

PROPOSED AMENDMENTS TO THE JSE FIDELITY FUND 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

Scope of Rules

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As amended by:

Effective Date	Notice Number	Amendment
17 January 2005	A528 of 19 January 2005 F618 of 19 January 2005 Y002 of 18 January 2005	New Fidelity Fund Rules issued
1 July 2005	A571 of 13 May 2005 F679 of 13 May 2005 Y006 of 13 May 2005	Demutualisation rule changes
1 August 2005	A603 of 2 August 2005 F742 of 2 August 2005 Y020 of 1 August 2005	Incorporating requirements of the Securities Services Act, 2004
5 June 2006	A691 of 22 June 2006 F941 of 22 June 2006 Y057 of 22 June 2006	Provision for the use of derivative instruments for hedging purposes.

1. Name

The name of the fund shall be the JSE Fidelity Fund hereinafter referred to as "the Fidelity Fund".

2. Separate identity and ownership

- 2.1 The Fidelity Fund shall consist of assets acquired and liabilities incurred by the trustees of the JSE Derivatives Fidelity Fund Trust, with Master's reference number IT 9149/2003 ("the Trust"), which vest in the trustees of the Trust.
- 2.2 The trustees will acquire, hold and administer the assets of the Fidelity Fund subject to, and in accordance with these Rules.

3. Administration

- 3.1 The trustees of the Fidelity Fund shall be the controlling body of the JSE who have those powers in respect of the administration of the Fidelity Fund as are set out in the trust deed of the Trust on the basis of which the Fidelity Fund is established.
- 3.2 The JSE shall act as the secretary of the Fidelity Fund.
- 3.3 The affairs of the Fidelity Fund shall be administered by the trustees at meetings convened for this purpose.

4. Definitions

For the purpose of these Rules –

"Act"	shall mean the [Securities Services Act, 2004 (Act No. 36 of 2004)] <u>Financial Markets Act (Act No. 19 of 2012)</u> and any measures prescribed thereunder by the Minister of Finance or the Registrar;
"authorised user"	shall have the same meaning as that contained in section 1 of the Act;
"bank"	shall have the same meaning as that contained in section 1 of the Act;
"client"	shall have the same meaning as that contained in section 1 of the Act;
"derivative instrument"	shall have the same meaning as that contained in section 1 of the Act;
"derivatives member"	shall mean a category of authorised user admitted to membership of the JSE under the derivatives rules;
"derivatives rules"	shall mean the rules and the directives of the JSE applicable to derivative securities, excluding the equities and <u>interest rate and currency derivatives [Yield-X] rules</u> ;
"derivative securities"	shall mean those JSE listed securities traded on the JSE derivatives trading system;
"derivatives trading member"	shall mean a sub-category of authorised user of the JSE, registered to trade in the equity derivatives market or the [agricultural products] <u>commodity derivatives</u> market or both under the derivatives rules;
"equities rules"	shall mean the rules and the directives of the JSE applicable to equity securities, excluding the derivatives and [Yield-X] <u>interest rate and currency derivative rules</u> ;
"equity securities"	shall mean those JSE listed securities traded on the JSE equities trading system;
"financial services provider"	shall have the same meaning as that contained in section 1 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);
" <u>interest rate and currency derivatives</u> member"	shall mean a category of authorised user admitted to membership of the JSE under the [Yield-X] <u>interest rate and currency derivatives</u> rules;
" [Yield-X] <u>interest rate and currency derivative</u> rules"	shall mean the rules and the directives of the JSE applicable to interest rate <u>and currency derivatives</u> securities, excluding the derivatives and equities rules.
" <u>interest rate and currency derivatives</u> securities"	shall mean those JSE listed securities traded on the [Yield-X] <u>interest rate and currency derivatives</u> trading system;

"interest rate <u>and currency</u>	
<u>derivatives</u> trading member"	shall mean a sub-category of authorised user of the JSE, registered to trade interest rate <u>and currency derivatives</u> securities under the [Yield-X] <u>interest rate and currency derivatives</u> rules;
"JSE"	shall mean JSE Limited, a company duly registered and incorporated with limited liability under the company laws of the Republic, licensed to operate an exchange under the Act;
"JSE listed securities"	shall mean those listed securities included in the list of securities kept by the JSE;
"listed securities"	shall have the same meaning as that contained in section 1 of the Act;
"participant"	shall have the same meaning as that contained in section 1 of the Act;
"Registrar"	shall have the same meaning as that contained in section 1 of the Act;
["SAFCOM"	shall mean Safex Clearing Company (Proprietary) Limited, licensed by the Registrar as a clearing house in terms of the Act;]
"securities"	shall have the same meaning as that contained in section 1 of the Act; and

5. Management of the Fidelity Fund

- 5.1 The trustees shall open a banking account with a bank in the name of the Fidelity Fund and shall have the power to **[draw and endorse cheques and other negotiable instruments]** effect electronic fund transfers connected with the business of the Fidelity Fund. All monies accruing to the Fidelity Fund shall, pending the investment or application thereof, in accordance with these Rules, be paid into the said banking account. The trustees shall have power to close the banking account and open an account with another bank.
- 5.2 Subject to these Rules, the trustees shall have exclusive administration and control of all assets of the Fidelity Fund and of the income arising therefrom. Such assets or income shall be applied or invested by the trustees in the manner hereafter provided and in no other manner, that is to say –
- 5.2.1 if necessary, all the assets of the Fidelity Fund shall be used to meet claims on the Fidelity Fund in terms of these Rules;
- 5.2.2 the assets of the Fidelity Fund shall be invested –
- 5.2.2.1 in cash or cash equivalents ;
- 5.2.2.2 in bills, bonds, debentures or stock issued or guaranteed by the government of the Republic;
- 5.2.2.3 in stock of any local authority in the Republic authorised by law to levy rates upon immovable property;
- 5.2.2.4 in debentures or stock of the Reserve Bank, the Rand Water Board, Eskom or such other similar body constituted or established by or under law;
- 5.2.2.5 in equity securities;
- 5.2.2.6 in derivative instruments for hedging purposes only; and
- 5.2.2.7 in any other listed security as determined by the trustees.
- 5.3 All contributions levied in terms of these Rules together with the income arising from the Fidelity Fund shall be invested in the manner set forth in Rule 5.2 until the net value of the assets of the Fidelity Fund has reached the amount determined by the Registrar in Rule 6.3 after which such income may be applied for the purposes set forth in Rule 6.4.
- 5.4 In investing the assets of the Fidelity Fund, the trustees shall follow an investment policy, which shall be aimed at the enhancement of the assets of the Fidelity Fund in the medium term.
- 5.5 Such assets shall be held in the name of the Fund or in the name of a nominee company and shall be held and administered on behalf of the trustees by a bank, a participant, an authorised user or a financial services provider who is authorised by law to hold and administer such assets.
- 5.6 Notwithstanding anything contained in these Rules, the trustees shall be empowered to sell, exchange, or redeem any investment. The trustees may determine what proportion of the monies in the Fidelity Fund may be retained for the immediate requirements of the Fidelity Fund and what proportion may be invested.
- 5.7 Save as may otherwise be determined by the trustees all contracts, deeds and instruments of a like nature and all

drafts, cheques or orders drawn on banks against any account of the Fidelity Fund in any bank shall be signed by two of the trustees.

6. Fidelity Fund assets

- 6.1 The trustees shall apply the assets of the Fidelity Fund solely for the purposes set forth in these Rules. No withdrawal or appropriation of any part of the assets of the Fidelity Fund shall be made without special authorisation by the trustees.
- 6.2 For the purposes of these Rules the expression "the net assets of the Fidelity Fund" shall mean the assets of the Fidelity Fund, valued at market value less provisions made by the trustees at their discretion for all actual and contingent liabilities of the Fidelity Fund.
- 6.3 The net assets of the Fidelity Fund shall at all times be at least R50 million. Should the net assets of the Fidelity Fund at any time fall below R50 million the trustees shall, in the manner set out in Rule 7, levy contributions from derivatives and interest rate and currency derivatives members sufficient to bring the net assets of the Fidelity Fund to R50 million.
- 6.4 When the net assets of the Fidelity Fund exceed R50 million or such other amount as the Registrar may determine after consultation with the trustees, the trustees shall, until such time as the net assets of the Fidelity Fund are reduced to such figure, be entitled, at their discretion, to apply the income arising from the assets of the Fidelity Fund received -
- 6.4.1 for maintaining or for strengthening the financial resources of the JSE as an institution;
- 6.4.2 to fund the expenses of the JSE in operating the equities market, the agricultural products market, the equity derivatives market and **[Yield-X] the interest rate and currency derivatives market;** and
- 6.4.3 for reducing the listing fees payable by the issuers of JSE listed securities.

7. Contributions to the Fidelity Fund

- 7.1 In the event that the trustees invoke the provisions of Rule 6.3 as a result of a claim by a **[derivatives member, interest rate member or]** client, the trustees shall levy additional contributions on those members falling within that market on which the claim arose.
- 7.2 Each such member shall contribute to the Fidelity Fund in relation to the volume of transactions that it trades on a basis and in an amount determined by the trustees. **[Such contributions shall be obtained from the applicable clearing members together with the trading fees and the said clearing members shall be entitled to recover such contributions from the members with whom they have entered into clearing agreements, together with the fees referred to in rule 8.80.2 of the derivatives rules or rule 8.70.2 of the Yield-X rules, as the case may be.]**

8. Claims against the Fidelity Fund

- 8.1 A **[derivatives trading member, an interest rate trading member or a]** client may recover from the Fidelity Fund the amount of initial margin, settlement margin, variation margin or top-up margin already paid by **[such member or]** the client to a derivatives member or interest rate and currency derivatives member in terms of the derivatives rules or **[Yield-X] the interest rate and currency derivatives** rules, as the case may be: Provided that the liability of the Fidelity Fund shall be limited to the amount of such margin which accrued or became due by the derivatives member or interest rate and currency derivatives member on the day of default by such trading member.
- 8.2 A claim as contemplated in terms of Rule 8.1 will only be considered by the trustees if the **[derivatives trading member, interest rate trading member or]** client **[, as the case may be,]** can evidence to the satisfaction of the trustees that the amount of the claim is not recoverable from the defaulting trading member.
- [8.3 The Fidelity Fund shall be liable to SAFCOM for a shortfall in margin for whatever reason.]**

9. Settlement of claims

- 9.1 The trustees shall make an award for compensation to the claimant from the Fidelity Fund, which award shall not exceed 5% of the Fidelity Fund, or R1 million, whichever is the smaller amount.
- 9.2 The trustees may decide to consolidate more than one claim against a particular derivatives member or a particular interest rate and currency derivatives member when making an award in terms of this section.

10. Cession of claim against trading member

The trustees may satisfy a claim as set out in Rule 9 provided that the claimant shall cede his claim against the relevant

trading member to the Fidelity Fund.

11. Reserved

12. General

- 12.1 The whole of the expenses in connection with or incidental to the management or administration of the Fidelity Fund including the cost of audit and legal expenses shall be borne by the Fidelity Fund.
- 12.2 The trustees shall cause proper accounting records relating to the Fidelity Fund to be kept and shall cause such accounting records to be audited every year by a person registered as an accountant and auditor under the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991) or any replacement Act.
- 12.3 Any notice to be given to derivatives or interest rate and currency derivatives members in terms of these Rules shall be properly given if given in terms of rule 3.140 of the derivatives rules and rule 3.110 of the **[Yield-X]** interest rate and currency derivatives rules.
- 12.4 Subject to the Act and these Rules, the decision of the trustees in regard to the administration of the Fidelity Fund and other matters arising therefrom shall be final.
- 12.5 In all disputes or queries other than those referred to in a court of law, the interpretation of these Rules shall vest with the trustees, whose interpretation shall be final.
- 12.6 The Rules of the Fidelity Fund may be amended in the same manner as any of the rules of the JSE may now or hereafter be amended, provided that every amendment shall be subject to the approval of the Registrar.

13. Winding up

- 13.1 If the JSE should be wound up, the assets of the Fidelity Fund shall be used, subject to these Rules, in discharging –
 - 13.1.1 first all claims against the Fidelity Fund which are accepted by the trustees in terms of these Rules;
 - 13.1.2 thereafter all obligations of the JSE to the public arising out of the business of an exchange carried on by the JSE.
- 13.2 The balance (if any) of the assets of the Fidelity Fund shall be assets of the JSE.
- 13.3 In the event of a merger, amalgamation or transfer of business by or to the JSE -
 - 13.3.1 the assets of the Fidelity Fund will not be dealt with pursuant to Rules 13.1 or 13.2, notwithstanding that the JSE may be wound up pursuant to such merger or transfer;
 - 13.3.2 at the discretion of the trustees, the Fidelity Fund may merge or amalgamate with or be transferred to any other fidelity or guarantee fund of the merged, amalgamated or transferee exchange.

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