



# The JSE Limited Listings Requirements

**BULLETIN 6 of 2013**

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Dear Subscriber

Requirements for Hybrid Financial Instruments

The JSE has made amendments to the JSE Listings Requirements to introduce Hybrid Financial Instruments, which have both the characteristics of debt and equity.

Pursuant to Board Notice 233 of 2013 as published in *Government Gazette* No. 37062, the effective date of Bulletin 6 of 2013 is 2 January 2014.

## **Section 20 Hybrid Financial Instruments**

### **Scope of section**

20.1 This section sets out the requirements for the listing of Hybrid Financial Instruments.

### **Definitions**

20.2 In these Listings Requirements pertaining to the listing of Hybrid Financial Instruments, unless the contrary intention appears, the following terms shall have the meanings assigned to them below:

“debt securities” as defined in the definitions section of the Debt Listings Requirements;

“equity securities” as defined in the definitions section of the Listings Requirements; and

“hybrid financial instrument/s” or “HFI” refers to securities that portray characteristics of both debt securities and equity securities.

### **General**

20.3 Due to the complex nature of HFI, the JSE must be consulted at an early stage before application for the listing is made. Depending on the nature and the structure of any particular issue, the JSE may grant

dispensation from certain paragraphs of these requirements.

- 20.4 Should the applicant issuer wish to delist the HFI, such delisting will be subject to the delisting provisions pursuant to Section 1.
- 20.5 HFI must be freely transferable and each HFI holder shall be required to appoint a CSDP or broker who will maintain an electronic record of ownership of the respective HFI.

### **Compliance with the Listings Requirements**

- 20.6 An existing applicant issuer or an applicant issuer seeking a listing of HFI on the JSE is required to comply and satisfy all applicable Listings Requirements in addition to the provisions set out in this section.

### **Sponsor**

- 20.7 An applicant issuer of HFI must comply with the provisions of Section 2 regarding the appointment of a sponsor.

### **Criteria for listing HFI**

- 20.8 An issue of HFI by an applicant issuer must comply with the following:
- (a) the JSE must be satisfied with the structure of the HFI;
  - (b) the pricing of the HFI must be clearly determinable; and
  - (c) 20% of the HFI for which application for listing will be made must be held by the public and the number of public HFI holders must be at least 50 (the JSE may accept a lower percentage or number if it is satisfied that the market will be sufficiently liquid with such percentage or number), unless a market maker has been appointed pursuant to paragraph 20.18.

### **Continuing obligations**

- 20.9 The applicant issuer is required to comply with Section 3, subject to the following exclusions and additions:
- (a) Exclusions

Applicant issuers need not comply with the following continuing obligations:

Paragraphs	
3.28	Voting rights
3.29 to 3.31	Pre-emptive rights
3.32 and 3.33	Waiver of pre-emptive rights
3.35 and 3.36	Issues by subsidiaries other than on listing

(b) Additions

Applicant issuers must comply with the following continuing obligations:

- (i) all additional listings applications must comply with Schedule 6, where applicable; and
- (ii) in the event that the applicant issuer makes any changes that affect the terms and conditions of the HFI or the guarantee (if applicable), other than changes which are of a formal, minor or technical nature or are made to correct a manifest error or to comply with mandatory provisions of the law of South Africa, the applicant issuer must obtain approval from the HFI holders holding not less than 66.67% of the value of a specific class of HFI.

### **Conditions for listing**

20.10 An applicant issuer must comply with the following provisions of Section 4 with respect to conditions for listing:

Paragraphs:

- 4.1 and 4.2 Introduction
- 4.3 to 4.5 Discretion of the JSE
- 4.6 and 4.7 Applicant to be duly incorporated
- 4.8 to 4.10 Directors and company secretary
- 4.13 Financial information
- 4.14 to 4.16 Status of securities
- 4.17 Transferability of securities
- 4.21 Convertible securities
- 4.25 to 4.27 Public shareholders

### **Methods and procedures of bringing securities to listing**

20.11 An applicant issuer of HFI need not comply with the provisions of Section 5 regarding the methods and procedures of bringing securities to listing. However, on conversion of the HFI into listed equity securities of the issuer (if the HFI is convertible for a period of time), Section 5 will in fact apply to such equity securities.

### **Pre-listing statements**

20.12 An applicant issuer of HFI must include the following in a pre-listing statement/prospectus:

- (a) the following paragraphs of Section 6:

Paragraphs:

6.1	Requirements for pre-listings statements
6.2 to 6.5	Responsibility
6.6 to 6.9	Form and content
6.11 and 6.12	Formal approval
6.13 and 6.14	Supplementary pre-listing statements
6.15 to 6.17	Omission of information
6.18	Omission of material contracts from disclosure
6.23	Publication/circulation of pre-listing statement

(b) additional disclosure as follows:

(i) in respect of the applicant issuer:

- (1) the risks associated with the applicant issuer's business and market place for the purposes of a comprehensive analysis of the applicant issuer's ability to service and redeem the debt portion of the HFI. It must also contain details of the HFI in relation to other debt, either listed or not, of the applicant issuer including but not limited to details of seniority, security, covenants, warranties or pledges. The pre-listing statement/prospectus must contain such 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 and most particularly its ability to effect agreed scheduled payments and repayments of the HFI; and
- (2) a description of the material risk factors associated with the HFI, and the sensitivity of the HFI to such risk factors must be provided.

(ii) a statement that the JSE's approval of the listing is not to be taken in any way as an indication of the merits of the applicant issuer or of the HFI, that the JSE has not verified the accuracy and truth of the contents of the HFI documentation and that, to the extent permitted by law, the JSE will not be liable for any claim of whatever kind;

(iii) an explanation of the tax implications on the HFI holder;

- (iv) every document issued by the applicant issuer must contain a risk statement on the front of the document, substantially as follows:
    - “Prospective purchasers of any hybrid financial instrument should ensure that they understand fully the nature of the hybrid financial instrument and the extent of their exposure to risks, and that they consider the suitability of the hybrid financial instrument as an investment in the light of their own circumstances and financial position”;
  - (v) details of all parties involved in the HFI structure and the manner in which pricing is to be determined in respect of the HFI; and
  - (vi) an explanation of the impact on pre-emptive rights and dilution on the HFI holder.
- (c) an applicant issuer of the HFI must comply with the provisions of Section 7 regarding listing particulars;
  - (d) in relation to the information required under Section 7.E, the financial statements of an applicant issuer relating to a period shorter than three years may be accepted if the JSE is satisfied that the acceptance of financial statements of the applicant issuer for such shorter period will not prejudice the interests of investors and the investors have sufficient information available to arrive at an informed assessment concerning the financial position and affairs of the applicant issuer and the HFI for which the listing is sought; and
  - (e) any other details that the JSE may deem appropriate.

#### **Documents to be submitted to the JSE**

- 20.13 The following documentation must be submitted to the JSE via a sponsor:
- (a) the approval of the Financial Surveillance Department of the South African Reserve Bank;
  - (b) the HFI pre-listing statement (if applicable);
  - (c) a copy of the resolution of the board of directors of the applicant issuer authorising the issue and listing of the HFI;
  - (d) a copy of the Memorandum of Incorporation of the applicant issuer;
  - (e) confirmation from Strate that the applicant issuer has been admitted in terms of the central securities depository rules and directives;

- (f) application letter complying with Schedule 1;
- (g) confirmation by the applicant issuer:
  - (i) that all applicable regulatory disclosures have been made; and
  - (ii) that there are no material matters, other than disclosed in the pre-listing statement/prospectus or otherwise in writing to the JSE, that should be taken into account by the JSE in considering suitability for the listing of the HFI;
- (h) the annual financial statements of the applicant issuer in respect of the period of three years prior to the date of such issue or for such shorter period as agreed to by the JSE in terms of paragraph 20.12(d);
- (i) the auditor's consent letter;
- (j) letter from the legal advisor that all relevant agreements have been signed; and
- (k) such other information as may be requested by the JSE.

### **Announcements**

- 20.14 The applicant issuer must publish an announcement on SENS immediately after the JSE has approved an application for listing, containing the following (where applicable):
- (a) the information referred to in paragraph 7.A.1 in respect of the applicant issuer;
  - (b) the period of marketing (if applicable) and the expected listing date;
  - (c) a statement that JSE approval for the listing has been granted;
  - (d) where copies of the HFI issue documentation can be obtained;
  - (e) the long name, short name, alpha code and ISIN code under which the HFI will trade;
  - (f) the issue price, coupon rate and any reference rate;
  - (g) the date from which interest accrues and the interest calculation methodology (if applicable);
  - (h) the interest or dividend payment dates (if applicable); and
  - (i) any other relevant information.
- 20.15 The applicant issuer will also be required to make an announcement in terms of any expiry of listed HFI or other conversion rights. In such instances, the applicant issuer must comply with the principles set out in Schedule 24 as well as the following:

- (a) a notice must be provided to the JSE and announced on SENS at least six weeks prior to the expiry date of the HFI or conversion rights; and
- (b) the notice must state the date on which the HFI or conversion rights expire and request the removal of the HFI from the List as and from the close of business on the date of expiry, after which the HFI will have no value.

20.16 The applicant issuer will also be required to make an announcement for transactions that fall within the scope of Section 9. The announcement must be released immediately after the terms of the transaction are agreed. The announcement must contain all the relevant information required in terms of paragraph 9.15.

20.17 Such announcement must be made through SENS and posted on the applicant issuer's website.

### **The appointment of market makers**

20.18 An applicant issuer may appoint a market maker and such duly appointed market maker must undertake that it will always, under normal market circumstances, maintain a reasonable bid and offer in the HFI.

### **Initial and annual listings fees**

20.19 The initial fees payable, as determined by the JSE from time to time, are as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17.

20.20 The annual fees payable, as determined by the JSE from time to time, are as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17.

Atiyya Pilodia  
LexisNexis  
Editor: Tax and Financial Services  
[atiyya.pilodia@lexisnexis.co.za](mailto:atiyya.pilodia@lexisnexis.co.za)

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