

BOARD NOTICE 62 OF 2005

SECURITIES SERVICES ACT, 2004

AMENDMENT OF THE RULES OF JSE LIMITED

1. In terms of section 61(5) of the Securities Services Act, 2004 (Act No. 36 of 2004), it is hereby notified that **JSE** Limited has applied to the Registrar of Securities Services for approval of proposed amendments of its rules, which amendments are set out in the Schedule.
2. In terms of section 61(5) of the said Act all interested persons who have any objections to the proposed amendments are hereby called upon to lodge their objections with the Registrar of Securities Services, PO Box 35655, Menlo Park, 0102, within a period of 14 days from the date of publication of this notice.
3. In terms of section 61(6) of the said Act, I, Rob Barrow, hereby determine 1 August 2005 as the date on which the rules in the Schedule will come into operation. If any objections to the proposed rules are received, another commencement date will be determined by notice in the Gazette.

RJG BARROW
Registrar of Securities Services

SCHEDULE

General explanatory notes

1. Words underlined with a solid line (____) indicate the insertions in the existing rules.
2. Words in square brackets in bold ([**]) indicate omissions from existing rules.**

AMENDMENTS TO THE FIDELITY FUND RULES OF JSE LIMITED

1. Name

The name of the fund [required in terms of section 9(1)(e) of the Act] shall be the JSE Fidelity Fund hereinafter referred to as 'the Fidelity Fund'.

2. Separate ~~[1]~~ identity and ownership

[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.]

2.1 The Fidelity Fund shall consist of assets acquired and liabilities incurred by the trustees of the **JSE** Derivatives Fidelity Fund Trust, with Master's reference number IT 914912003 ("the Trust"), which vest in the trustees of the **Trust**.

2.2 The trustees will acquire, hold and administer the Fidelity Fund subject to, and in accordance with these Rules.

3. Administration

3.1 The [administrators] trustees of the Fidelity Fund shall be the controlling body of the **JSE** who [exercise their powers of delegation in respect of the administration of the Fidelity Fund in terms of the Articles of the JSE] have those powers in respect of the administration of the Fidelity Fund as are set out in the trust deed of the Trust on the basis of which the Fidelity Fund is established.

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] trustees 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]~~ Securities Services Act, 2004 (Act No. 36 of 2004) and any measures prescribed thereunder by the Minister of Finance or the Registrar;
- [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] have the same meaning as that contained in section 1 of the Act;
- [4.4] "derivatives member[s]" shall mean [members of both the agricultural products market and the financial derivatives market] a category of authorised user admitted to membership of the JSE under the derivatives rules;
- [4.5] 'derivatives rules' shall mean the rules and ~~the~~ directives of the JSE applicable to ~~derivative[s]~~ securities, excluding the equities and Yield-X rules;
- 'derivative securities' shall mean those JSE listed securities traded on the JSE derivatives trading system;
- 'derivatives trading member' shall mean a sub-category of authorised user of the JSE, registered to trade in the equity derivatives market or the agricultural products market or both under the derivatives rules;
- [4.6] "equities rules" shall mean the rules and ~~the~~ directives of the JSE applicable to [equities] equity securities, excluding the derivatives and Yield-X rules;
- "equity securities" shall mean those JSE listed securities traded on the JSE equity trading system;
- [4.7] ["financial derivatives member"] [shall mean a member authorised to trade on the financial derivatives market ~~in~~ terms of the derivatives rules;]
- "interest rate member" shall mean a category of authorised user admitted to membership of the JSE under the Yield-X rules;
- "interest rate securities" shall mean those JSE listed securities traded on the Yield-X trading system;
- "interest rate trading member" shall mean a sub-category of authorised user of the JSE, registered to trade interest rate securities under the Yield-X rules;
- [4.8] "JSE" shall mean JSE Limited, a company duly registered and incorporated with limited liability under the company laws of [South Africa] ~~the~~ RePublic, licensed to operate an exchange under the [Securities Services] Act;
- "JSE listed securities" shall mean those listed securities included in the list of securities kept by the JSE;
- [4.9] ["JSE rules"] [shall mean the rules of the **JSE** applicable to the equities, derivatives and **Yield-X** markets;]
- "listed securities" shall have the same meaning as that contained in section 1 of the Act;
- [4.10] "Registrar" shall [mean the Registrar of Financial Markets, appointed ~~in~~ terms of the Act] have the same meaning as that contained in section 1 of the Act;
- [4.11] "SAFCOM" shall mean [SAFEX] Safex Clearing Company (Proprietary) Limited, [recognised] licensed by the Registrar as [the] a clearing house in

- terms of the Act;
- "securities" shall have the same meaning as that contained in section 1 of the Act; and
- [4.12] **["Yield-X member"]** [shall mean a member authorised to trade on Yield-X in terms of the Yield-X rules;]
- [4.13] **"Yield-X rules"** shall mean the rules and the directives of the JSE applicable to **[Yield-X] interest rate securities**, excluding the derivatives and equities rules.

5 Management of the Fidelity Fund

- 5.1 The [administrators] trustees shall open a banking account with a bank [registered otherwise than provisionally in terms of] as defined in 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] trustees shall have power to close the banking account and open an account with another bank so [registered] defined.
- 5.2 Subject to these Rules, the [administrators] trustees 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] trustees 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] as defined in 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] trustees 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] trustees 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] trustees shall be empowered to sell, exchange, or redeem any investment. The [administrators] trustees 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] trustees 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] trustees.

6 Fidelity Fund ~~[A]assets~~

- 6.1 The [administrators] trustees 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] trustees.
- 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] trustees 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] trustees shall, in the manner set out in Rule 7, levy contributions from derivatives and ~~[Yield-X]~~ interest rate 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] trustees, the [administrators] trustees 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]~~ products market, the [financial] equity 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] JSE listed securities.

7. Contributions to the Fidelity Fund

- 7.1 In the event that the [administrators] trustees invoke the provisions of Rule 6.3 as a result of a claim by a derivatives member, ~~[Yield-X]~~ interest rate member or client, the [administrators] trustees 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] trustees. 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 trading member, ~~[Yield-X]~~ an interest rate trading member or a 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 already Daid by such member or client to a derivatives member or interest rate member 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 such margin [initial margin, settlement margin, variation margin or top-up margin] which accrued or became due by the derivatives member or ~~[Yield-X]~~ interest rate 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.]

8.2 A claim as contemplated in terms of Rule 8.1 will only be considered by the trustees if the derivatives trading member, interest rate trading member or client, as the case may be, can evidence to the satisfaction of the trustees that the amount of the claim is not recoverable from the defaulting member.

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] trustees 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] trustees may decide to consolidate more than one claim against a particular derivatives member or a particular [Yield-X] interest rate member when making an award in terms of this section.

10. Cession of claim against member

The [administrators] trustees 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] Resewed

[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] trustees 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] every 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 No. 80 of 1991) or any replacement Act 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] interest rate members in terms of these Rules 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] trustees 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] trustees, whose interpretation shall be final.

12.6 The Rules of the Fidelity Fund may be amended in the same manner as any of the rules of 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, the assets of the Fidelity Fund shall be used, subject to [the derivatives rules and the Yield-X rules] these Rules, in discharging –

13.1.1 first all claims against the Fidelity Fund which are accepted by the [administrators] trustees in terms of these Rules;

13.1.2 thereafter all obligations of the **JSE** to the public arising out of the business of an exchange carried on by the **JSE**.

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 –

- 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 pursuant to such merger or transfer;
- 13.3.2 at the discretion of the **[administrators]** trustees, 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.

[14. Repeal

Section 18 of the Derivatives Rules of the JSE is hereby repealed.]