any time.*

**DETAILED AGRICULTURAL CONTRACT SPECIFICATIONS WILL BE UPDATED TO REFLECT THE CHANGE. SUCH AUDITS WILL ALSO COMMENCE AS PART OF THE JSE’S INTERNAL CHECKS.**

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.*

**DETAILED AGRICULTURAL CONTRACT SPECIFICATIONS WILL BE UPDATED TO REFLECT THE CHANGE.**

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 out load as arranged, then the Storage Operator is responsible for any reasonable costs suffered by the owner of the grain.*

**DETAILED AGRICULTURAL CONTRACT SPECIFICATIONS WILL BE UPDATED TO REFLECT THE CHANGE.**

10. *A “hub model” was suggested where a group of storage sites are grouped together.*

The JSE has considered this and has made a final decision not to pursue this concept.

**NO FURTHER ACTION**

11. *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.*

**REQUEST WITHDRAWN BY AGBIZ, THEREFORE NO FURTHER ACTION**

12. *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.*

After considering all the feedback provided, the JSE has to a certain degree begun to implement this if you consider the change reflected in A.2. Going forward Storage Operators and their affiliated companies who have control over the storage facilities will be restricted to the number of tonnages that may be delivered in any given delivery month. The JSE remains resolute that it would not want to restrict other participants who only rely on the operators for the service of secure storage.

**DETAILED AGRICULTURAL CONTRACT SPECIFICATIONS WILL BE UPDATED TO REFLECT THE CHANGE.**

13. *Storage Operators refrain from undertaking scheduled 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.*

**DETAILED AGRICULTURAL CONTRACT SPECIFICATIONS WILL BE UPDATED TO REFLECT THE CHANGE.**

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 business 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.*

The JSE has decided to continue with this request and will continue to monitor how it is facilitated in practice. Should the spirit in which this was proposed not be promoted the JSE may decide to revoke this change.

**DETAILED AGRICULTURAL CONTRACT SPECIFICATIONS WILL BE UPDATED TO REFLECT THE CHANGE.**

### 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.*

#### **NO FURTHER ACTION.**

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.*

#### **JSE TO START PUBLISHING THIS ON ITS WEBPAGE WITHIN NEXT TWO WEEKS**

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.*

#### **JSE TO START PUBLISHING THIS ON ITS WEBPAGE WITHIN NEXT TWO WEEKS**

4. *Publishing of a new report that will highlight to the market the concentration of product leading up to the end of each marketing season.*

The JSE has continued to interact with the Storage Operators to find a way forward in terms of this reporting, unfortunately the only way forward with their support would be if the entire industry began to share their stock levels as requested from the Storage Operators. They have committed to publish total stock levels per registered site only if all other market participants who store product including for their own use, publish their data. We understand amongst the various industry forums there is work under way to try progress this as an industry wide initiative.

The JSE will continue to publish on a monthly basis all stock per silo held on JSE silo receipts. The JSE will still receive a detailed stock report from each Storage Operator which it will use to benchmark against its independent audits and measure the Storage Operators commitments.

#### **JSE WILL CONTINUE TO ONLY PUBLISH INFORMATION SPECIFIC TO JSE SILO RECEIPTS**

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.*

#### **NO FURTHER ACTION AT THIS POINT**

## 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 out loading slots of the commodity.

### **DETAILED AGRICULTURAL CONTRACT SPECIFICATIONS WILL BE UPDATED TO CLARIFY THIS PROCESS**

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.*

### **STORAGE OPERATOR COMMUNICATION WILL BE DISTRIBUTED**

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 FURTHER 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.*

It is a well- established principle in South African law that the burden of proof is on the seller to indicate that possession and ownership of the commodity has been transferred to the buyer. The concept of “good delivery” is no more than a summary of the existing legal position in respect of the purchase and sale of goods and it

remains of critical importance that these important legal principles also apply to the physical delivery of commodities in fulfilment of the obligations recorded in listed futures contracts.

**JSE HAS BEGUN PLANNING FOR A SIMULATED STORAGE OPERATOR DEFAULT SESSION TO BE HELD WITH THOSE INTERESTED MARKET PARTICIPANTS. IT IS ENVISAGED TO TAKE PLACE IN Q1 2021.**

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.

**JSE HAS BEGUN PLANNING FOR A SIMULATED STORAGE OPERATOR DEFAULT SESSION TO BE HELD WITH THOSE INTERESTED MARKET PARTICIPANTS. IT IS ENVISAGED TO TAKE PLACE IN Q1 2021.**

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 JSE will 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.

**DETAILED AGRICULTURAL CONTRACT SPECIFICATIONS WILL BE UPDATED TO REFLECT THE CHANGE.**

This concludes the JSE's final decision regarding the way forward.

The JSE has already begun updating the detailed agricultural contract specifications with the changes as recorded above and is expected to secure the various internal approvals by mid December 2020. The market can expect the updated contract specifications to be effective from mid-January 2021.

We would like to thank each and every participant that provided feedback and whilst we acknowledge not all requests were accommodated, we believe the above amendments will strengthen the JSE physical delivery process. We think back to the establishment of the commodity derivatives market and over the years the continued and active engagement by stakeholders has afforded the commodity derivatives market to continue to evolve. We believe this round of enhancements will keep that momentum.

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)

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