

# JSE CLEAR RULES

September 2023

JSE Clear Rules – January 2023

As amended by:

Date	Notice No.	Amendment
1 September 2023	BOARD NOTICE 473 OF 2023	Amendments for the acceptance of securities as collateral



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## 1. SECTION 1: INTERPRETATION AND DEFINITIONS

### 1.1 Definitions

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

**"Act"** means the Financial Markets Act (Act No. 19 of 2012) and any regulatory instrument prescribed thereunder by the Minister of Finance or the FSCA;

**"additional margin"** means -

- (a) the margin, in addition to initial margin, deposited by an exchange member with its clearing member as agreed upon between the parties in terms of the clearing agreement; or
- (b) the margin, in addition to initial margin, deposited by a client with its exchange member as agreed upon between the parties in terms of the client agreement;

**"aggregate position"** means, collectively, all the proprietary positions in related exchange contracts registered in the name of an exchange member or, collectively, all the positions in related exchange contracts registered in the name of a client who has traded with a particular exchange member to open such positions;

**"agricultural derivatives"** means those commodity securities which are derivative instruments and the financial terms of which are determined by an underlying agricultural product;

**"agricultural product"** has the same meaning as contemplated in the Marketing of Agricultural Products Act, 1996 (Act No. 47 of 1996);

**"assign"** means the exercise by JSE Clear of its right in terms of an option contract to buy or sell the underlying instrument of the option contract from or to a person holding a short position in the option contract;

**"authorised bank"** means a branch of an Authorised Dealer which, in terms of Exchange Control Regulation 14, has been appointed to administer securities control;

<b>"Authorised Dealer"</b>	means, in relation to any transaction in respect of gold, a person authorised by the Treasury to deal in gold and, in relation to any transactions in respect of foreign exchange, a person authorised by the Treasury to deal in foreign exchange;
<b>"authorised user"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"bank"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"bank clearing member"</b>	means a clearing member that is also a bank;
<b>"bonds"</b>	means debt securities which create or acknowledge indebtedness of the issuer;
<b>"branch of a foreign bank"</b>	means a foreign institution which is authorised in terms of the Banks Act, 1990 (Act No. 94 of 1990) to conduct the business of a bank by means of a branch in the Republic;
<b>"business day" or " day"</b>	means any day except a Saturday, Sunday, public holiday or any other day on which JSE Clear is closed;
<b>"buy"</b>	means, in relation to derivative securities, to enter into either - <ul style="list-style-type: none"> <li>(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</li> <li>(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;</li> </ul>
<b>"call option contract"</b>	means a contract, in terms of which the holder of a long position in the call option contract has obtained the right to buy, and the holder of a short position must, if the option is exercised, sell, the underlying instrument of the option contract from or to JSE Clear on or before the future date at the strike price in accordance with the exchange rules and the contract specification of the option contract;



<b>"capital adequacy requirement"</b>	means the capital requirements applicable to clearing members as determined by JSE Clear in these clearing rules and the directives;
<b>"capital adequacy return"</b>	means the submission by a clearing member of its capital adequacy position to JSE Clear in the manner and form specified by JSE Clear;
<b>"cash settled futures contract"</b>	means a futures contract contemplated in part (b) of the definition of futures contract in this rule 1.1;
<b>"central counterparty"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"Chief Compliance Officer"</b>	means the prescribed officer of JSE Clear responsible for the compliance function of JSE Clear;
<b>"Chief Executive Officer"</b>	means the person appointed by the controlling body as the Chief Executive Officer of JSE Clear;
<b>"Chief Information Technology Officer"</b>	means the prescribed officer of JSE Clear responsible for the information technology function of JSE Clear;
<b>"Chief Risk Officer"</b>	means the prescribed officer of JSE Clear responsible for the risk function of JSE Clear;
<b>"clearing"</b>	means the process in terms of which JSE Clear acts as central counterparty by becoming the buyer to the seller and the seller to the buyer in every trade, whereupon the clearing member acting for the buyer and/or seller guarantees to JSE Clear all obligations arising out of any position resulting from such trade in terms of these clearing rules;
<b>"clearing agreement"</b>	means a written agreement entered into between a clearing member and an exchange member in terms of which the clearing member provides clearing services to the exchange member and the clients of the exchange member, and the exchange member guarantees to the clearing member the performance of the obligations arising out of the positions of the exchange member and the clients of the exchange member;
<b>"clearing house"</b>	has the same meaning as that contained in section 1 of the Act;





- "clearing house agreement"** means a written agreement entered into between a clearing member and JSE Clear in terms of which the clearing member guarantees to JSE Clear all of the obligations arising out of its proprietary positions as an exchange member, the positions of its clients as an exchange member, the proprietary positions of the exchange members with which it has entered a clearing agreement and the positions of the clients of such exchange members;
- "clearing manager"** means a person appointed by a clearing member who assumes overall responsibility for the clearing member's activities and services performed in terms of these rules;
- "clearing member"** means a person authorised by JSE Clear to perform clearing services in terms of these clearing rules and who has entered into a clearing house agreement with JSE Clear;
- "clearing rules"** means these clearing rules issued in pursuance of section 53 of the Act;
- "clearing services"** has the same meaning as that contained in Section 1 of the Act;
- "client"** means any person to whom an exchange member or clearing member provides securities services in terms of the exchange rules and/or these clearing rules, and includes a person that acts as an agent for another person in relation to those services, in which case it will include the agent or exclude the other person if the contractual arrangement between the parties indicates this to be the intention. For the purpose of these clearing rules, a clearing member provides clearing services to its own clients as an exchange member, to the exchange members with whom it enters into clearing agreements and to the clients of those exchange members;
- "client agreement"** means an agreement between an exchange member and a client, as prescribed by the exchange rules;
- "close out"** means the cancellation of a position in one direction with an equal and opposite position (e.g. a long position in an exchange contract is cancelled by a short position in the same exchange contract);



<b>"commodity derivatives market"</b>	means the market operated by the JSE in terms of the Act to facilitate trading in commodity securities;
<b>"commodity derivatives"</b>	means those derivative securities, the financial terms of which are determined by an underlying commodity;
<b>"common monetary area"</b>	means the Republic of South Africa, Lesotho, Namibia and Swaziland;
<b>"Companies Act"</b>	means the Companies Act, 2008 (Act No. 71 of 2008);
<b>"contract specification"</b>	means the standard terms and formal requirements of a futures or option contract as determined by an exchange;
<b>"controlling body"</b>	means the board of directors of JSE Clear, which is the governing body managing the affairs of JSE Clear;
<b>"corporate action"</b>	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;
<b>"default"</b>	means a default by a client, an exchange member or a clearing member as contemplated in Section 10;
<b>"Default Fund"</b>	means the JSE Clear Default Fund established and used for the custody and administration of the collateral posted by JSE Clear and the default margin paid by clearing members, to be applied in the manner set out in the clearing rules in the event of a default of a clearing member;
<b>"default margin"</b>	means – <ul style="list-style-type: none"> <li>(a) the margin paid as collateral by clearing members to the Default Fund for the due performance of clearing members' obligations as set out in the clearing rules; and/or</li> <li>(b) the securities - specifically South African Government Bonds listed on the JSE, as determined by JSE Clear - pledged by clearing members to JSE Clear, in accordance with section 39 of the Act, representing collateral provided by clearing members to the Default Fund for the due</li> </ul>



performance of clearing members' obligations as set out in the rules;

<b>"derivative instruments"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"derivative securities"</b>	means those derivative instruments that are exchange contracts and traded on the exchange in terms of the exchange rules;
<b>"Disciplinary Committee"</b>	means the committee appointed in terms of rule 9.5;
<b>"dispute"</b>	means any dispute arising between any of the persons bound by these clearing rules and which JSE Clear declares to be a dispute in terms of rule 8.9;
<b>"effective date"</b>	means the date of the coming into operation of these clearing rules;
<b>"employee"</b>	means a person engaged by a clearing member within that area of its business that operates as a clearing member;
<b>"equity derivatives market"</b>	means the market operated by the JSE in terms of the Act to facilitate trading in equity derivatives;
<b>"exchange"</b>	has the same meaning as that contained in section 1 of the Act, and for the purpose of these rules refers to an exchange that has appointed JSE Clear as a clearing house;
<b>"exchange contract"</b>	means either a futures contract in terms of which the expiry month is specified or an option contract in terms of which the expiry month, the strike price, and whether it is a put option contract or a call option contract, is specified;
<b>"exchange member"</b>	means an authorised user of the JSE, authorised to trade in the following markets: <ul style="list-style-type: none"> <li>(a) JSE Equity Derivatives Market; and/or</li> <li>(b) JSE Interest Rate and Currency Derivatives Market; and/or</li> <li>(c) JSE Commodity Derivatives Market;</li> </ul>
<b>"Exchange Control Regulations"</b>	means the Exchange Control Regulations, 1961, as promulgated by Government Notice R1111 of 1 December 1961, as amended, made in terms of Section 9 of the Currency and Exchanges Act, 1933 (Act No 9 of 1933);



<b>"exchange rules"</b>	means the rules issued by a licensed exchange in terms of section 17 of the Act;
<b>"executive director"</b>	means a person appointed as a director of a clearing member under the Companies Act and who, in terms of a contract of employment with such member, is in its employ;
<b>"exercise"</b>	means, in relation to the registered holder of a long position in an option contract, to exercise its right to buy or sell the underlying instrument of the option contract at the strike price on or before the future date;
<b>"expiry month"</b>	means in relation to a futures or option contract, the month in which the positions in such exchange contracts expire on the date and at the time as contained in the contract specification of the futures or option contract;
<b>"external company"</b>	means an external company as defined in Section 1 of the Companies Act and registered in terms of Section 23 of the Companies Act;
<b>"external market infrastructure"</b>	has the same meaning as that contained in Section 1 of the Act;
<b>"FSCA"</b>	means the Financial Sector Conduct Authority established in terms of section 56(1) of the FSR Act;
<b>"FSR Act"</b>	means the Financial Sector Regulation Act 9 of 2017;
<b>"futures contract"</b>	<p>means a contract, the effect of which is that -</p> <ul style="list-style-type: none"> <li>(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</li> <li>(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,</li> </ul> <p>in accordance with the exchange rules and the contract specification of the futures contract, and which is included in the list of derivatives securities kept by an exchange in terms of the Act;</p>



<b>"initial margin"</b>	means the amount of money paid to, or the South African Government Bonds listed on the JSE, as determined by JSE Clear pledged to, JSE Clear in accordance with section 39 of the Act, as determined by JSE Clear and held in respect of the aggregate position of an exchange member or a client;
<b>"insolvency administrator"</b>	has the same meaning as that contained in Section 1 of the Act;
<b>"insolvency proceeding"</b>	has the same meaning as that contained in Section 1 of the Act;
<b>"in writing"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"JSE"</b>	means JSE Limited, a company duly registered and incorporated with limited liability under the company laws of the Republic, licensed to operate an exchange under the Act;
<b>"JSE Clear"</b>	means JSE Clear Limited, a company duly registered and incorporated with limited liability under the company laws of the Republic, licensed to operate as an independent clearing house and central counterparty under the Act;
<b>"JSE clearing member"</b>	means a person authorised by the JSE, prior to the effective date of these clearing rules, to perform clearing services in terms of the exchange rules;
<b>"JSE Clear Gazette"</b>	means a gazette published by JSE Clear under the authority of the JSE Clear Executive;
<b>"JSE Clear Executive"</b>	means the Chief Executive Officer and such other officials of JSE Clear as the Chief Executive Officer may from time to time decide will serve on the JSE Clear's top management;
<b>"long position"</b>	means a number of exchange contracts registered by JSE Clear in the name of an exchange member or client in terms of which - <ul style="list-style-type: none"> <li>(a) in relation to futures contracts, the exchange member or the client 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</li> </ul>



(b) in relation to option contracts, the exchange member or client has the right to buy or sell the underlying instrument of the option contract at the agreed price on or before the future date;

<b>"margin"</b>	means either initial margin, variation margin, additional margin or retained margin, as the context may require;
<b>"margin category"</b>	means the margin category, expressed as a percentage of the initial margin, which is allocated to a non-resident client by the exchange member when the non-resident client is registered;
<b>"Market Improvement Fund"</b>	means the JSE Clear Market Improvement Fund, established in terms of rule 2.10 of these rules;
<b>"market infrastructure"</b>	has the same meaning as that contained in Section 1 of the Act;
<b>"mark-to-market"</b>	means the revaluation of a position in the exchange contract at its current market value;
<b>"non-bank clearing member"</b>	means a clearing member that is not also a bank;
<b>"non-resident"</b>	means a person (i.e. a natural person or legal entity) whose normal place of residency or domicile or registration is outside the common monetary area;
<b>"non-resident account"</b>	means the account of a non-resident;
<b>"non-resident client"</b>	means a non-resident who has been registered by JSE Clear as a non-resident client of an exchange member;
<b>"officer"</b>	means an executive director or a registered officer of a clearing member;
<b>"option contract"</b>	means a put option contract or a call option contract, as the context may require;
<b>"participant"</b>	has the same meaning as that contained in Section 1 of the Act;
<b>"physically settled futures contract"</b>	means a futures contract contemplated in part (a) of the definition of a futures contract in this rule 1.1;
<b>"position"</b>	means either a long position or a short position;



<b>"prescribed agreements"</b>	means the agreements, the basic terms and formal requirements of which have been specified by JSE Clear;
<b>"proprietary position"</b>	means a position registered by JSE Clear in the name of an exchange member for the exchange member's own account;
<b>"Prudential Authority"</b>	means the Prudential Authority established in terms of section 32(1) of the FSR Act;
<b>"put option contract"</b>	means a contract in terms of which the holder of a long position in the put option contract has obtained the right to sell, and the holder of a short position must, if the option is exercised, buy, the underlying instrument of the option contract to or from JSE Clear on or before the future date at the strike price in accordance with these clearing rules and the contract specification of the option contract;
<b>"registered officer"</b>	means the clearing manager or other officer registered by JSE Clear as such in the name of the clearing member;
<b>"regulation"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"related exchange contracts"</b>	means those exchange contracts which JSE Clear decides have such characteristics in common that the risk of loss in one of the exchange contracts may be reduced by an off-setting position in any of the other, or a combination of the other, exchange contracts in the group of related exchange contracts;
<b>"Republic"</b>	means the Republic of South Africa;
<b>"Reserve Bank"</b>	has the same meaning as that contained in section 1 of the FSR Act;
<b>"resident"</b>	means a natural person who is resident in the common monetary area, or a legal entity registered in such area, and includes a partnership or an external company;
<b>"resident client"</b>	means a resident who has been registered by JSE Clear as a resident client of an exchange member;
<b>"retained margin"</b>	means the margin paid by a client to an exchange member for an intended trade



or margin due to a client which the exchange member has retained in anticipation of a trade;

**"securities"** has the same meaning as that contained in section 1 of the Act;

**"sell"** means, in relation to derivative securities, to enter either -

- (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
- (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 agreed price on or before the future date;

**"settle"** has the same meaning as that contained in section 1 of the Act;

**"short position"** means a number of derivatives exchange contracts registered by JSE Clear in the name of an exchange member or client in terms of which -

- (a) in relation to futures contracts, the exchange member or client is obliged to make delivery of the underlying instrument at the agreed price on the future date or to pay an amount of money if, on the future date, the price or value of the underlying instrument is greater than the agreed price; or
- (b) in relation to option contracts, the exchange member or client has granted the right to another person to buy or sell the underlying instrument of the option contract at the agreed price on or before the future date;

**"SRO Oversight Committee"** means the JSE Clear Board sub-committee responsible for overseeing the regulatory functions of JSE Clear;

**"strike price"** means the price or yield at which the person in whose name a long position in an option contract is registered has the right to buy or sell the underlying





	instrument of the option contract;
<b>"SWIFT"</b>	means the Society for Worldwide Interbank Financial Telecommunications;
<b>"SWIFT non-resident account notification"</b>	means the notification, utilising the SWIFT network, from JSE Clear's nominated SWIFT agent to the authorised bank, instructing the authorised bank to receive payment of interest into a non-resident account in the amount specified in the notification;
<b>"systemically important financial institution"</b>	has the same meaning as that contained in section 1 of the FSR Act;
<b>"trade"</b>	means to buy or to sell derivative securities;
<b>"transaction"</b>	has the same meaning as that contained in section 1 of the Act;
<b>"Treasury"</b>	means National Treasury, a department of the government of the Republic of South Africa;
<b>"Tribunal"</b>	means the Financial Services Tribunal established in terms of section 219(1) of the FSR Act;
<b>"trustees"</b>	means the trustees of the Market Improvement Fund;
<b>"underlying instrument"</b>	means the corporeal or incorporeal thing, asset, index as referred to in the definition of "securities" in section 1 of the Act, 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;
<b>"variation margin"</b>	means the amount of margin payable in terms of rule 5.4.2.



## 1.2 Interpretation

In these clearing rules, unless otherwise clearly indicated by, or inconsistent with the context -

- 1.2.1 a reference to one gender includes a reference to all other genders;
- 1.2.2 the singular includes the plural, and vice versa;
- 1.2.3 all the terms defined in the Act and the FSR Act bear the same meaning in the rules as are assigned to them in the Act and the FSR Act.



## 2. SECTION 2: GENERAL PROVISIONS

### 2.1 Powers exercisable by the controlling body

- 2.1.1 The management and control of JSE Clear is exercised by the controlling body.
- 2.1.2 The controlling body may, in addition to the powers and authorities expressly conferred upon it by the Act, JSE Clear's Memorandum of Incorporation, and these clearing rules, exercise all such powers and do all such things as may be exercised or done by JSE Clear.

### 2.2 Emergency powers

- 2.2.1 In order that the business of JSE Clear be carried out with due regard to the interests of the public in a fair and orderly market, JSE Clear may, in addition to the powers given in terms of the Act, in circumstances of emergency, restrict or suspend the clearing and settlement of any transactions in any or all of the securities cleared by JSE Clear.
- 2.2.2 Circumstances of emergency include but are not limited to: the closing of an exchange that has appointed JSE Clear as a clearing house; an extended power failure; 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 JSE Clear, a fair and orderly market for the clearing and/or settlement of derivative securities.
- 2.2.3 If the trading in any security or commodity on any exchange or market ceases, the JSE Clear Executive will consider the cessation of the clearing and/or settlement of any derivative securities for which such security or commodity comprises the underlying instrument of the derivative security concerned.
- 2.2.4 In the event of any of the circumstances contemplated in this rule 2.2 occurring, the Chief Executive Officer will notify the FSCA, the Prudential Authority and the exchanges that have appointed JSE Clear as a clearing house of such circumstances and will co-operate with the FSCA to restore and maintain a fair and orderly market.

### 2.3 Committees

- 2.3.1 Advisory Committees
  - 2.3.1.1 The controlling body will appoint advisory committees.



2.3.1.2 The function of the advisory committees is to make recommendations to the JSE Clear Executive on operational issues.

2.3.1.3 An advisory committee must consist of –

2.3.1.3.1 a chairperson, who must be the JSE Clear Executive member responsible for the area in question; and

2.3.1.3.2 such persons as the chairperson, in consultation with the JSE Clear Executive and the controlling body, must appoint by reason of their knowledge of, or experience in, the securities or other relevant markets, and which must include representatives of members of JSE Clear.

2.3.1.4 The advisory committees must make recommendations by reasonable consensus.

2.3.1.5 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 must be advised to the JSE Clear Executive.

## 2.3.2 Rules Committee

2.3.2.1 A Rules Committee must be established to consider and adopt all proposed amendments to the clearing rules and directives in accordance with rule 2.6.

2.3.2.2 The Rules Committee consists of the Chief Risk Officer and the Legal Counsel of JSE Clear.

## 2.3.3 Membership Committee

2.3.3.1 A Membership Committee must be established to consider applications for membership and the provision of clearing services, as well as the termination of membership and the withdrawal of authority to perform clearing services.

2.3.3.2 The functions of the Membership Committee are to –

2.3.3.3 authorise applications for membership and for the provision of clearing services in accordance with rule 3.8.

2.3.3.4 terminate membership on a voluntary basis following notice from the clearing member to do so, in accordance with rule 3.9.



2.3.3.4.1 provisionally or finally terminate membership on an involuntary basis in accordance with rule 3.11; and

2.3.3.4.2 withdraw the authority of a clearing member to perform a clearing service.

2.3.3.5 The Membership Committee consists of -

2.3.3.5.1 the Legal Counsel of JSE Clear; and

2.3.3.5.2 the Chief Risk Officer.

## 2.4 Clearing rules and directives

### 2.4.1 Effective date of the clearing rules and directives

The clearing rules and directives become effective on a date to be determined by the controlling body, subject to the conditions imposed by the FSCA, the Prudential Authority and the Reserve Bank in respect of the granting of a clearing house licence and central counterparty licence to JSE Clear to perform the functions referred to in section 50 of the Act.

### 2.4.2 Purpose of the clearing rules and directives

The purpose of the clearing rules and directives is to achieve the objects of JSE Clear as set out in its Memorandum of Incorporation by providing the procedures necessary to manage the risks associated with JSE Clear's duties and functions as a licensed clearing house and licensed central counterparty, to establish and regulate fair and efficient markets, and to ensure that the business of JSE Clear is carried out in an orderly manner and with due regard to the objects of the Act.

### 2.4.3 Clearing rules and directives are binding

2.4.3.1 The clearing rules are binding on JSE Clear, clearing members, exchange members, clients of clearing and/or exchange members, the officers and employees of JSE Clear and its clearing members, and any other person that utilises the services of JSE Clear and/or clearing members.

2.4.3.2 The directives are binding on JSE Clear, clearing members, and the officers and employees of JSE Clear and its clearing members.

2.4.3.3 The controlling body must notify clearing members of any decision or determinations made under the clearing rules and directives.



## **2.5 Enforcement of the clearing rules and directives**

The enforcement and interpretation of the clearing rules and directives vests in the controlling body.

## **2.6 Proposals for amendments to clearing rules and directives**

- 2.6.1 Any member of the JSE Clear Executive may propose in writing any amendment to the clearing rules or directives.
- 2.6.2 The Rules Committee must consider the proposed amendment to the clearing rules or directives and notify exchange members and clearing members by way of notice of its decision in regard thereto.
- 2.6.3 If, within ten days of the notification of the decision of the Rules Committee to adopt the proposal, three or more clearing members object in writing to the decision, the objection together with the reasons for such objection will be referred to the controlling body for determination.
- 2.6.4 If, in respect of a proposal with regard to the clearing rules, an objection as referred to in rule 2.6.3 has not been lodged, or the controlling body upholds the decision of the Rules Committee to adopt the proposal, the proposal will be submitted to the FSCA for its approval.
- 2.6.5 If an objection to a proposed amendment to the directives has not been lodged within the prescribed period, or the controlling body upholds the decision of the Rules Committee to adopt the proposal, the proposal will take effect immediately.

## **2.7 Prescribed agreements**

JSE Clear prescribes and specifies the basic terms and formal requirements of the agreements for clearing derivative securities, including, but not limited to the clearing house agreement and the clearing agreement.

## **2.8 JSE Clear not responsible for any losses**

Subject to section 72 of the Act, JSE Clear is not liable to any person for loss or damage resulting from -

- 2.8.1 negligence, on the part of JSE Clear or on the part of any employee or agent of JSE Clear;
- 2.8.2 any act of omission on the part of any third party;
- 2.8.3 incorrect, inaccurate, defective or misleading information furnished or supplied by JSE Clear, or any employee or agent of JSE Clear or any third party;



- 2.8.4 equipment breakdown or the breakdown, interruption, suspension, termination or failure of or defect in any system, including but not limited to any clearing system, or service owned or operated by or on behalf of JSE Clear;
- 2.8.5 computer system malfunction, the interruption or failure of communications links, power failure, the failure of or defect in any software or hardware, whether owned by, licensed or leased to JSE Clear, the loss or destruction of any data and any loss or damage caused by natural disaster, riot, insurrection, acts of vandalism, sabotage or similar cause; and
- 2.8.6 the termination, for any reason whatsoever, of any licence or other agreement to which JSE Clear is a party.

## 2.9 Indemnification

A member of an advisory committee, trustee of the Market Improvement Fund and employee of JSE Clear is indemnified by JSE Clear out of the funds of JSE Clear 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 will 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.

## 2.10 Market Improvement Fund

- 2.10.1 JSE Clear will establish and maintain a Market Improvement Fund for the funding of education and investor protection initiatives to improve the financial markets in South Africa in which JSE Clear operates.
- 2.10.2 Fines and penalties in terms of rule 9.7 must be paid into the Market Improvement Fund.
- 2.10.3 The controlling body acts as the trustees of the Market Improvement Fund.
- 2.10.4 The trustees of the Market Improvement Fund, in their capacity as trustees, acquire, incur and administer the assets and liabilities of the Market Improvement Fund.
- 2.10.5 The income of the Market Improvement Fund vests in the trustees and is administered by the trustees as part of the Market Improvement Fund.



## 2.11 Systemically important financial institutions

Despite any provision in these rules, and in accordance with Section 31(1) of the FSR Act, any action by JSE Clear that suspends, varies, amends or cancels the membership status or authorisation of a clearing member that has been designated as a systemically important financial institution in terms of Section 29(1) of the FSR Act, must be done in concurrence with the Reserve Bank.

## 2.12 Transitional provisions

2.12.1 From the effective date of these clearing rules and directives ('the effective date'), as provided for in rule 2.4.1 -

2.12.1.1 anything done under any provision of the JSE derivatives rules and/or the JSE interest rate and currency derivatives rules prior to the effective date, will be effective as if done under or pursuant to these clearing rules and directives;

2.12.1.2 the disciplinary procedure set out in Section 9 of these clearing rules may, at the discretion of JSE Clear, be applied in the investigation and prosecution of any offence committed in terms of the JSE derivatives rules and/or the JSE interest rate and currency derivatives rules, prior to the effective date;

2.12.1.3 all JSE clearing members, in terms of the JSE derivatives rules and/or the JSE interest rate and currency derivatives rules, will be registered as clearing members of JSE Clear and will be authorised to perform the clearing services in the specific markets previously authorised by the JSE, subject to any condition of membership that may be imposed by JSE Clear;

2.12.1.4 all clearing agreements concluded between JSE clearing members and the exchange members to whom they provide clearing services remain in effect, provided that those clearing members must ensure that the agreements comply with the requirements regarding clearing agreements as prescribed in these clearing rules and directives; and

2.12.1.5 all clearing house agreements concluded between JSE clearing members and JSE Clear remain in effect.



### 3. SECTION 3: MEMBERSHIP

#### 3.1 Authorisation by JSE Clear

3.1.1 A clearing member may be authorised to provide clearing services in either one, more or all of the following markets:

3.1.1.1 JSE Equity Derivatives Market;

3.1.1.2 JSE Interest Rate and Currency Derivatives Market; and

3.1.1.3 JSE Commodity Derivatives Market.

3.1.2 JSE Clear must keep a register of clearing members and must indicate in this register the markets in which the clearing member has been authorised to provide clearing services.

#### 3.2 General membership requirements

3.2.1 In order to qualify to be a clearing member and to maintain membership, an applicant and a clearing member must comply with the requirements set out in this Section 3.

3.2.2 A clearing member must be -

3.2.2.1 a bank or a branch of a foreign bank regulated by the Prudential Authority; or

3.2.2.2 a direct or indirect wholly-owned subsidiary of a bank or a foreign bank headquartered in a jurisdiction that substantially adheres to current Basel capital requirements, and whose business activities are limited to the provision of clearing services as contemplated in these rules; or

3.2.2.3 an exchange member prudentially regulated by the exchange.

3.2.3 A clearing member must be incorporated and registered as a domestic company under the Companies Act.

3.2.4 A clearing member must have a good reputation and high business standing, in the opinion of JSE Clear.

#### 3.3 Risk management requirements

3.3.1 Clearing members must, at all times, have and maintain the necessary risk procedures, systems, facilities, resources and expertise to ensure that –



- 3.3.1.1 an adequate, effective and on-going process of risk management is established and maintained;
- 3.3.1.2 a comprehensive and documented risk management framework is established and maintained to identify, measure, monitor, control, and appropriately communicate or report on all risks associated with its activities, and, in particular, credit risk, counterparty credit risk and liquidity risk.

### 3.4 Operational requirements

- 3.4.1 Clearing members must, at all times, have and maintain the necessary procedures, administrative and other systems, controls, facilities, resources and expertise to ensure –
  - 3.4.1.1 the efficient and effective performance of its functions as a clearing member;
  - 3.4.1.2 compliance with the Act and these clearing rules and directives;
  - 3.4.1.3 that accurate records of all transactions and positions in respect of which it provides clearing services are kept and that financial and other information used or provided by the clearing member is correct and reliable;
  - 3.4.1.4 that the management of their own funds is adequate and in accordance with the clearing rules relating to the management or separation of funds;
  - 3.4.1.5 the adequate management of the funds and assets of clients or exchange members and their clients for whom the clearing member performs a clearing service in accordance with these clearing rules;
  - 3.4.1.6 that the positions and cash balances under control of the clearing member in respect of the clients or exchange members and their clients for whom the clearing member performs a clearing service are timeously reported to those parties;
  - 3.4.1.7 that there are measures, so far as is reasonably practicable, to minimize the risk of loss to the clearing member which results from any irregularity, fraud or error, and to detect any irregularity, fraud or error should they occur so that prompt remedial action may be taken by the clearing member; and
  - 3.4.1.8 that the records of the clearing member are maintained in such a manner as to promptly disclose financial and business information that will enable the clearing member to identify, quantify,



control and manage the risk exposures of the clearing member relating to its activities as a clearing member of JSE Clear.

3.4.2 A clearing member must be able to describe and demonstrate the objectives and operation of the procedures, controls and systems referred to in this rule to JSE Clear.

### **3.5 Default fund requirements**

A clearing member must pay an amount of default margin to the Default Fund as determined by JSE Clear from time to time, as collateral for the due performance of all or any of its obligations as set out in the clearing rules.

### **3.6 Financial resources requirements**

3.6.1 A clearing member must at all times have sufficient capital as prescribed in these rules and directives.

3.6.2 A clearing member that is a bank or a branch of a foreign bank regulated by the Prudential Authority must meet the capital adequacy requirements imposed by the Prudential Authority.

3.6.3 The own funds of a clearing member that is not a bank or a branch of a foreign bank must at all times be at least equal to R200 000 000. Own funds shall be calculated in the manner set out in the directives.

3.6.4 A clearing member must ensure that it has sufficient cash resources or cash facilities to meet its obligations to JSE Clear in terms of these rules at all times.

3.6.5 A clearing member that is not a bank or a branch of a foreign bank must procure that its obligations to JSE Clear in terms of these rules are guaranteed by a bank or a foreign bank headquartered in a jurisdiction that substantially adheres to current Basel capital requirements.

3.6.6 JSE Clear is entitled to suspend a clearing member should there be a deficiency in the financial resources of the clearing member.

3.6.7 JSE Clear is entitled to request a clearing member to submit any information, returns or financial statements submitted by the clearing member to the Prudential Authority or the exchange, as applicable, that will assist JSE Clear in determining whether the clearing member complies with the financial resources requirements in this rule 3.6. Such information returns or financial statements may be requested by JSE Clear as and when required and/or at such periodic intervals as JSE Clear may determine. A clearing member must provide the requested information or documents as soon as possible unless JSE Clear specifies a timeframe for the provision of the requested information or documents.

3.6.8 JSE Clear is entitled to request the Prudential Authority or the exchange to provide JSE Clear with any information, returns or financial statements submitted by the clearing member to the Prudential Authority or the exchange, as applicable, in order to assist JSE Clear in determining whether the clearing member complies with the financial resources requirements in this rule 3.6, subject to any restrictions imposed by the Prudential Authority, or otherwise imposed by relevant law, on the provision of such information to JSE Clear.

### 3.7 Shareholders, officers and non-executive directors

3.7.1 A clearing member must –

3.7.1.1 ensure that a shareholder who is a natural person and who directly or indirectly holds 15% or more of the issued shares of the member complies with the fit and proper requirements in rule 4.1;

3.7.1.2 only appoint officers and non-executive directors who comply with the fit and proper requirements in rule 4.1; and

3.7.1.3 appoint a clearing manager in terms of rule 4.3.

### 3.8 Applications for membership

3.8.1 An application for membership must be made to JSE Clear in the manner and in the form prescribed by JSE Clear and must indicate in which markets the applicant wishes to apply to provide clearing services.

3.8.2 Applicants must include their memorandum of incorporation, a copy of any agreement entered into or proposed to be entered into between the members of the entity relative to the members' interest or shares thereof, and any other information as JSE Clear may require. The provisions of this rule apply *mutatis mutandis* to the amendment or substitution of the aforementioned documents.

3.8.3 The applicant must include with its application, the following information:

3.8.3.1 the applications for registration as registered officers of the applicant;

3.8.3.2 the most recent financial statements of the applicant, as well as a completed pro-forma capital adequacy return if the applicant is a non-bank and a member or applicant for membership of the JSE;



3.8.3.3 the details of the applicant’s auditor; and

3.8.3.4 a completed clearing house agreement.

3.8.4 Notwithstanding any provision in the clearing rules and directives, JSE Clear may require the applicant to furnish further information, and may institute any investigation that it deems necessary, to verify information submitted by the applicant in support of an application. Such investigation may include, without limitation, a request for the applicant or one or more representatives of the applicant to be interviewed by the Membership Committee or any person appointed by JSE Clear for that purpose.

3.8.5 The Membership Committee has the sole discretion to accept or reject the application, or to accept an application subject to certain conditions to be fulfilled as determined by JSE Clear from time to time; provided that JSE Clear must reach a decision within 60 days of the first meeting at which the application was considered.

3.8.6 JSE Clear must notify the applicant in writing of the decision of the Membership Committee and of any conditions that are required to be fulfilled.

3.8.7 Any person aggrieved by the decision of JSE Clear to reject an application, has a right to apply to have the decision reconsidered by the Tribunal.

3.8.8 If an application for membership has been refused, and the applicant did not exercise its right to have the decision reconsidered or if the reconsideration is unsuccessful, such applicant will not be entitled to re-apply for membership for a period of one year from the date of refusal, or such shorter period as JSE Clear may determine.

3.8.9 Upon approval of the application, the applicant will obtain membership to provide clearing services in the market or markets for which it is has been approved.

3.8.10 JSE Clear must notify clearing members of the admission of a new clearing member.

### **3.9 Voluntary changes to, or termination of, membership**

3.9.1 A clearing member may apply to terminate its membership or to cease providing clearing services in one or more markets by giving JSE Clear 30 days’ written notice.



- 3.9.2 The Membership Committee may accept the termination unconditionally or subject to such conditions as it may deem fit or may refuse to accept the termination until it is satisfied that all outstanding contractual or other obligations of the clearing member have been satisfied.
- 3.9.3 The Membership Committee must provide the reasons, in writing, for its refusal to accept the termination, as provided for in rule 3.9.2.
- 3.9.4 Should a clearing member wish to obtain authorisation to provide clearing services in any markets that it has not been authorised by JSE Clear to provide clearing services in, the provisions of rule 3.8 apply *mutatis mutandis*. JSE Clear will determine the manner in which an application for such authorisation must be made and the relevant information that must be submitted by the clearing member to support its application.

### **3.10 Changes in name or corporate structure**

- 3.10.1 A clearing member undergoing any of the changes set out below must inform JSE Clear in writing of the change.
- 3.10.2 The notification referred to in rule 3.10.1 must be accompanied by such information as JSE Clear may determine from time to time. Provided that -
  - 3.10.2.1 in the case of a corporate entity changing its name, the notification must be accompanied by the relevant certificate of name change;
  - 3.10.2.2 in the event that a clearing member's business or infrastructure relating to clearing 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 clearing member must inform JSE Clear of the change at least one month before it takes effect, and the notification must be accompanied by such information as would be required in the case of a new application for membership. JSE Clear may, at its discretion, request full particulars regarding the change and the reasons therefor, and JSE Clear may determine that a new application for membership must be made.
- 3.10.3 JSE Clear must notify clearing members of the termination of, or change in, membership, and the termination will become effective on the date and time of the notice, unless otherwise stated in the notice.

### **3.11 Involuntary termination of membership**

- 3.11.1 The Membership Committee may provisionally or finally terminate membership if –



- 3.11.1.1 the clearing member is placed in curatorship by the Court or any regulatory authority, placed in liquidation, whether provisional or final, or under business rescue proceedings or any other judicial proceeding or court application for an insolvency proceeding is initiated, or the company files a resolution to such effect or has an insolvency administrator appointed to it;
  - 3.11.1.2 the clearing member compromises or attempts to compromise with its creditors;
  - 3.11.1.3 the clearing member fails to satisfy or to initiate steps to set aside a judgement, award or determination against it within the time periods provided for in the rules of the relevant body;
  - 3.11.1.4 the Disciplinary Committee has decided in terms of rule 9.7.1.3 that membership should be terminated;
  - 3.11.1.5 the clearing member defaults;
  - 3.11.1.6 the controlling body has resolved to terminate the membership of the clearing member after taking into account the clearing member's representations in this regard.
- 3.11.2 JSE Clear must notify the clearing member in writing of the decision of the Membership Committee to finally terminate the membership of a clearing member.
- 3.11.3 A clearing member aggrieved by a decision of JSE Clear to finally terminate its membership may apply to the Tribunal to have the decision reconsidered.

### **3.12 Duty to furnish information**

- 3.12.1 A clearing member must immediately advise JSE Clear in writing of –
- 3.12.1.1 the granting of an application for, or the revocation of, recognition under any statutory enactment or any registration, authorisation or licence which may bear upon or be associated with its business as a member of JSE Clear;
  - 3.12.1.2 the commission by or the conviction of the clearing member or any of its officers for any offence under legislation relating to banking, or other financial services, companies, insolvency, insurance and pension and provident societies or of any offence involving fraud or dishonesty;
  - 3.12.1.3 any person becoming or ceasing to be a director of the clearing member;



- 3.12.1.4 any change in the name or address of any office of the clearing member, and of any change in the clearing member's telephone numbers or electronic mailing addresses;
- 3.12.1.5 any change in the particulars relating to an officer, and of the event that any officer is found guilty of any improper conduct by any licensed exchange, a previous or current employer, a professional association or a court of law;
- 3.12.1.6 any of the circumstances referred to in rules 3.11.1.1 to 3.11.1.3 arising; or
- 3.12.1.7 the dismissal of an employee for committing or attempting to commit an act which is dishonest, fraudulent, dishonourable or disgraceful.

3.12.2 A clearing member must inform JSE Clear, in writing, of any person holding, or having a beneficial interest in, 15% or more of any class of the share capital of that clearing member and of any change in such holding.

3.12.3 A clearing member must submit to the Chief Risk Officer, within three months after the end of its financial year, a copy of its audited financial statements and the audit report prescribed by the Act, in respect of such period.

3.12.4 A clearing member is required to notify JSE Clear, in writing, as soon as it becomes aware that it has failed to meet the relevant financial resources requirements set out in these rules and/or the directives.

### **3.13 Fees, levies and charges**

3.13.1 A clearing member that uses the services of JSE Clear must pay to JSE Clear such fees and charges as may be prescribed by JSE Clear from time to time.

3.13.2 JSE Clear may prescribe by directive, subscriptions which must be paid by clearing members. Such subscriptions -

3.13.2.1 must be paid annually in advance during January and must be in respect of each JSE Clear financial year;

3.13.2.2 in respect of a new clearing member, will be payable from and including the month in which the clearing member is admitted;

3.13.2.3 in respect of a clearing member which ceases to be a member, will not be refunded.





- 3.13.3 In the event of any change in the amount of subscription payable by a clearing member, such changed subscription will apply with effect from the date on which the change took place.
- 3.13.4 JSE Clear may, in addition to the subscriptions, fees and charges prescribed by these clearing rules, from time to time impose upon every clearing member a levy which must be paid to JSE Clear or any of its funds on such conditions as JSE Clear may decide.
- 3.13.5 Any subscription, fee, charge, contribution or levy to be paid or which may be imposed in terms of these clearing rules, must be paid as determined by JSE Clear from time to time and any clearing member must make such payment within one month after written demand has been made by JSE Clear.

### **3.14 Trading name**

JSE Clear may refuse any approval of membership or a change in name should JSE Clear, in its sole discretion, deem the name under which the clearing member proposes to operate to be inappropriate or unacceptable for any reason.

### **3.15 Notices**

- 3.15.1 Every clearing member must notify JSE Clear of a business and postal address, and a secured electronic delivery mechanism address at which that clearing member will accept the delivery of all notices issued by JSE Clear in terms of the clearing rules.
- 3.15.2 Any notice given by JSE Clear in terms of these clearing rules and directives must be in writing.
- 3.15.3 A notice given by JSE Clear may be delivered by means of an electronic delivery mechanism or by hand or by registered post.
- 3.15.4 Any notice delivered by JSE Clear by hand before 16h00 on a business day at the physical address of the clearing member, is deemed, unless the contrary is proved, to have been received on the date of delivery.
- 3.15.5 Any notice transmitted by JSE Clear by an electronic delivery mechanism before 16h00 on a business day, is deemed, unless the contrary is proved, to have been received on the date of the transmission.
- 3.15.6 Any notice delivered by JSE Clear by registered post is deemed, unless the contrary is proved, to have been received within seven business days after being dispatched.

## 4. SECTION 4: MANAGEMENT AND CONTROL

### 4.1 Fit and proper requirements

4.1.1 An officer or non-executive director of a clearing member, or a shareholder who is a natural person and who, directly or indirectly, holds in excess of 15% of the issued shares of the member, must,

4.1.1.1 be of full legal capacity;

4.1.1.2 not be an unrehabilitated insolvent; and

4.1.1.3 be of good character and high business integrity.

4.1.2 In determining whether a person complies with rule 4.1.1.3, JSE Clear will take into account, inter alia, whether the person has been -

4.1.2.1 convicted of an activity constituting a criminal offence involving fraud, theft, dishonesty or market abuse, whether in the Republic or elsewhere;

4.1.2.2 held civilly or administratively liable for, inter alia, fraud, theft, dishonesty or market abuse, whether in the Republic or elsewhere;

4.1.2.3 declared to have contravened legislation in respect of market abuse, money laundering or terrorist or related activity, with or without the imposition of an administrative penalty, whether in the Republic or elsewhere;

4.1.2.4 disqualified by a court from acting as a director of a company;

4.1.2.5 the subject of a formal investigation by any regulatory or government agency;

4.1.2.6 expelled, whether as a member, participant or otherwise, from any market infrastructure or external market infrastructure;

4.1.2.7 employed by or associated with a member or participant of any market infrastructure or external market infrastructure, which member or participant was expelled from that market infrastructure or had its membership or participation involuntarily terminated by that market infrastructure, and where the person has, in the opinion of JSE Clear, contributed to the circumstances leading to the expulsion or involuntary termination;

4.1.2.8 refused entry to or expelled from any profession or vocation or been dismissed or requested to resign from any office or employment, or from any fiduciary office or position of trust.

4.1.3 A clearing member may not appoint, employ, register or permit association with an officer or a non-executive director who does not fulfil the requirements of rule 4.2 without the prior approval of JSE Clear.

## 4.2 Consent required for the approval of certain persons

4.2.1 A clearing member may not, without the written consent of JSE Clear, take into or continue in its employment, in any capacity in any business carried on by it as a clearing member-

4.2.1.1 any officer or employee of a member expelled from JSE Clear;

4.2.1.2 any person expelled, whether as a member, participant or otherwise, from any other market infrastructure; or

4.2.1.3 any person who is an unrehabilitated insolvent or has been a defaulter or has been convicted of theft, fraud, forgery, or any other crime involving dishonesty.

4.2.2 The consent of JSE Clear may be given for a limited period and may be withdrawn at any time, provided JSE Clear gives the clearing member one calendar months' notice of its intention to withdraw such consent.

## 4.3 Clearing manager

4.3.1 A clearing member must ensure the registration by JSE Clear of a clearing manager who must -

4.3.1.1 assume overall management responsibility for the clearing member's activities in relation to JSE Clear and, in doing so, ensure that appropriate arrangements have been made for the clearing member to comply with its obligations in terms of these rules and directives; and

4.3.1.2 possess sufficient knowledge of clearing and have sufficient experience in managing clearing activities, as deemed appropriate for the position by JSE Clear.

4.3.2 In the absence of a duly appointed clearing manager or where a clearing manager position has become vacant, an appropriately experienced senior employee must temporarily assume the responsibilities of the clearing manager as referred to in rule 4.3.1.1, for no longer than two months or such other period as JSE Clear may approve on application by the clearing member.



#### **4.4 Registration of officers by JSE Clear**

4.4.1 Application for registration as a registered officer must be made to JSE Clear in the manner and the form prescribed by JSE Clear.

4.4.2 A person who seeks to be registered with JSE Clear as a registered officer must satisfy the requirements of rule 4.1.

#### **4.5 Termination of the registration of an officer**

A clearing member must notify JSE Clear, in writing, of its decision to terminate the registration of a registered officer in its name, in which event JSE Clear may request full details of the circumstances of the termination.

#### **4.6 Registration and termination effective**

The registration or termination of the registration of a registered officer in the name of a clearing member will become effective on the date stipulated in the written notification to the clearing member by JSE Clear, confirming the registration or termination of registration of the registered officer.

#### **4.7 Member remains responsible**

The appointment or registration of any officer referred to in this section will not in any way relieve a clearing member from any of its duties and responsibilities in terms of the Act and these clearing rules, and the clearing member's liability to fulfil those duties and responsibilities will remain a liability of the clearing member and will not be accessory or subordinate to the liabilities of such officer.



## 5. SECTION 5: CLEARING AND POSITIONS

### 5.1 Clearing

5.1.1 JSE Clear will clear trades executed on the following markets -

5.1.1.1 JSE Equity Derivatives Market;

5.1.1.2 JSE Interest Rate and Currency Derivatives Market; and

5.1.1.3 JSE Commodity Derivatives Market,

provided that JSE Clear has provided prior approval of the relevant contract specifications for all trades submitted for clearing.

5.1.2 Upon the trade being cleared, by novation, JSE Clear will replace the buyer and become the counterparty to the seller and it will replace the seller and become the counterparty to the buyer.

5.1.3 JSE Clear may refuse to accept for clearing a trade at a price that is, in the discretion of the Chief Executive Officer, substantially different from the current market price.

### 5.2 Opening and closing-out a position

5.2.1 When there was no position in an exchange contract prior to a trade in the exchange contract being cleared, a position in the exchange contract will be opened and registered in the name of the exchange member or its client when the trade is cleared.

5.2.2 The exchange contracts comprising a trade which has been cleared will be added to or off-set against an existing position registered in the name of the party concerned and the position will be increased, decreased, closed out or a position in the opposite direction will be opened, as the case may be.

5.2.3 On the expiry of a futures contract or an option contract of which the strike price is not better by a certain amount determined by the JSE Clear than the expiry price of the underlying instrument of the option contract -

5.2.3.1 the person in whose name a long position in the exchange contract is registered by JSE Clear will be deemed to have sold the number of the exchange contracts equal to the number comprising the position, to JSE Clear; and



5.2.3.2 the person in whose name a short position in the exchange contract is registered by JSE Clear will be deemed to have bought a number of the exchange contracts equal to the number comprising the position, from JSE Clear.

5.2.4 The price of the futures contract which will apply to the purchase contemplated in rule 5.2.3.1 and the sale contemplated in rule 5.2.3.2 will be the expiry price determined in the manner prescribed in the contract specification of the futures contract in question, and the price of an option contract which applies to such purchase or sale will be zero.

5.2.5 Rule 5.2.2 applies *ipso facto* to the exchange contracts comprising the purchases and sales referred to in rule 5.2.3.

5.2.6 Where the strike price of an option contract is, on expiry, better by a certain amount, determined by JSE Clear, than the expiry price of the futures contract underlying the option contract, the person in whose name a position in the exchange contract is registered will be deemed to have exercised the option contract in terms of rule 5.8.2.

5.2.7 On the expiry as contemplated in rule 5.2.3 of a physically settled futures contract, the holder of a long position in the exchange contract must buy the underlying instrument and the holder of a short position must sell the underlying instrument at the price equal to that referred to in rule 5.2.4. The purchase, sale, delivery and receipt of the underlying instrument must take place pursuant to the contract specification applicable to such futures contract, provided that a physically settled agricultural derivatives futures contract will be regulated by the applicable clearing rules and contract specifications.

### 5.3 **Mark-to-market**

5.3.1 At 17h00 on each business day, or such other time as JSE Clear may determine on a particular business day, the positions in each exchange contract of all exchange members and their clients will be marked-to-market on such basis as JSE Clear may determine.

5.3.2 JSE Clear may, at any time on any business day, mark-to-market the position in any exchange contract or contracts of any exchange member or client if, in its sole discretion, the risk posed by any exchange member or client, or the conditions in the market for the exchange contract or its underlying instrument warrant such additional mark-to-market.

## 5.4 Margin payments

### 5.4.1 Initial margin

Initial margin must be paid by or to JSE Clear to or by an exchange member or client whenever the risk of loss, as determined by JSE Clear, changes with respect to the aggregate position of such exchange member or client. Initial margin must be paid in cash and/or may be posted by pledging South African Government Bonds listed on the JSE, as determined by JSE Clear to JSE Clear in accordance with section 39 of the Act, subject to the policies and procedures of the JSE Clear and these rules and the directives.

### 5.4.2 Variation margin

Variation margin must be paid by or to JSE Clear to or by an exchange member or client in whose name a position in an exchange contract is registered as the result of the marking-to-market of a position in terms of rule 5.3 or the closing out of a position or part thereof as contemplated in rule 5.2.2 or the closing out of a position as contemplated in rule 5.2.3.

### 5.4.3 Additional margin

5.4.3.1 A clearing member may require an exchange member with whom it has entered into a clearing agreement to deposit with it, with respect to the proprietary positions of the exchange member or the positions of any of the clients of the exchange member, an amount of additional margin as agreed upon between the parties in terms of the clearing agreement.

5.4.3.2 An exchange member may require a client with whom it has entered into a client agreement to deposit with it, with respect to the position of that client, an amount of additional margin as agreed upon between the parties in terms of the client agreement.

## 5.5 Interest payments

5.5.1 JSE Clear will manage and invest all margins held by it in terms of rule 6.1 and it will on the first business day of the month following the month in which interest was received or accrued, remit such interest, net of the interest consideration referred to in rule 6.1.4, to each clearing member in relation to the margin held in respect of the positions of the clearing member acting as an exchange member, its clients as an exchange member, exchange members with whom it has entered into clearing agreements and the clients of such exchange members.

5.5.2 Monthly in arrears a clearing member may remit the interest received in terms of rule 5.5.1, or any part thereof, to its clients as an exchange member and to the exchange members with whom it has entered into clearing agreements in relation to the positions of the exchange members and their clients.

5.5.3 Subject to rule 5.4.3.2, monthly in arrears an exchange member may remit the interest received in terms of rules 5.5.1 or 5.5.2, or any part thereof, to its clients in relation to the positions of such clients at any time during the preceding month.

## 5.6 Clearing fees

5.6.1 JSE Clear may levy fees on an exchange member and its clients in respect of the trades cleared by JSE Clear, in an amount and in a manner as decided by JSE Clear, and such fees will be recovered from the relevant clearing member on behalf of JSE Clear.

5.6.2 A clearing member may levy such fees and charges as it deems fit on an exchange member with whom it has entered into a clearing agreement, provided that such fees and charges must be in accordance with the schedule of fees which forms part of the said clearing agreement.

## 5.7 Settlement procedures

5.7.1 With respect to its proprietary positions as an exchange member, the positions of its clients as an exchange member, the positions of any other exchange members with whom it has entered into clearing agreements and the positions of the clients of such exchange members, the clearing member must pay to or receive from JSE Clear the net amount of -

5.7.1.1 subject to rule 5.11.1, the sum of the initial margin referred to in rule 5.4.1;

5.7.1.2 the sum of the variation margin referred to in rule 5.4.2;

5.7.1.3 any interest payable in terms of rule 5.5.1; and

5.7.1.4 the fees referred to in rule 5.6.1.

5.7.2 An amount due from a clearing member in terms of rule 5.7.1 must be paid to JSE Clear not later than 10h00 on the business day following the day on which such payment accrued or such other time as JSE Clear may in its sole discretion determine.





- 5.7.3 With respect to its proprietary positions as an exchange member, the positions of its clients as an exchange member, the positions of any other exchange members with whom it has entered into a clearing agreement and the positions of the clients of such exchange members that JSE Clear has marked-to-market in terms of rule 5.3.2, the clearing member must pay to JSE Clear the amount of variation margin as contemplated in rule 5.4.2 at the time stipulated by JSE Clear when the clearing member is notified of the mark-to-market.
- 5.7.4 With respect to the positions of its clients as an exchange member, the positions of any other exchange members with whom it has entered into a clearing agreement and the positions of the clients of such exchange members, the clearing member is acting as a settlement agent on behalf of those parties in relation to any amounts paid to or received from JSE Clear in terms of rules 5.7.1 and 5.7.3.
- 5.7.5 With respect to its proprietary positions and the positions of its clients, an exchange member must pay to or receive from the clearing member the net amount of -
- 5.7.5.1 subject to rule 5.11.1, the initial margin referred to in rule 5.4.1;
  - 5.7.5.2 the additional margin referred to in rule 5.4.3;
  - 5.7.5.3 the variation margin referred to in rule 5.4.2;
  - 5.7.5.4 any interest payable in terms of rule 5.5.2; and
  - 5.7.5.5 the fees referred to in rule 5.6.1 and 5.6.2.
- 5.7.6 An amount due to a clearing member in terms of rule 5.7.5 must be paid to the clearing member by the exchange member at such time as the exchange member and the clearing member have specifically agreed upon with respect to a particular payment, provided that payment due to the clearing member is made at a time which enables the clearing member to pay the amount due to the clearing house by no later than 10h00 on the business day following the day on which such payment accrued.
- 5.7.7 With respect to any proprietary position or the position of any of its clients, which JSE Clear has marked-to-market in terms of rule 5.3.2, an exchange member must pay to the clearing member the amount of variation margin as contemplated in rule 5.4.2 by the time referred to in rule 5.7.3, as stipulated by JSE Clear and as notified to the exchange member by the clearing member.
- 5.7.8 Subject to rule 5.11.2.1, with respect to its positions, a client must pay to or receive from the exchange member with whom he traded to open such positions, the net amount of -



- 5.7.8.1 the total of the initial margin referred to in rule 5.4.1 for all its aggregate positions, provided that any amount so due from a resident client must be offset against any retained margin;
- 5.7.8.2 the additional margin referred to in the clearing rules and/or the client agreement;
- 5.7.8.3 the variation margin referred to in rule 5.4.2;
- 5.7.8.4 any interest payable in terms of rule 5.5.3; and
- 5.7.8.5 the fees referred to in rule 5.6.1 and 5.6.2.

5.7.9 An amount due to an exchange member in terms of rule 5.7.8 must be paid to the exchange member by the client at such time as the exchange member and the client have specifically agreed upon with respect to a particular payment, provided that payment to the exchange member is made by a time that enables the exchange member to pay the amount due to the clearing member and ultimately enables the clearing member to pay the amount due to the clearing house by no later than 10h00 on the business day following the day on which such payment accrued.

5.7.10 With respect to the position of any client that JSE Clear has marked-to-market in terms of rule 5.3.2, the client must pay to the exchange member the amount of variation margin as contemplated in rule 5.4.2 by the time referred to in rule 5.7.3 stipulated by JSE Clear and notified to the client by the exchange member.

## 5.8 Exercise and assignment of option contracts

### 5.8.1 Exercise

Upon the exercise of an option, the person in whose name the long position in the exchange contract was registered will be deemed to have bought or sold the underlying instrument of the option contract in question at the strike price from or to JSE Clear.

### 5.8.2 Assignment

When an option is exercised or when an option is deemed to have been exercised in terms of rule 5.2.6, JSE Clear must in turn exercise its option to buy or sell the underlying instrument in question to or from the holder of a short position in the option contract in question, provided that -

- 5.8.2.1 JSE Clear will, in its sole discretion, assign the exercise of the exchange contract or contracts to the registered holders of short positions in the exchange contract; and



5.8.2.2 the person to whom the exercise of the exchange contract is assigned in terms of rule 5.8 will be deemed to have bought or sold the underlying instrument of the option contract.

## 5.9 Trading and position limits

5.9.1 JSE Clear may limit the aggregate exposure arising from the proprietary positions of a clearing member acting as an exchange member, the positions of the clients of the clearing member acting as an exchange member, the positions of other exchange members with whom the clearing member has entered into clearing agreements and the positions of the clients of such exchange members, in a manner determined by JSE Clear.

5.9.2 The clearing member may limit the aggregate exposure arising from the positions of the clients of the clearing member acting as an exchange member, the proprietary positions of an exchange member with whom the clearing member has entered into a clearing agreement, and the positions of the clients of such exchange member.

## 5.10 Trading and position records

5.10.1 A clearing member must at all times maintain records of margin and other payments to and from JSE Clear, the clients of the clearing member acting as an exchange member, the exchange members with whom it has entered into clearing agreements and the clients of those exchange members.

5.10.2 The records referred to in rule 5.10.1 must be kept for a period of at least five years.

## 5.11 Non-resident clients

5.11.1 Initial margin

The initial margin payable with respect to the positions of a non-resident client must be the initial margin that would otherwise have been payable by or to an exchange member or a resident client in relation to equivalent positions, adjusted by the margin category assigned by the exchange member in question to the non-resident client.

5.11.2 Settlements

5.11.2.1 With respect to his positions, a non-resident client must pay from his non-resident account to, or receive into his non-resident account from, the client trust account of the exchange member with whom he traded to open such positions, the net amount of the initial margin referred to in rule 5.4.1 and the variation margin referred to in rule 5.4.2, provided that –



- 5.11.2.1.1 the initial margin to be paid in terms of this rule 5.11.2.1 must be the initial margin that would otherwise be required to be paid to JSE Clear in respect of equivalent positions of an exchange member or a resident client adjusted by the margin category assigned by the exchange member to the non-resident client in question;
  - 5.11.2.1.2 an exchange member must comply with any applicable Exchange Control Regulations as determined by the South African Reserve Bank regarding the payment of any interest and fees contemplated in rules 5.7.8.4 and 5.7.8.5 respectively in respect of a non-resident client; and
  - 5.11.2.1.3 an exchange member is not entitled to hold any retained or additional margin with respect to the positions of a non-resident client.
- 5.11.2.2 With respect to his positions, a non-resident client must pay from his non-resident account to, or receive into his non-resident account from, the client trust account of the exchange member with which he traded to open such positions, the variation margin referred to in rule 5.4.2.
- 5.11.2.3 The confirmation contained in the SWIFT non-resident account notification to the authorised bank must confirm the net settlement amounts to be paid or received in terms of rule 5.11.2.1 or 5.11.2.2, and must require the authorised bank to release or accept this amount to or from the exchange member concerned.
- 5.11.2.4 The clearing member or JSE Clear, as the case may be, may off-set amounts due to the client against amounts due by the client to or from an exchange member, provided that it can be ascertained from the statements passing between them that no margins or other moneys of a non-resident client are being held by either JSE Clear or the clearing member.



## 6. SECTION 6: MANAGEMENT OF MEMBERS' AND CLIENTS' FUNDS

### 6.1 Management of funds by JSE Clear

- 6.1.1 JSE Clear must separate the margins and other moneys, securities and other corporeal and incorporeal things of any clearing member, exchange member or client from its own assets and must manage and invest such margins and other moneys in a manner and subject to such terms and conditions as the controlling body may decide.
- 6.1.2 A clearing member may deposit any additional margin kept by it in terms of rule 5.4.3 with JSE Clear.
- 6.1.3 An exchange member may deposit any additional margin held in respect of resident clients with JSE Clear.
- 6.1.4 JSE Clear shall monthly, in arrears, retain an interest consideration, as determined and published in a notice by JSE Clear, on any margins held by it in respect of any position registered in the name of any person during the month.

### 6.2 Separation of client assets

With the exception of a client or exchange member's funds held by a clearing member that is a bank, a clearing member must -

- 6.2.1 at all times, separate a client or exchange member's assets, including money, securities and other corporeal and incorporeal things of the client or exchange member, from its own assets;
- 6.2.2 not co-mingle the funds of any client or another exchange member with its own;
- 6.2.3 not allow the use of funds, securities or corporeal or incorporeal things belonging to any client or exchange member to finance its own trades as an exchange member or the trades of any other person;
- 6.2.4 not allow the use of funds, securities or corporeal or incorporeal things of any client or exchange member to operate its own business; and
- 6.2.5 in respect of the trades or positions of an exchange member or client, not retain any money, securities or other corporeal or incorporeal things given by such exchange member or client or received by the exchange member on behalf of any person other than additional margin contemplated in rule 5.4.3 or retained margin.



### **6.3 Clearing member bank accounts**

- 6.3.1 The provisions of this rule 6.3 apply in respect of additional margin and retained margin not deposited by a clearing member with JSE Clear, and in respect of any other client funds held by a clearing member.
- 6.3.2 A clearing member must, at all times, keep a separate bank account into which it must deposit, or in which it must hold, any additional margin kept by it in terms of rule 5.4.3, any retained margin held on behalf of a client or an exchange member, or any other client funds held by the clearing member in relation to the operation of a client's account with an exchange member.
- 6.3.3 A clearing member must, at all times, ensure that the correct amount of additional margin as required by the clearing agreement with the exchange member is held in respect of each exchange member with which it has entered into a clearing agreement.
- 6.3.4 A clearing member's records must, at all times, reflect the amount of additional margin, retained margin or other client funds held in respect of each client or exchange member.

### **6.4 Relaxation or indulgence given by clearing members**

A clearing member who gives any relaxation or indulgence to a client or an exchange member with whom it has entered into a clearing agreement regarding the payment of margin, whether initial margin, variation margin or additional margin, shall be deemed to have granted the client or exchange member a loan repayable on demand in the amount of the shortfall for the period of the relaxation or indulgence. The loan shall be at a rate of interest specified in the client agreement or clearing agreement between them or, if no rate is specified, at the member's customary rate or, if there is no customary rate, at the rate determined in terms of the Prescribed Rate of Interest Act 55 of 1975.



## 7. SECTION 7: ETHICS AND CONDUCT

### 7.1 Standards of integrity

A clearing member must, in the conduct of its business, observe high standards of integrity and fair dealing. It must –

- 7.1.1 not provide or accept material inducements of a non-business nature to, or from any person to obtain business;
- 7.1.2 not knowingly circulate information or submit information to JSE Clear which is false or misleading, or which affects or tends to affect unfairly the price of any derivative security;
- 7.1.3 not knowingly countenance any attempt to manipulate the market, nor to influence persons for such a purpose;
- 7.1.4 conduct its activities in a manner that is compatible with the objects of the Act and with full respect for the reputation of JSE Clear; and
- 7.1.5 not participate in any dealings with other clearing members, exchange members, clients, the media or other persons, which may be of such a nature as to discredit JSE Clear.

### 7.2 General conduct towards clients

In its dealings with clients to whom it provides clearing services, a clearing member must –

- 7.2.1 act honestly and fairly;
- 7.2.2 act with due skill, care and diligence, and in the interests of clients;
- 7.2.3 exercise independent professional judgement;
- 7.2.4 act promptly on and in accordance with the instructions of a client;
- 7.2.5 avoid conflicts of interest and when they cannot be avoided, ensure fair treatment to clients by disclosure, confidentiality or declining to act. A clearing member shall not unfairly place its interests above those of its clients; and
- 7.2.6 not make any statement, promise or forecast which it knows to be misleading or is likely to be misleading and that has the effect or may have the effect of inducing a person to enter into a clearing agreement.



### 7.3 Disclosure to clients

7.3.1 In rendering a service to a client, any representations made and information provided by a clearing member –

7.3.1.1 must be factually correct;

7.3.1.2 must be provided in plain language, avoid uncertainty or confusion and not be misleading;

7.3.1.3 must be adequate and appropriate in the circumstances of the particular service, taking into account the factually established or reasonably assumed level of knowledge of the client;

7.3.1.4 must, as regards all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein, be reflected in specific monetary terms, provided that where any such amount, sum, value, charge, fee, remuneration or monetary obligation is not reasonably pre-determinable, its basis of calculation must be adequately described;

7.3.1.5 need not be duplicated or repeated to the same client unless material or significant changes affecting that client occur, or the relevant service renders it necessary, in which case a disclosure of the changes must be made to the client without delay.

7.3.2 A clearing member –

7.3.2.1 must disclose full and accurate information about the fees and any other charges that may be levied on clients;

7.3.2.2 may not disclose any confidential information acquired or obtained from a client about such client, unless the written consent of the client has been obtained beforehand or disclosure of the information is required to further the objectives of the Act or is required under any law;

7.3.2.3 must advise a client in advance of any restrictions or limitations that may affect the access of that client to their funds or securities pledged as collateral.

### 7.4 Maintenance of client records

7.4.1 A clearing member must maintain proper, complete, accurate and secure records in relation to the services rendered to its clients.





- 7.4.2 A clearing member must have appropriate procedures and systems in place to store and retrieve, in a manner safe from destruction, a record of all –
  - 7.4.2.1 communications relating to a service rendered to a client, including instructions given by the client to the clearing member;
  - 7.4.2.2 transaction documentation relating to clients;
  - 7.4.2.3 contractual arrangements between the clearing member and its clients, including clearing agreements prescribed by the clearing rules;
  - 7.4.2.4 client particulars which are necessary for the effective operation of client accounts.
- 7.4.3 The client records in rule 7.4.1 may be kept in printed, electronic or voice recorded format.
- 7.4.4 A clearing member need not keep the records in rule 7.4.1 itself but must be capable of making such records available for inspection within seven days.
- 7.4.5 All client records in rule 7.4.1 must be kept for at least five years after the rendering of the services concerned.

## 7.5 Co-operation with regulators

A clearing member must deal with JSE Clear as its regulator in an open co-operative manner and keep JSE Clear promptly informed of anything concerning JSE Clear which might reasonably be expected to be disclosed to it. A clearing member must also provide reasonable co-operation to any other regulatory body or any law enforcement agency in respect of any matters which are the subject of an investigation by such body or agency relating to an alleged contravention of the Act, or any equivalent foreign legislation or any other law governing the activities of the clearing member.

## 7.6 Telephone recordings

- 7.6.1 JSE Clear and clearing members have the right to record all telephone calls.
- 7.6.2 With respect to such telephone calls, the recording will be admissible as evidence in any disciplinary or dispute resolution proceedings contemplated in these rules, provided that the person who intends to rely on such recordings in evidence will bear the onus of proving the authenticity thereof.
- 7.6.3 No clearing member may tamper with any recording of any telephone call.

7.6.4 Recordings contemplated in rule 7.6 must be kept in safe custody for a period of at least one month.

## 7.7 **Contraventions to be reported**

Every clearing member is required to report to JSE Clear any contravention of the Act, the clearing rules and directives that comes to its attention.



## 8. SECTION 8: COMPLAINTS AND DISPUTES

### 8.1 Complaints

8.1.1 For the purposes of Section 8 of the rules, a complaint is defined as any complaint by a client or exchange member in relation to the provision of clearing services, in which the client or exchange member alleges that he has suffered, or is likely to suffer, financial prejudice as a result of the clearing member –

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

8.1.1.2 contravening or failing to comply with the rules and the directives;

8.1.1.3 acting dishonestly, negligently or recklessly; or

8.1.1.4 treating the client or exchange member unreasonably or unfairly.

### 8.2 Internal complaint handling procedures

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

8.2.1.1 the receipt of oral or written complaints;

8.2.1.2 the appropriate investigation of complaints;

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

8.2.1.4 notification of the decision to the complainant; and

8.2.1.5 the recording of complaints.

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

8.2.2.1 all complaints are handled fairly, effectively and promptly;

8.2.2.2 recurring or systemic problems are identified, investigated and remedied;

8.2.2.3 the number of unresolved complaints to be referred to JSE Clear in terms of the rule 8.6 are minimised;



- 8.2.2.4 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;
- 8.2.2.5 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
- 8.2.2.6 relevant employees are aware of the clearing member's internal complaint handling procedures and comply with them.

### **8.3 Timeous response to complaints**

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

### **8.4 Redress**

- 8.4.1 Where a clearing member decides that redress in the form of compensation is appropriate in resolving a complaint, the clearing member must provide the complainant with fair compensation and must comply with any offer of compensation made by it which the complainant accepts.
- 8.4.2 Where a clearing member decides that redress in a form other than compensation is appropriate in resolving a complaint, the clearing member must provide the redress as soon as practicable.

### **8.5 Recording of complaints**

- 8.5.1 A clearing member must maintain a record of all complaints. The record of each complaint must include –
  - 8.5.1.1 the identity of the complainant;
  - 8.5.1.2 the substance of the complaint;
  - 8.5.1.3 all correspondence in relation to the complaint; and
  - 8.5.1.4 The records referred to in rule 8.5.1 must be retained by the clearing member for a period of 5 years from the date of the receipt of the complaint.



## 8.6 Unresolved complaints

- 8.6.1 A complaint will be deemed to be unresolved if the complainant is not satisfied with the resolution of the complaint proposed by the clearing member.
- 8.6.2 A complainant may lodge an unresolved complaint, in writing, with the Chief Compliance Officer giving full particulars of the matter concerned.
- 8.6.3 In order for an unresolved complaint to be considered by JSE Clear, the complaint must be lodged with the Chief Compliance Officer within four weeks of the receipt by the complainant of the clearing member's response referred to in rule 8.3 and within six months of the conduct by the clearing member giving rise to the complaint.
- 8.6.4 An unresolved complaint which is lodged subsequent to the period referred to in rule 8.6.3 will be considered, provided that failure to lodge the complaint within the relevant period was through no fault of the client.
- 8.6.5 The Chief Compliance Officer may request the clearing member and the complainant to provide copies of all relevant correspondence and documentation that is required to review the complaint.
- 8.6.6 The Chief Compliance Officer will endeavour to facilitate a resolution of the complaint between the clearing member and the complainant.
- 8.6.7 If the Chief Compliance Officer is unable to facilitate a resolution of the complaint within four weeks of lodgement of the complaint with it, the Chief Compliance Officer will refer the unresolved complaint to the Company Secretary of JSE Clear to be dealt with in terms of the dispute resolution rules.

## 8.7 Applicability of dispute resolution rules

- 8.7.1 Rules 8.7 to 8.12 ("the dispute resolution rules") are intended to facilitate the equitable and expeditious settlement of disputes that –
- 8.7.1.1 a client or an exchange member has with a clearing member, in respect of an unresolved complaint;
- 8.7.1.2 a clearing member has with another clearing member, in respect of the clearing of transactions or positions in derivative securities; or

8.7.1.3 a clearing member has with a client or an exchange member, in respect of the clearing of transactions or positions in derivative securities.

8.7.2 The dispute resolution rules only apply –

8.7.2.1 where the amount in dispute is in excess of R50 000;

8.7.2.2 where the dispute is not the subject of existing litigation;

8.7.2.3 in the case of a dispute that a client or exchange member has with a clearing member, where the amount in dispute either does not exceed R1 000 000 or, where the amount in dispute exceeds R1 000 000, if the consent of both parties to proceed has been obtained;

8.7.2.4 in the case of a dispute that a clearing member has with another clearing member, if the members are able to evidence to the satisfaction of the Chief Compliance Officer that reasonable endeavours have been made by the said clearing members to resolve the dispute, and if the consent of both parties to proceed has been obtained;

8.7.2.5 in the case of a dispute that a clearing member has with a client or an exchange member, if the consent of the client or exchange member to proceed has been obtained.

## 8.8 Reporting of a dispute

8.8.1 An unresolved complaint that JSE Clear is not able to resolve in terms of rule 8.6 will be reported as a dispute by the Chief Compliance Officer to the Company Secretary of JSE Clear if the client elects to pursue the dispute resolution process.

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

8.8.3 A dispute that a clearing member has with a client or exchange member in respect of transactions in derivative securities must be reported in writing, by the member, to the Company Secretary of JSE Clear, within six months of the circumstance giving rise to the dispute having arisen.

8.8.4 The Company Secretary of JSE Clear 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.

## 8.9 Declaration of a dispute

A dispute reported in terms of rule 8.8 will, subject to the criteria set out in rule 8.7.2 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.

## 8.10 Consideration by an Ombud

- 8.10.1 JSE Clear will appoint an Ombud to consider a dispute, who is a retired judge of the High Court of South Africa or a Senior Counsel.
- 8.10.2 Within three 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.
- 8.10.3 The Ombud may require the claimant to expand upon its statement of claim or provide further evidence or particulars as he deems necessary within such reasonable time as is specified by the Ombud.
- 8.10.4 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 must furnish the Ombud with its written response to the statement of claim within three 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.
- 8.10.5 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.
- 8.10.6 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.
- 8.10.7 After ascertaining the parties' availability, the Ombud will, subject to rule 8.10.8 furnish the parties with written notification of the date on which the dispute will be heard.
- 8.10.8 The Ombud may make a decision regarding any issues relating to the dispute or consider the dispute on the basis of the documents submitted in terms of rules 8.10.2 to 8.10.5 without the necessity of a hearing.

- 8.10.9 The dispute resolution proceedings will be conducted without legal representation of any of the parties, unless the Ombud in his sole discretion decides otherwise.
- 8.10.10 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.
- 8.10.11 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 three weeks of having considered the dispute. The Ombud must, at the request of any party to the dispute, provide written reasons for his decision.
- 8.10.12 The Ombud's decision will be furnished to the parties in writing.
- 8.10.13 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.
- 8.10.14 Any decision made in terms of rule 8.10.2 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.
- 8.10.15 Unless JSE Clear, 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 finding, and all other information pertaining to the proceedings will be kept confidential by all parties thereto, unless disclosure by JSE Clear or any of the parties is required by law.

## **8.11 Costs of the proceedings**

- 8.11.1 The parties to any dispute resolution proceeding in terms of rule 8.10 may be required to pay to JSE Clear, before the proceedings commence, such amount as JSE Clear may determine as a deposit to cover a portion of the costs of the proceedings.
- 8.11.2 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.





## 8.12 Limitation of liability

No officer, employee or representative of JSE Clear or any member of the controlling body, or the Ombud appointed in terms of these clearing rules is liable for any loss sustained by, or damage caused to any person as a result of anything done or omitted by them in the *bona fide* or negligent performance of any function under or in terms of this section 8.

## 8.13 Clearing member complaints against JSE Clear

8.13.1 Subject to rule 8.13.2, if a clearing member wishes to lodge a complaint against JSE Clear in respect of the exercise by JSE Clear of any clearing functions in terms of section 50 of the Act and the clearing member requires a written response to their complaint, the clearing member should lodge the complaint in writing with the JSE Clear Company Secretary.

8.13.2 If a clearing member wishes to lodge a complaint against JSE Clear in respect of conduct by JSE Clear which, in the opinion of the clearing member, evidences a failure by JSE Clear to avoid or otherwise appropriately manage a potential conflict between JSE Clear's regulatory functions and its commercial functions, the clearing member should lodge the complaint in writing with the JSE Clear Company Secretary for the attention of the Chairman of the SRO Oversight Committee.

8.13.3 JSE Clear or the Chairman of the SRO Oversight Committee will respond to a complaint received in terms of rule 8.13.1 or 8.13.2 respectively within four weeks of receiving the complaint or, within such period, will provide the complainant with an appropriate explanation as to why they are not, at that time, in a position to respond and will indicate by when they will respond.



## 9. SECTION 9: SUPERVISION AND ENFORCEMENT

### 9.1 Surveillance and investigation by JSE Clear

#### 9.1.1 Surveillance

JSE Clear may set up and maintain systems for-

9.1.1.1 monitoring compliance by clearing members with the provisions of the Act, the clearing rules and directives and any arrangements made by JSE Clear for the provision of services and facilities; and

9.1.1.2 the surveillance of any matter relevant for the purposes of the Act and these clearing rules.

#### 9.1.2 Investigation

9.1.2.1 The JSE Clear Chief Executive Officer, and any other person designated by him, may -

9.1.2.1.1 investigate any JSE Clear related activities of any person who at the relevant time was a clearing member, non-executive director, employee or officer of a clearing member;

9.1.2.1.2 investigate whether that clearing member or any of its shareholders, non-executive directors, officers or employees complies with all the provisions of the Act, and these clearing rules and directives;

9.1.2.1.3 investigate whether such clearing member is conducting its business in a manner which could be detrimental to the interest, good name or welfare of JSE Clear or its clearing members; and

9.1.2.1.4 require any person who is subject to the jurisdiction of JSE Clear and who is believed to be able to furnish any information on the subject of any investigation or to have in his or her possession or under his or her control any book, document, tape or electronic record or other object which has a bearing on the subject of the investigation, to produce such book, document, tape or electronic record or other object or to appear at a time and place specified, to be questioned by any of the abovementioned persons, to furnish such information or to produce such book,

document, tape, electronic record or other object, provided that the subject of the investigation has first been put to such person.

9.1.2.2 The Chief Executive Officer of JSE Clear may delegate the power granted to him in terms of rule 9.1.2.1 to any suitably qualified employee of JSE Clear.

9.1.3 Referral to another authority

Should JSE Clear become aware of any possible contravention of law by a person over whom JSE Clear does not have jurisdiction, JSE Clear is entitled to refer such matter to the appropriate authority or authorities, whether outside or within the Republic.

**9.2 Use of information obtained by JSE Clear**

Any information, document, book, tape or electronic record or other object obtained by JSE Clear, whether by investigation or otherwise, may be used in evidence in any disciplinary proceedings contemplated in rule 9.4 below and may be furnished by JSE Clear to any other body which may have jurisdiction over the matter under consideration, whether outside or within the Republic.

**9.3 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 clearing member or employee or officer of a clearing member constitutes 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:

- 9.3.1 committing or attempting to commit any act which is corrupt, dishonest or fraudulent;
- 9.3.2 being a party to, or facilitating or conducting a transaction which is fictitious and/or has a dishonest or unlawful motive;
- 9.3.3 contravening, attempting to contravene, or failing to comply with any one or more of any provision of the Act, a clearing rule or a directive;
- 9.3.4 negligently or recklessly conducting the business or affairs of the clearing member in such a way that actual or potential prejudice is, or may be, caused to JSE Clear, any other clearing member, a client of a clearing member or the general public. The failure by a clearing member to introduce appropriate and reasonable



safeguards or controls to avoid such prejudice may be treated, where appropriate, as constituting either negligence or recklessness;

9.3.5 committing or attempting to commit any act which is detrimental to any one or more of the interests, good name or welfare of JSE Clear or its clearing members;

9.3.6 knowingly obstructing the business of JSE Clear or its clearing members;

9.3.7 failing, when requested, to assist JSE Clear in the exercise of its duties (which includes, but is not limited to, failure without sufficient cause to provide information in accordance with the provisions of rule 9.1.2.1.4.

## 9.4 Disciplinary procedures

9.4.1 On conclusion of any investigation in terms of rule 9.1 and if, after having considered all the relevant information in his possession, the Chief Executive Officer is of the opinion that there are grounds for an allegation of improper conduct, the Chief Executive Officer may prefer a formal charge against such person (“the respondent”) setting out a brief statement of facts constituting the alleged offence. Such charge will be referred to a Disciplinary Committee, to be heard in terms of these clearing rules. Such charge may further, in the discretion of the Chief Executive Officer, make provision for an admission of guilt.

9.4.2 Where the Chief Executive Officer has preferred a formal charge against a respondent, the charge sheet must, in addition to the matters listed in rule 9.4.1, be in a form prescribed by the Chief Executive Officer, be signed by the Chief Executive Officer or his Deputy, and be served on the respondent in such manner as the Chief Executive Officer may determine.

9.4.3 Where the Chief Executive Officer has decided to make provision for an admission of guilt, he must stipulate

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9.4.3.1 the amount of the fine payable pursuant to the admission of guilt and any required contribution towards JSE Clear’s costs, as well as the period within which such amounts must be paid. In determining the amount of such fine and where the person has benefited financially as a result of the alleged transgression, the Chief Executive Officer must take such benefit into consideration. The admission of guilt may, in particular, provide for the fine to be suspended for a period;



- 9.4.3.2 the manner and time in which the admission of guilt may be made, which time must not be a period in excess of 50 business days from the date on which the charge sheet is served on the respondent; and
- 9.4.3.3 whether the terms of the admission of guilt should be published in a JSE Clear Gazette and/or in the media.

9.4.4 A respondent:

- 9.4.4.1 may, if the respondent is given an opportunity to sign an admission of guilt, admit guilt to such charges within the period set out in the charge sheet; or
- 9.4.4.2 may within 20 business days after receipt of the charge sheet request particulars to the charges, to which the Chief Executive Officer is obliged to respond within 20 business days after receipt of such request; and
- 9.4.4.3 must, if no admission of guilt is tendered by the Chief Executive Officer or if the respondent decides not to admit guilt to the charges, file a defence to such charges on or before 50 business days after the date on which the charge sheet was served on the respondent or within 20 days after the date on which JSE Clear has responded to the request for further particulars, whichever is later.

9.4.5 Thereafter, the chairman of the Disciplinary Committee must determine the date on which the charges will be heard, which date must not without good reason be later than six months after the charge sheet was served on the respondent.

9.4.6 No extension of the time periods set out in rule 9.4.3, including the date for the hearing of the charges, will be allowed without good reason. Furthermore, no such extension will be allowed unless the consent of the chairman of the Disciplinary Committee is obtained.

**9.5 Disciplinary committee**

9.5.1 The Chief Executive Officer may from time to time appoint one or more Disciplinary Committees each comprised of three members.

9.5.2 The members of a Disciplinary Committee must be:



- 9.5.2.1 a retired judge, or a practising or retired senior counsel, or a practising or retired attorney with not less than fifteen years' experience. Such person must act as chairman of the Disciplinary Committee;
- 9.5.2.2 a professional person appointed by reason of that person's knowledge of financial services as it relates to the matter under consideration; and
- 9.5.2.3 a person appointed by reason of that person's knowledge of, or experience in, the financial markets.

## 9.6 Procedure and evidence — disciplinary matters

- 9.6.1 Any charges preferred must be decided on a balance of probabilities.
- 9.6.2 In a hearing before a Disciplinary Committee -
  - 9.6.2.1 the chairman of the Disciplinary Committee must decide all matters of law which may arise during the hearing, and whether any matter constitutes a question of law or a question of fact, but all three members of the Disciplinary Committee must by a simple majority decide all other matters arising during the hearing;
  - 9.6.2.2 the chairman of the Disciplinary Committee must determine the procedure which the Disciplinary Committee must follow both in respect of preliminary issues and in respect of the hearing itself, subject to these clearing rules, the directives and to the principles of natural justice;
  - 9.6.2.3 JSE Clear may instruct attorneys and/or counsel to prefer and prosecute the charges on behalf of JSE Clear, or the charges may be prosecuted by an employee of JSE Clear; and
  - 9.6.2.4 the respondent is entitled to be legally represented at the respondent's own cost.
- 9.6.3 Should a respondent, without good cause, fail to attend a hearing before a Disciplinary Committee at the time and place stated in the charge sheet, the Disciplinary Committee is entitled to proceed with its consideration of the charges in the absence of the respondent.
- 9.6.4 If at any stage during a hearing before the Disciplinary Committee, one or more of the members of the Disciplinary Committee hearing the matter dies or retires or becomes otherwise incapable of acting or is absent, the hearing must, where the remaining members constitute a majority of the body before whom the



hearing was commenced, proceed before such remaining members and, provided that the remaining members are in agreement, their finding will be the finding of the body concerned. In any other case, the matter must be heard *de novo*.

- 9.6.5 If a Disciplinary Committee finds a respondent guilty of an offence, the Disciplinary Committee must apply rule 9.7.
- 9.6.6 If the proceedings before a Disciplinary Committee are recorded, any person charged is entitled to be supplied with a record of the hearing of such charges, and any person who has made oral representations is entitled to be supplied with a record of that portion of the proceedings which related to that person's oral representations.
- 9.6.7 A report on the findings of a Disciplinary Committee will be furnished to the Registrar within 30 days after the completion of the proceedings.

## 9.7 Disciplinary matters — penalties

- 9.7.1 When any person has been found guilty of improper conduct by a Disciplinary Committee pursuant to these clearing rules, the Disciplinary Committee -
  - 9.7.1.1 may warn or impose a reprimand, censure or fine upon the respondent, which fine may in respect of each contravention not exceed R7.5 million, or such other amount as may be stipulated in the Act or in any regulations promulgated in terms of the Act;
  - 9.7.1.2 must, in determining an appropriate penalty, take into account:
    - 9.7.1.2.1 any previous conviction in terms of the clearing rules of JSE Clear or in a court of law;
    - 9.7.1.2.2 the harm or prejudice which is caused by the offence;
    - 9.7.1.2.3 any other aggravating, mitigating or extenuating circumstances; and
    - 9.7.1.2.4 where it is possible that the membership of the respondent may be terminated, the representations of such person in this regard;
  - 9.7.1.3 may, on such conditions as the Disciplinary Committee may deem fit, suspend or terminate the membership of a clearing member who has been found guilty of improper conduct, or in the case



- of an officer or employee of a clearing member, require such clearing member to hold a disciplinary enquiry to consider terminating or suspending the employment of such person;
- 9.7.1.4 may direct a clearing member to prevent or relieve an officer or employee of that clearing member from carrying out any specified activity, function or duty for such reasonable period as the Disciplinary Committee deems appropriate;
  - 9.7.1.5 may direct a clearing member to ensure that any sanction imposed by the Disciplinary Committee on an officer or employee of that clearing member is complied with by such officer or employee;
  - 9.7.1.6 may make a fair and reasonable order as to costs; and
  - 9.7.1.7 may order that particulars of the offence, the finding of the Disciplinary Committee and the penalty imposed be published, provided that if publication is ordered, the respondent must be given an opportunity to make representations to the Disciplinary Committee in this regard.
- 9.7.2 A Disciplinary Committee may impose any one or more of the penalties referred to in rule 9.7.1.
- 9.7.3 Any penalty or part thereof may be suspended on such conditions as the Disciplinary Committee may determine.
- 9.7.4 If a clearing member or an officer or employee of a clearing member fails to pay any fine imposed by a Disciplinary Committee within seven days after being informed of the amount of the fine, JSE Clear has the right to -
- 9.7.4.1 recover such fine from such clearing member, officer or employee, as the case may be, in a court of competent jurisdiction;
  - 9.7.4.2 terminate or suspend (on such conditions as JSE Clear may deem fit) the membership of such clearing member, or in the case of an officer or employee of a clearing member, require such member to hold a disciplinary enquiry to consider terminating or suspending the employment of such person; and/or
  - 9.7.4.3 direct a clearing member to prevent or relieve an officer or employee of that clearing member from carrying out any specified activity, function or duty for such reasonable period as JSE Clear deems appropriate.





- 9.7.5 The amount of any fine paid to JSE Clear pursuant to these clearing rules must be paid into the Market Improvement Fund. Any costs paid to JSE Clear pursuant to an award made by a Disciplinary Committee must be paid into the general funds of JSE Clear.
- 9.7.6 A Disciplinary Committee may, upon good cause shown and subject to such conditions as the Disciplinary Committee may impose, vary or modify any penalty which it may have previously imposed on any person, provided that in modifying or varying such penalty, the Disciplinary Committee may under no circumstances increase such penalty.
- 9.7.7 Should any termination of the membership of a clearing member be suspended as a result of an appeal being lodged in terms of the Act, such suspension may be made subject to such conditions as JSE Clear may determine. Any clearing member whose membership has been terminated and who lodges an appeal in terms of the Act must simultaneously inform the Chief Executive Officer that an appeal has been lodged.

## **9.8 Urgent issues**

- 9.8.1 In order to ensure that the business of JSE Clear 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 JSE Clear, the Chief Risk Officer of JSE Clear and at least one other independent member of the controlling body will constitute an Urgent Issues Committee.
- 9.8.2 An Urgent Issues Committee will consider whether a clearing member is operating in such a manner that there is imminent danger that such clearing member may be unable to meet its commitments to clients, counterparties, other clearing members or to JSE Clear, or that it is conducting business in a manner which could be detrimental to the interests of JSE Clear or to the interests of the clearing members of JSE Clear and the public.
- 9.8.3 If an Urgent Issues Committee resolves by a two-thirds majority that an investigation into the affairs of a clearing member in terms of these clearing rules has revealed that the clearing member is operating in such a manner that there is such imminent danger as is referred to in rule 9.8.2, the Urgent Issues Committee may call upon senior representatives of the clearing member to attend a meeting of the Urgent Issues Committee, which meeting may be called on not less than one hour's notice, to hear the concerns of the Urgent Issues Committee and to discuss how such concerns may be resolved.

9.8.4 With the agreement of the clearing member concerned or, 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 9.8:

9.8.4.1 call for additional default margin; and/or

9.8.4.2 direct the clearing member to close or reduce its own positions as an exchange member or those of a client of the clearing member acting as an exchange member; and/ or

9.8.4.3 give the clearing member any other instructions as it may deem necessary in the interests of the clearing member's clients as an exchange member and counterparties or other clearing members or JSE Clear.

9.8.5 The Urgent Issues Committee will, during the period of any order in terms of rule 9.8.4 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 JSE Clear to supervise and control the activities of the clearing member, at the clearing member's cost. Such clearing member may further be prohibited from entering into new contracts without the prior consent of the person appointed as aforesaid to control and supervise the clearing member, which consent may be given upon such terms and conditions as the Urgent Issues Committee or the said appointee will determine.

9.8.6 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 clearing member in question.

## **9.9 Default or termination of membership — control of assets and accounting records**

9.9.1 In the event of any clearing member being declared a defaulting member or ceasing to enjoy membership by termination, and in the absence of the appointment of a curator to manage the affairs of the clearing member –

9.9.1.1 the clearing member must hand over to JSE Clear all books and accounting records of the clearing member, and all cash, securities and other assets relating to the business of the clearing member, including cash and control of securities held on behalf of clients as collateral or otherwise in safe custody in a banking institution;



- 9.9.1.2 the controlling body may grant authority to the Chief Executive Officer or his nominated deputy to assume control of such cash and securities which are owned by clients, including securities held on behalf of clients in safe custody and cash held on behalf of clients in any trust arrangement.
- 9.9.2 The Chief Executive Officer must take reasonable steps to ensure that any securities held by a clearing member or funds held either by a bank in terms of the Financial Institutions (Protection of Funds) Act, 2001, or by JSE Trustees (Pty) Limited on behalf of a client (“the funds”), are identified as the client’s property. The Chief Executive Officer must take reasonable steps to ensure that only the securities or funds which are identified as the client’s property and which are unencumbered are returned to a client or to his order if so authorised in terms of rule 9.9.2 by the client in writing.
- 9.9.2.1 A client of a clearing member acting as an exchange member who has been suspended or declared a defaulter, or who has ceased to enjoy membership by termination, must warrant in writing to the Chief Executive Officer that he is the lawful owner of any securities or funds returned to him before such securities or funds are returned to him by the Chief Executive Officer under rule 9.9.2.
- 9.9.2.2 If any securities or funds are returned to a client, under the provisions of rule 9.9.2, and it is thereafter established that ownership of such returned securities or funds does not vest in the client, the client must immediately return such securities or funds to the Chief Executive Officer, upon written notification by the Chief Executive Officer.
- 9.9.2.3 Where such returned securities or funds under rule 9.9.2 have been alienated by the client, the client must immediately, and insofar as he is able to, effect the return of such securities (or the equivalent amount of such securities) or funds to the Chief Executive Officer, upon written notification by the Chief Executive Officer.
- 9.9.3 The client must, before any securities or funds are returned to him under rule 9.9.2, indemnify the Chief Executive Officer in writing for any loss sustained by or damage caused to any person, including, but not limited to, the client, as a result of anything done or omitted by the Chief Executive Officer in the bona fide exercise of any power, or performance of any duty or function under or by virtue of rule 9.9.2, as a result of the return of the securities or funds to the client and the alienation by the client of such returned securities or funds in respect of which he is not the lawful owner.



- 9.9.4 In the event of the default of a clearing member, the authority referred to in rule 9.9.1.2 will endure until such time as the clearing member is placed under provisional sequestration or liquidation, when control of the assets in the possession of the clearing member will vest in the appointed trustee or liquidator.

## **9.10 JSE Clear’s powers of publication**

- 9.10.1 JSE Clear may, in such manner as it may deem fit, notify the public of any fact that JSE Clear considers to be in the public interest, including, but not limited to, the name of a clearing member or any employee or officer of a clearing 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 clearing member, employee or officer of a clearing member.
- 9.10.2 No action or other proceeding may in any circumstances be taken by any clearing member or any employee or officer of a clearing member referred to in any notification referred to above or in a JSE Clear Gazette, against JSE Clear or any controlling body or JSE Clear Executive member or employee thereof or any person publishing or circulating the same.

## **9.11 Administrative penalties**

- 9.11.1 JSE Clear may impose a penalty on a clearing member for administrative infractions of these clearing rules and the directives.
- 9.11.2 The penalties referred to in rule 9.11.1 are prescribed by directive.
- 9.11.3 Payment of the penalty imposed in terms of rule 9.11.1 must be made to JSE Clear within 5 business days of notification.
- 9.11.4 The amount of any penalty paid to JSE Clear pursuant to these clearing rules must be paid into the Market Improvement Fund.

## 10. SECTION 10: DEFAULTS

### 10.1 Event of default

10.1.1 A clearing member shall default if –

10.1.1.1 it fails to meet its obligations in respect of a trade or a position in terms of these clearing rules; or

10.1.1.2 JSE Clear determines, in its sole discretion, that it will be unable to meet its obligations in respect of a trade or a position in terms of these clearing rules; or

10.1.1.3 its clearing membership is involuntarily terminated.

10.1.2 An exchange member shall default if –

10.1.2.1 it fails to meet its obligations in respect of a trade or a position in terms of these clearing rules or the exchange rules; or

10.1.2.2 JSE Clear or the exchange determines, in their sole discretion, that it will be unable to meet its obligations in respect of a trade or a position in terms of these clearing rules or the exchange rules; or

10.1.2.3 its exchange membership is involuntarily terminated.

10.1.3 A client of an exchange member shall default if -

10.1.3.1 it fails to meet its obligations in respect of a trade or a position in terms of these clearing rules or the exchange rules; or

10.1.3.2 JSE Clear or the exchange determines, in their sole discretion, that the client will be unable to meet its obligations in respect of a trade or a position in terms of these clearing rules or the exchange rules; or

10.1.3.3 the client is in default with respect to one exchange member and JSE Clear or the exchange decides, in their sole discretion, that the client is in default with respect to any other exchange member.

10.1.4 JSE Clear shall default if –



10.1.4.1 it is placed in liquidation, either provisional or final; or

10.1.4.2 it is unable to meet its obligations as a central counterparty in terms of these clearing rules, and where such obligations have not been met at least 30 days after the delivery to JSE Clear of a written notice of demand by a party to whom such obligations are owed.

## 10.2 Consequences of default by a clearing member

Without limiting or detracting from any other remedies and rights which an exchange member or client or JSE Clear may have against a clearing member, in the event of default by a clearing member, rules 10.2.1 to 10.2.20 will apply.

10.2.1 The clearing member will, save as provided in this rule, be suspended from providing any clearing services to any exchange member and/or clients for which it clears.

10.2.2 JSE Clear must open a separate trust account with a bank (hereinafter referred to as the “trust account”), into which must be paid all margin due and payable and any other moneys held by JSE Clear in favour of or on behalf of or for the account of the clearing member.

10.2.3 JSE Clear will manage the trust account and all the affairs of the clearing member arising from and relating to its membership of JSE Clear.

10.2.4 JSE Clear will assume control of all assets held or administered by the clearing member on behalf of, or for the account or benefit of, any exchange member or client, and, when requested by an exchange, render such reports to the exchange as the exchange may require.

10.2.5 JSE Clear will, without prior notice to the clearing member, take any steps as appropriate to promote a stable market environment, to maintain financial stability and/or to reduce systemic risk, including –

10.2.5.1 close out all of or any portion of the futures and option contract positions of the clearing member in terms of rule 10.2.19 and rule 10.2.20;

10.2.5.2 execute hedging transactions in futures and option contract positions for the account of, and at the risk of, the clearing member, provided that the new contract positions eliminate or reduce market risk resulting from the clearing member’s portfolio of futures and option contract positions; and

- 10.2.5.3 sell securities pledged to JSE Clear and immediately apply the proceeds of such sales in terms of rule 10.4.
- 10.2.6 Any amount payable to the clearing member by JSE Clear as a result of such termination or arising from any suretyship, cession, pledge or other security or from any other cause, will be set off against any amount payable by the clearing member in terms of rule 5.7.1.
- 10.2.7 JSE Clear will transfer all positions of clients and exchange members cleared through the defaulting clearing member as follows -
  - 10.2.7.1 to the alternate clearing members designated by the clients or exchange members in terms of the exchange rules; or
  - 10.2.7.2 if an alternate clearing member has not been designated by a client or an exchange member, JSE Clear will endeavour to transfer the relevant positions to another clearing member or clearing members, at the discretion of JSE Clear and with the consent of such clearing member or clearing members, until such time as the provisions of rule 10.2.10 or 10.2.11 have been complied with.
- 10.2.8 JSE Clear will be entitled to appoint a trustee to exercise all its powers in terms of rule 10.2.7, subject to the trustee being entitled to the same indemnity as JSE Clear.
- 10.2.9 If JSE Clear is unable to transfer all or some positions of clients and exchange members cleared through the defaulting clearing member to another clearing member or clearing members in terms of rule 10.2.7, the positions that cannot be transferred will be closed out by JSE Clear in terms of rule 10.2.19 or 10.2.20.
- 10.2.10 Within a period decided by JSE Clear, each exchange member whose positions have been transferred to another clearing member in terms of rule 10.2.7, must conclude a clearing agreement with the clearing member to which the positions were transferred or with another clearing member, failing which its exchange membership will be involuntarily terminated in terms of the exchange rules, and its positions will be closed out by JSE Clear in terms of rule 10.2.19 or 10.2.20.
- 10.2.11 The clients of the defaulting clearing member, acting as an exchange member, must, within a period determined by JSE Clear, enter into client agreements with other exchange members and arrange for their positions to be transferred to the other exchange members through JSE Clear, failing which the clients' positions will be closed out by JSE Clear in terms of rule 10.2.19 or 10.2.20.



- 10.2.12 After all liabilities of the clearing member have been settled, the amounts paid by any surety in terms of the clearing rules will be refunded from any balance remaining in the trust account, and any further balance remaining in the trust account, together with any funds of the clearing member obtained through the realisation of any of its assets, will be paid to the clearing member.
- 10.2.13 If there are insufficient funds or other assets of the clearing member to meet all its obligations and liabilities as set out in these clearing rules and the clearing house agreement, the funds of the Default Fund will be applied in the following sequence to make good any such shortfall:
- 10.2.13.1 the contributions to the Default Fund by the defaulting clearing member;
  - 10.2.13.2 the contributions to the Default Fund by JSE Clear subject to the provisions of rule 10.2.15; and
  - 10.2.13.3 the contributions to the Default Fund by all the other clearing members, subject to the provisions of rules 10.2.16 and 10.2.17.
- 10.2.14 If after applying the funds of the Default Fund in terms of rule 10.2.13 there is still a shortfall in meeting the obligations and liabilities of the defaulting clearing member as set out in these clearing rules and the clearing house agreement, JSE Clear will deal with this shortfall as follows:
- 10.2.14.1 JSE Clear will calculate all variation margin amounts owed by or to each client and exchange member for each market in which the defaulting clearing member participated, through the normal mark-to-market process set out in rule 5.3 at the end of the business day on which the shortfall becomes evident;
  - 10.2.14.2 All clients and exchange members who owe variation margin to JSE Clear in terms of rule 10.2.14.1 must pay such amounts the following business day in terms of rule 5.7;
  - 10.2.14.3 For the purpose of calculating the variation margin amounts owed by or to each client and exchange member for each market in terms of rule 10.2.14.1, there will be no offset of variation margin amounts across different markets;
  - 10.2.14.4 JSE Clear will apportion the total shortfall across each market in which the defaulting clearing member participated, on a pro rata basis, based on the defaulter's outstanding obligations per market relative to the defaulter's total outstanding obligations across all markets;





- 10.2.14.5 The amount of the shortfall will be applied by JSE Clear to all variation margin amounts owed by JSE Clear to clients and exchange members in terms of rule 10.2.14.5, by deducting the amount of the shortfall per market, calculated in terms of rule 10.2.14.4, from the amount owed to all clients and exchange members in each affected market, on a pro rata basis, based on the amount owed to each client and exchange member relative to the aggregate amount owed to all clients and exchange members in each affected market;
- 10.2.14.6 The net amount after the deduction in rule 10.2.14.5 will be paid by JSE Clear to each client and exchange member;
- 10.2.14.7 The payment of the net amount in terms of rule 10.2.14.6 will expunge all of JSE Clear's obligations and liabilities to the relevant clients and exchange members in respect of the variation margin amounts calculated in terms of rule 10.2.14.1, and no client or exchange member may claim any further amounts from JSE Clear in respect of the variation margin amounts calculated in terms of rule 10.2.14.1.
- 10.2.15 If the contributions to the Default Fund referred to in rule 10.2.13.2 have been wholly or partially utilised following one or more clearing member defaults, JSE Clear will be obliged to make a contribution to the Default Fund equal to the amount so utilised. The obligation to make such contributions in any twelve month period will be limited to an amount equal to the value of the collateral held by the Default Fund on behalf of JSE Clear, as determined in terms of the clearing rules, immediately prior to the most recent clearing member default.
- 10.2.16 To the extent that the defaulting clearing member's obligations as set out in these clearing rules have been met by utilising some or all of the contributions to the Default Fund by the other clearing members, referred to in rule 10.2.13.3, in order to re-establish the size of the Default Fund at an appropriate level, as determined by JSE Clear, JSE Clear will determine the amount of default margin payable by the other clearing members in terms of rule 3.5.
- 10.2.17 In any twelve month period, where the total contributions to the Default Fund by clearing members have been fully utilised twice-over in terms of rule 10.2.13.3, as a result of one or more clearing member defaults, the remaining clearing members will still be obliged to re-contribute default margin to the Default Fund as calculated in terms of rule 3.5 but such re-contributed default margin will only be utilised to meet the obligations of a clearing member in terms of rule 10.2.13.1 and not rule 10.2.13.3.

- 10.2.18 Any losses suffered by JSE Clear, the Default Fund or any non-defaulting clearing member that has contributed to the Default Fund, as a result of the default of a clearing member, will be claimed by JSE Clear from the defaulting clearing member. Any amounts recovered by JSE Clear from the defaulting clearing member will be refunded to JSE Clear and the non-defaulting clearing members pro rata to the amount of their respective contributions to the Default Fund that have been utilised to meet the obligations and liabilities of the defaulting clearing member in terms of rule 10.2.13.
- 10.2.19 If any positions are to be closed out by JSE Clear in terms of rule 10.2.5, 10.2.9, 10.2.10 or 10.2.11 -
- 10.2.19.1 JSE Clear will endeavour to close out the positions by trading on the exchange and/or auctioning the positions, as it deems appropriate, at the best price that it can obtain, in the name of the position holder;
- 10.2.19.2 if JSE Clear decides that one or more positions will be closed out through an auction, JSE Clear will determine the manner in which the auction will be run; and
- 10.2.19.3 if, in its sole discretion, JSE Clear determines that there is no market on the exchange for one or more positions, or it is unable to obtain a reasonable price for one or more positions, either on the exchange or through an auction, JSE Clear may cancel such positions in terms of rule 10.2.20.
- 10.2.20 If JSE Clear determines that positions must be cancelled in terms of rule 10.2.19.3, JSE Clear will
- 10.2.20.1 by notice, solicit requests for voluntary cancellations by position holders with opposite positions to those that need to be cancelled, at prices determined by JSE Clear. In the event that the aggregate quantity of contracts covered by the voluntary cancellation requests received by JSE Clear exceeds the quantity of contracts to be cancelled, per security, JSE Clear will select requests for voluntary cancellation based on the time that the requests are received by JSE Clear, with preference given to the earliest submissions;
- 10.2.20.2 if no requests, or insufficient requests, for voluntary cancellations are received by JSE Clear in terms of rule 10.2.20.1 to cover the aggregate quantity of contracts, per security, that JSE Clear needs to cancel, cancel the positions of opposite position holders up to the aggregate quantity of contracts that need to be cancelled, on as close as possible to a pro-rata basis, at prices determined by JSE Clear.



## 10.3 Consequences of default by an exchange member

10.3.1 Without limiting or detracting from any other remedies and rights which a clearing member, an exchange member, a client or JSE Clear may have against an exchange member, in the event of default by an exchange member -

10.3.1.1 no subsequent transactions of the exchange member will, save as provided in this rule, be accepted for clearing by JSE Clear and/or any clearing member;

10.3.1.2 the clearing member must close out the proprietary positions of the exchange member by trading to transfer those positions to itself and for its own account at a price approved by JSE Clear within two business days or such other period as may be determined by JSE Clear, from the date of default;

10.3.1.3 any amount payable to the exchange member as a result of such close out or arising from any suretyship, cession, pledge or other security or from any other cause, will be set off against any amount payable by the exchange member in terms of the exchange rules and/or these clearing rules;

10.3.1.4 any shortfall remaining after the application of these clearing rules will be recovered from, and any balance paid to, the exchange member;

10.3.1.5 the clients of the exchange member will, without notice to such clients, become the clients of the clearing member;

10.3.1.6 the clearing member must assume the obligations of the exchange member in terms of these rules that accrued on the date of default or on the previous business day;

10.3.1.7 all clients who did not previously have client agreements with the clearing member must conclude client agreements with the clearing member to cover the positions and obligations assumed by the clearing member;

10.3.1.8 where the clearing member previously had a client agreement with the client of the exchange member, such positions and obligations and subsequent trades are subject to that agreement;

10.3.1.9 JSE Clear must, on request, provide the clearing member with the registration and contact details of the clients of a defaulting exchange member as supplied to JSE Clear; and

10.3.1.10 the clearing member must contact the clients of the defaulting exchange member as soon as practicable, to inform them of the default and to make arrangements for the transfer of existing client positions to the trading division of the clearing member or to another exchange member.

## 10.4 Securities pledged to JSE Clear

10.4.1 Securities pledged by exchange members and clients to JSE Clear in accordance with rule 5.4.1 are pledged in accordance with these rules, the applicable agreements and JSE Clear's policies and procedures, and on the basis that *parate executie* is expressly permitted. The securities pledged by defaulting exchange members and clients will be sold by JSE Clear within three business days from the date of default, without the intervention of the courts. JSE Clear will sell the pledged securities at a market related price at the time of such sale.

10.4.2 Securities pledged by a clearing member to JSE Clear as payment of default margin to the Default Fund are pledged in accordance with these rules, the JSE Clear agreement and JSE Clear's policies and procedures, and on the basis that *parate executie* is expressly permitted. The securities pledged by defaulting clearing members will be sold by JSE Clear within three business days from the date of default, without the intervention of the courts. JSE Clear will sell the pledged securities at a market related price at the time of such sale.

10.4.3 Clearing members, Trading members and clients that have elected to pledge securities to JSE Clear in terms of these Rules provide JSE Clear with express consent to instruct their CSDPs to move the pledged securities to JSE Clear's account to sell the pledged securities as contemplated in Rules 10.4.1 and 10.4.2.

## 10.5 JSE Clear liquidity facility

10.5.1 Without limiting or detracting from the other remedies and rights which an exchange member or client or JSE Clear may have against a clearing member, JSE Clear may, in order to ensure the efficient functioning of JSE Clear's markets by effecting prompt payment to clearing members, decide to apply the JSE Clear liquidity facility provided for in this section and settle the obligations in terms of a trade or a position of:

10.5.1.1 clients and exchange members whose payments are processed by a clearing member, on the relevant client or exchange member's behalf, in circumstances where such clients or exchange members have been unable to satisfy their obligations in terms of a trade or a position as provided for in these clearing rules; and/or

- 10.5.1.2 a clearing member who has acquired positions as a result of the default provisions provided for in these clearing rules, on the relevant clearing member's behalf, in circumstances where such clearing member has been unable to satisfy their obligations in terms of a trade or a position as provided for in these clearing rules; and/or
  - 10.5.1.3 defaulting clients, exchange members and/or clearing members that have pledged securities to JSE Clear in accordance with these clearing rules, where the JSE has sold the pledged securities pursuant to a default and the JSE is awaiting the proceeds of the sale of such pledged securities.
- 10.5.2 JSE Clear will, for the avoidance of doubt, be able to apply the JSE Clear liquidity facility referred to in 10.5.2 if -
- 10.5.2.1 a clearing member is unable to fulfil its obligations in terms of a trade or a position as a result of technical issues which preclude the clearing member from processing payments; and/or
  - 10.5.2.2 a clearing member is in default and JSE Clear has initiated the default procedures provided for in these clearing rules.
- 10.5.3 In order to place JSE Clear in a financial position to exercise the discretion to apply the JSE Clear liquidity facility contemplated in rule 10.5.1 in circumstances where, following a default, a clearing member is unable to satisfy its obligations in terms of a trade or a position towards its market counterparty, the amount that JSE Clear will pay on behalf of the clearing member to a market counterparty will be limited to:
- 10.5.3.1 the amount that the clearing member has paid to JSE Clear as margin for its obligations as set out in these clearing rules; and/or
  - 10.5.3.2 the amount of the initial margin paid by the exchange members and clients for which the clearing member clears.
- 10.5.4 JSE Clear will have the power and authority to set off any amount that it pays on behalf of a clearing member or on behalf of any other exchange member or client to a clearing member in terms of the JSE Clear liquidity facility against that clearing member's margin or another exchange member or client's initial margin.
- 10.5.5 For the purposes of these clearing rules, the amount that JSE Clear may decide to pay on behalf of a clearing member in settlement of such clearing member's obligations in terms of a trade or position in terms of the JSE Clear liquidity facility provided for in these clearing rules and JSE Clear's obligation to return initial margin to the clearing member, constitute debts that are capable of being set off against one another.



## 10.6 Consequences of default of JSE Clear

10.6.1 Without limiting or detracting from any other remedies and rights which a clearing member, an exchange member or a client of an exchange member may have against JSE Clear, in the event of default by JSE Clear -

10.6.1.1 JSE Clear shall continue to exercise all powers afforded to it by the provisions of the Act and these rules. This will include, but not be limited to, the necessary powers to give effect to the closing out of all positions cleared by JSE Clear at the time of default, to facilitate all parties meeting their obligations to JSE Clear in terms of these clearing rules at the time of, and following, the default, and to meet any of JSE Clear's obligations in terms of these clearing rules that it is able to meet;

10.6.1.2 JSE Clear shall advise an exchange that has appointed JSE Clear as a clearing house that it is in default and instruct the exchange to immediately cease trading in all derivative securities traded on the exchange and cleared by JSE Clear, unless JSE Clear specifically consents to certain trades being executed on the exchange and cleared by JSE Clear if those trades will reduce any obligations owed to or by JSE Clear;

10.6.1.3 JSE Clear shall not accept for clearing any trades executed on the exchange after the instruction to the exchange in rule 10.6.1.2 has been given, except for those trades that JSE Clear has specifically consented to in terms of that rule;

10.6.1.4 at 17h00 on the day of the default ("the termination date"), the positions in each exchange contract of all exchange members and their clients will be marked-to-market in terms of rule 5.3.1;

10.6.1.5 following the mark-to-market process in rule 10.6.1.4, JSE Clear will review the mark-to-market prices and determine, in its opinion, whether those prices correctly and fairly reflect the prices for each derivative security at the relevant time. If JSE Clear determines that the mark-to market price of any derivative security used in the mark-to-market process in rule 10.6.1.4 is not a correct and fair price for the particular derivative security, JSE Clear may adjust the mark-to-market price to a price which it determines, in its opinion, is a correct and fair price for the particular derivative security at the relevant time;

10.6.1.6 within two business days of the termination date or, in exceptional circumstances, such other period as may be determined by JSE Clear which may not exceed ten business days from the

termination date (“the close-out date”), JSE Clear will close out all positions registered in the names of exchange members and their clients at the termination date by cancelling all such positions reflected in the records of JSE Clear at that time, at the mark-to-market prices established in rules 10.6.1.4 and 10.6.1.5;

- 10.6.1.7 notwithstanding the default of JSE Clear, JSE Clear, clearing members, exchange members and clients of exchange members shall remain bound by the rules of JSE Clear and shall remain liable to meet all obligations due in respect of margin, interest payments and clearing fees in terms of rules 5.4, 5.5 and 5.6 respectively following the mark-to-market process in rule 10.6.1.4 and the closing out of positions by JSE Clear in terms of rule 10.6.1.6;
- 10.6.1.8 following the closing out of all positions by JSE Clear in terms of rule 10.6.1.6, the relevant settlement provisions in rule 5.7 will apply. The day on which all net payments to be made in terms of rule 5.7 accrue will be the close-out date;
- 10.6.1.9 if a client of an exchange member, an exchange member or a clearing member is unable to meet their settlement obligations in terms of rule 10.6.1.8, the relevant default provisions in this section 10 of the rules will apply. A clearing member must assume all the unsettled obligations to JSE Clear in terms of these clearing rules of an exchange member with whom it has entered into a clearing agreement and the clients of that exchange member, in the event of a default of the exchange member following the closing out of all positions by JSE Clear in terms of rule 10.6.1.6; and
- 10.6.1.10 once all of the obligations of JSE Clear, clearing members, exchange members and clients of exchange members have been met in terms of these clearing rules following the closing out of all positions by JSE Clear in terms of rule 10.6.1.6, JSE Clear will refund any remaining Default Fund contributions to the relevant parties and will return any remaining securities pledged to JSE Clear in terms of these clearing rules to the relevant clearing members, exchange members and clients.

