

PROPOSED AMENDMENTS TO THE JSE DERIVATIVES RULES

General explanatory notes:

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

Proposed amendments to the JSE Derivatives rules

“FSR Act” means the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);

1.41.4 Ombud Committee

1.41.4.1 The SRO Oversight Committee shall appoint an Ombud Committee to consider the appointment of an ombud in accordance with the FSR Act.

1.41.4.2 The functions of the Ombud Committee shall be to -

1.41.4.2.1 appoint an ombud in accordance with rule 17.100.1;

1.41.4.2.2 monitor and oversee the operation of the JSE Ombud Scheme, including in respect of the terms and conditions of the engagement of the ombud, such as remuneration and other benefits; and

1.41.4.2.3 terminate the appointment of the Ombud after the resolution of a dispute and/or if there are valid grounds to do so.

1.41.4.3 The Ombud Committee shall consist of -

1.41.4.3.1 the Legal Counsel of the JSE; and

1.41.4.3.2 the Company Secretary of the JSE.

Complaints

17.10 Client complaints

17.10.1 For the purposes of Section 17 of the rules, a client complaint is defined as any complaint in relation to the provision of regulated services, in which the client alleges that he has suffered, or is likely to suffer, financial prejudice as a result of the member –

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

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

17.10.1.3 acting dishonestly, negligently or recklessly; or

17.10.1.4 treating the client unreasonably or unfairly.

Section 17 deleted in entirety and replaced with effect from 1 August 2005
New 17.10.1 introduced with effect from 25 June 2007
17.10.1 renumbered 17.10.1.1 with effect from 25 June 2007
17.10.2 renumbered 17.10.1.2 with effect from 25 June 2007
17.10.3 renumbered 17.10.1.3 with effect from 25 June 2007
17.10.4 amended and renumbered 17.10.1.4 with effect from 25 June 2007

- 17.10.2 Every member must establish and maintain appropriate procedures for the handling of client complaints.

17.20 Internal complaint handling procedures

- 17.20.1 A member's internal complaint handling procedures must provide for –
- 17.20.1.1 information regarding the JSE Ombud Scheme to be provided to a client at the time that the member notifies the client of the member's decision in terms of rule 17.20.1.5, which information must include the existence of the Scheme, the Scheme's contact details, and the procedure for lodging an unresolved complaint with the Scheme in terms of rule 17.60;
 - 17.20.1.~~1~~2 the receipt of oral or written complaints;
 - 17.20.1.~~2~~3 the appropriate investigation of complaints;
 - 17.20.1.~~3~~4 an appropriate decision-making process in relation to the response to a client complaint;
 - 17.20.1.~~4~~5 notification of the decision to the client; and
 - 17.20.1.~~5~~6 the recording of complaints.
- 17.20.2 A member's internal complaint handling procedures must be designed to ensure that –
- 17.20.2.1 all complaints are handled fairly, effectively and promptly;
 - 17.20.2.2 recurring or systemic problems are identified, investigated and remedied;
 - 17.20.2.3 the number of unresolved complaints to be referred to the JSE in terms of the rule 17.60 are minimised;
 - 17.20.2.4 complaints are investigated by an employee of sufficient competence who, where appropriate, was not directly involved in the matter which is the subject of a complaint;
 - 17.20.2.5 the employee responsible for the resolution of complaints has the necessary authority to resolve complaints or has ready access to an employee who has the necessary authority; and
 - 17.20.2.6 relevant employees are aware of the member's internal complaint handling procedures and comply with them.

17.30 Timeous response to complaints

A member must respond to a client complaint within 4 weeks of receiving the complaint in terms of rule 5.20.1.1 or, within such period, provide the complainant with an appropriate explanation as to why the member is not, at that time, in a position to respond and must indicate by when the member will respond.

17.40 Redress

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

17.50 Recording of complaints

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

17.60 Unresolved client complaints

- 17.60.1 A client complaint will be deemed to be unresolved if the complainant is not satisfied with the resolution of the complaint proposed by the member.
- 17.60.2 A complainant may lodge an unresolved complaint, in writing, with the Director: Market Regulation giving full particulars of the matter concerned.
- 17.60.3 In order for an unresolved complaint to be considered by the JSE Market Regulation Division the complaint must be lodged with the Director: Market Regulation within 4 weeks of the receipt by the complainant of the member's response referred to in rule 17.30 and within 6 months of the conduct by the member giving rise to the complaint.
- 17.60.4 An unresolved complaint which is lodged subsequent to the period referred to in rule 17.60.3 will be considered, provided that failure to lodge the complaint within the relevant period was through no fault of the client.
- 17.60.5 The JSE Market Regulation Division may request the member and the complainant to provide copies of all relevant correspondence and documentation that is required to review the complaint.
- 17.60.6 The JSE Market Regulation Division will endeavour to facilitate a resolution of the complaint between the member and the complainant.
- 17.60.7 If the JSE Market Regulation Division is unable to facilitate a resolution of the complaint within 4 weeks of lodgement of the complaint with it, the Director: Market Regulation will refer the unresolved complaint to the Company Secretary of the JSE to be dealt with in terms of the dispute resolution rules.

Disputes

17.70 Applicability of dispute resolution rules

- 17.70.1 Rules 17.70 to 17.120 (“the dispute resolution rules”) are intended to facilitate the equitable and expeditious settlement of disputes that –
 - 17.70.1.1 a client has with a member, in respect of an unresolved complaint;
 - 17.70.1.2 a member has with another member, in respect of transactions in derivative securities; or
 - 17.70.1.3 a member has with a client, in respect of transactions in derivative securities.
- 17.70.2 The dispute resolution rules only apply –
 - 17.70.2.1 where the amount in dispute is in excess of R2 000;
 - 17.70.2.2 where the dispute is not the subject of existing litigation;
 - 17.70.2.3 in the case of a dispute that a client has with a member, where the amount in dispute either does not exceed R500 000 or, where the amount in dispute exceeds R500 000, if the consent of both parties to proceed has been obtained;
 - 17.70.2.4 in the case of a dispute that a member has with another member, if the members are able to evidence to the satisfaction of the Director: Market Regulation that reasonable endeavours have been made by the said members to resolve the dispute, and if the consent of both parties to proceed has been obtained;
 - 17.70.2.5 in the case of a dispute that a member has with a client, if the consent of the client to proceed has been obtained.

17.80 Reporting of a dispute

- 17.80.1 An unresolved client complaint that the JSE Market Regulation Division is not able to resolve in terms of rule 17.60 will be reported as a dispute by the Director: Market Regulation to the Company Secretary of the JSE if the client elects to pursue the dispute resolution process.
- 17.80.2 A dispute between two members in respect of transactions in derivative securities must be reported in writing, by either member, to the Company Secretary of the JSE, within 1 week of the circumstance giving rise to the dispute having arisen.
- 17.80.3 A dispute that a member has with a client in respect of transactions in derivative securities must be reported in writing, by the member, to the Company Secretary of the JSE, within 6 months of the circumstance giving rise to the dispute having arisen.
- 17.80.4 The Company Secretary of the JSE may, at any time, request any of the parties to a dispute to furnish him with such further information relating to the dispute as may be required.

17.90 Declaration of a dispute

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

17.100 Consideration by an ombud

- 17.100.1 The Ombud Committee [JSE] will appoint an ombud to consider a dispute, who is a retired judge of the High Court of South Africa or a Senior Counsel.
- 17.100.2 Within 3 weeks of the dispute having been referred to the ombud for consideration, the claimant must set out the subject matter of the claim in a written statement, including all the material facts, and furnish this statement, along with all relevant documentation upon which the claim is based, to the ombud.
- 17.100.3 The ombud may require the claimant to expand upon his statement of claim or provide further evidence or particulars as he deems necessary within such reasonable time as is specified by the ombud.
- 17.100.4 The other party to the dispute, hereafter referred to as the defendant, must be provided with a copy of the written statement of claim by the ombud. The defendant must furnish the ombud with its written response to the statement of claim within 3 weeks of having received such. In addition to the defendant's written response, the defendant must attach thereto all other evidence relating to the dispute.
- 17.100.5 The ombud may require the defendant to expand upon its response or provide further evidence or particulars as he deems necessary within such reasonable time as specified by the ombud and may require the claimant to provide a written reply to the defendant's response within such reasonable time as he may specify.
- 17.100.6 The ombud may at his discretion decide that a number of disputes based on similar occurrences or similar facts be consolidated and treated as a single dispute.
- 17.100.7 After ascertaining the parties availability, the ombud will, subject to rule 17.100.8, furnish the parties with written notification of the date on which the dispute will be heard.
- 17.100.8 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 17.100.2 to 17.100.5 without the necessity of a hearing.
- 17.100.9 The dispute resolution proceedings will be conducted without legal representation of any of the parties, unless the ombud in his sole discretion decides otherwise.
- 17.100.10 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.
- 17.100.11 The ombud must apply principles of equity, where appropriate, when dealing with a dispute.
- 17.100.1^[1]² The ombud will, after having considered the information as presented to him by the parties and such other information as he may request, make his decision within 3 weeks of having considered the dispute. The ombud must, at the request of any party to the dispute, provide written reasons for his decision.
- 17.100.1^[2]³ The ombud's decision will be furnished to the parties in writing.
- 17.100.1^[3]⁴ The ombud is not obliged to provide a ruling on a dispute if he is of the view that the dispute is of such a complex nature that it cannot be resolved expeditiously by means of the dispute resolution process and can only be properly considered by a court of law.

17.100.4 amended with effect from 25 June 2007

17.100.7 amended with effect from 25 June 2007

New 17.100.8 introduced with effect from 25 June 2007

17.100.8 renumbered 17.100.9 with effect from 25 June 2007

17.100.9 renumbered 17.100.10 with effect from 25 June 2007

17.100.1[4]5 Any decision made in terms of rule 17.100.1[2]3 must be complied with by the party against whom the decision is made within seven days of the decision having been made by the ombud.

17.100.1[5]6 Unless the JSE, the ombud and the parties to the dispute agree otherwise, the identity of the parties, the nature of the evidence and the details of the ombud's deliberations and finding, and all other information pertaining to the proceedings will be kept confidential by all parties thereto, unless disclosure by the JSE is required by law.

17.100.17 The ombud's engagement may be terminated by the Ombud Committee in accordance with rule 1.41.4.2.3.

17.110 Costs of the proceedings

17.110.1 The parties to any dispute resolution proceeding in terms of rule 17.100 may be required to pay to the JSE, before the proceedings commence, such amount as the JSE may determine as a deposit to cover a portion of the costs of the proceedings.

17.110.2 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.

17.120 Limitation of Liability

No officer, employee or representative of the JSE or any member of the controlling body, or the ombud appointed in terms of these rules shall be 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 rule 17.

17.130 Member complaints against the JSE

17.130.1 Subject to rule 17.130.2, if a member wishes to lodge a complaint against the JSE in respect of the exercise by the JSE of any exchange functions in terms of section 10 of the Act and the member requires a written response to their complaint, the member should lodge the complaint in writing with the JSE Company Secretary.

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

17.130.3 The JSE or the Chairman of the SRO Oversight Committee will respond to a complaint received in terms of rule 17.130.1 or 17.130.2 respectively within 4 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.

Old 17.110.1 deleted with effect from 25 June 2007

17.110.2 amended and renumbered 17.110.1 with effect from 25 June 2007

17.110.3 deleted with effect from 25 June 2007

17.110.4 renumbered 17.110.2 with effect from 25 June 2007

17.120 replaced with effect from 25 June 2007

17.130 introduced with effect from 28 March 2014.