



**nairobi
securities
exchange**
Discover Opportunity

NSE Derivatives Settlement Guarantee Fund Rules

October 2016

Scope of Rules

1. Name
2. Separate Identity and Ownership
3. Administration
4. Definitions
5. Management of the Guarantee Fund
6. Guarantee Fund Assets
7. Contributions to the Guarantee Fund
8. Claims against the Guarantee Fund
9. Settlement of Claims
10. Cession of Claim against Member
11. General
12. Winding Up

1. Name

The name of the fund is the NSE Derivatives Settlement Guarantee Fund hereinafter referred to as “the Guarantee Fund”.

2. Separate Identity and Ownership

2.1 The Guarantee Fund shall consist of assets acquired and liabilities incurred by the trustees of the NSE Derivatives Settlement Guarantee Fund Trust ("the Trust") which vest in the trustees of the Trust.

2.2 The trustees will acquire, hold and administer the assets of the Guarantee Fund subject to, and in accordance with these Rules.

3. Administration

3.1 The trustees of the Guarantee Fund shall be the controlling body of the NSE, which is its Board of Directors, or such persons appointed to act as trustees by the Board of Directors, who have those powers in respect of the administration of the Guarantee Fund as are set out in the trust deed of the Trust on the basis of which the Guarantee Fund is established.

3.2 The NSE shall act as the secretary of the Guarantee Fund.

3.3 The affairs of the Guarantee Fund shall be administered by the trustees at meetings convened for this purpose.

4. Definitions

For the purpose of these Rules –

"Act" shall mean the Capital Markets Act (Chapter 485A of the Laws of Kenya) and regulations prescribed thereunder;

“market participant” shall have the same meaning as that contained in section 2 of the NSE Derivatives Rules;

“Authority” means the Capital Markets Authority established under section 5 of the Act;

“bank” shall have the same meaning as that contained in section 2 of the Banking Act (Chapter 488 of the Laws of Kenya);

“Central Bank” means the Central Bank of Kenya established by section 3 of the Central Bank of Kenya Act (Chapter 491 of the Laws of Kenya);

"client" shall have the same meaning as that contained in section 2 of the NSE Derivatives Rules;

“derivative instrument” shall have the same meaning as that contained in section 2 of the NSE Derivatives Rules;

"derivatives member" shall mean a category of market participant admitted to membership of the NSE under the derivatives rules;

"derivatives rules" shall mean the rules and the directives of the NSE applicable to derivative securities;

"derivative securities" shall mean those NSE listed securities traded on the NSE derivatives trading system;

"derivatives trading member" shall mean a sub-category of authorised user of the NSE, registered to trade in the derivatives market under the derivatives rules;

"equities rules" shall mean the rules and the directives of the NSE applicable to equity securities, excluding the derivatives rules;

"equity securities" shall mean those NSE listed securities traded on the NSE equities trading system;

“financial services provider” shall have the same meaning as that contained in section 2 of the NSE Derivatives Rules;

"NSE" shall mean Nairobi Securities Exchange Limited, licensed to operate an exchange in accordance with section 20 of the Act;

"NSE listed securities" shall mean those listed securities included in the list of securities kept by the NSE;

"listed securities" shall have the same meaning as that contained in section 2 of the NSE Derivatives Rules;

“participant” means a person that holds in custody and administers securities or an interest in securities and that has been accepted by a central securities depository as a participant in that central securities depository;

“Rule” refers to a rule herein; and

"securities" shall have the same meaning as that contained in section 2 of the Act.

5. Management of the Guarantee Fund

- 5.1 The trustees shall open a banking account with a bank in the name of the Guarantee Fund and shall have the power to draw and endorse cheques and other negotiable instruments connected with the business of the Guarantee Fund. All monies accruing to the Guarantee Fund shall, pending the investment or application thereof, in accordance with these Rules, be paid into the said banking account. The trustees shall have power to close the banking account and open an account with another bank.
- 5.2 Subject to these Rules, the trustees shall have exclusive administration and control of all assets of the Guarantee Fund and of the income arising therefrom. Such assets or income shall be applied or invested by the trustees in the manner hereafter provided and in no other manner, that is to say –
- 5.2.1 if necessary, all the assets of the Guarantee Fund shall primarily be used to meet claims on the Guarantee Fund in terms of these Rules;
- 5.2.2 the assets of the Guarantee Fund shall be invested –
- 5.2.2.1 in cash or cash equivalents;
- 5.2.2.2 in bills, bonds, debentures or stock issued or guaranteed by the government of Kenya;
- 5.2.2.3 in stock of any local authority in Kenya authorised by law to levy rates upon immovable property; and/ or
- 5.2.2.4 in debentures or stock of the Central Bank, or such other similar body constituted or established by or under law.
- 5.3 All contributions levied in terms of these Rules together with the income arising from the Guarantee Fund shall be invested in the manner set forth in Rule 5.2 until the net value of the assets of the Guarantee Fund has reached the amount determined by the Authority in Rule 6.3.
- 5.4 In investing the assets of the Guarantee Fund, the trustees shall follow an investment policy, which shall be aimed at the enhancement of the assets of the Guarantee Fund in the medium term.
- 5.5 Such assets shall be held in the name of the Fund or in the name of a nominee company and shall be held and administered on behalf of the trustees by a bank, a participant, an authorised user or a financial services provider who is authorised by law to hold and administer such assets.

5.6 Notwithstanding anything contained in these Rules, the trustees shall be empowered to sell, exchange, or redeem any investment. The trustees may determine what proportion of the monies in the Guarantee Fund may be retained for the immediate requirements of the Guarantee Fund and what proportion may be invested.

5.7 Save as may otherwise be determined by the trustees all contracts, deeds and instruments of a like nature and all drafts, cheques or orders drawn on banks against any account of the Guarantee Fund in any bank shall be signed by two of the trustees.

6. Guarantee Fund Assets

6.1 The trustees shall apply the assets of the Guarantee Fund solely for the purposes set forth in these Rules. No withdrawal or appropriation of any part of the assets of the Guarantee Fund shall be made without special authorisation by the trustees.

6.2 For the purposes of these Rules the expression “the net assets of the Guarantee Fund” shall mean the assets of the Guarantee Fund, valued at market value less provisions made by the trustees at their discretion for all actual and contingent liabilities of the Guarantee Fund.

6.3 The net assets of the Guarantee Fund shall at all times be such minimum amount as may be determined from time to time by the Authority in consultation with the trustees. Should the net assets of the Guarantee Fund at any time fall below the determined amount the trustees shall, in the manner set out in Rule 7, levy contributions from derivatives members sufficient to bring the net assets of the Guarantee Fund to such amount as the Authority may determine.

7. Contributions to the Guarantee Fund

7.1 In the event that the trustees invoke the provisions of Rule 6.3 as a result of a claim by a derivatives member or client, the trustees shall levy additional contributions on those members falling within that market on which the claim arose.

7.2 Each such member shall contribute to the Guarantee Fund in relation to the volume of transactions that it trades on a basis and in an amount determined by the trustees. Such contributions may be in form of cash, guarantee or such other form as the Exchange may provide from time to time, and shall be obtained from the applicable clearing members.

8. Claims against the Guarantee Fund

8.1 A Clearing Member or the Clearing House may recover from the Settlement Guarantee Fund the amount of initial margin, settlement margin, variation margin or top-up margin already paid on behalf of a defaulting Clearing Member to effect settlement in the event a declaration of default was issued. The Settlement Guarantee Fund liability shall be limited to the amount of such margin which accrued or became due from the defaulting Clearing Member on the day of default by the Clearing Member.

8.2 A claim as contemplated in terms of Rule 8.1 will only be considered by the trustees if the claiming derivatives clearing member or clearing house, as the case may be, can evidence to

the satisfaction of the trustees that the amount of the claim is not recoverable from the defaulting member.

8.3 The Guarantee Fund shall be liable to NSE Clear Limited for a shortfall in margin for whatever reason.

9. Settlement of Claims

9.1 The trustees shall make an award for compensation to the claimant from the Guarantee Fund of such amount as shall be determined by NSE.

9.2 The trustees may decide to consolidate more than one claim against a particular derivatives clearing member when making an award in terms of this section.

10. Cession of Claim against Member

The trustees may satisfy a claim as set out in Rule 9 provided that the claimant shall cede his claim against the relevant member to the Guarantee Fund.

11. General

11.1 The whole of the expenses in connection with or incidental to the management or administration of the Guarantee Fund including the cost of audit and legal expenses shall be borne by the Guarantee Fund.

11.2 The trustees shall cause proper accounting records relating to the Guarantee Fund to be kept and shall cause such accounting records to be audited every year by a person registered as an accountant and auditor under the Accountants Act (Act No. 15 of 2008) or any replacement act.

11.3 Any notice to be given to derivatives members in terms of these Rules shall be properly given if given in terms of rule 3.10 of the derivatives rules.

11.4 Subject to the Act and these Rules, the decision of the trustees in regard to the administration of the Guarantee Fund and other matters arising therefrom shall be final.

11.5 In all disputes or queries other than those referred to a court of law, the interpretation of these Rules shall vest with the trustees whose interpretation shall be final.

11.6 The Rules of the Guarantee Fund may be amended in the same manner as any of the rules of the NSE may now or hereafter be amended, provided that every amendment shall be subject to the approval of the Authority.

12. Winding Up

- 12.1 If the NSE should be wound up, the assets of the Guarantee Fund shall be used, subject to these Rules, in discharging –
- 12.1.1 first all claims against the Guarantee Fund which are accepted by the trustees in terms of these Rules;
 - 12.1.2 thereafter all obligations of the NSE to the public arising out of the business of a derivatives exchange carried on by the NSE.
- 12.2 The balance (if any) of the assets of the Guarantee Fund shall be assets of the NSE unless the Guarantee Fund is itself being wound up in which event the provisions of the NSE Derivatives Guarantee Fund Trust Deed will apply.
- 12.3 In the event of a merger, amalgamation or transfer of business by or to the NSE -
- 12.3.1 the assets of the Guarantee Fund will not be dealt with pursuant to Rules 12.1 or 12.2, notwithstanding that the NSE may be wound up pursuant to such merger or transfer;
 - 12.3.2 at the discretion of the trustees, the Guarantee Fund may merge or amalgamate with or be transferred to any other Guarantee or guarantee fund of the merged, amalgamated or transferee exchange.