

THIS DOCUMENT (“SUPPLEMENTAL PROSPECTUS”) CONTAINS IMPORTANT INFORMATION ABOUT NEWGOLD AND THE GOLD BULLION DEBENTURES AND SHOULD BE READ CAREFULLY (TOGETHER WITH THE PROSPECTUS DATED 27 OCTOBER 2004, AS AMENDED (THE “2004 PROSPECTUS”)) BEFORE INVESTING. IF YOU HAVE ANY QUESTIONS ABOUT THE CONTENTS OF THIS SUPPLEMENTAL PROSPECTUS YOU SHOULD CONSULT YOUR PROFESSIONAL ADVISOR.

The directors of NewGold Issuer Limited, whose names are set out on pages 15 and 17 of this Supplemental Prospectus, collectively and individually, accept full responsibility for the accuracy of the information contained in this Supplemental Prospectus and certify that, to the best of their knowledge and belief, no facts have been omitted, the omission of which would make any statement in this Supplemental Prospectus false or misleading and that they have made all reasonable enquiries to ascertain such facts and that this Supplemental Prospectus contains all information required by law and the BSE Listings Requirements.







NEWGOLD ISSUER LIMITED
(Incorporated in the Republic of South Africa)
(Registration number 2004/014119/06)
(“NewGold”)
Abbreviated name: “NewGold”
JSE Symbol: “GLD”
ISIN Code: ZAE000060067
BSE Symbol: “NewGold”

SUPPLEMENTAL PROSPECTUS

relating to the proposed Secondary Listing of NewGold (which is already listed on the JSE) on the Botswana Stock Exchange (“BSE”) with effect from commencement of trading on 13 July 2010

At the Last Practicable Date, NewGold had issued and listed on the JSE 163,636,300 Gold Bullion Debentures referencing a total of 1,599,429.248 fine troy ounces of Gold Bullion.

Originator	Corporate and Legal Advisors and JSE Transactional Sponsor
	
Botswana Attorneys	Botswana Sponsoring Broker
	

Date of issue of Supplemental Prospectus: 13 July 2010

Prospective investors in the Gold Bullion Debentures, as with any other Exchange Traded Fund, should ensure that they fully understand the nature of the Gold Bullion Debentures and the extent of their exposure to risks, and that they consider the suitability of the Gold Bullion Debentures as an investment in light of their own circumstances and financial position. The BSE’s approval of the listing of the Gold Bullion Debentures should not be taken in any way as an indication of the merits of NewGold or of the Gold Bullion Debentures. The BSE has not verified the accuracy and truth of the contents of the documentation submitted to it and, the BSE will not be liable for any claim of whatever kind.

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1. CORPORATE DETAILS

Company

NewGold Issuer Limited
 Registration number: 2004/014119/06
 3rd Floor
 Absa Towers East
 170 Main Street
 Johannesburg
 2001
 (PO Box 5438, Johannesburg, 2000)
 Telephone No: (27)(11) 350-3132/5391
 Contact person: Freda Moloji

Manager

NewGold Managers (Proprietary) Limited
 Registration number: 2004/007543/07
 15 Alice Lane
 Sandton
 2196
 (Private Bag X10056, Sandton, 2146)
 Telephone No: (27)(11) 895-6985/5517
 Contact person: Busi Mtimkulu

Botswana Attorneys

Collins Newman & Co
 Plot 4863
 Dinatla Court
 PO Box 882
 Gaborone
 Botswana
 Telephone No: (267) 395-2702
 Contact person: Rizwan Desai

Transfer Secretaries (South Africa and Botswana)

Computershare Investor Services (Proprietary) Limited
 Registration number 2004/003647/07
 70 Marshall Street
 Johannesburg,
 2001
 (PO Box 61051, Marshalltown, 2107)
 Telephone No: (27)(11) 370 7843
 Contact person: Charles Lourens

Auditor

KPMG Inc
 Registration number: 1999/021543/21
 85 Empire Road
 Parktown
 2193
 (Private Bag X9, Parkview, 2112)
 Telephone number: (27) (11) 647-7111
 Contact person: Christine Bronkhorst/Pierre Fourie (Jnr)

Corporate and Legal Advisors and JSE Transactional Sponsor

Java Capital (Proprietary) Limited
 Registration number: 2002/031862/07
 2 Arnold Road
 Rosebank
 Johannesburg
 Telephone No.: (27) (11) 283-0144
 Contact person: Marian Gaylard

BSE Sponsoring Broker

Motswedi Securities (Proprietary) Limited
 Unit 30, Kgale 4 Mews
 Plot 113
 Kgale Hill
 Private Bag 00223
 Gaborone
 Botswana
 Telephone No: (267) 3188 627
 Contact person: Martin M. Makgatthe

NewGold Owner Trust

The NewGold Issuer Trust
 Master's reference number: IT8350/04
 1st Floor
 32 Fricker Road
 Illovo Boulevard
 Johannesburg
 2196

Secretary

Absa Secretarial Services (Proprietary) Limited
 Registration number: 1973/014516/07
 3rd Floor
 Absa Towers East
 170 Main Street
 Johannesburg
 2001
 (PO Box 5438, Johannesburg, 2000)
 Telephone No: (27)(11) 350-3132/5391
 Contact person: Freda Moloji

Information Agent

Automated Outsourcing Services (Proprietary) Limited
 Registration number: 1997/013802/06)
 272 Pretoria Avenue
 Ferndale, Randburg
 2194
 (PO Box 4769, Randburg ,2125)
 Telephone number:(27) (11) 259-0111
 Call Centre number: 0861 889383

2. OVERVIEW

Words used in this section shall have the same meaning as defined on pages 5 to 12 of this Prospectus, unless they are defined in this section or the use thereof is clearly inappropriate from the context.

NewGold is a special purpose company that was established in South Africa on 27 May 2004 under the name Lexpub 39 Investments Limited and listed on the JSE with effect from 4 November 2004. NewGold is an Exchange Traded Fund which enables investors to invest in a debt instrument, the value of which tracks the price of a commodity. The NewGold Exchange Traded Fund currently tracks the price of Gold Bullion. It does so by:

- issuing Gold Bullion Debentures on the terms and subject to the conditions more fully described in this Supplemental Prospectus, as read with the 2004 Prospectus, each of which references and is linked to a specified quantity of Gold Bullion (the “**Reference Quantity**”) and the value of which (both upon first issue and subsequent redemption) is equal to the value of the Reference Quantity of Gold Bullion at the applicable time;
- using the proceeds of the issue of each Gold Bullion Debenture to acquire the Reference Quantity of Gold Bullion. The Gold Bullion so acquired is in the form of London Good Delivery Bars, which Gold Bullion is retained in safe custody with the Custodian pursuant to the Custody Agreement; and
- allowing the holders of Gold Bullion Debentures to either trade same in the Exchange Traded Funds sector of the JSE or, following the proposed Secondary Listing, on the BSE.

In order to meet the requirements of the regulatory environment in which NewGold operates, the debt instruments issued by NewGold have been structured such that they do not give a Debenture Holder any ownership or title to any Gold Bullion held by NewGold. Further, so as to comply with the regulatory framework in which it will operate, NewGold has:

- obtained the approval of the Exchange Control Department of the South African Reserve Bank to buy, borrow, lend and sell Gold Bullion as contemplated in Exchange Control Regulation 2 and has been exempted from Exchange Control Regulation 5 and the prohibitions contained in the South African Precious Metals Act;
- obtained the approval of the JSE for the primary listing of the Gold Bullion Debentures on the JSE and issued the 2004 Prospectus in connection therewith; and
- obtained the approval of the JSE and BSE for the Secondary Listing of the Gold Bullion Debentures on the BSE.

In order to fund the costs of maintaining the corporate status of NewGold and to meet the liabilities of NewGold in respect of management, marketing and custodial fees (as described in this Supplemental Prospectus) NewGold, at fixed monthly intervals, sells a fixed, prescribed quantity of Gold Bullion in order to meet the Monthly Gold Sales Charge. The quantity of Gold Bullion sold effectively reduces the Reference Quantity of Gold Bullion in accordance with the formula set out on page 10.

NewGold, being a special purpose company, has no employees and the management of NewGold is outsourced to the Manager which is another special purpose company, NewGold Managers (Proprietary) Limited.

Investing in the Gold Bullion Debentures involves risks. See the section entitled “*Risk Factors*” beginning on page 30 of this Supplemental Prospectus for a description for some of the risks inherent therein.

The Gold Bullion Debentures issued pursuant to the Secondary Listing will rank *pari passu* with (i) each other and (ii) all other Gold Bullion Debentures already in issue prior to the Secondary Listing.

3. INTERPRETATION

In this Supplemental Prospectus, unless the context clearly indicates a contrary intention, the following expressions have the following meanings:

“ 2004 Prospectus ”	the Prospectus issued on 27 October 2004 in respect of the initial offer and listing on the JSE of Gold Bullion Debentures (as amended and supplemented from time to time), copies of which may be obtained from the offices of the BSE Sponsoring Broker;
“ Absa ”	Absa Bank Limited (registration number 1986/004794/06), a public company duly incorporated in accordance with the laws of South Africa and registered as a bank in terms of the Banks Act, 94 of 1990;
“ Absa Capital ”	the Absa Capital division of Absa;
“ Accounting Records ”	the books of account and accounting systems of NewGold;
“ Allocated Bullion Account ”	an allocated bullion account held with the Custodian to which the Gold Bullion acquired by NewGold is credited;
“ Applicable Laws ”	in relation to any entity, all and any: <ul style="list-style-type: none"> • statutes and sub-ordinate legislation; • regulations, ordinance and directions; • by-laws; • codes of practice, circulars, guidance notices, judgements and decisions of any competent authority; and • other similar provisions, in force from time to time, compliance with which is mandatory for that entity;
“ Applicable Procedures ”	the rules and operating procedures for the time being of the JSE, Strate and/or the Strate settlement agents, as the case may be;
“ Auditors ”	the statutory auditors of NewGold for the time being, being KPMG Inc. as at the date of the Prospectus, or such other internationally recognised auditing firm appointed by NewGold from time to time;
“ Block ”	400 000 Gold Bullion Debentures;
“ Botswana ”	the Republic of Botswana;
“ Botswana Companies Act ”	the Botswana Companies Act 2003 (Act No. 32 of 2004);
“ Botswana Business Day ”	a day (other than a Saturday, Sunday or official public holiday) in Botswana on which the BSE is open for business ;
“ BSE ”	the Botswana Stock Exchange as established by the Botswana Stock Exchange Act [CAP 56:08];
“ BSE Listings Requirements ”	the listings requirements of the BSE from time to time and for the time being, as published by the BSE;
“ BSE Sponsoring Broker ”	Motswedi Securities (Proprietary) Limited, Unit 30, Kgale 4 Mews Plot 113, Kgale Hill, Private Bag 00223, Gaborone Botswana

“Certificated Debenture”	a Gold Bullion Debenture that has not been Dematerialised, title to which is represented by a physical document of title;
“Computershare Agreement”	The written agreement between NewGold, Computershare and Computershare Investor Services (Pty) Limited dated 17 June 2010
“Computershare”	Computershare Limited, a company incorporated in RSA, whose registered office is 70 Marshall street, Johannesburg, 2001
“Conditions to Issue”	the conditions which must be fulfilled prior to the issue of any Gold Bullion Debentures, being the Conditions to Issue as set out in the 2004 Prospectus;
“Conditions to Redemption”	the conditions which must be fulfilled prior to a Debenture Holder being entitled to redeem a Gold Bullion Debenture in accordance with the provisions of condition 6 of the Debenture Conditions;
“CSDB”	Central Securities Depository Company of Botswana Limited, a wholly-owned subsidiary of the BSE;
“CSD Rules”	the rules from time to time of the CSD in respect of the trading of Dematerialised securities;
“CSDP”	a BSE participant duly accepted by the BSE and the CSD for purposes of the CSD Rules;
“Custodian”	Brink’s Limited (company number 959654), incorporated under the laws of England and Wales, or such other custodian as may be appointed by NewGold from time to time;
“Custody Agreement”	the written custody agreement (as amended, novated and/or replaced from time to time) concluded between NewGold and the Custodian dated 9 January 2009, in terms of which, <i>inter alia</i> , the Custodian is appointed as custodian of the Gold Bullion of NewGold from time to time;
“Debenture Conditions”	the terms and conditions of the Gold Bullion Debentures (as amended from time to time) attached as Annexure D , subject to and in accordance with which the Gold Bullion Debentures are issued;
“Debenture Holder”	in relation to any Gold Bullion Debenture, the person or entity whose name is entered in the Register as the holder of such Gold Bullion Debenture;
“Dematerialised”	the process whereby physical debenture certificates and other documents of title are replaced with electronic records evidencing ownership of Gold Bullion Debentures for the purposes of the CSD Rules;
“Dematerialised Debenture”	a Gold Bullion Debenture that has been Dematerialised;
“ETF”	the exchange traded fund established by the Transaction Documents and to be operated by NewGold, as described in this Supplemental Prospectus;
“Event of Default”	the occurrence of any of the following events: (a) NewGold being wound up, liquidated and/or placed under judicial management (in any case whether provisional or final), provided that an offer of compromise in terms of section 311 of the South African Companies Act on terms and conditions approved by the Debenture Holders by an Extraordinary

	Resolution to that effect and in circumstances where NewGold is solvent shall not constitute a winding-up of NewGold for purposes of this (a); or
	(b) NewGold having any application or other proceedings brought against it, in terms of which NewGold is sought to be wound up or placed in liquidation or under judicial management (whether provisional or final); or
	(c) subject to the proviso in (a) which shall apply <i>mutatis mutandis</i> , NewGold committing any act which is or would, if NewGold were a natural person, be an act of insolvency as defined in the South African Insolvency Act, 24 of 1936; or
	(d) subject to the proviso in (a) which shall apply <i>mutatis mutandis</i> , NewGold compromising or attempting to compromise with or attempting to defer payment of debt owing by it to its creditors generally; or
	(e) subject to the proviso in (a) which shall apply <i>mutatis mutandis</i> , any procedural steps being taken by NewGold with a view to effecting a compromise or arrangement with its creditors generally; or
	(f) NewGold ceasing to carry on NewGold's Business in a normal and regular manner;
“Exchange Control Regulations”	the Exchange Control Regulations, promulgated in terms of section 9 of the South African Currency and Exchanges Act, 9 of 1933;
“Extraordinary Resolution”	a resolution passed at a properly constituted meeting of Debenture Holders by a majority consisting of not less than three-quarters of the number of Gold Bullion Debentures represented at the meeting (present in person or by Proxy and voting whether on a show of hands or on a poll);
“Form of Proxy”	an instrument in writing signed by a Debenture Holder holding a Certificated Debenture or, in the case of a Debenture Holder holding a Certificated Debenture which is a company or other juristic person, signed on its behalf by a Representative of the company or juristic person appointing a Proxy;
“GAAP”	South African Statements of Generally Accepted Accounting Practice consistently applied in the RSA from time to time, as amended or restated from time to time;
“Good Delivery Standard”	the refining standard and weights set by the LBMA for gold bars as set out in “The Good Delivery Rules for Gold and Silver Bars” published by the LBMA from time to time;
“Gold Bullion”	physical unwrought gold in the form of London Good Delivery Bars;
“Gold Bullion Debenture”	a gold bullion debenture issued by NewGold in accordance with the Debenture Conditions;
“Gold Bullion Sale Agreement”	the sale agreement deemed to have been concluded between NewGold and a Qualifying Debenture Holder pursuant to the exercise by such Qualifying Debenture Holder of a Gold Option, as set out in condition 7 of the Debenture Conditions;
“Initial Beneficiary”	the initial capital and income beneficiary of the NewGold Owner Trust, namely Absa;
“Initial Quantity”	one-hundredth of one fine troy ounce of Gold Bullion (being the quantity of Gold Bullion to which the first Gold Bullion Debentures issued by

NewGold were referenced and linked as at 4 November 2004;

“Issue Date”	in relation to a Gold Bullion Debenture, the date of actual issue thereof;
“Issue Price”	in relation to each Gold Bullion Debenture, the price (expressed in Rand) at which such Gold Bullion Debenture is issued on the Issue Date thereof, being an amount calculated with reference to the value of the Reference Quantity of Gold Bullion linked to that Gold Bullion Debenture as at the Issue Date thereof and published on SENS and on the Botswana news service;
“JSE”	JSE Limited (Registration number 2005/0229394/06), a public limited liability company incorporated in accordance with the company laws of South Africa and licensed as an exchange under the Security Services Act;
“JSE Listings Requirements”	the listings requirements of the JSE from time to time and for the time being, as published by the JSE;
“Last Practicable Date”	the last practicable date prior to finalisation of this Supplemental Prospectus, being 12 July 2010;
“LBMA”	the London Bullion Market Association;
“London Good Delivery Bar”	<p>the requirements with which a gold bar should conform according to the Good Delivery Standard of the LBMA, being the following:</p> <ul style="list-style-type: none"> • in respect of weight: <ul style="list-style-type: none"> ○ the minimum gold content should be 350 fine troy ounces (approximately 10,9kg); ○ the maximum gold content should be 430 fine troy ounces (approximately 13,4kg); and ○ the gross weight of a bar should be expressed in fine troy ounces, in multiples of 0,025, rounded down to the nearest 0,025 of a troy ounce; • in respect of dimension: <ul style="list-style-type: none"> ○ length (Top): 250 mm +/- 40 mm Undercut *: 7% to 15% ○ width (Top): 70 mm +/- 15 mm Undercut *: 15% to 30% ○ height: 35 mm +/- 10 mm; <p>The undercut refers to the degree of slope on the side and ends of the bar and is calculated by deducting the dimension of the bottom edge of the bar from the dimension of the top edge and dividing the result by the top edge dimension multiplied by one hundred to obtain the percentage undercut.</p> • in respect of fineness, the minimum acceptable fineness is 995.0 parts per thousand fine gold and • lastly in respect of marks, it should contain: <ul style="list-style-type: none"> ○ the serial number; ○ the assay stamp of the refiner; ○ the fineness (to four significant figures); and ○ the year of manufacture (expressed in four digits);
“London PM Fix”	the afternoon session of the twice daily fix of the price of an ounce of gold which starts at 15:00 (London time) and is performed in London by the five members of the London gold fix;
“Management Agreement”	the written management agreement (as amended, novated and/or replaced from time to time) concluded between NewGold and the Manager dated 15 October 2004, in terms of which, <i>inter alia</i> , the Manager is appointed by NewGold to manage and administer the affairs of NewGold and NewGold’s Business and to advise NewGold in relation

to the conduct of NewGold's Business;

“Manager”	NewGold Managers (Proprietary) Limited (registration number 2004/007543/07), a private company duly incorporated in accordance with the laws of the RSA, or such other manager of NewGold as may be appointed by NewGold in terms of the Management Agreement;
“Monthly Gold Sales Charge”	an amount sufficient <i>inter alia</i> , to meet the monthly fees and expenses of NewGold and to declare and pay dividends to NewGold's shareholders from time to time, which are funded through the sale of Gold Bullion. The amount currently thought to be sufficient to meet such fees and expenses and to declare and pay dividends to the NewGold shareholders is 0,40% per annum of the Gold Bullion held by NewGold from time to time in excess of 430 fine troy ounces. The Monthly Gold Sales Charge may be increased at any time, provided the requisite notice period referred to on page 20 of this Supplemental Prospectus is given;
“NewGold”	NewGold Issuer Limited (formerly Lexpub 39 Investments Limited) (registration number 2004/014119/06), a public company duly incorporated in accordance with the laws of the RSA;
“NewGold's Board”	the board of directors of NewGold from time to time;
“NewGold's Business”	the business conducted by NewGold from time to time, being the issue of Gold Bullion Debentures, the acquisition and holding of Gold Bullion, the sale of Gold Bullion and such other business as described or envisaged in this Supplemental Prospectus and the Transaction Documents;
“NewGold Owner Trust”	The NewGold Owner Trust, a trust inter vivos duly established in terms of the NewGold Owner Trust Deed and registered with the Master of the High Court of South Africa (Transvaal Provincial Division) under reference number IT8350/04, which NewGold Owner Trust has been established with the sole purpose of beneficially holding all of the shares in the issued share capital of NewGold;
“NewGold Owner Trust Deed”	the written trust deed (as amended, novated and/or replaced from time to time) concluded by Absa (in its capacity as donor) and Maitland Trust Limited (in its capacity as trustee) on 7 September 2004, in terms of which the NewGold Owner Trust is established;
“Nominated Bullion Account”	the relevant Allocated Bullion Account or Unallocated Bullion Account of a Qualifying Debenture Holder into which the Sale Bullion to be delivered to such Qualifying Debenture Holder pursuant to the exercise of a Gold Option shall be credited;
“Originator”	Absa Capital;
“Priority of Payments”	the priority in which creditors of NewGold are to be repaid, as set out in condition 8 of the Debenture Conditions;
“Proxy”	a person duly appointed under a Form of Proxy to act for and on behalf of a Debenture Holder holding a Certified Debenture in connection with any meeting or proposed meeting of Debenture Holders;
“Pula” or “P”	the legal currency of Botswana;
“Rand” or “ZAR”	the legal currency of the RSA;
“Redemption Date”	in relation to a Gold Bullion Debenture, the date on which such Gold

Bullion Debenture is actually redeemed in accordance with the Debenture Conditions;

“Redemption Fee” the fee payable by a Debenture Holder on the redemption of a Gold Bullion Debenture held by it, being an amount equivalent to 0,15% of the Redemption Value (excluding VAT payable thereon, if any) of such Gold Bullion Debenture;

“Redemption Value” in relation to a Gold Bullion Debenture and as at the Redemption Date thereof, an amount equal to the Sale Proceeds realised or that would have been realised by NewGold pursuant to a sale by NewGold of the Reference Quantity of Gold Bullion to which such Gold Bullion Debenture is linked;

“Reference Quantity” in relation to a Gold Bullion Debenture, the specific quantity of Gold Bullion to which that Gold Bullion Debenture is referenced and linked as at any given point in time, being a quantity calculated in accordance with the following formula:

$$RQ = \frac{IQ}{\left(1 + \frac{R}{365}\right)^D}$$

where:

RQ = the Reference Quantity to be determined, expressed in fine troy ounces;

IQ = the Initial Quantity;

D = the number of days between 4 November 2004 (being the Issue Date of the first Gold Bullion Debenture to have been issued) and the Redemption Date of the Gold Bullion Debenture in respect of which the Reference Quantity is to be determined; and

$$R = \left(\left(\frac{1}{1 - L} \right)^{1/365} - 1 \right) \times 365$$

where for purposes of determining **R**:

L = the Monthly Gold Sales Charge, which Monthly Gold Sales Charge accrues daily and will be deducted monthly in arrears;

“Register” the register of Gold Bullion Debentures, which register shall, in the case of JSE listed Dematerialised Debentures, be kept by Strate and in the case of BSE listed debentures, be kept by Central Securities Depository Company of Botswana Limited (CSDB) and, in the case of Certificated Debentures, be kept by the Transfer Secretaries;

“Representative” a person authorised by a resolution of a corporate Debenture Holder’s directors or other governing body to act as its representative in connection with any meeting or proposed meeting of Debenture Holders;

“Residual Beneficiary” the residual beneficiary of the NewGold Owner Trust, namely The Nelson Mandela Children’s Fund (Non-Profit Organisation, registration number 004-638);

“Sale Proceeds” the proceeds realised by NewGold from the sale of Gold Bullion in the spot market in the London PM Fix on redemption of all or any of the Gold Bullion Debentures issued by it, less the costs of arranging and

	completing such sale, storage costs, insurance costs and all applicable Taxation payable in connection with such sale;
“Secondary Listing”	the secondary listing of NewGold on the BSE with effect from commencement of trade on 13 July 2010;
“Securities Services Act”	the Securities Services Act 36 of 2004;
“SENS”	the Securities Exchange News Service, an office of the JSE;
“Settlement Agent”	a CSDP approved in terms of the Applicable Procedures to perform electronic net settlements of both funds and scrip on behalf of market participants in South Africa;
“South Africa” or “RSA”	the Republic of South Africa;
“South African Business Day”	a day (other than a Saturday, Sunday or official public holiday within the meaning of the South African Public Holidays Act, 36 of 1994) on which commercial banks are generally open to settle payments in Rand in Johannesburg;
“South African Precious Metals Act”	the Precious Metals Act No. 37 of 2005;
“Supplemental Prospectus”	this supplemental prospectus which supplements the 2004 Prospectus, together with the annexures attached hereto;
“Taxation”	all taxes, duties, assessments, levies and/or governmental charges (including any penalty in respect thereof and interest thereon) payable to any governmental authority or any political sub-division thereof or any authority or agency therein or thereof having the power to tax, including income tax, VAT and regional services levies;
“Thebe”	the legal currency of Botswana, representing one-hundredth of a Pula;
“Trading Day”	for purposes of redemption of Gold Bullion Debentures: <ul style="list-style-type: none"> • listed on the JSE, a day on which trading takes place on the JSE; and • listed on the BSE, a day on which trading takes place on the JSE and the BSE;
“Transfer Form”	the written form for transfer of any Gold Bullion Debenture evidenced by a certificate in a form approved by the Transfer Secretaries and signed by the transferor and the transferee;
“Transaction Documents”	collectively: <ul style="list-style-type: none"> • the Debenture Conditions; • the Management Agreement; • the Custody Agreement; • the NewGold Owner Trust Deed; • the memorandum and articles of association of NewGold; and • the 2004 Prospectus, • the Computershare Agreement all as amended, novated and/or replaced from time to time;
“Transfer Secretaries”	in respect of JSE and BSE listed Gold Bullion Debentures, Computershare , Investor Services (Proprietary) Limited in its capacity as such, whose address is at 70 Marshall Street, Johannesburg, 2001 (PO Box 61051, Marshalltown, 2107)

“Trustee”	the trustee for the time being of the NewGold Owner Trust, currently Maitland Trust Limited;
“United States Dollars”	the legal currency of the United States of America;
“VAT”	value-added tax levied in terms of the South African Value-Added Tax Act 89 of 1991;
“World Gold Council”	a Swiss based not-for-profit organisation formed and funded by the world’s leading gold mining companies with the aim of stimulating and maximising the demand for and holding of gold by consumers.

All references in this Supplemental Prospectus to any Act, regulation, or other statutory provision shall be a reference to such Act, regulation or other statutory provision as amended and/or re-promulgated from time to time and for the time being.

All expressions in this Supplemental Prospectus which denote the singular shall include the plural, any gender shall include the other genders, and a natural person shall include artificial or juristic persons and *vice versa*.

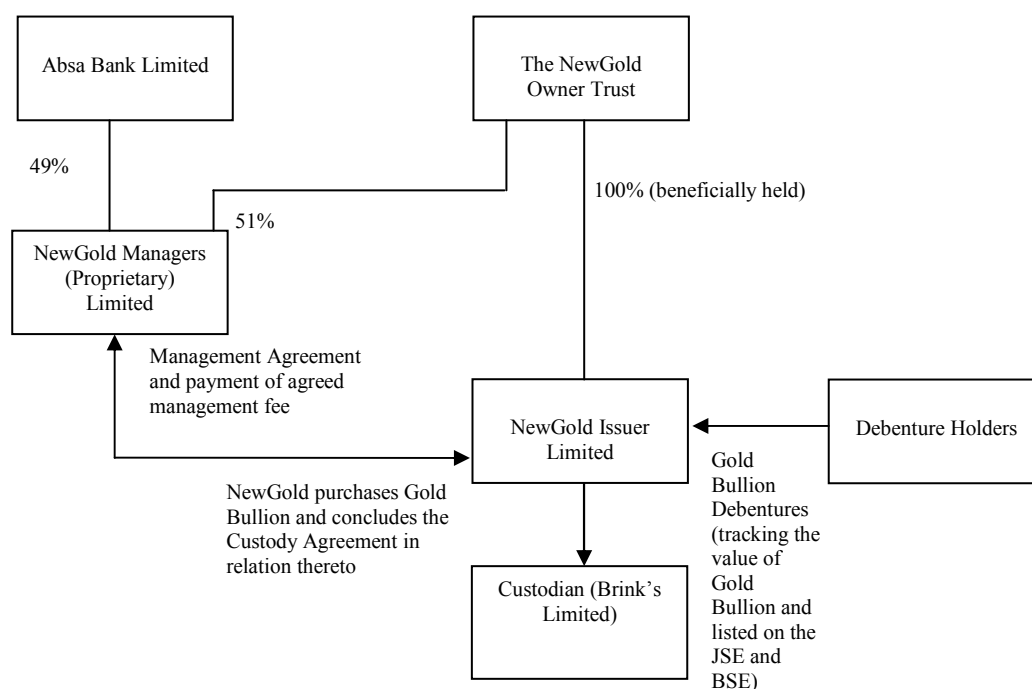
4. DESCRIPTION OF STRUCTURE AND GOLD BULLION DEBENTURES

Words used in this section shall have the same meaning as defined on pages 5 to 12 of this Supplemental Prospectus, unless they are defined in this section or the use thereof is clearly inappropriate from the context.

The following description of structure and of the Gold Bullion Debentures consists of a summary of the ETF and of the Debenture Conditions. As such, it does not purport to be complete. Accordingly, this summary is qualified in its entirety by reference to the Transaction Documents (which are available for inspection at the places and during the times described in this Supplemental Prospectus) and the Debenture Conditions.

1. Introduction and Schematic Diagram

- 1.1. NewGold uses the proceeds of the issue of Gold Bullion Debentures to acquire Gold Bullion. The Gold Bullion acquired and held by NewGold is held in safe custody by the Custodian for, on behalf and in the name of NewGold in terms of the Custody Agreement. NewGold funds and defrays its fees and expenses and pays dividends to its shareholder, The NewGold Owner Trust, by selling Gold Bullion at monthly intervals, thereby reducing the Reference Quantity of Gold Bullion to which each Gold Bullion Debenture is linked by a *pro rata* portion of the Monthly Gold Sales Charge.
- 1.2. NewGold, being a special purpose company, does not have any employees. Accordingly, in terms of the Management Agreement, the Manager manages and administers the business and affairs of NewGold and advises NewGold in relation to the conduct of NewGold's Business.
- 1.3. The diagram below describes, in schematic form, the various entities and relationships referred to above.



2. NewGold Owner Trust

- 2.1. NewGold is a subsidiary of the NewGold Owner Trust. The NewGold Owner Trust is an independent trust which was specifically established in the RSA on 10 September 2004 in terms of the NewGold Owner Trust Deed with the sole purpose of beneficially holding the entire issued share capital of NewGold. The NewGold Owner Trust is the registered and beneficial owner of 94 ordinary par value shares of ZAR1 each in the issued share capital of NewGold (constituting 94% of the issued shares in NewGold) and is the beneficial (but not registered) owner of the remaining 6 ordinary par value shares of ZAR1 each in the issued share capital of NewGold (such balance constituting the remaining 6% of the issued shares in NewGold). The NewGold Owner Trust is registered with the Master of the South Gauteng High Court under reference number IT8350/04. The principal place of business of the NewGold Owner Trust is at 1st Floor, 32 Fricker Road, Illovo Boulervard, Johannesburg, 2196. The trustee of the NewGold Owner Trust is currently Maitland Trust Limited.
- 2.2. The Initial Beneficiary is a discretionary capital and income beneficiary. The Trustee is under no obligation to make any award to the Initial Beneficiary but shall consider (without being under any obligation to do so), making awards to the Initial Beneficiary on the last South African Business Day of each calendar quarter.
- 2.3. The person appointed as the Trustee may be disqualified from acting as such in certain circumstances including if the Initial Beneficiary in its discretion, so determines.
- 2.4. Upon the winding-up of the NewGold Owner Trust after all of the liabilities of the NewGold Owner Trust have been discharged, the Residual Beneficiary shall be entitled to the remainder of the assets of the NewGold Owner Trust.

3. NewGold

- 3.1. NewGold is a special purpose, public company having a share capital, which was incorporated in the RSA in terms of the South African Companies Act on 27 May 2004 for the specific purpose of conducting the ETF. NewGold is ring-fenced and “insolvency remote” in that the memorandum and articles of association of NewGold limit NewGold’s legal capacity to conduct any business or incur any liability other than that permitted in terms of the Transaction Documents, without the prior consent of the Debenture Holders by an Extraordinary Resolution to that effect.
- 3.2. NewGold has an authorised share capital of 1 000 ordinary par value shares of ZAR1 each, of which 100 ordinary par value shares of ZAR1 each have been issued. As set out above, all of these issued shares are beneficially owned by the NewGold Owner Trust, although 6 of such issued shares are held by nominees. Each such nominee has executed a declaration of trust acknowledging that he holds such share on behalf of and for the benefit of the NewGold Owner Trust, that he will not be entitled to deal or otherwise transact with such share without the prior written consent of the NewGold Owner Trust and that any benefit which he may receive as a result of a being a shareholder of NewGold will be passed on to the NewGold Owner Trust.
- 3.3. In terms of the Transaction Documents, NewGold is entitled to issue Gold Bullion Debentures at any time provided that the Conditions of Issue have been fulfilled.
- 3.4. In terms of the memorandum and articles of association of NewGold, NewGold’s Board must at all times comprise at least four directors. Three of these directors are appointed (and from time to time replaced) by the NewGold Owner Trust. All directors appointed by the NewGold Owner Trust must be independent of the Originator of the ETF, Absa Capital. The fourth director of NewGold is appointed (and from time to time replaced) by Absa Capital. The directors are appointed in terms of the provisions of the memorandum and articles of association of NewGold. In addition, the memorandum and articles of association of NewGold require that each and every resolution passed by NewGold’s Board must be passed with the approval of two independent directors and that no meeting of NewGold’s Board will be quorate unless the two independent directors are present. The memorandum and articles of association of NewGold

further provide that neither a director nor an alternate director shall be obliged to hold qualifying shares in NewGold. The directors are not paid any remuneration by NewGold for their services as such but are paid a fee by the Manager.

3.5. The full names, ages, addresses and occupations of the directors of NewGold are set out below:

3.5.1. Edward Montagu Southey (Chairman)

- 3.5.1.1. age: 68;
- 3.5.1.2. nationality: South Africa;
- 3.5.1.3. qualifications: BA LLB;
- 3.5.1.4. business address: 10 Fricker Road, Illovo Boulevard, Johannesburg, 2196;
- 3.5.1.5. occupation and experience: Practising Attorney, notary and conveyancer and director of various companies;
- 3.5.1.6. directorships/partnerships in the five years preceding the date of this Supplemental Prospectus: Accelerator Fund 1 (Proprietary) Limited, Accelerator Fund 1 Security SPV (Proprietary) Limited, Accelerator Fund 2 (Proprietary) Limited, Accelerator Fund 3 (Proprietary) Limited (Main Street 606), Accelerator Fund 3 Security SPV (Proprietary) Limited, Aegis Nominees (Proprietary) Limited, Assore Limited, Altrax Investments No. 2, Attorneys Insurance Indemnity Fund, Blue Granite Investments No. 1 (Proprietary) Limited, Blue Granite Investments No. 2 (Proprietary) Limited, Blue Granite Investments No. 3 (Proprietary) Limited, Blue Granite Investments No. 4 (Proprietary) Limited, Blue Granite Investments No. 5 (Proprietary) Limited, Blue Granite No. 1 Security SPV (Proprietary) Limited, Blue Granite No. 2 Security SPV (Proprietary) Limited, Blue Granite No. 3 Security SPV (Proprietary) Limited, Blue Granite No. 4 Security SPV (Proprietary) Limited, Blue Granite No. 5 Security SPV (Proprietary) Limited, Collateralised Auto Receivables Securitisation 1 Guarantor (Proprietary) Limited, CI Debtors Finance (Proprietary) Limited, DHB Investments (Proprietary) Limited, Eagle Newco Number One (Proprietary) Limited, Eagle Security Co Number One (Proprietary) Limited, Epoch Investment Holdings Limited, Epoch Two Investment Holdings Limited, Fintech Receivables 1 (Proprietary) Limited, Fintech Lease Rentals (Proprietary) Limited, Homeplan Financial Solutions (Proprietary) Limited, Ian McLaren Family Holdings (Proprietary) Limited, Lexshell 596 Investments (Proprietary) Limited, Main Street 65 (Proprietary) Limited, Main Street 220 (Proprietary) Limited, Main Street 367 (Proprietary) Limited, Maitland Executors Limited, Maitland Trust Limited, Maitland Trust (Cape) (Proprietary) Limited, Maitland Trust (KZN) (Proprietary) Limited, Mondi SSC (SA) (Proprietary) Limited, NBC Future Guard Security SPV (Proprietary) Limited, Newgold Issuer Limited, Newgold Managers (Proprietary) Limited, Nqaba Finance 1 (Proprietary) Limited, Sanlam Home Loans 101 Security SPV (Proprietary) Limited, Sanlam Home Loans 102 (Proprietary) Limited, Sanlam Home Loans 102 Security SPV (Proprietary) Limited, Sanlam Home Loans 103 (Proprietary) Limited, Sanlam Home Loans 103 Security SPV (Proprietary)

Limited, Sanlam Personal Loans 102 (Proprietary) Limited, Sanlam Personal Loans 102 Security SPV (Proprietary) Limited, Schindler Lifts SA (Proprietary) Limited, Security SPV 1 (Proprietary) Limited Security SPV 2 (Proprietary) Limited, Security SPV 4 (Proprietary) Limited, South African Securitisation Programme (Proprietary) Limited, Tarl Investment Holdings Limited, The Oppenheimer Trust (Proprietary) Limited, Theseus Trustees (South Africa) (Proprietary) Limited, Trackhedge (Proprietary) Limited, Usat Nominees (Proprietary) Limited, Usat Trust Limited, Trackhedge Managers (Pty) Ltd ; Vukile Investment Property Securitisation (Pty) Limited; Partner: Webber Wentzel Attorneys.

3.5.2. **Edwin Marcus Letty**

- 3.5.2.1. age: 68;
- 3.5.2.2. nationality: South African;
- 3.5.2.3. qualifications: Admitted Attorney, Notary and Conveyancer;
- 3.5.2.4. business address: 32 Fricker Road, Illovo Boulevard, Johannesburg, 2196;
- 3.5.2.5. occupation and experience: Attorney, notary and conveyancer, CEO and director of various companies;
- 3.5.2.6. directorships/partnerships in the five years preceding the date of this Supplemental Prospectus: Accelerator Fund 1 (Proprietary) Limited, Accelerator Fund 2 (Proprietary) Limited, Accelerator Fund 3 (Proprietary) Limited, Aegis Nominees (Proprietary) Limited, Ash Brook Investments 124 (Proprietary) Limited, Blue Granite Investments No. 1 (Proprietary) Limited, Blue Granite Investments No. 3 (Proprietary) Limited, Blue Granite Investments No. 4 (Proprietary) Limited, Blue Granite Investments No. 5 (Proprietary) Limited, Blue Granite Investments No. 5 Security SPV (Proprietary) Limited, Brandmark (Proprietary) Limited, CI Debtors Finance (Proprietary) Limited, Collateralised Auto Receivables Securitisation 1 Guarantor, Columbia Falls Properties 118 (Proprietary) Limited, Currency Indexed ZAR Investments Limited, Eagle Newco Number One, Eagle Securityco Number One, Evening Shade Properties (Proprietary) Limited, Fedtrust, Fedprop, Fedbond Nominees, Fedbond Participation Mortgage Bond Managers, Green House Security SPV Series 1 (Proprietary) Limited, La Maison Vinasse, La Vinasse Vineyards, Lexshell 596 Investments (Proprietary) Limited, Mainbranch Investments 40 (Proprietary) Limited, Main Street 367 (Proprietary) Limited, Newgold Issuers (Proprietary) Limited, Newgold Managers (Proprietary) Limited, Newshelf 839 Limited, Plexus Properties (Proprietary) Limited, Relief Trust Services, Sanlam Home Loans 1001 Security SPV (Proprietary) Limited, Sanlam Home Loans 102 Security SPV (Proprietary) Limited, Security SPV 1 (Proprietary) Limited, Security SPV 2 (Proprietary) Limited, Security SPV 3 (Proprietary) Limited, Security SPV 4 (Proprietary) Limited, Tiddlers (Proprietary) Limited, Trackhedge Managers (Proprietary) Limited, Trackhedge (Proprietary) Limited; Vukile Investment Property Securitisation (Pty) Limited; Tutuni Investments no 38.

3.5.3. Timothy John Fearnhead

- 3.5.3.1 age: 61;
- 3.5.3.2 nationality: South African;
- 3.5.3.3 qualifications: CA(SA); Diploma in Adv. Banking
- 3.5.3.4 business address: 13 Argyle Avenue, Craighall;
- 3.5.3.5 occupation and experience: Independent Consultant – Financial Training
- 3.5.3.6 directorships/partnerships in the five years preceding the date of this Supplemental Prospectus: The South African Bank of Athens Limited, Alexander Forbes Preference Share Investments Limited, Finrech Receivables 2 (Pty) Limited, Onthecards Investments II (Pty) Ltd, Hentiq 3287 (Pty) Limited, Commissioner Street No 1 (Pty) Ltd, Bleau Enterprises (Pty) Limited, Campaign Investments (Pty) Ltd.

3.5.4. Albert Krieg

- 3.5.4.1. age: 34;
- 3.5.4.2. nationality: South African;
- 3.5.4.3. qualifications: CA(SA);
- 3.5.4.4. business address: 15 Alice Lane, Sandton, 2196;
- 3.5.4.5. occupation and experience: Chartered accountant;
- 3.5.4.6. directorships/partnerships in the five years preceding the date of this Supplemental Prospectus: NewGold Issuer Limited, NewGold Managers (Proprietary) Limited, Trackhedge (Proprietary) Limited, Trackhedge Managers (Proprietary) Limited; West Rand Wendy Homes.

3.6. None of these directors of NewGold has been appointed for any specific term of office and they will not retire by rotation. Each of these directors of NewGold will accordingly hold office until he resigns, is replaced by the person that appointed him or otherwise becomes ineligible to be a director of a company. None of the directors of NewGold will, in his capacity as such, be remunerated by NewGold.

3.7. None of the directors of NewGold has been involved in or has been subject to any:

- 3.7.1. bankruptcies, insolvencies or individual voluntary compromise arrangements;
- 3.7.2. receiverships, compulsory liquidations, creditors' voluntary liquidations, administrations, company voluntary arrangements, or any compromise or arrangement with creditors generally or any class of creditors of any company where the director is or was a director with an executive function at the time of or within twelve months preceding such events;
- 3.7.3. compulsory liquidations, administrations, or partnership voluntary arrangements of any partnerships where the director was a partner at the time of or within twelve months preceding such events;

- 3.7.4. receiverships or any asset/s of such person or of a partnership of which the individual is or was a partner at the time of or within the twelve months preceding such event;
 - 3.7.5. public criticism by statutory or regulatory authorities or disqualified by a court from acting as a director or in the management or conduct of the affairs of any company; or
 - 3.7.6. offence involving dishonesty.
- 3.8. NewGold has no employees (and is not in terms of its memorandum and articles of association permitted to have any employees) and, accordingly, in order to ensure the efficient running and management of NewGold's Business, NewGold concluded the Management Agreement.

4. Gold Bullion Debentures

- 4.1. The Gold Bullion Debentures are issued by NewGold in the form of debentures as contemplated in the South African Companies Act . The Gold Bullion Debentures constitute senior, unsecured obligations of NewGold and are issued in denominations linked to the value of the Reference Quantity in accordance with the Debenture Conditions..
- 4.2. The creation and redemption feature of the Gold Bullion Debentures enables new Gold Bullion Debentures to be created and for existing Gold Bullion Debentures listed on the JSE to be redeemed subject to compliance with the Conditions to Redemption.
- 4.3. A Gold Bullion Debenture may only be issued if the Conditions to Issue have been fulfilled.
- 4.4. The Gold Bullion Debentures do not bear interest and rank *pari passu* amongst each other. A Gold Bullion Debenture only evidences the financial indebtedness of NewGold to the relevant Debenture Holder (the amount of which is dependant on the value at any point in time of the Reference Quantity of Gold Bullion to which such Gold Bullion Debenture is linked) and does not grant or constitute any ownership, right or beneficial or other interest in or to any Gold Bullion. A Debenture Holder, accordingly, does not have or acquire any ownership, right or beneficial or other interest in or to any Gold Bullion held by NewGold from time to time.
- 4.5. The Gold Bullion Debentures are listed in the "Exchange Traded Funds" sector of the JSE list (as a primary listing) under the abbreviated name "NewGold", symbol "GLD" and ISIN Code ZAE000060067. The Gold Bullion Debentures are issued in Dematerialised form and all trades and transactions are made through the Strate System in accordance with the Applicable Procedures.
- 4.6. The BSE has granted a Secondary Listing for the Gold Bullion Debentures in the "ETF" sector of the Main Board of the BSE under the abbreviated name "NewGold", symbol "NewGold" and ISIN Code ZAE000060067. Almost all the Gold Bullion Debentures will be issued in Dematerialised form.
- 4.7. Further Gold Bullion Debentures may obtain a secondary listing on other exchanges, as determined by the Directors.
- 4.8. NewGold is entitled to require the redemption of the Gold Bullion Debentures if any of the Transaction Documents become illegal or unenforceable and such illegality or unenforceability cannot be remedied through reasonable measures, or if, as a result of any change to or amendment of the application or interpretation of any existing or future law, NewGold is required to make any withholdings or any deduction from payments to be made under the Gold Bullion Debentures and such requirement cannot be avoided through reasonable measures available to NewGold. In either such eventuality, NewGold is required to give the Debenture Holders not less than thirty days' and not more than ninety days' notice of such redemption. NewGold is also entitled to redeem Gold Bullion Debentures held by a specific Debenture

Holder in the event that NewGold is reasonably of the view that the investment by such Debenture Holder in the Gold Bullion Debentures may result in NewGold falling foul of the provisions of the Financial Intelligence Centre Act, 38 of 2001, or any other Applicable Law.

- 4.9. In the event of redemption, the Gold Bullion Debentures will be redeemed at their Redemption Value as at the Redemption Date thereof in accordance with the Priority of Payments. The Redemption Value is calculated having regard to the Sale Proceeds realised through the sale of the Reference Quantity of Gold Bullion in the London PM Fix on the relevant Redemption Date thereof. Any premium or discount to the price in the London PM Fix obtained or incurred by NewGold will be passed on to the relevant Debenture Holder. This Reference Quantity will be less than the Initial Quantity as it will take into account the Monthly Gold Sales Charge. NewGold sells Gold Bullion at the end of each month in an amount equal to the Monthly Gold Sales Charge and uses the proceeds of such sale to pay its fees and expenses and to declare and pay dividends to its shareholders. No dividends are paid to holders of Gold Bullion Debentures. The Monthly Gold Sales Charge accrues daily on all Gold Bullion held by NewGold from time to time in excess of 430 fine troy ounces, is deducted monthly in arrears and is currently set at 0,40% per annum (including VAT). The Monthly Gold Sales Charge will be used to pay, *inter alia*, fees to the Custodian and the Manager and to pay dividends to the NewGold shareholders, which dividends will be equal to the remainder of the Monthly Gold Sales Charge after all fees and expenses (as described in paragraph 10 hereof) have been deducted.
- 4.10. Accordingly, the Reference Quantity reduces each day as the Monthly Gold Sales Charge accrues.
- 4.11. Both the Monthly Gold Sales Charge and the Reference Quantity of each Gold Bullion Debenture as the end of each month will be published and released by NewGold on NewGold's website.
- 4.12. Should the fees and expenses of NewGold be higher than anticipated, the Monthly Gold Sales Charge may be varied by NewGold at any time on ninety days' prior notice through SENS and with simultaneous notifications to the BSE, provided that should NewGold be or become obliged to pay any amount in respect of Taxation on short notice, only thirty days' prior written notice of the variation of the Monthly Gold Sales Charge shall be required.
- 4.13. Subject to what is set out above, all amounts payable by NewGold in respect of the Gold Bullion Debentures listed on the BSE will be paid by NewGold in Pula in cash in accordance with the Priority of Payments. All such payments in respect of the Gold Bullion Debentures will further be made without withholding or deduction for or on account of any present or future Taxation, unless such withholding or deduction is required by Applicable Law. If so required, NewGold will make such payments after such withholding or deduction has been made (where applicable) and NewGold will not be obliged to make any additional payments to Debenture Holder in respect of such withholding or deduction.

5. Creation and Redemption Fees

- 5.1. NewGold does not charge Creation Fees or Redemption Fees to investors who buy and sell the Gold Bullion Debentures on the secondary market, including the JSE and BSE. Such fees are only payable on the creation and redemption of Gold Bullion Debentures. Given that the creation and redemption of Gold Bullion Debentures are only available in respect of Gold Bullion Debentures listed on the JSE (subject to the Conditions to Issue or the Conditions to Redemption, as the case may be) and Debenture Holders holding their Gold Bullion debentures on the BSE will only be able to trade on the secondary market, these fees will in normal circumstances not apply to BSE investors.
- 5.2. If NewGold exercises its rights to require the redemption of some or all of the Gold Bullion Debentures in accordance with the Debenture Conditions, it will charge each Debenture Holder a Redemption Fee equal to 0,15% of the Redemption Value (excluding VAT).

- 5.3. NewGold may vary the Redemption Fees payable at any time by giving one month's prior notice through SENS and with simultaneous notification to the BSE.

6. Manager

- 6.1. The Manager is a special purpose private company having a share capital, which was incorporated in the RSA in terms of the South African Companies Act on 18 March 2004 for the specific purpose of acting as manager of NewGold in terms of the ETF.

- 6.2. The Manager has an authorised share capital of 1 000 ordinary par value shares of ZAR1 each, of which 100 ordinary par value shares of ZAR1 each have been issued. These issued shares are held as to 49 thereof (constituting 49% of the issued shares of the Manager) by Absa and as to 51 thereof (constituting 51% of the issued shares of the Manager) by the NewGold Owner Trust. The Manager's main business is the provision of asset management and administration services to NewGold. The full names, ages, addresses and occupations of the directors of the Manager are set out below:

6.3.

6.3.1. **Edward Montagu Southey**

- 6.3.1.1. age: 68;
- 6.3.1.2. nationality: South African;
- 6.3.1.3. qualifications: BA LLB; Notary and Conveyancer;
- 6.3.1.4. business address: 10 Fricker Road, Illovo Boulevard, Johannesburg, 2196;
- 6.3.1.5. occupation and experience: Practising attorney, Notary and Conveyancer and director of various companies.

Edwin Marcus Letty

- 6.3.1.6. age: 68;
- 6.3.1.7. nationality: South Africa;
- 6.3.1.8. qualifications: Admitted Attorney, Notary and Conveyancer;
- 6.3.1.9. business address: 32 Fricker Road, Illovo Boulevard, Johannesburg, 2196;
- 6.3.1.10. occupation and experience: Attorney, Notary and Conveyancer, CEO and Director of various companies.

6.3.2. **Albert Krieg**

- 6.3.2.1. age: 34;
- 6.3.2.2. nationality: South African;
- 6.3.2.3. qualifications: CA(SA);
- 6.3.2.4. business address: 15 Alice Lane, Sandton, 2196;
- 6.3.2.5. occupation and experience: Chartered Accountant.

7. Management Agreement

- 7.1. In terms of the Management Agreement, NewGold appointed the Manager as the agent of NewGold to act as its manager, *inter alia*:
- 7.1.1. to oversee the issuing of Gold Bullion Debentures from time to time;
 - 7.1.2. to utilise the proceeds derived from the issue of Gold Bullion Debentures to acquire Gold Bullion on behalf of and in the name of NewGold so as to ensure that NewGold's liabilities under the Gold Bullion Debentures are at all times fully hedged;
 - 7.1.3. to monitor the performance of the Custodian in terms of the Custody Agreement;
 - 7.1.4. to dispose of Gold Bullion at monthly intervals so as to meet the obligations of NewGold in respect of fees and expenses payable from time to time;
 - 7.1.5. to monitor the fees and expenses payable by NewGold from time to time and, where applicable, to publish through SENS/BSE news services any alterations necessary to the Monthly Gold Sales Charge, the Creation Fee and/or the Redemption Fee;
 - 7.1.6. to manage the redemption of the JSE listed Gold Bullion Debentures including;
 - 7.1.7. to act as calculation agent under the Gold Bullion Debentures in relation to, *inter alia*, the Issue Price, the Creation Fee, the Redemption Value and the Redemption Fee in respect of the Gold Bullion Debentures;
 - 7.1.8. to render administrative, bookkeeping and clerical advice and services to NewGold, including:
 - 7.1.9. the maintenance of all Accounting Records;
 - 7.1.10. the preparation of all Taxation returns and the submission thereof to the relevant authorities;
 - 7.1.11. the operation and opening of all bank accounts on behalf of and in the name of NewGold;
 - 7.1.12. the appointment and dismissal of professional and other advisers, including brokers, auditors and attorneys, after consultation with NewGold; and
 - 7.1.13. liaising with the JSE and other exchanges on which the Gold Bullion Debentures may from time to time be listed, with Strate and all regulatory bodies having jurisdiction over NewGold and/or the Gold Bullion Debentures; and
 - 7.1.14. to ensure compliance by NewGold with all Applicable Laws.
- 7.2. The Manager has been appointed as the exclusive agent and manager of NewGold and is not entitled to act as manager to any other person or entity. In rendering its services to NewGold in terms of the Management Agreement, the Manager has to comply with the instructions given to it by NewGold's Board and is obliged to report to NewGold's Board in relation to the activities of the Manager and the performance by it of its duties under the Management Agreement.
- 7.3. The Manager is, in terms of the Management Agreement, entitled to sub-contract certain or all of its obligations under the Management Agreement with the prior written consent of NewGold's Board. However, notwithstanding the entering into of such subcontracts, the Manager will remain liable to NewGold for the performance of each sub-contractor.

- 7.4. In consideration for the services rendered by the Manager to NewGold in terms of the Management Agreement, the Manager is entitled to a management fee and to be reimbursed for all costs incurred by it in relation to the services performed by it in terms of the Management Agreement. The management fee shall never exceed an amount equivalent to the Monthly Gold Sales Charge, after deduction of the additional fees and expenses of NewGold further detailed in the table in paragraph 10.2 hereof. NewGold will meet its obligations in respect of payment of the aforementioned management fee by disposing of Gold Bullion monthly and reducing the Reference Quantity of Gold Bullion in the Monthly Gold Sales Charge.
- 7.5. The appointment of the Manager in terms of the Management Agreement will terminate upon the liquidation or dissolution of NewGold. In addition, the Management Agreement may be terminated by either the Manager or NewGold on not less than thirty Trading Days' prior written notice to the other of them to such effect. The Management Agreement may also be terminated by NewGold at any time in the event that the Manager is wound-up (whether provisionally or finally) or placed under judicial management or otherwise breaches its obligations under the Management Agreement.
- 7.6. The Manager is not liable for any loss suffered by NewGold in connection with the performance of the Manager's duties under the Management Agreement, except where such loss results from fraud, wilful default or gross negligence on the part of the Manager or in connection with the performance or non-performance of, or the reckless disregard by the Manager of its obligations and duties under the Management Agreement. NewGold has further indemnified the Manager against all liabilities, damages, costs, claims and expenses incurred by it in the performance or non-performance of its obligations and duties under the Management Agreement, save for instances where such loss arises from the fraud, wilful default or gross negligence by the Manager in the performance or non-performance of its obligations and duties or, from the reckless disregard by the Manager of its obligations and duties under the Management Agreement.

8. Custody Agreement

- 8.1. In terms of the Custody Agreement, NewGold has appointed Brink's Limited as its custodian of Gold Bullion. Further, in terms of the Custody Agreement, NewGold has opened an Allocated Bullion Account with the Custodian to which all Gold Bullion held by NewGold from time to time will be credited.
- 8.2. In terms of the Custody Agreement, in order to mitigate a co-mingling risk, all Gold Bullion held in the Allocated Bullion Account of NewGold is physically segregated from and separately identified from all other bullion and other assets of the Custodian (and its other clients). This Gold Bullion will remain the property of NewGold.
- 8.3. In terms of the Custody Agreement, the Custodian is responsible for the secure safe holding of the Gold Bullion belonging to NewGold. NewGold is, however, entitled to inspect the security arrangements at any time to ensure that it conforms with the standards required by its insurers. The Custodian is obliged to arrange appropriate insurance cover and to assume the liability for loss, damage or destruction of the Gold Bullion stored in each of their facilities up to a maximum of 750 million United States Dollars at each facility on any one day.
- 8.4. In consideration for the services rendered by the Custodian to NewGold in terms of the Custody Agreement, NewGold will pay to the Custodian a fee calculated on the daily price of Gold Bullion based on the London PM Fix plus all applicable taxes that the Custodian is required to collect in connection with the services.

9. Material Contracts

Save for the Transaction Documents and the Bridging Loan Agreement, no material contracts have been entered into by NewGold, either verbally or in writing. The Marketing Agreement and the Bridging Loan Agreement as referred to and defined in the 2004 Prospectus are no longer applicable and are to be disregarded for purposes of this Supplemental Prospectus.

10. Fees and Expenses

10.1. The fees and expenses which NewGold may incur in conducting the ETF may include:

- 10.1.1. management fees payable by NewGold to the Manager in terms of the Management Agreement;
- 10.1.2. fees payable to the Custodian in terms of the Custody Agreement;
- 10.1.3. costs of NewGold in publishing information and/or giving notice to the Debenture Holders;
- 10.1.4. all financial reporting and compliance costs of NewGold; and
- 10.1.5. all fees payable to the JSE, BSE and other regulatory bodies.

10.2. The following table sets out the anticipated fees and other amounts payable by NewGold on an annual basis. The figures in this table has been provided for illustration purposes only and may be subject to change:

FEE AND/OR EXPENSE	AMOUNT
Management Fees	In terms of the Management Agreement, NewGold is obliged to pay the Manager a fee equal to 0,01% of all expenses (including the compensation of all the Manager's employees, consultants and sub-contractors associated with discharging the Manager's obligations under the Management Agreement) incurred by the Manager in discharging his obligations under the Management Agreement, subject to a maximum fee in an amount equivalent to the Monthly Gold Sales Charge, after deduction of the fees and expenses set out below. In addition NewGold is obliged to reimburse the Manager with all costs and expenses reasonably and properly incurred by the Manager in rendering the services in terms of the Management Agreement.
Custodial Fees	In terms of the Custody Agreement, NewGold is obliged to pay the Custodian an all inclusive fee of a specified percentage of the daily price of gold based on the London PM Fixing, payable monthly in arrears, as at the date of this Supplemental Prospectus: <ul style="list-style-type: none"> • Up to 159,999.999 ozs : 0.1225% per annum; • From 160,000 to 319,999.999 ozs : 0.120% per annum; • From 320,000 to 479,999.999 ozs : 0.115% per annum; • From 480,000 to 799,999.999 ozs : 0,110% per annum; • From 800,000 to 1,119,999.999 ozs : 0,100% per annum.
JSE Fees	The annual listing fees payable to the JSE will not exceed 0,01% of NewGold's total assets.
BSE Fees	The annual listing fees payable to the BSE will not exceed 0,01% of NewGold's total assets

11. Dividends

NewGold may declare and pay a dividend to its shareholder, namely NewGold Owner Trust. This will be sourced from the Monthly Gold Sales Charge and the Creation and Redemption Fees after all fees and expenses have been paid.

5. GENERAL

Words used in this section shall have the same meaning as defined on pages 5 to 12 of this Supplemental Prospectus, unless they are defined in this section or the use thereof is clearly inappropriate from the context.

1. Dematerialisation

The Gold Bullion Debentures may only be purchased by investors in NewGold in Dematerialised form. Therefore, all investors must appoint a CSD directly or through a broker to receive and hold the Gold Bullion Debentures on their behalf. Should any Debenture Holder require a physical certificate for its Gold Bullion Debentures, it will have to transfer the Gold Bullion Debentures on to the JSE and re-materialise same. This can be done by an investor contacting its broker and the CSDP in South Africa to do so. It should be noted that there are risks associated with holding Gold Bullion Debentures in certificated form, including the risk of loss or tainted scrip. All Debenture Holders who elect to convert their Gold Bullion Debentures into Certificated Debentures should realise that they will have to dematerialise their Gold Bullion Debentures should they wish to trade them under the terms of the CSD Rules.

2. CSD

2.1. The Gold Bullion Debentures may only be traded on the BSE in electronic or Dematerialised form and will be trading for electronic settlement in terms of the CSD Rules immediately following the Secondary Listing. The CSD operates a system of “paperless” transfer of securities. If you have any doubt as to how it works please consult your broker or other appropriate advisor and you are referred to the BSE website at www.bse.co.bw. Some of the principal features of the CSD are as follows:

- 2.1.1. electronic records of ownership replace certificates and physical delivery of certificates;
- 2.1.2. trades in respect of the Gold Bullion Debentures executed on the BSE must be settled in accordance with the CSD Rules relating to trades by market makers;
- 2.1.3. all investors owning securities or wishing to trade their securities on the BSE are required to appoint a broker to:
 - 2.1.3.1. act on their behalf and to handle their settlement requirements; and
 - 2.1.3.2. unless investors owning dematerialised securities specifically request their broker to register them as an “own name” holder (which entails a fee), the broker holding securities on their behalf will be the registered holder of the relevant security and not the investor. Subject to the agreement between the investor and the broker, generally in terms of the CSD Rules, the investor is entitled to instruct the broker as to how it wishes to exercise the rights attaching to the securities as regard to voting at any relevant meetings.
- 2.1.4. All costs incurred in respect of secondary market trades will be for the account of the relevant Debenture Holder.

3. Listing on the JSE

The Gold Bullion Debentures were listed in the “Exchange Traded Funds” sector of the JSE list under the abbreviated name “NewGold”, symbol “GLD” and ISIN Code ZAE000060067 with effect from the commencement of business on 2 November 2004.

4. Listing on the BSE

Application has been made under and in terms of the BSE Listings Requirements for a listing of the Gold Bullion Debentures as an Exchange Traded Fund on the BSE in the commodities sector of the BSE and the BSE has, on 09 July 2010, granted approval for such a listing. This Supplemental Prospectus is in compliance with the Botswana Companies Act.

5. Applicable Law

The Gold Bullion Debentures are governed by, construed and interpreted in accordance with the laws of the RSA and each Debenture Holder will be deemed, by applying for or purchasing Gold Bullion Debentures to have consented and submitted to the jurisdiction of the South Gauteng High Court of the RSA in relation to all matters arising out of or in connection therewith.

6. Use of Proceeds

The proceeds derived by NewGold from the issue of the Gold Bullion Debentures are used by NewGold to acquire Gold Bullion, which is retained and used by NewGold on the basis more fully described in this Supplemental Prospectus as read with the 2004 Prospectus.

7. Optional Redemption at the instance of NewGold

7.1. NewGold may redeem all, but not some only, of the Gold Bullion Debentures at their Redemption Value as at the date thereof, having given not less than thirty and not more than ninety South African Business Days’ written notice to Debenture Holders (given in accordance with the Debenture Conditions and which notice shall be irrevocable) if:

7.1.1. any of the Transaction Documents become illegal or unenforceable for any reason whatsoever and such illegality or unenforceability cannot be remedied by reasonable measures open to NewGold; or

7.1.2. as a result of any change in or amendment to, the application or interpretation of any existing or new Applicable Law, NewGold is or would be required to deduct or withhold from any payments on the Gold Bullion Debentures any amounts as provided or referred to in condition 11 of the Debenture Conditions, and such requirement cannot be avoided by NewGold taking reasonable measures available to it.

7.2. NewGold may redeem all, but not some only, of the Gold Bullion Debentures held by a specific Debenture Holder (as opposed to all of the Debenture Holders) at their Redemption Value as at the date thereof, having given not less than thirty and not more than ninety South African Business Days’ written notice to the relevant Debenture Holder (given in accordance with the Debenture Conditions and which notice shall be irrevocable) if NewGold is reasonably of the view that the continued holding by such Debenture Holder of Gold Bullion Debentures may result in NewGold falling foul of the provisions of the South African Financial Intelligence Centre Act, 38 of 2001 or any other Applicable Law.

8. Mandatory redemption following an Event of Default

Upon the occurrence of an Event of Default, NewGold will advise the Debenture Holders of the occurrence of such event and will, if requested to do so by Debenture Holders by an Extraordinary

Resolution to that effect, be obliged to redeem all the Gold Bullion Debentures at their Redemption Value at the date of the occurrence of such Event of Default.

6. REGULATORY CONSIDERATIONS

Words used in this section shall have the same meaning as defined on pages 5 to 12 of this Supplemental Prospectus, unless they are defined in this section or the use thereof is clearly inappropriate from the context.

The following summary and guidelines are not a comprehensive statement of the regulatory considerations to be taken into account when investing in the Gold Bullion Debentures and not intended as advice and do not purport to describe all the considerations that may be relevant to prospective investors in the Gold Bullion Debentures.

Prospective investors in the Gold Bullion Debentures should consult their professional advisers with regard to the investment in Gold Bullion Debentures and the tax, exchange control and other regulatory implications thereof. Accordingly, neither NewGold nor any of its professional advisers makes any representation and accordingly gives no warranties or undertakings expressed or implied and accordingly accept no responsibility for the accuracy or completeness of the information contained in this section of the Prospectus.

1. South African Exchange Control Considerations in relation to the Gold Bullion Debentures

For purposes of this section the “Common Monetary Area” consists of the RSA, the Kingdoms of Swaziland and Lesotho and the Republic of Namibia.

Non-residents of the Common Monetary Area

- 1.1. A Debenture Holder who is not a resident of the Common Monetary Area holding Certificated Debentures will be required to ensure that the certificates in respect of such Certificated Debentures are endorsed “Non-Resident”. In relation to Dematerialised Debentures held by non-residents of the Common Monetary Area through the Strate System, the securities account of such Debenture Holder will be designated as a “non-resident account”.
- 1.2. It will be incumbent on any such non-resident to instruct the non-resident’s nominated authorised dealer in foreign exchange as to how any funds due to such non-resident in respect of the Gold Bullion Debentures are to be dealt with. Such funds may, in terms of the South African Exchange Control Regulations, be remitted outside the Common Monetary Area only if the relevant Debentures were acquired with foreign currency introduced into the RSA and provided that the relevant certificates or securities account, as the case may be, is designated “Non-Resident”.

2. Restrictions on dealing in Gold Bullion

- 2.1. In terms of the South African Precious Metals Act, no person is permitted to buy, sell, deal in, receive or otherwise dispose of by way of barter, pledge or otherwise, either as principal or agent, any unwrought precious metal (which includes Gold Bullion), unless:
 - 2.1.1. he is the holder of a Refining Licence and concludes the transaction in accordance with the terms of his licence issued in terms of the South African Precious Metals Act; or
 - 2.1.2. he is an authorised dealer in terms of the South African Exchange Control Regulations;
 - 2.1.3. such unwrought precious metal has been won by him or his servants acting on his behalf from land on which he is lawfully entitled to prospect or mine for precious metals;

- 2.1.4. he has obtained a certificate from the SA Diamond and Precious Metals Regulator authorising him to be in possession or to dispose of such unwrought precious metal;
 - 2.1.5. such unwrought precious metal does not exceed a prescribed mass and is acquired in accordance with a special permit issued by the Regulator for scientific or beneficiation purposes or to make jewellery; or
 - 2.1.6. he or she is the holder of a precious metal beneficiation licence and acts in accordance with the terms and conditions of his or her licence.
- 2.2. Further, in terms of South African Exchange Control Regulations 2 and 5:
- 2.2.1. no person other than an authorised dealer shall buy or borrow gold from, or sell or lend any gold to any person not being an authorised dealer in foreign exchange, unless done with the permission granted by the relevant exchange control authority and in accordance with such conditions as the relevant authority may impose; and
 - 2.2.2. every person resident in the RSA who becomes entitled to sell or to procure the sale of any gold shall, within thirty days after becoming so entitled, offer that gold for sale to the South African National Treasury (the “**Treasury**”) and the Treasury may purchase that gold at such price as the Treasury may fix, being a price which, in the opinion of the Treasury is not less than the market value of the gold on the day of purchase, unless the relevant person has been exempted from Exchange Control Regulation 5 by the relevant exchange control authorities.
- 2.3. NewGold has also obtained the permission of the relevant South African exchange control authorities to buy, borrow, lend and sell gold as contemplated in Exchange Control Regulation 2 and has been exempted from Exchange Control Regulation 5 by the relevant South African exchange control authorities. NewGold will, accordingly, be permitted to purchase Gold Bullion with the proceeds of the issue of Gold Bullion Debentures, to hold and retain same as envisaged in the Custody Agreement and to sell Gold Bullion to a Qualifying Debenture Holder exercising a Gold Option on the basis envisaged in condition 8 of the Debenture Conditions and the relevant Gold Bullion Sale Agreement. Furthermore, NewGold’s activities do not relate to any of the licences issued in the South African Precious Metals Act.

3. Approval of the Exchange Control Department of the South African Reserve Bank

The Exchange Control Department of the South African Reserve Bank has approved the creation and:

- 3.1. primary listing of the ETF on the JSE on the following terms and conditions:
 - 3.1.1. the limit is 3 000 000 ounces of Gold Bullion;
 - 3.1.2. investment in the ETF by long-term insurers and retirement funds must be included in the prudential limits on investment in gold products as administered by the Financial Services Board;
 - 3.1.3. NewGold may only hold Gold Bullion produced in the Republic of South Africa in an account with Brink’s Limited;
 - 3.1.4. in the instance where the Gold Option is exercised by a Qualifying Debenture Holder the delivery of Gold Bullion may only be made to accounts at Brink’s Limited; and
 - 3.1.5. the Exchange Control Department of the South African Reserve Bank must be furnished with feedback on a quarterly basis on the status of the ETF; and

- 3.2. the secondary listing of the ETF on the BSE is subject to the following terms and conditions:
- 3.2.1. Issuer must publish and report the following information to the BSE on a daily basis:
 - 3.2.1.1. Net Asset Value (NAV) of the ETF for the preceding day;
 - 3.2.1.2. number of listed securities in issue; and
 - 3.2.1.3. market capitalisation in issue.
 - 3.2.2. Issuers may increase or reduce the issue size of existing ETFs, subject to the approval of the BSE and the announcement of such change in the issue size through the BSE;
 - 3.2.3. ETFs should be backed 100% by the securities they represent or in the alternative be backed by a sample selection of such securities and other collateral acceptable to the BSE such as cash;
 - 3.2.4. A duly appointed market maker must undertake to quote buy and sell prices in respect of the ETFs on a daily basis;
 - 3.2.5. The Issuer may appoint a manager and the manager must appoint a Trustee to look after the interests of investors.

7. RISK FACTORS

Words used in this section shall have the same meaning as defined on pages 5 to 12 of this Supplemental Prospectus, unless they are defined in this section or the use thereof is clearly inappropriate from the context.

Investors' attention is drawn to the risk factors relating to an investment in Gold Bullion Debentures, some of which are set out below. This does not purport to be an exhaustive list of the risk factors relating to an investment in Gold Bullion Debentures.

1. General Market Risk

General movements in local and international markets and factors that affect the investment climate and investor sentiment could all affect the level of trading and therefore the market price of the Gold Bullion Debentures. These risks are generally applicable to any investment in listed securities and investors should be aware that the Gold Bullion Debentures can go down in price as well as up.

2. Gold Price

The value of the Gold Bullion Debentures will be affected by movements in the US dollar price of gold, the Rand/US dollar exchange rate and the Pula/US Dollar exchange rate. The gold price is affected by numerous factors, including:

- 2.1. global or regional political, economic or financial events and situations;
- 2.2. investors' expectations with respect to the future rates of inflation and movements in world equity, financial and property markets;
- 2.3. global gold supply and demand, which is influenced by such factors as mine production and net forward selling activities by gold producers, central bank purchases and sales, jewellery demand and the supply of recycled jewellery, net investment demand and industrial demand, net of recycling;
- 2.4. interest rates and currency exchange rates, particularly the strength of and confidence in the US dollar; and
- 2.5. investment and trading activities of hedge funds, commodity funds and other speculators.

3. Secondary Market Trading Risk

- 3.1. At any time, the price at which the Gold Bullion Debentures trade on the JSE and BSE may not reflect accurately the price of Gold Bullion represented by such Gold Bullion Debentures. The structure and the procedures set out in this Supplemental Prospectus for creations and redemptions of the Gold Bullion Debentures and, in particular, the ability of a qualifying Debenture Holder to exercise a Gold Option, will help limit this difference (or tracking error). However, this risk cannot be fully eliminated since the market price will be a function of supply and demand amongst investors wishing to buy and sell the Gold Bullion Debentures.
- 3.2. There can be no certainty that a liquid market in the Gold Bullion Debentures will develop on the BSE or that the Gold Bullion Debentures will remain listed on the JSE and/or the BSE. If the Gold Bullion Debentures are to be de-listed, such de-listing will be subject to the provisions of the JSE Listings Requirements and the BSE Listings Requirements, as applicable.

4. Custody and Insurance

- 4.1. All the Gold Bullion underlying the Gold Bullion Debentures will be held by the Custodian in its vaults in Middlesex, England or in the vaults of a sub-custodian appointed by the Custodian or by a delegate of a sub-custodian. Access to such Gold Bullion could be restricted by natural events, such as an earthquake, or human actions, such as a terrorist attack.
- 4.2. There is a risk that the Gold Bullion belonging to NewGold could be lost, stolen or damaged. In that event, NewGold may not be able to request either the sale or delivery of Gold Bullion for itself or on behalf of any Qualifying Debenture Holder. The Custodian is obliged to insure its obligations under the Custody Agreement. If the Custodian fails to take out suitable insurance, then Debenture Holders may have to rely on NewGold having a claim against the Custodian and NewGold recovering from the Custodian pursuant to such claim.

5. Compulsory Redemption of Gold Bullion Debentures

NewGold is entitled in the circumstances referred to in paragraph 1 of the section headed “General” in this Supplemental Prospectus, to redeem certain or all of the Gold Bullion Debentures outstanding at the time it elects to do so.

8. GENERAL INFORMATION

1. Share capital

NewGold has an authorised share capital of ZAR1 000 divided into 1 000 ordinary par value shares of ZAR1 each, of which 100 ordinary par value shares of ZAR1 each have been issued at par. All of these issued shares are beneficially owned by the NewGold Owner Trust. NewGold does not have any shares of no par value, founders', management or deferred shares. The directors of NewGold control the issue of authorised but unissued Gold Bullion Debentures.

2. Alteration of capital

NewGold is a specially incorporated special purpose vehicle and there has been no alteration of the share capital of NewGold during the three years immediately preceding the date of this Supplemental Prospectus. NewGold has also not made any offers of shares or debentures to the public for subscription or sale during such three year period.

Details of the Gold Bullion Debentures issued and redeemed by NewGold since NewGold's listing on the JSE are set out in **Annexure C**.

3. Borrowing powers exercisable by directors

NewGold may not, and is prohibited in terms of its memorandum and articles of association from, incurring any liability or indebtedness, save as specifically provided for in the Transaction Documents. The relevant provisions are contained in paragraph 6.2 of the memorandum of association which provides as follows:

*"6.2 Notwithstanding anything to the contrary contained in the articles of association of the Company, the Company shall not (and no organ, body or committee of the Company shall accordingly have the power, authority or ability to do so), without the approval of the holders of the Debentures ("**Debenture Holders**") issued or to be issued by the Company from time to time, by an Extraordinary Resolution of Debenture Holders and the unanimous approval of the members of the Company in a general meeting-*

6.2.1 conduct or engage in any business or activity other than its main business referred to in 2 [of the Memorandum of Association] or any business ancillary thereto;

6.2.2 incur any borrowing, liability or debt other than -

6.2.2.1 liabilities or borrowings envisaged in the following agreements and/or documents entered into or to be entered into or executed by the Company -

6.2.2.1.1 the written management agreement (as amended, novated and/or replaced from time to time) entered into or to be entered into between the Company and NewGold Managers (Proprietary) Limited (registration number 2004/007543/07) or such other manager as may be appointed by the Company from time to time;

6.2.2.1.2 the written custody agreement (as amended, novated and/or replaced from time to time) entered into or to be entered into between the Company and Brink's Limited (registration

number 959654) or such other custodian as may be appointed by the Company from time to time;

6.2.2.1.3 the written bridging loan agreement (as amended, novated and/or replaced from time to time) entered into or to be entered into between the Company and ABSA Bank Limited (registration number 1986/004794/06);

6.2.2.1.4 the Debentures; and/or

6.2.2.1.5 the Debenture Conditions, Prospectus and/or any other offering document or prospectus issued by the Company in relation to the listing of the Debentures on one or more Other Exchange and any other agreement and/or document necessary or ancillary for the purpose of the conduct of its main business;

6.2.2.2 enter into any transaction or contract otherwise than in the ordinary, regular and normal course of its business;

6.2.2.3 embark on any business or obligation other than its main business;

6.2.2.4 vary its authorised or issued share capital, or any rights attaching to any of its issued shares or the creation or issue of any further shares in its share capital or the creation or issue of any debentures (other than the Debentures) other than as envisaged in the Transaction Documents;”

In terms of the memorandum of association of NewGold, these borrowing powers may only be varied as follows:

“the provision of this clause 6 in the memorandum of association of the Company shall only be amended or varied by a unanimous resolution of the members of the Company in general meeting and with the prior written approval of the JSE and Debenture Holders by an Extraordinary Resolution of Debenture Holders to that effect”.

4. Loans of NewGold

Other than the Gold Bullion Debentures (once issued) which are described in this Supplemental Prospectus and the 2004 Prospectus, there are no material loans made to or by NewGold and there is no loan capital outstanding. The Gold Bullion Debentures are not secured.

5. Listing on stock exchange

Application has been made under and in terms of the BSE Listings Requirements for a listing of the Gold Bullion Debentures as an Exchange Traded Fund on the BSE in the commodities sector of the BSE and the BSE has, on 09 July 2010, granted approval for such a listing. This Supplemental Prospectus is in compliance with the Botswana Companies Act.

6. Further Exchange Listing

Gold Bullion Debentures may obtain a dual listing on other Exchanges.

7. Trading in Gold Bullion Debentures

Potential investors may purchase Gold Bullion Debentures by contacting either their nominated CSDP or broker.

8. Market making

Absa has been appointed by the Manager as a market maker for the ETF and is responsible for establishing and maintaining the secondary market in the Gold Bullion Debentures both on the JSE and the BSE.

9. Litigation statement

There are no legal or arbitration proceedings of which NewGold is aware (including any proceedings which are pending or threatened) which have or may have a material effect on NewGold's financial position.

10. Director's opinion

The directors of NewGold are of the opinion that the business of NewGold, conducted in accordance with the provisions conducted in the Transaction Documents, will continue to be viable on the basis set out herein. In addition, the directors of NewGold are of the opinion that NewGold, through the appointment of the Manager, has sufficient expertise to continue to issue the Gold Bullion Debentures and to conduct the ETF on the basis set out herein.

11. No material change

There has not been any material change in the assets or liabilities of NewGold between the last date which the annual financial statements of NewGold for the year ended 31 March 2010 pertain and 13 July 2010, being the date of issue of this Supplemental Prospectus.

12. Memorandum and articles of association of NewGold

12.1. The main business of NewGold is the issue of debt instruments through the acquisition of Gold Bullion or any other commodity in order to hedge its liability under such debt instruments.

12.2. The memorandum of association of NewGold:

12.2.1. prohibits the shareholders of NewGold (being the NewGold Owner Trust and six nominee shareholders) from selling, transferring or otherwise dealing in the shares in NewGold without the unanimous approval of the shareholders of the Manager and the JSE;

12.2.2. prohibits NewGold, without the unanimous approval of the members of NewGold and the approval of the Gold Debenture Holders by an Extraordinary Resolution Debenture Holders from:

12.2.2.1. incurring any borrowing of any nature whatsoever, save as envisaged in these Transaction Documents;

12.2.2.2. entering into any transaction or contracts otherwise than in the ordinary, regular and normal course of its business;

12.2.2.3. embarking upon any business or obligations other than its main business;

12.2.2.4. varying its authorised or issued share capital, or any rights attaching to any of its issued shares or the creation or issue of any further shares in its share capital or the creation or issue of any debentures other than as envisaged in the Transaction Documents;

12.2.2.5. incurring any liability (including any contingent liability), other than:

- 12.2.2.5.1. a liability under a Gold Bullion Debenture issued in accordance with the Debenture Conditions in respect of which NewGold's liability is fully hedged through the acquisition of Gold Bullion;
 - 12.2.2.5.2. a liability under a contract entered into in the ordinary regular and normal course of its business; and
 - 12.2.2.5.3. a liability to a Debenture Holder;
 - 12.2.2.6. encumbering, pledging or passing any notarial or mortgage bond over any of its assets or permitting any of the assets to become subject to any lien, hypothecate or encumbrance;
 - 12.2.2.7. becoming liable, whether contingently or otherwise and whether as surety, co-principal debtor, guarantor or indemnifier, for the liabilities of any third person;
 - 12.2.2.8. entering into any compromise or scheme of arrangement in terms of section 311 of the South African Companies Act;
 - 12.2.2.9. selling, ceding, assigning, transferring, encumbering or otherwise dealing in or disposing of its interest in Gold Bullion save for in terms of a Gold Bullion Sale Agreement or as provided for in terms of the Custody Agreement;
 - 12.2.2.10. altering its memorandum and articles of association; or
 - 12.2.2.11. proposing or passing any special resolution of its members.
- 12.3. Set out below are extracts from the articles of association of NewGold:

Borrowing Powers

- “24.2 The directors may exercise all the powers of the company to borrow money and to issue Gold Bullion Debentures, provided that the only liabilities or indebtedness that the company may incur is that permitted by the memorandum.
- 24.3 For the purpose of the provisions of 24.2, the borrowing powers of the directors shall be unlimited.”

Interests of directors

- “25.1 Subject to compliance with the provisions of the Act, a director shall not be liable (in the absence of any agreement to the contrary) to account to the company for any profit or other benefit arising out of any contract entered into by the company in which he is directly or indirectly interested.
- 25.2 A director shall, if he has, in accordance with the Act, disclosed his interest (if it is material) in the relevant contract or arrangement:
- 25.2.1 be counted in a quorum for the purpose of a meeting of directors at which he is present to consider any matter; and
 - 25.2.2 be entitled to vote in regard to any matter,

relating to any existing or proposed contract or arrangement in which he is interested, other than a contract or arrangement regulating his holding of an office or place of profit under the company or a subsidiary of the company.”

The directors have no interest in any transaction effected by NewGold since its incorporation.

13. Going Concern

NewGold is a going concern and NewGold can in all circumstances be reasonably expected to meet all of its commitments as and when they fall due.

14. Consents

The auditors, transfer secretaries, attorneys, legal and corporate advisor, JSE sponsor and BSE Sponsoring Broker have consented in writing to act in their capacities stated and to their names being stated in this Supplemental Prospectus and none of these consents has been withdrawn prior to the approval of this Supplemental Prospectus by the BSE.

15. Documents available for inspection

Copies of the following documents will be made available for inspection at NewGold’s registered office at 3rd Floor, Absa Towers East, 170 Main Street, Johannesburg, 2001 and at Motswedi Securities (Proprietary) Limited during normal business hours for the period up to and including the date of listing:

- 15.1. the memorandum and articles of association of NewGold;
- 15.2. the auditor’s report of KPMG Inc dated 18 June 2010 (which is included as **Annexure A** to this Supplemental Prospectus);
- 15.3. the written consents of the legal advisors, corporate advisor, attorneys, JSE transactional sponsor, BSE Sponsoring Broker and auditor named in this Supplemental Prospectus to act in those capacities;
- 15.4. the NewGold Owner Trust Deed establishing the NewGold Owner Trust between Absa and Maitland Trust Limited dated 7 September 2004;
- 15.5. the Management Agreement between Absa and NewGold dated 15 October 2004; and
- 15.6. the Custody Agreement between NewGold and Brink’s Limited dated 21 January 2009.

THE REPORT OF THE INDEPENDENT AUDITOR ON THE SUMMARISED HISTORICAL INFORMATION OF NEWGOLD ISSUER LIMITED

To the directors of NewGold Issuer Limited

The accompanying summarised historical financial information of NewGold Issuer Limited, which comprises the summarised statements of financial position at 31 March 2005 through to 31 March 2010 and related summarised statements of comprehensive income for the years then ended are derived from the annual financial statements of NewGold Issuer Limited for the years ended 31 March 2005 through to 31 March 2010. In our report on the annual financial statements for each of the years ended 31 March 2005 through to 31 March 2010, we expressed an unmodified opinion. Our report on the annual financial statements for the year ended 31 March 2010 is dated 10 June 2010. The annual financial statements and the summarised historical financial information do not reflect the effects of events that may have occurred subsequent to the date of our report on those annual financial statements.

In our opinion, the accompanying summarised historical financial information of NewGold Issuer Limited for the years ended 31 March 2005 through to 31 March 2010 is consistent in all material respects with the annual financial statements of NewGold Issuer Limited for the years ended 31 March 2005 through to 31 March 2010 from which the summarised historical financial information is derived.

The accompanying summarised historical financial information does not contain all the disclosures required by International Financial Reporting Standards applied in the preparation of the annual financial statements. Reading the summarised historical financial information, therefore, is not a substitute for reading the annual financial statements.

Yours faithfully
KPMG Inc.

Per P Fourie
Chartered Accountant (SA)
Registered Auditor
Director
22 June 2010

SUMMARISED HISTORICAL FINANCIAL INFORMATION OF NEWGOLD

Set out below is the summarised financial information of NewGold referred to in **Annexure A**.

Summarised statement of financial position

	Audited 2010 R'000	Audited 2009 R'000	Audited 2008 R'000	Audited 2007 R'000	Audited 2006 R'000	Audited 2005 R'000
ASSETS						
Non-current assets						
Deferred tax asset	292	276	131	248	191	0
Current assets						
Trade and other receivables	12 959 368	8 178 725	7 070 988	1 753 057	1 223 120	246 973
Cash and cash equivalents	9 247	8 080	3 977	464	98	55
Gold bullion	192	2 245	3 028	2 419	1 245	1 282
	12 949 929	8 168 400	7 063 983	1 750 174	1 221 777	245 636
TOTAL ASSETS	12 959 660	8 179 001	7 071 119	1 753 305	1 223 311	246 973
EQUITY AND LIABILITIES						
Share capital and reserves						
Ordinary share capital	5 229	1 371	3 679	1 150	513	0
Retained earnings	0	0	0	0	0	0
	5 229	1 371	3 679	1 150	513	0
Non-current liabilities						
Debentures	12 945 494	8 165 643	7 061 687	1 749 741	1 221 490	245 068
Current liabilities						
Trade and other payables	8 937	11 987	5 753	2 414	1 308	1 905
	8 937	11 987	5 753	2 414	1 308	1 905
TOTAL EQUITY AND LIABILITIES	12 959 660	8 179 001	7 071 119	1 753 305	1 223 311	246 973

Summarised statement of comprehensive income

	Audited 2010 R'000	Audited 2009 R'000	Audited 2008 R'000	Audited 2007 R'000	Audited 2006 R'000	Audited 2005 R'000
Revenue						
Monthly gold sales charge	46 032	27 921	16 743	5 827	2 057	858
Creation fee	45 795	27 503	11 512	5 700	2 020	858
Finance income	0	0	4 993	0	0	0
Other income	237	418	238	127	37	0
	87	586	2 712	1 142	278	0
Other expenses						
Fair value adjustments	(17 546)	(14 754)	(6 859)	(3 209)	(1 341)	(1 133)
	0	(276)	139	198	(382)	276
Profit before taxation	28 573	13 477	12 735	3 958	612	1
Income tax expense	(9 524)	(4 802)	(4 427)	(1 297)	(97)	0
Profit for the year	19 049	8 675	8 308	2 661	515	1
Basic and diluted earnings per share (cents)	19 049	8 675	8 308	2 661	515	0

ISSUES AND REDEMPTIONS OF GOLD BULLION DEBENTURES

Additional issues

Date of issue	Debentures	Fine troy ounces	Issue price (Rands)	Total fine troy ounces	Total in issue
01-Nov-04	800,000	8,000.00	26.22	8,000,000	800,000
04-Nov-04	8,036,300	80,359.47	26.35	7,999.74	800,000
06-Dec-04	400,000	3,998.46	26.00	92,327,509	9,236,300
21-Dec-04	400,000	3,997.80	25.37	96,310,107	9,636,300
01-Mar-05	-400,000	-3,994.73	25.50	92,241,373	9,236,300
04-Nov-05	400,000	3,983.87	30.55	95,974,386	9,636,300
09-Dec-05	800,000	7,964.68	32.00	103,902.18	10,436,300
14-Dec-05	800,000	7,964.24	32.30	119,824.96	12,036,300
15-Dec-05	1,200,000	11,946.23	33.20	131,769.87	13,236,300
19-Dec-05	1,200,000	11,945.70	33.00	131,764.08	13,236,300
20-Dec-05	3,200,000	31,855.21	33.30	207,417.91	20,836,300
21-Dec-05	2,000,000	19,909.07	32.25	227,324.70	22,836,300
22-Dec-05	800,000	7,963.54	32.50	235,285.75	23,636,300
28-Dec-05	1,200,000	11,944.52	31.55	247,214.77	24,836,300
06-Jan-06	800,000	7,962.23	32.80	255,152.56	25,636,300
17-Jan-06	1,200,000	11,941.90	33.05	267,063.64	26,836,300
19-Jan-06	1,200,000	11,941.64	33.20	278,999.41	28,036,300
23-Jan-06	1,200,000	11,941.11	33.15	290,928.27	29,236,300
24-Jan-06	1,200,000	11,940.98	32.95	302,866.06	30,436,300
21-Feb-06	1,600,000	15,916.41	33.30	318,689.36	32,036,300
22-Feb-06	1,200,000	11,937.18	33.00	330,623.04	33,236,300
07-Mar-06	800,000	7,956.98	34.60	338,532.83	34,036,300
12-Apr-06	800,000	7,953.84	35.95	346,352.87	34,836,300
05-May-06	400,000	3,975.91	39.50	350,241.32	35,236,300
26-Jul-06	400,000	3,972.34	45.00	353,898.43	35,636,300
01-Aug-06	400,000	3,972.07	43.20	357,847.19	36,036,300
23-Aug-06	-4,000,000	-39,711.15	42.00	318,049.60	32,036,300
11-Dec-06	400,000	3,967.00	45.80	321,631.98	32,436,300
27-Dec-06	800,000	7,931.00	44.00	321,575.48	32,436,300
27-Feb-07	1,600,000	15,852.00	47.00	345,134.17	34,836,300
03-Jan-08	1,200,000	11,849.00	56.00	774,452.30	78,436,300
07-Jan-08	800,000	7,890.07	57.00	782,316.85	79,236,300
11-Jan-08	800,000	7,898	59.00	790,180.71	80,036,300
16-Jan-08	4,400,000	43,438	60.00	833,575.17	84,436,300
28-Jan-08	1,200,000	11,845	62.25	845,310.46	85,636,300
31-Jan-08	2,800,000	27,638	64.50	872,920.33	88,436,300
01-Feb-08	1,600,000	15,793	66.00	888,703.55	90,036,300
18-Feb-08	-2,000,000	-19,737	70.50	868,800.34	88,036,300
10-Mar-08	1,200,000	11,841	76.50	880,439.68	89,236,300
11-Mar-08	1,600,000	15,786	75.00	896,216.06	90,836,300
12-Mar-08	800,000	7,893	76.00	904,099.15	91,636,300
13-Mar-08	400,000	3,946	76.75	908,035.65	92,036,300
14-Mar-08	1,200,000	11,838	78.00	919,804.21	93,236,300
15-Mar-08	400,000	3,946	81.00	923,699.62	93,636,300
16-Mar-08	800,000	7,892	79.00	931,581.20	94,436,300
25-Mar-08	400,000	3,946	81.00	923,699.62	93,636,300
26-Mar-08	800,000	7,892	79.00	931,581.20	94,436,300
08-Apr-08	-3,200,000	-31,562	68.50	899,885.84	91,236,300
11-Apr-08	-3,600,000	-35,507	70.75	864,349.69	87,636,300
17-Apr-08	400,000	3,945	72.00	868,237.65	88,036,300
16-May-08	800,000	7,887	65.75	875,848.51	88,836,300
19-May-08	1,200,000	11,831	65.00	887,650.23	90,036,300

27-May-08	400,000	3,943	70.50	891,515.43	90,436,300
28-May-08	400,000	3,943	69.00	895,448.77	90,836,300
29-May-08	800,000	7,886	70.25	903,325.11	91,636,300
09-Jul-08	2,800,000	27,589	71.00	930,507.71	94,436,300
10-Jul-08	800,000	7,883	70.50	938,380.03	95,236,300
14-Jul-08	800,000	7,882	70.75	946,221.01	96,036,300
18-Jul-08	1,200,000	11,823	70.00	958,044.30	97,236,300
22-Jul-08	400,000	3,941	73.00	961,943.15	97,636,300
18-Aug-08	-3,200,000	31,517	63.00	937,978.25	95,236,300
25-Aug-08	-3,200,000	31,514	60.25	906,391.92	92,036,300
05-Sep-08	-3,200,000	-31,519	62.25	874,772.01	88,836,300
08-Sep-08	-3,200,000	-31,509	62.00	843,224.53	85,636,300
12-Nov-08	1,200,000	11,808	73.00	854,439.74	86,836,300
18-Nov-08	1,200,000	11,807	74.00	866,190.26	88,036,300
23-Jan-09	800,000	7,866	80.00	873,514.55	88,836,300
09-Feb-09	2,400,000	23,597	82.75	897,024.75	91,236,300
11-Mar-09	2,400,000	23,592	90.50	920,449.44	93,636,300
18-Mar-09	400,000	3,930	90.00	939,727.65	95,636,300
23-Apr-09	-2,800,000	-27,504	79.00	911,854.16	92,836,300
04-May-09	800,000	7,857	79.25	919,600.81	93,636,300
05-May-09	800,000	7,857	75.75	927,447.41	94,436,300
07-May-09	800,000	7,857	73.50	935,283.58	95,236,300
11-May-09	800,000	7,856	75.00	943,098.68	96,036,300
12-May-09	1,200,000	11,784	74.50	954,872.47	97,236,300
18-May-09	3,600,000	35,352	76.00	990,159.68	100,836,300
20-May-09	800,000	7,855	78.25	997,993.34	101,636,300
26-May-09	800,000	7,855	76.50	1,005,782.48	102,436,300
28-May-09	2,400,000	23,564	77.50	1,029,324.55	104,836,300
02-Jun-09	4,400,000	43,199	77.00	1,072,466.62	109,236,300
04-Jun-09	1,600,000	15,708	77.00	1,088,151.30	110,836,300
05-Jun-09	2,400,000	23,562	76.50	1,111,701.43	113,236,300
09-Jun-09	2,000,000	19,634	77.50	1,131,286.81	115,236,300
10-Jun-09	2,400,000	23,561	77.00	1,154,835.18	117,636,300
22-Jun-09	2,800,000	27,484	74.00	1,182,166.99	120,436,300
25-Jun-09	1,600,000	15,705	74.40	1,197,832.65	122,036,300
07-Jul-09	5,200,000	51,033	70.80	1,248,708.08	127,236,300
09-Jul-09	3,600,000	35,330	72.50	1,284,010.59	130,836,300
14-Jul-09	2,000,000	19,627	73.30	1,303,566.76	132,836,300
31-Jul-09	7,600,000	74,567	72.70	1,377,890.84	140,436,300
14-Aug-09	1,600,000	15,696	77.00	1,393,375.02	142,036,300
17-Aug-09	1,200,000	11,772	75.25	1,405,100.72	143,236,300
24-Aug-09	-2,000,000	-19,618	74.00	1,385,374.89	141,236,300
25-Aug-09	-1,200,000	-11,771	74.40	1,373,589.11	140,036,300
31-Aug-09	800,000	7,847	72.50	1,381,390.65	140,836,300
08-Sep-09	2,800,000	27,463	72.20	1,408,807.99	143,636,300
11-Sep-09	400,000	3,923	75.10	1,412,607.16	144,036,300
11-Sep-09	400,000	3,923	74.00	1,416,498.97	144,436,300
14-Sep-09	1,600,000	15,691	74.10	1,432,174.58	146,036,300
17-Sep-09	400,000	3,922.53	73.80	1,447,770.35	147,636,300
23-Sep-09	12,000,000	117,668.21	73.60	1,565,343.18	159,636,300
25-Sep-09	2,400,000	23,533.13	74.10	1,588,841.93	162,036,300
30-Sep-09	1,200,000	11,765.92	73.60	1,600,520.61	163,236,300
02-Oct-09	4,800,000	47,062.63	72.30	1,647,548.10	168,036,300
05-Oct-09	1,200,000	11,765.27	72.20	1,659,259.09	169,236,300
06-Oct-09	3,200,000	31,373.71	74.30	1,690,614.58	172,436,300
13-Oct-09	400,000	3,921,456	75.60	1,690,503.20	172,836,300
13-Nov-09	400,000	3,920.08	80.80	1,697,749.44	173,236,300
16-Nov-09	400,000	3,919.95	80.50	1,701,613.46	173,636,300
17-Nov-09	400,000	3,919.91	80.60	1,705,514.68	174,036,300
18-Nov-09	400,000	3,919.86	81.50	1,709,415.81	174,436,300
20-Nov-09	400,000	3,919.78	81.90	1,713,298.05	174,836,300
23-Nov-09	400,000	3,919.65	83.10	1,717,161.26	175,236,300
24-Nov-09	400,000	3,919.60	83.80	1,721,062.01	175,636,300
28-Dec-09	-1,600,000	15,672.57	83.50	1,672,740.49	174,036,300
14-Jan-10	-1,600,000	15,669.64	82.40	1,688,759.16	172,436,300
28-Jan-10	-2,000,000	19,584.04	81.20	1,668,915.52	170,436,300
02-Feb-10	400,000	3,916.59	82.30	1,672,740.49	170,836,300

03-Feb-10	400,000	7,833.10	81.20	1,676,638.67	171,236,300
04-Feb-10	400,000	3,916.51	80.00	1,680,536.77	171,636,300
10-Feb-10	800,000	7,832.58	81.10	1,688,277.08	172,436,300
11-Feb-10	800,000	7,832.41	80.10	1,696,072.42	173,236,300
24-Feb-10	-3,600,000	35,240.82	83.80	1,660,589.50	169,636,300
01 March 2010	-3,200,000	31,323.453	85.10	1,629,174.874	166,436,300
04 March 2010	-3,200,000	31,322.421	84.30	1,597,798.784	163,236,300
10 March 2010	-1,600,000	15,660,179	83.10	1,582,033.337	161,636.337
04 May 2010	-800,000	7,825.362	85.00	1,573,252.798	160,836,300
10 May 2010	-1,600,000	15,649,692	87.10	1,557,499.454	159,236,300
11 May 2010	-1,600,000	15,649.521	86.90	1,541,832.831	157,636,300
12 May 2010	-2,400,000	23,474.023	88.40	1,518,341.877	155,236,300
13 May 2010	-1,200,000	11,736.883	91.10	1,506,588.322	154,036,300
14 May 2010	-1,600,000	15,649.005	87.80	1,490,922.773	152,436,300
19 May 2010	-1,200,000	11,736.109	90.30	1,479,104.808	151,236,300
25 May 2010	-1,200,000	11,735.336	91.50	1,467,272.024	150,036,300
28 May 2010	-1,600,000	15,646.600	90.50	1,451,577.089	148,436,300
01 June 2010	400,000	3,911.478	91.50	1,455,424.810	148,836,300
03 June 2010	800,000	7,822.784	89.75	1,463,215.631	149,636,300
07 June 2010	3,600,000	46,763.700	91.50	1,498,352.346	153,236,300
08 June 2010	2,000,000	19,555.887	91.75	1,517,891.780	155,236,300
09 June 2010	1,200,000	11,733.403	91.00	1,529,608.516	156,436,300
10 June 2010	1,600,000	15,644.366	91.25	1,545,236.086	158,036,300
15 June 2010	400,000	3,910.877	93.70	1,549,062.125	158,436,300
17 June 2010	800,000	7,891.582	92.00	1,556,849.687	159,236,300
24 June 2010	3,200,000	31,283.923	92.80	1,588,013.945	162,436,300
12 July 2010	1,200,000	11,729.152	88.60	1,599,429.248	163,636,300

TERMS AND CONDITIONS OF THE GOLD BULLION DEBENTURES

The following text is the terms and conditions subject to and in accordance with which the Gold Bullion Debentures will be issued.

1. Interpretation

In these terms and conditions:

- 1.1. unless the context clearly indicates a contrary intention, the following expressions shall have the following meanings:
- 1.1.1. “**2004 Prospectus**” the Prospectus issued on 27 October 2004 in respect of an initial offer and the listing on the JSE of Gold Bullion Debentures;
 - 1.1.2. “**Absa**” Absa Bank Limited (registration number 1986/004794/06), a public company duly incorporated in accordance with the laws of the RSA and registered as a bank in terms of the Banks Act, 94 of 1990;
 - 1.1.3. “**Absa Capital**” the Absa Capital division of Absa;
 - 1.1.4. “**Accounting Records**” the books of account and accounting systems of NewGold;
 - 1.1.5. “**Allocated Bullion Account**” an allocated bullion account held with the Custodian to which a quantity of Gold Bullion may be credited;
 - 1.1.6. “**Applicable Laws**” in relation to any entity, all and any:
 - 1.1.6.1. statutes and sub-ordinate legislation;
 - 1.1.6.2. regulations, ordinance and directions;
 - 1.1.6.3. by-laws;
 - 1.1.6.4. codes of practice, circulars, guidance notices, judgements and decisions of any competent authority; and
 - 1.1.6.5. other similar provisions, from time to time, compliance with which is mandatory for that entity;
 - 1.1.7. “**Applicable Procedures**” the rules and operating procedures for the time being of the Exchanges and applicable settlement systems used by the Exchanges from time to time;
 - 1.1.8. “**Block**” 400 000 Gold Bullion Debentures or such other multiple of Gold Bullion Debentures as determined by NewGold from time to time and notified to Debenture Holders *via* SENS and *via* the Exchanges;

- 1.1.9. “**Branch Register**” a sub-register of Gold Bullion Debentures kept outside the RSA for the listing of the Gold Bullion Debentures on an Exchange outside the RSA;
- 1.1.10. “**Business Day**” a day (other than a Saturday, Sunday or official public holiday within the meaning of the South African Public Holidays Act, 36 of 1994) on which commercial banks are generally open to settle payments in Rand in Johannesburg;
- 1.1.11. “**Certificated Debenture**” a Gold Bullion Debenture that has not been Dematerialised, title to which is represented by a physical document of title;
- 1.1.12. “**Conditions to Issue**” the conditions which must be fulfilled prior to the issue of any Gold Bullion Debentures, being:
- 1.1.12.1. in the case of cash subscriptions, the receipt by NewGold of the Issue Price in respect thereof and the application by NewGold of such monies in the acquisition of Gold Bullion pursuant thereto;
- 1.1.12.2. in the case of *in specie* subscriptions, the receipt by NewGold of confirmation from the Custodian that the Reference Quantity of Gold Bullion in respect thereof has been deposited with the Custodian together with an instruction from the relevant Investor to transfer such Gold Bullion to the Allocated Bullion Account of NewGold;
- 1.1.12.3. the receipt by NewGold of the Creation Fee;
- 1.1.12.4. the subscription being in respect of one or more entire Blocks;
- 1.1.13. “**Conditions to Redemption**” the conditions which must be fulfilled prior to a Debenture Holder being entitled to redeem Gold Bullion Debentures in accordance with the provisions of paragraph 6, being:
- 1.1.13.1. a Gold Bullion Debenture may only be redeemed together with so many other Gold Bullion Debentures as will constitute one or more entire Blocks;
- 1.1.13.2. a Gold Bullion Debenture may only be redeemed on a Trading Day; and
- 1.1.13.3. to the extent that Gold Bullion Debentures are held *via* any Branch Register, the Gold Bullion Debentures must be transferred to the Register;
- 1.1.14. “**Constitutional Documents**” the Memorandum and Articles of Association of NewGold (as amended, supplemented and/or replaced from time to time);
- 1.1.15. “**Creation Fee**” the fee payable to NewGold for the creation and issue of the Gold Bullion Debentures, being an amount equal to 0,15% of the Issue Price (excluding VAT). The Creation Fee may, however, be waived in the discretion of NewGold;
- 1.1.16. “**CSDP**” a central securities depository participant duly accepted by Strate as a participant in terms of the provisions of the Securities Services Act or such other participant approved as such by the applicable Exchange and in accordance with the Applicable Procedures;
- 1.1.17. “**Custodian**” Brink’s Limited (company number 959654), incorporated under the laws of England and Wales, or such other custodian as may be appointed

by NewGold from time to time and notified to Debenture Holders *via* SENS and the Exchanges;

- 1.1.18. “**Custody Agreement**” the written custody agreement concluded between NewGold and the Custodian (as amended, novated and/or replaced from time to time), in terms of which, inter alia, the Custodian is appointed as custodian of the Gold Bullion from time to time;
- 1.1.19. “**Debenture Conditions**” these terms and conditions of the Gold Bullion Debentures and in accordance with which the Gold Bullion Debentures are created, issued and redeemed (as amended, novated and/or replaced from time to time);
- 1.1.20. “**Debenture Holder**” in relation to any Gold Bullion Debenture, the person or entity whose name is entered in the Register as the holder of such Gold Bullion Debenture;
- 1.1.21. “**Delivery Date**” in relation to the exercise of any Gold Option, the date which is the later of:
- 1.1.21.1. the third Trading Day after the Redemption Date of the Gold Bullion Debentures in respect of which such Gold Option has been exercised if the Gold Option has been exercised in respect of Gold Bullion Debentures having in aggregate a Redemption Value of less than the Specified Value; or
- 1.1.21.2. the fifth Trading Day after the Redemption Date of the Gold Bullion Debentures in respect of which such Gold Option has been exercised if the Gold Option has been exercised in respect of Gold Bullion Debentures having in aggregate a Redemption Value equal to or greater than the Specified Value; or
- 1.1.21.3. the Delivery Date specified in the Redemption Notice pursuant to which such Gold Option is exercised;
- 1.1.22. “**Dematerialised**” the process whereby physical certificates and other documents of title are replaced with electronic records evidencing ownership of Gold Bullion Debentures for the purposes of the Strate System and/or such other settlement system applicable to the Gold Bullion Debentures from time to time;
- 1.1.23. “**Dematerialised Debenture**” a Gold Bullion Debenture that has been Dematerialised;
- 1.1.24. “**Event of Default**” the occurrence of any of the following events:
- 1.1.24.1. NewGold being wound up, liquidated and/or placed under judicial management (in any case whether provisional or final), provided that an offer of compromise on terms and conditions approved by the Debenture Holders by a Extraordinary Resolution to that effect and in circumstances where NewGold is solvent shall not constitute a winding-up of NewGold for purposes of this paragraph 1.1.24.1; or
- 1.1.24.2. subject to the proviso in paragraph 1.1.24.1 which shall apply *mutatis mutandis*, NewGold having any application or other proceedings brought against it, in terms of which NewGold is sought to be wound up or placed in liquidation or under judicial management (whether provisional or final); or
- 1.1.24.3. subject to the proviso in 1.1.24.1 which shall apply *mutatis mutandis*, NewGold committing any act which is or would, if

NewGold were a natural person, be an act of insolvency as defined in the South African Insolvency Act, 24 of 1936;

- 1.1.24.4. subject to the proviso in paragraph 1.1.24.1 which shall apply *mutatis mutandis*, NewGold compromising or attempting to compromise with or attempting to defer payment of debt owing by it to its creditors generally;
- 1.1.24.5. subject to the proviso in paragraph 1.1.24.1 which shall apply *mutatis mutandis*, any procedural steps being taken by NewGold with a view to effecting a compromise or arrangement with its creditors generally;
- 1.1.24.6. NewGold ceasing to carry on NewGold's Business in a normal and regular manner or materially changing the nature of NewGold's business or, through an official act of NewGold's Board, NewGold threatening to cease to carry on NewGold's Business;
- 1.1.25. "**Exchange**" the JSE, and any other recognised securities exchange on which the Gold Bullion Debentures may be listed from time to time;
- 1.1.26. "**Exchange Control Regulations**" the Exchange Control Regulations (as amended or replaced from time to time), promulgated in terms of section 9 of the South African Currency and Exchanges Act, 9 of 1933 or its successor;
- 1.1.27. "**Extraordinary Resolution**" a resolution passed at a properly constituted meeting of Debenture Holders by a majority consisting of not less than three-quarters of the number of Gold Bullion Debentures represented at that meeting (either present in person or represented by Proxy and voting whether on a show of hands or on a poll);
- 1.1.28. "**Form of Proxy**" an instrument in writing signed by a Certificated Debenture or, in the case of a Debenture Holder holding a Certificated Debenture which is a company or other juristic person, signed on its behalf by a Representative of the company or juristic person appointing a Proxy;
- 1.1.29. "**Good Delivery Standard**" the refining standard and weights set by the LBMA for gold bars as set out in "The Good Delivery Rules for Gold and Silver Bars" published by the LBMA from time to time;
- 1.1.30. "**Gold Bullion**" physical unwrought gold in the form of London Good Delivery Bars;
- 1.1.31. "**Gold Bullion Debenture**" a gold bullion debenture issued by NewGold in accordance with the Debenture Conditions;
- 1.1.32. "**Gold Bullion Sale Agreement**" the sale agreement deemed to have been concluded between NewGold and a Qualifying Debenture Holder pursuant to the exercise by such Qualifying Debenture Holder of a Gold Option, as set out in paragraph 7;
- 1.1.33. "**Gold Option**" the right and option of any Qualifying Debenture Holder redeeming one or more Blocks of Gold Bullion Debentures to require NewGold, under paragraph 7, to sell to such Qualifying Debenture Holder a quantity of Gold Bullion equal to the Reference Quantity of the Gold Bullion Debentures so redeemed;
- 1.1.34. "**Issue Date**" in relation to a Gold Bullion Debenture, the date of actual issue thereof;

- 1.1.35. “**Issue Price**” in relation to each Gold Bullion Debenture, the price (expressed in Rand) at which such Gold Bullion Debenture is issued on the Issue Date thereof, being an amount calculated with reference to the value of the Reference Quantity of Gold Bullion linked to that Gold Bullion Debenture as at the Issue Date thereof, published on SENS and notified to the Exchanges;
- 1.1.36. “**Initial Quantity**” one-hundredth of one fine troy ounce of Gold Bullion (being the quantity of Gold Bullion to which the first Gold Bullion Debentures issued by NewGold were referenced and linked as at 2 November 2004 ;
- 1.1.37. “**JSE**” JSE Limited (Registration number 2005/0229394/06), a public limited liability company incorporated in accordance with the company laws of South Africa and licensed as an exchange under the Securities Services Act;
- 1.1.38. “**LBMA**” the London Bullion Market Association;
- 1.1.39. “**London Good Delivery Bar**” the requirements with which a gold bar should conform according to the Good Delivery Standard of the LBMA, which at the date of these Debenture Conditions were:
- 1.1.39.1. in respect of weight:
- 1.1.39.1.1. the minimum gold content should be 350 fine troy ounces (approximately 10,9kg);
- 1.1.39.1.2. the maximum gold content should be 430 fine troy ounces (approximately 13,4kg); and
- 1.1.39.1.3. the gross weight of a bar should be expressed in fine troy ounces, in multiples of 0,025, rounded down to the nearest 0,025 of a troy ounce;
- 1.1.39.2. in respect of dimension:
- 1.1.39.2.1. the top surface should be 255mm x 81mm;
- 1.1.39.2.2. the bottom surface should be 236mm x 577mm; and
- 1.1.39.2.3. the thickness should be 37mm;
- 1.1.39.3. in respect of fineness, the minimum acceptable fineness is 99,5%; and
- 1.1.39.4. lastly in respect of marks, it should contain:
- 1.1.39.4.1. the serial number;
- 1.1.39.4.2. the assay stamp of the refiner;
- 1.1.39.4.3. the fineness (to four significant figures); and
- 1.1.39.4.4. the year of manufacture (expressed in four digits);
- 1.1.40. “**London PM Fix**” the afternoon session of the twice daily fix of the price of an ounce of gold which at the date of these Debenture Conditions starts at 15:00 (London time) and is performed in London by the five members of the London gold fix;
- 1.1.41. “**Management Agreement**” the written management agreement (as amended, novated and/or replaced from time to time) concluded between NewGold and

the Manager, in terms of which, *inter alia*, the Manager is appointed by NewGold to manage and administer the affairs of NewGold and NewGold's Business and to advise NewGold in relation to the conduct of NewGold's Business;

- 1.1.42. “**Manager**” NewGold Managers (Proprietary) Limited (registration number 2004/007543/07), a private company duly incorporated in accordance with the laws of the RSA, or such other manager of NewGold as may be appointed by NewGold from time to time and notified to Debenture Holders *via* SENS and the Exchanges;
- 1.1.43. “**Monthly Gold Sales Charge**” an amount sufficient to, *inter alia*, meet the monthly fees and expenses of NewGold from time to time, which fees and expenses are funded through the sale of Gold Bullion. The amount currently thought to be sufficient to meet such fees and expenses and to pay a dividend to the NewGold Owner Trust is 0,40% per annum of the Gold Bullion held by NewGold from time to time in excess of 430 fine troy ounces;
- 1.1.44. “**NewGold**” NewGold Issuer Limited (registration number 2004/014119/06), a public company duly incorporated in accordance with the laws of the RSA;
- 1.1.45. “**NewGold's Board**” the board of directors of NewGold from time to time;
- 1.1.46. “**NewGold's Business**” the business conducted by NewGold from time to time, being, *inter alia*, the issue of Gold Bullion Debentures, the acquisition and holding of Gold Bullion and the sale of Gold Bullion as described or envisaged in the Constitutional Documents from time to time;
- 1.1.47. “**NewGold Owner Trust**” the NewGold Owner Trust, a trust *inter vivos* duly established in terms of the NewGold Owner Trust Deed and registered with the Master of the High Court of South Africa (Transvaal Provincial Division) under reference number IT8350/04, which NewGold Owner Trust has been established with the sole purpose of beneficially holding all of the shares in the issued share capital of NewGold;
- 1.1.48. “**NewGold Owner Trust Deed**” the written trust deed (as amended, novated and/or replaced from time to time) concluded by Absa (in its capacity as donor) and Maitland Trust Limited (in its capacity as trustee) on 7 September 2004, in terms of which the NewGold Owner Trust was established;
- 1.1.49. “**Nominated Bullion Account**” the relevant Allocated Bullion Account or Unallocated Bullion Account of a Qualifying Debenture Holder into which the Sale Bullion to be delivered to such Qualifying Debenture Holder pursuant to the exercise of a Gold Option shall be credited;
- 1.1.50. “**Priority of Payments**” the priority in which creditors of NewGold are to be repaid, as set out in paragraph 8;
- 1.1.51. “**Prospectus**” the 2004 Prospectus, as supplemented by the Supplemental Prospectus and as amended, supplemented or replaced from time to time;
- 1.1.52. “**Proxy**” a person duly appointed under a Form of Proxy to act for and on behalf of a Debenture Holder holding a Certificated Debenture in connection with any meeting or proposed meeting of Debenture Holders;
- 1.1.53. “**Qualifying Debenture Holder**” a Debenture Holder holding one or more Blocks of Gold Bullion Debentures on the Register and who satisfies the Manager that he is in possession of all necessary licences, consents and approvals to buy, own, be in possession of and/or otherwise deal in Gold Bullion;
- 1.1.54. “**Rand**” or “**ZAR**” Rand, the legal currency of the RSA;

- 1.1.55. “**Redemption Date**” in relation to a Gold Bullion Debenture, the date on which such Gold Bullion Debenture is redeemed in accordance with the Debenture Conditions;
- 1.1.56. “**Redemption Fee**” the fee payable by a Debenture Holder on the redemption of a Gold Bullion Debenture held by it, being an amount equivalent to 0,15% of the Redemption Value (excluding VAT) of such Gold Bullion Debenture;
- 1.1.57. “**Redemption Notice**” a notice delivered by or on behalf of a Debenture Holder exercising its right to require the redemption of all or some of the Gold Bullion Debentures held by it, which redemption notice shall comply with all relevant requirements of the Debenture Conditions and shall be in the form of **Annexure D** to the 2004 Prospectus;
- 1.1.58. “**Redemption Value**” in relation to a Gold Bullion Debenture and as at the Redemption Date thereof, an amount equal to the Sale Proceeds realised or that would have been realised by NewGold pursuant to a sale of NewGold of the Reference Quantity of Gold Bullion to which such Gold Bullion Debenture is linked;
- 1.1.59. “**Reference Quantity**” in relation to a Gold Bullion Debenture, the specific quantity of Gold Bullion to which that Gold Bullion Debenture is referenced and linked as at any given point in time, being a quantity calculated in accordance with the following formula:

$$RQ = \frac{IQ}{\left(1 + \frac{R}{365}\right)^D}$$

where:

RQ = the Reference Quantity to be determined, expressed in fine troy ounces;

IQ = the Initial Quantity;

D = the number of days between 2 November 2004 (being the Issue Date of the first Gold Bullion Debenture to have been issued) and the Redemption Date of the Gold Bullion Debenture in respect of which the Reference Quantity is to be determined; and

$$R = \left(\left(\frac{1}{1 - L} \right)^{1/365} - 1 \right) \times 365$$

where for purposes of determining **R**:

L = the Monthly Gold Sales Charge, which Monthly Gold Sales Charge accrues daily and will be deducted monthly in arrears;

- 1.1.60. “**Register**” the principal register of Gold Bullion Debentures held in the RSA, which register shall, in the case of Dematerialised Debentures, be kept by Strate and, in the case of Certificated Debentures, be kept by the Transfer Secretaries or such other participant approved by the Applicable Exchange;

- 1.1.61. “**Representative**” a person authorised by a resolution of a corporate Debenture Holder’s directors or other governing body to act as its representative in connection with any meeting or proposed meeting of Debenture Holders;
- 1.1.62. “**RSA**” the Republic of South Africa;
- 1.1.63. “**SA Companies Act**” the South African Companies Act, 61 of 1973;
- 1.1.64. “**Sale Bullion**” the Gold Bullion to be sold by NewGold to a Qualifying Debenture Holder exercising a Gold Option in terms of a Gold Bullion Sale Agreement;
- 1.1.65. “**Sale Proceeds**” the proceeds realised by NewGold from the sale of Gold Bullion in the spot market in the London PM Fix on redemption of all or any of the Gold Bullion Debentures issued by it, less the costs of arranging and completing such sale, storage costs, insurance costs and all applicable Taxation payable in connection with such sale;
- 1.1.66. “**Securities Services Act**” the Securities Services Act 36 of 2004;
- 1.1.67. “**SENS**” the Securities Exchange News Service, an office of the JSE;
- 1.1.68. “**Settlement Agent**” a CSDP approved in terms of the Applicable Procedures to perform electronic net settlements of both funds and scrip on behalf of market participants;
- 1.1.69. “**Specified Value**” R1 000 000 000 (or the foreign currency equivalent thereof, determined by NewGold in its reasonable discretion) or such other amount determined by NewGold from time to time and notified to Debenture Holders *via* SENS and the Exchanges;
- 1.1.70. “**Strate**” Strate Limited (registration number 1998/022242/06), a public company duly incorporated in accordance with laws of the RSA;
- 1.1.71. “**Strate System**” the electronic settlement system utilised by the JSE and administered by the central depository Strate, which facilitates the electronic clearing and settlement for all transactions concluded on the JSE;
- 1.1.72. “**Supplemental Prospectus**” any prospectus supplemental to this Prospectus issued in respect of the secondary listing on an Exchange of the Gold Bullion Debentures;
- 1.1.73. “**Taxation**” all taxes, duties, assessments, levies and/or governmental charges (including any penalty in respect thereof and interest thereon) payable to any governmental authority or any political sub-division thereof or any authority or agency therein or thereof having the power to tax, including income tax, value-added tax and regional services levies;
- 1.1.74. “**Trading Day**” for purposes of redemption of Gold Bullion Debentures:
- 1.1.74.1. held *via* the Register, a day on which trading takes place on the JSE; and
- 1.1.74.2. held *via* a Branch Register, a day on which trading takes place on the JSE and on the applicable Exchange;
- 1.1.75. “**Transfer Form**” the written form for transfer of any Gold Bullion Debenture evidenced by a certificate in a form approved by the Transfer Secretaries and signed by the transferor and the transferee;
- 1.1.76. “**Transaction Documents**” collectively:

- 1.1.76.1. the Debenture Conditions;
- 1.1.76.2. the Management Agreement;
- 1.1.76.3. the Custody Agreement;
- 1.1.76.4. the NewGold Owner Trust Deed;
- 1.1.76.5. the Constitutional Documents,

all as amended, novated and/or replaced from time to time together with such other agreements concluded by NewGold from time to time necessary or incidental for the conduct of the NewGold Business;

1.1.77. **“Transfer Secretaries”**

- 1.1.77.1. in respect of Gold Bullion Debentures held *via* the Register, the Manager or such other transfer secretaries appointed in its sole discretion by NewGold from time to time and notified to Debenture Holders *via* SENS or the Exchanges; and
- 1.1.77.2. in respect of Gold Bullion Debentures held *via* any other Branch Register such other transfer secretaries appointed in its sole discretion by NewGold from time to time and notified to Debenture Holders *via* SENS or the Exchanges;

1.1.78. **“Unallocated Bullion Account”** an unallocated bullion account held with the Custodian to which a quantity of Gold Bullion may be credited;

- 1.2. a word or expression which denotes:
 - 1.2.1. any gender shall include the other genders;
 - 1.2.2. a natural person shall include an artificial or juristic person and vice versa;
 - 1.2.3. the singular shall include the plural and vice versa;
- 1.3. any reference to a statute, regulation or other legislation shall be to that statute, regulation or other legislation as at the date of the Debenture Conditions and as amended or substituted from time to time;
- 1.4. any word or expression defined in the SA Companies Act shall bear the same meaning as ascribed to it under such statute;
- 1.5. any provision in a definition which is a substantive provision conferring a right or imposing an obligation on any party shall, notwithstanding that it is only a definition, be given effect to as if it were a substantive provision of these terms and conditions;
- 1.6. where any number of days is prescribed or must be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day;
- 1.7. references to days (other than references to Business Days), months and/or years shall be construed as references to calendar days, months and/or years;
- 1.8. the use of the word “including” followed by specific examples shall not be construed as limiting the meaning of the general word preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific examples;
- 1.9. any word or expression defined within a particular paragraph of these Debenture Conditions other than this paragraph 1, shall bear the meaning ascribed to it in that paragraph wherever it is used in these Debenture Conditions.

2. **Form and denomination**

- 2.1. The Gold Bullion Debentures are unsecured debentures which are issued by NewGold from time to time in denominations linked to the value of the Reference Quantity, subject to the Conditions to Issue. The value of each Gold Bullion Debenture will be linked to the Reference Quantity of Gold Bullion from time to time. The Debenture Holder will, however, have no ownership right or beneficial interest in and to any Gold Bullion held by NewGold from time to time.
- 2.2. The Gold Bullion Debentures will initially be issued as Dematerialised Debentures, however, the holder of a Dematerialised Debenture will be entitled, in accordance with paragraph 10 and subject to the Applicable Laws, to exchange such Dematerialised Debenture for a Certificated Debenture.

3. **Title**

- 3.1. Title to the Gold Bullion Debentures will pass upon registration of transfer in accordance with paragraph 14. NewGold and the Transfer Secretaries shall recognise a Debenture Holder as the sole and absolute owner of the Gold Bullion Debenture registered in that Debenture Holder's name in the Register (notwithstanding any notice of ownership or writing thereon or notice of any previous loss or theft thereof) and shall not be bound to enter any trust in the Register or to take notice of or to accede to the execution of any trust (express, implied or constructive) to which any Gold Bullion Debenture may be subject.
- 3.2. In terms of existing law and practice, title to Dematerialised Debentures will be transferred subject to the Applicable Procedures.

4. **Status**

The Gold Bullion Debentures constitute unsecured senior obligations of NewGold. The claims of each Debenture Holder under the Gold Bullion Debentures shall rank *pari passu* with the claims of all other Debenture Holders under the Gold Bullion Debentures.

5. **NewGold's undertakings**

- 5.1. NewGold undertakes in favour of the Debenture Holders that, for so long as there are any Gold Bullion Debentures in issue, it shall:

5.1.1. *Corporate Status*

- 5.1.1.1. do all such things as are necessary to maintain its corporate existence and to always hold itself out as an entity which is legally separate and independent from any other entity or group of entities and to correct any misunderstanding known to it regarding its separate identity; and
- 5.1.1.2. obtain, comply with the terms of and do all that is necessary to maintain in full force and effect all authorisations, approvals, licences and consents required by all Applicable Laws to enable NewGold to lawfully enter into and perform its obligations under each of the Debenture Conditions and the Transaction Documents to which it is a party and to conduct NewGold's Business;

5.1.2. *Maintain Accounting Records*

prepare and keep proper and adequate Accounting Records in accordance with the prevailing accounting practices, the Applicable Laws and the requirements of the Exchanges from time to time and to lodge timely returns thereof as required thereunder;

5.1.3. *Taxation*

at all times maintain its tax residence in the RSA and to timeously pay all Taxation (other than Taxation disputed by NewGold in good faith) as and when due;

5.1.4. *Listing on JSE*

use all reasonable efforts to obtain and maintain a listing of the Gold Bullion Debentures on the JSE. If, however, it is unable to do so (having used such reasonable endeavours) or if the maintenance of such listing is found to be unduly onerous to NewGold, and NewGold is satisfied that the interests of Debenture Holders would not thereby be materially prejudiced, NewGold shall instead use all reasonable endeavours to promptly obtain and thereafter maintain a listing of the Gold Bullion Debentures on such other stock exchange/s as it may reasonably determine. Any de-listing of the Gold Bullion Debentures from the JSE will be subject to the provisions of the JSE listings requirements;

5.1.5. *Listing on additional stock exchanges*

provided that the NewGold Board is satisfied that Debenture Holders would not be materially prejudiced thereby, NewGold shall be entitled to procure additional listings of Gold Bullion Debentures on such other Exchange/s as NewGold determines in its discretion;

5.1.6. *Comply with Obligations*

5.1.6.1. take such steps as are reasonable to enforce its rights under the Gold Bullion Debentures and all other agreements (including the Transaction Documents) to which it is a party; and

5.1.6.2. comply with, perform and observe all of its obligations under the Gold Bullion Debentures and all other agreements (including the Transaction Documents) to which it is a party;

5.1.7. *Other Information*

make available to the relevant authorities and/or Exchanges, such information as NewGold is required by Applicable Laws (including the Listings Requirements of the Exchanges) and to the extent required, distribute same to its members and the Debenture Holders from time to time;

5.1.8. *Gold Bullion*

5.1.8.1. ensure that only Gold Bullion in the form of London Good Delivery Bars is acquired by NewGold;

5.1.8.2. subject to paragraph 5.1.8.3, ensure that all Gold Bullion of NewGold is held in a segregated Allocated Bullion Account of NewGold with the Custodian;

5.1.8.3. save as described in the Prospectus, ensure that no more than two London Good Delivery Bars are at any time deposited in the Unallocated Bullion Account of NewGold with the Custodian; and

5.1.8.4. dispose of Gold Bullion standing to the credit of its Unallocated Bullion Account solely for the purpose of meeting its statutory costs and operating fees and expenses;

5.1.9. *Events of Default*

promptly inform the Debenture Holders in accordance with the provisions of paragraph 6.3 of the occurrence of an Event of Default; and

5.1.10. *Independent Directors*

ensure that at least two directors of NewGold are independent directors nominated by the NewGold Owner Trust and not recognise a quorum at any meeting of NewGold's Board unless such independent directors are present at that meeting.

5.2. NewGold undertakes in favour of the Debenture Holders that, for so long as there are any Gold Bullion Debentures in issue, it shall not:

5.2.1. *Use of Proceeds*

utilise the proceeds derived from the issue of the Gold Bullion Debentures for any purpose other than in pursuance of NewGold's Business;

5.2.2. *Further Issues*

issue any Gold Bullion Debentures unless, as at the date thereof, the Conditions to Issue have been fulfilled;

5.2.3. *Restrictions on Activities*

engage in any activity which is outside the scope of NewGold's Business;

5.2.4. *Negative Pledge*

dispose of, create or permit to subsist any encumbrance (unless arising by the operation of law) upon the whole or any part of NewGold's assets or its revenues, present or future, or NewGold's Business, save for any such encumbrance subsisting under or in connection with any Transaction Document and/or the Debenture Conditions;

5.2.5. *Indebtedness*

incur any indebtedness save as contemplated herein and/or the Transaction Documents;

5.2.6. *Other*

save to the extent contemplated herein and/or in the Transaction Documents:

5.2.6.1. have any subsidiaries, employees or premises;

5.2.6.2. consolidate or merge with any other person or entity or convey or transfer its properties or assets substantially as an entirety to any other person or entity;

5.2.6.3. alienate, dispose of, encumber, deal with or grant any options or present or future rights to acquire any of its assets or undertakings or any right, title or interest in and to such assets or undertakings and any interests, estate, right, title or benefit therein;

5.2.6.4. consent to any variation or waiver of the terms of any of the Debenture Conditions and/or Transaction Documents other than in accordance with the Debenture Conditions, or permit any party to the Debenture Conditions and/or any of the Transaction Documents to be released from such obligations, other than in

accordance with the Debenture Conditions and/or the Transaction Documents; or

5.2.6.5. consolidate or merge with any other person or entity,

unless prior approval of Debenture Holders is obtained by way of Extraordinary Resolution.

6. Redemption

6.1. *Optional Redemption at the instance of NewGold*

6.1.1. NewGold may redeem all, but not some only, of the Gold Bullion Debentures in full (but not in part) at their Redemption Value as at the date thereof, having given not less than thirty and not more than ninety Business Days' written notice to the Debenture Holders (which notice shall be irrevocable) if:

6.1.1.1. any of the Transaction Documents become illegal or unenforceable for any reason whatsoever and such illegality or unenforceability cannot be remedied by reasonable measures open to NewGold; or

6.1.1.2. as a result of any change in or amendment to, the application or interpretation of any existing or new Applicable Law NewGold is or would be required to deduct or withhold from any payments on the Gold Bullion Debentures any amounts as provided or referred to in paragraph 11, and such requirement cannot be avoided by NewGold taking reasonable measures available to it.

6.1.2. NewGold may redeem all, but not some only, of the Gold Bullion Debentures in full (but not in part) held by a specific Debenture Holder (as opposed to all of the Debenture Holders) at their Redemption Value as at the date thereof, having given not less than thirty and not more than ninety Business Days' written notice to the relevant Debenture Holder (which notice shall be irrevocable) if NewGold is reasonably of the view that the continued holding by such Debenture Holder of Gold Bullion Debentures may result in NewGold falling foul of any Applicable Law.

6.2. *Optional Redemption at the instance of a Debenture Holder*

A Debenture Holder may redeem all or some of the Gold Bullion Debentures held by him at their Redemption Value as at the date thereof, having given written notice to NewGold (which notice shall be irrevocable) not less than three Trading Days' (in respect of the redemption of Gold Bullion Debentures having an aggregate Redemption Value of less than the Specified Value) and not less than five Trading Days (in respect of redemptions of Gold Bullion Debentures having an aggregate Redemption Value greater than or equal to the Specified Value) if, as at the date thereof, the Conditions to Redemption have been met.

6.3. *Redemption following an Event of Default*

Upon the occurrence of an Event of Default, NewGold shall forthwith advise the Debenture Holders of the occurrence of such event and shall, if requested to do so by Debenture Holders by a Extraordinary Resolution to that effect, be obliged to redeem all the Gold Bullion Debentures at their Redemption Value at the date of the occurrence of such event of default.

6.4. *Procedures for redemption*

6.4.1. A Debenture Holder may, provided the Conditions to Redemption are met, redeem a Block of Debentures at any time in accordance with paragraph 6.2 by delivering to its CSDP or broker a Redemption Notice indicating the number of Blocks of Gold Bullion Debentures that are to be redeemed and the

date on which such redemption is to take place (which shall be a date not less than three Trading Days (in respect of redemptions of Gold Bullion Debentures having an aggregate Redemption Value of less than the Specified Value)) and not less than five Trading Days (in respect of redemptions of Gold Bullion Debentures having an aggregate Redemption Value greater than or equal to the Specified Value) succeeding the date of delivery of the Redemption Notice. A message will then be forwarded from the Debenture Holder's CSDP to the Manager and NewGold's CSDP. Delivery messages received by NewGold's CSDP prior to 09:00 RSA time on any Trading Day will, if accepted, be deemed to have been received and dealt with on that Trading Day. If the delivery message is received by NewGold's CSDP after the 09:00 RSA time deadline for the relevant Trading Day, the delivery message will automatically be dealt with and be deemed to have been received on the next Trading Day.

- 6.4.2. All Gold Bullion Debentures will be redeemed at their Redemption Value. The Redemption Value will be calculated having regard to the Sale Proceeds realised or that would have been realised from the sale of the Reference Quantity of Gold Bullion on the Redemption Date of such Gold Bullion Debentures. Any discount or premium realised or incurred by NewGold to the London PM Fixing Price will be passed on to the relevant Debenture Holder. All Sale Proceeds will be converted into and paid in Rand at the Rand/Dollar exchange rate quoted by Absa Capital at 16:00 on the relevant Redemption Date.
- 6.4.3. If a delivery message is accepted, the relevant Debenture Holder will receive confirmation of such acceptance from its broker or CSDP before close of business on the Trading Day on which NewGold's CSDP received the delivery notice. In addition, the Debenture Holder shall receive confirmation of the London PM Fix used in calculating the Redemption Value, the actual Redemption Value to be paid and the Redemption Fee and costs (all of which shall be for the account of the Debenture Holder), together with details of the bank account into which such payment shall be made.
- 6.4.4. Payments in respect of the redemption of Debentures shall be made in accordance with paragraph 10 and the Applicable Procedures.
- 6.4.5. Should any Gold Bullion Debenture be a Certificated Debenture, the relevant Debenture Holder shall, prior to the redemption of such Gold Bullion Debenture, surrender the certificate in respect of such Certificated Debenture so held by him to the Transfer Secretaries at least five Business Days prior to the Redemption Date in respect thereof to allow for such Certificated Debenture to be Dematerialised prior to redemption.

6.5. *Cancellation*

All Gold Bullion Debentures which are redeemed by NewGold and submitted for cancellation shall forthwith be cancelled. All Gold Bullion Debentures so cancelled shall be de-listed and cannot be re-issued or resold.

7. **Gold option**

- 7.1. Any Debenture Holder who is a Qualifying Debenture Holder shall have the right and option, exercisable contemporaneously with the delivery to the relevant Qualifying Debenture Holder's broker or CSDP of a notification that such Qualifying Debenture Holder wishes to redeem one or more Blocks of Gold Bullion Debentures held by him, to deliver a written notification ("Option Notice") to the Manager stating that the relevant Qualifying Debenture Holder requires NewGold to sell to the relevant Qualifying Debenture Holder a quantity of Gold Bullion equal to the Reference Quantity of Gold Bullion in respect of the Gold Bullion Debentures to be redeemed.

- 7.2. The Option Notice shall include:
- 7.2.1. the number of Gold Bullion Debentures which are to be redeemed by the relevant Qualifying Debenture Holder;
 - 7.2.2. the details of the Nominated Bullion Account of the relevant Qualifying Debenture Holder into which the Sale Bullion is to be delivered; and
 - 7.2.3. evidence satisfactory to NewGold that the relevant Qualifying Debenture Holder is in fact a Qualifying Debenture Holder, accompanied by certified true copies of all relevant licences, consents, exemptions and the like, together with such other information or documentation requested by NewGold in its discretion.
- 7.3. Should a Qualified Debenture Holder exercise the Gold Option and deliver an Option Notice to the Manager in accordance with paragraph 5.2, the relevant Qualifying Debenture Holder and NewGold shall be deemed to have entered into a sale agreement, being a Gold Bullion Sale Agreement, on the following terms and conditions:
- 7.3.1. NewGold shall sell the Sale Bullion to the relevant Qualifying Debenture Holder (“Purchaser”) and the Purchaser shall purchase the Sale Bullion from NewGold on and with effect from the Redemption Date of the relevant Gold Bullion Debentures redeemed by the Purchaser (“Sale Date”) as a single indivisible transaction;
 - 7.3.2. the purchase price of the Sale Bullion (“Purchase Price”) payable by the Purchaser to NewGold shall be an amount equal to the Redemption Value of each Gold Bullion Debentures redeemed by the Purchaser (“Sale Debentures”), plus any VAT payable on the sale and purchase of the Sale Bullion, net of the Redemption Fee payable by the Purchaser in respect of the Sale Debentures;
 - 7.3.3. the Purchase Price shall be payable on the Sale Date by off-setting the obligation of the Purchaser to pay the Purchase Price and the Redemption Fee to NewGold against the obligation of NewGold to pay the Redemption Value of the Sale Debentures to the Purchaser;
 - 7.3.4. the Purchaser shall, prior to the Sale Date, deliver to its broker or CSDP an irrevocable instruction in terms of which the Purchaser instructs the broker or CSDP to redeem the Sale Debentures upon acknowledgement by NewGold of set-off of the Redemption Value of such Sale Debentures against the Purchase Price for the Sale Bullion. To the extent that the Purchaser fails to deliver such notice to its broker or CSDP prior to the Sale Date, the Purchaser hereby irrevocably and unconditionally authorises NewGold to deliver such notice on the Purchaser’s behalf;
 - 7.3.5. to the extent any of the Sale Debentures are Certificated Debentures, no notice of the nature referred to in paragraph 7.3.4 in respect of that Certificated Debenture shall be given, but instead the Purchaser shall, and hereby does, instruct NewGold to apply the Redemption Value of the Sale Debentures that are Certificated Debentures that would be payable by NewGold to the Purchaser against the obligations of the Purchaser to pay the Purchase Price to NewGold;
 - 7.3.6. each of the Purchaser and NewGold acknowledges that discharge of the Purchase Price in accordance with the above provisions shall constitute full and final discharge by:
 - 7.3.6.1. NewGold of its obligation to pay to the Purchaser the Redemption Value in respect of the Sale Debentures; and

- 7.3.6.2. the Purchaser of its obligation to pay the Purchase Price to NewGold;
- 7.3.7. NewGold shall on the Delivery Date and against payment of the Purchase Price by the Purchaser in terms of the above provisions, instruct the Custodian to debit the Sale Bullion against the Allocated Bullion Account of NewGold and to credit the Nominated Bullion Account with the Sale Bullion. The Purchaser shall be responsible for all costs, charges and expenses (including costs, charges and expenses in respect of insurance) incurred pursuant to the delivery of the Sale Bullion in accordance with the provisions of this paragraph 7.3.7;
- 7.3.8. all risk and benefit in and to the Sale Bullion shall pass to the Purchaser on the Sale Date;
- 7.3.9. the Purchaser gives NewGold the warranties (“warranties”) in paragraph 7.3.10 on the basis that:
- 7.3.9.1. notwithstanding that NewGold is or should be aware that any warranty is or may be incorrect, the Gold Bullion Sale Agreement is entered into by NewGold relying on the warranties, each of which is deemed to be both a material representation inducing NewGold to enter into the Gold Bullion Sale Agreement and an essential contractual undertaking by the Purchaser to ensure that the warranty is true and correct;
- 7.3.9.2. each such warranty shall conclusively be deemed to be material;
- 7.3.9.3. insofar as any warranty is promissory or relates to a future event, such warranty shall conclusively be deemed to have been given as at the date for fulfilment of the promise or for the happening of the event, as the case may be; and
- 7.3.9.4. each such warranty shall be a separate and independent warranty and shall not be limited by any reference to, or inference from, the terms of any other warranty or by any other provision in the Gold Bullion Sale Agreement;
- 7.3.10. the Purchaser warrants, represents and undertakes in favour of NewGold that, as at the Sale Date:
- 7.3.10.1. it is a company duly incorporated and validly existing under and in accordance with the laws of the RSA;
- 7.3.10.2. it has the legal capacity and the power to own its assets and to carry on its business as it is presently being conducted;
- 7.3.10.3. it has:
- 7.3.10.3.1. the legal capacity and the power to enter into and perform under; and
- 7.3.10.3.2. taken all necessary actions (whether corporate, internal or otherwise) to authorise its entry into and performance under,
- the Gold Bullion Sale Agreement;
- 7.3.10.4. the obligations expressed to be assumed by it under the Gold Bullion Sale Agreement are legal and valid and are binding on and enforceable against it;

- 7.3.10.5. the entry into the Gold Bullion Sale Agreement and/or the performance of its obligations under the Gold Bullion Sale Agreement does not and will not:
- 7.3.10.5.1. contravene any Applicable Laws; and/or
 - 7.3.10.5.2. contravene any provision of its constitutive documents; and/or
 - 7.3.10.5.3. contravene, violate, cause a default and/or breach of the terms of, and/or otherwise conflict with any contract, agreement, indenture, mortgage or other instrument of any kind to which it is a party or by which it may be bound or which is binding upon its assets;
- 7.3.10.6. all authorisations, consents, approvals, resolutions, licences, exemptions, filings and registrations which are required, necessary or desirable under all Applicable Laws:
- 7.3.10.6.1. to enable it to lawfully enter into, exercise its rights and comply with its obligations under the Gold Bullion Sale Agreement; and
 - 7.3.10.6.2. to make the Gold Bullion Sale Agreement admissible in evidence in the RSA,
- have been obtained or effected and are, and will for the duration of the Gold Bullion Sale Agreement remain, in full force and effect;
- 7.3.11. NewGold gives no warranties in relation to the Sale Bullion and such sale is accordingly done voetstoots, without any additional warranties express or implied, all of which are hereby expressly excluded;
- 7.3.12. should either NewGold or the Purchaser breach any provision of the Gold Bullion Sale Agreement and fail to remedy such breach within fourteen Business Days after receiving written notice from the aggrieved party to do so, then the aggrieved party shall be entitled, without prejudice to its other rights in law, to cancel the Gold Bullion Sale Agreement or to claim specific performance of all of the defaulting party's obligations in terms of the Gold Bullion Sale Agreement, whether such obligations are otherwise due for performance;
- 7.3.13. the Purchaser shall not be entitled to cede, assign, delegate or otherwise transfer any of his rights or obligations under the Gold Bullion Sale Agreement to any third party;
- 7.3.14. the Gold Bullion Sale Agreement shall in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the laws of the RSA;
- 7.3.15. the Purchaser consents and submits to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg in respect of any dispute or claim arising out of or in connection with the Gold Bullion Sale Agreement;
- 7.3.16. all provisions of the Gold Bullion Sale Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of the Gold Bullion Sale Agreement which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, only to the extent that it is so unenforceable, be treated as pro non scripto and the

remaining provisions of the Gold Bullion Sale Agreement shall remain of full force and effect. The Purchaser and NewGold declare that it is their intention that the Gold Bullion Sale Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof;

- 7.3.17. the Gold Bullion Sale Agreement constitutes the sole record of the agreement between the Purchaser and NewGold in relation to the subject matter hereof. Neither of them shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. The Gold Bullion Sale Agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the parties in respect of the subject matter hereof;
- 7.3.18. no addition to, variation, novation or agreed cancellation of any provision of the Gold Bullion Sale Agreement shall be binding upon the either NewGold or the Purchaser unless reduced to writing and signed by or on behalf of each of them; and
- 7.3.19. no indulgence or extension of time which either may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.

8. **Priority of payments**

All monies of NewGold will be applied in the following order of priority and in each case if and only to the extent that payments of a higher priority have been made in full:

- 8.1. first, in meeting the Taxation liability of NewGold from time to time;
- 8.2. second, *pari passu* and *pro rata* in payment of all fees and expenses payable by NewGold;
- 8.3. third, *pari passu* and *pro rata* in payment of the Redemption Value payable in terms of any of the Gold Bullion Debentures to be redeemed as at any point in time.

9. **Liability for calculations**

All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purpose of these Debenture Conditions, whether by the Manager or otherwise, shall (in the absence of wilful default, negligence, bad faith or manifest error) be binding on NewGold and the Debenture Holders and (in such absence as aforesaid) no liability to the Debenture Holders shall attach to NewGold or the Manager in connection with the exercise or non-exercise by them of their powers, duties and discretions hereunder.

10. **Payment**

- 10.1. The Redemption Value in relation to each Gold Bullion Debenture shall, in all instances where a Gold Option has not been exercised, be paid by NewGold in Rand in accordance with this paragraph 10. Where a Qualifying Debenture Holder exercises a Gold Option payment of the Redemption Value shall be set-off against the Purchase Price of the Sale Bullion in accordance with paragraph 7.
- 10.2. All monies payable on or in respect of each Gold Bullion Debenture shall be paid by electronic funds transfer to the account of the relevant Debenture Holder as set forth in the Register at 17h00 Johannesburg time on the Business Day preceding the relevant Redemption Date or, in the case of joint Debenture Holders, the account of that one of them who is first named in the Register in respect of that Gold Bullion Debenture, provided that no payment in respect of the redemption of such Gold Bullion Debenture shall, in the case of Certificated Debenture, be

made by NewGold until three Business Days after the date on which the Debenture Certificates in respect of such Certificated Debenture to be redeemed has been surrendered to the Transfer Secretaries.

- 10.3. If NewGold is prevented or restricted directly or indirectly from making any payment by electronic funds transfer in accordance with paragraph 10.2 (whether by reason of strike, lockout, fire, explosion, floods, riot, war, accident, *force majeure*, embargo, legislation, shortage of or breakdown in facilities, civil commotion, unrest or disturbances, cessation of labour, government interference or control or any other cause or contingency beyond the control of NewGold), NewGold shall give notice to the Debenture Holders within three Business Days of such inability arising. Upon receipt of such notice, any Debenture Holder may request NewGold to make payment of any such amounts by way of cheque and, if the Debenture Holder so requests, to make such cheque available for collection during business hours by a Debenture Holder or its Representative at the office of the Transfer Secretaries. All monies so payable by cheque shall, unless the Debenture Holder requests that the cheque be made available for collection as set out above, be sent by post within two Business Days of the receipt by NewGold of such request to:
 - 10.3.1. the address of that Debenture Holder as set forth in the Register at 17h00 Johannesburg time on the Business Day preceding the Redemption Date; or
 - 10.3.2. in the case of joint Debenture Holders, the address set forth in the Register of that one of them who is first named in the Register in respect of that Debenture on the Business Day preceding the Redemption Date; or
 - 10.3.3. such other address as may be designated to the Transfer Secretaries in writing by that Debenture Holder; or
 - 10.3.4. if the amount in question is legally payable to anyone else, the address designated by that person for that purpose.
- 10.4. Each such cheque shall be made payable to the relevant Debenture Holder or, in the case of joint Debenture Holders, the first one of them named in the Register and each such cheque shall be dated as at the relevant Redemption Date.
- 10.5. Payment of a cheque sent in terms of paragraph 10.3 or 10.4 shall be a complete discharge by NewGold of the amount of the cheque.
- 10.6. If several persons are entered into the Register as joint Debenture Holders then, payment to any one of them of any monies payable on or in respect of the Gold Bullion Debentures shall be an effective and complete discharge by NewGold of the amount so paid, notwithstanding any notice (express or otherwise) which NewGold may have of the right, title, interest or claim of any other person to or in any Gold Bullion Debenture or interest therein.
- 10.7. Subject to these Debenture Conditions, cheques may be posted by ordinary post, provided that neither NewGold nor its agent shall be responsible for any loss in transmission and the postal authorities shall be deemed to be the agent of the Debenture Holders for the purpose of all cheques posted in terms of this paragraph 10.
- 10.8. Payments in respect of Dematerialised Debentures will be made in accordance with the Applicable Procedures and NewGold shall have no responsibility and shall not incur any liability in any respect for the records relating to, or payments made on account of Dematerialised Debentures, or for the maintaining, supervising or reviewing any records relating to such Dematerialised Debentures.
- 10.9. Any monies payable by NewGold in respect of a Gold Bullion Debenture which are unclaimed by the relevant Debenture Holder for any reason whatsoever, including, without limiting the generality of the foregoing, by reason of a failure on the part of the relevant Debenture Holder to submit its bank account details to the Transfer Secretaries or a failure to submit the correct bank account details to the Transfer Secretaries for entry into the Register, for a period of three years after the relevant payment date of the monies in question shall:

10.9.1. be paid over to the Guardian's Fund (or its successor) for and on behalf of the relevant Debenture Holder; and

10.9.2. shall not bear interest,

and such payment by NewGold to the Guardian's Fund shall be a complete discharge by NewGold of its relevant payment obligations under the Gold Bullion Debenture in question.

11. **Taxation**

As at the date of these Debenture Conditions, all payments in respect of the Gold Bullion Debentures will be made without withholding or deduction for or on account of any present or future Taxation imposed or levied by or on behalf of the RSA or any authority thereof or therein having power to tax, unless such withholding or deduction is required by Applicable Law. In that event, NewGold shall make such payments after such withholding or deduction has been made (where applicable) and shall account to the relevant authorities for the amount so required to be withheld or deducted. NewGold shall not be obliged to make any additional payments to Debenture Holders in respect of such withholding or deduction.

12. **Prescription**

The Gold Bullion Debentures will become void unless presented for payment within a period of three years after the Redemption Date therefor.

13. **Delivery, dematerialisation, exchange and replacement of certificates**

13.1. The Debenture Holder of Dematerialised Debentures may, in terms of the Applicable Procedures and through its nominated broker or CSDP, direct a written request to the Transfer Secretaries for a certificate representing the number of Gold Bullion Debentures to be delivered by the Transfer Secretaries in exchange for such Dematerialised Debentures. The Transfer Secretaries shall deliver such certificate upon such written request no later than fourteen calendar days after receiving the written request of such Debenture Holder in accordance with the Applicable Procedures, provided that joint holders of Dematerialised Debentures shall be entitled to receive only one certificate in respect of that joint holding and delivery to one of those joint holders shall be delivery to all of them.

13.2. The holder of Dematerialised Debentures shall be obliged, if requested upon written notice of not less than five Business Days by NewGold to do so, to exchange such Dematerialised Debentures for Certificated Debentures (or such number of Certificated Debentures as such Debenture Holder may request in writing), in accordance with the Applicable Procedures if:

13.2.1. it is impossible for whatever reason for the Gold Bullion Debentures held by the applicable holder to be held *via* STRATE or the settlement system operated by the relevant Exchanges;

13.2.2. the applicable settlement system operated by Strate or the relevant Exchange is closed for business for a continuous period of fourteen days (other than by reason of holiday, statutory or otherwise) or announces its intention permanently to cease business and a successor satisfactory to NewGold and the applicable Exchange is not available; or

13.2.3. NewGold has become or will become subject to adverse tax consequences, which would not be suffered were such Dematerialised Debentures to be exchanged for Certificated Debentures.

13.3. A person holding a Dematerialised Debenture may, in terms of the Applicable Procedures and through its nominated CSDP, direct a written request to the Transfer Secretaries for a certificate representing the number of Certificated Debentures to be delivered by the Transfer Secretaries in exchange for such Dematerialised Debentures. The Transfer Secretaries shall deliver such certificates upon such written request no later than fourteen days after receiving the written request of the holder of such Dematerialised Debentures in accordance with the Applicable

Procedures, provided that, joint holders of Dematerialised Debentures shall be entitled to receive only one certificate in respect of that joint holding and delivery to one of those joint holders shall be delivery to all of them.

- 13.4. Certificates shall be provided (whether by way of issue, delivery or exchange) by NewGold without charge, save as otherwise provided in these Debenture Conditions. Separate costs and expenses relating to the provision of certificates and/or the transfer of Gold Bullion Debentures may be levied by other persons, such as a settlement agent, under the Applicable Procedures and such costs and expenses shall not be borne by NewGold. The costs and expenses of delivery of certificates by other than ordinary post (if any) and, if NewGold shall so require, taxes or governmental charges or insurance charges that may be imposed in relation to such mode of delivery shall be borne by the Debenture Holder.
- 13.5. If any certificate is mutilated, defaced, stolen, destroyed or lost it may be replaced at the office of the Transfer Secretaries on payment by the claimant of such costs and expenses as may be incurred in connection therewith and against the furnishing of such indemnity as the Transfer Secretaries may reasonably require. Mutilated or defaced certificates must be surrendered before replacements will be issued.
- 13.6. Any person becoming entitled to Certificated Debentures in consequence of the death or insolvency of the relevant Debenture Holder may, upon producing evidence to the satisfaction of NewGold that he holds the position in respect of which he proposes to act under this paragraph or of his title, require NewGold and the Transfer Secretaries to register such person as the holder of such Debentures or, subject to the requirements of this paragraph 13, to transfer such Gold Bullion Debentures to such person.

14. **Transfer of debentures**

- 14.1. Dematerialised Debentures may be transferred in terms of the Applicable Procedures. In order for any transfer of Debentures evidenced by a certificate to be effected through the Register and for the transfer to be recognised by NewGold, each transfer of a Gold Bullion Debenture:
- 14.1.1. must be embodied in the usual Transfer Form;
 - 14.1.2. must be signed by the relevant Debenture Holder and the transferee, or any authorised representatives of that registered Debenture Holder and/or transferee; and
 - 14.1.3. must be made by way of the delivery of the Transfer Form to the Transfer Secretaries together with the certificate in question for cancellation or, if only part of the Gold Bullion Debentures represented by a certificate is transferred, a new certificate for the balance will be delivered to the original Debenture Holder and the cancelled certificate will be retained by the Transfer Secretaries.
- 14.2. The transferor of any Gold Bullion Debentures represented by a certificate shall be deemed to remain the owner thereof until the transferee is registered in the Register as the holder thereof.
- 14.3. All authorities to sign transfer deeds granted by Debenture Holders for purposes of transferring Gold Bullion Debentures which may be lodged, produced or exhibited with or to NewGold at any time at its registered office shall, as between NewGold and the grantor of such authority be taken and be deemed to continue to remain in full force and effect, and NewGold may allow same to be acted upon until such time as express notice in writing of the revocation of same shall have been given and lodged at the registered office of NewGold at which the original authority was lodged, produced or exhibited (as the case may be).
- 14.4. Even after the giving and lodging of such notice, NewGold shall be entitled to give effect to any instrument signed under the authority to sign and certified by any officer of NewGold as being an order before the giving and lodging of such notice.

- 14.5. Before any transfer is registered all relevant transfer taxes (if any) must have been paid and evidence of such payment must be furnished as the Transfer Secretaries reasonably require as to the identity and title of the transferor and the transferee.
- 14.6. No transfer will be registered while the Register is closed.
- 14.7. If a transfer is registered then the Transfer Form (if any) and cancelled certificate (if any) will be retained by the Transfer Secretaries.

15. Register

- 15.1. The Register shall be kept at the offices of the Transfer Secretaries. The Register shall contain the name, address and bank account details of the registered Debenture Holders. The Register shall show the date of such issue and the date upon which the Debenture Holder became registered as such. The Register shall show the serial numbers of any certificates issued. The Register shall be open for inspection during the normal business hours of the Transfer Secretaries to any Debenture Holder or any person authorised in writing by any Debenture Holder. The Transfer Secretaries shall not record any transfer other than on Business Days, nor while the Register is closed.
- 15.2. The Transfer Secretaries shall alter the Register in respect of any change of name, address or bank account number of any of the Debenture Holders of which it is notified in accordance with these Debenture Conditions.

16. Notices

Save where a paragraph in these Debenture Conditions expressly provides for notice to be given in some other manner:

- 16.1. for so long as the Gold Bullion Debentures are held in their entirety in Dematerialised form, there may be substituted for publication as contemplated in paragraph 16.2 the delivery of the relevant notice to each of the applicable central depository and electronic settlement systems operated by the Exchanges, the Settlement Agents and the Exchanges for communication by them to the holders of Dematerialised Debentures; and
- 16.2. should any of the Gold Bullion Debentures be held in Certificated form as envisaged in 16.1, all notices (including all demands or requests under these Debenture Conditions) to the Debenture Holders will be valid if:
 - 16.2.1. mailed by registered post or hand delivered to their addresses appearing in the Register or published in a leading English language daily newspaper of general circulation in the RSA; or
 - 16.2.2. for so long as any of the Gold Bullion Debentures are listed on the JSE, published in a daily newspaper of general circulation in Johannesburg.

Any such notice shall be deemed to have been given on the day of first publication or hand delivery or on the seventh day after the day on which it is mailed (as the case may be); and

- 16.3. notices (including all demands or requests under these Debenture Conditions) to be given by any Debenture Holder shall be in writing and given by delivering the notice, together with a certified copy of the relevant certificate, to NewGold at its registered office. For so long as all of the Gold Bullion Debentures are dematerialised, notice may be given by any holder of a Dematerialised Debenture to NewGold through the Debenture Holder's relevant Settlement Agent in accordance with the Applicable Procedures and in such manner as NewGold and the relevant Settlement Agent may approve for this purpose; and
- 16.4. any notice to NewGold shall be deemed to have been received by NewGold, on the second Business Day after being hand delivered to the registered office of NewGold or on the seventh day after the day on which it is mailed by registered post to the registered office of NewGold (as the case may be), provided that any notice mailed from an address outside of the RSA shall be

deemed to have been received by NewGold on the fourteenth day after the date on which it was mailed.

17. **Amendment of conditions**

No amendment to these Debenture Conditions shall be made unless:

- 17.1. the Debenture Holders have consented to such amendment by an Extraordinary Resolution to that effect; and
- 17.2. the JSE has consented thereto,

provided that NewGold shall be entitled, without Debenture Holder approval, to amend these Debenture Conditions so as to correct any patent error or defect or so as to bring the Debenture Conditions in line with the Constitutional Documents.

18. **Meetings of Debenture Holders**

18.1. *Convening of meetings*

- 18.1.1. NewGold may at any time convene a meeting of Debenture Holders (a “meeting” or the “meeting”).
- 18.1.2. NewGold shall convene a meeting upon the requisition in writing of Debenture Holders holding Gold Bullion Debentures referencing at least one-tenth of the aggregate quantity of the Gold Bullion held by NewGold as at such point in time, upon and being given notice of the nature of the business for which the meeting is to be held.
- 18.1.3. All notices of meetings shall include details of the place, day and hour of the meeting and of the nature of the business to be transacted at the meeting.
- 18.1.4. All meetings of Debenture Holders shall be held in Johannesburg.

18.2. *Requisition*

- 18.2.1. A requisition notice referred to in paragraph 18.1 shall state the nature of the business for which the meeting is to be held and shall be deposited at the office of the Manager.
- 18.2.2. The Manager shall notify NewGold of the deposit of a requisition notice forthwith.
- 18.2.3. A requisition notice may consist of several documents in like form, each signed by one or more requisitionists.

18.3. *Convening of meetings by requisitionists*

If NewGold does not proceed to cause a meeting to be held within thirty Business Days of the deposit of a requisition notice, requisitionists who together hold Gold Bullion Debentures referencing not less than 10% of the aggregate quantity of Gold Bullion held by NewGold as at such point in time, may themselves convene the meeting, but the meeting so convened shall be held within ninety Business Days from the date of such deposit and shall be convened as nearly as possible in the same manner as that in which meetings may be convened by NewGold. Notice of the meeting shall be required to be given to NewGold.

18.4. *Notice of meeting*

- 18.4.1. Unless Debenture Holders holding Gold Bullion Debentures referencing at least 90% of the aggregate quantity of Gold Bullion held by NewGold as at such point in time agree in writing to a shorter period, at least twenty-one

calendar days' written notice specifying the place, day and time of the meeting and the nature of the business for which the meeting is to be held shall be given by NewGold, to each Debenture Holder in accordance with the provisions of paragraph 16.

- 18.4.2. The accidental omission to give such notice to any Debenture Holder or the non-receipt of any such notice, shall not invalidate the proceedings at a meeting.

18.5. *Quorum*

- 18.5.1. A quorum at a meeting shall:

18.5.1.1. for the purposes of considering a resolution other than one requiring an Extraordinary Resolution, consist of Debenture Holders present in person or by Proxy and holding Gold Bullion Debentures referencing in aggregate not less than one-third of the aggregate quantity of Gold Bullion held by NewGold as at such point in time;

18.5.1.2. for the purposes of considering an Extraordinary Resolution, consist of Debenture Holders present in person or by Proxy and holding Gold Bullion Debentures referencing in aggregate not less than a clear majority of the aggregate quantity of Gold Bullion held by NewGold as at such point in time.

- 18.5.2. No business shall be transacted at a meeting of the Debenture Holders unless a quorum is present at the time when the meeting proceeds to business.

18.5.3. If, within fifteen minutes from the time appointed for the meeting, a quorum is not present, the meeting shall, if it was convened on the requisition of Debenture Holders, be dissolved. In every other case the meeting shall stand adjourned to the same day in the third week thereafter, at the same time and place, or if that day is not a Business Day, the next succeeding Business Day, in which event, notice of the adjourned meeting shall be sent to every Debenture Holder in accordance with the provisions of paragraph 16 and shall state that, if a quorum (as referred to in paragraph 18.5.1 is not present at the adjourned meeting, the Debenture Holders then present will form a quorum.

18.6. *Chairperson*

Any director of NewGold or his duly authorised representative shall preside as chairperson at a meeting. If no director of NewGold or his duly authorised representative is present within ten minutes of the time appointed for the holding of the meeting, the Debenture Holders then present shall choose one of their own number to preside as chairperson.

18.7. *Adjournment*

18.7.1. Subject to the provision of this paragraph 18, the chairperson may, with the consent of, and shall on the direction of, the meeting, adjourn the meeting from time to time and from place to place.

18.7.2. No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

18.7.3. At least fourteen days' written notice of the place, day and time of an adjourned meeting shall be given by NewGold to each Debenture Holder and NewGold. In the case of a meeting adjourned in terms of paragraph 18.5.3, the notice shall state that the Debenture Holders present in person or by Proxy at the adjourned meeting will constitute a quorum.

18.8. *How questions are decided*

- 18.8.1. At a meeting, a resolution put to the vote shall be decided on a show of hands unless, before or on the declaration of the result of the show of hands, a poll is demanded by the chairperson or by any one of the Debenture Holders present in person or by Proxy.
- 18.8.2. Unless a poll is demanded, a declaration by the chairperson that on a show of hands a resolution has been carried, or carried by a particular majority, or lost, shall be conclusive evidence of that fact, without proof of the number or proportion of the votes cast in favour of or against such resolution.
- 18.8.3. A poll demanded on the election of a chairperson or on the question of the adjournment of a meeting shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs and the result of such poll shall be deemed to be the resolution of the meeting.
- 18.8.4. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson shall not be entitled to a casting vote in addition to the vote, if any, to which he is entitled.

18.9. *Votes*

- 18.9.1. On a show of hands every Debenture Holder present in person shall have one vote. On a poll every Debenture Holder, present in person or by Proxy, shall have one vote for each Gold Bullion Debenture held by it. The joint holders of Gold Bullion Debentures shall have only one vote on a show of hands and only one vote in respect of the Gold Bullion Debentures of which they are the registered holder and the vote may be exercised only by the holder whose name appears first in the Register in the event that more than one of such joint holders is present at the meeting in person or by Proxy.
- 18.9.2. The Debenture Holder in respect of Dematerialised Debentures shall vote at any such meeting on behalf of the beneficial owners of such Dematerialised Debentures in accordance with the instructions from the holders of Dematerialised Debentures conveyed through the settlement agents in accordance with the Applicable Procedures.

18.10. *Proxies and Representatives*

- 18.10.1. On a show of hands, votes may not be given by Proxy, but only by Debenture Holders present in person.
- 18.10.2. On a poll, votes may be given either in person or by Proxy. A Proxy shall be authorised in writing under a Form of Proxy.
- 18.10.3. A person appointed to act as Proxy need not be a Debenture Holder.
- 18.10.4. The Proxy form shall be deposited at the registered office of NewGold or at the office where the Register is kept not less than twenty-four hours before the time appointed for holding the meeting or adjourned meeting at which the person named in such Proxy proposes to vote, failing which, the Proxy shall be invalid.
- 18.10.5. No Form of Proxy shall be valid after the expiration of six months from the date named in it as the date of its execution. A Form of Proxy shall be valid for any adjourned meeting, unless the contrary is stated thereon.
- 18.10.6. A Proxy shall have the right to demand or join in demanding a poll.

18.10.7. A vote given in accordance with the terms of a Proxy shall be valid, notwithstanding the previous death or incapacity of the principal or revocation of the Proxy or of the authority under which the Proxy was executed or the transfer of Gold Bullion Debentures in respect of which the Proxy was given, provided that no intimation in writing of such death, incapacity or revocation shall have been received by NewGold at the office of the Transfer Secretaries more than, and that the transfer has been given effect to less than, twelve hours before the commencement of the meeting or adjourned meeting at which the Proxy is to be used.

18.10.8. Any reference in these Debenture Conditions to a Debenture Holder present in person includes such a duly authorised Representative of a Debenture Holder.

18.11. *Records*

18.11.1. NewGold shall cause minutes of all resolutions and proceedings of meetings to be duly entered in books of NewGold.

18.11.2. Any such minutes as aforesaid, if purporting to be signed by the chairperson of the meeting at which such resolutions were passed or proceedings held or by the chairperson of the next succeeding meeting, shall be admissible in evidence without any further proof, and until the contrary is proved, a meeting of Debenture Holders in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened and all resolutions passed thereat, or proceedings held, to have been duly passed and held.

19. *Governing law*

The Gold Bullion Debentures and all rights and obligations relating to the Gold Bullion Debentures are governed by, and shall be construed in accordance with, the laws of the RSA.