

Ombud Council

Ensuring an accessible and trusted
financial sector ombud system

INVITATION FOR SUBMISSIONS

DRAFT AMENDMENT TO THE GOVERNING RULES OF THE JSE OMBUD SCHEME

03 May 2023

1 Background and purpose

1.1 The Ombud Council granted recognition as an industry ombud scheme to the JSE OMBUD SCHEME (the JSE Scheme) in terms of section 194 of the Financial Sector Regulation Act, No. 9 of 2017 (FSR Act), with effect from 1 May 2022, under Recognition Certificate No. OC/003/22.

1.2 The JSE Scheme's recognition was granted subject to certain Recognition Conditions, imposed in accordance with section 195(2) of the FSR Act and annexed to its Recognition Certificate. Subsequently, with effect from 16 December 2022, the Recognition Conditions were amended in accordance with section 197 of the FSR Act by notice on the Ombud Council's website.

1.3 The Recognition Conditions are as follows:

1. The scheme must make the following amendments to its governing rules:

1.1. Add a provision requiring members of the scheme to ensure that their internal complaint handling rules require them to provide their financial customers with the information referred to in section 196(3)(b)(ii) of the Financial Sector Regulation Act, 2017.

1.2. Add a provision confirming the accountability of the scheme's governing body to ensure adequate monitoring and oversight of the operation of the scheme, as contemplated in section 196(3)(b)(vi) of the Financial Sector Regulation Act.

1.3. Add a provision indicating key features of the appointment process, terms of engagement and termination of appointment of the ombud, as contemplated in section 196(3)(b)(vi) of the Financial Sector Regulation Act, including confirming the accountability of the scheme's governing body for overseeing such matters.

1.4. Add a provision requiring the ombud to apply principles of equity, where appropriate, when dealing with a complaint, as contemplated in section 196(3)(b)(vii) of the Financial Sector Regulation Act.

2. The scheme must, after completing such internal and regulatory procedures for amending its governing rules as may be agreed to by the Ombud Council and the Financial Sector Conduct Authority, submit a draft of the rule amendments referred to in paragraph 1 to the Ombud Council on or before 30 April 2023.

3. Until such time as the rule amendment referred to in paragraph 1.4 above comes into operation, the scheme must ensure that, when any complaint is referred to the ombud, the referral must include a requirement that the ombud will, if appropriate, apply principles of equity when dealing with the complaint.

1.4 The governing rules of the JSE Scheme are incorporated into the JSE Equities, JSE Derivatives and JSE Interest Rate & Currency Derivatives rules respectively. Accordingly, in addition to approval by the Ombud Council (see paragraph 2 below), amendments to the JSE Scheme governing rules are also subject to the consultation and approval processes prescribed by the Financial Markets Act, 2012 for amendments to the rules of such market infrastructures.

1.5 The JSE published a Market Notice 064A/2023 on 15 February 2022, inviting comment from the JSE members concerned on proposed amendments to give effect to the Ombud Council Recognition Conditions, for a ten-day consultation period. No objections to the proposed amendments were received and the JSE proceeded to submit the proposed amendments to the Financial Sector Conduct Authority (FSCA) for approval.

1.6 The FSCA published the draft amendments on its website for comment on 11 April 2023 for a fourteen-day comment period, in accordance with section 71(3)(b)(ii) of the Financial Markets Act, as indicated in FSCA Board Notice 429 of 2023 published in Government Gazette no. 48402 of 6 April 2023. The FSCA confirmed to the Ombud Council on 25 April 2023 that the comment period is closed, with no comments or objections having been received.

2 FSR Act statutory requirements for approval of amendments to industry ombud scheme governing rules:

2.1 Section 214 of the FSR Act contains, in summary, the following provisions in relation to the amendment of the governing rules of a recognised industry ombud scheme -

2.1.1. the governing rules may not be amended without the approval of the Ombud Council (see s.214(3)(a))

2.1.2. any governing rule amendment adopted by a recognised industry ombud scheme without the approval of the Ombud Council is void (see s.214(3)(b))

2.1.3. the Ombud Council must not approve a governing rule amendment unless it is satisfied that doing so achieves the object of the FSR Act as set out in section 7 (see s.214(4)); and

2.1.4. before approving a governing rule amendment, the Ombud Council must publish a draft of the amendment together with: A statement explaining the need for, intended operation of, and expected impact of the amendment; and a notice inviting submissions in relation to the amendment that allows for a period of not less than 30 days for making such submissions (see s.214(1) and (2)).

2.2 The Ombud Council has reviewed the governing rule amendments proposed by the JSE Scheme and is satisfied that they comply with Recognition Condition 1. The Ombud Council is also satisfied that the consultation process summarised in paragraphs 1.5 and 1.6 above satisfies Recognition Condition 2.

2.3 The Ombud Council is also satisfied that the proposed governing rule amendments will assist in achieving the object of the FSR Act.

3 Statement of need for, intended operation and expected impact of proposed governing rule amendments:

3.1 The governing rules of the JSE Scheme are incorporated in each of the following three instruments, relevant extracts of which are contained in Annexure A:

- The JSE Equities rules;
- The JSE Derivatives rules; and
- The JSE Interest Rate and Currency Derivatives rules.

3.2 In the case of the JSE Equities rules, the proposed amendments relate to the following provisions:

3.2.1. Introducing a definition of “FSR Act”, being the Financial Sector Regulation Act, No.9 of 2017:

The definition is necessary for ease of reference, as the FSR Act is referred to in the other amendments. Its operation and impact are self-explanatory.

3.2.2. Insertion of rules 2.20.4, amendment of rule 11.100.1, and insertion of rule 11.100.18:

These amendments provide for the establishment by the SRO Oversight Committee of an Ombud Committee and its composition. The functions of the Ombud Committee are to appoint the Ombud, oversee the operation of the JSE Scheme (including in relation to the terms and conditions of the Ombud’s engagement), and terminate the Ombud’s appointment on stated grounds.

The need for the amendment is to ensure compliance with the Ombud Council’s Recognition Conditions 1.2 and 1.3, as set out in paragraph 1.3 above. The Recognition Condition was imposed to ensure compliance with section 196(3)(b)(vi) of the FSR Act, ensuring that an appropriate JSE governance structure and process is in place to exercise the oversight contemplated in that section.

The operation of the provisions is self-explanatory, and their impact is internal to the JSE.

3.2.3. Insertion of new rule 11.20.1.1:

This amendment imposes obligations on members of the JSE to make certain disclosures to their financial customers regarding the availability and contact details of the JSE Scheme and processes for lodging complaints to it. The need for the amendment is to ensure compliance with the Ombud Council’s Recognition Condition 1.1, as set out in paragraph 1.3 above. The Recognition Condition was imposed to ensure that the governing rules

comply with section 196(3)(b)(ii) of the FSR Act, which requires such a provision to be included in an industry ombud scheme's governing rules. The underlying need for such a provision is to enhance consumer access to and awareness of ombud schemes, in line with the objective of the Ombud Council as set out in section 176 of the FSR Act.

The operation of the provision, requiring members to make the requisite disclosures to their financial customers as part of their internal complaint handling processes, is self-explanatory. The amendment is not expected to have a material practical impact on JSE members, as the disclosures are required to be included in existing required member communications and will therefore not require material process changes.

3.2.4. Insertion of new rule 11.100.11:

This rule provides that the Ombud of the JSE Scheme must apply principles of equity where appropriate in dealing with a dispute.

The amendment is necessary to ensure compliance with the Ombud Council's Recognition Condition 1.4, as set out in paragraph 1.3 above. The Recognition Condition was imposed to ensure that the governing rules comply with section 196(3)(b)(vii) of the FSR Act, which requires such a provision to be included in an industry ombud scheme's governing rules. The underlying need for such a provision is to ensure that disputes can be decided on fairness principles where appropriate and need not be decided solely on the relevant contractual or legislative provisions, in line with the Ombud Council's objective of ensuring access to fair alternative dispute resolution processes, as set out in section 176 of the FSR Act.

The operation and impact of the amendment is self-explanatory.

3.3 The proposed amendments to the JSE Derivatives rules are identical to those for the JSE Equities rules. The need for the amendments and their purpose and impact is also the same as set out in paragraph 3.2 above in relation to the Equities rules.

The applicable provisions of the JSE Derivatives rules are rule numbers:

- 1.41.4
- 17.20.1.1
- 17.100.1
- 17.100.11
- 17.100.17.

3.4 The proposed amendments to the JSE Interest Rate and Currency Derivatives rules are identical to those for the JSE Equities rules. The need for the amendments and their purpose and impact is also the same as set out in paragraph 3.2 above in relation to the Equities rules.

The applicable provisions of the JSE Interest Rate and Currency Derivatives rules are rule numbers:

- 1.41.4
- 5.20.1.1
- 5.100.1
- 5.100.11
- 5.100.17.

4 Invitation for submissions on the governing rule amendments.

- 4.1 The Ombud Council today publishes the amended governing rules of the JSE Scheme, incorporating the amendments described in this document, for public comment in accordance with section 214 of the FSR Act. The proposed amendments are set out in Annexure A.
- 4.2 The corresponding consultation documents published by the JSE and the FSCA, as described in paragraphs 1.5 and 1.6, are available on the FSCA's website at (<https://www.fsc.co.za/Regulatory%20Frameworks/Pages/Capital-Markets.aspx>).
- 4.3 Please note that submissions are invited only on the proposed amendments noted in paragraph 3 above. Comment was previously invited on the remainder of the content of the governing rules prior to recognition of the JSE Scheme.
- 4.4 Written submissions on the proposed rule amendments must be sent to the Ombud Council via email to admin@ombudcouncil.org.za by no later than 17h00 on **05 June 2023**.



Leanne Jackson
Chief Ombud
Date: 03 May 2023

Annexure A – Draft extracts from the JSE Equities rules; the JSE Derivatives rules; and the JSE Interest Rate and Currency Derivatives rules, setting out proposed amendments.