JOHANNESBURG STOCK EXCHANGE
Equity Market

Market Notice

Number:	093A
Date	13 November 2012

Proposed amendments to the Equities Rules and Directives relating to the exemption for equities members from the payment of Securities Transfer Tax (STT)

Members are advised that the amendments to the equities rules and directives, as attached, were adopted by the JSE Executive Committee on 12 November 2012. Unless written objections are lodged in terms of rule 2.60.3, within 10 days of this Notice, the proposed amendments to the rules will be submitted to the Registrar for his approval, and the proposed amendments to the directives will take effect on the date that the amendments to the rules are implemented.

If the proposed amendments to the rules are approved by the Registrar, subject to any further amendments as a result of comments from members or comments from the Registrar, both the amendments to the rules and the amendments to the directives should come into effect on 1 January 2013 as these amendments give effect to certain amendments to the Securities Transfer Tax Act which are due to come into effect on that date.

The JSE has been working with the National Treasury Legal Tax, National Treasury Financial Stability and Banking, The South African Revenue Services (SARS), as well as an STT Market Working Group (consisting of representatives from members, banks and an asset manager) on proposed amendments to the JSE Equities Rules and Directives in relation to the exemption for equities members from the payment of STT, and specifically in relation to pending amendments to the STT Act and the arrangements that need to be put in place to facilitate accurate STT reporting to SARS and to evidence compliance by members with the STT Act, as amended.

The relevant amendments to the STT Act are contained in pages 118 to 119 of the Taxation Laws Amendment Bill which is available at the following address:

http://www.treasury.gov.za/legislation/bills/2012/bills2012_bill34-2012.pdf

Amendment of section 1 of Act 25 of 2007, as amended by section 145 of Act 24 of 2011 153.

- This section refers to three new types of stock accounts "defined in the exchange rules", where "exchange rules" means the exchange rules as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004), or a directive issued in accordance with section 11(1)(c) of that Act"

Amendment of section 2 of Act 25 of 2007, as amended by section 60 of Act 18 of 2009 154.

- This section refers to STT being levied once equity securities are moved from STT exempt stock accounts to stock accounts which are liable for STT.

National Treasury's amendments to the STT Act come into operation on 1 January 2013 and apply in respect of transactions entered into on or after that date.

The amendments to the JSE Equities Rules and Directives propose to:

- Introduce the following five new definitions in Section 1: Definitions of the JSE Equities Rules:
    - i) Associated banking entity
    - ii) Bank restricted stock account
    - iii) Unrestricted and security restricted stock account
    - iv) General restricted stock account
    - v) STT Act; and

- Insert a new Directive BI 6 which sets out the requirements regarding the use of stock accounts to facilitate compliance with the amended STT Act and accurate STT reporting to SARS.

Please note that with regards to the proposed amendments to Directive BI, the JSE has not yet addressed the issue raised by a number of members regarding the appropriate terms for the different types of proprietary trading i.e. arbitrage, investment and jobbing. The JSE will unfortunately not be able to address this issue as part of the current amendments due to the 1 January 2013 implementation date of the amendments to the STT Act and the fact that further consultation is required on this issue before any amendments can be proposed. The JSE will, however, seek to address this early in 2013.

Explanation of the rationale for the proposed amendments

With effect from 1 January 2013, the member STT exemption will be determined by whether the member has the freedom to acquire or dispose of equity securities purchased for their own account and held in a stock account, and if any restrictions have been placed on their freedom to acquire or dispose of equity securities, what the nature of the restriction is and who has imposed it.

There are certain instances (referred to as "allowable restrictions" in this explanatory memorandum) where a member may not have the freedom to acquire or dispose of equity securities held in the member's stock accounts due to restrictions being placed on the member's ability to dispose of the securities as a function of normal commercial activities or due to certain other restrictions which National Treasury deems permissible, which do not affect the exemption.

The three "allowable restrictions" which are regarded as being a function of normal commercial activities applicable to the business of an equities member are those where a restriction has been placed on the member's freedom to acquire or dispose of equity securities held in the member's stock account by:

- A lender of cash/another creditor (to whom equity securities are pledged/ceded as security);
- A lender of securities (to whom equity securities are pledged/ceded as security); and

- A person to whom the equity securities are pledged/ceded as security for fulfilment of the member's obligations in relation to the purchase or sale of other securities.

The other type of restriction placed on the member's freedom to acquire or dispose of equity securities which National Treasury deems permissible from an exemption point of view is where the entity placing the restriction is an associated banking entity.

The only instances in which a member will be liable for the payment of STT on equity securities transactions for the member's own account is when the entity placing a restriction on the member's freedom to acquire or dispose of equity securities is an entity other than:

- A lender of cash/another creditor;
- A lender of securities;
- A person to whom the equity securities are pledged/ceded as security for fulfilment of the member's obligations in relation to the purchase or sale of other securities; and
- An associated banking entity.

To give effect to the pending amendments to the STT Act, the following three types of stock accounts have been defined in Section 1: Definitions of the JSE Equities Rules:

- **"Unrestricted and security restricted stock account"** – an account where the member records all trading activity where no restriction is placed on the member or where one of the three "allowable restrictions" relating to normal commercial activity applies <u>*(positions held on this stock account will be exempt from STT)*</u>
- **"Bank restricted stock account"** – an account where the member records all trading activity where an associated banking entity has placed a restriction on the member <u>*(positions held on this stock account will be exempt from STT)*</u>
- **"General restricted stock account"** – an account where the member records all trading activity where a restriction is placed on the member other than one of the allowable restrictions <u>*(positions held on this stock account will be liable for STT)*</u>

Some key anti-avoidance measures have been catered for in the "allowable restrictions" through inclusion in the "Unrestricted and security restricted stock account" definition. These measures seek to avoid arrangements where the benefits of ownership of the equity securities are effectively passed to the person to whom the equity securities are pledged or ceded during the period of the pledge or cession, and are the following:

- In the instance where equity securities are pledged/ceded as security for a **cash or another loan** – the **interest on the loan/other debt** has to be **charged at a rate** which is <u>**unrelated**</u> to any <u>**changes in the value of the equity securities**</u>;
- In the instance where equity securities are pledged/ceded as security for a **securities loan** – the **fee charged by the lender** has to be <u>**unrelated**</u> to any <u>**changes in the value of the equity securities**</u>; and
- In the instance where equity securities are pledged/ceded as security for the **fulfilment of a member's obligations in relation to the purchase or sale of other securities,** the <u>**benefits of the rights**</u> attached to the equity securities <u>**has to remain with the member**</u> and <u>**cannot directly or indirectly be transferred to the pledge or cessionary**</u> during the period of the pledge/cession.

Members are required to reflect own account positions in equity securities in a type of stock account that correctly reflects the existence or nature of any restriction on the member's freedom to acquire or dispose of such equity securities. Members are required to move equity securities to another type of stock account if the situation changes. For example:

- If a member has the freedom to acquire or dispose of equity securities bought on the member's stock account it would meet the definition of an unrestricted and security restricted stock account, and therefore the resultant positions need to be reflected in that type of stock account.
- If at a later stage those equity securities become subject to a restriction contemplated in the definition of a bank restricted stock account or a general restricted stock account, the member needs to move the equity securities to the appropriate type of stock account.
- If positions in equity securities are required to be transferred to a general restricted stock account due to the nature of a restriction placed on the disposal of those securities, those equity securities will become liable for STT.

In the instance where equity securities are originally not subject to any form of restriction regarding the member's freedom to dispose of those securities and they subsequently become subject to one of the "allowable restrictions" included in the "Unrestricted and security restricted stock account" definition, the member does not have to move the positions to another stock account as they will already have been recorded on the correct type of stock account. However, for SARS reporting and audit trail purposes, the member is required to correctly reflect the nature of the restrictions which have been placed on the equity securities by processing the relevant accounting entries on the BDA system as soon as the securities become subject to one of the three "allowable restrictions". The two types of accounting entries are:

- the flagging of equity securities which remain in the possession of the member but which are pledged to a third party; and
- the necessary entries to reflect that equity securities have been delivered to a third party as security for a loan or another obligation.

The BDA system already makes provision for these types of entries relating to pledging and securities collateral.

If members have any questions on the proposed amendments or this explanatory memorandum, please contact Nicola Comninos at nicolac@jse.co.za or (011) 5207236.

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