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## GENERAL NOTICE

### NOTICE 689 OF 1990

#### DEPARTMENT OF FINANCE

#### THE SOUTH AFRICAN FUTURES EXCHANGE

#### NOTICE REGARDING PUBLICATION OF RULES

1. In terms of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), it is hereby notified that the Registrar of Financial Markets has granted a certificate authorising the issue of a financial market licence to the South African Futures Exchange ("the Association") whose address is 32 Diagonal Street, Johannesburg.
2. The rules of the Association will be open for inspection by the public at:
  - 2.1 TRANSVAAL—The South African Futures Exchange, Seventh Floor, 32 Diagonal Street, Johannesburg.
  - 2.2 CAPE TOWN—The South African Library, Queen Victoria Street, Cape Town.
  - 2.3 O.F.S.—Municipal Library, corner of Westburg and Charles Streets, Bloemfontein.
  - 2.4 NATAL—Municipal Library, Smith Street, Durban.
3. In terms of the said Act all interested persons (other than members of the Association) who have any objections to the rules are hereby called upon to lodge their objections with the Registrar of Financial Markets, Private Bag X238, Pretoria, 0001, within a period of 14 days from date of this notice.

#### RULES OF THE SOUTH AFRICAN FUTURES EXCHANGE

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**PART 7— ARBITRATION RULES****PART 8— FIDELITY FUND****PART 9— REGISTRAR'S POWERS TO HALT TRADING****PART 1— GENERAL****1.1 Interpretations**

1.1.1 In these rules, unless otherwise clearly indicated by, or inconsistent with, the context, the following terms shall have the meanings as are assigned to them hereunder, namely—

- “agent” means a broking member who may enter into a trade on behalf of a client or clients;
- “the Act” means the Financial Markets Control Act, No. 55 of 1989, as amended, and includes any regulations promulgated thereunder from time to time;
- “broking member” means a member who may trade in terms of these rules for its own account with members or with clients or on behalf of clients, and has the same meaning as a financial instrument trader as defined in the Act;
- “business day” means any day except a Saturday, Sunday or public holiday or any other day declared not to be a business day in terms of rule 5.1;
- “chief executive officer” means the person who is for the time being appointed by the executive committee as executive officer of the Exchange or in his absence, the deputy chief executive officer as contemplated by the Act and by the constitution;
- “to clear” or “clearing” means the matching of a trade by the clearing house in terms of these rules by means of which the clearing house, in respect of such trade, takes an equal and opposite position to each party to the trade by the entering into two new trades with those parties by the process of substitution, which shall be deemed to have occurred in terms of these rules, whereupon all obligations arising from such cleared trades are guaranteed by a clearing member;
- “clearing agreement” means a written agreement entered into between a clearing member and a non-clearing member in terms of which the clearing member undertakes, inter alia, to report for clearing to the clearing house all trades made or entered into by the non-clearing member, the basic terms and conditions of which agreement shall be prescribed by resolution from time to time;
- “clearing house” means any body corporate or unincorporated association or the integral part of the Exchange, any of which is for the time being appointed by the executive committee to clear all trades and to provide such services which may be required by the Exchange as contemplated by the Act, the constitution and these rules;
- “clearing house agreement” means the written agreement to be entered into between the clearing house and a clearing member, in terms of which the clearing member guarantees to the clearing house the fulfilment of all obligations which may arise from all trades cleared through the clearing member, the basic terms and conditions of which agreement shall be prescribed by resolution from time to time;
- “clearing member” means a person admitted by the executive committee as a member of the Exchange which person shall be empowered to report all trades entered into with or on behalf of a non-clearing member, with whom it has entered into a clearing agreement, or with or on behalf of a client, or with a client of such non-clearing member, all in accordance with these rules, which person shall at its election also be either a broking member or a non-broking member;

- “client” means any person who is not a member but who trades with a member and is registered as a client in terms of rule 5.3;
- “the client agreement” means the agreement to be entered into between a member and a client, before the member shall be entitled to trade on behalf of or with a client, the basic terms and conditions of which agreement shall be prescribed by resolution from time to time;
- “to close” or “closing” or “closing out” means the effective cancellation of a position in one direction with an equal and opposite position;
- “compliance officer” means, in relation to a member which is a body corporate or partnership, the person appointed in terms of rule 2.7.1.1 to ensure compliance by that member with the provisions of the Act, the constitution and these rules, or in his absence his alternate appointed in terms of rule 2.7.1.2;
- “compliance and surveillance committee” means the committee formed by the executive committee to perform the functions referred to in rule 6.10;
- “the constitution” means from time to time, the constitution of the Exchange existing at that time;
- “contract” means a contract entered into in the terms of an Exchange Contract where at least one party to the contract is a member acting either as a principal or as an agent, in accordance with these rules;
- “day” means any calendar day;
- “dealer” means a member who is a natural person and, in relation to a member who is a body corporate or partnership, a person registered in terms of rule 2.7.1.5 primarily for the purpose of trading;
- “dispute” means any dispute or counter dispute which may arise at any time between one or more of the parties referred to in rule 7.3 in regard to any of the parties rights and obligations arising from the Act, the constitution and these rules, or from any trade entered into, or which it is alleged has been entered into, in terms of these rules;
- “Exchange Contract” means at any time either —
- (a) a futures contract; or
  - (b) an option contract,
- where the expiry month relating to such futures or option contract is specified;
- “exchange seat” means a right conferring membership of the Exchange upon the registered holder or lessee thereof;
- “expiry month” means with respect to a futures or options contract the month in which the positions in such Exchange Contracts shall expire in accordance with rule 5.5.3;
- “the executive committee” means as contemplated by the Act, the executive committee of the Exchange elected in terms of the constitution to manage the affairs of the Exchange;
- “fidelity fund” means the fund established by the executive committee in terms of Part 8 of these rules;
- “financial exchange” means an association to which a financial market licence has been issued in terms of the Act;
- “financial instrument” means —
- (a) a futures contract;
  - (b) an option contract;
  - (c) loan stock; or
  - (d) any other instrument declared by the Registrar by notice in the *Government Gazette* to be a financial instrument;
- “financial market” means a market for the carrying on of the business of buying and selling financial instruments, taking place —
- (a) on an Exchange or at any other place; or
  - (b) by means of any trading facility;
- “financial market licence” means a licence issued in terms of the Act to carry on the business of a financial market;
- “the floor” means the place designated by the executive committee from time to time where members may congregate for the purpose of trading;



- "futures contract" means a contract, the terms and formal requirements of which are standardised and published by the executive committee from time to time, imposing an obligation on a person to make or accept delivery of corporeal or incorporeal things on a future date at an agreed price, and which is included in the list of financial instruments to be kept by the executive committee in terms of the Act;
- "initial margin" means the amount determined and published from time to time by the executive committee to be paid to the clearing house when a position is opened or increased, which amount shall be deposited with the clearing house and may be adjusted from time to time subject to the approval of clearing members given at a general meeting of those members;
- "lessee" means a member who leases a seat from another member in terms of rule 3.8;
- "lessor" means a member who leases a seat to another member in terms of rule 3.8;
- "long position" means with respect to a futures contract the number of Exchange Contracts that impose upon the party in whose name the position is registered by the clearing house the obligation to accept delivery of the underlying instruments or to pay an amount of money if the price or value of the underlying instrument decreases relative to the agreed price or value, and which entitles the party to receive an amount of money if the price or value of the underlying instrument increases relative to the agreed price or value or, with respect to an option contract, the number of Exchange Contracts that impose upon the party in whose name the position is registered by the clearing house, the right to make or accept delivery of the underlying instrument or to receive payment of an amount of money in the event that the price or value of the underlying instrument has increased or decreased relative to the agreed price or value at the time that the option is exercised or expires;
- "margin" means either initial margin or variation margin or any other amount determined from time to time by the executive committee to be paid in respect of a position;
- "market" means the futures and options market administered by the Exchange;
- "mark to market" means the repricing to current market value of each Exchange Contract by the clearing house at the close of each business day or at any other point in time as the executive committee may in its discretion determine and as more fully defined in rule 5.11;
- "to match" means the procedure determined by the executive committee from time to time to ensure that a trade has been properly concluded and recorded in terms of these rules;
- "member" means a member of the Exchange regardless of the class of members to which that member has been admitted;
- "membership committee" means the committee formed by the executive committee to perform the functions referred to in rule 2.12;
- "non-broking member" means a member who may trade with members for its own account but not with or on behalf of clients, and has the same meaning as a financial instrument principal as defined in the Act;
- "non-clearing member" means any person admitted by the executive committee to membership of the Exchange who is not a clearing member but who shall be either a broking member or a non-broking member;
- "option contract" means a contract, the terms and formal requirements of which are standardised and published by the executive committee from time to time, conferring a right on a person to make or demand delivery of corporeal or incorporeal things on or before a future date at an agreed price, and which is included in the list of financial instruments to be kept by the executive committee in terms of the Act;
- "position" means either a long or short position;
- "prescribed agreement" means collectively the clearing agreement, the clearing house agreement and the client agreement;
- "proprietary position" means a position registered by the clearing house in the name of a member for its own account;
- "the Registrar" means the Registrar of Financial Markets appointed in terms of the Act;
- "regulations" means any regulations which may be made by the Minister in terms of section 3 of the Act;
- "representative" means, in relation to a member who is a body corporate or partnership, the person appointed in terms of rule 2.7.1.3 to represent and stand for election to the executive committee as that member's representative;
- "report" or "to report" means either when a clearing member reports a trade to the clearing house for clearing or alternatively when a non-clearing member reports a trade directly to the clearing house for clearing with the consent of the clearing member in terms of rule 5.9;

"resolution" means any resolution adopted in terms of these rules by the executive committee from time to time to regulate the implementation of these rules and the affairs of the Exchange;

"rules" means the rules of the Exchange embodied in this document, including from time to time any alterations or additions which may be effected thereto;

"SAFEX" or "the Exchange" means the South African Futures Exchange;

"secretary" means the secretary of the Exchange;

"settlement period" means the period determined by the executive committee during which margins shall be paid by the clearing member to the clearing house;

"short position" means with respect to a futures contract the number of Exchange Contracts that impose upon the party in whose name the position is registered by the clearing house, the obligation to make delivery of the underlying instruments or to pay an amount of money if the price or value of the underlying instrument increases or which entitles the party to receive an amount of money if the price or value of the underlying instrument decreases, or with respect to an option contract the number of Exchange Contracts that impose upon the party in whose name the position is registered by the clearing house, the obligation to make or accept delivery of the underlying instrument or to make payment of an amount of money in the event that the price or value of the underlying instrument has increased or decreased relative to the agreed price when the option is exercised or expires;

"screens" means the computer screens and/or systems designated by the executive committee which—

- (a) dealers may use to display the prices at which they intend to trade;
- (b) dealers may use to communicate with each other for the purpose of trading; and
- (c) the executive committee may use to display notices to members;

"trading" or "to trade" means in each case to enter into a contract in the terms of an Exchange Contract where at least one party to the contract is a member acting either as a principal or as an agent as prescribed by these rules;

"trading facility" means either the floor or the screens;

"treasurer" means the treasurer of the Exchange;

"underlying instrument" means the corporeal or incorporeal thing or index or other factor that is the subject matter of a futures or option contract;

"variation margin" means gains or losses on a position which is calculated by reference to the mark to market and which must be paid to or by the clearing house, as the case may be, to maintain the initial margin paid or payable in respect of such Exchange Contract, which comprises the position.

1.1.2 In these rules further, unless otherwise clearly indicated by, or inconsistent with, the context—

1.1.2.1 a reference to any one gender includes a reference to all the other genders;

1.1.2.2 the singular includes the plural and vice versa; and

1.1.2.3 all the terms defined in the Act and the constitution bear the same meanings as are assigned to such terms in the Act and the constitution.

## 1.2 The rules

The rules embodied herein have been formulated by the executive committee, adopted by the members in general meeting by virtue of the powers conferred upon them by the constitution, and approved by the Registrar in terms of the Act.

## 1.3 Purpose of the rules

The purpose of these rules is to achieve the objects of the Exchange by providing the procedures to ensure that the business of the Exchange is carried on in an orderly manner and with due regard to the interests of the public in general.

## 1.4 Conduct

No member or, in the case of a member which is a body corporate or a partnership, any of its officers in terms of rule 2.7, or any person who has substantial control of, or who is employed by, or is associated with, the body corporate or partnership, shall directly or indirectly permit any act or engage in any conduct likely to bring the Exchange into disrepute, and in particular shall not:

1.4.1 cheat, defraud, deceive or attempt to cheat, defraud or deceive any client or any other member;

1.4.2 make or cause to be made to a client a report, which they know (or ought reasonably to know) to be false or misleading in connection with any Exchange Contract;

- 1.4.3 disseminate or cause to be disseminated any information or report, which they know (or ought reasonably to know) to be false or misleading, or affects or tends to affect unfairly the price of any Exchange Contract;
- 1.4.4 engage in manipulative or misleading acts or practices regarding the price of an Exchange Contract or trading in that Exchange Contract;
- 1.4.5 submit information to the Exchange or its employees or agents which they know (or ought reasonably to know) to be false or misleading.

## 1.5 Notices

- 1.5.1 Every member shall notify the executive committee of an address ("the registered address") which shall not be a post office box or post restante, at which that member shall accept the delivery of all notices to be issued by the executive committee to such member in terms of the constitution and these rules.
- 1.5.2 Any notice given by the executive committee to such member ("the addressee") shall be in writing and—
  - 1.5.2.1 if delivered by hand during normal business hours at the addressee's registered address shall be deemed, until the contrary is proved, to have been received at the time of delivery; or
  - 1.5.2.2 if posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at the addressee's registered address shall be deemed until the contrary is proved by the addressee, to have been received by not later than the seventh day after the date of posting; or
  - 1.5.2.3 if transmitted by telex or facsimile shall be deemed until the contrary is proved to have been received on confirmation of receipt.
- 1.5.3 A notice posted on the notice board or boards of the Exchange, the location of which will be advised by the executive committee to members from time to time, shall have the same effect as a notice conveyed to the members in terms of rule 1.5.2.1. Such notice shall remain affixed to the notice board/s for a period of at least five business days and shall take effect from the time that it is so affixed to the notice board/s unless otherwise stated in the notice and the validity of such a notice shall not be diminished or delayed by its having been temporarily removed from the notice board/s during the said period.
- 1.5.4 A notice which appears on a screen of the Exchange shall have the same effect as a notice conveyed to a member in terms of rule 1.5.2.1. Such notice shall take effect from the time of its appearance, unless otherwise stated in the notice, and shall remain on such screen for a period of at least two business days or until the event causing the notice ceases to require it to remain on the screen, whichever may be the sooner. The validity of such a notice shall not be diminished or delayed by it having disappeared temporarily from the screen during the said period.
- 1.5.5 For the purposes of rules 1.5.3 and 1.5.4 the word temporarily shall mean for a period not exceeding one day or such other period, deemed appropriate under circumstance then prevailing, by the executive committee.
- 1.5.6 A notice posted on the notice board or boards of the Exchange, may also appear on a screen and vice versa, and in addition such notice may be transmitted by facsimile to members in accordance with the provisions of rule 1.5.2.3.

## 1.6 Rules binding

- 1.6.1 These rules, directives and resolutions of the executive committee, shall be binding on all members, all clients and the clearing house, and shall remain binding on any past members in respect of any acts or omissions which occurred at a time when such past member was still a member.
- 1.6.2 Without derogating from the provisions of rule 1.6.1. members shall ensure that in all client agreements the clients acknowledge and confirm that they have read and understood, and shall be bound by, these rules and such directives and resolutions as set out in rule 1.6.1.
- 1.6.3 The executive committee shall notify a member of a decision of the executive committee with which such member must comply. For the purpose of this rule a notice delivered or posted in terms of rule 1.5 and which contains particulars of such decision shall constitute notification by the executive committee to a member.

## 1.7 Interpretation of rules

Subject to the provisions of rule 1.9, the interpretation and enforcement of these rules shall vest in the executive committee whose decision shall be final and binding on all parties affected thereby.



## **1.8 Limitation of liability**

The Exchange shall not be liable or responsible to any person in respect of any losses, whether direct or consequential, suffered as a result of—

- 1.8.1 any act of omission of any employee or officer of the Exchange, whether or not due to the negligence of any such employee or officer, and without limiting the generality of the foregoing:
  - 1.8.1.1 any information supplied by the Exchange or by any of its employees, agents or officers; or
  - 1.8.1.2 breakdowns of equipment or in the service in respect of any type of system or service owned or operated by the Exchange; or
- 1.8.2 any decision taken or directives or resolutions issued or activities performed by the Exchange or any of the employees, agents or officers of the Exchange, whether pursuant to the Act, the constitution, these rules or otherwise.

## **1.9 Conflict**

If there shall be any conflict between—

- 1.9.1 the Act and these rules, then to the extent of such conflict the provisions of the Act shall prevail;
- 1.9.2 the constitution and these rules then to the extent of such conflict the provisions of the rules shall prevail;
- 1.9.3 the English version and the Afrikaans version of these rules, then to the extent of such conflict the provisions of the English version shall prevail.

## **PART 2—MEMBERSHIP**

### **2.1 Classes of members**

There are the following classes of members of the Exchange for the time being, namely—

- 2.1.1 clearing members who shall also be either broking or non-broking members; and
- 2.1.2 non-clearing members who shall also be either broking members or non-broking members.

### **2.2 Eligibility for membership**

#### **2.2.1 General**

- 2.2.1.1 Admission to and expulsion from any class of membership shall be determined as set out in these rules.
- 2.2.1.2 Only a natural person or a body corporate or a partnership may be admitted to membership of the Exchange.
- 2.2.1.3 To be eligible for membership an applicant who is a *natural person* must satisfy the executive committee that such person—
  - 2.2.1.3.1 is at least 21 years of age, of full legal capacity and a citizen or a permanent resident of the Republic of South Africa;
  - 2.2.1.3.2 enjoys a financial and business standing considered suitable by the executive committee for a member of the Exchange;
  - 2.2.1.3.3 is of good character and high business integrity and complies with the minimum requirements with regard to education stipulated by the executive committee from time to time, has passed all necessary examinations required by the executive committee and has the experience and necessary administrative systems and resources as determined by the executive committee from time to time;
  - 2.2.1.3.4 all his registered officers and any employees who will be materially connected with trading or the administration of trading, have passed all such examinations as determined by the executive committee; and
  - 2.2.1.3.5 satisfies any and all other criteria for membership laid down by the executive committee from time to time;
- 2.2.1.4 To be eligible for membership an applicant which is a *body corporate or partnership* must satisfy the executive committee that such body corporate or partnership—
  - 2.2.1.4.1 possesses a high level of business integrity, complies with the minimum requirements with regard to administrative systems and resources as determined by the executive committee from time to time, all its officers registered in terms of rule 2.7.1 have sufficient and relevant experience and that all persons concerned with its management and administration are suitably qualified for that purpose in terms of these rules;

- 2.2.1.4.2 all its registered officers and any employees of the member materially connected with trading or the administration of trading, have passed all such examinations as determined by the executive committee;
- 2.2.1.4.3 neither its directors or partners, as the case may be, nor persons concerned in the management of that member nor persons who have substantial control of or significant influence over that member would be excluded personally from membership by virtue of the provisions of the Act and these rules; and
- 2.2.1.4.4 satisfies any and all other criteria for membership laid down by the executive committee from time to time.
- 2.2.1.5 No member shall be entitled to hold membership through any trust.
- 2.2.1.6 A member shall ensure that it shall for so long as it continues to be a member of the Exchange satisfy the criteria for membership.

## 2.2.2 *Clearing members*

- 2.2.2.1 An applicant for clearing membership shall comply with all the relevant requirements set out in rule 2.2.1 and in addition thereto—
  - 2.2.2.1.1 shall be a registered financial institution or a subsidiary of such an institution or the Johannesburg Stock Exchange or any other person approved by the executive committee; and
  - 2.2.2.1.2 shall have and maintain at all times a minimum net financial worth of R20 000 000 (twenty million rand) or such other sum as may be determined by the executive committee from time to time. The criteria for calculating such minimum net financial worth shall also be determined by the executive committee from time to time; or
  - 2.2.2.1.3 in the alternative to rule 2.2.2.1.2, if it does not have the minimum net financial worth referred to in rule 2.2.2.1.2, it shall, in addition to the suretyship referred to in rule 2.3.1.1.3, provide to the clearing house security for the due performance by it of its obligations in terms of these rules; in such form as may be acceptable to the executive committee, for an amount which shall be equal to the difference between its minimum net financial worth and R20 000 000 (twenty million rand).

## 2.2.3 *Non-clearing members*

An applicant for non-clearing membership shall comply with all the requirements for membership, set out in rule 2.2.1, and in addition thereto shall satisfy the executive committee that it has entered into a clearing agreement.

## 2.3 **Rights and obligations of members**

### 2.3.1 *Clearing members*

#### 2.3.1.1 A clearing member—

- 2.3.1.1.1 may enter into trades with or on behalf of clients or with other members;
- 2.3.1.1.2 shall subject to these rules report to the clearing house all trades made for its own account or made or entered into with or on behalf of non-clearing members with whom it has entered into clearing agreements or with or on behalf of clients or with clients of such non-clearing members; and
- 2.3.1.1.3 shall provide, maintain and keep in force, a suretyship to the clearing house, by a financial or other institution acceptable to the executive committee, and in such form and upon such terms and conditions as the executive committee may determine, for the due performance of all its obligations to the clearing house which may arise from any or all trades reported by it to, and cleared by, the clearing house, but shall at least provide that the liability of the surety under the suretyship shall be for an amount of not less than R10 000 000 (ten million rand), and that it shall be in solidum, joint and several, with the liability of the clearing member.
- 2.3.1.2 The executive committee shall have the right to impose additional suretyship, guarantee or other security requirements on clearing members if the executive committee in its sole discretion decides that such clearing member has excessive positions, or if at any time there has been a substantial decrease in the net financial worth of any surety in terms of a suretyship, which has been furnished in respect of the obligations of such clearing member, or if the clearing member exceeds the level of trading imposed on it by the clearing house, and a failure to comply with the provisions of this rule 2.3.1.2 shall constitute a default as contemplated by rule 5.12.



- 2.3.1.3 Notwithstanding the provisions of rule 2.3.1.1.3, a clearing member shall remain liable to fulfil all obligations which may arise from all trades reported by it or by a non-clearing member with whom it has entered into a clearing agreement and cleared by the clearing house.
- 2.3.1.4 Should the clearing members of the Exchange determine in the future that the credibility or integrity of the Exchange is diminished as a result of the criteria set for clearing members, in terms of these rules, such criteria shall be reconsidered by the clearing members. The clearing members of the Exchange shall in such an event prepare a proposal to rectify the situation for submission to the executive committee. The proposal in order to be valid, shall be supported by at least three quarters of the clearing members of the Exchange. A review shall in any event take place by the clearing members not later than six months from the commencement of operations of the Exchange.
- 2.3.1.5 A clearing member who is a partnership or body corporate shall promptly advise the executive committee in writing of any change in its partners or directors (or members in the case of a close corporation), as the case may be.
- 2.3.1.6. A clearing member may clear trades through another clearing member, on terms prescribed by resolution from time to time.

### 2.3.2 *Non-clearing members*

- 2.3.2.1 A non-clearing member who is a broking member may enter into trades with other members and with or on behalf of clients, provided that such non-clearing member shall have all such trades reported to the clearing house for clearing in the manner determined by these rules and shall, if so requested by the clearing member, provide security to the clearing member with whom it has concluded a clearing agreement, for the due fulfilment of all its obligations to the clearing member which may arise from such trades, by such a person and in such a form and upon such terms and conditions as the clearing member may determine.
- 2.3.2.2 Notwithstanding rule 2.3.2.1, a non-clearing member who is a non-broking member may only enter into trades with other members.
- 2.3.2.3 The provisions of rule 2.3.1.5 shall apply *mutatis mutandis* to a non-clearing member.
- 2.3.2.4 A non-clearing member shall only be entitled to enter into a clearing agreement with one clearing member at a time.

### 2.3.3 *General*

Nothing in this rule 2.3 shall be construed so as to detract from, or limit any other rights or obligations which may be conferred upon members by the Act, the constitution or these rules.

## 2.4 **Applications for membership**

### 2.4.1 *General*

An application for membership of the Exchange shall be made in the name of the applicant on the form prescribed by resolution from time to time, and which may be obtained from the chief executive officer.

### 2.4.2 *Clearing members*

In addition to the form referred to in rule 2.4.1, an application for clearing membership shall be accompanied by—

- 2.4.2.1 written confirmation from the clearing house that the applicant is acceptable to the executive committee as a clearing member and has signed a clearing house agreement;
- 2.4.2.2 a written undertaking from a financial or other institution, acceptable to the executive committee, that it will issue the suretyship referred to in rule 2.3.1.1.3 in favour of the clearing house immediately upon the applicant's admission as a clearing member;
- 2.4.2.3 a certificate, issued by the applicant's auditors, in terms of which they certify that the applicant has, at the date of application, the minimum net financial worth referred to in rule 2.2.2.1.2, or if the provisions of rule 2.2.2.1.3 are applicable, then written undertakings from the financial or other institution acceptable to the executive committee and the holding company that they will provide the suretyship and required security to the clearing house in terms of rule 2.2.2.1.3 immediately upon the applicant's admission as a clearing member;
- 2.4.2.4 a written undertaking by the applicant that it will report for clearing all trades made for its own account or made or entered into by those non-clearing members with whom it has concluded clearing agreements within the limits determined by the clearing member or with those clients with whom it has concluded a client agreement; and
- 2.4.2.5 a written nomination by an existing clearing member seconded by another clearing member supporting such application for membership.

### 2.4.3 *Non-clearing members*

In addition to the form referred to in rule 2.4.1, an application for non-clearing membership shall be accompanied by—

- 2.4.3.1 a valid clearing agreement;
- 2.4.3.2 a statement by the applicant whether it intends to operate as a broking or a non-broking member of the Exchange; and
- 2.4.3.3 a written undertaking by the applicant that it will report for clearing to its clearing member all trades made for its own account or made or entered into by those clients with whom it has concluded client agreements;
- 2.4.3.4 a written nomination of an existing clearing member seconded by any other member.

## 2.5 *Admission to membership*

### 2.5.1 *Right of admission to membership*

- 2.5.1.1 As soon as possible after receipt of an application for membership, the executive committee shall consider whether or not to grant membership to an applicant in terms of such application, provided that the executive committee shall, not less than 10 days before the date upon which it proposes to consider the application, publish the name and address of the applicant in a notice to members.
- 2.5.1.2 The executive committee may require from the applicant further information, and may institute such investigation, which it considers necessary, to verify information submitted by the applicant in support of an application. The executive committee may require the applicant, or one or more representatives of the applicant, to be interviewed by the executive committee or by a subcommittee of the executive committee or by the chief executive officer or by any other person appointed by the executive committee for that purpose.
- 2.5.1.3 The executive committee shall promptly notify the applicant in writing of its decision to grant or to refuse membership to the applicant and shall publish its decision in a notice to members.
- 2.5.1.4 The executive committee shall in its sole discretion decide to accept or to refuse an application for membership and shall not be obliged to give any reasons for its decisions, provided however that before making its final decision the executive committee shall have the right to request the applicant to attend an interview conducted by the executive committee before the executive committee makes its final decision, provided further that any person aggrieved by the decision of the executive committee shall have the right of appeal to the Appeal Tribunal in terms of rule 6.9.

### 2.5.2 *Admission to membership*

- 2.5.2.1 Subject to the provisions of rule 3.3.3, once an applicant has been granted membership in terms of rule 2.5.1, such applicant shall acquire or lease a seat in terms of Part 3 hereof.
- 2.5.2.2 The chief executive officer shall keep a list of applicants to whom membership has been granted in terms of rule 2.5.1, pending their acquisition or leasing of a seat in terms of Part 3 hereof.
- 2.5.2.3 An applicant to whom membership has been granted in terms of rule 2.5.1 shall *ipso facto*, without any notice being required from the executive committee, become a member of the Exchange on the date of the registration in its name of the minimum number of seats required for its membership or on the date upon which a lease of such minimum number of seats is approved by the executive committee, all in terms of Part 3 hereof.
- 2.5.2.4 In the event of the registration of the seats or the approval of the executive committee of a lease of such seats, referred to in rule 2.5.2.3, not being procured or obtained, as the case may be, within six months of the date on which the right of admission to membership has been granted to the applicant in terms of rule 2.5.1, such right shall *ipso facto* terminate.

## 2.6 *Fees, levies and charges*

- 2.6.1 The executive committee may from time to time for the purposes of carrying out its duties, including the administration of the Exchange, impose fees, levies and charges to be paid by members, either to the Exchange or to the clearing house direct, in such amounts and on such terms as the executive committee may determine. The executive committee shall give to members at least 28 business days notice of such proposed fees, levies and charges and changes thereto.

- 2.6.2 A member who fails to pay any fees, levies or charges within 30 days after the due date thereof, shall be notified in writing by the executive committee of such arrears. If the arrears are not paid by the member within 10 days (or within any extended period of time granted by the executive committee) after the date of dispatch of such notice, the executive committee may suspend the membership of such member until all monies for the time being owed by it to the Exchange together with interest, calculated from the due date to the date of actual payment at the rate determined from time to time by the executive committee, which rate shall at no time exceed the maximum rate prescribed by the Usury Act, No. 73 of 1968, as amended to Act No. 91 of 1989, for similar transactions, and any other sums that shall accrue and be due and payable by it and remain unpaid during the period of suspension, shall have been paid.

## 2.7 Registration of officers

- 2.7.1 Each member who is a body corporate or a partnership shall have—

- 2.7.1.1 a compliance officer who shall be at least 21 years of age, of full legal capacity and shall have passed the prescribed examinations of the Exchange and who shall—

- 2.7.1.1.1 be responsible for ensuring compliance by that member with the provisions of the Act, the constitution and these rules; without thereby relieving that member from its liability to comply with all its duties and responsibilities in terms of the Act, the constitution and these rules;

- 2.7.1.1.2 in the event of any breach or problem arising in respect of any trade made or entered into and affecting that member in terms of these rules, immediately upon being requested thereto by the executive committee or a clearing member, cause to be taken all such steps as may be necessary to rectify the breach or to eliminate the problem;

- 2.7.1.1.3 receive on behalf of the member all notices from the Exchange or the clearing house or a clearing member and be responsible to ensure that all such notices are complied with; and

- 2.7.1.1.4 ensure compliance with all agreements entered into between that member and clients, between that member and clearing members and, as far as may be applicable, between clearing members and the clearing house;

- 2.7.1.2 an alternate compliance officer who shall be at least 21 years of age, of full legal capacity and shall have passed the prescribed examinations of the Exchange and who shall act in the absence of the compliance officer in all things for which the compliance officer may be responsible in terms of the Act, the constitution and these rules;

- 2.7.1.3 a representative who shall be at least 21 years of age, of full legal capacity and shall have passed the prescribed examinations of the Exchange and who—

- 2.7.1.3.1 may be the same person as the compliance officer referred to in rule 2.7.1.1;

- 2.7.1.3.2 shall be the person who will stand for election to the executive committee; and

- 2.7.1.3.3 shall represent that member in all other matters of the Exchange for which the compliance officer is not responsible;

- 2.7.1.4 an alternate representative who shall satisfy the same requirements as for representatives referred to in rule 2.7.1.3 and who shall act in the absence of the representative in all things for which the representative may be responsible in terms of the Act, the constitution and these rules and shall be the representative's alternate on the executive committee in the event that the representative is unable to act;

- 2.7.1.5 dealers who shall be full time employees or partners or shareholders ("shareholders" shall include members of a close corporation) of that member, who shall be divided into different classes of dealers at the discretion of the executive committee with different rights and obligations and who shall be required to comply with all of the requirements determined by the executive committee from time to time, and in particular—

- 2.7.1.5.1 junior dealers who may trade for a member's own account with other members but not with or on behalf of clients, who shall operate under the supervision and control of a dealer and who shall have passed the prescribed examinations for associates, fellows or members of the Institute of Financial Markets;

- 2.7.1.5.2 dealers, who may trade for a member's own account with other members and with clients and who shall have passed the prescribed examinations for fellows or members of the Institute of Financial Markets;

- 2.7.2 Subject to all the provisions of this rule 2.7, a member who is a natural person may also appoint the officers referred to in rules 2.7.1.1, 2.7.1.2 and 2.7.1.5, and shall himself be deemed to have assumed the position of representative as referred to in rule 2.7.1.3.

- 2.7.3 the executive committee shall at all times keep a register of the officers referred to in rules 2.7.1 and 2.7.2. Such register shall be available for inspection to the general public at any time during normal business hours of the Exchange.



- 2.7.4 Full particulars of all the officers referred to in rules 2.7.1 and 2.7.2 shall be furnished in every application for membership of the Exchange and any changes to such particulars or new appointments of removals or terminations shall be notified to the executive committee promptly after the change has taken effect and in such a manner as may be determined by the executive committee from time to time, provided that if such removal or termination affects or could be construed to affect their conduct in trading, the members shall advise the chief executive officer in confidence of the reasons therefore.
- 2.7.5 The executive committee shall in its sole discretion decide to accept or refuse an application for registration of any officer in terms of this rule 2.7 and shall not be obliged to give any reasons for its decisions, provided however that before making its decision the executive committee shall have the right to request the applicant to attend an interview conducted by the executive committee in order to clarify any information submitted to it, before the executive committee makes its decision, provided however that any person aggrieved by the decision of the executive committee shall have the right of appeal to the Appeal Tribunal in terms of rule 6.9.
- 2.7.6 The executive committee may determine that some or all of the officers referred to in rules 2.7.1 and 2.7.2 shall—
- 2.7.6.1 write and pass an examination, including examinations to test an officer's knowledge of these rules, which may be determined by the executive committee from time to time;
  - 2.7.6.2 comply with any other requirements laid down by the executive committee from time to time for a particular class of officer;
  - 2.7.6.3 not perform any other function or hold any office or engage in any activity which may conflict with their duties in terms of the Act, the constitution or these rules or which may bring the Exchange into disrepute; and
  - 2.7.6.4 comply with all such other requirements and perform all such duties as may be determined by the executive committee from time to time.
- 2.7.7 The appointment of any of the officers referred to in this rule 2.7 shall not in any way relieve a member whether a natural person, body corporate or partnership from any of its duties and responsibilities from time to time in terms of the Act, the constitution or these rules whose liability to fulfil those duties and responsibilities shall remain a principal liability and shall not be accessory or subordinate to the liabilities of such officers.

## **2.8 Change of membership classes**

### **2.8.1 *From clearing member to non-clearing member***

- 2.8.1.1 A clearing member shall be entitled, subject to the prior written consent of the executive committee, or be obliged if requested thereto by the executive committee at its discretion, to change its class of membership from that of clearing member to that of non-clearing member, in the manner and on the terms determined by the executive committee from time to time which shall include, but not be limited to—
- 2.8.1.1.1 the cancellation of all clearing agreements entered into with non-clearing members on the terms for cancellation set out in such agreements and the entering into by all such non-clearing members of valid clearing agreements with other clearing members within such period of time as determined by the executive committee, provided that such cancellation shall not affect the validity of anything done prior to such cancellation;
  - 2.8.1.1.2 the closing out of all its proprietary positions unless it has entered into a clearing agreement with another clearing member, provided that the failure to enter into such agreement shall constitute a breach as contemplated by rule 2.9.2.6;
  - 2.8.1.1.3 the cancellation of the clearing house agreement on the terms for cancellation set out in that agreement;
  - 2.8.1.1.4 the cancellation of the suretyship referred to in rule 2.3.1.1.3 or the cancellation of the additional security referred to in rule 2.3.1.2;

### **2.8.2 *From non-clearing member to clearing member***

A non-clearing member shall be entitled to change its class of membership from that of non-clearing member to that of clearing member, provided that it obtains the prior written consent of the executive committee thereto in the manner and on the terms set out in rules 2.4.1 and 2.4.2 and, provided further that it complies with the requirements set out in rules 2.2.1 and 2.2.2 and fulfils the obligations set out in rule 2.3.1.

### **2.8.3 *Non-broking member to broking member***

A non-broking member shall be entitled to change its class of membership from that of non-broking member to that of broking member, provided that it obtains the prior written consent of the executive committee thereto in the manner and on the terms determined by the executive committee from time to time which shall include but not be limited to, the entering into the client agreements if it proposes to enter into trades with or on behalf of clients.

## 2.8.4 *Broking member to non-broking member*

- 2.8.4.1 A broking member shall be entitled, subject to the prior written consent of the executive committee, or be obliged if requested thereto by the executive committee, to change its class of membership from that of broking member to that of non-broking member, in the manner and on the terms determined by the executive committee from time to time which shall include but not be limited to the cancellation of any client agreements which it has entered into on the terms for cancellation set out in those agreements.
- 2.8.4.2 For the purposes of this rule 2.8.4 the broking member shall be deemed to be in default of all trades entered into with or on behalf of its clients and the clearing member with whom it has entered into a clearing agreement shall be entitled to invoke the relevant provisions of rule 5.12, except that the clearing member shall not be entitled to close the non-clearing members proprietary positions in terms of rule 5.12.
- 2.8.4.3 The broking member shall, after complying with all of its obligations to its clients, ensure that its clients sign a release on the terms determined by the executive committee from time to time, releasing and discharging the broking member from any and all claims or demands pursuant to all trades referred to in rule 2.8.4.2.

## 2.9 Termination of membership

- 2.9.1 A member may terminate its membership of the Exchange by giving 30 days written notice of termination to the chief executive officer.
- 2.9.2 The membership of a member shall *ipso facto* terminate when —
  - 2.9.2.1 the member dies or is placed under curatorship; or
  - 2.9.2.2 the member's estate is sequestrated, whether provisionally or finally; or
  - 2.9.2.3 in the case of a member who is not a natural person, the member is liquidated or placed under judicial management, whether provisionally or finally; or
  - 2.9.2.4 in the case of a member which is a partnership, the estate of the partnership or any of the partners thereof is sequestrated, whether provisionally or finally, or the partnership is dissolved for whatsoever reason; or
  - 2.9.2.5 the member is for any reason whatsoever expelled from the Exchange; or
  - 2.9.2.6 the member receives written notice of termination of its membership from the executive committee in the event of such member having committed a breach of the Act, the constitution or these rules where the nature of the breach is such as in the absolute discretion of the executive committee the continued membership of such member is undesirable; or
  - 2.9.2.7 the member compromises or attempts to compromise any of its creditors; or
  - 2.9.2.8 the member fails to take steps within 30 days after a judgment having been granted against such member by a court to satisfy such judgment or to have it set aside; or
  - 2.9.2.9 the registration of a seat, by virtue of which the member holds its membership, is terminated for whatsoever reason; or
  - 2.9.2.10 in the event of a non-clearing member's clearing agreement with a clearing member being terminated for whatever reason and the non-clearing member fails to enter into a clearing agreement with another clearing member within the period of time determined by the executive committee; or
  - 2.9.2.11 the executive committee by written notice terminates the member's membership as a consequence of that member having obtained admission to membership by having furnished to the executive committee information in, or in connection with, its application for admission which is found in any material respect to be incorrect or to be untrue.
- 2.9.3 The name of the member whose membership has terminated and the date from which the termination took effect shall be published by the executive committee by means of a notice to members.
- 2.9.4 If any member's membership has been terminated for whatever reason prior to the sale of that member's seat/s held in terms of these rules, the provisions of rule 3.6 shall apply.
- 2.9.5 In the event of a termination taking place as contemplated by this rule 2.9, the provisions of rule 5.12 and of Part 6 of these rules shall apply where applicable.

## 2.10 Advertising by members

- 2.10.1 Any advertising material or any other promotional or marketing material issued by or on behalf of a member whether in respect of trading or otherwise shall be in the manner and on the terms published by the executive committee from time to time by way of resolution. In particular, no member shall advertise in any manner which may be false, misleading or prejudicial to the goodwill and public image of the Exchange and its members.
- 2.10.2 In the event that the executive committee considers that a member has failed to conform to any of the advertising requirements published by the executive committee under rule 2.10.1, it may at its discretion (without prejudice to its other powers under these rules) require that no further advertising material or other promotional or marketing material shall be published by or on behalf of such member unless it has been submitted to the executive committee in advance and the executive committee has notified the member that the material is not unsuitable for publication.
- 2.10.3 The provisions of rules 2.10.1 and 2.10.2 shall apply *mutatis mutandis* to any advertising, promotional, marketing or sponsoring activities of a member.



**2.11 Submission of audited annual financial statements**

A member shall submit to the chief executive officer within four months after the end of each of its annual financial years, two copies of its audited annual financial statements in respect of such periods, irrespective of whether or not such member is obliged in terms of any legislation to provide such audited annual financial statements.

**2.12 Membership committee**

The membership committee defined in rule 1.1.1 shall be responsible for—

- 2.12.1 making recommendations to the executive committee regarding applicants for membership of the Exchange;
- 2.12.2 making recommendations to the executive committee for amendments or alterations to membership entry requirements; and
- 2.12.3 performing such other functions with regard to membership of the Exchange as may be delegated to it from time to time by the executive committee.

**PART 3—SEATS ON THE EXCHANGE****3.1 Exchange seats confer membership**

At least one seat shall confer membership of the Exchange on the registered holder or lessee thereof.

**3.2 Further seats**

The executive committee may at any time create and issue further seats on the Exchange subject to a resolution passed at a prior general meeting of members, in favour of such creation and issue by three quarters of those members present and entitled to vote at the meeting, provided that on a poll being taken at any such general meeting, a seat holder shall be entitled to one vote for each set held.

**3.3 Registration of seats**

- 3.3.1 A seat shall, and may only, be registered in the name of a member who has been granted the right of admission to membership in terms of rule 2.5.1 which may not be registered in the name of a nominee.
- 3.3.2 Before any seat, or the transfer of any seat, will be registered in the name of a member to whom the right of admission to membership has been granted in terms of rule 2.5.1, all such registration fees as may be determined by the executive committee from time to time shall have been paid to the Exchange and in the event of an application for the registration of a seat, or the transfer of a seat, being refused or cancelled or withdrawn, such fees shall not be refundable to the applicant.

**3.4 Ten per cent rule**

No person to whom the right of admission to membership has been granted in terms of rule 2.5.1 may at any time (either directly or indirectly) acquire or hold or lease more than 10% of all the seats on the Exchange in issue.

**3.5 Sale and other disposal of seats on the Exchange**

- 3.5.1 Seats on the Exchange may only be bought and sold in the following manner:
  - 3.5.1.1 The proposed purchase or sale of seats shall be notified, specifying the purchase price or the selling price and all relevant information, to the chief executive officer in writing;
  - 3.5.1.2 Until the proposed purchase or sale is withdrawn, the chief executive officer shall act as the agent of the proposed purchaser or seller, as the case may be, and shall publish the purchase price or the selling price and the number of seats to be purchased or sold by notice to members and to effect the proposed purchase or sale in the manner which the executive committee may determine.
- 3.5.2 The purchase price of any seat sold in terms of rule 3.5.1 shall be paid to the Exchange within two business days after the date of the sale together with the prescribed registration fee referred to in rule 3.3.2.
- 3.5.3 The executive committee shall refuse its consent to the proposed purchase and sale of any seats on the Exchange if the proposed purchaser has not already been granted the right of admission to membership of the Exchange in terms of rule 2.5.1 or is not already a member or to the registration of any seats which have been sold other than in the manner provided for in rule 3.5.1.
- 3.5.4 The chief executive officer shall at all times keep the names of the parties to the purchase and sale of seats on the Exchange confidential.
- 3.5.5 Any purchase or sale of seats on the Exchange shall be subject to these rules and to all such other terms and conditions as may be determined by the executive committee from time to time.
- 3.5.6 All seats held in terms of these rules shall be deemed by virtue of these rules to have been ceded to the Exchange as security for all of the member's obligations in terms of these rules.

### **3.6 Sale of seats on the termination of membership**

Any member whose membership is terminated for whatsoever reason shall be deemed to have offered all its seats for sale and to have irrevocably appointed the chief executive officer as its agent to sell such seats on its behalf or on behalf of its estate, as the case may be, in the manner and on the terms and conditions provided for in rule 3.5, provided that, if a member's membership terminates voluntarily and that member has received an offer to purchase its seat from a prospective purchaser before the termination of its membership, then the sale of such seat to that purchaser may be effected otherwise than in terms of the foregoing provisions of this rule 3.6, provided further that the purchaser shall satisfy all the other requirements of these rules, and in particular of this Part 3, for the sale and purchase of a seat.

### **3.7 The executive committee's right to enquire**

Before consent to the sale as contemplated in rules 3.5 or 3.6 is given, and where such consent would have the effect of the seller's or transferor's membership of the Exchange being terminated, the executive committee may before granting such consent make such enquiries and impose such conditions as it may determine concerning the manner in which the obligations and liabilities of the proposed seller or transferor, as the case may be, arising from its membership of the Exchange and all trades made or entered into by it, have been, or are proposed to be, discharged, and how any liabilities which it may have to the clearing house will be discharged.

### **3.8 Leasing of seats**

A member ("lessor") who holds more than one seat may with the prior written consent of the executive committee lease any additional seat to any applicant ("lessee") to whom the right of admission to membership of the Exchange has been granted in terms of rule 2.5.1, or who is a member subject to the following:

- 3.8.1 The lessor and lessee shall apply to the chief executive officer for the necessary written consent, stating their names, the number of seats which will be leased and all other terms and conditions of the proposed lease to the chief executive officer in writing. The chief executive officer shall maintain a register of such particulars and any withdrawal or amendment thereof. The register shall be kept at a place designated by the executive committee and shall be open to inspection by any member during normal business hours of the Exchange, and against payment of such fees as may be determined by the executive committee from time to time.
- 3.8.2 The executive committee shall, not less than 10 days before considering an application for consent to the leasing of a seat in terms of rule 3.8.1, publish the names and addresses of the proposed lessor and lessee in a notice to members;
- 3.8.3 The executive committee shall, within 30 days after the receipt of an application in terms of rule 3.8.1, consider the application and forthwith notify the proposed lessor and the proposed lessee in writing of its decision.
- 3.8.4 A lessee in terms of this rule 3.8 shall, for the full period of the lease, have all of the rights and obligations which attach to the status of non-clearing membership of the Exchange, including the right to vote at any general meeting of members which may be held during the tenure of the lease, but shall in all respects comply with the provisions of the Act, the constitution and these rules. The lessor shall be deemed to have ceded his voting rights in and to the seat leased to the lessee, during the period of the lease.
- 3.8.5 In the event of the termination of the membership of a lessor to a lease in terms of this rule 3.8, the lease shall be deemed to have terminated simultaneously and in the event of a suspension shall be deemed to have been suspended for the same period as the lessor's membership is suspended.

### **3.9 Other seats**

The executive committee shall have the right in the manner and on the terms determined by the executive committee from time to time, to create, issue and register other categories of seats to members which convey rights on the holders thereof other than the right of membership.

## **PART 4—MANAGEMENT, CONTROL AND REGULATION OF THE EXCHANGE**

### **4.1 Introduction**

All the affairs of the Exchange shall be managed, controlled and regulated by the executive committee, in accordance with the Act, the constitution and these rules.

### **4.2 Election and composition of the executive committee**

The members of the executive committee shall be elected by the members of the Exchange at each annual general meeting (except that the first executive committee shall have been elected at a special general meeting) in accordance with the relevant provisions of the constitution.

### 4.3 Powers and duties of the executive committee

- 4.3.1 In the management, control and regulation of the affairs of the Exchange, the executive committee shall have full powers to act so as to enable it to discharge its functions and in particular, but without derogating from the generality of the foregoing, it shall enjoy the following powers:
- 4.3.1.1 To deal with all matters remitted by general meetings of the Exchange;
  - 4.3.1.2 to act on behalf of the Exchange and, subject to the relevant provisions of the constitution, to pass resolutions and to issue directives which shall be binding upon the Exchange and its members in all matters, provided that such resolutions and directives shall not be in conflict with any prior resolutions passed by the members in general meeting;
  - 4.3.1.3 to institute, defend, bring, carry on or discontinue legal proceedings for or against the Exchange, or refer to arbitration or compromise any proceedings, actions, search, claims and demands for or against the Exchange or in regard to any matter affecting the interests of the Exchange;
  - 4.3.1.4 to authorise and/or assist any member to institute or defend any legal proceedings if it is of the opinion that the interests of the Exchange justify such course of action;
  - 4.3.1.5 to apply the funds of the Exchange for any of the purposes provided for in the constitution;
  - 4.3.1.6 to exert disciplinary action upon the members of the Exchange in terms of Part 6 of these rules;
  - 4.3.1.7 to defend any legal proceedings instituted against any member of the executive committee or any other official or employee of the Exchange in respect of any matter or thing done or performed by any such person in the proper and reasonable discharge of its duties and to indemnify it against all costs in such legal proceedings;
  - 4.3.1.8 to manage, direct or control all the assets of the Exchange and to employ its funds, property and other assets in such a manner as may from time to time be decided by the members in general meeting;
  - 4.3.1.9 to appoint standing subcommittees and *ad hoc* committees as may be deemed necessary in order more effectively to deal with the regular or special business of the Exchange, and to determine their composition, functions and powers;
  - 4.3.1.10 to act as trustees of the fidelity fund in accordance with the provisions of Part 8 of these rules;
  - 4.3.1.11 subject to the relevant provisions of the constitution, to make, amend or rescind these rules for the better regulation of the affairs of the Exchange and of its members; and
  - 4.3.1.12 generally, to exercise all such powers and to do all such things as may be incidental to or necessary for the attainment of the objects and the furtherance of the interests of the Exchange and its members.
- 4.3.2 The executive committee shall transmit reports of its proceedings to the executive committee members to keep them informed of all such proceedings.
- 4.3.3 The executive committee shall, under the hand of the chief executive officer, issue to all members—
- 4.3.3.1 a report of its activities since the last annual general meeting at least four weeks prior to the next annual general meeting;
  - 4.3.3.2 statements of account, duly audited by the auditors of the Exchange, as early as possible after the end of the previous financial year and at least two weeks prior to the next annual general meeting.
- 4.3.4 The executive committee may from time to time delegate any of its powers or duties, to any committee, subcommittee or the chief executive officer or to any other person as it may determine.
- 4.3.5 In the performance of its duties the executive committee shall act with due care and skill.

### 4.4 Invitee's

The executive committee shall be entitled to invite at the Exchange's expense, representatives of other organisations representing specific fields to attend meetings of the executive committee or any subcommittee of the executive committee, save that such representatives shall not be entitled to vote.

### 4.5 Office bearers

In terms of the powers conferred upon it by the constitution the executive committee shall elect from amongst its members, the chairman and vice chairman and shall also appoint the treasurer and the secretary.



**4.5.1 The chairman**

The duties of the chairman of the executive committee shall be—

- 4.5.1.1 to preside at all general meetings of the Exchange and of meetings of the executive committee;
- 4.5.1.2 to sign the minutes of all the meetings referred to in rule 4.5.1.1 after their adoption;
- 4.5.1.3 to represent the Exchange at official and public functions;
- 4.5.1.4 to make or delegate the making of any public announcements or addresses on behalf of the Exchange in consultation with the chief executive officer;
- 4.5.1.5 to convene all general meetings of the Exchange and all meetings of the executive committee, and, when necessary, to instruct the chief executive officer to issue notices of such meetings in due time; and
- 4.5.1.6 generally, together with the chief executive officer, to initiate and/or direct the activities of the executive committee.

**4.5.2 The vice chairman**

The duties of the vice chairman shall be—

- 4.5.2.1 to deputise or act for the chairman in the performance of any duties when the chairman is absent or unable to act; and
- 4.5.2.2 generally, to perform such duties as the chairman may delegate to him.

**4.5.3 The treasurer**

The duties of the treasurer shall be—

- 4.5.3.1 to ensure that proper accounts of receipts and payments are kept;
- 4.5.3.2 to present audited annual financial statements to the annual general meeting of the members of the Exchange;
- 4.5.3.3 to report to the executive committee from time to time, as required by the executive committee, on the financial state of the Exchange;
- 4.5.3.4 to act as the public officer of the Exchange in its dealings with the Receiver of Revenue and any other State Department; and
- 4.5.3.5 generally, to supervise the financial affairs of the Exchange and to perform such other functions as may be delegated to him from time to time by the chief executive officer.

**4.5.4 The secretary**

- 4.5.4.1 to keep any records which may be required by the Act and submit the necessary returns to the Registrar in respect thereof;
- 4.5.4.2 to act as the secretary of the executive committee particularly with regard to the holding of general meetings and meetings of the executive committee, and keeping the minutes of such meetings;
- 4.5.4.3 to supply the chief executive officer with all information regarding the activities of the Exchange as he may require from time to time; and
- 4.5.4.4 to generally perform such other functions as may be delegated to him from time to time by the chief executive officer or the executive committee.

**4.6 Reimbursement of expenses for attendances at meetings**

- 4.6.1 Members of the executive committee may, if so determined by the executive committee, be entitled to reimbursement of their reasonable expenses in—
  - 4.6.1.1 attending meetings of the executive committee; and/or
  - 4.6.1.2 the execution of responsibilities delegated to them by the executive committee.
- 4.6.2 The reasonable expenses referred to in rule 4.6.1 shall be calculated for the duration of the said meeting or activity, as well as the minimum necessary period from the date of the executive member's departure from home to the date of his return thereto on or after the conclusion of Exchange or executive committee business.

**4.7 Subcommittees and *ad hoc* committees**

- 4.7.1 Members of subcommittees (which shall hereinafter include *ad hoc* committees) appointed by the executive committee in terms of rule 4.3.1.9 need not necessarily be members of the executive committee or of the Exchange.
- 4.7.2 No member of the Exchange shall be eligible for election to any subcommittee if, at the time of his nomination, any fees, levies or charges due by it to the Exchange are in arrears.
- 4.7.3 A subcommittee member absenting himself from three consecutive meetings without good cause or without prior permission of the subcommittee or its chairman, shall cease to be a member of the subcommittee concerned.

- 4.7.4 All members of subcommittees shall possess only one vote at any subcommittee meeting.
- 4.7.5 The chief executive officer and the treasurer shall be *ex officio* members of all subcommittees and the secretary shall be secretary to such subcommittees.
- 4.7.6 In the event of a vacancy occurring on any subcommittee, the subcommittee shall recommend to the executive committee some other member to fill the vacancy, provided that such member shall have the same qualifications for membership of the subcommittee as the member vacating the office.
- 4.7.7 In the absence of the chairman of any subcommittee the members of that committee shall elect a chairman to preside at such meeting.

#### **4.8 Officials and employees of the Exchange**

- 4.8.1 The executive committee shall appoint the chief executive officer, as contemplated by the Act and by the constitution upon such terms and conditions as the executive committee and the chief executive officer may agree upon, provided that the chief executive officer shall be a voting member of the executive committee and shall not be entitled to engage in trading for and on behalf of any persons or for his own account.
- 4.8.2 The executive committee shall appoint a deputy chief executive officer who shall act in all things in the absence of the chief executive officer including the right to vote at meetings of the executive committee in the absence of the chief executive officer. The deputy chief executive officer so appointed may not engage in trading for and on behalf of any persons or for his own account.
- 4.8.3 In the event of the absence or impending absence of both the chief executive officer and the deputy chief executive officer, the executive committee shall meet within one business day of such absence or impending absence becoming known to the chairman, to appoint a deputy chief executive officer who shall be vested with all of the powers of the chief executive officer in his absence.
- 4.8.4 In performing his duties in terms of the Act, the constitution and these rules, the chief executive officer shall be entitled to perform all such further duties and functions as may be ancillary thereto even if such duties and functions have not expressly been delegated to him by the executive committee, or conferred upon him by the Act, the constitution or these rules.

#### **4.9 Finances**

- 4.9.1 The executive committee shall cause proper accounts books and records to be kept as are necessary to fairly present the state of affairs and business of the Exchange and reflecting the particulars of all monies received and disbursed and reflecting the assets and liabilities of the Exchange.
- 4.9.2 All monies collected shall be deposited into banking accounts or in building society accounts in the name of the Exchange.
- 4.9.3 Any funds of the Exchange not immediately required to conduct the day to day affairs of the Exchange may be invested from time to time in the name of the Exchange as the executive committee may direct.
- 4.9.4 The financial statements of the Exchange shall be submitted annually for examination by an auditor appointed by the executive committee, provided that no member of the executive committee may act as auditor or be a partner in or employee of any firm which acts as auditor.
- 4.9.5 Audited annual financial statements shall be laid before every annual general meeting of the Exchange, in respect of the last completed financial year of the Exchange, before the date of the next annual general meeting.
- 4.9.6 The financial year of the Exchange shall be from the first day of July to the last day of June the following year.

#### **4.10 Signatories**

All legal and other documents (including all cheques and other negotiable instruments) which are required to be signed on behalf of the Exchange, shall be signed in such manner and by such persons as the executive committee may decide from time to time, provided that all such documents shall be signed by at least the chief executive officer or the treasurer.

#### **4.11 Indemnity**

Every officer or employee of the Exchange, including the members of the executive committee, shall be indemnified by the Exchange against all actions, liabilities, costs, losses and expenses and damages which they may incur or become liable for by reason of any act or thing done or omitted to be done by them in the discharge of their duties, unless that loss is caused by the gross negligence, default, breach of faith or breach of trust of such officer or employee.



#### **4.12 Waiver**

No failure by the Exchange to exercise, nor any delay on its part in exercising, any of its rights (in whole or in part) under these rules shall operate as a waiver of the Exchange's rights or remedies upon that or any subsequent occasion, nor shall any single partial exercise of any right or remedy prevent any further exercise thereof or any other right or remedy.

#### **4.13 Confidentiality**

A member of the executive committee, or any other committee formed in terms of these rules, shall keep confidential and not publish, divulge, or make known in any manner, any information which may come to his attention in his official capacity as a member of such committee unless he has obtained the prior written consent of the executive committee.

### **PART 5—RULES OF TRADING**

#### **5.1 Business days and trading hours**

- 5.1.1 The opening and closing hours of the trading facilities and the opening and closing trading times for each Exchange Contract on the foregoing days, shall be determined from time to time by the executive committee at its sole discretion and shall be published by means of a notice to members.
- 5.1.2 Unless otherwise determined by the executive committee, the trading facilities shall be closed on Saturdays, Sundays, Public Holidays, any day on which trading is suspended and on any other day that the executive committee may after prior consultation with the Registrar from time to time decide.
- 5.1.3 Subject to the provisions of rules 5.16 and 5.17.5, the days on which the trading facilities shall be closed other than on Saturdays, Sundays and Public Holidays, shall be published by means of a notice to members.

#### **5.2 Admission to the floor**

- 5.2.1 Only members whether in person or through their duly authorised representatives, dealers, employees of the Exchange and visitors authorised by the chief executive officer or his nominee shall be admitted to the floor.
- 5.2.2 The executive committee may require that a person entering the floor shall display an identification of the member that he represents and/or an identification that indicates his authorisation, temporary or otherwise, to enter the floor and the activities in which he may engage himself whilst present on the floor.

#### **5.3 Client registration**

- 5.3.1 The clearing house shall maintain a register of clients reflecting such particulars as may be considered necessary from time to time by the executive committee including, but not limited to, the following particulars in respect of each client, namely—
  - 5.3.1.1 full name;
  - 5.3.1.2 identity number or company registration number, if applicable;
  - 5.3.1.3 addresses in the Republic of South Africa (street and box number);
  - 5.3.1.4 telephone or telefax or telex numbers;
  - 5.3.1.5 duly authorised contact person; and
  - 5.3.1.6 client's code referred to in rule 5.3.4.2.
- 5.3.2 Member's shall apply in writing, in the manner and form prescribed from time to time by the clearing house, for registration of their clients with the clearing house.
- 5.3.3 A member shall not trade with or on behalf of a client until registration of the client has been effected and confirmed by the clearing house and the client has signed the client agreement, the risk disclosure statement and client's acknowledgement attached thereto.
- 5.3.4 Upon registration of a client—
  - 5.3.4.1 the client shall be given a client registration number, which number shall be retained by the clearing house for a period of time considered reasonable by the clearing house, after the client has ceased trading; and
  - 5.3.4.2 the member shall be issued with a client code by the clearing house in respect of such client.
- 5.3.5 A member may require the change of a client's code by giving not less than one business days notice to the clearing house.
- 5.3.6 At all times when reporting a trade with or on behalf of a client to the clearing house for clearing in terms of these rules, a member shall state the client's code on the report and in the manner and form prescribed by the clearing house from time to time.

#### **5.4 Trading by a director, or employee or partner of a member**

- 5.4.1 A director or an employee of, or a partner in, a member may be a client of the member for his own account or for an account in which he has a beneficial interest, provided that any trades so made or entered into are separately recorded and identified in the accounting records of the member, but are otherwise dealt with in the same manner and subject to the same terms and conditions as apply in the case of trades of other clients of the member, including the collection of margin as prescribed by resolution from time to time.
- 5.4.2 The trades referred to in rule 5.4.1 shall be reported to, and monitored by, the compliance officer of the member who shall be independent of the director, employee or partner concerned and who shall maintain procedures to ensure that the trading and conduct of the director, employee or partner are not prejudicial to the interests of the member's other clients. If the compliance officer is not independent of the director, employee or partner the functions of the compliance officer in this regard shall be fulfilled by the alternate compliance officer, who shall also be so independent.
- 5.4.3 No official or employee of the Exchange or the clearing house shall directly or indirectly make or enter into any trades whatsoever, whether for his own account or on behalf of other persons, except with the prior written consent of the executive committee.
- 5.4.4 A director or an employee of, or a partner in, a broking member shall not be a client of any other member in respect of a trade.

#### **5.5 Exchange Contracts and expiry months**

- 5.5.1 Every trade shall be in the terms of an Exchange Contract. The expiry months in respect of each Exchange Contract shall be as determined from time to time by the executive committee and shall be published by means of a notice to members.
- 5.5.2 Only financial instruments listed in terms of the Act shall be traded and such trading shall be subject to these rules and in accordance with the terms and conditions and in the form and manner determined by the executive committee from time to time, which shall be published by means of a notice to members.
- 5.5.3 On the expiry of an Exchange Contract the proprietary position of a member in the Exchange Contract shall be closed out in terms of rule 5.9.3.3.2 by an equal and opposite trade. If the position registered is for a client trading with a particular member, then such a position shall be closed out in terms of rule 5.9.3.3.2 by an equal and opposite trade between the member and the client, provided that it shall not be necessary for the member to report trades in terms of this rule 5.5.3 to the clearing house.

#### **5.6 Trading**

##### **5.6.1 Trading facilities**

The Exchange shall provide the necessary trading facilities as the executive committee in its sole discretion considers appropriate and necessary and in particular the executive committee shall from time to time—

- 5.6.1.1 determine in accordance with its licence the location and the physical extent and configuration of the trading area or pits on the floor and the ancillary equipment, staffing and any other item or facility which in the opinion of the executive committee is required to regulate trading on or improve the operation of the floor; and
- 5.6.1.2 determine in accordance with its licence the nature and the information to be displayed on screens and which may be utilised for terminals, as well as the facilities which in the opinion of the executive committee are required to regulate trading on or improve the operation of the screens.

##### **5.6.2 Trading requirements**

- 5.6.2.1 A member shall not trade on behalf of clients other than strictly in accordance with the instructions received from the clients.
- 5.6.2.2 Trading on the floor shall be by way of open outcry and a member wishing to trade, whether as a buyer or seller for his own account, or on behalf of a client, shall, standing wholly or partly within the appropriate pit, announce aloud to other members on the floor the offer or selling price, as the case may be, and the type of Exchange Contract in which it intends to trade. No such announcement shall be made unless the price is the best or equal best available at the time the last price was announced on the floor by another member and the price then being displayed on the listing board of the floor, and in particular—
- 5.6.2.2.1 any bid or offer shall be firm and may be withdrawn at any time before being accepted; and

- 5.6.2.2.2 dealers on the floor shall immediately announce aloud to the market, any change of price in respect of any bid or offer which it has made and or wishes to withdraw; and
- 5.6.2.2.3 a bid or offer that has been accepted in part or in whole, shall not be capable of being withdrawn.
- 5.6.2.3 Bids, offers and acceptances shall be made with as much detail and precision as possible to avoid misunderstanding and disputes. If the number of trades is not disclosed by the bidder or offeror, as the case may be, it shall be accepted that there is only one trade unless otherwise determined from time to time by the executive committee. If the number of trades to be entered into is disclosed by a bidder or offeror, then if the bid or offer is to be validly accepted, then that number of trades must be accepted by the counterparty, provided that such bidder or offeror, as the case may be, at his discretion, may accept a different number of trades than offered by the counterparty.
- 5.6.2.4 Notwithstanding the provisions of rule 5.6.2.2, the price at which trades are being traded at any time on the floor shall be displayed on the screens in the manner determined by the executive committee from time to time.

## 5.7 Contractual relationships

- 5.7.1 A trade shall be deemed to have been concluded between two members or between a member and a client, as the case may be, when a bid or offer has been made by the one member and has been accepted by the other member. Every member shall transact its business in good faith and every trade, whether for the account of the member effecting it, or for the account of a client, must be entered into according to the provisions of the Act, these rules, and resolutions in force at the time the trade is concluded.
- 5.7.2 In all trades concluded between two members, or between a member and a client as contemplated in rule 5.7.4, the members or the client, as the case may be, shall be deemed to have acted as principals and shall accordingly be personally bound by, and entitled under, such trades.
- 5.7.3 A broking member may enter into a trade with a client either as a principal, in which event he shall be the counterparty to the client under the trade, or act as an agent, provided however, that, before the trade is entered into, the member has clearly informed the client that it is acting as a principal or as an agent, as the case may be, and such manner of trading by the member has been clearly recorded in the client agreement.
- 5.7.4 If a member is acting as a principal the trade shall be deemed to have been entered into in accordance with the provisions of rule 5.7.1.
- 5.7.5 If the member is acting as the agent for a client, the member shall enter into an equal and opposite trade with a counterparty, which trade shall be at the same price, and on terms in accordance with the instructions given by the client. If no price is indicated by the client, then the price shall be the market price prevailing at the time the trade is concluded. The following additional provisions shall apply:
  - 5.7.5.1 The member shall be liable to the client for the due fulfilment by the counterparty of all its obligations to the client in terms of the trade;
  - 5.7.5.2 any claims by a client in respect of a trade shall be against the member who entered into the trade on behalf and on the instruction of such client, and not against any other member or a client of such member who is the counterparty; and
  - 5.7.5.3 if for any reason after the member has reported the trade to either the clearing member or its client a mistake has occurred, then the member may correct such mistake as a principal in order to fulfil the obligations to its client.
- 5.7.6 A member which has an order to buy and an order to sell the same trade at the same price and the same volume on behalf of two or more clients may deal with those clients on an agency basis provided that—
  - 5.7.6.1 the trade must be concluded during normal floor trading hours;
  - 5.7.6.2 there is a bid and offer for the same Exchange Contract between two other members either on the floor or the screen; and
  - 5.7.6.3 the price at which the trade is concluded shall be the mid-point between the bid and offer referred to in rule 5.7.6.2.
- 5.7.7 A member who enters into a trade with the client of a person referred to in section 5 of the Act, shall do so in the manner and on the terms determined by the executive committee from time to time.



## **5.8 Business with client**

No member shall enter into any agreement, with a client if the effect, likely effect or purported effect of such agreement is to exclude or limit the liability of that member, or any of its employees or any of its agents, to the client for negligence, fraud, or dishonesty, committed by the member, his employees or his agents, in relation to the member's trading activities with or on behalf of the client.

## **5.9 Reporting/Clearing**

### **5.9.1 Reporting**

- 5.9.1.1 Each member shall immediately report the trade to sell or buy, either to its clearing member or, if the clearing member has agreed otherwise in a clearing agreement, to the clearing house direct.
- 5.9.1.2 In respect of a trade between a client and a member acting as a principal as contemplated by rule 5.7.3, the member shall report the trade to its clearing member or, if the clearing member has agreed otherwise in the clearing agreement, to the clearing house direct.
- 5.9.1.3 If a member is acting as an agent then—
  - 5.9.1.3.1 the member shall immediately report the trade between the client and the counterparty in accordance with the provisions of rule 5.9.1.2;
  - 5.9.1.3.2 the member as a counterparty to the trade shall independently report the trade either to its clearing member, or if its clearing member has agreed otherwise in the clearing agreement, to the clearing house direct; and
  - 5.9.1.3.3 in the case where the provisions of rule 5.7.6 apply then a member shall report the trade in accordance with the provisions of rule 5.9.1.2.
- 5.9.1.4 If in any of the trades referred to in rules 5.9.1.1, 5.9.1.2, or 5.9.1.3, the member in question is a clearing member then that member must be report the trade direct to the clearing house.
- 5.9.1.5 If a clearing member has agreed with a non-clearing member in the clearing agreement concluded between them that all trades entered into by that non-clearing member with another non-clearing member or clients, shall be reported direct to the clearing member, then it shall be the responsibility of that clearing member to ensure that all trades so reported are in turn reported timeously to the clearing house. Notwithstanding the provisions of this rule 5.9.1.5, the clearing member shall not be relieved of any of its obligations in terms of these rules, and in particular the non-clearing member shall advise the clearing house if the trade has not been reported timeously by the clearing member.
- 5.9.1.6 All trades entered into shall be reported in the manner and form and within the periods prescribed by the clearing house from time to time and shall include, inter alia, the furnishing of the following information:
  - 5.9.1.6.1 The name of the clearing member reporting the trade;
  - 5.9.1.6.2 the clearing member's identification;
  - 5.9.1.6.3 the date of the trade;
  - 5.9.1.6.4 the identification of the parties to the trade;
  - 5.9.1.6.5 the identity of the reporting member's dealer;
  - 5.9.1.6.6 the time of the trade;
  - 5.9.1.6.7 who acted as the seller and who acted as the buyer;
  - 5.9.1.6.8 the number of trades entered into;
  - 5.9.1.6.9 the kind of Exchange Contract involved;
  - 5.9.1.6.10 the expiry date of the Exchange Contract;
  - 5.9.1.6.11 the price at which the trade was concluded; and
  - 5.9.1.6.12 in respect of a trade with a client, where the trade was concluded by the member as agent and the identity of the counterparty member.

### **5.9.2 Clearing**

- 5.9.2.1 A trade between two members, as contemplated by rule 5.7.1, shall be cleared by the clearing house when both the purchase and the sale have been reported to the clearing house, the clearing house has matched the specific purchase with the specific sale in accordance with the matching criteria determined by the clearing house from time to time.

- 5.9.2.2 A trade between a client and a member acting as a principal as contemplated by rule 5.7.3, shall be cleared by the clearing house when it is reported in accordance with rule 5.9.1.2.
- 5.9.2.3 A trade between a client and a member who is acting as an agent for the client shall be cleared by the clearing house, when the trade has been reported to the clearing house by the member acting as an agent and also by the counterparty, in accordance with the terms of rule 5.9.1.3, and the clearing house has matched the specific purchase with the specific sale according to the matching criteria determined by the clearing house from time to time.
- 5.9.2.4 A trade concluded as contemplated in rule 5.7.6 shall be cleared when it is reported in accordance with rule 5.9.1.2.
- 5.9.2.5 Upon the trade being cleared by the clearing house, such trade shall be replaced by the process of substitution by two new trades, in which, the clearing house takes an equal and opposite position to each party to the trade, and as a consequence each party to the trade either opens, closes, increases or reduces its position as contemplated in rule 5.9.3.
- 5.9.2.6 In addition to the provisions of rule 5.9.2.4 a clearing member shall, in respect of each trade cleared by the clearing house through that clearing member, be liable jointly and severally, in solidum, with each party to such trades, other than the clearing house, for the due performance by each party of all their obligations to the clearing house under such trades.

### 5.9.3 *Opening and closing a position*

- 5.9.3.1 Where no position in the Exchange Contract existed prior to a trade being cleared, a position shall be opened and registered in the name of the party to the trade provided that a separate position shall be registered whenever a client opens a position by trading through different members and such a position shall only be effected by a trade in terms of rules 5.9.3.2 and 5.9.3.3 when such trade is with the specific member concerned.
- 5.9.3.2 When a position in the Exchange Contract existed prior to the trade being cleared and the cleared trade is in the same direction (i.e. long or short as the case may be) the position shall be increased by the number of Exchange Contracts comprising the trade.
- 5.9.3.3 When a position existed in the Exchange Contract prior to the trade being cleared, and the cleared trade is in the opposite direction, such position shall be closed out either—
  - 5.9.3.3.1 in part, when the number of trades entered into is less than the existing position;
  - 5.9.3.3.2 in total, when the number of Exchange Contracts is equal to or greater than the number of Exchange Contracts comprising the position; and
  - 5.9.3.3.3 in the event that the number of Exchange Contracts comprising the trade is greater, a new position is entered into in the opposite direction in the number of Exchange Contracts by which the trade exceeds the position.

## 5.10 **Margin**

### 5.10.1 Payment of margin to and by the clearing house shall be made as follows:

- 5.10.1.1 When a position is opened or increased, initial margin shall be payable by the clearing member concerned in cash to the clearing house within the settlement period determined by the clearing house from time to time, in respect of each Exchange Contract comprising the new position or the increase.
- 5.10.1.2 Subject to the provisions of rule 5.10.1.3 in respect of each position closed, the clearing house shall repay all margin and any other monies in respect of such position to the clearing member concerned within the settlement period determined by the clearing house.
- 5.10.1.3 The clearing house may offset any margin payable by the clearing member to the clearing house against any margin to be repaid to the clearing member.
- 5.10.1.4 The clearing house shall place all margins received with financial institutions, acceptable to the clearing house in interest bearing investments acceptable to the executive committee and the clearing member may at its discretion pay interest thereon on the second business day of each month on margins held.
- 5.10.1.5 When a position is opened or increased the clearing member shall require all non-clearing members with whom they have clearing agreements, to pay to it initial margin on the terms set out in those clearing agreements.



- 5.10.1.6 When a position is opened or increased the broking member shall require its clients with whom they have client agreements, to pay initial margin on the terms set out in those client agreements.
- 5.10.1.7 The payment of initial margin referred to in rules 5.10.1.5 and 5.10.1.6 shall at no time be less than the amount of initial margin being paid by the clearing member to the clearing house in respect of the trades in question.

### 5.11 Mark to market

- 5.11.1 At the close of each business day or at any other time as the executive committee may determine, the market price of each Exchange Contract as at that time shall be calculated by the clearing house in such manner and on such basis as determined by the executive committee from time to time, which determination shall be final and binding.
- 5.11.2 In respect of any clearing member, the clearing house shall in its sole discretion decide that the clearing member's open positions shall be marked to market at a time other than at the close of each business day.
- 5.11.3 The clearing member shall be notified by the clearing house of any change in the market price of an Exchange Contract consequent upon the provisions of rules 5.11.1 and 5.11.2, and the clearing member shall pay to or receive from the clearing house, as the case may be, any difference between the previous price so calculated and the latest price so calculated in the manner and within the settlement period, determined by the executive committee in order to maintain initial margin levels.

### 5.12 Defaults

- 5.12.1 For purposes of this rule 5.12, time shall be of the essence for the performance of any obligation, and a default shall be considered to have occurred when a party to any trade fails to fulfil any of its obligations in terms of that trade or is rendered incapable of performing any of its obligations in terms of that trade, in particular if that party fails to comply fully and immediately with its obligation to make any payment, whether in respect of margin or otherwise, when due or required by another party, or for any or all of the following reasons:
  - 5.12.1.1 If a party breaches any material term of any one of the prescribed agreements or cancels such agreement without valid cause; or
  - 5.12.1.2 if a party no longer satisfies the criteria for membership or is in breach of the terms of its membership or is suspended or expelled from membership; or
  - 5.12.1.3 if a party's membership is terminated in accordance with rule 2.9; or
  - 5.12.1.4 if a party fails to perform, or is in breach of any of these rules; or
  - 5.12.1.5 any other reason whatsoever that may in the executive committee's sole discretion be considered to be a default.

#### 5.12.2 *Consequences of a client's default*

Without in any way limiting or detracting from any other remedies and rights which a member may have against a client in terms of these rules, in the event of a default by a client as contemplated by rule 5.12.1, the member shall be entitled, without notice to the client—

- 5.12.2.1 to assume, all of the client's positions or to assume some of such positions, for its own account and to close out the others which it does not wish to so assume all within two business days (or such other period of time determined by the executive committee), from the date of the default, provided that, the member shall be deemed to have assumed all of the client's positions, which are not so closed out, within the time period stipulated in this rule 5.12.2.1, at the best price available at the close of business on the day on which such period lapses; and/or
- 5.12.2.2 if the member closes out any position pursuant to rule 5.12.2.1, to use any amount payable to the client or member, as the case may be, as a result of the closing-out to settle the client's obligations to the member including any fees due to the member as a result of the closing-out; and/or
- 5.12.2.3 if there remains any further obligations of the client to the member after the closing-out of any position pursuant to rule 5.12.2.1, to apply any margin, suretyships, cession, lien or any other money, investment or other security held by the member for the account of the client, to settle the client's obligations to the member; and/or
- 5.12.2.4 if there remains any shortfall after the provisions of rules 5.12.2.1 to 5.12.2.3 have been applied, to claim such shortfall from the client, provided that, if there remains any balance, such balance shall immediately be paid to the client.

**5.12.3 *The consequences of a non-clearing member's default***

Without in any way limiting or detracting from any other remedies and rights which a member or client or the clearing house may have against a non-clearing member in terms of these rules, in the event of the default of a non-clearing member as contemplated by rule 5.12.1 the following shall apply:

- 5.12.3.1 The clearing member with whom the non-clearing member has concluded a clearing agreement shall assume, all of the non-clearing member's proprietary positions, or assume some of such positions for its own account and close out the others which it does not wish to so assume, all within two business days (or such other period of time determined by the executive committee), from the date of default, provided that, the clearing member shall be deemed to have assumed all of the member's positions which are not so closed out, within the time period stipulated in this rule 5.12.3.1, at the best price available at the close of business on the day on which such period lapses;
- 5.12.3.2 when the clearing member closes out any or all of the non-clearing member's proprietary positions as contemplated by rule 5.12.3.1, any amount payable to the non-clearing member as a result of the closing out may be used to off-set the non-clearing member's obligations to the clearing member which shall include any fees due from the non-clearing member to the clearing member as a result of the closing-out;
- 5.12.3.3 if there remains any further obligations of the non-clearing member to the clearing member after the provisions of rule 5.12.3.2 have been applied, the clearing member may apply any margin, suretyships, cession, lien or any other money, investment or security held by the clearing member for the account of the non-clearing member to settle the non-clearing member's obligations to the clearing member;
- 5.12.3.4 if there remains any shortfall after the provisions of the rule 5.12.3.1 to 5.12.3.3 have been applied, the clearing member may claim such shortfall from the non-clearing member, provided that, if there remains any balance, such balance shall immediately be paid to the non-clearing member;
- 5.12.3.5 the clearing member shall assume the non-clearing member's obligations in respect of any trades concluded on behalf of a client and any redress from the non-clearing member to which the client is entitled shall be made good by the clearing member;
- 5.12.3.6 all clients who did not previously have a client agreement with the clearing member shall conclude a client agreement with the clearing member to cover the positions and obligations assumed by the clearing member in terms of rule 5.12.3.1. Where the clearing member previously had a client agreement with any client of the non-clearing member, such positions and obligations and subsequent trades shall be subject to that agreement;
- 5.12.3.7 if, after all of the remedies set out in this rule 5.12.3 have been exhausted, a shortfall still remains, then the non-clearing member's seat/s may, at any time, be sold by the chief executive officer in terms of rule 3.6 and the proceeds of the sale utilised to settle such shortfall, provided that if there remains any balance such balance shall immediately thereafter be paid to the non-clearing member.

**5.12.4 *Consequences of a clearing member's default***

Without in any way limiting or detracting from any other remedies and rights which a member or client or the clearing house may have against a clearing member in terms of these rules, in the event of default of a clearing member as contemplated by rule 5.12.1, the following shall apply:

- 5.12.4.1 The clearing house shall open a separate trust account, with such financial or other institution as the clearing house in its absolute discretion may determine, into which shall be paid all margin, the proceeds from the sale of the clearing member's seats, if applicable, the proceeds from the suretyship referred to in rules 2.3.1.1.3 and any other monies, securities or investments held by the clearing house in its favour or on behalf of or for the account of the clearing member. The clearing house may appoint a trustee to manage the trust account and all the affairs of the clearing member arising from and relating to, its membership of the Exchange, which trustee shall be another clearing member (hereinafter in this rule 5.12.4 referred to as "the trustee clearing member");
- 5.12.4.2 the trustee clearing member shall assume control of all money and other assets and securities held or administered by the clearing member on behalf of or for the account or benefit of any party, and from time to time, when requested thereto by the executive committee render all such reports to the executive committee as the executive committee may require;
- 5.12.4.3 the clearing house shall be obliged, without prior notice to the clearing member, to close out all of the clearing member's proprietary positions at the best price it can obtain as soon as it in its sole discretion deems fit;
- 5.12.4.4 when the clearing house closes out the clearing member's proprietary positions as contemplated by rule 5.12.4.3, any amount payable to the clearing member as a result of the closing-out may be used to settle the clearing member's obligations to the clearing house which shall include any fees due from the clearing member to the clearing house as a result of the closing-out;

- 5.12.4.5 if there remains any further obligation's of the clearing member to the clearing house after the provisions of rule 5.12.4.4 have been applied, the clearing house may instruct the trustee clearing member to apply any margin, suretyships, cession or any other money, investment or security held by the clearing house in terms of rule 5.12.4.1 to settle such obligation. If any shortfall remains thereafter the trustee clearing member shall be entitled to sell the member's seat/s and the proceeds of the sale shall be utilised to settle such shortfall, provided, if there remains any balance, such balance shall be immediately paid to the clearing member;
- 5.12.4.6 the clearing house shall transfer all client's and non-clearing member's positions cleared through the clearing member to the trustee clearing member until such time as the provisions of rules 5.12.4.7 and 5.12.4.8 have been complied with;
- 5.12.4.7 within a period decided by the executive committee each non-clearing member with whom the defaulting clearing member had a clearing agreement, shall conclude a clearing agreement with another clearing member. All the non-clearing member's positions shall then be transferred by the clearing house from the trustee clearing member to the new clearing member who shall henceforth assume responsibility for all such positions;
- 5.12.4.8 if a non-clearing member is unable to conclude a clearing agreement with a clearing member, as contemplated by rule 5.12.4.7, the executive committee may nominate another clearing member with whom the non-clearing member shall endeavour to enter into a clearing agreement;
- 5.12.4.9 failing the conclusion of a clearing agreement as contemplated by rules 5.12.4.7 and 5.12.4.8, the non-clearing member shall be regarded to be in default and its membership shall terminate in terms of rule 2.9.2.10, whereupon the provisions of rule 5.12.3 shall apply *mutatis mutandis*;
- 5.12.4.10 after all liabilities of the defaulting clearing member have been settled all amounts remaining in the trust account referred to in rule 5.12.4.1 shall be refunded to the surety any monies paid by the surety in terms of rules 2.3.1.1.3, and 2.3.1.2 and thereafter shall be refunded to the defaulting clearing member. If however, after the foregoing provisions in this rule 5.12.4 have been applied, there are insufficient funds in the trust account referred to in rule 5.12.4.1 for the clearing house to be able to fulfill its obligations to any party arising out of the clearing member's default, the clearing house shall call on all clearing members for an equitable contribution to make up the shortfall. If no clearing members are willing to so contribute, or after contributions have been made a shortfall still remains, the liquidation of the clearing house shall be considered by the clearing members.

#### 5.12.5 *General*

The provisions of this rule 5.12 shall be in addition to, and not detract from or limit, any of the provisions of Part 6 of these rules.

### 5.13 Trading limits

- 5.13.1 A clearing member may limit the extent of a non-clearing member's proprietary positions and/or of a client's positions in a manner, and on a basis, agreed between the clearing member and the non-clearing member.
- 5.13.2 The clearing house may limit the proprietary positions of a clearing member and the trades it may report to the clearing house on behalf of non-clearing members or clients in a manner and on a basis, agreed between the clearing member and the clearing house.
- 5.13.3 A clearing member may stipulate in respect of each or any Exchange Contract or group of Exchange Contracts, a limit to the number of such Exchange Contracts that may constitute a trade entered into by a particular non-clearing member at any one time, in the form and manner prescribed by resolution from time to time.
  - 5.13.3.1 The clearing house shall ensure that Exchange Contract limits are made known to all members by way of a notice to members.
  - 5.13.3.2 The non-clearing member shall ensure that all clients registered in its name be informed of such limits.

### 5.14 Fees, levies and charges

- 5.14.1 The clearing house shall be entitled to levy fees, levies or charges in respect of such matters and at such rates as may from time to time be determined by the clearing house. Such fees, levies or charges shall be payable by such members, by such times, and in such manner as may be determined by the clearing house.



- 5.14.2 Any changes to be made to the fees, levies or charges payable pursuant to rule 5.14.1 shall take effect from such dates as determined by the clearing house.
- 5.14.3 A clearing member may charge a non-clearing member with whom he has entered into a clearing agreement such fees, levies or charges as may be agreed between them.
- 5.14.4 A member may charge a client with whom he has entered into a client agreement such fees, levies or charges as may be agreed between them.

## **5.15 Maintaining suitable accounting and other records**

### **5.15.1 A member shall—**

- 5.15.1.1 maintain internal records showing the time, date and nature of instructions received from and trades concluded with clients or other members and maintain separate internal records showing the time, date and nature of its own trading and the source of funds used for that trading; and
  - 5.15.1.2 maintain such other accounting records which correctly record and explain the trades concluded with any client or member and the financial position of the member; and
  - 5.15.1.3 which in addition shall at all times enable compliance with the rules to be conveniently ascertained by the compliance and surveillance committee.
- 5.15.2 Without in any way derogating from the provisions of rule 5.15.1, a member shall specifically maintain accounting and other records sufficient to show and explain, *inter alia*, all of its trading activities. The records shall be such as—
- 5.15.2.1 to disclose the positions at all times of the member and of each of its clients;
  - 5.15.2.2 to show the margin required to be deposited from time to time by the member with the clearing member with whom it has entered into a clearing agreement and the margin required to be deposited from time to time with the member by each of its clients, and margin account balances and interest paid and received thereon;
  - 5.15.2.3 to record all payments or other security received by the member to satisfy such margin requirements;
  - 5.15.2.4 to allow for the separation of client's funds from its own;
  - 5.15.2.5 not to allow the use of funds belonging to one client to finance the trades of another client;
  - 5.15.2.6 not to allow the use of a client's funds to operate the member's own business;
  - 5.15.2.7 in the case of a non-clearing member, to allow for the separation of its funds from that of a clearing member with whom it has entered into a clearing agreement; and
  - 5.15.2.8 in the case of a clearing member, to allow for the separation of its funds from that of a non-clearing member with whom it has entered into a clearing agreement.
- 5.15.3 The records referred to in rules 5.15.1 and 5.15.2 shall be maintained for a period of not less than three years from the date of a trade by the member and shall, where appropriate, correctly record and explain the trades concluded and the financial position of the member, and all such records are to be maintained in a form that will enable them to be conveniently and properly audited.

## **5.16 Power to restrict or suspend trading**

The executive committee shall create procedures whereby the chief executive officer shall be empowered with the prior consent of the Registrar, to restrict or suspend trading on the market in any Exchange Contract at any time if in his opinion such restriction or suspension is necessary in the interests of the Exchange and of its members, or to maintain a fair and orderly market.

## **5.17 Emergency provisions**

- 5.17.1 If in its opinion, any circumstances calling for emergency action in the interests of the Exchange for the orderly conduct of trading on the market and due performance in respect of trades have developed or are developing, the executive committee may take any steps whatsoever to provide for the management of those circumstances and to preserve or restore conditions enabling the orderly conduct of trading and due performance in respect of trades to be resumed. The executive committee shall invite the clearing house to be represented at any meeting of the executive committee at which the taking of such steps or the modification or revocation of the same, is to be considered. The clearing house may by notice to the Exchange request that a meeting of the executive committee be convened for the purpose of taking, modifying or revoking such steps.
- 5.17.2 Circumstances falling within the scope of rule 5.17.1 above may (but without limiting the generality of that rule) include excessive open positions or unwarranted speculation, a state of war or threatening hostilities, the introduction of official controls affecting the market or due performance in respect of trades or any change in such controls, any other change in legal provisions or administrative or financial practice affecting the market or due performance in respect of trades or any other undesirable situation or practice, provided always that such circumstances in the sole discretion of the executive committee call for emergency action as aforesaid.

- 5.17.3 If the trading in any security, commodity or financial instrument on any exchange or market ceases, the executive committee shall immediately convene to consider the cessation of trading in all Exchange Contracts for which such security, commodity or financial instrument comprises the underlying instrument, as described in the relevant terms of the Exchange Contract.
- 5.17.4 In the event of any of the circumstances contemplated by this rule 5.17 occurring, the chief executive officer shall request the chief executive officers of other exchanges or markets to form a committee under the chairmanship of the Registrar or his nominee to discuss and co-ordinate the course of action to be taken by the exchanges to combat such circumstances in an endeavour to restore, maintain and regulate orderly trading as soon as possible.
- 5.17.5 Any action taken in terms of this rule with regard to halting or suspending trading shall only be taken after the prior consent of the Registrar has been obtained.

## **PART 6—DISCIPLINARY MATTERS—INVESTIGATION**

### **6.1 Contraventions**

A contravention in terms of this Part shall take place if a member—

- 6.1.1 contravenes, attempts to contravene or fails to comply with any of the provisions of the Act, the constitution, these rules, directives or resolutions; or
- 6.1.2 is guilty of behaviour prejudicial to the interests of the public, the Exchange or other members; or
- 6.1.3 acts contrary to the usages or practices of the Exchange; or
- 6.1.4 commits or attempts to commit any act which the executive committee considers to be dishonest, fraudulent or dishonourable; or
- 6.1.5 is a party to or has facilitated or entered into a trade which is fictitious or which has a dishonest or unlawful underlying motive.

### **6.2 Preliminary investigation**

- 6.2.1 An alleged contravention shall be the subject of a preliminary investigation by the compliance and surveillance committee which shall report its findings as soon as possible to the chief executive officer.
- 6.2.2 The chief executive officer shall, where he is satisfied that there is a prima facie case of a contravention, report the findings of the compliance and surveillance committee as soon as possible to the executive committee.

### **6.3 Meetings/Decisions**

- 6.3.1 The executive committee shall convene a meeting at which an alleged contravening member shall be entitled to attend and offer an explanation and, pending the holding of such a meeting, it may be unanimous resolution resolve to suspend the membership of the member or order the member not to trade. Any member of the executive committee who has a direct interest in the determination of the issues before the executive committee shall be entitled to attend such meeting but shall not be entitled to vote on any resolution to suspend or order not to trade, and the member shall comply with such order, as aforesaid. The meeting shall be held within 14 days after the passing of the resolution referred to in this rule 6.3.1, provided that such meeting may be adjourned from time to time as the executive committee may determine, provided further that unless the member consents thereto, the meeting shall be completed within one month after the date of its commencement. Additional evidence or information, including auditor's reports may be considered by the executive committee at any such adjourned meeting. The member shall be entitled to attend any such adjourned meeting. The executive committee shall cause notice of such meeting to be sent to the member, specifying a time and place for the meeting, giving details of the acts or behaviour alleged against it and nominating, where felt desirable by the executive committee, any particular partner, director, or employee of the member from whom the executive committee, wishes to receive information or explanations.
- 6.3.2 The executive committee may at the meeting referred to in rule 6.3.1, where it considers that the member is guilty of the contravention in question, decide whether—
  - 6.3.2.1 to expel the member; and/or
  - 6.3.2.2 to suspend the membership of the member; and/or
  - 6.3.2.3 to impose a fine on the member up to a maximum of R100 000 (one hundred thousand rand); and/or
  - 6.3.2.4 to order the member not to trade; and/or
  - 6.3.2.5 to reprimand the member; and/or
  - 6.3.2.6 to cancel the registration of any registered officer who is found to have been a party to the contravention.

The foregoing actions shall not be mutually exclusive of each other and the executive committee may take any one or more of such actions in respect of the member at the meeting. Decisions by the executive committee under this rule 6.3.2 shall require in order to be valid to be taken by a two thirds majority of executive committee members present and entitled to vote at the meeting.

- 6.3.3 Subject to these rules, and in particular rule 6.3.5, no suspension of membership or order not to trade shall be for a term in excess of six months, but disregarding any period of suspension under rule 6.3.2, provided that, where any meeting held pursuant to this rule 6.3 is adjourned, any suspension or order not to trade shall continue, until that meeting is completed, provided further that, unless the meeting is adjourned with the consent or at the request of the member, such suspension shall not exceed one month.
- 6.3.4 The executive committee may make any order of suspension or order not to trade, subject to such conditions as it thinks fit, and may give the member directions in relation to the treatment of the member's open positions, and the member shall promptly comply with such conditions and directions.
- 6.3.5 Any decision made pursuant to rule 6.3.2 may be expressed to take effect, or cease to have any effect, upon the happening of an event or the fulfilment of a condition. When a suspension is expressed to continue until the happening of an event or the fulfilment of a condition, the suspension shall so continue notwithstanding that the period of six months referred to in rule 6.3.3 has expired.
- 6.3.6 The imposition of a suspension, fine or reprimand or a decision to take no such action, shall not preclude the executive committee at a later date from calling a meeting pursuant to rule 6.3.1 or from imposing a fine or suspension or reprimand based on the same and further facts.
- 6.3.7 If any employee of a member, when acting on behalf of a member, or any duly authorised person acting on behalf of a member, commits any act or omits to do any act which act or omission if done or omitted by that member employing or authorising such employee or person would constitute a contravention under rule 6.1, then the member employing such employee or authorising such person shall in the discretion of the executive committee be deemed to have committed such contravention in the same manner as if it had itself done or omitted to do such act.

#### **6.4 Expulsion**

- 6.4.1 A member expelled in terms of rule 6.3.2.1, and who appeals to the Appeals Board in terms of the Act against shall such expulsion, shall be deemed to be suspended and the provisions of rules 6.3.3, 6.3.4 and 6.3.5 apply *mutatis mutandis* to that member until the decision of the Appeal Board is announced. If the Appeal Board upholds the decision of the executive committee, then the provisions of rule 6.4.2 shall apply. If the Appeal Board reverses the decision of the executive committee, then the suspension of the member shall lapse from the date of the Appeal Board's decision, subject to the provisions of these rules, and the member shall have no right of recourse or action against the Exchange or the executive committee or any employee thereof for any losses which it may have suffered consequent upon the action taken against it in terms of these rules.
- 6.4.2 Upon expulsion, the member shall forfeit all his rights pursuant to the Act, the constitution and these rules, membership entrance fee and any annual subscriptions which it may have paid to the Exchange. A resolution for the expulsion of a member may be expressed to be subject to such conditions as the executive committee thinks fit and the meeting may give the member directions in relation to the treatment of open positions in respect of any trades made or held in the member's name and the member shall comply with such conditions and directions.

#### **6.5 Fines**

A fine imposed on a member who has been found guilty of any of the contraventions contemplated in rule 6.1 shall not exceed R100 000 (one hundred thousand rand) for each contravention which limit may be increased from time to time at the discretion of the executive committee and the executive committee may require that such fine shall be paid by a member and shall not be imposed in respect of each individual contravention where a member is found guilty of more than one contravention at any one hearing. In such cases the fine shall be imposed in respect of a number of contraventions collectively.

#### **6.6 Notice of contraventions**

A notice to members shall be published setting out details of any alleged contravention of which a member has been found guilty and of the resolution setting out the executive committee's decision with regard to the penalty imposed.

#### **6.7 Representations**

No ruling may be made in respect of a member in respect of a matter in connection with which it has not had an opportunity of making representations to the executive committee, and a member who has so made representations to the executive committee shall be entitled to be supplied with a copy of a record of the meeting at which such representations were considered.



**6.8 Full and final**

Any decision of the executive committee in terms of rules 6.1 to 6.7 on a matter before it shall be final unless and until the Appeal Tribunal appointed in terms of rule 6.9 has reversed such decision, or unless and until (in cases where an appeal to that body lies) the Appeal Board established under the Act shall have reversed such decision.

**6.9 Appeals/Appeal Tribunal**

6.9.1 Where by notice in writing to the Exchange a member indicates that it is to appeal against the decision of the executive committee taken in terms of rules 2.5.1.4, 2.7.5 or 6.3.2 other than in respect of termination of membership, the executive committee shall within 21 days appoint independent persons (hereinafter referred to as the "Appeal Tribunal") to review the decision and shall forthwith notify the appellant of such appointment. For the purposes of this rule independent persons shall not include members of the executive committee or permanent salaried employees of the Exchange.

6.9.2 The Appeal Tribunal shall make its decision as expeditiously as possible and in any event by not later than one month after its appointment.

6.9.3 Unless the Appeal Tribunal otherwise determines, neither the appellant nor the Exchange shall be entitled to appear before the Appeal Tribunal, but each shall be entitled to make written submissions to the Appeal Tribunal. Any written submissions by the appellant shall be lodged with the Exchange, and any submissions by the Exchange shall be served upon the appellant at its address for service, no later than 10 business days after notice is given under rule 6.9.1. All such submissions shall be provided by the Exchange to the Appeal Tribunal upon lodgement or service as aforesaid or upon the appointment of the Appeal Tribunal, whichever is the later. The Appeal Tribunal shall be entitled to call for such written or oral explanations, or clarification of the written submissions, from the Exchange or the appellant, as it sees fit. Subject to this rule 6.9.3, proceedings of the Appeal Tribunal shall be held in camera.

6.9.4 Any notice given by the appellant to the Exchange under rule 6.9.1 shall—

6.9.4.1 be given within three business days after the decision of the executive committee;

6.9.4.2 include an address for service;

6.9.4.3 be accompanied by a fee of R500 (five hundred rand) or such other reasonable fee as the executive committee may determine, payable to the Exchange, which fee shall be not refundable.

6.9.5 In making its decision the Appeal Tribunal shall have regard to the same criteria as the executive committee is required to have pursuant to these rules.

6.9.6 The composition of the Appeal Tribunal shall consist of an unequal number of persons, and its decision shall be by a majority of those persons.

6.9.7 Subject to the provisions of rule 6.9.6, where a member of the Appeal Tribunal is unable or unwilling to act, the remaining members of the Appeal Tribunal shall constitute the Appeal Tribunal.

**6.10 Investigation**

6.10.1 For the effective monitoring of compliance with, and enforcement of, these rules, the provisions of the Act and the constitution the compliance and surveillance committee shall have the power to investigate the affairs of a member for the purpose of—

6.10.1.1 ascertaining whether that member of any or its employees complies with all the provisions of the Act, the constitution or these rules;

6.10.1.2 ascertaining whether the member is trading in such a manner that there is a danger that such member may not be able to fulfil its obligations to clients or other members or to the Exchange or the clearing house;

6.10.1.3 ascertaining whether such member is conducting its business in a manner which could be detrimental to the interest, good name or welfare of the Exchange or its members; and

6.10.1.4 the investigation of complaints in respect of trading.

6.10.2 Any official of the Exchange or the clearing house or a member of the compliance and surveillance committee duly authorised thereto by the chief executive officer or the Manager of the compliance and surveillance committee ("the investigating officer"), in carrying out their investigations as contemplated in terms of these rules, shall have the right, without prior notice, to—

6.10.2.1 enter the premises of any member; and/or

6.10.2.2 search such premises; and/or

6.10.2.3 take possession of any documents, books, records, or articles or make copies of or take extracts from any such documents, books or records; and/or

6.10.2.4 question any person whom they believe may be able to assist them in their investigations.

- 6.10.3 Any member who fails to assist the investigating officer in his investigations, or in any way hinders his investigation shall be deemed to have committed a contravention as contemplated by rule 6.1
- 6.10.4 Any member who conceals, destroys, mutilates or alters a document, book or record relating to a matter that is the subject of an investigation by the compliance and surveillance committee, or sends or takes or causes to be sent or taken any such document, book or record out of the Republic of South Africa, shall be deemed to have committed a contravention as contemplated by rule 6.1
- 6.10.5 The executive committee may at any time require any member to instruct its auditors to examine any or all procedures and/or transactions of a member's business relating to the Exchange and verify the member's adherence to any or all of these rules. The report of such auditors shall be submitted to the executive committee when it is first available and the costs of such audits shall be borne by the executive committee, provided that, if, as a result of such audit it is ascertained that the member has contravened any of these rules then the costs of the audit shall be borne by the member.
- 6.10.6 If the executive committee should resolve by a two thirds majority that an investigation of the affairs of a member reveals that it is trading in such a manner that there is a danger that such member may not be able to fulfil its obligations to clients or to other members or the Exchange or the clearing house, or that it is conducting its business in a manner which could be detrimental to the interests of the Exchange or the welfare of its members, the executive committee shall be entitled to—
  - 6.10.6.1 prohibit such member from trading;
  - 6.10.6.2 restrict the trading activities of such member in such manner as it deems fit;
  - 6.10.6.3 give such member such instructions as it may deem necessary in the interests of its clients or other members;
  - 6.10.6.4 proceed under the relevant provisions of this rule 6 if the executive committee is satisfied that a contravention as contemplated by rule 6.1 has taken place.

Any action taken by the executive committee in terms of this rule 6.10.6 may continue until such time as the executive committee is satisfied as to the financial position of the member in question, provided that such action shall be reviewed by the executive committee at least once each month and shall thereafter only continue to the extent that such continuation is agreed by a two-thirds majority of the executive committee.
- 6.10.7 Immediately upon a member being prohibited from trading, the executive committee may require that such member hand over to it all books and accounting records in respect of trading operations of the member, including all registers, cheque books and all cash held by and in the possession of the member including cash held on behalf of clients in safe custody in a banking institution. The executive committee shall during the period of prohibited trading have power to control such books, accounting records, cheque books and cash seized in terms of this rule, as it may in its discretion deem fit.

## 6.11 Waiver

No party shall have any claim of any nature whatsoever against the Exchange or the executive committee or the Appeal Tribunal in respect of any decision made by them in good faith pursuant to the performance of their functions in terms of these rules.

## 6.12 Telephone calls

- 6.12.1 The Exchange, clearing house and members shall have the right to tape record all incoming and outgoing telephone calls, provided that the equipment to be installed by members to tape record such calls shall be to the standard determined by the executive committee.
- 6.12.2 In respect of such telephone calls the tape recording shall be admissible as evidence in any disciplinary or arbitration proceedings contemplated by these rules, provided that the person who intends to rely on such tape recordings in evidence shall bear the onus of proving the authenticity thereof.
- 6.12.3 Each member and client shall in the prescribed agreements acknowledge and confirm that he is aware that telephone calls are being tape recorded, and shall be deemed for all purposes under this rule 6.13, to have irrevocably consented thereto.
- 6.12.4 No member shall tamper with any tape recording of such telephone calls.

## PART 7—ARBITRATION

### 7.1 Objectives

It is contrary to the objectives and policies of the Exchange for members to engage in litigation in respect of disputes. Therefore all disputes shall be resolved in accordance with the arbitration rules and procedures of the Exchange as published and amended from time to time by the executive committee by way of resolutions.

**7.2 Adherence**

If any member does not adhere to the provisions of rule 7.1, it shall be guilty of a contravention as contemplated by rule 6.1.

**7.3 Parties subject to arbitration**

These arbitration rules shall apply to the Exchange, the clearing house, members and clients, including all their officials, employees and agents.

**PART 8—FIDELITY FUND****8.1 The executive committee shall—**

8.1.1 establish and maintain, to the satisfaction of the Registrar, a Fidelity Fund ("the fund") out of which shall be paid claims against a member up to an amount specified in the rules of such fund, in respect of the liabilities of whatsoever nature of any member, or any member whose membership has been terminated, arising from its trading activities; and

8.1.2 cause rules to be made for the administration of the fund, provided, that such rules shall be subject to the approval of members given at a general meeting by three quarters of those members present and entitled to vote at the meeting.

8.2 No payment in respect of a claim shall be made from the fund until the member and all sureties or guarantees supplied by or in respect of the member in terms of these rules have been fully excused or realised.

8.3 The members from time to time of the executive committee shall be the trustees of the fund and shall remain so for as long as they are members of the executive committee.

8.4 Every member shall contribute from time to time to the fund the amounts determined by the trustees to make up the fund or any diminution in the fund or to increase the size of the fund.

8.5 All members shall be liable jointly to maintain the assets of the fund at or above the minimum levels prescribed by the rules of the fund.

8.6 The trustees shall have the right to recover in a court of competent jurisdiction any amount or contribution levied against members by the trustees but not paid within the period laid down by the rules of the fund.

8.7 Subject to the provisions of rule 8.8, all members shall be liable jointly for any shortfall following the exhaustion of the assets of the fund arising at any time.

8.8 The liability of members in terms of rule 8.7 shall be limited to the amount which together with the assets of the fund, is required—

8.8.1 for the reimbursement in full, following the winding up of the deceased or insolvent estate of a member or following the determination of a former member's liability, to the buyer or seller to a trade of monies paid by such buyer or due to such seller; and

8.8.2 to make good losses sustained by clients of the insolvent, deceased or former member and arising out of trades entered into by such member with or on behalf of members or clients, which reimbursement and making good shall not exceed an amount equal to 5% of the net assets of the fund at the time of the claim.

**8.9 The rules of the fund shall prescribe at least—**

8.9.1 the basis upon which members shall contribute to the fund and the period within which contributions shall be paid; and

8.9.2 the terms and conditions upon which all claims made upon the fund shall be determined and paid, provided that such claims shall only relate to the liabilities arising pursuant to the acts referred to in rule 8.1.1.

8.10 All claims on the fund shall first be paid out of the proceeds of any claim on any insurance policy taken out by the Exchange and any claims not so satisfied shall be claims against the assets of the fund.

8.11 The fund shall not be liable for any consequential loss suffered by a person as a result of any default or contraventions in terms of these rules including breach of trade, negligence or fraud of a member or for any loss of income or profits or for any loss sustained as a result of fluctuations in the market price of any Exchange Contract after the time of the default or contraventions of such member.

8.12 The trustees shall have the right to invest any monies of the fund in such manner as the trustees deem fit.

**PART 9—REGISTRAR'S POWER TO HALT TRADING**

The Registrar is empowered in consultation with other exchanges including any exchanges licensed in terms of any other act to halt trading, in such form and manner as he deems necessary.



# **LYS VAN VASTE TARIEWE EN VOORWAARDES VIR DIE PUBLIKASIE VAN WETLIKE KENNISGEWINGS IN DIE STAATSKOERANT VANAF 1 MEI 1990**

## **LIST OF FIXED TARIFF RATES AND CONDITIONS FOR THE PUBLICATION OF LEGAL NOTICES IN THE GOVERNMENT GAZETTE FROM 1 MAY 1990**

### **WETLIKE KENNISGEWINGS • LEGAL NOTICES**

#### **LYS VAN VASTE TARIEWE**

| <i>Gestandaardiseerde kennisgewings</i>  | <i>Tarief per plasing</i> |
|--|---------------------------|
|  | R                         |
| Besigheidskennisgewings .....  | 11,00                     |
| Boedelwetkennisgewings: Vorms J 297, J 295, J 193 en J 187 .....   | 5,00                      |
| Derdeparty-assuransie-eise om skadevergoeding Vorm MVA .....   | 5,00                      |
| Insolvensiewet- en maatskappywetkennisgewings: J 28, J 29, Vorms 1 tot 9 .....   | 9,00                      |
| L.W.—Vorms 2 en 9—bykomstige verklarings volgens woordetal-tabel, toegevoeg tot die basiese tarief.  | 44,00                     |
| Naamsverandering (twee plasinge) .....   | 44,00                     |
| Onopgeëiste geld—slegs in die buitengewone Staatskoerant, sluitingsdatum 15 Januarie (per inskrywing van 'n "naam, adres en bedrag") .....   | 2,00                      |
| Slagterskennisgewings .....  | 11,00                     |
| Slumopruimingshofkennisgewings, per taal, per perseel .....  | 9,00                      |
| Verlore lewensversekeringspolisie Vorm VL .....  | 5,00                      |
| <b>Nie-gestandaardiseerde kennisgewings</b>  |                           |
| <b>Dranklisensie-kennisgewings in buitengewone Staatskoerant:</b>  |                           |
| (i) Transvaal verskyn voorlaaste Vrydag in Junie. Sluitingsdatum vir indiening eerste Vrydag in Junie...   | 15,00                     |
| (ii) Kaap verskyn voorlaaste Vrydag in November. Sluitingsdatum vir indiening eerste Vrydag in November .....  | 15,00                     |
| (iii) OVS verskyn voorlaaste Vrydag in Januarie. Sluitingsdatum vir indiening eerste Vrydag in Januarie .....  | 15,00                     |
| (iv) Natal verskyn voorlaaste Vrydag in April. Sluitingsdatum vir indiening eerste Vrydag in April .....   | 15,00                     |
| Laat aansoek vir plasing in gewone Staatskoerant .....   | 95,00                     |
| <b>Geregtelike en ander openbare verkope:</b>  |                           |
| Geregtelike verkope .....  | 40,00                     |
| <b>Openbare veilings, verkope en tenders:</b>  |                           |
| Tot 75 woorde .....  | 12,00                     |
| 76 tot 250 woorde .....  | 31,00                     |
| 251 tot 350 woorde (meer as 350 woorde bereken volgens woordetal-tabel) .....  | 48,00                     |
| Handelsmerke in Namibië (volgens sentimeter tarief vir departemente)   | 15,00                     |
| Likwidaaturs en ander aangesteltes se kennisgewings .....  | 15,00                     |
| <b>Maatskappykennisgewings:</b>  |                           |
| Kort kennisgewings: Vergaderings, besluite, aanbod van skikking, omskepping van maatskappy, vrywillige likwidasië, ens.; sluiting van oordrag- of lederegisters en/of verklaring van dividende ..... | 22,00                     |
| Verklaring van dividende met profytstate, notas ingesluit .....  | 47,00                     |
| Lang kennisgewings: Oordragte, veranderings met betrekking tot aandele of kapitaal, aflossings, besluite, vrywillige likwidasië .....  | 73,00                     |
| <b>Orders van die Hof:</b>   |                           |
| Voorlopige en finale likwidasië of sekwestrasies .....   | 29,00                     |
| Verlagings of veranderings in kapitaal, samesmeltings, aanbod van skikking .....   | 73,00                     |
| Geregtelike besture, kurator bonis en soortgelyke en uitgebreide bevels nisi .....   | 73,00                     |
| Verlenging van keurdatum .....   | 9,00                      |
| Tersydestelling en afwysings van petisies (J 158) .....  | 9,00                      |

#### **LIST OF FIXED TARIFF RATES**

| <i>Standardised notices</i>  | <i>Rate per insertion</i> |
|--|---------------------------|
|  | R                         |
| Administration of Estates Acts notices: Forms J 297, J 295, J 193 and J 187 .....  | 5,00                      |
| Business notices .....   | 11,00                     |
| Butcher's notices .....  | 11,00                     |
| Change of name (two insertions) .....  | 44,00                     |
| Insolvency Act and Company Acts notices: J 28, J 29, Forms 1 to 9 .....  | 9,00                      |
| N.B.—Forms 2 and 9—additional statements according to word count table, added to the basic tariff.   |                           |
| Lost life insurance policies Form VL .....   | 5,00                      |
| Slum Clearance Court notices, per language per premises .....  | 9,00                      |
| Third party insurance claims for compensation Form MVA .....   | 5,00                      |
| Unclaimed moneys—only in the extraordinary Government Gazette, closing date 15 January (per entry of "name, address and amount") .....   | 2,00                      |
| <b>Non-standardised notices</b>  |                           |
| <b>Company notices:</b>  |                           |
| Short notices: Meetings, resolutions, offer of compromise, conversion of company, voluntary windings-up; closing of transfer or members' registers and/or declaration of dividends ..... | 22,00                     |
| Declaration of dividend with profit statements, including notes .....  | 47,00                     |
| Long notices: Transfer, changes with respect to shares or capital, redemptions, resolutions, voluntary liquidations .....  | 73,00                     |
| Liquidator's and other appointees' notices .....   | 15,00                     |
| <b>Liquor Licence notices in extraordinary Gazette:</b>  |                           |
| (i) Transvaal appear on last Friday but one in June. Closing date for acceptance first Friday in June .....  | 15,00                     |
| (ii) Cape appear on last Friday but one in November. Closing date for acceptance first Friday in November .....  | 15,00                     |
| (iii) OVS appear on last Friday but one in January. Closing date for acceptance first Friday in January .....  | 15,00                     |
| (iv) Natal appear on last Friday but one in April. Closing date for acceptance first Friday in April .....   | 15,00                     |
| Late applications for publication in ordinary Government Gazette .....   | 95,00                     |
| <b>Orders of the Court:</b>  |                           |
| Provisional and final liquidations or sequestrations .....   | 29,00                     |
| Reductions or changes in capital, mergers, offer of compromise .....   | 73,00                     |
| Judicial managements, curator bonus and similar and extensive rules nisi .....   | 73,00                     |
| Extension of return date .....   | 9,00                      |
| Supersessions and discharge of petitions (J 158) .....   | 9,00                      |
| <b>Sales in executions and other public sales:</b>   |                           |
| Sales in execution .....   | 40,00                     |
| <b>Public auctions, sales and tenders:</b>   |                           |
| Up to 75 words .....   | 12,00                     |
| 76 to 250 words .....  | 31,00                     |
| 251 to 350 words (more than 350 words—calculate in accordance with word count table) .....   | 48,00                     |
| Trade Marks in Namibia (according to centimetre tariff for department)   |                           |

**WOORDETAL-TABEL**

Vir algemene kennisgewings wat nie onder bovermelde opskrifte met vaste tariewe reëlsonder nie en wat 1 600 of minder woorde beslaan, moet die tabel van woordetal-tariewe gebruik word. Kennisgewings met meer as 1 600 woorde, of waar twyfel bestaan, moet vooraf ingestuur word soos in die Voorwaardes par. 10 (2), voorgeskryf:

**WORD COUNT TABLE**

For general notices which do not belong under above-mentioned headings with fixed tariff rates and which comprise 1 600 or less words, the rates of the word count table must be used. Notices with more than 1 600 words, or where doubt exists, must be sent in before publication as prescribed in par. 10 (2) of the Conditions:

| Aantal woorde in kopie<br>Number of words in copy | Een plasing<br>One insertion | Twee plasinge<br>Two insertions | Drie plasinge<br>Three insertions |
|---|------------------------------|---------------------------------|-----------------------------------|
|   | R                            | R                               | R                                 |
| 1- 100.....                                       | 16,00                        | 22,00                           | 26,00                             |
| 101- 150.....                                     | 23,00                        | 33,00                           | 40,00                             |
| 151- 200.....                                     | 31,00                        | 44,00                           | 53,00                             |
| 201- 250.....                                     | 39,00                        | 55,00                           | 66,00                             |
| 251- 300.....                                     | 46,00                        | 66,00                           | 79,00                             |
| 301- 350.....                                     | 54,00                        | 77,00                           | 92,00                             |
| 351- 400.....                                     | 62,00                        | 88,00                           | 106,00                            |
| 401- 450.....                                     | 69,00                        | 99,00                           | 119,00                            |
| 451- 500.....                                     | 77,00                        | 110,00                          | 132,00                            |
| 501- 550.....                                     | 85,00                        | 121,00                          | 145,00                            |
| 551- 600.....                                     | 92,00                        | 132,00                          | 158,00                            |
| 601- 650.....                                     | 100,00                       | 143,00                          | 172,00                            |
| 651- 700.....                                     | 108,00                       | 154,00                          | 185,00                            |
| 701- 750.....                                     | 116,00                       | 165,00                          | 198,00                            |
| 751- 800.....                                     | 123,00                       | 176,00                          | 211,00                            |
| 801- 850.....                                     | 130,00                       | 187,00                          | 224,00                            |
| 851- 900.....                                     | 138,00                       | 198,00                          | 238,00                            |
| 901- 950.....                                     | 146,00                       | 209,00                          | 251,00                            |
| 951-1 000.....                                    | 154,00                       | 220,00                          | 264,00                            |
| 1 001-1 300.....                                  | 200,00                       | 286,00                          | 343,00                            |
| 1 301-1 600.....                                  | 246,00                       | 352,00                          | 422,00                            |

**AANSOEKE OM OPENBARE PADVERVOERPERMITTE*****Sluitingstye vir die aanname van kennisgewings***

Kennisgewings moet nie later as 15:00 op die Vrydag, twee kalenderweke voor datum van publikasie, ingedien word nie.

**APPLICATIONS FOR PUBLIC ROAD CARRIER PERMITS*****Closing times for the acceptance of notices***

Notices must be handed in not later than 15:00 on the Friday, two calendar weeks before the date of publication.

### THE ONDERSTEPSPOORT JOURNAL OF VETERINARY RESEARCH

Die "Onderstepoort Journal of Veterinary Research" word deur die Staatsdrukker, Pretoria, gedruk en is verkrygbaar van die Direkteur, Afdeling Landbou-inligting, Privaatsak X144, Pretoria, 0001, aan wie ook alle navrae in verband met die tydskrif gerig moet word.

Hierdie publikasie is 'n voortsetting van die "Reports of the Government Veterinary Bacteriologist of the Transvaal" wat terugdateer tot 1903 en waarvan 18 verskyn het tot 1932. Dit is gevolg deur 52 volumes van die "Onderstepoort Journal". Tans bestaan elke volume uit vier nommers wat teen R5 per kopie of R20 per jaar plus AVB binnelands en R6,25 per kopie of R25 per jaar buitelands van bogenoemde adres posvry verkrygbaar is (lugposbestellings: R10 per kopie of R40 per jaar).

Direkteure van laboratoriums ens. wat begerig is om publikasies om te ruil moet in verbinding tree met die Direkteur, Navorsingsinstituut vir Veeartsenykunde, Pk. Onderstepoort, 0110, Republiek van Suid-Afrika.

### THE ONDERSTEPSPOORT JOURNAL OF VETERINARY RESEARCH

The Onderstepoort Journal of Veterinary Research is printed by the Government Printer, Pretoria, and is obtainable from the Director, Division of Agricultural information, Private Bag X144, Pretoria, 0001, to whom all communications should be addressed.

This publication is a continuation of the Reports of the Government Veterinary Bacteriologist of the Transvaal which date back to 1903 and of which 18 have appeared up to 1932. These were followed by 52 volumes of the Onderstepoort Journal. At present each volume comprises four numbers which are obtainable from the above address at R5 per copy or R20 per annum plus GST local or other countries R6,25 per copy or R25 per annum (air mail: R10 per copy or R40 per annum).

Directors of laboratories etc. desiring to exchange publications are invited to communicate with the Director, Veterinary Research Institute, P.O. Onderstepoort, 0110, Republic of South Africa.

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