

**20 October 2017**

**Questions for Mr. Derek Cohen, trustee of the Nova Debenture Trust**

1. Do you agree with the definition of debentures in the trust deed as being exchangeable debentures to be issued by Nova to scheme shareholders, of R1 each, with each debenture holder receiving an EBTDA as specified in the relevant schedules, with debentures having the meaning as set out in the 1973 Companies Act?
2. Do you agree that under the 2008 Companies Act, debentures are specifically included in the definition of securities?
3. Is the Debenture Register currently up to date and available for inspection?
4. Are all mortgage bonds securing the debentures currently registered and in place and ranking ahead of Nova or its subsidiaries and third-party creditors of the Company?
5. In what sense does the proposed scheme of arrangement represent a compromise by the company with its creditors? What is compromised by the debenture holders?
6. Why do you consider the debenture holders to be creditors of the company, as that term is intended to be understood in Section 155 of the 2008 Companies Act, as opposed to the holders of securities, as that term is defined and as used in Section 114 of the 2008 Companies Act?
7. Section 114 of the 2008 Companies Act requires the Company to furnish an independent fair and reasonable report to debenture holders. Have you asked the Company to provide such a report, and if not, why not?
8. Do you as trustee, and in the exercise of your fiduciary duties to debenture holders, consider the proposed scheme of arrangement under Section 155 to be fair to debenture holders?
9. Have you asked the company to propose the scheme under section 114 of the 2008 Companies Act? What different result is achieved by proceeding under Section 155 rather than under Section 114. Have you taken professional advice in this regard and if so, what was that advice and from whom was it obtained?
10. Is the only reason why the company has proceeded under Section 155 of the 2008 Companies Act, not to avoid the onerous provisions of an independent fair and reasonable report?
11. Have you agreed with the company to recommend that debenture holders vote in favour of the scheme?

12. Ms Dominique Haese said in an interview with Business Day that if Nova was to be liquidated now (before the implementation of the scheme) debenture holders could expect 50c in the rand. If the Section 155 Scheme of Arrangement is implemented and the company goes into liquidation, debenture holders will receive 34% of what is left after all other creditors were paid. So, if the residue of the assets amounts to 50 cents in the rand, then the debenture holders get only 17.5 cent in the rand. On the above basis, they are exchanging security value of 32.5 cents in the rand for shares where there is no guarantee these shares will be listed. Is this a good deal for debenture holders and do you think it is likely the court will approve the scheme if these facts are brought to its attention?
13. How many debenture holders in number and value do you expect will attend the scheme meeting, or provide a proxy?
14. How many debenture holders need to vote for the scheme for it to be passed?
15. Is it not grossly negligent to allow the company to propose a scheme of arrangement under what is clearly the wrong section of the Companies Act, where you conveniently allow the secured debenture holders to be classified as ordinary creditors, as opposed to the holders of a class of securities in the Company?
16. Do you agree that the scheme is subject to the condition precedent, and it is the intention of the scheme, that the debenture holders will receive shares of a company that have been listed on the JSE? Do you have assurances that the JSE will agree to the listing? Have you seen the draft prospectus? What will happen if the JSE does not agree to the listing? What is your view of clause 5.3.17 that overrides the condition that requires the shares to be listed. Do you consider this to be a material risk to debenture holders?
17. Do you regard the shares being offered to the debenture holders as being an offer to the public of shares of Listco in an initial public offering? Are you aware that no person may offer shares in a company to members of the public without a prospectus? Do you believe Listco has complied with section 99(2) of the 2008 Companies Act?
18. The acquiring party in this scheme is a company owned by separate shareholders, distinct from the company. The directors of this company are different to the directors of Nova. Nova has assets greater than R80m and there will be a change of control of Nova. Have you ensured that the Competition Commission has been notified of the change of control and has approved this change of control, in terms of the merger control provisions of the Competition Act?
19. What fees have you been paid per year to act as the Debenture Trustee since 2012.
20. Are you aware of the provisions of Section 123 of the 1973 Companies Act that limits any indemnities given in terms of any debenture trust deed and

holds trustees to performing their duties in accordance with the degree of diligence and care required of you as a trustee?