Issues for cash

Description

5.50 An issue for cash is an issue of equity securities for cash (or the extinction of a liability, obligation or commitment, restraint, or settlement of expenses) in compliance with paragraphs 5.50 to 5.57:[[1]](#footnote-1)

 (a) on terms that are specifically approved by equity securities holders in general meeting (if applicable in terms of paragraph 5.51(g)) in respect of that particular issue (“a specific issue for cash”); or

 (b) on terms generally approved by equity securities holders in general/annual general meeting by granting the board of directors of the issuer the authority to issue a specified number of securities for cash pursuant to paragraph 5.52(c), which authority will be valid until the issuer’s next annual general meeting or for 15 months from the date on which the general issue for cash ordinary resolution was passed, whichever period is shorter, subject to the requirements of the JSE and to any other restrictions set out in the authority (“a general issue for cash”).

Requirements for specific issues for cash

5.51 An applicant may only undertake a specific issue for cash subject to satisfactory compliance with the following requirements:

 (a) the equity securities which are the subject of the issue for cash must be of a class already in issue or, where this is not the case, must be limited to such securities or rights that are convertible into a class already in issue;

 (b) if any of the equity securities are to be issued to non-public shareholders, as defined in paragraph 4.25 to 4.27, this fact must be disclosed;

 (c) the number or maximum number of equity securities to be issued must be disclosed;

 (d) if the discount at which the equity securities are to be issued is not limited, this fact must be disclosed;

 (e) if the discount at which the securities are to be issued is limited, such limit must be disclosed;

 (f) if the issue is:[[2]](#footnote-2)

 (i) to a related party/ies as described in paragraphs 10.1 to 10.3, and

 (ii) the price at which the equity securities are issued is at a discount to the weighted average traded price of such equity securities measured over the 30 business days prior to the date that the price of the issue is agreed in writing between the issuer and the party subscribing for the securities (the JSE should be consulted for a ruling if the applicant’s securities have not traded in such 30 business-day period)

 then such issue shall be subject to the inclusion of a statement by the board of directors confirming whether the issue is fair insofar as the shareholders (excluding the related party/ies if it/they are equity securities holders) of the issuer are concerned and that the board of directors has been so advised by an independent expert acceptable to the JSE. The board of directors must obtain a fairness opinion prepared in accordance with Schedule 5 before making this statement; and

 (g) approval of the specific issue for cash ordinary resolution, by achieving a 75% majority of the votes cast in favour of such resolution by all equity securities holders present in person or represented by proxy at the general meeting convened to approve such resolution, on which any parties and their associates participating in the specific issue for cash have not voted or whose votes have not been counted. If the dilution, as a result of a once-off issue (calculated by taking the number of equity securities to be issued and dividing it by the number of listed equity securities, excluding treasury shares) is equal to or less than 0.25% and the price at which the equity securities are issued is equal to or at a premium to the weighted average traded price of such equity securities measured over the 30 business days prior to the date that the price of the issue is agreed in writing between the issuer and the party subscribing for the securities (the JSE should be consulted for a ruling if the applicant’s securities have not traded in such 30 business day period) then shareholder approval is not required.[[3]](#footnote-3)

Requirements for general issues for cash

5.52 An applicant may only undertake a general issue for cash subject to satisfactory compliance with the following requirements:

 (a) the equity securities which are the subject of the issue for cash must be of a class already in issue or, where this is not the case, must be limited to such securities or rights that are convertible into a class already in issue;

 (b) the equity securities must be issued to public shareholders, as defined in paragraph 4.25 to 4.27, and subject to paragraph (f) not to related parties;[[4]](#footnote-4)

 (c) securities which are the subject of a general issue for cash must be less than 30% of the applicant’s listed equity securities as at the date of the notice of general/annual general meeting seeking the general issue for cash authority, provided that:[[5]](#footnote-5)

 (i) the authority shall be valid for the period contemplated in paragraph 5.50(b);

 (ii) the calculation of the applicant’s listed equity securities must be a factual assessment of the applicant’s listed equity securities as at the date of the notice of general/annual general meeting, excluding treasury shares;

 (iii) the specific number of shares representing the number up to 30% of the applicant’s listed equity securities as at the date of the notice of general/annual general meeting must be included as a number in the resolution seeking the general issue for cash authority;

 (iv) any equity securities issued under the authority during the period contemplated in paragraph 5.50(b) must be deducted from such number in (iii) above; and

 (v) in the event of a sub-division or consolidation of issued equity securities during the period contemplated in paragraph 5.50(b), the existing authority must be adjusted accordingly to represent the same allocation ratio;

 (d) the maximum discount at which equity securities may be issued is 10% of the weighted average traded price of such equity securities measured over the 30 business days prior to the date that the price of the issue is agreed between the issuer and the party subscribing for the securities. The JSE should be consulted for a ruling if the applicant’s securities have not traded in such 30 business-day period;[[6]](#footnote-6)

 (e) approval of the general issue for cash ordinary resolution, by achieving a 75% majority of the votes cast. The resolution must be worded in such a way as to include the issue of any options/convertible securities that are convertible into an existing class of equity securities, where applicable.[[7]](#footnote-7)

 (f) related parties may participate in a general issue for cash through a bookbuild process provided – [[8]](#footnote-8)

 (i) the approval by shareholders contemplated in paragraph 5.52(e) expressly affords the ability to the issuer to allow related parties to participate in a general issue for cash through a bookbuild process;

 (ii) related parties may only participate with a maximum bid price at which they are prepared to take-up shares or at book close price. In the event of a maximum bid price and the book closes at a higher price the relevant related party will be “*out of the book*” and not be allocated shares; and

 (iii) equity securities must be allocated equitably “*in the book*” through the bookbuild process and the measures to be applied must be disclosed in the SENS announcement launching the bookbuild*.*

Options and convertible securities granted/issued for cash

5.53 In respect of options and convertible securities granted/issued for cash:

 (a) Where options or convertible securities, excluding executive and staff share schemes, are granted/issued for cash (or for the extinction or payment of any liability, obligation or commitment, restraint(s), or settlement of expense), such options/convertible securities, issued otherwise than to existing holders of equity securities in proportion to their existing holdings, will be permitted in respect of:[[9]](#footnote-9)

 (i) a specific issue of such options/convertible securities, provided specific approval is obtained for such grant/issue in terms of paragraph 5.51; and

 (ii) a general issue of options/convertible securities, provided approval for such grant/issue is obtained in terms of paragraph 5.52 (and in respect thereof, refer to the second sentence in paragraph 5.52(e)).

 (b) The grant/issue will be subject to the inclusion of a statement by the board of directors (the board of directors must obtain a fairness opinion prepared in accordance with Schedule 5 before making this statement) confirming whether the issue is fair insofar as the shareholders (excluding the related party/ies if it/they are equity securities holders) of the issuer are concerned and that the board of directors has been so advised by an independent expert acceptable to the JSE if:[[10]](#footnote-10)

 (i) in respect of 5.53(a)(i), the issue is to a related party as defined in paragraphs 10.1 to 10.3; or

 (ii) in respect of 5.53(a)(ii), the strike or conversion price of the options/convertible securities are at a discount that exceeds the maximum discount contemplated in paragraph 5.52(d) above. In this instance, the grant/issue may only proceed if the independent expert confirms that it is fair.

JSE discretion

5.54 The JSE may waive some or all of the requirements contained in paragraphs 5.51 to 5.53 if it is satisfied that the conditions as stipulated in Schedule 11 exist.[[11]](#footnote-11)

Affected transactions

5.55 Where any issue for cash constitutes an “affected transaction” as defined in the Takeover Regulations and the Act such affected transaction must be referred to the Panel by the issuer.[[12]](#footnote-12)

Documents to be submitted to the JSE

5.56 The documents detailed in paragraph 16.17 must be submitted to the JSE.

Documents to be published

5.57 The documents that require publication regarding issues for cash are set out in paragraphs 11.19 to 11.22.

Issues for cash

Specific issue for cash

11.19A Issuers seeking a listing for securities issued in terms of a specific issue of shares for cash that requires shareholders approval must send shareholders a circular within 60 days of publication of the announcement containing the following:[[13]](#footnote-13)

 (a) the notice of general meeting;

 (b) subject to (f) below, full disclosure of the detailed effects of the proposed issue including the effects on the statement of financial position, net asset value per share, net tangible asset value per share, the statement of comprehensive income, earnings per share, headline earnings per share and, if applicable, diluted earnings and headline earnings per share;[[14]](#footnote-14)

 (c) the disclosure referred to in paragraph 5.51(b) to (g);

 (d) if paragraph 5.51(f) or 5.53(b) is applicable, include a statement by the board of directors confirming whether the issue is fair insofar as the shareholders of the issuer are concerned and that the board of directors has been so advised by an independent expert acceptable to the JSE. The board of directors must obtain a fairness opinion (which must be included in the circular), prepared in accordance with Schedule 5, before making this statement; and

 (e) the paragraphs of Section 7 described in paragraph 11.13 above other than paragraph 7.C.16, except where a pre-listing statement is required in terms of Section 6, in which case the pre-listing statement should contain the information set out in that section;

 (f) if the specific issue relates to a class of securities already in issue and is for cash without any other impact on the financial statements, an explanation, including supporting information (if any), of the intended use of the funds.[[15]](#footnote-15)

Accelerated Specific issue for cash[[16]](#footnote-16)

11.19B (a) Issuers seeking a listing for securities issued pursuant to an accelerated specific issue of shares for cash that requires shareholders’ approval must send shareholders a circular containing the following:[[17]](#footnote-17)

 (i) the notice of general meeting; and

 (ii) the term sheet in Appendix 2 Form G1.

 (b) In the event of an accelerated specific issue for cash to a related party, the price at which the equity securities are issued may not be at a discount as contemplated by paragraph 5.51(f)(ii). The accelerated specific issue route will not be available where the intention is to issue equity securities to a related party at a discount. In such event the provisions of paragraph 5.51 and paragraph 11.19A must be applied.

 (c) The accelerated specific issue for cash to a related party/ies will only be allowed by the JSE where an issuer has the necessary liquidity in order to calculate a weighted average traded price of such equity securities measured over the 30 business day period.

11.20 In the case of a specific issue for cash, the issuer, after it has agreed the terms, must immediately publish an announcement containing full details of the issue, including:[[18]](#footnote-18)

 (a) the number and price of the securities issued;

 (b) if applicable, the average discount to the weighted average traded price of the equity securities over the 30 business days prior to the date that the issue is agreed in writing between the issuer and the party subscribing for the securities;

 (c) the name of the party/ies subscribing for the securities; and

 (d) the effects of the issue on net asset value per share, net tangible asset value per share, earnings per share, headline earnings per share and, if applicable, diluted earnings and headline earnings per share or the explanation of the issue as contemplated in paragraph 11.19A(f).[[19]](#footnote-19)

General issue for cash

11.21 If an issuer is seeking a general authority for issues for cash, a circular must be sent to securities holders including the following:

 (a) the notice of general/annual general meeting; and

 (b) the disclosure referred to in paragraph 5.52(b) to (e).

11.22 After an issuer has issued equity securities in terms of an approved general issue for cash representing, on a cumulative basis within the period contemplated in paragraph 5.50(b), 5% or more of the number of equity securities in issue prior to that issue, the company shall publish an announcement containing full details of the issue, including:

 (a) the number of securities issued;

 (b) the average discount to the weighted average traded price of the equity securities over the 30 business days prior to the date that the issue is agreed in writing between the issuer and the party/ies subscribing for the securities; and

 (c) in respect of the issue of options and convertible securities pursuant to paragraph 5.53, the effects of the issue on the statement of financial position, net asset value per share, net tangible asset value per share, the statement of comprehensive income, earnings per share, headline earnings per share and, if applicable, diluted earnings and headline earnings per share; or[[20]](#footnote-20)

 (d) in respect of an issue of shares pursuant to paragraph 5.52, an explanation, including supporting information (if any), of the intended use of the funds.[[21]](#footnote-21)

Issues for cash

16.18 The following information is required to be submitted to and approved by the JSE before approval (where applicable) will be granted for an issue for cash, as contemplated in paragraphs 5.50 to 5.57:[[22]](#footnote-22)

 (a) the circular;

 (b) the application for listing complying with Schedule 2 Form A4;

 (c) a statement detailing all issues of securities in the previous three years;

 (d) copies of any exchange control (refer to paragraph 16.26) approvals required;

 (e) certified copies of any experts’ consents (refer to paragraph 7.F.10) appearing in the circular; and

 (f) the appropriate documentation and listing fee as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17.

Issues with participating or conversion rights

5.66 Classes of securities that have participating rights to profits or have equity conversion rights must be offered to equity securities holders of a company by means of a rights offer, unless issued:

 (a) by way of a claw-back offer;

 (b) by way of an issue for cash;

 (c) for the acquisition of assets or for an amalgamation/merger; or

 (d) in circumstances that the JSE considers to be exceptional and warranting special approval.

1. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)
6. [↑](#footnote-ref-6)
7. [↑](#footnote-ref-7)
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