



# The JSE Limited Debt Listings Requirements

**BULLETIN 1 of 2015**

8 July 2015

Dear Subscriber

## JSE Debt Listings Requirements

The JSE made amendments to the JSE Debt Listings Requirements in respect of the following Sections:

- Definitions
- Section 2: Debt Sponsor (Addition of paragraph 2.7(k))
- Section 5: Financial Information (Substitution of paragraph 5.3(c) in its entirety)
- Section 7: Continuing Obligations (Addition of paragraphs 7.4, 7.5, 7.31, 7.32 and 7.33 and consequential renumbering of paragraphs in Section 7 in its entirety)
- Section 9: The South African Government (Consequential renumbering of reference to Section 7 in paragraph 9.5 only).

Pursuant to Board Notice 131 of 2015 as published in the *Government Gazette* No. 38952, the effective date of Bulletin 1 of 2015 is 4 August 2015.

## Definitions

Term	Meaning
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;

## Section 2 – Debt Sponsor

### Responsibilities

2.7 A debt sponsor must:

- (a) ensure that the applicant 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;
- (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 complied 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 have or may have breached the Debt Listings Requirements;
- (j) be present at all discussions held between the JSE and the applicant issuer. The JSE may, however, where it deems appropriate, communicate directly with an applicant issuer or with an adviser of the applicant issuer, in order to discuss matters of principle and/or the interpretation of provisions of the Debt Listings Requirements. Where discussions take place in the absence of the debt sponsor, an applicant issuer shall ensure, as soon as is practicable, that the debt sponsor is informed (preferably in writing) of the matters discussed; 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.

## **Section 5 – Financial Information**

### **Financial statements**

- 5.3 An applicant issuer which makes application for the registration of a programme memorandum must have published and submitted financial statements which:
- (a) have been prepared in respect of at least the last three financial years (except as provided for in paragraph 5.4) and the latest published audited financial statements of such applicant issuer must be in respect of a period ended not more than 18 months before the date of the placing document. If more than 9 months have lapsed since the last financial year end, interim financial statements, prepared in accordance with IAS34, must be submitted to the JSE. No audit or review opinion is required on the interim financial information;
  - (b) have been prepared in accordance with the Companies Act or other appropriate legislation; and
  - (c) have been independently audited by an accredited auditor pursuant to paragraph 7.31. If the financial statements of the applicant issuer for the latest financial year-end has not been audited by an accredited auditor, then the accredited auditor appointed 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. Government, municipalities, parastatals and utilities may apply for dispensation from this paragraph 5.3(c) if audited by the Auditor general.

## Section 7 – Continuing Obligations

### Continuing obligations

- 7.2 An applicant issuer granted a listing of debt securities, and where required by the JSE any guarantor in respect of such listing, shall, within six months of the end of every financial year submit its audited annual financial statements to the JSE. Where interim financial statements are prepared, they must be submitted to the JSE within three months of the end of the period to which they relate. The applicant issuer and the guarantor must publish a notice of availability announcement on SENS stating when and where such financial information will be available for inspection.
- 7.3 In the case of the type of debt securities detailed in section 6, the applicant issuer shall submit within six months of every financial year its audited annual financial statements to the JSE (or at such intervals and in respect of such periods as the JSE may in its discretion determine).
- 7.4 The following procedure shall apply to an applicant issuer or any guarantor that fails to comply with paragraph 7.2 or if applicable paragraph 7.3 above:
- (a) five months after the applicant issuer's financial year end, the JSE will send to the applicant issuer a letter of reminder, advising that the applicant issuer still has one month within which to submit its annual financial statements, failing which the listing of the applicant issuer's debt securities may be suspended until such time as the annual financial statements have been submitted;
  - (b) if the applicant issuer has not complied with paragraph 7.2 or if applicable paragraph 7.3 above by the end of the sixth month the JSE will release an announcement over SENS, informing holders of debt securities that the applicant issuer has not submitted its annual financial statements and cautioning holders of debt securities that the listing of the applicant issuer's debt securities is under threat of suspension and possible removal;
  - (c) if the applicant issuer has not complied with paragraph 7.2 or if applicable paragraph 7.3 above by the end of the seventh month after its financial year end, the listing of the applicant issuer's debt securities will be suspended and a meeting of the JSE will be convened to consider the continued suspension or removal of the listing of the applicant issuer's debt securities;
  - (d) the suspension of the applicant issuer's debt securities will be lifted after the JSE receives the applicant 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 above.
- 7.5 Discretionary authority shall vest with the JSE to waive the requirement for suspension of the listing of the applicant issuer's debt securities where it has not submitted its annual financial statements timeously.
- 7.6 In the case of asset-backed debt securities, in addition to paragraph 7.3 above, an applicant issuer must disclose through SENS –
- (a) on a semi-annual basis, historical information about all assets of the pool that were the subject of a demand to repurchase or replace due to breach of the representations and warranties contained in the agreements underlying the asset-backed debt securities; and
  - (b) on a quarterly basis, details of the performance of the underlying assets in aggregate, including details of any defaults in respect of such assets.
- 7.7 Where an applicant issuer is not obliged by law to file financial statements with the Companies and Intellectual Property Commission, the requirements of 7.2 may be varied at the discretion of the JSE.

- 7.8 An applicant 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, notify the JSE thereof.
- 7.9 If the JSE has reason to believe that an event of default as contemplated in 7.8 has occurred or is about to occur, it may request the applicant 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.
- 7.10 Issuers shall forthwith advise the JSE in writing of:
- (a) a change in name of the applicant issuer, together with a certified copy of the certificate of change of name; the applicant issuer must also publish an announcement relating to the name change on SENS;
  - (b) a change in the applicant issuer's registered address;
  - (c) a change in transfer agent, paying or calculation agent, index provider and index calculation agent if applicable;
  - (d) any "stops" placed against, or the reported loss of, Listed Debt Security certificates; and
  - (e) any changes to the books closed period.
- 7.11 The JSE reserves the right to request an applicant 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 have a material adverse effect on the ability of such applicant issuer or its guarantor to maintain any of its obligations in respect of any specific Listed Debt Security, and the applicant issuer shall be obliged to comply with such request forthwith.
- 7.12 An applicant issuer must immediately release an announcement on SENS if the applicant issuer has failed to make a distribution to holders of debt securities on the distribution date. The announcement should contain details of the nature and extent of such failure and suggested remedial steps.

## **Changes to existing debt securities or placing document**

### **Placing document**

- 7.13 A programme memorandum which has not lapsed in terms of 1.13 shall be updated by the applicant issuer in the event of any of the information therein being outdated in a material respect, within six months after the financial year end of the applicant issuer. The amendments to the programme memorandum must be approved by the JSE. No update of a programme memorandum in respect of the issuer's financial statements shall be required if such financial statements are incorporated by reference and such statements are published as required by the Companies Act and submitted to the JSE within six months after the financial year end of the issuer.
- 7.14 In the event that the applicant issuer makes any changes to the placing document that affect the terms and conditions of the debt securities or the guarantee, other than the 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 formal approval first from the JSE prior to sending the notice to holders of debt securities incorporating the proposed amendments and obtaining the approval from holders of debt securities holding not less than 66.67% (sixty-six point sixty-seven percent) of the value of a specific class of notes or all outstanding notes. This approval can be obtained by the relevant holders of debt securities (i) at a general meeting or (ii) may be voted on in writing by holders of debt securities entitled to exercise voting rights in relation to the proposed written resolution within 15 business days after the written resolution was submitted to holders of debt securities. A written resolution as contemplated above would have been adopted if it was supported by holders of debt securities entitled to exercise sufficient voting rights for it to have been adopted in accordance with the voting percentage prescribed above at a properly constituted meeting of holders of debt securities. The notice of the

proposed written resolution to holders of debt securities should include the actual written resolution including any restrictions on voting in terms of the program memorandum, the last date on which a holder of debt securities should return the signed written resolution and the address to which it should be sent. The amended placing document must be submitted to the JSE and the amendments must be published on SENS.

- 7.15 Debt securities issued under a programme memorandum and subsequently redeemed may be re-issued under the programme memorandum unless restricted in terms of other relevant regulation or the programme memorandum itself.

#### **Listed debt securities**

- 7.16 The granting of a listing of debt securities must be announced by the applicant issuer on SENS no later than close of business on the day before the listing of the debt securities. In the event of a change to an issue of the nature as set out in paragraph 7.17, the details of the change shall be submitted to the JSE for approval and published on SENS.
- 7.17 The applicant issuer shall publish on SENS details of the following of new or tap issues by the applicant issuer:
- (a) the debt security name, short name and debt security code;
  - (b) the issue price;
  - (c) the coupon rate/variable interest rate, the first interest date, and the other interest dates;
  - (d) the change from the previous coupon interest rate to the new interest rate payable;
  - (e) the original date of the issue and the proposed date of any additional issue;
  - (f) the previous authorised amount and the new authorised amount;
  - (g) the total amount issued after this additional issue;
  - (h) the effective date;
  - (i) nominal value;
  - (j) last day to register;
  - (k) maturity date;
  - (l) books closed period;
  - (m) ISIN;
  - (n) day and method for Interest Calculation Methodology;
  - (o) coupon rate indicator;
  - (p) programme size; and
  - (q) final amount payable on maturity.
- 7.18 Where an additional amount of securities to be listed causes the total amount issued to exceed the original authorised amount of the applicant issuer, if applicable, the notification to the JSE shall be accompanied by a resolution from the governing body (e.g. Board of directors) of the applicant issuer, authorising such increase in the authorised amount.
- 7.19 Applicant issuers other than the South African government, shall on formal submission be required to submit to the JSE a letter signed by two directors or two duly authorised officers of the applicant issuer confirming that there has been no material change to the financial position or affairs of the applicant issuer as reflected or incorporated in the original placing document since the date of such placing document; alternatively in the event of any such material change, detailed supplementary information shall be submitted to JSE, specifying the nature and extent of such material change. If the applicant issuer has one director only, the letter must be signed by the director and another duly authorised official.

- 7.20 The applicant issuer shall advise the JSE and publish on SENS:
- (a) at least two business days prior to the notice period as contained in the terms and conditions of its placing document or pricing supplement, to extend the maturity date of a listed debt security from its scheduled maturity date, or to step-up/call, in writing of its intention; or
  - (b) at least one business day prior to the commencement of books closed period of a listed debt security, where the issuer requires the expected maturity date to be extended if applicable. Provided that such expected maturity date cannot be extended past its legal maturity date.
  - (c) the issuer may extend the maturity date of any debt security beyond its legal maturity date, subject to the terms and conditions of the placing document and by extraordinary resolution. The issuer's written notice to the JSE and publication on SENS must be made at least two business days prior to the commencement of the notice period provided in the placing document, regarding the extension of the maturity date.
- 7.21 The issuer is required to deposit additional securities with Strate for listed debt securities prior to settlement date in the event that an issuer is issuing a tap issue.
- 7.22 In the event of a proposed permanent reduction in the authorised amount, listed and issued amount of a debt security (e.g. invitation to redeem, convert or split), an issuer shall notify the JSE and publish on SENS its intention to implement such permanent reduction, providing details of:
- (a) the reduction in the amount;
  - (b) the remaining balance;
  - (c) the proposed date of reduction;
  - (d) the issue date of the notice to the investors giving formal notice of the proposed reduction; and
  - (e) where the issuer has requested a permanent reduction in the issued amounts, the issuer is required to withdraw the existing listed debt securities from Strate on or before LDR ("last day to register") date, with the amount of the reduction.
- 7.23 In the event of a change in the interest rate, the following information must be published on SENS not less than three business days before the interest is payable:
- (a) the name, short name and code of the debt security;
  - (b) the new rate applicable; and
  - (c) the period for which it is applicable.

### **Dividends**

- 7.24 In the event of a cash disbursement to a holder of debt securities in respect of a debt security is classified as a dividend (including in specie dividend) as defined in terms of the Income Tax Act, an announcement on SENS must be published complying with paragraphs 7.25(i) to (ix) and must include any STC (secondary tax on companies) credits and also indicate whether the distribution is made from capital or income reserves.
- 7.25 Any announcement released on SENS for cash disbursements to holders of debt securities 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). Announcements released for any cash disbursements to holders of debt securities 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) STC credits utilised;

- (iv) net local dividend amount represented as cents per debt security;
- (v) non-reclaimable foreign withholding dividend tax rate represented as a percentage;
- (vi) dividend reclaimable tax rate applicable overseas represented as a percentage;
- (vii) issued debt securities as at declaration date;
- (viii) applicant issuer registration number; and
- (ix) tax reference number.

## **Communication with investors**

- 7.26 Once the listing of a debt security is granted to the applicant issuer, the applicant issuer must:
- (a) publish on SENS details of any new issue of debt securities (and, if applicable, guarantees, security or credit enhancements relating thereto), as well as any amendments to the terms and conditions attaching to existing listed debt securities;
  - (b) ensure that all information material to the financial or trading position of the applicant issuer is published on SENS to enable investors of listed debt securities to make an informed investment decision;
  - (c) ensure that all announcements made by the applicant issuer relevant to the issue must be approved by the debt sponsor and released on SENS, and where the applicant issuer is listed on another licensed or recognised exchange, all such announcements released through that licensed or recognised exchange must be published on SENS; and
  - (d) ensure that the release of any information relating to debt securities that are listed on another licensed or recognised exchange, must take place simultaneously on SENS.
- 7.27 To publish on SENS the annual financial statements as detailed in paragraph 5.5, excluding 5.5(b) and paragraph 5.6, within the following time frame:
- (a) with regards to a public entity, within 6 months of the end of the financial year; and
  - (b) with regards to a quasi-governmental entity (most commonly provincial and local authorities/municipalities and state owned entities) or a government, within 12 months of the end of each financial year.

## **Trustee or representative for the body of investors**

- 7.28 The Trustee of, or other representative body, for the holders of debt securities (“Beneficial Holders”) referred to in 4.13(c) or its successor is required to confirm in writing annually, or as the JSE may require from time to time:
- (a) that their appointment as Trustee or Representative is still valid; or
  - (b) that their appointment has been terminated and the reasons for termination;
  - (c) that the conditions of the relevant Trust Deed/Representative Agreement relating to a listing during the year have been met; and
  - (d) that they are not aware of a material event (financial or otherwise) referred to in 7.22 to 7.23 occurring, or that such material event has occurred and if so, the Trustee/Representative shall promptly give notice thereof to the JSE and investors.

## **SENS announcements**

- 7.29 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 and the debt sponsor’s logo must appear on the SENS announcement.

## **Register of Note Holders**

- 7.30 A holder of a note is entitled to inspect, at no charge, the Note Holder Register for that class of notes held.

## **Appointment of auditors**

- 7.31 An applicant issuer may only appoint as its auditor an audit firm and individual auditor who is accredited as such on the JSE list of Auditors and their advisers, as set out in Section 22 of the JSE Listings Requirements. This requirement must be considered by the audit committee when recommending an auditor for appointment at the annual general meeting.
- 7.32 Within 90 days of an audit firm or individual auditor being removed from the JSE list of Auditors and their advisers, an applicant issuer must replace its auditor with an auditor who is accredited on the JSE list of Auditors and their advisers. This change should be made before the auditor signs the next audit report, failing which the applicant issuer must caution holders of debt securities as to the status of its auditor. This warning must appear whenever reference is made to the audit report in an announcement or in the financial statements themselves.
- 7.33 The requirements in paragraphs 7.31 and 7.32 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. In this instance, the audit firm and individual auditor registered in a jurisdiction other than South Africa need to be accredited on the JSE list of Auditors and their advisers. The specific requirements and eligibility criteria, as set out in Section 22 and Schedule 8 of the JSE Listings Requirements, are, however, slightly different for auditors registered in a jurisdiction other than South Africa.

## **Section 9 – The South African Government**

### **Amendment to terms and conditions**

- 9.5 Notwithstanding the provisions of paragraph 7.14, in the event that the applicant issuer makes any changes to the placing document, the following shall apply and a statement to that effect must be included in the terms and conditions:

“No modification of these terms and conditions may be effected without the written agreement of the applicant issuer. The applicant issuer may effect, without the consent of the holders of debt securities, any modification of the terms and conditions which is of a formal, minor or technical nature or is made to correct a manifest error or to comply with mandatory provisions of the law of the Republic of South Africa provided that the JSE must be notified. Any such modification shall be binding on the relevant holders of debt securities.

The applicant issuer may with the prior sanction of an extraordinary resolution of holders of debt securities or with the prior written consent of holders of debt securities holding not less than 66.67% (sixty-six point sixty-seven percent) in nominal amount of the debt securities outstanding from time to time, amend these terms and conditions (outside the regulatory (law) changes).

Any modification of these terms and conditions which may have a direct effect on compliance with the Debt Listings Requirements will require the approval of the JSE.”

Regards,

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