

BOARD NOTICE 64 OF 2005

SECURITIES SERVICES ACT, 2004

AMENDMENT TO THE DERIVATIVES 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 Derivatives 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.**
3. The Rules, excluding Section 2 of the Rules, are further amended by the substitution for the term –
 - (a) 'derivatives member', wherever it appears, of the term 'member';
 - (b) 'broking member (derivatives)', wherever it appears, of the term 'trading member';
 - (c) 'non-broking member (derivatives)', wherever it appears, of the term 'trading member';
 - (d) 'clearing member (derivatives)', wherever it appears, of the term 'clearing member'; and
 - (e) 'non-clearing member (derivatives)', wherever it appears, of the term 'trading member'.

Section 1: Derivatives **rules****1.10** [Demutualisation] Resewed

[The demutualisation of the ~~JSE~~ does not affect the continued corporate existence of the JSE and any actions of the JSE before its demutualisation remain effectual as provided for in section **53(2)** of the Securities Services Act.]

1.20 Reserved**1.30** Resewed**1.40** Powers exercisable by the [Board] controllin**d** body

- 1.40.1 The management and control of the JSE shall be exercised by the [Board] controllin**a** body which shall be the governing body managing the affairs of the JSE.

1.40.2 The [Board] controlling body may, in addition to the powers and authorities expressly conferred upon it by the Act, the JSEs Memorandum and Articles of Association and these derivatives rules, exercise all such powers and do all such things as may be exercised or done by the JSE.

[1.40.3] Without limiting the generality of **1.40.2**:

1.40.3.1 subject to a superior court's inherent right of judicial review, any decision of the Board on a matter before it shall be final unless and until (in cases where an appeal to that body lies) the Appeal Board established under the Act shall have varied or reversed such decision;

1.40.3.2 any action, procedure, directive, instruction or decision of the Board in relation to the administration, management, control, conduct or procedures for the orderly functioning of the JSE as an efficient market for listed products which is in accordance with the provisions and powers contained in the derivatives rules shall be binding upon members, their officers, employees, clients and other parties with whom members are permitted to deal.

1.40.3.3 The Board shall also have the power –

1.40.3.3.1 to decide on the hours of business of the JSE trading system and subject to the approval of the Registrar, to reduce or extend such hours as circumstances may dictate;

1.40.3.3.2 to close the JSE trading system for trading purposes at any time and for any period. The Board shall cause the Registrar to be advised forthwith of any such closure; and

1.40.3.3.3 to declare, in exceptional circumstances, that a transaction effected by or through the JSE trading system is void. Such a declaration shall bind a member, a client of such member, or a counterparty with whom such transaction was effected.]

1.41 Advisory Committees

1.41.1 The [Board] controlling body shall procure the appointment of advisory committees.

1.41.2 The function of the advisory committees will be to make recommendations to [the executive of] the JSE Executive on operational issues [of principle relevance to the JSE].

1.41.3 The advisory committees shall consist of –

1.41.3.1 a chairperson, who shall be the JSE [executive] Executive member responsible for the area in question; and

1.41.3.2 such persons as the chairperson, in consultation with the JSE [executive] Executive and the [Board] controlling body, shall appoint by reason of their knowledge of or experience in the securities or other relevant markets and which shall include representatives of [members] authorised users of the JSE.

1.41.4 ...

1.41.5 In the event that an advisory committee is not able to reach reasonable consensus on any issue considered by it, the conflicting views on the issue in question shall be [referred] advised to the JSE [executive] Executive [or, where appropriate, to the Board for determination].

1.50 [Rules and Directives] Derivative rules and directives

1.50.1 Purpose of the derivatives rules and directives

The purpose of the derivatives rules and directives is to achieve the objects of the JSE as set out in its Memorandum and Articles of Association by providing the procedures necessary to establish and regulate fair and efficient markets and to ensure that the business of the JSE is carried out in an orderly manner and with due regard to the [interests of the public in general] objects of the Act.

1.50.2 Derivatives rules and directives are binding

- 1.50.2.1 The derivatives rules[,] and directives [and any decisions or determinations made under the derivatives rules now or hereafter in force shall be] are binding [upon all] on derivatives members, officers and their employees.
- 1.50.2.2 [Derivatives members shall ensure that their employees have entered into a written agreement with such member to comply with the provisions of the Act, the derivatives rules and directives and decisions made in terms of these derivatives rules] Reserved.
- 1.50.2.3 The derivatives rules [shall be] are binding on any person utilising the services of a derivatives member or who concludes a transaction with a derivatives member in the course of that member's business.
- 1.50.2.4 The [Board] controllina body shall notify [a member or] members of any [a] decision [of the Board with which such member or members must comply] or determinations made under the derivatives rules and directives.

1.60 Transactions subject to provisions of the Act, the derivatives rules [, etc] and directives

[Notwithstanding anything contained In these derivatives rules every] Every transaction in [listed products] derivative securities entered into by a member [with or on behalf of another member or a member of the public shall] must be concluded on the specific condition that the transaction is entered into subject to the provisions of the Act, these derivatives rules [, the JSE directives and decisions of the Board in force at the time the bargain was struck] and the directives.

1.70 Interpretation of the derivatives rules and directives

The interpretation and enforcement of the derivatives rules and directives, JSE directives, listing requirements and decisions of the Board shall] vests in the [Board] controllina body.

1.80 Proposals for [alterations and additions] amendments to derivatives rules and directives

- 1.80.1 Any member of the [Board] JSE Executive may propose in writing any [alteration or addition] amendment to the derivatives rules or directives. [The proposal shall be lodged with the JSE and shall be submitted to the Board for consideration at its next ordinary meeting.]
- 1.80.2 The [Board] JSE Executive shall consider the proposed [alteration or addition] amendment to the derivatives rules or directives and notify members by way of notice of its decision in regard thereto.
- 1.80.3 If, within ten days of the announcement of the [Board's] JSE Executive's decision to adopt the proposal, [(10) 5 or more members object in writing to the decision, the objection together with the reasons for such objection will be referred to the controllina body for determination [a ballot of members shall be taken at a meeting of members convened for that purpose, called by not less than 14 days' notice].
- 1.80.4 [If at such ballot a majority of votes be recorded against the adoption of the proposal, then the proposal will be deemed to have been rejected.] If, in respect of a proposal with regard to the derivatives rules, an objection as referred to in rule 1.80.3 has not been lodged, or the controllina body upholds the JSE Executive's decision to adopt the proposal, the proposal will be submitted to the Registrar for his approval.
- 1.80.5 [If a ballot is not demanded or if at such ballot a majority is recorded in favour of any proposal, the Board shall submit the accepted proposal to the Registrar for his approval.] If an objection to a proposed amendment to the directives has not been lodged within the prescribed period, or the controllina body upholds the JSE Executive's decision to adopt the proposal, the proposal will take effect immediately.

1.90 JSE not responsible for any losses

Subject to section 62 of the Act, the JSE and the clearing house shall not be [responsible or] liable to any person for [(or in respect of) direct, indirect or consequential liability,] loss or damage [of any kind or nature, howsoever arising, incurred as a result of] resultina from:

1.90.1 ...

- 1.90.2 ...
- 1.90.3 ...
- 1.90.4 ...
- 1.90.5 ...
- 1.90.6 ...

1.100 [Board members and others indemnified] Indemnification

A member of an advisory committee, trustee of the Fidelity Fund and employee of the JSE shall be indemnified by the JSE out of the funds of the JSE against any liability, loss or damage incurred or suffered as a result of any bona fide or negligent, but not grossly negligent or wilful, act or omission in the execution of their duties. For the purposes of this rule, such member, trustee or employee shall not be regarded as having been grossly negligent or having acted in wilful breach of duty or trust if the act or omission resulted from incorrect information supplied to such member, trustee or employee by a source from which the member, trustee or employee would normally accept the information as correct and which can be expected to provide the correct information.

[1.100.1] Every member of the Board, every member of an advisory committee and every employee of the JSE shall be indemnified by the JSE against all actions, liabilities, costs, charges, losses, damages and expenses which they or any of them may incur or become liable for in respect of any act done, concurred in, or omitted, in or about the execution of their duties in their respective offices and trusts, as a member of the Board or an advisory committee or an employee of the JSE, whether in their capacity as a member of the Board, trustee of the Fidelity Fund, director of any company as a representative of the JSE or otherwise, including all such actions, liabilities, costs, charges, losses, damages and expenses which arise as a consequence of any mistake, oversight or omission on the part of such member or employee other than through his gross negligence or wilful breach of duty or trust and it shall be the duty of the Board to pay and discharge all such actions, liabilities, costs, charges, losses, damages and expenses out of the funds of the JSE. For the purposes of this rule such member or employee shall not be regarded as having been grossly negligent or having acted in wilful breach of duty or trust if such apparent negligence or breach was solely or mainly the result of incorrect information supplied to such member or employee by a source from which the member or employee would normally accept the information as correct and which can be expected to provide the correct information.]

(1.100.2) No person mentioned in 1.100.1 shall be answerable for the acts, rights, neglects or defaults of any other such person or of any bankers or other persons with whom monies or effects of the JSE may, subject to the provisions hereof, be or have been lodged or deposited for safe custody, or for joining in any action for the sake of conformity or for the insufficiency or deficiency of any security accepted by the Board or for any other loss, misfortune or damage which may happen in the execution of their respective offices or trusts or in relation thereto, accept as may happen by or through their own wilful breach of duty or breach of trust.]

1.120 [Transitional Provisions] Fidelity Fund

1.120.1 The JSE shall have the power to –

- 1.120.1.1 establish and maintain, to the satisfaction of the Registrar, a Fidelity Fund out of which shall be paid claims up to an amount specified in the rules of such fund in respect of liabilities arising prior to the default of a member. Such payment shall be limited to claims arising out of transactions in derivative securities with or on behalf of other persons by such member and such other liabilities as may be specified in the rules of the Fidelity Fund and shall be subject to any defences which the defaulting member may have against a claimant; and
- 1.120.1.2 determine a levy to be payable by every member to the Fidelity Fund on all transactions in derivative securities.

- 1.120.2 Where a tradina member has effected a transaction on behalf of a buver or a seller of derivatives securities, such member may recover the lew imposed in terms of rule 1.120.1.2 from such buver or seller.
- 1.120.3 The trustees of the Fidelitv Fund, in their capacity as trustees, acauire, incur and administer the assets and liabilities of the Fidelitv Fund.
- 1.120.4 The income of the Fidelitv Fund, includina but not limited to lew contributions bv members, vests in the trustees and is administered bv the trustees as part of the Fidelitv Fund.
- [1.120.1** Anything done under or for the purposes of a provision of the old rules and directives shall be effective from the effective date as if done under or pursuant to the derivatives rules and directives.
- 1.120.2** The disciplinary procedures set out in section 3 will, from the effective date, be applied in the investigation and prosecution of any offence in terms of the old rules and directives committed prior to the effective date.
- 1.120.3** The coming in to operation of the derivatives rules and directives shall not effect the validity of anything done under ~~or~~ pursuant to the old rules and directives.]

Section 2: Interpretation and definitions

2.10 Definitions

In these derivatives 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 (Act No. 36 of 2004) and any measure mescribed thereunder bv the Minister of Finance or the Registrar; [Financial Markets Control Act, 1989 (Act No. 55 of 1989) or any replacement Act;]

["administrators"] [means the administrators of the Fidelity Fund in terms of rule 18.20;]

["advice"] [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 -

- a) in respect of the purchase or sale of any listed financial Instruments or other investments; ~~or~~
- b) on any corporate action or other event affecting any rights or benefits in respect of any listed financial instruments or other investments; ~~or~~
- c) on the exercise or lapse of any rights in respect of any listed financial instruments or other investments;

and irrespective of whether or not such advice results in any transaction being effected, except that advice does not include -

- d) factual advice given merely -
 - (i) on the procedure for entering into a transaction in respect of any listed financial instruments ~~or~~ other investments;
 - (ii) in relation to the description of any listed

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| | financial instruments or other investments; |
| | (iii) in answer to routine administrative queries; |
| | (iv) in the form of objective information about any listed financial instruments or other investments; or |
| | (v) by the display or distribution of promotional material; |
| | e) an analysis or report on any listed financial instruments or other 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;] |
| ["affiliated officer"] | [means, in relation to any derivatives member • |
| | a) a registered officer; or |
| | b) a director, employee, associate, shareholder, partner, or member of a close corporation materially concerned in the management or administration of trading; or |
| | c) a person who controls the derivatives member or who is privy to information regarding the derivatives member's or a client's trades or positions;] |
| ["approved investment manager"] | [means a person who is not a derivatives member and who has been approved in terms of section 5(1) of the Act to manage investments;] |
| ["Arbitration Act"] | [means the Arbitration Act, 1965 (Act No 42 of 1965) as amended and includes any regulations promulgated thereunder;] |
| ["arbitrator"] | [means the Chief Executive Officer or the person or persons appointed by him to perform the functions of an arbitrator in terms of these derivatives rules;] |
| "authorised user" | <u>has the same meaning as that contained in section 1 of the Act</u> |
| "automated trading system" or "ATS" | means the computerised facility of the [clearing house] JSE by means of which a derivatives member shall make an offer in respect of a trade in [financial instruments] <u>derivative securities</u> that shall, in terms of the derivatives rules, be done on the ATS or reports an off-ATS trade to the clearing house and on which the JSE and the clearing house may display notices to derivatives members; |
| "bank" | <u>has the same meaning as that contained in section 1 of the Act</u> |
| ["Board"] | [means the board of directors of the JSE which is the governing body managing the affairs of the JSE;] |
| "board of appeal" | <u>has the same meaning as that contained in section 1 of the Act</u> |
| ["broking member (derivatives)"] | [means a derivatives member who may trade in financial instruments for his own account and for or on behalf of clients, and has the same meaning as a financial instrument |

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| | trader as defined In the Act;] |
| "business day" or "day" | means any day except a Saturday, Sunday, public holiday or any other day on which the JSE is closed; |
| "buy" | means, in relation to [financial instruments listed by the JSE] <u>derivative securities</u> , to enter into either - |
| | (a) a futures contract in terms of which the buyer is obliged to take delivery of the underlying instrument from the seller at the agreed price on the future date or to pay an amount of money to the seller if, on the future date , the price or value of the underlying instrument is less than the agreed price; or |
| | (b) an option contract in terms of which the buyer obtains the right from the seller to buy or sell the underlying instrument of the option contract at the agreed price from or to the seller on or before the future date; |
| "capital adequacy requirement" | means the sum of the greater of a derivatives member's initial capital or one quarter of [his] its annual fixed operating costs plus [the funds that he shall have in relation to the financial risks of the business] the risk requirements as determined by the JSE by directive [in agreement with the Registrar]; |
| "capital adequacy return" | means the submission by a derivatives member of his capital adequacy requirement to the JSE in the manner and form specified by the JSE [in agreement with the Registrar]; |
| "Chief Executive Officer" | means the person appointed by the [Board] <u>controlling body</u> as the Chief Executive Officer of the JSE ; |
| "clearing" | means the process in terms of which the clearing house becomes the buyer from the seller and the seller to the buyer in every trade whereupon the clearing member (derivatives) guarantees to the clearing house all obligations arising out of any position resulting from such trade in terms of these derivatives rules; |
| "clearing house" | <u>has the same meaning as that contained in section 1 of the Act;</u> [means Safex Clearing Company (Proprietary) Limited or any other body corporate or unincorporated association or department of the JSE designated by the JSE as such and recognised by the Registrar as a clearing house in terms of the Act;] |
| "clearing member (derivatives)" | means a [person] <u>sub-category of authorised user of the JSE, registered to Perform clearing in the equity derivatives market or the agricultural products market or both</u> [admitted by the JSE as a clearing member (derivatives) of the JSE] and who has entered into a clearing house agreement with the clearing house; |
| "client" | <u>has the same meaning as that contained in section 1 of the Act.</u> [means a person - |
| | a) who has been registered as a client of the derivatives member and with whom the derivatives member has concluded a client agreement; or |
| | b) on whose instruction or authority JSE authorised Investments are bought, sold or safeguarded by a derivatives member;] |

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| <u>"Companies Act"</u> | <u>means the Companies Act, 1973 (Act No. 61 of 1973);</u> |
| "contract specification" | means the standard terms and formal requirements of a futures or option contract [contemplated in the definition of standardised contract in section 1 of the Act] as determined [from time to time] by the JSE; |
| <u>"controlling body"</u> | <u>means the board of directors of the JSE which is the governing body managing the affairs of the JSE;</u> |
| <u>"comorate action"</u> | <u>means an action taken by an issuer or any other entity or third party, which affects the registered owner and the beneficial owner of derivative securities in terms of an entitlement;</u> |
| "counterparty risk requirement" | means the own funds that a derivatives member shall have in relation to the risk to the derivatives member of unseffled transactions with other parties as calculated in a manner determined from time to time by the JSE [in agreement with the Registrar]; |
| ["corporate entity (limited liability)"] | [means an incorporated company which is a derivatives member of the JSE and has the minimum number of directors as prescribed in the rules of the JSE;] |
| "corporate entity (unlimited liability)" | [means an incorporated company which is a derivatives member of the JSE.] |
| ["derivatives member"] | [means an entity admitted to membership of the JSE to trade financial instruments under the derivatives rules;] |
| <u>"derivative instruments"</u> | <u>has the same meaning as that contained in section 1 of the Act;</u> |
| "derivatives rules" | means these derivatives rules issued in pursuance of section [17] 18 of the Act [, including any alteration, addition or amendment thereof]; |
| <u>"derivative securities"</u> | <u>means those derivative instruments listed on the JSE and traded on the JSE derivatives trading system;</u> |
| ["directive"] | [means a directive as referred to in rule 1.50.2;] |
| <u>"Disciplinary Committee"</u> | <u>means the committee appointed in terms of rule 3.290.2</u> |
| "dispute" | means any dispute arising between any of the persons bound by these derivatives rules and which the JSE declares to be a dispute <u>in terms of rule 17.90;</u> |
| ["equities rules"] | [means the rules of the JSE issued pursuant to section 12 of the Stock Exchanges Control Act 1985 (No. 1 of 1985), including any alteration, addition or amendment thereof;] |
| <u>"employee"</u> | <u>means a person engaged by a member within that area of its business that operates as a member;</u> |
| <u>"equity derivatives market"</u> | <u>means the market operated by the JSE in terms of the Act to facilitate trading in equity derivatives;</u> |
| <u>"exchange"</u> | <u>has the same meaning as that contained in section 1 of the Act;</u> |
| "executive director" | [of a corporate entity] means a person appointed as a director of [the corporate entity, whether with limited or unlimited liability,] a member, under the Companies Act [1973] and who, in terms of a contract of employment with such [corporate entity] member is in its full-time employ; |
| "external company" | means an external company as defined in Section 1 of the |

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| | | Companies Act [, 1973 (Act No. 61 of 1973),] <u>and</u> registered in terms of Section 322(2) of the [said] Companies Act; |
| <u>"external exchange"</u> | | <u>has the same meaning as that contained in section 1 of the Act;</u> |
| "Fidelity Fund" | | means the JSE [Derivatives] Fidelity Fund [provided for] <u>contemplated</u> in terms of Section [18] <u>9(1)(e) of the Act;</u> |
| ["financial derivatives market"] | | [means the market operated by the JSE in terms of the Act to facilitate trading in financial derivatives;] |
| ["financial instruments"] | | [means financial instruments as defined in Section 1 of the Act;] |
| "financial products" | | shall have the same meaning as that contained in section 1 of the FAIS Act, and by definition includes [listed financial instruments and other JSE regulated investments] <u>JSE authorised investments;</u> |
| ["foreign exchange"] | | [means a person authorised to function as an exchange in terms of the laws of a country other than the Republic of South Africa;] |
| "foreign exchange risk requirement" | | means the amount of own funds required in relation to the derivatives member's risk exposure arising from dealings in foreign exchange, or exposure to changes in the value of foreign currencies relative to the Rand as calculated in a manner determined by the JSE <u>by directive</u> [in agreement with the Registrar]; |
| "futures contract" | | means a contract, the effect of which is that • (a) a person agrees to deliver the underlying instrument to or receive it from another person at an agreed price on a future date; or (b) a person will pay to or receive from another person an amount of money according to whether, on the future date, the price or value of the underlying instrument is higher or lower than the agreed price on that future date, in accordance with these derivatives rules and the contract specification of the futures contract and which is included in the list of [instruments] <u>derivatives securities</u> kept by the JSE in terms of the Act; |
| "initial capital" | | means the minimum capital as specified from time to time by the JSE [in agreement with the Registrar]; |
| ["investment agreement"] | management | [means the prescribed agreement to be entered into between a derivatives member who manages investments and an approved investment manager;] |
| <u>"investment advice"</u> | | <u>means any recommendation, avoidance or proposal of a financial nature furnished by a member, by any means or medium, to any client or group of clients -</u> <u>(a) in respect of the purchase or sale of JSE authorised investments; or</u> <u>(b) on any corporate action or other event affecting any rights or benefits in respect of any JSE authorised investments; or</u> <u>(c) on the exercise or lapse of any rights in respect of any JSE authorised investments;</u> <u>and irrespective of whether or not such investment advice results</u> |

in any transaction being effected.

Investment advice does not include -

- factual advice given merely -
 - (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 enquiries;
 - (iv) in the form of objective information about JSE authorised investments; or
 - (v) by the display or distribution of promotional material;
- 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;

"investment manager"

means a broking member (derivatives) who is authorised in terms of Section 15 of the derivatives rules to undertake the management of investments on a discretionary basis;

"in writing"

has the same meaning as that contained in section 1 of the Act; [in relation to anything which, in terms of these Rules and Directives, must be done in writing, Includes any such thing done in electronic form, unless the context indicates otherwise; and "written" has a corresponding meaning;]

"JSE"

means 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 authorised investments"

means -

- (a) derivative securities;
- (b) JSE listed securities traded on the JSE equities trading system or the Yield-X trading system;
- (c) securities listed on an exchange in the Republic other than the JSE;
- (d) securities listed on an external exchange;
- (e) participatory interests in a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), and units or any other form of participation in a foreign collective investment scheme approved by the Registrar of Collective Investment Schemes in terms of section 65 of that Act;
- (f) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country; and
- (g) funds intended for the purchase of such securities, units or participation;

"JSE derivatives trading system"

means the computer system or systems and associated network

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| | <u>or networks operated or used by the JSE for the purpose of providing a market for the trading of derivative securities, including the ATS;</u> |
| <u>"JSE Gazette"</u> | <u>means the gazette published by the JSE under the authority of the JSE Executive;</u> |
| <u>"JSE listed securities"</u> | <u>means those securities included in the list of securities kept by the JSE;</u> |
| <u>["JSE trading system"]</u> | <u>[means the computer system or systems and associated network or networks operated or used by the JSE for the purpose of providing a market for the trading of listed products, including the ATS;]</u> |
| <u>"JSE year"</u> | means the financial year of the JSE which shall end on the last [Friday] <u>day</u> in December in each year or such other date as the [Board] <u>JSE</u> may determine; |
| <u>"large exposure risk"</u> | means the amount of own funds required in relation to the derivatives member's risk arising from large exposures to a third party or a connected group of third parties as calculated in a manner determined by the JSE [in agreement with the Registrar]; |
| <u>["listed products"]</u> | [means products listed by or traded on the JSE;] |
| <u>"listed securities"</u> | <u>has the same meaning as that contained in section 1 of the Act;</u> |
| <u>"market corner"</u> | <u>has the same meaning as that contained in section 72 of the Act;</u> |
| <u>["mediation"]</u> | [means the process in terms of these derivatives rules through which two parties to a dispute, facilitated by a mediator: resolve the dispute themselves;] |
| <u>["mediator"]</u> | [means the Chief Executive Officer or the person appointed by him in terms of rule 17.50 to assist the parties to a dispute to resolve the dispute between them;] |
| <u>"member"</u> | means [an entity admitted to membership of the JSE under the derivatives rules or the equities rules or both] <u>a derivatives member, which is a category of authorised user admitted to membership of the JSE under these rules;</u> |
| <u>["non-broking member (derivatives)"]</u> | [means a derivatives member who may trade financial instruments with derivatives members for his own account but not for or on behalf of clients, and has the same meaning as a financial instrument principal as defined in the Act ;] |
| <u>["non-clearing member (derivatives)"]</u> | [means any person admitted by the JSE to membership of the JSE and who is not a clearing member (derivatives) but who is either a broking member (derivatives) or a non-broking member (derivatives);] |
| <u>"non-executive director"</u> | [of a corporate entity] means a person appointed as a director of [the corporate entity, whether with limited or unlimited liability] <u>a member</u> , under the Companies Act [1973] <u>but</u> who is not employed by such [corporate entity] <u>member</u> ; |
| <u>"officer"</u> | <u>means an executive director or a registered officer of a member;</u> |
| <u>"option contract"</u> | means a put option contract [and/] or a call option contract, as the context may require; |
| <u>["old rules and directives"]</u> | [means the rules and directives of SAFEX ;] |

["other investments"]

[means-

- (a) financial instruments listed on a financial exchange other than the JSE;
- (b) financial instruments listed on a foreign exchange;
- (c) participatory interests in a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (Act No.45 of 2002), and units or any other form of participation in a foreign collective investment scheme approved by the Registrar of Collective Investment Schemes in terms of section 65 of that Act;
- (d) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country; and
- (e) funds intended for the purchase of such financial instruments, units or participation;]

"own funds"

means the net financial worth of a derivatives member calculated in the manner as decided by the JSE [in agreement with the Registrar];

"position risk requirement"

means the amount of own funds required in relation to the derivatives member's open positions in [exchange contracts, unsettled positions in other financial instruments and securities and other assets included in the capital adequacy return as calculated in a manner] securities as determined by the JSE [in agreement with the Registrar];

ssional client"

in relation to a tradina member, means -

- (a) another authorised user;
- (b) a bank;
- (c) a long-term or short-term insurer registered as such under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or the Short-term Insurance Act, 1998 (Act No. 53 of 1998), respectively;
- (d) a person outside the Republic who -
 - (i) as a regular feature of the person's business, renders a service similar to a "securities service" as defined in section 1 of the Act or conducts the business of a bank or a business referred to in paragraph (c); and
 - (ii) is registered, licensed, recognised, approved or otherwise authorised to render the service or conduct the business referred to in paragraph (d)(i) by a foreign regulator with functions similar to those of the Registrar, the Registrar of Banks or the Registrar of Long-term or Short-term Insurance;
- (e) any person who is mandated to manage assets and who has confirmed to the satisfaction of the authorised user that the market value of the assets managed by the person will exceed R1 billion at all times during the rendering of securities services to the person;

| | |
|------------------------------|--|
| | <p>(f) <u>any other client, who has confirmed to the satisfaction of the member that the person will have assets of which the net asset value will exceed R20 million at all times during the rendering of securities services to the Person, but who is not –</u></p> <p>(i) <u>a natural Person;</u></p> <p>(ii) <u>a pension fund organisation as defined in section 1 (1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);</u></p> <p>(iii) <u>a friendly society referred to in the Friendly Societies Act, 1956 (Act No. 25 of 1956);</u></p> <p>(iv) <u>a medical scheme as defined in section 1/11 of the Medical Schemes Act, 1998 (Act No. 131 of 1998);</u></p> |
| <u>"Registrar"</u> | <u>has the same meaning as that contained in section 1 of the Act;</u> |
| <u>"Registrar of Banks"</u> | <u>means the Registrar of Banks designated under section 4 of the Banks Act, 1990 (Act No. 94 of 1990);</u> |
| "regulation" | means any regulation which may be made by the Minister in terms of section [37] 113 of the Act; |
| <u>"Republic"</u> | <u>means the Republic of South Africa;</u> |
| ["resolution"] | [means any resolution adopted in terms of these derivatives rules by the JSE to regulate the implementation of these derivatives rules and the affairs of the JSE;] |
| "safeguard" | <p><u>means, in relation to [listed financial instruments or other investments means] JSE authorised investments. –</u></p> <p>(a) the holding of such investments in safe custody by a derivatives member on behalf of a client; or</p> <p>(b) being accountable as a derivatives member to a client for such investments held by another financial services provider;</p> |
| ["SAFEX"] | [means the South African Futures Exchange;] |
| "securities" | [shall have] <u>has</u> the same meaning as that contained in section 1 of the [Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)] <u>Act;</u> |
| ["Securities Services Act"] | [means the Securities Services Act, 2004 (Act No. 36 of 2004);] |
| <u>"securities services"</u> | <u>has the same meaning as that contained in section 1 of the Act</u> |
| "sell" | <p><u>means, in relation to [financial instruments listed by the JSE] derivative securities, to enter into either –</u></p> <p>(a) a futures contract in terms of which the seller is obliged to make delivery of the underlying instrument to the buyer at the agreed price on the future date; or to pay an amount of money to the buyer if, on the future date the price or value of the underlying instrument is greater than the agreed price; or</p> <p>(b) an option contract in terms of which the seller grants the right to the buyer to buy or sell the underlying instrument of the option contract from, or sell it to, the seller at the</p> |

| | |
|--|---|
| | agreed price on or before the future date; |
| ["the Registrar"] | [means the Registrar of Financial Markets appointed in terms of the Act;] |
| [" the Registrar of Banks"] | [means the Registrar of Banks designated under section 4 of the Banks Act, 1990 (Act No 94 of 1990);] |
| "trade" | means [, in relation to one of the parties,] to buy or to sell [financial instruments] <u>derivative securities</u> [or, in relation to both parties, to buy and to sell financial instruments] whether by means of the ATS or off-ATS; |
| <u>"tradina member"</u> | <u>means a sub-category of authorised user of the JSE, registered to trade in the equity derivatives market or the agricultural products market or in both under the derivatives rules;</u> |
| <u>"transaction"</u> | <u>has the same meaning as that contained in section 1 of the Act</u> |
| <u>"trustees"</u> | <u>means the trustees of the Fidelity Fund;</u> |
| "underlying instrument" | means the corporeal or incorporeal thing, asset, index as referred to in the definition of "securities" in section 1 of the [Stock Exchanges Control Act, 1985 (Act No 1 of 1985)] <u>Act</u> , currency, rate of interest or any other factor which is the subject matter of a futures contract or an option contract, or the futures contract that is the subject matter of an option contract; |
| <u>"unsolicited call"</u> | <u>means any first communication made to a person by a trading member or an employee of a tradina member, without an express or tacit invitation from such person;</u> |

Section 3: General membership and disciplinary procedures

3.10 General Membership of the JSE

3.10.1 In order to qualify to be a member, an applicant must:

3.10.1.1 ...

3.10.1.2 ...

3.10.1.3 comply with any specific requirements applicable to members who participate in the agricultural products market and in the [financial] equity derivatives market [as set out in the derivative rules ~~or~~ to members who participate in the equities market as set out in the equities rules, as the case may be].

3.10.2 The **JSE** shall keep a register of members and shall in such register indicate in which category or [class] sub-category of [membership] authorised user the member has been authorised to operate.

3.10.3 Depending on the category [~~or~~ class] of membership enjoyed by a member, a member may –

3.10.3.1 . * .

3.10.3.2 perform clearing and settlement [~~for~~ the **JSE**] in one or more product categories; and/or

3.10.3.3 ...

3.20 General requirements

3.20.1 [Members, who are natural persons, and officers] Officers ~~of~~ members shall, subject to any waiver by the JSE–

- 3.20.1.1 ...
- 3.20.1.2 comply with such criteria [on] of good character and high business integrity as the JSE deems fit;
- 3.20.1.3 ...
- 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 activities constituting a criminal offence, whether in ~~[South Africa]~~ the Republic or elsewhere;
- 3.20.1.4.2 ...
- 3.20.1.4.3 expelled, whether as a member or otherwise, from any [stock or financial] exchange or external exchange [whether in South Africa or elsewhere];
- 3.20.1.4.4 employed by or associated with a member of any [stock or financial] exchange or external exchange, [whether in South Africa or elsewhere], 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;
- 3.20.1.4.5 declared a [defaulter] defaulting member [on] of the JSE or any other [stock or financial] exchange or external exchange, whether in South Africa or elsewhere]; or
- 3.20.1.4.6 ...
- 3.20.2 ...
- 3.20.3 ...
- 3.20.4 In addition to the requirements set out in this rule 3.20, members seeking admission within a specific membership category shall comply with any additional requirements applicable to such membership category set out in the derivatives rules and the equities rules.
- 3.20.5 Members shall at all times have and maintain the necessary administrative and other systems, facilities, resources and expertise to ensure that –
- 3.20.5.1 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 [or otherwise];
- 3.20.5.2 ...
- 3.20.5.3 ...
- 3.20.5.4 they comply with all the financial resources requirements pertaining to the relevant category of [membership] authorised user as prescribed in the derivatives rules.
- 3.30 Resewed
- 3.40 Applications for membership
- 3.40.1 ...
- 3.40.2 The following provisions shall apply to applicant members who are partnerships:
- 3.40.2.1 ...
- 3.40.2.2 the JSE shall not grant its consent for the admission of a partnership unless it is satisfied that all the partners are jointly and severally liable for the debts and obligations of the partnership in terms of the provisions of the deed of

partnership, which shall comply with the Act, the derivatives rules[,] and directives [and Board decisions].

3.40.3 ...

3.40.4 ...

3.40.5 ...

3.40.6 ...

3.40.7 ...

3.40.8 Any person aggrieved by the decision of the **JSE** to reject an application, shall have a right of appeal to the [Appeal Board] board of appeal in terms of the Act.

3.40.9 ...

3.40.10 ...

3.40.11 ...

3.40.12 ...

3.40.13 ...

3.40.14 Upon approval of the application of the member, such member shall obtain membership and the status in such sub-category or categories of [membership] authorised user as determined by the **JSE** shall be activated.

3.40.15 ...

3.50 Voluntary changes to, or termination of, membership

3.50.1 A member may apply to terminate its membership by giving the **JSE 30** [(thirty)] days written notice.

3.50.2 ...

3.50.3 Should a member wish to change its [membership] authorised user status or wish to obtain authorisation to operate [as a member] in another sub-category of [membership] authorised user, the provisions of rule 3.40 shall apply *mutatis mutandis*.

3.50.3A Changes in name or corporate structure:

3.50.3A.1 ...

3.50.3A.2 The notification referred to in rule 3.50.3A.1 shall be accompanied by such information as the **JSE** may determine from time to time. Provided that -

3.50.3A.2.1 ...

3.50.3A.2.2 in the event that a trading member's [trading] business or infrastructure relating to trading in [instruments listed on the **JSE**] derivative securities[,] is transferred to another legal entity in any manner, including but not limited to a merger, take-over, transfer of business or corporate restructuring, the trading member shall inform the **JSE** of the change at least one month before it takes effect, and the notification shall be accompanied by such information as would be required in the case of a new application for membership: Provided that the **JSE** may, at its discretion, request full particulars regarding the change and the reasons therefor, and provided further that the **JSE** may determine that a new application for membership must be made.

3.50.4 The **JSE** shall notify members of the termination of or change in membership, and the termination shall become effective on the date and time of the notice, unless otherwise stated in the notice.

3.60 Involuntary termination of membership**3.60.1** Membership shall terminate when –**3.60.1.1** ...**3.60.1.2** ...**3.60.1.3** ...**3.60.1.4** ...**3.60.1.5** the disciplinary tribunal has decided in terms of rule 3.300 that membership should be terminated;**3.60.1.6** ...**3.60.1.7** ...**3.60.1.8** ...**3.60.1.9** the [Board] controlling body has resolved to terminate the membership of the member after taking into account the member's representations in this regard.**3.60.2** ...**3.70** Duty to furnish information**3.70.1** ...**3.70.2** A member shall in addition inform the JSE in writing –**3.70.2.1** of any person holding, or having a beneficial interest in[, **20%** [(twenty percent)]] or more of any class of the share capital of a member that is a company or in the member's interest of a member that is a ~~close~~ corporation, as the case may be, and of any change in such holding:**3.70.2.2** if it or any [affiliated officer] ~~employee~~ thereof holds, ~~or~~ has a beneficial interest in, any ~~class~~ of the share capital of a client that is a company ~~or~~ in the membership interest of a client that is a close corporation or in a client that is a partnership.**3.70.3** ...**3.70.4** ...**3.70.5** ...**3.120** Consent required for employment of certain persons**3.120.1** No member shall without the written consent of the JSE take into or continue in its employment in any capacity in any business carried on by it ~~as~~ a member –**3.120.1.1** ...**3.120.1.2** ...**3.120.1.3** any person refused approval to operate as [an investment manager] ~~a~~ financial services Provider in terms of the FAIS Act or any other act;**3.120.1.4** any person expelled, whether as an authorised user or otherwise, from [membership ~~of~~] any other exchange: ~~or~~**3.120.1.5** ...**3.120.2** ...**3.275** Surveillance and investigation by the JSE's Surveillance Department**3.275.1** Surveillance

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

- 3.275.1.1 monitoring compliance by members with the provisions of the Act, the derivatives rules[,] and directives [and Board decisions] and any arrangements made with a clearing house for the provision of services and facilities; [and]
- 3.275.1.2 the surveillance of any matter relevant for the purposes of the Act and these derivatives rules; and
- 3.275.1.3 supervising compliance by members with the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).
- 3.275.2 Investigation
 - 3.275.2.1 The Director: Surveillance, and any other person designated by him, shall at all times have the power to:
 - 3.275.2.1.1 ...
 - 3.275.2.1.2 investigate whether that member or any of its employees complies with all the provisions of the Act, these derivatives rules, [JSE] directives and [Board decisions] the Financial Intelligence Centre Act;
 - 3.275.2.1.3 ...
 - 3.275.2.1.4 ...
 - 3.275.2.1.5 ...
- 3.275.3 ...
- 3.275.4 Referral to another authority

Should the JSE's Surveillance Department become aware of any possible contravention of law by a person over whom the JSE does not have jurisdiction, the JSEs Surveillance Department shall be entitled to refer such matter to the appropriate authority or authorities, whether outside or within the Republic [of South Africa].

3.280 Use Of Information Obtained By the JSE's Surveillance Department

Any information, document, book, tape or electronic record or other object obtained by the JSEs Surveillance Department, whether by investigation or otherwise, may be used in evidence in any disciplinary proceedings contemplated in rule 3.290 below and may be furnished by the JSEs Surveillance Department to any other body which may have jurisdiction over the matter under consideration, whether outside or within the Republic [of South Africa].

3.285 Improper Conduct

The following acts and practices whether of commission or omission on the part of any person who at the time of the alleged act or practice was a member or a partner, employee or officer of a member shall constitute improper conduct: Provided that the acts and practices so specified are not intended to be a complete list of acts and practices which may constitute improper conduct:

- 3.285.1 committing or attempting to commit any act which is [any one or more of] dishonest [,] or fraudulent [, dishonourable or disgraceful];
- 3.285.2 ...
- 3.285.3 contravening, attempting to contravene, or failing to comply with any one or more of any provision of the Act, a [JSE] derivatives rule[,] or a directive [or a Board decision];
- 3.285.4 ...
- 3.285.5 ...
- 3.285.6 ...

- 3.285.7 failing, when requested, to assist the JSE['s] Surveillance Department in the exercise of its duties (which shall include, but shall not be limited to, failure without sufficient cause to provide information in accordance with the provisions of rule 3.275.2.15).

3.290 Disciplinary procedures

3.290.1 ...

3.290.2 Disciplinary Committee

3.290.2.1 The Chairman may from time to time appoint one or more Disciplinary Committees. Each Disciplinary Committee shall consist of three persons, as follows: any one of the Chairman or a Deputy Chairman or the Chief Executive Officer or acting Chief Executive Officer of the JSE, and at least two appropriate representatives of two members. The Chairman, Deputy Chairman, Chief Executive Officer or acting Chief Executive Officer who is a member of the Disciplinary Committee shall be the chairman. A Disciplinary Committee [shall have the right] may at any time [to] co-opt additional members, whenever it deems such additional appointments to be necessary and appropriate.

3.290.2.2 ...

3.290.2.3 ...

3.290.2.4 No fine imposed by a Disciplinary Committee may exceed R25 000 per contravention, or such other amount as the JSE may determine by directive from time to time. A Disciplinary Committee may direct that any action taken in terms of rule 3.290.2 be published [in a JSE Gazette or other member publication and/or in the media].

3.290.2.5 ...

3.290.3 ...

3.295 Procedure and Evidence – Disciplinary Matters

3.295.1

3.295.2 In a hearing before a Tribunal:

3.295.2.1 ...

3.295.2.2 the chairman of the Tribunal shall determine the procedure which the Tribunal shall follow both in respect of preliminary issues and in respect of the hearing itself, subject to these derivatives rules, the directives and to the principles of natural justice;

3.295.2.3 ...

3.295.2.4 ...

3.295.3 ...

3.295.4 ...

3.295.5 ...

3.295.6 ...

3.295.7 A report on the findings of a Disciplinary Committee or a Tribunal will be furnished to the Registrar within 30 days after the completion of the Proceedings.

3.300 Disciplinary Matters – Penalties

3.300.1 When any person has been found guilty of improper conduct by a Tribunal pursuant to these derivatives rules, the Tribunal:

3.300.1.1 may[by a simple majority] warn or impose a reprimand, censure or fine upon the respondent, which fine shall in respect of each contravention not exceed

- R1 million, or such other amount as may be stipulated in the Act or in any regulations promulgated in terms of the Act;
- 3.300.1.2 ...
- 3.300.1.3 may [by a simple majority], on such conditions as the Tribunal may deem fit, suspend or terminate the membership of a member who has been found guilty of improper conduct or in the case of a partner or an officer or employee of a member, require such member to hold a disciplinary enquiry to consider terminating or suspending the employment of such person;
- 3.300.1.4 may direct a member to prevent or relieve an officer or employee of that member from carrying out any specified activity, function or duty for such reasonable period as the Tribunal deems appropriate;
- 3.300.1.[4]5 may direct a member to ensure that any sanction imposed by the Tribunal on a partner, officer or employee of that member is complied with by such partner, officer or employee;
- 3.300.1.[5]6 may make a fair and reasonable order as to costs; and
- 3.300.1.[6]7 may order that particulars of the offence, the [and/or] finding of the Tribunal and [or] the penalty imposed be published [in a JSE Gazette and/or in the media]: Provided that if publication is ordered, the respondent shall be given an opportunity to make representation to the Tribunal in this regard.
- 3.300.2 ...
- 3.300.3 ...
- 3.300.4 [Should] if a member or a partner, officer or employee of a member fails to pay any fine imposed by a Disciplinary Committee or a Tribunal, within 7 days after being informed of the amount of the fine, the JSE shall have the right to after serving notice of not less than 3 days on such person,] to:
- 3.300.4.1 ...
- 3.300.4.2 ...
- 3.300.4.3 ...
- 3.300.5 ...
- 3.300.6 ...
- 3.300.7 ...
- 3.300.8 ...
- 3.305 Urgent Issues
- 3.305.1 In order to ensure that the business of the JSE is carried on with due regard to the public interest, the Chairman may from time to time appoint one or more Urgent Issues Committees. The Chief Executive Officer or the acting Chief Executive Officer, the Chairman and/or a Deputy Chairman of the JSE and at least two other members of the [Board] controlling body shall constitute an Urgent Issues Committee.
- 3.305.2 An Urgent Issues Committee shall consider whether a member is operating in such a manner that there is imminent danger that such member may be unable to meet its commitments to clients, counterparties, other members or to a settlement system of the JSE or any other exchange, or that it is conducting business in a manner which could be [directly] detrimental to the interests of the JSE or to the interests of the members of the JSE and the public.
- 3.305.3 ...
- 3.305.4 With the agreement of the member concerned or, [should] if the outcome of such meeting fails to satisfy the Urgent Issues Committee with regard to the above, the Urgent Issues Committee may by a two-thirds majority and subject to this rule 3.305:

- 3.305.4.1 ...
- 3.305.4.2 ...
- 3.305.4.3 ...
- 3.305.5 The Urgent Issues Committee shall during the period of any order in terms of rule 3.305.4 have such power as it in its discretion may deem fit to appoint a registered public accountant and auditor or a member or employee of the **JSE** to supervise and control the activities of the member, at the member's cost. Such member may further be prohibited from entering into **JSE** related contracts without the prior consent of the person appointed as aforesaid to control and supervise the member which consent may be given upon such terms and conditions as the Urgent Issues Committee [and/] or the said appointee shall determine.
- 3.305.6 [Notice to the member concerned of such prohibition, restriction or instruction shall be accompanied by particulars of any alleged contraventions of the Act, derivatives rules, directives, Board decisions and special gazettes governing members. Any requirements of the Urgent Issues Committee for the rectification of the alleged contraventions shall be stated so as to enable the member in question to apply to the Urgent Issues Committee for the removal of the order once the conditions stated in the order have been satisfied.] Reserved.
- 3.305.7 Any action taken by an Urgent Issues Committee in terms of this rule may continue until such time as that Committee is satisfied as to the financial position and business conduct of the member in question, [; Provided that such action shall be reviewed by the Committee at least once every month and any order given above shall thereafter only continue to the extent that such continuation is resolved by a two-thirds majority of the Committee.]
- 3.310 [Disciplinary Matters – Transactions Open] Reserved
- [3.310.1 In the event of any member being suspended or ceasing to enjoy membership other than by death, expulsion or resignation, and having open positions with another member under these derivatives rules, such transactions shall be dealt with in terms of the default rules.]
- 3.325 Default[, suspension] or termination of membership – Control of assets and accounting records
- 3.325.1 In the event of any member being [suspended or] declared a [defaulter] defaulting member or ceasing to enjoy membership by termination –
- 3.325.1.1 the member shall hand over to the **JSE** all books and accounting records of the member including all scrip registers, safe custody ledgers and cheque books, and all cash, securities [, bonds] and other assets relating to the [stockbroking] business of the member including cash and control of securities[and bonds] held on behalf of clients in safe custody in a banking institution;
- 3.325.1.2 the [Board] controlling body may grant authority to the Director: Surveillance or his nominated deputy to assume control of such cash[, and securities [and bonds] referred to in rule 3.325.1.1 which are owned by clients, including [money market instruments,] securities [and bonds] held on behalf of clients in safe custody and cash held on behalf of clients in **JSE** Trustees (Pty) Limited.
- 3.325.2 ...
- 3.325.3 ...
- 3.325.4 ...
- 3.330 Lien over proceeds of sale of JSE shares
- The **JSE** shall have a first lien on the proceeds of the sale or other disposition of any **JSE** shares held by a member in the event that the member selling or disposing of such **JSE** shares is in any way indebted to the **JSE**. The [JSE] Fidelity Fund or Funds of the **JSE** shall have a second lien on the proceeds of the sale or other disposition of such **JSE** shares in the event that the member selling or disposing of such shares has defaulted and the [JSE] Fidelity Fund or Funds have discharged any of the member's obligations. After the

satisfaction of the lien or liens, the balance of the proceeds of the sale or other disposition will revert to the selling or disposing member or the estate of the selling or disposing member as the case may be.

3.350 JSE's powers of publication

3.350.1 The JSE may [in its discretion and] in such manner as it may deem fit, notify the public of [or cause to be notified to the public] any fact that the JSE considers to be in the public interest, including, but not limited to the name of a member or any employee or officer of a member and the fact that any such employee or officer has been found guilty of any charge and of the sentence so imposed on such member, employee or officer of a member. ~~The JSE shall inform or cause the public to be informed that a particular member or employee or officer of a member has been expelled, suspended, declared a defaulter or has otherwise ceased to be a member.]~~

3.350.2 No action or other proceeding shall in any circumstances be taken by any member or any employee ~~or~~ officer of a member referred to in any notification referred to above or in a JSE Gazette, against the JSE or any [Board] ~~controlling body~~ or [Committee] ~~JSE Executive~~ member ~~or~~ employee thereof or any person publishing or circulating the same [, and this rule shall operate as leave to any person to publish and circulate such notification and be pleadable accordingly].

Section 4 Derivatives membership

4.10 [Classes and categories of derivatives membership] Cateaoories of authorised users

4.10.1 A derivatives member [of the JSE] is a cateaoory of authorised user of the JSE and may be authorised by the JSE to operate in one of two sub-cateaoories, either as a clearina member or a tradina member, or in both. [shall be registered to trade in the financial derivatives market or the agricultural products market or in both, and shall in respect of each market be registered in one of two classes, namely, as a clearing or non-clearing member (derivatives) in such market and in one of two categories, namely as a broking or non-broking member (derivatives) in such market.]

4.10.2 A tradina member may be authorised to trade in the eaativ derivatives market or the aagricultural products market, or both, and a clearina member may be authorised to Derform clearina in the equity derivatives market or the aagriculturalproducts market, or in both. [Reserved]

4.10.3 A non-clearing member (derivatives) may only enter into a clearing agreement with one clearing member (derivatives) to [clear and settle] perform clearina and settlement of the trades of that non-clearing member (derivatives).

4.10.4 A broking member (derivatives) -

4.10.4.1 may be a clearing member (derivatives) [or a non-clearing member (derivatives)];

4.10.4.2 ...

4.10.4.3 ...

[4.105] A non-broking member (derivatives) shall not be entitled to trade for or on behalf of clients or to enter into client agreements with any client.]

4.20 Capital adequacy requirements

4.20.1 ...

4.20.1A The following provisionsshall apply to a derivatives member that is an external company -

4.20.1A.1 the ~~external company shall, when submitting~~ its application for membership, submit proof of compliance with the requirements of Section **322** of the Companies Act ~~[, 1973 (Act No. 61 of 1973)]~~ by furnishing the JSE with the certificate of registration as provided for in Section **322(2)** of the [said] Companies Act;

4.20.1A.2 ...

- 4.20.1A.3 the foreign parent of the local branch of the external company shall in writing confirm to the [exchange] 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;
- 4.20.1A.4 ...
- 4.20.1A.5 ...
- 4.20.2 A [non-clearing,] non-broking member (derivatives) that does not have clients in any other market ~~shall have the initial capital as required by his clearing member (derivatives).~~
- 4.20.3 A [non-clearing,] broking member (derivatives) who 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 client with respect to the client's buying and selling of [financial instruments whether listed by the JSE or not, or with respect to the client's buying and selling of securities] JSE authorised investments, shall have an initial capital of at least R200 000 [(two hundred thousand Rand)] or such other minimum amount that the JSE may [, subject to the approval of the Registrar,] decide.
- 4.20.4 A [non-clearing,] broking member (derivatives) 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 [financial instruments whether listed by the JSE or not, or with respect to the client's buying and selling of securities] JSE authorised investments, shall have an initial capital of at least R400 000 [(four hundred thousand Rand)], or such other minimum amount that the JSE may [, subject to the approval of the Registrar,] **decide**.
- 4.20.5 A clearing member (derivatives) shall have own funds of R200 000 000 [(two hundred million Rand),] 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 (derivatives) if -
- 4.20.5.1 ...
- 4.20.5.2 ...
- 4.20.6 A clearing member (derivatives) 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 [(ten million Rand)] or such other sum as the JSE may determine.
- 4.20.7 ...

Section 5: Registered officers

5.10 Derivatives members' obligation to ensure registration of officers

Each derivatives member which is a body corporate or a partnership -

- 5.10.1 ...
- 5.10.2** ...
- 5.10.3 ...
- 5.10.4 [shall ensure that no person ~~is~~ registered as a registered officer unless he has entered into a written agreement with the derivatives member in terms of which he agrees to be bound by the provisions of the Act, the derivatives rules, the directives, customs and usages of the JSE] Reserved.

5.50 Registration of officers by the JSE

5.50.1 ...

5.50.2 ...

5.50.3 ...

5.50.4 An application to change the registration of a registered officer from one derivatives member to another or from one office to another shall be made in writing to the Chief Executive Officer by the derivatives member intending to register the officer and the Chief Executive Officer shall, in his discretion, decide to grant such change in registration or to refer the application to the JSE Executive for consideration at its next meeting: Provided that, if aggrieved by the decision of the JSE Executive, the derivatives member concerned shall have the right of appeal to the [appeal board] board of appeal.

5.50.5 ...

5.90 [Giving of advice by employees] Reserved

[A derivatives member shall, in the course of its business, give advice to its clients on the buying and selling of financial instruments only through an affiliated officer.]

Section 7: Trading

7.10 Financial [market] exchange

The business of the buying and selling of exchange contracts as contemplated by section [8] 10 (2) 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 ...

7.10.2 ...

7.20 Offers and acceptances

7.20.1 ...

7.20.2 An offer in terms of rule 7.20.1 may include the following specifications-

7.20.2.1 [The] the particular exchange contract;

7.20.2.2 ...

7.20.2.3 ...

7.20.2.4 ...

7.20.2.5 ...

7.20.2.6 ...

7.20.2.7 ...

7.20.2.8 ...

7.20.2.9 ...

7.20.2.10 a clear indication of whether in the case of an order the derivatives member shall be entitled to fill the order in more than one purchase or sale in the market and whether or not such purchases or sales are to be concluded by the derivatives member as the offeror's agent as specified in rule [7.40.2.2] 7.40.3 or as the offeror's principal, as specified in rule [7.40.2.1] 7.40.2;

7.20.2.11 ...

7.20.2.12 the place where and/or telephone [or telex] or facsimile number or electronic mail address at which the client is to be contacted to confirm the acceptance of the offer; and

7.20.2.13 ...

7.20.3 ...

7.20.4 ...

7.20.5 ...

7.20.6 ...

7.20.7 ...

7.20.8 ...

7.30 Order priority

7.30.1 ...

7.30.2 ...

7.30.3 ...

7.30.4 A derivatives member shall not trade for his own account or for the account of an [affiliated officer] ~~employee~~ of the derivatives member or any account in which the derivatives member, or [affiliated officer] ~~employee~~ of the derivatives member has a beneficial interest if the trade could satisfy an order from a client or another derivatives member.

7.50 [Affiliated officers] ~~Employees~~ and derivatives members trading as clients

7.50.1 An [affiliated officer] ~~employee~~ of a broking member (derivatives) may be a client of the broking member (derivatives): Provided that such client fulfils all his obligations in terms of these derivatives rules.

7.50.2 Except with the written approval of the JSE and subject to such conditions as it may impose-

7.50.2.1 An [affiliated officer] ~~employee~~ of a derivatives member may not have a beneficial interest in another derivatives member;

7.50.2.2 An [affiliated officer] ~~employee~~ of a broking member (derivatives) may not be a client of another derivatives member or have a beneficial interest in a client;

7.50.2.3 ...

7.50.2.4 A derivatives member may not accept an [affiliated officer] ~~employee~~ of another derivatives member or another derivatives member as a client.

7.50.3 [An official or employee of the JSE or the clearing house may not be a client of any derivatives member or have a beneficial interest in a client of any derivatives member] Reserved.

7.60 Trading for or on behalf of clients

7.60.1 ...

7.60.2 ...

7.60.3 [Client advice notes] Notification of transactions

[The JSE may send a client advice note to the client confirming a trade with a derivatives member and may include such information in the advice note as the JSE may require.]

7.60.3.1 A tradina member must ensure that clients are notified of all transactions executed on or reported to the derivatives tradina system, for or on behalf of such clients, in the manner and within the time Period as set out in the directives.

7.60.3.2 The transaction notification referred to in rule 7.60.3.1 must set out -

- 7.60.3.2.1 the terms of the transaction;
- 7.60.3.2.2 the capacity in which the tradina member acted; and
- 7.60.3.2.3 if the transaction is executed by the tradina member in an aaeng capacity, the details of any commission charaed by the tradina member

7.139 ATS 4-Digit Sub Account

- 7.139.1 ...
- 7.139.2 ...
- 7.139.3 Members are precluded from trading on the dedicated sub account for their own accounts or for any accounts in which [affiliated officers] employees have a direct or indirect beneficial interest; and
- 7.139.4 ...

7.180 Declarations of transactions beina void

- 7.180.1 Despite any other Provision of the derivatives rules or any directive, the JSE Executive may, if there has been any failure of the JSE systems for any reason, or if JSE systems have been dosed, suspended or halted, declare that a transaction effected throuah or by the JSE derivatives trading system is void. Such declaration shall bind a tradina member and a client of a tradina member on behalf of or with whom the transaction was effected.
- 7.180.2 Where, from a lack of clarity in the published information available at the time of the transaction, a tradina member deals in a auantivy or at a price which in the opinion of the Director: Surveillance is unreasonable, the Director: Surveillance may declare such transaction void. Such declaration shall be bindina on the tradina members who entered into such transaction and on the clients for or on whose behalf the transaction was executed.

7.190 Suspension or haltina of tradina in derivative securities

- 7.190.1 The Director: Surveillance or his deputy, in coniuunction with the Chief Executive Officer or acting Chief Executive Officer or, failina the Chief Executive Officer or actina Chief Executive Officer, the Director: Issuer Services, may declare a tradina halt in a derivative security in circumstances where the Director : Surveillance determines that the tradina activity in a derivative security -
 - 7.190.1.1 is beina or could be undertaken by persons possessing unpublished price-sensitive information that relates to the underliva instrument to which the derivative security relates; or
 - 7.190.1.2 is beina influenced by a manipulative or deceptive tradina Dractice; or
 - 7.190.1.3 may otherwise aive rise to an artificial price in that derivative security.
- 7.190.2 No tradina member may trade that derivative security for the duration of the tradina halt but may delete orders from the derivatives tradina svstem.

7.200 Manipulative or deceptive tradina practices

- 7.200.1 No tradina members shall use, or knowinalv participate in the use of any manipulative or deceptive tradina Dractice 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 misleadina appearance of tradina activitv; or
 - 7.200.1.2 an artificial value for such derivative security.
- 7.200.2 A tradina member must give consideration fo the circumstances of orders placed by clients before enterina such orders in the JSE derivatives tradina svstem and is responsible for the integrity of such orders.
- 7.200.3 A tradina member or employee of a member may not place an order in the JSE derivatives trading svstem to buy or sell derivative securities which to the knowledae of the tradina member or employee of a tradina member will, if executed, have the effect contemplated in rule 7.200.1.

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.

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 8: Positions

8.80 Trading fees

8.80.1 ...

8.80.2 ...

8.80.3 A derivatives member may **levy** such fees and charges for different categories of transactions as he deems fit on clients with whom he trades: Provided that such fees and charges shall **be** in accordance with the schedule of fees and charges which shall form part of the client agreement.

8.80.4 ...

8.90 Settlement procedures

8.90.1 With respect to his proprietary positions, the positions of his clients, the positions of the non-clearing members (derivatives) with whom he has entered into clearing agreements and the positions of the clients of non-clearing members (derivatives), the clearing member (derivatives) shall pay to or receive from, the clearing house the net amount of -

8.90.1.1 subject to rule **9.20[.1]**, the sum of the initial margin referred to in rule **8.60.1**;

8.90.1.2 ...

8.90.1.3 ...

8.90.1.4 ...

8.90.2 ...

8.90.3 ...

8.90.4 With respect to his proprietary positions, and the positions of his clients, a non-clearing member (derivatives) shall pay to or receive from the clearing member (derivatives) the net amount of -

8.90.4.1 subject to rule **9.20[.2]**, and read together with rule **8.60.3.1**, the initial margin referred to in rule **8.60.1**;

8.90.4.2 ...

8.90.4.3 ...

8.90.4.4 ...

8.90.5 ...

8.90.6 ...

8.90.7 ...

8.90.8 ...

8.90.9 ...

Section 10: Trading and positions – sundry provisions

10.20 Trading and position records

10.20.1 ...

10.20.2 ...

10.20.3 ...

10.20.4 Telephone recordings

10.20.4.1 the JSE, the clearing house and derivatives members shall have the right to tape-record all telephone calls[using a device approved by Telkom].

10.20.4.2 ...

10.20.4.3 With respect to such telephone calls, the tape-recording shall be admissible as evidence in any disciplinary or [arbitration] dispute resolution proceedings contemplated in these derivatives rules: Provided that the person who intends to rely on such tape recordings in evidence shall bear the onus of proving the authenticity thereof.

10.20.4.4 ...

10.20.4.5 ...

10.20.5 ...

10.30 Emergency provisions

- 10.30.1** In order that the business of the JSE be carried out with due regard to the interests of the public in a fair and orderly market the JSE may, in addition to the powers given in terms of the Act, [with the prior consent of the Registrar,] in circumstances of emergency restrict or suspend trading in any or all of the [instruments] derivative securities kept by it in its list of [financial instruments] derivative securities.
- 10.30.2** Circumstances of emergency shall include but are not limited to the closing of any other exchange, a state of war or threatening hostilities, acts of state affecting the market or the due performance of trades or any position, any change in the law affecting the market or the due performance of trades or positions and any other situation or circumstances affecting, in the opinion of the JSE, a fair and orderly market for the trading in [instruments listed by the JSE] derivative securities.
- 10.30.3** If the trading in any security[, or commodity [or financial instrument] on any exchange or market ceases, the JSE Executive shall [convene to] consider the cessation of trading in [all] derivative securities [financial instruments listed by the JSE] for which such security[, or commodity [or financial instrument] comprises the underlying instrument of the [financial instrument] derivative security concerned.
- 10.30.4** In the event of any of the circumstances contemplated in this rule **10.30** occurring, the Chief Executive Officer shall [request the executive officers of all the other exchanges and] notify the Registrar [to attend a meeting to co-ordinate the course of action to be taken by the exchanges] of such circumstances and shall co-operate with the Registrar to restore and maintain a fair and orderly market.

10.40 Speculative position limits

- 10.40.1** This rule applies only to traders members authorised to trade on the agricultural products market. For the purposes of this rule, the following definitions are applicable -

'hedaina positions'

means Positions in futures or options on the JSE, where such positions normally represent a substitute for positions to be made or positions to be taken at a later time in a physical commodity, and where they are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise. The primary purpose for hedaina positions must be to offset price risks incidental to the commercial cash or spot operations. These risks may arise from: -

- (a) potential changes in the value of assets which a Person owns, produces, processes, manufactures or anticipates owning, producing, processing or manufacturing; or
- (b) potential changes in the value of liabilities which a person owns or anticipates incurring; or
- (c) potential changes in the value of services which a Person provides, purchases or anticipates providing or purchasing.

For the purposes of this definition, hedaina positions include, but are not limited to, the following specific positions:

- (a) Sales for future delivery, purchases of any put options on futures contracts and/or sales of any call options on futures contracts, which do not exceed in quantity -

- (i) Ownership of the same cash commodity by the same person; and

- (ii) Fixed-price purchases of the same cash commodity by the same person.

- (b) Purchases of any commodity for future delivery, sales of any put

options on futures contracts and/or purchases of any call options on futures contracts, which do not exceed in quantity fixed-price sales of the same cash commodity by the same person;

(c) Short-hedaina positions of unsold anticipated Positions or anticipated production of the same commodity by the same person;

(d) Long-hedaina Positions of unfilled anticipated requirements of the same cash commodity by the same Person for processing, manufacturing or feeding;

"spot month limit" means the spot month futures eauivalent position limit net long or short effective at the start of trading on the first delivery day of the spot month as determined by directive;

"single month limit" means the futures eauivalent Position limit net long or short in any one month other than the spot month as determined by directive;

"all month limit" means the futures eauivalent Position limit either long or short in all months as determined by directive;

"futures eauivalent positions" means the futures Positions plus or minus option contracts that have been adjusted for the delta coefficient as calculated at the close of trading by the JSE -

(a) Long futures contracts shall have positive delta factor of +1 and short futures shall have a neaative delta factor of -1;

(b) Long call option and short put option Positions shall have positive delta factors; and

(c) Short call option and long put option Positions shall have neaative delta factors.

10.40.2 Duty to furnish information

The JSE may at its discretion request trading members or clients to provide it with written statements in relation to agricultural derivative Positions owned, controlled or carried by the trading member or a client of the trading member. On receipt of a written request from the JSE, a trading member or client must within two business days, furnish the JSE with a written statement in the form, manner and content prescribed by the JSE. Statements submitted to the JSE must include information necessary to enable the clearing house, or any person or committee authorised by the JSE to make a determination as to whether the relevant Position of a trading member or client should be limited or reduced in terms of this rule.

10.40.3 Net limits

10.40.3.1 No trading member or client may hold or control Positions separately or in combination, net long or net short for the purchase or sale of a commodity for future delivery, or on a futures eauivalent basis, options thereon, in excess of the limits as set out in the directives.

10.40.3.2 The clearing house or any Person authorised by the JSE may direct any trading member owning, controlling or carrying a Position for a client, whose total net speculative Position as determined by the JSE exceeds the Position limits as set out in the directives, to liquidate or otherwise reduce the position within a time period stipulated by the JSE.

10.40.3.3 For the purposes of determining whether a trading member or client has exceeded these Position limits, the JSE will include all positions that such member or client by Power of attorney or otherwise, directly or indirectly, owns or controls or where Positions are held by two or more persons acting pursuant to an express or implied agreement or understanding the same as if the positions were held or trading positions were done by a single individual.

10.40.3.4 The term "net" shall mean the long or short Position held after offsetting long futures equivalent Positions against short futures equivalent Positions.

10.40.4 Exceeding Position limits

The position limits set out in rule **10.40.3** may be exceeded to the extent that such Positions are -

10.40.4.1 bona fide hedging Positions in futures and options; or

10.40.4.2 spread or arbitrage Positions between single months of a futures contract or, on a futures equivalent basis, options thereon, outside of the spot month. Provided that such spread or arbitrage Positions, when combined with other net Positions in the single month, do not exceed the all months limit.

Section 11: Management of derivatives members' and clients' funds

11.10 Management of funds by the clearing house

11.10.1 The clearing house shall separate the margins and other moneys, [financial instruments] securities and other corporeal and incorporeal things of any derivatives member or client from its own assets and shall manage and invest such margins and other moneys in a manner and subject to such terms and conditions as the JSE shall decide.

11.10.2 ...

11.20 Separation of funds

A derivatives member shall -

11.20.1 at all times separate a client's or other derivatives member's funds, including money, [financial instruments] securities and other corporeal and incorporeal things of the client or other derivatives member, from his own assets;

11.20.2

11.20.3 not allow the use of funds, [or financial instruments] securities or corporeal or incorporeal things belonging to any client or other derivatives member to finance his own trades or the trades of any other person;

11.20.4 not allow the use of funds, [or financial instruments] securities or corporeal or incorporeal things of any client or other derivatives member to operate his own business; and

11.20.5 in respect of the trades or positions of a derivatives member or client, not retain any money, [financial instruments] securities or other corporeal or incorporeal things given by such derivatives member or client or received by the derivatives member on behalf of any person other than additional margin contemplated in rule 8.60.3 or retained margin contemplated in rule **8.60.4**.

11.60 Acceptance of cash deposits

No member shall knowingly receive or accept a deposit of cash from any person exceeding an amount of R5 000. For the purpose of this rule "cash" shall mean coin and paper money of the Republic or any other country. A member shall not receive or accept two or more cash amounts exceeding R5 000 in total with the purpose of avoiding compliance with this rule.

Section 12: Defaults

12.40 Consequences of default by a clearing member (derivatives)

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

12.40.1 ...

- 12.40.2 the clearing house shall open a separate trust account with a bank (hereinafter referred to as the "trust account"), into which shall be paid all margin due and payable, the proceeds from the sale of any JSE shares held by the clearing member (derivatives), the proceeds from the suretyship referred to in rule 4.20.6 and any other moneys[, securities or investments] or securities held by the clearing house in favour of or ~~on~~ behalf of or for the account of the clearing member (derivatives);
- 12.40.3 ...
- 12.40.4 ...
- 12.40.5 ...
- 12.40.6 after all liabilities of the defaulting clearing member (derivatives) have been settled, the amounts paid by any surety in terms of the derivatives 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 (derivatives): Provided that if there are insufficient funds to cover such liabilities, the clearing house shall call on ~~all~~ clearing members (derivatives) 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]~~ Fidelity Fund shall be applied.

Section 13 [Financial instruments] Derivative securities

13.10 List of [financial instruments] derivative securities

The [financial Instruments] derivative securities which may be bought or sold [on the financial market referred to] ~~as Provided for~~ in rule 7.10 shall be kept by the JSE in the list of [financial instruments] derivative securities in terms of section ~~[14]~~ 12(6)(a) of the Act.

13.20 ~~Contract~~ specification of the [financial Instruments] derivative securities

- 13.20.1 The contract specification of [financial instruments] derivative securities contained in the list of [financial instruments] derivative securities kept in terms of these derivatives rules shall be determined by the JSE.
- 13.20.2 The JSE may, in its discretion, conduct surveys and research, call for the views of (derivatives) members and any committee and take such other steps as it may deem appropriate in determining the ~~contract~~ specification of [financial instruments listed by the JSE] derivative securities.

13.30 Listing of [financial instruments] derivative securities

- 13.30.1 The JSE shall have the power ~~], subject to the approval of the Registrar,]~~ to -
- 13.30.1.1 add [financial Instruments] derivative securities to, ~~or~~ remove [financial instruments] derivative securities from, the list of [financial instruments] derivative securities kept in terms of these derivatives rules, or suspend [financial instruments] derivative securities from such list;
- 13.30.1.2 impose new conditions on or amend the existing conditions of such [financial instruments] derivative securities.
- 13.30.2 The JSE shall notify all derivatives members of the approval of an application in terms of this rule, and shall stipulate a date for the coming into operation of an addition, removal or suspension of [financial instruments] derivative securities or new or amended conditions relating to [financial instruments] derivative securities.

Section 14: Prescribed agreements

The **JSE** shall prescribe and specify the basic terms and formal requirements of the agreements for dealing in derivative securities [listed financial instruments], including, but not limited to the clearing house agreement, the clearing agreement and the client agreement.

Section 15: Management of investments

15.10 Authority to manage investments in [listed financial instruments] derivative securities

All broking members (derivatives) [of the **JSE**] are **[, for the purposes of Section 5 (1) of the Act,]** authorised to manage investments comprising [financial instruments listed on the **JSE**] derivative securities: Provided that they comply with the provisions of this rule, and other applicable derivatives rules, and undertake such management in compliance with the prescribed client agreement. This rule shall, however, not apply to a derivatives member if the member is a bank or if the majority of such member's intermediary ~~services~~ do not relate to trading in [listed financial instruments as a broking member (derivatives) and, if applicable, trading in listed securities as a broking member (equities)] JSE listed securities as an authorised user of any of the JSE markets. Such a member shall be required to obtain a licence to operate as a financial services provider in terms of the FAIS Act in respect of any advice or intermediary services which it provides to clients relating to [listed financial instruments] derivative securities, and the relevant provisions of that Act shall apply to such advice or intermediary services.

15.20 Trading as an investment manager in [listed financial instruments] derivative securities

15.20.1 A derivatives member may not trade as an investment manager in [listed financial instruments] derivative securities for or on behalf of a client unless he or she has concluded a discretionary client agreement with the client and the client has been registered as a client of that derivatives member with the clearing house in terms of rule 7.60.2.

15.20.2 An investment manager may not directly or indirectly buy or sell [listed financial instruments] derivative securities for or from his own account or any account in which an [affiliated officer] employee has a direct or indirect beneficial interest, to or from a client.

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

15.30.1 This rule is only applicable to trading members whose investment management activities in relation to derivative securities are regulated by the JSE in terms of rule 15.10.

15.30.2 The Provisions of rules 15.30.4 to 15.30.13 shall not apply to a trading member if the trading member is a bank or if the majority of such member's intermediary services do not relate to trading in JSE listed securities as an authorised user of any of the JSE markets. Such a member shall be required to obtain a licence to operate as a financial services provider in terms of the FAIS Act in respect of any advice or intermediary services which it provides to clients relating to JSE authorised investments other than derivative securities and the relevant Provisions of that Act shall apply to such advice or intermediary services.

15.30.3 The Provisions of rules 15.30.4 to 15.30.13 shall not apply to a trading member in respect of transactions in JSE authorised investments other than derivative securities where such transactions relate to securities listed on an exchange other than the JSE, including the Bond Exchange of South Africa, and where such transactions are conducted as an authorised user of such exchange. Such transactions will instead be subject to the rules of the relevant exchange.

15.30.[1]4 A broking member (derivatives) may not enter into transactions as an investment manager in [other investments] 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.[2]5 In order for the **JSE** to identify the scope of an investment manager's activities in [other investments] JSE authorised investments other than derivative securities, the written notification to the Director: Surveillance referred to in rule 15.30.[1]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.

- 15.30.[3]6 The details which are required to be submitted to the Director: Surveillance in terms of rule 15.30.[3]5 shall specify the particular types of [other investments] JSE authorised investments other than derivative securities in which activity is to be conducted, but need not include the name of the particular investments.
- 15.30.[4]7 The failure by an investment manager to provide the notification referred to in rules 15.30[1]4 and 15.30.[2]5 prior to undertaking the relevant activity may result in the JSE imposing restrictions or a prohibition on the investment manager's activities in [other investments] JSE authorised investments other than derivative securities.
- 15.30[5]8 If an investment manager has previously notified the Director: Surveillance in terms of rules 15.30[1]4 and 15.30.[2]5 of its intention to conduct activity in any [other investments] JSE authorised investments other than derivative securities and the investment manager ceases to conduct activity in respect of one or more particular types of investments, with no intention of resuming activity in such investments in the foreseeable future, the investment manager shall notify the Director: Surveillance forthwith, in writing, of such cessation of activity.
- 15.30.[6]9 Any decision by an investment manager to invest in [other investments] JSE authorised investments other than derivative securities on behalf of a client shall be made with due regard to the relevant provisions of rule 16.10 regarding the conduct of derivatives members, particularly the provisions relating to the General Conduct Towards Clients in rule 16.10.2 and the Exercise of Discretion in rule 16.10.3.
- 15.30.[7]10 An investment manager shall not effect transactions in [other investments] JSE authorised investments other than derivative securities on behalf of a client unless the client has given his general consent to such transactions being effected in a written mandate.
- 15.30.[8]11 Every investment manager who purchases [other investments] JSE authorised investments other than derivative securities on behalf of a client and who is accountable to the client for the client's investment in such [instruments] JSE authorised investments shall comply with the following requirements:
- 15.30.[8]11.1 the relevant investments shall be segregated from the investment manager's own assets at all times. If the [investments] JSE authorised investments other than derivative securities are held in an account maintained by another financial services provider, the account shall either be opened in the client's own name or, if the investment manager opens a single account in respect of transactions executed on behalf of more than one client, the investment manager shall procure that the account is clearly designated in the records of the relevant financial services provider as being an account utilised for investments made by the investment manager on behalf of its clients;
- 15.30.[8]11.2 the investment manager shall maintain proper accounting records in respect of all [other investments] JSE authorised investments other than derivative securities purchased or sold on behalf of clients. These records shall be updated forthwith in respect of any transactions in [other investments] JSE authorised investments other than derivative securities and shall clearly identify the beneficial owners of all such investments at all times;
- 15.30.[8]11.3 the investment manager must balance its clients' holdings in [other investments] JSE authorised investments other than derivative securities, as reflected in the investment manager's records, with the accounts maintained by the other financial services providers who hold such investments, on a monthly basis. Any differences identified between the respective records must be rectified forthwith.
- 15.30.[9]12 Every investment manager who holds [other investments] JSE authorised investments other than derivative securities on behalf of a client or who is accountable to a client for such investments shall implement and maintain an effective system of internal controls to safeguard such investments and prevent unauthorised access thereto.

15.30.[10]13 Transactions by an investment manager in [other investments] JSE authorised investments other than derivative securities which constitute foreign investments shall also be subject to 15.35.

[15.30.11 The provisions of 15.30.1 to 15.30.10 shall not apply to a broking member (derivatives) if the member is a bank or if the majority of such member's intermediary services do not relate to trading in listed financial instruments as a broking member (derivatives) and, if applicable, trading in listed securities as a broking member (equities). Such a member shall be required to obtain a licence to operate as a financial ~~services~~ provider in terms of the FAIS Act in respect of any advice or intermediary services which it provides to clients ~~relating~~ to other investments, and the relevant provisions of that Act shall apply to such advice or intermediary services.]

[15.30.12 The provisions of 15.30.1 to 15.30.10 shall not apply to a broking member (derivatives) in respect of transactions in other investments where such transactions relate to financial instruments listed on a financial exchange other than the JSE, including the Bond Exchange of South Africa, and where such transactions are conducted as a member of such financial exchange. Such transactions will instead be subject to the rules of the relevant financial exchange.]

15.35 Management of foreign investments

15.35.1 For the purpose of this rule, foreign investments means the following a JSE authorised investments –

15.35.1.1 [financial instruments] securities listed on [a foreign] an external exchange;

15.35.1.2 units ~~or~~ any other form of participation in a foreign collective investment scheme approved by the Registrar of Collective Investment Schemes in ~~terms~~ of section 65 of the Collective Investment Schemes Control Act, 2002;

15.35.1.3 units or any other form of participation in a collective investment scheme licensed or registered in a foreign country; and

15.35.1.4 foreign funds intended for the purchase of such [financial instruments] securities, units or participation.

15.35.2 An investment manager shall not enter into transactions in foreign investments on behalf of a client unless:

15.35.2.1 the mandate entered into between the investment manager and the client in terms of rule 15.30.[7]10 –

15.35.2.1.1 ...

15.35.2.1.2 ...

15.35.2.1.3 ...

15.35.2.1.4 ...

15.35.2.2 ...

15.35.3 An investment manager must, on request by a client, furnish the client with the following information regarding any foreign investments made by the investment manager on behalf of the client –

15.35.3.1 the name of the licensed [foreign] external exchange on which the foreign investments are listed, if applicable;

15.35.3.2 ...

15.35.3.3 ...

15.35.3.4 the name and address of the regulator of the foreign financial services provider referred to in rule 15.35.3.3 and whether such foreign financial services provider is approved or registered by such regulator.

15.50 Client statements

15.50.1 ...

- 15.50.2 ...
- 15.50.3 Pursuant to rule 15.50.2, and to provide the client with the information necessary for them to review the operation of their account and make appropriate investment decisions, a client statement must contain at least the following information:
- 15.50.3.1 ...
- 15.50.3.2 ...
- 15.50.3.3 ...
- 15.50.3.4 ...
- 15.50.3.5 ...
- 15.50.3.6 ...
- 15.50.3.7 ...
- 15.50.3.8 ...
- 15.50.3.9 ...
- 15.50.3.10 ...
- 15.50.3.11 ...
- 15.50.3.12 ...
- 15.50.3.13 in respect of investments in [listed financial instruments] derivative instruments, a description of the underlying financial product, index, commodity or thing, the expiry month and in the case of options, the exercise or strike price; and
- 15.50.3.14
- 15.50.4 The information referred to in rule 15.50.3 may be provided to the client in separate statements either during the reporting period or as at the reporting date.
- 15.50.5 ...

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

16.10.1 Standards of Integrity

A derivatives member shall, in the conduct of its business, observe high standards of integrity and fair dealing. It [shall] must -

- 16.10.1.1 not provide, or accept material inducements of a non-business nature to, or from any person to obtain business;
- 16.10.1.2 not knowingly circulate information or submit information to the JSE or the clearing house which is false or misleading, or which affects or tends to affect unfairly the price of any [listed financial instrument] derivative security;
- 16.10.1.3 ...
- 16.10.1.4 ...

- 16.10.1.5 conduct its activities [strictly in accordance] in a manner that is compatible with the [public interest] objects of the Act and with full respect for the dignity of the JSE: and
- 16.10.1.6 ...
- 16.10.2 ...
- 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 derivatives 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:
- 16.10.3.2 ...
- 16.10.3.3 identify the [listed financial instrument or other investment] JSE authorised investments that will suit the client's risk profile and financial needs, subject to the terms of any client agreement entered into between the client and the member or any other mandate provided to the member by the client;
- 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.
- 16.10.4 Disclosure to clients
- 16.10.4.1 ...
- 16.10.4.2 A member –
- 16.10.4.2.1 ...
- 16.10.4.2.2 ...
- 16.10.4.2.3 must advise a client in advance of any restrictions or limitations that may affect the access of that client to their funds [, listed financial instruments or other investments] or JSE authorised investments.
- 16.10.5 Maintenance of client records
- 16.10.5.1 ...
- 16.10.5.2 ...
- 16.10.5.3 The client records in rule 16.10.5.2 may be kept in printed, electronic or voice-recorded format.
- 16.10.5.4 ...
- 16.10.5.5 ...
- 16.10.6 Contact with the member
- A member must provide for the necessary resources and functionality to ensure that clients are able to readily contact the member [easily and timely].
- 16.10.7 Waiver of rights
- A member may not request or induce in any manner a client to waive any right or benefit conferred on the client by or in terms of this code or the derivatives rules, or recognise, accept or act on any such waiver by the client, and any such waiver is void.
- 16.10.8 ...

16.10.9 ...

16.10.10 ...

16.10.11 Enforcement of code on employees

A member shall enforce the provisions of this code on all its employees [and affiliated officers].

16.15 Unsolicited calls

A member may enter into a transaction with or on behalf of a person where the transaction is as a result of an unsolicited call. Provided that the member has complied with the requirements set out in rules 16.10.3 and 16.10.4.

16.20 Advertising by derivatives members

16.20.1 Advertising material of a member –

16.20.1.1 must provide accurate, complete and unambiguous information about any [listed financial instrument or other investment] JSE authorised investment or any service rendered by the member;

16.20.1.2 ...

16.20.1.3 ...

16.20.1.4 ...

16.20.1.5 may not make the statement or suggest that trading in [listed financial instruments] derivatives securities on the JSE is appropriate for all persons.

16.20.2 An advertisement by a member –

16.20.2.1 ...

16.20.2.2 must, if it contains –

16.20.2.2.1 ...

16.20.2.2.2 ...

16.20.2.2.3 a warning statement about risks involved in buying or selling a [listed financial instrument or other investment] JSE authorised investment, prominently display such statement; and

16.20.2.2.4 ...

16.20.2.3 must, if the investment value of a [listed financial instrument or other investment] JSE authorised investment mentioned in the advertisement is not guaranteed, contain a warning that no guarantees are provided.

16.20.3 ...

16.30 Contraventions to be reported

Every derivatives member shall report to the JSE any contravention of [the derivatives rules,] the Act, the derivatives rules and the directives [and resolutions made in terms of these derivatives rules] that comes to its attention.

Section 17: Resolution of disputes

[17.10 Resolution of disputes

17.10.1 Any dispute involving persons bound by these derivatives rules and relating to any matter provided for in ~~or~~ relating to these derivatives rules shall be resolved by arbitration or mediation in terms of this rule 17.

17.10.2 ~~It is~~ contrary to the policy and objectives of the JSE ~~for~~ persons bound by these derivatives ~~rules~~ to engage in litigation against one another.

- 17.10.3 Save in so far as they may be contrary to these derivatives rules, the provisions of the Arbitration Act, 1965 (Act No 42 of 1965) shall apply to the arbitration proceedings provided for by these derivatives rules.]

[17.20 Reporting a dispute

- 17.20.1 The compliance officer of a derivatives member and any other party to a dispute shall report the dispute to the JSE, unless it is immediately resolved by the parties themselves.
- 17.20.2 The report may be made verbally: Provided that the JSE may request confirmation of the report in writing.]

[17.30 Powers of the JSE

- 17.30.1 The JSE may request any derivatives member or client to furnish it with written particulars of a dispute to which such derivatives member or client is a party or matters relating thereto or to confirm or reply to any report made to the JSE.
- 17.30.2 The JSE may call for additional information and material relating to a dispute from any derivatives member or client as may be deemed necessary.
- 17.30.3 The JSE shall be entitled to require any party to a dispute to trade in the market or with the other party pending resolution of the dispute in order to prevent loss.]

[17.40 Declaration of a dispute

If, after considering the report and reply and any other information at its disposal, the JSE is of the opinion that there is a dispute, the dispute shall be referred to mediation or to informal arbitration or formal arbitration, subject to the said Arbitration Act, 1965.1

[17.50 Mediation

- 17.50.1 A dispute may be referred to mediation only with the consent of the parties.
- 17.50.2 The JSE shall nominate a mediator who shall be acceptable to both parties and who shall endeavour to cause the parties to agree to the resolution of the dispute. Any agreement concluded between the parties shall be binding on them whether or not it is reduced to writing.
- 17.50.3 If at any time during formal or informal arbitration proceedings the parties agree to submit their dispute to mediation, the arbitration proceedings shall be suspended and the provisions of this rule shall apply. Should the mediation not resolve the dispute, the arbitration proceedings shall be resumed.]

[17.60 Informal arbitration

- 17.60.1 With the consent of the parties the JSE may refer a dispute to an arbitrator or arbitrators nominated by the JSE or may, after having considered the report and reply and such other evidence and information as may be presented to the JSE, make an award.
- 17.60.2 The arbitrator nominated in terms of this rule shall, after having considered the report and reply and such other evidence as may be presented to him, make his award immediately, unless the parties have otherwise agreed.
- 17.60.3 The arbitrator nominated in terms of this rule shall not be obliged to give reasons for his award, which shall be in writing.]

(17.70 Formal arbitration

- 17.70.1 In the event of either party not consenting to either mediation or informal arbitration, the dispute shall be referred to formal arbitration by the JSE.
- 17.70.2 Within seven days of being so required in writing by the JSE, the claimant shall submit a written statement of his claim that clearly states the subject matter of the claim and contains all the material facts and documents upon which the claim is based.
- 17.70.3 The JSE may require the claimant to expand upon his statement of claim or provide other evidence or particulars as may be deemed necessary.

17.70.4 Within seven days of being so required by the JSE and receipt of the claimant's written statement of claim and evidence and particulars referred to in rules **17.70.2** and **17.70.3**, the other party to the dispute, hereinafter called the defendant, shall respond in writing to the claim and shall attach to his response evidence and other particulars relating to the dispute and deliver such response with evidence and particulars to the JSE and the claimant.

17.70.5 The JSE may require the defendant to expand upon his response or provide other evidence or particulars and may require the claimant to reply to such response in writing.]

117.80 Arbitrator

The JSE shall appoint an arbitrator or arbitrators: Provided that, if the arbitrator appointed by the JSE is not acceptable to both parties, the chairman of the JSE shall, within 7 (seven) days, appoint an arbitrator who shall be accepted by both parties to resolve the dispute.]

[17.90 Costs

17.90.1 The parties to any arbitration shall be liable jointly for the costs of the arbitration, including the fee of the arbitrator, and shall be obliged to pay to the JSE such amount as the JSE may determine before the arbitration proceedings commence.

17.90.2 The JSE may at any time during the arbitration require each party to pay an additional amount to cover any further costs incurred in the arbitration proceedings.

17.90.3 Should any party fail or refuse to pay on demand any costs due in terms of this rule, an award dismissing his claim or defence with costs shall be made by the arbitrator.

17.90.4 The arbitrator may make an award directing a party to pay the costs of an arbitration and in such an event, the successful party may recover his costs from the other party.]

[17.100 Arbitration proceedings

17.100.1 The arbitrator shall make his award within 30 days of the conclusion of the arbitration proceedings.

17.100.2 The arbitrator shall not be bound to follow the general principles of law, but may decide the dispute in accordance with the principles of equity, and therefore the strict rules of law and evidence need not be observed or taken into account by the arbitrator in arriving at an award.

17.100.3 The arbitrator shall give due weight to the customs and practices of the JSE and shall have the right to request the Director: Surveillance to carry out investigations on his behalf.

17.100.4 The arbitrator shall not be bound to give reasons for his award.

17.100.5 The arbitration proceedings shall be conducted without legal representation by any of the parties, unless the arbitrator in his sole discretion decides otherwise.

17.100.6 The arbitrator may at his discretion decide that a number of disputes involving a particular party based on similar occurrences or similar facts shall be consolidated and treated as a single dispute.

17.100.7 Subject to rule **17.100.8**, unless the JSE, the arbitrator and the parties to the dispute agree otherwise, the identity of the parties, the nature of the evidence and the details of the arbitrator's deliberations and finding, and all other information pertaining to arbitration proceedings shall be kept confidential by all parties.

17.100.8 If at any time the arbitrator is of the opinion that a contravention of the derivatives rules may have occurred he may refer the matter to the JSE for its consideration in terms of rule **3.275**.

17.100.9 If requested by either the JSE or the clearing house to do so, the arbitrator may, in his sole discretion, decide on the relevance to the dispute of any evidence requested from the JSE or the clearing house and he shall accordingly instruct the JSE or the clearing house to supply the required evidence or relieve them of the obligation of doing so.]

[17.110 Waiver

No party shall have any claim of any nature whatsoever against the mediator, arbitrator, the JSE, the JSE Executive, the Chief Executive Officer or the clearing house in respect of any decision made in good faith by such person or body pursuant to the performance of his functions in terms of these derivatives rules.]

Complaints**17.10 Client complaints**

Every member must establish and maintain appropriate procedures for the handling of any client complaint, in which the client alleges that he has suffered or is likely to suffer financial prejudice as a result of the member –

17.10.1 contravening or failing to comply with any instruction given by the client, or any agreement or mandate entered into with the client;

17.10.2 contravening or failing to comply with the derivatives rules and the directives;

17.10.3 acting dishonestly, negligently or recklessly; or

17.10.4 treating the client unfairly;

in relation to the provision of services to the client in terms of the derivatives rules.

17.20 Internal complaint handling procedures

17.20.1 A member's internal complaint handling procedures must provide for –

17.20.1.1 the receipt of oral or written complaints;

17.20.1.2 the appropriate investigation of complaints;

17.20.1.3 an appropriate decision-making process in relation to the response to a client complaint;

17.20.1.4 notification of the decision to the client and

17.20.1.5 the recording of complaints.

17.20.2 A member's internal complaint handling procedures must be designed to ensure that –

17.20.2.1 all complaints are handled fairly, effectively and promptly;

17.20.2.2 recurrent or systemic problems are identified, investigated and remedied;

17.20.2.3 the number of unresolved complaints to be referred to the JSE in terms of the rule 17.60 are minimised;

17.20.2.4 complaints are investigated by an employee of sufficient competence who, where appropriate, was not directly involved in the matter which is the subject of a complaint;

17.20.2.5 the employee responsible for the resolution of complaints has the necessary authority to resolve complaints or has ready access to an employee who has the necessary authority; and

17.20.2.6 relevant employees are aware of the member's internal complaint handling procedures and comply with them.

17.30 Timely response to complaints

A member must respond to a client complaint within 4 weeks of receiving the complaint or, within such period, provide the complainant with an appropriate explanation as to why the member is not, at that time, in a position to respond and must indicate when the member will respond.

17.40 Redress

17.40.1 Where a member decides that redress in the form of compensation is appropriate in resolving a complaint, the member must provide the complainant with fair compensation and must comply with any offer of compensation made by it which the complainant accepts.

- 17.40.2** Where a member decides that redress in a form other than compensation is appropriate in resolving a complaint, the member must provide the redress as soon as practicable.

17.50 Recording of complaints

- 17.50.1** A member must maintain a record of all client complaints. The record of each complaint must include –
- 17.50.1.1** the identity of the complainant;
 - 17.50.1.2** the substance of the complaint; and
 - 17.50.1.3** all correspondence in relation to the complaint.
- 17.50.2** The records referred to in rule 17.50.1 must be retained by the member for a period of 5 years from the date of the receipt of the complaint.

17.60 Unresolved client complaints

- 17.60.1** A client complaint will be deemed to be unresolved if the complainant is not satisfied with the resolution of the complaint proposed by the member.
- 17.60.2** A complainant may lodge an unresolved complaint, in writing, with the Director: Surveillance giving full particulars of the matter concerned.
- 17.60.3** In order for an unresolved complaint to be considered by the JSE Surveillance Department, the complaint must be lodged with the Director: Surveillance within 4 weeks of the receipt by the complainant of the member's response referred to in rule 17.60.1 and within 6 months of the conduct by the member giving rise to the complaint.
- 17.60.4** An unresolved complaint which is lodged subsequent to the period referred to in rule 17.60.3 will be considered. Provided that failure to lodge the complaint within the relevant period was through no fault of the client.
- 17.60.5** The JSE Surveillance Department may request the member and the complainant to provide copies of all relevant correspondence and documentation that is required to review the complaint.
- 17.60.6** The JSE Surveillance Department will endeavour to facilitate a resolution of the complaint between the member and the complainant.
- 17.60.7** If the JSE Surveillance Department is unable to facilitate a resolution of the complaint within 4 weeks of lodging of the complaint with it, the Director: Surveillance will refer the unresolved complaint to the ComDanv Secretary of the JSE to be dealt with in terms of the dispute resolution rules.

Disputes

17.70 Applicability of dispute resolution rules

- 17.70.1** Rules 17.70 to 17.120 ("the dispute resolution rules") are intended to facilitate the equitable and expeditious settlement of disputes that –
- 17.70.1.1** a client has with a member, in respect of an unresolved complaint;
 - 17.70.1.2** a member has with another member, in respect of transactions in derivative securities; or
 - 17.70.1.3** a member has with a client, in respect of transactions in derivative securities.
- 17.70.2** The dispute resolution rules only apply –
- 17.70.2.1** where the amount in dispute is in excess of R2 000;
 - 17.70.2.2** where the dispute is not the subject of existing litigation;
 - 17.70.2.3** in the case of a dispute that a client has with a member, where the amount in dispute either does not exceed R500 000 or, where the amount in dispute exceeds R500 000, if the consent of both parties to proceed has been obtained;

17.70.2.4 in the case of a dispute that a member has with another member, if the members are able to evidence to the satisfaction of the Director: Surveillance that reasonable endeavours have been made by the said members to resolve the dispute, and if the consent of both parties to proceed has been obtained;

17.70.2.5 in the case of a dispute that a member has with a client, if the consent of the client to proceed has been obtained.

17.80 Reporting of a dispute

17.80.1 An unresolved client complaint that the **JSE Surveillance Department** is not able to resolve in terms of rule 17.60 will be reported as a dispute by the Director: Surveillance to the Company Secretary of the **JSE** if the client elects to pursue the dispute resolution process.

17.80.2 A dispute between two members in respect of transactions in derivative securities must be reported in writing, by either member, to the Company Secretary of the **JSE**, within 1 week of the circumstance giving rise to the dispute having arisen.

17.80.3 A dispute that a member has with a client in respect of transactions in derivative securities must be reported in writing, by the member, to the Company Secretary of the **JSE**, within 6 months of the circumstance giving rise to the dispute having arisen.

17.80.4 The Company Secretary of the **JSE** may, at any time, request any of the parties to a dispute to furnish him with such further information relating to the dispute as may be required.

17.90 Declaration of a dispute

A dispute reported in terms of rule 17.80 will, subject to the criteria set out in rule 17.70.2 having been met, be declared a dispute by the Company Secretary and will be referred by the Company Secretary to a duly appointed ombud for consideration.

17.100 Consideration by an ombud

17.100.1 The **JSE** will appoint an ombud to consider a dispute, who is a retired judge of the High Court of South Africa or a Senior Counsel.

17.100.2 Within 3 weeks of the dispute having been referred to the ombud for consideration, the claimant must set out the subject matter of the claim in a written statement, including all the material facts, and furnish this statement, along with all relevant documentation upon which the claim is based, to the ombud.

17.100.3 The ombud may require the claimant to expand upon his statement of claim or provide further evidence or particulars as he deems necessary within such reasonable time as is specified by the ombud.

17.100.4 The other party to the dispute, hereafter referred to as the defendant, must be provided with a copy of the written statement of claim by the ombud. The defendant will furnish the ombud with its written response to the statement of claim within 3 weeks of having received such. In addition to the defendant's written response, the defendant must attach thereto all other evidence relating to the dispute.

17.100.5 The ombud may require the defendant to expand upon its response or provide further evidence or particulars as he deems necessary within such reasonable time as specified by the ombud and may require the claimant to provide a written reply to the defendant's response within such reasonable time as he may specify.

17.100.6 The ombud may at his discretion decide that a number of disputes based on similar occurrences or similar facts be consolidated and treated as a single dispute.

17.100.7 After ascertaining the parties' availability, the ombud will furnish the parties with written notification of the date on which the dispute will be heard.

17.100.8 The dispute resolution proceedings will be conducted without legal representation of any of the parties, unless the ombud in his sole discretion decides otherwise.

- 17.100.9 The ombud, in reaching a decision, may consult with any third party regarding any issue relating to the dispute. The ombud has the discretion to call upon any third party to participate in the dispute resolution proceedings.
- 17.100.10 The ombud will, after having considered the information as presented to him by the parties and such other information as he may request, make his decision within 3 weeks of having considered the dispute. The ombud need not give reasons for his decision.
- 17.100.11 The ombud's decision will be furnished to the parties in writing and will be final and binding on both parties to the dispute. The ombud's decision is not subject to appeal.
- 17.100.12 The ombud is not obliged to provide a ruling on a dispute if he is of the view that the dispute is of such a complex nature that it cannot be resolved expeditiously by means of the dispute resolution process and can only be properly considered by a court of law.
- 17.100.13 Any decision made in terms of rule 17.100.11 must be complied with by the party against whom the decision is made within seven days of the decision having been made by the ombud.
- 17.100.14 Unless the JSE, the ombud and the parties to the dispute agree otherwise, the identity of the parties, the nature of the evidence and the details of the ombud's deliberations and findings, and all other information pertaining to the proceedings will be kept confidential by all parties thereto, unless disclosure by the JSE is required by law.

17.110 Costs of the Proceedings

- 17.110.1 For the purpose of this rule, the costs of the proceedings means the fee of the ombud, the cost of the venue and any other incidental administrative costs incurred by the JSE relating to the consideration of a dispute by an ombud.
- 17.110.2 The parties to any dispute resolution proceeding in terms of rule 17.100 are responsible for the costs of the proceedings and may be required to pay to the JSE, before the proceedings commence, such amount as the JSE may determine to cover these costs.
- 17.110.3 If the proceedings continue for a period longer than anticipated, the JSE may at any time during the proceedings require each party to pay an additional amount to cover any further expected costs of the proceedings.
- 17.110.4 The ombud may, as part of his award and as he deems appropriate in the circumstances, make an order on costs which may include an order against the unsuccessful party for payment of all the costs of the proceedings.

17.120 Waiver

No party shall have any claim of any nature against the ombud, the JSE and any of its employees in respect of any decision made in good faith by such person or body pursuant to the performance of their functions in terms of the derivatives rules.