

NoteA1940 C

PROPOSED AMENDMENTS TO THE JSE DERIVATIVES RULES

General explanatory notes:

1. The proposed amendments to the JSE derivatives rules set out below give effect to the requirements of the Financial Markets Act (Act No.19 of 2012).
2. Words underlined with a solid line (___) indicate the insertions in the existing rules.
3. Words in bold and in square brackets ([]) indicate deletions from the existing rules.

Section 1: Derivatives rules**1.90 JSE not responsible for any losses**

Subject to section [62]72 of the Act, the JSE and the clearing house shall not be liable to any person for loss or damage resulting from –

1.90.1 ...

1.130 Transitional provisions

Members will have 6 months from the date of the approval by the registrar of the amended rules 7.200.2 to 7.200.4 within which to conduct the relevant training and formulate and implement the compliance monitoring procedures referred to in those rules.

Section 2: Interpretation and definitions**2.10 Definitions**

In these rules, unless otherwise clearly indicated by, or inconsistent with the context, the following terms shall have the meanings that are assigned to them hereunder, namely –

“Act”	means the [Securities Services Act, 2004 (Act No. 36 of 2004)] <u>Financial Markets Act, 2012 (Act No. 19 of 2012)</u> and any measure prescribed thereunder by the Minister of Finance or the Registrar;
"advice"	<u>has the same meaning as that contained in Section 1 of the Act;</u>
"appeal board"	<u>has the same meaning as that contained in Section 1 of the Act;</u>
["board of appeal"]	[has the same meaning as that contained in section 1 of the Act;]
“clearing member”	means a sub-category of authorised user of the JSE, [registered] <u>authorised</u> to perform clearing <u>services</u> in the equity derivatives market or the commodity derivatives market or both and who has entered into a clearing house agreement with the clearing house;
"clearing services"	<u>has the same meaning as that contained in Section 1 of the Act;</u>
"client"	[has the same meaning as that contained in Section 1 of the Act;] <u>means any person to whom a member provides securities services in terms of the rules, and includes a person that acts as an agent for another person in relation to those services in which case it will include the agent or exclude the other person if the contractual arrangement between the parties indicates this to be the intention;</u>
"Companies Act"	means the [Companies Act, 1973 (Act No. 61 of 1973)] <u>Companies Act, 2008 (Act No. 71 of 2008);</u>
"derivatives rules"	means these derivative rules issued in pursuance of section [18]17 of

	the Act;
"external company"	means an external company as defined in Section 1 of the Companies Act, registered in terms of Section [322(2)]23 of the Companies Act;
<u>"Financial Intelligence Centre Act"</u>	<u>means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).</u>
"Fidelity Fund"	means a Compensation Fund as contemplated in terms of Section [9(1)(e)]8(1)(h) of the Act, out of which shall be paid claims arising from the default of a member in accordance with the rules of the fund;
<u>"insolvency administrator"</u>	<u>has the same meaning as that contained in Section 1 of the Act;</u>
<u>"insolvency proceeding"</u>	<u>has the same meaning as that contained in Section 1 of the Act;</u>
["investment advice"]	<p>[means any recommendation, guidance or proposal of a financial nature furnished by a member, by any means or medium, to any client or group of clients –</p> <p>(a) in respect of the purchase or sale of any JSE authorised investments; or</p> <p>(b) on any corporate action or other event affecting any rights or benefits in respect of any JSE authorised investments; or</p> <p>(c) on the exercise or lapse of any rights in respect of any JSE authorised investments;</p> <p>and irrespective of whether or not such advice results in any transaction being effected.</p> <p>Investment advice does not include –</p> <ul style="list-style-type: none"> • factual advice given merely – <ul style="list-style-type: none"> (i) on the procedure for entering into a transaction in respect of any JSE authorised investments; (ii) in relation to the description of any JSE authorised investments; (iii) in answer to routine administrative queries; (iv) in the form of objective information about any JSE authorised investments; or (v) by the display or distribution of promotional material; <p>an analysis or report on any JSE authorised investments without any express or implied recommendation, guidance or proposal that any particular transaction in respect of the relevant product is appropriate to the particular investment objectives, financial situation or particular needs of a client;]</p>
"manage"	in relation to JSE authorised investments, means any arrangement entered into between a client and a member which authorises such member to buy or sell JSE authorised investments <u>or exercise any rights attached to those investments</u> on behalf of such client, either with full discretion or with prior reference to the client;
[market corner]	[has the same meaning as that contained in section 72 of the Act;]
"regulation"	[means any regulation which may be made by the Minister under section 113 of the Act;] <u>has the same meaning as that contained in section 1 of the Act;</u>
["safeguard"]	<p>[in relation to client assets, means:</p> <p>(a) the holding of such assets in safe custody by a member or a nominee company controlled by a member, on</p>

	behalf of a client; or
	(b) being accountable as a member to a client for such assets held by another financial services provider;]
<u>"safeguarding"</u>	
<u>"settle"</u>	<u>has the same meaning as that contained in section 1 of the Act;</u>
<u>"SRO Oversight Committee"</u>	<u>has the same meaning as that contained in section 1 of the Act;</u> <u>means the JSE Board sub-committee responsible for overseeing the issuer regulation and market regulation functions of the JSE;</u>

Section 3: General membership and disciplinary proceedings

3.20 General requirements

- 3.20.1 Officers of members shall, subject to any waiver by the JSE –
- 3.20.1.4 not in the period preceding the application as the JSE in its discretion deems fit, have been –
- 3.20.1.4.1 convicted of an **[activities]** activity constituting a criminal offence involving fraud, theft, dishonesty or market abuse, whether in the Republic or elsewhere;
- 3.20.1.4.2 held civilly or administratively liable for, inter alia, fraud, theft, dishonesty or market abuse, whether in the Republic or elsewhere;
- 3.20.1.4.3 declared to have contravened legislation in respect of market abuse, money laundering or terrorist or related activity, with or without the imposition of an administrative penalty, whether in the Republic or elsewhere;
- 3.20.1.4.4 disqualified by a court from acting as a director of a company;
- 3.20.1.4.5**[2]** the subject of a formal investigation by any regulatory or government agency;
- 3.20.1.4.6**[3]** expelled, whether as a member or otherwise, from any exchange or external exchange;
- 3.20.1.4.7**[4]** employed by or associated with a member of any exchange or external exchange, which member was expelled from that exchange and where the person or officer has, in the opinion of the JSE, contributed to the circumstances leading to the expulsion;
- 3.20.1.4.8**[5]** declared a defaulting member of the JSE or any other exchange or external exchange; or
- 3.20.1.4.9**[6]** refused entry to or expelled from any profession or vocation or been dismissed or requested to resign from any office or employment, or from any fiduciary office or position of trust.
- 3.20.5 Members shall at all times have and maintain the necessary procedures administrative and other systems, facilities, resources and expertise to ensure **[that]** –
- 3.20.5.1 the effective performance of the regulated services that they provide;
- 3.20.5.2 compliance with the Act and the rules and directives that are relevant to the performance of such regulated services;
- 3.20.5.3 compliance with the Financial Intelligence Centre Act;
- 3.20.5.4**[1]** that the management of their own and clients' funds is adequate and in accordance with the derivatives rules relating to the management or separation of funds;

- 3.20.5.5[2] that an accurate record of their own and clients' positions is kept at all times;
- 3.20.5.6[3] that their clients' trades, cash balances and any other information relating to their positions are timeously reported to the clients; and
- 3.20.5.7[4] that they comply with all the financial resources requirements pertaining to the relevant category of authorised user as prescribed in the derivatives rules.

3.60 Involuntary termination of membership

3.60.1 Membership shall terminate when –

- 3.60.1.2 **[a] the member [who is a corporate entity] is [liquidated or] placed [under judicial management, whether provisionally or finally] 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;**

3.275 Surveillance and investigation by the JSE's Surveillance Department

3.275.1 Surveillance

The JSE's Surveillance Department shall at all times have the power to set up and maintain systems for-

- 3.275.1.3 supervising compliance by members with the Financial Intelligence Centre Act, **2001 (Act No. 38 of 2001)**].

Section 4: Derivatives membership

4.20 Capital adequacy requirements

4.20.1A The following provisions shall apply to a member that is an external company, other than a branch of a foreign bank -

- 4.20.1A.1 the external company shall, when submitting its application for membership, submit proof of compliance with the requirements of Section **[322]23** of the Companies Act by furnishing the JSE with the certificate of registration as provided for in Section **[322(2)]14(1)(b)(iii)** of the Companies Act;

Section 7: Trading

7.10 Financial exchange

The business of the buying and selling of exchange contracts as contemplated by sections **[10] 24(a) and (b)** of the Act shall be conducted both on the ATS and off-ATS. Trading in all exchange contracts shall be conducted by means of the ATS: Provided that –

7.10.1 ...

7.200 **[Manipulative or deceptive trading practices] Prevention and detection of market abuse**

7.200.1 **[No trading members shall use, or knowingly participate in the use of any manipulative or deceptive trading practice in a derivative security, either for its own account or on behalf of clients, which creates or may create –**

- 7.200.1.1 **a false or misleading appearance of trading activity; or**

7.200.1.2 an artificial value for such derivative security.]

A member must give consideration to the circumstances of orders placed by clients before entering such orders in the JSE derivatives trading system and must take reasonable steps to satisfy itself that such orders and any resultant trades will not result in a breach of the provisions of section 80 of the Act (Prohibited trading practices).

7.200.2 [A trading member must give consideration to the circumstances of orders placed by clients before entering such orders in the JSE derivatives trading system and is responsible for the integrity of such orders.]

A member must ensure that all of its employees involved in the receipt of orders from clients and the execution of transactions in derivative securities on the JSE derivatives trading system are familiar with the market abuse provisions in sections 77 to 80 of the Act and that those employees receive adequate training and guidance to enable them to recognise and avoid entering into any transaction on behalf of the member or its clients which will result in, or is likely to result in, a breach of those provisions.

7.200.3 [A trading member or employee of a member may not place an order in the JSE derivatives trading system to buy or sell derivative securities which to the knowledge of the trading member or employee of a trading member will, if executed, have the effect contemplated in rule 7.200.1.]

A member's compliance monitoring procedures must specifically include procedures to monitor orders entered into, and transactions executed on, the JSE derivatives trading system by the member and its employees, with the objective of identifying and taking appropriate action in relation to orders or trades that, in the reasonable opinion of the member, may constitute a breach of the provisions of sections 78 and 80 of the Act.

7.200.4 [Without in any way limiting the generality of the foregoing, the following shall be deemed to be manipulative or deceptive methods of trading:

7.200.4.1 Approving or entering on the JSE derivatives trading system –

7.200.4.1.1 an order to buy or sell a derivative security with the knowledge that an opposite order of substantially the same size at substantially the same time and at substantially the same price, has been or will be entered by or for the same or different persons with the intention of creating a false or misleading appearance of active public trading in connection with, or an artificial market price for, such derivative security;

7.200.4.1.2 orders to buy any derivative security at successively higher prices, or orders to sell any derivative security at successively lower prices for the purpose of unduly or improperly influencing the market price of such derivative security;

7.200.4.1.3 an order at or near the close of the market, the primary purpose of which is to change or maintain the closing price of such derivative security;

7.200.4.1.4 an order to buy or sell a derivative security which involves no change in the beneficial ownership of that derivative security; or

7.200.4.1.5 reported transactions which would result in a contravention of rule 7.200.1;

- 7.200.4.2 Effecting or assisting in effecting a market corner;
- 7.200.4.3 Maintaining the price of a derivative security at a level that is artificial;
- 7.200.4.4 Employing any device, scheme or artifice to defraud any other person as a result of a transaction effected through the JSE derivatives trading system; or
- 7.200.4.5 Engaging in any act, practice or course of business in respect of trading in derivative securities which is deceptive or which is likely to have such an effect.]

In formulating and implementing the compliance monitoring procedures referred to in rule 7.200.3, a member is not expected to monitor every order entered into and every trade executed on the JSE derivatives trading system by the member, for the purpose of identifying potential market abuse. Nevertheless, whilst members are encouraged to implement monitoring procedures to detect any activity undertaken by the firm's employees or its clients which may constitute a breach of the provisions of sections 78 and 80 of the Act, the procedures should, as a minimum, aim to detect activity which, to a reasonable person observing or reviewing such activity, would constitute a blatant breach of the provisions of sections 78 and 80 of the Act taking into account all relevant factors such as:

- 7.200.4.1 the identity of the parties to the transaction;
- 7.200.4.2 the perceived intention of the parties to the transaction;
- 7.200.4.3 the frequency and pattern of transactions over a period of time;
- 7.200.4.4 the effect of the transaction on market prices or volumes;
- 7.200.4.5 the size and timing of the transaction; or
- 7.200.4.6 a combination of two or more of these factors.

[7.210] [False, misleading or deceptive statements, promises and forecasts

A member or employee of a member may not, directly or indirectly, make or publish in respect of derivative securities, or in respect of the past or future performance of a listed company –

- 7.210.1 any statement, promise or forecast which is, at the time and in the light of the circumstances in which it is made, false or misleading or deceptive in respect of any material fact and which the member or employee of a member knows, or ought reasonably to know, is false, misleading or deceptive; or
- 7.210.2 any statement, promise or forecast which is, by reason of the omission of a material fact, rendered false, misleading or deceptive and which the member or employee of a member knows, or ought reasonably to know, is rendered false, misleading or deceptive by reason of the omission of that fact.]

Section 13: Derivative securities

13.10 List of derivative securities

The derivative securities which may be bought or sold as provided for in rule 7.10 shall be kept by the JSE in the list of derivative securities in terms of section ~~[12(6)]~~11(8)(a) of the Act.

Section 15: Management of investments

Scope of section

- 15.30 Management and **[investment]** advice in respect of JSE authorised investments other than derivative securities
- 15.60 Exercising of discretion and provision of **[investment]** advice by employees

15.30 Management and [investment] advice in respect of JSE authorised investments other than derivative securities

15.30.4 A trading member may not enter into transactions as an investment manager in JSE authorised investments other than derivative securities on behalf of clients or provide [investment] advice to any clients in respect of such investments unless it has notified the Director: Surveillance, in writing, of its intention to effect such transactions or provide such [investment] advice.

15.30.5 In order for the JSE to identify the scope of an investment manager's activities in JSE authorised investments other than derivative securities, the written notification to the Director: Surveillance referred to in rule 15.30.4 shall indicate which specific investments the investment manager is intending either to transact in on behalf of its clients or to provide [investment] advice on, or both.

15.45 Conducting business with a nominee

A member may not operate a client account on behalf of a person whom the member believes or suspects requires approval to act as a nominee under section 76 of the Act without having taken reasonable measures to ascertain that such person has the necessary approval.

15.60 Exercising of discretion and provision of [investment] advice by employees

A trading member shall, in the course of its business, exercise discretion in the management of JSE authorised investments and provide [investment] advice to its clients on the buying and selling of JSE authorised investments only through an employee who has obtained such qualification as may be prescribed in the directives.

Section 16: Ethics and conduct**16.10 Code of conduct**

16.10.3 Furnishing of [investment] advice and exercise of discretion

In providing [investment] advice to a client, other than a professional client, or exercising discretion in relation to the management of JSE authorised investments, a member shall –

16.10.3.1 take reasonable steps to seek from the client information regarding the client's financial situation, investment experience, particular needs and objectives in connection with the services required, to enable the member to provide the client with sound [investment] advice or make an appropriate investment decision;

16.10.3.4 take reasonable steps to ensure that the client understands any [investment] advice that has been provided, as well as the nature and material terms and risks involved in the relevant transaction, so as to enable the client to make an informed decision; and

16.10.3.5 ensure that any [investment] advice provided or discretion exercised is not for the sole purpose of maximising the income of the member.

Section 17: Complaints and [Resolution of] disputes**17.130 Member complaints against the JSE**

17.130.1 Subject to rule 17.130.2, if a member wishes to lodge a complaint against the JSE in respect of the exercise by the JSE of any exchange functions in terms of section 10 of the Act and the member requires a written response to their complaint, the member should lodge the complaint in writing with the JSE Company Secretary.

17.130.2 If a member wishes to lodge a complaint against the JSE in respect of conduct by the JSE which, in the opinion of the member, evidences a failure by the JSE to avoid or otherwise appropriately

manage a potential conflict between the JSE's regulatory functions and its commercial functions, the member should lodge the complaint in writing with the JSE Company Secretary for the attention of the Chairman of the SRO Oversight Committee.

17.130.3 The JSE or the Chairman of the SRO Oversight Committee will respond to a complaint received in terms of rule 17.130.1 or 17.130.2 respectively within 4 weeks of receiving the complaint or, within such period, will provide the complainant with an appropriate explanation as to why they are not, at that time, in a position to respond and will indicate by when they will respond.