
GENERAL NOTICES ALGEMENE KENNISGEWINGS

NOTICE 2802 OF 2004

FINANCIAL MARKETS CONTROL ACT, 1989 JSE FIDELITY FUND RULES

1. In terms of section 17(3)(e) of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), it is hereby notified that the JSE Securities Exchange South Africa has applied to the Registrar of Financial Markets for approval of the JSE Fidelity Fund rules contained in the Schedule.
2. In terms of section 17(3)(f) of the said Act all interested persons (other than members of the **JSE** Securities Exchange South Africa) who have any objections to the proposed rules 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 in the Gazette.

J VAN ROOYEN,
REGISTRAR OF FINANCIAL MARKETS

SCHEDULE

JSE Fidelity Fund Rules

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1. Name

The name of the fund required in terms of section 17(1)(n) of the Act shall be the **JSE Fidelity Fund** hereinafter referred to as "the Fidelity Fund".

2. Separate Identity

The Fidelity Fund shall be a separate legal person capable of owning property in its own name and of suing and being sued in its own name. The Fidelity Fund shall have no members and no member of the **JSE** shall have any claim on the assets of the Fidelity Fund save as set out in these Rules.

3. Administration

- 3.1 The administrators of the Fidelity Fund shall be the controlling body of the **JSE** who may exercise their powers of delegation in respect of the administration of the Fidelity Fund in terms of the Constitution of the **JSE**.
- 3.2 The **JSE** shall act as the secretary of the Fidelity Fund.
- 3.3 The affairs of the Fidelity Fund shall be administered by the administrators at meetings convened for this purpose.

4. Definitions

For the purpose of these Rules -

- 4.1 "Act" shall mean the Financial Markets Control Act, 1989 (Act No. 55 of 1989) and any subsequent amendments thereto or any replacement Act;
- 4.2 "agricultural products member" shall mean a member authorised to trade on the agricultural products market in terms of the derivatives rules;
- 4.3 "client" shall mean any client registered as a client of a derivatives member or a Yield-X member and with whom the said member has concluded a client agreement;
- 4.4 "derivatives members" shall mean members of both the agricultural products market and the financial derivatives market;
- 4.5 "derivatives rules" shall mean the rules and directives of the **JSE** applicable to derivatives, excluding the equities and Yield-X rules;
- 4.6 "equities rules" shall mean the rules and directives of the **JSE** applicable to equities, excluding the derivatives and Yield-X rules;
- 4.7 "financial derivatives member" shall mean a member authorised to trade on the financial derivatives market in terms of the derivatives rules;
- 4.8 "**JSE**" shall mean the **JSE Securities Exchange South Africa**;
- 4.9 "**JSE** rules" shall mean the rules of the **JSE** applicable to the equities, derivatives and Yield-X markets;
- 4.10 "Registrar" shall mean the Registrar of Financial Markets, appointed in terms of the Act;
- 4.11 "SAFCOM" shall mean SAFEX Clearing Company (Proprietary) Limited, recognised by the Registrar as the clearing house in terms of the Act;
- 4.12 "Yield-X member" shall mean a member authorised to trade on Yield-X in terms of the Yield-X rules; and
- 4.13 "Yield-X rules" shall mean the rules of the **JSE** applicable to Yield-X, excluding derivatives and equities rules.

5. Management of the Fidelity Fund

- 5.1 The administrators shall open a banking account with a bank registered otherwise than provisionally in terms of the Banks Act, 1990 (Act No. 94 of 1990) in the name of the Fidelity Fund and shall have the power to draw and endorse cheques and other negotiable instruments connected with the business of the Fidelity Fund. All monies accruing to the Fidelity Fund shall, pending the investment or application thereof, in accordance with these Rules, be paid into the said banking account. The administrators shall have power to close the banking account and open an account with another bank so registered.
- 5.2 Subject to these Rules, the administrators shall have exclusive administration and control of all assets of the Fidelity Fund and of the income arising therefrom. Such assets or income shall be applied or invested by the administrators in the manner hereafter provided and in no other manner, that is to say –
- 5.2.1 if necessary, all the assets of the Fidelity Fund shall be used to meet claims on the Fidelity Fund in terms of these Rules;
- 5.2.2 not less than 25 per cent of the total assets of the Fidelity Fund shall be invested –
- 5.2.2.1 on deposit with a bank (registered otherwise than provisionally in terms of the Banks Act, 1990);
- 5.2.2.2 in bills, bonds, debentures or stock issued or guaranteed by the government of the Republic;
- 5.2.2.3 in stock of any local authority in the Republic authorised by law to levy rates upon immovable property; and
- 5.2.2.4 in debentures or stock of the Reserve Bank, the Rand Water Board, Eskom or such other similar body constituted or established by or under law.
- 5.2.3 any monies not invested in the manner set forth in Rule 5.2.2 above shall be invested in accordance with sound financial principles in securities and financial instruments, in such manner as the administrators deem fit.
- 5.3 All contributions levied in terms of these Rules together with the income arising from the Fidelity Fund shall be invested in the manner set forth in Rule 5.2 until the net value of the assets of the Fidelity Fund has reached the amount determined by the Registrar in Rule 6.3 after which such income may be applied for the purposes set forth in Rule 6.4.
- 5.4 In selecting securities and financial instruments for the Fidelity Fund, the administrators shall follow an investment policy, which shall have as its primary objectives a reasonable level of current income and maximum stability for capital invested. To achieve this objective, the securities and financial instruments normally to be included in the Fidelity Fund shall consist of financially sound ordinary shares, to be acquired at fair market prices, and financially sound fixed income securities embracing stock, preference shares, debenture stock, debenture bonds or unsecured notes.
- 5.5 Notwithstanding anything contained in these Rules, the administrators shall be empowered to sell, exchange, or redeem any investment. The administrators may determine what proportion of the monies in the Fidelity Fund may be retained for the immediate requirements of the Fidelity Fund and what proportion may be invested.
- 5.6 Save as may otherwise be determined by the administrators all contracts, deeds and instruments of a like nature and all drafts, cheques or orders drawn on banks against any account of the Fidelity Fund in any bank shall be signed by two of the administrators.

6. Fidelity Fund Assets

- 6.1 The administrators shall apply the assets of the Fidelity Fund solely for the purposes set forth in these Rules. No withdrawal or appropriation of any part of the assets of the Fidelity Fund shall be made without special authorisation by the administrators.

- 6.2 For the purposes of these Rules the expression "the net assets of the Fidelity Fund shall mean the assets of the Fidelity Fund, valued at market value less provisions made by the administrators at their discretion for all actual and contingent liabilities of the Fidelity Fund.
- 6.3 ~~The net assets of the Fidelity Fund shall at~~ all times be at least R50 million. Should the ~~net assets of the Fidelity Fund at any time fall~~ below R50 million the administrators shall, in the manner set out in Rule 7, levy contributions from derivatives and Yield-X members sufficient to bring the net assets of the Fidelity Fund to R50 million.
- 6.4 When the net assets of the Fidelity Fund exceed R50 million or such other amount as the ~~Registrar may determine~~ after consultation with the administrators, the administrators ~~shall, until such time as the~~ net assets of the Fidelity Fund are reduced to such figure, be ~~entitled, at their discretion,~~ to apply the ~~income~~ arising from the assets of the Fidelity Fund received -
- 6.4.1 for maintaining ~~or~~ for strengthening the financial resources of the JSE as an institution;
- 6.4.2 to fund the expenses of the JSE in operating the equities market, the agricultural derivatives market, the financial derivatives market and Yield-X; and
- 6.4.3 ~~for~~ reducing the listing fees payable by the issuers of financial instruments listed on the JSE.

7. Contributions to the Fidelity Fund

- 7.1 In the event that the administrators invoke the provisions of Rule 6.3 as a result of a claim by a derivatives member, Yield-X member or client. the administrators shall levy additional contributions on those members falling within that market on which the claim arose.
- 7.2 Each such member shall contribute to the Fidelity Fund in relation to the volume of transactions that it trades on a basis and in an amount determined by the administrators. Such ~~contributions~~ shall be obtained from the applicable clearing members together with the trading fees and the said clearing members shall be entitled to recover such contributions from the members with whom they have entered into clearing agreements, together with the fees referred to in rule 8.80.2 of the derivatives rules or rule 8.70.2 of the Yield-X rules, as the case may be.

8. Claims against the Fidelity Fund

- 8.1 A derivatives member, Yield-X member or client may recover from the Fidelity Fund the amount of the outstanding obligation of a derivatives member or Yield-X member to pay initial margin, settlement margin, variation margin or top-up margin in terms of the derivatives rules or Yield-X rules, as the case may be, to such derivatives member, Yield-X member or client: Provided that the liability of the Fidelity Fund shall be limited to the amount of initial margin, settlement margin, variation margin or top-up margin which accrued or became due by the derivatives member or Yield-X member on the day of default by such member, and provided further that -
- 8.1.1 the amount of the claim has been determined by way of arbitration as contemplated in rule 17 of the derivatives rules or rule 5 of the Yield-X rules, as the case may be, and has become final and the award of the arbitrator has not been satisfied by such member; or
- 8.1.2 ~~the~~ claim is otherwise admitted by the administrators and has not been satisfied by such member; and the provisions of rule 12.30 and 12.40 of the derivatives rules or rule 11.40 and 11.50 of the Yield-X rules, as the case may be, have been satisfied; and any remaining balance has been applied towards the claim.
- 8.2 A derivatives clearing member, Yield-X clearing member or SAFCOM shall be entitled to apply any balance remaining in terms of Rule 8.1.2 towards a claim by a person against a derivatives or Yield-X member and, if after the application of such balance, any part of the

award remains unpaid, the administrators shall consider a payment from the Fidelity Fund, subject to Rule 10.

- 8.3** The Fidelity Fund shall be liable to SAFCOM for a shortfall in margin for whatever reason.

9. Settlement of claims

- 9.1** The administrators shall make an award for compensation to the claimant from the Fidelity Fund, which award shall not exceed 5% of the Fidelity Fund, or R1 million, whichever is the smaller amount.
- 9.2** The administrators may decide to consolidate more than one claim against a particular derivatives member or a particular Yield-X member when making an award in terms of this section.

10. Cession of claim against member

The administrators may satisfy a claim as set out in Rule 9 provided that the claimant shall cede his claim against the relevant member to the Fidelity Fund.

11. Arbitrator's finding

In the event of a member failing to satisfy the award of the arbitrator fully, the arbitrator shall make his deliberations and findings available to the administrators.

12. General

- 12.1** The whole of the expenses in connection with or incidental to the management or administration of the Fidelity Fund including the cost of audit and legal expenses shall be borne by the Fidelity Fund.
- 12.2** The administrators shall cause proper accounting records relating to the Fidelity Fund to be kept and shall cause such accounting records to be audited in respect of each year ended on the last day of December by a person registered as an accountant and auditor under the Public Accountants' and Auditors' Act 1991 (Act 80 of 1991) and who publicly carries on the profession of an accountant and auditor and shall not later than three months after the said date in each year, or within such further period as the Registrar may allow, transmit to the Registrar a copy of the accounts and balance sheet of the Fidelity Fund for the said year certified by the said auditor and accompanied by a copy of his report.
- 12.3** Any notice to be given to derivatives or Yield-X members shall be properly given if given in terms of rule 3.140 of the derivatives rules and rule 3.110 of the Yield-X rules or any amendment thereof.
- 12.4** Subject to the Act and these Rules, the decision of the administrators in regard to the administration of the Fidelity Fund and other matters arising therefrom shall be final.
- 12.5** In all disputes or queries other than those referred to in a court of law, the interpretation of these Rules shall vest with the administrators whose interpretation shall be final.
- 12.6** The Rules of the Fidelity Fund may be amended in the same manner as the JSE rules may now or hereafter be amended, provided that every amendment shall be subject to the approval of the Registrar.

13. Winding up

- 13.1** If the JSE should be wound up or otherwise dealt with as envisaged in article 15 of the Constitution of the JSE, the assets of the Fidelity Fund shall be used, subject to the derivatives rules and the Yield-X rules, in discharging –

- 13.1.1 first all **claims** against the Fidelity Fund which are accepted by the administrators in terms of these Rules;
- 13.1.2 thereafter all obligations of the JSE to the public as envisaged in article 15.2.1 of the Constitution.
- 13.2 The balance (if any) of the assets of the Fidelity Fund shall be assets of the **JSE**.
- 13.3 In the event of a merger, amalgamation or transfer of business by or to the **JSE** as contemplated in article 4.3.3 of the Constitution of the **JSE**:
 - 13.3.1 the assets of the Fidelity Fund will not be dealt with pursuant to Rules 13.1.1 or 13.1.2, notwithstanding that the **JSE** may be wound up in terms of article 15 of the Constitution pursuant to such merger or transfer;
 - 13.3.2 at the discretion of the administrators, the Fidelity Fund may merge or amalgamate with or be transferred to any other fidelity or guarantee fund of the merged, amalgamated or transferee exchange, as contemplated in the Constitution.

14. REPEAL

Section 18 of the Derivative Rules of the JSE is hereby repealed.