

## **NEDBANK LIMITED**

Incorporated in the Republic of South Africa

(Registration number: 1951/000009/06)

JSE share code: NBKP

ISIN: ZAE000043667

JSE alpha code: BINBK

(“Nedbank” or “the Company”)

### **FIRM INTENTION ANNOUNCEMENT BY NEDBANK IN RESPECT OF AN OFFER TO NEDBANK PREFERENCE SHAREHOLDERS TO ACQUIRE ALL, OR ALTERNATIVELY A PORTION OF, THEIR PREFERENCE SHARES, TO BE IMPLEMENTED BY WAY OF A SCHEME OF ARRANGEMENT OR A STANDBY GENERAL OFFER, AND WITHDRAWAL OF THE CAUTIONARY ANNOUNCEMENT**

#### **1. INTRODUCTION**

- 1.1. Nedbank shareholders (“**Shareholders**”) are referred to the cautionary announcement published on the Stock Exchange News Service of JSE Limited (“**JSE**”) (“**SENS**”) on **Tuesday, 21 September 2021 (“Cautionary Announcement”)**.
- 1.2. The board of directors of Nedbank (“**Board**”) is pleased to announce that it has resolved to propose a repurchase of all, or alternatively a portion of, the non-redeemable, non-cumulative, non-participating, variable rate preference shares of Nedbank (“**Preference Shares**”) by way of two separate, but concurrent offers (“**Proposed Repurchase**”), comprising:
  - 1.2.1. an offer to all of the holders of Preference Shares (“**Preference Shareholders**”) to repurchase all their Preference Shares (“**Scheme Shares**”) for a cash consideration of ZAR9.79 per Scheme Share (“**Scheme Consideration**”), in accordance with the provisions of sections 114(1)(c) and 114(1)(e), read with section 115(2)(a), of the Companies Act of South Africa, 71 of 2008, as amended, (“**Companies Act**”), by way of a scheme of arrangement between Nedbank and the Preference Shareholders (“**Scheme**”), which, if successfully implemented will result in **all** Preference Shares being repurchased, cancelled and removed from the issued share capital of Nedbank and subsequently delisted from the Main Board of the JSE; and
  - 1.2.2. separate to the Scheme, but concurrently with it, and subject to the Scheme not becoming operative, a general offer (“**Standby Offer**”) by Nedbank, in terms of section 48(2)(a) read with sections 48(8)(a) and 48(8)(b) (read with the requirements of sections 114 and 115) of the Companies Act, to Preference Shareholders to repurchase all or, if only certain of the Preference Shareholders accept the Standby Offer, a portion of their Preference Shares (“**Standby Offer Shares**”) for a cash consideration of ZAR9.04 per Standby Offer Share (“**Standby Offer Consideration**”). The Standby Offer may be accepted or rejected by Preference Shareholders (in whole or in part) and, if successfully implemented,

will result in only those Preference Shares that have been voluntarily tendered being repurchased, cancelled and removed from the issued share capital of Nedbank, and the subsequent delisting of those Preference Shares that are repurchased and cancelled from the Main Board of the JSE. If there are any remaining Preference Shareholders after the implementation of the Standby Offer, then the Standby Offer will not result in a delisting as contemplated in section 1 of the Listings Requirements of the JSE (“**Listings Requirements**”).

- 1.3. The Scheme and the Standby Offer are proposed concurrently on the basis that the implementation of the Standby Offer will be conditional on, *inter alia*, the Scheme not becoming unconditional and operative. In this regard, if the Scheme becomes unconditional and operative, the Standby Offer will lapse. Alternatively, if the Scheme does not become unconditional and operative and the Standby Offer becomes wholly unconditional, the Standby Offer will become effective.
- 1.4. The Board further confirms that, as a bank, Nedbank is required to and has obtained the consent of the Prudential Authority of the South African Reserve Bank in terms of regulation 38(16)(a)(ii) of the regulations, 2012 as amended and substituted from time to time and promulgated under the Banks Act, 94 of 1990, to proceed with the Proposed Repurchase to be implemented, either in terms of the Scheme or the Standby Offer, as the case may be.
- 1.5. The contents of this announcement constitute a firm intention by Nedbank to make an offer to the Preference Shareholders as contemplated in Chapter 5 of the Companies Act and Chapter 5 of the Companies Regulations, 2011, promulgated under the Companies Act (which includes the “**Takeover Regulations**” issued pursuant to sections 120 and 223 of the Companies Act) (“**Companies Regulations**”) (“**Firm Intention Announcement**”).
- 1.6. Nedbank has appointed, in terms of the Takeover Regulations, an independent board of directors of the Company (“**Independent Board**”) for purposes of the Scheme and, although not a requirement of the Takeover Regulations, the Standby Offer, to advise Preference Shareholders on the terms and conditions of the Scheme and the Standby Offer. The Independent Board comprises Messrs. Hubert Brody, Stanley Subramoney and Brian Dames.
- 1.7. The purpose of this Firm Intention Announcement is to advise Shareholders of the Proposed Repurchase and specifically the terms and conditions of the Scheme and the Standby Offer.

## 2. **BACKGROUND TO THE PREFERENCE SHARES**

- 2.1. Nedbank has issued, and the Preference Shareholders have subscribed for, 358 277 491 Preference Shares with a nominal value of 0.1 cent each, which Preference Shares are currently listed on the Main Board of the JSE under the abbreviated name “Nedbank-P”.
- 2.2. The Preference Shares were issued in several tranches from 2002 to 2010 as part of regulatory capital under the then prevailing Basel II requirements, ranging from a minimum

issue price of ZAR9.90 per Preference Share on 9 September 2009 to ZAR10.68 per Preference Share on 30 November 2003. On the date preceding this Firm Intention Announcement, the Preference Shares have a blended average carrying value of ZAR9.94 per Preference Share. The quoted closing price of the Preference Shares on **Monday, 20 September 2021**, the day preceding the Cautionary Announcement, was ZAR7.66 per Preference Share.

- 2.3. The Preference Shares experience low trading volumes and low liquidity, which have contributed to the Preference Shares trading at a material discount to their issue prices and blended average carrying value.
- 2.4. The Preference Shares' contribution towards regulatory capital has been reducing over time as these instruments have been phased-out in terms of Basel III regulatory requirements, and accordingly, from 1 January 2022 Nedbank will not derive any regulatory capital benefit associated with the Preference Shares. Furthermore, in terms of the draft Financial Sector Laws Amendment Bill the Preference Shares are unlikely to qualify as 'First Loss After Capital' (FLAC) instruments. As a result, Nedbank has deemed it appropriate not to continue to have the Preference Shares in its issued share capital and the appropriate manner of achieving this is through the Proposed Repurchase of the Preference Shares as contemplated in this Firm Intention Announcement.

### **3. RATIONALE FOR THE PROPOSED REPURCHASE BY WAY OF THE SCHEME OR THE STANDBY OFFER**

The rationale for, and potential benefits of, the Proposed Repurchase, to be implemented through either the Scheme or the Standby Offer, are as follows:

- 3.1. the Preference Shares are perpetual and accordingly, other than through a sale of the Preference Shares by the Preference Shareholders, there is no other practical way for a Preference Shareholder to dispose of their Preference Shares;
- 3.2. provides the opportunity for a single liquidity event for all Preference Shareholders that would otherwise be difficult to achieve, due to the thin market for preference shares in general which results in low liquidity and trading volumes, and further, to provide the opportunity to Preference Shareholders to monetise their Preference Shares at a significant premium to the ruling Preference Share price prior to the Cautionary Announcement;
- 3.3. Preference Shareholders can potentially utilise the Scheme Consideration, or the Standby Offer Consideration as the case may be, to re-invest in alternative listed preference shares with a similar yield to that of the Preference Shares, prior to the Cautionary Announcement, thereby potentially increasing the Preference Shareholders' returns;
- 3.4. each of the Scheme Consideration and the Standby Offer Consideration represent a 32.8%

and 22.7% premium, respectively, to the 60-day volume weighted average price (“**VWAP**”) of the Preference Shares of ZAR7.37 per Preference Share on the day before the Cautionary Announcement (published on SENS on **Tuesday, 21 September 2021**);

- 3.5. each of the Scheme Consideration and the Standby Offer Consideration represent a 29.8% and 19.9% premium, respectively, to the 30-day VWAP of the Preference Shares of ZAR7.54 per Preference Share on the day before the Cautionary Announcement;
- 3.6. the Board has proposed that Nedbank uses funding resources accessed in the ordinary course of business to repurchase the Preference Shares, noting that the Preference Shares have effectively become funding instruments with no regulatory capital benefits as Basel III regulatory requirements have been phased-in. The Proposed Repurchase (which will cost Nedbank a maximum of ZAR3 507 536 637 to fund the Scheme Consideration, being the maximum consideration required to implement the Proposed Repurchase, whether the Proposed Repurchase is implemented by way of the Scheme or the Standby Offer) will provide Preference Shareholders with an opportunity to realise their investment in the Preference Shares through an exit/partial exit at a premium. The Takeover Regulation Panel established in terms of section 196 of the Companies Act (“**TRP**”) has permitted Nedbank to provide the irrevocable, unconditional cash confirmation in terms of Companies Regulations 111(4) and 111(5) which cash confirmation has been provided by Nedbank and accepted by the TRP; and
- 3.7. the Board has considered the Preference Shares’ reducing contribution to Nedbank’s regulatory capital and is of the view that the Proposed Repurchase, whether by way of the Scheme or the Standby Offer, would be value-accretive to Nedbank’s income statement and balance sheet.

#### **4. TERMS AND CONDITIONS OF THE SCHEME**

The Scheme constitutes an “affected transaction” as defined in section 117(1)(c)(iii) of the Companies Act and, as such, is regulated by the Companies Act and the Companies Regulations. The salient terms of and other information pertaining to the Scheme are set out below:

##### 4.1. Terms of the Scheme

- 4.1.1. The Scheme will be proposed by the Board between the Company and Preference Shareholders.
- 4.1.2. The Scheme will be subject to the fulfilment, or waiver (to the extent permissible) of the Scheme conditions precedent set out in paragraph 4.3 below.
- 4.1.3. If the Scheme becomes unconditional and operative, Preference Shareholders, excluding those Preference Shareholders who validly exercise their appraisal rights in accordance with section 164 of the Companies Act as a consequence of

the approval of the Scheme and whose rights have not been reinstated as envisaged in sections 164(9) and 164(10) of the Companies Act, or who have not been ordered by any South African court of competent jurisdiction (“**Court**”) to withdraw their demands in terms of section 164(15)(c)(v)(aa) of the Companies Act (“**Scheme Participants**”), will be deemed to have disposed of all of their Scheme Shares at the Scheme Consideration, such that Nedbank will repurchase all of the Scheme Shares previously held by the Scheme Participants, whereafter the listing of all the Scheme Shares on the JSE will be terminated.

#### 4.2. Scheme Consideration

The Scheme Participants will receive the Scheme Consideration, being an amount of ZAR9.79 per Scheme Share held by such Scheme Participant.

#### 4.3. Scheme Conditions

4.3.1. The operation of the Scheme is subject to the fulfilment, or waiver (to the extent permissible) of the following conditions precedent (“**Scheme Conditions**”) by no later than **17h00** on **28 February 2022** or such later time and date as Nedbank may in its sole discretion determine (and subject to approval from the TRP) (“**Scheme Conditions Fulfilment Date**”):

4.3.1.1. subject to paragraph 4.3.2, no written notice from any Preference Shareholder/s, entitled to dissent and holding in aggregate at least 2% (two percent) of the Preference Shares, is received by Nedbank in terms of section 164(3) of the Companies Act objecting to the resolution required to approve the Scheme (“**Scheme Resolution**”), before the Scheme Resolution is to be voted on at the meeting of Preference Shareholders to vote on the Scheme Resolution (“**Scheme Meeting**”);

4.3.1.2. all necessary Shareholder approvals and/or resolutions as may be necessary to give effect to the Scheme having been obtained, including but not limited to the Scheme having been approved by the requisite majority of the Preference Shareholders at the Scheme Meeting as contemplated in sections 114(1)(c) and 114(1)(e) and section 115(2)(a) of the Companies Act, and the resolutions required to be approved by Nedbank Group Limited, the ordinary shareholder of the Company (“**Ordinary Shareholder**”), (“**General Meeting Resolutions**”) having been approved by the Ordinary Shareholder at the meeting of Shareholders (“**General Meeting**”);

4.3.1.3. to the extent that the provisions of section 115(2)(c) read with section

115(3) of the Companies Act become applicable:

4.3.1.3.1. the Scheme being approved by the relevant Court unconditionally or, if subject to conditions, the person on whom such conditions are imposed approves such conditions and undertakes in writing to comply therewith; and

4.3.1.3.2. Nedbank not treating the aforesaid Scheme Resolution as a nullity in terms of section 115(5)(b) of the Companies Act; and

4.3.1.4. the issue by the TRP of a compliance certificate in relation to the Scheme as required by section 115(1)(b), read with section 119(4)(b) and section 121(b), of the Companies Act.

4.3.2. The Scheme Condition Precedent stipulated in paragraph 4.3.1.1 above may be waived (in whole or in part) at the sole and absolute discretion of Nedbank. The remaining Scheme Conditions stipulated above are not capable of waiver.

4.3.3. The Scheme Conditions Fulfilment Date may be extended by Nedbank, subject to any approval as may be required from the TRP. An announcement will be released on SENS and published in the South African press as soon as reasonably practicable after all the Scheme Conditions have been fulfilled or waived, if the Scheme Conditions are not fulfilled or waived timeously, or if the time and/or date for fulfilment or waiver of the Scheme Conditions is extended.

4.3.4. For the avoidance of doubt, if the Scheme Conditions are not fulfilled or waived (to the extent permissible) by the Scheme Conditions Fulfilment Date, then the Scheme shall not become unconditional and operative and, subject to the Standby Offer not becoming unconditional and/or being implemented, the Preference Shareholders will continue in their present position as preference shareholders in Nedbank.

#### 4.4. Termination of the Scheme

The Scheme shall terminate and cease with immediate effect if any of the Scheme Conditions have not been fulfilled or waived (to the extent permissible) on or by the Scheme Conditions Fulfilment Date.

## 5. TERMS AND CONDITIONS OF THE STANDBY OFFER

### 5.1. Terms of the Standby Offer

5.1.1. Simultaneously with the Scheme, Nedbank hereby makes a separate but concurrent offer, in terms of sections 48(2)(a) read with sections 48(8)(a) and 48(8)(b) (read with the requirements of sections 114 and 115) of the Companies Act, to Preference Shareholders, whereby each Preference Shareholder will be entitled to elect whether or not to dispose of all, or a portion of, their Standby Offer Shares to Nedbank for the Standby Offer Consideration.

5.1.2. Implementation of the Standby Offer will be conditional on, *inter alia*, the Scheme not becoming unconditional and operative. If the Scheme does become unconditional and operative, the Standby Offer will lapse and be of no force and effect. In addition to the Standby Offer being conditional on the Scheme not becoming unconditional and operative, the Standby Offer is also subject to the fulfilment or waiver (to the extent permissible), of the Standby Offer conditions precedent set out in paragraph 5.3 below.

5.1.3. If the Standby Offer becomes unconditional and operative, and is implemented, Nedbank will repurchase all the Standby Offer Shares tendered and previously held by those Preference Shareholders who have accepted the Standby Offer ("**Standby Offer Participants**").

## 5.2. Standby Offer Consideration

Standby Offer Participants will, if they accept the Standby Offer, receive the Standby Offer Consideration, being an amount of ZAR9.04 per Standby Offer Share held by such Standby Offer Participant.

## 5.3. Standby Offer Conditions

5.3.1. The implementation of the Standby Offer is subject to the fulfilment or waiver (to the extent permissible), of the following conditions precedent ("**Standby Offer Conditions**") by no later than **17h00** on **28 February 2022** or such later date as Nedbank may, in its sole discretion, determine ("**Standby Offer Conditions Fulfilment Date**"):

5.3.1.1. the Scheme does not become unconditional and operative (meaning that a Scheme Condition has not been fulfilled or waived by no later than **17h00** on the Standby Offer Conditions Fulfilment Date or such later time and date as Nedbank may in its sole discretion determine); and

5.3.1.2. the General Meeting Resolutions having been approved by the Ordinary Shareholder at the General Meeting.

- 5.3.2. The Standby Offer Conditions stipulated above are not capable of waiver.
- 5.3.3. The Standby Offer Conditions Fulfilment Date may be extended by Nedbank. An announcement will be released on SENS and published in the South African press as soon as reasonably practicable after all the Standby Offer Conditions have been fulfilled or waived, if the Standby Offer Conditions are not fulfilled or waived timeously, or if the time and/or date for fulfilment or waiver of the Standby Offer Conditions is extended.
- 5.3.4. If the Standby Offer Conditions are not fulfilled or waived (to the extent permissible) by the Standby Offer Conditions Fulfilment Date, then the Standby Offer will not become unconditional and be implemented and the Standby Offer Participants will continue in their present position as preference shareholders in Nedbank.

#### 5.4. Termination of the Standby Offer

The Standby Offer shall terminate and cease with immediate effect if the Scheme is implemented or if any of the Standby Offer Conditions have not been fulfilled or waived (to the extent permissible) on or by the Standby Offer Conditions Fulfilment Date.

## 6. IRREVOCABLE UNDERTAKINGS

- 6.1. Nedbank has obtained approval from the TRP to approach some of the Preference Shareholders to provide irrevocable undertakings to:
  - 6.1.1. vote their relevant number of Preference Shares, which are either held as principal or on behalf of clients, in favour of the resolutions to be proposed at the Scheme Meeting in respect of which they are entitled to vote (including the Scheme Resolution) or such additional number of Preference Shares as they may hold at the time of the Scheme Meeting (together, the “**Relevant Shares**”); and/or
  - 6.1.2. irrevocably accept the Standby Offer in respect of all (or some of) the Relevant Shares.
- 6.2. At the date of this Firm Intention Announcement, Nedbank has received irrevocable undertakings and/or letters of support from the following Preference Shareholders who collectively hold 24.13% Preference Shares to vote the following number of Preference Shares, which are either held by them as principal or on behalf of clients, that they may hold at the time of the Scheme Meeting in favour of all the resolutions required to implement the Scheme, including the Scheme Resolution.



<b>Preference Shareholder</b>	<b>Number of Preference Shares</b>	<b>Percentage of Preference Shares*</b>
Prescient Investment Management (SA)	44 271 399	13.93%
Sanlam Investment Management	12 020 145	3.78%
Hollard Insurance (ZA)	7 649 253	2.41%
OUTsurance Insurance Company Limited (SA)	7 586 720	2.39%
STANLIB Asset Management (SA)	5 132 014	1.62%

\*Based on 317 741 402 Preference Shares, which is 358 277 491 Preference Shares in issue less 40 536 089 Preference Shares held in aggregate by Nedbank Group Limited, Nedgroup Insurance Company Limited and Nedgroup Life Assurance Company Limited and which entities have agreed not to vote at the Scheme Meeting.

## **7. SOLVENCY AND LIQUIDITY**

7.1. It is recorded, in respect of the Proposed Repurchase of the Preference Shares, that:

7.1.1. in terms of section 46(1)(a)(ii) of the Companies Act, the Board has, by way of resolution, authorised the Proposed Repurchase of the Preference Shares in terms of either the Scheme or the Standby Offer;

7.1.2. in terms of section 46(1)(b) of the Companies Act, the Board is satisfied that it reasonably appears that Nedbank will satisfy the solvency and liquidity test as set out in section 4 of the Companies Act, immediately after having completed the Proposed Repurchase of the Preference Shares (whether by way of the Scheme or the Standby Offer) and, in this regard, the different considerations offered under each of the Scheme and the Standby Offer have been taken into account;

7.1.3. in terms of section 46(1)(c) of the Companies Act, the Board has, by resolution, acknowledged that it has applied the solvency and liquidity test, as set out in section 4 of the Companies Act, and reasonably concluded that Nedbank will satisfy the solvency and liquidity test immediately after having completed the Proposed Repurchase of the Preference Shares (whether implemented in terms of the Scheme or the Standby Offer); and

7.1.4. since the solvency and liquidity test was performed, there have been no material changes to the financial position of Nedbank.

7.2. The financial effect of the Proposed Repurchase on Nedbank is a maximum cash outflow of approximately ZAR3 507 536 637 and a debit against Preference Share capital and share premium.

## **8. INDEPENDENT EXPERT AND FAIR AND REASONABLE OPINION**

8.1. In accordance with section 114(2) of the Companies Act, the Independent Board has

appointed Questco Corporate Advisory Proprietary Limited as the independent expert in terms of section 114(2) of the Companies Act and regulation 90 of the Companies Regulations (“**Independent Expert**”) to provide the Independent Board with external advice in relation to the Scheme and, although not a requirement of the Takeover Regulations, the Standby Offer, in the form of a fair and reasonable opinion as required by and in compliance with the Takeover Regulations (“**Independent Expert Report**”).

8.2. The Independent Expert Report will be attached to the Circular to be distributed to Shareholders as referred to in paragraph 12 below.

## **9. VIEWS OF THE INDEPENDENT BOARD**

The views of the Independent Board, taking into account the Independent Expert’s Report, will be more fully set out in the Circular to be distributed to Shareholders as referred to in paragraph 12 below.

## **10. RESPONSIBILITY STATEMENTS**

The Independent Board and the Board, individually and collectively, accept full responsibility for the accuracy of the information contained in this Firm Intention Announcement which relates to Nedbank, the Scheme and the Standby Offer, and certify that, to the best of their knowledge and belief, such information is true, and that this Firm Intention Announcement does not omit any facts that would make any of the information false or misleading or would be likely to affect the importance of any information contained in this Firm Intention Announcement. The Independent Board and the Board have made all reasonable enquiries to ascertain that no facts have been omitted and that this Firm Intention Announcement contains all information required by law.

## **11. CONFIRMATION OF CASH SET ASIDE**

Nedbank will use available resources within Nedbank to fund the Scheme Consideration or the Standby Offer Consideration, as applicable. The funds to settle the Scheme Consideration or the Standby Offer Consideration are available and are currently held in an account with Nedbank. In accordance with regulation 111(4) and 111(5) of the Takeover Regulations, Nedbank has delivered to the TRP a written confirmation of cash set aside in respect of the total Scheme Consideration, being the maximum possible consideration in respect of the Proposed Repurchase in terms of the Scheme.

## **12. POSTING OF THE CIRCULAR AND NOTICES OF THE SCHEME MEETING AND THE GENERAL MEETING**

12.1. A circular providing full details of the Scheme and the Standby Offer, and containing notices of the Scheme Meeting and the General Meeting, the Independent Expert’s Report, the recommendations of the Independent Board, the salient dates and times relating to the Scheme and the Standby Offer and the necessary forms in order to effect the Scheme and the Standby Offer, is expected to be distributed to Shareholders on or about **Tuesday, 19 October 2021** (“**Circular**”).

- 12.2. In light of the restrictions on public gatherings pursuant to the regulations issued in terms of section 27(2) of the Disaster Management Act 57 of 2002, arising from the Covid-19 pandemic, the Scheme Meeting and the General Meeting will be conducted entirely by electronic communication. Nedbank is permitted in terms of the Companies Act to hold a Shareholders' meeting entirely by electronic communication and the memorandum of incorporation does not prohibit Nedbank from holding its Shareholders' meeting by electronic communication. The Board has decided that it is appropriate to hold the Scheme Meeting and the General Meeting entirely by electronic communication in accordance with section 63(2) of the Companies Act.
- 12.3. Accordingly, the Scheme Meeting and the General Meeting will be conducted entirely through electronic communication. The electronic meeting facilities will permit all Shareholders to be able to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meetings. Voting via the electronic facility will be the only method available to Shareholders to vote their shares at these meetings. The Scheme Meeting and the General Meeting are expected to be held on or about **Friday, 19 November 2021**.
- 12.4. A further announcement setting out details of the salient dates and times will be published on SENS in due course.

### **13. WITHDRAWAL OF THE CAUTIONARY ANNOUNCEMENT**

The Cautionary Announcement is hereby withdrawn and, accordingly, Preference Shareholders do not need to exercise caution in dealing in their Preference Shares.

Johannesburg

8 October 2021

#### **INVESTMENT BANK, CORPORATE ADVISOR AND SPONSOR**

Nedbank Corporate and Investment Banking, a division of Nedbank Limited

#### **INDEPENDENT TRANSACTION SPONSOR**

Investec Bank Limited

#### **LEGAL ADVISOR**

Edward Nathan Sonnenbergs Incorporated

#### **INDEPENDENT EXPERT**

Questco Corporate Advisory Proprietary Limited

#### **TRANSFER SECRETARY**

JSE Investor Services Proprietary Limited