

NOTICE TO MEMBERS

CHANGES TO THE JSE DERIVATIVES AND YIELD-X MEMBERSHIP STRUCTURE – UPDATE

On the 26th April 2005, the JSE distributed a comprehensive consultation document to all Derivative and Yield-X members which described in detail and explained the rationale for the new membership structure which the JSE is planning to introduce. For your convenience, this consultation document has been provided as an attachment hereto.

The JSE has made considerable progress in defining the requirements and specific conditions for the new categories of authorised user and it is anticipated that these will be introduced and become effective in the first half of 2007.

In terms of this new structure, depending on the scope of its business activities and the services it provides, an authorised user will be approved and categorised by the JSE as either a **member**, a **trading participant** or a **clearing participant**. These categories are defined as follows:-

- (a) A **member** will be a category of authorised user that is **regulated** by the JSE in respect of the securities services which it provides to its clients in relation to JSE authorised investments. The JSE may authorise a member to provide one or more of the following regulated securities services to its clients:
- trading services;
 - investment services; and
 - custody services.
- (b) A **trading participant** will be a category of authorised user that is authorised to use a JSE trading system in relation to one or more of the JSE's markets and who is **only regulated** by the JSE in respect of its use of such trading system. To the extent that a trading participant provides any securities services to a client, those services are **not regulated** by the JSE.
- (c) A **clearing participant** will be a category of authorised user that is authorised to provide clearing services to members and trading participants.

Members are encouraged to take particular cognisance of and to understand their anticipated authorised user classification under the new model, including the obligations and requirements of their respective category as set out in the Appendix below. As you will appreciate, these rule changes may require certain members to restructure their businesses and whilst members will be given a short window period in which to comply with these new requirements once the new rules are introduced, it is imperative that they begin to restructure their businesses in accordance with the new model as soon as possible.

In particular, members of the Agricultural Products Division (APD) which are large diversified agricultural trading houses, whose trading activities on the JSE only constitute a small portion of their overall activities, will NOT qualify as "members" under the new model because of the marginal or non-core nature of their exchange traded activities in relation to their overall activities. This type of entity will need to form a separately capitalised legal entity should it wish to continue engaging its clients on Safex. The dominant business activity of such a separately capitalised legal entity will need to be the trading in securities as described in the Appendix below in the section entitled "Specific Conditions of Membership".

An important rationale for membership of the APD has been a JSE fee structure that differentiates between the fees charged to members in respect of their proprietary JSE derivative activity, versus the JSE fees levied on their clients' activity. In keeping with the principles in all the other JSE markets, it is the JSE's intention to eliminate this current fee differential in the APD as soon as possible. Current members of the APD that have acquired membership primarily for the purposes of obtaining the benefits of the current fee differential will need to carefully reassess their optimal structures going forward, given the new JSE membership model and fee structure.

Each existing member that will need to form a separately capitalised legal entity for the purposes described above, will need to apply to the JSE in the normal format required by the JSE in respect of new membership applications. Depending on the size and complexity of the application and the amount of work to be performed by the JSE in order to process the application, the JSE may waive either all or part of the standard application fee in respect of the applications it receives pursuant to this new membership structure.

In addition, once the JSE has approved the new membership, such members will need to complete a number of other activities in order to properly transfer their existing JSE derivative business to their new legal entities. These activities include the signing of new client mandates, the transfer of client positions, the registration of officers (e.g. traders and compliance officers) and the appointment of auditors.

Members are urged to contact Richard Bone on 011-5207150 should they require further clarity on their anticipated status in terms of these new authorised user classifications.

APPENDIX

Membership Requirements

To be admitted as a member and to remain a member, an applicant or a member, respectively, must -

- be registered as a company under the Companies Act;
- only appoint executive and non-executive directors who comply with the fit and proper requirements;
- ensure that a shareholder who is a natural person and who directly or indirectly holds in excess of 10% of the issued shares of the applicant or member complies with the fit and proper requirements;
- appoint a compliance officer in terms of the rules who complies with the fit and proper requirements;
- in relation to the interest rate market, appoint a settlement officer and an alternate settlement officer who comply with the fit and proper requirements;
- in relation to the interest rate market, appoint a settlement agent in terms of the rules;
- appoint a clearing participant to perform clearing services if the entity itself is not also a clearing participant; and
- meet the specific conditions of membership set out below.

Specific Conditions of Membership

The specific conditions of membership set out below represent the minimum conditions which an applicant and a member will be required to satisfy in order to be granted or to retain membership status and to be authorised to perform regulated services.

- Resources, procedures and systems
 - (i) A member will be required to employ adequate resources, procedures and systems necessary for the effective performance of the regulated services which the member provides and for ensuring compliance with the provisions of the Securities Services Act, 2004, (the Act) and the rules and directives that are relevant to the performance of such regulated services.
 - (ii) A member will be required to ensure that its employees are suitable, adequately trained and properly supervised.
- Business activities
 - (i) The dominant business activity of a member shall be the trading in securities listed on one or more licensed exchanges in the Republic as an authorised user of such exchanges.
 - (ii) To the extent that a member's business activities includes intermediary services or the provision of advice in relation to financial products other than listed securities, such activities shall be subject to the member having been granted the appropriate license in terms of the Financial Advisory and Intermediary Services Act, 2002 (the FAIS Act), and to the "Limitations on Members Operating as Financial Services Providers", as outlined below.
- Financial resources
 - (i) A member must on admittance and at all times thereafter ensure that it maintains adequate financial resources to meet its business commitments and to withstand the risks to which its business is subject.
 - (ii) A member must on admittance and at all times thereafter hold adjusted liquid capital which complies with the minimum requirements calculated in accordance with the directives, sufficient to meet its base requirement and its risk requirement.

- (iii) The base requirement of a member is the higher of –
 - (a) an amount determined in accordance with the directives as being adequate to meet a member's fixed expenditure for a period of 13 weeks; or
 - (b) R400 000.
- (iv) The risk requirement of a member is the sum of its position, counterparty, foreign exchange, custody and large exposure requirements determined in accordance with the directives.

Regulated Services Performed by Members

An entity applying for approval as a member -

- will be required to apply for authorisation to perform trading services;
- must, where the applicant is to be involved in the custody of client funds held in relation to activity in any of the JSE Derivative markets or in Yield-X, either -
 - (i) apply for authorisation to perform custody services on behalf of such clients in respect of their funds; or
 - (ii) enter into a written arrangement with its clearing participant for the performance of custody services on behalf of that member;
- may apply to perform investment services, provided that the applicant has also applied to perform trading services.

Limitations on Members Operating as Financial Services Providers

- A member may operate as a financial service provider licensed in terms of section 8 of the FAIS Act in respect of any advice or intermediary service which it provides in terms of the FAIS Act and where such advice or intermediary service is not regulated by the Act, and the rules, subject to the provisions below.
- The intermediary services which a member may be permitted to provide shall exclude collecting or accounting for premiums or other monies payable by a client to a product supplier, or receiving, submitting or processing the claims of a client against a product supplier, in relation to the following financial products-
 - (i) a long-term or a short-term insurance contract or policy, referred to in the Long-term Insurance Act, 1998 (Act No. 52 of 1998), and the Short-term Insurance Act, 1998 (Act No. 53 of 1998), respectively; or
 - (ii) a benefit provided by-
 - (a) a pension fund organisation as defined in section 1 (1) of the Pension Funds Act, 1956 (Act No. 24 of 1956), to the members of the organisation by virtue of membership; or
 - (b) a friendly society referred to in the Friendly Societies Act, 1956 (Act No. 25 of 1956), to the members of the society by virtue of membership; or
- a health service benefit provided by a medical scheme as defined in section 1 (1) of the Medical Schemes Act, 1998 (Act No.131 of 1998).

Trading Participant Requirements

To be admitted as a trading participant and to remain a trading participant, an applicant or a trading participant, respectively, must -

- be incorporated as a company or be a close corporation or a partnership of natural persons or a sole proprietor, subject to the specific conditions set out below regarding the various sub-categories of trading participants;

- if a company, only appoint directors who comply with the fit and proper requirements;
- ensure that a shareholder, member or partner who is a natural person and who directly or indirectly holds in excess of 10% of the issued shares or ownership interest of the applicant or trading participant complies with the fit and proper requirements;
- if a sole proprietor, complies with the fit and proper requirements;
- appoint a compliance officer in terms of the rules who complies with the fit and proper requirements;
- in relation to the interest rate market, appoint a settlement officer and an alternate settlement officer who comply with the fit and proper requirements;
- in relation to the interest rate market, appoint a settlement agent;
- appoint a clearing participant to perform clearing services if the entity itself is not also a clearing participant; and
- meet the specific conditions applicable to trading participants set out below.

Specific Conditions Applicable to Trading Participants

The specific conditions applicable to trading participants set out below represent the minimum conditions which an applicant and a trading participant will be required to satisfy in order to be granted and to retain authorisation as a trading participant.

- Resources, procedures and systems
 - (i) A trading participant must employ adequate resources, procedures and systems necessary for compliance with the provisions of the Act and the rules and directives that are relevant to the use of a JSE trading system and the settlement of obligations arising out of the use of such a system.
 - (ii) A trading participant must ensure that those employees who utilise a JSE trading system are suitable, adequately trained and properly supervised.
- Business activities

A trading participant shall be authorised in one of the following sub-categories based on its business activities:

 - (i) a banking institution authorised in terms of the Banks Act, including an external company, as defined in these rules, that operates as a branch by means of which a foreign institution conducts the business of a bank and which is regulated in terms of the Banks Act;
 - (ii) a financial services provider licensed by the Registrar of Financial Services Providers in terms of the FAIS Act, whose trading in listed securities on one or more licensed exchanges in the Republic as an authorised user of such exchanges is not its dominant business activity;
 - (iii) a South African resident dealing on the JSE in derivative securities or interest rate securities for his or its own account only, including inter dealer activity;
 - (iv) a foreign registered and incorporated company dealing on the JSE in derivative securities or interest rate securities for its own account or on behalf of foreign clients only, and where such foreign company is regulated by a foreign securities regulator.
- Financial resources
 - (i) Trading participants categorised in terms of sections (i), (ii) or (iv) above shall be required to comply with the capital adequacy requirements as imposed by their respective lead regulators.
 - (ii) Trading participants categorised in terms of section (iii) above shall be required at all times to ensure that their unencumbered assets, excluding goodwill, other intangible assets, investments in subsidiaries and other long term assets, exceed their liabilities, excluding loans validly subordinated in favour of all other creditors.

Clearing Participant Requirements

To be admitted as a clearing participant and to remain a clearing participant, an applicant or a clearing participant, respectively, must -

- be incorporated and registered in the Republic as a domestic company, or be an external company, as defined in these rules, that operates as a branch by means of which a foreign institution conducts the business of a bank and which is regulated in terms of the Banks Act;
- appoint a clearing officer who complies with the fit and proper requirements;
- meet the specific conditions applicable to clearing participants set out below.

Specific Conditions Applicable to Clearing Participants

The specific conditions applicable to clearing participants set out below represent the minimum conditions which an applicant and a clearing participant are required to satisfy in order to be granted and to retain authorisation as a clearing participant.

- Resources, procedures and systems
 - (i) A clearing participant must employ adequate skilled resources, procedures and systems necessary for the effective performance of the clearing services which it provides and for ensuring compliance with the provisions of the Act and the rules and directives that are relevant to the performance of such services. These procedures and systems must be provide for-
 - (a) the accurate and efficient measurement and control of the risks and related exposures to authorised users and to the clearing house arising out of the clearing services which it provides;
 - (b) the implementation of effective safeguards and data sensitivity controls regarding the information pertaining to authorised users that utilise its clearing services;
 - (c) the efficient discharge of all of its obligations to the clearing house and to authorised users that utilise its clearing services; and
 - (d) effective communication with the clearing house and the authorised users that utilise its clearing services.
 - (ii) Clearing participants shall maintain documented default contingency arrangements in the event of the default of any authorised user to whom they provide clearing services, in order to ensure-
 - (a) continuity of service for the clients of such authorised users; and
 - (b) the ongoing segregation and safeguarding of any client funds held by the authorised user or the clearing participant in relation to activity in any of the JSE Derivative markets or in Yield-X.
 - (iii) A clearing participant that is not also a member or a trading participant shall be required to have a written contractual arrangement in place with a member or trading participant in order to discharge its obligations in terms of the rules to –
 - (a) the authorised users and the clients of such authorised users for whom it provides clearing services; and
 - (b) the clearing house.
 - (iv) A clearing participant must ensure that those employees who are involved in the provision of clearing services are suitable, adequately trained and properly supervised.
- Business activities

Clearing participants shall conduct their clearing service activities in the Republic.
- Financial resources

A clearing participant must on admittance and at all times thereafter maintain -

- (i) a minimum shareholders equity, as defined the rules, of R1 billion; or
- (ii) adjusted net capital which complies with the minimum requirements calculated in accordance with the directives.
