

Corporate & Regulatory Information

Flare FX (Pty) Ltd, registration number 2023/202257/07, trading as “FlareX” (“FlareX”, “we”, “us” or “our”), is a private company duly incorporated in accordance with the laws of the Republic of South Africa.

FlareX conducts regulated financial markets and financial services activities in South Africa pursuant to two distinct regulatory authorisations.

FlareX is:

- an authorised Over-the-Counter Derivative Provider (“ODP”), ODP No. 83, under the South African regulatory framework governing over-the-counter derivatives; and
- an authorised Category I Financial Services Provider (“FSP”) and Crypto Asset Service Provider (“CASP”) in terms of the Financial Advisory and Intermediary Services Act 37 of 2002 (“FAIS”), under FSP No. 54894.

FlareX is regulated by the Financial Sector Conduct Authority (“FSCA”) in respect of the regulated activities conducted under these authorisations.

FlareX’s ODP approval and its FAIS authorisation constitute separate regulatory authorisations and are governed by distinct regulatory frameworks. FlareX’s status as a CASP arises under its FAIS authorisation to render specified financial services in respect of crypto assets and does not constitute a separate licence from its FSP licence.

The regulatory capacity in which FlareX acts, and the regulatory requirements governing its conduct, are determined by the nature of the particular product, service or transaction concerned.

FlareX as an Over-the-Counter Derivative Provider

FlareX is authorised as an Over-the-Counter Derivative Provider, ODP No. 83, in terms of the Financial Markets Act 19 of 2012 (“FMA”), the Financial Markets Act Regulations and the regulatory standards governing authorised ODPs.

Under the Financial Markets Act Regulations, an ODP is a person who, as a regular feature of its business and transacting as principal, originates, issues or sells OTC derivatives or makes a market in OTC derivatives.

Accordingly, where FlareX enters into an OTC derivative transaction with a client in its capacity as an ODP, FlareX acts as principal and as the contractual counterparty to the client in respect of that OTC derivative transaction.

FlareX may originate, issue, sell or make a market in OTC derivatives within the scope of its ODP approval and in respect of those products which FlareX is authorised to provide.

Each OTC derivative transaction is governed by the agreement concluded between FlareX and the client in respect of that OTC derivative product or service, together with the product terms, transaction confirmation and other contractual disclosures governing the transaction.

OTC Derivative Products

An OTC derivative is an unlisted derivative instrument falling within the definition prescribed by the Financial Markets Act Regulations. The statutory definition excludes, amongst other instruments, foreign-exchange spot contracts and physically settled commodity derivatives

An OTC derivative creates contractual financial exposure determined by reference to an underlying asset, rate, instrument, index, price or other reference specified in the terms governing the particular derivative.

Where FlareX provides a contract for difference (“**CFD**”) or another cash-settled OTC derivative, the client does not, merely by entering into that transaction, acquire ownership of the asset underlying or referenced by the derivative.

Accordingly, where a client enters into a CFD referencing a crypto asset, the client obtains contractual exposure to movements in the relevant reference price. The client does not acquire or own the underlying crypto asset solely by virtue of entering into the CFD.

FlareX as Principal & Contractual Counterparty

In its capacity as an ODP, FlareX transacts as principal. FlareX may determine or quote the prices at which it is prepared to enter into OTC derivative transactions with its clients.

Prices quoted or made available by FlareX may be derived from or informed by underlying markets, reference prices, market-data providers and liquidity sources and may take into account market liquidity, volatility, spreads, funding costs, hedging costs and prevailing market conditions.

FlareX may enter into separate transactions with liquidity providers, brokers, hedging counterparties or other market participants for purposes including obtaining liquidity and managing or hedging the market exposure arising from its OTC derivative business.

Unless the agreement concluded between FlareX and the client in respect of the particular OTC derivative product or service expressly provides otherwise, a transaction entered into between FlareX and a liquidity provider, broker, hedging counterparty or other market participant is separate and distinct from the transaction entered into between FlareX and the client.

The use by FlareX of a third-party liquidity provider or hedging counterparty does not, of itself, render that third party the contractual counterparty of the client.

FlareX as an Authorised Financial Services Provider & Crypto Asset Service Provider

Separate and distinct from its ODP approval, FlareX is an authorised Category I Financial Services Provider and Crypto Asset Service Provider under FAIS, FSP No. 54894.

FlareX's status as a CASP forms part of its authorisation under FAIS and arises from its authorisation to render specified financial services in respect of crypto assets.

In terms of its FSP authorisation, FlareX is authorised to render specified financial services in respect of the following financial-product categories:

- Crypto Assets;
- Long-term Deposits; and
- Short-term Deposits.

Insofar as FlareX renders authorised financial services in respect of crypto assets, it does so as an authorised FSP and CASP under FAIS.

Crypto Assets & Crypto-Referenced OTC Derivatives

A distinction must be drawn between acquiring or otherwise transacting in a crypto asset itself and entering into an OTC derivative which references a crypto asset.

Where FlareX renders advice or intermediary services in respect of the acquisition, disposal or other transaction concerning a crypto asset itself, FlareX performs the regulated financial service in its capacity as an authorised FSP and CASP under FAIS.

By contrast, where a client enters into an OTC derivative which references a crypto asset, FlareX acts in its capacity as an ODP, transacting as principal and as the contractual counterparty to the client in respect of that OTC derivative transaction.

Unless the agreement concluded between FlareX and the client in respect of that OTC derivative product or service expressly provides otherwise, the client does not acquire ownership of the underlying crypto asset.

Accordingly, FlareX's CASP activities in respect of crypto assets and its ODP activities in respect of crypto-referenced OTC derivatives constitute distinct regulated activities, notwithstanding that the same crypto asset may constitute the subject matter of the financial service in the former case and the reference asset of the derivative in the latter.

The authorisation of FlareX as an FSP and CASP does not constitute approval, endorsement or a guarantee by the FSCA of any particular crypto asset

Regulatory Capacities

FlareX's ODP approval and its FAIS authorisation as an FSP, including its authorisation to operate as a CASP, perform distinct regulatory functions and must not be construed as interchangeable.

Depending upon the nature of the product, service or transaction concerned, FlareX may act:

- as an ODP, transacting as principal and as contractual counterparty, when entering into an OTC derivative transaction with a client;
- as an authorised FSP and CASP, when rendering advice or intermediary services in respect of crypto assets falling within the scope of its FAIS authorisation; or
- as an authorised FSP, when rendering advice or intermediary services in respect of another financial-product category specified in its FSP licence.

Where a product, service or client relationship involves activities falling within more than one regulatory framework, FlareX conducts each regulated activity in the capacity prescribed by the regulatory framework governing that activity.

The agreement concluded between FlareX and the client in respect of the respective service or product, together with the product terms and associated disclosures, governs the contractual relationship between FlareX and the client and should be considered in determining the nature of the product or service and the capacity in which FlareX acts.

Third-Party Service Providers & Counterparties

FlareX may engage third parties in connection with the conduct of its business, including liquidity providers, hedging counterparties, custodians, payment service providers, banking service providers, technology providers and market-data providers.

The appointment or use of a third-party service provider does not, of itself, alter the capacity in which FlareX contracts with a client or relieve FlareX of the regulatory obligations attaching to the regulated activity performed by FlareX.

Where FlareX acts as principal to an OTC derivative transaction, FlareX remains the client's contractual counterparty in respect of that transaction notwithstanding that FlareX may hedge some or all of the resulting exposure with one or more third parties.

Where a third-party separately provides a product or service directly to a client, the nature of that relationship, and the respective rights and obligations of the client and the third party, are governed by the contractual documentation concluded in respect of that product or service.

General Information & Financial Advice

Information made available through the FlareX website, trading platform, social-media channels, educational materials, webinars, market commentary, research publications and other communications of a general nature may be provided for informational, educational or marketing purposes.

Unless expressly communicated to a client as advice rendered by FlareX pursuant to its FAIS authorisation, such general information does not take into account the particular financial circumstances, objectives or needs of an individual client and must not be construed as personalised financial advice or a personal recommendation.

Nothing contained in this disclaimer is intended to state or imply that FlareX is not authorised to render financial advice.

FlareX is authorised to render non-automated advice in respect of the financial-product categories specified in its FSP licence, including crypto assets.

Where FlareX agrees to render advice to a client, such advice will be rendered within the scope of its FAIS authorisation and in accordance with FAIS and the regulatory instruments governing authorised financial services providers.

General market commentary, research, educational material or marketing communications do not constitute a representation, warranty or guarantee as to the future performance of any financial product, transaction or trading strategy.

Risk Warning

OTC derivatives, CFDs, leveraged financial products and crypto assets involve material financial risk and may not be suitable for all clients.

The price or value of a financial product or position may fluctuate materially and rapidly. A client may sustain substantial financial losses and, depending upon the nature of the product and the circumstances of the transaction, may lose all of the capital committed to that transaction.

Before entering into any transaction, a client should ensure that the client understands the nature and characteristics of the product, the manner in which profits and losses are determined, the effect of leverage, margin requirements, fees and charges, the circumstances in which positions may be closed, and the material risks associated with the transaction

Clients should not trade or invest funds which they cannot afford to lose.

OTC derivatives and CFDs are complex financial instruments.

Their value is determined by reference to an underlying asset, rate, price, instrument, index or other specified reference.

OTC derivative transactions may expose clients to material risks, including market risk, leverage risk, liquidity risk, counterparty risk, execution risk, gap risk, funding risk and operational risk.

Where FlareX acts as principal to an OTC derivative transaction, the client may assume counterparty exposure to FlareX in respect of FlareX's contractual obligations arising from that transaction.

Certain OTC derivative products offered by FlareX may be leveraged.

Leverage enables a client to obtain market exposure which exceeds the amount provided by the client as margin. Leverage accordingly magnifies the financial effect of both favourable and adverse movements in the underlying market.

A comparatively small adverse movement in the underlying market may consequently result in a substantial loss relative to the amount initially committed by the client.

Where the prescribed margin is not maintained, FlareX may, where permitted under that agreement and the product terms, close, reduce or liquidate one or more positions.

Clients should not assume that a margin call will necessarily be made or that an opportunity to provide additional funds will necessarily arise before a position is closed, reduced or liquidated.

Crypto assets are capable of substantial and rapid fluctuations in value and may exhibit materially greater volatility than certain traditional financial products.

Transactions involving crypto assets may expose clients to risks associated with, amongst other matters, market volatility, liquidity, distributed-ledger and blockchain technology, cybersecurity, custody arrangements, wallets and private keys, protocol vulnerabilities, network congestion, forks and protocol changes, regulatory developments and reliance upon third-party service providers.

A crypto asset may lose a substantial proportion or the entirety of its value.

The regulation of FlareX as an FSP and CASP, and the regulation of financial services rendered in respect of crypto assets, do not eliminate the technological, operational, liquidity, market or other risks inherent in crypto assets.

Financial products providing exposure to foreign currencies may be subject to material fluctuations in exchange rates.

Foreign exchange markets may be affected by, amongst other factors, interest rates, monetary policy decisions, economic announcements, geopolitical developments, market liquidity and other market events.

Where foreign-exchange exposure is leveraged, adverse movements in exchange rates may materially magnify financial losses.

Fees, Charges & Spreads

Clients may incur spreads, commissions, funding or financing charges, currency-conversion charges and other fees or costs associated with a particular product or service.

The fees and charges applicable to a particular product or service will be disclosed in the agreement concluded between FlareX and the client in respect of that product or service, the product terms, fee schedule, trading platform or other disclosure provided to the client.

Fees and charges may materially affect the profitability of a transaction, particularly where leveraged positions are maintained for extended periods or where a client trades frequently.

Past Performance

Past performance is not a reliable indicator of future performance. Historical returns, historical prices, charts, hypothetical or simulated results and back-tested performance do not constitute a representation, warranty or guarantee of future results.

Pricing & Execution

FlareX may display prices, market data, charts, analytics and other information generated by FlareX or obtained from third-party sources. Market information or prices identified as indicative must not be construed as executable prices.

Execution prices may differ from indicative or previously displayed prices as a consequence of market movements, liquidity, volatility, spreads, latency and other execution conditions.

Although FlareX takes reasonable measures to maintain the accuracy and integrity of information made available through its systems, market data and information obtained from third parties may, from time to time, be delayed, interrupted, incomplete or erroneous.

Electronic trading and crypto-asset services depend upon technological infrastructure, telecommunications networks, software, hardware, internet connectivity, market-data feeds and third-party systems.

Clients may experience delays, interruptions or failures arising from network disruption, system outages, excessive transaction volumes, cybersecurity incidents, market disruption or failures affecting third-party infrastructure.

Third-Party Content

The FlareX website or platform may contain information supplied by, or links to websites, platforms or services operated by, independent third parties.

The inclusion of third-party information or an external link does not, of itself, constitute an endorsement by FlareX of the third party concerned or of any product or service provided by that third party.

Independent third-party services may be governed by separate contractual terms, privacy policies and regulatory arrangements.

Limitation of Liability

To the fullest extent permitted under South African law, FlareX shall not be liable for loss arising solely from reliance upon general informational, educational or marketing material contained on this website, or for loss resulting from circumstances beyond FlareX's reasonable control.

Nothing contained in this disclaimer excludes, restricts or purports to exclude or restrict any liability, statutory obligation, regulatory duty or client right which may not lawfully be excluded or restricted.

The respective rights and obligations of FlareX and the client in relation to a particular account, financial service, product or transaction are further governed by the agreement concluded between FlareX and the client in respect of the respective service or product, together with the product terms and contractual documentation incorporated into or accompanying that agreement.

Regulatory authorisation does not eliminate the possibility or risk of financial loss.

Anti-Money Laundering

FlareX is subject to obligations under the Financial Intelligence Centre Act 38 of 2001 ("FICA") in respect of activities for which FlareX constitutes an accountable institution under Schedule 1 to FICA.

In discharging its obligations under FICA, FlareX may be required, amongst other matters, to identify and verify clients and beneficial owners, conduct customer due diligence and ongoing monitoring, establish the source of funds or source of wealth in circumstances contemplated by FICA and FlareX's risk-management and compliance programme, maintain prescribed records, screen clients and transactions against financial sanctions measures, and submit regulatory reports to the Financial Intelligence Centre where the circumstances prescribed by FICA arise.

FlareX may accordingly require clients to provide information, records and supporting documentation for purposes of complying with its obligations under FICA and the regulatory framework concerning anti-money laundering, counter-terrorist financing, counter-proliferation financing and financial crime.

FlareX may decline to establish a business relationship, decline or restrict a transaction, or suspend or terminate a service where this is required for FlareX to discharge its statutory or regulatory obligations

or is permitted under the agreement concluded between FlareX and the client in respect of the service or product concerned.

Jurisdiction

This website and these regulatory disclosures are governed by the laws of the Republic of South Africa.

The governing law, jurisdiction and dispute-resolution arrangements governing the contractual relationship between FlareX and a client are set out in the agreement concluded between FlareX and the client in respect of the respective service or product.

Client Documentation

Before using a FlareX service or entering into a transaction, clients should carefully read and understand the contractual and disclosure documentation governing the product or service concerned.

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