
BOARD NOTICE RAADSKENNISGEWING

BOARD NOTICE 75 OF 2001

FINANCIAL MARKETS CONTROL ACT, 1989 (ACT NO 55 OF 1989) AMENDMENT OF RULES OF THE SOUTH AFRICAN FUTURES EXCHANGE

1. In terms of section 17(3) of the Financial Markets Control Act, 1989 (Act No 55 of 1989), it is hereby notified that the South African Futures Exchange has applied to the Registrar of Financial Markets for approval to make amendments to its rules, as set forth in the Schedule hereto.
2. In terms of section 17(3) of the said Act all interested persons (other than members of the South African Futures Exchange) who have any objections to the proposed amendments are hereby called upon to lodge their objections with the Registrar of Financial Markets, P O Box 35655, Menlo Park, 0102, within a period of 30 days from the date of publication of this notice.

J VAN ROOYEN,
REGISTRAR OF FINANCIAL MARKETS

SCHEDULE

General explanatory notes:

1. Words in bold in square brackets ([]) indicate deletions from existing rules.
2. Words underlined with a solid line (_____) indicate insertions in existing rules.

Definitions

1. In this Schedule "Rules" means the Rules of the South African Futures Exchange as approved by the Registrar of Financial Markets on 19 September 1994, as amended by Safex Notices Nos. 443 of 7 March 1995, 454 of 17 March 1995, 530 of 14 September 1995, 531 of 14 September 1995, 535 of 29 September 1995, 595 of 15 February 1996, Board Notices Nos. 20 of 23 February 1996, 120 of 27 November 1996, 7 of 31 January 1997, 21 of 28 February 1997, 66 of 4 July 1997, 7 of 16 January 1998, 43 of 27 March 1998, Safex Notice 847 of 18 August 1998, Board Notices 59 of 11 June 1999, 80 of 30 July 1999 and 55 of 28 July 2000.

Amendment of Section 1

2. Section 1 of the Rules is hereby amended by the amendment of the definition of "default" as follows:

"default" means a default by a client or member as contemplated in Section 12 [the failure of a person to fulfil his obligations with respect to a trade or position in terms of these rules or any other act or omission which constitutes a default in terms of the rules or as determined by the executive committee];

Amendment of Section 3

3. Section 3 of the Rules is hereby amended by the amendment of Rule 3.4.3 as follows:

3.4.3 The executive committee may in writing exempt a member or registered officer from the provisions of any rule for a period not exceeding [ten] ninety (90) [business] days if-

Amendment of Section 4

4. Section 4 of the Rules is hereby amended as follows:

- (a) by the amendment of Rule 4.3.5 as follows:

4.3.5.2 the own funds of the clearing member as specified in rule 4.3.5 have decreased to the limit referred to in rule 10.1.1[;and].

[4.3.5.3 failure to comply with the provisions of rule 4.3.5 shall constitute a default as contemplated in section 12 of these rules.]

(b) by the amendment of rule 4.3.7 as follows:

4.3.7 The executive **[committee] officer** shall be entitled to suspend a member as envisaged in rule 19.4, should there be a deficiency in the capital adequacy requirement of the member as prescribed in the rules and directives **[, or should the return referred to in rule 4.8.7 not be submitted timeously].**

(c) by the amendment of rule 4.7.1 as follows:

4.7.1 The membership of a member shall terminate if –

- 4.7.1.1 a member who is a natural person dies or **[is placed under curatorship or]** his estate is sequestrated, whether provisionally or finally, or application is made for the sequestration of his estate, whether provisionally or finally, **[and the executive committee resolves that his membership has terminated];**
- 4.7.1.2 a member that is a body corporate is liquidated or placed under judicial management, whether provisionally or finally, or application is made for his liquidation or that he be placed under judicial management, whether provisionally or finally, **[and the executive committee resolves that his membership has terminated: Provided that if application is made for the curatorship of such member, the executive committee may in its discretion terminate his membership];**
- 4.7.1.3 the estate of a member that is a partnership, or of any of the partners thereof, is sequestrated, whether provisionally or finally, or application is made for the sequestration of his estate or the estate of any of the partners thereof, whether provisionally or finally, **[and the executive committee resolves that his membership has terminated,]** or the partnership is dissolved for whatever reason;
- 4.7.1.4 the member compromises or attempts to compromise with his creditors;
- [4.7.1.5 the member fails to satisfy or to have set aside a judgement or arbitrator's award within thirty days of it having been granted or to lodge an appeal against it within such time;]**
- 4.7.1.**[6]**5 the member fails to satisfy a determination by a disciplinary or appeal tribunal;
- 4.7.1.**[7]**6 the registration of a seat, by virtue of which the member holds his membership, is terminated for whatsoever reason;
- 4.7.1.**[8]**7 the non-clearing member fails to enter into a clearing agreement with a clearing member within thirty days or such other period which the executive committee may determine after the termination for whatever reason of his clearing agreement with a clearing member; **[or]**
- 4.7.1.**[9]**8 the disciplinary tribunal has decided to terminate the membership of the member in terms of rule 19.7; **[or]**
- 4.7.1.9 the executive committee has resolved to terminate the membership of the member: Provided that the executive committee shall not terminate a member's membership under this rule unless the member has had the opportunity to make representations to the executive committee.

- (b) by the insertion of rule 12.1A as follows:

12.1A Default by a client

A client shall default if -

12.1A.1 he fails to fulfil any of his obligations in terms of a trade or a position; or

12.1A.2 the executive officer, in his sole discretion, considers that the client has defaulted; or

12.1A.[4]3 [a client] he is in default with respect to one particular member and the executive officer in his discretion decides that he is in default with respect to any other member.

- (c) by the amendment of rule 12.2 as follows:

12.2 Consequences of a client's default

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

12.2.1 the client shall, save as provided ~~[for]~~ in this rule, be suspended from trading through the member;

12.2.2 the member shall close out the positions of the client by trading to transfer those positions to himself and for his own account at a price approved by the executive officer within two business days or such other period ~~[of time]~~ as may be determined by the executive officer, from the date of default;

12.2.3 any amount payable by the member to the client as a result of such close out ~~[or as initial, additional or retained margin]~~ 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 client in terms of rule 8.9.7 [as variation margin or otherwise];

- (d) by the amendment of rule 12.3 as follows:

12.3 Consequences of a non-clearing member's default

Without limiting or detracting from any other remedies and rights which a member or client or the clearing house may have against a non-clearing member, in the event of the default ~~[of]~~ by a non-clearing member -

12.3.1 the non-clearing member shall, save as provided ~~[for by]~~ in this rule, be suspended from trading and the provisions of rule 19.4.2 shall be applied;

12.3.2 the clearing member shall close out the proprietary positions of the non-clearing member by trading to transfer those positions to himself and for his own account at a price approved by the executive officer within two business days or such other period ~~[of time]~~ as may be determined by the executive officer, from the date of default;

12.3.3 any amount payable to the non-clearing member as a result of such close out ~~[or as initial, additional or retained margin]~~ or arising from any suretyship, cession, pledge or other security or from any other cause shall be

(d) by the amendment of rule 4.8.7 as follows:

4.8.7 Subject to rule 4.8.8, a member shall submit the capital adequacy return monthly within seven business days of the end of the month or within such other period that the executive officer may require: Provided that a member shall at all times comply with the capital adequacy requirements referred to in these rules, and provided further that the executive officer shall be entitled to suspend a member as envisaged in rule 19.4, should the return not be submitted within a reasonable time after the member was requested to do so.

Amendment of Section 5

5. Section 5 of the Rules is hereby amended by the amendment of rule 5.5.6 as follows:

5.5.6 The executive officer may, in his discretion, for a period not exceeding ~~[ten]~~ ninety (90) days, grant the temporary registration of an officer pending the attainment by him of the qualifications required for the office in question.

Amendment of Section 7

6. Section 7 of the Rules is hereby amended by the amendment of Rules 7.9.3 and 7.9.4 as follows:

7.9.3 The executive ~~[committee]~~ officer may suspend the ATS at any time by giving 5 minutes notice on the screen specifying the expected duration of suspension and alternative methods of trading, if any.

7.9.4 The executive ~~[committee]~~ officer may extend ATS trading times on any business day by giving 5 minutes notice on the ATS specifying the closing time for trading that day.

Amendment of Section 12

7. Section 12 of the Rules is hereby amended as follows:

(a) by the amendment of rule 12.1 as follows:

12.1 Default by a member

A member ~~[or client]~~ shall default if -

12.1.1 he fails to fulfil any of his obligations in terms of a trade or a position[, in particular if he fails to comply fully and immediately with his obligation to make payment of margin when due or required]; or

12.1.2 his membership is terminated; or

12.1.3 the executive committee, in its sole discretion, considers that he has defaulted; Provided that Rule 20.2.2.4 shall apply in relation to an AMD member.; or

set off against any amount payable by the non-clearing member in terms of rule 8.9.4 [as variation margin or otherwise];

12.3.4^A if after all the above rules have been exhausted a shortfall remains, the non-clearing member's seat may be sold by the executive officer and the proceeds utilised towards settlement of [such] any remaining shortfall, and any surplus paid to the non-clearing member.

12.3.6 the clients of the non-clearing member shall, without notice to such clients, become the clients of the clearing member, and-

12.3.6.1 the clearing member shall assume the non-clearing member's obligations in terms of rule 8.9.7, [in respect of any open positions or retained margin] that accrued [within that] on the date of default or on the previous business day;

(e) by the amendment of rule 12.4 as follows:

12.4 Consequences of a clearing member's default

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

12.4.1 the clearing member shall, save as provided [for] in this rule, be suspended from trading and the provisions of rule 19.4.2 shall be applied;

12.4.3 the clearing house shall manage the trust account and all the affairs of the clearing member arising from and relating to his membership of Safex and -

12.4.3.3 any amount payable to the clearing member as a result of such close out [or as margin] 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 8.9.1 [as variation margin or otherwise];

12.4.3.4 if after all the above rules have been exhausted a shortfall remains, the clearing member's seat may be sold by the executive officer and the proceeds utilised towards the settlement of [such] any remaining shortfall, and any surplus paid to the clearing member;

12.4.4 within a period decided by the executive committee each non-clearing member with whom the defaulting clearing member had a clearing agreement shall conclude a clearing agreement with another clearing member, [Provided that] failing [the conclusion of such clearing agreement] which the non-clearing member shall be deemed to be in default and his membership shall terminate;

12.4.6 after all liabilities of the defaulting clearing member have been settled, the amounts paid by any surety in terms of the rules shall be refunded from any balance remaining in the trust account and any further balance remaining shall be paid to the defaulting clearing member: Provided that if there are insufficient funds to cover [the] such liabilities [of the clearing house arising out of the clearing member's default], 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 and the general reserve of Safex shall be [paid to the clearing house] applied in equal proportions: Provided that the member's fund and general fund of the Fidelity Fund shall each contribute an equal part.

Amendment of Section 18

8. Section 18 of the Rules is hereby amended by the amendment of Rule 18.2 as follows:

18.2 Trustees

The trustees of the fidelity fund shall be the executive officer, the treasurer appointed in terms of rule 3.5.5.2, and at least three voting members of the executive committee of Safex elected in terms of rule 3.2.1.

Amendment of Section 20

9. Section 20 of the Rules is hereby amended by the amendment of rule 20.2.2 as follows:

20.2 AMD Management Committee

20.2.2 Powers delegated to the AMD Management Committee

Without thereby divesting or relieving itself of any power so delegated, the executive committee delegates its powers to the AMD Management Committee in terms of Section 13 of the Act, with respect to –

20.2.2.4 default by an AMD member in terms of Section 12; and

20.2.2.[4]5 any other matter which the executive committee deems to be particular to the trading in agricultural commodity contracts or the promotion of trading in such contracts.