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Exchange Control Circular No. 9/2022

Inward listing on South African exchanges

Reference is made to Exchange Control Circular Nos. 15/2020, 17/2020, 4/2022 and the announcement by the Minister of Finance in Annexure F of the 2022 Budget Review, wherein it was advised that after public consultation and a review, approved 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, are classified as foreign. Inward listed shares remain classified as domestic.

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

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

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 approval of the Financial Surveillance Department and will have to comply with the specific reporting requirements.
- (v) The inward listing policy may not be used as a mechanism for a South African company to re-domicile offshore.
- (vi) The intention of the inward listing policy is to attract foreign direct investment to the domestic economy, grow market capitalisation and liquidity of South Africa's capital markets 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, limited to listing exchange traded funds referencing foreign assets.

(C) Investors in inward listed instruments

- (i) The following entities may invest in inward listed instruments without restriction:
 - (a) South African companies, trusts, partnerships and private individuals;
 - (b) bona fide non-residents.
- (ii) South African institutional investors and Authorised Dealers may invest in:
 - (a) inward listed shares without restriction;
 - (b) inward listed debt and derivative instruments, subject to the full nominal or notional exposure being marked off against the prudential limit of institutional investors and macro-prudential limit of Authorised Dealers; and
 - (c) inward listed exchange traded funds, subject to the prudential limit of institutional investors and macro-prudential limit of Authorised Dealers.

(D) Classification of inward listed instruments

- (i) Approved inward listed debt and derivative instruments as well as exchange traded funds referencing foreign assets, traded and settled in Rand on a South African exchange, are classified as foreign.

- (ii) Approved inward listed shares are classified as domestic.
- (iii) Should an institutional investor or Authorised Dealer purchase the shares of an inward listed company on an offshore exchange in terms of the prudential limit of institutional investors and macro-prudential limit of the Authorised Dealers, the investment is deemed as foreign.

(E) Inward listed instruments

- (i) Inward listed shares mean the following products listed on a South African exchange:

| No | Product | Details |
|----|---|--|
| 1. | Ordinary shares/equities including A, B and N shares | Shares which are listed on a South African exchange and settled in Rand. |
| 2. | Preference shares/debentures | If the company is already listed on a South African exchange and the preference share/debenture is compulsory convertible. |
| 3. | Linked units/participatory interest/ real estate investment trusts (REITS) and loan stock companies | If the company is already primary or secondary listed on a South African exchange. |
| 4. | Exchange traded funds (ETFs) | An instrument that tracks a basket of shares, as long as they track an index or shares that are made up of companies already listed on a South African exchange. This must be valid for all the shares in the index. |
| 5. | Warrants | As long as they represent an underlying share or basket of shares already listed on a South African exchange. |
| 6. | Share instalments | As long as they represent an underlying share or basket of shares already listed on a South African exchange. |

| No | Product | Details |
|-----|--|--|
| 7. | Derivatives - Equities indices | A future or option that is listed against an index that represents companies already listed on a South African exchange. |
| 8. | Derivatives - Single stock futures and options | A future or option that is listed against a single security of a company that is already listed on a South African exchange. |
| 9. | Derivatives - Dividend futures and options | A future or option on a dividend of a company that is already listed on a South African exchange. |
| 10. | Krugerrand coins | Listed and traded on a South African exchange in Rand. |
| 11. | Current commodity derivatives (i.e. White Maize) | Listed and traded on a South African exchange in Rand. |

(ii) Criteria for 'African' debt

- (a) 'African' debt encompasses debt securities issued and listed on a South African exchange by African governments, African public entities, African local authorities, African development agencies and by non-African development institutions where the funds raised are earmarked for use in Africa.

(F) 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) specific details of the proposed transaction including the term sheet or prospectus of the instrument to be inward listed;
 - (b) utilisation and full reporting details of all transactions concluded in terms of a previous authority granted;
 - (c) name of the Authorised Dealer responsible for the facilitation of the special vostro-styled account;
 - (d) confirmation that the qualifying issuer will comply with the conditions set out in subsection H. below; and
 - (e) 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) the 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 company is registered as an external company in South Africa; and
- (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) 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;
 - (c) details on how the acquisition will benefit South Africa;
 - (d) a copy of the pre and post structure of the applicant company; and
 - (e) details on how the balance of the transaction will be funded where the purchase consideration is partially funded by shares.

(G) 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.

(H) Conditions applicable to inward listing approvals

- (i) The following conditions will be applicable to approvals in respect of the inward listing of shares:
 - (a) South African investors are required to hold their inward listed shares on a South African exchange and such shares may not be moved to an offshore exchange unless specific prior approval is obtained from the Financial Surveillance Department;
 - (b) as an exception to (a) above, private individuals may, as part of their single discretionary allowance and/or foreign capital allowance, export multi-listed domestic securities (including inward listed shares) to a foreign securities register in a jurisdiction where such securities are listed, subject to tax compliance and reporting to the Financial Surveillance Department via a Central Securities Depository Participant, in conjunction with an Authorised Dealer. In

this regard see section B.2(B)(i)(o) and (p) of the Authorised Dealer Manual.

- (c) the applicant company must appoint an approved Authorised Dealer to facilitate the reporting via the special vostro-styled account in respect of funds raised;
 - (d) the trade and settlement of inward listed shares may only take place at market related prices and in Rand terms, where applicable;
 - (e) all capital raised must be deployed within 30 days of being raised and recorded in the special vostro-styled account, in a manner that does not cause any distortions and/or volatility to the exchange rate;
 - (f) 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;
 - (g) South African investors may exercise their rights in terms of a rights offer without restriction; and
 - (h) the inward listing of any additional instruments will require the specific prior approval of the Financial Surveillance Department, e.g. the utilisation of shares as acquisition currency in the purchase of CMA assets; any capital raising exercise by means of a new issue; rights offer; the issue of new shares in lieu of a cash dividend.
- (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 CMA assets:

- (a) the transaction must be concluded on an arm's length basis and at a fair and market related price.
- (iii) The following conditions are applicable to approvals in respect of the inward listing of debt instruments:
- (a) the applicant must appoint an approved Authorised Dealer to facilitate the reporting via the special vostro-styled account in respect of the funds raised;
 - (b) all capital raised, must be deployed within 30 days of being raised and recorded in the special vostro-styled account, in a manner that does not cause any distortions and/or volatility to the exchange rate;
 - (c) all settlements should take place locally in Rand; and
 - (d) the inward listing of any additional instruments will require the specific prior approval of the Financial Surveillance Department.
- (iv) The following conditions are 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; and

- (e) the inward listing of any additional instruments will require the specific prior approval of the Financial Surveillance Department.
- (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) The inward listed exchange traded funds will not be restricted in terms of the amount they can invest offshore.
 - (c) The approved inward listed exchange traded fund must be ring-fenced and not be included in the quarterly asset allocation report of the local CIS manager for prudential purposes.
 - (d) All subscriptions and settlements should take place locally in Rand.
 - (e) The listing of any additional exchange traded funds referencing foreign assets will require the specific prior approval of the Financial Surveillance Department.

(l) 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 authority granted has expired:
 - (a) details on the capital raised through an initial public offering;
 - (b) utilisation and full reporting details of all transactions concluded in terms of the authority granted; and

- (c) confirmation that the intended benefits to South Africa have been realised.

- (ii) Issuers of inward listed debt and derivative instruments referencing foreign assets must furnish the Financial Surveillance Department through an Authorised Dealer with the following information within three months after the authority granted has expired:
 - (a) details on the capital raised through an initial public offering, if applicable; and

 - (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.

(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 may be accessed on the South African Reserve Bank website, www.resbank.co.za by following the links: Home>What we do>Financial Surveillance>Financial Surveillance documents.

Head of Department: Financial Surveillance