



**nairobi  
securities  
exchange**  
*Discover Opportunity*

# **NSE Derivatives Investor Protection Fund Rules**

**June 2017**

## 1. Citation

These Rules may be cited as the NSE Derivatives Investor Protection Fund Rules and shall come into effect following approval of the Rules by the Capital Markets Authority (“**the Authority**”).

## 2. Definitions and Interpretation

- 2.1. “**Assets**” means all contributions, fees, levies, charges and other monies received by the Fund in accordance with the Rules;
- 2.2. “**Authority**” means the Capital Markets Authority established under Section 5 of the Capital Markets Act, Cap. 485A of the Laws of Kenya;
- 2.3. “**Board**” means the Board of Directors of NSE Clear;
- 2.4. “**Claimant**” means any client of a Trading Member and/ or Non-Executing Member making a genuine and bonafide claim under these Rules;
- 2.5. “**Non-Executing Member**” means a person registered and authorized to provide custodial services as a custodian or an authorised depository agent in the Republic of Kenya and registered as a Non-Executing Member in the Derivatives Market under the Derivatives Rules ;
- 2.6. “**NSE**” means the Nairobi Securities Exchange Limited;
- 2.7. “**NSE Clear**” means NSE Clear Limited;
- 2.8. “**Retail Client**” means an individual investor in the Derivatives Market who uses the services of a Trading Member and/ or Non-Executing Member;
- 2.9. “**Rules**” means these NSE Investor Protection Fund Rules;
- 2.10. “**Trading Member**” means a stockbroker or investment bank registered to trade by the NSE in the Derivatives Market under the Derivatives Rules;
- 2.11. “**Trustees**” means the persons appointed as such by the Board.
- 2.12. Words importing the singular include the plural and vice versa;
- 2.13. Where a word or a phrase is given a particular meaning other parts of the speech and grammatical forms of that word or phrase have corresponding meanings;
- 2.14. Words importing persons include the natural persons, partnerships, trusts, associations and bodies corporate;

- 2.15.** The clause sub-clause paragraph or schedule headings and bold print are included for ease of reference only and shall not affect the interpretation of these Rules;
- 2.16.** A reference to any statute includes a reference to that statute as amended, modified or replaced from time to time and includes orders ordinances regulations rules and by-laws made under or pursuant to that statute.

### **3. Establishment of the NSE Derivatives Investor Protection Fund**

- 3.1.** NSE Clear Limited (NSE Clear) resolved to establish under irrevocable trusts the NSE Derivatives Investor Protection Fund (“**the Fund**”) with effect from 16 July 2015, being the commencement date set out in the Trust Deed, in accordance with the provisions of the Capital Markets (Derivatives Markets) Regulations, 2015.
- 3.2.** The object of the Fund is to satisfy specified claims by the investing public arising out of non-settlement of obligations owed to them by derivatives members or losses incurred by reason of the default of derivatives members.
- 3.3.** These Rules are made pursuant, and subject, to the Trust Deed and the NSE Derivatives Rules to govern the operations and effective management of the Fund.
- 3.4.** Subject to the NSE Derivatives Rules, the Fund kept by the Trustees shall be of such minimum amount as stipulated by the NSE and/ or NSE Clear from time to time in consultation with the Authority.

### **3. Composition of the Fund**

- 3.1.** The Fund shall consist of:
- 3.1.1.** Monies and other property which was contained in the Fund immediately before the commencement of these Rules;
- 3.1.2.** Monies paid by the Trading Member and or the Non-Executing Members to the NSE in accordance with these Rules and the NSE Derivatives Rules;
- 3.1.3.** Interests and profits from time to time accruing from the investment of the Fund;
- 3.1.4.** Monies paid into the Fund by the NSE;

- 3.1.5. Monies and other assets recovered by or on behalf of the NSE in the exercising of any right of action conferred by these Rules
- 3.1.6. Monies paid by an insurer pursuant to a contract of insurance or indemnity entered into by the Trading Member and or Non Executing Member pursuant to these Rules;
- 3.1.7. Penalties from breach of the NSE Derivatives Rules; and
- 3.1.8. All other monies lawfully paid into the Fund.
- 3.2. The Trustees will acquire, hold and administer the Assets of the Fund subject to, and in accordance with these Rules.

#### **4. Management Committee**

- 4.1. The Trustees may appoint a Fund management committee (“**the Management Committee**”) comprising not less than three (3) and not more than five (5) persons, at least one of whom shall be an executive Director of the Board.
- 4.2. The Trustees may delegate to the Management Committee all or any of its powers, authorities and discretions vested in the Trustees under these Rules (other than this Rule 4.2).
- 4.3. A power, authority or discretion delegated under Rule 3.2 may be exercised by members forming a majority of the Management Committee as if that power, authority or discretion had been conferred by this Rule on a majority of the members of the Management Committee.
- 4.4. A delegation by the Trustees under Rule 3.2 may at any time be varied or revoked.
- 4.5. The Trustees may at any time remove a member of the Management Committee appointed by it under this Rule and may fill a vacancy arising in the membership of the Management Committee.
- 4.6. A delegation by the Trustees under Rule 3.2 does not prevent the exercise of a power, authority or discretion by the Trustees.
- 4.7. The Management Committee may exercise all powers and perform all functions conferred on the Trustees by these Rules, the Trust Deed and the NSE Derivatives Rules in respect of the Fund.

#### **5. Nature of the Fund and Manner of Investment**

- 5.1. The Assets of the Fund shall be managed by the Trustees. All Assets of the Fund shall be kept separately from all other property of the NSE and/ or NSE Clear, and shall be held in trust for the purposes of these Rules.
- 5.2. Money held in the Fund that is not immediately required for the purposes of the Fund may be invested by the Trustees in the manner authorized by the Rules.

## **6. Payments out of the Fund**

Subject to these Rules, there shall be paid out of the Fund, in the order the Trustees deem proper:

- 6.1.** the amount of all claims, costs and interest as described in Rules 7 & 8 which may be allowed from time to time;
- 6.2.** all costs and expenses incurred by the Trustees where the source of funds consist of contracts of insurance or indemnity, irrevocable letters of credit or such other arrangements;
- 6.3.** the expenses incurred in the administration of the Fund, including the salaries and wages of persons employed by the Trustees, allowances paid to the Trustees, or Management Committee in relation to the Fund and reasonable consultancy fees relevant to the administration of the Fund; Provided, however, that such administration expenses shall first be paid from investment income as well as penalties received or funds from other sources other than the initial fund.
- 6.4.** all other money payable out of the Fund in accordance with the provisions of these Rules, including any excess funds that may be determined to be excess by the Trustees in consultation with the Authority.

## **7. Utilization of the Fund**

The Fund shall be utilized, subject to these Rules, to cover losses suffered by a Claimant, for recovery of the loss, where:

- 7.1.** the Claimant gives money or other property or authority over property, to a Trading Member and/ or Non-Executing Member who is a member of the NSE Derivatives Market at that time;
- 7.2.** the money or property or authority was given to the Trading Member and/ or Non-Executing Member in connection with effecting a transaction, or proposed transaction covered by the provisions of the NSE Derivatives Rules of the NSE relating to transactions effected through the NSE; and
- 7.3.** the effecting of the transaction through the NSE Derivatives Market constitutes or would constitute the provision of a financial service to the Claimant; and
- 7.4.** the Claimant suffers loss because:
  - 7.4.1.** if the Claimant provided money or other property to the Trading Member and/ or Non-Executing Member - the defalcation or fraudulent misuse of the money or other property by the Trading Member and/ or Non-Executing Member; or
  - 7.4.2.** if the Claimant gave the Trading Member and/ or Non-Executing Member authority over property - the fraudulent misuse of that authority by the Trading Member and/ or Non-Executing Member

## **8. Application of the Fund**

- 8.1.** A person who suffers loss as described in Rule 7 is, subject to these Rules, entitled to claim compensation from the Fund.
- 8.2.** Subject to these Rules, the Trustees may allow and settle a proper claim for compensation from the Fund at any time after the occurrence of the loss in respect of which the claim arose.
- 8.3.** The amount that a Claimant is entitled to claim as compensation from the Fund is, subject to this Rule8:
  - 8.3.1.** the lesser of:
    - 8.3.1.1.** the amount of the actual pecuniary loss suffered by the Claimant, calculated by reference to the market value of any relevant assets or liabilities as at the date on which the loss was suffered, less the total amount or value of all amounts or other benefits received or receivable by the Claimant from a source other than the Fund in reduction of the loss. The Claimant shall issue a declaration to the Trustees disclosing the total amount or value of all amounts or other benefits received or receivable by the Claimant from a source other than the Fund including, without limitation, the valuation of positions held by the Claimant; and
    - 8.3.1.2.** the maximum amount payable from the Fund pursuant to Rule 6.4.
- 8.4.** The maximum amounts which may be paid from the Fund in respect of claims arising from a particular event or set of related events are:
  - 8.4.1.** Kenya Shillings Fifty Thousand (KShs. 50,000.00) per Claimant;
- 8.5.** In the case of an aggregate claim as contemplated in Rule 8.4.3, the maximum amount payable from the Fund shall be allocated to the various Claimants in direct proportion to the loss suffered.
- 8.6.** The maximum amount payable from the Fund may be changed from time to time by the Trustees at their sole discretion.
- 8.7.** A claim against the Fund relating to an alleged loss caused by defalcation or fraudulent misuse may be allowed even if:
  - 8.7.1.** The person against whom the defalcation or fraudulent misuse is alleged has not been convicted or prosecuted; and

**8.7.2.** The evidence on which the claim is allowed would not be sufficient to establish the guilt of that person in a criminal trial in respect of the defalcation or fraudulent misuse.

**8.8.** Where all persons who have submitted claims have been fully compensated in accordance with these Rules for loss in relation to a Trading Member and/ or Non-Executing Member of the NSE, being loss as described in Rule 7 suffered in relation to money or other property, any affiliate of the Trading Member and/ or Non-Executing Member who has made payment to a person in compensation for loss suffered by the person in relation to that money or property shall be deemed to be subrogated to the extent of that payment to all the rights and remedies of that person against the Fund if the NSE, having regard to all the circumstances, determines that the affiliate was in no way a party to the loss and acted honestly and reasonably in the matter.

## **9. Exclusion from the Fund**

A person shall not be excluded from making a claim merely because that person is not a Retail Client.

## **10. Claims - Procedures, Approvals, Disallowances**

**10.1.** A claim for compensation from the Fund shall be made in writing to the NSE:

**10.1.1.** where a notice under Rule 10.2 has been published, on or before the date specified in the notice;  
or

**10.1.2.** where no such notice has been published, within six (6) months after the date of the transaction and a claim that is not so made is barred unless the NSE otherwise determines.

**10.2.** The Trustees may cause to be published in a daily newspaper or on the NSE website, a notice specifying a date, not being earlier than three (3) months after the publication of the notice, on or before which claims for compensation from the Fund, in relation to the person specified in the notice, may be made.

**10.3.** Claims made for compensation from the Fund should be made to the Trustees setting out:

**10.3.1.** the names of the parties involved;

**10.3.2.** the details of the transaction (s) or proposed transaction (s) for which the money or property or authority over property was given, including the date, time, place and type of contract(s) traded or proposed to be traded;

**10.3.3.** a statement of the alleged defalcation or fraudulent misuse of funds;

- 10.3.4.** details of the loss suffered as a result of the defalcation or fraudulent misuse, including precise details as to how the amount was calculated;
- 10.3.5.** details of all efforts which have been made to recover the amount of the loss from the Trading Member and/ or Non-Executing Member concerned, and any other proceedings taken to recoup the loss prior to the application being made;
- 10.3.6.** all correspondence, documentation and supporting evidence concerning the matters listed in Rules 10.3.1 – 10.3.5 above, including all agreements entered into between the client and the Trading Member and/ or Non-Executing Member.
- 10.4.** Following receipt of such a claim, the Trustees may request further information to clarify or add to the information provided.
- 10.5.** The Trustees may at any time require a person to produce and deliver any documents or statements of evidence necessary to support a claim made or necessary for the purpose either of exercising its rights against a Trading Member and/ or Non-Executing Member of the NSE or of enabling criminal proceedings to be taken against a person in respect of a defalcation or fraudulent misuse of property, and in default of delivery of such documents or statements of evidence by the first-mentioned person, the Trustees may disallow any claim by the first-mentioned person under these Rules.
- 10.6.** The Trustees may at any time require a Trading Member and/ or Non-Executing Member to produce necessary documentary or other evidence in regard to a claim for compensation by the Trading Member and/ or Non-Executing Member’s client from the Fund made in accordance with these Rules.
- 10.7.** Following receipt of a claim and any additional information which may have been sought, the Trustees shall refer the claim to the Management Committee for consideration. The Management Committee shall, so far as is practical, meet to consider the claim within one (1) month of receipt of all relevant documentation.
- 10.8.** The Management Committee may call for such additional information as it considers necessary to enable it to allow a claim for compensation, and shall advise the Claimant of its decision as soon as practical after its decision has been made.
- 10.9.** The Management Committee may approve a claim in full or in part. The Management Committee may approve a part payment of claim where the Management Committee reasonably considers that the part payment is warranted, having regard to the purpose of the compensation arrangements such as a part payment to the extent that the Claimant contributed to their loss.
- 10.10.** Where a claim is allowed, in full or in part, the Trustees shall, subject to Rule 13, forward payment of the amount allowed, in a lump sum, to the Claimant or as the Claimant may direct, as soon as practicable



**10.11.** The Trustees shall serve on the Claimant formal notice of the outcome of the claim.

## **11. Subrogation of Rights,**

On payment out of the Fund of any money in respect of a claim under these Rules, the Trustees are subrogated to all the rights and remedies of the Claimant in relation to the loss suffered by the Claimant from the defalcation or fraudulent misuse of property. Where, as a result of Rule 8.4, a payment is made to the Claimant which is less than the amount of the claim and the Trustees recover an amount pursuant to the exercise of the right of subrogation under this Rule 11, then after deducting a sum equal to the amount paid to the Claimant from the Fund and reasonable costs incurred by the Trustees in exercising those rights, the Trustees shall pay the balance of the amount recovered to the Claimant.

## **12. Payment of Claims Only from Investor Protection Fund**

Money or other property belonging to the NSE and/ or NSE Clear is not available for the payment of a claim under these Rules, whether the claim is allowed by the Trustees or is made the subject of an order of a court or a relevant tribunal. Payment of claims shall be made solely from the Fund.

## **13. Provisions Where the Fund Is Insufficient to Meet Claims or Where Claims Exceed Total Amount Payable**

**13.1.** Where the amount in the Fund is insufficient to pay the whole of the amount of all claims against it that have been allowed or in respect of which orders of a Court or relevant tribunal have been made, the amount in the Fund shall, subject to Rule 8 and Rule 13.2, be apportioned among the Claimants in such manner as the Trustees, on a reasonable basis, think equitable, and such a claim, so far as it then remains unpaid, shall be deemed to be charged against future receipts of the Fund and paid out of the Fund when money is available in the Fund. All amounts paid out of the Fund will be paid without interest.

**13.2.** Where the aggregate of all claims that have been allowed or in respect of which orders of a Court or relevant tribunal may have been made in relation to defalcations or fraudulent misuses of property by or in connection with a Trading Member and/ or Non-Executing Member of the NSE exceeds the total amount that may, pursuant to Rule 8, be paid under these Rules in respect of that Trading Member and/ or Non-Executing Member, the total amount, subject to Rule 8, shall be apportioned among the Claimants in such manner as the Trustees, on a reasonable basis, think equitable, and on payment out of the Fund of that total amount in accordance with that apportionment, all such claims and any orders relating to those claims and all other claims against the Fund that may thereafter arise or be made in respect of defalcations or fraudulent misuses of property by or in connection with that Trading Member and/ or Non-Executing Member are discharged.

## **14. Payments out of the Fund**

### **14.1. Repayment to General Fund**

- 14.1.1.** The NSE may, from its general funds, give or advance, on such terms as the NSE thinks fit, any sums of money to the Fund.
- 14.1.2.** Money that is advanced under Rule 14.1.1 may, provided it does not result in the total amount in the Fund falling below the minimum amount which the NSE and/ or NSE Clear has determined to be adequate, at any time be repaid from the Fund to the general funds of the NSE.
- 14.1.3.** Where the NSE, under Rule 14.1.2 requires the repayment of the money paid under Rule 14.1.1, then the Authority may approve in writing, on such conditions (if any) are specified in the approval, the repayment of the whole or a specified part, of the amount from the Fund to the general funds of the NSE. If the Authority does approve the repayment of an amount in accordance with any specified conditions then that amount can be repaid to the NSE from the Fund.

Removal of 12.1 results in loss of flexibility. Derivatives team may consider.

### **14.2. Excess Moneys**

Where a determination is made that the Fund has excess money, then the Trustees may, in consultation with the Authority, approve a purpose for which such excess money may be used by the Trustees.

## **15. Accounts of the Fund**

- 15.1.** The Trustees shall establish and keep proper accounts of the Fund and shall, within the period of not later than three (3) months from the end of every financial year, cause an audit in respect of those accounts to be made out as at the end of that financial year.
- 15.2.** The Trustees shall appoint a registered company auditor to audit the accounts of the Fund.

## **16. Contributions to the Fund**

- 16.1.** A person will not be admitted as a Trading Member and/ or Non-Executing Member of the NSE unless the Trading Member and/ or Non-Executing Member has paid to the NSE, as a contribution to the Fund, such an amount, if any, as the NSE may determine in relation to the Trading Member and/ or Non-Executing Member or a class including the Trading Member and/ or Non-Executing Member.

- 16.2.** A Trading Member and/ or Non-Executing Member of the NSE must at the beginning of each year, pay to the NSE, as a contribution to the Fund, such amount (if any) as the NSE may determine in relation to the Trading Member and/ or Non-Executing Member or a class including the Trading Member and/ or Non-Executing Member. NSE shall issue the Trading Member and/ or Non-Executing Member with paper or electronic invoices in respect of such contribution amount. The Trading Member and/ or Non-Executing Member shall pay to the NSE the contribution on or before the due date indicated in the invoice.
- 16.3.** Where the Trading Member and/ or Non-Executing Member's annual contribution to the Fund remains unpaid for more than three (3) months from the date of NSE's invoice, NSE may refer the debt to a collection agent and/or institute debt recovery proceedings for the recovery of the debt. The Trading Member and/ or Non-Executing Member will be liable for all pre and post judgment collection costs reasonably incurred in pursuing any debt collection claim against the Trading Member and/ or Non-Executing Member until payment is received in full.

**17. Top-Up of Contributions to the Fund**

- 17.1.** If at any time the amount of the Fund falls below the amount prescribed by the NSE and/ or NSE Clear or is insufficient to pay all amounts that, at that time, are required to be paid under Rule 8, the Trustees may determine that a levy of a specified amount must be paid equally between all the Trading Members and/ or Non-Executing Members.
- 17.2.** The amount of the levy must be paid within the time, and in the manner, specified by the Trustees.
- 17.3.** An amount of any levy paid under this Rule shall be paid to the Trustees and dealt with in accordance with the NSE Derivatives Rules.
- 17.4.** Subject to 17.2, the Trustees or the Board shall for the purpose of Rule 17.1 determine the amount of the levy in accordance with the following formula:

$$D = \frac{A - B}{C}$$

- A = the amount specified in Rule 3.4
- B = the amount in the Fund immediately prior to a Trustees or Board determination in Rule 17.1
- C = number of NSE Trading Members and/ or Non-Executing Members
- D = amount of levy to be paid by each Trading Member and/ or Non-Executing Member