

NoteA734B

Proposed amendments to the JSE Derivatives Rules

Note: Additions are underlined. Deletions are in bold and in square brackets.

3.70 Duty to furnish information

3.70.1 ...

3.70.2 ...

3.70.3 A member shall submit to the [JSE.] Director: Surveillance within **[four]** three months after the end of its financial year, **[two copies]** a copy of its audited annual financial statements, and the audit report prescribed by the Act [Regulations], in respect of such period, **[irrespective of whether or not the member is obliged in terms of any legislation to provide such audited financial statements.]**

3.70.4 Subject to rules 3.70.5 and 3.70.6, a member shall submit the prescribed monthly capital adequacy return to the Director: Surveillance within **[seven]** ten business days of the end of the month or within such other period that the JSE may require: Provided that the member shall at all times comply with the capital adequacy requirements referred to in these derivatives rules, and provided further that the JSE shall be entitled to suspend a member from trading, should the return not be submitted **[within a reasonable time after the member was requested to do so]** timeously.

3.70.5 **[A member may apply in writing to the JSE for exemption from the requirement to submit the return referred to in rule 3.70.4, and the JSE may at its discretion grant such exemption: Provided that the member confirms in writing that it shall submit a similar return to another exchange or to the Registrar of Banks and such other exchange or the Registrar of Banks confirms that it shall accept such returns and ensure compliance by the member with its rules and any other requirements relating to the capital adequacy of the member.]** A member that is either -

3.70.5.1 a bank;

3.70.5.2 a foreign institution which is authorised in terms of the Banks Act, 1990 (Act No. 94 of 1990) to conduct the business of a bank by means of a branch in the Republic; or

3.70.5.3 trades in derivative securities solely for its own account,

shall be exempt from the requirement to submit the monthly capital adequacy return referred to in rule 3.70.4, provided the member has advised the JSE, in writing, that it meets the requirements of rule 3.70.5.1, 3.70.5.2, or 3.70.5.3.

3.70.6 A member that is an authorised user of another exchange may apply in writing to the Director: Surveillance for exemption from the requirement to submit the monthly capital adequacy return referred to in rule 3.70.4, provided the capital requirements of the other exchange are, in the opinion of the Director: Surveillance, similar to those imposed by the JSE and the member is required to submit a return to the other exchange.

3.70.7 In considering an application for an exemption in terms of rule 3.70.6, the Director: Surveillance will take into account the relative activity undertaken by the member on the JSE and the other exchange in order to determine whether it is preferable for the other exchange to act as the lead regulator in relation to the supervision of compliance with capital adequacy requirements by the member.

3.70.8 If a member is granted an exemption in terms of rule 3.70.6, the member may be required at any time to submit, to the Director: Surveillance, a copy of any capital adequacy return submitted to the other exchange.

3.70.9 Despite the fact that a member may be exempt from submitting monthly capital adequacy returns to the Director: Surveillance, in terms of rules 3.70.5 or 3.70.6, the member is required to advise the Director: Surveillance, in writing, as soon as it becomes aware that it has failed to meet the relevant capital adequacy requirements set out in rules 4.20.2 to 4.20.4.

4.20 Capital adequacy requirements

4.20.1 [A] Subject to rules 4.20.2, 4.20.3, 4.20.4 and 4.20.7, a member shall at all times have own funds equal to the greater of -

4.20.1.1 the initial capital referred to in rule **[4.20.2, 4.20.3, 4.20.4 or]** 4.20.5 or 4.20.6 as the case may be; or

4.20.1.2 ...

4.20.1.3 ...

4.20.1.4 ...

4.20.1.5 ...

4.20.1.6 ...

4.20.1.7 ...

4.20.1A The following provisions shall apply to a member that is an external company, other than an external company that is a foreign institution which is authorised in terms of the Banks Act, 1990 (Act No.94 of 1990) to conduct the business of a bank by means of a branch in the Republic-

4.20.1A.1 ...

4.20.1A.2 the own funds of the local branch of the external company shall at all times **[exceed the liabilities of the said local branch of the external company in the Republic by an amount]** be equal to or greater than **[that]** the amount provided for in rule **[4.20.2, 4.20.3, 4.20.4 or 4.20.5]** 4.20.1.2, 4.20.5, 4.20.6 or 4.20.7, as the case may be;

4.20.1A.3 the foreign parent of the local branch of the external company shall in writing confirm to the JSE that it is required to comply with capital adequacy requirements similar to those in the Republic, and that they are reporting such as required to an appropriate foreign regulator; and

4.20.1A.4 the thirteen weeks operating costs requirement in rule 4.20.1.2 shall relate to the operating costs of the local branch of the external company in the Republic, **[; and]**

[4.20.1A.5 an external company which operates as a branch by means of which a foreign institution conducts the business of a bank, shall submit its capital adequacy returns in terms of rules 3.70.4 and 3.70.5 to the Registrar of Banks, and shall at all times comply with the Banks Act, 1990 (Act No. 94 of 1990) and any Conditions published in terms of the said Banks Act.]

4.20.2 [A trading member that does not have clients in any other market shall have the initial capital as required by his clearing member.] A trading member that is a bank or a foreign institution which is authorised in terms of the Banks Act, 1990 (Act No. 94 of 1990) to conduct the business of a bank by means of a branch in the Republic, and is exempt from the requirement to submit monthly capital adequacy returns to the Director: Surveillance, in terms of rule 3.70.5, is not required to comply with the requirements of rule 4.20.1 but is instead required to comply with the capital adequacy requirements as prescribed by the Banks Act, 1990 (Act No. 94 of 1990) and the regulations made under that Act.

- 4.20.3 A trading member that trades in derivative securities solely for its own account and is exempt from the requirement to submit monthly capital adequacy returns to the Director: Surveillance, in terms of rule 3.70.5, is not required to comply with the requirements of rule 4.20.1 but shall ensure that its assets (excluding goodwill and other intangible assets) exceed its liabilities (excluding loans validly subordinated in favour of all other creditors).
- 4.20.4 A trading member that is an authorised user of another exchange and is exempt from the requirement to submit monthly capital adequacy returns to the Director: Surveillance, in terms of rule 3.70.6, is not required to comply with the requirements of rule 4.20.1 but shall comply with the capital adequacy requirements as prescribed by such other exchange.
- 4.20.[3]5 A trading member who trades on behalf of clients but does not receive a client's margins or hold the client's margins in terms of rule 8.60.4 or who does not receive any other assets of [his] a client with respect to the client's buying and selling of JSE authorised investments, shall have an initial capital of at least R200 000 or such other minimum amount that the JSE may decide.
- 4.20.[4]6 A trading member who receives client's margins or holds clients' margins in terms of rule 8.60.4, or that receives any other assets of his client with respect to the client's buying and selling of JSE authorised investments, shall have an initial capital of at least R400 000, or such other minimum amount that the JSE may decide.
- 4.20.[5]7 A clearing member shall have own funds of R200 000 000, or such other sum as the JSE may determine: Provided that the JSE may, at its discretion, impose additional suretyship, guarantee or other requirement on a clearing member if -
- 4.20. [5]7.1 the sum of the initial margin with respect to the positions of the clearing member, its clients, the trading members with which the clearing member has entered into clearing agreements and the clients of such trading members, reaches the limit as contemplated in rule 10.10.1; or
- 4.20. [5]7.2 the own funds of the clearing member as specified in rule 4.20.[5]7 have decreased to the limit referred to in rule 10.10.1.
- 4.20.[6]8 A clearing member shall provide, maintain and keep in force a suretyship in favour of the clearing house by a financial or other 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.[7]9 The JSE shall be entitled to suspend a member should there be a deficiency in the capital adequacy [requirement] of the member [as prescribed in the derivatives rules and directives].