



# The JSE Limited Listings Requirements

**BULLETIN 12 of 2012**

10 December 2012

Dear Subscriber

The JSE has made certain amendments and additions to the JSE Listings Requirements in respect of the following matters:

- (i) the "28 day rule" for the posting of circulars;
- (ii) disclosure of repurchased equity securities;
- (iii) steps for the removal of designated adviser;
- (iv) steps for the removal of sponsor;
- (v) financial director adequacy sign-off by designated adviser;
- (vi) electronic submissions to the JSE; and
- (vii) restrictive funding arrangements.

The effective date of the aforesaid Listings Requirements will be 14 January 2013.

## **Category 1 Requirements and circulars – the 28 day rule**

### **Section 9 Transactions**

#### **Category 1 requirements**

9.20 Upon the terms of a Category 1 transaction being agreed, the issuer must:

...

- (b) within 60 days, dispatch a circular to shareholders containing a notice of general meeting to obtain their approval and any agreement effecting the transaction must be conditional upon such approval being obtained. The JSE may, in its sole discretion, extend this period provided that there is sufficient justification to do so.

#### **Reverse take-over requirements**

9.24 The announcement of a reverse take-over must contain adequate warning as to the uncertainty of whether or not the JSE will allow the listing to continue following the acquisition. The issuer must prepare a Category 1 circular and listing particulars as though the issuer were a new applicant. If such Category 1 circular and listing particulars are not provided to shareholders within 60 days of the announcement, the JSE may suspend the listing of the issuer's securities. The Category 1 circular must clearly advise shareholders whether or not the JSE will continue to grant a listing to the issuer if shareholders approve the acquisition.

### **Section 10 Transactions with Related Parties**

#### **Contents of circular**

10.9 A circular in respect of a related party transaction must be issued within 60 days of the publication of the terms announcement, must comply with the general requirements relating to circulars set out in Section 11 and must also include:

## **Section 11 Circulars, Pre-listing Statements/Prospectuses and Announcements**

### **Specific issue for cash**

11.19 Issuers seeking a listing for securities issued in terms of a specific issue of shares for cash that requires shareholders approval must send shareholders a circular within 60 days of publication of the announcement containing the following:

### **Specific repurchases**

11.23 The circular must be sent to shareholders within 60 days of publication of the announcement and must comply with and/or contain the following information:

### **Specific payments (as defined in Section 5)**

11.28 The circular must be sent to shareholders within 60 days of publication of the announcement and must contain the following information:

## **Repurchased equity securities**

### **Section 8 Financial Information**

#### **Minimum contents of annual financial statements**

8.63 In addition to complying with IFRS, Section 30 of the Act and paragraph 3.84 of the Listings Requirements, issuers are required to disclose the following information in the annual report (in the case of 8.63(a) and (l)), and in the annual financial statements (in the case of 8.63(b)–(k), (m) – (o)):

...

(n) 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) held as treasury securities 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;
- (3) the average price paid for the repurchased equity securities, calculated by dividing the total amount paid by the number of repurchased equity securities.

8.64 The issuer's auditor shall modify the audit report as considered appropriate in cases of non-compliance with any of the requirements set out in paragraphs 8.63(b) to (k), (m) – (o).

## **Removal of DA**

### **Section 21 Alternative Exchange**

#### **Termination of contract**

21.30 In the event that the appointment of the DA pursuant to paragraph 21.12 is terminated by the issuer, for whatever reason, such termination must be approved by the board of directors of the issuer. Once the termination of the DA has been approved by the board of directors, the issuer and the DA must submit a report to the JSE stipulating the reasons for the termination, within 48 hours of such termination.

## Removal of Sponsor

### Section 2 Sponsors

#### Appointment and resignation

2.6 An applicant issuer must advise the JSE in writing (providing a copy to the sponsor) of the appointment or resignation of any sponsor. Where a sponsor resigns, the applicant issuer and the sponsor must immediately inform the JSE separately in writing of the reason for the resignation. In such a situation, the applicant issuer has 30 days to appoint a new sponsor from the date of resignation of the sponsor, unless the JSE decides otherwise. The replacement sponsor must ensure, before accepting an appointment, that it has requested the written reasons for the resignation as submitted to the JSE from the outgoing sponsor. The outgoing sponsor must supply the reasons to the replacement sponsor within five business days of such request and the replacement sponsor must take account of the reasons for the resignation before accepting the appointment. Failure to comply with this requirement may result in disciplinary action being taken in terms of the Listings Requirements.

#### Termination

- 2.6 (A) (a) In the event that the appointment of the sponsor is terminated by the issuer, for whatever reason, such termination must be approved by the board of directors of the issuer. Once the termination of the sponsor has been approved by the board of directors, the issuer and the sponsor must submit a report to the JSE stipulating the reasons for the termination, within 48 hours of such termination.
- (b) In the circumstances set out in paragraph 2.6(A)(a), an issuer must immediately publish an announcement confirming the termination of the services of the sponsor. The issuer must make immediate arrangements to appoint a replacement sponsor, within 30 business days of the date on which the former sponsor ceased to act, and must inform the JSE and publish a further announcement immediately after the appointment has been made.
- (c) The replacement sponsor must ensure, before accepting the appointment, that it has requested the report referred to in paragraph 2.6(A)(a) from the outgoing sponsor. The outgoing sponsor must supply this report to the replacement sponsor within five business days of such request and the replacement sponsor must take account of the reasons for the termination before accepting the appointment.
- (d) Failure to comply with this requirement may result in disciplinary action being taken in terms of the Listings Requirements.

## Financial Director – Appropriate expertise and experience

### Section 21 Alternative Exchange

#### Conditions for listing

##### Suitability

21.3 In addition to the requirements of paragraphs 4.1 to 4.27, an issuer wishing to apply for a listing on ALTX must comply (and after the listing has been granted must comply on a continuing basis) with the following requirements:

...

- (e) The applicant issuer must appoint an executive financial director and the audit committee of the applicant issuer appointed pursuant to paragraph 21.5(i) must be satisfied (and submit confirmation in writing to the JSE) that the financial director has the appropriate expertise and experience to fulfil his role;

## Electronic copies

### Section 3 Continuing Obligations

#### Annual financial statements

3.21 An issuer's annual financial statements must be distributed to the issuer's holders of securities and a copy thereof must be submitted electronically and directly to the information database maintained by Issuer Regulation Division for publication on the JSE website. At the same time, an abridged version of such annual financial statements ("abridged report"), complying with paragraphs 8.57 to 8.61, must be published on SENS. Although the audit report of the auditor need not be included in the abridged report, the name of the auditor must be included and, if such report is modified, details of the nature of such modification shall also be stated therein. If the audit report is not modified then a statement to this effect must be included in the report.

### Appendix 1 to Section 11

#### Guidelines on the publication of information

The following table provides a summary of the requirements for publication of information relating to listed companies:

| Reference (section paragraph unless otherwise stated) | Information   | Electronic submission to the JSE | Distribute to shareholders | Publish in press in compliance with paragraphs 3.46 to 3.48 Note 4 | Publish through SENS in compliance with paragraph 3.45 |
|---|---|----------------------------------|----------------------------|--|--|
| 3.4(b)  | Trading updates   | Yes                              | No                         | No   | Yes  |
| 3.11  | Dividend announcement   | Yes                              | No                         | No   | Yes  |
| 3.15  | Interim Reports   | Yes                              | Yes                        | Yes  | Yes  |
|   | Quarterly Reports   | Yes<br>Note 3                    | No<br>Note 3               | No   | Yes  |
| 3.16  | Provisional annual financial statements (Provisional reports) | Yes                              | Yes                        | Yes  | Yes  |
| 3.19  | Annual financial statements                                   | Yes                              | Yes                        | No   | No   |
| 3.19(a)   | Notices of annual general meetings                            | Yes                              | Yes                        | No   | Yes<br>Note 1  |
| 3.21  | Abridged annual financial statements (Abridged report)        | Yes                              | No                         | No   | Yes<br>Note 1  |

*Continued*

| Reference (section paragraph unless otherwise stated) | Information   | Electronic submission to the JSE | Distribute to shareholders | Publish in press in compliance with paragraphs 3.46 to 3.48 Note 4 | Publish through SENS in compliance with paragraph 3.45 |
|---|---|----------------------------------|----------------------------|--|--|
|   |   |                                  |                            |  |  |
| 3.22  | Preliminary annual financial information (Preliminary report)         | Yes<br>Note 3                    | No<br>Note 3               | No   | Yes  |
| 3.46–3.48   | All announcements except those specifically detailed in this appendix | Yes                              | No                         | Yes  | Yes  |
| 3.49  | Circulars   | Yes                              | Yes                        | No   | No   |
| 3.49–3.50   | Pre-listing statements and prospectuses                               | Yes                              | Yes                        | Yes<br>Note 2  | Yes<br>Note 2  |
| 3.78  | Change of auditors  | Yes                              | No                         | No   | Yes  |
| 3.59  | Changes to the boards of directors                                    | Yes                              | No                         | No   | Yes  |
| 3.63  | Directors dealings in securities                                      | Yes                              | No                         | No   | Yes  |
| 11.2  | Voluntary price sensitive announcements                               | Yes                              | No                         | No   | Yes  |

**Notes:**

3. If an applicant issuer elects to distribute the report to shareholders then, once so distributed, a copy thereof must be submitted electronically and directly to the information database maintained by Issuer Regulation Division for publication on the JSE website.

**Section 16 Documents to be submitted to the JSE**

**Part II documents**

- 16.12 The following documents are classified as Part II documents and must be received by the JSE no later than 48 hours before the date of listing, unless the listing timetable, which has been approved by the JSE, precludes such submission, in which case the relevant Part II documents must be submitted to the JSE at such time that is acceptable to the JSE:

...

- (d) the published pre-listing statement/prospectus or circular, which is required for circulation to members, must be submitted electronically and directly to the information database maintained by Issuer Regulation Division for publication on the JSE website, together with one hard copy, signed by the directors;

### **Periodic returns**

16.21 The following must be submitted electronically and directly to the information database maintained by Issuer Regulation Division:

...

- (b) a copy of the minutes of general/annual general meetings must be furnished to the JSE within 72 hours of request therefore;

### **Extensions of listed options**

16.22 With respect to listed options and their extension, the company must submit for approval to the JSE:

...

- (viii) once issued, a copy of the circular must be submitted electronically and directly to the information database maintained by Issuer Regulation Division for publication on the JSE website, together with one hard copy, signed by the directors.

## **Restrictive Funding Arrangements**

### **New Definition**

Restrictive Funding Arrangements

any funding arrangement by way of a loan or otherwise in terms of which the applicant issuer and/or any of its subsidiaries –

- (a) have to obtain the prior consent from the funding provider in order to undertake certain specified events; and
- (b) do not have the ability to settle the relevant funding arrangement in full, at any time, at the election of the applicant issuer and/or any of its subsidiaries, as the case may be.

## **Section 5 - Methods and Procedures of Bringing Securities to Listing**

### **Restrictive Funding Arrangements**

5.128 Any restrictive funding arrangements undertaken by an issuer and/or any of its subsidiaries must comply with paragraph 11.58.

## **Section 7 – Listing Particulars**

### **Material Contracts**

7.F.1 Subject to paragraph 6.17, the dates, nature of and the parties to every material contract entered into either verbally or in writing by the applicant, or any of its subsidiaries, being restrictive funding arrangements and/or a contract entered into otherwise than in the ordinary course of the business carried on, or proposed to be carried on, by the applicant or any of its subsidiaries, and:

- (a) entered into within the two years prior to the date of the pre-listing statement or circular; or
- (b) entered into at any time and containing an obligation or settlement that is material to the issuer or its subsidiaries at the date of the pre-listing statement or circular.

## **Section 8 – Financial Information**

### **Minimum contents of annual financial statements**

8.63(o) Any restrictive funding arrangements undertaken by an issuer and/or any of its subsidiaries must be disclosed. The disclosure must include the following details:

- (a) the restriction(s) on specified events attaching to the funding arrangement;
- (b) the funding provider(s); and
- (c) the amount of the funding;

## **Section 9 - Transactions**

### **Restrictive Funding Arrangements**

9.35 Any restrictive funding arrangements undertaken by an issuer and/or any of its subsidiaries must comply with paragraph 11.58.

## **Section 11 - Circular. Pre-listings statements/prospectuses and announcements**

### **Restrictive Funding Arrangements**

11.58 Any restrictive funding arrangements undertaken by an issuer and/or any of its subsidiaries must comply with the following;

- (a) Disclose the restrictive funding arrangement as a material contract in circulars, pre-listings statements and prospectuses published by issuers in accordance with 7.F.1;
- (b) If a related party participates in the restrictive funding arrangement shareholder approval will be required and the requirements of paragraph 10.9 will apply with the exception of paragraph 10.9(e); and
- (c) Disclosure of the terms of the restrictive funding arrangement in the annual report in accordance with paragraph 8.63(o).

## **Guidance Letters**

The following new Guidance Letters have also been included by the JSE:

- Audit Report Matters
- Fairness opinion: related party transactions in respect of property and mineral assets

## **Guidance Letter: Audit Report Matters**

**Date: 20 September 2012**

### **Audit Report Matters**

In terms of Section 3 of the JSE Listings Requirements (the “**Requirements**”), issuers have certain obligations with regards to periodic financial information and Practice note 1/2003 (the “**Practice note**”) provides further guidance on the announcement and publication of year end results. In addition, Section 22 of the Requirements deals with, inter alia, the auditor’s responsibilities as it relates to the periodic financial information published by issuers.

It has been brought to our attention that there is some confusion with regards to:

- the terminology used in Section 3 and 22 of the Requirements and the Practice note; and
- the obligations of issuers in obtaining an auditor’s report and submitting that report to the JSE.

This letter serves to clarify these matters.

### **Abridged report**

Paragraph 3.21 of the Requirements has two criteria for an abridged report:

- it is a compulsory report that must be published on SENS; and
- it must be published when the company distributes its annual financial statements (“**AFS**”) to its shareholders i.e. the full AFS must be available when publishing the report.

Given the above, the references in the Practice note to abridged report in the table entitled “terms used herein” for abridged, preliminary and provisional reports may be confusing. Similarly the use of the term “condensed” may also be confusing. The words “abridged or condensed” should therefore be removed from the Practice note in the terms abridged, preliminary and provisional reports.

The Practice note will be updated in due course to reflect this.

## Auditors’ responsibilities for an abridged report

In terms of paragraph 3.21 of the Requirements, an abridged report can only be issued when the full audited AFS have been distributed. Under the circumstances it would be impractical to expect an auditor to issue an additional audit report on the abridged report being published on SENS. The reference in paragraph 3.21 of the Requirements to the audit report refers to the audit report on the AFS and does not place an additional obligation on the issuer to obtain a separate audit report for the abridged report published on SENS.

Paragraph 3.21 of the Requirements will be updated in due course to read as follows:

*Although the audit report of the auditor on the annual financial statements need not be included in the abridged report, the name of the auditor must be included and, if such report is modified, details of the nature of such modification shall also be stated therein. The abridged report is not required to be audited.*

## Modified audit report

Paragraph 3.25 of the Requirements refers to procedures that prevail when a modified auditors’ report has been issued. Paragraph 22.6(b) of the Requirements makes similar reference to a modified audit report. International Standards on Auditing (“ISAs”) deal clearly with the modification of an auditors’ opinion and no further clarification is needed for this term. From a reading of paragraphs 3.18 and 3.25 of the Requirements it is clear that the JSE use the term modified audit report to cover the following circumstances:

- a modified audit opinion;
- an emphasis of matter paragraph in the auditors’ report; and
- a reportable irregularity paragraph in the auditors’ report.

It would therefore be useful to include a definition of the term “modified auditors’ report” in the Requirements so that it can be clearly distinguished from a modified audit opinion as envisaged in ISAs.

| Term                             | Meaning   |
|----------------------------------|---|
| <i>modified auditors’ report</i> | <i>An audit report that contains a modified opinion, an emphasis of matter paragraph or paragraph regarding a reportable irregularity as defined in the Auditing Profession Act</i> |

The JSE is aware that ISAs require auditors to consider including an “Other Matters” paragraph in their report. The South African Auditing Practice Statement 3 issued by IRBA in June 2012 includes some examples of these sorts of reports. At this stage the Requirements place no obligations on parties with regards to an “Other matters” paragraph or for a paragraph dealing with “Other Legal and Regulatory Requirements” other than in the instances of a reportable irregularity as discussed above. We will continue to assess the situation and if we decide to change our approach, any potential changes to the Requirements will follow the normal due process.

## No change reports

Paragraph 3.16, 3.21 and 3.22, as read with the Practice note, defines a no change report as:

*“an announcement, not sent to shareholders, published only on SENS, stating that there have been no changes to any financial information previously published in a preliminary or provisional report”*

It is clear that the concept of a no change report apply equally to preliminary and provisional reports. In order to avoid any uncertainty, paragraph 3.16 of the Requirements will be updated in due course to include the following:

*If an issuer has published a provisional report, then, at the date of issue of its annual financial statements, such issuer must either comply with paragraph 3.21 as it relates to abridged reports, or publish an announcement stating that it has issued its annual financial statements and that it is*

*not publishing an abridged report as the information previously published in the provisional report is unchanged.*

### **Paragraph 3.22 of the Requirements**

Paragraph 3.22 of the Requirements contains the exact wording as already set out in paragraph 3.18(f). The inclusion of this wording makes the paragraph lengthy and cumbersome to read. By comparison, paragraph 3.16 of the Requirements deals with the same concept with simple cross referencing to paragraph 3.18(f).

Furthermore whilst paragraph 3.22 of the Requirements does not provide any direct guidance on the review obligations for the auditor, paragraph 3.18 of the Requirements is the relevant section to consider as the heading implies.

In order to remove any uncertainty, the Requirements will be updated in due course to include reference to preliminary report in paragraphs 3.18(e) and (f).

### **Paragraph 3.18(g) of the Requirements**

Paragraph 3.18(g) of the Requirements was inserted some time ago, before the adoption of IASs. The JSE is unaware of any circumstances where an auditor has modified their report for this Requirement. Furthermore we believe that since the adoption of the IASs, there should be no circumstances under which the auditor's report would not already include the matters discussed in paragraph 3.18(g) of the Requirements. As such this Requirement is probably superfluous and the JSE is considering deleting it.

### **Obligation to submit copies of auditor's reports**

Paragraph 3.18(i) of the Requirements deals with a procedural matter for the JSE and currently reads as follows:

- (i) *if a review is required in terms of the above, a signed copy of the auditor's review opinion must be submitted to the JSE within 24 hours of the publication of the results*

The JSE no longer requires copies of all auditors' reports as these are available for inspection at the registered office and in terms of paragraph 22.6(b) of the Requirements the JSE places reliance on the auditor to ensure that the content of their report is not misrepresented,. Paragraph 3.18 (i) will therefore be amended to read as follows:

- (i) *if the auditor issues a modified report, a signed copy of the auditor's report must be submitted to the JSE within 24 hours of the publication of the results.*

### **Scope of the auditor's report**

It is important to note that the ISAs require that the auditor's report is included in any document that indicates that the auditor has reported thereon. It was not practical to pass this obligation on to issuers given the format in which financial results have been traditionally distributed i.e. on SENS. It is for this reason that the Requirements require extracts of the auditor's report to be included with the results and for the auditor's report to be available for inspection.

We note that it is common for an issuer to publish additional voluntary information with their financial results. In this regard, where the auditor's report is not actually included in the financial results it can be confusing and misleading for an investor to understand exactly what information the auditor's report covers. The JSE therefore believes that it would be appropriate for an issuer to clarify matters through the inclusion of the following wording in their results announcements where unaudited/unreviewed information is contained in a results announcement and the demarcation between the audited/reviewed information and unaudited/unreviewed information is not clear:

*The auditor's report does not necessarily cover all of the information contained in this announcement/ financial report. Shareholders are therefore advised that in order to obtain a full understanding of the nature of the auditor's work they should obtain a copy of that report together with the accompanying financial information from the registered office of the company.*

If a results publication does not contain the above wording, the assumption will be made that all of the information is in fact covered by the auditor's report. To avoid any confusion there is also nothing preventing an issuer from distributing the actual auditor's report with the financial information.

## **Guidance Letter: Fairness opinion: related party transactions in respect of property and mineral assets**

**Date: 25 October 2012**

## **Fairness opinion: related party transactions in respect of property and mineral assets**

Typically for a related party transaction the directors of the issuer must make a statement indicating whether or not the related party transaction is fair insofar as shareholders of the issuer are concerned and that the board of directors has been advised by an independent expert acceptable to the JSE. The board of directors must obtain a fairness opinion prepared in accordance with Schedule 5 of the JSE Listings Requirements (the "**Requirements**"). Before issuing a fairness opinion, the independent professional expert must perform a valuation of the issuer and/or the subject of the transaction.

In 2007, with the introduction of the amendments to paragraph 10.4(f) of the Requirements, the JSE adopted a pragmatic approach to fairness opinions prepared pursuant to certain related party transactions. The provisions of paragraph 10.4(f) allow for a fairness opinion, resulting from a related party transaction, to be dispensed with in the event that (i) property or (ii) mineral assets form the subject matter of the related party transaction and where the value thereof is supported by the necessary valuations. The rationale for the approach being that a valuation is performed on the asset, which is then compared against the consideration paid or received in respect of that asset. The only basis under which such a comparison can take place on a like for like basis is if the consideration paid or received in respect of the asset is clearly ascertainable and determinable in the form of cash, without any consideration whatsoever of outside variables. The fairness opinion becomes superfluous where the value of the asset can be weighed outright against the cash consideration received or paid for the asset.

It should therefore be noted that the exemption on a fairness opinion as envisaged above does not apply where the consideration received or paid for the asset is in the form other than cash, such as the issue of shares in the issuer.

Therefore, only in the event that a related party transaction involves –

- property and/or mineral assets, as the subject matter of the acquisition or disposal pursuant to a related party transaction;
- the value of which has been determined and supported by a valuation –
  - For property assets it would be a valuation report prepared in accordance with paragraphs 13.20 and 13.31 of the Requirements; and
  - For mineral assets it would be a valuation included in a competent person's report prepared in accordance with Section 12 of the Requirements by an independent competent person.
- the consideration received or paid is settled in cash,

the requirement for a fairness opinion may be dispensed with.

For the avoidance of doubt, the above principle applies equally to paragraph 13.10 of the Requirements which provides that an issuer is exempt from providing a fairness opinion where a related party transaction involves property, the subject of the valuation report prepared in accordance with paragraphs 13.20 to 13.31. It should be noted however, that property is specifically defined and described in section 13 as being immovable property consisting of land and buildings.

The exemption from obtaining a fairness opinion set out in paragraphs 10.4(f) in respect of (i) property or (ii) mineral assets is subject to the following two factors being present:

- The transaction involves an asset only, not a business, shares in a company, or a stake in a joint venture or partnership; and
- The consideration received or paid is settled in cash.

It should be noted that once a transaction involves more than an asset as envisaged above other factors may come into play which could impact the valuation as:

- There could be other assets and liabilities within the entity that may need to be considered; and
- There are other valuation considerations that need to be taken into account when the related party transaction involves a business or a group of assets.