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Exchange Control Circular No. 15/2020

Reclassification of inward listed debt and derivative instruments as well as exchange traded funds referencing foreign assets

Following the Minister of Finance's announcement in the 2020 Medium Term Budget Policy Statement Authorised Dealers are advised that all the remaining foreign classified debt and derivative instruments as well as exchange traded funds referencing foreign assets, that are inward listed on a South African exchange, traded and settled in Rand, will be reclassified as domestic. The classification of all inward listed shares on a South African exchange remains domestic.

The approval process in respect of the inward listing of all instruments on a South African exchange remains extant.

The outlay of Section H. of the Currency and Exchanges Manual for Authorised Dealers (Authorised Dealer Manual) was deleted and replaced to, inter alia, highlight the application procedure, adjudication process, conditions applicable to inward listing approvals and reporting requirements.

The following amendments have also been made to Sections B.2(H) and B.2(I) of the Authorised Dealer Manual:

Section B.2(H)(ii)(d)(cc)

The paragraph has been amended and replaced as follows:

'Rand denominated foreign assets may be acquired indirectly through investments with another domestic institutional investor.'

Section B.2(H)(v)(c)

The entire section has been deleted.

The current subsections (d) to (f) have been renumbered (c) to (e).

Section B.2(H)(v)(d)(bb)

The entire section has been deleted.

The current subsections (cc) and (dd) have been renumbered (bb) and (cc).

Section B.2(I)(ii)(b)

The entire section has been deleted.

Section B.2(I)(iii)(a)

The paragraph has been amended and replaced as follows:

'The Financial Surveillance Department defines foreign exposure for macro-prudential limit purposes as all foreign assets held where such assets are foreign currency denominated, except for the dispensations in (iv)(b) below, as well as foreign assets denominated in Rand, e.g. Rand denominated instruments issued offshore. Foreign exposure will therefore, inter alia, include the following:'

Section B.2(I)(iii)(a)(ee)

The entire section has been deleted.

Section B.2(I)(iii)(b)

The entire section has been deleted.

Section H.

The entire section has been deleted and replaced as follows:

(A) Introduction

- (i) Instruments that offer South African investors exposure to foreign referenced assets in Rand terms must be listed on a South African exchange. The types of instruments include equity, debt and derivatives. These instruments may only be denominated in Rand.
- (ii) These foreign referenced instruments may not be offered to South African investors on an over-the-counter basis.
- (iii) The listing of all instruments referencing foreign assets will require specific prior approval of the Financial Surveillance Department.
- (iv) An Authorised Dealer wishing to facilitate the cross-border reporting of inward listed transactions requires prior written approval of the Financial Surveillance Department and will have to comply with the specific reporting requirements of the Financial Surveillance Department.
- (v) The inward listing policy may not be used as a mechanism for a South African company to re-domicile offshore.
- (vi) Inward listings attract foreign direct investment to the domestic economy, grow market capitalisation and liquidity of South Africa's capital markets, support the New Partnership for Africa's Development initiative and support the enhancement of foreign investment diversification through domestic channels.

(B) Qualifying issuers of inward listed instruments

- (i) The following entities qualify to issue inward listed instruments on a South African exchange referencing foreign assets:
 - (a) non-resident entities;

- (b) local Authorised Dealers;
- (c) South African exchanges; and
- (d) CIS managers registered under CISCA to administer collective investment schemes.

(C) Classification of inward listed instruments

- (i) Approved inward listed shares, including exchange traded funds as well as debt and derivative instruments, traded and settled in Rand on a South African exchange, are classified as domestic.
- (ii) Should an investor opt to hold the shares of an inward listed company on an offshore exchange, the investment is deemed as foreign and may be acquired as follows:
 - (a) South African institutional investors, subject to the prevailing prudential limits.
 - (b) Authorised Dealers, subject to the prevailing macro-prudential limit.
 - (c) South African companies in terms of the foreign direct investment policy.
 - (d) South African individuals, subject to the applicable single discretionary or foreign capital allowance limits.

(D) Investors in inward listed instruments

- (i) The following entities may invest in inward listed instruments without restriction:
 - (a) South African institutional investors;

- (b) Authorised Dealers;
- (c) South African companies, trusts, partnerships and private individuals;
- (d) emigrants, subject to adhering to the emigration policy as outlined in section B.2(J) of the Authorised Dealer Manual; and
- (e) bona fide non-residents.

(E) Application procedure

- (i) Requests by a qualifying issuer to inward list an instrument on a South African exchange referencing foreign assets must be referred to the Financial Surveillance Department through an Authorised Dealer, for consideration.
- (ii) The application must include the following information, where applicable:
 - (a) confirmation that the qualifying issuer will comply with the conditions set out in subsection G. below;
 - (b) name of the Authorised Dealer responsible for the facilitation of the special styled vostro account reporting; and
 - (c) confirmation that the transaction has been cleared with all relevant regulatory authorities.
- (iii) Requests to inward list a company's shares on a South African exchange for the purpose of raising capital should be accompanied by the following information relating to the applicant company, in addition to the information called for in (ii) above:

(a) A draft pre-listing statement or prospectus outlining the following information:

(aa) registration and incorporation details;

(bb) the nature of the business of the company;

(cc) location and value of the assets;

(dd) details of the place of effective management of the company;

(ee) details of major shareholders (five per cent and above) including the extent of the direct and indirect South African shareholding as well as the mechanism through which such shareholding was acquired, if applicable;

(ff) the latest audited financial statements, where applicable;

(gg) details on how and where the listings proceeds will be utilised; and

(hh) information whether the applicant is registered as an external company in South Africa.

(b) Should the pre-listing statement or prospectus not contain any of the above requested information, same must then be included in the application.

(iv) Requests to utilise inward listed shares as acquisition currency must be accompanied by the following information, in addition to the information called for in (ii) and (iii) above:

(a) details on the trading history/track record of the applicant company;

- (b) specific details of the proposed transaction;
- (c) confirmation from an independent auditor that the transaction will be concluded on an arm's length basis and at a fair and market related price;
- (d) details on how the acquisition will benefit South Africa;
- (e) a copy of the pre and post structure of the applicant company; and
- (f) details on how the balance of the transaction will be funded where the purchase consideration is partially funded by shares.

(F) Adjudication process

- (i) Requests to inward list instruments on a South African exchange referencing foreign assets will be considered by the Financial Surveillance Department on receipt of an application submitted through an Authorised Dealer taking into account, inter alia, factors pertaining to the overall national and economic interest of South Africa.
- (ii) The compliance with the terms and conditions for the submission of an application to inward list an instrument referencing foreign assets on a South African exchange should not be construed as an indication that the application will necessarily be approved.
- (iii) The Financial Surveillance Department could refer an application to the National Treasury for their consideration.
- (iv) The Financial Surveillance Department will provide written notice of the decision in respect of an application to inward list an instrument referencing foreign assets on a South African exchange, to the applicant through an Authorised Dealer.

(G) Conditions applicable to inward listing approvals

- (i) Conditions applicable to approvals in respect of the inward listing of shares
 - (a) All capital raised must be deployed within 30 days of being raised and recorded in the designated account, in a manner that does not cause any distortions and/or volatility to the exchange rate.
 - (b) The placement of shares may only take place at market related prices and in Rand terms, where applicable.
 - (c) The applicant company must appoint an approved Authorised Dealer to facilitate the reporting via the special styled vostro account in respect of funds raised.
 - (d) Inward listed shares acquired on a South African exchange may not be moved to an offshore exchange unless specific prior approval is obtained from the Financial Surveillance Department.
 - (e) In the event of a capital reduction/share buyback transaction or the delisting of an inward listed company from a South African exchange, all South African shareholders must be paid in Rand in South Africa. A notification to this effect must be submitted to the Financial Surveillance Department for record purposes.
 - (f) South African investors may exercise their rights in terms of a rights offer without restriction.
 - (g) Emigrants may exercise their rights in terms of a rights offer without restriction, subject to the provisions of section B.2(J) of the Authorised Dealer Manual.

- (h) The utilisation of shares as acquisition currency in the purchase of Common Monetary Area assets, any capital raising exercise by means of a new issue, rights offer, etc., as well as the issue of new shares in lieu of a cash dividend, require prior written approval of the Financial Surveillance Department.
- (i) All settlements should take place locally in Rand
- (ii) The following condition, in addition to (i) above, is applicable to approvals in respect of the inward listing of shares utilised as acquisition currency to purchase Common Monetary Area assets:
 - (a) The transaction must be concluded on an arm's length basis and at fair and market related prices.
- (iii) Conditions applicable to approvals in respect of the inward listing of debt instruments
 - (a) All capital raised, must be deployed within 30 days of being raised and recorded in the designated account, in a manner that does not cause any distortions and/or volatility to the exchange rate.
 - (b) The applicant company must appoint an approved Authorised Dealer to facilitate the reporting via the special styled vostro account in respect of funds raised.
 - (c) All settlements should take place locally in Rand.
- (iv) Conditions applicable to approvals in respect of the inward listing of derivative instruments
 - (a) For every buyer there should be a seller.
 - (b) The loss for one party is paid as the profit of the counterparty.

- (c) Participants may not hedge their exposures by physically trading in the underlying referenced asset unless that particular asset is also inward listed on a South African exchange.
- (d) All settlements of derivative contracts should take place locally in Rand.
- (v) Conditions applicable to approvals in respect of the inward listing of exchange traded funds by CIS managers
 - (a) Only exchange traded funds referencing foreign assets may be inward listed on a South African exchange by local CIS managers.
 - (b) All settlements should take place locally in Rand.

(H) Reporting requirements

- (i) All issuers of inward listed shares must furnish the Financial Surveillance Department through the Authorised Dealer concerned with the following information within three months after the expiring of the authority granted:
 - (a) Details on the capital raised through an initial public offering.
 - (b) Information on the deployment of the listing proceeds.
 - (c) Confirmation that the intended benefits to South Africa have been realised.
- (ii) Issuers of inward listed debt and derivative instruments based on foreign referenced assets must furnish the Financial Surveillance Department through the Authorised Dealer with the following information within three months after the expiring of the authority granted:

- (a) Details on the capital raised through an initial public offering, if applicable.
- (b) Information on the deployment of the listing proceeds.
- (iii) All secondary trades will be reported directly to the Financial Surveillance Department by the South African exchanges in terms of standing arrangements.

(I) Subsequent requests applicable to existing inward listed instruments

- (i) An application must be submitted to the Financial Surveillance Department through an Authorised Dealer in respect of subsequent requests applicable to existing inward listed instruments, including the following:
 - (a) Utilisation and reporting details of the previous authority.
 - (b) Information on the deployment of the listing proceeds relating to the previous capital raising, if not previously provided under subsection (H) above, if applicable.
 - (c) Reason(s) for the current request.
 - (d) Value of current request.

(J) Special dispensation to local brokers to facilitate the trading of inward listed shares

- (i) Local brokers are allowed to purchase inward listed shares offshore and to transfer such shares to the South African section of the register as a book-building exercise and to enhance liquidity on a South African exchange.

- (ii) This dispensation is confined to inward listed shares and brokers may warehouse such shares for a maximum period of 30 days only.

The amended Authorised Dealer Manual and guidelines document may be accessed on the South African Reserve Bank website: www.resbank.co.za by following the links: Home>Regulation and supervision>Financial surveillance and exchange controls>Currency and exchanges documents.

Acting Head of Department: Financial Surveillance

Suspended for public consultation