

25 October 2012

Dear Company Secretary, Sponsor and Designated Adviser

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



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F Evans (CFO) **Non-Executive Directors:** HJ Borkum
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NS Nematswerani, N Nyembezi-Heita, N Payne **Alternate
Directors:** JH Burke, LV Parsons

- 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.

Should you have any queries regarding the content of this letter please contact Tania Wimberley at taniaw@jse.co.za.

Yours faithfully



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