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| Memorandum |  |
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| **From: Nicolas Kleovoulou** |  |
| **Date: 12 December 2013** |  |
| **Subject: Section 19 – Specialist Securities** |  |
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*Background*

Given the innovation and developments in the market since Section 19 of the JSE Listing Requirements was initially drafted, the Johannesburg Stock Exchange (“JSE”) is proposing certain amendments to this section and has also restructured the section to prevent repetition of requirements. The JSE is also proposing specific requirements for Exchange Traded Notes (“ETNs”), structured products and unsponsored Depository Receipts (“DRs”).

The requirements relating to index disclosures and acceptable index calculators [S19.31 – S19.41], have previously undergone comment by the Advisory Committee and public consultation and have now been incorporated into the proposed Section 19. No further comment is required in relation to this section.

*The Proposed Section 19 Structure*

The proposed Section 19 has been restructured to include a definitions section, a general disclosure section applicable to the listing documentation, a continuing obligations section and a section covering other general requirements which applies to all securities. The rationale for this approach is to avoid having to repeat generic disclosure requirements for new instruments in future. The proposed section thus includes instrument-specific requirements under their own respective headings, cross-referring to the general requirements section where applicable. This allows for easier reading, giving the reader a clearer distinction between requirements applicable to each instrument.

*Amendments*

The JSE proposes of the following material amendments to the existing Section 19:

* General section
	+ S19.10(a) limits issuers to banking institutions;
	+ The requirement for a credit rating for warrant issuers has been removed but the issuer must disclose the rating if it has obtained one. This will now impact all products issued off the back of the issuer’s balance sheet such as warrants, structured products and ETNs;
	+ The continuing obligations for every instrument under S19 have been assessed. We now have generic and instrument-specific continuing obligations sections. Specific exclusions have been provided for under S19.20(i); and
	+ Voting on changes to the terms and conditions of all instruments that fall under Section 19 have been lowered to 66.67% majority in line with our Debt Listings Requirements as the same principle applies to S19.
* Exchange Traded Funds (“ETFs”)
	+ The issuers of ETFs are limited to banks complying with S19.10 or regulated entities acceptable to the JSE, as opposed to any issuer, as this ensures that issuers have sufficient expertise to issue ETFs;
	+ Disclosure requirements have been amended where necessary. The previous version of the requirements insisted on disclosures relevant to companies, which were not applicable to ETFs and have subsequently been removed.
		1. Additions include the provisions under S19.63, 19.66, 19.67 and 19.70; and
		2. Specific exclusions have been provided for under S19.20(i)
	+ Requirements relating to the procedure for delisting an ETF.
* Depository Receipts
	+ Sponsored DRs
		1. Market maker and spread not required as this poses difficulty when listing by means of an introduction, or in the event of a private placement. This is also in line with international precedents. Furthermore, the DR redemption mechanism i.e. the ability to convert from the DR to the underlying security is satisfactory in that should you not be able to sell your DR, a broker could convert the DR into the underlying security and sell it in the home market. We thus feel that there is no need for a market maker; and
		2. The current rules require depositories to notify holders of DRs of the procedures through which they should obtain copies of all notices, reports, voting forms or other communications published by the underlying entity to its shareholders. We have removed the requirement to have all of the aforementioned documents available for inspection at the depository, custodian and sponsor’s principal office for practical reasons and because DR holders have been informed of where and how to obtain such information already. This is also in line with international precedents.

*Additional Requirements*

The proposed Section 19 now also includes the requirements for index disclosures and acceptable index calculators as well as proposed requirements for the following instruments:

* ETNs

An ETN is defined as a listed, senior, non-bespoke, unsubordinated, uncollateralised debt instrument which represents a contractual obligation made by an issuer to pay the holder a return which is linked to the performance of underlying securities or benchmarks, such as the performance of one or more shares or bonds, an index, an exchange rate or a commodity and are backed by the creditworthiness of the issuer. An ETN is a long-term instrument and the Maturity Date will be a minimum of five years after the date of issue. Given that ETNs are investment products, we feel that they fit best into Section 19. Furthermore, the JSE gains comfort from the fact that the product issuance will be limited to banks, where we have applied specific balance sheet as well as other criteria [S19.10] that must be adhered to when registering their respective programmes with the JSE. Cognisance should be taken of the fact that investors are taking on balance sheet risk of the issuer in this case.

* Structured products

Structured products are bespoke in nature and may vary from issuance to issuance We have thus included a separate section that deals with structured products as well as the related definition which has been derived from international research that had been conducted.

These products will also be limited to Banks given the same rationale provided for under the ETN section above.

* Index disclosures and acceptable index calculators (approved by advisory committee and has undergone public consultation)
* Unsponsored DRs (“UDRs”)

UDRs are a type of certificate issued by a depository that represents a certain number of ordinary shares of a non-South African company that have been deposited with the depository to underpin such certificates. UDRs enable South African investors to invest indirectly in the securities of a non-South African company whose ordinary shares are listed on a recognized exchange.

An UDR program is one that is established by a depository without the participation or consent of the issuer. Since an issuer is not involved in the implementation or in the maintenance of the unsponsored DR program, it has no influence on the treatment of DR holders. A schedule 1 agreement will thus be signed by the depository in the case of UDRs as opposed to the underlying company, as the depository will be the regulated entity in this case. The provisions of Section 1 (Authority of the JSE) of the listings requirements have thus been amended to include depositories.

Regards,

Nicolas Kleovoulou

Manager: Corporate Finance - Specialist Securities
Issuer Regulation

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