

## The need for bond market reform: Futuregrowth responds to the JSE's comments

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We stated our views on the JSE debt listing requirements amendments process in an article entitled, **Bond investors left out in the cold**. The JSE has publically rebutted our assertions. Our response, and a summary on the issue below:

The JSE has done an about-turn on two crucial principles agreed upon in October 2019: **investors' ability to properly negotiate terms and conditions** of loan documentation with borrowers and the requirement that borrowers, not lenders, pay for legal advice. No substitutes to these critical protection mechanisms are offered in version 4 of the draft amendments.

The JSE's reasoning for the wholesale deletion of these two critical investor protections, included in previous versions of the proposed amendments to the DLR, cites legal opinions obtained that i) the JSE does not have the power to regulate processes which are subject to commercial negotiations and ii) that the JSE would not be able to comply with its statutory obligation to enforce these requirements. We believe their exclusion violates every principle of sound lending and enables issuers to divide and conquer by not allowing the investors to properly negotiate in the interest of the individual and pension fund investors we represent.

Although ASISA members requested copies of the legal opinions on which the JSE is relying, the JSE did not provide these. Despite not having sight of the legal opinions, we do not accept the rationale given by the JSE.

The reasons for our position are:

1. The JSE's job is to create and manage a fair and level playing field where borrowers and lenders can meet, negotiate and transact. Presently the corporate bond market is a skewed playing field.
2. Where commercial negotiations do not achieve an appropriate outcome (as we have experienced over the years of malfeasance in the corporate bond market) there is a need for a regulatory solution.
3. Many of the provisions of the DLR (e.g. SENS requirements) arguably fall within "processes which are subject to commercial negotiations" and yet are already part of the existing regulations. It appears to us that this is inconsistent.
4. Investors' view is that the JSE's oversight of the corporate bond market does not support or enable a proper commercial negotiation to take place. The removal of these provisions perpetuates this problem.
5. Finally, the JSE is required to enact Debt Listings Requirements that, *inter alia*, protect investors. The JSE is the regulator, with all the powers of enforcement that come with that role. As such, before instruments are listed, the JSE must satisfy themselves that the regulations have been met by the potential issuer.

We do not understand, nor accept, the rationale provided by the JSE on backtracking on either of these key terms.

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### Contact

Adele du Bois Botha

[adeledb@futuregrowth.co.za](mailto:adeledb@futuregrowth.co.za)

Tel: 021 659 5476