

JOHANNESBURG STOCK EXCHANGE (JSE) OMBUD SCHEME

The Need for the Governing Rules

The rules of the JSE Ombud Scheme were introduced in July of 2007, in order to comply with the recognition requirements of sections 10 and 11 of the Financial Services Ombud Schemes Act, No. 37 of 2004. These rules are incorporated in the same form in the three rulebooks of the JSE markets, being the:

- Equities Market
- Interest Rate and Currency Derivatives Markets; and
- Derivatives Markets

The references to the rules of the JSE ombud scheme in this statement are made in respect of the rules of the JSE Equities Market.

The governing rules of the JSE ombud scheme are necessary for the effective resolution of disputes between the authorised users (members or brokers) of the JSE and their clients, as determined by an independent and objective party that is in possession of the necessary legal expertise and knowledge of the operational workings of the JSE.

The governing rules promote the protection of the clients of JSE authorised users and affirm the integrity of the JSE markets, by resolving disputes in a swift, impartial and equitable manner.

The JSE rules in respect of client complaints and dispute resolution provide for an informal facilitated alternative dispute resolution process that takes place before the referral of unresolved client complaints to the JSE ombud. This attempt at a facilitated outcome has the intention of obtaining an outcome that is acceptable to both parties, and that the client complaint may be resolved in a manner that is fair, flexible and without cost to the parties.

If this process fails, the client of the authorised user may elect that the matter be referred to the JSE ombud for determination, in accordance with the JSE rules, which incorporate the rules of the JSE ombud scheme.

The Intended Operation of the JSE Rules in Respect of the JSE Ombud Scheme

Section 11 of the JSE Equities Market rules set out how authorised users of the exchange (brokers or members) must handle complaints, the process for unresolved complaints (Rule 11.60), the reporting of a dispute (Rule 11.80) and the processes to be followed for consideration by an ombud.

Authorised users have four weeks to resolve a complaint. If they cannot do so in this time period, the authorised user must give the complainant an explanation for the delay and indicate when they will be able to respond.

If the complainant remains dissatisfied with the authorised user's response and attempt at resolution, they have four weeks to refer the matter to the Director of JSE's MRD, who will attempt to facilitate the resolution of the matter. If an unresolved complaint is referred to the MRD subsequent to this period, and such is through no fault of the complainant, the matter will be considered by the MRD.

If a complainant contacts the MRD before contacting the financial provider and giving them an opportunity to resolve the matter, the complainant will be referred to the authorised user, who after following the necessary process attempting to resolve the matter will tell them they can escalate the complaint to the MRD if they remain dissatisfied.

The MRD will attempt to facilitate the resolution of the client complaint prior to its referral to the JSE Ombud in terms of Rule 11.60 of the Equities Rules.

If unsuccessful, the Director of the MRD will, upon the election to do so of the complainant, refer the unresolved complaint to the company secretary of the JSE. The company secretary will then facilitate the appointment of the JSE Ombud.

The person appointed as ombud must be a retired judge of the High Court of South Africa or a Senior Counsel.

Rule 11.100 sets out the processes for the JSE Ombud handling of the complaint, which includes:

- Within 3 weeks of the dispute having been referred to the ombud for consideration, the claimant must set out the subject matter of the claim in a written statement, including all the material facts, and furnish this statement, along with all relevant documentation upon which the claim is based, to the ombud.
- The ombud may require the claimant to expand upon his/her statement of claim or provide further evidence or particulars as the ombud deems necessary within such reasonable time as is specified by the ombud.
- The authorised user (financial product provider) must be provided with a copy of the written statement of claim by the ombud. The authorised user must furnish the ombud with its written response to the statement of claim within 3 weeks of having received it. In addition, the authorised user must attach all other evidence relating to the dispute.
- The ombud may require the provider to expand upon its response or provide further evidence or particulars as the ombud deems necessary within such reasonable time as specified by the ombud and may require the claimant to provide a written reply to the authorised user's response within such reasonable time as the ombud may specify.
- The JSE Ombud will consider the merits of the dispute referred to him and make a decision within three weeks.

At the request of any party to the dispute, the ombud must provide reasons in writing for his/her decision (Rule 11.100.11).

The proceedings are conducted without legal representation, unless the ombud decides otherwise.

Under Rule 11.100.10 the identity of the parties, the nature of the evidence and the details of the ombud's deliberations and finding, and all other information pertaining to the proceedings, will be kept confidential by all parties, unless disclosure by the JSE is required by law or otherwise agreed by the JSE, the ombud and both parties to the dispute.

Any direction as to a change in behaviour by a JSE member which is deemed necessary and has caused the dispute in question, will be made by the JSE Director of Market Regulation as the regulator of JSE members.

The Expected Impact of the Governing Rules

The JSE is a Self-Regulatory Organisation (SRO). It is able to enforce the outcomes agreed to through the initial informal dispute resolution process, as well as the determinations of the JSE ombud, because it is responsible for the supervision of its authorised users and their business conduct through the JSE Market Regulation Division (“MRD”) in accordance with its rules.

As a result of the initial facilitation by the MRD, as described above, client complaints, in the main, are resolved without the need for referral to the JSE ombud. This is expected to remain the case.

Statistics in respect of matters referred to the JSE Ombud over the past 5 years:

Year	No. of Cases
2017	0
2018	0
2019	1
2020	0
2021	1

In addition, the JSE Group SRO Oversight Committee, a sub-committee of the JSE Board oversees the fulfilment by the JSE MRD of its statutory obligations, which includes the supervision of its authorised users, and the enforcement of its rules in a fair and consistent manner, and, in need, the imposition of sanctions for non-compliance, and the escalation of market abuse matters to the Financial Sector Conduct Authority (FSCA) for prosecution.

It is the intention of the JSE that its rules that pertain to client complaints, dispute resolution and the JSE ombud scheme will continue to serve the interests of the authorised users of the exchange and that the processes of fairness, independence and impartiality are advanced.