



JSE Debt Listings Requirements: proposed “Professional Debt Segment”

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The JSE Limited (“JSE”) released an announcement on 26 April 2018 proposing, among other things, that a so-called “Professional Debt Segment” be added as a new section 11 to the JSE Debt Listings Requirements (the “DLRs”).

The purpose of the Professional Debt Segment is to create a market for the listing of certain “instruments” referencing assets or entities, which may be issued to certain specified “qualified investors” and aims, in particular, to address concerns relating to the disclosure of sensitive information to the public in connection with the reference assets or entities.

Key features of section 11, as currently worded, include the following:

- section 11 will apply only to certain “instruments”, namely “the ‘securities’ (as defined in the [Financial Markets Act, 2012]), 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 **where the issuer does not have the obligation to pay back to the investor the initial amount of capital invested and the instrument is subject to market risk other than or over and above the credit risk of the issuer**” (our emphasis added). The wording will need to be improved upon but it would seem the intention here is to refer to debt instruments where investors bear the risk of non-performance of the reference asset or entity.
- issuers may only issue instruments to entities falling within a specified and closed list of sophisticated “qualified investors”, ranging from insurers, banks, pension funds, the Government Employees Pension Fund and the Public Investment Corporation to international institutions such as the World Bank, the International Monetary Fund, the European Central Bank and the International Finance Corporation.
- placing documents must comply with, among other things, the Commercial Paper Regulations or the Securitisation Regulations or, **where the issuer does not fall within the ambit of the Banks Act, 1990, the minimum disclosure information set out in the Commercial Paper Regulations**. The highlighted wording is important, as it would appear that the JSE is seeking to ensure that issuers of these types of instruments must, as a minimum, always disclose information as required under the Commercial Paper Regulations even in circumstances where the Commercial Paper Regulations or Securitisation Regulations are inapplicable under the Banks Act, 1990.
- in the event that an issuer is a new company or special purpose vehicle where the financial information for the last two financial years is not available or where such financial information does not affect the pricing of the instrument, additional information must be made available to enable qualified investors to make an informed investment decision, which additional information must include, at least:
 - i. cash flow projections of the issuer or the underlying reference asset(s) (if applicable); and/or
 - ii. sufficient information to allow qualified investors to calculate the NAV of the instrument; and/or
 - iii. any information on the underlying asset(s) that impacts the performance of the instrument (if applicable).
- issuers may approach the JSE for a dispensation from providing certain information on SENS when complying with its continuing obligations under the DLRs and to provide such information in a virtual data room (“VDR”). The JSE may grant this dispensation if:
 - i. the disclosure of the information to the public will, or probably will, prejudice the issuer’s legitimate interests; or
 - ii. disclosure would be contrary to the public interest or the market as a whole.
- VDRs will be operated by JSE-approved VDR providers, a list of which will be published on the JSE’s website.

The JSE has invited comments on section 11 until close of business on **Monday, 28 May 2018**.

The JSE’s announcement, section 11 and an explanatory memorandum in respect of section 11 is available on the JSE’s website here.

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