*Background*

In the last year, the JSE has given a number of rulings for companies seeking a listing of instruments that have both the characteristics of debt and equity. One such instrument is a perpetual preference share; another is a very long-dated preference share which may be regarded as debt from a legal perspective but – because of its long term nature – can be classified as permanent capital and therefore much closer to equity. In some cases, these instruments are also classified as equity from a legal perspective.

In the interests of providing clarity for issuers and investors, the JSE proposes to include specific requirements to its Listing Requirements concerning treatment of such instruments.

If the instrument is classified as equity, in terms of the existing Listings Requirements apply our equity rules. This means that the company must apply for a listing on the JSE and by implication that it must list all its equity, including its ordinary shares. In most cases, these entities do not want to list the company but simply want to list a specific instrument on the JSE. For this reason we have decided to draft requirements to cater for these instruments.

An appropriate section has now been drafted which is largely disclosure based, but also includes certain requirements which cover issues such as price-sensitive information, publication of financial results, as well as how the aforementioned disclosures are to be dealt with (e.g. pre-emptive rights, voting and the like).

Regards

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**Section 20**

**Hybrid Financial Instruments**

20.1 This section sets out the requirements for the listing of Hybrid Financial Instruments (“HFI”) as defined.

**Definitions**

20.2 In these Listings Requirements pertaining to the listing of HFI, 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 JSE Debt Listings Requirements.

“equity securities” as defined in the definitions section of the JSE Listings Requirements.

“hybrid financial instrument” or “HFI” refers to securities that may 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 formal application for the listing is made. Depending on the nature and the structure of any particular issue, the requirements set out in the following paragraphs may be modified or additional requirements may apply.

20.4 Should the securities listed no longer qualify as an HFI as defined, the securities will be delisted or the remaining securities must comply for listing under the JSE Listings requirements relating to equity securities, or the Debt Listings requirements whichever is applicable.

20.5 Trades will be settled through Strate. HFIs 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 issuer with, or seeking a listing of HFI on the JSE is required to comply and satisfy all applicable Listings Requirements as modified by the provisions set out in this section.

**Sponsor**

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

**Criteria for listing hybrid financial instruments**

20.8 An issue of HFI must comply with the following:

(a) The structure of the HFI must be satisfactory to the JSE;

(b) Pricing of the instrument must be clearly determinable; and

(c) 20% of the HFIs for which application for listing has been 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 considers that the market will be sufficiently liquid with such percentage or number), unless a market maker has been appointed in terms of paragraph 20.18. The JSE must be approached well

**Continuing obligations**

20.9 The issuer is required to comply with section 3 of the Listings Requirements, subject to the following exclusions and additions:

(a) Exclusions

Issuers need not comply with the following continuing obligations:

Paragraph

3.28 Voting rights

3.29 to 3.31 Pre-emptive rights

3.32 to 3.33 Waiver of pre-emptive rights

3.35 to 3.36 Issues by a major subsidiary other than on listing

(b) Additions

(i) The following continuing obligations are applicable to a listing of HFI

(1) all additional listings applications must comply with schedule 6 where applicable; and

(2) In the event that the issuer makes any changes that affect the terms and conditions of the HFIs 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 issuer must obtain approval from holders of HFIs holding not less than 66.67% of the value of a specific class of HFIs or all outstanding HFIs.

**Conditions for listing**

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

 Paragraph

4.1 to 4.2 Introduction

4.3 to 4.5 Discretion of the JSE

4.6 to 4.7 Applicant to be duly incorporated

4.8 to 4.10 Directors

4.13 Financial information

4.14 to 4.16 Status of securities

4.17 Transferability of shares

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 HFIs need not comply with the provisions of Section 5 regarding the methods and procedures of bringing securities to listing. However, on conversion (if HFI is convertible) of the HFI into listed ordinary shares of the issuer, section 5 will apply.

**Pre-listing statements**

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

(a) the following requirements of Section 6:

Paragraph

6.1 Requirements for pre-listings statements

6.2 to 6.5 Responsibility

6.6 to 6.9 Form and content

6.11 to 6.12 Formal approval

6.13 to 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 shall also contain details of the HFI in relation to other debt, either listed or not, of the Issuer including but not limited to details of seniority, security, covenants, warranties or pledges. The pre-listing statement/prospectus 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 and most particularly its ability to effect agreed scheduled debt payments and repayments in relation to the debt portion 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 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; and

 (iii) an explanation of the tax implications on the structure and on the security holder;

(iv) every document issued 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 applicable to the HFI; and

(vi) An explanation of the impact on pre-emptive rights and dilution on the security holder.

(c) an applicant issuer of HFIs must comply with the relevant paragraphs of Section 7 regarding listing particulars as follows:

 Paragraph headings:-

7.A The applicant and its capital

7.B Directors, managers and advisors

7.C Securities for which application is being made

7.D Group activities

7.E Financial information

7.F General information

7.G Documents and consents to be available for inspection

7.H Vendors

(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 is in the interests of the applicant issuer and 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.

**Announcements**

20.13 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) places where copies of the HFI issue documentation can be obtained;

(f) the long name, short name, alpha code and ISIN code under which the HFI will trade;

(g) the issue price, coupon rate and any reference rate;

(h) the date from which interest accrues and the interest calculation methodology; and

(i) any other relevant information.

20.14 The 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 Issuer must comply with the principles set out in Schedule 24 as well as the following:

(a) notice must be given to the JSE at least 30 days before the expiry date of the HFI or conversion rights;

(b) the notice must state the date on which the HFI or conversion rights expire and requesting

the removal of the HFI from the List as and from the close of business on the date of expiry; and

(c) that all registered HFI holders, or registered holders of the HFI with conversion rights, have been notified of the date on which the HFI or conversion rights expire and that, after that date, the HFI or conversion rights will have no value. This notification should be published at least six weeks prior to the expiry date.

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

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

**Documents to be submitted to the JSE**

20.17 The following documentation must be submitted to the JSE via a sponsor:

1. the approval of the Exchange Control Department of the South African Reserve Bank;
2. the HFI pre-listing statement if applicable;
3. a specimen share certificate if applicable;
4. a copy of the Board of directors resolution of the applicant issuer authorising the establishment and listing of the HFI and/or issue of instruments;
5. a copy of the Memorandum of Incorporation applicant issuer;
6. confirmation from Strate that the applicant issuer has been admitted in terms of the central securities depository rules and directives;
7. application letter complying with schedule 1;

(h) 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

(i) 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 20.12(d);

(j) the auditors consent letter;

(k) letter from the legal advisor that all relevant agreements have been signed; and

(m) such other information as may be requested by the JSE.

**The appointment of market makers**

20.18 A HFI issuer may appoint a market maker and such duly appointed market maker must undertake to maintain a secondary market in the HFIs.

**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, 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, per Section 17.