

JSE Consultation Paper

Cutting Red Tape Aimed at Effective and Appropriate Regulation:
Request for Comments

March 2021

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JSE

The Issuer Regulation Division of the JSE Limited (the “JSE”) has compiled this Consultation Paper with the aim of obtaining proposals for cutting red tape aimed at achieving a level of effective and appropriate regulation, for existing listings on the Main Board and the Alternative Exchange (“AltX”).

This Consultation Paper is being presented to market participants and stakeholders for comments and discussion.

ENGAGEMENT

The JSE will be available for discussion opportunities, if required, in order to afford a better understanding of the aim of the Consultation Paper.

Please contact Alwyn Fouchee at alwynf@jse.co.za to request an engagement session.

HOW TO RESPOND TO THIS CONSULTATION PAPER

The JSE invites comments and suggestions on this Consultation Paper through the Comments Template on or before Friday, 9 April 2021.

The completed Comments Template can be sent to alwynf@jse.co.za.

It should be noted that this Consultation Paper is a new initiative by the JSE to engage with its market participants and stakeholders well prior to actual amendments to the JSE Listings Requirements (the “**Listings Requirements**”) being proposed to the market through the means of a public consultation process. This is a first step to the amendment process journey, to the extent that the proposals receive favourable consideration.

It should be noted that information, proposals, statements and opinions contained in this Consultation Paper should not be read as a commitment on the part of the JSE to implement, or take any steps to implement, in whole or in part, any proposal or action considered or mentioned in this Consultation Paper.

Should any proposals proceed as actual amendments, such amendments will be undertaken using the standard process, which includes the necessary research, fit for purpose assessment, peer exchange benchmarking and separate public consultation processes, pursuant to the provisions of the Listings Requirements (the “**Listings Requirements**”) and the Financial Markets Act No. 19 of 2012 (the “**FMA**”).

Amendments to the Listings Requirements are subject to the approval of the Financial Sector Conduct Authority pursuant to the provisions of the FMA.

In conclusion it must be noted that, as part of the JSE’s normal regulatory processes, the JSE annually proposes amendments to the Listings Requirements in areas where (i) practices may have changed, (ii) weaknesses have been identified, or (iii) the requirements may have resulted in unintended consequences. The JSE intends to proceed with its annual improvement programme later in 2021 and the purpose of this Consultation Paper has a very different objective, as more fully explained below.

André Visser

Director: Issuer Regulation
JSE Limited

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Introduction

The South African financial markets have, over the past years, experienced a range of corporate scandals, rumours and innuendo. These have led to questions about how certain alleged activities were able to happen (apparently undetected), whether regulators such as the JSE could have taken action to prevent certain activities and whether those events have highlighted any regulatory provisions that may need to change.

Although corporate scandals are not unique to South Africa, in response the JSE initiated a market consultation process during September 2018 with the aim of obtaining public input on possible improvements to its regulatory approach to new and existing listings on the JSE.

The market consultation was very well received and commentators comprised a diverse group, which comprised of private individuals, institutional investors, public interest groups, listing sponsors, issuers and fellow regulatory bodies. Taking into account the public comments received, the JSE formulated amendments to the Listings Requirements, which were subject to further public consultation processes pursuant to the provisions of the Listings Requirements and the FMA. These engagements and finalised amendments resulted in the strengthening of the regulation of primary and secondary listings on the JSE and came into effect on 2 December 2019.

As a brief highlight reel, the amendments included the following:

- Strengthening the Main Board listing entry criteria by requiring the subscribed capital requirement to be achieved prior to listing in order to avoid the established practise where the listing process is used to achieve subscribed capital.

The aim of the amendment was to contribute to established companies being listed on the JSE.

- Strengthening the integrity of public spread, through the exclusion of shares held by close relations of directors and prescribed officers of the issuer.

The aim of the amendment was to elevate the integrity of public spread on listing to contribute to liquidity.

- Requiring longer market notices prior to listing, to allow better market consumption and understanding of new listings.

The aim of the amendment was to allow longer market dissemination of a new listing.

- Requiring more disclosure on listing in relation to (i) compliance with laws of incorporation, (ii) risk and (iii) the status of the mandate of the social and ethics committee.

The aim of the amendments were to allow more disclosure on risk and compliance with certain elements of the Companies Act or laws of incorporation in respect of a foreign issuer.

- Expanding the provisions in respect of directors' dealings to capture dealings by prescribed officers and to add a further dealings transaction requiring SENS announcements where shares are used as security/collateral. These dealings must further be disclosed in the annual report of the issuer.

The aim of the amendment was to afford improved disclosure on dealings by prescribed officers and where directors have no discretion where shares are used as security/collateral, which dealing event has previously contributed unnecessarily to market volatility.

- Added responsibilities on the audit committee to ensure (i) that they have access to all the financial information of the issuer (all entities in the consolidated group IFRS financial statements) to allow the issuer to effectively prepare and report on the financial statements of the issuer and (ii) voting on the appointment of the auditor at every annual general meeting.

The aim of the amendments were for audit committees to place more focus on the group's structure when preparing and reporting on the financial statements of the issuer and to ensure that the appointment of the auditor is voted upon at every annual general meeting.

- Introducing CEO and financial director sign-off on the annual financial statements; and

The aim of the amendment was to establish executive responsibility when preparing and reporting on the financial statements of the issuer.

- Establishing a clear framework for the secondary listings regime by the creation of a list of primary approved exchanges and creating more certainty in respect of continuing obligations as applied to secondary listings.

The aim of the amendments were to clarify the secondary listings regulation regime of the JSE.

Based on the above exercise and positive engagements with market participants, it is the aim of the JSE to have more frequent engagements with market participants and stakeholders in order to obtain broader input when proposing certain amendments to the Listings Requirements. This will ensure a more inclusive and transparent approach when making amendments to the Listings Requirements, allowing the regulation applied by the JSE to be more thought through and fit for purpose.

Cutting Red Tape in Regulation

As a frontline regulator the JSE advocates for the enhancement of corporate governance and the quality of disclosures (i) in general and (ii) in financial reporting by issuers on the JSE. However, as the custodian on the interpretation and application of the Listings Requirements, the JSE does recognise with capital markets regulation and legislation evolving significantly over the last few years that there may still be provisions of the Listings Requirements that may appear to be redundant and/or not fit for purpose. The JSE has been very active since 2014 in reviewing the Listings Requirements on a regular basis to allow for a more effective application of the Listings Requirements, such as:

- Removing pro forma financial information in Category 1 transaction announcements;
- Removing the working capital sign-off requirement on sponsors, save for new listings;
- Removing the forecast sign-off requirement on sponsors;
- Removing the requirement for a PLS on a rights offer;
- Increasing the Category 1 transaction threshold for Main Board issuers from 25% to 30%;
- Allowing written resolutions, limited for Main Board issuers but unlimited for AltX issuers;
- Removing publications in the press requirement for AltX issuers;
- Introducing short form press announcement for Main Board issuers;
- Simplifying mandatory corporate governance provisions for AltX issuers;
- Simplifying summary circular for AltX issuers;
- Allowing sponsor approval only for circulars dealing with capitalisation issues, scrip dividend and cash dividend elections, change of name, subdivision/consolidation, general issue for cash and increase in authorised share capital;
- Advocating incorporation by reference in circulars for all issuers;
- Introducing an accelerated issue of shares for cash mechanism (48 hour approval process);
- Increasing the general issue of shares for cash threshold from 15% to 30%;
- Reducing the rights offer timetable and introduced non-renounceable rights offers;
- Removing pro forma financial information for basic “in and out” issue of shares for cash and repurchase corporate actions;
- Removing the requirement for audits on all subsidiaries;
- Removing JSE approval for the MOIs of subsidiaries;
- Simplifying MOI approval for secondary listed issuers; and
- Introducing fast-track secondary listings.

The JSE has always maintained the approach to keep the Listings Requirements current and to remove provisions that no longer meet the intended regulatory objectives, however the JSE is aware of the continued market noise that the Listings Requirements are too onerous.

The JSE is the front line regulator for companies listed on the JSE and pursuant to the provisions of the FMA, the JSE is required to make listings requirements and enforce them. In making listings requirements the JSE has regard to the objects of the FMA, which includes the aim to ensure that the South African financial markets are fair, efficient and transparent.

Even though the JSE follows a transparent and robust public consultation process to effect amendments to the Listings Requirements, the JSE recognises that it would be beneficial to obtain wider input from market participants and stakeholders. On this basis, the JSE would welcome any proposals to make the application of the Listings Requirements easier and to do away with “*red tape*” in the application of the Listings Requirements. The JSE is certainly open to suggestions that will allow for a more flexible and fit for purpose application of the Listings Requirements whilst supporting an environment allowing listed companies on the JSE to focus on their business and operations.

When considering any proposals it must be made clear that the JSE will not compromise on its regulation standards aimed at the protection of investors but the JSE clearly recognises that a real balance must be achieved between the regulatory objectives to be achieved by the JSE on the one hand and the obligations/responsibilities placed on listed companies by the JSE on the other. It is important for the stability and integrity of the South African financial markets that the Listings Requirements adopted by the JSE provides for an effective and appropriate level of regulation to ensure a fair, efficient and transparent financial market and that listings regulation is carried out with due regard to the public interest.

The key focus for this Consultation Paper is therefore-

“effective and appropriate level of regulation”

The JSE’s objective is to ensure that the Listings Requirements strike the appropriate balance and the JSE welcomes input from all market participants and stakeholders on proposals that will meet the focus and objective of this Consultation Paper. Taking the above into account and in order to set the tone, the JSE is proposing the measures below in support of effective and appropriate level of regulation for issuers listed on the JSE.

The measures below are merely launch discussion themes and the JSE is open to any proposal for consideration.

Proposals for Consideration

1 *Transactions - Ordinary Course of Business Exemption*

Section 9 of the Listings Requirements deals with the regulation of transactions, principally acquisitions and disposals, by issuers and their subsidiaries. It describes how transactions are to be categorised, what the requirements are for announcements and circulars, and whether or not shareholders' approval will be required.

Transactions under the provisions of Section 9 of the Listings Requirements currently exclude transactions in the ordinary course of business, where such ordinary course of business transaction consideration measured against the market capitalisation of the issuer in question is equal or less than 10%. This means that if (i) a transaction is classified as in the ordinary course of business and (ii) provided the transaction categorisation is equal or less than 10% (measured against the market capitalisation of the issuer at the time), it will not trigger the application of Section 9 of the Listings Requirements.

Both transactions and related party transactions pursuant to Section 10 of the Listings Requirements are subject to the ordinary course of business exemption.

Although the JSE, probably as a cautious approach at the time, imposed a 10% limitation on the ordinary course of business exemption it is interesting to note that the London Stock Exchange ("LSE") also allows the ordinary course of business exclusion for purposes of Classifying Transactions, however without the 10% limitation.

<https://www.handbook.fca.org.uk/handbook/LR/10/?view=chapter>

Proposal for Consideration

The JSE is proposing the following:

Option 1: The removal of the 10% limitation when categorising a transaction which falls within the ordinary course of business of an issuer, which will afford issuers more flexibility when conducting their business from a cost, timing and resources perspective.

Option 2: As an alternative, increasing the existing 10% limitation to 30%, akin to the Category 1 transaction threshold requiring shareholders' approval. This will afford issuers more flexibility when conducting their business, but with a shareholders' oversight limitation.

The JSE is further proposing that ordinary course of business transactions with related parties be announced through SENS, dealing with pertinent details of the ordinary course of business transaction/s. These details may not necessarily include pricing information as the JSE recognises that such information could be commercially sensitive to the issuer and vendor in the ordinary course of business, but must speak to (i) the broader nature of the ordinary course of business transaction and (ii) the corporate

governance processes that were followed to approve and conclude the transaction, which must include an opinion from the independent members of the board of directors of the issuer that the transaction is in fact in the ordinary course of business and that the transaction was concluded on an arm's length basis.

Protection Measures

As is currently the case, issuers will continue to discuss transaction/s with the JSE at an early stage in order for the JSE to determine whether it will classify such a transaction as being in the ordinary course of business. In assessing whether a transaction is in the ordinary course of business, the JSE will have regard to the nature of the business of the transacting parties and incidence of similar transactions which have been concluded.

The board of directors of an issuer will therefore not be able to make the assessment on what constitutes ordinary course of business at their discretion.

Further, consideration will be required by the board of directors of the issuer whether the ordinary course of business transaction constitutes price sensitive information pursuant to the provisions of the Listings Requirements and may require the release of an announcement through SENS.

Ordinary Course of Business Test – Request for Input

In assessing whether a transaction is in the ordinary course of business, the JSE will have regard to the nature of the business of the transacting parties and incidence of similar transactions which have been concluded.

Although the JSE has undertaken research on the matter and benchmarked peer exchanges on the matter, the JSE would like to take this opportunity to seek input what other additional measures could be considered by the JSE to facilitate a more accurate assessment on what would in fact constitute "*ordinary course of business*".

Rationale

The JSE believes it must be cognisant of an issuer's activities in the ordinary course of business, especially when time sensitive and where a third party vendor does not necessarily appreciate/understand JSE regulation on transactions. The proposals above may afford issuers more flexibility to pursue transactions in the ordinary course of business.

2 Intragroup Repurchases of Securities

A *pro rata* repurchase by a listed company of its securities from all its shareholders will not require shareholder approval, save to the extent required in terms of the Companies Act No.71 of 2008 (the “**Companies Act**”). In all other instances an acquisition by an issuer of its own securities or a purchase by a subsidiary of securities in its holding company (in accordance with Section 48 of the Companies Act or in accordance with repurchase laws of a foreign incorporated issuer), will be regarded as a repurchase of securities in terms of the Listing Requirements.

A repurchase of securities pursuant to Section 48 of the Companies Act therefore constitutes a repurchase of securities under the Listings Requirements, which requires shareholders’ approval under either a general or specific authority to repurchase securities.

A consequence of a repurchase is that company cash resources are being utilised to acquire shares from shareholders which is a vital consideration. This is an important reason underpinning the requirement that a repurchase resolution must be approved by achieving 75% majority of the votes cast by shareholders, excluding from voting any shareholder/s participating in the repurchase where there has been prior engagement or agreements concluded.

A common feature seen by the JSE in the repurchase of shares is that a listed holding company often acquires treasury shares held by its subsidiary or share incentive scheme (end of life) for share consolidation purposes which are then either cancelled or held for future use for other share incentive schemes. In these circumstances, the listed holding company effectively controls both ends of the corporate action and are regarded as intragroup transactions on the basis that there is no money leakage from the group. There is no impact on the earnings per share, headline earnings per share and net asset value per share as these shares have been treated as treasury shares and will continue to be treated as such if not cancelled. The repurchased shares do not create a benefit for one shareholder over another as the shares are merely cancelled or remain consolidated in the issuer’s group as treasury shares.

The issue is that the Listings Requirements currently does not differentiate between intragroup share repurchases as explained above.

Noteworthy to mention is that Section 9 (Transaction) of the Listings Requirements recognises the exclusion of intragroup transactions through wholly-owned subsidiaries.

Proposal

The JSE is proposing to remove the application of the Listings Requirements and the required shareholders’ approval on intragroup share repurchases, provided the share repurchases transpire (i) between the issuer and wholly-owned subsidiaries of the issuer or (ii) between the issuer and Schedule 14 share incentive schemes (shares schemes controlled by the issuer to incentivise employees and approved by the JSE), which measures are intended to afford issuers more flexibility with intragroup repurchases.

Protection Measures

Any repurchase of securities must comply with Section 46 and Section 48 of the Companies Act, which includes the passing of the solvency and liquidity test by the board of directors of the issuer.

From a Listings Requirements perspective the following disclosure will continue to apply to the repurchase of securities:

- Disclosure in the Annual Report:

Repurchased equity securities:

Details must be disclosed in respect of the repurchase by an issuer of its own equity securities or a purchase by a subsidiary of equity securities in its holding company (in accordance with section 48 of the Act) during the period under review.

In respect of the above repurchase of equity securities by the issuer and/or subsidiary, the following should be disclosed:

- (1) the total number of equity securities repurchased;*
- (2) in relation to the total number, the number of equity securities:*
 - (i) which were repurchased by a subsidiary of the issuer;*
 - (ii) which have reverted to authorised but unissued equity securities of the issuer in accordance with section 35(5) of the Act; and*
 - (iii) which have reverted to authorised but unissued equity securities of the issuer in accordance with section 35(5) of the Act where the repurchased equity securities were acquired by the issuer from treasury shares;*
- (3) the average price paid for the repurchased equity securities, calculated by dividing the total amount paid by the total number of repurchased equity securities;*

Rationale

The repurchase of securities is primarily regulated by the Companies Act and with intragroup repurchases of shares there is –

- no money leakage from the issuer's group;
 - no impact on the earnings per share, headline earnings per share and net asset value per share;
 - no creation of a benefit for one shareholder over another.
-

Based on the above, the JSE has no active regulatory role to play other than through disclosure which will be maintained.

3 General Authority to Issue Shares for Cash / Bookbuilds

Various capital raising options for issuers require JSE imposed shareholders' approval in accordance with the provisions of the Listings Requirements.

One of the most effective capital raising measures for an issuer is to issue shares for cash and an issuer may do so either in terms of a general or specific authority or as a vendor consideration placing. An unavoidable consequence of an issue for cash is the dilution of the rights of existing shareholders and, depending on the issue price, the value attached to their shares. This is one of the important reasons underpinning the requirement that an issue of shares for cash resolution must be approved by achieving 75% majority of the votes cast by shareholders, excluding from voting any shareholder/s participating in the issue of shares for cash where there has been prior engagement or agreements concluded.

The brief parameters of the two instances where an issuer may issue shares for cash are set out below:

- **Specific issue for cash:**
 - May be issued to related parties;
 - No limit to discount applied on issue price, subject to a fairness opinion prepared by independent professional expert; and
 - No limit to number of shares to be issued.
- **General issue for cash:**
 - May not be issued to related parties;
 - Issue price limitation: 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; and
 - Dilution limitation: 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.

As can be seen from the above, one of the prominent distinguishable features between the specific and general authority to issue shares for cash, is that under a specific authority shares may be issued to related parties and under a general authority the issue of shares to a related party is totally prohibited. The benefit of excluding related parties under the general issue of shares for cash authority is that it empowers the board of the issuer, through a pre-approved authority from shareholders, to be able to raise capital at any point and expediently during a financial year without the need of considering whether shareholders' approval at the time of issue of the shares will be required. It further removes any possibility of undue influence by related parties on the board of the issuer regarding the issue price of the shares issued under the general authority.

Bookbuild Process

It must be recognised that the general issue for cash authority provisions as contained in the Listing Requirements have remained largely unchanged for many years and have become entrenched in the South African capital markets. Shareholders take dilution events through an issue of shares for cash rather seriously and often vote down proposed authorities. General issue of shares for cash authorities rarely seek the maximum permitted threshold of 30% of the Issuer's issued share capital, and 5-10% authorities are more the accustomed ranges in order to pass a general issue of shares for cash authority.

It must be recognised that the mechanisms to raise capital have evolved over the years and it may therefore be prudent to consider some of these mechanisms against the entrenched principles of a general issue of shares for cash authority.

One of the most prominent capital raising measures being applied currently in the market is the Bookbuild process, often undertaken on an accelerated basis, i.e. within a short time frame.

A Bookbuild is a process through which investor-demand from select participants is generated and captured as a book of demand is built which is then the basis for raising capital through an issue of shares for cash. The objective of this mechanism is to achieve the best price through a bidding process by selected participants leading to active price formation. An accelerated Bookbuild uses this method within a very short period of time where the offering is completed quickly, often within eight hours or less. Issuers use the accelerated Bookbuild method as an expedient capital raising mechanism.

The Listing Requirements expressly prohibit related parties participating under a general issue for cash authority which can severely limit the benefits of a Bookbuild by eliminating potential participants interested in providing capital to the issuer. For example, anchor investors, often holders of more than 10% of the share capital (and therefore defined as related parties), are in many cases obvious sources of capital for an issuer but are excluded from participating in a Bookbuild capital raising process.

Effecting a placing under the general issue of shares for cash authority places an onus on the issuer not to include related parties in the placement, so a Bookbuild for a placement under a general authority is limited.

Proposal

The JSE is proposing to amend the constraint on capital raising under a general issue of shares for cash authority so as to allow related parties to participate in the issue of shares for cash subject to the protection measure below.

Continued Protection Measures

Raising capital by Bookbuild allows the issuer to achieve the best price at which to issue shares to shareholders and/or investors, as the book closes at a bid price where the weight of investor demand equals or exceeds the quantum of capital sought, thereby being a price which the shareholders and/or investors see as the highest value of the shares on offer at that point in time. However, related parties of

the issuer could possibly influence the price at which shares may be issued during the bidding process, more so when they hold a material interest in the issuer. For that reason, the JSE proposes that related parties may only participate in a Bookbuild capital raising process by putting in a bid “*at best*”, where related parties are excluded from a price formation bidding process but may then only take up shares once the final issue price has been determined on the completion of the Bookbuild process. This will result in related parties being permitted to take up shares under a general issue shares for cash authority through a Bookbuild process, but only on the basis that any related parties taking up shares are price takers (at best) only and not price makers. In such a manner, the influence that a related party could exercise on the issue price through the bidding process are minimised.

It also affords related parties the opportunity to directly participate in the issue of shares for cash, at their choice.

The pricing parameters applicable to a general issue of shares for cash pursuant to paragraph 5.52(d) of the Listings Requirements will continue to apply, being a maximum discount of 10% of the weighted average traded price of such shares measured over the 30 business day period.

The JSE will further require that the Bookbuild process to be clearly disclosed to avoid any circumvention of the specific issue of shares for cash provisions to a related party. As a minimum, it must disclose that the placement under a general authority is only open to participants who are related parties if they bid without specifying a bid price, on the basis that they will accept the price at which the book closes i.e. supply is matched or exceeded by demand.

As a final point, these measure will require shareholders’ approval, clearly stating the fact that if a Bookbuild capital raising measure is used under a general authority to issue shares for cash, related parties will be able to participate as proposed above.

Rationale

The JSE has a role to play in ensuring that capital raising measures on the JSE stay current with established market capital raising measures. The proposal above recognises the benefits and popularity of Bookbuilds as capital raising measures and the inclusion of related parties, where the ability of related parties to influence pricing are minimised.

This approach may also allow for better demand in capital raisings of this type on the basis that related parties can participate as price takers, under a general issue of shares for cash authority.

4 *Pro Forma Financial Information – Disposals*

The objective of pro forma financial information is to provide investors with information about the impact of the corporate action (the subject of the prospectus/pre-listing statement/circular) by illustrating how that corporate action might affect the previous reported financial information, had the corporate action been undertaken at the commencement of the period being reported on, or in the case of a pro forma statement of financial position, at the date reported on.

Pursuant to paragraph 8.29(c)(iii) of the Listings Requirements, in the case of a circular to shareholders where the circular either includes unpublished management accounts and/or uses them for the purposes of pro forma financial effects, a reporting accountant's review or audit opinion (whichever is applicable) must be obtained on those management accounts.

Proposal

The JSE is proposing, in the case of a disposal by the issuer, to remove the provision requiring an assurance report (prepared by the reporting accountant) on the adjustment column in the pro forma financial effects.

Continued Protection Measures

The source information is part of the historical financial information of the issuer. For purposes of the disposal, as reflected in the pro forma financial effects, the issuer will merely be removing the disposal it has already included in its historical financial information. Assurance on the underlying source information does not change what was already included in the historical financial information.

Importantly, the approach will be maintained in respect of an acquisition by the issuer where a new asset is being brought into the issuer's group, as the assurance must then be obtained on the source information.

Rationale

The JSE is of the view that there is no meaningful regulatory value to be obtained in obtaining assurance on the adjustment column for purposes of pro forma effects which merely reflects the removal of the disposal, from historical financial information prepared in compliance with the Listings Requirements.

5 *Abridged Report*

Paragraph 3.21(b) of the Listings Requirements places an obligation on an issuer to publish an abridged version of their results on SENS simultaneously with the publication of their audited annual financial statements. The AFS are published on the issuer's website. The abridged version of the results follows an IAS 34 format.

The short form announcement approach (pursuant to paragraph 3.46A of the Listings Requirements) was introduced when the JSE modified the publication in the press provisions in 2014. This short form announcement flags certain key indicators and states that the full financial results have been published on SENS and are available on the issuer's website

On 6 February 2019 the JSE made a decision that only the short form financial results need be published on SENS and that the PDF of the abridged results can rather be made available through a weblink. Given that the full detailed AFS are available, and that the abridged results no longer need to be published directly on SENS, the JSE is not convinced of the regulatory benefit of forcing issuers to produce IAS 34 compliant results.

IAS 34 was written to be applied in the context of the full annual financial statements not being available. The preparation of IAS 34 results is not necessarily a simple cut and paste exercise. IAS 34 has its own disclosures obligations, which must be assessed against a specific criteria of materiality. It adds additional management time to prepare its full suite of financial results. It also increases costs (not only in terms of internal resources) but external costs in terms of typesetting of the results and, to the extent that the issuer decides to get the auditors to review those results, adds auditors' costs as well.

Proposal

The JSE is proposing to remove the obligation to produce an abridged report when the issuer has published its audited annual financial statements

Continued Protection Measures

Investors have access to full audit annual financial statements on the issuer's website.

Rationale

This requirement adds no regulatory benefit. It creates time delays to the publication of financial results, as well as unnecessary costs (both internal and external) in complying with their obligations to produce annual financial results pursuant to IFRS.

6 Revised Listing Particulars & Reverse Take-Overs

As mentioned above, Section 9 of the Listings Requirements deals with the regulation of transactions, principally acquisitions and disposals, by issuers and their subsidiaries. It describes how transactions are to be categorised, what the requirements are for announcements and circulars, and whether or not shareholders' approval will be required.

Paragraph 9.5(c) of the Listings Requirements places an obligation on an issuer to prepare a revised listing document, along with a transaction circular, where the percentage ratio in relation to the acquisition or disposal transaction is:

- 100% or more; or
- results in a fundamental change in the business; or
- results in a change in board of directors or voting control of the issuer.

Proposal

The JSE is proposing to remove the obligation to prepare revised listing particulars in the event of an acquisition, although exceeding the percentage ratio by 100% or more, but where it does not result in a fundamental change in the business of the issuer, change in board of directors or voting control* of the issuer.

**Control – change in the 35% voting threshold of any shareholder.*

Continued Protection Measures

The acquisition will be a Category 1 transaction requiring shareholders' approval and the only consideration in respect of this proposal is merely the removal of the need for revised listing particulars where a certain set of prescribed circumstances are present.

The JSE will require that issuers must discuss acquisition transaction with the JSE at an early stage in order for the JSE to determine whether the acquisition results in a fundamental change in the business of the issuer, change in board of directors or voting control of the issuer.

The board of directors of an issuer will therefore not be able to make the assessment on whether revised listing particulars will be required at their discretion.

Rationale

Where there are clear synergies with an acquisition and the business of an issuer, without any fundamental change in the business of the issuer, change in board of directors or voting control of the issuer the need for revised listing particulars may seem burdensome.

7 Rights Offers, Directors and Closed Periods

A rights offer is an effective capital raising measure used by issuers.

A rights offer is an offer by an issuer to existing holders of securities to subscribe for further securities in the issuer in proportion to their existing holdings, usually at a discount to market price, by means of the issue of (i) a renounceable right that is traded as either “fully paid” or “nil paid” rights for the period before payment for the securities is due or (ii) a non-renounceable right (no renounceable right is traded).

Pursuant to paragraph 3.67 of the Listings Requirements a director must not be given clearance to deal in any securities relating to the issuer during a prohibited period.

A “*prohibited period*” means:

- a closed period (a timeframe from a financial period end until the date on which the relevant financials of the issuer are published or any period where the issuer is trading under a cautionary announcement); and
- any period when there exists any matter which constitutes price sensitive information in relation to the issuer’s securities (whether or not the director has knowledge of such matter).

The prominent features that make rights offers an attractive measure of raising capital is that (i) all shareholders are being treated the same and (ii) that no shareholders’ approval is required.

Throughout 2020 various capital raising measures were being considered by issuers to counter the impact of the covid-19 pandemic, and where rights offers were selected as the preferred capital raising measure the JSE was approached various times with proposals to enable directors, prescribed officers and/or company secretaries (the “**excluded parties**”) to participate in the rights offer during a closed period. After due consideration, the JSE was not able to accommodate any of these requests on the basis that the Listings Requirements do not afford the excluded parties an ability to exercise an election based on rights offer entitlements during a closed period.

The result is that where a rights offer runs into, or is launched, in a closed period the excluded parties (who hold shares in an issuer) cannot make any elections in respect of their rights offer entitlements. Typically what transpires and where possible, is that the excluded parties make their elections in respect of their entitlements known in the rights offer offering circular, well prior to entering in a closed period to avoid being excluded participation by the application of paragraph 3.67 of the Listings Requirements. However this is not always possible, as pricing and final terms of the rights offer are not always available/known prior to the closed period commencing.

Not allowing the excluded parties to participate could negatively impact the issuer’s ability to raise cash on the basis that the excluded parties are often considered to be natural contributors of cash to the issuer. In light of the various approaches received by the JSE during 2020, the JSE noted that the JSE’s approach is far stricter than that applied by the LSE:

<https://www.handbook.fca.org.uk/handbook/LR/9/Annex1.html?date=2016-07-02#D593>

Proposal

The JSE is proposing to remove the limitation on the excluded parties following entitlements pursuant to a rights offer during a closed period, taking into account the LSE approach.

The proposal will afford excluded parties the ability to participate in a rights offer during a closed period through the following actions:

- exercising undertakings or elections to take up entitlements under a rights offer, including excess applications; and
- taking up entitlements under a rights offer.

To the extent that the proposal receives favourable support, it would be sensible to extend the proposal to capitalisation issues (bonus issue) and scrip dividends, which corporate actions afford the same treatment to all shareholders.

Continued Protection Measures

This approach will only apply to the excluded parties where the same entitlements are afforded to all shareholders.

The JSE will require disclosure of these elections via SENS or in the rights offer circular, if possible.

Rationale

This proposal will align the Listings Requirements with international practice and contribute to more successful capital raisings by issuers.

8 *Category 1 Disposal and Working Capital Statement*

Where an issuer enters into a Category 1 transaction (acquisition or disposal), the JSE requires that the circular to shareholders seeking shareholders' approval include a statement as to working capital.

A statement by the directors of the issuer that, in their opinion, the working capital available to the issuer and its subsidiaries, if any, is sufficient for the group's present requirements, that is, for at least the next 12 months. The working capital statement should be prepared on the group, as enlarged by the acquisition of any assets. Issuers and sponsors must comply with the requirements of Schedule 12 of the Listings Requirements.

This type of transaction can only be enhancing from a working capital perspective and therefore the need for a working capital statement is unnecessary for the board of the issuer to go through pursuant to the provisions of Section 7 and Schedule 12 of the Listings Requirements.

Proposal

The JSE is proposing to remove the need for the board of the issuer to provide confirmation of a working capital statement for a Category 1 disposal where the consideration to be received is cash.

Rationale

The need for a working capital statement on a cash disposal does not serve any regulatory purpose and may seem burdensome.

9 Conclusion & Open Invitation

It must be emphasised that the regulatory standards of the JSE remain of paramount importance, but such standards must be at an effective and appropriate level of regulation. We believe that the proposals above could result in meaningful benefits for issuers, from a cost, time and resources perspective without lowering the regulation standards of the JSE.

The proposal above are by no means an exhaustive list and the JSE hereby extends an open invitation to market participants and stakeholders to provide the JSE with any proposal that could be considered as “cutting *red tape*” aimed at achieving a level of effective and appropriate regulation. When considering proposals, please also consider other existing protection measures already elsewhere in the Listings Requirements or outside of the scope of the Listings Requirements that could further support your proposal/s.

We look forward to engaging with you and receiving your comments and thoughts.

For additional information or questions contact:

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