

Proposed Amendments to 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 existing rules.

Section 2.10: Interpretation and Definitions

“additional margin” means the margin paid as collateral by clearing members to the Default Fund for the due performance of clearing members’ obligations as set out in the Rules or the margin paid to a clearing member over and above that required by the clearing house or to a trading member over and above that required by the clearing member concerned”

“Default Fund” means the SAFCOM Default Fund established and used for the custody and administration of the collateral posted by the JSE or SAFCOM, as the case may be, and the additional margin paid by clearing members, to be applied in the manner set out in the rules in the event of a default of a clearing member;

Section 4: Derivatives Membership

[4.20.8 A clearing member shall provide, maintain and keep in force a suretyship in favour of the clearing house by a financial institution acceptable to the JSE, in such form and upon such terms and conditions as the JSE may determine, for the due performance of all or any of its obligations to the clearing house in terms of these derivatives rules, jointly and severally, for an amount of not less than R10 000 000 or such other sum as the JSE may determine.]

4.20.8 A clearing member shall pay an amount of additional margin to the Default Fund as determined by the JSE from time to time as collateral for the due performance of all or any of its obligations as set out in these derivatives rules.

Section 12: Defaults

12.40 Consequences of default by a clearing member

Without limiting or detracting from any other remedies and rights which a trading member or client or the clearing house may have against a clearing member, in the event of default by a clearing member –

12.40.1 the clearing member shall, save as provided in this rule, be suspended from trading;

12.40.2 the clearing house shall open a separate trust account with a bank (hereinafter referred to as the “trust account”), into which shall be paid all margin due and payable [**, the proceeds from the sale of any JSE shares held by the clearing member, the proceeds from the suretyship referred to in rule 4.20.6]** and any other moneys or securities held by the clearing house in favour of or on behalf of or for the account of the clearing member;

- 12.40.3 the clearing house shall manage the trust account and all the affairs of the clearing member arising from and relating to his membership of the JSE and –
- 12.40.3.1 shall assume control of all assets held or administered by the clearing member on behalf of or for the account or benefit of any member or client, and, when requested by the JSE, render such reports to the JSE as the JSE may require;
 - 12.40.3.2 shall, without prior notice to the clearing member, close out all the proprietary positions of the clearing member at the best price it can obtain when, in its sole discretion, it so decides;
 - 12.40.3.3 any amount payable to the clearing member as a result of such close out or arising from any suretyship, cession, pledge or other security or from any other cause, shall be set off against any amount payable by the clearing member in terms of rule 8.90.1;
 - [12.40.3.4 if after all the above rules have been exhausted a shortfall remains, any JSE shares held by the clearing member may be sold by the JSE and the proceeds utilised towards settlement of any remaining shortfall, and any surplus paid to the clearing member;]**
 - [12.40.3.5 any shortfall remaining after the application of these derivatives rules shall be recovered from and any balance paid to the clearing member;]**
 - 12.40.3.4[6] transfer all positions of clients and trading members cleared through the clearing member to another clearing member until such time as the provisions of rule 12.40.5 have been complied with: Provided that the clearing house shall be entitled to appoint a trustee to exercise all its powers in terms of this rule subject to the trustee being entitled to the same indemnity as the clearing house.
- 12.40.4 within a period decided by the JSE each trading member with whom the defaulting clearing member had a clearing agreement shall conclude a clearing agreement with another clearing member, failing which the trading member shall be deemed to be in default and his membership shall terminate;
- 12.40.5 the clients of the clearing member shall within a period determined by the JSE –
- 12.40.5.1 enter into client agreements with other members and trade with the clearing house and such other members to transfer their positions to them, or
 - 12.40.5.2 trade with the clearing house to close out their positions;
- 12.40.6 after all liabilities of the defaulting clearing member have been settled, the amounts paid by any surety in terms of the derivatives rules shall be refunded from any balance remaining in the trust account and any further balance remaining in the trust account, together with any funds of the clearing member obtained through the realisation of any of its assets, shall be paid to the defaulting clearing member; **[Provided that if there are insufficient funds to cover such liabilities, the clearing house shall call on all clearing members for an equitable contribution on a voluntary basis to make good any shortfall and, in the event of such contributions being insufficient, the funds of the Fidelity Fund shall be applied.]**

- 12.40.7 if there are insufficient funds or other assets of the clearing member to meet all its obligations and liabilities as set out in these rules and the clearing agreement, the funds of the Default Fund shall be applied in the following sequence to make good any such shortfall –
- 12.40.7.1 the contributions to the Default Fund by the defaulting clearing member;
 - 12.40.7.2 the contributions to the Default Fund by the JSE or SAFCOM, as the case may be, subject to the provisions of rule 12.40.8; and
 - 12.40.7.3 the contributions to the Default Fund by all the other clearing members, subject to the provisions of rules 12.40.9 and 12.40.10;
- 12.40.8 if the contributions to the Default Fund referred to in rule 12.40.7.2 have been wholly or partially utilised following one or more clearing member defaults, the JSE and / or SAFCOM shall be obliged to make a contribution to the Default Fund equal to the amount so utilised. The obligation to make such contributions in any twelve month period shall be limited to an amount equal to the value of the most recent collateral posted by the JSE and / or SAFCOM as its contribution to the Default Fund, as determined in terms of the Rules. This obligation is not an additional obligation to that contemplated and imposed in terms of rule 11.50.8 of the Interest Rate and Currency Rules;
- 12.40.9 to the extent that the defaulting clearing member's obligations as set out in these rules have been met by utilising some or all of the contributions to the Default Fund by the other clearing members, referred to in rule 12.40.7.3, in order to re-establish the size of the Default Fund at an appropriate level, as determined by the JSE, the JSE shall determine the amount of additional margin payable by the other clearing members in terms of rule 4.20.8;
- 12.40.10 in any twelve month period, where the total contributions to the Default Fund by clearing members have been fully utilised twice-over in terms of rule 12.40.7.3 as a result of one or more clearing member defaults, the remaining clearing members shall still be obliged to re-contribute additional margin to the Default Fund as calculated in terms of rule 4.20.8 but such re-contributed additional margin shall only be utilised to meet the obligations of a clearing member in terms of rule 12.40.7.1 and not rule 12.40.7.3. The obligation to contribute additional margin referred to in this rule is not an additional obligation to that contemplated and imposed in terms of rule 11.50.10 of the Interest Rate and Currency Rules;
- 12.40.11 any losses suffered by the JSE, SAFCOM, the Default Fund or any market participant as a result of the default of a clearing member shall be recovered from that clearing member.
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