



## JSE Debt Listings Requirements



## **Introduction**

The definitions contained in the "Definitions and Interpretation" section of these Debt Listings Requirements applies to this Introduction.

## **Objectives**

It is an integral function of the JSE to provide facilities for the listing of securities (including securities issued by companies, domestic or foreign), to provide the JSE's users with an orderly market place for trading in such securities and to regulate the market accordingly.

The Debt Listings Requirements set out in this document apply to issuers of debt securities and where applicable, to directors, prescribed officers, debt sponsors and designated persons. The Debt Listings Requirements contain the rules and procedures governing new applications and continuing obligations applicable to issuers of debt securities. They are furthermore aimed at ensuring that the business of the JSE is carried on with due regard to the public interest.

## **The General Principles**

It is impracticable and undesirable for the JSE's requirements and procedures to attempt to govern all circumstances that may arise in commercial practice. Accordingly, the Debt Listings Requirements fall into two categories as follows:

- (a) general principles (the "General Principles") which are set out below and which must be observed in all corporate actions and also in all submissions pertaining to (i) the registration of a programme and (ii) debt securities listed and to be listed; and
- (b) the main body of the Debt Listings Requirements (the "main body") which consists of the sections and schedules. The main body is derived from the application and interpretation of the General Principles by the JSE.

Moreover, the spirit of the General Principles and the main body may be applied by the JSE in areas or circumstances not expressly covered in the Debt Listings Requirements.

The JSE has discretion to modify the application of a requirement contained in the main body when the JSE considers that the strict application of the requirement would conflict with the General Principles.

Accordingly, users of the Debt Listings Requirements must at all times observe the spirit as well as the precise wording of the General Principles and main body.

If there is any doubt as to the interpretation or application of the Debt Listings Requirements, users must consult the JSE.

The General Principles are as follows:

- (i) to ensure the existence of a market for the raising of primary capital, an efficient mechanism for the trading of debt securities in the secondary market, and to protect investors;
- (ii) to ensure that debt securities will be admitted to the List only if the JSE is satisfied that it is appropriate for those debt securities to be listed;
- (iii) to ensure that full, equal and timeous public disclosure is made to all holders of debt securities and the general public at large regarding the activities of an applicant issuer that are price sensitive;
- (iv) to ensure that holders of debt securities are given full information and are afforded adequate opportunity to consider in advance, make submissions and vote upon any matter affecting the rights of holders of debt securities;
- (v) to ensure that all parties involved in the dissemination of information into the

market place, whether directly to holders of debt securities or to the public, observe the highest standards of care in doing so;

- (vi) to ensure that all holders of the same class of debt securities of an applicant issuer are afforded fair and equal treatment in respect of their debt securities; and
- (vii) to ensure that the Debt Listings Requirements, and in particular the continuing obligations, promote investor confidence in standards of disclosure and corporate governance in the conduct of applicant issuers' affairs and in the market as a whole.

### **Principles underlying this document**

It is the function of the JSE under the FMA to provide for the listing, trading, clearing and settlement of debt securities in a transparent, efficient and orderly market place.

The Debt Listings Requirements reflect, *inter alia*, the rules and procedures governing new applications and the ongoing obligations of applicant issuers, and are aimed at providing investor confidence via an orderly, secure, efficient and transparent financial market.

The JSE believes it is important for the exchange to be in a position to facilitate offerings and listings by continually enhancing its requirements to ensure a high level of investor protection and confidence.

The Debt Listings Requirements provide for the minimum disclosure which investors and their professional advisers would reasonably require for the purpose of making an informed assessment of the nature and state of an applicant issuer's business, and terms of the debt securities.

Documentation is central to any issuance of debt securities. The placing document consists of sections setting out all, or certain, of the terms and conditions of the debt securities and sections dealing with the issue of, subscription for and sale of the debt securities. The terms and conditions of the debt securities provide for the rights of the investor, the obligations of the applicant issuer, the terms of any security or guarantee, the mechanics of payment and settlement and any credit enhancements or trust deeds, credit ratings, etc.

The JSE encourages applicant issuers making application for the listing of debt securities to discuss, on a confidential basis, the Debt Listings Requirements to ascertain whether the debt security is eligible for listing and what additional requirements, if any, must be complied with.

Where applicant issuers are incorporated in terms of specific enabling legislation, which may have imposed limitations on disclosure, this fact must be disclosed in the placing documents.

All information submitted to the JSE must be delivered timeously pursuant to the provisions of the Debt Listings Requirements and must not be misleading, deceptive or omit any material information.

### **Competent authority**

The JSE is the holder of an exchange licence in terms of the provisions of the FMA. A company wishing to have its securities trade on the JSE must apply for a listing and must be in compliance with the requirements of the JSE before being granted such listing. The Board of the JSE is the competent authority responsible for:

- the list of the securities which may trade on the JSE;
- applications by applicant issuers for the listing of securities on the JSE; and
- the annual revision of the List.

The Board of the JSE has delegated its authority in relation to the Debt Listings Requirements, excluding removal of listings initiated at the instance of the JSE (which authority has been delegated to the JSE's executive committee), to the management

of the Issuer Regulation Division. When a listings matter is considered by the JSE, representatives of the issuer may accompany the relevant sponsor, any of whom may, subject to the JSE's consent, address the meeting.

## Definitions and Interpretations

In the Debt Listings Requirements, unless otherwise stated or the context requires otherwise, any expression which denotes any gender includes the other gender and the singular includes the plural and vice versa.

Throughout the Debt Listings Requirements, unless otherwise stated or the context requires otherwise the following terms will have the meaning set out below –

Term	Meaning
accredited exchange	an exchange accredited by the JSE, such exchanges being the:
	(a) Australian Securities Exchange;
	(b) Ireland Stock Exchange;
	(c) London Stock Exchange;
	(d) Luxembourg Stock Exchange;
	(e) New York Stock Exchange;
	(f) Singapore Exchange; or
	such other exchange acceptable to the JSE, in its discretion;
applicant issuer	an issuer or a new applicant;
application	an application for the listing of debt securities or the registration of a programme memorandum or, in the case of a foreign issuer, the JSE supplement, which application must contain the documents provided for in the Debt Listings Requirements;
asset-backed debt securities	debt securities (excluding credit linked debt securities) directly backed by assets which have regular cash flows associated with them and which cash flows are intended to be applied towards interest payments and repayment of principal on maturity, as applicable;
associate	<p><b>"associate"</b> in relation to an individual means:</p> <ol style="list-style-type: none"> <li>1 that individual's immediate family; and/or</li> <li>2 the trustees, acting as such, of any trust of which the individual or any of the individual's immediate family is a beneficiary or discretionary subject, including trustees of a trust without nominated beneficiaries, but who have been provided with a letter of wishes or similar document or other instruction, including a verbal instruction, naming desired beneficiaries (other than a trust that is either an occupational pension scheme, or an employees' share scheme that does not, in either case, have the effect of conferring benefits on the individual or the individual's family); and/or</li> <li>3 any trust, in which the individual and/or his family referred to in 1 above, individually or taken together have the ability to control 35% of the votes of the trustees or to appoint 35% the trustees, or to appoint or change 35% of the beneficiaries of the trust. Without derogating from the above, and for the purposes of this definition, the term trust may also be replaced with any other vehicle or arrangement set up for similar purposes to that of a trust; and/or</li> <li>4 any company in whose equity securities the individual or any person or trust contemplated in 1 or 2 above, taken together, are directly or indirectly beneficially interested, or have a conditional, contingent or future entitlement to become beneficially interested, and that the individual or any person or trust contemplated in 1 or 2 above are, or would on the fulfilment of the condition or the occurrence of the contingency be able to <ol style="list-style-type: none"> <li>(a) exercise or control the exercise of 35% or more of the votes able to be cast at general meetings on all, or substantially all, matters; or</li> <li>(b) appoint or remove directors holding 35% or more of the voting rights at board of directors' meetings on all, or substantially all, matters; or</li> </ol> </li> </ol>

	<p>(c) exercise or control the exercise of 35% or more of the votes able to be cast at a board of directors' meeting on all, or substantially all, matters; and/or</p> <p>5 any close corporation in which the individual and/or any member(s), taken together, of the individual's family are beneficially interested in 35% or more of the members' interest and/or are able to exercise or control the exercise of 35% or more of the votes able to be cast at members' meetings on all, or substantially all, matters; and/or</p> <p>6 any associate as defined below with reference to a company of the company referred to in 4 above. For the purpose of 4(a), (b) and (c) above, where more than one director of the same listed company is directly or indirectly beneficially interested in the equity securities of another company, then the interests of those directors and their associates will be aggregated when determining whether such a company is an associate of any one director of such listed company.</p> <p><b>"associate"</b> in relation to a company ("company") means:</p> <p>1 any other company that is its subsidiary, holding company or subsidiary of its holding company; and/or</p> <p>2 any company whose directors are accustomed to act in accordance with the company's directions or instructions; and/or</p> <p>3 any company in the capital of which the company, and any other company under 1 or 2 taken together, is, or would on the fulfilment of a condition or the occurrence of a contingency be, interested in the manner described in 4 above; and/or</p> <p>4 any trust that the company and any other company under 1 and 2 above, individually or taken together, have the ability to control 35% of the votes of the trustees or to appoint 35% of the trustees, or to appoint or change 35% of the beneficiaries of the trust. Without derogating from the above, and for the purposes of this definition, the term trust may also be replaced with any other vehicle or arrangement set up for similar purposes to that of a trust;</p>
auditor	includes the audit firm and the individual auditor assigned and/or appointed to perform a statutory audit (or a review) of an applicant issuer;
authorised amount	the maximum aggregate outstanding nominal amount of all of the debt securities that may be issued under the programme at any one point in time, as is determined by the issuer from time to time;
beneficial books closed period	<p>in relation to –</p> <p>1 any interest in a security, means the de facto right or entitlement to directly receive the income payable in respect of that security and/or to exercise or cause to be exercised, in the ordinary course of events, any or all of the voting, conversion, redemption or other rights attaching to that security;</p> <p>2 any other interest, means the obtaining of any benefit or advantage, whether in money, in kind or otherwise, as a result of the holding of that interest; and/or</p> <p>3 in respect of the interests described in 1 and 2 above, means the de facto right or entitlement to dispose or cause the disposal of the company's securities, or any part of a distribution in respect of the securities</p> <p>the period or periods stipulated by an issuer as being the period or periods during which the register in respect of its debt securities is closed for purposes of giving effect to transfers of the debt securities;</p>
business day	a day (other than a Saturday, Sunday or public holiday in the Republic of South Africa) on which commercial banks settle payments in Rand in Johannesburg;
calculation agent	a person identified as such in the placing document or pricing supplement which performs certain functions with regard to calculations in relation to a debt security;
children	includes any step child, adopted child or illegitimate child, who has not yet attained the age of 18 years, and any person under the guardianship of the individual;
Climate Transition	means the standards set out in the Climate Transition Finance

Finance Standards	Handbook published by ICMA, as updated from time to time, or any other principles, guidelines or standards acceptable to the JSE, in its discretion in relation to the classification of transition debt securities;
closed period	the date from the financial year-end up to the date of the publication of the audited annual financial statements and (if applicable) the date from the expiration of the first six month period of a financial year up to the date of publication of the interim results (if applicable);
Commission	the Companies and Intellectual Property Commission established in terms of Section 185 of the Companies Act;
common monetary area	Lesotho, Namibia, eSwatini and South Africa;
Companies Act	the Companies Act, 2008 (Act No. 71 of 2008), as amended, or any law that may replace it wholly or in part, from time to time;
company	a body corporate, wherever incorporated or established, including any other legal person, undertaking, association of persons or entities and any trust or similar device, wherever established, that issues debt securities, which are capable of being listed by the JSE;
corporate action or event	an action taken by an issuer or any other entity or third party which affects the holders of debt securities in terms of entitlements or notifications;
coupon	the stated interest payment in respect of a debt security;
CPI	Consumer Price Index;
CP Regulations	the commercial paper regulations of 14 December 1994 issued pursuant to paragraph (cc) of the definition of "the business of a bank" in the Banks Act, 1990, as set out in Government Notice 2172, published in <i>Government Gazette</i> 16167 of 14 December 1994, as amended, or any law that may replace it wholly or in part, from time to time;
CSD	means Strate Proprietary Limited (registration number 1998/022242/07), a company licensed as a central securities depository in terms of the FMA or any additional depository operating in terms of the FMA;
CSDP	Central Securities Depository Participant, as authorised by the CSD as a participant in terms of Section 31 of the FMA to perform electronic settlement of funds and debt securities;
"dealer", "manager" and "arranger"	a person or persons identified as such in the placing document or the pricing supplement which performs certain functions with regard to preparing the placing document and/or the placing of debt securities;
Debt Listings Requirements or requirements	the debt listing requirements of the JSE pursuant to the provisions of the FMA for the listing of debt securities on the JSE, as amended from time to time including the "Introduction", "Definitions", "Sections" and "Schedules", save that the section headings, paragraph headings and the introductory text to each section headed "Scope of Section" do not form part of the debt listing requirements and are for guidance and ease of reference only and are not to be construed as affecting the substance or interpretation of the debt listing requirements;
debt market process document	the document available on the JSE's website (www.jse.co.za) detailing the process that applicant issuer's must follow in order to register a placing document or list debt securities, as amended or updated from time to time;
debt officer	the debt officer appointed pursuant to paragraph 7.3(g) with the accompanied responsibilities pursuant to paragraph 6.78;
debt securities	(a) the "securities" (as defined in the FMA), which are designated by the JSE as "debt securities" from time to time, including, without limitation, debentures, debenture stock, loan stock, bonds, notes, certificates of deposit, preference shares or any other instrument creating or acknowledging indebtedness; and (b) structured products;
debt sponsor	as described in Section 2 of the Debt Listings Requirements;
declaration data	the minimum information to be announced on the declaration date, if applicable, as follows: mother instrument name mother instrument code mother instrument ISIN

	event or corporate action last day to trade election date record date pay date ex date conditions precedent;
declaration date	the date on which the corporate action and the declaration data, including any conditions precedent to which the corporate action is subject, are announced and released through SENS;
designated person	a natural person appointed by a secondary registered issuer as described in Section 2 of the Debt Listings Requirements;
director	a "director" as defined in Section 1 of the Companies Act, and in relation to an applicant issuer that is not a company (as defined in the Companies Act), a person with corresponding powers and duties;
domestic prominent influential person	a person as defined in the Financial Intelligence Centre Act No. 38 of 2001, as amended;
ESG	means environmental, social and governance;
effective disclosure practices	means the effective disclosure practices aligned with the principles outlined by the Financial Stability Board's Task Force on Climate-Related Financial Disclosures as may be amended or any other framework acceptable to the JSE, in its discretion in relation to disclosure practices;
equity securities	equity shares, securities convertible into equity shares and securities with restricted voting rights but which participate in the distribution of profits in a manner directly linked to the profitability of the company;
Exchange Control Regulations	the Exchange Control Regulations, 1961, promulgated under the Currency and Exchanges Act, 1933 (Act No. 9 of 1933);
extraordinary resolution	a resolution passed at a meeting (duly convened) of the holders of debt securities or the holders of a specific class of debt securities, as the case may be, by holders of debt securities of not less than 66.67% (sixty-six point six-seven percent) of the value of a specific class of debt securities or all outstanding debt securities present in person or by proxy voting at such meeting upon a show of hands or a poll;
extraordinary written resolution	a resolution passed other than at a meeting of the holders of debt securities or the holders of a specific class of debt securities, with the written consent of the holders of debt securities or the holders of the specific class of debt securities, holding not less than 66.67% (sixty-six point six seven percent) of the value of all outstanding debt securities or the specific class of debt securities, as the case may be;
finalisation date	the date on which an event and its terms become unconditional in all respects and irrevocable i.e. no further finalisation changes to any of the finalisation information can be made by the issuer and the event can only be cancelled;
finalisation information	finalisation information on the corporate action to be included in the announcement on the finalisation date, if applicable, as follows: mother instrument name mother instrument code mother instrument ISIN event or corporate action last day to trade election date record date pay date ex date price ratio default for election first date to trade entitlement statement that all conditions precedent have been fulfilled;

financial assets	are assets which derive their value from an underlying contractual claim, and includes, without limitation, cash deposits, investments in bonds or equities, accounts receivable and derivatives;
financial information	the annual financial statements, interim financial statements, quarterly financial statements or annual report prepared by the applicant issuer in accordance with IFRS (or as otherwise determined or agreed to by the JSE) together with any additional unaudited information included therein;
FMA	the Financial Markets Act, 2012 (Act No.19 of 2012), as amended, or any law that may replace it wholly or in part, from time to time;
formal approval	the final approval granted by the JSE;
FSCA	Financial Sector Conduct Authority;
guidelines on external reviews	the Guidelines for Green, Social, Sustainability and Sustainability-Linked Bonds External Reviews published by ICMA, as updated from time to time, or any other guidelines on external reviews acceptable to the JSE, in its discretion;
holder of debt securities	the holders of debt securities pursuant to the CSD registry records;
IAS	International Accounting Standards;
ICMA	in respect of the sustainability segment, the International Capital Market Association;
immediate family	an individual's spouse and children;
Income Tax Act	the Income Tax Act, 1962 (Act No. 58 of 1962), as amended, or any law that may replace it wholly or in part, from time to time;
independent external reviewer	means an entity, independent of the issuer, its directors, senior management and advisers, who has been appointed by the applicant issuer;
index calculator	the party responsible for calculating or administering a given index;
Interest Rate Market	means all the debt securities listed on the Interest Rate Market of the JSE;
International Financial Reporting Standards or IFRS	the International Financial Reporting Standards formulated by the International Accounting Standards Committee;
investors	persons, natural or juristic, who have acquired or may acquire debt securities listed on the JSE and "potential investors" shall be construed accordingly;
ISA	International Standards on Auditing;
issue date	the date upon which the debt securities listed on the JSE are issued by the applicant issuer, as specified in the offering circular or pricing supplement;
issuer	any company whose placing document has been registered with the JSE and who has not deregistered their placing document in accordance with Section 1;
Issuer Regulation Division	the division of the JSE which is tasked with the listings function of the JSE;
JIBAR	the Johannesburg Interbank Agreed Rate, being the mid-market rate for deposits in South African Rand for a designated period that appears on the Reuters Screen SAFEX Page as at 11h00, Johannesburg time on each trading day;
JSE general code	the stock code under which the JSE issues regulatory announcements on SENS;
JSE Limited or the JSE	the JSE Limited, a company duly registered and incorporated with limited liability under the company laws of the Republic of South Africa, licensed as an "exchange" under the FMA;
JSE Listings Requirements	the equity listing requirements of the JSE pursuant to the provisions of the FMA, as amended from time to time;
JSE supplement	the South African supplement to a foreign applicant issuer's prospectus, which contains the disclosures required by the Debt Listings Requirements;
King Code	the King Code on Corporate Governance for South Africa, as amended or replaced from time to time;



last day to register	close of business on the business day immediately preceding the first day of a books closed period;
last day to trade	the last business day to trade in a debt security listed on the Main Board of the JSE, in order to settle by the record date and to be able to qualify for entitlements or to participate in an event. All trades done from commencement of trade the first business day after the last day to trade will be excluding entitlements;
List	the official list, maintained by the JSE, of debt securities which have been listed;
listing	the admission of a debt security to the List and "listed" shall be construed accordingly;
listing date	the date upon which a debt security is listed on the JSE;
listing particulars	the particulars required to be disclosed by an applicant issuer from time to time in its placing document which are set out in Section 4 hereof;
material	information that, if omitted or misstated, could reasonably influence the economic decisions of users and includes a change in, or constituent of, a particular factor that may be regarded in the circumstances as being material and that, as a rule of thumb, would normally be equal to or exceed 10%;
maturity date	means the scheduled date on which on which the debt security becomes redeemable as may be extended or otherwise revised, as the case may be;
mother instrument code	alpha code for the security in respect of which the event has been declared;
mother instrument ISIN	ISIN for the security on which the event has been declared;
mother instrument name	long name for the security in respect of which the event has been declared;
new applicant	a company applying for the registration of its placing document with the JSE;
offering circular	a document containing <i>inter alia</i> the provisions required by the Debt Listings Requirements, for a standalone issue of debt securities;
originator	as defined in the Securitisation Regulations;
Paris Agreement	means the Paris Agreement, as defined by United Nation Climate Change, a legally binding international treaty on climate change adopted by 196 parties at COP 21 in Paris, on 12 December 2015 and entered into force on 4 November 2016;
partial redemption	the partial payment by the issuer to holders of debt securities as partial settlement of their investment in the debt security;
pay date	means the date on which entitlements will be paid by the CSD to the holder of the debt security. This date can coincide with the redemption date or occur after the redemption date;
paying agent	an entity identified as such in the placing document or the pricing supplement which undertakes certain functions with regard to payments in relation to debt securities, which entity may also be the applicant issuer;
physical assets	are real or tangible assets with a tangible existence, and which have economic, commercial or exchange value. They include, without limitation, cash, equipment, inventory and property;
placing document	an offering circular, a programme memorandum or any other placing document, as the case may be (for example applicable issuer supplements, applicable transaction supplements, etc.), but specifically excluding the pricing supplement, which contains <i>inter alia</i> the provisions required by the Debt Listings Requirements for an issue of debt securities. In the case of a foreign applicant issuer, "placing document" refers to the JSE supplement as read together with the prospectus (where a separate JSE specific offering circular or programme memorandum is not produced) or an offering circular or programme memorandum;
placing or offering	the method of offering debt securities to be listed, for subscription or sale to potential investors and that takes place before such debt securities are listed;
prescribed officer	despite not being a director of the applicant issuer, a person is a

	<p>"prescribed officer" if that person (i) exercises general executive control over and management of the whole, or a significant portion, of the activities of the applicant issuer or (ii) regularly participates to a material degree in the exercise of general executive control over and management of the whole, or a significant portion, of the activities of the applicant issuer;</p>
price sensitive information	<p>unpublished information that is specific or precise, which, if it were made public, could reasonably be expected to have a material (as per the practice note) effect on the price of the issuer's debt securities</p> <p>Apply Practice Note 2/2015 contained in the JSE Listings Requirements;</p>
pricing supplement	<p>a supplement to a programme memorandum (or in the case of foreign issuers, the JSE supplement) setting out additional and/or other terms and conditions as are applicable to a specific tranche of debt securities, for which application is made;</p>
profit estimate	<p>a form of words which expressly states, or by implication indicates, a figure or a minimum or maximum figure for the likely level of profits or losses for a financial period ended but for which no financial information has yet been published, or contains data from which a calculation of such a figure may be made, even if no particular figure is mentioned and the word "profit" is not used;</p>
profit forecast	<p>a form of words which expressly states, or by implication indicates, a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word "profit" is not used;</p>
programme memorandum	<p>a document containing <i>inter alia</i> the provisions required by the Debt Listings Requirements, for the issuance of multiple debt securities;</p>
project bond segment	<p>is the segment of the Interest Rate Market on which only project bond investors will be able to trade and all debt securities listed on this segment will be marked as such;</p>
project bonds	<p>bonds that are financed by the cash flows of a ring-fenced development project (for example infrastructure or renewable energy projects);</p>
project bonds investor	<p>a juristic person that:</p> <p>Is any one of the following acting either for their own account or as an agent for a client on a discretionary basis:</p> <ul style="list-style-type: none"> <li>(a) a category II or IIA authorised Financial Services Provider, as defined in the Financial Advisory and Intermediary Services Act, No. 37 of 2002 (as amended from time to time);</li> <li>(b) a JSE authorised user, as defined in Section 1 of the FMA;</li> <li>(c) a long-term insurer as defined in the Long-Term Insurance Act, No. 52 of 1998 (as amended from time to time);</li> <li>(d) a short-term insurer as defined in the Short-Term Insurance Act, No. 53 of 1998 (as amended from time to time);</li> <li>(e) a bank as defined in the Banks Act, No. 94 of 1990 (as amended from time to time);</li> <li>(f) a Pension Fund Organisation, as defined in the Pension Funds Act, No. 24 of 1956 (as amended from time to time);</li> <li>(g) the Government Employees Pension Fund, established in terms of the Government Employees Pension Law, No. 21 of 1996 (as amended from time to time);</li> <li>(h) the Public Investment Corporation Limited, established in terms of the Public Investment Corporation Act, No. 23 of 2004 (as amended from time to time);</li> <li>(i) an international and supranational institutions such as the World Bank, the IMF, the ECB, IFC and other similar international organisations; or</li> <li>(j) an institution that is the foreign equivalent of the entities listed in paragraphs (a) to (f) and is authorised and regulated in a country other than the Republic of South Africa; and</li> </ul> <p>1 is approved in terms of its applicable legislation and regulations; and</p>

	2 is in compliance with the relevant requirements for financial soundness in terms of such juristic person's applicable legislation and regulations;
project bonds issuer	applicant issuers of project bonds;
project sponsor	the entity that is (i) responsible for the development of the underlying project (including, but not limited to, providing financial support to the underlying project); and (ii) is a shareholder in the project bond issuer;
prospectus	the legal document establishing a foreign applicant issuer's debt programme, which contains the disclosure required by the rules and regulations of the exchange with which such document is registered;
publish/ed or publication	either (i) an announcement of information through SENS in accordance with the SENS Procedural Requirements, as contained in Schedule 9 of the JSE Listings Requirements or (ii) in respect of project bond and structured product issuers, making information available in the virtual data room;
record date	the date to determine eligibility for the event as defined in Schedule 4 Form A5;
redemption amount	the final principal amount payable by the issuer to the holder of the debt security as settlement of the investment in the debt security;
redemption date	means the date on which the debt security will be redeemed;
Registrar	the Registrar of Securities Services, as defined in the FMA;
related party	means a related party referred to in paragraph 10.(1)b of the JSE Listings Requirements;
secondary registered issuers	foreign applicant issuers with a prospectus registered with an accredited exchange;
securitisation	a synthetic securitisation scheme or a traditional securitisation scheme, each as defined in the Securitisation Regulations;
Securitisation Regulations	the securitisation regulations of 1 January 2008 issued pursuant to paragraph (cc) of the definition of "the business of a bank" in the Banks Act, 1990, as set out in Government Notice 2, published in <i>Government Gazette</i> 30628 of 1 January 2008, as amended, or any law that may replace it wholly or in part, from time to time;
security structure	is considered in place when the debt securities issued by the applicant issuer are guaranteed by a ring-fenced insolvency remote vehicle (hereinafter referred to as the " <b>Security SPV</b> ") and the Security SPV has recourse to the assets and/or bank accounts of the applicant issuer and/or other entities within the issuer's group structure through an indemnity from the applicant issuer and/or other entities within the issuer's group structure and the cession and pledge of the assets and/or bank accounts of the applicant issuer and/or other entities within the issuer's group structure to the Security SPV;
SENS	the JSE Stock Exchange News Service;
servicing agent	as defined in the Securitisation Regulations;
sovereign issuer	means the South African Government or a foreign government, including a government department, or special purpose vehicle of that government, acceptable to the JSE, as an applicant issuer;
spouse	a person who is in a marital relationship (recognised as a marriage in terms of the matrimonial laws of any country) with the individual at the time of the relevant transaction, including but not limited to, the individual's spouse in terms of a same sex, hetero-sexual or customary union or any marital union acknowledged by any religion or custom;
structured products	means debt securities: <ul style="list-style-type: none"> <li>(a) where the payment of interest (if any) and/or redemption amounts is linked and calculated with reference to the performance of an underlying security/ies, index/indices or other reference asset/s;</li> <li>(b) that are asset-backed debt securities;</li> <li>(c) that are issued by applicant issuers pursuant to a securitisation scheme under the Securitisation Regulations; or</li> <li>(d) that are designated as such by the JSE from time to time;</li> </ul>
subsidiary	a subsidiary company as defined in Section 1 of the Companies Act; or

	an entity which would have been a subsidiary as defined in Section 1 of the Companies Act but for the fact that it is incorporated outside of South Africa;
sustainability-linked debt securities	means a forward-looking performance based debt security listed on the sustainability segment for which the financial and/or structural characteristics can vary depending on whether the applicant issuer achieves predefined sustainability / ESG objectives pursuant to the sustainability-linked standards;
sustainability-linked standards	means the Sustainability-Linked Bond Principles published by ICMA, as updated from time to time or any other principles, guidelines or standards acceptable to the JSE, in its discretion in relation to the classification of sustainability-linked debt securities;
sustainability use of proceeds debt securities	means a sustainability use of proceeds debt security listed on the sustainability segment that finances one or more green, sustainable and social projects pursuant to the use of proceeds standards;
sustainability segment	means the segment of the JSE's Interest Rate Market where sustainability instruments are listed;
tap issue	the issue of debt securities, having terms and conditions which are identical to existing debt securities already in issue (save for their respective issue dates, issue prices, and aggregate principal amounts), so that such new debt securities (i) are consolidated and form a single series with such existing debt securities; and (ii) rank <i>pari passu</i> in all respects with such existing debt securities;
transfer secretary or transfer agent	an entity who maintains a register of debt securities, which entity may be the issuer of such debt securities;
transition debt securities	means debt securities listed on the transition segment whereby the applicant issuer is raising funds for climate and/or just transition-related purposes.  The transition debt securities can take the following forms: <ul style="list-style-type: none"> <li>• sustainability use of proceeds debt securities; or</li> <li>• sustainability-linked debt securities;</li> </ul>
transition segment	means the segment of the JSE's Interest Rate Market where transition debt securities are listed;
URL	uniform resource locator being the address of a specific webpage or file on the world wide web;
use of proceeds standards	means the Green Bond Principles, the Social Bond Principles and Sustainability Bond Guidelines published by ICMA, as updated from time to time or any other principles, guidelines or standards acceptable to the JSE, in its discretion in relation to the classification of sustainability use of proceeds debt securities;
VDR providers	companies appointed by project bond and structured product issuers that provide virtual data room services and are acceptable to the JSE pursuant to Section 3; and
virtual data room	a regulated access cloud-based or internet-based storage in which the project bond and structured product issuer uploads/stores certain documents for consumption by investors.

## Section 1 – Authority of the JSE

- 1.1 General powers of the JSE
- 1.6 Suspension initiated by the JSE
- 1.11 Suspension at the request of the issuer
- 1.12 Continuing obligations of issuers
- 1.13 Removal initiated by the JSE
- 1.16 Removal at the request of the issuer
- 1.19 Annual revision of the List
- 1.20 Censure and penalties

- 1.25 Power to require information
- 1.29 Publication
- 1.32 Amendments to the Debt Listings Requirements

### **General powers of the JSE**

- 1.1 Subject to the provisions of the FMA, the JSE has the power:
  - (a) to grant, defer, refuse, suspend or remove a listing of a debt security or the registration of a programme memorandum or, in the case of a foreign issuer, the JSE supplement in accordance with the Debt Listings Requirements;
  - (b) to prescribe from time to time the requirements with which a new applicant must comply before debt securities issued by such new applicant is granted a listing;
  - (c) to prescribe from time to time the requirements with which applicant issuers must comply;
  - (d) to alter or rescind a requirement prescribed before or after a listing has been granted;
  - (e) to prescribe additional requirements from time to time;
  - (f) to prescribe the circumstances under which a listing of debt securities or the registration of a programme memorandum or, in the case of a foreign issuer, the JSE supplement shall or may be suspended or removed; and
  - (g) to prescribe from time to time the requirements with which issuers, their directors, officers, employees and agents must comply.
- 1.2 Listings are granted subject to compliance with the Debt Listings Requirements and applicant issuers, their directors, officers, employees and agents must comply with the Debt Listings Requirements. In addition, the JSE may, in consultation with the Registrar, grant a listing subject to any additional condition(s) that it considers appropriate, in which event the new applicant will be informed of, and will be required to comply with, any such condition(s).
- 1.3 Nothing contained in this section shall limit the powers of the JSE or its officers to those contained herein, and the JSE or its officers may at any time exercise any further powers granted to the JSE or its officers in terms of the FMA.
- 1.4 If an applicant issuer, director, officer, employee or agent of the applicant issuer, in respect of whom a decision (other than a decision in respect of which a specific appeal or review procedure is prescribed in the Debt Listings Requirements, the Rules of the JSE and the FMA, or any replacement legislation) is taken under the Debt Listings Requirements objects to such decision, such applicant issuer, director, officer, employee or agent must notify the JSE in writing within two business days of the decision, giving reasons for such objection. In such event, the JSE shall consider the objection and shall be entitled, in its sole discretion, to consult with not less than three independent members of the Debt Advisory Committee. Taking into account the views of those independent members, the JSE shall be entitled to reconsider and change its decision. A decision of the JSE made after following the above procedure will be final.
- 1.5 Subject to the provisions of the FMA, if the JSE decides, at its instance, to remove a listing, and the issuer concerned objects to this decision, then the issuer may appeal to the Issuer Regulation Appeal Committee in writing within two business days of the decision, giving reasons for such objection.

## **Suspension initiated by the JSE**

- 1.6 The JSE may, subject to the suspension provisions of the FMA and paragraph 1.7 below, and if either of the following applies:
- (a) if it will further one or more of the objects contained in Section 2 of the FMA, which may also include, if it is in the public interest to do so; or
  - (b) if the issuer has failed to comply with the Debt Listings Requirements and it is in the public interest to do so,
- suspend the listing of debt securities.
- 1.7 When the listing of debt securities of an issuer is under threat of suspension, the affected issuer shall be given the opportunity to make written representations to the JSE why the suspension should not be affected prior to the JSE making any decision to suspend such listing or registration.
- 1.8 If the listing of a debt security is suspended and the affected issuer fails to take adequate action to enable the JSE to reinstate such listing within a reasonable period of time, the JSE may remove the listing in accordance with the procedure set out in this Section 1.
- 1.9 If the issuer:
- (a) has ordinary shares listed on the JSE and the listing of such ordinary shares is suspended by the JSE;
  - (b) has any securities listed on another exchange and the listing of the securities is suspended by that exchange; or
  - (c) is placed under provisional liquidation, curatorship or business rescue or any similar proceedings if the issuer is not a company as defined in the Companies Act,
- the listing of the issuer's debt securities on the JSE may be suspended. The issuer is required to inform the JSE within one business day of the occurrence described in 1.9(b) and (c).
- 1.10 Where an issuer's debt securities only reference the securities or obligations of a single company (hereafter the "**reference entity**") and:
- (a) trading in any of the reference entity's securities is suspended by the JSE;
  - (b) trading in any of the reference entity's securities is suspended by any other exchange on which the reference entity has securities listed; or
  - (c) if the reference entity is placed under provisional liquidation, curatorship or business rescue or any similar proceedings if the issuer is not a company as defined in the Companies Act,
- then the listing of the issuer's relevant debt securities may be suspended. The issuer is required to inform the JSE within one business day of becoming aware of the occurrences described in 1.10(b) and (c).

## **Suspension at the request of the issuer**

- 1.11 The JSE may suspend a listing of debt securities or, in the case of a foreign issuer, the JSE supplement in the following circumstances:
- (a) where the issuer adopted a special resolution to be wound up voluntarily, is placed under provisional liquidation, curatorship or business rescue or any similar proceedings if the issuer is not a company as defined in the Companies Act;
  - (b) where a written request is made by a/the director(s) of the issuer in the event of a default of the issuer;

- (c) where a written request is made by a/the director(s) of an issuer and it is apparent that there are two levels of information in the market and the JSE considers that this situation cannot be remedied by the immediate publication of an announcement on SENS to clarify the situation;
- (d) where the Commission issues a notice to an issuer in terms of Sections 22 (reckless trading) and/or 23(6) (external company registration) of the Companies Act. The issuer must immediately inform the JSE of any such notice issued to the issuer by the Commission; and/or
- (e) the Commission deregisters an issuer in terms of Section 82(3) of the Companies Act or if the issuer is not a company as defined in the Companies Act is deregistered by its authority of incorporation.

### **Continuing obligations of issuers**

- 1.12 If the listing of an issuer's debt securities or, in the case of a foreign issuer, the JSE supplement is suspended, it must, unless the JSE decides otherwise:
- (a) continue to comply with all the Debt Listings Requirements applicable to it;
  - (b) submit to the JSE a monthly progress report pertaining to the current state of affairs of the issuer and any action proposed to be taken by the issuer in order to have the listing and/or registration reinstated; and
  - (c) advise the holders of debt securities on a quarterly basis concerning the current state of affairs of the issuer and any action proposed by the issuer in order to have the listing and/or registration reinstated, including the date on which the suspension is expected to be lifted (if known).

### **Removal initiated by the JSE**

- 1.13 The JSE may, subject to the removal provisions of the FMA and paragraph 1.14 below, and if one of the following applies:
- (a) if it will further one or more of the objects contained in Section 2 of the FMA, which may also include, if it is in the public interest to do so; or
  - (b) if the issuer has failed to comply with the Debt Listings Requirements and it is in the public interest to do so,
- remove from the List any debt securities previously included therein; provided that the listing of such debt securities shall first have been suspended in accordance with the above provisions.
- 1.14 When a listing of debt securities is under threat of removal, the affected issuer shall be given the opportunity to make written representations to the JSE why the removal should not be affected prior to the JSE making any decision to remove such listing.
- 1.15 If at any point an applicant issuer has no debt securities listed on the JSE, such issuer must continue to comply with the Debt Listings Requirements or deregister the programme memorandum.

### **Removal at the request of the issuer**

- 1.16 An issuer must make written application to the JSE for the removal of the listing of any of its debt securities from the List (excluding instances where the debt securities have been redeemed on their maturity date or redeemed early in accordance with the terms and conditions of the debt securities) and/or the deregistration of the programme memorandum or, in the case of a foreign issuer, the JSE supplement stating from which time and date it wishes the removal to be effective. The JSE may grant the request for removal, provided paragraph 1.17 is properly complied with and perfected, except



where all debt securities are owned by the issuer.

- 1.17 Prior to being able to effect paragraph 1.16, an issuer must send a notice of meeting of holders of debt securities or a notice requesting the written consent of holders of debt securities to such holders. The notice must comply with the following:
- (a) the notice must request approval for the removal of the listing of the debt securities and/or the de-registration of the placing document from the JSE;
  - (b) the notice must state that an extraordinary resolution or an extraordinary written resolution is required in order for approval to be obtained. The issuer will be excluded from voting in either the extraordinary resolution or the extraordinary written resolution; and
  - (c) the reasons for removal and/or de-registration must be clearly stated.
- 1.18 Once approval has been obtained pursuant to paragraph 1.17, the issuer can make written application to the JSE for the removal of the listing of the debt securities and/or the de-registration of the programme memorandum or, in the case of a foreign issuer, the JSE supplement.

### **Annual revision of the List**

- 1.19 All listings of debt securities shall be revised by the JSE annually after receipt by the JSE of a certificate from each issuer complying with Schedule 4 Form A2 ("the certificate"), which must be submitted to the JSE together with the issuer's annual financial statements pursuant to paragraph 6.15. If the issuer is given dispensation with regard to its financial statements as per paragraph 6.16, the compliance certificate must be submitted on the date of the issuer's financial year-end. If the certificate is not received by the JSE:
- (a) a notification will be sent to the issuer requesting that it rectify the situation and advising that it has been granted a period of 14 days, from the date of such reminder, in which to provide the JSE with the certificate, failing which the issuer must make written representations to the JSE, within 7 days thereafter, as to why the listing of the debt securities and registration of the programme memorandum or, in the case of a foreign issuer, the JSE supplement should not be suspended and subsequently removed (in terms of paragraph 1.13);
  - (b) failing compliance within 14 days of despatch of the reminder to the issuer, the JSE will release an announcement through SENS, informing holders of debt securities that the issuer has not provided the JSE with the certificate and cautioning holders that the listing of the debt securities and registration of the programme memorandum or, in the case of a foreign issuer, the JSE supplement concerned are under threat of suspension and possible removal; and
  - (c) if the certificate is not submitted and the representations received in terms of paragraph 1.19(a) are not satisfactory, the listing of the relevant debt securities and registration of the programme memorandum or, in the case of a foreign issuer, the JSE supplement will be suspended and the lifting of the suspension will only be effected upon receipt of the certificate by the JSE.

### **Censure and penalties**

- 1.20 Where the JSE finds that an issuer, director, officer, employee or agent has contravened or failed to adhere to the provisions of the Debt Listings Requirements, the JSE may, in accordance with the provisions of the FMA, and without derogating from its powers of suspension and/or removal:
- (a) censure the issuer, director, officer, employee or agent of the issuer by means of private censure;



- (b) censure the issuer, director, officer, employee or agent of the issuer by means of public censure;
  - (c) in the instance of either paragraph 1.20(a) or (b), impose a fine not exceeding such amount as stipulated by the FMA on the issuer, director, officer, employee or agent of the issuer;
  - (d) disqualify an applicant issuer's director(s)/officer(s) from holding the office of a director or officer of a listed company for any period of time; and/or
  - (e) impose any other penalty that is appropriate in the circumstances.
- 1.21 In the event that an issuer, director, officer, employee or agent of the issuer fails to adhere to the provisions of the Debt Listings Requirements, the JSE may elect in its discretion, that:
- (a) full particulars regarding the imposition of a penalty may be published in the *Gazette*, national newspapers, the website of the JSE or through SENS; and/or
  - (b) an investigation or hearing be convened and the issuer, director, officer, employee or agent of the issuer pay the costs incurred in relation to such investigation or hearing.
- 1.22 If the issuer, director, officer, employee or agent of the issuer fails to pay a fine as referred to in paragraph 1.20, the JSE may in terms of the provisions of the FMA file with the clerk or registrar of any competent court a statement certified by the JSE as correct, stating the amount of the fine imposed, and such statement thereupon shall have all the effects of a civil judgement lawfully given in that court against that issuer, director, officer, employee or agent of the issuer and in favour of the JSE for a liquid debt in the amount specified in that statement.
- 1.23 Unless the JSE considers that the maintenance of the smooth operation of the market or the protection of investors otherwise requires, the JSE will give advance notice to the parties involved of any action that it proposes to take under paragraphs 1.20 and 1.21, and will provide them with an opportunity to make written representations to the JSE.
- 1.24 The whole or any part of the fines issued in terms of paragraph 1.20 will be appropriated as follows:
- (a) External costs incurred by the JSE at its specific instance and request, in enforcing the provisions of the Debt Listings Requirements, including but not limited to, attorney fees, senior counsel fees, forensic investigation fees and any fees that relate (direct or indirectly) to any investigative services or in support of any investigation initiated by the JSE;
  - (b) External costs incurred by the JSE to create an observance and awareness as to the interpretation and application of the Debt Listings Requirements in furtherance of the general principles of the Debt Listings Requirements and the objects of the FMA; and
  - (c) Project costs initiated by the JSE, which are directly associated with the Debt Listings Requirements and falls within the sphere of research and/or analysis in financial markets regulation.

#### **Power to require information**

- 1.25 The JSE may, in accordance with the FMA, require an applicant issuer to disclose to it, within a period specified by it, such information at the applicant issuer's disposal as the JSE may determine, save to the extent that the applicant issuer has obtained a court order excusing it from such disclosure. The JSE may request that a copy of such court order be delivered to it. If the JSE is satisfied, after such applicant issuer has had an opportunity to make representations to it, that the disclosure of that information to the registered holders of the debt securities in question will be in the public interest, it may,

by notice in writing, require such applicant issuer to publicly disclose that information within the period specified in the notice.

- 1.26 The JSE may require an applicant issuer to provide for the publication or dissemination of any further information not specified in the Debt Listings Requirements in such form and within such time limits as the JSE considers appropriate. The applicant issuer must comply with such requirement and, if it fails to do so, the JSE may publish the information after having heard representations from the applicant issuer or after having granted the applicant issuer the opportunity to make such representations.
- 1.27 If the JSE has reason to believe that an event of default as contemplated in paragraph 6.7 has occurred or is about to occur, it may request the issuer to confirm or deny the existence of such default or potential default in writing within one business day of receipt of such request or within such longer period as agreed with the JSE.
- 1.28 The JSE reserves the right to request an issuer, at any time after the listing of a debt security issued by it, to confirm or refute the happening of an event or existence of a state of affairs which may be reasonably expected to have a material adverse effect on the ability of such issuer or its guarantor (if applicable) to maintain any of its obligations in respect of any specific listed debt security, if the JSE has reason to believe that such an event exists, and the issuer shall be obliged to comply with such request forthwith.

## **Publication**

- 1.29 Without derogating from any other powers of publication referred to in these Debt Listings Requirements, the JSE may, in its absolute discretion and in such manner as it may deem fit, state or announce that it has:
- (a) investigated dealings in a listed debt security;
  - (b) censured an issuer, director, officer, employee or agent;
  - (c) suspended the listing of any debt security or registration of a programme memorandum or, in the case of a foreign issuer, the JSE supplement;
  - (d) removed the listing of any debt security or registration of a programme memorandum or, in the case of a foreign issuer, the JSE supplement;
  - (e) imposed a fine on an issuer, director, officer, employee or agent;
  - (f) advised that, in its opinion, the retention of office as a director of any applicant issuer's director(s), who shall be named, is prejudicial to the interests of investors.
- 1.30 In a statement or announcement referred to in paragraph 1.29, the JSE may give reasons for such investigation, censure, suspension, removal or fine, as the case may be, and, in the case of an investigation, so much of the JSE's conclusions or findings as it may, in its absolute discretion, deem necessary.
- 1.31 No issuer or its directors, officers, holders of debt securities or holders of a beneficial interest shall have any cause of action against the JSE, or against any person employed by the JSE, for damages arising out of any statement or announcement made in terms of paragraph 1.29, unless such publication was made with gross negligence or with wilful intent.

## **Amendments to the Debt Listings Requirements**

- 1.32 Subject to the provisions of the FMA, the JSE may amend the Debt Listings Requirements through a public consultation process. The proposed amendments to the Debt Listings Requirements will be published through SENS and the JSE website inviting comments from affected parties for a period of one month.
- 1.33 Once the public consultation process has been completed, the JSE will submit

the proposed amendments to the Debt Listings Requirements, together with an explanation of the reasons for the proposed amendments, and any concerns or objections raised during the public consultation process, to the FSCA for approval.

## **Section 2 – Debt Sponsor or Designated Person**

### **Scope of section**

This section sets out the requirements relating to debt sponsors and designated persons.

Debt sponsors and designated persons must undertake to the JSE that they accept certain responsibilities. These responsibilities are detailed in Section 2 of the Debt Listings Requirements. The responsibilities of a debt sponsor or designated person appointed by an applicant issuer are twofold, namely:

- (a) to assist applicant issuers with applications for listing which require the production of a placing document, pricing supplement and/or other relevant documentation; and
- (b) to provide advice, on a continuing basis, regarding the application of the Debt Listings Requirements, including the application of the spirit of the Debt Listings Requirements and upholding the integrity of the JSE, and in particular, the continuing obligations set out in Section 6.

Only debt sponsors and designated persons recorded on the JSE's Register of Debt Sponsors and Designated Persons may act as debt sponsors or designated persons.

The main headings of this section are:

- 2.1 Application
- 2.4 Appointment
- 2.5 Resignation
- 2.6 Termination
- 2.7 Responsibilities
- 2.8 Directors
- 2.9 Annual confirmation
- 2.10 Breach of responsibilities

### **Application**

- 2.1 Applications to become a debt sponsor must be made to the JSE by submitting the application form pursuant to Schedule 4 Form A1.
- 2.2 In order to be approved as a debt sponsor or designated person a written application must be made to the JSE pursuant to Schedule 3.
- 2.3 Only secondary registered issuers will be permitted to appoint a designated person.

### **Appointment**

- 2.4 Applicant issuers must appoint, as its agent, a debt sponsor or a designated person in relation to their placing document and debt securities, subject to the following:
  - (a) New applicants and secondary registered issuers must advise the JSE in writing (providing a copy to the debt sponsor or designated person) of the appointment of the debt sponsor or designated person on the first submission for the registration of a placing document.

- (b) Applicant issuers and secondary registered issuers must maintain the appointment of a debt sponsor or designated person until the programme memorandum has been deregistered from the JSE's list.
- (c) Secondary registered issuers that elect to appoint a designated person must also appoint an alternative designated person, which person must complete the application process pursuant to Schedule 3 and will be subject to all of the requirements placed on designated persons in the Debt Listings Requirements.
- (d) The debt sponsor or designated person must notify the JSE of its appointment. Where there are joint debt sponsors, an independent debt sponsor must be appointed that will take the lead in the process. The JSE shall deal with the lead independent debt sponsor which is appointed in respect of the issue.
- (e) A joint independent debt sponsor must be appointed where –
  - (i) the debt sponsor is also the applicant issuer or is a subsidiary, an associate or a division of the applicant issuer; or
  - (ii) the JSE believes, in its sole discretion, that the debt sponsor's procedures to ensure and maintain independence and objectivity in professional dealings cannot be achieved or maintained.
- (f) Notwithstanding the provisions of paragraph 2.4(e)(i) above, an independent joint debt sponsor is not required to be appointed, where –
  - (i) the applicant issuer has its equity shares listed on the Main Board or AltX of the JSE; or
  - (ii) the applicant issuer is a wholly-owned subsidiary of an issuer with its equity shares listed on the Main Board or AltX of the JSE.

## **Resignation**

2.5 Where a debt sponsor or designated person resigns:

- (a) The applicant issuer/secondary registered issuer must immediately publish an announcement on SENS confirming the resignation of the debt sponsor/designated person. The applicant issuer/secondary registered issuer and the debt sponsor or designated person must immediately inform the JSE separately in writing of the reason for the resignation.
- (b) The applicant issuer/secondary registered issuer has 30 business days to appoint a new debt sponsor or designated person from the date of resignation of the debt sponsor or designated person, unless the JSE decides otherwise, and must advise the JSE in writing (providing a copy to the new debt sponsor or designated person) and publish an announcement on SENS immediately after the appointment of the replacement debt sponsor or designated person has been made.
- (c) The replacement debt sponsor or designated person must ensure that, before accepting an appointment, it has requested the written reasons for the resignation as submitted to the JSE from the outgoing debt sponsor or designated person. The outgoing debt sponsor or designated person must supply the reasons to the replacement debt sponsor or designated person within five business days of such request and the replacement debt sponsor or designated person must take account of the reasons for the resignation before accepting the appointment.

## **Termination**

- 2.6 (a) In the event that the appointment of the debt sponsor or designated person is terminated by the applicant issuer/secondary registered issuer, for whatever reason, such termination must be approved by the board of directors (or appropriate authorised officials) of the applicant

issuer/secondary registered issuer. Once the termination of the debt sponsor or designated person has been approved by the board of directors (or appropriate authorised officials), the applicant issuer/secondary registered issuer and the debt sponsor or designated person must submit a report to the JSE stipulating the reasons for the termination, within two business days of such termination.

- (b) In the circumstances set out in paragraph 2.6(a), an applicant issuer/secondary registered issuer must immediately publish an announcement on SENS confirming the termination of the services of the debt sponsor or designated person. The applicant issuer must make immediate arrangements to appoint a replacement debt sponsor or designated person, within 30 business days of the date on which the former debt sponsor or designated person ceased to act, unless the JSE decides otherwise, and must inform the JSE in writing (providing a copy to the debt sponsor or designated person) and publish a further announcement on SENS immediately after the appointment of the replacement debt sponsor or designated person has been made.
- (c) The replacement debt sponsor or designated person must ensure that, before accepting the appointment, it has requested the report referred to in paragraph 2.6(a) from the outgoing debt sponsor or designated person. The outgoing debt sponsor or designated person must supply this report to the replacement debt sponsor or designated person within five business days of such request and the replacement debt sponsor or designated person must take account of the reasons for the termination before accepting the appointment.

## **Responsibilities**

2.7 A debt sponsor or designated person must:

- (a) ensure that the applicant issuer/secondary registered issuer is guided and advised as to the application of the Debt Listings Requirements;
- (b) provide to the JSE any information or explanation known to it in such form and within such time limit as the JSE may reasonably require for the purpose of verifying compliance with the Debt Listing Requirements by it or by an applicant issuer/secondary registered issuer;
- (c) ensure that all SENS announcements comply with the Debt Listings Requirements before submission to the JSE;
- (d) use all reasonable endeavours to ensure that the applicant issuer/secondary registered issuer complies with the Debt Listings Requirements;
- (e) manage the submission of all documentation to the JSE and ensure its compliance with the Debt Listings Requirements before submission is made;
- (f) carry out any activities which are requested by the JSE in respect of the application of the Debt Listings Requirements;
- (g) discharge its responsibilities with due care and skill;
- (h) prior to the submission of any documentation that requires approval by the JSE, satisfy itself to the best of its knowledge and belief, having made due and careful enquiry of the applicant issuer, that there are no material matters, other than those disclosed in writing to the JSE, that should be taken into account by the JSE in considering the submission;
- (i) advise the JSE immediately if they are aware or have reason to suspect that any of their debt sponsor clients/the applicant issuer/secondary registered issuer have/has or may have breached the Debt Listings Requirements;
- (j) be present at all discussions held between the JSE and the applicant

issuer/secondary registered issuer. The JSE may, however, where it deems appropriate, communicate directly with an applicant issuer/secondary registered issuer or with an adviser of the applicant issuer/secondary registered issuer, in order to discuss matters of principle and/or the interpretation of provisions of the Debt Listings Requirements; and

- (k) adhere to the Sponsor Code of Ethics and Standards of Professional Conduct as contained in the appendix to Schedule 16 of the JSE Listings Requirements.

## **Directors**

2.8 The debt sponsor or designated person must be satisfied that the directors of the applicant issuer and newly appointed directors:

- (a) have provided the information as required pursuant to paragraph 4.10(b)(i)-(xii);
- (b) have had explained to them by the debt sponsor or designated person the nature of their responsibilities and obligations arising from the Debt Listings Requirements; and
- (c) understand what is required of them to enable holders of debt securities and the public to be able to appraise debt securities and to avoid the creation of a false market in the debt securities of the applicant issuer once the debt securities are listed.

## **Annual confirmation**

2.9 Debt sponsors and designated persons are required, on an annual basis, to provide the annual confirmation pursuant to Schedule 3.

## **Breach of responsibilities**

2.10 If the JSE determines, after taking account of written representations, that a debt sponsor or designated person has breached any of its responsibilities under the Debt Listings Requirements, the JSE is entitled to take any one or more of the following actions:

- (a) censure the debt sponsor or designated person;
- (b) remove the debt sponsor or designated person from the register of debt sponsors and designated persons maintained by the JSE;
- (c) impose a penalty not exceeding R1 000 000; and/or
- (d) publish details of the action it has taken and the reasons for that action.

2.11 Where the JSE has decided to take any action described in paragraph 2.10(b), and the debt sponsor or designated person concerned objects to this decision, then the debt sponsor or designated person may appeal to the Issuer Regulation Appeal Committee in writing within two business days of the decision, giving reasons for such objection.

## **Section 3 – Conditions for Listing**

### **Scope of section**

This section sets out the requirements relating to conditions of listing.

The provisions dealing with conditions of listing apply to all issuers of debt securities. It should be noted that subject to the type of debt instrument/issuer, additional or amended provisions dealing with conditions of listing may apply. The heading of the type of debt instrument/issuer will specify whether additional or amended provisions apply. If there is no specific heading of the debt instrument/issuer in question, there are no additional or amended provisions applicable.

- 3.1 Introduction
- 3.6 Applicant to be duly incorporated
- 3.8 Status of debt securities
- 3.9 Transferability of securities
- 3.10 Minimum criteria for listing of debt securities or registration of a programme memorandum or, in the case of a foreign issuer, the JSE supplement
- 3.11 Exchange control approval
- 3.13 Price stabilisation
- 3.15 Additional or Amended Conditions of Listing: Type of Debt Instrument/Issuer

### **Introduction**

- 3.1 Registration of a programme memorandum or, in the case of a foreign issuer, the JSE supplement and/or listings of debt securities are granted subject to compliance with the Debt Listings Requirements.
- 3.2 All documents submitted, distributed and/or published pursuant to the provision of the Debt Listings Requirements must be in English.
- 3.3 An applicant issuer must appoint, as its agent, a debt sponsor or designated person. Only secondary registered issuers will be permitted to appoint a designated person. The applicant issuer must maintain a dedicated debt sponsor, or if a designated person is appointed, a dedicated designated person and an alternative designated person at all times. All applications for the listing of debt securities or the registration of a programme memorandum or, in the case of a foreign issuer, the JSE supplement are to be submitted to the JSE through a debt sponsor or designated person.
- 3.4 Where unusual features exist regarding a listing or registration, the JSE must be consulted by the debt sponsor or designated person to discuss such features at the earliest possible date and to discuss any rulings required from the JSE at that time.
- 3.5 Applicant issuers are required to submit to the JSE, at the earliest practicable date, any matter or unusual feature pertaining to the listing or registration that is not specifically provided for in, or is otherwise in conflict with, the Debt Listings Requirements.

### **Applicant to be duly incorporated**

- 3.6 The applicant issuer must be duly incorporated, or otherwise validly established under the law of the country of incorporation or establishment, and must be operating in conformity with its memorandum of incorporation or other constitutive documents, as the case may be, and all laws of its country of incorporation or establishment.
- 3.7 New applicants seeking the registration of a programme memorandum or, in the case of a foreign issuer, the JSE supplement must contractually undertake to the JSE, by completing Schedule 1, that from the date of registration of the programme memorandum or, in the case of a foreign issuer, the JSE supplement, the applicant issuer will comply fully with all the Debt Listings Requirements of the JSE, irrespective of the jurisdiction in which the applicant issuer is incorporated or established.

### **Status of debt securities**

- 3.8 Debt securities for which a listing is sought must be issued in conformity with the law of the applicant issuer's country of incorporation or establishment and in conformity with the applicant issuer's memorandum of incorporation (if applicable) or other constitutive documents as the case may be, and all



authorisations needed for their creation and issue under such law must have been duly given. The JSE must be consulted for a ruling if it is not possible to comply with the Debt Listings Requirements as a result of conflict between the Debt Listings Requirements and the relevant legislation in the applicant issuer's country of incorporation or establishment.

### **Transferability of securities**

- 3.9 The debt securities for which listing is sought must be freely transferrable and fully paid up (i.e. the debt security cannot be partially paid for) according to the terms and conditions of the debt security, unless otherwise required by law. Zero-coupon debt securities are not considered partly paid securities in terms of this requirement.

### **Minimum criteria for listing of debt securities or registration of a programme memorandum or, in the case of a foreign issuer, the JSE supplement**

- 3.10 In order to satisfy the minimum criteria for listing an applicant issuer must:
- (a) have appointed a debt sponsor or designated person, as the case may be;
  - (b) have appointed a JSE accredited auditor;
  - (c) have appointed a debt officer;
  - (d) have obtained the necessary statutory consent;
  - (e) be duly authorised to issue debt securities in terms of its memorandum of incorporation or other constitutive documents as the case may be;
  - (f) make all the necessary disclosure in terms of Section 4;
  - (g) comply with the corporate governance provisions pursuant to Section 7, as applicable;
  - (h) in respect of an applicant issuer registering a placing document for the first time and subject to paragraphs 5.4 to 5.6, have the required financial history as detailed in paragraph 5.3 and reported on by the auditor of the applicant issuer without qualification, disclaimer, adverse audit opinion, the inclusion of a paragraph on material uncertainty relating to going concern or reference to an emphasis of matter; and
  - (i) issue debt securities in a currency acceptable to the JSE.

### **Exchange control approval**

- 3.11 Where approval for a listing of debt securities or the registration of a programme memorandum or, in the case of a foreign issuer, the JSE supplement is required from the Financial Surveillance Department of the South African Reserve Bank, the JSE will not grant the listing of the debt securities or the registration of the programme memorandum or, in the case of a foreign issuer, the JSE supplement until such written approval is obtained.
- 3.12 The following should be considered in terms of exchange control:
- (a) information on any exchange control regulation that may be relevant to an investor;
  - (b) approval from the Financial Surveillance Department of the South African Reserve Bank is required when the applicant issuer is incorporated or domiciled in a foreign country, including the common monetary area (other than South Africa); and
  - (c) where the applicant issuer issues listed debt securities that will pay higher than the interest rate to be paid/discounted in terms of exchange control policy, and where there will be foreign participation in cross-



border funding, the applicant/issuer is required to obtain prior approval from the Financial Surveillance Department of the South African Reserve Bank or a directive in respect of the issue. Exchange control policy allows interest to be paid up to the prime overdraft rate (predominant rate) plus 3% per annum or as amended from time to time.

### **Price stabilisation**

- 3.13 Price stabilisation will be permitted by the JSE in accordance with the provisions of the FMA and subject to paragraph 3.14 below. Price stabilisation may be effected through an over-allotment, with or without a greenshoe. Over-allotment is a pre-cursor to a price stabilisation mechanism aimed at supporting and maintaining the price of newly listed debt securities or debt securities which are the subject of a substantial offer for a limited period after the listing. The main purpose is to establish an orderly market for securities in the immediate secondary market after an offer.
- 3.14 There is no obligation on the applicant issuer to stabilise the price, but if the applicant issuer intends to do price stabilisation, the applicant issuer's debt sponsor or designated person must contact the JSE for a ruling.

### **Additional or Amended Conditions of Listing: Type of Debt Instrument/Issuer**

- Sustainability Segment;
- Transition Segment;
- Project Bonds;
- Structured Products;
  - Index-Linked Notes;
  - Asset-Backed Debt Securities; and
- Sovereign Issuer.

### ***Sustainability Segment***

#### *Sustainability Use of Proceeds Debt Securities*

- 3.15 The listing of sustainability use of proceeds debt securities (new issuance or framework) are granted subject to compliance with the Debt Listings Requirements and provided the debt securities are issued in accordance with the use of proceeds standards as supported by a complete review report (through means of a second party opinion as described in the guidelines on external reviews) from an independent external reviewer. An application for listing based on a framework does not require a second party opinion on every new issuance.

#### *Criteria for the independent sustainability advisor*

- 3.16 Applicant issuers must appoint an independent external reviewer with reference to the guidelines on external reviews.

### ***Sustainability-Linked Debt Securities***

- 3.17 The listing of sustainability-linked debt securities (new issuance or framework) are granted subject to compliance with the Debt Listings Requirements and provided the debt securities are issued in accordance with the sustainability-linked standards as supported by a complete review report (through means of a second party opinion as described in the guidelines on external reviews) from an independent external reviewer. An application for listing based on a framework does not require a second party opinion on every new issuance.
- 3.18 Applicant issuers must appoint an independent external reviewer with reference to the guidelines on external reviews.

## **Transition Segment**

### *Transition Debt Securities*

- 3.19 The listing of transition debt securities are granted subject to compliance with the Debt Listings Requirements and provided the debt securities are issued in accordance with the Climate Transition Finance Standards as supported by a complete review report (through means of a second party opinion as described in the Climate Transition Finance Standards) from an independent external reviewer. The review must opine on the proposed quantified decarbonisation trajectory noted in Elements 1 and 3 of the Climate Transition Finance Standards, deemed necessary to limit climate change to safe levels.
- 3.20 An applicant issuer must appoint an independent external reviewer pursuant to paragraph 3.21.
- 3.21 The appointed independent external reviewer must be an entity specialising in assessing transition debt securities, with sufficient financial and market-specific expertise. Such expertise is demonstrated by:
- (i) having an organisational structure, working procedures and other relevant systems for carrying out external reviews;
  - (ii) having policies and procedures on ethical and professional standards; and
  - (iii) employing appropriate staff with the necessary expertise and qualifications for the scope of the external review to be provided.

## **Project Bonds**

- 3.22 Project bond issuers may only issue project bonds to project bond investors.

### *Virtual Data Rooms and Appointment of a VDR Provider*

- 3.23 Should project bond issuers decide to utilise a virtual data room, the following must be complied with:
- (a) The project bond issuer must appoint a VDR provider that has been approved by the JSE in accordance with paragraph 3.25.
  - (b) The project bond issuer must confirm the following in writing to the JSE before using a virtual data room:
    - (i) The project bond issuer will sign a non-disclosure agreement with any project bond investor that wishes to access the project bond issuer's virtual data room and will not require any further documents from the project bond investor before granting access to the virtual data room;
    - (ii) The project bond issuer will not withhold access to the virtual data room from any project bond investor;
    - (iii) The project bond issuer will ensure that all project bond investors have the ability to download and print all of the documents contained in the virtual data room and there will be no selective disclosure of or discriminatory access to the documents;
    - (iv) If the virtual data room has a question and answer facility, the project bond issuer will ensure that no price sensitive information or information material to the holders of project bonds listed on the project bond segment or to the financial or trading position of the project bond issuer (other than such information allowed to be disclosed in the VDR as described in paragraph 6.89 will be communicated through this facility;
    - (v) The project bond issuer/VDR provider will give the required individuals at the JSE and the FSCA administrator (or equivalent) access to the virtual data room; and

- (vi) The contact details for the individuals at the project bond issuer/VDR provider that will be responsible for ensuring the JSE's and FSCA's access and/or support in the event of a failure in the virtual data room.

#### *Approval of VDR Providers*

- 3.24 VDR providers must be approved by the JSE prior to their virtual data rooms being utilised. The JSE will publish a list on its website ([www.jse.co.za](http://www.jse.co.za)) of approved VDR providers.
- 3.25 Project bond issuers wishing to apply for approval for a VDR provider can do so via their submission for the registration of a placing document and the documentation detailed below must be provided. VDR providers can also apply directly to the JSE to be approved by submitting the following documentation:
  - (a) A copy of the ISO 27001 certificate confirming that the VDR provider is so accredited in respect of their entire virtual data room business.
  - (b) A letter confirming that the VDR provider's virtual data room has the following capabilities:
    - (i) The virtual data room is accessible on all major operating systems;
    - (ii) Documents can be uploaded to the data room in at least the following minimum formats: Microsoft Word, PowerPoint, Excel, PDF, JPEG and text;
    - (iii) There are no time restrictions on access to the information in the virtual data room;
    - (iv) Activity in the data room is tracked on an individual and document level and an automatic audit report of all activity is available. This audit report must include the date and time of the activity and the identity of the individual related to such activity;
    - (v) The documents will be version controlled;
    - (vi) Information can be stored and will be available in the virtual data room until such time as the project bond issuer deregisters their placing document from the JSE (i.e. no automatic deletion of documents will occur due to a particular time period being reached); and
    - (vii) Uploading and downloading of documents will be secure.

#### **Structured Products**

- 3.26 A structured product, save for asset-backed debt securities and securitisations, must be issued by a registered bank or financial services company (for the purposes hereof a company that is an authorised user as defined in the FMA, a long-term insurer as defined in the Long-term Insurance Act 1998, as amended, a short-term insurer as defined in the Short-term Insurance Act 1998, as amended).
- 3.27 Due to the complex nature of structured products, the JSE must be consulted at an early stage, save for (i) credit-linked notes, (ii) index-linked instruments, (iii) asset-backed debt securities and (iv) securitisations .
- 3.28 Issuers of structured products may make use of the virtual data room through the appointment of a VDR provider, on the same basis as Project Bonds above.

#### *Index-Linked Notes*

- 3.29 If the performance of the debt security relates to the performance of an index (other than inflation indices) and/or the calculation thereof, the index

calculator must be registered as such with the JSE and the index must be approved by the JSE. To register an index calculator or submit an index for approval, the applicant issuer must make application to the JSE confirming compliance with the criteria as set out in Section 19 of the JSE Listings Requirements.

#### *Asset-Backed Debt Securities*

- 3.30 Due to the complex nature of asset-backed debt security transactions, the JSE should be consulted at an early stage.
- 3.31 In relation to all asset-backed debt securities that do not fit within the definition of securitisations, a letter from the applicant issuer must be submitted to the JSE confirming, where applicable, the following:
- (a) that the applicant issuer is insolvency remote from the creditors of the originator/seller;
  - (b) that all assets have been transferred to or acquired by the applicant issuer and whether these assets have been registered in the name of the applicant issuer; and/or
  - (c) that the security structure is enforceable; or
  - (d) that the assets are held by a company, whose sole shareholder is a trust. The trust must be administered by trustees who are independent of the applicant issuer and represent the interests of the holders of the debt securities.

#### **Sovereign Issuer**

- 3.32 A sovereign issuer, in its capacity as issuer or guarantor, is not required to comply with Section 5.

### **Section 4 – Listing Particulars**

#### **Scope of section**

This section sets out the requirements relating to listing particulars.

The provisions dealing with listing particulars apply to all issuers of debt securities. It should be noted that subject to the type of debt instrument/issuer, additional or amended provisions dealing with listing particulars may apply. The heading of the type of debt instrument/issuer will specify whether additional or amended provisions apply. If there is no specific heading of the debt instrument/issuer in question, there are no additional or amended provisions applicable.

Secondary registered issuers may apply the Fast Track Listing Process, which will exempt secondary registered issuers from compliance with all the other provisions of this Section 4 below.

- 4.1 General
- 4.9 Content of the placing document and/or pricing supplement
- 4.10 Details of the applicant issuer
- 4.11 Terms and conditions to be included in the placing document
- 4.12 Details of the guarantee, trustee company and representatives
- 4.13 Taxation
- 4.14 Financial information
- 4.15 Responsibility
- 4.16 Documents available for inspection

- 4.17 Offering circular or pricing supplement
- 4.18 Rating agencies
- 4.19 Incorporation by reference
- 4.22 Additional or Amended Listing Particulars: Type of Debt Instrument/Issuer

#### **General**

- 4.1 The placing document and/or pricing supplement shall contain that minimum disclosure which an investor would reasonably require in order to be in a position to make an informed assessment of the nature and state of the applicant issuer's business, terms and conditions of the debt securities and most particularly its ability to effect agreed scheduled interest payments on debt securities and the repayment of the principal amount.
- 4.2 The placing document and other documentation required for the listing of debt securities in terms of the Debt Listings Requirements must be submitted to the JSE as detailed in the debt market process document available on the JSE website.
- 4.3 Approval for the registration of a programme memorandum or, in the case of a foreign issuer, the JSE supplement or listing of debt securities is subject to the submission to the JSE of all the documents required in terms of the Debt Listings Requirements or such documents as may be requested by the JSE prior to formal approval of the listing.
- 4.4 No placing document is to be made available to the investing community unless the JSE has granted formal approval or preliminary approval as per the debt market process document.
- 4.5 No placing document shall bear the words "final" unless such placing document has been formally approved by the JSE.
- 4.6 A placing document and/or pricing supplement must be signed as provided for in the Debt Listings Requirements and a signed copy submitted to the JSE before it is issued to the public.
- 4.7 All debt securities to be listed on the JSE shall be cleared and settled through CSDPs and the CSD or any other system approved by the JSE to perform electronic settlement of funds and scrip from time to time. All issuers are required to be admitted by the CSD and comply with the central securities depository rules.
- 4.8 The signed placing document must be available to the public via placement of the document on the JSE's and the new applicant's websites at least five business days before the listing date of the first instrument, unless otherwise agreed with the JSE. If the applicant issuer has a listing on the JSE, the placing document must be available on the JSE's and the applicant issuer's websites for at least three business days before the listing of the first instrument. If there is an update to the placing document, the updated placing document must be must be available on the JSE's and issuer's websites for at least two business days before the listing of the first instrument under the updated placing document. If the applicant issuer does not have a website, the placing document must be made available on a third party's website (for example, the arranger's website).

#### **Content of the placing document and/or pricing supplement**

- 4.9 The following details the requirements for disclosure that must be contained in the placing document and where stated, the pricing supplement.

#### **Details of the applicant issuer**

- 4.10 The following details of the applicant issuer must be included in the placing

document:

- (a) The applicant issuer's full name, registration number, date and place of incorporation or establishment and the primary contact of the applicant issuer together with their contact details. If the applicant issuer changed its name within the last year, the old name must be printed in bold type under the existing name on the cover page;
- (b) the full names of its directors and debt officer (or in the event that the applicant issuer is not a company, the persons with corresponding duties and powers as a director in relation to the applicant issuer) including –
  - (i) a brief CV of each director, including a list of all other companies of which he/she is a director (which may be incorporated by reference);
  - (ii) details of any bankruptcies, insolvencies or individual voluntary compromise arrangements of such person;
  - (iii) details of any business rescue plans and/or resolution proposed by any entity to commence business rescue proceedings, application having been made for any entity to begin business rescue proceedings, notices having been delivered in terms of Section 129(7) of the Act, receiverships, compulsory liquidations, creditors' voluntary liquidations, administrations, company voluntary compromise arrangements or any compromise or arrangement with creditors generally or any class of creditors of any company; where such person is or was a director, with an executive function within such company at the time of, or within the 12 months preceding, any such event(s);
  - (iv) details of any compulsory liquidations, administrations or partnership voluntary compromise arrangements of any partnerships where such person is or was a partner at the time of or within the 12 months preceding such event(s);
  - (v) details of receiverships of any asset(s) of such person or of a partnership of which the person is or was a partner at the time of, or within the 12 months preceding, such event;
  - (vi) details whether such person has ever been disqualified by a court from acting as a director of a company or from acting in the management or conduct of the affairs of any company;
  - (vii) details of any offence involving dishonesty committed by such person;
  - (viii) details of any convictions of any offence resulting in dishonesty, fraud, theft, forgery, perjury, misrepresentation or embezzlement;
  - (ix) details of ever being barred from entry into any profession or occupation;
  - (x) details of any convictions in any jurisdiction of any criminal offence, or an offence under legislation relating to the Companies Act. (All such convictions must be disclosed even though they may now be "spent convictions");
  - (xi) details regarding such person's removal from an office of trust, on the grounds of misconduct and involving dishonesty; and
  - (xii) details of any court order declaring such person delinquent or placing him under probation in terms of Section 162 of the Act and/or Section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984) or disqualifying him to act as a director in terms of Section 219 of the Companies Act, 1973 (Act No. 61 of 1973).

The details of paragraphs (ii)-(ix) must be applied equally to the

- corresponding events and laws in foreign jurisdictions, when applied to foreign directors.
- (c) the contact details of the debt officer appointed pursuant to Section 7;
  - (d) a general description of the business carried or to be carried on by the applicant issuer and its subsidiaries (if any), and where the applicant issuer or its subsidiaries will carry on two or more businesses that are material having regard to the profit and losses, assets employed, or to be employed, a general description of each such business;
  - (e) the full name of the applicant issuer's
    - (i) company secretary (if applicable). In relation to a company secretary where the issuer is not a company or is a foreign applicant issuer, disclosure must be made in relation to the person with corresponding powers and duties;
    - (ii) the address of the applicant issuer's offices and of the registered office (if a company, as defined in the Companies Act).
  - (f) the full name, registered office and contact details of the auditors, arrangers and debt sponsor/designated person;
  - (g) a description of material risks, which must be material to the applicant issuer. Proper consideration must be given to the material risks that face the applicant issuer and generic disclosures must be avoided. Material risks should be grouped together in a coherent manner and material risk considered to be of the most immediate significance should be prominent at the beginning within the material risk disclosure;
  - (h) details of the legislation under which the applicant issuer is incorporated or established and the legal form which it has adopted under that legislation;
  - (i) disclosure of the applicable corporate governance provisions pursuant to Section 7, depending on the type of debt securities/issuer;
  - (j) information on any legal or arbitration proceedings, including any proceedings that are pending or threatened, of which the applicant issuer is aware, that may have or have had in the recent past, being at least the previous 12 months, a material effect on the applicant issuer's financial position, or an appropriate negative statement; and
  - (k) a positive statement that the applicant issuer is –
    - (i) in compliance with the provisions of the Companies Act or legislation of establishment, specifically relating to its incorporation. If a foreign applicant issuer, the positive statement must be made in respect of its laws of incorporation; and
    - (ii) acting in conformity with its MOI or relevant constitutional documents.

#### **Terms and conditions to be included in the placing document**

- 4.11
- (a) A description of the types of debt securities that can be issued under the placing document;
  - (b) A detailed description of the interest calculation and payment methods applicable to all possible debt securities that can be issued under the placing document. The placing document must also include a statement that the interest amount will be announced on SENS at least three business days before the relevant interest payment date;
  - (c) A detailed description of the repayment and redemption provisions;
  - (d) Details of all covenants;



- (e) Details of the status of the debt securities that can be issued under the placing document e.g. senior, subordinated;
- (f) Details of the enabling provisions allowing the applicant issuer to repurchase debt securities from the holders of debt securities;
- (g) A description of the events of default including any remedy periods;
- (h) A provision for modifications to the placing document, pricing supplement, the terms and conditions of the debt securities, the guarantee, security or credit enhancement agreement (where applicable), as per the provisions of paragraph 6.56;
- (i) A statement of the law under which the debt securities are governed and
- (j) Details of the ability of holders of debt securities to call a meeting pursuant to paragraph 6.74.

#### **Details of the guarantee, trustee company and representatives**

- 4.12 (a) Where the debt security to be issued is subject to a security structure, guaranteed, secured and/or subject to credit enhancement, the placing document must include the following details:
- (i) A description of the salient terms of the security structure, guarantee, security and/or credit enhancement agreement;
  - (ii) the full name, registration number, registered address and general business of the entity providing the security structure, guarantee, security and/or credit enhancement;
  - (iii) the full names of the entity's directors (or in the event that the entity is not a company, the persons with corresponding duties and powers as a director in relation to the entity);
  - (iv) in relation to the entity providing a guarantee, information on any legal or arbitration proceedings, including any proceedings that are pending or threatened, of which the entity is aware, that may have or have had in the recent past, being at least the previous 12 months, a material effect on the entity's financial position, or an appropriate negative statement;
  - (v) the effective date of the security structure, guarantee, security and/or credit enhancement;
  - (vi) where a copy of the agreements related to the security structure, guarantee, security agreement and/or credit enhancement agreement can be obtained;
  - (vii) whether the security structure, guarantee, security and/or credit enhancement is conditional or unconditional and, if applicable, whether revocable or irrevocable;
  - (viii) the trigger events for the security structure, guarantee, security and/or credit enhancement to be utilised and the conditions under which payments are made thereunder; and
  - (ix) the placing document must make provision for approval of amendments (other than amendments of a technical nature, to correct a manifest error or to comply with mandatory provisions of any applicable laws) to the agreements relating to the security structure, guarantee (excluding amendments to the size of the guarantee consequent to a change in the authorised amount), security agreement and/or credit enhancement agreement by way of an extraordinary resolution or an extraordinary written resolution of holders of debt securities, in accordance with the provisions of paragraph 6.56; and



- (b) The following details of debenture/bond trustee company and/or representatives for the holders of debt securities, if applicable, must be included in the placing document:
  - (i) the full name and registered address of the debenture/bond trustee company and/or representative of the holders of debt securities, a summary of the main responsibilities of the debenture/bond trustee company and/or the conditions of the representation of the holders of debt securities and the terms or conditions under which the debenture/bond trustee company and/or the representative of the holders of debt securities may be replaced; and
  - (ii) a statement that the trust deed or the agreement entered into between the applicant issuer and the representative of the holders of debt securities will be available at the applicant issuer's registered office.

## **Taxation**

- 4.13 (a) A statement regarding whether the applicant issuer is required to gross up income payments where there is a withholding tax on the income from the debt securities (in the country of origin and South Africa in the case of a foreign applicant issuer registering a placing document with the JSE) or a negative statement; and
- (b) Details of any taxation imposed or levied on the applicant issuer as a result of the issue of the debt securities as required by law or a negative statement.

## **Financial information**

- 4.14 (a) The financial statements which the new applicant and the guarantor, if applicable, is required to disclose (as set out in Section 5) shall either be included in the placing document or incorporated by reference. The financial statements of the guarantor are not required to be incorporated by reference or included in the placing document if such guarantor does not currently have and will not in future have any operating assets.
- (b) A statement must be included in the placing document detailing any material change in the financial or trading position of the applicant issuer and its subsidiaries that has occurred since the end of the last financial period for which either audited annual financial statements or unaudited interim reports have been published and if this disclosure was reviewed and reported on by the applicant issuer's auditors, or an appropriate negative statement. (c) The name of the auditor or the Auditor General must be included in the placing document.
- (d) The audit report of the auditor or Auditor General, if applicable in terms of paragraph 5.3(c) of the Debt Listings Requirements, shall either be included in the placing document or incorporated by reference. If such audit report of the auditor is a modified auditor's report, details of the nature of such modification shall also be stated therein.

## **Responsibility**

- 4.15 (a) The placing document must include the following statement, only modified where documents are not applicable\*: "The issuer certifies that to the best of its knowledge and belief there are no facts that have been omitted which would make any statement false or misleading and that all reasonable enquiries to ascertain such facts have been made as well as that the placing document contains all information required by law and the Debt Listings Requirements. The issuer accepts full responsibility for the accuracy of the information contained in the placing document and the annual financial statements and/or\* the

pricing supplements, and/or\* the annual report and any amendments or supplements to the aforementioned documents, except as otherwise stated therein”.

- (b) The following limitation of liability provision must be included in the placing document, only modified where documents are not applicable\*: “The JSE takes no responsibility for the contents of the placing document and the annual financial statements and/or\* the pricing supplements and/or\* the annual report of the issuer and any amendments or supplements to the aforementioned documents. The JSE makes no representation as to the accuracy or completeness of the placing document and the annual financial statements and/or\* the pricing supplements and/or\* the annual report of the issuer and any amendments or supplements to the aforementioned documents and expressly disclaims any liability for any loss arising from or in reliance upon the whole or any part of the aforementioned documents. The JSE’s approval of the registration of the placing document and listing of the debt securities is not to be taken in any way as an indication of the merits of the issuer or of the debt securities and that, to the extent permitted by law, the JSE will not be liable for any claim whatsoever.”

### **Documents available for inspection**

- 4.16 (a) The placing document must include a statement that the following documentation will be available for inspection at the registered office of the issuer for as long as the placing document remains registered with the JSE:
- (i) the current placing document;
  - (ii) any supplementary documents published since the current placing document was published;
  - (iii) any pricing supplements (with respect to outstanding issues);
  - (iv) any document incorporated into the placing document by reference;
  - (v) the annual financial statements and interim financial statements (if applicable) of the issuer;
  - (vi) the annual financial statements and interim financial statements (if applicable) of the guarantor, if applicable. The financial statements of the guarantor is not required if such guarantor has no operating assets;
  - (vii) the constitutional documents of the issuer, if applicable;
  - (viii) the guarantee, if applicable;
  - (ix) the agreements in relation to the security structure, security agreement and/or credit enhancement agreement, if applicable; and
  - (x) the corporate governance policies applicable pursuant to Section 7.
- (b) The placing document must include a statement that the documentation referred to in paragraph 4.16(a)(i)-(iii) will be made available on the JSE’s website and all the documents referred to in paragraph 4.16 will be made available on the issuer’s website.

### **Offering circular or pricing supplement**

- 4.17 The offering circular or a pricing supplement relating to a specific issue of a debt security under a registered programme memorandum (or in the case of a foreign issuer, under the JSE supplement) must provide an investor with sufficient information, including the full terms and conditions of that debt

security, for an investor to fully understand the debt security and must include as a minimum, if applicable, the following:

- (a) instrument code;
- (b) issue date;
- (c) issue price;
- (d) nominal value;
- (e) ISIN;
- (f) interest commencement date;
- (g) dates and method for interest calculation;
- (h) if several interest rates are provided for, an indication of the conditions that will trigger the changes in the interest rate;
- (i) interest payment dates;
- (j) coupon rate (limited to three decimals);
- (k) the type of debt security to be issued (e.g. fixed rate, floating rate, zero coupon, etc.);
- (l) base CPI for inflation-linked instruments;
- (m) last day to register;
- (n) books closed period;
- (o) redemption/maturity date and the legal final maturity date, if different to the maturity date;
- (p) total nominal value of debt securities in issue;
- (q) a statement that the authorised amount, if applicable, has not been exceeded;
- (r) name and date of the placing document;
- (s) business day convention;
- (t) final amount payable on maturity if different from nominal value;
- (u) where the instrument is linked to a listed equity security, the name and ISIN of that instrument;
- (v) credit rating for the applicant issuer, guarantor or debt security, if applicable;
- (w) the arrangements for the amortisation of the debt securities, if any, including the repayment schedules;
- (x) the names and business addresses of the paying agent, calculation agent and settlement agent;
- (y) if applicable, a statement that exchange control approval has been granted to the applicant issuer for the listing of the debt securities;
- (z) a material change statement in the form detailed in paragraph 4.14(b) above;
- (aa) responsibility statement by the applicant issuer complying with paragraph 4.15(a) and (b);
- (bb) any additional terms or conditions not disclosed in the placing document;

(cc) The following definitions must be included in the pricing supplement:

**"Interest Period/s"** means each period commencing on (and including) an Interest Payment Date and ending on (but excluding) the following Interest Payment Date; provided that the first Interest Period will commence on (and include) the interest commencement date and end on (but exclude) [the following Interest Payment Date / state specific Interest Payment Date] (each Interest Payment Date as adjusted in accordance with the applicable Business Day Convention);

**"Interest Payment Date/s"** means [please insert the specific interest payment dates of each calendar year] or, if such day is not a Business Day, the Business Day on which the interest will be paid, as determined in accordance with the applicable Business Day Convention (as specified in this Applicable Pricing Supplement); and

**"Interest Rate Determination Date/s or Reset Dates"** means [please insert the interest rate determination date/s or reset dates of each interest period for example, the auction date for the first Interest Period and thereafter the first business day of each Interest Period];

(dd) For all debt securities which will be automatically redeemed on the occurrence of a trigger event, the applicant issuer must include a statement in the pricing supplement that the early redemption date of the debt security will be a minimum of five business days after the date on which the trigger event occurred and such early redemption date will be announced on SENS, in accordance with the timetable set out in Schedule 4, Form A5, paragraph 3. For the purposes of this paragraph 4.17(dd), the following definition shall apply:

**"trigger event"** means an event that precipitates an automatic redemption in relation to the debt security as defined in the placing document (for example, when the reference index reaches a particular index level); and

(ee) any other relevant information.

## **Rating agencies**

4.18 An applicant issuer or the guarantor of the applicant issuer's debt securities is not required to use the services of a credit rating agency. Should the applicant issuer or the guarantor of the applicant issuer's debt securities elect to utilise the services of a credit rating agency and formally accepts the rating given to the applicant issuer, the guarantor or the applicant issuer's debt securities, such rating must be included in the offering circular or the pricing supplement.

## **Incorporation by reference**

4.19 The information referred to in paragraph 4.20 below may be incorporated by reference in the placing document, provided that any information incorporated by reference:

- (a) must be the most recent available to the applicant issuer. Any information that has changed since publication and prior to the last practicable date of the placing document may be incorporated by reference, provided that such changes are appropriately disclosed in the placing document; and
- (b) must be disclosed under a separate heading to enable holders of debt securities and prospective investors to easily identify specific items of information incorporated by reference:
  - (i) the following statement must be made, that:
    - (aa) the information can be accessed on the applicant issuer's website (also specifying the route to same); and
    - (bb) the information is available for inspection at the

registered office or other designated office of the applicant issuer at no charge, for so long as the placing document remains registered with the JSE.

- 4.20 Subject to paragraph 4.19, the information required by the following paragraphs of the Debt Listings Requirements may be incorporated by reference:
- (a) 4.10(b);
  - (b) 4.10(c);
  - (c) 4.10(d);
  - (d) 4.10(e)
  - (e) 4.10(g);
  - (f) 4.10(i);
  - (g) 4.12(a)(ii);
  - (h) 4.12(a)(iii);
  - (i) 4.14(a); and
  - (j) 4.14(c).
- 4.21 A placing document that contains the above-mentioned information that has been incorporated by reference, does not need to be updated as per paragraph 6.54 of the Debt Listings Requirements however, if such information incorporated by reference has become outdated, the link to the updated information incorporated by reference must be announced on SENS prior to the updated information being available on the applicant issuer's website.

#### **Additional or Amended Listing Particulars: Type of Debt Instrument/Issuer**

- Sustainability Segment;
- Transition Segment
- Structured Products;
  - o Securitisations;
  - o Asset-Backed Debt Securities;
  - o Credit-Linked Notes;
  - o Index-Linked Notes;
- Project Bonds;
- Sovereign Issuer; and
- Secondary Registered Issuers.

The provisions below must be applied in addition to Section 4 above, to the extent applicable relating to the debt instrument/issuer.

#### ***Sustainability Segment***

##### ***Sustainability Use of Proceeds Debt Securities***

- 4.22 The placing document published in connection with the issue of these debt securities must, over and above the information required pursuant to Section 4, include the following additional information in order to qualify for the sustainability segment:

- (a) the full name, address and contact details of each independent external reviewer;
- (b) disclosure on the use of proceeds which must explain how such proceeds will be managed and allocated to, and how the applicant issuer will report annually on the use of proceeds and the impact, in each case, in adherence with the use of proceeds standards until the proceeds of the issue of the relevant sustainability use of proceeds debt securities have been fully allocated; and
- (c) a complete review report through means of a second party opinion from an independent external reviewer. The report must opine on whether the debt securities adhere to the use of proceeds standards.

This information can also be incorporated by reference and must then be made available on the applicant issuer's website. The information must be available on the website of the issuer at least five business days before the issue date.

### ***Sustainability-Linked Debt Securities***

4.23 The placing document published in connection with the issue of these debt securities must, over and above the information required pursuant to Section 4, include the following additional information in order to qualify for the sustainability segment:

- (a) the full name, address and contact details of each independent external reviewer;
- (b) disclosure that the sustainability-linked debt securities incorporate forward-looking ESG outcomes pursuant to the sustainability-linked standards;
- (c) disclosure of the alignment of the sustainability-linked debt securities with the core components pursuant to the sustainability-linked standards; and
- (d) a complete review report through means of a second party opinion from an independent external reviewer. The report must opine on whether the debt securities adhere to the sustainability-linked standards.

This information can also be incorporated by reference and must then be made available on the applicant issuer's website. The information must be available on the website of the applicant issuer at least five business days before the issue date.

### ***Transition Segment***

#### ***Transition Debt Securities***

4.24 The placing document published in connection with the issue of these debt securities must, over and above the information required pursuant to Section 4, include the following additional information in order to qualify for the transition segment:

- (a) the full name, address and contact details of each independent external reviewer;
- (b) specify whether the transition debt securities are either -
  - (i) sustainability use of proceeds debt securities; or
  - (ii) sustainability-linked debt securities;
- (c) depending on the form of the debt securities as specified in paragraph (b) above, the information and disclosures required by the Debt Listings Requirements in respect of such debt securities;
- (d) disclosure of the effective disclosure practices; and

- (e) disclosure of public commitments to Paris Agreement goals.

This information can also be incorporated by reference and must then be made available on the applicant issuer's website. The information must be available on the website of the applicant issuer at least five business days before the issue date.

## **Structured Products**

### *Securitisations*

4.25 The placing document or pricing supplement published in connection with the issue of debt securities in a securitisation must, over and above the information required above, include the following additional information where applicable:

- (a) a general description of the underlying assets/rights forming the subject matter of the securitisation specifying at least the following, where applicable:
  - (i) the legal jurisdiction(s) where the assets are located;
  - (ii) the title/recourse to the assets;
  - (iii) the eligibility criteria for the selection of the assets must be fully stated in the placing document or pricing supplement and a statement must be included that any amendments to the eligibility criteria will require approval from holders of debt securities in accordance with paragraph 6.56;
  - (iv) the number and value of the assets in the pool;
  - (v) the seasoning of the assets;
  - (vi) the level of collateralisation;
  - (vii) rights of the applicant issuer or seller/originator to substitute the assets and the qualifying criteria;
  - (viii) the treatment of early amortisation/pre-payments of the assets; and
  - (ix) the general characteristics and descriptions of the underlying assets, providing the details where applicable as contained in Schedule 4 Form A3 available on the JSE website; and
- (b) details on the following:
  - (i) a description of the sale or transfer of the assets or assignment of any rights in the assets to the applicant issuer, indicating the extent of the right of recourse to the originator or seller of the assets;
  - (ii) a description of the structure and a flow diagram of the structure;
  - (iii) an explanation of the flow of funds stating:
    - (1) how often payments are collected in respect of the underlying assets (e.g. daily/monthly/quarterly, etc.);
    - (2) a description of all fees payable by the applicant issuer and the amounts payable;
    - (3) the order of priority of payments made by the applicant issuer;
    - (4) details of any other arrangements upon which payments of interest and principal to holders of debt securities are dependent; and

- (5) an indication of where potential material liquidity shortfalls may occur and plans to cover potential shortfalls;
- (iv) information regarding the accumulation of surpluses in the applicant issuer and an indication of the investment criteria for the investment of any liquidity surpluses;
- (v) details of any interest held in the debt securities by the originator; and
- (vi) the name, address, description and significant business activities of:
  - (1) the originator of the underlying assets to the securitisation;
  - (2) the seller of the underlying assets to the securitisation (if different to the originator); and
  - (3) the servicing agent or equivalent. A summary of the servicing agent's responsibilities and a summary of the provisions relating to the appointment or removal of the servicing agent and back-up servicing agent and their details must also be included in the placing document or pricing supplement.

4.26 The following information, as required by paragraph 4.25, can instead be included in the report produced by issuers for its investors, provided that the website (where such report will be available) must be included in the placing document or pricing supplement and such report must be available on the relevant website at least 1 business day before the issue date:

- (a) 4.25(a)(iv);
- (b) 4.25(a)(v);
- (c) 4.25(a)(vi);
- (d) 4.25(a)(ix); and
- (e) 4.25(b)(iii)(1).

#### *Asset-Backed Debt Securities*

4.27 These paragraphs govern the disclosure requirements for issuers issuing asset-backed debt securities that do not fall within the definition of a securitisation.

4.28 The placing document or pricing supplement published in connection with the issue of debt securities in asset-backed debt securities must include the following additional information where applicable:

- (a) Applicant issuers must ensure that the website addresses where the financial information of the issuing entities of the underlying assets, excluding sovereign issuers, as referred to in paragraph 4.28(b)(ix), are included in the pricing supplement, offering circular or the report produced by issuers for its investors. If this information is included in the report produced by issuers for its investors, the pricing supplement or offering circular must include the URL address where the report produced by issuers for its investors will be available; and
- (b) the pricing supplement, offering circular or report produced by issuers for its investors must indicate if the proceeds of the debt security issue will be used to acquire underlying assets and if so, the date on which the assets will be transferred to the issuer. If this information is included in the report produced by issuers for its investors, the pricing supplement or offering circular must include the URL address where the report produced by issuers for its investors will be available;

4.29 For asset-backed debt securities, which will be backed by a pool of fungible financial assets and where no obligor accounts for more than 10% of the



value of the assets the placing document or pricing supplement published in connection with the issue of the debt securities must, over and above the information required as per Section 4, include the following additional information (where applicable):

- (a) all the information required by paragraph 4.25. The information required by paragraphs 4.25(a)(iv), 4.25(a)(v), 4.25(a)(vi), 4.25(a)(ix) and 4.25(b)(iii)(1) can instead be included in the report produced by issuers for its investors, provided that the website (where such report will be available) must be included in the placing document or pricing supplement and the report produced by issuers for its investors must be available on the relevant website at least 1 business day before the issue date; and
- (b) details on the following:
  - (i) the names and addresses and brief description of:
    - (1) the provider/s of material forms of credit enhancement. Details of the credit enhancement provided must also be included in the placing document; and
    - (2) the provider/s of liquidity facilities. Details of the liquidity facility provided must also be included in the placing document.

4.30 For asset-backed debt securities, other than those described in paragraph 4.29, with debt securities as the underlying instruments, the placing document or pricing supplement published in connection with the issue of the debt securities must, over and above the information required as per Section 4, include the following additional information (where applicable):

- (a) all the information required by paragraphs 4.25(a)(i) to (iv), (vii) and (viii), 4.25(b) and 4.29(b). The information required by paragraphs 4.25(a)(iv), and 4.25(b)(iii)(1) can instead be included in the report produced by issuers for its investors, provided that the website (where such report will be available) must be included in the placing document or pricing supplement and such report must be available on the relevant website at least 1 business day before the issue date;
- (b) for each underlying asset that accounts for 10% or more of the total value of the underlying assets, the following must be disclosed:
  - (i) the name of the issuing entity of the underlying asset;
  - (ii) the maturity date;
  - (iii) payment periods (e.g. daily/monthly/quarterly/etc.);
  - (iv) whether the asset is amortising or not;
  - (v) the nominal value;
  - (vi) the financial year-end of the issuing entity of the underlying asset;
  - (vii) if there is a physical asset to which the financial asset is related, information on the physical asset must also be disclosed;
  - (viii) if the asset is guaranteed, details of the guarantor must be included; and
  - (ix) if the issuing entity of the underlying asset:
    - (1) is listed on the Main Board or Interest Rate Market of the JSE, a statement must be included that the financial information of such entity will be available on such entity's website or a third party's website (for example the arranger's website). If available on a third party's website,

then the website address of such third party's website must be included;

- (2) is not listed on the JSE but is listed on another exchange and has its financial information available on its or a third party's website, a statement must be included that the financial information of such entity will be available on such entity's website or a third party's website and the website address for such website must be included; or
- (3) is not listed on the JSE but is guaranteed and the guarantee complies with the following provisions:
  - (aa) the guarantee is an irrevocable, unconditional guarantee, with the guarantor(s) being jointly and severally liable for the issuing entity's obligations in terms of the underlying assets;
  - (bb) the guarantee is an irrevocable, unconditional guarantee with the guarantor(s) being jointly and severally liable for the punctual performance by the issuing entity of its obligations e.g. amount due on interest and nominal;
  - (cc) the guarantee states that the guarantor(s) shall immediately on written demand pay the amount due by the issuing entity as if it was the principle obligor; and
  - (dd) the guarantee states that guarantor(s) will immediately pay on written demand any amount due but not paid by the issuing entity in terms of its obligations with no waiting period,

then the financial information of the issuing entity can be replaced by the financial information of the guarantor. The applicant issuer must confirm to the JSE that the guarantee complies with the above provisions and that the process to enforce the guarantee is seamless and with no waiting period. A statement must be included in the placing document, pricing supplement or the report produced by issuers for its investors that the guarantee will be made available at the registered address of the applicant issuer and the financial information of the guarantor will be available on the guarantor's website or a third party's website and the website address for such website must be included; or

- (4) if the issuing entity of the underlying asset is not listed on any exchange or guaranteed, a statement must be included that the financial information of such entity will be available on the issuer's or a third party's website and the website address for such website must be included. The financial information must be available within six months of the financial year-end of the underlying entity;
- (c) where there is no asset that accounts for 10% or more of the total value of the underlying assets, the general characteristics and description of the underlying assets, providing the details where applicable as required in Schedule 4 Form A3, which is available on the JSE website;
  - (d) the weighted average time to maturity;
  - (e) the weighted average interest rate unless there is only a single underlying asset, in which case the interest cover ratio must be provided; and
  - (f) where the underlying assets have been provided with a public credit

rating, such credit rating with respect to the underlying assets must be disclosed.

4.31 For asset-backed debt securities with equity securities as the underlying instruments:

- (a) These instruments must:
  - (i) have underlying assets that are listed on the JSE, unless otherwise agreed to by the JSE;
  - (ii) have underlying assets which are minority interests and must not confer legal or management control of the companies; and
  - (iii) in respect of each underlying asset that accounts for 10% or more of the total market value of the underlying assets, the financial information of the company related to such asset must be available on a website; and
- (b) The following information, where applicable, must be disclosed in either the placing document or pricing supplement over and above the information required as per Section 4:
  - (i) details of the underlying assets, including but not limited to the following. The following information can also be included in the report produced by issuers for its investors, the website where such report will be available must be included in the placing document or pricing supplement and the report produced by issuers for its investors must be available on the relevant website at least 1 business day before the issue date:
    - (1) number of assets held;
    - (2) total market value of the assets and total costs or projected costs of the assets, if different to the total market value;
    - (3) historical financial performance of the assets for the past 12 months;
    - (4) all the information required by paragraphs 4.25(a)(i) to (iii) and (vii); and
    - (5) for each underlying asset that accounts for 10% or more of the total market value of the underlying assets, the following details must be disclosed:
      - (aa) the name of the issuing entity of the underlying asset and ISIN;
      - (bb) the financial year-end of the issuing entity;
      - (cc) the exchange that the issuing entity is listed on;
      - (dd) the percentage of equity held as a proportion of the listed issuing entity's total issued shares;
      - (ee) the market value of the equity held by the applicant issuer (as at the last practicable date prior to finalisation of the placing document or pricing supplement);
      - (ff) the cost of the asset or projected cost; and
      - (gg) the website address where the financial information of the issuing entity can be obtained;
  - (ii) all the information required by paragraphs 4.25(b)(ii) to (iv) and (vi) and 4.29(b)(i)(2);

- (iii) the dividend/interest payment policy;
- (iv) how corporate actions in the underlying asset/s or affecting the underlying asset/s will influence the rights of the holders of debt securities; and
- (v) whether or not the holders of debt securities will receive any distributions receivable on the underlying asset/s and the frequency thereof.

#### *Credit-Linked Notes*

4.32 The placing document or pricing supplement published in connection with the issue of debt securities as credit-linked notes must, over and above the general information required in this section, include the following additional information where applicable:

- (a) the name of the reference entity, reference index and/or the reference obligation;
- (b) the characteristics and ISIN of the reference obligation, if applicable; and
- (c) if the issuing entity of the reference obligation (or if there is no reference obligation, the reference entity):
  - (i) is listed on the Main Board or Interest Rate Market of the JSE, no additional information needs to be provided;
  - (ii) is not listed on the JSE but is guaranteed, a statement that the financial information of the guarantor will be available on the guarantor's website and the website address must be included; or
  - (iii) does not fall within (i) or (ii) above, a statement that the financial information of the issuing entity, excluding sovereign issuers, of the reference obligation (or if there is no reference obligation the reference entity, excluding sovereign issuers) will be available on the issuing entity's or reference entity's website and the website address must be included. The financial information must be available within six months of the financial year-end of the underlying entity;

#### *Index-Linked Notes*

4.33 The placing document or pricing supplement published in connection with the issue of debt securities linked to the performance of an index must, over and above the general information required in this section, include the following additional information where applicable:

- (a) The name, code and currency of the index;
- (b) The name of the index sponsor and index calculator;
- (c) The website address where the index's ground rules document is available;
- (d) A statement that any changes to the index methodology will be published on SENS and communicated to the JSE;
- (e) A statement that all other changes as detailed in the ground rules document will be published on the index calculator's website and the website address must be included;
- (f) A statement confirming how often the level of the index is published (for example daily, monthly) and the website address where the level of the index is published; and
- (g) If there are other indices underlying the index being referenced, the ground rules document of the underlying indices must be publicly

available. The pricing supplement or offering circular must include:

- (i) a list of the indices underlying the referenced index;
- (ii) a statement confirming how often the level of each of these indices are published; and
- (iii) the website address where the level for each of those indices is published;

### **Project Bonds**

4.34 Project bond issuers are required to disclose all of the information required by Section 4. In addition the following information must be included in the placing document:

- (a) If any of the information detailed in paragraph 5.19 is submitted to the JSE, the placing document must incorporate this information by reference and a statement must be included detailing the website where this information will be available.
- (b) The legal agreements that relate to the cash flow earned on the project (for example off-take agreements, operation and maintenance agreements, engineering, procurement and construction contracts and tariff agreements) must be incorporated by reference in the placing document and a statement must be included detailing the website where these agreements will be available.
- (c) The following documents, where applicable, must be incorporated by reference in the placing document and a statement must be included detailing the website where these documents will be available:
  - (i) The inter-creditor agreement;
  - (ii) Any licenses obtained;
  - (iii) Concession agreement;
  - (iv) Environmental authorisations;
  - (v) Technical adviser's studies or reports.
- (d) Information on the project, where applicable:
  - (i) A structure/flow diagram detailing the relevant parties to the project.
  - (ii) An explanation of the flow of funds/priority of payments including information on the trapping of cash and the permitted investments for any excess cash.
  - (iii) The legal jurisdiction where the project assets are located.
  - (iv) The information required by Schedule 4, Form A4. This information can either be included in the placing document or incorporated by reference. If the information is incorporated by reference, it must be available on a website and this website be stated in the placing document. Where any information required by Section 4 is duplicated in Schedule 4, Form A4, the placing document can reference Schedule 4, Form A4.
  - (v) Information on any liquidity facilities and the name and address of the provider thereof.
- (e) The name and address of the project sponsor, the obligations of the project sponsor and any restrictions on the project sponsor (e.g. restrictions on selling their equity stake, etc.).
- (f) Where there is a controlling creditor that has the right to amend certain

terms and conditions, the name and address of the controlling creditor must be provided and the circumstances in which they can exercise their rights must be fully described in the placing document. All other amendments must be done in compliance with paragraph 6.56.

- (g) Funding advances required by the project bond investor over time, if applicable, including the dates and amounts required and that these are subject to amendment only with approval from the controlling credit / holders of the project bonds in accordance with paragraph 6.56.

### ***Sovereign Issuer***

- 4.35 Material risk and the sensitivity of the issue of debt securities to such risk factors pursuant to paragraph 4.10(g) must be addressed in respect of country/government risk.
- 4.36 The placing document must make provision for modifications to the placing document, pricing supplement, the terms and conditions of the debt securities, the guarantee, security or credit enhancement agreement (where applicable), as per the provisions of paragraph 6.56.

### ***Secondary Registered Issuers***

- 4.37 Secondary registered issuers can apply the Fast Track Listing Process below, in lieu of compliance with all of the provisions of Section 4 above.

#### ***Fast track listing process***

- 4.38 Secondary registered issuers can use the following fast track listing process in order to register a placing document with the JSE.

#### ***Registration of a placing document***

- 4.39 Secondary registered issuers utilising this fast track listing process must appoint either a debt sponsor or designated person, in accordance with the requirements detailed in Section 2, prior to the first submission of the placing document.
- 4.40 To register a placing document on the Interest Rate Market of the JSE, secondary registered issuers must comply with the following:
  - (a) The secondary registered issuer must provide the documents detailed in paragraph 8.10 to the JSE, in accordance with the procedures detailed in paragraph 8.2 and the debt market process document.
  - (b) The JSE supplement, as required by paragraph 8.10(e), must contain:
    - (i) a statement regarding withholding tax, in accordance with paragraph 4.13(a);
    - (ii) a material change statement, in accordance with paragraph 4.15(b);
    - (iii) a responsibility statement, in accordance with paragraph 4.15(a);
    - (iv) a limitation of liability statement, in accordance with paragraph 4.15(b);
    - (v) a statement that the placing document, pricing supplements (or equivalent thereof) and the financial statements (including the annual report, if produced) of the secondary registered issuer will be available on the secondary registered issuer's website for the duration that the JSE supplement remains registered with the JSE;
    - (vi) if the debt securities are guaranteed, a statement that the guarantor's financial statements will be available at the secondary registered issuer's registered office;

- (vii) if there is a pro forma applicable pricing supplement (or the equivalent thereof) included in the prospectus, the necessary amendments thereto to ensure compliance with paragraphs 4.17, 4.18 and 8.8; and
  - (viii) as an annexure or incorporated by reference, the prospectus.
- (c) The JSE will accept the financial information of the secondary registered issuer, as required by paragraph 8.10(f), if it is prepared in accordance with the following accounting frameworks:
  - (i) IFRS;
  - (ii) United States GAAP;
  - (iii) Australian GAAP;
  - (iv) Canadian GAAP; or
  - (v) such other accounting framework acceptable to the JSE, in its discretion.
- (d) The signed placing document must be available on the secondary registered issuer's and the JSE's website at least three business days before the issue date of the first debt security.

#### *Listing of a debt security*

4.41 Prior to the listing of a debt security on the Interest Rate Market of the JSE, the secondary registered issuer must comply with the following:

- (a) The secondary registered issuer must submit to the JSE, via its debt sponsor or designated person, its applicable pricing supplement (or equivalent thereof) for approval by the JSE, in accordance with the timetable detailed in the debt market process document.
- (b) The applicable pricing supplement must comply with the following paragraphs:
  - (i) 3.29;
  - (ii) 4.11 (only if applicable to the class of debt securities being issued and not all debt securities in issue);
  - (iii) 4.16 (please note that information as required in terms of paragraph 4.25 that is already contained in the prospectus does not need to be repeated in the applicable pricing supplement);
  - (iv) 8.8; and
  - (v) 4.18 (if applicable).
- (c) The secondary registered issuer can only list debt securities denominated in South African Rands or such other currency as the JSE in its discretion may determine.
- (d) The signed pricing supplement must be available for inspection at the secondary registered issuer's registered office, website and on JSE's website at least 1 business day before the issue date of the debt security.

## **Section 5 – Financial Information**

### **Scope of section**

This section sets out the requirements relating to financial information.

The provisions dealing with financial information apply to all issuers of debt securities. It should be noted that subject to the type of debt instrument/issuer, additional or



amended provisions dealing with financial information may apply. The heading of the type of debt instrument/issuer will specify whether additional or amended provisions apply. If there is no specific heading of the debt instrument/issuer in question, there are no additional or amended provisions applicable.

- 5.1 General
- 5.2 Financial statements
- 5.7 Contents of financial information
- 5.9 Report of the independent auditor
- 5.10 Profit forecasts and estimates
- 5.18 Additional or Amended Financial Information: Type of Debt Instrument/Issuer

### **General**

- 5.1 The information referred to in this section may be included in the placing document or incorporated by reference in the placing document at the time of registration of the placing document.

### **Financial statements**

- 5.2 The financial statements referred to in paragraph 5.3 below shall be prepared in accordance with IFRS or any other acceptable accounting framework as determined in consultation with the FCSA.
- 5.3 A new applicant which makes application for the registration of a placing document must have published and submitted financial statements which:
  - (a) have been prepared in accordance with paragraph 5.2 and in respect of at least the last three financial years (except as provided for in paragraphs 5.4 and 5.5) and the latest published audited financial statements of such new applicant must be in respect of a period ended not more than 15 months before the date of the placing document. If more than 9 months have lapsed since the last financial year-end on the signature date of the placing document, interim financial statements, prepared in accordance with IAS34, must be submitted to the JSE. A review opinion is required on the interim financial statements;
  - (b) have been prepared in accordance with the Companies Act or other appropriate legislation; and
  - (c) have been independently audited by an auditor that has been accredited by the JSE pursuant to paragraph 6.22. If the financial statements of the new applicant for the latest financial year-end have not been audited by such an auditor, then the appointed auditor, that has been accredited by the JSE pursuant to paragraph 6.22, must issue an audit report in respect of such latest period, dated the day the placing document is submitted to the JSE for formal approval.
- 5.4 Notwithstanding paragraph 5.3, financial statements of a new applicant relating to a period shorter than three years may be accepted if the new applicant submits a dispensation request to the JSE and the JSE is satisfied that:
  - (a) the acceptance of financial statements of the new applicant for such shorter period is in the interests of the new applicant and will not prejudice the interests of investors and that investors have sufficient information available to arrive at an informed assessment concerning the financial position and affairs of the new applicant and the debt securities for which the listing is sought; or
  - (b) in the case of the new applicant being a property company, a two year profit forecast (for the year in which the programme is registered and one full year thereafter) has been prepared and reported on by the

auditor in accordance with provisions of this Section 5.

- 5.5 New applicants that do not have the financial history required by 5.3 and that wish to register a placing document for the issuance of debt securities that will be guaranteed debt securities and the guarantor complies with 5.3 or will be asset-backed debt securities, must submit to the JSE:
- (a) a letter from the auditor, confirming the dormancy of the new applicant and that no liabilities have been created; or
  - (b) if more than 18 months have lapsed since the date of incorporation of the new applicant or more than 6 months have lapsed since the financial year-end of the new applicant, audited annual financial statements of the new applicant.
- 5.6 If the applicant issuer is a wholly-owned subsidiary of the guarantor and is only a funding/financing arm of the guarantor, the applicant issuer is not required to provide the information requested in paragraph 5.5 above or the financial information required in paragraphs 6.14 and 6.15. The applicant issuer is required to provide the financial information of the guarantor, which information must comply with paragraphs 5.2 and 5.3. The applicant issuer must also provide the guarantor's financial information on an ongoing basis, in accordance with paragraph 6.16.

### **Contents of financial information**

- 5.7 The financial information prepared by the applicant issuer in accordance with IFRS must also include:
- (a) details of any material post balance sheet events occurring subsequent to the issue of the latest audited financial statements; and
  - (b) disclosure of the applicable corporate governance provisions pursuant to Section 7, depending on the type of debt securities/issuer.
- 5.8 The information required by paragraph 5.7(b) above can be incorporated by reference in the financial information prepared by the applicant issuer, in accordance with the provisions contained in Section 4.

### **Report of the independent auditor**

- 5.9 The auditor's report contained in the applicant issuer's audited annual financial statements or the audit report provided by the auditor as per paragraph 5.3(c) must comply with ISA and must include the following:
- (a) scope of the audit; and
  - (b) audit opinion.

### **Profit forecasts and estimates**

- 5.10 An applicant issuer is not obliged to include profit forecasts or profit estimates in any placing documents, pricing supplements or any other information produced by the issuer for consumption by external parties (hereinafter referred to as "**public documentation**"). If the applicant issuer chooses to include a profit forecast or profit estimate in its public documentation, the following requirements have to be complied with. The requirements apply equally to forecasts or estimates of profits or losses, cash flows or net asset values ("collectively defined as 'profits or losses'") of an applicant issuer or an undertaking that is to become a material part of an applicant issuer's group.
- 5.11 Any statement or information relating to the future prospects of an applicant issuer or an undertaking that is to become a material part of an applicant issuer's group, must be clear and unambiguous. The applicant issuer must determine in advance with its debt sponsor or designated person whether such a statement of information will constitute a profit forecast or an estimate. Any profit forecast or estimate must be presented in an explicit

manner and must be compiled with using accounting policies applied by the applicant issuer.

- 5.12 A dividend forecast must be treated as a profit forecast where the applicant issuer has a known policy of relating dividends to earnings, or has an insufficient level of retained earnings, or the forecast otherwise implies a forecast of profit. In the event of uncertainty the JSE must be consulted.
- 5.13 In the event of an applicant issuer including a profit forecast or estimate in its public documentation, it must either:
- (a) produce and submit to the JSE a profit forecast or estimate and auditor's report thereon in accordance with:
    - (i) ISAE 3400 – The Examination of Prospective Financial Information and the South African Institute of Chartered Accountants Revised Guide on Forecasts, in respect of profit forecasts; or
    - (ii) ISAE 3000 – Assurance Engagements other than Audits or Reviews of Historical Financial Information, in respect of the estimate; or
  - (b) include a statement in the announcement advising holders of debt securities that the forecast financial information has not been reviewed and reported on by the applicant issuer's auditors in accordance with 5.13(a).
- 5.14 The JSE reserves the right to insist on sign-off by the auditor in accordance with paragraph 5.13(a) where it believes that it would be in the interest of holders of debt securities.
- 5.15 The period of the forecast or estimate should normally be to the end of the financial period. If it is not, then the period of the forecast or estimate must be in respect of a period for which the results will be published, or the applicant issuer must make a new forecast for such a period.
- 5.16 A profit forecast or estimate included by the issuer in its public documentation and reported on by an auditor in accordance with paragraph 5.13(a)(i) or (ii), must include a statement of the principal assumptions for each factor that would have a material effect on the achievement of the forecast or estimate. These assumptions must:
- (a) be clearly segregated between assumptions about factors that the directors can influence and assumptions about factors that are exclusively outside the influence of the directors;
  - (b) be readily understandable by investors;
  - (c) be specific about the particular aspect of the estimate/forecast to which they refer and about the uncertainty attaching to that aspect; and
  - (d) not relate to the general accuracy of the estimates (e.g. sales estimates, expense estimates, etc.) underlying the forecasts.
- 5.17 With regards to a profit estimate the estimate may only be subject to assumptions in exceptional circumstances and such exceptional circumstances should be explained.

#### **Additional or Amended Financial Information: Type of Debt Instrument/Issuer**

- Project Bonds;
- Sovereign Issuer, State-Owned Entities; and Municipalities.

#### ***Project Bonds***

- 5.18 Project bond issuers that wish to list and are unable to comply with the requirements of paragraph 5.3 may be accepted for a listing if the following is provided to the JSE:
- (a) An audited consolidated cash flow model on the project. The audit must be done by an accredited auditor. The cashflow model must be prepared under a lenders base case scenario; or
  - (b) A profit forecast for the project bond issuer, produced in compliance with paragraphs 5.7 to 5.17, for the remainder of the financial year during which it will list the first debt security and for one full financial year thereafter. A reporting accountant's report, in compliance with paragraph 5.13(a)(i), is required on this forecast financial information. The reporting accountant signing off on the reporting accountant's report must be accredited by the JSE.

### **Sovereign Issuer, State-Owned Entities and Municipalities**

- 5.19 A sovereign issuer, in its capacities as issuer or guarantor, is not required to comply with Section 5.
- 5.20 With reference to paragraph 5.2, state-owned entities and municipalities that are subject to enabling legislation, may require adherence to other standards and this fact should be disclosed with the necessary details of those other standards.
- 5.21 With reference to paragraph 5.3(c), state-owned entities and municipalities that are audited by the Auditor General, are not required to comply with that paragraph.

### ***Secondary Registered Issuers***

- 5.22 Secondary registered issuers are not required to comply with paragraphs 5.2, 5.3, 5.7 and 5.8.
- 5.23 Secondary registered issuers must prepare their financial information in accordance with one of the accounting frameworks as detailed below:
- (i) IFRS;
  - (ii) United States GAAP;
  - (iii) Australian GAAP;
  - (iv) Canadian GAAP; or
  - (v) such other accounting framework acceptable to the JSE, in its discretion.
- 5.24 Secondary registered issuers financial information must also include details of any material post balance sheet events occurring subsequent to the issue of the latest audited financial statements.

## **Section 6 – Continuing Obligations**

### **Scope of section**

This section sets out the requirements relating to continuing obligations.

The provisions dealing with continuing obligations apply to all issuers of debt securities. It should be noted that subject to the type of debt instrument/issuer, additional or amended provisions dealing with continuing obligations may apply. The heading of the type of debt instrument/issuer will specify whether additional or amended provisions apply. If there is no specific heading of the debt instrument/issuer in question, there are no additional or amended provisions applicable.

- 6.1 Introduction
- 6.3 General obligation of disclosure

- 6.10 Confidentiality
- 6.14 Financial statements
- 6.31 General continuing obligations
- 6.80 Additional or Amended Continuing Obligations: Type of Debt Instrument

## **Introduction**

- 6.1 The registration of a programme memorandum or, in the case of a foreign issuer, the JSE supplement, the listing of a debt security on the JSE and any additional listings in respect thereof are granted subject to the Debt Listing Requirements as amended from time to time.
- 6.2 If at any point an issuer has no debt securities listed on the JSE, such issuer must continue to comply with the Debt Listings Requirements or deregister the programme memorandum.

## **General obligation of disclosure**

- 6.3 Once the listing of a debt security is granted to the issuer, the issuer must:
  - (a) ensure that, where there is price sensitive information relating, directly or indirectly, to the financial or trading position of the issuer or the issuer's debt securities:
    - (i) The issuer must without delay, unless the information is kept confidential for a limited period of time, release an announcement on SENS providing details of the price sensitive information; and
    - (ii) Immediately after an issuer knows of any price sensitive information and the necessary degree of confidentiality of such information cannot be maintained or if the issuer suspects that confidentiality has or may have been breached, the issuer must release an announcement on SENS providing details of the price sensitive information to enable investors of listed debt securities to make an informed investment decision. If the directors of the issuer consider that disclosure to the public of the aforementioned information will, or probably will, prejudice the issuer's legitimate interests, the JSE may grant a dispensation from this requirement to make such information public; and
  - (b) ensure that, where the issuer has debt securities listed on another licensed or recognised exchange, all such announcements released through that licensed or recognised exchange, that will be relevant to holders of debt securities listed on the JSE, must also be published on SENS.

## **Covenants**

- 6.4 Once the listing of a debt security is granted to the issuer, the issuer must ensure that, if there are any financial covenant clauses stated in a placing document or pricing supplement, such covenant information is calculated as specified in the placing document or pricing supplement and is released on SENS in accordance with the measures and notification timelines specified.
- 6.5 With regards to covenant information as referred to in 6.4 above, where there are no notification timelines specified in the placing document or pricing supplement, the issuer must release such information on SENS within 60 days after the required measurement period; and
- 6.6 With regards to measurement of and compliance with covenants as referred to in 6.4 above, where the placing document or pricing supplement requires no disclosure in terms of measurement or compliance, the issuer must release a confirmation on SENS within two business days after the required measurement period that such covenant measurement has in fact been

performed along with the covenant level achieved.

### **Events of default**

- 6.7 An issuer shall within one business day of the happening of an event of default in respect of a debt security, within the meaning of the relevant terms and conditions of such debt security, publish the details of such event on SENS and notify the JSE thereof.

### **Rating agencies and credit ratings**

- 6.8 In the event of any amendment to the credit rating obtained by the issuer, debt securities or credit rating of the guarantor, then such amended rating together with the previous rating must be announced on SENS within one business days of the receipt by the issuer of the amendments to the credit rating and the JSE must also be informed.
- 6.9 Where a rating agency from which an issuer had obtained a credit rating has been removed, replaced or substituted, or if a new credit rating agency has been engaged, disclosure of the date on which such event occurred and the circumstances surrounding the change must be announced on SENS and notified to the JSE within two business days.

### **Confidentiality**

- 6.10 Information that is required to be announced in terms of paragraph 6.3 or any other Debt Listings Requirement, including price sensitive information, may not, subject to paragraphs 6.11 to 6.13, be released (even subject to a time embargo):
- (a) during JSE trading hours (as defined in Schedule 9 of the JSE Listings Requirements), until such time as such information has been published in accordance with paragraph 7 of Schedule 9 of the JSE Listings Requirements; or
  - (b) outside of JSE trading hours until such time as such information has been approved, if necessary (in accordance with paragraph 6 of Schedule 9 of the JSE Listings Requirements), and arrangements have been made for such information to be published before the opening of JSE trading hours on the next business day.
- 6.11 Issuers that deem it necessary to provide information, prior to releasing same on SENS must ensure that in doing so they do not commit an offence in terms of the FMA and in particular Section 78(4).

Section 78(4) of the FMA states the following:

- (a) An insider who knows that he or she has inside information and who discloses the inside information to another person commits an offence.
  - (b) An insider is, despite paragraph (a), not guilty of the offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she disclosed the inside information because it was necessary to do so for the purpose of the proper performance of the functions of his or her employment, office or profession in circumstances unrelated to dealing in any security listed on a regulated market and that he or she at the same time disclosed that the information was inside information.
- 6.12 Issuers that elect to provide information in accordance with paragraph 6.11 and become aware that the necessary degree of confidentiality of such information cannot be maintained or if the issuer suspects that confidentiality has or may have been breached, the issuer must immediately:
- (i) inform the JSE; and
  - (ii) ensure that such information is announced accordingly.

- 6.13 When an issuer intends to release any information as contemplated in paragraph 6.10 at any meeting or forum, arrangements must be made for the publication of such information to ensure that the announcement of such information at the meeting or forum is made simultaneously with the publication through SENS in accordance with Schedule 9 of the JSE Listings Requirements. If any such information is disclosed in an unplanned manner during the course of a meeting or forum, the issuer must immediately:
- (i) inform the JSE; and
  - (ii) ensure that such information is announced accordingly.

### **Financial statements**

- 6.14 An issuer and the guarantor (if applicable) must prepare annual financial statements. The financial statements of the guarantor are not required to be prepared if such guarantor has no operating assets.
- 6.15 An issuer and the guarantor (if applicable) shall, within four months after the end of every financial year submit its audited annual financial statements, which statements must comply with paragraph 5.2 and paragraphs 5.7 to 5.9, to the JSE. State-owned entities and municipalities shall within seven months after the end of every financial year submit its audited annual financial statements to the JSE. Where interim financial statements are prepared, they must be prepared in accordance with IAS34 and submitted to the JSE within three months after the end of the period to which they relate.
- The issuer must publish a notice of availability announcement on SENS in accordance with paragraph 6.17 below.
- 6.16 An issuer that fits within the description of paragraph 5.6 is not required to submit its financial information in accordance with paragraphs 6.14 and 6.15 and release an announcement regarding its financial information in accordance with paragraph 6.6 below however, the issuer shall:
- (a) within four months after the guarantor's financial year-end, submit the guarantor's audited annual financial statements, which statements must comply with paragraph 5.2 and paragraphs 5.7 to 5.9, to the JSE;
  - (b) within three months after the end of the period to which they relate, submit the guarantor's interim financial statements, where prepared, which statements must be prepared in accordance with IAS34, to the JSE; and
  - (c) publish a notice of availability announcement on SENS in relation to the guarantor's annual financial statements and interim financial statements, if applicable, in accordance with paragraph 6.17 below.
- 6.17 Issuers must publish a notice of availability announcement on SENS at the same time as the audited annual financial statements or interim financial statements (if applicable) of the issuer and/or the guarantor (if applicable) are submitted to the JSE, in terms of paragraphs 6.15 and 6.16 above. This announcement must state:
- (a) when and where the issuer's and the guarantor's (if applicable) financial statements will be available for inspection. The issuer's financial statements must be available on a website and the link to the website must be included;
  - (b) in respect of annual financial statements, whether the audit reports on the issuer and the guarantor (if applicable) were unqualified or if not, what the modification was (as per the modifications detailed in paragraph 6.30 below) and the reasons therefor; and
  - (c) in the case of a restatement of the previous year's annual or interim financial statements, the reasons for such restatement must be included.



- 6.18 The following procedure shall apply to an issuer in respect of audited annual financial statements that fails to comply with any of paragraphs 6.14 to 6.17 above, where applicable:
- (a) three months or, in respect of state-owned entities and municipalities six months, after the issuer's financial year-end, the JSE will send to the issuer a letter of reminder, advising that the issuer still has one month within which to submit its annual financial statements, failing which the registration of the issuer's programme memorandum or, in the case of a foreign issuer, the JSE supplement and the listing of the issuer's debt securities (if applicable) may be suspended until such time as the annual financial statements have been submitted;
  - (b) if the issuer has not complied with any of paragraphs 6.14 to 6.17 above, where applicable, by the end of the fourth month or, in respect of state-owned entities and municipalities the end of the seventh month, after its financial year-end the JSE will release an announcement over SENS, informing the market and holders of debt securities (if applicable) that the issuer has not submitted its annual financial statements and cautioning the market and holders of debt securities (if applicable) that the registration of the issuer's programme memorandum or, in the case of a foreign issuer, the JSE supplement and the listing of the issuer's debt securities (if applicable) is under threat of suspension and possible removal;
  - (c) if the issuer has not complied with any of paragraphs 6.14 to 6.17 above, where applicable, by the end of the fifth month, or, in respect of state-owned entities and municipalities the end of the eighth month, after its financial year-end, the registration of the issuer's programme memorandum or, in the case of a foreign issuer, the JSE supplement and the listing of the issuer's debt securities (if applicable) will be suspended. The JSE will convene a meeting to consider the continued suspension or removal of the registration of the issuer's programme memorandum or, in the case of a foreign issuer, the JSE supplement and/or the listing of the debt securities (if applicable); and
  - (d) the suspension of the registration of the issuer's programme memorandum or, in the case of a foreign issuer, the JSE supplement and listing of the issuer's debt securities (if applicable) will be lifted after the JSE receives the issuer's annual financial statements and the JSE is satisfied that these annual financial statements comply with IFRS or other acceptable accounting framework approved pursuant to paragraph 5.2. The applicant issuer must release an announcement in the event that the suspension has been lifted by the JSE.
- 6.19 Where an issuer is not obliged by law to file financial statements with the Commission, the requirements of paragraphs 6.14 to 6.17, where applicable, may be varied at the discretion of the JSE.
- 6.20 The following procedure shall apply to an issuer where interim financial statements are prepared that fails to comply with any of paragraphs 6.15 to 6.17 above:
- (a) on the day following the due date of issue of the issuer's interim financial statements, a letter of reminder will be sent to the issuer requesting that it rectify the situation and advising that it has been granted a period of one month, from the date of such reminder, in which to issue its interim financial statements, failing which the registration of the issuer's programme memorandum or, in the case of a foreign issuer, the JSE supplement and the listing of the issuer's debt securities (if applicable) will be suspended and a meeting of the JSE will be convened to consider the continued suspension or removal of the registration of the issuer's programme memorandum or, in the case of a foreign issuer, the JSE supplement and the listing of the issuer's debt securities (if applicable);
  - (b) failing compliance within 14 days of dispatch of the reminder to the

issuer, the JSE will release an announcement through SENS informing holders of debt securities that the issuer has not issued its interim financial statements, and cautioning holders of debt securities that the registration of the issuer's programme memorandum or, in the case of a foreign issuer, the JSE supplement and the listing of the issuer's debt securities (if applicable) is under threat of suspension and possible removal;

- (c) where the registration of the issuer's programme memorandum or, in the case of a foreign issuer, the JSE supplement and the listing of the issuer's debt securities (if applicable) is suspended, the lifting of the suspension will only be effected upon receipt by the JSE of the issuer's interim financial statements, and if the JSE is satisfied that the interim financial statements complies with IFRS or other acceptable accounting framework approved pursuant to paragraph 5.2. The applicant issuer must release an announcement in the event that the suspension has been lifted by the JSE.

### ***Restatement of previously published financial results***

- 6.21 In the instance where an applicant issuer restates previously published results, for whatever reason, they must submit a restatement notification to the JSE containing details of the restatement and the reasons therefor. Such notification must be submitted pursuant to the provisions of Practice Note 3/2017 of the JSE Listings Requirements.

### ***Appointment of auditors***

- 6.22 An applicant issuer may only appoint as its auditor an audit firm who is accredited as such on the JSE list of Auditors and Accounting Specialists and an individual auditor who does not appear on the JSE list of disqualified individual auditors, as set out in Section 22 of the JSE Listings Requirements.
- 6.23 Within 90 days of receiving notification that their audit firm has been removed from the JSE list of Auditors and Accounting Specialists, or their individual auditor being included on the JSE list of disqualified individual auditors, an issuer must replace its auditor with an audit firm who is accredited or an individual auditor who is not disqualified. This change should be made before the auditor signs the next audit report, in the event that the applicant issuer receives notification after the auditor has commenced their assurance engagement audit, in such circumstances, it may not be possible for the issuer to appoint a new audit firm within the prescribed period. The applicant issuer must then approach the JSE who, at their discretion, may waive paragraph 6.22 above, for that specific assurance engagement. If such dispensation is granted the applicant issuer must caution holders of debt securities as to the status of its audit firm. This warning must appear whenever reference is made to the auditor's report in an announcement or in the financial statements themselves.
- 6.24 The requirements in paragraphs 6.22 and 6.23 with regard to the auditor apply equally to those foreign registered entities with debt securities listed on the Interest Rate Market and/or the main board of the JSE other than in the instance of a secondary registered issuer.

### ***Notification of change in auditor***

- 6.25 An issuer must notify the JSE of:
- (a) the termination or the appointment of the audit firm; and/or
  - (b) the resignation of the audit firm;
- without delay, and by no later than two business days following the decision by the applicant issuer to terminate or appoint the audit firm or after receipt of the audit firm's resignation.
- 6.26 The notification required by paragraph 6.25 must state the effective date of

the termination or resignation, if it is not with immediate effect.

- 6.27 The notification required by paragraph 6.25 must be accompanied by a letter from the audit firm stating the date of termination, what the audit firm believes to be the reason for such termination or, in the case of resignation, the reason(s) for such resignation.
- 6.28 The applicant issuer must publish an announcement immediately after the notification to the JSE in pursuant to paragraph 6.25 above, informing holders of debt securities of the termination of the audit firm appointment or resignation of the audit firm and the reason(s) therefore.
- 6.29 The annual financial statements for the year-end in which the termination or resignation took place must state that the audit firm appointment was terminated or that the audit firm resigned and the reason(s) therefore.

### **Modified audit report**

- 6.30 The following procedure shall prevail where a modified auditors' report has been issued on an issuer's annual financial statements:
- (a) When the auditors' report contains an emphasis of matter paragraph, the issuer's debt securities will be annotated with an "E" to indicate that the auditors' report contains an emphasis of matter paragraph.
  - (b) When the auditor's report contains a paragraph on material uncertainty relating to going concern, the issuer's debt securities will be annotated with a "G".
  - (c) When the auditors' report is qualified, the issuer's debt securities will be annotated with a "Q" to indicate that the auditors' report is qualified.
  - (d) When the auditors' report contains an adverse opinion:
    - (i) the issuer's debt securities will be annotated with an "A" to indicate that the auditors' report contains an adverse opinion; and
    - (ii) the JSE may decide to follow the steps set out in paragraph 6.30(e)(ii) below.
  - (e) When the auditors' report contains a disclaimer of opinion:
    - (i) the issuer's debt securities will be annotated with a "D" to indicate that the auditors' report is disclaimed; and
    - (ii) the JSE will consider the continued listing, suspension and possible subsequent removal of the issuer's debt securities pursuant to Section 1 of the Debt Listings Requirements.
  - (f) When the auditor's report includes additional paragraph/s in terms of some additional reporting responsibilities of the auditor, such as the obligation to report reportable irregularities in terms of the Auditing Profession Act, this must be announced by the issuer through SENS and the JSE may decide to take further action.

### **General continuing obligations**

- 6.31 Where discussions take place in the absence of the debt sponsor or designated person (as per paragraph 2.7(j) of the Debt Listings Requirements), the applicant issuer shall ensure, as soon as is practicable, that the debt sponsor or designated person is informed (preferably in writing) of the matters discussed.
- 6.32 A holder of a debt security is entitled to inspect, at no charge, the register of holders of debt securities for that class of debt securities held.
- 6.33 (a) The following documentation must be available for inspection at the

registered office of the issuer for as long as the placing document remains registered with the JSE:

- (i) the current placing document;
  - (ii) any supplementary documents published since the current placing document was published;
  - (iii) any pricing supplements (with respect to outstanding issues);
  - (iv) the annual financial statements and interim financial statements (if applicable) of the issuer;
  - (v) the annual financial statements and interim financial statements (if applicable) of the guarantor, if applicable. The financial statements of the guarantor is not required if such guarantor has no operating assets;
  - (vi) the constitutional documents of the issuer, if applicable;
  - (vii) the guarantee;
  - (viii) the security agreement and/or credit enhancement agreement, if applicable;
  - (ix) the trust deed or the agreement entered into between the issuer and the representative of the holders of debt securities, if applicable;
  - (x) any document incorporated into the placing document by reference; and
  - (xi) the corporate governance policies applicable pursuant to provisions of Section 7.
- (b) The documentation referred to in paragraphs 6.33(a)(i)-(iv) and (vii) must be made available on the issuer's website. If the issuer has been given dispensation regarding its financial statements, as per paragraph 6.16, the guarantor's financial information must be made available on the guarantor's website.
- 6.34 An issuer must pay the listing and other fees, including its annual listing fee, as published on the JSE's website, [www.jse.co.za](http://www.jse.co.za), as soon as such payment becomes due. Failure to pay any fees due may result in the censure of the issuer in terms of Section 1.
- 6.35 (a) In the event of an issuer being placed, or making application to be placed, into liquidation, whether voluntary or compulsory, provisional or final, the issuer must immediately release an announcement on SENS and notify the JSE.
- (b) In the event that the board of directors of the issuer adopts a resolution to place the issuer under business rescue proceedings, or application is made to a court to place the issuer under business rescue proceedings, in terms of Chapter 6 of the Companies Act or the board of directors issues a notice in terms of Section 129(7) of the Companies Act, the issuer must immediately release an announcement on SENS and notify the JSE thereof. Furthermore, in the event that the business rescue proceedings are terminated and the issuer does not proceed with liquidation proceedings and wishes to:
- (i) delist, the issuer will remain subject to the delisting procedures set out in Section 1 of the Debt Listings Requirements; or
  - (ii) remain listed, the issuer must consult the JSE in order to discuss the suitability of the issuer for continued listing on the JSE.

If the issuer is not a company as defined in the Companies Act, this provision (b) applies equally to any similar proceedings.

- (c) Issuers must immediately notify the JSE of any application in terms of Section 163 of the Companies Act (oppressive and prejudicial conduct). If the issuer is not a company as defined in the Companies Act, this provision (c) applies equally to any similar proceedings.

### ***Repurchase of Debt Securities***

- 6.36 An applicant issuer may not repurchase debt securities during any period where the applicant issuer is in possession of unpublished price sensitive information pursuant to the provisions of the FMA, unless it is an automatic repurchase pursuant to a credit-linked note resulting from a credit event being called or a repurchase pursuant to the exercise of an early redemption right in accordance with the terms and conditions of those debt securities. The repurchase of debt securities exclude market making activities where the applicant issuer provides liquidity or serves as an intermediary to facilitate transactions between buyers and sellers of debt securities ("market making activities").

### ***Notification of decision to repurchase***

- 6.37 Where an applicant issuer intends to make an offer, which is to be open to all holders of debt securities in respect of all or part of their holdings, to repurchase any of its debt securities, it must:
- (a) release announcements on SENS in accordance with the timetable set out in paragraph 3 of Schedule 4, Form A5. The offer period announced must be open for at least 15 business days;
  - (b) while the offer is being actively considered, ensure that no dealings in the relevant debt securities are carried out by or on behalf of the applicant issuer or another member of its group, associate or subsidiary, until the proposal has either been submitted to the JSE or abandoned; and
  - (c) notify the JSE of its decision to proceed with the offer to repurchase.

### ***Announcement of repurchases***

- 6.38 Any repurchases (excluding market making activities as defined in paragraph 6.36) of the issuer's debt securities must be announced on SENS when an aggregate of 10% of the initial nominal value of the relevant debt securities has been purchased during a financial year and for each subsequent 10% in aggregate of the initial nominal value of that debt securities during the remainder of the financial year. Such announcement must be made as soon as possible and, in any event, by not later than 08h30 on the business day following the day on which the relevant threshold is reached or exceeded. The announcement must state (i) the highest and lowest prices paid for the repurchased debt securities, (ii) the number of debt securities purchased since the most recent announcement, (iii) the nominal value of the class of debt securities that remain outstanding, and (iv) whether and when the debt securities repurchased are to be cancelled, and the listing removed, if applicable.

### ***Directors, Company Secretary and Debt Officer***

- 6.39 An applicant issuer, through its debt sponsor or designated person, must notify the JSE of any change, including the reason for the change, to the board of directors, the company secretary or debt officer including:
- (a) the appointment of a new director (including the director's capacity in terms of paragraph 7.3(c)), company secretary or debt officer;
  - (b) the resignation, removal, retirement or death of a director, the company secretary or debt officer; and/or
  - (c) changes to any important functions or executive responsibilities of a director, including change of board committees;

and such changes must be announced on SENS without delay and no later than by the end of the business day following the decision or receipt of notice detailing the change. Such changes, including the reason for the changes, must be announced as soon as practically possible and also included in the issuer's publication of interim report or annual financial statements. Where a director retires and is re-appointed at an annual or other general meeting, no notification is required as this does not result in a change to the board of directors. In respect of the appointment of a director, the announcement must contain a positive statement that the appointment was made pursuant to the policy dealing with the nomination of directors of the applicant issuer.

- 6.40 The notifications required by paragraph 6.39 must state the effective date of (i) the resignation, removal, retirement or death and (ii) appointment. If the effective date is not yet known or has not yet been determined, the notification should state this fact and the issuer must notify the JSE once the effective date has been determined.
- 6.41 Any director and/or debt officer who is aware of any change in the statements contained in paragraphs 4.10(b)(ii)-(xii) is required to disclose such information to the applicant issuer without delay and, in any event, by no later than three business days after becoming aware of such change. Any amendments to the statements contained in paragraphs 4.10(b)(ii)-(xii) must be (i) notified to the JSE in writing and (ii) announced by the applicant issuer through SENS, within one business day after it has been received from the director and/or debt officer.

### ***Dealings in Securities***

- 6.42 An issuer, via its debt sponsor or designated person, must announce the following information on SENS:
- (a) details of all transactions (including off market transactions), as detailed in paragraph 6.43, in securities relating to the applicant issuer by or on behalf of:
    - (i) a director and company secretary (held beneficially, whether directly or indirectly) of the applicant issuer;
    - (ii) any associate of 6.42(a)(i) (collectively referred to for purposes of paragraphs 6.42 to 6.49 as "**directors**");
  - (b) such announcement shall contain the following information:
    - (i) the name of the director;
    - (ii) the name of the company of which he is a director;
    - (iii) the date on which the transaction was effected;
    - (iv) the price, number, total nominal value and status of securities concerned. Aggregation and averaging of prices is not allowed and therefore, in instances where there have been various trades at various prices during the course of a day, the volume weighted average price must be shown together with the highest and lowest trading prices for the day;
    - (v) in the case of options or any other similar right or obligation, the option strike price, strike dates and periods of exercise and/or vesting;
    - (vi) the nature of the transaction;
    - (vii) the nature and the extent of the director's interest in the transaction. In the case of dealings by associates, the announcement must disclose the name of the associate and the relationship with the director;
    - (viii) confirmation as to whether the trades were done on-market or off market; and

(ix) whether clearance has been given in terms of paragraph 6.45.

6.43 Transaction for purposes of paragraph 6.42 above includes:

- (a) any sale, purchase or subscription of securities relating to the applicant issuer;
- (b) any agreement to sell, purchase or subscribe for securities relating to the applicant issuer;
- (c) the acceptance, acquisition, disposal, or exercise of any option to acquire or dispose of securities relating to the applicant issuer;
- (d) the acceptance, acquisition or disposal of any right or obligation, present or future, conditional or unconditional, to acquire or dispose of securities relating to the applicant issuer; or
- (e) any other transaction that will provide direct or indirect exposure to the securities of the applicant issuer.

6.44 Directors are required to disclose to the applicant issuer all information that the applicant issuer needs in order to comply with paragraph 6.42. The applicant issuer shall also advise each of its directors of their obligations to disclose to it all information that the applicant issuer needs in order to comply with paragraph 6.42. Any director who deals in securities relating to the applicant issuer is required to disclose the information required by paragraph 6.42 to the applicant issuer without delay and, in any event, by no later than three business days after dealing. The applicant issuer must in turn announce on SENS such information without delay and, in any event, by no later than one business day after receipt of such information from the director concerned.

#### ***Clearance to deal***

6.45 A director may not deal in any securities relating to the applicant issuer without first advising the chairman (or one or more other appropriate directors designated for this purpose) in advance and receiving clearance from the chairman or other designated director. In his own case, the chairman, or other designated director, must advise the board of directors in advance, or advise another designated director, and receive clearance from the board of directors or designated director, as appropriate. The JSE may waive this requirement in situations where the director has no discretion in the transaction. The JSE must be consulted for a ruling in these cases and if a waiver is granted the announcement must clearly explain the reasons why the director had no discretion to deal.

#### ***Circumstances for refusal***

6.46 A director must not be given clearance (as required by paragraph 6.45) to deal in any securities relating to the applicant issuer during a prohibited period. A "**prohibited period**" means

- (a) a closed period;
- (b) any period when there exists any matter which constitutes price sensitive information in relation to the applicant issuer's securities (whether or not the director has knowledge of such matter).

6.47 A written record must be maintained by the applicant issuer of the receipt of any advice received from a director pursuant to paragraph 6.45 and of any clearance given. Written confirmation from the issuer that such advice and clearance, if any, have been recorded must be given to the director concerned.

#### ***Dealing in prohibited periods***

6.48 A director may not deal in any securities relating to the issuer:



- (a) during a closed period; and
- (b) at any time when he is in possession of price sensitive information in relation to those securities or otherwise where clearance to deal is not given in terms of paragraph 6.45.

6.49 The JSE may waive compliance with paragraph 6.48 in situations where the director has no discretion in the transaction. The JSE must be consulted for a ruling in these cases and if a waiver is granted the announcement must clearly explain the reasons why the director had no discretion to deal.

### ***Dealings by associates of directors and investment managers***

6.50 A director must advise the following parties of the name(s) of the applicant issuer(s) of which he is a director:

- (a) any associate of his/her; and/or
- (b) any investment manager, excluding any investment manager of a pension fund pursuant to the Pension Funds Act No. 24 of 56, dealing on his/her behalf or on behalf of any person associated with him where either he/she or any person associated with him/her has funds under management with that investment manager, whether on a discretionary basis or not.

6.51 A director must advise all of his associates in writing that they must notify him immediately after they have dealt in securities relating to the applicant issuer(s) in order for him to comply with paragraph 6.45.

6.52 A director must advise his investment manager, excluding any investment manager of a pension fund pursuant to the Pension Funds Act No. 24 of 56, in writing that they may not deal in any securities relating to applicant issuer(s) of which he is a director unless it obtains his express consent in writing.

6.53 Paragraphs 6.42 to 6.52 do not override the provisions of the FMA and should not be construed as additional defences or exclusions from having to comply with the FMA. Issuers may impose more rigorous restrictions upon dealings by directors if they so wish or if it is appropriate in certain circumstances.

### ***Continuing obligations related to changes to existing debt securities or the placing document***

#### *Changes to the placing document*

6.54 The issuer must on an annual basis consider if any of the information contained in the placing document in relation to the issuer, specifically excluding terms and conditions, is outdated in a material respect, and if deemed so, be updated by the issuer. The update to the placing document must be approved by the JSE and the issuer must release a SENS announcement containing a summary of the changes and a statement that the updated placing document will be available for inspection on the relevant website, together with a link to that website.

6.55 No update of any information incorporated by reference will require an update of the placing document, in accordance with paragraph 6.54, however, an announcement must be released on SENS notifying holders of debt securities of an update to the relevant information incorporated by reference and where such updated information is available.

6.56 In the event that the issuer makes any amendments to the terms and conditions of the debt securities, the agreements in relation to the security structure, the guarantee, security or credit enhancement agreements (any of these documents being an "**issuer document**"):

- (a) which amendments are of a technical nature, made to correct a manifest error or to comply with mandatory provisions of any applicable laws, no prior approval by the JSE is required however, the issuer must provide the amended issuer document or the supplement to the issuer

document to the JSE immediately after the amendment and release an announcement on SENS providing a summary of the amendments and where the amended issuer document or the supplement to the issuer document will be available for inspection. Any such modification to an issuer document shall be binding on the relevant holders of debt securities; or

- (b) if the amendments do not fall within the provisions of paragraph 6.56(a) above:
- (i) the issuer must first obtain conditional formal approval on the amended issuer document or the supplement to the issuer document from the JSE, in accordance with paragraph 8.4 and the debt market process document;
  - (ii) subsequent to receiving JSE approval pursuant to paragraph 6.56(b)(i), the issuer must send a notice, together with the amended issuer document or supplement to the issuer document, to all of the holders of debt securities or the holders of the relevant class(es) of debt securities incorporating the proposed amendments and requesting approval of the amendments from the holders of debt securities or the holders of the relevant class(es) of debt securities by way of an extraordinary resolution or an extraordinary written resolution;
  - (iii) if approval is requested to be given by way of an extraordinary resolution, a proxy form must be sent, together with the notice convening the meeting at which the extraordinary resolution is proposed to be passed, to each person entitled to vote at such meeting and who has elected to receive such documents;
  - (iv) if approval is requested to be given by way of an extraordinary written resolution, the notice to the holders of debt securities or the holders of the relevant class(es) of debt securities must include the proposed resolution, any restrictions on voting in terms of the placing document, the last date on which a holder of debt securities may submit its vote, in writing, on the proposed resolution (provided that such date shall be no later than the 20th business day after the notice was distributed to the holders of debt securities or the holders of the relevant class(es) of debt securities) and the address where the vote must be submitted;
  - (v) for the purpose of the resolutions above wherein any votes are to be excluded from the passing of that resolution, any proxy given by a holder of debt securities to the holder of such an excluded vote shall be excluded from voting for the purposes of that resolution;
  - (vi) the issuer must release an announcement on SENS with details concerning the date, time and venue of the meeting of the holders of debt securities or the holders of the relevant class(es) of debt securities within one business day after the notice of the meeting has been distributed to the relevant holders of debt securities. In the case of written resolutions, the issuer must release an announcement on SENS with details of the written resolutions being proposed within one business day after the notification of the proposed written resolutions have been distributed to the relevant holders of debt securities. In either instance, if the notification to the relevant holders of debt securities was distributed via a SENS announcement, a separate announcement is not required in terms of this paragraph;
  - (vii) if approval from the holders of debt securities or the holders of the relevant class(es) of debt securities has been obtained, confirmation of such approval and the signed amended issuer document or the supplement to the issuer document must be submitted to the JSE. The issuer must also provide a letter to the

JSE confirming that the signed amended issuer document or the supplement to the issuer document is identical, other than in minor respects, to the draft conditionally formally approved by the JSE;

- (viii) within two business days after the meeting or the responses from the relevant holders of debt securities on the proposed written resolution have been obtained, a SENS announcement must be released containing the details of the voting results in respect of the proposed resolution/s. The announcement must include the following:
  - (a) the proposed resolution/s;
  - (b) the debt securities voted in person or by proxy disclosed as a number and a percentage (in relation to the total nominal amount of that class(es) of debt securities or the total nominal amount of all debt securities of the issuer); and
  - (c) the votes abstained disclosed as a percentage (in relation to the total nominal amount of that class(es) of debt securities or the total nominal amount of all debt securities of the issuer) and the votes carried (i) for and (ii) against each resolution, disclosed as a percentage (in relation to the total nominal amount of that class(es) of debt securities or the total nominal amount of all debt securities of the issuer voted at the meeting); and
- (ix) the amended issuer document or the supplement to the issuer document must be available for inspection for at least two business days before the listing of an instrument by the issuer.

#### ***Requirements for a meeting or written resolution of holders of debt securities***

6.57 A meeting of holders of debt securities must:

- (a) comply fully with the sections in the Companies Act that relate to notice of meetings, conduct of meetings and meeting quorums and adjournment, notwithstanding that the Companies Act refers to meetings of shareholders and that the issuer may not be regulated under the Companies Act;
- (b) be announced on SENS and the announcement must state the date that the issuer has selected to determine which holders of debt securities recorded in the register will receive the notice of meeting and the last date by which proxy forms must be submitted; and
- (c) allow for voting by proxy and the proxy forms must be in compliance with the Companies Act (notwithstanding that the Companies Act refers to shareholders and that the issuer may not be regulated under the Companies Act).

6.58 A written resolution to holders of debt securities must state the date that the issuer has selected to determine which holders of debt securities recorded in the register will receive the notice of written resolution.

#### ***Changes to listed debt securities***

6.59 In the event of a change to any of the information set out in paragraph 6.64, the details of the change shall be submitted to the JSE for approval and published on SENS. The announcement must be published at least one business day prior to the change coming into effect.

6.60 The issuer may extend the maturity date of any debt security subject to the following:

- (a) where the extension of the maturity date is included in the terms and conditions of the debt security, the issuer must notify the JSE in writing

and publish an announcement on SENS of its intention to extend the maturity date in accordance with the timetable set out in paragraph 3 of Schedule 4, Form A5; or

- (b) where the extension of the maturity date is not included in the terms and conditions of the debt security or the maturity date is expected to be extended beyond the legal maturity date, the amendment must be approved by the JSE and holders of debt securities in accordance with paragraph 6.56. Once approved, the new maturity date must be announced on SENS in accordance with the timetable set out in paragraph 3 of Schedule 4, Form A5.

6.61 In the event of a partial capital redemption (e.g. through a market repurchase, amortisation, conversion into equity at the election of the holder of the debt security, etc.), an issuer must notify the JSE and publish an announcement on SENS in accordance with the timetable set out in paragraph 3 of Schedule 4, Form A5 providing the following details:

- (a) the reduction in the nominal amount;
- (b) the remaining nominal amount in issue;
- (c) the pay date;
- (d) the code and ISIN of the debt security;
- (e) the record date (if applicable); and
- (f) the reason for the partial redemption.

6.62 In the event of an early redemption at the option of the issuer (excluding those early redemptions detailed in paragraph 6.63), an issuer must notify the JSE and publish an announcement on SENS, in accordance with the timetable set out in paragraph 3 of Schedule 4, Form A5, providing the following details:

- (a) the redemption amount;
- (b) the proposed date of the early redemption;
- (c) the code and ISIN of the debt security; and
- (d) the record date.

6.63 In relation to debt securities which will automatically be redeemed on the occurrence of a trigger event, an issuer shall notify the JSE and publish an announcement on SENS, in accordance with the timetable set out in paragraph 3 of Schedule 4, Form A5, and providing details of:

- (a) the code and ISIN of the debt security;
- (b) the trigger event;
- (c) the pay date;
- (d) the early redemption date, which must be a minimum of three business days after date on which the trigger event occurred;
- (e) the redemption amount; and
- (f) the record date.

For the purpose of this paragraph, “**trigger event**” means an event that precipitates an automatic redemption in relation to the debt security (for example, when the reference index reaches a particular index level).

6.64 In the event of a conversion of the debt security, an issuer shall notify the JSE and publish an announcement on SENS in accordance with the timetable set out in paragraph 3 of Schedule 4, Form A5 providing the following details, where applicable:

- (a) Where the debt securities will convert into equity securities at the election of the issuer:
  - (i) the number of equity securities that will be received per debt security;
  - (ii) the proposed date of conversion;
  - (iii) the code and ISIN of the debt security;
  - (iv) the record date; and
  - (v) confirming note holder approval, if applicable.
- (b) Where the existing debt securities will convert into a new debt security:
  - (i) all of the information as required by paragraph 6.64.

6.65 In relation to the interest rate earned on:

- (a) Inflation-linked debt securities, the following information must be published on SENS, in accordance with the timetable set out in paragraph 3 of Schedule 4, Form A5:
  - (i) the code and ISIN of the debt security;
  - (ii) the annualised interest rate;
  - (iii) the interest rate for the relevant interest period; and
  - (iv) the URL to the pricing supplement;
- (b) Variable interest rate debt securities (i.e. where the interest rate is determined in accordance with a formula and is not only linked to a reference rate for example JIBAR/LIBOR), the following information must be published on SENS, in accordance with the timetable set out in paragraph 3 of Schedule 4, Form A5:
  - (i) the code and ISIN of the debt security;
  - (ii) the annualised interest rate;
  - (iii) the interest rate for the relevant interest period; and
  - (iv) the URL to the pricing supplement.

### ***Communication with investors***

- 6.66 All SENS announcements must be submitted to the JSE SENS department according to the procedure stipulated on the JSE website. SENS announcements must be approved by the debt sponsor or the designated person. All announcements that are to be made through SENS must be in English.
- 6.67 The issuer shall publish on SENS the following details of new or tap issues of debt securities by the issuer, in accordance with the timetable set out in paragraph 3 of Schedule 4, Form A5:
  - (a) the debt security code;
  - (b) ISIN;
  - (c) the type of debt security to be issued (e.g. fixed rate debt security, floating rate debt security, zero coupon debt security, etc.);
  - (d) nominal value;
  - (e) the issue date;
  - (f) the issue price;

- (g) the coupon rate/variable interest rate (in the instance of a floating rate debt security, only the margin and the date on which JIBAR/other reference rate was/will be set needs to be included);
  - (h) the interest commencement date and the interest payment dates (applying the definitions pursuant to paragraph 4.17(cc));
  - (i) the business day convention applicable to this issuance;
  - (j) last day to register;
  - (k) books closed period;
  - (l) maturity date;
  - (m) final amount payable on maturity, if different to the nominal value;
  - (n) a statement confirming if the debt security is subject to a guarantee, security or credit enhancement, if applicable;
  - (o) the total amount in issue, after this issuance; and
  - (p) a statement indicating if the pricing supplement contains any additional terms and conditions or changes to the terms and conditions as contained in the placing document and a summary of such terms and conditions.
- 6.68 In the event that a cash disbursement to a holder of debt securities is classified as a dividend (including an in specie dividend) as defined in terms of the Income Tax Act, an announcement must be published by the issuer on SENS complying with paragraphs 6.69 and in accordance with the relevant timetable set out in Schedule 4, Form A5.
- 6.69 Any announcement released by the Issuer on SENS for cash disbursements to holders of debt securities, where such disbursement is classified as a dividend, must indicate whether the issue amount is distributed by way of a reduction of CTC (Contributed Tax Capital as defined in the Income Tax Act) or a Dividend (as defined in the Income Tax Act). Such announcement must include the following, where applicable:
- (i) local dividend tax rate represented as a percentage;
  - (ii) gross local dividend amount represented as cents per debt security;
  - (iii) net local dividend amount represented as cents per debt security;
  - (iv) non-reclaimable foreign withholding dividend tax rate represented as a percentage;
  - (v) dividend reclaimable tax rate applicable overseas represented as a percentage;
  - (vi) issued debt securities as at declaration date;
  - (vii) issuer registration number;
  - (viii) tax reference number; and
  - (ix) whether the distribution is made from capital or income reserves.
- 6.70 An issuer must release an announcement on SENS as soon as the issuer becomes aware that it will not be able to make a distribution on the distribution date or if the issuer has failed to make a distribution to holders of debt securities on the distribution date or if the issuer will make the payment late, an announcement must be released immediately on SENS. The announcement should contain details of the nature and extent of such failure or delay, the impact of the failure or the delay under the terms and conditions of the debt securities and suggested remedial steps.

### ***Communication with the JSE***

6.71 Issuers shall forthwith advise the JSE in writing of:

- (a) a change in name of the issuer, together with a certified copy of the certificate of change of name. The issuer must also publish an announcement relating to the name change on SENS;
- (b) a change in the issuer's registered address;
- (c) a change in the issuer's financial year-end, such change must also be announced on SENS;
- (d) in respect of issuing entity's/guarantors of issuing entities as described in paragraph 4.28(b)(ix)(2) to (4), a change in such issuing entity's/guarantor's financial year-end;
- (e) a change in the designated person or debt sponsor. The change must also be announced on SENS, in accordance with Section 2;
- (f) in the case of callable bonds, whether the bond has been called or not and if not, whether a new interest rate will apply and what the extended maturity date will be at least five business days before the call redemption date;
- (g) a change in the index provider or index calculator;
- (h) a change in the trustee company and/or the representative for holders of debt securities and the contact details of the replacement trustee company and/or the representative for holders of debt securities. The reasons for the change and the contact details of the replacement trustee company and/or the representative for holders of debt securities must also be published on SENS; and
- (i) an issuer with debt securities listed on any other exchange must immediately notify the JSE, in writing, of any suspension or removal of the listing of the debt securities on any other exchange on which it has debt securities listed.

***Additional continuing obligations for issuers with debt securities listed on the Main Board***

6.72 Issuers with debt securities listed on the Main Board of the JSE must also comply with the continuing obligations set out below. The issuer must:

- (a) with respect to the certificated environment, maintain a transfer office or a receiving and certification office. All certifications must be completed within one business day of lodgement;
- (b) with respect to the dematerialised environment, be approved by the CSD and comply with the CSD rules; and
- (c) comply with the timetables as set out in paragraph 2 of Schedule 4, Form A5 Requirements in respect of corporate actions.

***Timetables applicable to all corporate actions***

6.73 Corporate actions in respect of debt securities listed on the Interest Rate Market of the JSE must comply with the timetables detailed in paragraph 3 of Schedule 4, Form A5.

***Demand to call a meeting***

6.74 In the event that an issuer and/or board of directors of the issuer receives a demand to call a meeting –

- (a) of holders of debt securities holding not less than 10% of the value of a specific class of debt securities; or
- (b) holding not less than 10% of the value of all outstanding debt securities,



the applicant issuer must immediately:

- (i) inform the JSE in writing and describing the purpose of the meeting; and
- (ii) release an announcement through SENS that the applicant issuer has received a demand to call a meeting from holders of debt securities pursuant to the provisions of the Debt Listings Requirements and specifying the date and time of the meeting.

6.75 The applicant issuer must:

- (a) issue a notice of meeting (meeting in person or via conference call facilities) within five business days from the date of receipt of the request to call a meeting of holders of debt securities;
- (b) the date of the meeting should be specified as a date not exceeding seven business days from when the notice of meeting is issued;
- (c) the notice of meeting must allow for a pre-meeting of the holders of debt securities (without the presence of the applicant issuer) on the same day/venue and at least two hours before the scheduled meeting of holders of debt securities; and
- (d) the applicant issuer must release an announcement on SENS within two business days after the meeting of holders of debt securities regarding the outcomes of the meeting.

In the event of the liquidation, business rescue or curatorship of the applicant issuer, the inability of the applicant issuer to pay its debts as they fall due or the applicant issuer becoming financially distressed as contemplated in the Companies Act, the reference to five business days in (a) is reduced to two business days and seven business days in (b) is reduced to five business days.

6.76 At the meeting, holders of debt securities will exercise their voting through polling and not by the show of hands. The meeting will elect a chair as voted by holders of debt securities.

6.77 The holder/s of debt securities who demanded the meeting may, prior to the meeting, withdraw the demand by notice in writing to the applicant issuer. A copy must be submitted to the JSE. Further, the applicant issuer may cancel the meeting if as a result of one or more of the demands being withdrawn, fail to meet the required percentage in paragraph 7.74 to call a meeting.

#### ***Specific responsibilities of the debt officer***

6.78 The debt officer appointed pursuant to Section 7 must undertake the following responsibilities:

- (a) act as central contact person for the applicant issuer to assist holders of debt securities with 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; and
- (b) assisting holders of debt securities access to the register of holders of debt securities through the transfer agent or otherwise (accepting the disclosure limitations at nominee/broker holder level only). Any request of access to the register of holders of debt securities must be adhered to within three business days from receipt of a written request from a holder/s of debt securities.

6.79 Any change to the contact details of the debt officer must be announced through SENS.

#### **Additional or Amended Continuing Obligations: Type of Debt Instrument**

- Sustainability Segment;
- Transition Segment;
- Structured Products:
  - o Asset-Backed Debt Securities;
  - o Credit-Linked Notes;
- Project Bonds;
- Sovereign Issuer;
- State-Owned Entities;
- Municipalities; and
- Secondary Registered Issuers.

### ***Sustainability Segment***

#### *Sustainability Use of Proceeds Debt Securities*

- 6.80 Applicant issuers with sustainability use of proceeds debt securities listed on the sustainability segment must:
- (a) comply with the Debt Listings Requirements and Sections 6 and 7 in relation to continuing obligations;
  - (b) confirm to the JSE that the sustainability use of proceeds debt securities complies with the use of proceeds standards, including a verification report from an independent external reviewer pursuant to the use of proceeds standards, in its annual compliance certificate pursuant to Section 1. The verification report must be made available on the website of the applicant issuer;
  - (c) publish any updates since the listing date, in relation to the disclosures made in the placing documentation in respect of the independent external reviewer's report;
  - (d) in the event that the use of proceeds standards are updated/revised, any new issuance of sustainability use of proceeds debt securities will only be permitted with the preparation of a new second party opinion as contemplated in paragraph 3.15 to reflect the updates/revision to the use of proceeds standards;
  - (e) publish through SENS immediately, any material divergence from the use of proceeds standards; and
  - (f) comply with the use of proceeds standards on an ongoing basis. Applicant issuers who fail to comply with the use of proceeds standards on an ongoing basis, must report such non-compliance to the JSE in writing and must remedy the non-compliance within a period of 25 business days. Should the issuer fail to remedy the non-compliance, the sustainability use of proceeds debt securities will no longer be visible on the sustainability segment but continue to remain listed on the appropriate sector pursuant to the provisions of the Debt Listings Requirements.

#### *Sustainability-Linked Debt Securities*

- 6.81 Applicant issuers with sustainability-linked debt securities listed on the sustainability segment must:
- (a) comply with the Debt Listings Requirements and Sections 6 and 7 in relation to continuing obligations;
  - (b) evidence to the JSE that the sustainability-linked debt securities issuer complies with the sustainability-linked standards, including a verification report from an independent external reviewer pursuant to the

- sustainability-linked standards, in its annual compliance certificate pursuant to Section 1. The verification report must be made available on the website of the applicant issuer;
- (c) publish through SENS at the time of submitting its annual compliance certificate pursuant to Section 1, the applicant issuer's progress against baseline/benchmark targets as prepared by the independent external reviewer;
  - (d) in the event that the sustainability-linked standards are updated/revised, any new issuance of sustainability-linked debt securities will only be permitted with the preparation of a new second party opinion as contemplated in paragraph 3.17 to reflect the updates/revision to the sustainability-linked standards;
  - (e) publish through SENS immediately, any material divergence from the sustainability-linked standards; and
  - (f) comply with the sustainability-linked standards on an ongoing basis. Applicant issuers who fail to comply with the sustainability-linked standards on an ongoing basis, must report such non-compliance to the JSE in writing and must remedy the non-compliance within a period of 25 business days. Should the issuer fail to remedy the non-compliance, the sustainability-linked debt securities will no longer be visible on the suitability segment but continue to remain listed on the appropriate sector pursuant to the provisions of the Debt Listings Requirements.

## **Transition Segment**

### *Transition Debt Securities*

- 6.82 Applicant issuers with transition debt securities listed on the transition segment must:
- (a) comply with the Debt Listings Requirements and specifically Sections 6 and 7 in relation to continuing obligations;
  - (b) evidence to the JSE that the transition debt securities adheres to the recommendations of the Climate Transition Finance Standards, as supported through the effective disclosure practices.
  - (c) in the event that the Climate Transition Finance Standards are updated/revised, any new issuance of transition debt securities will only be permitted with the preparation of a new Second Party Opinion as contemplated in paragraph 3.19 to reflect the updates/revision to the Climate Transition Finance Standards;
  - (d) publish through SENS immediately, any material divergence from the Climate Transition Finance Standards; and
  - (e) comply with the recommendations of the Climate Transition Finance Standards on an ongoing basis. Applicant issuers who fail to comply with the recommendations of the Climate Transition Finance Standards on an ongoing basis, must report such non-compliance to the JSE in writing and must remedy the non-compliance within a period of 25 business days. Should the applicant issuer fail to remedy the non-compliance, the transition debt securities will no longer be visible on the transition segment but continue to remain listed on the appropriate sector pursuant to the provisions of the Debt Listings Requirements.

## **Structured Products**

### *Asset-Backed Debt Securities*

- 6.83 Issuers of asset-backed debt securities must comply with the following additional continuing obligations:
- (a) The issuer must announce the following on SENS:

- (i) on a semi-annual basis, information about all underlying assets that, during the period under review, were the subject of a demand to repurchase or replace due to a breach of the representations and warranties (contained in the agreements underlying the asset-backed debt securities) or a negative statement. This information can be included in the quarterly report required in paragraph 6.83(a)(ii) below, however a SENS announcement must still be released stating that this information will be available in the report produced by issuers for its investors and including the website where the quarterly report will be available; and
  - (ii) on a quarterly basis (in accordance with the issuer's financial year-end or the interest payment dates on the asset-backed debt securities), details of the performance of the underlying assets including details of any defaults in respect of such assets and the information required in Schedule 4, Form A3. This information must also be submitted to the JSE. This requirement only applies to issuers who have issued asset-backed debt securities (i) pursuant to a securitisation or (ii) where the debt securities are backed by assets that can change between each quarterly reporting date (as an example, conduit structures). Issuers of asset-backed debt securities that are backed by static assets (i.e. the assets will not change between reporting dates) will not be required to comply with this paragraph 6.83(a)(ii).
- (b) Once the financial information of the issuing entities/guarantor of the issuing entities referred to in paragraphs 4.29(b)(ix)(2) to (4) is available, an issuer of asset-backed debt securities must release an announcement on SENS, within two business days of the financial information becoming available to the issuer, detailing the website address where such financial information can be obtained. The financial information of the issuing entities/guarantors of the issuing entities must be made available within six months of the issuing entity's/guarantor's financial year-end. Failure to prepare and publish such financial information will be addressed in accordance with the provisions of Section 6.
- (c) For asset-backed debt securities with equity securities as the underlying asset/s:
  - (i) where there is price sensitive information in relation to the underlying assets that is material or price sensitive information in relation to the issuer's financial or trading position or to the issuer's debt securities:
    - (1) The issuer must without delay, unless the information is kept confidential for a limited period of time, release an announcement on SENS providing details of the price sensitive information.
    - (2) Immediately after an issuer knows of any price sensitive information and the necessary degree of confidentiality of such information cannot be maintained or if the issuer suspects that confidentiality has or may have been breached, the issuer must release an announcement on SENS providing details of the price sensitive information to enable investors of listed debt securities to make an informed investment decision.
    - (3) If the directors of the issuer consider that disclosure to the public of the afore-mentioned information will, or probably will, prejudice the issuer's legitimate interests, the JSE may grant a dispensation from this requirement to make such information public.
  - (ii) If an issuer decides not to declare dividend or interest payments

on the asset-backed debt security, and such decision is deemed to be price sensitive, the decision must be announced on SENS immediately after it is taken.

- 6.84 Issuers of structured products may make use of the virtual data room on the same basis as Project Bonds below.

#### *Credit-Linked Notes*

- 6.85 When a credit event occurs and is called by the issuer, issuers of credit-linked notes must:

- (a) immediately announce on SENS that a credit event has occurred, stating the name of the relevant reference entity/ies; and
- (b) if the credit-linked note will not be redeemed and once the portion of the nominal amount that will be written down is known, announce this information on SENS and notify the JSE in accordance with the timetable set out in paragraph 3 of Schedule 4, Form A5; or
- (c) if the credit-linked note will be redeemed and once the redemption amount is known, announce this information on SENS and notify the JSE and CSD, in accordance with the timetable set out in paragraph 3 of Schedule 4, Form A5; and
- (d) submit an application through Webstir detailing what amendments to the instrument are required pursuant to the credit event (if there are additional amendments to that stated in 6.85(b) and (c)), at least three business days before the effective date for the amendments to the instrument to allow the JSE sufficient time to make the necessary adjustments on the various JSE systems impacted by this change. The changes to the instrument must be announced by the Issuer on SENS in accordance with paragraph 6.59.

- 6.86 The SENS announcement required by paragraph 6.85(b) and (c) above must state the following:

- (a) whether the settlement of the credit-linked note/relevant portion of the credit-linked note will be physically settled or cash settled and the process that will be followed to implement the settlement;
- (b) nominal amount to be written down, as well as the nominal amount after the write-down;
- (c) the actual amount of cash that is payable to investors (if applicable);
- (d) the record date;
- (e) pay date (if applicable); and
- (f) any other applicable changes.

#### *Changes to listed debt securities*

- 6.87 In the event that the redemption amount will not be equal to the nominal amount issued (i.e. the redemption amount is determined in accordance with a formula), an issuer shall announce the following information on SENS in accordance with the timetable set out in paragraph 3 of Schedule 4, Form A5:

- (a) the pay date, which shall not be more than two days after redemption date; and
- (b) the redemption amount.

#### **Project Bonds**

- 6.88 Project bond issuers are required to comply with Section 6 of the Debt Listings Requirements. In addition, project bond issuers must:

- (a) on a quarterly basis (in accordance with the project bond issuer's financial year-end or interest payment dates on the project bond) and within 1 month of the end of such quarter, publish a report on the project, complying with Schedule 4, Form A4, only to the extent that such information is applicable to the relevant project. An announcement must be released on SENS indicating the website where this report can be found, or if published in the VDR, the SENS announcement must contain the details required by paragraph 6.91. This report must also be submitted to the JSE; and
- (b) immediately inform the JSE and publish an announcement on SENS in the event of any material changes in the contractual arrangements in the structure of the project.

6.89 If, when complying with its continuing obligations as set out in the Debt Listings Requirements, the project bond issuer believes that certain information should not be released on SENS, the project bond issuer must approach the JSE for dispensation from providing the information on SENS and to provide such information in the virtual data room. The JSE may grant this dispensation if:

- (a) The disclosure of the information to the public will, or probably will, prejudice the project bond issuer's legitimate interests; or
- (b) Disclosure would be contrary to the public interest or the market as a whole.

#### *Publication of information*

6.90 The following information, where applicable, can be disclosed in a virtual data room rather than on a website at the project bond issuer's discretion, provided that paragraphs 3.19, 6.91 and 6.92 have been complied with:

- (a) The audited cash flow model on the project;
- (b) Information in relation to a delayed interest or capital payment on the project bonds. The issuer should provide details of the nature and extent of such delay and suggested remedial steps;
- (c) The legal agreements required by paragraph 4.32(b);
- (d) The documents required by paragraph 4.32(c);
- (e) The information required by paragraph 4.32(d)(iv);
- (f) The report required by paragraph 6.88(a); and
- (g) Any information where the JSE has granted the project bond issuer a dispensation from publishing such information on SENS, in accordance with paragraph 6.89.

6.91 Where information required to be included in the placing document or pricing supplement is made available in a virtual data room, a statement must be included in the placing document or pricing supplement confirming the following:

- (a) the information that will be available to project bond investors in the virtual data room;
- (b) the exact location in the virtual data room where the information can be found (e.g. folder name and document number);
- (c) the date and time at which such information will be available (this must be no later than the date on which the final placing document is published on a website or two business days prior to the trade date, whichever comes first); and
- (d) the contact details of the individual responsible for granting access to the virtual data room.

### *Continuing obligations when using a virtual data room*

- 6.92 A SENS announcement must be released by the project bond issuer before any information can be uploaded to the virtual data room. The SENS announcement must include the following information:
- (a) the type of information that will be uploaded into the virtual data room;
  - (b) the exact location in the virtual data room where the information can be found (e.g. folder name and document number);
  - (c) the date and time at which the information will be available in the virtual data room; and
  - (d) the contact details of the individual responsible for granting access to the virtual data room.
- 6.93 If the information to be uploaded into the virtual data room has not been uploaded at the time specified in the SENS announcement, a new SENS announcement, in compliance with paragraph 6.92, must be released by the project bond issuer detailing the new time at which the information will be available in the virtual data room. In such an instance, the project bond issuer must ensure that the information is only uploaded after the release of the second SENS announcement.
- 6.94 If the project bond issuer opts to change its VDR provider, the new VDR provider must be accredited with the JSE and the project bond issuer must provide the JSE with ten business days' notice before such change can be implemented. The project bond issuer must also release an announcement on SENS at least ten business days' prior to such change being implemented detailing the following:
- (a) the name of the new VDR provider;
  - (b) the weblink to the new virtual data room;
  - (c) the date and time at which all of the project bond issuer's documents will be available in the new virtual data room (the time must not be during JSE trading hours); and
  - (d) the contact details of the individual responsible for access to the new virtual data room.
- 6.95 If the virtual data room is not available for any reason, the JSE must be immediately notified by the VDR provider and the project bond issuer. In such an instance, the JSE may suspend trading in accordance with Section 1.
- 6.96 Project bond Issuers or VDR providers must submit a copy of the renewed ISO 27001 certificate to the JSE within ten business days of the expiry date of the certificate.

### ***Sovereign Issuer***

- 6.97 A sovereign issuer, in its capacity as an issuer of debt securities, is not required to comply with:
- (a) paragraphs 6.14, 6.15 and 6.17;
  - (b) paragraphs 6.39 and 6.41 only in respect of directors and the company secretary; and
  - (c) paragraphs 6.42-6.53.

### ***State-Owned Entities***

#### *Municipalities*

- 6.98 State-Owned Entities and municipalities are not required to comply with paragraphs 6.22 and 6.23 if audited by the Auditor General.



## **Secondary Registered Issuers**

### *Continuing obligations for secondary registered issuers*

- 6.99 The following continuing obligations apply to all secondary registered issuers:
- (a) Secondary registered issuers are not required to comply with paragraphs 6.22 to 6.29 and 6.54 to 6.58;
  - (b) Secondary registered issuers must release a SENS announcement, as detailed in paragraph 6.17, and submit their financial information to the JSE within the timeframes stipulated by the accredited exchange but in any event by no later than 6 months after the secondary registered issuer's financial year-end; and
  - (c) Should the secondary registered issuer cease to have its debt programme registered with the accredited exchange or the registration of the debt programme has been suspended:
    - (i) The JSE must immediately be notified and an announcement must be released immediately on SENS; and
    - (ii) The JSE reserves the right to review the secondary registered issuer's listing of debt securities which could lead to the suspension or removal of the registration of the secondary registered issuer's JSE supplement or listing of debt securities pursuant to Section 1 of the Debt Listings Requirements.

### *Foreign Issuers*

- 6.100 The requirements in paragraphs 6.22 and 6.23 with regard to the auditor apply equally to those foreign registered entities with debt securities listed on the Interest Rate Market and/or the main board of the JSE other than in the instance of a secondary registered issuer.

## **Section 7 – Corporate Governance**

### **Scope of section**

This section sets out the requirements relating to corporate governance and must be read with the continuing obligations in Section 6.

All the provisions dealing with corporate governance are contained in this section. The applicable corporate governance provisions must be applied in accordance with the type of the debt securities/issuer pursuant to the table in Appendix 1 to Section 7.

- 7.1 Details of the applicant issuer
- 7.2 Contents of financial information
- 7.3 Corporate Governance
- 7.4 Conflicts of Interests
- 7.7 Nomination of Directors
- 7.9 Domestic Prominent Influential Person
- 7.12 Procurement
- 7.15 General: Loans and Procurement

Appendix 1 to Section 7 – Applicable corporate governance provision pursuant to type of debt securities/issuer.

### **Details of the applicant issuer**

- 7.1 The placing document prepared by the applicant issuer must include the disclosure of how the applicant issuer has implemented the King Code through

the application of the King Code disclosure and application regime. A foreign applicant issuer must comply with the applicable provisions of Appendix 1 to Section 7, depending on the type of debt securities/issuer. The reference to the King Code for purposes of this paragraphs 7.1 and 7.2 below, must be replaced with the applicable corporate governance code in its jurisdiction, which must be acceptable to the JSE.

## **Contents of financial information**

- 7.2 In addition to complying with IFRS, applicant issuers are required to disclose how they have implemented the King Code through the application of the King Code disclosure and application regime. Where an applicant issuer obtains a third party governance rating on its application of the King Code, the governance rating must be disclosed.

## **Corporate Governance**

- 7.3 Applicant issuers must implement the following specific corporate governance practices and must, in addition to complying with IFRS, disclose compliance therewith in their annual financial statements, which must be available on the website of the applicant issuer. (The effect of incorporating certain practices from the King Code into the Debt Listings Requirements is to make their implementation mandatory, this is notwithstanding the fact that application of the corporate governance practices in the King Code is generally voluntary):
- (a) all applicant issuers must, in accordance with the King Code appoint an audit committee. The composition of the audit committee must comply with the Companies Act or other enabling legislation, and should be considered in accordance with the recommended practices in the King Code on an apply and explain basis, provided that each committee must comprise of at least three members. A brief description of the audit committee mandate, the number of meetings held and other relevant information must be disclosed in the annual financial statements;
  - (b) a brief CV of each director must be included in the annual financial statements. It should further be noted that a brief CV for each director standing for election or re-election at a general meeting or the annual general meeting must accompany the notice of the general meeting or annual general meeting;
  - (c) the capacity of each director must be categorised as executive, non-executive or independent, using the following as guidelines to determine which category is most applicable to each director:
    - (i) executive directors:  
are directors that are involved in the management of the company and/or in full-time salaried employment of the company and/or any of its subsidiaries;
    - (ii) non-executive directors are directors that are not:
      - (1) involved in the day to day management of the business, or
      - (2) full-time salaried employees of the company and/or any of its subsidiaries;
    - (iii) independent directors should be determined holistically, and on a substance over form basis in accordance with the indicators provided in Section 94(4)(a) and (b) of the Companies Act and the King Code.
  - (d)
    - (i) all applicant issuers must have an executive financial director;
    - (ii) the JSE may, at its discretion, when requested to do so by the applicant issuer and due to the existence of special circumstances, allow the financial director to be employed on a part time basis or not at all. This request must be accompanied

by a detailed motivation by the applicant issuer and the audit committee. In the event that the request is granted by the JSE, the applicant issuer must announce the appointment of a part-time director through SENS;

- (iii) an applicant issuer is not required to appoint a financial director if its holding company (of which the applicant issuer is a wholly-owned subsidiary as defined in the Companies Act) has a financial director and irrevocably, and unconditionally guarantees the obligations of the applicant issuer;
- (e) the audit committee must, notwithstanding its duties pursuant to Section 94 of the Companies Act:
  - (i) consider and satisfy itself, on an annual basis, of the appropriateness of the expertise and experience of the financial director;
  - (ii) ensure that the issuer has established appropriate financial reporting procedures and that those procedures are operating;
    - (iii) the audit committee must, notwithstanding its duties pursuant to Section 94 of the Companies Act or other enabling legislation, request from the audit firm (and if necessary, consult with the audit firm on) the information detailed in paragraph 22.15(h) of Section 22 of the JSE Listings Requirements in their assessment of the suitability for appointment of their current or a prospective audit firm and designated individual partner both when they are appointed for the first time and thereafter annually for every re-appointment as well as, in the instance of a new issuer, prior to registration of the programme; and
  - (iv) notwithstanding the provisions of Section 90(6) of the Companies Act, ensure that the appointment of the auditor is tabled as a resolution at the annual general meeting of the issuer pursuant to Section 61(8) of the Companies Act.

The issuer must confirm, by reporting to holders of debt securities in its annual financial statements, that the audit committee has executed the responsibilities set out in paragraph 7.3(g) below.

- (f) all applicant issuers must have a current policy on the evaluation of the performance of the board of directors of the applicant issuer and that of its committees, its chair and its individual directors pursuant to the provisions of the King Code. The applicant issuer must confirm this by reporting to holders of debt securities in its annual financial statements that the board of directors has executed this responsibility;
- (g) all applicant issuers must appoint a debt officer, which person must be –
  - (i) the financial director of the applicant issuer;
  - (ii) the group treasurer of the applicant issuer; or
  - (iii) a senior employee of the applicant issuer with full delegated authority from the person in (i) or (ii) above,

ensuring adherence with the specific responsibilities pursuant to paragraph 6.78. In the event of a full delegation of authority under (iii), the delegation of authority must in no way whatsoever diminish the responsibility vested on the financial director or group treasurer of the applicant issuer, as the case may be, to undertake the responsibilities pursuant to paragraph 6.78.

The board of directors must consider and satisfy itself on the competence, qualifications and experience of the debt officer on appointment.

## **Conflicts of Interests**

- 7.4 The applicant issuer must have a current policy dealing with the conflicts of interest of the directors and the executive management of the applicant issuer and how such conflicting interests can be identified and managed or avoided. The policy must be available on the website of the applicant issuer.
- 7.5 Notwithstanding paragraph 7.4, the applicant issuer must record any interests of the directors and the executive management disclosed pursuant to Section 75 of the Companies Act (Director's personal financial interests).
- 7.6 A current register of any conflicts of interest and/or personal financial interests must be maintained by the applicant issuer and must be made available on the website of the applicant issuer when the applicant issuer publishes its annual financial statements. A negative statement must be made if there are no recorded conflicts of interest.

## **Nomination of Directors**

- 7.7 The applicant issuer must have a current policy dealing with the process for the nomination and appointment of directors of the applicant issuer, which must include details of the (i) statutory framework for the appointment of directors (if any), (ii) the fit and proper assessment to be undertaken in order to evaluate the suitability of candidates, (iii) the consideration of any conflicts and (iv) the process involved when considering the nomination of domestic prominent influential persons as directors. The policy must be available on the website of the applicant issuer.
- 7.8 Any amendments to the policy dealing with the nomination of directors of the applicant issuer must be announced immediately. Any instances of deviations from the policy dealing with the nomination and appointment of directors must be announced on SENS immediately together with reasons for the deviation.

## **Domestic Prominent Influential Person**

- 7.9 If the applicant issuer is a state-owned entity or municipality, the applicant issuer must have a current policy dealing with the disclosure and treatment of domestic prominent influential persons (i) at board level and (ii) for prescribed officers of the applicant issuer in respect of any transactions/dealings by the applicant issuer with domestic prominent influential persons. The policy must be available on the website of the applicant issuer.
- 7.10 A current register of such domestic prominent influential persons and the relationship with the applicant issuer must be maintained by the applicant issuer and must be made available on the website of the applicant issuer when the applicant issuer publishes its annual financial statements. A negative statement must be made if there are no domestic prominent influential persons.
- 7.11 Any amendments to the policy dealing with disclosure and treatment of domestic prominent influential persons must be announced immediately. Any instances of deviations from the policy dealing with the disclosure and treatment of domestic prominent influential persons must be announced on SENS immediately together with reasons for the deviation.

## **Procurement**

- 7.12 If the applicant issuer is a state-owned entity or municipality and has a policy dealing with procurement of services and/or products, this policy must be current and published on the issuer's website.
- 7.13 A current register of procurement of services and/or products representing 10% or more of the annual procurement spend of the applicant issuer must be maintained by the applicant issuer and must be made available on the website of the applicant issuer when the applicant issuer publishes its annual

financial statements. The register must disclose at least the following:

- (a) Parties to the agreement;
- (b) Brief description as to the nature of the agreement;
- (c) Date of the agreement and duration; and
- (d) Total value of the agreement for the duration period.

A negative statement must be made if there are no such procurement partners at that level.

- 7.14 Any amendments to the policy dealing with procurement must be announced immediately. Any instances of deviations from the policy dealing with the procurement of services and/or products must be announced on SENS immediately together with reasons for the deviation.

### **General: Loans and Procurement**

- 7.15 If the applicant issuer is a state-owned entity or municipality, the applicant issuer must have a current policy dealing with the disclosure and treatment of loans and procurement, as a minimum, with –

- (a) any related party;
- (b) domestic prominent influential persons; and
- (c) prescribed officers.

The policy must be available on the website of the applicant issuer.

- 7.16 A current register of such loans and procurement with the applicant issuer must be maintained by the applicant issuer and must be made available on the website of the applicant issuer when the applicant issuer publishes its annual financial statements. The register must disclose at least the following:

- (a) Parties to the agreement;
- (b) Brief description as to the nature of the agreement;
- (c) Date of the agreement and duration; and
- (d) Total value of the agreement for the duration period.

A negative statement must be made if there are no loans or procurement with such parties.

- 7.17 Any amendments to the policy dealing with the disclosure and treatment of loans and procurement with related parties, domestic prominent influential persons and prescribed officers must be announced immediately. Any instances of deviations from the policy must be announced on SENS immediately together with reasons for the deviation.

### **Appendix 1 to Section 7**

#### **Applicable corporate governance provision pursuant to type of debt securities/issuer.**

Keys:

Unless specifically categorised by type of debt securities/issuer through items 2-10 below, item 1 (Debt Securities) must be applied.

<b>1</b>	Debt Securities	<b>DS</b>
<b>2</b>	Securitisations	<b>S</b>
<b>3</b>	Asset-backed debt securities	<b>ABS</b>
<b>4</b>	Sustainability & Transition Segment	<b>S&amp;TS</b>

<b>5</b>	Structured Products	<b>SP</b>
<b>6</b>	Projects Bonds	<b>PB</b>
<b>7</b>	Sovereign Issuer	<b>SI</b>
<b>8</b>	State-Owned Entities	<b>SOE</b>
<b>9</b>	Municipalities	<b>MUN</b>
<b>10</b>	Secondary Registered Issuers	<b>SRI</b>

	<b>DS</b>	<b>S</b>	<b>ABS</b>	<b>S&amp;TS</b>	<b>SP</b>	<b>PB</b>	<b>SI</b>	<b>SOE</b>	<b>MUN</b>	<b>SRI</b>
7.1 <b>King Code - Placing Document +</b>	√	X	X	√	X	X	X	√	√	*
7.2 <b>King Code - Financial Statements +</b>	√	X	X	√	X	X	X	√	√	*
7.3(a) <b>Audit Committee#</b>	√	X	X	√	X	X	X	√	√	X
7.3(b) <b>CV of Directors</b>	√	X	X	√	X	√	X	√	√	X
7.3(c) <b>Capacity of Directors</b>	√	√	√	√	√	√	X	√	√	X
7.3(d) <b>Financial Director ^</b>	√	X	X	√	X	X	X	√	X	X
7.3(e) <b>Audit Committee Functions</b>	√	X	X	√	X	X	X	√	√	X
7.3(f) <b>Evaluation of Directors</b>	√	X	X	√	X	X	X	√	√	X
7.3(g) <b>Debt Officer</b>	√	X	X	√	X	X	X	√	√	√
7.4 <b>Conflicts of Interests</b>	√	X	X	√	X	X	X	√	√	X
7.7 <b>Nomination of Directors</b>	√	X	X	√	X	X	X	√	√	X
7.9 <b>Domestic Prominent Influential Person</b>	X	X	X	X	X	X	X	√	√	X
7.12 <b>Procurement</b>	X	X	X	X	X	X	X	√	√	X
7.15 <b>Loans and Procurement – Related Parties</b>	X	X	X	X	X	X	X	√	√	X

**Notes:**

- +
- In the event that the applicant issuer is a wholly-owned subsidiary of an issuer with its equity shares listed on the Main Board or AltX of the JSE, the applicant issuer may place reliance on the disclosure made by such listed equity issuer on the basis that the applicant issuer would have been included in the King Code application. A positive statement to this fact must be made and disclosure on how the equity listed issuer has implemented the King Code through the application of the King Code disclosure and application regime must be incorporated by reference.
- #
- The exemptions to appoint an audit committee pursuant to Section 94(2) of

the Companies Act will be allowed.

^ Consider exemption pursuant to paragraph 7.3(d)(iii).

\* A secondary registered issuer is not required to comply with the King Code however must have a corporate governance regime acceptable to the JSE. A secondary registered issuer must state the corporate governance regime they comply with.

## **Section 8 – The Listing Process**

- 8.1 General
- 8.3 Documents to be submitted on formal submission
- 8.5 Signing and date of the placing document
- 8.8 Signing and date of the pricing supplement
- 8.9 Sovereign Issuers
- 8.10 Secondary Registered Issuers

### **General**

- 8.1 The applicant issuer must refer to the JSE website for the debt market process document.
- 8.2 For the guidance and information of applicant issuers, it should be noted that:
  - (a) all documents submitted by applicant issuers to the JSE will become the property of the JSE and are not returnable;
  - (b) any documentation including proposed amendments to documentation by applicant issuers must be submitted to the JSE for approval before being published; and
  - (c) new placing documents submitted to the JSE in the first submission must be accompanied by the documents detailed in Schedule 4 Form A6.

### **Documents to be submitted on formal submission**

- 8.3 A new applicant making application for the approval by the JSE of the registration of a programme memorandum or, in the case of a foreign issuer, the JSE supplement or a listing of debt securities pursuant to an offering circular shall submit an application to the JSE through a debt sponsor or designated person and in accordance with the debt market process document. The JSE will not grant final formal approval unless the following documents, where applicable, have been submitted:
  - (a) a signed copy of the placing document;
  - (b) a copy of the certificate of registration and certificate of incorporation of the new applicant;
  - (c) a copy of the resolution or resolutions of the board of directors or the governing authority of the new applicant authorising the establishment and registration of the programme memorandum or, in the case of a foreign issuer, the JSE supplement and/or the issue of debt securities as the case may be;
  - (d) a copy of the Memorandum of Incorporation of the new applicant or equivalent constitutive documents;
  - (e) a signed copy of any applicable guarantee/security agreement in respect of the debt security;
  - (f) a duly executed resolution of the appropriate legal authority authorising



- the provision of the guarantee, security and/or credit enhancement;
- (g) confirmation from the CSD that the new applicant has been authorised as a participant in terms of the central securities depository rules and directives;
- (h) any trust deed relating to the debt securities (only in the instance of a debenture trustee or bond trustee);
- (i) where the new applicant issuer is registering a placing document in relation to a securitisation, a copy of the South African Reserve Bank approval of the securitisation;
- (j) approval from the Financial Surveillance Department of the South African Reserve Bank is required when the applicant issuer is incorporated or domiciled in a foreign country, including the common monetary area (other than South Africa);
- (k) written confirmation from the trustee or relevant party holding the guarantee or other security that it has the guarantee in its possession;
- (l) application letter complying with Schedule 1;
- (m) a letter from the debt sponsor or designated person complying with Schedule 2;
- (n) the audit report from the auditor, if the instance referred to in paragraph 5.3(c) is applicable;
- (o) the audited annual financial statements of the new applicant and/or guarantor (if applicable and if the guarantor has operating assets) in respect of the period of three years prior to the date of such issue or such financial statements as agreed to by the JSE in terms of paragraphs 5.4 to 5.6. If more than 9 months have lapsed since the new applicant's financial year-end and/or guarantor's financial year-end, interim financial statements for the new applicant and/or guarantor must be submitted;
- (p) the auditors consent letter, if paragraph 8.3(n) is applicable;
- (q) letter from the legal adviser that all relevant agreements have been signed;
- (r) in relation to all other asset-backed debt securities, the letter from the new applicant as required by paragraph 3.26; and
- (s) the letter from the new applicant issuer or other foreign issuer, as the case may be, confirming that the information published in the signed placing document was materially the same as that contained in the draft submitted for formal approval to the JSE, or, if not, then in what material respects it differed, as required by paragraph 8.6.

8.4 An issuer making application for the approval of amendments or an update to the placing document, pricing supplement, the terms and conditions of the debt securities, guarantee, security agreement and/or credit enhancement agreement (any of these documents being an **"amended document"**) shall submit an application to the JSE through a debt sponsor or designated person and in accordance with the debt market process document.

- (a) The first submission must include:
  - (i) a letter from the debt sponsor or designated person complying with Schedule 2;
  - (ii) A blackline and clean version of the amended placing document, pricing supplement, the terms and conditions of the debt securities, guarantee, security agreement or credit enhancement agreement. If a blackline is not possible due to substantial number of amendments, a clean version must be submitted and

this reason must be stated by the debt sponsor or designated person as a comment in the Webstir filing. It should be noted that in such cases, the fee charged will be the new placing document fee;

- (iii) The draft supplement to the placing document or general amendment agreement, if applicable; and
  - (iv) The draft notice to holders of the debt securities requesting approval of the amendments.
- (b) The JSE will not grant final formal approval unless the following documents, where applicable, have been submitted:
- (i) a signed copy of the amended placing document, pricing supplement, supplement to the placing document, general amendment agreement, guarantee, security agreement or credit enhancement agreement;
  - (ii) a letter from the issuer to the JSE confirming that the signed amended placing document, pricing supplement, supplement to the placing document, general amendment agreement, guarantee, security agreement or credit enhancement agreement was materially the same as that contained in the draft submitted for formal approval to the JSE, or, if not, then in what material respects it differed;
  - (iii) a copy of the resolution of the board of directors or the governing authority of the issuer authorising the amendments, if applicable;
  - (iv) a duly executed resolution of the appropriate legal authority authorising the amendment to the guarantee, security and/or credit enhancement, if applicable;
  - (v) confirmation of approval by all the holders of debt securities or the relevant holders of a class(es) of debt securities of the amendments;
  - (vi) a letter from the legal adviser that all relevant agreements have been signed; and
  - (vii) any documents ancillary to the amendments (e.g. changes to the constitutional documents of the issuer, etc.).

### **Signing and date of the placing document**

8.5 The placing document shall:

- (a) in the case where the applicant issuer is not subject to the CP Regulations or Securitisation Regulations, be signed by a duly authorised signatory of such applicant issuer; or
- (b) in the case where the applicant issuer is subject to the CP Regulations or Securitisation Regulations, be signed in accordance with the applicable regulation; and
- (c) the signatory/ies shall be deemed to have authorised the publication of the placing document;
- (d) every signature to a placing document shall be dated, the latest of such dates shall be deemed to be the date of the placing document; and
- (e) every signature to a placing document shall include the name and capacity of the signatory.

8.6 The submission of the signed placing document must be accompanied by a letter from the applicant issuer confirming that the information published in the signed placing document was materially the same as that contained in the draft submitted for formal approval to the JSE, or, if not, then in what

material respects it differed.

- 8.7 The placing document shall contain a statement on the cover page that the placing document has been registered with the JSE.

### **Signing and date of the pricing supplement**

- 8.8 The pricing supplement shall:
- (a) in the case where the applicant issuer is not subject to the CP Regulations or Securitisation Regulations, be signed by a duly authorised signatory of such applicant issuer; or
  - (b) in the case where the applicant issuer is subject to the CP Regulations or Securitisation Regulations, be signed in accordance with the applicable regulation;
  - (c) the signatory/ies shall be deemed to have authorised the publication of the pricing supplement; and
  - (d) every signature to a pricing supplement shall include the name and capacity of the signatory and shall be dated, the latest of such dates shall be deemed to be the date of the pricing supplement.

### **Sovereign Issuers**

#### ***Dispensation***

- 8.9 The following dispensations are granted to a sovereign issuer, in its capacity as issuer and guarantor (where applicable), as regards documents to be submitted for formal submission:
- (a) paragraphs 8.3(b), (c), (d), (e), (f), (h), (i), (k), (n), (o) and (p).
- 8.10 The South African Government is further granted dispensation from compliance with paragraph 8.3(j).

### **Secondary Registered Issuers**

#### ***Fast track listing process – Documents to be submitted***

- 8.11 A secondary registered issuer utilising the fast track listing process, as detailed in Section 4, shall submit an application to the JSE through a debt sponsor or designated person, in accordance with the debt market process document. The application must be accompanied by the following documents where applicable:
- (a) A completed Schedule 1 letter;
  - (b) Resolution by the board of directors (or appropriate authorised officials) of the secondary registered issuer, including the authority for the issue of debt securities in South Africa;
  - (c) Approval from the Financial Surveillance Department of the South African Reserve Bank (if exchange control approval will only be provided on issuance, a letter from the secondary registered issuer stating this and exchange control approval must then be provided when applying to list a debt security on the JSE);
  - (d) The prospectus;
  - (e) The JSE supplement;
  - (f) The latest audited annual financial statements of the secondary registered issuer prepared within the accounting frameworks listed in paragraph 4.30I (if more than nine months have elapsed since the last financial year-end, interim financial statements must be submitted);

- (g) The letter from the applicant issuer confirming that the information published in the signed JSE supplement was materially the same as that contained in the draft submitted for formal approval to the JSE, or, if not, then in what material respects it differed; and
- (h) Letter from the legal adviser that all relevant agreements have been signed.

### **Debt Listing Requirements Schedules**

- 1 Application for registration of a placing document by the new applicant
- 2 Declaration by debt sponsor or designated person
- 3 Debt sponsor & designated person
- 4 Applications forms & other

#### **Schedule 1: Application for registration of a placing document by the new applicant**

Application for registration must contain the following:

- (a) A statement that "It is understood that the granting of formal approval for the registration of a placing document and pursuant therefore the application for the listing of debt securities shall constitute a contract between the new applicant and the JSE Limited to comply with the Debt Listings Requirements, as amended from time to time";
- (b) A statement that "All applicable regulatory disclosures have been made and there are no material matters, other than those disclosed in the placing document or otherwise in writing to the JSE that should be taken into account by the JSE in considering the suitability for the registration of the placing document and/or the listing of the debt securities for which application is being made";
- (c) full name of the new applicant;
- (d) the address of the registered transfer agent of the new applicant in the Republic of South Africa;
- (e) where the new applicant is a regulated entity, the new applicant must state the act under which it is regulated;
- (f) the application must be signed by the two authorised signatories or equivalent, of the new applicant and by the debt sponsor or designated person;
- (g) the application must be accompanied by a resolution of the directors, or equivalent of the new applicant authorising the establishment and registration of the placing document and the listing of debt securities;
- (h) statement that the JSE will be advised in writing of any change in debt sponsor/designated person, company secretary, address of registered or transfer office; and
- (i) confirmation that the new applicant has appointed an ongoing debt sponsor or designated person and the contact details and registered addresses thereof. Where a designated person is appointed, the contact details for the alternative designated person must also be disclosed; and
- (j) confirmation that the new applicant has appointed a settlement agent and the contact details and registered addresses thereof.

#### **Schedule 2: Declaration by the debt sponsor or designated person**

The following declaration format must be used by the debt sponsor or designated person when making the first submission of the placing document to the JSE. The

declaration must be on the letterhead of the debt sponsor or designated person, as applicable.

"The Issuer Regulation Division

JSE Limited

One Exchange Square

Gwen Lane

Sandown

..... 20.....

Dear Sirs

(Debt sponsor/designated person) Declaration

The attached application by (full name of applicant issuer) in respect of (brief description of the placing document the issuer is applying to register with the JSE) is the subject of this declaration.

I, (full name of debt sponsor or the designated person), as approved by the JSE hereby confirm that:

(a) (name of debt sponsor or designated person) has been appointed as an ongoing debt sponsor or designated person by (full name of applicant issuer);

(b) I have satisfied myself to the best of my knowledge and belief, having made due and careful enquiry of the applicant issuer (and its advisers), that all the documents required by the Debt Listings Requirements to be included in the application have been supplied to the JSE, that all other relevant requirements of the Debt Listings Requirements have been complied with, and that there are no material matters other than those disclosed in writing to the JSE that should be taken into account by the JSE in considering the suitability of the application. Should any further information come to my notice before the approval of the application, I will immediately inform the JSE; and I will review each submission for full compliance with the Debt Listings Requirements before submitting it to the JSE.

This declaration is furnished to you in accordance with the Debt Listings Requirements of the JSE and may not be relied upon for any other purpose or by any other person.

.....

Yours faithfully

.....

(Signature of debt sponsor or designated person)

.....

(Initials and surname of debt sponsor or designated person)"

### **Schedule 3: Debt Sponsor & Designated Person**

This schedule contains certain requirements applicable to debt sponsors and designated persons and should be read in conjunction with Section 2 of the Debt Listings Requirements.

#### ***Introduction***

- 3.1 This schedule sets out the requirements of the JSE pertaining to the eligibility criteria of debt sponsors.
- 3.2 A debt sponsor may be a company, partnership or sole proprietor with sufficient executive staff to execute all debt sponsor requirements and responsibilities in accordance with the Debt Listings Requirements.
- 3.3 The responsibilities of a debt sponsor are set out in Section 2.

#### ***Qualifications for approval***

- 3.4 A debt sponsor must satisfy the JSE –
  - (a) that it is competent to discharge the responsibilities of a debt sponsor; and
  - (b) that it accepts the responsibilities of a debt sponsor and agrees to discharge those responsibilities at all times to the satisfaction of the JSE.

### ***Eligibility criteria***

3.5 The following criteria must be met by a debt sponsor in order to satisfy the JSE that it is competent to fulfil the role of debt sponsor:

- (a) Employment of staff with relevant experience
  - (i) a debt sponsor will be expected to have staff that has considerable relevant debt market experience;
  - (ii) a debt sponsor must be able to demonstrate to the JSE's satisfaction, that at least three of its executive staff have relevant debt market experience. Such Executive staff will be classified as Debt approved executives and recorded as such by the JSE.
  - (iii) the debt sponsor's approved executives must not have been:
    - (1) convicted of an offence resulting from dishonesty, fraud or embezzlement;
    - (2) censured or fined by a self-regulatory organisation, or recognised professional body;
    - (3) barred from entry into any profession or occupation; or
    - (4) convicted in any jurisdiction of any criminal offence, or an offence under legislation relating to the Companies Act and/or the FMA, or been a director or alternate director or officer of a company at the time such company was convicted of any similar offence;
  - (iv) if the relevant criteria detailed in 3.5(a)(i) to (iii) above are not satisfied, the JSE may still accept the applicant as a debt sponsor, provided that such debt sponsor has demonstrated to the JSE's satisfaction that it has the necessary expertise and adequacy of staff to properly discharge the responsibilities of a debt sponsor. In such instance such debt sponsor must have at least one executive approved as a Debt Approved Executive by the JSE. In this instance the JSE will record whichever executive staff members have qualified for approved executive classification as well as the details of the other debt sponsor staff employed ("employment status"). The JSE reserves the right to review such debt sponsor's status if and when there is any change to such debt sponsor's employment status, which must be notified to the JSE within two business days of such change.
- (b) Adequate supervision of staff –
  - (i) a debt sponsor must ensure that all staff who do not qualify for classification are supervised and managed by debt approved executives whenever they are involved in debt sponsor activities; and
  - (ii) a debt sponsor must have appropriate controls and procedures to ensure that staff involved in debt sponsor activities do not act beyond their authority.
- (c) Sufficiency of staff –
  - (i) arrangements must be in place to ensure that a sufficient number of debt approved executives are always available to ensure that the debt sponsor's responsibilities are properly discharged at all times.

### ***The application process***

3.6 Application to become a debt sponsor must be made to the JSE by submitting the debt sponsor application form (in terms of Form A1).

- 3.7 An applicant will be required to nominate a person to act as the primary contact with the JSE concerning the application.
- 3.8 The JSE will advise the applicant of the result of the application in writing.

#### ***Fees***

- 3.9 The relevant fees for application and to act as debt sponsor as determined by the JSE from time to time are available on the JSE's website "[www.jse.co.za](http://www.jse.co.za)".
- 3.10 If annual subscription fees payable by a debt sponsor are not paid by 31 January of any year, no document from such debt sponsor will be accepted for submission to the JSE until the fees have been paid in full.

#### ***Register***

- 3.11 A register of debt sponsors will be published by the JSE.

#### ***Designations***

- 3.12 A debt sponsor is permitted, but not required, to state on its business documentation that it is a debt sponsor approved by the JSE and may similarly disclose its debt approved executives.

#### ***Continuing requirements***

##### ***Annual confirmation***

- 3.13 Each time the annual subscription is paid, the debt sponsor is required to advise the JSE whether or not it still meets the eligibility criteria, and, specifically, whether or not it continues to have a minimum of three approved executives in its employ.
- 3.14 Individuals who wish to remain as registered Debt approved executives must submit a sworn affidavit to the JSE by no later than 31 January of each year confirming that they were actively involved in providing advice on the application of the Debt Listings Requirements during the previous twelve months and that they will continue to do so in the next twelve months. Failure to make this submission will result in the removal of the individual from the register.

#### ***Issues affecting approved executive status***

- 3.15 Whenever an approved executive of a debt sponsor resigns and moves employment to another debt sponsor, such person must notify the JSE.

#### ***Issues affecting debt sponsor status***

- 3.16 A debt sponsor must inform the JSE within two business days, in writing, if any of its approved executives leave its employment (including the situation where an approved executive is no longer physically present in the debt sponsor's offices and providing advice to applicant issuers), and, if such departure causes the debt sponsor to have less than three approved executives in its employ it will have a period of three months in which to re-satisfy the eligibility criteria detailed in 3.5 above, failing which (unless the JSE provides dispensation in terms of Schedule 3.5(a)(iv)) the debt sponsor's status will be suspended until such criteria are satisfied. The JSE will publish such details of the suspension of debt sponsors.
- 3.17 A debt sponsor may resign as a sponsor by giving written notice to the JSE and the relevant applicant issuer's on whose behalf it acts.
- 3.18 If the departure of approved executives results in a debt sponsor no longer meeting the eligibility criteria in 3.5 above, the JSE will suspend the debt sponsor's status, announcing same through SENS, until the debt sponsor re-qualifies in accordance with 3.5.
- 3.19 If at any time the JSE considers that a debt sponsor or approved executive is



no longer competent, the JSE may suspend the debt sponsor or approved executive on reasonable notice to the debt sponsor. If the debt sponsor or approved executive is dissatisfied with the JSE's decision in this regard they should notify the JSE in accordance with paragraph 2.11 of Section 2.

- 3.20 Notwithstanding acceptance by the JSE of a debt sponsor's resignation, or withdrawal by the JSE of a debt sponsor's status, the debt sponsor shall continue to be subject to the jurisdiction of the JSE for a period of one year following the resignation or withdrawal of status.
- 3.21 A debt sponsor must immediately notify the JSE by email, facsimile and letter if any of the events below occur (failure to make full disclosure to the JSE may result in disciplinary action against the sponsor):
- (a) any of the debt sponsor's executives are:
    - (i) convicted of an offence resulting from dishonesty, fraud or embezzlement;
    - (ii) censured or fined by a self-regulatory organisation, or recognised professional body;
    - (iii) barred from entry into any profession or occupation; or
    - (iv) convicted in any jurisdiction of any criminal offence, or an offence under legislation relating to the Companies Act, or was a director or alternate director or officer of a company at the time such company was convicted of any similar offence; or
  - (b) an approved executive ceases to meet the criteria for approved executive classification.

### ***Designated Person***

#### *The application process*

- 3.22 Applications to become a designated person must be made to the JSE by submitting:
- (a) an application letter detailing the following:
    - (i) the name of the secondary registered issuer that the designated person wishes to represent;
    - (ii) the name of the company that the designated person is employed by;
    - (iii) the contact details of the designated person;
    - (iv) the designated person's relevant debt experience; and
    - (v) a statement confirming that the designated person has undergone the prescribed training; and
  - (b) a letter signed by an authorised signatory of the secondary registered issuer and by the designated person confirming the following:
    - (i) that an agreement has been signed between the secondary registered issuer and the designated person (this statement is not required if the designated person is an employee of the secondary registered issuer);
    - (ii) that the secondary registered issuer is satisfied with the expertise and experience of the designated person and has appointed the designated person in the capacity of "designated person" to act on its behalf in relation to the execution of the applicant issuer's responsibilities, to the extent possible, in terms of the Debt Listings Requirements; and

- (iii) that the designated person accepts the appointment as “designated person” to the secondary registered issuer and agrees to act on behalf of the secondary registered issuer in relation to the execution of the secondary registered issuer’s responsibilities, to the extent possible, in terms of the Debt Listings Requirements and agrees to the requirements placed on a designated person in terms of the Debt Listings Requirements.

For the purposes of this paragraph 3.22, the following definition shall apply:

“**prescribed training**” means training on the Debt Listings Requirements as further detailed on the JSE’s website.

### ***Continuing requirements***

#### *Annual confirmation*

Designated persons are required, on an annual basis, to submit a letter to the JSE confirming that they have advised their applicant issuers on the Debt Listings Requirements in the past 12 months and that they have not been:

- (a) convicted of an offence resulting from dishonesty, fraud or embezzlement;
- (b) censured or fined by a self-regulatory organisation or recognised professional body;
- (c) barred from entry into any profession or occupation;
- (d) convicted in any jurisdiction of any criminal offence or an offence under legislation relating to their laws of incorporation and/or financial markets laws or the FMA; and
- (e) a director or alternate director or officer of a company at the time such company was convicted of any criminal offence or an offence under legislation relating to their laws of incorporation and/or financial markets laws or the FMA.

### **Schedule 4: Applications forms & other**

The following administrative documents are available on the JSE website at [www.jse.co.za](http://www.jse.co.za).

#### General: Form A

Form A1	Application to be a debt sponsor
Form A2	Applicant issuer annual confirmation certificate
Form A3	Reporting template: Details of performance of underlying assets
Form A4	Disclosure required for project bonds
Form A5	Corporate Actions Timetable
Form A6	New placing document checklist

# JSE Limited Listings Requirements Guidance Letters

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**General: Administrative Issues****Guidance Letter: Rulings**

Date: 21 June 2012

**Background**

With effect from 1 April 2006 the JSE Limited ("JSE") introduced its revised documentation inspection fee structure. As part of that structure we introduced a fee for formal rulings. That fee was initially R3 000 (excluding VAT) and taking into account the annual inflationary increases currently sits at R3 930.

We remind you that the principle behind the introduction of this fee was that the staff of the Issuer Regulation Division ("Division") spend a substantial amount of time considering these rulings which are then binding on the JSE.

The Division continues, as in the past, to provide general telephonic guidance and advice but such advice is not binding on the JSE. The Division deals with a high volume of calls during any given day and the information provided to us during telephonic discussions is, more often than not, incomplete.

**Reminder of ruling request process**

The following instances require payment of the ruling fee:

- Requests for dispensation from the Listings Requirements ("LR");
- Requests for interpretation of the LR;
- Requests for guidance on the application of the LR; and
- Requests for confirmation that the LR have been correctly interpreted.

Furthermore we remind you that every ruling request must be accompanied by a letter from an approved executive of the Sponsor / Designated Adviser, which letter must contain their detailed consideration of the matter the subject of the ruling request. A standalone letter from a listed company will not be considered as a valid ruling request.

The JSE is committed to comply with the standard turnaround times of 5 business days for these ruling requests. It is likely however that in the instances of an incomplete submission or a highly complex matter that the turnaround times may become longer. We undertake to keep you informed about such potential delays.

**Revised approach to billing for ruling request**

The JSE has decided to revise the current billing model for ruling requests as in many instances:

- the ruling is highly complex or contains several different requests covering various sections of the LR; and
- complex interpretation matters or dispensation requests are not identified before the submission of a document and are left to be resolved as part of the documentation review process. (This practice in itself is undesirable as it can cause unnecessary delays to the standard documentation submission process).

In light of the above we wish to advise the following:

- the standard fee per ruling request (which is currently R3 930) can be charged multiple times despite the fact that there may be only one ruling request letter;
- a ruling fee may be charged, in addition to the standard documentation inspection fee, if during the course of the review process there are any complex dispensation or ruling requests.

Multiple charges can be made, inter alia, when the ruling request:

- cuts across more than one section of the LR. For example an additional fee would be charged in instances of a ruling request dealing with a categorisation (section 9) and a related party (section 10) matter; or
- is of a highly technical or complex nature, which requires extensive debate and consideration (for example for a complex multiple events transaction or a BEE deal).

As it relates to charging ruling fees during the documentation process, this will be done where the matter needs to be taken to the JSE's technical committee for consideration. The additional billing will only be made if the second reader on the document believes that the additional charge is warranted. The JSE undertakes to be reasonable in this approach and will ensure that the Sponsor/ Designated Adviser are advised if we believe additional fees should be charged.

This revised approach will be effective for all rulings and documents submitted on or after 1 July 2012.

### **Guidance Letter: Submission of Agreements to the JSE**

Date: 14 August 2012

There has been some confusion on the point on how and when agreements should be submitted to the JSE in the submission, review and approval process (the "Submission Process"). Issuers are required to send out certain circulars to their shareholders within a fixed period of time pursuant to the JSE Listings Requirements and as such the status of the signed agreement/s become vital in the Submission Process.

We appreciate the commercial realities of transactions and that in certain cases agreements are in the process of being negotiated between the lawyers and/or other external parties by the time the first submission is contemplated or has reached the JSE. On this basis, the JSE has considered the matter internally and has come to the following suggested approach for the submission of agreements to the JSE in order to facilitate the Submission Process:

- The rule in principle: It is preferred that signed agreements are submitted to the JSE at the first submission.
- The compromise approach: If it is not possible (due to whatever reason) to submit signed agreements at first submission, the JSE is willing to facilitate the Submission Process and will accept draft agreements for review at first submission. Final signed versions of any agreements should however reach the JSE prior to informal approval being granted with copies duly marked-up reflecting clearly any and all changes to the agreements against the previous draft agreements submitted to the JSE. Should the compromise approach be elected, there are certain considerations that should be taking into account:
- Should the marked-up changes to the draft agreements be substantial, taking into account the complexities of the changes, the volume and number of

agreements involved (the “considering factors”), the JSE will inform the sponsor that it will require more time to review and consider the additional changes to the agreements.

- The JSE will charge additional fees pro rata to the documentation fees, should the JSE be of the view that, based on the considering factors, more time and allocation of resources will be required to finalise the Submission Process. As a result the above compromise approach may have an impact on the timetable and fees of the transaction and as such this approach should be carefully considered prior or at an early stage of the Submission Process. It should be noted that minor marked-up changes to agreements would not trigger additional time or fees from a JSE perspective.

It is in the interest of all parties that the JSE review any documents (along with agreements) in the Submission Process in a swift and efficient manner. Where agreements are involved it would be beneficial to all parties to have the final signed agreements as soon as possible in order to avoid potential delays, confusion or extra fees.

### **Guidance Letter: Information to be included in SENS announcements**

Date: 2 October 2013

The Issuer Regulation Division (“**the Division**”) wish to inform Sponsors and Designated Advisors that the following information is required to be included in the relevant SENS announcements issued on behalf of issuers. This information is used by various stakeholders and it is important that same is included.

- The source of the distribution with regards to payment of dividends, cash disbursements and capitalisation issues (i.e. whether it is capital or revenue in nature) must be disclosed in the declaration announcement.
- The ISIN for a Letter of Allocation with regard to a Rights Offer/Claw-back Offer must be included in the declaration announcement.
- With regard to schemes, if part elections (i.e. a combination of cash or shares) are possible, this fact together with what the default will be must be disclosed in the declaration announcement.
- The restrictions that exist in certain countries must be disclosed in the declaration announcement, specifically with regard to rights offers. Additionally, disclosure must be made on how non-residents are dealt with in a particular corporate action including whether they may participate or not.

Kindly note that dual-listed issuers must advise and obtain approval from the JSE with regard to the timetables for corporate actions stipulated in Schedule 24. Issuers must ensure that the JSE is notified in advance in order to ensure that the JSE can accommodate the processing of these corporate actions for shareholders on the South African share register. Please refer to the further information in the guidance letter dated 10 March 2010.

### **Guidance Letter: Presentation of an AltX Business Plan**

Date: 17 September 2019

In order to ensure that companies applying for a listing on AltX are able to present a comprehensive business plan to the AltX Advisory Committee (“**the Committee**”), we have prepared this guidance letter.

This process is necessary as to standardise and improve the business plan presentations to ensure a fair and equitable process based on the information presented. This guidance letter has been updated in paragraph 4 only to take account of certain practical concerns that have been raised by some Designated Advisers and also make the process more cost efficient for applicants. This letter replaces the letter

dated 25 August 2015.

Set out below is the process to be followed prior to being granted an opportunity to present to the Committee.

In terms of paragraph 21.41 of the JSE Listings Requirements (**the "Requirements"**) the directors of the issuer, as well as the Designated Advisor ("**DA**"), must present, in person, a detailed business plan (including but not limited to historic and forecast financial information) to the Committee prior to being granted a listing. The Committee shall then advise the JSE as to the eligibility of the issuer. The JSE shall consider the advice of the Committee and decide whether or not to grant the issuer a listing.

The JSE will only allow a first submission in respect of an AltX listing if the Committee has confirmed the eligibility of the applicant issuer in writing.

The aim of this guidance letter is to prescribe the minimum content and process for a business plan to be submitted and presented to ensure that the Committee has all the relevant information to make an informed decision which in turn will avoid delays in the approval process.

### **Business Plan: Minimum Content**

#### **1. General Overview of the Issuer**

The aim of the general overview is to provide general introductory information in respect of the issuer to the Committee, which must as a minimum address the following:

- Full name and registration number of the issuer and major subsidiaries;
- Place and date of incorporation of the issuer and major subsidiaries;
- Details of the DA;
- Full names, addresses and CV's of the board of directors of the issuer and major subsidiaries, including dates of appointment;
- Details of the business of the issuer, including a diagram of the group structure;
- Details of the primary exchange (if applicable);
- Full details of any capital that will be raised and in which jurisdictions; and
- Full details of any acquisitions and disposals in the last 12 months and in which jurisdiction.

#### **2. Industry**

The aim of the industry disclosures is to focus on the industry in which the issuer intends to operate as a listed company, which must as a minimum address the following:

- General overview of the industry with reference to current market conditions;
- Basic entry criteria to enter the industry (required licenses or other);
- Experience of directors and senior management of the issuer with specific reference to the industry; and
- Customer profile.

#### **3. Strategy of the Issuer**

The aim of the strategy disclosures is to explain the competitiveness of the issuer in the industry, which must as a minimum address the following.

- Reason for listing on AltX;



- If the issuer qualifies for a main board listing this fact must be disclosed and a motivation provided for pursuing a listing on AltX;
- The vision and mission of the issuer;
- Feasibility of current business approach, including a SWOT analysis (strength, weaknesses, opportunities and threats);
- BEE status and developments; and
- Marketing plan, including details of feasibility studies and research undertaken.

#### 4. Financial Position and Performance

The aim of the financial disclosures is to provide details of the financial status of the issuer, which must as a minimum address the following:

- The issuer's historical financial statements in accordance with IFRS or IFRS for SME's for the preceding three years (or a lesser period since incorporation) (the "**HFI**"), including a summarised overview of the financial highlights for each year;
- A statement as to whether or not the HFI have been assured by an auditor registered with the Independent Regulatory Body for Auditors and inclusion of the assurance opinion for each of the relevant HFI periods. Where the auditor's report is modified, an explanation of the reasons for the modification together with a description of the manner in which the modification will be resolved in order to ensure compliance with paragraph 4.13(a) of the Requirements;
- A statement from the board of directors of the issuer that save for changes arising from new or revised standards of the relevant reporting framework; the accounting policies used in the preparation of the HFI have been consistently applied for each of the financial periods;
- Where a change in accounting policy is applicable to any of the financial periods presented, an explanation of the reasons for such change and impact on the HFI (where not already disclosed in the HFI);
- Where the issuer or DA is aware of any significant changes to the HFI as a result of the translation from IFRS for SME's to IFRS, these changes must be clearly disclosed together with a description of the potential impact on the HFI with particular relevance to paragraph 21.3 of the Requirements;
- A statement from the board of directors of the issuer that the HFI is free from material misstatement and fairly presents in accordance with the relevant reporting framework;
- A year on year comparison of the statement of profit and loss and comprehensive income, statement of financial position and statement of cash flows for HFI periods to identify and discuss anomalies that may be noted in the comparison;
- The medium and long term forecast statement of profit and loss and comprehensive income, statement of financial position and statement of cash flows of the issuer which must address the remainder of the current financial period and at a minimum three full financial periods thereafter. The forecasts financial information must include clearly documented assumptions and forecast drivers. The manner in which the assumptions tie in with the issuer's strategy must be addressed. The forecast financial information must incorporate the adjustments necessary to reflect the impact of any capital raising and/or acquisitions/disposals; and
- Details of current and near future funding requirements of the issuer.

The submission of the listing documents must include financial information

prepared in terms of IFRS as contemplated in section 8 of the Requirements. Where significant changes between the financial information (HFI and forecasts) presented in the business plan to the Committee and listing documents are noted the issuer and DA are required to provide explanations for such changes with the submission of the listing documents. Where such changes are deemed significant to the recommendation of the Committee, the JSE may direct the issuer to seek a further recommendation from the Committee based on the IFRS compliant financial information.

## 5. Regulatory Environment

The aim of the regulatory disclosure is to confirm and illustrate compliance with the basic listing entry criteria, which must as a minimum address the following:

- Method of listing;
- Compliance with paragraph 21.3 of the Requirements;
- Mineral and property companies must illustrate compliance with paragraphs 12.5–12.7 and 13.3 respectively;
- Details of the legal and policy frameworks of the issuer in order to comply with industry and regulatory obligations of the issuer; and
- Any matter that the DA and/or the directors of the issuer, feel should be brought to the attention of the JSE which may have a regulatory or business impact on the issuer.

## 6. AltX Business Plan Process

- The submission must be made by the DA using the “Webstir” system of the Division;
- The Webstir submission must be made to the Division before 10h00 and the event type of “Business Plan” must be selected;
- This Webstir submission will then be allocated to a Corporate Finance Officer (“**the CFO**”) who will conduct a review of the business plan to ascertain whether it contains the required disclosures pursuant to the provisions of this guidance letter;
- The CFO will provide feedback to the DA within 72 hours of the Webstir submission. The feedback will either be (i) confirmation that the business plan contains the required disclosures or (ii) comments on the business plan that must be addressed by the issuer and DA;
- In the event of comments on the business plan, the review process will continue in the ordinary course for submissions to Corporate Finance (with 48 hours turnaround) until the CFO confirms that the business plan contains the required disclosures;
- The DA will then be permitted to make the formal submission of the business plan for consideration by the Committee.
- The submission of the business plan to the Committee must be made in the usual manner through Webstir by 10h00;
- The Division will convene a Committee meeting at the JSE as soon as is convenient for all parties. The DA will be notified of the time, date and location of the Committee meeting and the presence of both the DA and the directors of the issuer will be required; and
- The DA will be notified in writing within 48 hours from the conclusion of the Committee meeting regarding the outcome.
- It should be noted that if the Committee advises the JSE on the eligibility of the issuer, with conditions, such conditions must be met before listing documentation can be submitted to Corporate Finance. If the conditions have not been met or the DA/issuer advises the JSE on an alternative

approach, the issuer will be required to present to the Committee afresh.

- In the event that the Committee advises the JSE that the issuer is eligible for listing on AltX, the approval letter from the Committee will be based on the information as presented to the Committee. If there are any changes to the business plan and the information in the listing documents as submitted to Corporate Finance, this fact/s must be disclosed by the DA to Corporate Finance.

### **Guidance Letter: Procedure for approval of documentation**

Date: 8 April 2014

Paragraphs 16.3 and 16.4 of the JSE Listings Requirements (the "**Requirements**") address the procedure for approval by the JSE of documents submitted through a sponsor pursuant to paragraph 16.2 of the Requirements.

The above paragraphs address the three step approval process, being (i) informal comments, (ii) informal approval and (iii) formal approval, as well as the JSE's turnaround times for comments/approval. Based on our experience, documents submitted to the JSE from first submission to formal approval generally take up to four submissions over a period of approximately four to six weeks. This can of course be sooner or later depending on the complexity of the document and/or issues raised.

It has come to our attention that on several occasions the number of submissions made have exceeded five and/or it has taken a period of between five and eight months to obtain formal approval from the JSE, notwithstanding the strict turnaround times imposed on the JSE for comments/approval.

A prolonged submission process (both in number of submissions and the period of time in respect of submissions) is not a favourable situation for the JSE, sponsor or the issuer for various reasons and has been identified as an area of risk for the JSE. A submission to the JSE must be well prepared by the sponsor and the issuer to ensure that an objective and focused review can be applied by the JSE within (i) a reasonable number of submissions and (ii) a reasonable period of time. Taking into account the high volume of submissions dealt with by a Corporate Finance Officer ("**CFO**") at any point in time, it is imperative that the submission process remains current and active to ensure objective consideration of the document as a whole (without piecemeal considerations over a substantial period of time).

### **Timing in respect of Procedure for Approval**

In order to minimise the risk and encourage an active review process, the JSE hereby wishes to draw your attention to the revised approach in respect of the procedure for the approval of documentation.

The procedure for approval must not exceed five submissions and a period of three months. In the event that (i) the number of submissions and/or (ii) the period is exceeded, the JSE may elect to reject the submission as a whole. The sponsor will be allowed to resubmit, however, this submission will be treated as a first submission and will be allocated to a new CFO and second reader for consideration and review. The reason for this approach is that CFOs are required to undertake an objective and focussed review on the document as a whole within a reasonable period of time. Several submissions, as well as submissions over a lengthy period of time, (i) will inevitably have a negative impact on the review process and (ii) may impact the time a CFO has allocated to other complete and timely submissions.

We do accept that there may be valid reasons for a delay in the submission process, however, we would encourage issuers and sponsors to discuss any matters which may cause a delay in the submission and review process with the JSE or motivate the reason/s for the delay adequately during the submission process. In these circumstances the provisions above may not be applied by the JSE.

We further believe that this revised approach will improve the quality of first submissions, as there have been instances where first submissions have been made without certain material information being included, merely for the sake of getting the document into the JSE review process.

## Guidance Letter: Procedure for approval of documents (Part 2)

Date: 15 March 2018

The JSE wishes to address certain issues that have arisen of late in respect of the procedure for approval of prospectuses, pre-listings statements and circulars (collectively referred to as "**Circular/s**") submitted to the JSE pursuant to Section 16 of the JSE Listings Requirements (the "**Requirements**"). The JSE has always been very accommodating during the approval process but the issues that have arisen is now introducing significant risk to (i) the overall approval process and (ii) the regulatory duties of the JSE.

Pursuant to paragraph 2.8(c) of the Requirements, it should be noted that at the time of first submission to the JSE the Circular must be in full compliance with the Requirements to facilitate an effective and meaningful review process by the JSE in accordance with the turn-around timetables as prescribed in the Requirements.

It has come to the attention of the JSE that the following events frustrate the review process of Circulars, which impact the effectiveness of the JSE approval process:

- The submission of rulings simultaneously with the draft Circular on first submission or during the review process of a Circular;
- The submission of a Circular with material information outstanding such as financial information or otherwise, which specifically includes the omission of the confirmation required by the accounting specialist ( the "**paragraph 8.56 letter**") or the submission of a qualified paragraph 8.56 letter (on the basis that the preparation of the financial information is still a work in progress);
- Material amendments and re-formatting of Circulars from one submission to the next; and
- The submission of draft agreements.

In order to ensure the effectiveness of the review and approval process of the JSE as it relates to Circulars, the JSE will from the date hereof not accept any submission that –

- is accompanied by a ruling request;
- is not accompanied by a paragraph 8.56 letter; is accompanied by a qualified paragraph 8.56 letter; or
- is incomplete in any other respect.

In the event that any of the above events is unavoidable, the JSE must be consulted in advance for special arrangements.

Sponsors and designated advisers are required to identify in-principle issues requiring a ruling before the first submission of Circulars to the JSE in order to ensure an effective and meaningful review process.

Sponsors and designated advisers are reminded of the guidance letters –

- "*Submission of Agreements to the JSE*" dated 14 August 2012. The rule in principle is that it is preferred that signed agreements are submitted to the JSE at first submission. In the event that draft agreements are submitted to the JSE, delays in the approval of the JSE may occur and additional fees could be charged; and
- "*Procedure for Approval of Documents*" dated 8 April 2014. If the procedure of approval exceeds five submissions and/or a period of three months, the JSE may elect to reject the submission as a whole.

In light of the above, it should be noted that the following, which have unfortunately become regular practises, are unacceptable and must be avoided:

- **Formal Approval:** CFOs have at times been placed under undue pressure to grant informal approval on Circulars in order for a sponsor to proceed with formal approval, although the CFO in question has not granted informal approval.

Pursuant to paragraph 16.3(d)-(g) of the Requirements, the rule is that informal approval must be granted by the CFO first before a formal submission can be considered. The reason for this is that the CFO in question presents the Circulars to the Overnight Committee on the basis that it is in full compliance with the Requirements. The Overnight Committee places reliance on the review undertaken by the CFO and as such the JSE cannot entertain requests to proceed with formal approval unless the CFO has in fact granted informal approval. In the event that the above is unavoidable, the JSE must be consulted in advance for special arrangements.

- **Rejections of Documents:** As mentioned above, at the time of first submission to the JSE the Circular must be in full compliance with the Requirements. The JSE is entitled to reject any incomplete submission of a Circular. The informal comment process allows the JSE five days to complete the first submission review. Depending on a CFO's work load, it could be that the CFO only attends to the review of the Circular on day three or four (of five days). Sponsors and designated advisers therefore run the risk that their incomplete submission will be rejected by the JSE (even during the later part of the five day review process). The lapse of time during a submission process will therefore not impair the JSE's ability to reject the submission of Circulars.
- **Planning Various Submissions:** It would appear that a practise has developed with certain sponsors to build in various submissions to the JSE as part of the review process, in order to obtain high-level comments from the JSE or to appease an issuer to say that the Circular has been submitted to the JSE (although not in full compliance with the Requirements). This practise is unacceptable and sponsors are once again reminded of the above guidance letter which stipulates that if the procedure of approval exceeds five submissions and/or a period of three months, the JSE may elect to reject the submission as a whole.

It is not in the interest of an issuer to have unnecessary delays, which the JSE believes can be avoided or managed effectively. We kindly request the commitment of sponsors and designated advisers to give effect to this letter for the benefit of all issuers.

## **SECTION 1**

### **Guidance Letter: Fairness opinions on delisting**

Date: 5 March 2012

We refer to the practice letter that we issued in May 2010 relating to the above. In that letter we indicated that we would not allow the application of a minority discount in order to determine whether an offer is fair in the case of a delisting. Since that communication we have engaged extensively with several parties on this topic. Specific concern has been raised as to the extent to which the JSE becomes involved in valuation methodologies being applied by an independent expert. This letter serves to replace the practice letter dated 13 May 2010.

When issuing an opinion on a delisting in terms of paragraph 1.15 of the Listings Requirements ("LR") as read with Schedule 5 and the Securities Services Act, 2004:

- The expert must perform a valuation of the entity as whole.
- The expert is not prohibited from applying any discounts or premiums to such valuation which they believe impact their valuation in order to opine whether the offer is fair or not.
- The expert's opinion must include full disclosure of the valuation number both including and excluding any discount or premium applied. There must be separate disclosure of the details and value attributed to each of the different types of discounts or premiums the expert has applied to the valuation in reaching their opinion.
- The expert must explain why they believe each of the discounts or premiums is relevant in the circumstances.

- The inclusion of a valuation range (for both the entity valuation and the discounts/premiums) as opposed to an absolute figure is acceptable, but that range should not be so wide as to render it meaningless and the opinion must include justification for the size of the range. The JSE may ask the expert to narrow that range.

The above request to include additional disclosure in the fairness opinion issued by an expert in the case of a delisting is within the ambits of paragraph 5.11 of Schedule 5 of the LR. We will therefore not be making a separate amendment to the LR at this stage.

## **SECTION 3**

### **Guidance Letter: Cautionary Announcements**

Date: 23 October 2015

This letter supersedes the previous guidance letter dated 18 May 2012.

The JSE is aware that certain issuers are releasing bland cautionary announcements which in many instances may not be required and as a result causes unnecessary speculation in the market. It is further important to note that a bland cautionary announcement is merely an early warning announcement to the market and does not provide sufficient information to assist shareholders or the market in understanding the purpose of the cautionary announcement.

The JSE has therefore decided to issue guidance on the requirement to release cautionary announcements pursuant to the provisions of paragraph 3.9 of the JSE Listings Requirements (the "Requirements").

In this guidance letter three aspects of the Requirements will be addressed in the aim to provide clarity on the (i) necessity and (ii) timing of a cautionary announcement pursuant to the provisions of the Requirements.

#### **General: Obligation of disclosure**

Issuers must publish an announcement in respect of the following:

- Without delay, details relating, directly or indirectly, to the issuer that constitutes price sensitive information pursuant to paragraph 3.4(a) of the Requirements; and/or
- Immediately, after terms have been agreed, verbally or in writing, in respect of any transaction or corporate action pursuant to the provisions of the Requirements ("agreement of terms").

#### **Price Sensitive Information**

Paragraph 3.4(a) of the Requirements refers to the obligation of an announcement in respect of price sensitive information unless the information is kept confidential for a limited period of time.

The reference to a "limited period of time" refers to a period where the information of an issuer does constitute price sensitive information, however the issuer does not have certainty in respect of the information and a period of time is then afforded to the issuer to obtain that certainty provided the information is kept confidential during that period (the "PSI window period"). Once certainty is achieved, Issuers must publish an announcement pursuant to paragraph 3.4(a) of the Requirements.

*Caveat: The JSE strongly recommends that the "limited period of time" provision in paragraph 3.4(a) of the Requirements must only be utilised in exceptional circumstances and emphasis is placed on announcing information without delay when it constitutes price sensitive information.*

#### **Cautionary Announcements**

A cautionary announcement is required in the following circumstances pursuant to paragraph 3.9 of the Requirements:



Immediately after an issuer knows of any price sensitive information and the necessary degree of confidentiality of such information cannot be maintained or if the issuer suspects that confidentiality has or may have been breached, an issuer must publish a cautionary announcement. An issuer that has published a cautionary announcement must provide updates thereon in the required manner and within the time limits as prescribed in the Requirements. *See paragraph 3.9 of the Requirements for the full text.*

A cautionary announcement pursuant to the provisions of paragraph 3.9 will only be necessary during two periods, being –

- during the PSI window period pursuant to the provisions of paragraph 3.4(a) of the Requirements; and
- during a period of negotiations prior to the agreement of terms in respect of transactions or corporate actions where the information constitutes price sensitive information,

and only to the extent that the necessary degree of confidentiality of such information cannot be maintained or if the issuer suspects that confidentiality has or may have been breached.

Cautionary announcements have a limited lifespan and must be followed up with an announcement without delay pursuant to paragraph 3.4(a) of the Requirements once the issuer has obtained certainty or immediately after the agreement of terms.

### **Recommendations on Cautionary Announcements**

We recommend that the following be taken into account in relation to the release of cautionary announcements:

1. Issuers must ensure that they have sufficient internal controls and policies in place to ensure that all price sensitive information is kept confidential.
2. The timing involved when issuing an announcement, being “without delay” and “immediately” is of vital importance to the JSE and the market. Issuers must therefore also ensure that they have policies in place to deal with the required internal approvals within the Issuer to approve an announcement, in prescribed timely manner, before release on SENS. Should there for any reason whatsoever be a delay (i) in obtaining the necessary approvals or (ii) releasing the announcement on SENS, the JSE must be notified immediately.
3. Issuers should refrain from releasing bland cautionary announcements to avoid unnecessary speculation in the market. Additional details that can be made available should rather be included to give investors and market participants an indication of the nature of the price sensitive information.
4. In deciding whether to release a cautionary announcement, issuers must carefully consider section 81 of the Financial Markets Act dealing with “False, misleading or deceptive statements, promises and forecasts”.

### **Guidance letter: Directors’ dealings**

Date: 6 October 2008

#### **Background**

The JSE Limited (“JSE”) has not only received numerous requests for interpretations on the Listings Requirements relating to certain types of directors’ dealings but we have also noticed that the disclosures in certain announcements have not been in full compliance with paragraph 3.63(b). The JSE has therefore decided to issue guidance in order to provide more clarity.

#### **Definition of director**

Paragraph 3.63 (a) stipulates very clearly which parties need to disclose their dealings and we do not believe that any further guidance on this particular requirement is necessary other than to confirm that it primarily includes directors (as defined in the



Companies Act and including alternate directors) and company secretaries of both the listed company and any of its major subsidiaries as well as any associate of these parties. The Listings Requirements contains a clear definition of "associate."

### **Definition of transaction or dealing**

The one area where we feel that additional guidance may be appropriate relates to the definition of "transaction" as referred to in paragraph 3.64.

The requirement refers to "securities relating to the issuer". The definition of securities in the Listings Requirements refers to the definition as contained in the Securities Services Act ("SSA") 36 of 2004, and for ease of reference, we have included that definition in Annexure 1. In determining whether dealing in a security must be disclosed one must first take account of the definition as contained in the SSA and secondly whether the security in question could provide direct or indirect exposure to the share price of the listed company. In addition, paragraph 3.64 also provides specific examples including warrants, single stock futures and other derivatives issued in respect of an issuer's securities.

In order to provide further guidance on this definition we feel that it may be useful to deal with particular categories of transactions which we have encountered in the past and which must be disclosed.

- Ordinary shares – this will be a normal sale or purchase of shares in the listed company. It will also include a purchase or sale of nil paid fatters in terms of a rights offer.
- Subscription of securities – this includes a subscription by a director of new shares in terms of an issue of shares for cash, rights offer or any other means.
- Agreements to sell/purchase or subscribe for securities – this must be announced when the agreement is signed irrespective of whether any shares are issued or cash flows at that time.
- Options – this will normally relate to a formal share option scheme but can also be any other option. It should be noted that each stage of an option must be announced including the acceptance, acquisition, disposal and exercise.
- Single stock futures – the purchase or sale of a single stock future must be announced. It should be noted that if shares are sold and the equivalent exposure is purchased through a single stock future, then both legs of the transaction (the sale of the shares and the purchase of the single stock future) must be announced even if it is believed that the director's exposure has not changed. The closing out of a single stock future is also a transaction as defined and is therefore subject to the Listings Requirements, The JSE accepts that the rolling of a single stock future is merely an extension of an existing position and is therefore not subject to the Listings Requirements.
- Contracts for difference – the approach to single stock futures applies equally to these contracts.
- Donations – donations made or received fall within the ambit of the Requirements and must be announced.

### **Clearance to deal**

This particular aspect of the Requirements is generally well understood with a couple of exceptions. Certain transactions, as described above (e.g. options and single stock futures) have many legs to them and the general rule is that every leg of a transaction requires clearance to deal. An aspect which has been misinterpreted in the past is that all associates of directors require clearance. The JSE is mindful of the fact that it is not possible in all cases for a director to prevent an associate from dealing and it therefore follows that it would serve no purpose for that director to request permission prior to such a trade by the associate. The general test which must be applied in these cases is whether the director can prevent the associate from trading and an example of this would be the case of a minor child (being an associate of a director) where the director can legally prevent the trade from taking place. Another example could be where a spouse or a company in which a director has a 35% interest (defined as an associate)

enters into a transaction but the director does not have the legal ability to stop the trade from happening. In these cases, directors must clearly observe the provisions of paragraph 3.71 and 3.72.

### **Prohibited periods**

Prohibited periods are clearly defined within the Listings Requirements but the JSE is often approached for an interpretation where a director is obligated to take delivery of shares without having a choice in the matter. An example of this could be where he/she has an option which was purchased or obtained and which can only be exercised on a specific date that happens to fall within a prohibited period. This could also be the case with a single stock future where delivery of the shares has to take place in a prohibited period. The JSE is generally amenable to allowing these trades to take place in these periods but a ruling on the specifics must be sought from the JSE. The JSE's decision in this regard will be separate from any potential implications relating to the insider trading provisions of the SSA.

### **Guidance on disclosures required**

Name of director: John Davies (this is the name of the director/company secretary who traded).

Name of company: ABC Limited (this is the name of the listed company).

Date of transaction: 1 March 2008 (this is the date upon which the transaction is entered into).

Number of shares: 100 000.

Note: 100 cents (there will be no price in the case of a donation).

Total value: R 100 000.00 (this will generally be the number of securities multiplied by the price – a deemed value based on the prevailing market price must be included in the case of a donation. In the case of options the value will be the number of options multiplied by the strike/exercise price. The existing requirements do not stipulate that profits/losses made on options must be disclosed in the announcement and it is therefore not required at the moment).

Class of securities: ordinary shares (this is the actual security which has been traded – examples are ordinary shares, options, warrants, single stock futures, contracts for difference, etc).

Options: (strike/exercise price, strike/exercise date, periods of exercise/vesting)

Nature of transaction: Sale of shares (this is a description of the transaction – examples are sale/purchase of shares, acquisition/disposal of single stock futures, acceptance/exercise of options, etc.).

Nature of directors interest in transaction: Direct/Indirect Beneficial. This is a description of the director's interest. In the case of transactions by associates, this will include a description of the relationship e.g. sale of shares by director's wife/minor child. Some examples of different interests are:

- direct beneficial – the security is registered in the name of the director and the director has voting rights over the security or the right to receive the dividends in respect thereof;
- indirect beneficial – the security is not registered in the name of the director but rather through a trust or an investment holding company in which the director holds any or all of the voting rights and/or is a beneficiary of the trust.

Clearance to deal: Yes (this is a factual statement). If clearance was not obtained for whatever reason, a statement must be included together with the reasons.

### **Annexure 1**

#### **"Securities –**

#### **(a) means –**

- (i) shares, stocks and depository receipts in public companies and other equivalent equities, other than shares in a share block company as defined in the Share Blocks Control Act, 1980 (Act 59 of 1980);
- (ii) notes;
- (iii) derivative instruments;
- (iv) bonds;
- (v) debentures;
- (vi) participatory interests in a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (Act 45 of 2002), and units or any other form of participation in a foreign collective investment scheme approved by the Registrar of Collective Investment Schemes in terms of section 65 of that Act;
- (vii) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country;
- (viii) instruments based on an index;
- (ix) the securities contemplated in subparagraphs (i) to (viii) that are listed on an external exchange;
- (x) instrument similar to one or more of the securities contemplated in subparagraphs (i) to (ix) declared by the registrar by notice in the Gazette to be a security for the purposes of this Act;
- (xi) rights in the securities referred to in subparagraphs (i) to (x);

**(b) excludes –**

- (i) money market instruments except for the purposes of Chapter IV; and
- (ii) any security contemplated in paragraph (a) specified by the registrar by notice in the Gazette;”

**Guidance Letter: Participation by directors in share incentive/option schemes**

Date: 29 July 2010

The JSE Limited (“JSE”) amended the Listings Requirements earlier this year with an effective date of 1 April 2010. Included amongst the amendments was paragraph 3.84(f)(iii) which stipulates that directors who participate in a share incentive/option scheme will not be regarded as independent in terms of the Listings Requirements.

The JSE has received a number of enquiries on this matter and in particular the implications on shares/options that were issued prior to 1 April 2010. It is not the intention of the JSE to apply this requirement retrospectively and we therefore wish to advise that any shares or options that were issued under a scheme prior to 1 April 2010 will not be regarded as affecting a director's independence in terms of paragraph 3.84(f)(iii). However, any shares or options issued to a non-executive director on or after 1 April 2010 will result in that director no longer being classified as independent in terms of the Listings Requirements.

We trust that this clarifies the position, but please feel free to contact us if you have any further questions.

**Guidance Letter: Procedural requirements of the Stock Exchange News Service (“SENS”)**

Date: 5 May 2014

As a result of the need to disseminate relevant company information to the market on a real time basis, the JSE established SENS. The purpose of SENS falls within the sphere of the general principles of the JSE Listings Requirements (the “Requirements”) to ensure that full, equal and timeous public disclosure is made to

all holders of securities and the general public at large regarding the activities of an issuer that are price sensitive.

Paragraph 19.2 of Schedule 9 (Procedural requirements of SENS), which is a schedule to the Requirements, addresses the requirement to disseminate relevant company information to the market. Certain issues have come to our attention in respect of the use of SENS by issuers for the dissemination of relevant company information and the JSE wishes to issue the following guidance.

#### Relevant Company Information

Relevant company information is defined in Schedule 9 of the Requirements, which means company announcements and price sensitive company releases.

Thus, announcements must be released on SENS if a positive obligation is placed on the issuer pursuant to the provisions of the Requirements to release certain information on SENS or when such information is required to be released because it constitutes price sensitive information. See the definition of price sensitive information in the Requirement for further guidance.

Relevant company information must be factually supportable and must relate directly to the issuer. As a rule, the JSE will not consider the following information as relevant company information:

- Any information which constitutes marketing information of the issuer or the issuer's sphere of activity. Marketing information for the purposes of the guidance letter would be any information that would in the normal course be considered as an advertisement of the products of the issuer or the issuer itself; and
- Any information that is not factually supportable or contains features of human emotion, such as derogatory or malicious statements.

#### Secondary Listed Issuers

Issuers with a secondary listing on the JSE are reminded that any information required to be released on its primary exchange must also be released on SENS pursuant to the provisions of Section 18 of the Requirements.

#### Exceptions

Notwithstanding the above provisions, the JSE will allow for the following to be released on SENS:

- We understand that some issuers are accustomed to release details of presentations on SENS in relation to the issuer's sphere of activity. Although such presentations may be meaningful to a selected audience, these presentations are normally not considered to be relevant company information or price sensitive information (the eligibility criteria for SENS). We do however understand that issuers would like to use SENS as a platform to make such presentations public and in this regard the JSE will continue to accept the publication of presentations linked to the issuer's sphere of activity on SENS, however, the JSE will only allow a notice of availability via a website link to be published on SENS and not the full presentation;
- Issuers may release company related information through SENS:
  - such as operational updates, provided such information is relevant to (i) the issuer's sphere of activities and (ii) to investors; and
  - which is required to be published under Statute.

#### General

In considering whether an announcement should be released, issuers must always take account of the rationale and purpose of SENS being a mechanism for the dissemination of relevant company information. Issuers must therefore guard against releasing unnecessary information that may overwhelm investors and dilute the importance and relevance of SENS announcements. Issuers should consult with their

sponsors or designated advisers to ensure compliance with this guidance letter and the Requirements.

## **Guidance Letter: Discussions with Journalists & Investment Analysts**

Date: 23 October 2015

The JSE has decided to issue guidance to issuers and their directors when having discussions with journalists and investment analysts ("analysts") and the treatment of price sensitive information. Although this letter is focused on discussions with analysts it should have equal application to discussions with journalists.

The general principles that underpin the JSE Listings Requirements (the "Requirements") ensure, amongst others, that full, equal and timeous public disclosure is made to all holders of securities and the general public at large regarding the activities of an issuer that are price sensitive.

It is therefore imperative that discussions with analysts are managed firmly and responsibly by issuers and their directors.

The general rule is that price sensitive information must be released publicly through SENS before being disclosed to analysts or any other parties.

### **General**

This guidance letter, as per the heading above, merely serves as a guide to issuers and their directors when having discussions with analysts and the treatment of price sensitive information. In the event of any breach whatsoever of the provisions of the Financial Markets Act No 19 of 2012 (the "FMA") and/or the Requirements, compliance or reliance on this guidance letter will not necessarily absolve an issuer and/or their directors from any liability.

It should further be noted that the contents of this guidance letter may be familiar or known to some directors and we kindly request that you indulge us for the benefit of (i) the broader group of directors, (ii) newly appointed directors and (iii) company secretaries.

### **Price Sensitive Information**

For purposes of this guidance letter, price sensitive information will not be discussed in detail. Please refer to the definition of price sensitive information in the Requirements read together with Practice Note 2/2015 providing guidance on price sensitive information.

### **The Financial Markets Act**

In applying this guidance letter, issuers and their directors must familiarise themselves with the market abuse provisions in the FMA dealing with market abuse and inside information. Refer to Sections 78 to 82 of the FMA. Issuers should be aware that price sensitive information pursuant to the provisions of Requirements may also qualify as inside information pursuant to the FMA and vice versa.

### **Analysts**

Analysts are employed to produce detailed reports on the prospects and performance of issuers and have an important role to play in assisting the market in understanding the valuation of issuers. They compile and research their information via a number of methods including interviewing executives, clients, customers and company advisers. Investment analysis is a competitive industry and analysts are rated and remunerated on the quality and accuracy of their information, and the conclusions they draw.

The JSE understand that as a consequence of being listed, issuers are exposed to discussions with analysts. Issuers should therefore take a firm view when answering questions from analysts during discussions.

In dealing with analysts, issuers should note the following event types:

1. Questions from analysts

During discussions with analysts, issuers are allowed to expand on information already in the public domain or discuss the markets/industry in which they operate, provided that such expanded disclosure does not qualify as price sensitive information. Therefore, issuers must decline to answer questions from analysts where the answer would lead to divulging price sensitive information. In responding to certain comments or views from analysts which appear to be inaccurate, issuers should respond with information drawn from information released publicly to the market through SENS.

## 2. Draft reports from analysts

Issuers must not correct draft reports from analysts which are sent to them with a view to commenting on financial figures and/or assumptions. The issuer may consider the financial figures and/or assumptions and discuss them with the analyst, in broad terms and without providing any price sensitive information. Issuers can of course correct information in relation to financial figures and/or assumptions that do not constitute price sensitive information and drawn from information released publicly to the market through SENS.

## 3. Conduct of discussions with analysts

Issuers are sometimes concerned that they may be misinterpreted or mistakenly accused of providing price sensitive information following meetings with analysts. In this case, issuers must consider establishing internal procedures which reduce these risks.

In this regard the following recommendations could be considered:

- Issuers must have internal written policies for handling confidential and price sensitive information;
- Issuers must ensure that their directors and senior management are trained and understand the provisions of the Requirements dealing with price sensitive information and the provisions of the FMA dealing with market abuse and insider information;
- Issuers must make sure that more than one representative of the issuer is present during discussions with analysts and that accurate records of all discussions are kept in safekeeping for future reference;
- Authorising a spokesperson/spokespersons: Issuers must keep to a minimum the number of directors and senior staff authorised to speak on the issuer's behalf. Issuers must make sure that these persons are informed about the issuer's activities and are familiar with all the information that the issuer has previously released publicly through SENS, but they must avoid commenting on price sensitive information. A director or other person responsible for disclosure could further outline the issuer's disclosure history to analysts before entering into discussions. This will safeguard against inadvertent disclosure of price sensitive information;
- Body language: Spokespersons must be mindful of body language when answering questions. =As an example, the shake of a person's head in a "yes" or "no" gesture or showing thumbs up or down in a "positive" or "negative" gesture, does constitute communication when answering questions although not in a verbal format;
- Reviewing discussions: Issuers must have a procedure for reviewing briefings and discussions with analysts afterwards to check whether any price sensitive information has inadvertently been disclosed. If so, shareholders and the market must have access to it by the issuer announcing it immediately through SENS;
- Handling unanticipated questions: Issuers must be particularly careful when dealing with questions from analysts that raise issues outside the intended scope of discussion/s. Some useful ground rules are:
  - only discuss information that has been publicly released through

SENS or is in the public domain;

- if a question can only be answered by disclosing price sensitive information, decline to answer; and
- Responding to financial projections and reports: Issuers must confine comments on financial projections by analysts to errors in factual information and underlying assumptions that do not constitute price sensitive information. Avoid any response which may suggest that the current projections of an analyst are incorrect. The way to manage earnings expectations is by using the continuing obligations trading statement disclosure to establish a range within which earnings are likely to fall or improve. Announce through SENS any change in expectations before commenting to any party outside the issuer.

The above recommendations should not be considered to be an exhaustive list of measures to deal with discussions with analysts and the treatment of price sensitive information, however, the intention is to give issuers practical guidance on how to manage discussions with analysts.

### **Guidance Letter: Trading Statements**

Date: 19 April 2016

Pursuant to paragraph 3.4(b) of the JSE Listings Requirements (the “**Requirements**”), issuers must publish a trading statement as soon as they are satisfied that a reasonable degree of certainty exists that the financial results for the next period to be reported upon will differ by at least 20% from the most recent of the following:

- the financial results for the previous corresponding period; or
- a profit forecast previously provided to the market in relation to such period.

(the “**base information**”)

During 2014 the JSE made certain amendments to paragraph 3.4(b) of the Requirements dealing with trading statements. Historically, trading statements only indicated the percentage change to the base information. Concern was raised at the time that the percentage figure alone in the announcement did not provide sufficient information to make an informed assessment of the expected financial results compared to the base information. The 2014 amendments aimed to address this concern by requiring the following additional disclosure in trading statements:

- comparative figures (base information); and
- a number to describe the difference (in addition to the percentage).

The additional information now enables a more detailed comparative analysis on the expected financial results to readers based on the review of the announcement alone.

A concern has been brought to the attention of the JSE regarding trading statement announcements where the inclusion of the percentage to describe the difference (when more than 100%) in certain instances could be misleading and/or confusing. The relevance instances are present when –

- the base information of the issuer is very low, or
- the issuer has moved from a profit to a loss position or vice versa.

To address this concern, the JSE has decided to accept a reference in the trading statement announcement to the number only and not the percentage in order to describe the difference to the base information, where the percentage difference is more than 100%. It should be noted that the requirement for comparative numbers remain unchanged.

The JSE will be attending to amendments to the Requirements in due course to give effect to the above approach.



## **Guidance Letter: Suspensions & Trading Halts**

Date: 13 June 2017

Suspension and trading halts can be very useful regulatory tools for issuers and the JSE especially during a period where there is a delay by the issuer in releasing an announcement on SENS containing price sensitive information. The JSE has thought it wise to also provide a guidance letter in respect of (i) the suspension of the listing of securities of an issuer pursuant to the provisions of the JSE Listings Requirements (the "**Requirements**") and (ii) the use of trading halts.

### **Suspension**

The suspension of listing of the securities of an applicant issuer by the JSE may be exercised pursuant to paragraphs 1.6 – 1.10 of the Requirements. A suspension can either be (i) initiated by the JSE or (ii) at the request of the issuer.

Suspension of listing of the securities of an issuer means that no trading can take place in respect of the issuer's securities for the period whilst the issuer is suspended.

### **Initiated by the JSE**

Pursuant to paragraphs 1.6 – 1.9 of the Requirements a suspension of securities of an issuer can be initiated by the JSE in the following two circumstances:

- it will further one or more of the objects contained in Section 2 of the Financial Markets Act No. 19 of 2012 (the "**FMA**"), which may also include if it is in the public interest to do so; and
- if the issuer has failed to comply with the Requirements and it is in the public interest to do so.

(the "**considering factors**")

When the listing of securities of an issuer is under threat of suspension, the affected issuer shall be given the opportunity of making written representations to the JSE why the suspension should not be affected prior to making any decision to suspend such listing.

The suspension provisions pursuant to the Requirements are always subject to the provisions of the FMA. The approach above mirrors the provisions of sections 12(1) and 12(2) of the FMA dealing with the suspension of trading, subject to the provision of section 12(3) which affords the JSE with certain powers to proceed with immediate suspension of trading where (i) the Requirements are not complied with or (ii) if a circumstance arises which the Requirements envisage as a circumstance justifying the immediate suspension of trading (the "**FMA powers**").

The JSE can therefore only proceed with a suspension of listing of securities of an issuer on the following basis:

- the considering factors are present and the issuer has been given the opportunity of making written representations to the JSE why the suspension should not be affected; and
- the JSE exercises its FMA powers.

It should be noted that suspension initiated by the JSE is generally a timely process on the basis that an issuer is afforded time to make written representations to the JSE, before the JSE will make a decision on the threatened suspension. Issuers should therefore be mindful of the FMA powers of the JSE, subject to the provisions of section 12(3) of the FMA, which could lead to an immediate suspension of the listing of the securities of an issuer in certain circumstances.

It should be noted that the above guidance does not deal with the suspension powers of the JSE in the event of non-compliance relating to publication of financial information pursuant to the provisions of Section 3 as those provisions are very prescriptive in nature and do not require guidance.

### **At the request of the issuer**

Pursuant to paragraph 1.10 of the Requirements the listing of securities of an issuer may be suspended by the JSE at the request of the issuer in respect of various prescribed events, of which the most relevant for purposes of this guidance letter is when it is apparent that there are two levels of information in the market and the JSE considers that the situation cannot be remedied by the immediate publication of an announcement to clarify the situation ("**two levels of information event**").

It should be noted however that if a two levels of information event is present, the first recourse of the issuer must be to immediately release an announcement (i) to provide clarity on the speculation in the market or (ii) providing details of the information constituting price sensitive information. On the basis that the issuer can release such an announcement and there is any delay by the issuer in releasing an announcement immediately on SENS to clarify the situation, the issuer must approach the JSE with a request for suspension of the listing of the securities of the issuer.

The board of the issuer or a duly authorised representative must contact the JSE immediately in respect of the request of the issuer for suspension on the following numbers: (011) 520 7217 or (011) 520 7059. Please ask to speak to any senior corporate finance officer or manager.

Although the circumstances when an issuer may approach the JSE for a suspension of the listing of securities are limited, it should be noted that the FMA powers afforded to the JSE could be utilised as a regulatory tool by the JSE as the Requirements cannot envisage all circumstances that may arise in commercial practice which may warrant a suspension.

*Caveat: The JSE strongly recommends that a request for suspension by the issuer must only be utilised in exceptional circumstances and emphasis is placed on announcing information without delay when it constitutes price sensitive information. Also, the fact that the JSE has received a request for suspension by the issuer, it does not necessarily mean that such suspension will be granted as the decision of suspension lies within the discretion of the JSE.*

## **Trading Halt**

Trading halts take place pursuant to the provisions of the JSE Equity Rules under Market Regulation (Surveillance). It is not a measure prescribed by the provisions of the Requirements.

Pursuant to paragraph 6.80 of the JSE Equity Rules, the Director Market Regulation (subject to internal approvals) may declare a trading halt in the equity securities of an issuer in circumstances where the Director Market Regulation determines that the trading activity in an equity security –

- is being or could be undertaken by persons possessing unpublished price sensitive information that relates to that security;
- is being influenced by a manipulative or deceptive trading practice; or
- may otherwise give rise to an artificial price for that equity security.

In these circumstances and if not already implemented by the JSE, it is recommended that the issuer should request a trading halt. The board of the issuer or a duly authorised representative must contact the JSE immediately in respect of the request of the issuer for a trading halt on the following numbers: (011) 520 7217 or (011) 520 7059. Please ask to speak to any senior corporate finance officer or manager.

Trading halts are implemented for a very short period of time and should generally not exceed two days. The JSE does however reserve the right to rather implement a suspension of the listing of the securities of an issuer in accordance with the provisions of the Requirements.

*Caveat: The JSE strongly recommends that a request for a trading halt by the issuer must only be utilised in exceptional circumstances and emphasis is placed on announcing information without delay when it constitutes price sensitive information. Also, the fact that the JSE has received a request for a trading halt by the issuer, it does not necessarily mean that such trading halt will be granted as the decision of a trading halt lies within the discretion of the JSE, through the Director Market*

## *Regulation.*

We request issuers to consider the above regulatory tools as issuers should be aware of all measures available to them when dealing with price sensitive information.

### **Dual Listings**

It is common practice in certain primary markets to either suspend the issuer or halt trading in the securities of the issuer in circumstances not envisaged in the Requirements. In the event of such a suspension or trading halt, the general approach of the JSE will be to follow the regulatory approach of the primary market and mirror the suspension or trading halt on the JSE. The timing in the suspension or trading halt is of vital importance to the JSE in order to ensure that the suspension or trading halt is implemented simultaneously on both markets in order to avoid a situation where investors can trade in on market but not the other.

Issuers and sponsors must therefore ensure that the JSE is notified sufficiently in advance of any suspension or trading halt to ensure that the JSE can accommodate the request and implement same simultaneously. Issuers and sponsors must further ensure that the advisers and regulators responsible for implementing the suspension or trading halt in the primary market is notified of the listing on the JSE and the importance of implementing the suspension or trading halt simultaneously.

The principles above apply equally to dual listings where the JSE is the primary exchange although the JSE is not obliged to implement a suspension or trading halt instituted by the other exchange.

### **Announcements**

Suspensions or trading halts must be followed with a SENS announcement explaining the circumstances leading to the decision. It is important to note that such announcement must only be released immediately after the suspension or trading halt has been implemented. Releasing an announcement dealing with the suspension or trading halt prior to the implementation of the suspension or trading halt by the JSE could cause investor prejudice and must be avoided.

### **Guidance Letter: Trading Statements: Range Unknown**

Date: 20 September 2018

The JSE wishes to remind issuers, sponsors and designated advisers on the application of paragraph 3.4(iii)(3) of the JSE Listings Requirements (the "**Requirements**").

In applying paragraph 3.4 of the Requirements, there are two main elements to consider:

- Paragraph 3.4(b)(i) deals with the 20% trigger for a trading statement; and
- Paragraph 3.4(iii) deals with the contents of a trading statement.

The aim of paragraph 3.4(iii)(3) of the Requirements, is to deal with the scenario where the issuer does not have reasonable certainty to provide the required guidance in terms of 3.4(b)(iii)(1) or (2). When applying paragraph 3.4(iii)(3) of the Requirements, issuers must avoid the practice to use the 20% benchmark number as the default disclosure level in order to comply with paragraph 3.4(iii)(3) of the Requirements.

The issuer is required to disclose the actual minimum percentage and number difference for which they have reasonable certainty and not merely refer to a 20% benchmark number. In addition the issuer must disclose any other relevant information at its disposal at the time. Failure to do so could result in the publication of misleading information (as an example, if an issuer expects the earnings to be down by at least 300% it would be misleading to merely refer the market to a 20% benchmark number).

The fact that an additional trading statement will be published pursuant to paragraph 3.4(b)(iii)(3) of the Requirements, as the issuer obtains reasonable certainty, does not excuse an issuer for incorrectly only disclosing a 20% benchmark level. It would be

highly unlikely for issuers to be unable to quantify a minimum when applying paragraph 3.4(iii)(3) of the Requirements.

## **SECTION 4**

### **Guidance Letter: Control – par 4.28 of the Listings Requirements**

Date: 25 March 2004

The JSE Securities Exchange South Africa ("JSE") has received various enquiries relating to the interpretation and application of paragraph 4.28(d)(i) of the Listings Requirements. In light of this, the JSE has decided to issue a letter setting out the interpretation and the applicability of the requirement.

#### **Background**

The Listings Requirements afford shareholders of the listed company the right to vote and have their wishes implemented on certain transactions (including but not limited to category 1 transactions and issues of shares for cash) and any structure/agreement that could dilute that right in any way would be in contravention of this requirement. The JSE has enforced the principle behind this requirement for a number of years under the general principles, without it being included in the main body of the Listings Requirements. During the re-write of the Listings Requirements last year, it was decided to introduce paragraph 4.28(d)(i). We believe this requirement is in line with international best practice. The JSE also believes that it is important for a listed company to have control over the majority of its assets to ensure that the shareholders of the company are not merely passive investors. In other words, shareholders of the listed company must have the ability to decide what is done with the underlying assets. The requirements do make provision for certain exemptions as contained in paragraph 4.28(d)(ii).

#### **Interpretation**

The requirement refers to control and this could be interpreted as meaning 35 % as defined in the Listing Requirements. The intention however, as stipulated above, is for the listed company to have full control (i.e. 50% + 1) over the assets to ensure that it can effectively influence and control those assets. This interpretation implies that the JSE would not allow the creation of structures which would effectively result in the issuer "forfeiting" full control over certain matters by the creation of high voting shares, golden shares or shares that confer "negative control" to a specific shareholder in any of the companies within the group.

#### **Applicability**

This requirement is contained in section four which deals primarily with new listings. The requirement is therefore applicable to new listings in the first instance. It is important to note that it was not our intention, nor would it make any sense, to only make this requirement applicable to new listings. It should therefore be noted that this requirement is also applicable from a continuing obligations perspective and issuers must ensure that they comply with this requirement at all times.

#### **General**

The JSE would strongly recommend that issuers contact their sponsors whenever a structure or transaction is contemplated that could give rise to a possible contravention of this requirement in order for the sponsor to obtain ruling from the JSE in this regard.

### **Guidance Letter: Special Purpose Acquisition Company ("SPAC")**

Date: 13 June 2017

The JSE has noted increased interest in the use of SPACs and in light of our original intention of making it an efficient vehicle for raising capital we wish to clarify the approach on the preparation of the circular dealing with the acquisition of viable assets pursuant to paragraph 4.35 of the JSE Listings Requirements (the "**Requirements**").

## **General**

The acquisition of a viable asset must be approved by the majority of security holders of the SPAC at a general meeting. The circular will therefore be treated by the JSE as a category 1 transaction and not as a new listing requiring a pre-listing statement. Therefore a category 1 checklist must be completed and not a new listing checklist. The acquisition of a viable asset will further not be treated as a reverse listing by the JSE requiring the SPAC to prepare revised listing particulars.

## **New Listings Considerations**

On the basis that a viable acquisition must on its own enable the SPAC to qualify for listing there are certain considerations in respect of a new listing that must be addressed and disclosed in the circular, notwithstanding the fact that the acquisition will be treated as a category 1 circular. These new listings considerations are the following:

- The listing entry criteria, whether Main Board or AltX, taking into account the specific disclosure requirements relating to the industry such as (i) mining, (ii) investment entity or (iii) property entity. In this regard intended Main Board issuers must further show that the required minimum capital and profit is achieved and reflected in the pro forma financial information.
- The directors and senior management of the issuer must collectively have appropriate expertise and experience for the governance and management of the issuer and the business pursuant to paragraph 4.8(a) of the Requirements.
- The working capital statement pursuant to paragraph 2.12 of the Requirements.
- The corporate governance items pursuant to paragraph 3.84 (Main Board) or paragraph 21.5 (AltX) of the Requirements, as the case may be. In this regard, issuers are reminded that the information can be incorporated by reference to the extent that the corporate governance requirements have already been met and disclosed in the annual report of the issuer.

## **Category 2 Acquisition/s**

It has come to the attention of the JSE that a SPAC may wish to proceed with smaller acquisitions in the same category 1 circular on the basis that (i) these acquisitions compliment the viable asset or (ii) the board of the SPAC wishes to show a complete position of the issuer post all the acquisitions. In this regard SPACs are reminded to obtain shareholders' approval for the use of the residual capital pursuant to paragraph 4.35(c) of the Requirements.

To the extent that such acquisitions are classified as category 2 acquisitions, the historical financial information to be included in the pro forma financial information in the circular can either be –

- audited by a JSE accredited auditor (which is a preferred option for the JSE); or
- reviewed by a JSE accredited auditor.

It should be noted that any category 2 acquisition presented to shareholders can only become unconditional on the basis that the viable acquisition has been approved by shareholders.

## **Forecasts**

It has come to the JSE's attention that some issuers believe that the acquisitions coming into the SPAC combined with residual cash (if applicable), even on a pro forma basis, does not always reflect the intended position of the new combined issuer going forward. In this regard issuers are reminded that a forecast may be prepared and included in the circular provided the forecast is prepared pursuant to the provisions of the Requirements. We ask that you discuss this option with SPAC issuers going forward.

## **SECTION 5**

## **Guidance Letter: Guidance in fairness opinions relating to an issue of shares for cash in terms of the JSE Listings Requirements**

Date: 11 November 2010

The JSE Limited ("JSE") amended paragraph 5.51(f) of the Listings Requirements ("LR") in October 2007 (regarding a specific issue of shares for cash) in order to remove the need for a fairness opinion under certain circumstances. The main intention behind the amendment was to remove the need for a fairness opinion in instances where shares are issued to a related party at a market related price (as determined in terms of paragraph 5.51(f)(ii) and the full cash payment is received at the same time.

The JSE has noticed in some instances shares are issued to related parties for cash, and although the issue is at a market related price, the issue is also directly or indirectly funded by the company i.e. in accordance with Section 38 of the Companies Act (No. 61 of 1973). This was not what was intended when the JSE relaxed the LR and the JSE therefore wishes to confirm that it will insist on a fairness opinion where shares are issued for cash to related parties and the issuer provides direct or indirect financial assistance in the funding of the issue. This may include, but is not limited to, the following:

- a company providing all or some of the funding themselves;
- a company providing a third party guarantee; or
- the payment for the transaction being deferred to a later stage.

It must be noted that the fairness opinion in these instances must cover the entire deal including the fact that the issuer is funding the purchase of the shares. Consideration must also be given to the substance of the transaction as in most of these instances the commercial reality of the deal is that the party has been given an option and this must be factored into the opinion.

## **SECTION 6**

### **Guidance Letter: Simultaneous secondary listings**

Date: 26 January 2018

It has come to the attention of the JSE that guidance is required on the preparation of a pre-listing statement ("**PLS**") where the applicant issuer is seeking a simultaneous listing (same day listing) on the London Stock Exchange ("**LSE**") and the JSE, and where the listing on the JSE will be the secondary listing. This is different from the approach where an applicant issuer is already listed on another exchange when seeking a secondary listing on the JSE.

The approach outlined in this letter with a simultaneous listing will be limited to the LSE based on recent discussions and rulings provided. The JSE should be approached for a separate ruling should a simultaneous listing on another exchange be considered and where such exchange will be the primary exchange.

#### General

The JSE Listings Requirements ("**the Requirements**") have comprehensive provisions dealing with primary and secondary listings. Secondary listing status means that once an applicant issuer is listed, it will only be required to comply with the listings requirements of the exchange where it has a primary listing, save as otherwise specifically stated in the Requirements.

Paragraph 18.11 of the Requirements includes the following:

*"Where the disclosure requirements of Section 7 relate to the continuing obligations, the JSE may allow the applicant issuer to address this in the context of the requirements of the exchange where it has its primary listing."*

Based on the above the JSE wishes to clarify the following in respect of the PLS for a company applying for a simultaneous secondary listing on the JSE with the primary



listing on the LSE.

#### 1. PLS

On the basis that the Requirements and the UKLA listing rules are substantially similar, the JSE has no objection to the use of a single PLS document for the purposes of listing on the LSE and the JSE. The PLS must be accompanied by a completed new listing checklist clearly demonstrating compliance with the Requirements. There may be instances where application of the UKLA listing rules would lead to only partial compliance with the Requirements. These items should be clearly referenced in the new listing checklist and will be assessed by the JSE during the first submission review process. Should the JSE believe that there is a material departure from the Requirements on any particular disclosure item, additional disclosure may be required.

#### 2. Historical Financial Information

The JSE will accept, subject to the exceptions detailed below, the inclusion of the historical financial information of the applicant issuer prepared in accordance with the UKLA listing rules in order to meet the disclosure requirements pursuant to paragraph 7.E. read with 8.2 and 8.45 of the Requirements. This will result in no additional assurance report being required by a reporting accountant or JSE accredited auditor.

The exceptions to the above approach are the following:

- (i) Headline earnings must still be prepared and disclosed pursuant to paragraph 8.11 of the Requirements (noting that no separate reporting accountant sign off is required); and
- (ii) Where the applicant issuer is newly incorporated, the JSE understand that a standard waiver may be granted by the UKLA to dispense with the need for historical financial information on such newly incorporated applicant issuer. Irrespective of such waiver, the JSE will insist on the required application of paragraph 8.2 and paragraph 8.45 of the Requirements on the historical information in respect of the newly incorporated applicant issuer.

#### 3. Pro forma Financial Information

The JSE may accept the application of the UKLA listing rules as it relates to the preparation of the pro forma financial information and the auditors' report thereon. However, applicant issuers should approach the JSE for a formal ruling in this regard. The JSE may request additional pro forma financial information prepared pursuant to the Requirements if that information is necessary for the JSE to assess the listing entry criteria.

#### 4. Corporate Governance

Applicant issuers are not required to comply with the new listing corporate governance requirements pursuant to the provisions of the Requirements for the purposes of the PLS, provided that there is a positive confirmation in the PLS that the applicant issuer complies with the UK Corporate Governance Code.

### **SECTION 7**

#### **Guidance Letter: Guidance on 7.B.23 on the JSE Listings Requirements**

Date: 14 December 2011

The JSE has decided to issue further guidance on paragraph 7.B.23 states:

The prospectus/pre-listing statement/circular must be signed by every director of the applicant (or by his agent or attorney, with a copy of the authority of any such agent or attorney); provided that where responsibility for any information contained in different parts of the prospectus/pre-listing statement/circular has been extended to or accepted by any other person(s), such other person(s) (or his/their agent or attorney) shall also sign the prospectus/pre-listing statement/circular and it shall be stated clearly for



which part or parts of the prospectus/pre-listing statement/circular each signatory bears responsibility.

## **Introduction**

It has come to the attention of the JSE that some confusion exists in respect of the signing of the prospectus, pre-listing statement and circular (the "**document**") by every director as envisaged by 7.B.23. It should be noted that the signing of the document is personal and attached to each director. Therefore, the document must be signed by the director or by (i) his agent or (ii) attorney.

It should be noted that that the action required by each director pursuant to 7.B.23 (i.e. the signing of the document) should not be confused with the approval of a transaction by the board of directors as a whole and the subsequent authorisation of any one of them (or other) to execute the transaction documents (or any other document incidental thereto) on behalf of the Issuer.

The object of 7.B.23 is that each director approve and sign the document, which is additional to and separate from the approval of the transaction by the board of directors as a whole.

We have also been made aware of the logistical difficulties in obtaining these signatures from directors due to scheduling difficulties of directors and transaction timetables.

On this basis, the JSE issues further guidance on the interpretation of 7.B.23.

## **Prospectus, pre-listing statement and circular**

The JSE will accept, in respect of each director, the following as it relates to the signing of the document, as the case may be:

- the original signature of the director on the document;
- a duly executed power of attorney authorising any director or another to sign the document on the director's behalf;
- a round robin resolution of the board of the Issuer signed by each and every director authorising one of them or another to sign the document on their behalf; or
- minutes of a fully constituted board meeting of the Issuer duly signed by the chairman of the meeting authorising one of them or another to sign the document on their behalf.

## **Guidance on execution: Power of attorney**

Save for any director(s) which will be signing the document in his/her personal capacity, every other director of the Issuer may sign and provide a power of attorney to authorise another to sign the document on the director's behalf, which must contain the following provisions as a minimum:

- the full name(s), title and capacity of the director giving the power of attorney;
- a specific reference to the document including a summary of all the provisions covered (the purpose of the summary is to link the power of attorney to the relevant corporate action.);
- a statement that the said director has read and understood the contents of the document;
- confirmation that the said director has given his/her consent to the party signing the document on his/her behalf;
- signature by the director;
- signature by at least one witness;
- signature date.

Guidance on execution: Round robin resolution or minutes of a fully constituted board meeting

The directors may elect to pass a round robin resolution signed by each and every director authorising one of them or another to sign the document on their behalf or in the alternative provide board minutes duly signed by the chairman of a fully constituted board meeting authorising one of them or another to sign the document on their behalf. It should be noted that if this route is chosen, either all the directors must sign the round robin resolution or all directors need to be present at the board meeting.

The round robin resolution must contain the following provisions as a minimum:

- the full name(s), title and capacity of the director signing the round robin resolution
- a specific reference to the document including a summary of all the provisions covered (the purpose of the summary is to link the authorisation to the relevant corporate action.)
- a resolution covering the following:
  - a statement that the said director(s) have read and understood the contents of the document;
  - confirmation that the said director(s) has given his/her consent to the party signing the document on his/her behalf;
  - signature by each director;
  - signature date;
  - signature in counterpart will be acceptable;

the board minutes must contain the following provisions as a minimum:

- confirmation that all the directors were in attendance at the meeting;
- a specific reference to the document including a summary of all the provisions covered (the purpose of the summary is to link the matters to be discussed to the relevant corporate action);
- a resolution covering the following:
  - that all the directors have read and understood the contents of the document;
  - that all the directors have given their consent to the party signing the document on their behalf;
- the minutes signed by the chairman of the meeting;
- signature date.

On the basis that the signing of the document is personal to the director as envisaged in 7.B.23, the round robin resolution or minutes of a fully constituted board meeting will be acceptable to the JSE on the basis that each director will be authorising a mutual other to sign the document on his/her behalf. This should be distinguished from a duly constituted board meeting where a quorum can be achieved without the presence of all the directors.

For the avoidance of doubt –

- board minutes will not be accepted where all the board members are not present; and
- authorisation for the purposes of this guidance note may be given to another director or a duly authorised third party (e.g. the company secretary).

#### **General note**

A power of attorney, round robin resolution or minutes of a fully constituted board meeting (the **"authorisations"**) may be an original document or a photocopy and must be delivered to the JSE by the Sponsor or Designated Adviser of the Issuer, either in person, or sent via email in the form of a scanned document. Please note that *the* Sponsor or Designated Adviser thereby takes responsibility for verifying the authenticity of the authorisations.

If a Sponsor or Designated Adviser, as the case may be, elects to send the authorisations via e-mail, it must be sent to the JSE from an official company e-mail address of the Sponsor or Designated Adviser and not from a personal e-mail address.

## **SECTION 8**

### **Guidance Letter: New listing: Key audit matters in auditor's reports**

Date: 1 September 2017

International Auditing Standard ISA 701 deals with situations when the auditor is required to address Key Audit Matters ("**KAMs**") in their auditor's report.

IAS 701 is effective for audits of financial statements for periods ending on or after 15 December 2016 and states that it applies to:

- audits of complete sets of general purpose financial statements of listed entities;
- when the auditor otherwise decides to communicate KAMs in the auditor's report; and
- when the auditor is required by law or regulation to communicate KAMs in the auditor's report.

A listed entity is defined as an entity whose:

- shares, stock or debt are -
  - quoted or listed on a recognised stock exchange; or
  - marketed under the regulations of a recognised stock exchange or other equivalent body.

The JSE wishes to remind sponsors, designated advisors and reporting accountant specialists to ensure that KAMs are included in audit report that accompanies the audited historical information of an applicant issuer in the pre-listing statement.

It should further be noted that in some instances, the operating entity ("**OpCo**") is not listed itself but a holding company is created for purposes of listing. Although OpCo is not seeking a listing, the JSE will view the substance of the listing as the listing of OpCo. In these circumstances, the JSE will expect to see KAMs included in the auditor's report of OpCo.

In the event of a reverse listing, please engage with the JSE at an early stage to determine the application of KAMs.

Please contact the JSE should you –

- have any queries as to the application of this letter, or
- if the first submission of a pre-listing statement is imminent from the date of this letter and there are concerns from a timing perspective.

## **SECTION 9**

### **Guidance Letter: Amending transaction terms as approved by shareholders**

Date: 8 May 2012

#### **Background**

The JSE has recently received several requests to consider amendments to transactions as previously approved by shareholders in general meeting ("**approved transaction**") on the basis that the proposed amendments are not material to shareholders and therefore do not require shareholder approval.

It has been the JSE's firm position that it cannot and will not make an assessment on materiality on behalf of shareholders as far as it relates to a proposed amendment to an approved transaction. It has been the JSE's approach to refer any amendments to an approved transaction (irrespective of materiality) back to shareholders for their due consideration in order that they may exercise their vote in respect thereof.

### **Review of approach**

The JSE endeavors to be pragmatic in its approach and in recent cases compelling arguments have been provided to the JSE that certain proposed amendments to approved transactions were (i) not material and (ii) not in conflict with the approved transaction (the "**considering factors**"), and therefore did not require the further approval of shareholders in general meeting.

The JSE wishes to advise that the general rule still applies that amendments to approved transactions must be approved by shareholders in general meeting. However, the JSE is willing to consider amendments to approved transactions, on application, where the considering factors can be clearly evidenced and supported. The JSE will seek confirmation on the considering factors from (i) the board of the issuer, (ii) the auditors of the issuer, (iii) the legal advisers of the issuer and (iv) such expert/s as the JSE may deem appropriate in its discretion (the "**confirming parties**").

The JSE is aware that the general rule of referring matters back to shareholders on the mere fact that it is an amendment to an approved transaction may have timing and cost implications (in certain cases to the detriment of shareholders) and has therefore revised its approach from the general rule.

Each and every amendment to an approved transaction will be considered on its own merit and no general precedent will be created in respect of the JSE's approach. Once the JSE is satisfied with the various representations made by the relevant parties as regards the considering factors, the JSE may issue a letter of no objection in respect of the amendments to the approved transaction not being referred back to shareholders. The JSE will require that an announcement be released on SENS addressing each of the considering factors as reported by the confirming parties and stating clearly that the amendments to the approved transaction will not be referred back to shareholders for approval.

In order for the JSE to take a view on the considering factors in respect of a proposed amendment to an approved transaction, the JSE will require and rely on the following

- A letter signed by a director of the Issuer clearly explaining the nature of the amendments to the approved transaction and the rationale for such amendments, also stating clearly why, in the board's opinion (as supported by the necessary board minutes), the proposed amendments to the approved transaction are not material and not in conflict with the approved transaction;
- A letter signed by the appointed auditors showing the pro forma financial effects of the proposed amendments on the approved transaction; and
- A letter signed by the legal advisers of the Issuer clearly explaining the nature of the amendments to the approved transaction and the rationale for such amendments, also stating clearly why, in the lawyer's opinion, the proposed amendments to the approved transaction are not material and not in conflict with the approved transaction.

The JSE may request the submission of irrevocable undertakings, signed by shareholders of the issuer, ( i) supporting each of the considering factors, (ii) specifying the proposed amendments to the approved transaction and (iii) stating clearly that should those amendments be proposed at a general meeting of shareholders of the issuer, that such shareholders would vote in favour of such proposed amendments. Such irrevocable undertakings should exceed the threshold required for the passing of the said resolutions as regards the approved transaction.

The above is not an exhaustive list and the JSE may consider any external factors that may have bearing on the considering factors.

## **Guidance Letter: Related party issues – Schemes of arrangement and offers**

Date: 2 April 2012

The JSE recently consulted with various stakeholders and market participants regarding the application of the related party provisions of the JSE Listings Requirements (the "**Requirements**") as it relates to (i) schemes of arrangement for the purpose of a recommended take-over ("**Scheme**") and (ii) offers to shareholders of a target company ("**Offers**").

The purpose of the letter is to provide guidance on the related party implications for a listed offeror company in Offers and Schemes, which Offers and Schemes are primarily regulated by the Takeover Regulations Panel ("**TRP**") created by the Companies Act No. 71 of 2008.

For purposes of this guidance note, it should be noted that focus is placed on the offeror in the context that it is a listed company on the JSE. The regulation involved in respect of the target company and its shareholders are undertaken by the TRP subject to paragraph 11.54 of the Requirements.

### **Schemes**

A Scheme is one of the methods used in effecting a take-over. A Scheme by definition is an arrangement proposed by the offeror between a company and its members and accordingly requires the target company's board to approve the Scheme documentation submitted to shareholders for their consideration and approval.

Although a Scheme is primarily regulated by the TRP, the JSE's jurisdiction in relation to a Scheme is over the listed offeror company as it would be a transaction (an acquisition) for such listed offeror company pursuant to Section 9 of the Requirements. The JSE will therefore also assess the relationship between the listed offeror company and the target company in accordance with the provisions of section 10 of the Requirements.

### **Offers**

An Offer involves an offer by an offeror to shareholders of a target company and there may be no involvement by the target company's board

As in the case with a Scheme, the JSE's jurisdiction in relation to an Offer is over the listed offeror company as it would be a transaction (an acquisition) for such listed offeror company pursuant to Section 9 of the Requirements.

Taking into account the nature of such an Offer and the number of shareholders of the target company that may be involved, the JSE will normally only enact the related party provisions of Section 10 of the Requirements where there is a common controlling shareholder present in both the listed offeror company and the target company. The JSE is of the view that such common controlling shareholder would be in a position to influence the board's decision of the listed offeror company as it relates to the determination of the Offer price and may even control the boards of both the listed offeror company and target company. On this basis, the normal provisions of a related party transaction would apply for the listed offeror company (including the preparation of a fairness opinion as it relates to the Offer price).

The JSE reserves the right to assess the relationship between the listed offeror company and the shareholders of the target company in accordance with the provisions of section 10 of the Requirements.

In cases where any of the shareholders in the target company have board representation in the listed offeror company, the JSE will require appropriate corporate governance measures to be applied by the listed offeror company. Thus, such representative on the board of the listed offeror company may not participate in any way whatsoever as it relates to the determination whether an Offer will be made and the subsequent quantum of the Offer price to be offered by the listed offeror company.

## **Guidance letter: Approved executive sign-off on submissions to the JSE**

Date: 18 May 2012

The JSE Limited ("JSE") has noticed in certain cases that the first submission checklist and /or schedule 17 declaration is not submitted for "smaller" documents such as articles of association, share schemes, and specific payments.

In light of this we felt that it would be appropriate to remind approved executives of their responsibilities in terms of the Listings Requirements ("LR") in order to avoid any delays in the approval process.

Paragraph 16.2 of the LR details the types of documents that must be submitted through a sponsor and you will note that the "smaller" documents referred to above is specifically covered in this paragraph. Paragraph 16.3 deals with the procedures for documents requiring JSE approval and 16.3(a) states that all submissions must be accompanied by, inter alia, the first submission checklist signed by an approved executive. The first submission checklist is contained in Schedule 2 Form F and calls for, inter alia, a signed sponsor declaration as contained in Schedule 17.

Schedule 17 deals with three aspects and must be signed by the responsible approved executive. First and foremost there is confirmation that the submission complies with the LR. Secondly, there is confirmation that the approved executive will review each submission before it is submitted to the JSE and it finally deals with independence.

Based on the above we wish to advise that we will no longer accept any submissions that are not properly signed-off as explained above. Please ensure that this is adhered to avoid delays in the approval process.

## **SECTION 10**

### **Guidance Letter: Fairness opinion: related party transactions in respect of property and mineral assets**

Date: 25 October 2012

#### **Fairness opinion: related party transactions in respect of property and mineral assets**

Typically for a related party transaction the directors of the issuer must make a statement indicating whether or not the related party transaction is fair insofar as shareholders of the issuer are concerned and that the board of directors has been advised by an independent expert acceptable to the JSE. The board of directors must obtain a fairness opinion prepared in accordance with Schedule 5 of the JSE Listings Requirements (the "**Requirements**"). Before issuing a fairness opinion, the independent professional expert must perform a valuation of the issuer and/or the subject of the transaction.

In 2007, with the introduction of the amendments to paragraph 10.4(f) of the Requirements, the JSE adopted a pragmatic approach to fairness opinions prepared pursuant to certain related party transactions. The provisions of paragraph 10.4(f) allow for a fairness opinion, resulting from a related party transaction, to be dispensed with in the event that (i) property or (ii) mineral assets form the subject matter of the related party transaction and where the value thereof is supported by the necessary valuations. The rationale for the approach being that a valuation is performed on the asset, which is then compared against the consideration paid or received in respect of that asset. The only basis under which such a comparison can take place on a like for like basis is if the consideration paid or received in respect of the asset is clearly ascertainable and determinable in the form of cash, without any consideration whatsoever of outside variables. The fairness opinion becomes superfluous where the value of the asset can be weighed outright against the cash consideration received or paid for the asset.

It should therefore be noted that the exemption on a fairness opinion as envisaged above does not apply where the consideration received or paid for the asset is in the form other than cash, such as the issue of shares in the issuer.

Therefore, only in the event that a related party transaction involves –

- property and/or mineral assets, as the subject matter of the acquisition or disposal pursuant to a related party transaction;
- the value of which has been determined and supported by a valuation –
  - For property assets it would be a valuation report prepared in accordance with paragraphs 13.20 and 13.31 of the Requirements; and
  - For mineral assets it would be a valuation included in a competent person's report prepared in accordance with Section 12 of the Requirements by an independent competent person.
- the consideration received or paid is settled in cash,

the requirement for a fairness opinion may be dispensed with.

For the avoidance of doubt, the above principle applies equally to paragraph 13.10 of the Requirements which provides that an issuer is exempt from providing a fairness opinion where a related party transaction involves property, the subject of the valuation report prepared in accordance with paragraphs 13.20 to 13.31. It should be noted however, that property is specifically defined and described in section 13 as being immovable property consisting of land and buildings.

The exemption from obtaining a fairness opinion set out in paragraphs 10.4(f) in respect of (i) property or (ii) mineral assets is subject to the following two factors being present:

- The transaction involves an asset only, not a business, shares in a company, or a stake in a joint venture or partnership; and
- The consideration received or paid is settled in cash.

It should be noted that once a transaction involves more than an asset as envisaged above other factors may come into play which could impact the valuation as:

- There could be other assets and liabilities within the entity that may need to be considered; and
- There are other valuation considerations that need to be taken into account when the related party transaction involves a business or a group of assets.

## SECTION 13

### Restructuring of capital structure

Date: 28 March 2014

We refer to the introduction of the REIT requirements in March 2013 which allowed issuers to make application for REIT status. Those issuers that had linked units in issue and made application were granted REIT status but our approval letters imposed the following condition:

"In your application letter you have excluded the existing debentures issued as part of your listed linked units and the related premium from liabilities for the purposes of the gearing test. We hereby agree that you can make such an adjustment for the purposes of the gearing test but only until 1 July 2015. After that date the gearing must be based on the total consolidated liabilities as reflected in the IFRS financial statements and no separate adjustment may be made for any debentures, even if they are part of an historic linked unit structure."

As a result of the above, we are aware that several issuers are intending to propose a capital restructuring ("**the restructuring**"). This letter serves to guide you on the administrative process around the restructuring and the process to be followed.

Whilst the restructuring proposals that we have seen to date have varied between issuers, they had the following common elements:



- There is a delinking of the linked units;
- The linked units are replaced with a new share certificate and a new ISIN;
- The debentures are effectively redeemed (albeit for no additional consideration);
- There is a debenture holders meeting; and
- The value of the debentures is capitalised to equity.

Taking all of the above into account we believe that the appropriate Listings Requirements ("**the Requirements**") applicable to the restructuring is a combination of parts of the following sections:

- (i) Capitalisation issues (paragraphs 5.39–5.43 of the Requirements);
- (ii) Redemption of listed redeemable securities (paragraph 11.38 of the Requirements read together with paragraph 11.34);
- (iii) Alternations of share capital (paragraph 11.37);
- (iv) Amendment to the MOI; and
- (v) Schedule 24(i) or (p).

The checklist combining the above Requirements is attached to this letter as Annexure "A" and we expect to see compliance therewith. Please note that should a specific issuers' restructuring deviate dramatically from the types of examples we have seen in the past we may ask for compliance with other aspects of the Requirements.

As it relates the practicalities of the above we wish to advise that:

- In respect of paragraph 13.34(d), if the effect of the restructuring on the per linked unit indicators is insignificant, such effect need not be included. Instead, the issuer must include a statement to that effect and describe what

the impact will be on both the statement of financial position (including the gearing), the statement of comprehensive income and the per share/linked unit indicators; and

- The information required by paragraph 13.34(c) is critical and details must be included. It is inappropriate for the issuer to merely advise linked unitholders to seek their own advice.

In order to facilitate the administrative process we have created a new event type in Webstir called "REIT restructuring" that must be used for your submissions. This event type will be invoiced at an amount of R11 154.94 (inclusive of VAT) which has been derived from the sum of event types (i) to (iv) set out above. Should the restructuring be implemented via a scheme of arrangement, that event type must be included separately in Webstir, but the JSE will not invoice separately for it. Furthermore, even if the restructuring is implemented through a scheme, the JSE will impose the above requirements and will not follow its usual approach for a document under the jurisdiction of the Panel.

## SECTION 18

### **Guidance Letter: Termination at the request of the issuer: Secondary listed issuers**

Date: 20 June 2012

An issue was recently raised whether an issuer had to comply with the termination provisions (at the request of the issuer) pursuant to paragraph 1.14 of the JSE Listings Requirements (the "Requirements") in instances where the issuer was secondary listed on the JSE.

The factors for consideration presented to the JSE were the following:

On the basis that the primary exchange of the issuer did not require (i) shareholder

approval or (ii) an offer to be made to shareholders in order to affect the termination of securities –

- the JSE (as the secondary exchange) should follow suit as the securities would be terminated in accordance with the requirements of the primary exchange; and
- the provisions of paragraph 18.19 of the Requirements dealing with the continuing obligations of secondary listed issuers did to specifically address adherence to the termination provisions as set out in paragraph 1.14 of the Requirements.

Paragraph 1.13: Termination of securities at the request of the issuer

The relevant provision relating to termination of securities at the request of the issuer has been extracted below from the Requirements for ease of reference:

1.14 An issuer may make written application to the JSE for a deletion of any of its securities from the List, stating from which time and date it wishes the deletion to be effective. The JSE may grant the request for termination, provided paragraphs 1.15 and 1.16 are properly complied with and perfected.

1.15 Prior to being able to effect paragraph 1.14, an issuer must send a circular to the holders of its securities complying not only with the requirements of paragraph 11.1 (contents of all circulars) but also with the following:

- (a) where the issuer is a listed company, approval must be obtained from shareholders in general meeting for the termination of the listing prior to the issuer making written application for such removal;
- (b) the reasons for termination must be clearly stated;
- (c) an offer (which must be fair in terms of paragraph 1.15(d)) must be made to all holders of listed securities with terms and conditions provided in full; and
- (d) a statement must be included by the board of directors confirming that the offer is fair insofar as the shareholders (excluding any related party/ies if it/they are equity securities holders) of the issuer are concerned and that the board of directors has been so advised by an independent expert acceptable to the JSE. The board of directors must obtain a fairness opinion (which must be included in the circular), prepared in accordance with Schedule 5, before making this statement.

1.16 Where approval is required in terms of paragraph 1.15(a), more than 50% of the votes of all shareholders present or represented by proxy at the general meeting, excluding any controlling shareholder, its associates and any party acting in concert, and any other party which the JSE deems appropriate, must be cast in favour of such resolution, unless the JSE otherwise decides.

### **Dual Listings: Section 18 of the Requirements**

In order to address this issue the meaning of secondary listing status should be understood. Secondary listing status means that once an applicant issuer is listed, it will only be required to comply with the listings requirements of the exchange where it has its primary listing, save as otherwise specifically stated in the Requirements.

### **Authority of the JSE**

The section in the Requirements dealing with the termination provisions is contained in Section 1 of the Requirements. The scope of the section states clearly in the preamble that the section sets out the authority of the JSE regarding its powers to list, suspend and terminate listings, and its powers to enforce the Requirements.

These powers are general enabling powers applicable to all issuers, including issuers with secondary listings on the JSE.

### **The continuing obligations provisions: Paragraph 18.19 of the Requirements**

It was argued that the termination provisions did not apply to the issuer on the basis that the Continuing Obligations Provisions did not include adherence to the termination provisions as set out in Section 1 of the Requirements.

It should be appreciated that the Continuing Obligations Provisions deal with continued disclosure as long as the issuer remains secondary listed on the JSE and it would therefore be out of place to deal with provisions dealing with the termination of securities.

This position is confirmed in the above definition of secondary listing status. Once an applicant issuer is listed, it will only be required to comply with the listings requirements of the exchange where it has its primary listing, save as otherwise specifically stated in the Requirements. Thus, as long as the secondary listed issuer is listed on the JSE it would need to comply with the Continuing Obligations Provisions of the JSE despite any contrary requirements of the primary exchange.

## **Conclusion**

It should be noted that one of the objectives of the JSE is aimed at ensuring that its activities are carried out with due regard to the public interest. On the basis that secondary listed companies actively market and pursue investments from the South African public and others, there is no reason to believe that the Requirements, as they pertain to the termination of securities at the request of the issuer, do not apply to secondary listed companies which have securities listed on the JSE.

## **Secondary Listed Companies**

### **Guidance Letter: Corporate actions and certain other events undertaken by secondary listed companies on the JSE**

Date: 10 March 2010

The JSE Limited ("JSE") has received numerous requests from sponsors regarding the approval by the JSE of corporate actions or events specified in terms of paragraph 16.2 of the JSE Listings Requirements ("LR") undertaken by companies with a secondary listing on the JSE. In light of this and given some of the difficulties experienced by some companies we have decided to clarify our approach in relation to the above. In future, sponsors must submit to the JSE at least 5 working days prior to the date of the circular, a letter confirming the following:

- that all relevant approvals have been granted. These approvals will, amongst others, include approval from the listings or other competent authority of the exchange where the company has its primary listing and if applicable, approval from the South African Reserve Bank;
- that the circular as submitted is in compliance with Section 18 of the LR to the extent required;
- that approval has been granted by the Corporate Actions and Clearing and Settlement Departments of the JSE with regard to any procedural and timetable issues;
- that they are satisfied that there is nothing in the document that is in conflict with the LR (if there is a conflict, this must be brought to the attention of Issuer Services Division); and
- the contents of the documents will not lead to a reverse listing (as contemplated in Section 9 of the LR). The JSE will, subject to compliance with the above, peruse the document and provide formal approval within 48 hours of the submission.

Certain corporate actions can be extremely complex and it should therefore be noted that for approval to be granted from the departments (as mentioned above) within at least 5 working days prior to the date of the document, they must have been consulted as far in advance of the process as possible. As this is a new approach, we may have to change it if we experience any problems in the future. Please communicate this new approach to your clients with secondary listings on the JSE.

## **SECTION 19**

### **Guidance Letter: Acceptable index providers**

Date: 27 November 2008

#### **Introduction**

The JSE Limited ("JSE") Listings Requirements, specifically section 19, make provision for the listing of certain instruments with an index as their underlying basis. In order to promote investor protection, the JSE requires that the index meets certain minimum requirements. In this regard, the JSE has established certain principles which will be used to determine whether the index and the party responsible for its calculation are acceptable. The principles, together with supporting guidelines, are set out in paragraphs 2 to 6 below.

#### **Experience**

The index provider must satisfy the JSE that it has adequate experience in calculating indices. The JSE will have regard to the following guidelines in considering whether an index provider has the required experiences:

- The index provider will be expected to have staff with considerable relevant experience. Experience could include the calculation of in-house benchmarks, custom indices or having worked with or been employed by a reputable index provider for a considerable period.
- The index provider must provide evidence that it has sufficient knowledge and experience in dealing with the impact of corporate actions on indices. This could be achieved by displaying a satisfactory track record of applying corporate actions correctly to an index.

#### **Transparency**

The construction of the index, including the treatment of corporate actions, must be clearly stated in the Ground Rules Document and its document must be publicly available to ensure full transparency. The JSE will have regard to the following guidelines in considering whether the Ground Rule Document is acceptable:

- It must contain the basic constitution of the index and the treatment of all known corporate actions must be clearly set out to ensure that they are dealt with timeously, objectively and consistently.
- Details of index reviews and the intervals at which such reviews are conducted must be clearly disclosed.
- It must include details of the process followed when there are changes to the index and how these changes will be communicated to investors.

#### **Independence**

An index provider must calculate the index objectively without undue influence from the organisation or fund which is issuing the instrument based on the index. Consequently, an index provider may not act as an index provider to any organisation or fund issuing the relevant instrument from which it is not independent except with the specific approval of the JSE. The JSE will have regard to the following guidelines in considering whether to allow an index provider to act for an organisation or fund issuing the instrument from which it is not deemed to be independent:

- The department or business unit that is responsible for calculating the index must operate separately from the issuer of the instrument and this must be evidenced by clear "Chinese walls".
- The department or business unit responsible for calculation the index must not have any reporting lines into the department or business unit responsible for issuing the instrument.

- The compliance officer of the organisation must confirm in writing that the two areas are sufficiently independent and separated to ensure that the one is not influenced at all by the other.
- A policy must be in place stipulating how matters will be dealt with that are not covered in the Ground Rules Document and this policy must ensure that decisions are taken in order that the interests of the issuer of the instrument may not be in conflict with the best interest of investors.
- Disclosure regarding the relationship between the index provider and the issuer of the instrument must be included in the listing documentation together with details on the index provider's ability to act independently.

### **Continuity**

Arrangements must be in place to ensure that a sufficient number of experienced staff are available to properly discharge the index provider's responsibilities at all times. If the index provider does not have the necessary staff to fulfil this obligation, it must have alternative arrangements in place to ensure continuity at all times. The JSE will have regard to the following guidelines in considering whether the alternative arrangements are acceptable:

- The index provider must have an agreement in place with another index provider that will take over its responsibilities in the event of the index provider not being able to discharge its responsibilities for whatever reason.
- The other index provider referred to in (a) above must meet the criteria in considering was set out in this document and be approved by the JSE.

### **Technology**

The index provider must demonstrate to the JSE that it has a robust index calculation system in place. The JSE will have regard to the following guidelines in considering whether the system is acceptable:

- The system must not be subject to manipulation. Confirmation of this must be provided to the JSE and the issuer of the instrument must confirm that it is satisfied with the controls implemented to avoid manipulation.
- The system must be designed to ensure continuity in the event of a system failure.

The JSE would encourage potential index providers to submit all the relevant documentation evidencing compliance with the above principles and guidelines early in the process in order to ensure that there are no unnecessary delays in the approval of a new listing.

## **Announcement - Paragraph 19.28 (Specialist Securities)**

Date: 24 April 2017

### **Introduction**

The JSE wishes to advise that it has received a number of enquiries relating to the application of paragraph 19.28 of the JSE Listings Requirements (the "**Requirements**") and in particular (i) the timing of the announcement and (ii) its applicability to ETFs and ETNs. The JSE has therefore decided to issue guidance on the applicability of the requirement.

Paragraph 19.28 is a general requirement that is applicable to all securities listed pursuant to Section 19 (Specialist Securities) and states the following:

"The issuer will also be required to make an announcement should there be any changes in the constituents of the asset pool relating to a corporate action or otherwise (if applicable). Such announcement must be made through SENS and posted on the issuer's website."

The requirement refers to an underlying pool of assets which means that the requirement only pertains to instruments that are backed by underlying assets.

### **Warrants, Structured Products and ETNs ("investment products")**

In relation to investment products that are issued over and index, the issuer is obliged to pay the investor the performance of an index at a point in time and generally the issuer does not hold the constituents in the index for the benefit of the investor. An index license agreement may not always be in place between the issuer of the investment product and the index sponsor of the index being referenced in the product. Issuers therefore do not always have a legal basis to republish index constituent information. The JSE therefore wishes to advise that index constituent disclosure announcements are not compulsory where a physical underlying pool of assets is not being referenced.

## **ETFs**

Pursuant to paragraph 19.66 of the Requirements, ETFs must be fully covered by the underlying assets that the ETF references at all times. It is therefore clear that there is an underlying pool of assets as referred to in paragraph 19.28 of the Requirements. The announcement pursuant to paragraph 19.28 is therefore applicable to any change in the underlying pool of assets including:

- changes to the index at the scheduled periodic index review that result in a change in the underlying portfolio holdings; and
- intra-periodic changes to the index as a result of corporate actions or otherwise that result in a change in either the underlying portfolio constituent holdings or weightings.

The changes referred to above must be announced via SENS no later than the day after the effective date of the change.

It should be noted that the changes to constituents and their respective weightings must be disclosed in relation to the underlying portfolio of assets. A simple republication of the index market notice produced by the index sponsor will not fulfil the issuer's obligations in terms of paragraph 19.28 of the Requirements. In light of this, a republication of the aforementioned index market notice including a reference to the portfolio constituents and weightings on the issuer's website via a web URL will be required in the announcement. This will ensure that investors have a clear indication as to the index changes as well as the related impact on the underlying portfolio of assets.

## **Indices referenced by ETFs and other specialist securities**

Date: 17 August 2017

The JSE has for some time been monitoring the application of the JSE Listings Requirements (the "**Requirements**") in relation to indices disclosures in order to align the application with best market practice. The JSE has thought it wise to provide guidance on the application of certain of the index related requirements pursuant to the provisions of Section 19 (Specialist Securities), with the intention of assisting the market with their respective business processes.

### **Exchange Traded Funds**

#### Daily Publication – Paragraph 19.70

Pursuant to the provisions of paragraph 19.70(e) an issuer must publish details on its website each day of the index constituents (if applicable).

In respect of disclosure of the index constituents pursuant to paragraph 19.70(e), given that the index value is made publically available through data vendors the JSE is of the view that the requirements dealing with the daily publication of index constituents are no longer relevant.

The JSE will therefore no longer require the publication of the index constituents from the date hereof.

#### Feeder Fund Placing Documents

The JSE has experienced a recent influx in listing applications for feeder funds in the ETF market. Although the listings of feeder funds are permitted, the requirements do

not specifically deal with the disclosure requirements relating to feeder funds. Guidance is therefore provided as to the required disclosure for index and portfolio constituents in the placing documents of feeder funds:

- General information on the underlying fund, being –
  - the name of the fund;
  - fact sheets; and
  - prospectus/listing documents

A URL link must be included as to where the abovementioned information on the fund can be obtained.

- A URL link as to where the underlying feeder fund's portfolio constituents are published (this information may be incorporated by reference into the placing document);
- The units/instruments being purchased to track the index by means referencing the underlying fund; and
- The full list of constituents in the listing document is not required for either the portfolio or the index. A URL link must again be included as to the underlying fund portfolio constituents.

## **Transparency**

### Paragraph 19.35

Issuers are reminded that pursuant to paragraph 19.35 the ground rule summary document must be publically available on the issuer's website and the comprehensive ground rules document must comply with the provisions of paragraph 19.35 in order for the JSE to assess whether same is acceptable.

## **Financial Matters**

### **Financial and audit related – Continuing obligations**

#### **Guidance Letter: Proactive monitoring of financial statements**

Date: 16 February 2011

The JSE has released an announcement on SENS today regarding pro active monitoring of financial statements. As a reminder, compliance with SA GAAP was made a JSE Listings Requirement in 2000. In 2005 this was changed to compliance with International Financial Reporting Standards ("IFRS"). The obligation to comply with IFRS is therefore not new. What has changed, however, is the JSE's approach to regulating this matter. It is important to note that our change is in line with international best practice.

From a practical process perspective, the pro-active review will begin shortly. All financial statements published on or after 1 January 2011 will be eligible for review. You will not receive any notification that your results have been selected. We shall contact you if the review process has identified issues which in our opinion warrant further investigation. In line with King III and the new Companies Act, No. 71 of 2008, audit committees must receive and deal appropriately with any concerns or complaints relating to accounting matters. We would therefore expect to see the input of the audit committee on any correspondence which flows from the company in response to issues of an accounting nature raised by the JSE.

A well regulated securities market is fundamental for listed companies to be able enjoy the benefits of being listed. We hope that you will embrace this new process and trust that together we will enhance South Africa's standing in the international market.

#### **Guidance Letter: Summary of financial statements**

Date: 25 July 2011



The Companies Act, No. 71 of 2008 ("the Act") makes provision for a summary of financial statements to be sent to shareholders, the summary must however comply with the prescribed requirements in the Act or Regulations. Unfortunately neither the Act nor the Regulations have provided for the prescribed requirements for a summary of financial statements.

Listed companies must thus obtain the necessary advice in order to determine whether it is legal to distribute a summary of financial statements to their shareholders. If they do send such a summary, whether voluntary or in terms of the Act, the JSE, without condoning that it is correct to send a summary, shall at the very least require of the company in relation to annual financial statements to have a summary that follows the approach of the Listings Requirements as they relate to preliminary, provisional and abridged reports. In this regard the summary must:

- be prepared in accordance with the framework concepts and measurement and recognition requirements of IFRS and the AC 500 standards as issued by the Accounting Practices Board or its successor; and
- must also as a minimum contain –
  - the information required by IAS 34: Interim Financial Reporting (in other words the disclosure requirements); and
  - a statement confirming that it has been so prepared.

These requirements apply equally to the situation where a company voluntarily sends financial information in a summarised format for example in advance of the notice of annual general meeting.

In the event that a company wishes to provide a summary of their interim financial reports, preliminary reports, provisional reports and abridged reports, such a summary must fully comply with paragraph 8.57 of the Listings Requirements.

### **Guidance Letter: Presentation of financial results**

Date: 14 September 2007

The JSE Limited ("JSE") wishes to remind issuers that in terms of paragraph 8.57 of the JSE Listings Requirements, interim, preliminary, provisional and abridged reports (period results reports) must be prepared in accordance with, and containing the information required by, International Financial Reporting Standards ("IFRS") on Interim Financial Reporting (i.e. IAS 34).

In order to confirm compliance with this Listing Requirement, we ask issuers to include a statement confirming that the period results reports have been prepared in terms of IAS 34. This statement would be in addition to the normal wording which confirms that the accounting policies are in terms of IFRS and are consistent with those of the previous annual financial statements.

The GAAP Monitoring Panel ("GMP"), in recent cases referred to it has identified serious deficiencies with respect to compliance with IAS 34, as well as issues relating to accounting for business combinations. These matters are detailed in the Annexure to this letter. We would urge all issuers to carefully consider the content to their period results reports in light of paragraph 8.57 of the Listings Requirements and these GMP findings in order to avoid contravening the Listings Requirements.

Finally, in the context of period results reports which have been reviewed or audited we refer you to the 2004 SAICA guide. Although the references in this guide are out of date, the principle remains the same, namely the period results report should actually have an auditor's report separate from the underlying detailed annual financial statements.

### **Annexure**

This annexure does not deal with all the requirements of the applicable standards. Its purpose is to set out deficiencies in financial reporting identified by the GMP in recent cases referred to it.

### **IAS 34: Interim financial reporting**

- 1.1 It should be noted that IAS 34 applies to half-yearly reports AND any preliminary, provisional or abridged reports issued by a company.
- 1.2 The minimum disclosure required includes specific disclosures relating to segment reporting and business combinations.
- 1.3 IAS 34, paragraph 16, requires, inter alia, the following minimum disclosure requirements:

Segment information, including:

- 1.3.1 Revenues from external customers.
- 1.3.2 Inter-segment revenues.
- 1.3.3 Segment profit or loss.

Business combinations, including:

- 1.3.4 The effective changes in the composition of the group during the period, including business combinations, acquisition or disposal of subsidiaries and long-term investments, restructurings and discontinued operations.
- 1.3.5 Acquisition date of business combinations.
- 1.3.6 Percentage of voting equity instruments acquired.
- 1.3.7 Cost of acquisitions.
- 1.3.8 If equity is issued (or issuable) in payment for an acquisition, disclosure is required of the number of equity instruments issued or issuable and the fair value of those instruments/basis for determining fair value.
- 1.3.9 The amount of the acquiree's profit or loss since acquisition date included within group profit for the period.
- 1.3.10 The revenue and results of the group for the period as if the acquisition dates had been at the beginning of the period.
- 1.3.11 Any gain/loss recognised in reporting period relating to the business combinations effected in the period.

Basic and diluted earnings per share

- 1.4 Diluted earnings per share data must include the effects of all dilutive potential ordinary shares. Contingently issuable shares should be included in the calculation of diluted earnings per share. This includes share issues which are subject to the fulfilment of conditions which had not yet been fulfilled at the reporting date. If there is a dispute regarding whether there are further shares to be issued (e.g. a dispute whether an earn-out target triggering share issue has been met), that fact should be disclosed and appropriate treatment and disclosure in terms of IAS 37 and Schedule 4 to the Companies Act, No. 61 of 1973 is required. Contingently issuable shares are only treated as dilutive their issue would have a negative effect on EPS.

**IFRS 3: Business combinations/IAS 27: consolidated financial statements**

- 2.1 The income and expenses of a subsidiary are to be included in the consolidated financial statements from the "acquisition date" as defined in IFRS 3. Income and expenses of a subsidiary are to be excluded from the consolidated financial statements from the date upon which the holding company ceases to control the subsidiary.
- 2.2 In terms of IFRS 3, the acquisition date is the date upon which the company "effectively obtains control of the acquiree" and control is the "power to govern the financial and operating policies . . .".
- 2.3 The date upon which the company effectively obtains control must be considered, having regard to the financial substance and economic reality, not the legal form in the acquisition agreement.

- 2.4 The effective date set in an agreement does not determine the acquisition (or sale) date for accounting purposes.
- 2.5 Some acquisition agreements reflect effective dates which are many months before the agreement date and/or the date upon which the acquirer effectively obtained control of the acquiree.
- 2.6 In those circumstances, the financial substance and economic reality is that the profits earned up to the acquisition date are included within the purchase price (and represented by increased net asset value as at the acquisition date). Such a transaction should be accounted for based on the acquisition date as defined in IFRS 3 and not the contractual effective date. Appropriate accounting adjustments are required in order to eliminate from the group profits the profits of the acquiree between the contractual effective date and the acquisition date.
- 2.7 The acquirer must account for the results of an acquired business or subsidiary based on the date upon which the power to govern was obtained in substance and reality (and not legal form). This principle applies equally to the seller, which should account for the results up to the date that such control was transferred to the buyer, in substance and reality, i.e. when seller "ceases to control" as referred to in IAS 27.
- 2.8 The consideration as to whether, in substance and reality, the power to govern had been obtained (or given up) would include, inter alia, an assessment of the de facto ability to make policy decisions in relation to the acquiree.
- 2.9 A measure of this power is to consider the date from which the acquirer had actual management control of the acquiree.
- 2.10 It follows that the allocation of the purchase price to the identified assets of the acquire should not be based on the fair values as at the legal effective date in the contract, but on the acquisition date, which must be determined in compliance with IFRS 3.
- 2.11 In circumstances where a take-over cannot legally be implemented until regulatory approvals have been obtained, it would be unlikely that control in substance and reality, could have been obtained by the acquirer prior to this approval.
- 2.12 The following counter arguments put forward were considered and rejected by the GMP:
1. the fact that the acquirer would be in control of the target at the end of its next reporting period is entirely irrelevant to the assessment;
  2. the fact that the acquirer would control the accounting policies of target for the historic reporting period is irrelevant to the assessment. The selection of accounting policies to utilise in reporting the historic period, has no bearing on the date upon which the acquirer effectively obtained control of the target;
  3. a reference was made to "guidance on implementation and illustrative examples". The only matter of relevance is the application supplement, being Appendix "B" to IFRS 3. This does not provide any indication that control for accounting purposes is based on an analysis of contractual rights and legal form. The question of effective control contemplated by IFRS 3 requires an analysis of the substance and financial reality which prevails over the legal form;
  4. although contractually, certain rights may have passed to the acquirer on the effective date set in the agreement, this is clearly not the date from which the acquirer effectively obtains control of the target for the purposes of IFRS 3; and
  5. the fact that there may have been no significant changes in the policies of the target during the reporting period, that the core management would remain the same and that the businesses were principally the same, are all entirely irrelevant considerations in assessing the

acquisition date for the purposes of IFRS 3.

## **Guidance Letter: Presentation of pro forma financial information**

Date: 4 March 2010

The Johannesburg Stock Exchange ("JSE") has received a number of enquiries relating to the presentation of certain pro forma financial information ("pro formas") and we deemed it appropriate to communicate our position on this to all issuers to avoid any uncertainty.

Paragraph 8.15 of the JSE Listings Requirements ("LR") is clear that it relates to pro formas in any information requiring submission to the JSE. Such information includes results announcements and annual financial reports. Some issuers have adopted a practice of including additional information in their results to show the impact of for example:

- the acquisition of an asset as if it had been acquired at the beginning of the period;
- the application or non application of a specific IFRS; or
- the results for a longer or shorter period than the previously reported results; for example, retailers adjust past results to show a comparable 53 – week period.

These examples are all pro formas for JSE purposes and the disclosure thereof must accordingly be done in full compliance with Section 8 of the LR. This is the case even if the issuer only discloses for example a pro forma profit or revenue figure without showing the entire income statement.

## **Guidance Letter: Presentation of constant currency information**

Date: 16 August 2012

We refer to our guidance letter dated 4 March 2010 which addressed certain items which the JSE regarded as pro forma financial information ("**pro forma information**"). The guidance letter further stipulated that the items would be regarded as pro forma information for JSE purposes and the disclosure thereof must therefore be provided in full compliance with section 8 of the Listings Requirements (the "**Requirements**"). One of the items mentioned was the application or non-application of a specific International Financial Reporting Standard ("**IFRS**").

The JSE has recently noted that the presentation of financial information on a "constant currency" basis is increasing and in light of discussions held with certain issuers, the JSE decided to issue specific guidance thereon in order to ensure consistency in (i) the presentation of financial information and (ii) the involvement of auditors. IFRS has specific requirements dealing with currency conversions and the presentation of a "constant currency" figure essentially ignores the IFRS requirements. The presentation of financial information on a "constant currency" basis therefore falls into the category of non-application of a specific IFRS requirement and can therefore be regarded as pro forma information.

The JSE acknowledges that where management information is reviewed by the Chief Operating Decision Maker (as defined in terms of IFRS 8 – *Operating Segments*) in a currency other than the presented currency of the financial statements, an issuer is obliged to present such information in terms of IFRS 8 – *Operating Segments*. Where the issuer is obliged to present this information in compliance with IFRS 8 the JSE will not impose its pro forma requirements on such issuer. Similarly the JSE is not concerned if an issuer explains, as a matter of fact, how an underlying currency strengthened or weakened during a specified period. Such commentary is common with other line items within the income statement, for example where an issuer explains changes in volumes of units sold.

In all other instances, when an issuer presents financial information on a "constant currency" basis they must:

- (i) Comply with paragraphs 8.16 and 8.18 of the Requirements;

- (ii) Explain clearly what the base information is, i.e. whether it is the current or the comparative period that has been adjusted for the application of a constant currency;
- (iii) Explain clearly how that base information has been adjusted for the exchange rate changes. Where there is more than one foreign currency involved this explanation must:
  - (a) provide details of each of the material currencies of the issuer for both periods; and
  - (b) indicate how the average exchange rate was calculated;
- (iv) For constant currency information presented as part of or accompanying interim results of the issuer represented in terms of paragraph 3.15(a) of the Requirements, there must be a statement advising investors that this information has not been reviewed and reported on by the issuers' auditors; and
- (v) For constant currency information presented as part of or accompanying any other results the issuer must obtain a limited assurance report, prepared in terms of IASE 3000, from their auditor on such information, and the auditors' report must be available for inspection. In issuing their report, the auditor must consider the accuracy and the appropriateness of the basis of presentation of the constant current financial information.

### **Guidance Letter: Integrated reporting**

Date: 27 June 2013

This letter aims to clarify the continued misunderstanding within the market as to the obligations of listed companies ("**Issuers**") pursuant to the JSE Listings Requirements ("**the Requirements**") and Integrated Reporting.

#### The Requirements

On 31 January 2013 the JSE issued a guidance letter on corporate governance pursuant to the provisions of the Requirements. The JSE's general approach to corporate governance in relation to the King Code on Corporate Governance for South Africa (the "**King Code**") is that certain principles are mandatory with the balance being adopted on an "apply or explain" basis. Chapter 9 of the King Code which deals with Integrated Reporting and disclosure is not a mandatory principle pursuant to our recent guidance and can therefore be applied on an "apply or explain basis".

#### The Consultation Draft of the International IR Framework ("**Draft Framework**")

The JSE applauds the work of the International Integrated Reporting Council ("**IIRC**") and for the publication of the Draft Framework. We believe that this document is an improvement on the Discussion Paper issued by IIRC in September 2011. Nevertheless, we would therefore encourage Issuers to provide their comments on the Draft Framework to the IIRC.

In conclusion, the JSE wishes to advise Issuers that the production of an Integrated Report is not a mandatory principle from a Requirements perspective and neither is the application and compliance with the Draft Framework.

### **Guidance Letter: Application of IFRS 2 to share incentive schemes containing a cash settlement option**

Date: 10 September 2013

The JSE wishes to bring to your attention a recent matter arising from its pro-active monitoring activities dealing with the treatment of cash settled options. The matter was also referred to the Financial Reporting Investigation Panel ("**FRIP**") for their advice.

#### Fact pattern

The terms of an equity settled share based payment scheme permitted settlement in cash at the option of the Issuer. In the first year of vesting the Issuer settled certain

of the employees share appreciation rights ("**SARS**") in cash when requested to do so by the employees. In the subsequent years, further SARS were settled in cash, even in instances when no request was made by the employee.

The Issuer continued to treat the SARS as equity settled on the basis that the decision to settle in cash was made at settlement date based on an assessment of the commercial and economic factors, and what would be most beneficial to the Issuer. The Issuer had no stated policy with regards to cash settlement and contended that it thus did not have a present obligation of cash settlement, and continued to treat the scheme as equity settled.

#### Application of IFRS 2

Given the above fact pattern the SARS should have been treated as cash settled in terms of paragraphs 41 to 43 of IFRS 2. In considering this matter the FRIP noted that:

- Past behaviour and patterns of generally settling in cash shed light on the assessment of the likely conduct in the future indicating a rebuttable presumption of likely conduct;
- In circumstances where the Issuer cash settles the majority of SARS, this would be an indicator that a practice has been developed of settling SARS in cash (irrespective of its stated policy in this regard);
- Settlement in cash, even when not requested to do so by the holder of the right, would point to conduct of generally settling in cash, and establishes a business behaviour in relation thereto;
- The settling in cash in those circumstances (without the request from the holder of the right), would in fact be a stronger indication of an obligation to settle in cash than the circumstance in IFRS 2 paragraph 41 which contemplates that the counter-party specifically requests cash settlement;
- Even if the original intention was to settle in shares, in the Issuers case, the settlements in cash indicated a practice of cash settlement, which would drive the accounting thereafter; and
- For completeness, the assessment of whether the SARS were cash or equity settled would be a significant judgment that should be disclosed in terms of IAS 1.

#### Conclusion

The JSE urges Issuers to pay careful attention to their accounting treatment for share incentive shares where the scheme allows for cash settlement and this option is being utilised.

#### **Guidance letter: Application of IFRS for antecedent interest on linked units**

Date: 9 October 2014

The JSE wishes to bring to your attention a recent matter arising from its pro-active monitoring activities dealing with the treatment of antecedent interest payable by property entities with linked units. This matter was also referred to the Financial Reporting Investigation Panel ("**FRIP**") for their advice.

#### **Fact pattern**

In this specific instance a property entity ("**the issuer**") with a debenture linked to an ordinary share ("**linked unit**") issued new linked units between two debenture distribution dates.

The issuer:

- (i) Determined the amount of interest attributable to the newly issued linked units from the last distribution date to the issue date ("**antecedent interest**") and accounted for this as income;

- (ii) Did not correctly apply their own accounting policy to measure the debenture at fair value plus transaction costs at initial recognition; and
- (iii) Thereafter incorrectly fair valued the debenture, instead of measuring it applying amortised cost using the effective interest rate method.

### **Application of IFRS**

The treatment of antecedent interest in terms of the above fact pattern is not in accordance with International Financial Reporting Standards ("IFRS"). It is neither revenue in terms of IAS 18 – Revenue standard nor income in terms of the Framework. The FRIP advised that this antecedent interest forms part of the cash inflow on the issue of the linked units and should be recognised as part of the debenture liability's initial carrying amount using the effective interest rate method (IAS 18.30 and IAS 39.09).

IAS 39.43 states that when a financial asset or financial liability is recognised initially, an entity shall measure it at its fair value plus, in the case of a financial asset or financial liability not at fair value through profit or loss, transaction costs that are directly attributable to the acquisition or issue of the financial asset or financial liability. Thus the fair value of the debenture liability as determined initially should include the antecedent interest portion, since it is a component of the debenture portion's future contractual cash flows.

Furthermore the debenture liability is then amortised using the effective interest rate in accordance with IAS 39 – Financial Instruments: Recognition and Measurement for every separate issue of debentures (linked units).

### **Conclusion**

The JSE urges issuers to pay careful attention to their accounting treatment for both antecedent interest and the measurement of debentures. Whilst we understand that the linked unit structures are in the process of being collapsed, we wish to highlight these principles to ensure that issuers do not take the same approach as it relates to dividends that they may believe accrue on the shares issued in place of the linked unit structures.

### **Financial and audit related – Circulars**

#### **Guidance Letter: Letter to sponsors/designated advisers**

Date: 4 March 2010

Presentation of financial information: role of the reporting accountant specialist, sponsor and designated adviser

The Johannesburg Stock Exchange ("JSE") Listings Requirements ("LR") as they relate to Reporting Accountant Specialists ("RA Specialist") have been in force for more than a year now. In light of this the JSE felt that it would be appropriate to clarify the responsibilities of RA Specialists, Sponsors and Designated Advisers ("DA's") in terms of the LR.

Sponsors and DA's ("collectively referred to as Sponsors")

- (1) The Sponsor must assist the RA Specialist, on a timely basis, by providing it with the draft circular full details of the transaction and any changes as and when they occur.
- (2) On first submission of a circular, the Sponsor must submit to the JSE the signed letter required from the RA Specialist in terms of paragraph 8.56(a) of the LR ("the 8.56(a) letter"). Submission of the circular without the 8.56(a) letter will delay the approval process and may even result in a rejection of the entire submission. The JSE will also not review the pro forma financial information ("pro formas") or historical financial information. It must be noted that if we accept the submission without the 8.56(a) letter, the next submission we will in all likelihood be treated as a first submission again for turnaround purposes.
- (3) The Sponsor must ensure that the JSE comments are provided to the RA



Specialist, and as far as reasonably possible should ensure that the comments have been addressed before making subsequent submissions.

- (4) On formal submission the Sponsor must ensure that paragraph 8.56(b) is complied with.
- (5) The Sponsor must approve all announcements and if the RA Specialist is not involved in the announcement then it will take full responsibility for ensuring compliance with the LR including the financial effects. Whilst we do not expect the Sponsor to ensure compliance with complex International Financial Reporting Standards ("IFRS") matters they must ensure compliance with the remainder of Section 8 of the LR as they relate to pro formas and should ensure that the issuer has sought the necessary advice on any complex IFRS matters.
- (6) As it relates to circulars, the directors of the issuer are responsible for the content thereof. The RA Specialist takes responsibility to sign-off on the information prepared by the issuer. The Sponsors responsibility in terms of paragraph 2.8(d) of the LR still applies (which advice extends to financial information). They should therefore still be involved in advising on the Section 8 requirements and at the very least should perform a reasonableness check and should ensure compliance with the remainder of Section 8 as explained in point 5 above.

#### The role of the RA specialist

A separate letter has been sent to RA Specialists confirming their roles and responsibilities in the submission process. In that letter we also provided a list of common and/or serious problems that we encountered in circulars over the past year. Sponsors are advised to review that letter in order to understand the RA Specialist role. The list of common problems should also be considered by Sponsors as they fulfill their responsibilities as it relates to approval of announcements and their involvement in circulars.

#### Pro forma information

We also refer you to a separate letter sent to issuers regarding pro forma information. Sponsors are responsible for all submissions to the JSE and must therefore carefully consider that information and ensure that all pro forma is dealt with appropriately.

### **Guidance Letter: Letter to reporting accountant specialists**

Date: 5 March 2010

Presentation of financial information: Role of the reporting accountant specialist, sponsor and designated adviser

The Johannesburg Stock Exchange ("JSE") Listings Requirements ("LR") as they relate to Reporting Accountant Specialists ("RA Specialist") have been in force for more than a year now. In light of this the JSE felt that it would be appropriate to clarify the responsibilities of RA Specialists, Sponsors and Designated Advisers ("DA's") in terms of the LR.

#### **Sponsors and DA's ("collectively referred to as Sponsors")**

- The Sponsor must assist the RA Specialist, on a timely basis, by providing it with the draft circular and details of the transaction and any changes as they occur.
- On first submission of a circular, the Sponsor must submit to the JSE the signed letter required from the RA Specialist in terms of paragraph 8.56(a) of the LR ("the 8.56(a) letter"). Submission of the circular without the 8.56(a) letter will delay the approval process.
- The Sponsor must ensure that the JSE comments are provided to the RA Specialist.
- The Sponsor handles the flow of documents and submission process between the JSE and the RA Specialist.

#### **RA Specialist:**

## **Submission process**

- The RA Specialist must on the first submission of a document submit a signed 8.56(a) letter confirming that they have:
  - provided the necessary advice on the applicable IFRS and the LR; and
  - reviewed the first submission document to confirm that their advice was followed.
- In order to comply with the above, the RA Specialist must have performed a detailed review of the historical information and pro formas that are to be submitted to the JSE. The JSE acknowledges that this letter is not a guarantee that the figures are final as some may change, but the intention is that all the principle issues must have been addressed and we would not expect the final pro formas to be materially different. The RA Specialist must not sign their letter if their comments have not been addressed or if they have not had sight of the document that is to be submitted to the JSE.
- In order to provide the necessary advice and ensure compliance with the LR, the RA Specialist must have considered the content of the circular and any supporting agreements, and not just their part of the circular. It is only after such a consideration that they will be able to identify any other corporate actions that need to be included in the pro formas and to be able to confirm that everything is correctly reflected.
- The RA Specialist must consider any comments received from the JSE and ensure that any changes made to the transaction are correctly reflected in the financial information sections.
- The RA Specialist must consider the need to consult with their IFRS specialist if there is any uncertainty.
- On formal submission the RA Specialist must either sign off on the reporting accountants report or must submit a signed confirmation in accordance with paragraph 8.56(b) of the LR that they have reviewed the final pro formas and confirm that all JSE comments have been addressed and the pro formas fully comply with IFRS and the LR.

## **Expectations of RA Specialist**

- When the JSE introduced the RA Specialist role, we acknowledged that many parties required some time to find their feet with the new process. We have therefore in the past been relatively lenient with the quality of work performed by certain RA Specialists and provided more detailed comments than we would have expected.
- Now that the process and roles have been established, the JSE expects the RA Specialist to ensure that the information is at the required standard to eliminate any problems. We will be placing more reliance on their work in the submission process and are moving away from the practice of the past year of having every set of pro forma figures reviewed by our own internal specialists as well as the corporate finance officer responsible for the document.
- In future, it will only be the corporate finance officers that will be reviewing certain disclosures and any areas of non-compliance by the RA Specialists will be dealt with in terms of Section 1 of the LR.

## **Common problems**

Annexure A sets out a list of common or serious problems we have encountered in circulars over the past year. This list must be used by RA Specialist to eliminate potential areas of non-compliance in circulars and announcements.

## **Annexure A:**

### **Listings Requirement- Pro forma matters**

1. Periods covered (LR paragraph 8.17):

- (a) the disposal of the investment is not dealt with from the beginning of the period for income statement purposes; and
  - (b) tried to have retained income from the income statement flow through directly to the balance sheet despite the fact that you have to assume different effective dates for balance sheet and income statement purposes (see comment 8(a) below too).
- 2. Periods used (LR paragraph 8.25):
  - (a) Not using latest published results.
- 3. Adjustments that must be made (LR paragraph 8.26):
  - (a) pro formas don't deal with all the transactions the subject of the circular (LR paragraph 8.26(b));
  - (b) not dealing correctly with previously published pro forma effects (LR paragraph 8.26(c)); and
  - (c) ignoring material post balance sheet events (LR paragraph 8.26(d)).
- 4. Source of unadjusted information (LR paragraph 8.29):
  - (a) source of underlying historical information is not from an audited source;
  - (b) source of underlying historical information is not based on an audit (or review if applicable) done by a JSE accredited auditor; and
  - (c) Adjustment column does not agree to underlying audited/reviewed information.
- 5. Explanation of adjustments (LR paragraphs 8.30 & 8.31):
  - (a) notes don't explain the figures or and in some cases even contradict them;
  - (b) notes are not detailed enough to explain adjustments;
  - (c) notes are incomplete;
  - (d) notes are not detailed enough to disaggregate information;
  - (e) use of proceeds on a disposal don't tie into the stated rationale of the deal as set out in the document;
  - (f) figures don't make sense or tie back to the underlying historical information;
  - (g) figures don't make sense or tie into the facts of the deal as set out in the circular;
  - (h) incorrect assumption that for rights offer there is never an income statement effect;
  - (i) don't deal with interest savings when it is factually supportable that debt was repaid; and
  - (j) not dealing with a range of assumptions e.g. if there are numerous scenarios of a transaction.
- 6. Continuing impact (LR paragraph 8.32):
  - (a) Notes don't indicate which income statement effects have an ongoing impact.
- 7. Per share figures:
  - (a) Not including the number of shares and per share effect under the detailed table.

8. Issues also spelt out in detail in the SAICA guide:
  - (a) balance sheet impacts incorrectly brought in assuming the deal was done at the beginning of the period i.e. ignoring paragraph 23 & 24 of the SAICA guide and trying to get articulation; and
  - (b) incorrectly ignoring transaction costs (paragraph 64 of SAICA guide).
9. Reporting accountants report:
  - (a) not including name of audit partner involved in the report on the first submission document;
  - (b) 8.56(a) letter not submitted on first submission;
  - (c) did not comply with the Listings Requirements as it relates to auditors reports on "carve-out" financial information;
  - (d) didn't issue correct report in terms of paragraph 13.16(e) of the LR.

IFRS /accounting specific matters

1. Share issues records at issue price instead of at actual value as required by IFRS 3.
2. Ignored purchase price allocation exercise of IFRS 3.
3. Incorrectly did not consolidate a subsidiary.
4. Incorrectly ignored the deferred consideration for an acquisition.
5. Earnings and Headline earnings per share incorrectly shown as the same figure.
6. No reconciliation to headline earnings.
7. IFRS 2 not correctly dealt with.