Public consultation process on proposed changes to JSE Listings Requirements in relation to Special Purpose Acquisition Companies

17 January 2013

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Introduction

It is proposed that additional requirements be included in the JSE Listings Requirements as to make provision for the listing of Special Purpose Acquisition Companies ("SPAC"). Upon listing, these companies do not have any assets but rather have a large amount of cash with which it would aim to acquire assets.

Overview of SPACs

With the ever evolving changes in the Financial Markets, new company structures and instruments are introduced into markets as to accommodate investors. One of these new structures has been that of SPACs which became quite popular in developed markets just before the credit crisis of 2008. Although these products were not linked to the debt crisis, but as a result of the crisis and the general slowdown that followed, it momentarily halted the growth of these new products. This being said, demand for these products have been revived and thus the aim of the amendments to the JSE Listings Requirements is to facilitate the growth of this new product in South Africa.

SPACs as stated previously do not have any assets which would qualify it for a normal Main Board or AltX listing, however it does have a large amount of funds raised upon listing with which it aims to acquire unlisted assets. The company will have a period of two years within which to acquire Viable Assets which would make it qualify for listing thereafter. If no acquisition is made within the specified time then the company will distribute the funds and delist. Investors normally invest in these type of products based on the experience and expertise of the directors which would attempt to find and acquire mispriced assets or assets which value could be enhanced through listing. On this basis, it is required that the directors have a direct interest in the SPAC and normally would hold a stake of up to 5% of the SPAC themselves.

The funds raised upon listing will be required to be held in escrow until Viable Assets are acquired or upon the distribution of the funds. If an acquisition is proposed by directors then the security holders would have to approve this. If however no Viable Assets are acquired then remaining funds (after taking into consideration costs incurred) will be distributed back to security holders.

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Alternate Directors: JH Burke, LV Parsons
Company Secretary: GC Clarke

Proposed Amendments to the JSE Listings Requirements

Special Purpose Acquisition Company (SPAC)

4.33 The purpose of a SPAC listing is to facilitate a capital raising process for experts to be able to acquire assets and construct a viable listed company. This process consists of two steps, the first being the initial admittance of the issuer while the second step consists of the issuer finding and acquiring Viable Assets. Viable Assets would be assets that would, once acquired, cause the SPAC to comply with the entry criteria for the JSE Main Board or Alternative Exchange.

Initial Requirements

4.34

(a) A SPAC seeking listing on the JSE must not carry on any operation. A SPAC may be in the process of reviewing a potential acquisition, but may not have entered into any binding acquisition agreement and this must be confirmed in the prospectus/prelisting statement.

(b) A SPAC must have identified a target business sector, industry or market in which to make a qualifying acquisition, and this must be disclosed in its prospectus/prelisting statement. Additionally the prospectus/prelisting statement must contain a detailed disclosure as to how the SPAC assesses potential investments and what its investment criteria are. This may not change unless a resolution (requiring 75% majority) to this effect is passed by security holders.

(c) The estimated expenses of the SPAC, which will be incurred during the initial period (as defined in 4.35(a)) while directors search for Viable Assets, need to be specified in advance in the prelisting statement and the SPAC may not spend more funds than specified without a resolution (requiring 75% majority) to this effect being passed by security holders.

(d) The directors may receive remuneration before Viable Assets are acquired however this needs to be specified in advance in the prospectus/prelisting statement.

(e) A SPAC seeking listing on the JSE must satisfy all of the criteria below:

(i) it must have raised a minimum of at least R500 million through the issue of shares, units, options or a combination thereof for a Main Board Listing and R50 million for a AltX listing.

(ii) prior to listing, directors must subscribe for shares, units, options or a combination thereof of the SPAC. The terms of this investment must be disclosed in the prospectus/prelisting statement. The directors must have at least a 5% interest, being the aggregate of shares, units and options, on the date of listing and these securities must be held in trust by the issuer’s attorney and cannot be sold until after the Viable Assets are acquired; and

(iii) Directors must satisfy the JSE that they have the required experience and competence.

Viable Assets

4.35

(a) A SPAC must complete an acquisition of Viable Assets within 24 months of the date of listing ("initial period").

(b) The acquisition of Viable Assets must be approved by a majority of directors unrelated to the Viable Assets and security holders of the SPAC at a meeting duly called for that purpose. Directors shall not be entitled to vote on any of their securities with respect to the approval of the acquisition of Viable Assets.

(c) The shareholders meeting called to vote on the acquisition of Viable Assets must also have a resolution dealing with the use of the residual funds not used in the proposed acquisition. If security holders do not approve of the company retaining the funds then the funds must be returned to security holders.

(d) If a listed SPAC fails to complete a qualifying acquisition within the permitted time, the JSE will suspend the issuers listing the day after the second anniversary of the listing date and delist the issuer once funds are distributed according to section 4.37.

Funds

4.36

(a) Immediately upon listing on the JSE, a SPAC must place all funds except those which will be used to cover the operating expenses (as mentioned in 4.34 (d)), in escrow with an escrow agent unrelated to the acquisition of Viable Assets.

(b) The escrow agent must invest the escrowed funds in either investment grade bonds (this being debt securities with a rating of "BBB" or above as rated by Standard and Poor's Corporation or any similar institution) or bank deposits with a party who is unrelated to the directors of the SPAC. The SPAC must disclose the proposed nature of these investments in its prospectus/prelisting statement. The interest earned on the escrow funds will accrue to the SPAC and be held in escrow.

(c) The escrow agreement governing the escrowed funds must provide for the following and the document must be submitted to the JSE beforehand for approval:

(i) the release of funds to the SPAC if it receives approval as per 4.35(b) for an acquisition within the permitted time; and

(ii) the termination of the escrow and the distribution of the escrowed funds to security holders in accordance with the terms of sections 4.37 if the SPAC fails to complete a qualifying acquisition within the permitted time.

(e) Prior to completion of an acquisition, the JSE will permit a listed SPAC to raise additional funds pursuant to the issuance of securities provided that it's:

(i) part of a rights offer; and/or

(ii) security holders have granted approval of the issue in accordance with the JSE Listings Requirements.

All additional funds raised must be placed in escrow in accordance with 4.36(a).

Failure to Acquire Viable Assets

4.37 If a listed SPAC fails to complete an acquisition of Viable Assets within the permitted time, it must:

(a) complete a distribution within 60 calendar days after the end of such permitted time to all security holders pro rata to their holdings. The distribution must be the maximum amount while still complying with the Solvency and Liquidity tests as required in the Companies Act. All interest earned through permitted investments will form part of the distribution while any funds required to cover applicable taxes and expenses relating to the distribution will not form part of the distribution, and

(b) propose a special resolution to security holders for voluntary liquidation within 3 months from the above distribution.

Disclosure

4.38

(a) Each director's experience and competence must be disclosed in accordance with 7.B.1 and 7.B.2.

(c) In the instance when a security holder meeting is required to vote on a proposed acquisition the SPAC must prepare a circular in compliance with the section 9 and distribute this to security holders.

Structured Provisions

4.39 A SPAC must have the following provisions included in its Memorandum of Incorporation:

(a) it must require security holders to vote on any initial acquisition proposed;

(b) a distribution feature, pursuant to which security holders must, if an acquisition is not completed within the permitted time, be entitled to receive an amount equal to: the aggregate amount then on deposit in the escrow account (net of any applicable taxes and expenses related to the distribution), plus the interest earned on the escrow funds, divided by the aggregate number of securities then outstanding; and

(c) any options must not be exercisable prior to the completion of an acquisition of Viable Assets.

Continuing Obligations

4.40

(a) As per any other listing, the issuer will be subject to the Continuing Obligations of section 3, with the exception of 3.84 (a) to (d).

(b) The SPAC shall not be permitted to obtain any form of debt financing (excluding those of short term trade or accounts payable used in the ordinary course of business) except for the completion of an acquisition. A statement to this effect must be included in the prospectus/prelisting statement.

After Acquisition

4.41

(a) Once the SPAC has completed an acquisition it must meet the JSE's Listing Requirements set out in section 4.28 or section 21.2. Failure to meet these requirements upon the completion of an acquisition will result in the delisting of the SPAC.

(b) Once an acquisition of Viable Assets has been completed, the resulting issuer will be subject to all standard listing requirements.