Addendum

Legal entities tax residency classification (FATCA &CRS)

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The following explanatory notes are based on the U.S.A. Foreign Account Tax Compliance Act (FATCA), and the OECD Common Reporting Standard (CRS) as implemented in South Africa. If you have any questions about your organisation's classification, please contact your tax advisor.

1. **U.S.A Foreign Account Tax Compliance Act (FATCA)**

FATCA

Foreign Account Tax Compliance Act (FATCA), regulations in sections 1471 to 1474 of the US Internal Revenue Code and the Treasury regulations and of cial guidance issued thereunder, as amended from time to time, as adopted in South Africa.

Financial Institution

The term "Financial Institution" means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company as defined for the purposes of FATCA. Please see the relevant tax regulations for the classification definitions that apply to Financial Institutions.

The term "Investment Entity" means: any Entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:

- Trading in money market instruments (cheques, bills, certi cates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
- Individual and collective portfolio management; or
- Otherwise investing, administering, or managing funds or money on behalf of other persons

Partner Jurisdiction Financial Institution

A Partner Jurisdiction Financial Institution includes (a) any Financial Institution resident in South Africa, but excluding any branches of such Financial Institution that are located outside South Africa and (b) any South African branch of a Financial Institutional not resident in South Africa.

For these purposes, **"Partner Jurisdiction"** means any jurisdiction that has in effect an agreement with the US to facilitate the implementation of FATCA.

For these purposes a **"Non-IGA jurisdiction"** is one where there is no agreement in place with the US to facilitate the implementation of FATCA.

Non-Participating Foreign Financial Institution (NPFFI)

The term “Non-Participating Foreign Financial Institution” means a non-participating FFI, as that term is defined in relevant U.S. Treasury Regulations, but does not include a South African Financial Institution or other Partner Jurisdiction Financial Institution other than a Financial Institution identified as a Non-Participating Financial Institution pursuant to a determination by IRS or SARS that there is significant non-compliance with FATCA obligations.

US Territory

This term means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico or the US Virgin Islands.

Exempt Beneficial Owner

The term "Exempt Beneficial Owner" means:

- A South African Governmental Organisation;
- An International Organisation (examples of which include The International Monetary Fund, The World Bank, The International Bank for Reconstruction and Development and The European Community - for a full list please see the relevant guidance issued by SARS, or the IRS);
- A Central Bank; or
- A South African broad or narrow participation retirement fund falling within the denition of Exempt Beneficial Owner for the purposes of FATCA;or
- A pension fund of, or an investment entity wholly owned by organisations listed in criteria above.

Deemed Compliant Foreign Financial Institution

The term "Deemed Compliant Foreign Financial Institution" means:

- Those entities classified as such in Annex II of the intergovernmental agreement between the US and South Africa, which includes Non-Profit Organisations and Financial Institutions with a Local Client Base, or
- Entities which otherwise qualify as such under the FATCA Regulations.

Active Non-Financial Foreign Entity (Active NFFE)

An "Active NFFE" means any NFFE that meets any of the following criteria:

- Less than 50 percent of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- The stock of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
- The NFFE is organized in a U.S. Territory and all of the owners of the payee are bonafide residents of that U.S. Territory;
- The NFFE is a government (other than the U.S. government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a U.S. Territory, an international organization, a non-U.S. central bank of issue, or an Entity wholly owned by one or more of the foregoing;
- Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an NFFE shall not qualify for this status if the NFFE functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFFE;
- The NFFE was not a Financial Institution in the past ve years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- The NFFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution;
- The NFFE is an "excepted NFFE" as described in relevant U.S. Treasury Regulations
- The Entity is Non-Profit Organisation.

Passive Non-Financial Foreign Entity (PNFFE)

A Passive NFFE is any Non-Financial Foreign Entity that is not an Active NFFE.

2. OECD Common Reporting Standard (CRS)

CRS

OECD Common Reporting Standard for Automatic Exchange of Financial Account Information.

Financial Institution

The term “Financial Institution” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company. This also includes all Non Reporting Financial Institutions as defined below

The term "Non-Reporting Financial Institution" means any Financial Institution which is:

- A Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer;
- Any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described above, and is defined in domestic law as a Non-Reporting Financial Institution;
- Any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described above, and is included in the list of Non-Reporting Financial Institutions provided to the OECD by South Africa;
- An Exempt Collective Investment Vehicle; or
- A trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to the CRS with respect to all Reportable Accounts of the trust.

The term "Investment Entity" means any Entity which primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

- Trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interestrate and index instruments; transferable securities; or commodity futures trading;
- Individual and collective portfolio management; or
- Otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or
- The gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity.

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Related Entity

An Entity is a “Related Entity” of another Entity if:

- Either Entity controls the other Entity;
- The two Entities are under common control; or
- The two Entities are Investment Entities, are under common management, and such management ful ls the due diligence obligations of such Investment Entities. For this purpose control includes direct or indirect ownership of more than 50 % of the vote and value in an Entity.

Active NFE

The term **"Active NFE"** means any NFE that meets any of the following criteria:

- Less than 50 per cent of the NFE's gross income for the preceding Reporting Period is passive income and less than 50 per cent of the assets held by the NFE during the preceding Reporting Period or other appropriate reporting period are assets that produce or are held for the production of passive income;
- The stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
- The NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
- Substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an NFE does not qualify for this status if the NFE functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes.
- The NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFE;
- The NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- The NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution.
- The Entity is a Non-Profit Organisation.

Passive Non-Financial Entity (PNFE)

A Passive NFE is any Non-Financial Entity that is not an Active NFE, or an Investment Entity that is not a Participating Jurisdiction Financial Institution.

Non-Financial Entity (NFE)

The term "NFE" means any Entity that is not a Financial Institution

Participating Jurisdiction

The term "Participating Jurisdiction" means a jurisdiction which has an agreement in place to exchange information in accordance with the OECD Common Reporting Standard.

3. FATCA and CRS

Non-Profit Organisation

An entity that meets ALL of the following criteria:

- It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
- It is exempt from income tax in its country of residence;
- It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- The applicable laws of the entity's country of residence or the entity's formation documents do not permit any income or assets of the entity to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the entity's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the entity has purchased; and
- The applicable laws of the entity's country of residence or the entity's formation documents require that, upon the entity's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organisation, or escheat to the government of the entity's country of residence or any political subdivision thereof.

Controlling Persons

The term "Controlling Persons" means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Persons" must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

Control

"Control" over an Entity is generally exercised by the natural person(s) who ultimately has a controlling ownership interest in the Entity. A "control ownership interest" depends on the ownership structure of the legal person and is usually identified on the basis of a threshold applying a risk-based approach (e.g. any person(s) owning more than a certain percentage of the legal person, such as 25%). Where no natural person(s) exercises control through ownership interests, the Controlling Person(s) of the Entity will be the natural person(s) who exercises control of the Entity through other means. Where no natural person(s) is identified as exercising control of the Entity, the Controlling Person(s) of the Entity will be the natural person(s) who holds the position of senior managing official.

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