



**nairobi
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Discover Opportunity

NSE Derivatives Rules

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1. Derivatives Rules

The purpose of these Derivatives Rules and directives is to achieve the objects of the NSE as set out in its Memorandum and Articles of Association by providing the procedures necessary to establish and regulate a fair and efficient derivatives market and to ensure that the business of the NSE is carried out in an orderly manner and with due regard to the objects of the Capital Markets Act.

1.1. Powers exercisable by the Board of Directors

- 1.1.1.** The overall management and control of the derivatives market shall be exercised by the Board of Directors of the NSE (“**the Board**”).
- 1.1.2.** Subject to the Act, the Board may, in addition to the powers and authorities expressly conferred upon it by the Act, its licences, its Memorandum and Articles of Association, these Derivatives Rules and the applicable Rules of the NSE, exercise all powers and do all such things as may be exercised or done by the NSE.

1.2. Derivatives Rules and directives

Derivatives Rules and directives are binding:

- 1.2.1.** The Derivatives Rules and directives are binding on members, officers and their employees.
- 1.2.2.** The Derivatives Rules are binding on any person utilising the services of a member or who concludes a transaction with a member in the course of that member’s business.
- 1.2.3.** The Board shall notify members of any decision or determinations made under the Derivatives Rules and directives.

1.3. Transactions subject to provisions of the Act, the Derivatives Rules and directives

Every transaction in derivative securities entered into by a trading member must be concluded on the specific condition that the transaction is entered into subject to the provisions of the Act, these Derivatives Rules and the directives.

1.4. Interpretation of the Derivatives Rules and directive

The interpretation and enforcement of the Derivatives Rules and directives vests in the Board.

1.5. Proposals for amendments to Derivatives Rules and directives

- 1.5.1.** Any member of the Board or any member may propose in writing to the Board, any amendment to the Derivatives Rules or directives.

- 1.5.2. The Board shall consider the proposed amendment to the Derivatives Rules or directives and notify members by way of notice of its decision in regard thereto.
- 1.5.3. If, within ten days of the announcement of the Board's decision to adopt the proposal, 5 or more members object in writing to the decision, the objection together with the reasons for such objection will be referred to the Board for determination.
- 1.5.4. If, in respect of a proposal with regard to the Derivatives Rules, an objection as referred to in rule 1.5.3 has not been lodged, or the Board upholds its decision to adopt the proposal, the proposal will be submitted to the Authority in accordance with section 21B of the Act.
- 1.5.5. If an objection to a proposed amendment to the directives has not been lodged within the prescribed period, or the Board upholds its decision to adopt the proposal, the proposal will take effect immediately.
- 1.5.6. The Board will notify the Authority of any changes to its directives.

1.6. NSE not responsible for any losses

Subject to the provisions of the Act, the NSE and the clearing house shall not be liable to any person for loss or damage resulting from –

- 1.6.1. Save in the case of gross negligence, any act or omission on the part of the NSE, the clearing house or on the part of any employee or agent of the NSE or the clearing house;
- 1.6.2. any act or omission on the part of any third party;
- 1.6.3. incorrect, inaccurate or defective information furnished or supplied by the NSE, the clearing house or any employee or agent of the NSE, the clearing house or any third party where the same arises other than as a result of gross negligence by the NSE;
- 1.6.4. equipment breakdown or the breakdown, interruption, suspension, termination or failure of or defect in any system, including but not limited to any trading system, or service owned or operated by or on behalf of the NSE;
- 1.6.5. computer system malfunction, the interruption or failure of communications links, power failure, the failure of or defect in any software or hardware, whether owned by, licensed or leased to the NSE, the loss or destruction of any data and any loss or damage caused by natural disaster, riot, insurrection, acts of vandalism, sabotage or similar cause; and
- 1.6.6. the termination of any licence or other agreement to which the NSE is a party, save where the same arises due to gross misconduct or negligence by the NSE.

1.6.7. Limitation of Liability

No officer, employee or representative of the NSE and the clearing house or any member of the Board or the Board of the clearing house shall be liable for any loss sustained by, or damage caused to any person as a result of anything done or omitted by them in the *bona fide* or negligent performance of any function under or in terms of these Rules.

1.7. Indemnification

A member of the NSE management and Board, trustee of the Guarantee Fund, trustee of the Investor Protection Fund and employee of the NSE shall be indemnified by the NSE out of the funds of the NSE against any liability, loss or, damage incurred or suffered as a result of any *bona fide*, but not grossly negligent, act or omission in the execution of their duties. For the purposes of this rule, such member, trustee or employee shall not be regarded as having been grossly negligent or having acted in wilful breach of duty or trust if the act or omission resulted from incorrect information supplied to such member, trustee or employee by a source from which the member, trustee or employee would normally accept the information as correct and which can be expected to provide the correct information.

1.8. Appointment of a clearing house

The NSE shall acquire the services of, or designate a wholly owned subsidiary of the NSE as, a clearing house with the purpose of clearing contracts on the NSE in accordance with the Derivatives Rules and to provide any other services or facilities as may be required by the NSE. Any additional services required by the NSE and any duties and responsibilities of the NSE may be delegated by the NSE to such clearing house. The clearing house shall be a central counterparty.

1.9. Settlement Guarantee Fund

1.9.1. The NSE shall, by itself or through a clearing house, have the power to:

1.9.1.1. establish and maintain, to the satisfaction of the Authority, a Settlement Guarantee Fund in accordance with its rules to strengthen the financial integrity of the derivatives market and ensure settlement of transactions in derivative securities in case of default by a clearing member. Payments out of the Guarantee Fund shall be limited to ensuring settlement of transactions in derivative securities in case of a default by a clearing member as further specified in the rules of the Guarantee Fund; and

1.9.1.2. impose on every clearing member such periodic contributions as may be determined by the NSE in consultation with the Authority and notified to the clearing member in accordance with rule 1.2, for all transactions in derivative securities which contributions shall be remitted to the Guarantee Fund. These amounts will be in addition to seed capital deposited into the Guarantee Fund by the NSE or its clearing

house, as applicable, as well as an initial refundable contribution by clearing members of such an amount as may be prescribed by the NSE;

- 1.9.2. Where a clearing member has effected a transaction on behalf of a trading member, such clearing member shall be entitled to recover the levy imposed in terms of rule 1.9.1.2 from such trading member.
- 1.9.3. Similarly, where a trading member has effected a transaction on behalf of a buyer or a seller of derivatives securities, such member shall be entitled to recover the levy imposed in terms of rule 1.9.1.2 from such buyer or seller.
- 1.9.4. The trustees of the Guarantee Fund, in their capacity as trustees may acquire, incur and administer the assets and liabilities of the Guarantee Fund.
- 1.9.5. The income of the Guarantee Fund, including but not limited to levy contributions by members, vests in the trustees and is administered by the trustees as part of the Guarantee Fund provided always that the trustees shall delegate the administration of the trust account of the Guarantee Fund to the NSE or its clearing house, as the case may be, to facilitate quick settlement.

1.10. Investor Protection Fund

1.10.1. The NSE shall have the power to:

- 1.10.1.1. establish and maintain, to the satisfaction of the Authority, an Investor Protection Fund with provisions for contributions by trading members, non-executing members and the NSE, or its clearing house, and which shall satisfy claims of clients against trading members up to an amount specified in the rules of such fund. Payment out of this fund shall be subject to any defences which the relevant trading member may have against a claimant; and
- 1.10.1.2. impose on every trading member and non-executing member an investor protection levy of 0.01% of the transaction value, or such other amount as may be determined by the NSE in consultation with the Authority, for all transactions in derivative securities which levy shall be remitted to the Investor Protection Fund. These amounts will be in addition to seed capital deposited into the Investor Protection Fund by the NSE as well as other contributions that may be made into the Investor Protection Fund as agreed between the NSE and the Authority from time to time including contributions from trading members and non-executing members.
- 1.10.2. Where a clearing member has effected a transaction on behalf of a trading member and non-executing member, such clearing member shall be entitled to recover the investor protection levy imposed in terms of rule 1.10.1.2 from such trading member and non-executing member.
- 1.10.3. Similarly, where a trading member and/or non-executing member has effected a transaction on behalf of a buyer or a seller of derivatives securities, such member shall

be entitled to recover the investor protection levy imposed in terms of rule 1.10.1.2 from such buyer or seller.

- 1.10.4. The trustees of the Investor Protection Fund, in their capacity as trustees, acquire, incur and administer the assets and liabilities of the Investor Protection Fund.
- 1.10.5. The income of the Investor Protection Fund, including but not limited to levy contributions by members, vests in the trustees and is administered by the trustees as part of the Investor Protection Fund provided always that the trustees may delegate the administration of the trust account of the Investor Protection Fund to the NSE or its clearing house, as they deem necessary.

2. Interpretation and Definitions

2.1. Definitions

In these Derivatives Rules, unless otherwise clearly indicated by, or inconsistent with the context, the following terms shall have the meanings that are assigned to them hereunder, namely:

"**Act**" means the Capital Markets Act (Chapter 485A of the Laws of Kenya) including any amendments thereto;

"**additional margin**" means the margin paid to a clearing member over and above that required by the clearing house or to a trading member over and above that required by the clearing member concerned;

"**advertisement**" means any written, printed, electronic or oral communication, including a communication by means of a public radio service, television broadcast or any other media by a member, which communication is directed to the general public, or any section thereof, or to any client, and is intended to call attention to, or to market or promote, the services offered by a member, and which does not purport to provide detailed information about such services; and "advertising" has a corresponding meaning;

"**agent**" means a trading member who has traded with a client other than for his own account in terms of the Derivatives Rules;

"**aggregate position**" means collectively all the proprietary positions in related exchange contracts registered in the name of a member or, collectively, all the positions in related exchange contracts registered in the name of a client who has traded with a particular member to open such positions;

"**agricultural derivatives**" means those commodity securities which are derivative instruments and the financial terms of which are determined by underlying agricultural produce which is physically settled in terms of the Derivatives Rules;

"agricultural product" has the same meaning as contemplated in section 2 of the Agricultural Produce Marketing Act (Chapter 320 of the Laws of Kenya) or any written law modifying or replacing it;

"assign" means the exercise by the clearing house of its right in terms of an option contract to buy or sell the underlying instrument of the option contract from or to a person holding a short position in the option contract;

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

"bank" has the same meaning as that contained in section 2 of the Banking Act (Chapter 488 of the Laws of Kenya);

"bonds" means those Interest rate securities which create or acknowledge indebtedness of the issuer;

"business day" or "day" means any day except a Saturday, Sunday, public holiday or any other day on which the NSE is closed;

"buy" means, in relation to derivative securities, to enter into either:

- (a) a futures contract in terms of which the buyer is obliged to take delivery of the underlying instrument from the seller at the agreed price on the future date or to pay an amount of money to the seller if, on the future date, the price or value of the underlying instrument is less than the agreed price; or
- (b) an option contract in terms of which the buyer obtains the right from the seller to buy or sell the underlying instrument of the option contract at the agreed price from or to the seller on or before the future date;

"call option contract" means a contract, in terms of which the holder of a long position in the call option contract has obtained the right to buy, and the holder of a short position shall, if the option is exercised, sell, the underlying instrument of the option contract from or to the clearing house on or before the future date at the strike price in accordance with these Derivatives Rules and the contract specification of the option contract;

"capital adequacy requirement" means the sum of the greater of a member's initial capital or one quarter of its annual fixed operating costs plus the risk requirements as determined by the NSE by directive;

"capital adequacy return" means the submission by a member of his capital adequacy requirement to the NSE in the manner and form specified by the NSE;

"**cash settled futures contract**" means a futures contract contemplated in part (b) of the definition of futures contract in rule 2.1 of these Derivatives Rules;

"**circuit breaker**" means such mechanisms established in the DATS to prevent unnatural price movements in a derivatives instrument in accordance with the Derivatives Rules;

"**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);

"**Chief Executive**" means the person appointed by the Board as the Chief Executive of the NSE in accordance with the Articles of Association of the NSE;

"**clearing**" means the process in terms of which the clearing house becomes the buyer from the seller and the seller to the buyer in every trade whereupon the clearing member guarantees to the clearing house all obligations arising out of any position resulting from such trade in terms of these Derivatives Rules;

"**clearing agreement**" means a written agreement entered into between a clearing member and a trading member in terms of which the trading member guarantees to the clearing member the performance of the obligations arising out of the positions of the trading member and the clients of the trading member;

"**clearing house**" means NSE, or its wholly owned subsidiary designated and appointed by NSE for purposes of clearing contracts on the NSE in accordance with these rules;

"**clearing house agreement**" means a written agreement entered into between a clearing member and the clearing house in terms of which the clearing member guarantees to the clearing house all of the obligations arising out of his proprietary positions, the positions of his clients, the proprietary position of the trading members with which he has entered a clearing agreement and the positions of the clients of such trading members;

"**clearing member**" means a sub-category of market participant of the NSE, registered to perform clearing in the derivatives market and who has entered into a clearing house agreement with the clearing house;

"**client**" means any person who uses the services of a market participant;

"**client agreement**" means an agreement between a member and a client entered into before the member becomes entitled to trade with the client, the basic terms and formal requirements of which have been prescribed by the NSE;

"**close out**" means the cancellation of a position in one direction with an equal and opposite position (e.g. a long position in an exchange contract is cancelled by a short position in the same exchange contract);

"**commodity derivatives**" means those NSE listed derivatives traded on the NSE derivatives trading system and whose value is based on commodities;

"**Companies Act**" means the Companies Act, (Chapter 486 of the Laws of Kenya) or any statutory modification or re-enactment thereof for the time being in force;

"**compliance officer**" means the person appointed in terms of rule 4;

"**contract specification**" means the standard terms and formal requirements of a futures or option contract as determined by the NSE;

"**corporate action**" means an action taken by an issuer or any other entity or third party, which affects the registered owner and the beneficial owner of derivative securities in terms of an entitlement;

"**dealer**" means an employee of a trading member who is registered in terms of these Derivatives Rules to trade either for the member's own account or for or on behalf of clients, or for both;

"**Declaration of Default**" means a notice issued by the NSE and/or the clearing house informing a trading member, non-executing member or a clearing member of the occurrence of an Event of Default in accordance with rule 9.1 of these Derivatives Rules.

"**default**" means a default by a client or member as contemplated in rule 9 of these Derivatives Rules;

"**Default Handling Working Group**" means the committee established by the NSE and/ or the clearing house comprising of representatives of the risk and operations functions of the NSE and/or the clearing house as well as representatives of the clearing members, non-executing members and trading members;

"**derivative instruments**" means any:

- (a) financial instrument; or
- (b) contract;

that creates rights and obligations and that derives its value and characteristics from the value and characteristics of an underlying asset

"**derivatives automated trading system**" or "**DATS**" means the automated platform at the NSE by means of which a member shall make an offer in respect of a trade in derivative securities and on which the NSE and the clearing house may send notices to members;

"Derivatives Rules" means these Derivatives Rules issued in pursuance of the Act;

"derivative securities" means those derivative instruments listed on the NSE and traded on the NSE derivatives trading system;

"directive" means any circular, guidelines, guidance notes, instructions, notices, operational and procedural manuals or other similar form of communication issued by the NSE and/ or the clearing house;

"discretionary basis" in relation to the management of investments, means to trade, without it being necessary to obtain further authority or consent from the client involved, other than the discretionary client agreement;

"discretionary client agreement" means the client agreement as prescribed by the NSE that entitles the member to trade for a client on a discretionary basis;

"dispute" means any dispute arising between any of the persons bound by these Derivatives Rules and which the NSE declares to be a dispute in accordance with Section 14;

"effective date" means the date of the coming into operation of these Derivatives Rules;

"employee" means a person engaged by a member within that area of its business that operates as a member;

"exchange" has the same meaning as that given to "securities exchange" in section 2 of the Act;

"exchange contract" means either a futures contract in terms of which the expiry month is specified or an option contract in terms of which the expiry month, the strike price, and whether it is a put option contract or a call option contract, is specified;

"executive director" means a person appointed as a director of a member, under the Companies Act and who, in terms of a contract of employment with such member is in its full-time employ;

"exercise" means, in relation to the registered holder of a long position in an option contract, to exercise its right to buy or sell the underlying instrument of the option contract at the strike price on or before the future date;

"expire" means the closing out of an exchange contract by a trade between the registered holder of a position and the clearing house in terms of these Derivatives Rules;

"expiry month" means in relation to a futures or option contract, the month in which the positions in such exchange contracts expire on the date and at the time as contained in the contract specification of the futures or option contract;

"external exchange" means a person authorised to function as an exchange in terms of the laws of a country other than the Republic;

"financial products" means:

- (a) securities and instruments, including:
 - (i) shares in a company;
 - (ii) debentures and securitised debt;
 - (iii) any money-market instrument;
 - (iv) any warrant, certificate, and other instrument acknowledging, conferring or creating rights to subscribe to, acquire, dispose of, or convert securities and instruments referred to in subparagraphs (i), (ii) and (iii);
 - (v) any "securities" as defined in Section 2 of the Act;
- (b) a participatory interest in one or more collective investment schemes;
- (c) a long-term or a short-term insurance contract or policy;
- (d) a benefit provided by a pension fund organisation to the members of the organisation by virtue of membership;
- (e) a foreign currency denominated investment instrument, including a foreign currency deposit;
- (f) a deposit as defined by Kenyan banking law;
- (g) any other product similar in nature to any financial product referred to in paragraphs (a) to (f) inclusive declared by notice of the Authority to be a financial product;
- (h) any combined product containing one or more of the financial products referred to in paragraphs (a) to (g) inclusive;
- (i) any financial product issued by any foreign product supplier and marketed in the Republic and which in nature and character is essentially similar or corresponding to a financial product referred to in paragraphs (a) to (h) inclusive;

and by definition includes NSE authorised investments;

"financial services provider" means any person, other than a representative, who as a regular feature of the business of such person:

- (a) provides advice; or
- (b) provides advice or renders any intermediary service; or
- (c) renders an intermediary service;

"foreign commodity derivatives" means those commodity securities which are cash settled derivative instruments and the financial terms of which are determined by an underlying foreign referenced commodity;

"foreign company" means a foreign company as registered in accordance with Part XXXVII of the Companies Act;

"futures contract" means a contract, the effect of which is that:

- (a) a person agrees to deliver the underlying instrument to or receive it from another person at an agreed price on a future date; or
- (b) a person will pay to or receive from another person an amount of money according to whether, on the future date, the price or value of the underlying instrument is higher or lower than the agreed price on that future date, in accordance with these Derivatives Rules and the contract specification of the futures contract and which is included in the list of derivatives securities kept by the NSE;

"Guarantee Fund" means the NSE Derivatives Settlement Guarantee Fund established in accordance with these Derivatives Rules and the Settlement Guarantee Fund rules of the NSE;

"initial capital" means the minimum capital as specified from time to time by the NSE;

"initial margin" means the amount of money determined by the clearing house on the basis specified by the NSE and held in respect of the aggregate position of a member or a client;

"intermediary services" means any act other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier:

- (a) the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier; or

- (b) with a view to:
- (i) buying, selling or otherwise dealing in, managing, administering, keeping in safe custody, maintaining or servicing a financial product purchased by a client from a product supplier or in which the client has invested;
 - (ii) collecting or accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product; or
 - (iii) receiving, submitting or processing the claims of a client against a product supplier;

"international derivatives" means those derivative securities the financial terms of which are determined by a security listed on an external exchange;

"investment advice" means any recommendation, guidance or proposal of a financial nature furnished by a member, by any means or medium, to any client or group of clients:

- (a) in respect of the purchase or sale of NSE authorised investments; or
- (b) on any corporate action or other event affecting any rights or benefits in respect of any NSE authorised investments; or
- (c) on the exercise or lapse of any rights in respect of any NSE authorised investments; and irrespective of whether or not such investment advice results in any transaction being effected.

Investment advice does not include:

- factual advice given merely:
 - (i) on the procedure for entering into a transaction in respect of any NSE authorised investments;
 - (ii) in relation to the description of any NSE authorised investments;
 - (iii) in answer to routine administrative queries;
 - (iv) in the form of objective information about NSE authorised investments; or
 - (v) by the display or distribution of promotional material;
- an analysis or report on any NSE authorised investments without any express or implied recommendation, guidance or proposal that any particular transaction in respect of the relevant product is appropriate to the particular investment objectives, financial situation or particular needs of a client;

"investment manager" means a trading member who is authorised in terms of rule 14 of the Derivatives Rules to undertake the management of investments on a discretionary basis;

"Investor Protection Fund" means the NSE Derivatives Investor Protection Fund established in accordance with these Derivatives Rules and the NSE Derivatives Investor Protection Fund rules of the NSE;

"in writing" in relation to anything which must be done in writing includes any such thing done in electronic form;

"large exposure risk" means the amount of own funds required in relation to the member's risk arising from large exposures to a third party or a connected group of third parties as calculated in a manner determined by the NSE;

"Licensing Regulations" means the Capital Markets (Licensing Requirements) (General) Regulations, 2002 and any Regulations regarding the licensing of Derivatives Brokers that may come into force by notice in the Kenya Gazette;

"listed securities" means those securities listed in accordance with the Capital Markets (Securities) (Public Offers, Listings and Disclosures) Regulations, 2002, formulated under the Act and the NSE Listing Rules as amended from time to time;

"long position" means a number of exchange contracts registered by the clearing house in the name of a member or client in terms of which:

- (a) in relation to futures contracts, the member or the client is obliged to take delivery of the underlying instrument from the seller at the agreed price on the future date; or to pay an amount of money to the seller if, on the future date, the price or value of the underlying instrument is less than the agreed price; or
- (b) in relation to option contracts, the member or client has the right to buy or sell the underlying instrument of the option contract at the agreed price on or before the future date;

"manage" in relation to NSE authorised investments, means any arrangement entered into between a client and a member which authorises the member to buy or sell NSE authorised investments on behalf of the client, either with full discretion or with prior reference to the client;

"margin" means either initial margin or variation margin or additional margin or retained margin as the context may require;

"Market Controller" means the NSE Chief Executive or the person acting as the NSE Chief Executive acting in his/ her role to supervise, administer and control the daily operations of the DATS;

"market corner" means any arrangement, agreement, commitment or understanding involving the purchasing, selling or issuing of securities listed on a regulated market:

- (a) by which a person, or a group of persons acting in concert, acquires direct or indirect beneficial ownership of, or exercises control over, or is able to influence the price of, securities listed on a regulated market; and
- (b) where the effect of the arrangement, agreement, commitment or understanding is or is likely to be that the trading price of the securities listed on a regulated market, as reflected through the facilities of a regulated market, is or is likely to be abnormally influenced or arbitrarily dictated by such person or group of persons in that the said trading price deviates or is likely to deviate materially from the trading price which would otherwise likely have been reflected through the facilities of the regulated market on which the particular securities are traded;

"market maker" means a person appointed as a market maker for a particular security or asset class in accordance with the Market Participants Rules of the NSE.

"market making" means the creation of demand and supply for securities by way of entry into the DATS of bids and offers by a trading member for purposes of enhancing liquidity in accordance with the market making rules of the Exchange;

"market participant" means a person authorised by NSE in terms of its Rules to perform such securities services as the NSE Rules may permit;

"market scrip" means a financial instrument which denotes the ownership of income from debt or shares and whose value may be realized in a financial market;

"mark-to-market" means the revaluation of a position in the exchange contract at its current market value;

"match" means to match one member's trade with that of another member in terms of certain criteria contained in their independent reports of the trades;

"member" means a derivatives member, which is a category of market participant admitted to derivatives membership of the NSE under these rules and the term "member" shall refer to a trading member, a clearing member and/ or a non-executing member, as the case may be;

"non-executing member" means a sub-category of market participant of the NSE, registered and authorized to provide custodial services as a custodian or an authorised depository agent in the Republic and registered as a non-executing member under these Derivatives Rules for the purpose of accepting trades allocated from a trading member in accordance with rule 5.16 of these Derivatives Rules to facilitate the settlement of trades from clients;

“non-executive director” means a person appointed as a director of a member, under the Companies Act but who is not employed by such member;

"non-resident" means a person (i.e. a natural person or legal entity) whose normal place of residency or domicile or registration is outside Kenya;

“NSE” means the Nairobi Securities Exchange Limited, a limited liability company duly incorporated under the Companies Act (Chapter 486 of the Laws of Kenya), licensed to operate a securities exchange under the Act;

"NSE authorised investments" means:

- (a) derivative securities;
- (b) NSE listed securities traded on the NSE trading system;
- (c) securities listed on an exchange in the Republic other than the NSE;
- (d) securities listed on an external exchange;
- (e) participatory interests in a collective investment scheme as defined in the Act and units or any other form of participation in a foreign collective investment scheme approved by the Authority;
- (f) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country; and
- (g) funds intended for the purchase of such securities, units or participation;

"NSE derivatives trading system" means the computer system or systems and associated network or networks operated or used by the NSE for the purpose of providing a market for the trading of derivative securities, including the DATS;

"NSE Executive" means the Chief Executive and such other officials of the NSE as may from time to time serve on the NSE's top management;

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

“NSE Director: Regulatory Affairs” means the person for the time being in charge of the Regulatory Affairs Department of the NSE;

"NSE share" means a share in the NSE itself or in any company that owns the NSE;

"NSE trading system" means the computer system or systems and associated network or networks operated or used by the NSE for the purpose of providing a market for the trading of listed securities;

"NSE year" means the financial year of the NSE which shall end on the last day in December in each year or such other date as the NSE may determine;

"off-DATS" means, in relation to an offer, acceptance of an offer or a trade, that the offer is made by one member to another verbally or in writing in accordance with rule 5.1 of the Derivatives Rules and not on the DATS;

"officer" means an executive director or a registered officer of a member;

"offer" means an offer to buy or to sell;

"option contract" means a put option contract or a call option contract, as the context may require;

"order" means an offer in terms of which there is a period of time within which to accept the offer;

"own funds" means the net financial worth of a member calculated in the manner decided by the NSE;

"physically settled futures contract" means a futures contract contemplated in part (a) of the definition of a futures contract in rule 2.1 of these Derivatives Rules;

"position" means either a long position or a short position;

"position risk requirement" means the amount of own funds required in relation to the member's open positions in securities as determined by the NSE;

"prescribed agreements" means the agreements, the basic terms and formal requirements of which have been specified by the NSE;

"principal" means a member who has traded with a client or another member for his own account;

"product supplier" means any person who issues a financial product by virtue of an authority, approval or right granted to such person under any law;

"professional client" in relation to a trading member , means:

- (a) another market participant;
- (b) a bank;
- (c) an insurer licensed under the Insurance Act (Chapter 487 of the Laws of Kenya);

- (d) a person outside the Republic who:
- (i) as a regular feature of the person's business, renders a service similar to a "securities service" or conducts the business of a bank or a business referred to in paragraph (c); and
 - (ii) is registered, licensed, recognised, approved or otherwise authorised to render the service or conduct the business referred to in paragraph (d)(i) by a foreign regulator with functions similar to those of the Authority, the Central Bank or the Insurance Regulatory Authority;
- (e) any person who is mandated to manage assets and who has confirmed to the satisfaction of the market participant that the market value of the assets managed by the person will exceed KShs. 10 Million at all times during the rendering of securities services to the person; or
- (f) any other client, who has confirmed to the satisfaction of the member that the person will have assets of which the net asset value will exceed KShs. 5 Million at all times during the rendering of securities services to the person;

"proprietary position" means a position registered by the clearing house in the name of a member for the member's own account;

"put option contract" means a contract, in terms of which the holder of a long position in the put option contract has obtained the right to sell, and the holder of a short position shall, if the option is exercised, buy, the underlying instrument of the option contract to or from the clearing house on or before the future date at the strike price in accordance with these Derivatives Rules and the contract specification of the option contract;

"registered officer" means a compliance officer or a dealer registered by the NSE as such in the name of the member;

"regulation" means any regulation which may be made by the Cabinet Secretary in terms of Section 12 of the Act;

"related exchange contracts" means those exchange contracts which the NSE decides have such characteristics in common that the risk of loss in one of the exchange contracts may be reduced by an off-setting position in any of the other or a combination of the other exchange contracts in the group of related exchange contracts;

"Republic" means the Republic of Kenya;

"resident" means a natural person who is resident in Kenya or a legal entity registered in Kenya, and includes a partnership or a foreign company;

"resident client" means a resident who is not a member and who has concluded a client agreement with a trading member or non-executing member, and who has been registered by the clearing house as a resident client of the trading member;

"retained margin" means the margin paid by a client to a member for an intended trade or margin due to a client which the member has retained in anticipation of a trade;

"risk disclosure statement" means the risk disclosure statement annexed to the client agreement;

"safeguard" means in relation to NSE authorised investments:

- (a) the holding of such investments in safe custody by a member on behalf of a client;
- (b) or being accountable as a member to a client for such investments held by another financial services provider;

"securities" has the same meaning as that contained in section 2 of the Act;

"securities services" means services provided in respect of:

- (a) the buying and selling of securities;
- (b) the custody and administration of securities;
- (c) the management of securities by a market participant;
- (d) the clearing of transactions in listed securities; and
- (e) the settlement of transactions in listed securities;

"sell" means, in relation to derivative securities, to enter into either:

- (a) a futures contract in terms of which the seller is obliged to make delivery of the underlying instrument to the buyer at the agreed price on the future date; or to pay an amount of money to the buyer if, on the future date the price or value of the underlying instrument is greater than the agreed price; or
- (b) an option contract in terms of which the seller grants the right to the buyer to buy or sell the underlying instrument of the option contract from, or sell it to, the seller at the agreed price on or before the future date;

"settlement date" means the date by which an executed trade in derivative securities must be settled;

"settlement risk requirement" means the amount of own funds required in relation to the member's settlement obligations in the Derivatives Market as determined by the NSE;

"short position" means a number of derivatives exchange contracts registered by the clearing house in the name of a member or client in terms of which:

- (a) in relation to futures contracts, the member or client is obliged to make delivery of the underlying instrument at the agreed price on the future date or to pay an amount of money if, on the future date, the price or value of the underlying instrument is greater than the agreed price; or
- (b) in relation to option contracts, the member or client has granted the right to another person to buy or sell the underlying instrument of the option contract at the agreed price on or before the future date;

"SRO Committee" means the Self-Regulatory Organization Committee of the NSE appointed pursuant to the Capital Markets (Demutualization of the Nairobi Securities Exchange Limited) Regulations, 2012;

"standard lot size" means the number of a particular exchange contract that is traded in a single trade as determined by the NSE;

"strike price" means the price or yield at which the person in whose name a long position in an option contract is registered has the right to buy or sell the underlying instrument of the option contract;

"SWIFT" means the Society for Worldwide Interbank Financial Telecommunications;

"SWIFT non-resident account notification" means the notification, utilising the SWIFT network, from the clearing house's nominated SWIFT agent to a bank, instructing the bank to receive payment of interest into a non-resident account in the amount specified in the notification;

"trade" means to buy or to sell derivative securities by means of the DATS;

"trading member" means a sub-category of market participant of the NSE, registered to trade in the derivatives market under the Derivatives Rules;

"transaction" means a contract of purchase and sale of securities;

"tripartite client agreement" means a written agreement entered into between a non-executing member, a trading member and a client in terms of which the non-executing member guarantees to the trading member the receipt of positions allocated by the trading member in accordance with rule 5.16 and the performance of the obligations arising out of those positions;

"trustees" means the trustees of the Guarantee Fund or Investor Protection Fund, as applicable;

"underlying instrument" means the corporeal or incorporeal thing, asset, index, currency, rate of interest or any other factor which is the subject matter of a futures contract or an option contract, or the futures contract that is the subject matter of an option contract;

"unsolicited call" means any first communication made to a person by a trading member or an employee of a trading member, without an express or tacit invitation from such person;

"variation margin" means the amount of margin payable in terms of rule 6.6.2;

2.2. Interpretation

In these Derivatives Rules, unless otherwise clearly indicated by, or inconsistent with the context:

- 2.2.1. a reference to one gender includes a reference to all other genders;
- 2.2.2. the singular includes the plural, and vice versa;
- 2.2.3. all the terms defined in the Act bear the same meaning as are assigned to them in the Act;
- 2.2.4. all the terms that have not been defined shall bear the same meaning as ascribed to them in ordinary parlance.

3. Derivatives Membership and Disciplinary Procedures

3.1. Membership of the Derivatives Market of the NSE

- 3.1.1. In order to qualify to be a member, an applicant must:
 - 3.1.1.1. comply with the general requirements set out in these rules as well as in the NSE's Market Participants Rules, 2014, the Licensing Regulations and the obligations set out in the legislation under which the prospective member primarily operates;
 - 3.1.1.2. comply with any specific requirements applicable to members who participate in the derivatives market, as the case may be; and
 - 3.1.1.3. comply with any other directives that may be communicated by the NSE to the market in consultation with the Authority
- 3.1.2. The NSE shall keep a register of members and shall in such register indicate in which category or sub-category of market participant the member has been authorised to operate.

3.1.3. Depending on the category of membership enjoyed by a member, a member may:

3.1.3.1. trade in one or more of the categories; and/or

3.1.3.2. perform clearing and settlement in one or more categories; and/or

3.1.3.3. otherwise access or utilise the operational services of the NSE.

3.1.4. Existing members of NSE's Equities Market who wish to apply for membership of the Derivatives Market, and any other persons who wish to apply for membership of both the Equities and Derivatives Market, will be required to meet all the criteria set out in these rules for membership and in addition will be required:

3.1.4.1. to establish and maintain separate client accounts for each Market;

3.1.4.2. to demonstrate clear segregation of client funds at client level; and

3.1.4.3. to maintain such capital adequacy levels and make such capital adequacy returns as required by NSE.

3.2. General requirements

3.2.1. Officers of members shall, subject to any waiver by the NSE:

3.2.1.1. be of full legal capacity;

3.2.1.2. be fit and proper in line with the criteria set out under Section 24 of the Capital Markets Act;

3.2.1.3. comply with such criteria of good character and high business integrity as the NSE deems fit;

3.2.1.4. not be an undischarged bankrupt; and

3.2.1.5. not in the period preceding the application as the NSE in its discretion deems fit, have been:

3.2.1.5.1. convicted of activities constituting a criminal offence, whether in the Republic or elsewhere;

3.2.1.5.2. the subject of a formal investigation by any regulatory or government agency;

3.2.1.5.3. expelled, whether as a member or otherwise, from any exchange or external exchange;

3.2.1.5.4. employed by or associated with a member of any exchange or external exchange, which member was expelled from that exchange and where the person or officer has, in the opinion of the NSE, contributed to the circumstances leading to the expulsion;

3.2.1.5.5. declared a defaulting member of the NSE or any other exchange including an external exchange; or

3.2.1.5.6. refused entry to or expelled from any profession or vocation or from any fiduciary office or position of trust for breach of fiduciary duty.

3.2.2. Members shall:

3.2.2.1. not employ, register or permit association with an officer who does not fulfil the requirements of rule 3.2.1 without the prior approval of the NSE; and

3.2.2.2. have, in the opinion of the NSE, a good reputation and high business standing.

3.2.3. In addition to the requirements set out in this rule 3.2, members seeking admission within a specific membership sub - category shall comply with any additional requirements applicable to such membership category set out in the Derivatives Rules, directives, the prevailing Licensing Regulations and the legislation under which the prospective member primarily operates.

3.2.4. Members shall at all times have and maintain the necessary administrative and other systems, facilities, resources and expertise to ensure that:

3.2.4.1. the management of their own and clients' funds is adequate and in accordance with the Derivatives Rules relating to the management or separation of funds;

3.2.4.2. an accurate record of their own and clients' positions is kept at all times;

3.2.4.3. their clients' trades, cash balances and any other information relating to their positions are timeously reported to the clients; and

3.2.4.4. they comply with all the financial resources requirements pertaining to the relevant category of market participant as prescribed in the Derivatives Rules.

3.3. Applications for membership

3.3.1. An application for membership shall be made to the NSE in the manner and in the form set out in or pursuant to these rules and shall indicate in what category or categories of membership the applicant wishes to apply.

3.3.2. Applicants shall include a signed copy of their constitutive documents or memorandum and articles of association, as the case may be, a copy of any agreement entered into or proposed to be entered into between the members of the entity relative to the members' interest or shares thereof and any other information as the NSE may require. The provisions of this rule shall apply *mutatis mutandis* to the amendment or substitution of the aforementioned document.

- 3.3.3.** The applicant shall include with its application, the following information:
- 3.3.3.1.** the applications for registration as registered officers of the applicant;
 - 3.3.3.2.** the most recent financial statements of the applicant as well as a completed capital adequacy return;
 - 3.3.3.3.** the details of the applicant's auditor;
 - 3.3.3.4.** a completed clearing agreement, in the case of a trading member and non-executing member;
 - 3.3.3.5.** a completed tripartite client agreement, in the case of a non-executing member; and
 - 3.3.3.6.** a completed clearing house agreement, in the case of a clearing member.
- 3.3.4.** Notwithstanding any provision in the Derivatives Rules and directives, the NSE may require the applicant to furnish further information, and may institute any investigation that it deems necessary, to verify information submitted by the applicant in support of an application. Such investigation may include without limitation, a request for the applicant or one or more representatives of the applicant, to be interviewed by the Chief Executive or any person appointed by the NSE for that purpose.
- 3.3.5.** The NSE shall have the sole discretion to accept or reject the application, or to accept an application subject to certain conditions to be fulfilled as determined by the NSE from time to time: Provided that the NSE shall reach a decision within 60 (sixty) days of the first meeting at which the application was considered.
- 3.3.6.** The NSE shall notify the applicant in writing of its decision and of any conditions that are required to be fulfilled.
- 3.3.7.** Any person aggrieved by the decision of the NSE to reject an application, shall have a right of appeal to the Authority.
- 3.3.8.** If an application for membership has been refused, and the applicant did not exercise his right of appeal or if the appeal is unsuccessful, such applicant shall not be entitled to re-apply for membership for a period of one (1) year from the date of refusal, or such shorter period as the NSE may determine.
- 3.3.9.** Upon approval of the application of the member, such member shall obtain membership and the status in such sub-category or categories of market participant as determined by the NSE shall be activated.
- 3.3.10.** The NSE shall notify the Authority and members of the admission of a new member.

3.3.11. Trading members on the existing equities market of the NSE shall automatically be admitted as members subject to the fulfilment of any additional requirements arising from membership of the derivatives market.

3.4. Voluntary changes to, or termination of, membership

3.4.1. A member may apply to terminate its membership by giving the NSE 30 days' written notice.

3.4.2. The NSE may accept the termination unconditionally or subject to such conditions as it may deem fit, or may refuse to accept the termination until it is satisfied that all outstanding contractual or other obligations of the member have been satisfied.

3.4.3. Should a member wish to change its market participant status or wish to obtain authorisation to operate in another sub-category of market participant, the provisions of rule 3.3 shall apply *mutatis mutandis*.

3.4.4. Changes in name or corporate structure:

3.4.4.1. A member undergoing any of the changes set out below shall forthwith inform the NSE in writing of the change.

3.4.4.2. The notification referred to in rule 3.4.4.1 shall be accompanied by such information as the NSE may determine from time to time. Provided that:

3.4.4.2.1. in the case of a corporate entity changing its name, the notification shall be accompanied by the relevant certificate of name change;

3.4.4.2.2. in the event that a trading member's business or infrastructure relating to trading in derivative securities is transferred to another legal entity in any manner, including but not limited to a merger, take-over, transfer of business or corporate restructuring, the trading member shall inform the NSE of the change at least one (1) month before it takes effect, and the notification shall be accompanied by such information as would be required in the case of a new application for membership: Provided that the NSE may, at its discretion, request full particulars regarding the change and the reasons therefor, and provided further that the NSE may determine that a new application for membership must be made.

3.4.5. The NSE shall notify members of the termination of or change in membership, and the termination shall become effective on the date and time of the notice, unless otherwise stated in the notice.

3.5. Involuntary termination of membership

3.5.1. Membership shall terminate if:

3.5.1.1. the member ceases to exist via operation of law;

- 3.5.1.2. a member who is a corporate entity is liquidated or placed under administration or statutory management, whether provisionally or finally;
- 3.5.1.3. the member enters into an arrangement with its creditors;
- 3.5.1.4. the member fails to satisfy or to initiate steps to set aside a judgment, award or determination against it within the time periods provided for in the rules of the relevant body;
- 3.5.1.5. the SRO Committee has resolved in accordance with its procedures that membership should be terminated;
- 3.5.1.6. the member defaults;
- 3.5.1.7. a newly admitted trading member or non-executing member fails to enter into a clearing agreement with a clearing member within thirty days or such other period which the NSE may determine after the termination for whatever reason of its clearing agreement with a clearing member; or
- 3.5.1.8. an existing trading member or non-executing member fails to enter into a clearing agreement with a clearing member within twenty four hours or such other period which the NSE may determine after the termination for whatever reason of its clearing agreement with a clearing member;
- 3.5.1.9. the Board has resolved to terminate the membership of the member after taking into account the member's representations in this regard.
- 3.5.2. The NSE shall notify the Authority of any termination of membership and shall publish the termination in a notice to members, and the termination shall become effective on the date and time of the notice, unless stated otherwise in the notice.

3.6. Duty to furnish information

- 3.6.1. A member shall forthwith advise the NSE in writing of:
 - 3.6.1.1. the granting of an application for, or the revocation of, recognition under any statutory enactment or any registration, authorisation or licence which may bear upon or be associated with its business as a member of the NSE;
 - 3.6.1.2. the commission by or the conviction of the member or any of its officers for any offence under legislation relating to banking, or other financial services, companies, insolvency, insurance and pension and provident societies or of any offence involving fraud or dishonesty;
 - 3.6.1.3. any person becoming or ceasing to be a director of a corporate member;

- 3.6.1.4. any change in the name or address of any office of the member, and of any change in the member's telex, telephone or facsimile numbers or electronic mailing addresses;
- 3.6.1.5. any change in the particulars relating to an officer, and of the event that any officer is found guilty of any improper conduct by any licensed exchange, a previous or current employer, a professional association or a court of law;
- 3.6.1.6. any of the circumstances referred to in rules 3.5.1.1 to 3.5.1.4 arising; or
- 3.6.1.7. the dismissal of an employee for committing or attempting to commit an act which is dishonest, fraudulent, dishonourable or disgraceful.
- 3.6.2. A member shall in addition inform the NSE in writing:
 - 3.6.2.1. of any person holding, or having a beneficial interest in 20% or more of any class of the share capital of a member that is a company or in the member's interest of a member that is a corporate entity other than a company, as the case may be, and of any change in such holding;
 - 3.6.2.2. if it or any employee thereof holds, or has a beneficial interest in, any class of the share capital of a client that is a company or in the membership interest of a client that is a corporate entity or in a client that is a partnership.
- 3.6.3. A member shall submit to the NSE within three months after the end of its financial year, a copy of its audited financial statements, and the audit report prescribed by the Act, in respect of such period.
- 3.6.4. Subject to rules 3.6.5 and 3.6.6, a member shall submit the prescribed monthly capital adequacy return monthly to the NSE within ten business days of the end of the month or within such other period that the NSE may require: Provided that the member shall at all times comply with the capital adequacy requirements referred to in these Derivatives Rules, and provided further that the NSE shall be entitled to suspend a member from trading, should the return not be submitted timeously.
- 3.6.5. A member that is a bank shall be exempt, at the NSE's sole discretion, from the requirement to submit the monthly capital adequacy return referred to in rule 3.6.4,
- 3.6.6. A member that is a market participant of another exchange may apply in writing to the Director: Regulatory Affairs for exemption from the requirement to submit the monthly capital adequacy return referred to in rule 3.6.4, provided the capital requirements of the other exchange are, in the opinion of the NSE Director: Regulatory Affairs, similar to those imposed by the NSE and the member is required to submit a return to the other exchange. Such exemption shall be granted at the NSE's sole discretion.
- 3.6.7. In considering an application for an exemption in terms of rule 3.6.6, the NSE Director: Regulatory Affairs will take into account the relative activity undertaken by the member on the NSE and the other exchange in order to determine whether it is

preferable for the other exchange to act as the lead regulator in relation to the supervision of compliance with capital adequacy requirements by the member.

- 3.6.8. If a member is granted an exemption in terms of rule 3.6.6, the member may be required at any time to submit, to the NSE Director: Regulatory Affairs, a copy of any capital adequacy return submitted to the other exchange.
- 3.6.9. Despite the fact that a member may be exempt from submitting monthly capital adequacy returns to the NSE Director: Regulatory Affairs, in terms of rules 3.6.5 or 3.6.6, the member is required to advise the NSE Director: Regulatory Affairs, in writing, as soon as it becomes aware that it has failed to meet the relevant capital adequacy requirements set out in rule 3.20.
- 3.6.10. Without prejudice to the foregoing, a member shall submit to the NSE such other information as may reasonably be requested by the NSE from time to time and in such frequency as may be advised by the NSE.

3.7. Fees, levies and charges

- 3.7.1. A member which uses the services of the NSE shall pay to the NSE such fees and charges as may be prescribed by the NSE from time to time.
- 3.7.2. The NSE may prescribe fees which shall be paid by members. Such fees:
 - 3.7.2.1. shall be paid annually in advance during January and shall be in respect of each NSE financial year;
 - 3.7.2.2. in respect of a new member shall be payable from and including the month in which the member is admitted;
 - 3.7.2.3. in respect of a member which ceases to be a member, shall not be refunded.
- 3.7.3. In the event of any change in the amount of fees payable by a member, such changed fees shall apply with effect from the date on which the change took place.
- 3.7.4. The NSE may, in addition to the fees and charges prescribed by these Derivatives Rules, from time to time impose upon every member a levy which shall be paid to the NSE or any of its funds on such conditions as the NSE may decide. Such levy may be recovered from the clients of the member.
- 3.7.5. Any fee, charge, contribution or levy to be paid or which may be imposed in terms of these Derivatives Rules, shall be paid as determined by the NSE from time to time and any member failing to make such payment when due shall, unless the same be paid within one month after written demand has been made by the NSE, cease to be a member.

3.8. Consent required for employment of certain persons

3.8.1. No member shall without the written consent of the NSE take into or continue in its employment in any capacity in any business carried on by it as a member:

3.8.1.1. any sole proprietor, partner, officer or employee of a member expelled from the NSE;

3.8.1.2. or any such sole proprietor, or partner whose membership has been terminated by the NSE,

3.8.1.3. any person refused approval to operate as a financial services provider in terms of the Act or any other act;

3.8.1.4. any person expelled, whether as a market participant or otherwise, from any other exchange; or

3.8.1.5. any person who is an undischarged bankrupt or has been a defaulter or has been convicted of theft, fraud, forgery, money laundry or any other crime involving dishonesty.

3.8.2. The consent of the NSE may be given for a limited period and may be withdrawn at any time: Provided the NSE gives the member one calendar month's notice of its intention to withdraw such consent.

3.9. Trading name

The NSE shall be entitled to refuse any member approval of membership, should the NSE in its sole discretion deem the name under which the member proposes to operate, to be inappropriate, misleading or unacceptable for any reason.

3.10. Notices

3.10.1. Notice to the NSE by members

Every member shall notify the NSE of a business and postal address, and a secured electronic delivery mechanism address at which that member shall accept the delivery of all notices issued by the NSE in terms of the Derivatives Rules.

3.10.2. Notice to members

3.10.2.1. Any notice given by the NSE in terms of the Derivatives Rules and directives shall be in writing.

3.10.2.2. A notice may be delivered by means of an electronic delivery mechanism or by hand or by registered post.

3.10.2.3. Any notice delivered by the NSE by hand before 16:00 on a business day at the physical address of the member, shall be deemed, unless the contrary is proved, to have been received on the date of delivery.

3.10.2.4. Any notice transmitted by an electronic delivery mechanism before 16:00 on a business day, shall be deemed, unless the contrary is proved, to have been received on the date of the transmission.

3.10.2.5. Any notice delivered by the NSE by registered post shall be deemed, unless the contrary is proved, to have been received within seven business days after being dispatched.

3.11. Surveillance and Investigation by the NSE

3.11.1. Surveillance

The NSE's Regulatory Affairs Department shall at all times have the power to set up and maintain systems for:

3.11.1.1. monitoring compliance by members with the provisions of the Act, the regulations and the Derivatives Rules and directives and any arrangements made with a clearing house for the provision of services and facilities;

3.11.1.2. the surveillance of any matter relevant for the purposes of the Act, the regulations and these Derivatives Rules.

3.11.2. Investigation

3.11.2.1. The NSE Officer in charge of surveillance, and any other person designated by him, shall at all times have the power to:

3.11.2.1.1. investigate any NSE related activities of any person who at the relevant time was a member or a partner, employee or officer of a member;

3.11.2.1.2. investigate whether that member or any of its employees complies with all the provisions of the Act, these Derivatives Rules and directives;

3.11.2.1.3. investigate whether the member is trading in such a manner that there is a danger that such member may not be able to meet its commitments to clients, other members or the clearing house;

3.11.2.1.4. investigate whether such member is conducting its business in a manner which could be detrimental to the interest, good name or welfare of the NSE or its members; and

3.11.2.1.5. require any person who is subject to the jurisdiction of the NSE and who is believed to be able to furnish any information on the subject of any investigation or to have in his or her possession or under his or her control any book, document, tape or electronic

record or other object which has a bearing on the subject of the investigation, to produce such book, document, tape or electronic record or other object or to appear at a time and place specified, to be questioned by any of the abovementioned persons, to furnish such information or to produce such book, document, tape, electronic record or other object: Provided that the subject of the investigation has first been put to such person. Such person may, if he or she is not a sole proprietor or an executive director or senior partner of a member, request to be assisted by the sole proprietor or by an executive director or senior partner of the member by which the person is employed.

3.11.3. The NSE Director: Regulatory Affairs may delegate the power granted to him in terms of rule 3.11.2.1 to any member of his staff.

3.11.4. Referral to another authority

3.11.5. Should the NSE's Regulatory Affairs Department become aware of any possible contravention of law by a person over whom the NSE does not have jurisdiction, the NSE's Regulatory Affairs Department shall be entitled to refer such matter to the appropriate authority or authorities, whether outside or within the Republic.

3.12. Use of Information Obtained by the NSE

Any information, document, book, tape or electronic record or other object obtained by the NSE in connection with its surveillance role, whether by investigation or otherwise, may be used in evidence in any disciplinary proceedings contemplated in rule 3.14 below and may be furnished by the NSE's Regulatory Affairs Department to any other body which may have jurisdiction over the matter under consideration, whether outside or within the Republic.

3.13. Improper Conduct

The following acts and practices whether of commission or omission on the part of any person who at the time of the alleged act or practice was a member or a partner, employee or officer of a member shall constitute improper conduct: Provided that the acts and practices so specified are not intended to be a complete list of acts and practices which may constitute improper conduct:

3.13.1. committing or attempting to commit any act which is dishonest or fraudulent;

3.13.2. being a party to, or facilitating or conducting a transaction which is fictitious and/or has a dishonest or unlawful motive;

3.13.3. contravening, attempting to contravene, or failing to comply with any one or more of any provision of the Act, a derivatives rule or a directive;

3.13.4. negligently or recklessly conducting the business or affairs of the member in such a way that actual or potential prejudice is, or may be, caused to the NSE, any other member, a client of a member or the general public. The failure by a member to

introduce appropriate and reasonable safeguards or controls to avoid such prejudice may be treated where appropriate as constituting either negligence or recklessness;

- 3.13.5. committing or attempting to commit any act which is detrimental to any one or more of the interest, good name or welfare of the NSE or its members;
- 3.13.6. knowingly obstructing the business of the NSE or its members;
- 3.13.7. failing, when requested, to assist the NSE Regulatory Affairs Department in the exercise of its duties (which shall include, but shall not be limited to, failure without sufficient cause to provide information in accordance with the provisions of rule 3.11.2.1.5).

3.14. Disciplinary procedures

3.14.1. Conclusion of investigation

On conclusion of any investigation in terms of rule 3.11 and if, after having considered all the relevant information in his possession, the NSE Director: Regulatory Affairs is of the opinion that there are grounds for an allegation of improper conduct, the NSE Director: Regulatory Affairs may:

3.14.1.1. refer the matter for determination to the SRO Committee; or

3.14.1.2. if he considers that the alleged conduct is so serious that it might warrant the imposition of a fine in excess of the amount referred to in rule 3.14.2.4 or suspension or termination of membership or employment with a member, report the matter to the Authority.

3.14.2. SRO Committee

3.14.2.1. The SRO Committee may, subject to the provisions of rule 3.14.2.2:

3.14.2.1.1. issue instructions to the person whose conduct or omission is under consideration concerning action which must be taken, or not be taken, to remedy the matter referred to the SRO Committee;

3.14.2.1.2. warn, reprimand, censure or, subject to the provisions of rule 3.14.2.4, impose a fine (with or without ordering that a contribution be made towards the NSE's costs) on any person who has, in the reasonable opinion of the SRO Committee, been guilty of improper conduct;

3.14.2.1.3. in relation to a partner, officer or employee of a member, direct the member to conduct a disciplinary enquiry into the acts or omissions of such person;

3.14.2.1.4. direct a member to ensure that any sanction imposed on a partner, officer or employee of that member is complied with by such partner, officer or employee;

- 3.14.2.1.5.** direct a member to prevent or relieve a partner or officer or employee of that member from carrying out any specified activity, function or duty for such reasonable period as the SRO Committee deems appropriate; and/or
- 3.14.2.1.6.** if at any stage it determines that the matter referred to it is sufficiently serious to be heard by a Tribunal, stop the proceedings, and refer the matter to a Tribunal.
- 3.14.2.2.** The SRO Committee may not impose any penalty contemplated in rule 3.14.2 unless:
- 3.14.2.2.1.** the alleged improper conduct has first been put to the person who is alleged to have committed it. If such person is a sole proprietor partnership or corporate member, the alleged improper conduct shall be put to the sole proprietor or to the executive director as the case may be or otherwise to a duly authorised employee of the member; and
- 3.14.2.2.2.** such person has been given an opportunity (orally or in writing) of explaining his or her conduct after being warned that any explanation furnished pursuant to these Derivatives Rules may be used in evidence against him or her.
- 3.14.2.3.** The fine imposed by a SRO Committee for each contravention will be a percentage of the transaction value as from time to time determined by the NSE or KShs. 250,000.00, whichever is the higher, or such other amount as the NSE may determine by directive from time to time. The SRO Committee may direct that any action taken in terms of rule 3.14.2 be published.
- 3.14.2.4.** Any person in respect of whom the SRO Committee has imposed a reprimand, censure, or fine (but not a warning) shall have the right to demand, within a period of three days after the imposition of such reprimand, censure, or fine, that the matter shall be referred to the Authority.

3.15. Urgent Issues

- 3.15.1.** In order to ensure that the business of the NSE is carried on with due regard to the public interest, the Chairman of the Board may from time to time, and on the advise of the Chief Executive, appoint one or more Urgent Issues Committees. The Chief Executive, the Director: Regulatory Affairs and two senior personnel of the NSE shall constitute the Urgent Issues Committee. Other relevant senior personnel of the NSE may attend by invitation as and when required.
- 3.15.2.** An Urgent Issues Committee shall consider whether a member is operating in such a manner that there is imminent danger that such member may be unable to meet its commitments to clients, counterparties, other members or to a settlement system of the NSE or any other exchange, or that it is conducting business in a manner which could be detrimental to the interests of the NSE or to the interests of the members of the NSE and the public.
- 3.15.3.** If an Urgent Issues Committee resolves by a two-thirds majority that an investigation into the affairs of a member in terms of these Derivatives Rules has revealed that the

member is operating in such a manner that there is such imminent danger as is referred to in rule 3.15.2, the Urgent Issues Committee may call upon senior representatives of the member to attend a meeting of the Urgent Issues Committee, which meeting may be called on not less than one hour's notice, to hear the concerns of the Urgent Issues Committee and to discuss how such concerns may be resolved.

3.15.4. With the agreement of the member concerned or, if the outcome of such meeting fails to satisfy the Urgent Issues Committee with regard to the above, the Urgent Issues Committee may by a two thirds majority and subject to this rule 3.15:

3.15.4.1. prohibit such member from trading;

3.15.4.2. restrict the trading activities of such member in such manner as it deems fit, including applying of rule 3.15.5; and/or

3.15.4.3. give such member such instructions as it may deem necessary in the interests of the member's clients and counterparties or other members or any settlement system of the NSE or any other exchange.

3.15.5. The Urgent Issues Committee shall during the period of any order in terms of rule 3.15.4 have such power as it in its discretion may deem fit to appoint a registered public accountant and auditor or a member or employee of the NSE to supervise and control the activities of the member, at the member's cost. Such member may further be prohibited from entering into NSE related contracts without the prior consent of the person appointed as aforesaid to control and supervise the member which consent may be given upon such terms and conditions as the Urgent Issues Committee or the said appointee shall determine.

3.15.6. Any action taken by an Urgent Issues Committee in terms of this rule may continue until such time as that Committee is satisfied as to the financial position and business conduct of the member in question.

3.16. Default or termination of membership - Control of assets and accounting records

3.16.1. In the event of any member being declared a defaulting member or ceasing to enjoy membership by termination:

3.16.1.1. the member shall hand over to the NSE all books and accounting records of the member including all scrip registers, safe custody ledgers and cheque books, and all cash, securities and other assets relating to the business of the member including cash and control of securities held on behalf of clients in safe custody in a banking institution;

3.16.1.2. the Board may grant authority to the NSE Director: Regulatory Affairs or his nominated deputy to assume control of such cash and securities referred to in rule 3.16.1.1 which are owned by clients, including securities held on behalf of clients in safe custody and cash held on behalf of clients.

3.16.2. The NSE Director: Regulatory Affairs shall take reasonable steps to ensure that any market scrip held by a member (“the scrip”) or client funds held by a bank (“the funds”), are identified as the client’s property. The NSE Director: Regulatory Affairs shall take reasonable steps to ensure that only the scrip or funds which are identified as the client’s property and which are unencumbered are returned to a client or to his order if so authorised in terms of rule 3.16.2 by the client in writing.

3.16.2.1. A client of a member who has been suspended or declared a defaulter, or who has ceased to enjoy membership by termination under this rule, shall warrant in writing to the NSE Director: Regulatory Affairs that he is the lawful owner of any scrip or funds returned to him before such scrip or funds are returned to him, by the NSE Director: Regulatory Affairs under rule 3.16.2.

3.16.2.2. If any scrip or funds are returned to a client, under the provisions of rule 3.16.2, and it is thereafter established that ownership of such returned scrip or funds does not vest in the client, the client shall immediately return such scrip or funds to the NSE Director: Regulatory Affairs, upon written notification by the NSE Director: Regulatory Affairs.

3.16.2.3. Where such returned scrip or funds under rule 3.16.2 have been alienated by the client, the client shall immediately, and insofar as he is able to, effect the return of such scrip (or the equivalent amount of such scrip) or funds to the NSE Director: Regulatory Affairs, upon written notification by the NSE Director: Regulatory Affairs.

3.16.3. The client shall, before any scrip or funds are returned to him under rule 3.16.2, indemnify the NSE Director: Regulatory Affairs in writing for any loss sustained by or damage caused to any person, including, but not limited to, the client, as a result of anything done or omitted by the NSE Director: Regulatory Affairs in the bona fide exercise of any power, or performance of any duty or function under or by virtue of rule 3.16.2, as a result of the return of the scrip or funds to the client and the alienation by the client of such returned scrip or funds in respect of which he is not the lawful owner.

3.16.4. In the event of the default of a member, the authority referred to in rule 3.16.1.2 shall endure until such time as the member is placed under provisional sequestration or liquidation when control of the assets in the possession of the member shall vest in the appointed trustee or liquidator.

3.17. Default process of a clearing house to take precedence over laws of insolvency

The provisions in respect of a default process and the precedence of the default process over the laws of insolvency in relation to a central depository under the Central

Depositories Act (No. 4 of 2000) shall apply to the NSE Derivatives Market Clearing House in line with Section 22E of the Act.

3.18. NSE's powers of publication

3.18.1. The NSE may in such manner as it may deem fit, notify the public of any fact that the NSE considers to be in the public interest, including, but not limited to the name of a member or any employee or officer of a member and the fact that any such employee or officer has been found guilty of any charge and of the sentence so imposed on such member, employee or officer of a member.

3.18.2. No action or other proceeding shall in any circumstances be taken by any member or any employee or officer of a member referred to in any notification referred to above or in the DATS, against the NSE or the Board or NSE Executive member or employee thereof or any person publishing or circulating the same.

3.19. Categories of market participants

3.19.1. A derivatives member is a category of market participant of the NSE and may be authorised by the NSE to operate in one of the three sub-categories, either as a derivatives clearing member, a derivatives non executing member or a derivatives trading member, or all.

3.19.2. A trading member may be authorised to trade in the derivatives markets, and a clearing member may be authorised to perform clearing in the derivatives markets, and a non-executing member may be authorized to accept allocated trades from a trading member in the derivatives markets.

3.19.3. A trading member may only enter into a clearing agreement with one clearing member to perform clearing and settlement of the trades of that trading member.

3.19.4. A trading member and non - executing member:

3.19.4.1. shall not be a natural person; and

3.19.4.2. shall have and continuously maintain the administrative systems and expertise to ensure:

3.19.4.2.1. the adequate management of his own and his clients' funds in accordance with these Derivatives Rules;

3.19.4.2.2. that an accurate record of his own and his clients' positions is kept at all times; and

3.19.4.2.3. that his clients' trades, positions and cash balances under control of the trading member are timeously reported to such clients.

3.20. Capital adequacy requirements

3.20.1. Subject to rules 3.20.2, 3.20.3, 3.20.4 and 3.20.7, a member shall at all times have own funds equal to the greater of:

3.20.1.1. the initial capital referred to in rule 3.20.6 or 3.20.7 as the case may be; or

3.20.1.2. thirteen weeks operating costs; plus

3.20.1.3. the position risk requirement; and

3.20.1.4. the settlement risk requirement; and

such that the following formula is satisfied:

$ONF \geq CAR$

And

$CAR = (\text{greater of ICR or } AOC/4) + PRR$

where

ONF = Own funds

CAR = Capital adequacy requirement

ICR = Initial capital requirement

AOC = Annual operating costs

PRR = Position risk requirement

3.20.2. The following provisions shall apply to a member that is an foreign company:

3.20.2.1. the foreign company shall, when submitting its application for membership, submit proof of compliance with the requirements of Part XXXVII of the Companies Act by furnishing the NSE with the certificate of registration as provided for in Section 975 of the Companies Act;

3.20.2.2. the own funds of the local branch of the foreign company shall at all times be equal to or greater than the amount provided for in rule 3.20.1.3, 3.20.6, 3.20.7 or 3.20.8, as the case may be;

3.20.2.3. the foreign parent of the local branch of the foreign company shall in writing confirm to the NSE that it is required to comply with capital adequacy requirements similar to those in the Republic, and that they are reporting such as required to an appropriate foreign regulator; and

3.20.2.4. the thirteen weeks operating costs requirement in rule 3.20.1.2 shall relate to the operating costs of the local branch of the foreign company in the Republic.

3.20.3. A trading member that is a market participant of another exchange and is exempt from the requirement to submit monthly capital adequacy returns to the NSE Director:

Regulatory Affairs, in terms of rule 3.6.6, is not required to comply with the requirements of rule 3.20.1 but shall comply with the capital adequacy requirements as prescribed by such other exchange.

- 3.20.4.** A trading member who trades on behalf of clients but does not receive a client's margins or hold the client's margins in terms of rule 6.6.4 or who does not receive any other assets of a client with respect to the client's buying and selling of NSE authorised investments, shall have an initial capital of such minimum amount as the NSE may prescribe.
- 3.20.5.** A trading member who receives client's margins or holds clients' margins in terms of rule 6.6.4, or that receives any other assets of his client with respect to the client's buying and selling of NSE authorised investments, shall have an initial capital of such minimum amount as the NSE may prescribe.
- 3.20.6.** A clearing member shall maintain the minimum paid up share capital stipulated by the NSE from time to time, Provided that the NSE may, at its discretion, impose additional guarantee or other requirement on a clearing member if:
- 3.20.6.1.** the sum of the initial margin with respect to the positions of the clearing member, its clients, the trading members with which the clearing member has entered into clearing agreements and the clients of such trading members, reaches the limit as contemplated in rule 7.1.1; or
- 3.20.6.2.** the own funds of the clearing member as specified in rule 3.20.8 have decreased to the limit referred to in rule 7.1.1.
- 3.20.7.** A clearing member, which is not a bank or another financial institution within the meaning of the Banking Act, shall provide, maintain and keep in force a guarantee in favour of the clearing house by a financial or other institution acceptable to the NSE, in such form and upon such terms and conditions as the NSE may determine, for the due performance of all or any of its obligations to the clearing house in terms of these Derivatives Rules, jointly and severally, for an amount of not less than KShs. 100 Million or such other sum as the NSE may determine.
- 3.20.8.** The NSE shall be entitled to suspend a member should there be a deficiency in the capital adequacy of the member.

4. Registered Officers

4.1. Members' obligation to ensure registration of officers

Each member which is a body corporate :

- 4.1.1. shall ensure the registration by the NSE of a compliance officer who shall:
 - 4.1.1.1. without relieving that member from his responsibility to comply with the provisions of the Act and these Derivatives Rules, be responsible for ensuring compliance by that member with the provisions of the Act and these Derivatives Rules;
 - 4.1.1.2. have obtained such qualification as may be required by the NSE;
 - 4.1.1.3. in the event of any breach of these Derivatives Rules or problem or query arising in respect of any trade or alleged trade or position of the member or any of his clients or any trading member with which the clearing member has entered into a clearing agreement in terms of these Derivatives Rules, immediately on the request of the NSE or the clearing house or his clearing member, take such steps as may be necessary to rectify the breach or to eliminate the problem or to satisfy the query;
 - 4.1.1.4. receive all notices to the member from the NSE or the clearing house or the clearing member and be responsible to ensure that all such notices are complied with; and
 - 4.1.1.5. ensure compliance with all prescribed agreements referred to in section 11 of these Derivatives Rules.
- 4.1.2. shall not carry on business for more than two months in any continuous period of twelve months unless such member has registered a compliance officer in terms of rule 4.1.1: Provided that in the absence of a duly appointed compliance officer, or where the post has become vacant, the sole proprietor or a director, as the case may be, shall temporarily assume the responsibility of the compliance officer as referred to in rule 4.1.1, for no longer than 2 months.
- 4.1.3. shall ensure the registration by the NSE of dealers who shall be the only persons entitled to trade for a trading member's own account and for or on behalf of clients and who shall have obtained such qualification as may be required by the NSE.

4.2. Dealers to trade only with other registered dealers

No dealer shall trade with a person whom they know or ought reasonably to know is not registered as a dealer of the other member concerned or person authorised to trade for the member.

4.3. Registration of officers by the NSE

- 4.3.1. An application for the first registration as a registered officer shall be made to the NSE in the manner and on the form prescribed by the NSE.
- 4.3.2. The NSE shall in a notice to members publish the name of the applicant, and members shall within ten business days of such notice notify the NSE in writing of objections to or comments on the application.

- 4.3.3.** The NSE shall convene a meeting of the NSE Executive to consider the application referred to in rule 4.3.1 and any objection to or comment on it in order to recommend to the NSE to accept or reject the application.
- 4.3.4.** An application to change the registration of a registered officer from one member to another or from one office to another shall be made in writing to the Chief Executive by the member intending to register the officer and the Chief Executive shall, in his discretion, decide to grant such change in registration or to refer the application to the NSE Executive for consideration at its next meeting: Provided that, if aggrieved by the decision of the NSE Executive, the member concerned shall have the right of appeal to the Authority.
- 4.3.5.** The NSE may, in its discretion, for a period not exceeding ninety (90) days, grant the temporary registration of an officer pending the attainment by him of the qualifications required for the office in question.

4.4. Termination of the registration of an officer

A member shall notify the NSE in writing of its decision to terminate the registration of a registered officer in its name, in which event the NSE shall be entitled to request full details of the circumstances of the termination.

4.5. Registration and termination effective

The registration, whether permanent or temporary, or termination of the registration of a registered officer in the name of a particular member in a particular office shall become effective on the date and the time of the notice to members by the NSE, unless it is stated otherwise in the notice.

4.6. Member remains responsible

The appointment or registration of any officer referred to in this rule 4 shall not in any way relieve a member from any of his duties and responsibilities in terms of the Act and these Derivatives Rules, and the member's liability to fulfil those duties and responsibilities shall remain a principal liability and shall not be accessory or subordinate to the liabilities of such officer.

5. Trading

5.1. Financial exchange

The business of the buying and selling of exchange contracts shall be conducted on the DATS. Trading in all exchange contracts shall be conducted by means of the DATS: Provided that transfer of option contracts or combinations of option and futures contracts and in futures in a number of contracts may be conducted off-DATS in accordance with provisions for private transfers under the Act or subsidiary legislation including the Licensing Regulations.

5.2. Offers and acceptances

5.2.1. Transactions conducted off-DATS shall have been concluded when a valid offer made by one of them is accepted by the other, subject always to provisions of the Act requiring approval by the Authority.

5.2.2. An offer in terms of 5.2.1 may include the following specifications:

5.2.2.1. the particular exchange contract;

5.2.2.2. the number of exchange contracts to be bought or sold;

5.2.2.3. a clear indication of whether the offer is to buy or sell;

5.2.2.4. the price at which the offeror is prepared to trade expressed as:

5.2.2.4.1. the best price; or

5.2.2.4.2. any price that is better than a specified worst price; or

5.2.2.4.3. a specific price;

5.2.2.5. a clear indication of whether the member to whom the offer is made is to exercise his discretion in terms of either rule 5.2.2.4.1 or rule 5.2.2.4.2;

5.2.2.6. the period of time for which the offer will remain open: Provided that in the case of:

5.2.2.6.1. a verbal offer, if no such period is specified and if the offer is not accepted immediately, it shall be deemed to have been withdrawn on termination of the verbal communication;

5.2.2.6.2. a written offer, a period of time shall be specified;

5.2.2.7. subject to rule 5.2.2.10, a clear indication of whether the member is to trade with the client as an agent or as a principal: Provided that, if no such stipulation is made, the member shall trade with the client in the capacity specified in the client agreement or, if no such specification is made in the client agreement, then the member may trade with the client as a principal in terms of the Derivatives Rules;

5.2.2.8. the date and precise time when the offer is made or varied;

5.2.2.9. a clear indication of whether in the case of an order the member is allowed any discretion as to the number of exchange contracts more or less than those specified under rule 5.2.2.2 that the offeror shall be prepared to buy or sell;

5.2.2.10. a clear indication of whether in the case of an order the member shall be entitled to fill the order in more than one purchase or sale in the market and whether or not such

purchases or sales are to be concluded by the member as the offeror's agent as specified in rule 5.4.3 or as the offeror's principal, as specified in rule 5.4.2;

- 5.2.2.11. a clear indication of whether in the case of an order the acceptance of the offer shall be conditional upon the acceptance of an offer to buy or sell another exchange contract;
 - 5.2.2.12. the place where and/or telephone or facsimile number or electronic mail address at which the client is to be contacted to confirm the acceptance of the offer; and
 - 5.2.2.13. any other particular which the NSE may require.
- 5.2.3. For an offer made in terms of rule 5.2.1 to be valid the terms contained in rules 5.2.2.1, 5.2.2.2, 5.2.2.3, 5.2.2.4 and 5.2.2.8 shall be specified.
- 5.2.4. An offer may be made by a client to a member either telephonically or in writing; and
- 5.2.4.1. the member shall ensure that the requirements set out in rule 5.2.3 are clearly and unambiguously confirmed to or by the client; and
 - 5.2.4.2. the member shall keep a tape recording of a telephonic offer in terms of rule 7.2.4; and
 - 5.2.4.3. the member shall keep a record of the offer for a period of not less than six months after the offer was made, in terms of rule 13.1.5.
- 5.2.5. A member may make an offer in respect of a transfer exempted in terms of rule 5.1 of at least the standard lot size off-DATS subject to complying with the requirements under the Act.
- 5.2.6. Member may only address offers to clients with whom they have entered into client agreements or to other members.
- 5.2.7. When accepting an offer to effect an off-DATS transaction, a member shall clearly and unambiguously state to the offeror and not to an intermediary that he has accepted the offer, and in the case of an order he shall repeat the following details:
- 5.2.7.1. the particular exchange contract;
 - 5.2.7.2. the number of the exchange contracts being bought or sold;
 - 5.2.7.3. the price at which the exchange contracts are being bought or sold; and
 - 5.2.7.4. the date and the precise time when the offer was accepted.
- 5.2.8. If a member trades for or on behalf of a client pursuant to an order from the client, he shall, provided the client can be reached at the address or telephone number stated in the client agreement or at any other place or at any other telephone number given by

the client at the time the offer was made, use his best endeavours to confirm the acceptance of the offer:

- 5.2.8.1. within the period agreed upon for confirmation of the trade; or
- 5.2.8.2. if no time was agreed upon, within the period as specified in the client agreement; or
- 5.2.8.3. if no such period is stipulated in the client agreement, within the period specified for the acceptance of the offer as contemplated in rule 5.2.2.6.

5.3. Order priority

- 5.3.1. A member shall not trade with another member if the trade could satisfy an order from a client.
- 5.3.2. Subject to rule 5.3.1, a member shall not trade with a client if the trade could satisfy a previously received order from another client.
- 5.3.3. Subject to rule 5.3.1, a member shall not trade with another member, if the trade could satisfy a previously received order from another member.
- 5.3.4. A member shall not trade for his own account or for the account of an employee of the member or any account in which the member or employee of the member has a beneficial interest if the trade could satisfy an order from a client or another member.

5.4. Trading capacity

- 5.4.1. Where a member trades with a client (as agent or principal) or with another member:
 - 5.4.1.1. the member shall be liable to the client or other member for the due fulfilment of all obligations arising out of the trade;
 - 5.4.1.2. any claims by the client or a member in respect of a trade shall be against the member with whom he traded and not against any other person with whom the member may have traded as contemplated by rule 5.4.2; and
 - 5.4.1.3. the member shall ensure that it has sufficient funds to meet the established margin requirements prior to executing a trade.
- 5.4.2. Trading by a member:
 - 5.4.2.1. A member will trade with his client as principal, as defined in these rules, by trading with his client for his own account and by:
 - 5.4.2.1.1. entering the client order directly on the client account; or

- 5.4.2.1.2. filling the client's order by trading and aggregating the contracts in the members' client sub account, before allocating to the client; or
- 5.4.2.1.3. employing another member to fill the client order on behalf of such a member.
- 5.4.2.2. A member will trade for his client as agent, as defined in these rules, by trading with another member or with another client and by:
 - 5.4.2.2.1. entering the client order directly on the client account; or
 - 5.4.2.2.2. filling the client's order by trading and aggregating the contracts in the members' client sub account, before allocating to the client; or
 - 5.4.2.2.3. employing another member to fill the client order on behalf of such member.
- 5.4.3. Notwithstanding the provisions of rule 5.4.2, if for any reason, after the member has reported an off- DATS trade to the clearing house, a mistake has occurred, the member may trade with the client as principal in order to correct the mistake.
- 5.4.4. Subject to rule 5.1, a member who has an offer from one client to buy and an offer from another client to sell the same exchange contract, may not simultaneously trade off-DATS.
- 5.4.5. A member off-setting an approved off-DATS transaction with another member with an equal and opposite off-DATS transaction with a third member, shall not, for a valuable consideration, remove himself from the transactions with the two members concerned, but shall, in order to receive any valuable consideration, trade with both members as a principal at different prices.

5.5. Employees and members trading as clients

- 5.5.1. An employee of a trading member may be a client of the trading member: Provided that such client fulfils all his obligations in terms of these Derivatives Rules.
- 5.5.2. Except with the written approval of the NSE and subject to such conditions as it may impose-
 - 5.5.2.1. An employee of a member may not have a beneficial interest in another member;
 - 5.5.2.2. An employee of a trading member may not be a client of another member or have a beneficial interest in a client;
 - 5.5.2.3. A member may not be a client of another member or have a beneficial interest in a client;
 - 5.5.2.4. A member may not accept an employee of another member or another member as a client.

5.6. Trading for or on behalf of clients

5.6.1. Client agreement

A member shall not trade for or on behalf of a client, unless he has entered into a client agreement, the minimum terms and conditions of which are prescribed in terms of rule 13 of these Derivatives Rules.

5.6.2. Client registration

5.6.2.1. A member shall not trade for or on behalf of a client until registration of the client has been effected.

5.6.2.2. To register a client, a member shall submit the following details:

5.6.2.2.1. The full name and description of legal capacity and a clear indication whether the person is a resident or non-resident client;

5.6.2.2.2. the identity number, or registration number of a company or close corporation;

5.6.2.2.3. the address;

5.6.2.2.4. the telephone, facsimile or telex number;

5.6.2.2.5. the duly authorised contact person;

5.6.2.2.6. the name of the authorised bank at which the non-resident client has opened a non-resident account and the telephone, telex and facsimile numbers of the authorised bank concerned;

5.6.2.2.7. where applicable, the numbers of the non-resident account referred to in rule 5.6.2.2.6;

5.6.2.2.8. the name of the contact person at the authorised bank concerned where the non-resident accounts referred to in rule 5.6.2.2.6 are kept; and

5.6.2.2.9. the margin category in respect of a non-resident client.

5.6.2.3. The NSE shall maintain a record of the clients which are registered as clients of trading members and it shall keep a record of the particulars associated with each client as required under rule 5.6.2.2.

5.6.2.3.1. A member shall ensure that the particulars relating to his clients are correct and up to date at all times.

5.6.2.3.2. The member shall ensure that clients, which have ceased trading with the member, are removed from the register as being the clients of the member.

5.6.2.4. The client's registration shall be retained by the NSE for as long as it deems necessary, after the client has ceased trading.

5.6.3. Notification of transactions

5.6.3.1. A trading member must ensure that clients are notified of all transactions executed on or reported to the derivatives trading system, for or on behalf of such clients, in the manner and within the time period as set out in the directives.

5.6.3.2. The transaction notification referred to in rule 5.6.3.1 must set out:

5.6.3.2.1. the terms of the transaction;

5.6.3.2.2. the capacity in which the trading member acted; and

5.6.3.2.3. if the transaction is executed by the trading member in an agency capacity, the details of any commission charged by the trading member.

5.7. Derivatives automated trading system

5.7.1. In accordance with the procedures set out in the User Manual as amended from time to time and/or as determined by the NSE, other than in relation to the trades exempted in terms of rule 5.1.1, a member shall make an offer to buy or sell either for his own account or for the account of a client on the DATS.

5.7.2. A trading member may request the NSE, or its clearing house, to give direct access to the DATS to such persons with whom it has a business relationship (sponsored users) for purposes of conducting direct trading activity, provided always that the trading member will remain fully responsible, and will indemnify the NSE and its clearing house fully, for all activity of the sponsored users in the DATS. The NSE or its clearing house may require, and the trading member shall provide such information with regard to the sponsored user as the NSE or its clearing house shall consider reasonable.

5.8. Members obligations in relation to the DATS

A member shall be bound by all offers, acceptances or entries made in his name on the DATS regardless of whether or not such offer or acceptance or trade was authorised by the member and the member shall:

5.8.1. by keeping all codes, passes, passwords or other security devices confidential and privy only to the compliance officer and the registered dealer for whom they are intended, control access to the DATS; and

5.8.2. ensure that only the registered dealer to whom a valid password is allocated by the clearing house, or the compliance officer, shall use such password to gain access to the DATS.

5.9. Trading times

5.9.1. The DATS will operate on every business day according to standard periods and times as set out in the directives.

5.9.2. The Market Controller may decide that the derivatives market be closed in the event that a fair and realistic market does not exist. A fair and realistic market will be deemed not to exist after consideration of the percentage of members not able to access the DATS, their contribution to price formation and the reasons for such lack of access.

5.9.3. Despite any other provision of the Derivatives Rules or any directive and subject to rule 1.1, the NSE Executive, in accordance with prevailing circumstances, may:

5.9.3.1. reduce or extend the hours of operation of the DATS for any particular business day;

5.9.3.2. without prior notice to any person, halt or close the DATS for trading at any time and for any period;

5.9.3.3. without prior notice to any person suspend automated trading;

5.9.3.4. if there has been any failure of the DATS, for any reason, or if the DATS has been closed, suspended or halted, declare that a transaction executed through or by the DATS is void. Such declaration is binding on the members who entered into such transaction and on the clients for or on whose behalf the transaction was executed;

5.9.3.5. exercise such further powers and take such further action as may be exercised or taken by the NSE in terms of the Derivatives Rules and directives, and as may be necessary to resolve any issue which may arise from the closure, suspension, halt or failure of the DATS; and

5.9.3.6. take such other steps as may be necessary to ensure an orderly market.

5.10. Cross trades

A member who has an order from one client to buy and an order from another client to sell the same exchange contract shall, where such orders are to be executed by means of offers that shall be made on the DATS, acting as the agent of the clients:

5.10.1. first offer to buy or sell the particular contract for the client that first placed the order; and

5.10.2. after a period of time determined by the NSE, enter an offer for the second client in the opposite direction at the same price in order to ensure that the first client's order shall be fulfilled.

5.11. Pre-arranged trades

Two members shall not trade on the DATS pursuant to a prior agreement between them without a period of at least 30 seconds, or such other time as the NSE may determine, having elapsed between entering the offer on the DATS and the acceptance thereof.

5.12. Solicitation of offers

5.12.1. In the manner determined by the NSE and/or as set out in the user manual, a member may solicit offers that will be made on the DATS from the other members to both buy and sell an exchange contract according to the terms and conditions determined by the NSE in relation to such futures or option contract. Such solicitation of an offer shall be referred to as a "request for a double".

5.12.2. In the manner determined by the NSE and/or as set out in the user manual a member may solicit offers to buy or sell an exchange contract where such purchase or sale is contingent upon the purchase or sale of another exchange contract or contracts. Such a solicitation of an offer shall be referred to as a "request for a quote".

5.13. Delta trades

A member may offer to buy or sell an option in combination with the underlying futures contract in a specific ratio and/or at a specific price. Such a combined trade shall be referred to as a "delta trade".

5.14. DATS 4-Digit Sub Account

5.14.1. When bulking or aggregating client orders, or orders received from other members, members are required to use dedicated 4-digit sub accounts, as specified by the NSE, for the order entry, trading, consolidation, division or allocation of such orders and trades;

5.14.2. Members are responsible for the time priority of allocations of the transactions in respect of which orders have been bulked;

5.14.3. Members are precluded from trading on the dedicated sub account for their own accounts or for any accounts in which employees have a direct or indirect beneficial interest; and

5.14.4. All trades on the sub account shall be allocated to the relevant clients or members on the day of the trading and no positions must remain on such sub account overnight.

5.15. Aggregation and division of trades

A member may:

- 5.15.1.** aggregate a number of trades that were done on the DATS by means of offers made by the member for his 4-digit sub account/s and, in terms of rule 5.16, allocate such aggregated trade to a client or other member in terms of an order from the client or other member at a price, calculated by the DATS equal to the average price of the original trades; or
- 5.15.2.** divide a trade that was done on the DATS by means of an offer made by the member for his 4-digit sub account/s and, in terms of rule 5.16, allocate such subdivided trades to two or more clients and/or other members in terms of orders from such clients or other members.

5.16. Trade allocation

A member shall allocate a trade that has been done on the DATS on the particular business day for his 4-digit sub account/s to a client or another member:

- 5.16.1.** pursuant to a tripartite agreement that was executed by means of an offer made on the DATS by the member for his 4-digit sub account;
- 5.16.2.** when the member has aggregated or divided trades done in terms of an order from a client or another member as contemplated in rule 5.15; or
- 5.16.3.** as a result of an order from the other member which has been executed on his behalf by means of the offer on the DATS: Provided that:
 - 5.16.3.1.** the allocation of a single trade or a subdivided trade shall take place within a period of time determined by the NSE; and
 - 5.16.3.2.** the NSE may determine that the original price or average of the original prices or the price prevailing at the time of the allocation shall be made known to the client or the member giving the order referred to in rule 5.1.2.

5.17. Trading restriction

It shall be a contravention in terms of rule 3.13.3 for a member to:

- 5.17.1.** make or accept an offer on the DATS when he has placed an order with another member in terms of rule 5.1.2 in the opposite direction in the same or a related exchange contract; or
- 5.17.2.** to place an order with another member in terms of the said rule if he has made an offer on the DATS in the opposite direction in the same or a related exchange contract.

5.18. Rules of trading that are particular to the physical delivery of agricultural products

- 5.18.1.** The contract specification of an agricultural derivatives futures contract may provide for performance by means of physical delivery and may set out the conditions and terms under which physical delivery shall be effected.
- 5.18.2.** The NSE may issue directives in respect of delivery procedures, settlement and delivery agents, delivery locations, inspections of agricultural products sold and delivered and other matters relating to trading in agricultural derivatives and may appoint settlement agents on such terms as it may deem fit to facilitate performance of agricultural derivatives.
- 5.18.3.** Unless otherwise specified in the contract, the holder of every short position in an agricultural derivatives futures contract shall on expiry have an obligation to make delivery of the underlying agricultural product at the expiry price, and the holder of every long position on expiry shall have an obligation to take delivery of the underlying agricultural product at the expiry price.
- 5.18.4.** The clearing house shall, unless otherwise specified in the contract specification, have the sole discretion in allocating delivery to long position holders. In the event of a default by a party to an agricultural derivatives futures contract, the contract may be closed out by the non-defaulting party by booking the quantity in default back to the defaulting party at a market price determined by the NSE.

5.19. Declarations of transactions being void

- 5.19.1.** Despite any other provision of the Derivatives Rules or any directive, the NSE Executive may, if there has been any failure of the NSE systems for any reason, or if NSE systems have been closed, suspended or halted, declare that a transaction effected through or by the NSE derivatives trading system is void. Such declaration shall bind a trading member and a client of a trading member on behalf of or with whom the transaction was effected.
- 5.19.2.** Where, from a lack of clarity in the published information available at the time of the transaction, a trading member deals in a quantity or at a price which in the opinion of the NSE Director: Regulatory Affairs is unreasonable, the NSE Director: Regulatory Affairs may declare such transaction void. Such declaration shall be binding on the trading members who entered into such transaction and on the clients for or on whose behalf the transaction was executed.

5.20. Suspension or halting of trading in derivative securities

- 5.20.1.** The NSE Director: Regulatory Affairs or his deputy, in conjunction with the Chief Executive or acting Chief Executive, may declare a trading halt in a derivative security in circumstances where the NSE Director : Regulatory Affairs determines that the trading activity in a derivative security:

5.20.1.1. is being or could be undertaken by persons possessing unpublished price-sensitive information that relates to the underlying instrument to which the derivative security relates; or

5.20.1.2. is being influenced by a manipulative or deceptive trading practice;

5.20.1.3. may otherwise give rise to an artificial price in that derivative security; or

5.20.1.4. is being hindered by a technical failure of the DATS where at least 2 members are not able to access the system.

5.20.2. No trading member may trade that derivative security for the duration of the trading halt but may delete orders from the derivatives trading system.

5.21. Manipulative or deceptive trading practices

5.21.1. No trading members shall use, or knowingly participate in the use of any manipulative or deceptive trading practice in a derivative security, either for its own account or on behalf of clients, which creates or may create:

5.21.1.1. a false or misleading appearance of trading activity; or

5.21.1.2. an artificial value for such derivative security.

5.21.2. A trading member must give consideration to the circumstances of orders placed by clients before entering such orders in the NSE derivatives trading system and is responsible for the integrity of such orders.

5.21.3. A trading member or employee of a member may not place an order in the NSE derivatives trading system to buy or sell derivative securities which to the knowledge of the trading member or employee of a trading member will, if executed, have the effect contemplated in rule 5.21.1.

5.21.4. Without in any way limiting the generality of the foregoing, the following shall be deemed to be manipulative or deceptive methods of trading:

5.21.4.1. Approving or entering on the NSE derivatives trading system:

5.21.4.1.1. an order to buy or sell a derivative security with the knowledge that an opposite order of substantially the same size at substantially the same time and at substantially the same price, has been or will be entered by or for the same or different persons with the intention of creating a false or misleading appearance of active public trading in connection with, or an artificial market price for, such derivative security;

5.21.4.1.2. orders to buy any derivative security at successively higher prices, or orders to sell any derivative security at successively lower prices for the purpose of unduly or improperly influencing the market price of such derivative security;

- 5.21.4.1.3. an order at or near the close of the market, the primary purpose of which is to change or maintain the closing price of such derivative security;
 - 5.21.4.1.4. an order to buy or sell a derivative security which involves no change in the beneficial ownership of that derivative security; or
 - 5.21.4.1.5. reported transactions which would result in a contravention of rule 5.21.1;
- 5.21.4.2. Effecting or assisting in effecting a market corner;
 - 5.21.4.3. Maintaining the price of a derivative security at a level that is artificial;
 - 5.21.4.4. Employing any device, scheme or artifice to defraud any other person as a result of a transaction effected through the NSE derivatives trading system; or
 - 5.21.4.5. Engaging in any act, practice or course of business in respect of trading in derivative securities which is deceptive or which is likely to have such an effect.

5.22. False, misleading or deceptive statements, promises and forecasts

A member or employee of a member may not, directly or indirectly, make or publish in respect of derivative securities, or in respect of the past or future performance of a listed company:

- 5.22.1. any statement, promise or forecast which is, at the time and in the light of the circumstances in which it is made, false or misleading or deceptive in respect of any material fact and which the member or employee of a member knows, or ought reasonably to know, is false, misleading or deceptive; or
- 5.22.2. any statement, promise or forecast which is, by reason of the omission of a material fact, rendered false, misleading or deceptive and which the member or employee of a member knows, or ought reasonably to know, is rendered false, misleading or deceptive by reason of the omission of that fact.

5.23. Circuit Breakers

There shall be circuit breakers in the derivatives market whose operational modalities will be specific to the different derivatives contracts in the derivatives market and in accordance with the applicable Derivatives Market Product Specification Document.

6. Positions

6.1. Reporting

- 6.1.1. Upon approval by the Authority in accordance with rule 5.1, and within such time as the NSE may decide, a member shall report his off-DATS transaction to the clearing house through the DATS in the manner and form prescribed by the clearing house.
- 6.1.2. Off-DATS transactions concluded after 17:00, or such later time on a business day as the NSE may determine, shall be reported to the clearing house in such manner no later than 09:00 on the following business day.
- 6.1.3. In the event of a failure of the DATS or in circumstances beyond the control of the member preventing him from complying with the provisions of this rule 6.1, the member may, with the prior written approval of the NSE and for the duration of such failure or circumstances, report his off-DATS transactions to the clearing house by fax or other means acceptable to the NSE.

6.2. Matching

- 6.2.1. Off-DATS transactions involving two members shall be matched by the clearing house in terms of the date and time of the trade, the name of the counterparty, the particular exchange contract and the price at which the trade was done.
- 6.2.2. If an off-DATS transaction with another member is reported and does not match all the particulars referred to in rule 6.2.1, or if no counterparty trade is reported, the clearing house shall report the mismatched or unmatched trade as soon as possible to both members nominated in the report and both members shall correct the details causing the mismatch or the party which failed to report the counterparty trade, shall do so.
- 6.2.3. In the event of any off-DATS transaction not being matched by 17:00 or such later time that the clearing house determines on the day it is reported, it shall be reported anew by both members on the following business day.

6.3. Clearing

- 6.3.1. Trades will be cleared by the clearing house:
 - 6.3.1.1. when an off-DATS transaction is reported to the clearing house; or
 - 6.3.1.2. when a trade is done as the result of an offer made on the DATS or an allocation of a trade in accordance with rule 5.16.
- 6.3.2. Upon the trade being cleared, by novation, the clearing house shall replace the buyer and become the counterparty to the seller and it shall replace the seller and become the counterparty to the buyer.

6.4. Opening and closing-out a position

- 6.4.1. When there was no position in an exchange contract prior to a trade in the exchange contract being cleared, a position in the exchange contract shall be opened and registered in the name of the member or his client when the trade is cleared.
- 6.4.2. The exchange contracts comprising a trade which has been cleared, shall be added to or off-set against an existing position registered in the name of the party concerned and the position shall be increased, decreased, closed out or a position in the opposite direction shall be opened, as the case may be.
- 6.4.3. On the expiry of a futures contract or an option contract of which the strike price is not better by a certain amount determined by the NSE than the expiry price of the underlying instrument of the option contract:
- 6.4.3.1. the person in whose name a long position in the exchange contract is registered by the clearing house shall be deemed to have bought the number of the exchange contracts equal to the number comprising the position, to the clearing house; and
- 6.4.3.2. the person in whose name a short position in the exchange contract is registered by the clearing house shall be deemed to have sold a number of the exchange contracts equal to the number comprising the position, from the clearing house.
- 6.4.4. The price of the futures contract which shall apply to the purchase contemplated in rule 6.4.3.1 and the sale contemplated in rule 6.4.3.2 shall be the expiry price determined in the manner prescribed in the contract specification of the futures contract in question and the price of an option contract which shall apply to such purchase or sale shall be zero.
- 6.4.5. Rule 6.4.2 shall apply *ipso facto* to the exchange contracts comprising the purchases and sales referred to in rule 6.4.3.
- 6.4.6. Where the strike price of an option contract is, on expiry, better by a certain amount determined by the NSE, than the expiry price of the futures contract underlying the option contract, the person in whose name a position in the exchange contract is registered shall be deemed to have exercised the option contract in terms of rule 6.10.3.
- 6.4.7. On the expiry as contemplated in rule 6.4.3 of a physically settled futures contract the holder of a long position in the exchange contract shall buy the underlying instrument and the holder of a short position shall sell the underlying instrument at the price equal to that referred to in rule 6.4.4 and the purchase, sale, delivery and receipt of the underlying instrument shall take place pursuant to the contract specification applicable to such futures contract: Provided that a physically settled agricultural derivatives futures contract shall be regulated by rule 5.18.

6.5. Mark-to-market

6.5.1. At 17:00 on each business day, or such other time as the NSE may determine on a particular business day, the positions in each exchange contract of all members and their clients shall be marked-to-market on such basis as the NSE may determine.

6.5.2. The NSE or the clearing house, as the case may be, may at any time on any business day mark-to market the position in any exchange contract of any member or client if, in its sole discretion, the conditions in the market for the exchange contract or its underlying instrument warrant such additional mark-to-market.

6.6. Margin payments

6.6.1. Initial margin Initial margin shall be paid to or by a member or client whenever the risk of loss, as determined by the NSE, changes with respect to the aggregate position of such member or client.

6.6.2. Variation margin Variation margin shall be paid to or by a member or client in whose name a position in an exchange contract is registered as the result of the marking-to-market of a position in terms of rule 6.5 or the closing out of a position or part thereof as contemplated in rule 6.4.2 or the closing out of a position as contemplated in rule 6.4.3.

6.6.3. Additional margin

6.6.3.1. A clearing member may require a trading member with whom he has entered into a clearing agreement to deposit with him, with respect to the proprietary position of the trading member or the position of any of the clients of the trading member, an amount of additional margin as agreed upon between the parties in terms of the clearing agreement.

6.6.3.2. A member may require a resident client to deposit with him, with respect to the resident client's position, an amount of additional margin as agreed upon between the parties in terms of the client agreement.

6.6.4. Retained margin A member, with respect to a resident client, may with the client's prior written agreement:

6.6.4.1. require the client to deposit an amount of money with him to be used to furnish initial and additional margin before the member shall trade with the client; and/or

6.6.4.2. retain initial and variation margin payable to the client or interest accruing in terms of rule 6.7.3, in anticipation of future trades:

Provided that the money so deposited and/or retained shall be repaid to the client if the client has not traded with the member within thirty days.

6.6.5. Maintenance margin level A member may agree, where a client has an amount of money deposited with the member as contemplated in rule 6.6.3.2, that the client shall pay an amount of money to restore the additional margin to the amount contemplated by rule 6.6.3.2 when the additional margin has been used to meet payments of variation margin in terms of rule 6.6.2.

6.7. Interest payments

6.7.1. The clearing house shall manage and invest all margins held by it in terms of rule 8.1 and it shall on the second working day of the month following the month in which interest was received or accrued, remit such interest within two days, net of the management fee referred to in rule 8.1.2, to each clearing member in relation to the margin held in respect of the positions of the clearing member, its clients and trading members and the clients of such trading members.

6.7.2. Monthly in arrears a clearing member may remit the interest received in terms of rule 6.7.1, or any part thereof, to the trading members with whom he has entered into clearing agreements in relation to the positions of the trading member and their clients.

6.7.3. Subject to rule 6.6.4.2, monthly in arrears a member may remit the interest received in terms of rules 6.7.1 or 6.7.2, or any part thereof, to his clients in relation to the positions of such clients at any time during the preceding month.

6.8. Trading fees

6.8.1. The NSE shall levy fees on a clearing member in respect of the trades of the clearing member, his clients and the members with whom the clearing member has entered into clearing agreements, in an amount and in a manner as decided by the NSE, and such fees may be recovered from the clearing member on behalf of the NSE by the clearing house.

6.8.2. A clearing member may levy such fees and charges as he deems fit on trading member with whom he has entered into a clearing agreement: Provided that such fees and charges shall be in accordance with the schedule of fees which shall form part of the said clearing agreement.

6.8.3. A member may levy such fees and charges for different categories of transactions as he deems fit on clients with whom he trades: Provided that such fees and charges shall be in accordance with the schedule of fees and charges which shall form part of the client agreement.

6.8.4. A member shall not levy a fee or any commission or other charge on a client in respect of a trade in terms of which he has traded as a principal with the client without the prior written agreement of the client having been recorded in the client agreement.

6.9. Settlement procedures

- 6.9.1.** With respect to his proprietary positions, the positions of his clients, the positions of the trading members with whom he has entered into clearing agreements and the positions of the clients of such trading members, the clearing member shall pay to or receive from, the clearing house the net amount of:
- 6.9.1.1.** subject to rule 7.2, the sum of the initial margin referred to in rule 6.6.1;
 - 6.9.1.2.** the sum of the variation margin referred to in rule 6.6.2;
 - 6.9.1.3.** any interest payable in terms of rule 6.7.1; and
 - 6.9.1.4.** the fees referred to in rule 6.8.1.
- 6.9.2.** An amount due from a clearing member in terms of rule 6.9.1 shall be paid to the clearing house within such timelines as the NSE may in its sole discretion determine and these timelines shall be set out in the clearing house agreement executed by the clearing house and the clearing member. .
- 6.9.3.** With respect to any proprietary position, the position of any of his clients, the position of a trading member or non-executing member with whom he has entered into a clearing agreement and the position of a client of such trading member or non-executing member whom the NSE has marked-to-market in terms of rule 6.5.2, the clearing member shall pay to the clearing house the amount of variation margin as contemplated in rule 6.6.2 at the time stipulated by the NSE when the clearing member is notified by him of the mark-to-market.
- 6.9.4.** With respect to his proprietary positions, and the positions of his clients, a trading member or non-executing member shall pay to or receive from the clearing member the net amount of:
- 6.9.4.1.** subject to rule 7.2, the initial margin referred to in rule 6.6.1;
 - 6.9.4.2.** the additional margin referred to in rule 6.6.3.1;
 - 6.9.4.3.** the variation margin referred to in rule 6.6.2;
 - 6.9.4.4.** any interest payable in terms of rule 6.7.2; and
 - 6.9.4.5.** the fees referred to in rule 6.8.2.
- 6.9.5.** An amount due to or from a clearing member in terms of rule 6.9.4 shall be paid within such timelines as the NSE may in its sole discretion determine and these timelines shall be set out in a clearing agreement executed by the clearing member and the trading member.

- 6.9.6.** With respect to any proprietary position or the position of any of his clients, which the NSE has marked to- market in terms of rule 6.5.2, the trading member or non-executing member shall pay to the clearing member the amount of variation margin as contemplated in rule 6.6.2 by the time referred to in rule 6.9.3, as stipulated by the NSE and as notified to the trading member or non-executing member by the clearing member, and no relaxation shall be given to a trading member or non-executing member without the prior approval of the NSE.
- 6.9.7.** With respect to his positions a client shall pay to or receive from the trading member or non-executing member with whom he traded to open such positions the net amount of:
- 6.9.7.1.** the total of the initial margin referred to in rule 6.6.1 for all its aggregate positions: Provided that any amount so due from the resident client shall be off-set against any retained margin referred to in rule 6.6.4;
- 6.9.7.2.** the additional margin referred to in rule 6.6.3.2;
- 6.9.7.3.** the variation margin referred to in rule 6.6.2;
- 6.9.7.4.** any interest payable in terms of rule 6.7.3; and
- 6.9.7.5.** the fees referred to in rule 6.8.3.
- 6.9.8.** An amount due to or from a trading member in terms of rule 6.9.7 shall be paid within such timelines as the NSE may in its sole discretion determine and these timelines shall be set out in the client agreement executed by the trading member or non-executing member and the client.
- 6.9.9.** With respect to the position of any client, which the NSE has marked-to-market in terms of rule 6.5.2, the client shall pay to the trading member or non-executing member the amount of variation margin as contemplated in rule 6.6.2 by the time referred to in rule 6.9.3 stipulated by the NSE and notified to the client by the trading member and no relaxation shall be given without the prior approval of the NSE.

6.10. Exercise and assignment of option contracts

6.10.1. Exercise

- 6.10.1.1.** A client in whose name a long position in an option contract is registered may exercise the option at any time until the expiry of the exchange contract by either verbal or written notice to the member with whom he dealt in order to open the long position.

6.10.1.2. A member who has a proprietary long position in an option contract registered in his name may exercise the option at any time until the expiry of the exchange contract, and shall exercise the option on a client's behalf on the instruction of the client by executing the exercise on the DATS in the manner prescribed by the NSE and/or as set out in the user manual.

6.10.2. Upon the exercise of the option in terms of rule 6.10.1.2 the person in whose name the long position in the exchange contract was registered shall be deemed to have bought or sold the underlying instrument of the option contract in question at the strike price from or to the clearing house.

6.10.3. Assignment

When an option is exercised in terms of rule 6.10.1.1 or when an option is deemed to have been exercised in terms of rule 6.4.6, the clearing house shall in turn exercise its option to buy or sell the underlying instrument in question to or from the holder of a short position in the option contract in question: Provided that:

6.10.3.1. the clearing house shall in its sole discretion assign the exercise of the exchange contract or contracts to the registered holders of short positions in the exchange contract; and

6.10.3.2. the person to whom the exercise of the exchange contract is assigned in terms of rule 6.10 shall be deemed to have bought or sold the underlying instrument of the option contract.

7. Sundry Provisions

7.1. Trading and position limits

7.1.1. The clearing house may, in consultation with the Authority, limit the aggregate exposure arising from the proprietary positions of a clearing member, the positions of the clients of the clearing member, the positions of trading members with which the clearing member has entered into clearing agreements and the positions of the clients of such trading members in relation to the net financial worth of the clearing member plus his guarantee referred to in rule 3.19.8 in a manner determined by the NSE.

7.1.2. The clearing house shall set out the aggregate exposure limits in respect to exposures arising from the proprietary positions of the trading members and the positions of the clients of such trading members in the applicable Derivatives Market Product Specification Document.

7.1.3. The clearing member may limit the aggregate exposure arising from the proprietary positions of a trading member and the positions of the clients of such trading member.

7.1.4. A clearing member may stipulate a limit to the number of exchange contracts that may constitute a trade by a particular trading member at any one time.

7.2. Trading and position records

7.2.1. A member shall at all times maintain records of:

7.2.1.1. his trades with members and clients;

7.2.1.2. margin and other payments to and from other members and their clients.

7.2.2. A member shall update its client accounts and inform clients of effected trades, whether electronically or otherwise, on a daily basis and shall in addition confirm to a client at least once a month:

7.2.2.1. the trades done with the client during the period;

7.2.2.2. the positions of the client at the time of reporting;

7.2.2.3. the balances of additional and retained margin held for the client at the time of reporting; and

7.2.2.4. all payments to and from the client made or accrued during the period, including payments of margin, fees and interest.

7.2.3. The records referred to in rule 7.2.1 shall be kept for a period of at least seven years.

7.2.4. Telephone recordings

7.2.4.1. the NSE, the clearing house and members shall have the right to tape-record all telephone calls.

7.2.4.2. A member shall tape-record all telephonic offers received from or made to clients.

7.2.4.3. With respect to such telephone calls, the tape-recording shall be admissible as evidence in any disciplinary or dispute resolution proceedings contemplated in these Derivatives Rules: Provided that the person who intends to rely on such tape recordings in evidence shall bear the onus of proving the authenticity thereof.

7.2.4.4. All parties to the prescribed agreements shall in such agreement acknowledge and confirm that they are aware that telephone calls may be recorded, and they shall be deemed to have irrevocably consented thereto.

7.2.4.5. No member shall tamper with any tape-recording of any telephone call.

7.2.5. Tape-recordings contemplated in rule 7.2.4 shall be kept in safe custody for a period of at least 14 days.

7.3. **Emergency provisions**

7.3.1. In order that the business of the NSE be carried out with due regard to the interests of the public in a fair and orderly market the NSE may, in addition to the powers given in terms of the Act, in circumstances of emergency restrict or suspend trading in any or all of the derivative securities kept by it in its list of derivative securities.

7.3.2. Circumstances of emergency shall include but are not limited to the closing of any other exchange, a state of war or threatening hostilities, acts of state affecting the market or the due performance of trades or any position, any change in the law affecting the market or the due performance of trades or positions and any other situation or circumstances affecting, in the opinion of the NSE, a fair and orderly market for the trading in derivative securities.

7.3.3. If the trading in any security or commodity on any exchange or market ceases, the NSE Executive shall consider the cessation of trading in derivative securities for which such security or commodity comprises the underlying instrument of the derivative security concerned.

7.3.4. In the event of any of the circumstances contemplated in this rule 7.3 occurring, the Chief Executive shall notify the Authority of such circumstances and shall co-operate with the Authority to restore and maintain a fair and orderly market.

7.4. **Speculative position limits**

7.4.1. This rule applies only to trading members authorised to trade in agricultural derivatives. For the purposes of this rule, the following definitions are applicable:

“hedging positions” means positions in futures or options on the NSE, where such positions normally represent a substitute for positions to be made or positions to be taken at a later time in an agricultural product, and where they are appropriate to the reduction of risks in the conduct and management of a commercial enterprise. The primary purpose for hedging positions must be to offset price risks incidental to the commercial cash or spot operations.

These risks may arise from:

- (a) potential changes in the value of assets which a person owns, produces, processes, manufactures or anticipates owning, producing, processing or manufacturing; or
- (b) potential changes in the value of liabilities which a person owns or anticipates incurring; or

- (c) potential changes in the value of services which a person provides, purchases or anticipates providing or purchasing.

For the purposes of this definition, hedging positions include, but are not limited to, the following specific positions:

- (a) Sales for future delivery, purchases of any put options on futures contracts and/or sales of any call options on futures contracts, which do not exceed in quantity:
 - (i) Ownership of the same agricultural product by the same person; and
 - (ii) Fixed-price purchases of the same agricultural product by the same person;
- (b) Purchases of any agricultural product for future delivery, sales of any put options on futures contracts and/or purchases of any call options on futures contracts, which do not exceed in quantity fixed-price sales of the same agricultural product by the same person;
- (c) Short-hedging positions of unsold anticipated positions or anticipated production of the same agricultural product by the same person;
- (d) Long-hedging positions of unfilled anticipated requirements of the same agricultural product by the same person for processing, manufacturing or feeding;

“spot month limit” means the spot month futures equivalent position limit net long or short effective at the start of trading on the first delivery day of the spot month as determined by directive;

“single month limit” means the futures equivalent position limit net long or short in any one month other than the spot month as determined by directive;

“all month limit” means the futures equivalent position limit either long or short in all months as determined by directive;

“futures equivalent positions” means the futures positions plus or minus option contracts that have been adjusted for the delta coefficient as calculated at the close of trading by the NSE:

- (a) Long futures contracts shall have positive delta factor of +1 and short futures shall have a negative delta factor of -1;
- (b) Long call option and short put option positions shall have positive delta factors; and
- (c) Short call option and long put option positions shall have negative delta factors.

7.4.2. Duty to furnish information

The NSE may at its discretion request trading members or clients to provide it with written statements in relation to agricultural derivative positions owned, controlled or carried by the trading member or a client of the trading member . On receipt of a written request from the NSE, a trading member or client must within two business days, furnish the NSE with a written statement in the form, manner and content prescribed by the NSE. Statements submitted to the NSE must include information necessary to enable the clearing house, or any person or committee authorised by the NSE to make a determination as to whether the relevant position of a trading member or client should be limited or reduced in terms of this rule.

7.4.3. Net limits

7.4.3.1. No trading member or client may hold or control positions separately or in combination, net long or net short for the purchase or sale of derivative securities for future delivery, or on a futures equivalent basis, options thereon, in excess of the limits as set out in the Derivatives Market Product Specification Document.

7.4.3.2. The clearing house or any person authorised by the NSE may direct any trading member owning, controlling or carrying a position for a client, whose total net speculative position as determined by the NSE exceeds the position limits as set out in the Derivatives Market Product Specification Document, to liquidate or otherwise reduce the position within a time period stipulated by the NSE.

7.4.3.3. For the purposes of determining whether a trading member or client has exceeded these position limits, the NSE will include all positions that such member or client by power of attorney or otherwise, directly or indirectly, owns or controls or where positions are held by two or more persons acting pursuant to an express or implied agreement or understanding the same as if the positions were held or trading positions were done by a single individual.

7.4.3.4. The term “net” shall mean the long or short position held after offsetting long futures equivalent positions against short futures equivalent positions.

7.4.4. Exceeding position limits

The position limits set out in rule 7.4.3 may be exceeded to the extent that such positions are:

7.4.4.1. *bona fide* hedging positions in futures and options; or

- 7.4.4.2. spread or arbitrage positions between single months of a futures contract or, on a futures equivalent basis, options thereon, outside of the spot month, provided that such spread or arbitrage positions, when combined with other net positions in the single month, do not exceed the all months limit.

8. Management of Members' and Clients' Funds

8.1. Management of funds by the clearing house

- 8.1.1. The clearing house shall separate the margins and other moneys, securities and other corporeal and incorporeal things of any member or client from its own assets and shall manage and invest such margins and other moneys in a manner and subject to such terms and conditions as the NSE shall decide.

- 8.1.1.1. A clearing member may deposit any additional margin kept by him in terms of rule 6.6.3.1 with the clearing house.

- 8.1.1.2. A member may deposit any additional or retained margin kept by him in terms of rule 6.6.3.2 in respect of his resident clients with the clearing house.

- 8.1.2. The clearing house, on behalf of the NSE, shall monthly in arrears, retain a management fee as determined by the NSE of not more than 2% per annum on any margins held by it in respect of any position registered in the name of any person during the month.

8.2. Separation of funds

A trading member or non-executing member shall:

- 8.2.1. at all times separate a client's or other member's funds, including money, securities and other corporeal and incorporeal things of the client or other member, from his own assets;
- 8.2.2. not co-mingle the funds of any client or another member with his own;
- 8.2.3. not allow the use of funds, securities or corporeal or incorporeal things belonging to any client or other member to finance his own trades or the trades of any other person and as such shall maintain sub-accounts for each client;
- 8.2.4. not allow the use of funds, securities or corporeal or incorporeal things of any client or other member to operate his own business;
- 8.2.5. in respect of the trades or positions of a member or client, not retain any money, securities or other corporeal or incorporeal things given by such member or client or received by the member on behalf of any person other than additional margin contemplated in rule 6.6.3 or retained margin contemplated in rule 6.6.4; and

8.2.6. if it is a clearing member, maintain a segregated account for the clearing and settlement of trades conducted by that clearing member on the Derivatives Market.

8.3. Clearing member bank accounts

8.3.1. The provisions of this rule 8.3 shall apply in respect of additional margin not deposited by a clearing member with the clearing house.

8.3.2. A clearing member shall at all times keep a separate bank account into which he shall deposit any additional margin kept by him in terms of rule 6.6.3.1 and he shall at all times ensure that the correct amount of additional margin as required by his clearing agreement with the trading member is held in respect of each trading member with which he has entered into a clearing agreement and his records shall at all times reflect the amount of additional margin held in respect of each such trading member.

8.4. Members' bank accounts

8.4.1. The provisions of this rule 8.4 shall apply in respect of additional and/or retained margin not deposited by a member with the clearing house.

8.4.2. A member shall keep a separate trust account with a bank into which he shall deposit all additional and retained margin held by him with respect to his resident clients and he shall at all times keep records that shall show the amount held in respect of each client with respect to additional margin and with respect to retained margin and he shall at all times ensure that the correct amount of additional margin as required in terms of the relevant client agreement is held in respect of each client's positions.

8.4.2.1. A member shall keep a separate trust account with a bank into which he shall deposit directly or ensure the direct deposit of all client money either held or received by him with respect to his clients and he shall at all times ensure that the correct amount of additional margin as required in terms of the relevant client agreement is held in respect of each client's positions.

8.4.2.2. Other than in respect of the payment for fees and services rendered, a member shall at all times ensure that there is no deposit or receipt of client funds into his own proprietary account.

9. Default

9.1. Default by a trading member and/ or non-executing member

A trading member and/ or non-executing member shall default if:

9.1.1. a member is unable to fulfil its obligations in respect of one or more derivative securities or appears to be or to be likely to become so unable;

- 9.1.2. a member fails duly to perform or is, in the opinion of the clearing member, in material breach of any provision of the rules or of any agreement, understanding or arrangement which the member has from time to time entered into with the NSE, the clearing house or the clearing member;
- 9.1.3. a member is in breach of the terms of its Exchange Membership or the rules of any market or is suspended or expelled from Exchange Membership or ceases to be a Trading Participant, as may be applicable;
- 9.1.4. a member ceases to be a company authorized to carry out derivatives trading activities under these rules and/or the Licensing Regulations, as may be applicable;
- 9.1.5. a member defaults in payment of any sum payable to the NSE or the clearing house or the clearing member, or commits an event of default under the rules of another clearing house;
- 9.1.6. a member fails to pay when due any sum due and payable to the clearing member, or is otherwise in default under the terms of any agreement with the clearing member or threatens or proposes to suspend payment or to default under the terms of any agreement with the clearing member;
- 9.1.7. in respect of a member, winding-up petition is presented, or a notice of a proposal for a resolution for its winding-up is given or the resolution for winding-up is passed (save for the purpose of amalgamation or reconstruction), or a voluntary arrangement is approved by the court for the benefit of creditors, or if the clearing member considers in its absolute discretion that the occurrence of such events are imminent or likely;
- 9.1.8. in respect of a member, a receiver, manager or liquidator is appointed or a composition or scheme of arrangement is approved by the court, or if the clearing member considers in its absolute discretion that the occurrence of such events are imminent or likely;
- 9.1.9. any distress, execution or other process is levied or enforced or served upon or against any property of a member;
- 9.1.10. in respect of a member that is licensed under the Licensing Regulations as the term is defined therein, if it ceases to be so licensed; or
- 9.1.11. the clearing member considers it necessary or desirable to take action under this rule for its own protection or the protection of other participants;

On the occurrence of any one or more of such events (each an "Event of Default"), in its absolute discretion, the clearing member shall be entitled then or at any time thereafter whilst such event is, in the opinion of the clearing member, continuing unremedied, to take any one or more of the actions referred to in Rule 9.5 as applicable.

9.2. **Default by a clearing member**

A clearing member shall default if:

- 9.2.1. a member is unable to fulfil its obligations in respect of one or more derivative securities or appears to be or to be likely to become so unable;
- 9.2.2. a member fails duly to perform or is, in the opinion of the NSE, in material breach of any provision of the rules or of any agreement, understanding or arrangement which the member has from time to time entered into with the NSE;
- 9.2.3. a member is in breach of the terms of its Exchange Membership or the rules of any market or is suspended or expelled from Exchange Membership;
- 9.2.4. a member ceases to be a company authorized to perform clearing services in the derivatives market under these rules;
- 9.2.5. a member defaults in payment of any sum payable to the NSE or the clearing house, or commits an event of default under the rules of another clearing house;
- 9.2.6. a member fails to pay when due any sum due and payable to the NSE or the clearing house, or is otherwise in default under the terms of any agreement with the NSE or the clearing house or threatens or proposes to suspend payment or to default under the terms of any agreement with the NSE or the clearing house;
- 9.2.7. in respect of a member, winding-up petition is presented, or a notice of a proposal for a resolution for its winding-up is given or the resolution for winding-up is passed (save for the purpose of amalgamation or reconstruction), or a voluntary arrangement is approved by the court for the benefit of creditors, or if the NSE considers in its absolute discretion that the occurrence of such events are imminent or likely;
- 9.2.8. in respect of a member, a receiver, manager or liquidator is appointed or a composition or scheme of arrangement is approved by the court, or if the NSE considers in its absolute discretion that the occurrence of such events are imminent or likely;
- 9.2.9. any distress, execution or other process is levied or enforced or served upon or against any property of a Member;
- 9.2.10. a member is de-licensed or is suspended by a competent authority from carrying out any services provided by the member pursuant to these Rules ; or
- 9.2.11. the NSE considers it necessary or desirable to take action under this Rule for its own protection or the protection of other participants;

On the occurrence of any one or more of such events (each an "Event of Default"), in its absolute discretion, the NSE shall be entitled then or at any time thereafter whilst such event is, in the opinion of the NSE, continuing unremedied, to take any one or more of the actions referred to in Rule 9.6 as applicable.

9.3. Default by a client

A client shall default if:

- 9.3.1. he fails to fulfil any of his obligations in terms of a trade or a position; or
- 9.3.2. the trading member or non-executing member considers that he has committed an event of default including:
 - 9.3.2.1. committing or attempting to commit any act which is fraudulent or any act that would constitute any of the market abuse offences as outlined in the Act;
 - 9.3.2.2. being a party to, or conducting a transaction which has an unlawful motive;
 - 9.3.2.3. contravening, attempting to contravene, or failing to comply with any one or more of any provisions of the Act, a derivatives rule or a directive;
 - 9.3.2.4. knowingly obstructing the business of the NSE or its members; or
- 9.3.3. he is in default with respect to one particular member and the trading member or non-executing member in its discretion decides that he is in default with respect to any other member.

9.4. Consequences of a client's default

Without limiting or detracting from any other remedies and rights which a member may have against a client, in the event of default by a client:

- 9.4.1. the client shall, save as provided in this rule, be suspended from trading through the member;
- 9.4.2. the member shall close out the positions of the client by either (i) trading to transfer those positions to himself and for his own account at a price approved by the NSE; or (ii) auctioning the positions of the client in the market in line with any directive(s) issued by the NSE and/ or the clearing house regarding auctions; or (iii) selling off the positions of the client in the market within two business days or such other period as may be determined by the NSE from the date of default.;
- 9.4.3. any amount payable by the member to the client as a result of such close out or arising from any guarantee, cession, pledge or other security or from any other cause shall be set off against any amount payable by the client in terms of rule 6.9.7;
- 9.4.4. any shortfall remaining after the application of these Derivatives Rules shall be recovered from any other amounts payable to the client, and any balance paid to the client.

9.5. Consequences of default by a trading member and a non-executing member

Without limiting or detracting from any other remedies and rights which a member or client or the clearing house may have against a trading member or non-executing member, in the event of default by a trading member or non-executing member:

- 9.5.1. the clearing member shall issue a Declaration of Default to the trading member or the non-executing member setting out the Event of Default;
- 9.5.2. the trading member or non-executing member shall, save as provided in this rule, be suspended from trading;
- 9.5.3. the clearing member shall close out the proprietary positions of the trading member or non-executing member by either (i) trading to transfer those positions to himself and for his own account at a price approved by the NSE or (ii) auctioning the positions of the client in the market in line with any directive(s) issued by the NSE and/ or the clearing house regarding auctions; or (iii) selling off the positions of the client in the market within two business days or such other period as may be determined by the NSE from the date of default. The NSE shall notify the Authority of the commencement of the closing out and transfer of the positions by the clearing member;
- 9.5.4. any amount payable to the trading member or non-executing member as a result of such close out or arising from any guarantee, cession, pledge or other security or from any other cause shall be set off against any amount payable by the trading member in terms of rule 6.9.4;
- 9.5.5. any shortfall remaining after the application of these Derivatives Rules shall be recovered from any other amounts payable to the trading member or non-executing member, and any balance paid to the trading member or non-executing member;
 - 9.5.5.1. the clearing member shall assume the obligations of the trading member or non-executing member in terms of rule 6.9.7 that accrued on the date of default or on the previous business day;
 - 9.5.5.2. the NSE shall on request provide the clearing member with the registration and contact details of the clients of a defaulting member as supplied to the NSE; and
 - 9.5.5.3. on the default of a trading member or non-executing member, the clearing member shall contact the clients of such defaulting member immediately, to inform them of the default and to make arrangements for the transfer of existing client positions to another trading member.

9.5.6. the clients of the trading member shall have recourse to the Investor Protection Fund in accordance with its rules, where the provisions of this rule 9.5 are to fully meet their claims, including without limitation:

9.5.6.1. where the claim arises out of misapplication of the funds of the client by the trading member or non-executing member; and

9.5.6.2. in any other instance deemed acceptable by the trustees of the Investor Protection Fund.

9.6. Consequences of default by a clearing member

Without limiting or detracting from any other remedies and rights which a trading member and/ or non-executing member or client or the clearing house may have against a clearing member, in the event of default by a clearing member:

9.6.1. the NSE and/or the clearing house shall issue a Declaration of Default to the clearing member setting out the Event of Default. The NSE and/or the clearing house shall, immediately thereafter, convene a meeting of the Default Handling Working Group which shall consider the value and risks of the collateral and open positions held by the defaulting clearing member and advise the NSE and/ or the clearing house on the appropriate action to be taken. The NSE and/ or the clearing house shall, immediately thereafter, make the final decision on the appropriate action to be taken in accordance with rule 9.6 of these Derivatives Rules.

9.6.2. the clearing member shall, save as provided in this rule, be suspended from the market and the monies of the Guarantee Fund shall be applied in the following sequence to make good any shortfall arising from such default of the clearing member:

9.6.2.1. the initial margin collected from the clients of the defaulting clearing member;

9.6.2.2. the contributions to the Guarantee Fund by the defaulting clearing member;

9.6.2.3. a percentage, approved by the Authority, of the contributions to the Guarantee Fund made by the NSE and/or the clearing house as the case may be together with any reserves, revenues and penalties accrued to the Guarantee Fund subject to the provisions of rule 9.6.1; and

9.6.2.4. the contributions to the Guarantee Fund by all the other clearing members subject to the provisions of rules 9.6.2 and 9.6.3;

Provided that upon execution of a clearing agreement rule 9.6.5 the clearing member taking over the obligations will be responsible for settlement and the monies of the Guarantee Fund shall immediately cease to be applied in the same.

9.6.3. the clearing house shall operate a separate trust account with a bank (hereinafter referred to as the "default trust account"), into which shall be paid all margin due and

payable, the proceeds from the guarantee referred to in rule 3.20.8 and any other moneys or securities held by the clearing house in favour of or on behalf of or for the account of the clearing member;

- 9.6.4.** the clearing house shall manage the default trust account and all the affairs of the clearing member arising from and relating to its membership of the NSE and:
- 9.6.4.1.** shall assume control of all assets held or administered by the clearing member on behalf of or for the account or benefit of any member or client, and, when requested by the NSE, render such reports to the NSE as the NSE may require;
- 9.6.4.2.** shall, without prior notice to the clearing member, close out all the proprietary positions of the clearing member, if any, at the best price it can obtain when, in its sole discretion, it so decides. Without prejudice to the foregoing, the clearing house shall have the power to auction and/ or liquidate the portfolios of the defaulting clearing member's trading members or non-executing members in the derivatives market to enable the close out of the same;
- 9.6.4.3.** any amount payable to the clearing member as a result of such close out or arising from any guarantee, cession, pledge or other security or from any other cause, shall be set off against any amount payable by the clearing member in terms of rule 6.9.1;
- 9.6.4.4.** any shortfall remaining after the application of these Derivatives Rules shall be recovered from any other amounts payable to the clearing member, and any balance paid to the clearing member;
- 9.6.4.5.** transfer all positions of clients and trading members cleared through the clearing member to another clearing member until such time as the provisions of rule 9.5.4 have been complied with: Provided that the clearing house shall be entitled to appoint a trustee to exercise all its powers in terms of this rule subject to the trustee being entitled to the same indemnity as the clearing house.
- 9.6.5.** within twenty four hours or such other period which the NSE may determine, each trading member with whom the defaulting clearing member had a clearing agreement shall conclude a clearing agreement with another clearing member failing which the trading member shall be deemed to be in default and his membership shall terminate;
- 9.6.6.** after all liabilities of the defaulting clearing member have been settled, the amounts paid by any guarantor in terms of the Derivatives Rules shall be refunded from any balance remaining in the default trust account and any further balance remaining shall be paid to the defaulting clearing member: Provided that if there are insufficient funds to cover such liabilities, the clearing house may call on all clearing members for an proportionate contribution to make good any shortfall.

9.7. Delayed Delivery

- 9.7.1.** If a member pays funds on the settlement date but the funds are received by the clearing house after the cut-off time notified by the NSE or the clearing house on the settlement date, and the member makes due representations to the NSE or the clearing house that the delay was due to reasons beyond its control, it may be considered, at the discretion of the NSE or the clearing house, as a delayed payment. However, the applicable penalties as detailed in rule 10 of these rules shall be levied as notified by the clearing house.
- 9.7.2.** If the member fails to pay the funds on the settlement date, the same shall constitute an Event of Default by that member and the NSE, in its absolute discretion, shall be entitled then or at any time thereafter whilst such event is, in the opinion of the NSE, continuing unremedied, to take any one or more of the actions referred to in Rules 9.5 and 9.6, as may be applicable.

9.8. Replenishing the Guarantee Fund

Without limiting or detracting from any other provisions in these rules concerning replenishment of the Settlement Guarantee Fund:

- 9.8.1.** To the extent that the defaulting clearing member's obligations as set out in these rules have been met by utilising some or all of the contributions to the Guarantee Fund by the other clearing members referred to in rule 9.5.1.3, the NSE shall determine the amount of additional contribution payable by the other clearing members in order to re-establish the size of the Guarantee Fund at an appropriate level.
- 9.8.2.** In any twelve month period, where the total contributions to the Guarantee Fund by clearing members have been fully utilized twice-over in terms of rule 9.5.2.4 as a result of one or more clearing member defaults, the remaining clearing members shall still be obliged to make an additional contribution to the Guarantee Fund but such additional contribution shall only be utilized to meet the obligations of a clearing member in terms of rule 9.5.1.1 and not 9.5.1.3.
- 9.8.3.** Any losses suffered by the NSE, its clearing house, the Guarantee Fund or any market participant as a result of the default of a clearing member shall be recovered from that clearing member.

10. Penalties

10.1. Failure to meet obligations by any member

10.1.1. A penal charge, together with the cost of funding, where applicable, shall be levied on the amount in default in accordance with the provisions here below relating to failure to meet the obligations set out below by any member:

Type of Default	Penalty Charge per day	Chargeable to
Settlement shortage	0.07%	clearing member
Failure to remit contributions due to the Guarantee Fund	0.07%	clearing members
Failure to remit contributions due to the Investor Protection Fund	0.07%	trading member or non-executing member

10.2. Short Reporting of Margins

10.2.1. The following penalty shall be levied, together with the cost of funding, where applicable, in case of short reporting by trading member, non-executing member or clearing member:

Short collection for each client	Penalty percentage	Short collection for each client
(< KShs. 100,000.00) and (< 10% of applicable margin)	0.5%	(<KShs. 100,000.00) And (< 10% of applicable margin)
(= KShs. 100,000.00) Or (= 10% of applicable margin)	1.0%	(=KShs. 100,000.00) Or (= 10% of applicable margin)

10.2.2. If short or non-collection of margins for a client continues for more than 3 consecutive days, then a penalty of 5% of the shortfall amount shall be levied against the trading member, the non-executing member and/ or clearing member for each day of continued shortfall beyond the third day of shortfall.

10.2.3. If short or non-collection of margins for a client takes place for more than 5 days in a month, then penalty of 5% of the shortfall amount shall be levied for each day, during the month, beyond the fifth day of shortfall.

10.2.4. Notwithstanding the above, if short collection of margin from clients is caused due to movement of 3% or more in the NSE 25 (close to close) on a given day, (day T), then, the penalty for short collection shall be imposed only if the shortfall continues to T+2 day.

10.2.5. All instances of non-reporting are treated as 100% short reporting for the purpose of levy of penalty.

10.2.6. Violations, if any, by the non-executing member shall be treated in line with those of the trading member and, accordingly, action shall be initiated against the concerned non-executing member or the trading member.

10.3. Penalty for margin/limit violation

10.3.1. The penalty for margin and/ or limit violation shall be levied on a monthly basis as enumerated below or such other amount as may be prescribed by the NSE or the clearing house from time to time:

Instances of Suspension	Penalty to be levied
1 st instance	0.07% per day
2 nd to 5 th instance of suspension	0.07% per day + KShs. 10,000.00 per instance from 2 nd to 5 th instance
6 th to 10 th instance of suspension	0.07% per day + KShs. 20,000.00 (for 2 nd to 5 th instance) + KShs. 10,000.00 per instance from 6 th to 10 th instance
11 th instance onwards	0.07% per day + KShs. 100,000.00 (for 2 nd to 10 th instance) + KShs. 15,000.00 per instance from 11 th instance onwards. Additionally, the member will be referred to the SRO Committee for suitable action.

10.3.2. Instances as mentioned above refer to all suspension during market hours in a calendar month. The penal charge of 0.07% per day is applicable on all disablements due to margin violation anytime during the day.

10.4. Proprietary Funds/ Pension Fund position limit violation

In case of violation of Proprietary/Pension Fund limits, a penalty of KShs. 15,000.00 would be levied for each instance of violation.

10.5. Client wise position limit violation

10.5.1. In any event where the open proprietary positions of any Client exceed the aggregate exposure limit arising from the proprietary positions of a client as set out in the applicable Derivatives Market Product Specification Document, the following penalty shall be charged to the trading member for each day of violation:

10.5.1.1. 1% of the value of the quantity in violation (i.e., excess quantity over the allowed quantity, valued at the closing price of the security in the normal market of the Capital Market segment of the Exchange) per client or

10.5.1.2. KShs. 150,000.00 per client, whichever is lower, subject to a minimum penalty of KShs. 10,000.00 per violation per client.

10.5.2. When the client level violation is due to the open position exceeds 5% of the open position, a penalty of KShs. 10,000 per instance shall be levied against the trading member.

10.6. Market wide Position Limit violation

At the end of each day during which the ban on increase in overall positions is in force in respect of any derivatives securities, when any member or client has increased his existing positions or has created a new position in that derivatives security, the client and/ or the trading members will be subject to a penalty of 1% of the value of increased position subject to a minimum penalty of KShs. 7,500.00 and maximum penalty of KShs. 150,000.00. The positions, for this purpose, will be valued at the underlying close price.

11. Anti-Money Laundering

All trading members, non-executing members and clearing members shall at all times comply with these Rules, the Proceeds Of Crime And Anti-Money Laundering Act 2009, the Proceeds of Crime and Anti Money Laundering Regulations, 2013, the Guidelines On The Prevention Of Money Laundering And Terrorism Financing In The Capital Markets, 2015, the Nairobi Securities Exchange Market Participants Business Conduct and Enforcement Rules, 2014 and all other legal and regulatory requirements thereto on all matters relating to Know Your Customer requirements, anti-money laundering and combating the financing of terrorism.

12. Derivative Securities

12.1. List of derivative securities

The derivative securities which may be bought or sold as provided for in rule 5.1 shall be kept by the NSE in the list of derivative securities in accordance with the Act.

12.2. Contract specification of the derivative securities

12.2.1. The contract specification of derivative securities contained in the list of derivative securities kept in terms of these Derivatives Rules shall be determined by the NSE and shall include, without limitation:

12.2.1.1. Size of the contract;

12.2.1.2. Tick size;

12.2.1.3. Duration of the contract;

12.2.1.4. Mode of final settlement; -

12.2.1.5. Where applicable, specifications of the underlying asset;

12.2.1.6. Position limits at the member and client levels; and

12.2.1.7. Any other information which the Authority may consider necessary.

12.2.2. The NSE may, in its discretion, conduct surveys and research, call for the views of members and any committee and take such other steps as it may deem appropriate in determining the contract specification of derivative securities in line with NSE's policies, procedures and manuals.

12.3. Listing of derivative securities

12.3.1. The NSE shall have the power to:

12.3.1.1. add derivative securities to, or remove derivative securities from, the list of derivative securities kept in terms of these Derivatives Rules, or suspend derivative securities from such list, subject to the approval of the Authority;

12.3.1.2. impose new conditions on or amend the existing conditions of such derivative securities.

12.3.2. The NSE shall notify all members of the approval of an application in terms of this rule, and shall stipulate a date for the coming into operation of an addition, removal or suspension of derivative securities or new or amended conditions relating to derivative securities.

12.4. Exchange contracts

12.4.1. The NSE may, in its sole discretion, decide which expiry months shall be specified for the futures and options contracts contained in the list referred to in rule 10.1 and it shall publish such exchange contracts in a notice to members: Provided that where the expiry date of a futures or options contract is longer than one year hence the NSE shall specify the expiry date.

12.4.2. Options contracts having strike prices as contained in the contract specification of the particular option contract may be traded when the expiry month of the underlying futures contract is specified as contemplated in rule 10.4.1.

13. Prescribed Agreements

The NSE shall prescribe and specify the basic terms and formal requirements of the agreements for dealing in derivative securities, including, but not limited to the clearing house agreement, the clearing agreement, the tripartite client agreement and the client agreement.

14. Management of Investments

14.1. Authority to manage investments in derivative securities

Trading members are authorised to manage investments comprising derivative securities: Provided that they comply with the provisions of this rule and other applicable Derivatives Rules, and applicable regulations and undertake such

management in compliance with the prescribed client agreement. This rule shall, however, not apply to a member if the member is a bank or if the majority of such member's intermediary services do not relate to trading in NSE listed securities as a market participant of any of the NSE markets. Such a member shall be required to obtain a licence to operate as a financial services provider in accordance with the Act or other relevant act in respect of any advice or intermediary services which it provides to clients relating to derivative securities, and the relevant provisions of that Act shall apply to such advice or intermediary services.

14.2. Trading as an investment manager in derivative securities

14.2.1. A member may not trade as an investment manager in derivative securities for or on behalf of a client unless he or she has concluded a discretionary client agreement with the client and the client has been registered as a client of that member with the clearing house in terms of rule 5.6.2.

14.2.2. An investment manager may not directly or indirectly buy or sell derivative securities for or from his own account or any account in which an employee has a direct or indirect beneficial interest, to or from a client.

14.3. Management and investment advice in respect of NSE authorised investments other than derivative securities

14.3.1. This rule is only applicable to trading members whose investment management activities in relation to derivative securities are regulated by the NSE in terms of rule 14.1.

14.3.2. The provisions of rules 14.3.4 to 14.3.13 shall not apply to a trading member if the trading member is a bank or if the majority of such member's intermediary services do not relate to trading in NSE listed securities as a market participant of any of the NSE markets. Such a member shall be required to obtain a licence to operate as a financial services provider in accordance with the Act or other relevant act in respect of any advice or intermediary services which it provides to clients relating to NSE authorised investments other than derivative securities and the relevant provisions of that Act shall apply to such advice or intermediary services.

14.3.3. The provisions of rules 14.3.4 to 14.3.13 shall not apply to a trading member in respect of transactions in NSE authorised investments other than derivative securities where such transactions relate to securities listed on an exchange other than the NSE, where such transactions are conducted as a market participant of such exchange. Such transactions will instead be subject to the rules of the relevant exchange.

14.3.4. A trading member may not enter into transactions as an investment manager in NSE authorised investments other than derivative securities on behalf of clients or provide investment advice to any clients in respect of such investments unless it has notified the NSE Director: Regulatory Affairs, in writing, of its intention to effect such transactions or provide such investment advice.

- 14.3.5.** In order for the NSE to identify the scope of an investment manager's activities in NSE authorised investments other than derivative securities, the written notification to the NSE Director: Regulatory Affairs referred to in rule 14.3.4 shall indicate which specific investments the investment manager is intending either to transact in on behalf of its clients or to provide investment advice on, or both.
- 14.3.6.** The details which are required to be submitted to the NSE Director: Regulatory Affairs in terms of rule 14.3.5 shall specify the particular types of NSE authorised investments other than derivative securities in which activity is to be conducted, but need not include the name of the particular investments.
- 14.3.7.** The failure by an investment manager to provide the notification referred to in rules 14.3.4 and 14.3.5 prior to undertaking the relevant activity may result in the NSE imposing restrictions or a prohibition on the investment manager's activities in NSE authorised investments other than derivative securities.
- 14.3.8.** If an investment manager has previously notified the NSE Director: Regulatory Affairs in terms of rules 14.3.4 and 14.3.5 of its intention to conduct activity in any NSE authorised investments other than derivative securities and the investment manager ceases to conduct activity in respect of one or more particular types of investments, with no intention of resuming activity in such investments in the foreseeable future, the investment manager shall notify the NSE Director: Regulatory Affairs forthwith, in writing, of such cessation of activity.
- 14.3.9.** Any decision by an investment manager to invest in NSE authorised investments other than derivative securities on behalf of a client shall be made with due regard to the relevant provisions of rule 15.1 regarding the conduct of members, particularly the provisions relating to the General Conduct Towards Clients in rule 15.1.2 and the Exercise of Discretion in rule 15.1.3.
- 14.3.10.** An investment manager shall not effect transactions in NSE authorised investments other than derivative securities on behalf of a client unless the client has given his general consent to such transactions being effected in a written mandate.
- 14.3.11.** Every investment manager who purchases NSE authorised investments other than derivative securities on behalf of a client and who is accountable to the client for the client's investment in such NSE authorised investments shall comply with the following requirements:
- 14.3.11.1.** the relevant investments shall be segregated from the investment manager's own assets at all times. If the NSE authorised investments other than derivative securities are held in an account maintained by another financial services provider, the account shall either be opened in the client's own name or, if the investment manager opens a single account in respect of transactions executed on behalf of more than one client, the investment manager shall procure that the account is clearly designated in the records

of the relevant financial services provider as being an account utilised for investments made by the investment manager on behalf of its clients;

14.3.11.2. the investment manager shall maintain proper accounting records in respect of all NSE authorised investments other than derivative securities purchased or sold on behalf of clients. These records shall be updated forthwith in respect of any transactions in NSE authorised investments other than derivative securities and shall clearly identify the beneficial owners of all such investments at all times;

14.3.11.3. the investment manager must balance its clients' holdings in NSE authorised investments other than derivative securities, as reflected in the investment manager's records, with the accounts maintained by the other financial services providers who hold such investments, on a monthly basis. Any differences identified between the respective records must be rectified forthwith.

14.3.12. Every investment manager who holds NSE authorised investments other than derivative securities on behalf of a client or who is accountable to a client for such investments shall implement and maintain an effective system of internal controls to safeguard such investments and prevent unauthorised access thereto.

14.3.13. Transactions by an investment manager in NSE authorised investments other than derivative securities which constitute foreign investments shall also be subject to 14.4.

14.4. Management of foreign investments

14.4.1. For the purpose of this rule, foreign investments means the following NSE authorised investments:

14.4.1.1. securities listed on an external exchange;

14.4.1.2. units or any other form of participation in a foreign collective investment scheme approved by the Authority;

14.4.1.3. units or any other form of participation in a collective investment scheme licensed or registered in a foreign country; and

14.4.1.4. foreign funds intended for the purchase of such securities, units or participation.

14.4.2. An investment manager shall not enter into transactions in foreign investments on behalf of a client unless:

14.4.2.1. the mandate entered into between the investment manager and the client in terms of rule 12.3.10:

14.4.2.1.1. stipulates that the investment manager is authorised to invest in foreign investments;

14.4.2.1.2. contains a statement pertaining to the risks associated with foreign investments, with particular reference to any currency risk;

14.4.2.1.3. states whether there are any jurisdiction restrictions in respect of the particular foreign investments; and

14.4.2.1.4. contains full particulars of the manner in which such investments shall be made and in whose name such investments shall be held or registered.

14.4.3. An investment manager must, on request by a client, furnish the client with the following information regarding any foreign investments made by the investment manager on behalf of the client:

14.4.3.1. the name of the licensed external exchange on which the foreign investments are listed, if applicable;

14.4.3.2. the country in which the foreign investments are licensed or registered and the name and address of the relevant licensing or registration authority, if applicable;

14.4.3.3. the name and address of the foreign financial services provider used by the investment manager to purchase or hold the foreign investments, if applicable; and

14.4.3.4. the name and address of the regulator of the foreign financial services provider referred to in rule 14.4.3.3 and whether such foreign financial services provider is approved or registered by such regulator.

14.5. Client statements

14.5.1. An investment manager must provide a written statement to a client on a monthly basis which complies with 14.5.2 and 14.5.3.

14.5.2. A client statement must contain such information as is reasonably necessary to enable the client to:

14.5.2.1. produce a set of financial statements;

14.5.2.2. determine the composition of the investments comprising the portfolio held by the member or for which the member is accountable to the client and the changes thereto over the reporting period, if applicable; and

14.5.2.3. determine the market value of the investments comprising the portfolio held by the member or for which the member is accountable to the client and the changes therein over the reporting period, if applicable.

14.5.3. Pursuant to rule 14.5.2, and to provide the client with the information necessary for them to review the operation of their account and make appropriate investment decisions, a client statement must contain at least the following information:

- 14.5.3.1.** the quantity, description and market value of each investment comprising the portfolio held by the member or for which the member is accountable to the client, at the reporting date;
- 14.5.3.2.** the amount of funds held by the member or which has been invested by the member on behalf of the client and for which the member is accountable to the client, at the reporting date;
- 14.5.3.3.** if any of the investments or funds are reflected in a foreign currency, the relevant currency exchange rate at the reporting date must also be reflected;
- 14.5.3.4.** investments purchased or sold during the reporting period;
- 14.5.3.5.** receipts and payments of funds during the reporting period;
- 14.5.3.6.** details of income earned and expenditure incurred during the reporting period;
- 14.5.3.7.** non-cash transactions during the reporting period, including non-cash components of corporate actions and option expiries;
- 14.5.3.8.** investments transferred into and out of the portfolio during the reporting period;
- 14.5.3.9.** identification of those investments which at the reporting date were loaned to any third party but for which the member is still accountable to the client;
- 14.5.3.10.** the quantity, description and market value of any financial products, or the amount of funds, held as collateral by the member on behalf of the client in respect of any loans made by the client;
- 14.5.3.11.** identification of those investments or funds which at the reporting date were utilised to secure loans to the client or borrowings made on behalf of the client;
- 14.5.3.12.** identification of those investments or funds which at the reporting date were utilised as margin in respect of open positions in any financial product;
- 14.5.3.13.** in respect of investments in derivative instruments, a description of the underlying financial product, index, commodity or thing, the expiry month and in the case of options, the exercise or strike price; and
- 14.5.3.14.** if the statement reflects any investments or funds which are not held by the member and for which the member is not accountable to the client, it should clearly indicate that fact in relation to such investments or funds.
- 14.5.3.15.** The information referred to in rule 14.5.3 may be provided to the client in separate statements either during the reporting period or as at the reporting date.

14.5.3.16. A client statement shall be provided either to the client or to an agent or third party nominated by the client in writing.

14.6. Exercising of discretion and provision of investment advice by employees

A trading member shall, in the course of its business, exercise discretion in the management of NSE authorised investments and provide investment advice to its clients on the buying and selling of NSE authorised investments only through an employee who has obtained such qualification as may be prescribed in the directives.

15. Trading of Derivatives by Market Makers

Any market making by market makers shall be in line with the relevant rules, directives and incentive programs in respect of market makers as may be published by the NSE from time to time.

16. Ethics and Conduct

16.1. Code of conduct

16.1.1. Standards of Integrity:

A member shall, in the conduct of its business, observe high standards of integrity and fair dealing. It must:

16.1.1.1. not provide, or accept material inducements of a non-business nature to, or from any person to obtain business;

16.1.1.2. not knowingly circulate information or submit information to the NSE or the clearing house which is false or misleading, or which affects or tends to affect unfairly the price of any derivative security;

16.1.1.3. not knowingly countenance any attempt to manipulate the market, nor to influence persons for such a purpose;

16.1.1.4. not be a party to or facilitate or enter into a trade which is fictitious or which has a dishonest or unlawful motive;

16.1.1.5. conduct its activities in a manner that is compatible with the objects of the Act and with full respect for the dignity of the NSE; and

16.1.1.6. not participate in any dealings with other members, clients, the media or other persons, which may be of such a nature as to discredit the NSE.

16.1.2. General conduct towards clients In its dealings with clients, a member shall:

16.1.2.1. act honestly and fairly;

16.1.2.2. act with due skill, care and diligence, and in the interests of clients;

16.1.2.3. exercise independent professional judgment;

16.1.2.4. act promptly on and in accordance with the instructions of a client, and exercise any discretion in a responsible manner;

16.1.2.5. avoid conflicts of interest and when they cannot be avoided, ensure fair treatment to clients by disclosure, confidentiality or declining to act. A member shall not unfairly place its interests above those of its clients; and

16.1.2.6. not make any statement, promise or forecast which it knows to be misleading or is likely to be misleading and that has the effect or may have the effect of inducing a client to enter into a client agreement.

16.1.3. Furnishing of investment advice and exercise of discretion in providing investment advice to a client, other than a professional client, or exercising discretion in relation to the management of NSE authorised investments, a member shall:

16.1.3.1. take reasonable steps to seek from the client information regarding the client's financial situation, investment experience, particular needs and objectives in connection with the services required, to enable the member to provide the client with sound investment advice or make an appropriate investment decision;

16.1.3.2. conduct an analysis, based on the information obtained, for the purpose of advising the client or making an investment decision;

16.1.3.3. identify the NSE authorised investments that will suit the client's risk profile and financial needs, subject to the terms of any client agreement entered into between the client and the member or any other mandate provided to the member by the client;

16.1.3.4. take reasonable steps to ensure that the client understands any investment advice that has been provided, as well as the nature and material terms and risks involved in the relevant transaction, so as to enable the client to make an informed decision; and

16.1.3.5. ensure that any investment advice provided or discretion exercised is not for the sole purpose of maximising the income of the member.

16.1.4. Disclosure to clients:

16.1.4.1. In rendering a service to a client, any representations made and information provided by a member:

16.1.4.1.1. must be factually correct;

16.1.4.1.2. must be provided in plain language, avoid uncertainty or confusion and not be misleading;

16.1.4.1.3. must be adequate and appropriate in the circumstances of the particular service, taking into account the factually established or reasonably assumed level of knowledge of the client;

16.1.4.1.4. must, as regards all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein, be reflected in specific monetary terms, provided that where any such amount, sum, value, charge, fee, remuneration or monetary obligation is not reasonably pre-determinable, its basis of calculation must be adequately described;

16.1.4.1.5. need not be duplicated or repeated to the same client unless material or significant changes affecting that client occur, or the relevant service renders it necessary, in which case a disclosure of the changes must be made to the client without delay.

16.1.4.2. A member:

16.1.4.2.1. must disclose full and accurate information about the fees and any other charges that may be levied on clients;

16.1.4.2.2. may not disclose any confidential information acquired or obtained from a client about such client, unless the written consent of the client has been obtained beforehand or disclosure of the information is required to further the objectives of the Act or is required under any law;

16.1.4.2.3. must advise a client in advance of any restrictions or limitations that may affect the access of that client to their funds or NSE authorised investments.

16.1.5. Maintenance of client records:

16.1.5.1. A member must maintain proper, complete, accurate and secure records in relation to the services rendered to its clients.

16.1.5.2. A member must have appropriate procedures and systems in place to store and retrieve, in a manner safe from destruction, a record of all:

16.1.5.2.1. communications relating to a service rendered to a client, including instructions given by the client to the member;

16.1.5.2.2. transaction documentation relating to clients;

16.1.5.2.3. contractual arrangements between the member and its clients, including client agreements and mandates prescribed by the rules; and

16.1.5.2.4. client particulars required to be provided in terms of the rules or which are necessary for the effective operation of client accounts.

16.1.5.3. The client records in rule 16.1.5.2 may be kept in printed, electronic or voice-recorded format.

16.1.5.4. Members need not keep the records in 16.1.5.2 themselves but must be capable of making such records available for inspection within seven days.

16.1.5.5. All instructions given by clients to execute transactions must be kept for a period of at least six months after the relevant transactions and all other client records in 16.1.5.2 must be kept for at least seven years after the rendering of the services concerned.

16.1.6. Contact with the member

A member must provide for the necessary resources and functionality to ensure that clients are able to readily contact the member.

16.1.7. Waiver of rights

A member may not request or induce in any manner a client to waive any right or benefit conferred on the client by or in terms of this code or the Derivatives Rules or recognise, accept or act on any such waiver by the client, and any such waiver is void.

16.1.8. Adequacy of financial resources

A member shall ensure that it maintains adequate financial resources to meet its business commitments and to withstand the risks to which its business is subject.

16.1.9. Internal resources and risk management

A member shall employ effectively the resources and procedures that are necessary for the proper performance of its business activities and to eliminate, as far as is reasonably possible, the risk that clients will suffer financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions. It shall organise and control its internal affairs in a reasonable manner and keep proper records. Its staff shall be suitable, adequately trained and properly supervised.

16.1.10. Co-operation with regulators

A member shall deal with the NSE as its regulator in an open co-operative manner and keep the NSE promptly informed of anything concerning the NSE which might reasonably be expected to be disclosed to it. A member shall also provide reasonable co-operation to any other regulatory body or any law enforcement agency in respect of any matters which are the subject of an investigation by such body or agency relating to

an alleged contravention of the Act, or any equivalent foreign legislation or any other law governing the activities of the member.

16.1.11. Enforcement of code on employees

A member shall enforce the provisions of this code on all its employees.

16.2. Unsolicited calls

A member may enter into a transaction with or on behalf of a person where the transaction is as a result of an unsolicited call, provided that the member has complied with the requirements set out in rules 16.1.3 and 16.1.4 and the provisions of the Capital Markets (Conduct of Business) (Market Intermediaries) Regulations, 2011 on cold calling.

16.3. Advertising by members

16.3.1. Advertising material of a member:

16.3.1.1. must provide accurate, complete and unambiguous information about any NSE authorised investment or any service rendered by the member;

16.3.1.2. must emphasise the risk of loss and uncertainty of future results;

16.3.1.3. must discern fact from opinion;

16.3.1.4. may not be comparative in relation to another member; and

16.3.1.5. may not make the statement or suggest that trading in derivatives securities on the NSE is appropriate for all persons.

16.3.2. An advertisement by a member:

16.3.2.1. may not contain any statement, promise or forecast which is fraudulent, untrue or misleading;

16.3.2.2. must, if it contains:

16.3.2.2.1. performance data (including awards and rankings), include references to their source and date;

16.3.2.2.2. illustrations, forecasts or hypothetical data:

16.3.2.2.2.1. contain support in the form of clearly stated basic assumptions (including, but not limited to, any relevant assumptions in respect of performance, returns, costs and charges) with a reasonable prospect of being met under current circumstances;

- 16.3.2.2.2. make it clear that they are not guaranteed and are provided for illustrative purposes only; and
- 16.3.2.2.3. also contain, where returns or benefits are dependent on the performance of underlying assets or other variable market factors, clear indications of such dependence;
- 16.3.2.3. a warning statement about risks involved in buying or selling a NSE authorised investment, prominently display such statement; and
- 16.3.2.2.4. information about past performances, also contain a warning that past performances are not necessarily indicative of future performances; and
- 16.3.2.3. must, if the investment value of a NSE authorised investment mentioned in the advertisement is not guaranteed, contain a warning that no guarantees are provided.

In the event that the NSE considers that a member has failed to conform to any of the advertising requirements published by the NSE under rule 13.3.1 or 13.3.2, it may at its discretion (without prejudice to its other powers under these Derivatives 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 NSE in advance and the NSE has notified the member that the material is suitable for publication.

16.4. Contraventions to be reported

Every member shall report to the NSE any contravention of the Act, the Derivatives Rules and directives and any other relevant NSE rules that come to its attention.

17. Resolution of Disputes

Complaints

17.1. Client complaints

- 17.1.1. For the purposes of rule 17 of the Derivatives Rules, a client complaint is defined as any complaint in relation to the provision of regulated services, in which the client alleges that he has suffered, or is likely to suffer, financial prejudice as a result of the member:
 - 17.1.1.1. contravening or failing to comply with any instruction given by the client, or any agreement or mandate entered into with the client;
 - 17.1.1.2. contravening or failing to comply with the rules and the directives;
 - 17.1.1.3. acting dishonestly, negligently or recklessly; or
 - 17.1.1.4. treating the client unreasonably or unfairly.
- 17.1.2. Every member must establish and maintain appropriate procedures for the handling of client complaints.

17.2. Internal complaint handling procedures

17.2.1. A member's internal complaint handling procedures must provide for:

17.2.1.1. the receipt of oral or written complaints;

17.2.1.2. the appropriate investigation of complaints;

17.2.1.3. an appropriate decision-making process in relation to the response to a client complaint;

17.2.1.4. notification of the decision to the client; and

17.2.1.5. the recording of complaints.

17.2.2. A member's internal complaint handling procedures must be designed to ensure that:

17.2.2.1. all complaints are handled fairly, effectively and promptly;

17.2.2.2. recurring or systemic problems are identified, investigated and remedied;

17.2.2.3. the number of unresolved complaints to be referred to the NSE in terms of the rule 17.6 are minimised;

17.2.2.4. complaints are investigated by an employee of sufficient competence who, where appropriate, was not directly involved in the matter which is the subject of a complaint;

17.2.2.5. the employee responsible for the resolution of complaints has the necessary authority to resolve complaints or has ready access to an employee who has the necessary authority; and

17.2.2.6. relevant employees are aware of the member's internal complaint handling procedures and comply with them.

17.3. Timely response to, and resolution of, complaints

A member must acknowledge, to the client, receipt of their complaint within 24 hours. If the complaint is not dealt with, or cannot reasonably be dealt with, within 48 hours the member must inform the NSE of the outstanding complaint without delay. In any case, the member must resolve a client complaint within 4 weeks of receiving the complaint or, within such period, provide the complainant with an appropriate explanation as to why the member is not, at that time, in a position to resolve the complaint and must indicate by when the member will resolve the complaint.

17.4. Redress

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

17.5. Recording of complaints

- 17.5.1. A member must maintain a record of all client complaints. The record of each complaint must include:
 - 17.5.1.1. the identity of the complainant;
 - 17.5.1.2. the substance of the complaint;
 - 17.5.1.3. all correspondence in relation to the complaint; and
 - 17.5.1.4. The resolution where one is reached and/or the status of the progress in resolving the complaint;
- 17.5.2. The records referred to in rule 17.5.1 must be retained by the member for a period of 6 years from the date of the receipt of the complaint.

17.6. Unresolved client complaints

- 17.6.1. A client complaint will be deemed to be unresolved if the complainant is not satisfied with the resolution of the complaint proposed by the member or if a client complaint is not resolved within 4 weeks of the member receiving the complaint.
- 17.6.2. A complainant may lodge an unresolved complaint, in writing, with the NSE Director: Regulatory Affairs giving full particulars of the matter concerned.
- 17.6.3. In order for an unresolved complaint to be considered by the NSE Regulatory Affairs Department, the complaint must be lodged with the NSE Director: Regulatory Affairs within 4 weeks of the receipt by the complainant of the member's response referred to in rule 17.3 and within 3 months of the conduct by the member giving rise to the complaint.
- 17.6.4. An unresolved complaint which is lodged subsequent to the period referred to in rule 17.6.3 will be considered, provided that failure to lodge the complaint within the relevant period was through no fault of the client.

- 17.6.5.** The NSE Regulatory Affairs Department may request the member and the complainant to provide copies of all relevant correspondence and documentation that is required to review the complaint.
- 17.6.6.** The NSE Regulatory Affairs Department will endeavour to facilitate a resolution of the complaint between the member and the complainant.
- 17.6.7.** If the complaint is not resolved in accordance with this clause 14.6, it will be dealt with in accordance with clause 17.7 to 17.11.

Disputes

17.7. Applicability of dispute resolution rules

17.7.1 The dispute resolution mechanism applicable under this clause is arbitration.

17.7.1. Rules 17.7 to 17.12 (“the dispute resolution rules”) are intended to facilitate the equitable and expeditious settlement of disputes that:

17.7.1.1. a client has with a member, in respect of an unresolved complaint;

17.7.1.2. a member has with another member, in respect of transactions in derivative securities;
or

17.7.1.3. a member has with a client, in respect of transactions in derivative securities.

17.7.2. The dispute resolution rules only apply:

17.7.2.1. where the amount in dispute is in excess of KShs. 20,000.00;

17.7.2.2. where the dispute is not the subject of existing litigation;

17.7.2.3. in the case of a dispute that a client has with a member, where the amount in dispute either does not exceed KShs. 5,000,000.00 or, where the amount in dispute exceeds KShs. 5,000,000.00, if the consent of both parties to proceed has been obtained;

17.7.2.4. in the case of a dispute that a member has with another member, if the members are able to evidence to the satisfaction of the NSE Director: Regulatory Affairs that reasonable endeavours have been made by the said members to resolve the dispute, and if the consent of both parties to proceed has been obtained;

17.7.2.5. in the case of a dispute that a member has with a client, if the consent of the client to proceed has been obtained.

17.8. Reporting of a dispute

- 17.8.1.** An unresolved client complaint that the NSE Regulatory Affairs Department is not able to resolve in terms of rule 17.6 will be reported as a dispute by the NSE Director: Regulatory Affairs to the NSE SRO Committee if the client elects to pursue the dispute resolution process.
- 17.8.2.** A dispute between two members in respect of transactions in derivative securities must be reported in writing, by either member, to the NSE's Director, Regulatory Affairs, within 14 days of the circumstance giving rise to the dispute having arisen.
- 17.8.3.** A dispute that a member has with a client in respect of transactions in derivative securities must be reported in writing, by the member, to the Director: Regulatory Affairs of the NSE, within 6 months of the circumstance giving rise to the dispute having arisen.
- 17.8.4.** The Director: Regulatory Affairs of the NSE may, at any time, request any of the parties to a dispute to furnish him with such further information relating to the dispute as may be required.

17.9. Declaration of a dispute

A dispute reported in terms of rule 17.8 will, subject to the criteria set out in rule 17.7.2 having been met, be declared a dispute by the NSE.

17.10. Arbitration Procedure

- 17.10.1.** Any dispute, if not settled mutually between the members, shall be referred to arbitration under the Rules of the Chartered Institute of Arbitrators of the United Kingdom, Kenya Branch.
- 17.10.2.** The number of arbitrators shall be three (3). In the event of a failure to agree between the Parties on the choice of the arbitration panel within 14 days, the Chairman of the Chartered Institute of Arbitrators of the United Kingdom, Kenya Branch shall appoint the arbitrator under its rules.
- 17.10.3.** The language to be used in the arbitral proceedings shall be English.
- 17.10.4.** The proceedings shall take place in Nairobi.
- 17.10.5.** The arbitrators will report their decision to the NSE and the disputants. The arbitrators' determination will be final subject to the right of an aggrieved party to appeal to the Authority within 14 days of the arbitrators' determination.

17.11. Costs of the proceedings

- 17.11.1.** The parties to the arbitration proceeding in terms of rule 17.10 shall bear equally between them the fees and expenses of the arbitration..

17.11.2. The expert may, as part of his award and as he deems appropriate in the circumstances, make an order on costs which may include an order against the unsuccessful party for payment of all the costs of the proceedings.