

# JSE Clear Board Charter

March 2024

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## 1 Version Control

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## 2 Version History

Version	Date	Summary of changes	Author
1.0	March 2016	Creation of document	Post Trade Services Division
2.0	May 2021	Regular review	JSE Clear Governance and Compliance
3.0	March 2023	Update to section 12 to allow for INEDs to meet independently to make decisions in cases where there are conflicts of interest	JSE Clear Governance and Compliance
4.0	March 2024	Annual review	JSE Clear Governance and Compliance

### 3 Preamble

3.1. JSE Clear Proprietary Limited (“JSE Clear”) is a wholly owned subsidiary of the JSE Ltd (“JSE”). JSE Clear is an Independent Clearing House and Central Counterparty (CCP) as defined in the Financial Markets Act (“FMA”) and is licensed by the Financial Sector Conduct Authority (FSCA). JSE Clear has been appointed as the clearing house and central counterparty of the JSE for all transactions in listed derivatives concluded on the JSE’s markets. The main objective of JSE Clear is to take the necessary and appropriate steps to clear and risk manage transactions in securities listed on the JSE’s Derivatives, Interest Rate and Currency markets as per the terms specified in its rules. Currently the listed securities cleared by JSE Clear are options on futures contracts and futures contracts in the equity derivatives, commodity derivatives, currency derivatives and interest rate derivatives markets of the JSE.

JSE Clear operates as a central counterparty (“CCP”) by interposing itself in terms of its Rules between parties to transactions in listed securities on the markets operated by the JSE. JSE Clear also acts as a trustee in investing funds posted by market participants as collateral for due performance of their obligations on the JSE markets.

The JSE Clear Chief Executive Officer (CEO) has been designated as the officer responsible (“RO”) for ensuring that all services provided by external service providers to JSE Clear are delivered in accordance with contractually agreed service levels.

3.2. The Board of Directors of JSE Clear regard corporate governance as fundamentally important to the achievement of JSE Clear’s mission, its financial objectives and the fulfilment of its corporate responsibilities and are accordingly committed to applying the core governance principles of fairness, accountability, responsibility and transparency in all of JSE Clear’s business dealings with its stakeholders.

3.3. The Board is the focal point of JSE Clear’s corporate governance system and remains ultimately accountable and responsible for the performance and affairs of the clearing house. It should exercise leadership, enterprise, integrity and judgement in directing the clearing house so as to achieve the objects set out in JSE Clear’s Memorandum of Incorporation (“Moi”).

### 4 Aim and Objectives

4.1. The aim of this Board Charter is to set out the parameters within which the Board will operate and to ensure the application of the principles of good corporate governance in all dealings by, in respect and on behalf of JSE Clear.

4.2. This Board Charter sets out the specific responsibilities to be discharged by the Board members collectively, as well as the roles and responsibilities incumbent upon directors as individuals. This Charter does not replace or override any statute or regulation and Directors should refer to the original text of such statute or regulations.

4.3. The Board recognises that with regard to corporate governance, it is critical that substance prevails over form, and in applying the principles contained in this Board Charter the Board will be guided by the principles and

recommendations contained in the King Report on Corporate Governance for South Africa (“King IV”), and the established standards of best governance practice as espoused in the JSE’s Listings Requirements. For the avoidance of doubt, JSE Clear is not subject to the requirements of the JSE Listings Requirements.

## 5 The Role of the Board

- 5.1. Article 11.1.1 of the MoI of JSE Clear vests the management and control of JSE Clear in the Board which has the powers conferred upon it by the relevant legislation, the rules of JSE Clear made in terms of such legislation, and JSE Clear’s MoI.
- 5.2. The Board's primary responsibilities include being the focal point for, and custodian of corporate governance by managing its relationship with the shareholders and other stakeholders of JSE Clear as well as giving strategic direction to JSE Clear, identifying key risk areas and key performance indicators of the clearing house’s business, monitoring investment decisions, considering significant financial matters and risk and, where applicable, industry standards.
- 5.3. The Board should specifically:
  - 5.3.1. retain full and effective control over JSE Clear;
  - 5.3.2. provide effective leadership based on an ethical foundation and ensure that the clearing house’s ethics are managed effectively;
  - 5.3.3. act in the best interest of the clearing house by ensuring that individual directors adhere to legal standards of conduct, are permitted to take legal advice in connection with their duties following an agreed procedure, disclose real or perceived conflicts of interest and deal with them accordingly and deal in securities in accordance with a policy agreed by the Board;
  - 5.3.4. ensure that JSE Clear is seen to be a responsible corporate citizen by having regard to not only the financial aspect of the business of the clearing house but also the impact that business operations have on the environment and the society in which it operates and ensure that the clearing house acts responsibly towards all relevant stakeholders having a legitimate interest in its affairs;
  - 5.3.5. ensure that a comprehensive system of policies and procedures is in place and that appropriate governance structures exist to ensure the smooth, efficient and prudent stewardship of the clearing house. This includes ensuring that internal and external disputes are resolved effectively, and in the best interests of all stakeholders;
  - 5.3.6. ensure an effective compliance framework exists that ensures compliance with all relevant codes, laws and regulations, audit and accounting principles, the MoI of JSE Clear and JSE Clear’s code of ethics and conduct, and such other principles as may be established by the Board from time to time;
  - 5.3.7. be responsible for the governance of risk and regularly review and evaluate the risks to the business of JSE Clear;
  - 5.3.8. ensure the existence of comprehensive and appropriate internal controls to mitigate against risks;
  - 5.3.9. where appropriate, commence business rescue proceedings as soon as it determined that the company is financially distressed;
  - 5.3.10. exercise objective judgement on the business affairs of the clearing house;
  - 5.3.11. identify and monitor non-financial aspects relevant to the business of JSE Clear; and
  - 5.3.12. strive to adhere to the relevant best practices prescribed within the King Code.

- 5.4. Having regard to its role set out in 5.3 above, the Board has defined the following as key issues which the Board must consider in the course of its direction of JSE Clear:
- 5.4.1. reviewing the strategic direction of the clearing house and adopting business plans proposed for the achievement thereof;
  - 5.4.2. approving specific financial and non-financial objectives and policies proposed;
  - 5.4.3. reviewing processes for the identification and management of business risk;
  - 5.4.4. reviewing processes for ensuring compliance by JSE Clear with its key regulatory and legal obligations;
  - 5.4.5. overseeing JSE Clear's performance against agreed targets and objectives; and
  - 5.4.6. overseeing reporting that ensures full and timely disclosure of material matters to relevant stakeholders on the direction, governance and performance of JSE Clear as well as other processes that need reporting and other disclosure requirements.

## **6 Composition of the Board**

- 6.1. JSE Clear has a unitary Board, consisting of a majority of non-executive Directors.
- 6.2. Per the Mol the Board shall consist of not less than seven (7) nor more than eleven (11) directors, the majority of whom shall be independent non-executive directors.
- 6.3. The appointment process for Board members is prescribed by the Mol of JSE Clear.
- 6.4. The Board should collectively contain the skills, experience and mix of personalities appropriate to the strategic direction of the clearing house and necessary to secure its sound performance.
- 6.5. Procedures for the nomination to the Board should be formal and transparent.
- 6.6. It is a fundamental pre-requisite for achieving best practice in corporate governance that Board members be selected and appointed:
  - 6.6.1. on the basis of the particular skills or experience each Board member brings to the Board;
  - 6.6.2. the capacity of each appointee to satisfy the competency requirements necessary for being a director; and
  - 6.6.3. taking cognisance of the race and gender of the candidate to ensure the achievement of demographic equity.
- 6.7. Key qualifications and competencies for membership of the Board are:
  - 6.7.1. the ability to make sensible and informed business decisions and recommendations and the ability to contribute an independent view to matters under consideration and to add value to Board deliberations;
  - 6.7.2. high ethical standards and sound practical sense and the ability to demonstrate a wide, and unfettered, perspective on issues; and
  - 6.7.3. full commitment to furthering the interests of JSE Clear in achieving its goals and, where appropriate, bring the benefit of international experience to the Board.
- 6.8. Every director recognises that his or her primary fiduciary duty is to JSE Clear as an entity and not to the constituency on behalf of which that director may have been appointed. Irrespective of a Board member's

special expertise or knowledge, all members of the Board recognise that they are collectively responsible for the performance of JSE Clear.

## **7 Board Leadership**

7.1. JSE Clear's philosophy of Board leadership is premised on the principle that the running of the Board of directors and the executive responsibility for the running of the clearing house's business are two separate and distinct tasks.

7.2. The roles of Chairman and CEO shall be separate, with responsibilities divided between them.

7.3. The Chairman

7.3.1. The Chairman shall be an independent non-executive director.

7.3.2. The Chairman shall hold office for a term of three (3) years from the date of appointment, and may be appointed for (3) three consecutive terms, unless the Board determines otherwise.

7.3.3. The Chairman shall preside over meetings of the Board and shall be responsible for ensuring the integrity and effectiveness of the Board governance process.

7.3.4. The Chairman must ensure that the content and order of the Board agenda is appropriate, that Board members are properly briefed on issues arising at Board meetings and that all relevant and available information on an issue is placed before the Board in order that members may make informed decisions.

7.3.5. The Chairman shall be responsible for maintaining regular dialogue with the CEO over all operational matters and will consult with the remainder of the Board promptly over any matter that gives him or her cause for concern.

7.3.6. The Chairman will act as facilitator at meetings of the Board to ensure that no director dominates the discussion, that relevant discussion takes place, that the opinions of all directors relevant to the subject under discussion are solicited and freely expressed, and that Board discussions lead to appropriate decisions.

7.3.7. The Chairman will seek a consensus in the Board but may, where considered necessary, call for a vote in which event the decision of an ordinary majority of the Board shall prevail.

7.3.8. The Chairman shall act as an informal link between the Board and the CEO, shall be kept informed by the CEO on all important matters between Board meetings, and shall be available to the CEO to provide counsel and advice where appropriate.

## **8 The Role of the Chief Executive Officer**

8.1. As provided for in the Mol, the Board may appoint a managing Director or Chief Executive Officer, who shall be an executive Director of JSE Clear, and who shall be responsible for managing the business of JSE Clear.

## **9 Induction of New Board Members**

- 9.1. On appointment, new Board members will undergo an induction programme aimed at facilitating their understanding of JSE Clear and the business environment and markets in which it operates. The induction programme will entail at least the following:
- 9.1.1. background on JSE Clear (including its Mol, ownership rules, regulations and applicable laws, Board and governance structures, membership, and an overview of its key policies and processes);
  - 9.1.2. guidance on the business of the clearing house;
  - 9.1.3. instruction in the key financial statements (i.e. annual accounts, directors' reports, trends of the key financial ratios and financial performance of the business);
  - 9.1.4. a clear identification of reciprocal expectations on appointment (by way of discussions with the Chairman with regards to the director's role, potential contributions and particular knowledge, the identification of any gaps in knowledge of board or governance procedures where training may be required, and a clear understanding of the director's own expectations from the Chairman and the Board as a whole);
  - 9.1.5. familiarisation with JSE Clear's operations, and its business environment; and
  - 9.1.6. formal induction in terms of their fiduciary duties and responsibilities.

## 10 Undertakings by Board Members

- 10.1. Every Board member shall:
- 10.1.1. at all times conduct him or herself in a professional manner, having due regard to his or her fiduciary duties and responsibilities to JSE Clear;
  - 10.1.2. uphold the core values of integrity and enterprise in all dealings on behalf of JSE Clear;
  - 10.1.3. ensure that he or she has sufficient time available to devote to their duties as Board members. Directors shall notify the Company Secretary as soon as practicable after the acceptance of any additional directorships or external appointments, following their appointment to the Board of JSE Clear;
  - 10.1.4. be diligent in discharging his or her duties to the clearing house and shall seek to acquire a broad knowledge of the business of JSE Clear so as to be able to provide meaningful direction to it;
  - 10.1.5. regularly attend meetings of the Board and any Board committees on which he or she serves and will tender his or her resignation in the event that the Board Member is unable to attend three consecutive Board or Board Committee meetings; and
  - 10.1.6. endeavour to keep abreast of changes and trends in the business environment and markets, including changes and trends in the economic, political, social and legal climate generally, which may impact the business of JSE Clear.
- 10.2. Every Board member should, in addition, be aware of and conversant with the statutory and regulatory requirements affecting the direction of the clearing house, including, inter alia:
- 10.2.1. The Mol of JSE Clear;
  - 10.2.2. Financial Markets Act, No. 19 of 2012; and
  - 10.2.3. such other national legislation and regulations governing the operation and conduct of JSE Clear.

## 11 Term of Board Appointment



- 11.1. The Board recognises that Board continuity, subject to performance and eligibility of directors for re-election, is imperative to the proper governance of JSE Clear.
- 11.2. Directors shall hold office for a three-year term, and if eligible, may be re-elected by the Shareholders of JSE Clear in accordance with the provisions of the MoI.
- 11.3. No director shall be appointed for more than three (3) successive terms (i.e. a combined term of 9 years), unless otherwise determined by the Board.
- 11.4. The Board shall seek to maintain the optimum balance between the need for board continuity and experience, the appropriate mix amongst directors of skills and experience, board diversity and the desirability for the board to be infused with new personalities and fresh ideas.
- 11.5. Non-executive directors appointed to fill a vacancy will only hold office until the next annual general meeting, at which they will retire and become available for election.
- 11.6. The termination of an employment contract of an executive director will result ipso facto in the termination of his or her membership of the Board, unless the Board determines otherwise.
- 11.7. Every year, non-executive directors classified as “independent” may undergo an evaluation of their independence by the chairman and the board. Independence should be assessed by weighing all relevant factors that may impair independence. The classification of directors in the annual financial statements, as independent or otherwise, should be done on the basis of this assessment.
- 11.8. Independent non-executive directors may serve longer than nine years if, after an independence assessment by the board, there are no relationships or circumstances likely to affect, or appearing to affect, the director’s judgement. The assessment should show that the independent director’s independence of character and judgement is not in any way affected or impaired by the length of service.

## **12 Board Governance**

### **12.1. Board Meetings**

- 12.1.1. Board members will use their best endeavours to attend all Board meetings and to read all necessary documentation and prepare themselves thoroughly in advance of Board meetings. Board members are expected to participate fully, frankly and constructively in Board discussions and other activities and to bring the benefit of their particular knowledge, skills and abilities to Board discussions.
- 12.1.2. Board members who are unable to attend shall advise the Chairman or the Company Secretary in advance of a meeting.
- 12.1.3. The Board should allow every director to play a full and constructive role in its affairs, within the limitations imposed by the MoI of JSE Clear, all applicable legislation, and Board and/or shareholders’ resolutions specifically regulating the powers and responsibilities of directors.
- 12.1.4. As and when required, the Board shall:

- 12.1.4.1. review and evaluate the present and future strengths, weaknesses and opportunities in respect of the clearing house. Comparisons with competitors and best practice are important elements of this process;
- 12.1.4.2. review and approve JSE Clear's financial objectives, plans and actions and significant allocation and expenditure;
- 12.1.4.3. review JSE Clear's goals and the strategies for achieving these;
- 12.1.4.4. approve the annual budget;
- 12.1.4.5. approve the preliminary and half-yearly financial statements, annual report and other reports to shareholders;
- 12.1.4.6. review the Board's composition, structure and succession;
- 12.1.4.7. review the audit requirements;
- 12.1.4.8. review the performance of, necessity for and composition of the Board's committees;
- 12.1.4.9. review risk management policies and internal controls, including compliance with legal and regulatory requirements;
- 12.1.4.10. review JSE Clear's codes of conduct and ethical standards;
- 12.1.4.11. review shareholder, client and other relevant stakeholder relations; and
- 12.1.4.12. deal with such other matters as may be appropriate.

## 12.2. Frequency and Quorum

- 12.2.1. Meetings of the Board will be held at such time and at such venue as the Board deems appropriate, subject to a minimum of four (4) meetings per year.
- 12.2.2. Reasonable notice in writing shall be given to all Board members.
- 12.2.3. The quorum for a meeting of the Board shall be a majority of Directors from time to time, subject to any provisions of the Mol.
- 12.2.4. In addition to the rules of procedure set out in this Board Charter, meetings and proceedings of the Board will be governed by the Mol of JSE Clear.

## 12.3. Agenda, Meeting Papers and Access to Information

- 12.3.1. The Chairman, together with the Chief Compliance Officer, establish appropriate standards for preparation of Board papers and reports.
- 12.3.2. The Chairman ensures that an agenda is prepared prior to the meeting and that all issues requiring attention are suitably dealt with. The Chairman shall have effective authority over the Board agenda, however, any Board member may request, through the Chief Compliance Officer, that any matter requiring board deliberation be added to the agenda.
- 12.3.3. The Chief Compliance Officer circulates the agenda and other meeting papers to the Board members at least five (5) working days before the date of the meeting.
- 12.3.4. Board members shall be entitled to have access, at reasonable times, to all relevant information to assist them in the discharge of their duties and responsibilities and to enable them to take informed decisions. Board members shall, however, strictly observe the provisions of all applicable legislation related to the use and confidentiality of information obtained by virtue of their position as directors of JSE Clear.

## 12.4. Minutes and Retention of Meeting Papers

- 12.4.1. Minutes of the Board meeting will, as far as is reasonably possible, be circulated to all members of the Board by the Company secretary one (1) month post each Board meeting, after review and approval by the Chairman.
- 12.4.2. The Board agrees that the maintenance of the confidentiality of Board proceedings is of paramount importance. In order to facilitate the maintenance of confidentiality, all meeting papers and submissions of a sensitive nature are distributed via Diligent.
- 12.4.3. The Company Secretary keeps records of all Board submissions and papers, and of all material presented to the Board together with the minutes of meetings. These records will be accessible to all directors upon request.

#### 12.5. Independent Professional Advice

- 12.5.1. The Board shall approve a procedure in terms of which any director may take independent professional advice, at the expense of JSE Clear, where there is doubt as to whether a proposed course of action is consistent with his or her fiduciary duties and responsibilities.

#### 12.6. Conflicts of Interest

- 12.6.1. Board members must inform the Board of any conflicts or potential conflicts of interest they may have in relation to particular items of business, as soon as he or she becomes aware of such conflict or potential conflict.
- 12.6.2. Directors should recuse themselves from discussions or decisions on matters in which they have a conflict of interest, unless the Board otherwise agrees.
- 12.6.3. Directors are required to act in the best interests of JSE Clear and not the respective institution that they represent. In a scenario where a matter brought to the Board creates a real or perceived conflict amongst the non-independent directors, specifically as a result of the inherent nature of their interactions with either JSE Clear or the JSE, these non-independent directors will be required to recuse themselves and the Independent Non-Executive Directors of JSE Clear will be able to meet to make independent decisions on said matter (including decisions that may require a vote).

### 13 Board Committees

- 13.1. The Board may form such committees as may be necessary to facilitate efficient decision-making and to assist the Board in the execution of its duties, power and authorities. The Board has established a standing Board Committee – the JSE Clear Risk Management Committee – to oversee all matters relating to risk management within JSE Clear. In accordance with section 94 of the Companies Act, 2008, the Group Audit Committee of JSE Limited shall serve as the Audit Committee of JSE Clear. Other Board Committee established by the Group, such as for remuneration, nomination, regulation and social & ethics matters, shall serve as Board Committees for JSE Clear.
- 13.2. Each committee of the Board shall be constituted with formal Terms of Reference, which shall determine inter alia, the membership, purpose, powers and authority of the committee, the scope of its mandate and its relationship to the board.

13.3. The delegation of the Board's authority in certain defined areas to committees constituted in terms of this cause will absolve neither the Board, nor its directors, from their respective accountability to ensure the due discharge of their duties and responsibilities.

#### **14 Matters Reserved for the Board**

14.1. The following matters shall be reserved for decision by the Board, supported by any recommendation as may be made from time to time by the committees of the Board (as appropriate):

- 14.1.1. the approval of the strategy, business plans and annual budgets and of any subsequent material changes in strategic direction or material deviations in business plans;
- 14.1.2. the adoption of any significant change or departure in the accounting policies and practices of JSE Clear and its subsidiaries;
- 14.1.3. the approval of annual financial statements and the approval of interim reports;
- 14.1.4. any decision regarding the incorporation of JSE Clear;
- 14.1.5. the convening of general meetings of shareholders of JSE Clear;
- 14.1.6. appointments to and removals from the Board;
- 14.1.7. the appointment and approval of Terms of reference of and changes in the composition of the committees of the Board as are established from time to time;
- 14.1.8. the appointment, removal or replacement of the Company Secretary;
- 14.1.9. the frequency of meetings of the Board; and
- 14.1.10. based on the recommendations of the Risk Management Committee, the adoption of appropriate risk management and internal control strategies.

#### **15 Board Evaluation and Performance**

15.1. In line with the recommendations of King IV, the Board shall endeavour to evaluate its performance from time to time and to benchmark its performance against international best practice.

15.2. The Chairman, if necessary with the guidance of the Board shall appraise the performance of the Chief Executive Officer, at least annually, on the basis agreed in terms of the relevant employment contract. The evaluation should be based on objective criteria including performance of the business, accomplishment of long-term strategic objectives, and other similar issues.

15.3. The Board shall also endeavour to regularly review the performance of each of the Board committees to ensure that their composition, mandate and authority enables them to provide effective assistance to the Board in the key areas in which they function.

#### **16 Internal Audit**

16.1. The definition of Internal Audit as applied by the Institute of Internal Auditors is as follows:

“Internal audit is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a

systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.”

16.2. The internal audit function is recognised to be an integral part of the governance structures of JSE Clear and functions under policies established by the Board. The Head of the JSE’s Internal Audit function is responsible to providing the Board with:

- 16.2.1. assurance that the processes exist which are adequate to identify and monitor significant risks;
- 16.2.2. confirmation of the effective operation of the established internal control systems;
- 16.2.3. ongoing development and evaluation of improved controls; and
- 16.2.4. credible processes for feedback on risk management and assurance.

## **17 Company Secretary**

17.1. The Company Secretary is critically important to the proper governance of the clearing house and it is the responsibility of the Board to ensure that the Company Secretary remains capable to fulfil the function for which he or she has been appointed. The appointment and removal of the Company Secretary is a matter for the Board as a whole.

17.2. The Company Secretary shall work closely with the Chairman and the CEO, to ensure the proper and effective functioning of the Board and the integrity of the Board governance process.

17.3. In addition to the statutory duties of the Company Secretary, he or she must provide the Board as a whole and the Board members individually with detailed guidance as to how their responsibilities should be properly discharged in the best interests of JSE Clear.

17.4. Particularly in relation to the Board and its obligations as set out in this Board Charter, the Company secretary shall be responsible inter alia for:

- 17.4.1. ensuring that the MoI of JSE Clear and this Board Charter are both followed and reviewed regularly, as circumstances warrant;
- 17.4.2. providing a central source of guidance and advice to the Board and its committees primarily in respect of procedural and compliance issues, including compliance with statutory regulations and with King IV;
- 17.4.3. ensuring that each Board member is made aware of and provided with guidance as to their duties, responsibilities and powers as directors of JSE Clear; and
- 17.4.4. keeping abreast of, and informing the Board of current governance thinking, governance best practice, both locally and internationally.

17.5. All Board members shall have unlimited access to the Company Secretary.

## **18 Process for Review of Board Charter**

18.1. This Board Charter shall be reviewed by the Board as and when necessary to ensure that it remains relevant to the business objectives of JSE Clear. The Company Secretary in consultation with the Chairman shall initiate the review process.