

PROPOSED AMENDMENTS TO THE JSE DERIVATIVES 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.

The terms “Surveillance Department” and “Director: Surveillance” shall be substituted with “Market Regulation Division” and “Director: Market Regulation” respectively wherever these appear in the JSE Interest Rate and Currency Derivatives Rules and Directives.

Section 1: General Provisions

1.41 ~~[Advisory]~~ [c] Committees

1.41.1

Advisory Committee

~~[1.41.1]~~ 1.41.1.1 The controlling body shall procure the appointment of advisory committees.

~~[1.41.2]~~ 1.41.1.2 The function of the advisory committees will be to make recommendations to the JSE Executive on operational issues.

~~[1.41.3]~~ 1.41.1.3 The advisory committees shall consist of –

~~[1.41.3.1]~~ 1.41.1.3.1 a chairperson, who shall be the JSE Executive member responsible for the area in question; and

~~[1.41.3.2]~~ 1.41.1.3.2 such persons as the chairperson, in consultation with the JSE Executive and the controlling body, shall appoint by reason of their knowledge of or experience in the securities or other relevant markets and which shall include representatives of authorised users of the JSE.

~~[1.41.4]~~ 1.41.1.4 The advisory committees shall make recommendations by reasonable consensus.

~~[1.41.5]~~ 1.41.1.5 In the event that an advisory committee is not able to reach reasonable consensus on any issue considered

by it, the conflicting views on the issue in question shall be advised to the JSE Executive.

1.41.2

Rules Committee

1.41.2.1

The SRO Oversight Committee shall appoint a Rules Committee to consider and adopt all proposed amendments to the rules and directives in accordance with rule 1.80.

1.41.2.2

The Rules Committee shall consist of the Director: Market Regulation and the Legal Counsel of the JSE.

1.41.3

Membership Committee

1.41.3.1

The SRO Oversight Committee shall appoint a Membership Committee to consider applications for membership and the provision of regulated services, as well as the termination of membership and the withdrawal of authority to perform regulated services.

1.41.3.2

The functions of the Membership Committee shall be to -

1.41.3.2.1

authorise applications for membership and for the provision of regulated services in accordance with rule 3.40;

1.41.3.2.2

terminate membership on a voluntary basis following notice from the member to do so, in accordance with rule 3.50;

1.41.3.2.3

provisionally or finally terminate membership on an involuntary basis in accordance with rule 3.60; and

1.41.3.2.4

withdraw the authority of a member to perform a regulated service.

1.41.3.3

The Membership Committee shall consist of -

1.41.3.3.1

the Legal Counsel of the JSE;
and

1.41.3.3.2

the Director: Market Regulation.

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1.70...

1.80 Proposals for amendment to the rules and the directives

1.80.1

Any member of the JSE Executive or the Director: Market Regulation may propose in writing any amendment of the derivatives rules or directives.

- 1.80.2 The **[JSE Executive] Rules Committee** shall consider the proposed amendment to the derivatives rules or directives and notify members by way of notice of its decision in regard thereto.
- 1.80.3 If, within ten days of the notification [announcement] of the **[JSE Executive's]** decision of the Rules Committee to adopt the proposal, 5 or more members object in writing to the decision, the objection together with the reasons for such objection, will be referred to the controlling body for determination.
- 1.80.4 If, in respect of a proposal with regard to the derivatives rules, an objection as referred to in rule 1.80.3 has not been lodged, or the controlling body upholds the **[JSE Executive's]** decision of the Rules Committee to adopt the proposal, the proposal will be submitted to the Registrar for his approval.
- 1.80.5 If an objection to a proposed amendment of the directives has not been lodged within the prescribed period, or the controlling body upholds the **[JSE Executive's]** decision of the Rules Committee to adopt the proposal, the proposal will take effect immediately.

Section 3: General membership and disciplinary procedures

3.40 Applications for membership

- 3.40.1 ...
- 3.40.2 ...
- 3.40.3 ...
- 3.40.4 ...
- 3.40.5 Notwithstanding any provision in the derivatives rules and directives, the JSE may require the applicant to furnish further information, and may institute any investigation that it deems necessary, to verify information submitted by the applicant in support of an application. Such investigation may include without limitation, a request for the applicant or one or more representatives of the applicant, to be interviewed by the **[Executive Officer] Membership Committee** or any person appointed by the JSE for that purpose.
- 3.40.6 The **[JSE] Membership Committee** shall have the sole discretion to accept or reject the application, or to accept an application subject to certain conditions to be fulfilled as determined by the JSE from time to time: Provided that the JSE shall reach a decision within 60 (sixty) days of the first meeting at which the application was considered.
- 3.40.7 The JSE shall notify the applicant in writing of **[its] the decision of the Membership Committee** and of any conditions that are required to be fulfilled.
- 3.40.8 ...
- 3.40.9 ...
- 3.40.10 ...
- 3.40.11 ...
- 3.40.12 ...
- 3.40.13 ...

- 3.40.14 ...
- 3.40.15 ...

3.50 Voluntary changes to, or termination of, membership

- 3.50.1 ...
- 3.50.2 The **[JSE]** Membership Committee may accept the termination unconditionally or subject to such conditions as it may deem fit, or may refuse to accept the termination until it is satisfied that all outstanding contractual or other obligations of the member have been satisfied.
- 3.50.3 ...
- 3.50.3A ...
- 3.50.4 ...

3.60 Involuntary termination of membership

- 3.60.1 **[Membership shall terminate when]** The Membership Committee may provisionally or finally terminate membership if -
 - 3.60.1.1 a member which is a natural person, or a partner in the case of a member who is a partnership, dies, or is placed under curatorship, or his estate is sequestrated, whether provisionally or finally;
 - 3.60.1.2 the member is placed in liquidation, whether provisional or final, or under business rescue proceedings or any other judicial proceeding or court application for an insolvency proceeding is initiated, or the company files a resolution to such effect or has an insolvency administrator appointed to it;
 - 3.60.1.3 the member compromises or attempts to compromise with his creditors;
 - 3.60.1.4 the member fails to satisfy or to initiate steps to set aside a judgement, award or determination against it within the time periods provided for in the rules of the relevant body;
 - 3.60.1.5 the Disciplinary Committee **[disciplinary tribunal]** has decided in terms of rule 3.300 that membership should be terminated;
 - 3.60.1.6 the member defaults;
 - 3.60.1.7 Reserved;
 - 3.60.1.8 a trading member fails to enter into a clearing agreement with a clearing member within thirty days or such other period which the JSE may determine after the termination for whatever reason of his clearing agreement with a clearing member ; or
 - 3.60.1.9 the controlling body has resolved to terminate the membership of the member after taking into account the member's representations in this regard.

3.60.2 **[The JSE shall publish the termination in a notice to members, and the termination shall become effective on the date and time of the notice, unless stated otherwise in the notice.] The JSE must notify the member in writing of the decision of the Membership Committee to finally terminate the membership of a member.**

3.60.3 **A member aggrieved by a decision of the JSE to finally terminate its membership may appeal to the appeal board in terms of section 105(1) of the Act.**

3.275 Surveillance and investigation by the JSE [Surveillance Department] Market Regulation Division

3.275.1 Surveillance

...

3.275.2 Investigation

The Director: **[Surveillance]** Market Regulation, and any other person designated by him shall at all times have the power to:

3.275.2.1 investigate any JSE related activities of any person who at the relevant time was a member or a partner, employee or officer of a member;

3.275.2.2 investigate whether that member or any of its employees complies with all the provisions of the Act, these derivatives rules, directives and the Financial Intelligence Centre Act;

3.275.2.3 investigate whether the member is trading in such a manner that there is a danger that such member may not be able to meet its commitments to clients, other members or the clearing house;

3.275.2.4 investigate whether such member is conducting its business in a manner which could be detrimental to the interest, good name or welfare of the JSE or its members; and

3.275.2.5 require any person who is subject to the jurisdiction of the JSE and who is believed to be able to furnish any information on the subject of any investigation or to have in his or her possession or under his or her control any book, document, tape or electronic record or other object which has a bearing on the subject of the investigation, to produce such book, document, tape or electronic record or other object or to appear at a time and place specified, to be questioned by any of the abovementioned persons, to furnish such information or to produce such book, document, tape, electronic record or other object: Provided that the subject of the

investigation has first been put to such person. Such person may, if he or she is not a sole proprietor or an executive director or senior partner of a member, request to be assisted by the sole proprietor or by an executive director or senior partner of the member by which the person is employed.

3.275.3. The Director: **[Surveillance]** Market Regulation may delegate the power granted to him in terms of rule 3.275.2.1 to any member of **[his staff]** the Market Regulation Division.

3.275.4 ...

3.276 ...

3.280 ...

3.285 ...

3.290 Disciplinary procedures

3.290.1 Conclusion of investigation

On conclusion of any investigation in terms of rule 3.275 and if, after having considered all the relevant information in his possession, the Director: **[Surveillance]** Market Regulation is of the opinion that there are grounds for an allegation of improper conduct, the Director: **[Surveillance]** Market Regulation may[:]

[3.290.1.1 refer the matter for determination to a Disciplinary Committee; or

3.290.1.2 if he considers that the alleged conduct is so serious that it might warrant the imposition of a fine in excess of the amount referred to in rule 3.290.2.4 or suspension or termination of membership or employment with a member,] prefer a formal charge against such person ("the respondent") setting out a brief statement of facts constituting the alleged offence. Such charge shall be referred to a Disciplinary Committee [tribunal ("a Tribunal")], to be heard in terms of these derivatives rules. Such charge may further, in the discretion of the Director: **[Surveillance] Market Regulation, make provision for an admission of guilt.**

[3.290.2 Disciplinary Committee

3.290.2.1 The Chairman of the JSE may appoint one or more Disciplinary Committees. Each Disciplinary Committee shall consist of three persons, as follows: any one of the Chairman of the JSE, Deputy Chairman of the JSE, Executive Officer or acting Executive Officer of the JSE, and at least one appropriate representative from each of two

members. The Chairman of the JSE, Deputy Chairman of the JSE, Executive Officer or acting Executive Officer who is a member of the Disciplinary Committee shall be the chairman. A Disciplinary Committee may co-opt additional members for the Disciplinary Committee, whether members of the Institute or not, when necessary and appropriate.

3.290.2.2
3.290.2.3-

A Disciplinary Committee may, subject to rule

3.290.2.2.1 issue instructions to the person whose conduct is under consideration concerning action which must be taken, or not be taken, to remedy the matter referred to the Disciplinary Committee;

3.290.2.2.2 warn, reprimand, censure or, subject to rule 3.290.2.4, impose a fine (with or without ordering that a contribution be made towards the JSE's costs) on any person who has, in the reasonable opinion of the Disciplinary Committee, been guilty of improper conduct;

3.290.2.2.3 in relation to an officer or employee of a member, direct the member to conduct a disciplinary enquiry into the conduct of such person;

3.290.2.2.4 direct a member to ensure that any sanction imposed on an officer or employee of that member is complied with by such officer or employee;

3.290.2.2.5 direct a member to prevent or relieve an employee of that member from carrying out any specified activity, function or duty for such reasonable period as the Disciplinary Committee deems appropriate; and

- 3.290.2.2.6 if at any stage it determines that the matter referred to it is sufficiently serious to be heard by a Tribunal, stop the proceedings, and refer the matter to a Tribunal.
- 3.290.2.3 A Disciplinary Committee may not impose any penalty contemplated in rule 3.290.2 unless:
- 3.290.2.3.1 the alleged improper conduct has first been put to the person who is alleged to have committed it. If such person is a director, the alleged improper conduct shall be put to an executive director or otherwise to a duly authorised employee of the member; and
- 3.290.2.3.2 such person has been given an opportunity (orally or in writing) of explaining his or her conduct after being warned that any explanation furnished pursuant to the rules may be used in evidence against him or her.
- 3.290.2.4 No fine imposed by a Disciplinary Committee may exceed R25 000 per contravention or such other amount as the JSE may determine by directive. A Disciplinary Committee may direct that any action taken in terms of rule 3.290.2 be published.
- 3.290.2.5 Any person in respect of whom a Disciplinary Committee has imposed a reprimand, censure, or fine (but not a warning) may demand, within a period of three days after the imposition of such reprimand, censure, or fine, that the matter shall be heard de novo by a Tribunal. The Tribunal may, if it finds the person guilty of the conduct which forms the subject of the charge, impose a penalty more severe than that imposed by the Disciplinary Committee.]
- 3.290.2 Reserved
- 3.290.3 Preferring charges to be heard by a [Tribunal] Disciplinary Committee
- 3.290.3.1 Where the Director: [Surveillance] Market Regulation has preferred a formal charge against a respondent, the charge sheet shall, in addition to the matters listed in rule 3.290.1[.2], be in a form prescribed by the Director:

[Surveillance] Market Regulation, be signed by the Director: **[Surveillance] Market Regulation** or his Deputy and be served on the respondent in such manner as the Director: **[Surveillance] Market Regulation** may determine.

3.290.3.2

Where the Director: **[Surveillance] Market Regulation** has decided to make provision for an admission of guilt, he shall stipulate:

3.290.3.2.1 the amount of the fine payable pursuant to the admission of guilt and any required contribution towards the JSE's costs as well as the period within which such amounts must be paid. In determining the amount of such fine and where the person has benefited financially as a result of the alleged transgression, the Director: **[Surveillance] Market Regulation** shall take such benefit into consideration. The admission of guilt may, in particular, provide for the fine to be suspended for a period;

3.290.3.2.2 the manner and time in which the admission of guilt may be made, which time shall not be a period in excess of 50 business days from the date on which the charge sheet is served on the respondent; and

3.290.3.2.3 whether the terms of the admission of guilt should be published in a JSE Gazette and/or in the media.

3.290.3.3

A respondent -

3.290.3.3.1 may, if the respondent is given an opportunity to sign an admission of guilt, admit guilt to such charges within the period set out in the charge sheet; or

3.290.3.3.2 may within 20 business days after receipt of the charge sheet request particulars to the charges, to which the Director: **[Surveillance] Market Regulation** shall be obliged to

- 3.290.3.3.3 respond within 20 business days after receipt of such request; and shall, if no admission of guilt is tendered by the Director: **[Surveillance] Market Regulation** or if the respondent decides not to admit guilt to the charges, file a defence to such charges on or before 50 business days after the date on which the charge sheet was served on the respondent or within 20 business days after the date on which the JSE has responded to the request for further particulars, whichever is later.
- 3.290.3.4 Thereafter the chairman of the **[Tribunal] Disciplinary Committee** shall determine the date on which the charges shall be heard, which date shall not without good reason be later than six months after the charge sheet was served on the respondent.
- 3.290.3.5 No extension of the time periods set out in rule 3.290.3, including the date for the hearing of the charges, shall be allowed without good reason. Furthermore, no such extension shall be allowed unless the consent of the chairman of the **[Tribunal] Disciplinary Committee** is obtained.
- 3.290.3.6 **[Tribunal] Disciplinary Committee**
- 3.290.3.6.1 The Director: Market Regulation **[Chairman]** may appoint one or more **[Tribunals] Disciplinary Committees** each comprised of three members.
- 3.290.3.6.2 The members of a **[Tribunal] Disciplinary Committee** shall be:
- 3.290.3.6.2.1 a retired judge, or a practising or retired senior counsel, or a practising or retired attorney with not less than

- fifteen years' experience.
Such person shall act as chairman of the **[Tribunal]** Disciplinary Committee;
- 3.290.3.6.2.2 a professional person appointed by reason of that person's knowledge of financial services as it relates to the matter under consideration; and
- 3.290.3.6.2.3 a person appointed by reason of that person's knowledge of or experience in the financial markets.

3.295 Procedure and Evidence – Disciplinary matters

- 3.295.1 Any charges preferred shall be decided on a balance of probabilities.
- 3.295.2 In a hearing before a **[Tribunal]** Disciplinary Committee:
- 3.295.2.1 the chairman of the **[Tribunal]** Disciplinary Committee shall decide all matters of law which may arise during the hearing, and whether any matter constitutes a question of law or a question of fact, but all three members of the **[Tribunal]** Disciplinary Committee shall by a simple majority decide all other matters arising during the hearing;
- 3.295.2.2 the chairman of the **[Tribunal]** Disciplinary Committee shall determine the procedure which the **[Tribunal]** Disciplinary Committee shall follow both in respect of preliminary issues and in respect of the hearing itself,

- subject to these derivatives rules, the directives and to the principles of natural justice;
- 3.295.2.3 the JSE may instruct attorneys or counsel to prefer and prosecute the charges on behalf of the JSE, or the charges may be prosecuted by an employee of the JSE; and
- 3.295.2.4 the respondent shall be entitled to be legally represented at the respondent's own cost and shall, where the respondent is not a sole proprietor or an executive director or senior partner of a member firm, be entitled to be assisted by an executive director or senior partner of the member by which the respondent is employed.
- 3.295.3 Should a respondent without good cause fail to attend a hearing before a **[Tribunal]** Disciplinary Committee at the time and place stated in the charge sheet, the **[Tribunal]** Disciplinary Committee may proceed with its consideration of the charge in the absence of the respondent.
- 3.295.4 If, at any stage during a hearing before a Disciplinary Committee **[or a Tribunal]**, one or more of the members of the Disciplinary Committee **[body hearing the matter]** dies or retires or becomes otherwise incapable of acting or is absent, the hearing shall, where the remaining members constitute a majority of the body before whom the hearing was commenced, proceed before such remaining members and, provided that the remaining members are in agreement, their finding shall be the finding of the Disciplinary Committee **[body concerned]**. In any other case, the matter shall be heard de novo.
- 3.295.5 If a **[Tribunal]** Disciplinary Committee finds a respondent guilty of an offence, the **[Tribunal]** Disciplinary Committee shall have the powers set out in and shall apply rule 3.300.
- 3.295.6 If the proceedings before a Disciplinary Committee **[or a Tribunal]** are recorded, any person charged shall be entitled to be supplied with a record of the hearing of such charges, and any person who has made oral representations shall be entitled to be supplied with a record of that portion of the proceedings which related to that person's oral representations.
- 3.295.7 A report on the findings of a Disciplinary Committee **[or a Tribunal]** will be furnished to the Registrar within 30 days after the completion of the proceedings.

3.300 Disciplinary matters - Penalties

- 3.300.1 When any person has been found guilty of improper conduct by a **[Tribunal]** Disciplinary Committee pursuant to these derivatives rules, the **[Tribunal]** Disciplinary Committee:
- 3.300.1.1 may warn or impose a reprimand, censure or impose a fine upon the respondent, which fine shall in respect of each contravention not exceed R[1]7.5 million, or such

- other amount as may be stipulated in the Act or in any regulations promulgated in terms of the Act;
- 3.300.1.2 shall in determining an appropriate penalty take into account:
- 3.300.1.2.1 any previous conviction in terms of the rules of the JSE, or in a court of law;
- 3.300.1.2.2 the harm or prejudice which is caused by the offence;
- 3.300.1.2.3 any other aggravating, mitigating or extenuating circumstances; and
- 3.300.1.2.4 where it is possible that the membership of the respondent may be terminated, the representations of such person in this regard;
- 3.300.1.3 may, on such conditions as the **[Tribunal] Disciplinary Committee** may deem fit, suspend or terminate the membership of a member who has been found guilty of improper conduct or in the case of a partner or an officer or an employee of a member, require such member to hold a disciplinary enquiry to consider terminating or suspending the employment of such person;
- 3.300.1.4 may direct a member to prevent or relieve an officer or employee of that member from carrying out any specified activity, function or duty for such reasonable period as the **[Tribunal] Disciplinary Committee** deems appropriate;
- 3.300.1.5 may direct a member to ensure that any sanction imposed by the **[Tribunal] Disciplinary Committee** on a partner, officer or employee of that member is complied with by such partner, officer or employee;
- 3.300.1.6 may make a fair and reasonable order as to costs; and
- 3.300.1.7 may order that particulars of the improper offence, the finding of the **[Tribunal] Disciplinary Committee** and the penalty imposed be published: Provided that if publication is ordered, the respondent shall be given an opportunity to make representations to the **[Tribunal] Disciplinary Committee** in this regard.
- 3.300.2 A **[Tribunal] Disciplinary Committee** may impose any one or more of the penalties referred to in rule 3.300.1.
- 3.300.3 Any penalty or part thereof may be suspended on such conditions as the **[Tribunal] Disciplinary Committee** may determine.

- 3.300.4 If a member or a partner, officer or employee of a member fails to pay any fine imposed by a Disciplinary Committee **[or a Tribunal]**, within 7 days after being informed of the amount of the fine, the JSE shall have the right to:
- 3.300.4.1 recover such fine from such member, partner, officer or employee, as the case may be, in a court of competent jurisdiction;
- 3.300.4.2 terminate or suspend (on such conditions as the JSE may deem fit) the membership of such member, or in the case of a partner, officer or employee of a member, require such member to hold a disciplinary enquiry to consider terminating or suspending the employment of such person; and/or
- 3.300.4.3 direct a member to prevent or relieve a partner or officer or employee of that member from carrying out any specified activity, function or duty for such reasonable period as the JSE deems appropriate.
- 3.300.5 The amount of any fine paid to the JSE pursuant to these derivatives rules shall be paid into the Fidelity Fund. Any costs paid to the JSE pursuant to an award made by a Disciplinary Committee **[or a Tribunal]** shall be paid into the general funds of the JSE.
- 3.300.6 A **[Tribunal]** Disciplinary Committee may, upon good cause shown and subject to such conditions as the **[Tribunal]** Disciplinary Committee may impose, vary or modify any penalty which it may have previously imposed on any person: Provided that in modifying or varying such penalty, the **[Tribunal]** Disciplinary Committee shall under no circumstances increase such penalty.
- 3.300.7 [Reserved]
- 3.300.8 Should any termination of the membership of a member be suspended as a result of an appeal being lodged in terms of the Act, such suspension may be made subject to such conditions as the JSE may determine. Any member whose membership has been terminated and who lodges an appeal in terms of the Act shall simultaneously inform the Director: **[Surveillance]** Market Regulation that an appeal has been lodged.