Section 5
Continuing Obligations

**Scope of section[[1]](#footnote-1)**

This section sets out the general continuing obligations for issuers.

Definitions (Added to definitions section)

Existing definition in 3.67 moved to definitions section:

|  |  |  |
| --- | --- | --- |
| prohibited period |  | means - 1. a closed period; and
2. any period where price sensitive information exists in relation to the issuer’s securities; [*moved this portion to 5.50, as it applies to directors dealings*]
 |

Continuing Obligation Principles

Sponsors

5.1 An issuer must always have a sponsor and all correspondence with the JSE must be communicated through the sponsor.[[2]](#footnote-3)

5.2 Issuers must submit all announcements to their sponsors for approval prior to publication.

**Announcements**

5.3 Announcements must be in English and may only be made available on the issuer’s website after it has been announced.

5.4 All relevant company information must be announced by the applicant issuer as soon as possible after authorisation by the applicant issuer and the sponsor. Relevant company information, includes announcement of the applicant issuer and price sensitive information.[[3]](#footnote-4)

**Conflicts**

5.5 If there is any conflict between the application of the Requirements and adherence to any other statute, the Requirements must be adhered to unless specifically otherwise directed by statute or court of law.

Prescribed information to shareholders

5.6 An issuer must:

 (a) inform shareholders of general/annual general meetings that they are entitled to attend;

 (b) enable shareholders to exercise their right to vote, where applicable; and

 (c) release announcements and distribute circulars in terms of the Requirements.

Rights between holders of securities

Equality of treatment

5.7 An issuer must ensure that all holders of any class of its securities receive fair and equal treatment.

Voting rights

5.8 An issuer must not issue any securities with voting rights differing from other securities of the same class, save for weighted voting shares in terms of Section 3. Where a company currently has listed low or high voting securities prior to the incorporation of weighted voting shares in the Requirements, the JSE will grant a listing of additional securities of that class.

Pre-emptive rights

5.9 Listed securities in each class must rank *pari passu* in respect of all rights. "*Pari passu*” means that the securities:

 (a) are in all respects identical;

 (b) are of the same nominal value, and that the same amount per share has been paid up;

 (c) carry the same rights as to transfer, attendance and voting at general/annual general meetings and in all other respects; and

 (d) are entitled to the same dividends for the same period.

5.10 Subject to 5.12 and 5.13, an issuer proposing to issue equity securities for cash must first offer those securities in terms of a rights offer, to existing holders of equity securities in proportion to their existing holdings. Only if securities are not taken up by such holders may they then be issued for cash to other persons or otherwise than in the proportion mentioned above.[[4]](#footnote-5)

5.11 If allowed by the Commission and subject to the prior approval of the JSE, an issuer need not comply with 5.10 for securities that the issuer consider necessary to be excluded from the rights offer because of legal impediments or compliance with the requirements of any regulatory body of any territory recognised.

Waiver of pre-emptive rights

5.12 The issue of shares for cash by an issuer, made otherwise than through a rights offer, will be permitted provided shareholders approve such issuances through an ordinary resolution required for a specific and/or general authority to issue shares for cash in terms of the Requirements.

5.13 The JSE may waive some or all of the provisions in 5.12 if the provisions of [Schedule 11] are met.[[5]](#footnote-6)

Listing fees

5.14 An issuer must pay the listing and other JSE fees as published on the JSE website. Failure to pay any fees due may result in the censure of the issuer in terms of Section 1.

General Continuing Obligations

Listing Conditions

5.15 Issuers must comply with the control listing conditions in terms of Section 3 [*not yet released*].[[6]](#footnote-7)

5.16 Issuers must use their best endeavours to comply with the free float listing condition in Section 3.

**Corporate Governance**

5.17 Issuers must comply with the corporate governance continuing obligations in Section 4[new].

**Financial Results & Auditor**

5.18 Issuers must comply with the financial results and auditor continuing obligations in Section 8.

**General obligation of disclosure**

5.19 With the exception of trading statements below, an issuer must, without delay, unless the information is kept confidential for a limited period of time, release an announcement providing details relating, directly or indirectly, to such issuer that constitutes price sensitive information.[[7]](#footnote-8)

Confidentiality[[8]](#footnote-9)

5.20 Subject to 5.21, information that is required to be announced in terms of the Requirements, including price sensitive information, must not be disclosed until announced.

5.21 Issuers may, if deemed necessary, disclose inside information in terms of Section 78(4)(b) of the FMA, prior to such information being announced. If an issuer believes or suspects that the confidentiality of such information cannot be maintained, the issuer must immediately:[[9]](#footnote-10)

 (a) inform the JSE; and

 (b) ensure that such information is announced.

5.22 When an issuer intends to disclose any information as contemplated in 5.19 at any meeting or forum, such information must be announced either before or at the same time as the meeting or forum. If any information is disclosed inadvertently during the meeting or forum prior to it being announced, the issuer must immediately:[[10]](#footnote-11)

 (a) inform the JSE; and

 (b) ensure that such information is announced.

Cautionary announcements

5.23 Immediately after an issuer knows of any price sensitive information and the confidentiality cannot be maintained or if the issuer suspects that confidentiality has or may have been breached, an issuer must publish a cautionary announcement. [[11]](#footnote-12)

5.24 Cautionary announcements must contain disclosure of all available details regarding the information and contain a warning to shareholders that they must exercise caution when dealing in their securities, until full details of the information has been announced. If an issuer is unable to announce the information, such cautionary announcement must be in the format of a first cautionary announcement available on the JSE Forms Portal.

5.25 After an issuer has issued a cautionary announcement, it must announce a renewal cautionary announcement (format available on the JSE Forms Portal,) every 30 business days thereafter unless the JSE allows otherwise, until full details of the information have been announced. Once full information has been announced, the cautionary announcement must be withdrawn in the format available on the JSE Forms Portal

**Trading statements**

5.26 Subject to 5.32, issuers must publish a trading statement as soon as they are reasonably certain that the results for the period to be reported upon next will differ by at least 20% from the most recent results below:

 (a) the published\* results for the previous corresponding period; or

 (b) a profit forecast in terms of Section 8 previously published in relation to such period.

 \*In respect of a new listing these provisions will apply to the previous corresponding period notwithstanding that the financial results were not published.

5.27 The results measure is headline earnings per share and earnings per share, and if more relevant (because of the nature of the issuer’s business) net asset value per share (“navps”). If an issuer wishes to adopt navps, it must announce, in advance of the first period ending that it will be adopting navps for trading statement purposes.

5.28 The determination of a reasonable certainty is a judgmental decision which has to be taken by the directors of the issuer.

5.29 Trading statements must provide specific guidance by including the period to which they relate, the comparative numbers for the periods in 5.26, and:[[12]](#footnote-13)

 (a) a specific percentage and number to describe the differences; or[[13]](#footnote-14)

 (b) a range (e.g. the issuer is expecting an increase of between 15% and 25%) and numbers to describe the differences, provided the range must not exceed 20%. (e.g. 20% to 40%, 25% to 45% etc.); or[[14]](#footnote-15)

 (c) a minimum difference in percentage and number, together with any other information available to the issuer, provided that (a) or (b) must then be announced once reasonable certainty is obtained.

 The specific percentage as referred to in (a) to (c) above, need only be provided if less than 100%.[[15]](#footnote-16)

5.30 If, after publication of a trading statement but before publication of the relevant results, an issuer becomes reasonably certain that its previously published trading statement is incorrect, then the issuer must publish an updated trading statement.

5.31 When announcing a trading statement, an issuer must comply with the provisions dealing with a specific or general profit forecast or estimate in Section 8.

5.32 Issuers that announce quarterly results may apply the trading statements provision on a voluntary basis. If not applied, such issuers must include commentary in each quarterly results announcement on the expected performance of the issuer for the next quarter. The commentary is exempted from compliance with the provisions dealing with profit forecasts and estimates in Section 8.

Press announcements

5.33 Announcements requiring publication in the press must be published in a widely circulated daily newspaper taking into account the composition and demographics of the issuer’s stakeholders, in the reasonable opinion of the issuer, in any official language.

5.34 Publication in the press can be made through a short-form press announcement. The following details must be included in the short-form press announcement:

 (a) a headline describing the subject matter of the announcement;[[16]](#footnote-17)

 (b) a statement that the announcement is the responsibility of the directors;[[17]](#footnote-18)

 (c) a statement that:

 (i) the full announcement/results has been released and is also available on the issuer’s website; and

 (ii) any investment decision should include consideration of the information in the full announcement/results;[[18]](#footnote-19)

 (d) a short-form announcement dealing with results must disclose the following increases/decreases compared to the results for the previous corresponding period:[[19]](#footnote-20)

 (i) revenue/profit;[[20]](#footnote-21)

 (ii) headline earnings per share;

 (iii) earnings per share;

 (iv) dividend/distribution; and

 (v) net asset value, only if more relevant because of the nature of the issuers business.

 To the extent that any of the above indicators in (i)-(v) are not considered to be a true measure to reflect the performance of an issuer in the banking and property industries, the JSE may waive the requirement to publish such information or agree to a relevant alternative indicator/s; and[[21]](#footnote-22)

 (e) where the auditor issued a report on the results, the name of the audit firm, a statement on the type of audit opinion/review conclusion that was reached (unmodified, qualified, disclaimer or adverse) and a statement to that effect if any disclosure on the following exists: [[22]](#footnote-23)

 (i) material uncertainty relating to going concern;[[23]](#footnote-24)

 (ii) emphasis of matter;

 (iii) a reportable irregularity (as defined in the Auditing Profession Act); and

 (iv) a material inconsistency in information included in a document that contains results.

Dealings by share incentive schemes

5.35 The provisions of 5.46 to 5.54 apply equally to any dealings by the issuer or a scheme (including a non-dilutive scheme) involving securities relating to the scheme, save for the following:[[24]](#footnote-25)

 (i) the instruction to deal was given by a participant of the scheme (other than a director), where shares in the issuer have vested in favour of the participant in terms of the scheme;

 (ii) the scheme is merely facilitating the dealing on behalf of the participant;

 (iii) the participant takes the risk of any profit or loss in respect of the dealing; and

 (iv) the trustees of the scheme, any other party responsible and the issuer do not exercise any election/decision in respect of such dealing, other than following and acting on the specific instructions of the participant.

 A non-dilutive scheme means any share incentive scheme not involving the issue of equity securities by the issuer.

Disclosure of beneficial interests in securities

5.36 (a) Issuers must establish and maintain a register of the disclosures made in terms of Section 56 of the Act.

 (b) An issuer that has received a notice regarding share dealings, in terms of Section 122 of the Act, must, within 48 hours after receipt of such notice, publish the information.

Cash company

5.37 A cash company classification may lead to suspension and removal of listing in terms of 9.11.

Meetings

Announcement of annual/general meeting details

5.38 An issuer must release an announcement regarding the date, time and venue of its annual/general meeting within 24 hours after the notice of meeting has been distributed to shareholders.

5.39 If proposing written resolutions, the issuer must release an announcement with details of the written resolutions within 24 hours after the written resolutions have been distributed to shareholders.[[25]](#footnote-26)

Disclosure of voting results of annual/general meetings

5.40 (a) An issuer must release an announcement within 48 hours after each meeting providing details of the voting results. The announcement must include the following:[[26]](#footnote-27)

 (i) the resolution/s proposed at the meeting;

 (ii) the shares voted in person or by proxy disclosed as a number and a percentage (in relation to the total issued share capital of that class of the applicant issuer);

 (iii) the shares abstained disclosed as a percentage (in relation to the total issued share capital of that class of the applicant issuer); and

 (iv) the votes carried for and against each resolution, disclosed as a percentage (in relation to the total number of shares voted at the meeting in respect of (ii) above).

 To the extent that the number of shares in (ii) and (iii) differ for each resolution, details must be provided per resolution.

 (b) The announcement in terms of 5.40(a) above, must include details of any resolutions added or amended in respect of the annual/general meeting.

Demand to call a shareholders meeting[[27]](#footnote-28)

5.41 On receipt by an issuer of a valid demand to call a shareholders’ meeting in terms of Section 61(3) of the Act (or for a foreign applicant issuer with a primary listing in terms of similar legislation) or [4.45(d) WV shares], the issuer must immediately:[[28]](#footnote-29)

 (i) inform the JSE in writing; and

 (ii) release an announcement.

5.42 Subject to the Act or for a foreign applicant issuer with a primary listing on the JSE in terms of similar legislation, the issuer must:[[29]](#footnote-30)

 (i) issue a notice of meeting within ten business days from the date of receipt of the request to call a shareholders’ meeting;

 (ii) the date of the meeting must not exceed 25 business days from when the notice of meeting is issued; and

 (iii) the shareholders meeting must be announced in terms of 5.40.

Proxy forms

3.43 (a) A proxy form must be included with the notice convening a meeting of holders of securities.[[30]](#footnote-31)

 (b) For the purpose of resolutions proposed in terms of the Requirements wherein any votes are to be excluded from that resolution, any proxy given by a holder of securities to the holder of such an excluded vote shall be excluded from voting for the purposes of that resolution.

Directors

Changes to the board and company secretary

5.44 An issuer must announce any change in respect of the following, as soon as practically possible and must state the effective date:

 (a) the appointment of a new director (including capacity being executive, non-executive or independent non-executive) or company secretary;[[31]](#footnote-32)

 (b) the resignation, removal, retirement or death of a director or company secretary; and/or

 (c) changes to any important functions or executive responsibilities of a director, which will include changes to board sub-committees.

 Such changes must also be included in the issuer’s next publication of listing particulars

5.45 Where a director is reappointed through rotation in terms of Section 4, it will not be regarded as a change requiring notification.

Dealing in Securities

5.46 An issuer must announce details of all dealings in securities of the issuer (including off market dealings) held beneficially, whether directly or indirectly, by or on behalf of:

 (a) a director;

 (b) company secretary;

 (c) prescribed officer;

 (d) director and company secretary of a major subsidiary;

 (the “dealing party”)

 (e) any associates of the above.

5.47 The announcement must contain:

 (a) the name of the dealing party. If an associate, the name and relationship with the dealing party;

 (b) the nature of the dealing, and whether undertaken on or off-market;

 (c) details of the dealing party’s interest in the dealing;

 (d) the date of the dealing;

 (e) the price, number, total value and class of securities. If no price is attributable to the dealing (e.g. donations), a deemed value based on the prevailing market price must be disclosed. Aggregation and averaging of prices are not allowed, however in instances of various trades with variable prices during the course of a day, the volume weighted average price must be disclosed together with the highest and lowest trading prices for the day;

 (f) in the case of options or any other similar right or obligation, the option strike price, strike dates and periods of exercise and/or vesting;

 (g) where securities of the issuer are used as security, guarantee, collateral or otherwise granting a charge, *lien* or other encumbrance, the announcement must disclose the nature, term and amount of the financial obligation as well the number, value and class of securities offered as security, guarantee, collateral or otherwise; and[[32]](#footnote-33)

 (h) whether clearance has been given in terms of paragraph 5.52. In the case of dealings by associates, this requirement does not apply.[[33]](#footnote-34)

5.48 Dealings include:[[34]](#footnote-35)

 (a) any sale, purchase or subscription of securities in the issuer (including in terms of a rights offer, capitalisation award or scrip dividend);[[35]](#footnote-36)

 (b) any agreement to sell, purchase or subscribe for securities relating to the issuer (irrespective of whether shares or cash flows);

 (c) any donations of securities relating to the issuer;

 (d) any dealing in derivatives in respect of the issuer’s securities including warrants, single stock futures, contracts for difference or any other derivatives issued in respect of the issuer’s securities. It should be noted that, if shares are sold and the equivalent exposure is purchased through a single stock future or any other derivative, both legs will be deemed to be dealings. The closing out of a single stock future or other derivative is also a dealing. The rolling-over of a single stock future that is merely an extension of an existing position is not a dealing;

 (e) the acceptance, acquisition, disposal, or exercise of any option (including but not limited to options in terms of a share incentive/option scheme) to acquire or dispose of securities;

 (f) any purchase or sale of nil or fully paid letters, however excluding following full or partial entitlements as a shareholder through means of a renounceable rights offer (excess applications permitted), capitalisation issues, scrip dividends and dividend reinvestment, and receiving the subsequent allocation of such securities pursuant to such entitlements;[[36]](#footnote-37)

 (g) the acceptance, acquisition or disposal of any right or obligation, present or future, conditional or unconditional, to acquire or dispose of securities;

 (h) using securities of the issuer as security, guarantee, collateral or otherwise granting a charge, *lien* or other encumbrance over the securities of the issuer. A dealing will be deemed to be present at each of the following trigger events –[[37]](#footnote-38)

 (i) at the time of agreement of such arrangement;

 (ii) at the time when a right or discretion afforded to a lender is being exercised; and

 (iii) at the time an existing arrangement is being amended or terminated; or

 (i) any other dealing that will provide direct or indirect exposure to the share price of the issuer. Cash settled share appreciation rights granted to directors in the ordinary course of business do not constitute a dealing.[[38]](#footnote-39)

5.49 Directors must disclose to the issuer all information in 5.48, without delay and, in any event, by no later than three business days after dealing. The issuer must in turn announce such information without delay and, in any event, by no later than 24 hours after receipt of such information from the director concerned.[[39]](#footnote-40)

Dealings in prohibited periods

5.50 A director may not deal in any securities relating to the issuer during a prohibited period, whether or not the director has knowledge of such matter.[[40]](#footnote-41)

5.51 The JSE may waive compliance with 5.50 where the director has no discretion in the dealing. The JSE must be consulted for a ruling and if a waiver is granted the announcement must clearly explain the reasons why the director had no discretion to deal.[[41]](#footnote-42)

Clearance to deal

5.52 A director (excluding any of his associates) may not deal in any securities in the issuer without receiving clearance in advance from the chairman or other designated director (the “clearance director”). When the clearance director intends to deal in securities in the issuer, he/she must inform the board or designated director in advance and receive the required clearance.

5.53 A director must not be given clearance to deal in any securities in the issuer during a prohibited period.

5.54 A written record must be maintained by the issuer of any request received from a director in terms of 5.52 and of any clearance given. A director may request confirmation from the issuer that such request and clearance, if any, have been recorded.

Dealings by associates of directors and investment managers

5.55 A director must advise the following parties of the issuer(s) of which he/she is a director:[[42]](#footnote-43)

 (a) any associate of his/her; and/or

 (b) any investment manager dealing on his/her behalf or associates, whether on a discretionary basis or not.

5.56 A director must advise all of his/her associates that they must notify him/her immediately after they have dealt in securities relating to the issuer(s) in order comply with the dealings provisions.[[43]](#footnote-44)

5.57 A director must advise his/her investment manager that they may not deal in any securities relating to issuer(s) of which he/she is a director unless it obtains his express consent.[[44]](#footnote-45)

5.58 The dealings provisions do not override the FMA and should not be construed as additional defences or exclusions from having to comply with the FMA.

Directors and Company Secretary Declaration

5.59 All newly appointed directors of the issuer must complete a director’s declaration on appointment, in the format available on the JSE Forms Portal, which must be submitted to the JSE by the issuer within 7 days of appointment. The issuer must announce the information within one business from receipt of the information, save for personal information, qualifications and experience (the “general information”). The information to be announced will be limited to a period of five years before the date of appointment.

5.60 Each director is required to inform the issuer without delay of any changes to the director’s declarations, save for personal information, qualifications and experience. Any changes must be announced by the issuer, within one business day after receipt of the information by the director.

5.61 Newly appointed company secretaries must submit the company secretary information, in the format available on the JSE Forms Portal, within 7 days of appointment.

**Court applications**

5.62 Issuers must immediately notify the JSE of any application in terms of Section 163 of the Act.

[*Note for ease of reference: Section 163 Relief from oppressive or prejudicial conduct or from abuse of separate juristic personality of company*]

1. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-3)
3. [↑](#footnote-ref-4)
4. [↑](#footnote-ref-5)
5. [↑](#footnote-ref-6)
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