

**Consultation Briefing Note  
September 2019**

Based on the public comments received, we wish to draw your attention to the following noteworthy amendments to the Debt Listings Requirements to facilitate your review:

**Definitions**

- Please do not focus on formatting and cross-referencing as this is a time consuming exercise to update on a draft by draft basis. We will ensure that formatting and all cross-referencing is attended to at the time we proceed with the FSCA public consultation process.
- Definition of “*restrictive funding arrangements*” has been removed as well as its application in Section 7 (Corporate Governance). We have been advised that this definition and its application under Section 7 (Corporate Governance) is not relevant for the debt market.
- Definition of “*structured products*” has been expanded to include asset-backed securities and securitisations, as we have been advised that it would be more appropriate for these debt instruments to be classified as structured products in order to benefit from the flexible disclosure regime. The bespoke requirements dealing with these debt instruments will accordingly be moved under “Structured Products” in each applicable section. A drafting note to this effect has been included in order not to impact existing formatting and cross-referencing.

**Section 1: Authority of the JSE**

We do not believe material and clearly marked-up.

**Section 2: Debt Sponsor & Designated Person**

- Clarified that issuers listed on the Main Board and their wholly owned subsidiaries, as issuers of debt securities are not required to appoint an independent debt sponsor. The appointment of a debt sponsor is still required.

**Section 3: Conditions of Listing**

- The issue of structured products will no longer be limited to banks.

**Section 4: Listings Particulars**

We do not believe material and clearly marked-up.

**Section 5: Financial Information**

- Contents of financial statements, removed the following disclosures:
  - Directors’ Interests: Disclosure of directors’ interests, including a director who has resigned during the reporting period.
  - Repurchases: Details must be disclosed in respect of the repurchase by an applicant issuer of its debt securities or a purchase by a subsidiary of debt securities in its holding company during the period under review.

These items will be disclosed through announcements to the market and therefore the additional disclosure is a repetition and unnecessary.

- Removed the following provision pertaining to interims:  
*“To the extent that the conclusion reached on the audited annual financial statements contains a qualification, disclaimer or adverse audit opinion, the applicant issuer must prepare interim financial statements in accordance with IAS 34, which must be reviewed by the applicant issuer’s auditors.”*

This is not international practice or customary for the debt market. There are also certain practical resource constraints.

## **Section 6: Continuing Obligations**

- Announcements regarding repurchases to exclude market making activities to accommodate existing market practise.
- We have removed the concept of completing and submitting a Schedule 5 (Director Information Sheet) to the JSE on listing and on a construing basis. Disclosure regarding the integrity items must now be included in the placing document (refer to Section 4).
- Expanded the provisions dealing with the demand to call a meeting.
- Redrafted responsibilities of the debt officer.
- Added that any change to the contact details of the debt officer must be announced through SENS.

## **Section 7: Corporate Governance**

- Removed the following:
  - Board policy and the balance of power;
  - Appointment of chairman and CEO;
  - Appointment of company secretary; and
  - Restrictive funding arrangements.

The above items are adequately addressed under the King IV Report on Corporate Governance. As advised, restrictive funding arrangements are not relevant for the debt market.

- Debt Officer:
  - Name designation - The name designation of a *“compliance officer”* has been amended to *“debt officer”* as the intended role envisaged by the JSE was limited to certain specific responsibilities imposed by the JSE rather than the wider responsibilities generally associated with the term *“compliance”*, which would encompass compliance with all outside regulatory and legal requirements as well as all internal policies. This was not the intention of the JSE.
  - Capacity - The person appointed as debt officer has been amended to either be the financial director or the group treasurer of the applicant issuer in order to align with existing practise of applicant issuers. The designation to be the financial director or the group treasurer will be sufficient as to ensure (i) close proximity to the applicant issuer (ii) regulatory oversight by the JSE and (iii) sufficient seniority within the organisation. The applicant issuer will have the freedom to determine whether it is the financial director or the group treasurer, provided such person is an employee of the applicant issuer and the board of directors of the applicant issuer are satisfied in respect of the competence, qualifications and experience of the dedicated debt officer. On the basis that the dedicated debt officer would be an employee, we do not

believe that an annual confirmation by the board of directors of the applicant issuer in the annual report on competence, qualifications and experience is necessary, as this will be done on appointment only.

- Role - The mandatory appointment of a debt officer was aimed at there being a central point of contact between the applicant issuer and potential investors/holders of debt securities regarding (i) disclosure in general regarding the nature and terms of debt securities to be issued and (ii) the rights of the holders of debt securities in general. The primary tasks of the debt officer would be to ensure that certain specific obligations placed on the applicant issuer by the JSE are adhered to pursuant to the provision of the Debt Requirements. The applicant issuer and its board of directors, through the Financial Markets Act No 19 of 2012 (the “FMA”) and the Debt Requirements, are bound by the Debt Requirements and as such they alone, with the debt sponsor, are responsible for adherence to the Debt Requirements. The appointment of the debt officer should not detract from those primary obligations of the applicant issuer, board of directors and the debt sponsor.
- Specific obligations - The following specific obligations have been removed as they are already covered in the Debt Requirements.
  - *monitor compliance (i) by the applicant issuer with the terms and conditions of the placing document and (ii) by the security providers of the terms and conditions of the security documents (if applicable), and notify holders of debt securities immediately through SENS of any non-compliance by the applicant issuer and/or security providers*

As advised above, the obligation to ensure compliance with the above obligations rest with the board of the applicant issuer and should not be placed on one single individual alone. The financial director or the group treasurer of the applicant issuer, as regulated by the JSE, will now play a central role between the applicant issuers and investors regarding any issues pertaining to compliance with (i) the terms and conditions of any placing document, security documents and/or any applicable pricing supplements(s) and (ii) the Debt Listings Requirements.

- *notify holders of debt securities immediately through SENS of any actual default under the placing document and/or security documents*

This item will constitute price sensitive information and already requires a SENS announcement. Refer to paragraph 6.3.

## **Section 8: The Listing Process**

We do not believe material and clearly marked-up.