

Dear Company Secretaries, Sponsors and Designated Advisers

23 November 2012

## **THE APPOINTMENT AND COMPOSITION OF THE AUDIT COMMITTEE**

We refer to our recent guidance letter on corporate governance dated 16 August 2012 and more specifically to paragraph 3.84(d) of the JSE Listings Requirements (the “**Requirements**”) as it relates to the appointment and composition of the audit committee.

### Background

Paragraph 3.84(d) of the Requirements stipulate, amongst others, that all issuers must in compliance with the King Code appoint an audit committee. In the above guidance letter the JSE issued the following guidance on the composition of the audit committee and the role of the chairman:

*“With regard the composition specifically, this means that the audit committee must comprise at least three independent non-executive directors. The chairman of the board must not be a member of the audit committee and by implication cannot chair this committee.”*

The JSE applied the above approach based on its interpretation of the Requirements read with the provisions of the King Report dealing with the position of the chairman and the composition of the audit committee. The relevant provisions in the King Report are the following:

- Principle 2.16, par 45.1 of the King Report stipulates that the chairman should not be a member of the audit committee; and
- Principle 3.2, par 11 of the King Report stipulates that the chairman of the board has a strategic and comprehensive role to play in guiding the board and cannot simultaneously lead and participate objectively in the audit committee. The chairman of the board should therefore not be eligible for appointment as an audit committee member but may attend audit committee meetings by invitation.

### The Chairman of the Board

Since the issue of the above guidance letter, the JSE received several requests for dispensation in relation to the composition of the audit committee on the grounds that the chairman of the issuer is also a member of the audit committee. The grounds for such dispensation requests were mainly motivated on the (i) value added by the chairman in relation to his experience and expertise relevant to the particular industry of the issuer and (ii) the costs associated in ensuring that the audit committee comprises of at least three independent non-executive directors (more so in the case of smaller market cap issuers).

In reviewing the dispensation requests, the JSE strictly applied its guidance on the composition of the audit committee and did not grant any dispensations which would allow a chairman of the board to be a member of the audit committee.

### JSE Revised Approach

It should be noted that the Companies Act No 71 of 2008 (the “**Companies Act**”) has transformed the audit committee of listed companies from being a committee of the board to a separate statutory committee that is appointed by the shareholders pursuant to section 94 of the Companies Act.



In light of (i) the several dispensation requests received by the JSE, (ii) the elevation of the audit committee pursuant to the Companies Act and (iii) the election of the audit committee by shareholders, the JSE has reconsidered its position and interpretation on the chairman's participation on the audit committee as a member.

The JSE is very mindful of the commercial realities involved in the appointment of further independent non-executive directors in order to compliment the audit committee and is of the view that the chairman could add meaningful value and experience to the audit committee as a member.

The JSE further takes comfort from the fact that pursuant to the provisions of section 94(2) of the Companies Act, the composition of the audit committee of an issuer is voted on by its shareholders. As such, shareholders have a direct interest and participation in the composition of the audit committee.

The JSE has therefore decided to be pragmatic in its approach, taking into account the above considering factors, in relation to an independent non-executive chairman's participation on the audit committee as a member. The JSE wishes to amend its initial guidance in respect of paragraph 3.84(d) of the Requirements in order to allow an independent non-executive chairman to be a member of the audit committee, subject to certain qualifications as indicated below. For the avoidance of doubt, this further guidance letter only amends the guidance in respect of paragraph 3.84(d) of the Requirements and all other provisions as contained in our initial guidance letter dated 16 August 2012 remains unaffected.

3.84(d)	Issuers must appoint an audit committee in compliance with the King Code.	<p>All the principles and recommended practices, including composition and duties, as set out in the King Code should be considered and applied accordingly, save as specifically addressed below. With regard the composition specifically, this means that the audit committee must comprise at least three independent non-executive directors.</p> <p>If an issuer has an independent non-executive chairman of the board, he/she may be a member of the audit committee, subject to the following provisions:</p> <ul style="list-style-type: none"> <li>• All the other members of the audit committee (at least two) are independent non-executive directors;</li> <li>• He/she may not be the chairman of the audit committee;</li> <li>• The dual role (chairman of the board and member of the audit committee) is specifically disclosed to shareholders at the annual general meeting referred to in Section 94(2) of the Act; and</li> <li>• Shareholders approve the appointment of the chairman to the audit committee at the annual general meeting.</li> </ul> <p>The JSE is aware that some issuers combine the audit and risk committee. Given the difference in</p>
---------	---	---

		the membership of these committees, issuers must ensure that in these instances that the membership of the combined committee meets the more stringent independence criteria of the audit committee.
--	--	--

### Conclusion

In considering the appointment and composition of the audit committee, the JSE's preferred composition of the audit committee would still be in line with our initial guidance on the basis that the chairman is not a member of the audit committee.

Although our revised approach now allows an independent non-executive chairman of the board to be a member of the audit committee (in contrast with the strict application and interpretation of the recommended practices of the King Report), we have tested this approach with certain members of the King Committee and with the Institute of Directors in Southern Africa and same was met with no objection provided there is sufficient justification that it is applied in the best interest of the company.

It should however be noted that in applying the above guidance we wish to remind you of the provisions of principle 3.1, paragraph 12 of the King Report which stipulates that there should be a basic level of qualification and experience for audit committee membership, even though the members have been appointed by shareholders.

It is the JSE's approach to incorporate guidance letters into the Requirements once the market has had the opportunity to consume and apply the guidance in general practice.

We trust that the now facilitates and clarifies the appointment and composition of the audit committee in compliance with the Requirements.

Yours faithfully



**A.F. VISSER: GENERAL MANAGER  
ISSUER REGULATION**