**Public consultation process on proposed changes to JSE Listings Requirements in relation to the general issue for cash authority**

**27 May 2013**

Introduction

An issuer may only undertake a general issue for cash subject to satisfactory compliance with paragraph 5.52 of the JSE Listings Requirements (the “**Requirements**”). It is further required that equity securities which are the subject of a general issue for cash, in the aggregate in any one financial year, may not exceed 15% of the issuer’s equity securities in issue in a particular class.

The JSE has recently dealt with various queries in respect of the interpretation and application of the 15% allocation pursuant to a general issue for cash authority for a financial year. In fairness, paragraph 5.52(c) of the Requirements dealing with the calculation methodology for the 15% threshold is a lengthy and complicated requirement. See **annexure 1** for ease of reference.

The JSE wishes to simplify the requirement in order to avoid any further interpretational issues.

Recommendation

We are of the view that security holders should agree to a level of dilution at a specific point in time and provide the directors the general issue for cash authority on that basis. We are further of the view that the general issue for cash requirements should be simplified to remove uncertainty and the current interpretational issues. The JSE therefore wishes to move away from a percentage allocation and to implement a firm number approach in the general issue for cash authority. This approach is in line with the approach followed pursuant to Schedule 14 of the Requirements where the scheme share allocation has to be a specified number of securities and not a percentage allocation.

We therefore recommend that the general issue for cash provisions be simplified on the following basis:

* Security holders agree to a 15% dilution at a specific point in time for a certain period;
* The general issue for cash authority shall be valid until the next annual general meeting or 15 months from the date the general issue for cash authority was granted, whichever period is shorter. As such the general issue for cash authority shall not be in place for a financial year.
* The assessment of the applicant’s equity securities in issue is made as the date of the notice of general/annual general meeting containing the resolution seeking the general issue for cash authority;
* The assessment shall be a factual assessment of the applicant’s equity securities listed on the JSE, excluding treasury shares;
* The general issue for cash resolution in the notice of general /annual general meeting will include the specific number of securities representing the 15% threshold amount which the directors are authorised to issue;
* Any securities issued under the general issue for cash authority shall be deducted from the threshold amount and the threshold amount may not be exceeded during the period;
* In conclusion, the securities authorised to be issued by the directors under the general issue for cash authority is a firm number and will reduce throughout the period as securities are issued under such authority.

Amendments to the Requirements

The existing paragraph 5.50 of the Requirements will be amended as follows:

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:

 (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[[1]](#footnote-2)

 (b) generally approved by 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”).

It is suggested to delete the provisions of paragraph 5.52(c) of the Requirements in its entirety and to replace same with the following new paragraph 5.52(c):

*“(c) securities which are the subject of a general issue for cash may not exceed 15% of the applicant’s equity securities in issue as at the date of the notice of general/annual general meeting seeking the general issue for cash authority, provided that -*

1. *the authority shall be valid for the period contemplated in paragraph 5.50(b);*
2. *the calculation of the applicant’s equity securities in issue shall be a factual assessment of the applicant’s equity securities listed on the JSE as at the date of the notice of general/annual general meeting, excluding treasury shares;*
3. *the specific number of shares representing a number up to 15% of the applicant’s equity securities in issue 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;*
4. *any equity securities issued under the authority during the period contemplated in paragraph 5.50(b) shall be deducted from such number in (iii) above and may not be exceeded during the period; and*
5. *in the event of a sub-division or consolidation of equity securities during the period contemplated in paragraph 5.50(b), the authority must be adjusted accordingly to represent the same allocation ratio.”*

The existing paragraph 11.22 of the Requirements will be amended as follows:

General issue for cash

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[[2]](#footnote-3)

 (c) 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 (please also refer to note 2 in paragraph 11.13).[[3]](#footnote-4)

Please submit all comments to alwynf@jse.co.za by close of business Friday, 28 June 2013.

**Annexure 1**

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 not to related parties;

 (c) securities which are the subject of general issues for cash:

 (i) in the aggregate in any one financial year may not exceed 15% of the applicant’s equity securities in issue of that class (for purposes of determining the securities comprising the 15% number in any one year, account must be taken of the dilution effect, in the year of issue of options/convertible securities, by including the number of any equity securities which may be issued in future arising out of the issue of such options/convertible securities);

 (ii) of a particular class, will be aggregated with any securities that are compulsorily convertible into securities of that class and, in the case of the issue of compulsorily convertible securities, aggregated with the securities of that class into which they are compulsorily convertible;

 (iii) as regards the number of securities which may be issued (the 15% number), same shall be based on the number of securities of that class in issue added to those that may be issued in future (arising from the conversion of options/convertible securities), at the date of such application:

 (1) less any securities of the class issued, or to be issued in future arising from options/convertible securities issued, during the current financial year;

 (2) plus any securities of that class to be issued pursuant to:

 (aa) a rights issue which has been announced, is irrevocable and is fully underwritten; or

 (bb) an acquisition (in respect of which final terms have been announced) which acquisition issue securities may be included as though they were securities in issue at the date of application;

 (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;[[4]](#footnote-5)

 (e)[[5]](#footnote-6)  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.

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