Proposed Amendments to the JSE Listings Requirements

June 2015

Section	Nr	Proposed amendment/s	JSE comments
Definitions	1	**Headline earnings per share** The provisions of the JSE Listings Requirements (the "**Requirements**") require the calculation of headline earnings and disclosure of a detailed reconciliation of headline earnings to the earnings numbers used in the calculation of basic earnings per share in accordance with the requirements of IAS 33 - Earnings per Share. The current applicable rules for headline earnings per share are set out in Circular 2/2013 – Headline Earnings, which are incorporated into the Requirements in the definitions section. These rules in the circular will need to be amended from time to time when the underlying IFRS standards change. They could also change if there is concern about a specific rule not meeting the principles as outlined in the circular	**Nature of amendment and rationale** An amendment to the Requirements is required to change the definition of "headline earnings" to replace the referencing from Circular 2/2013 to the new circular that will be issued by SAICA. In order to avoid that the definition be amended each and every time there is an update on the HEPS circular, the intention of the amendment is to make the definition of "headline earnings" more generic. Current definition of "headline earnings": *as defined and calculated in terms of the SAICA Circular 2/2013, Headline Earnings, as amended from time to time;* The new definition of "headline earnings" will read as follows: *as defined, calculated and issued by SAICA as the circular Headline Earnings, as amended from time to time;* Detailed changes in the HEPS circular themselves will also need to go through a JSE consultation process as it is envisaged that a current change is not merely the application of the existing headline rules to a new IFRS, but there is also a change to certain rules. In summary, the proposed amendments to the current HEPS circular is due to the following: (i) IFRS 9 (Financial Instruments) has now been issued and the current HEPS circular does not deal with all of the nuances of that standard that are now being understood; (ii) IFRS 9 introduces the business model approach and as

			such requires a rethink of certain of the rules that were contained in its predecessor standard (IAS39); and (iii) Consideration si being given an alternative solution in the matter that was resolved in the current HEPS circular regarding the treatment of deferred tax in terms of IAS 12 (Income Taxes). Item (i) is merely an application of the existing rules to a new IFRS, but item (ii) and (iii) are new rules / a new approach. The proposed amendments to the current HEPS circular will go through a parallel consultation process through SAICA.
Definitions & Section 3: Continuing Obligations	2	**Price Sensitive Information** Definition of price sensitive information and the meaning of material price sensitive information in paragraph 3.4(a) (General obligation of disclosure) and paragraph 3.9 (Cautionary announcements). During the general review undertaken in 2014 the JSE attempted the following amendment: *The definition of price sensitive information will be amended to ensure consistency throughout the JSE Listings Requirements (the "**Requirements**") and to align same with the provisions of the Financial Markets Act No.19 of 2012 ("**FMA**"), with specific reference to "inside information". The amended definition will result in consequential changes to paragraph 3.4(a), General Obligation of Disclosure, to ensure consistency with the FMA.* The following general comments were provided and the JSE decided the consult on this matter separately as it	**Nature of amendment and rationale** One of the general principles of the Requirements is to ensure that full, equal and timeous public disclosure is made to all holders of securities and the general public at large regarding the activities of an issuer that are price sensitive. **First Step** The first step would be to simplify the definitions as it relates to price sensitive information. The current definition of "price sensitive information" will be deleted in its entirety: *"unpublished information that, if it were made public, would be reasonably likely to have an effect on the price of a listed company's securities"* and be replaced with a new definition – "*unpublished information that is specific or precise, if it were made public could influence the economic decisions of users*" The definition of "material" will be deleted in its entirety, as well as its

		required more and separate consideration: *The meaning of "material" as stipulated in the Listings Requirements does not have the same meaning attributed to it in the context in which it is used in the definition of "inside information" in the FMA.* *It was submit that it would be helpful to market participants if the JSE and FSB could jointly issue general guidelines on what they regard as being "material".*	application in the definition of "price sensitive information". Consequential amendments will further be made to in paragraph 3.4(a) (General obligation of disclosure) and paragraph 3.9 (Cautionary announcements) to address the above amendments. **Second Step** The second step will be to issue a practice note, which forms part of the Requirements, to assist issuers and their directors on the interpretation of price sensitive information. The practice note will contain the following in a format to be determined: (i) <u>Materiality</u> When looking at the meaning of "material" as used in the Requirements and the FMA it became apparent that attempts to crystalise the definition of "material" was highly unlikely as the significance of the information would vary widely from issuer to issuer, depending on a variety of factors such as (i) the size of the issuer, (ii) recent developments (iii) market sentiment about the issuer, (iv) the sector in which it operates, (v) prevailing market conditions, (vi) price of the listed securities, (vii) general liquidity and (viii) shareholder base. Directors of issuers are currently required, and will continue, to apply their own discretion in determining what will constitute price sensitive information If there is any uncertainty as to the price sensitivity of information, then the issuer's advisers should be consulted. If doubt remains, the issuer should assume that the information is price sensitive in order to avoid selective disclosure which could lead to confusion in the market. If in doubt, publish. The previous rule of thumb materiality reference of 10% in the definition of "material" in the Requirements was merely a broad guide based on experience or practice rather than theory. The JSE cannot in isolation benchmark a materiality percentage on the price or value

			of listed securities as there is no such benchmark to materiality in the FMA dealing with inside information. Such benchmarking will be contrary to the provisions of the FMA. Thus, for the avoidance of doubt, that materiality cannot be benched on the rule of thumb materiality reference of 10% as it relates to the potential effect on the price or value of listed securities. In determining whether information would be likely to influence the economic decisions of users, an issuer should be mindful that there is no firm figure (percentage change or otherwise) that can be set for any issuer when determining what constitutes price sensitive information, as this will surely vary from issuer to issuer taking into account all the above factors. (ii) <u>Specific and Precise</u> The FMA and the Requirements further do not define what constitutes specific or precise information and as such the courts will determine this on a case-by-case basis. What may constitute specific or precise information in one situation may possibly not do so in another, depending on the surrounding circumstances. The European Court of Justice has accepted a definition of Precise to be where: • The information indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so; and • The information as specific enough to enable conclusions to be drawn as to the possible effect of that set of circumstances or event on the price of a share. Specific should have a similar meaning and the grammatical meaning should also be considered. (iii) <u>Economic Decision of Users</u> According to the Association of Investment Managers and Research Standards of Practice Handbook, inside information is generally defined as information about a company that is both material and non-public. "*Under the securities laws of the United* States*, information is material if a reasonable investor is likely to consider it*

			significant in making an investment decision or if the information is reasonably certain to have a substantial impact on the market price of a company's securities." Therefore price sensitive information is information that is not public and which could move you to make an investment decision which you would otherwise not have made at the time. Any assessment on the investment decision should take into consideration the anticipated impact of the information in light of (i) the whole of the issuer's activities, (ii) the reliability of the source of the information and (iii) other market variables likely to affect the relevant listed securities in the circumstances. Information which is considered to be relevant to a reasonable investor's decision includes information which affects: • The assets and liabilities of the issuer; • The performance, or the expectation of the performance of the issuer's business; • The financial condition of the issuer; • The course of the issuer's business; • Major new developments in the business of the issuer; and • Information previously disclosed to the market. As such, quantitative and qualitative measures should be applied in this regard. (iv) <u>The FMA</u> The provisions of section 78 and 79 of the FMA dealing with market abuse also have bearing on the definition of price sensitive information pursuant to the provisions of the Requirements. "Inside information' is defined in the FMA as specific or precise information, which has not been made public and which (i) is obtained and learned as an insider and (ii) if it were made public, would be likely to have a material effect on the price or value of any security listed on a regulated market.

			It should be noted that subject to certain exemptions, an insider who knows that he or she has inside information and who deals directly or indirectly or through an agent for his or her own account in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it, commits and offence under the provisions of the FMA. (v) Paragraph 3.4(a) (General obligation of disclosure) The reference to a "limited period of time" refers to a period where negotiations could be taking place and the price sensitive information is not yet specific or precise. As long as price sensitive information can be kept confidential for a limited period of time there will be no requirement to release an announcement. However, as soon the information becomes specific or precise during the course of negations, an announcement will have to be released. If at any time the confidentiality of price sensitive information cannot be maintained, a cautionary announcement must be released. The timing of the release will be amended from "without delay" to "promptly and without delay" to provide for the limited period of time as explained above.
4: Conditions for Listing	3.1	**Africa Classification** Paragraph 4.31(b) An issuer seeking an African Classification can also meet the AltX requirements and should not be limited to the Main Board only.	**Nature of amendment and rationale** The amendments will expand the listing entry criteria for applicants seeking a primary or secondary listing on the JSE and classified as African to include AltX.

	3.2	**Corporate Governance** Paragraph 3.84 The JSE wishes to add a disclosure item under corporate governance as is relates to gender diversity at board level. Issuers should be encouraged to set voluntary targets in respect of gender diversity at board level within a certain timeframe (not imposed by the JSE). The disclosure should clearly identify the gender diversity policy and require annual reporting on how the policy has been applied against set voluntary targets (which must be done on an "apply or explain basis").	**Nature of amendment and rationale** The amendments will seek to provide disclosure on gender diversity at board level for listed companies.
5: Methods and Procedure of Bringing Securities to Listing	4	**Repurchase of Securities** Paragraph 5.76 A repurchase of shares triggers the provisions of the repurchase requirements pursuant to the provisions of the Requirements if it is an acquisition of the issuer's shares pursuant to Section 48 of the Companies Act No. 71 of 2008 (the "**Companies Act**"). It has come to our attention that some purchases of own shares by certain financial services companies are required as a normal part of their financial services offering to clients. Products and client portfolios managed on behalf of/and for clients by the investment management team/s of the issuer may require different levels of equity exposure of the issuer's own shares. These products tailored and managed by the investment management team/s of the issuer include, but is not limited to, life insurance products, collective investment and index tracking funds, and derivative products (such as single stock futures, contracts for difference, swaps, option etc.). The primary business objective relating to	**Nature of amendment and rationale** The principle is that certain financial services products/portfolios tailored and managed by financial services providers involve the acquisition of the issuer's shares, in the normal course of business. The JSE wishes to amend the Requirements so that shares acquired by a financial services company - • as part of its product range/portfolio for clients and at arm's length; or • in the normal course of business and at an arm's length basis, be excluded from the Requirements as a specific or general repurchase requiring shareholders' approval and that such shares acquired not be treated as treasury shares pursuant to the provisions of the Requirements. The following should be noted in respect of these products/portfolios: • The provision of the range of products or portfolios with exposure to the issuer's shares is common and current

		the derivative products is not to profit from market movements but to generate brokerage and funding margins. The positions are therefore managed on a hedged basis pursuant to an internal risk management framework and require that the investment management team of the issuer actively trade in the listed shares and derivatives thereon to hedge exposures that arise from the different products. These products/portfolios and the consequential exposure to the issuer's own shares (the acquisition and selling the issuer's shares as part of the product/portfolio) constitute an acquisition of shares pursuant to the provisions of the Companies Act and in effect triggers the repurchase requirements pursuant to the Requirements. This means that shareholders' approval, either under a general or specific approval, along with the mandatory disclosure in a circular to shareholders, is required. This however is not practically feasible based on the nature and structure of such products and portfolios tailored and managed by financial services companies, in the normal course of business.	market practice across financial services firms in South Africa; • These products/portfolios are executed by the relevant portfolio or business managers who operate independently from the issuer's board and executives and do not have and are not provided any access to unpublished price sensitive information as it relates to the issuer; • Due to the nature and complexity of the products/portfolios involved, the free trading in the issuer's shares cannot be suspended during the issuer's closed or prohibited periods nor can shareholders' approval be obtained for each purchased of shares; and • The authority to purchase shares in the market for the products/portfolio of the financial services companies will comply with the provisions of the Companies Act (to the extent required). • Paragraph 5.76 of the Requirements includes a similar exclusion, however very limited in that it only applies to transactions entered into on behalf *bona fide* third parties on an arm's length basis. The current proposal goes a further, for example it includes hedging for the issuer's benefit to limit exposure on derivative products. Shares in the issuer acquired as part of a product or portfolio by the investment management team will not be treated as treasury shares. In accordance with the definition of treasury shares, the shares will not be under the control of the issuer as the investments decisions will be made by the management of the investment management team or the directors of the subsidiary (removed from the board and executive of the issuer) and the investment decision will be based on the nature of the investment and for its benefit. Any issuer's shares acquired through a formal repurchase pursuant to a specific board decision or general mandate by shareholders will continue to be dealt with in accordance with the Requirements which will require (i) a circular to be distributed, and (ii) shareholder

			approval. Such repurchased shares will be treated as treasury shares.
7: Listing Particulars	5	**Section 7 disclosures in respect of subsidiaries** Section 7 requires certain disclosures in respect of the applicant and all their subsidiaries.	**Nature of amendment and rationale** In line with the JSE's approach in 2014 to make disclosures more relevant to the applicant issuer, the proposed amendment will result in certain disclosures to be made at (i) applicant issuer level and (i) major subsidiary level only. Therefore, not for all subsidiaries. Further, certain disclosures are required were a disclosure event is material to the applicant issuer and/or its subsidiaries. This will be clarified in that the disclosure event will only require disclosure if it is material for the applicant issuer and not in respect of the subsidiary
12: Mineral Companies	6	**Minimum contents of annual reports** Paragraph 12.11(ii)(aa) & (bb) – Disclosure compliance (aa) Mining companies currently have to address the disclosure requirements dealing with Mineral Companies Annual Disclosure Requirements set out in paragraph 12.11(iii) and not with the disclosure requirements dealing with Exploration Companies Annual Disclosure Requirements as set out in paragraph 12.11(iv) although some mining companies that undertake mining also undertake exploration activities. (bb) On the other hand, Explorations Companies are required to address both (i) Mineral Companies Annual Disclosure Requirements and (ii) Exploration Companies Annual Disclosure Requirements although some mineral companies only undertake exploration activities and not mining.	**Nature of amendment and rationale** The amendment will require the following disclosure for mineral companies: (aa) Mining Companies: Mineral Companies Annual Disclosure Requirements set out in paragraph 12.11(iii) and Exploration Companies Annual Disclosure Requirements as set out in paragraph 12.11(iv) (if applicable). (bb) Exploration Companies: Exploration Companies Annual Disclosure Requirements as set out in paragraph 12.11(iv) (if applicable). The rationale is that mining companies could undertake (i) mining activities only or (ii) mining and exploration activities and therefore the need for the dual disclosure. However, issuers in the exploration phase will not yet undertake mining and therefore the disclosure is limited to exploration.

13: Property Entities	7.1	**SAICA Guide on reporting accountants responsibilities ("the SAICA guide")** The Requirements do not deal adequately with all of the necessary disclosure issues that auditors are required to verify. Specifically an auditor can only audit what companies are obliged to present. Currently the obligation to present certain information sits indirectly in the SAICA guide.	**Nature of amendment and rationale** New wording needs to be included in the Requirements to mandate the company to include information that the auditor provides assurance on. Specifically disclosure must be provided for the split between: • contracted and uncontracted revenue (and these need to be defined); and • Rental and non-rental revenue
13: Property Entities	7.2	**Clarification regarding rental income (contracted, near-contracted and un-contracted)** The JSE needs as much certainty as possible that for entities that list under section 13, when the first set of results are published these results show that: • the entity is in fact property entities (ie that the original assessment was correct); and • that forecast are met. The definition of a property entity states that the entity must be *primarily engaged* in property activities of holding properties for investment purposes Paragraph 13.14(d) states that the forecast must be prepared, *as far as possible on signed leases.* Paragraph 13.15(b) explains what the JSE wants the auditor to provide assurance on the income line item. As it relates to uncontracted income, the SAICA guide specifies certain work to be performed on this uncontracted income and that uncontracted income must be excluded from the forecast if it does not fall into	**Nature of amendment and rationale** The Requirements need to be amended to deal explicitly with the issue of contracted and near-contracted vs uncontracted revenue and rental vs non rental as • the rules currently partly sit in the SAICA guide; and • the principles that the JSE applies are not always know. The criteria for listing in paragraph 13.3 will be amended to state that: • the R15 million profit before tax needed to qualify as a property entity must only be based on contracted rental revenue; • at least 75% of the rental revenue must be derived from contracted or near-contracted rental revenue (and the balance can be uncontracted) Paragraph 13.46 (d) of the REIT rules already states that 75% of income must be derived from rental revenue. The amendment to paragraph 13.3 above will still apply ie 75% of the rental must be contracted or near-contracted.

		one of the three categories: • the seller has provided rental warranties in terms of an agreement; • it is reasonable to assume that expiring leases will be renewed (with reference to terms of this lease and similar market leases) • confirmation with a prospective tenant that a lease is in the process of being signed. It is necessary to ensure more clarity in the Requirements in terms of the JSE's intention with regards to the income line item in the forecast both in terms of • contracted, near-contracted vs uncontacted revenue; and • potential non rental revenue. This clarification is even more so important with the introduction of the REIT requirements in 2013 and the reliance on the property forecast for the determination of REIT status.	
13: Property Entities	7.3	**Unintended consequence of changes made in 2014** In 2014 the entry criteria were amended to increase the profit forecast threshold from R8 million to R15 million ("**the 2014 amendment**") With this amendment we lost sight of the interplay of this requirement with those set out in section 21 for Altx companies. Before the 2014 amendment a property entity listed on Altx could obtain REIT status. The critical test for a REIT is gross assets of R300 million, and the R8 million profit criteria was achievable. With the 2014 amendment and the larger profit requirement it is more difficult / impossible for an Altx company to obtain REIT status. This was never the intention of the 2014 amendment	**Nature of amendment and rationale** We need to maintain the status quo before the 2014 amendment and give Altx properties the ability to be granted REIT status A new paragraph must therefore be inserted in paragraph 21.3 as follows "With regard to compliance with the provisions of Section 13 in order for an ALTX issuer to obtain REIT status, paragraph 13.2(a) applies but should be read with the wording R8 million replacing the R15 million."

13: Property Entities	7.4	**Management contracts** Paragraph 13.40 imposes certain obligations as it relates to management companies for the Issuer. We are concerned that parties might be under the false impression that these rules do not apply to a management contract entered into at subsidiary company level.	**Nature of amendment and rationale** Paragraph 13.40 will be amended to include the word "subsidiaries" in the introductory paragraph This matter needs clarification as we do not wish for issuers to proceed with certain matters at a subsidiary company level which are prohibited at a holding company level.
13: Property Entities	7.5	**Eligibility** Paragraph 13.3 states that a property entity can only be eligible for listing on a forecast. Paragraph 13.46(d) states that a REIT application can only be granted on a forecast.	**Nature of amendment and rationale** The amendment will afford a new listing and a REIT application based on the reliance of the historical financial information. Paragraph 13.15 will be amended to exempt such applications from a special property forecast.
16: Documents to be submitted to the JSE	8	**Part I Documents** Paragraph 16.10(n) and (m) and Paragraph 16.12(b) requires certain documents be notariallty certified and stipulates the following: <u>Paragraph 16.10</u> (n) a notarially certified copy of the applicant's MOI or other constitutional documents if not a South African entity, embodying any amendments required by the JSE; (m) a notarially certified copy of the registration	**Nature of amendment and rationale** Notarially certified documents add no additional regulatory value than document certified by a commissioner of oaths. Further the process adds cost and time to the issuer as only certain attorneys can notarially certify documents. The JSE proposes to amend the requirement to allow any commissioner of oath (e.g. attorney or accountant) to certify that the respective documents are true copies of the original.

		certificate, if the company was registered within the last two years. Where a company is registered outside of the Republic of South Africa, it must furnish a notarial copy of the certificate of registration as an external company; <u>Paragraph 16.12</u> (b) a notarially certified copy of any prospectus or pre-listing statement to be published in connection with the issue, dated and signed by the directors of the company or, in their absence, by their respective alternates or by person(s) making the offer;	
16: Documents to be submitted to the JSE	9	**Part II Documents** Paragraph 16.12(f) stipulates the following; *(f) a certificate signed by the auditor, certifying that, the applicant issuer's share capital and share premium issued since the date of issue of the last annual financial statements, or date of incorporation if no annual financial statements have yet been issued, have been fully subscribed for and, if applicable, deposited, for the company's account, with the company's bankers.* *This document must be received by the JSE by no later than 48 hours before the date of listing.* It has come to our attention that auditors are not in a position to provide this confirmation in certain instances,	**Nature of amendment and rationale** The intention of the proposed amendment is to allow the sponsor of the issuer to provide confirmation to the JSE, the day prior to listing, that (i) all allocations have been matched and will be settled on listing and (ii) specifying the number of allocations and the amount raised. By way of background, the matching process works as follows: 1. Once an offer closes, the sponsor will notify the investors of their allocation of shares (number of shares and cash amount). 2. At the same time, the sponsor will instruct the investors, who have received an allocation, that they need to notify their broker/CSDP that they have received an allocation of shares. The investor will need to make sure that their broker/CSDP has enough cash in their broker/CSDP account in order for the broker/CSDP to execute the trade.

		on the basis that the funds have not yet reached the issuer's bank account due to the following practical difficulties: • Section 33(2) of the Financial Markets Act does not allow for the issue of listed securities in uncertificated form. In order to receive funds prior to listing, the issuer would have to first issue the shares in certificated form in order to receive the funds and then convert the shares back into dematerialised form once listed, • Further to this, the international practice followed is that shares are issued through the process of "delivery vs settlement". i.e. shares are issued to an investor/ shareholder at the same time that funds for the shares are received by the issuer. Whilst the JSE will no longer require confirmation that the funds are received by the issuer 48 hours before listing, the JSE will still require comfort that the funds are earmarked for settlement of the allocations in favour of the issuer prior to listing by ensuring that all trades have matched at least by 1pm the business date before listing. This will result in cash only flowing to the issuer on listing.	3. The sponsor sends the details of the allocations to the issuer's transfer secretaries. 4. The transfer secretaries will contact each investors broker/CSDP to confirm the allocation, that the CSDP/broker has received instruction to execute the trade and settlement details are correct (i.e. that there is enough cash in the investors brokerage/CSDP account allocated to execute the trade and that settlement will be to the correct accounts on the intended date). 5. Once all trades match, the transfer secretaries notify the sponsor by way of email. 6. The sponsor then provides the JSE with this e-mail confirmation of the trades matching and the amount of equity capital raised the day prior to the listing of shares.
18: Dual Listings and Listings by External Companies	10	**Secondary Listings – Conditions of Listing** Paragraph 18.3(b)(i) In order to qualify as a secondary listing, the issuer must (i) have a primary listing on another exchange and such exchange is a member of the World Federation of Exchanges ("**WFE**") <u>or</u> (ii) have a subscribe capital of at least R500 million.	**Nature of amendment and rationale** The London Stock Exchange ("**LSE**") has recently ceased to be a member of the WFE and as such excludes companies from the LSE to pursue a secondary listing on the JSE (if they do not have the R500 million subscribed capital). This was an unintended and unfortunate consequence. This is also contradictory on the basis that the LSE is an accredited exchange for purposes of a fast-track listing pursuant to Section 18 of

			the Requirements. The JSE proposes to amend paragraph 18.3(b)(i), dealing with membership to the WFE. The amendment will incorporate the fast-track listing accredited exchanges as entry exchange for purposes of a secondary listing and remove the reference to membership to the WFE. It should be noted that this approach will impact the current secondary listed companies on the JSE as follows: Secondary listed companies from exchanges other than an accredited exchange will maintain their secondary listed status on the JSE as they were granted a secondary listing pursuant to the applicable Requirements at the time. However, should the primary regulation of a secondary listed company revert to the JSE (where the volume and value ("**V&V**") of securities traded on the JSE exceeded 50% of the V&V of those securities traded on all other exchanges) and such issuer later wishes to revert back to its secondary listing status on the JSE (due to changes in the V&V of the securities traded on the JSE), such issuer would have to comply with the accredited exchange requirements in order to be eligible for a secondary listing or have a subscribed capital of at least R500 million. Although such circumstances may be remote, it is important to consider the effects.
Schedule 8: Accreditation of auditors, reporting accountants and IFRS advisers	11	**Accreditation of auditors, reporting accountants and IFRS advisors** Paragraph 8.3(c)(i)(2) As part of the general review of the Requirements which was published in September 2014 certain amendments were made to update Schedule 8 for a new process for	**Nature of amendment and rationale** The amendment reinstates the wording of Schedule 8 as it relates to ongoing auditor accreditation now that the transitional period for the new process has lapsed.

		partner engagement inspections implemented by IRBA ("**new process**"). The amendments to Schedule 8 paragraph 8.3(c)(i)(2) were aimed to address the transitional period in respect of the new process effective 31 March 2015 from Sep 2014 to March 2015. The amendment remove the reference to the transitional period and ensures that paragraph 8.3(c)(i)(2) continues to be applicable for the ongoing accreditation of all auditors irrespective of date of accreditation.	

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			such requires a rethink of certain of the rules that were contained in its predecessor standard (IAS39); and (iii) Consideration si being given an alternative solution in the matter that was resolved in the current HEPS circular regarding the treatment of deferred tax in terms of IAS 12 (Income Taxes). Item (i) is merely an application of the existing rules to a new IFRS, but item (ii) and (iii) are new rules / a new approach. The proposed amendments to the current HEPS circular will go through a parallel consultation process through SAICA.
Definitions & Section 3: Continuing Obligations	2	**Price Sensitive Information** Definition of price sensitive information and the meaning of material price sensitive information in paragraph 3.4(a) (General obligation of disclosure) and paragraph 3.9 (Cautionary announcements). During the general review undertaken in 2014 the JSE attempted the following amendment: *The definition of price sensitive information will be amended to ensure consistency throughout the JSE Listings Requirements (the "**Requirements**") and to align same with the provisions of the Financial Markets Act No.19 of 2012 ("**FMA**"), with specific reference to "inside information". The amended definition will result in consequential changes to paragraph 3.4(a), General Obligation of Disclosure, to ensure consistency with the FMA.* The following general comments were provided and the JSE decided the consult on this matter separately as it	**Nature of amendment and rationale** One of the general principles of the Requirements is to ensure that full, equal and timeous public disclosure is made to all holders of securities and the general public at large regarding the activities of an issuer that are price sensitive. **First Step** The first step would be to simplify the definitions as it relates to price sensitive information. The current definition of "price sensitive information" will be deleted in its entirety: *"unpublished information that, if it were made public, would be reasonably likely to have an effect on the price of a listed company's securities"* and be replaced with a new definition – "*unpublished information that is specific or precise, if it were made public could influence the economic decisions of users*" The definition of "material" will be deleted in its entirety, as well as its

		required more and separate consideration: *The meaning of "material" as stipulated in the Listings Requirements does not have the same meaning attributed to it in the context in which it is used in the definition of "inside information" in the FMA.* *It was submit that it would be helpful to market participants if the JSE and FSB could jointly issue general guidelines on what they regard as being "material".*	application in the definition of "price sensitive information". Consequential amendments will further be made to in paragraph 3.4(a) (General obligation of disclosure) and paragraph 3.9 (Cautionary announcements) to address the above amendments. **Second Step** The second step will be to issue a practice note, which forms part of the Requirements, to assist issuers and their directors on the interpretation of price sensitive information. The practice note will contain the following in a format to be determined: (i) <u>Materiality</u> When looking at the meaning of "material" as used in the Requirements and the FMA it became apparent that attempts to crystalise the definition of "material" was highly unlikely as the significance of the information would vary widely from issuer to issuer, depending on a variety of factors such as (i) the size of the issuer, (ii) recent developments (iii) market sentiment about the issuer, (iv) the sector in which it operates, (v) prevailing market conditions, (vi) price of the listed securities, (vii) general liquidity and (viii) shareholder base. Directors of issuers are currently required, and will continue, to apply their own discretion in determining what will constitute price sensitive information If there is any uncertainty as to the price sensitivity of information, then the issuer's advisers should be consulted. If doubt remains, the issuer should assume that the information is price sensitive in order to avoid selective disclosure which could lead to confusion in the market. If in doubt, publish. The previous rule of thumb materiality reference of 10% in the definition of "material" in the Requirements was merely a broad guide based on experience or practice rather than theory. The JSE cannot in isolation benchmark a materiality percentage on the price or value

			of listed securities as there is no such benchmark to materiality in the FMA dealing with inside information. Such benchmarking will be contrary to the provisions of the FMA. Thus, for the avoidance of doubt, that materiality cannot be benched on the rule of thumb materiality reference of 10% as it relates to the potential effect on the price or value of listed securities. In determining whether information would be likely to influence the economic decisions of users, an issuer should be mindful that there is no firm figure (percentage change or otherwise) that can be set for any issuer when determining what constitutes price sensitive information, as this will surely vary from issuer to issuer taking into account all the above factors. (ii) <u>Specific and Precise</u> The FMA and the Requirements further do not define what constitutes specific or precise information and as such the courts will determine this on a case-by-case basis. What may constitute specific or precise information in one situation may possibly not do so in another, depending on the surrounding circumstances. The European Court of Justice has accepted a definition of Precise to be where: • The information indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so; and • The information as specific enough to enable conclusions to be drawn as to the possible effect of that set of circumstances or event on the price of a share. Specific should have a similar meaning and the grammatical meaning should also be considered. (iii) <u>Economic Decision of Users</u> According to the Association of Investment Managers and Research Standards of Practice Handbook, inside information is generally defined as information about a company that is both material and non-public. "*Under the securities laws of the United* States*, information is material if a reasonable investor is likely to consider it*

			significant in making an investment decision or if the information is reasonably certain to have a substantial impact on the market price of a company's securities." Therefore price sensitive information is information that is not public and which could move you to make an investment decision which you would otherwise not have made at the time. Any assessment on the investment decision should take into consideration the anticipated impact of the information in light of (i) the whole of the issuer's activities, (ii) the reliability of the source of the information and (iii) other market variables likely to affect the relevant listed securities in the circumstances. Information which is considered to be relevant to a reasonable investor's decision includes information which affects: • The assets and liabilities of the issuer; • The performance, or the expectation of the performance of the issuer's business; • The financial condition of the issuer; • The course of the issuer's business; • Major new developments in the business of the issuer; and • Information previously disclosed to the market. As such, quantitative and qualitative measures should be applied in this regard. (iv) <u>The FMA</u> The provisions of section 78 and 79 of the FMA dealing with market abuse also have bearing on the definition of price sensitive information pursuant to the provisions of the Requirements. "Inside information' is defined in the FMA as specific or precise information, which has not been made public and which (i) is obtained and learned as an insider and (ii) if it were made public, would be likely to have a material effect on the price or value of any security listed on a regulated market.

			It should be noted that subject to certain exemptions, an insider who knows that he or she has inside information and who deals directly or indirectly or through an agent for his or her own account in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it, commits and offence under the provisions of the FMA. (v) Paragraph 3.4(a) (General obligation of disclosure) The reference to a "limited period of time" refers to a period where negotiations could be taking place and the price sensitive information is not yet specific or precise. As long as price sensitive information can be kept confidential for a limited period of time there will be no requirement to release an announcement. However, as soon the information becomes specific or precise during the course of negations, an announcement will have to be released. If at any time the confidentiality of price sensitive information cannot be maintained, a cautionary announcement must be released. The timing of the release will be amended from "without delay" to "promptly and without delay" to provide for the limited period of time as explained above.
4: Conditions for Listing	3.1	**Africa Classification** Paragraph 4.31(b) An issuer seeking an African Classification can also meet the AltX requirements and should not be limited to the Main Board only.	**Nature of amendment and rationale** The amendments will expand the listing entry criteria for applicants seeking a primary or secondary listing on the JSE and classified as African to include AltX.

	3.2	**Corporate Governance** Paragraph 3.84 The JSE wishes to add a disclosure item under corporate governance as is relates to gender diversity at board level. Issuers should be encouraged to set voluntary targets in respect of gender diversity at board level within a certain timeframe (not imposed by the JSE). The disclosure should clearly identify the gender diversity policy and require annual reporting on how the policy has been applied against set voluntary targets (which must be done on an "apply or explain basis").	**Nature of amendment and rationale** The amendments will seek to provide disclosure on gender diversity at board level for listed companies.
5: Methods and Procedure of Bringing Securities to Listing	4	**Repurchase of Securities** Paragraph 5.76 A repurchase of shares triggers the provisions of the repurchase requirements pursuant to the provisions of the Requirements if it is an acquisition of the issuer's shares pursuant to Section 48 of the Companies Act No. 71 of 2008 (the "**Companies Act**"). It has come to our attention that some purchases of own shares by certain financial services companies are required as a normal part of their financial services offering to clients. Products and client portfolios managed on behalf of/and for clients by the investment management team/s of the issuer may require different levels of equity exposure of the issuer's own shares. These products tailored and managed by the investment management team/s of the issuer include, but is not limited to, life insurance products, collective investment and index tracking funds, and derivative products (such as single stock futures, contracts for difference, swaps, option etc.). The primary business objective relating to	**Nature of amendment and rationale** The principle is that certain financial services products/portfolios tailored and managed by financial services providers involve the acquisition of the issuer's shares, in the normal course of business. The JSE wishes to amend the Requirements so that shares acquired by a financial services company - • as part of its product range/portfolio for clients and at arm's length; or • in the normal course of business and at an arm's length basis, be excluded from the Requirements as a specific or general repurchase requiring shareholders' approval and that such shares acquired not be treated as treasury shares pursuant to the provisions of the Requirements. The following should be noted in respect of these products/portfolios: • The provision of the range of products or portfolios with exposure to the issuer's shares is common and current

		the derivative products is not to profit from market movements but to generate brokerage and funding margins. The positions are therefore managed on a hedged basis pursuant to an internal risk management framework and require that the investment management team of the issuer actively trade in the listed shares and derivatives thereon to hedge exposures that arise from the different products. These products/portfolios and the consequential exposure to the issuer's own shares (the acquisition and selling the issuer's shares as part of the product/portfolio) constitute an acquisition of shares pursuant to the provisions of the Companies Act and in effect triggers the repurchase requirements pursuant to the Requirements. This means that shareholders' approval, either under a general or specific approval, along with the mandatory disclosure in a circular to shareholders, is required. This however is not practically feasible based on the nature and structure of such products and portfolios tailored and managed by financial services companies, in the normal course of business.	market practice across financial services firms in South Africa; • These products/portfolios are executed by the relevant portfolio or business managers who operate independently from the issuer's board and executives and do not have and are not provided any access to unpublished price sensitive information as it relates to the issuer; • Due to the nature and complexity of the products/portfolios involved, the free trading in the issuer's shares cannot be suspended during the issuer's closed or prohibited periods nor can shareholders' approval be obtained for each purchased of shares; and • The authority to purchase shares in the market for the products/portfolio of the financial services companies will comply with the provisions of the Companies Act (to the extent required). • Paragraph 5.76 of the Requirements includes a similar exclusion, however very limited in that it only applies to transactions entered into on behalf *bona fide* third parties on an arm's length basis. The current proposal goes a further, for example it includes hedging for the issuer's benefit to limit exposure on derivative products. Shares in the issuer acquired as part of a product or portfolio by the investment management team will not be treated as treasury shares. In accordance with the definition of treasury shares, the shares will not be under the control of the issuer as the investments decisions will be made by the management of the investment management team or the directors of the subsidiary (removed from the board and executive of the issuer) and the investment decision will be based on the nature of the investment and for its benefit. Any issuer's shares acquired through a formal repurchase pursuant to a specific board decision or general mandate by shareholders will continue to be dealt with in accordance with the Requirements which will require (i) a circular to be distributed, and (ii) shareholder

			approval. Such repurchased shares will be treated as treasury shares.
7: Listing Particulars	5	**Section 7 disclosures in respect of subsidiaries** Section 7 requires certain disclosures in respect of the applicant and all their subsidiaries.	**Nature of amendment and rationale** In line with the JSE's approach in 2014 to make disclosures more relevant to the applicant issuer, the proposed amendment will result in certain disclosures to be made at (i) applicant issuer level and (i) major subsidiary level only. Therefore, not for all subsidiaries. Further, certain disclosures are required were a disclosure event is material to the applicant issuer and/or its subsidiaries. This will be clarified in that the disclosure event will only require disclosure if it is material for the applicant issuer and not in respect of the subsidiary
12: Mineral Companies	6	**Minimum contents of annual reports** Paragraph 12.11(ii)(aa) & (bb) – Disclosure compliance (aa) Mining companies currently have to address the disclosure requirements dealing with Mineral Companies Annual Disclosure Requirements set out in paragraph 12.11(iii) and not with the disclosure requirements dealing with Exploration Companies Annual Disclosure Requirements as set out in paragraph 12.11(iv) although some mining companies that undertake mining also undertake exploration activities. (bb) On the other hand, Explorations Companies are required to address both (i) Mineral Companies Annual Disclosure Requirements and (ii) Exploration Companies Annual Disclosure Requirements although some mineral companies only undertake exploration activities and not mining.	**Nature of amendment and rationale** The amendment will require the following disclosure for mineral companies: (aa) Mining Companies: Mineral Companies Annual Disclosure Requirements set out in paragraph 12.11(iii) and Exploration Companies Annual Disclosure Requirements as set out in paragraph 12.11(iv) (if applicable). (bb) Exploration Companies: Exploration Companies Annual Disclosure Requirements as set out in paragraph 12.11(iv) (if applicable). The rationale is that mining companies could undertake (i) mining activities only or (ii) mining and exploration activities and therefore the need for the dual disclosure. However, issuers in the exploration phase will not yet undertake mining and therefore the disclosure is limited to exploration.

13: Property Entities	7.1	**SAICA Guide on reporting accountants responsibilities ("the SAICA guide")** The Requirements do not deal adequately with all of the necessary disclosure issues that auditors are required to verify. Specifically an auditor can only audit what companies are obliged to present. Currently the obligation to present certain information sits indirectly in the SAICA guide.	**Nature of amendment and rationale** New wording needs to be included in the Requirements to mandate the company to include information that the auditor provides assurance on. Specifically disclosure must be provided for the split between: • contracted and uncontracted revenue (and these need to be defined); and • Rental and non-rental revenue
13: Property Entities	7.2	**Clarification regarding rental income (contracted, near-contracted and un-contracted)** The JSE needs as much certainty as possible that for entities that list under section 13, when the first set of results are published these results show that: • the entity is in fact property entities (ie that the original assessment was correct); and • that forecast are met. The definition of a property entity states that the entity must be *primarily engaged* in property activities of holding properties for investment purposes Paragraph 13.14(d) states that the forecast must be prepared, *as far as possible on signed leases.* Paragraph 13.15(b) explains what the JSE wants the auditor to provide assurance on the income line item. As it relates to uncontracted income, the SAICA guide specifies certain work to be performed on this uncontracted income and that uncontracted income must be excluded from the forecast if it does not fall into	**Nature of amendment and rationale** The Requirements need to be amended to deal explicitly with the issue of contracted and near-contracted vs uncontracted revenue and rental vs non rental as • the rules currently partly sit in the SAICA guide; and • the principles that the JSE applies are not always know. The criteria for listing in paragraph 13.3 will be amended to state that: • the R15 million profit before tax needed to qualify as a property entity must only be based on contracted rental revenue; • at least 75% of the rental revenue must be derived from contracted or near-contracted rental revenue (and the balance can be uncontracted) Paragraph 13.46 (d) of the REIT rules already states that 75% of income must be derived from rental revenue. The amendment to paragraph 13.3 above will still apply ie 75% of the rental must be contracted or near-contracted.

		one of the three categories: • the seller has provided rental warranties in terms of an agreement; • it is reasonable to assume that expiring leases will be renewed (with reference to terms of this lease and similar market leases) • confirmation with a prospective tenant that a lease is in the process of being signed. It is necessary to ensure more clarity in the Requirements in terms of the JSE's intention with regards to the income line item in the forecast both in terms of • contracted, near-contracted vs uncontacted revenue; and • potential non rental revenue. This clarification is even more so important with the introduction of the REIT requirements in 2013 and the reliance on the property forecast for the determination of REIT status.	
13: Property Entities	7.3	**Unintended consequence of changes made in 2014** In 2014 the entry criteria were amended to increase the profit forecast threshold from R8 million to R15 million ("**the 2014 amendment**") With this amendment we lost sight of the interplay of this requirement with those set out in section 21 for Altx companies. Before the 2014 amendment a property entity listed on Altx could obtain REIT status. The critical test for a REIT is gross assets of R300 million, and the R8 million profit criteria was achievable. With the 2014 amendment and the larger profit requirement it is more difficult / impossible for an Altx company to obtain REIT status. This was never the intention of the 2014 amendment	**Nature of amendment and rationale** We need to maintain the status quo before the 2014 amendment and give Altx properties the ability to be granted REIT status A new paragraph must therefore be inserted in paragraph 21.3 as follows "With regard to compliance with the provisions of Section 13 in order for an ALTX issuer to obtain REIT status, paragraph 13.2(a) applies but should be read with the wording R8 million replacing the R15 million."

13: Property Entities	7.4	**Management contracts** Paragraph 13.40 imposes certain obligations as it relates to management companies for the Issuer. We are concerned that parties might be under the false impression that these rules do not apply to a management contract entered into at subsidiary company level.	**Nature of amendment and rationale** Paragraph 13.40 will be amended to include the word "subsidiaries" in the introductory paragraph This matter needs clarification as we do not wish for issuers to proceed with certain matters at a subsidiary company level which are prohibited at a holding company level.
13: Property Entities	7.5	**Eligibility** Paragraph 13.3 states that a property entity can only be eligible for listing on a forecast. Paragraph 13.46(d) states that a REIT application can only be granted on a forecast.	**Nature of amendment and rationale** The amendment will afford a new listing and a REIT application based on the reliance of the historical financial information. Paragraph 13.15 will be amended to exempt such applications from a special property forecast.
16: Documents to be submitted to the JSE	8	**Part I Documents** Paragraph 16.10(n) and (m) and Paragraph 16.12(b) requires certain documents be notariallty certified and stipulates the following: <u>Paragraph 16.10</u> (n) a notarially certified copy of the applicant's MOI or other constitutional documents if not a South African entity, embodying any amendments required by the JSE; (m) a notarially certified copy of the registration	**Nature of amendment and rationale** Notarially certified documents add no additional regulatory value than document certified by a commissioner of oaths. Further the process adds cost and time to the issuer as only certain attorneys can notarially certify documents. The JSE proposes to amend the requirement to allow any commissioner of oath (e.g. attorney or accountant) to certify that the respective documents are true copies of the original.

		certificate, if the company was registered within the last two years. Where a company is registered outside of the Republic of South Africa, it must furnish a notarial copy of the certificate of registration as an external company; <u>Paragraph 16.12</u> (b) a notarially certified copy of any prospectus or pre-listing statement to be published in connection with the issue, dated and signed by the directors of the company or, in their absence, by their respective alternates or by person(s) making the offer;	
16: Documents to be submitted to the JSE	9	**Part II Documents** Paragraph 16.12(f) stipulates the following; *(f) a certificate signed by the auditor, certifying that, the applicant issuer's share capital and share premium issued since the date of issue of the last annual financial statements, or date of incorporation if no annual financial statements have yet been issued, have been fully subscribed for and, if applicable, deposited, for the company's account, with the company's bankers.* *This document must be received by the JSE by no later than 48 hours before the date of listing.* It has come to our attention that auditors are not in a position to provide this confirmation in certain instances,	**Nature of amendment and rationale** The intention of the proposed amendment is to allow the sponsor of the issuer to provide confirmation to the JSE, the day prior to listing, that (i) all allocations have been matched and will be settled on listing and (ii) specifying the number of allocations and the amount raised. By way of background, the matching process works as follows: 1. Once an offer closes, the sponsor will notify the investors of their allocation of shares (number of shares and cash amount). 2. At the same time, the sponsor will instruct the investors, who have received an allocation, that they need to notify their broker/CSDP that they have received an allocation of shares. The investor will need to make sure that their broker/CSDP has enough cash in their broker/CSDP account in order for the broker/CSDP to execute the trade.

		on the basis that the funds have not yet reached the issuer's bank account due to the following practical difficulties: • Section 33(2) of the Financial Markets Act does not allow for the issue of listed securities in uncertificated form. In order to receive funds prior to listing, the issuer would have to first issue the shares in certificated form in order to receive the funds and then convert the shares back into dematerialised form once listed, • Further to this, the international practice followed is that shares are issued through the process of "delivery vs settlement". i.e. shares are issued to an investor/ shareholder at the same time that funds for the shares are received by the issuer. Whilst the JSE will no longer require confirmation that the funds are received by the issuer 48 hours before listing, the JSE will still require comfort that the funds are earmarked for settlement of the allocations in favour of the issuer prior to listing by ensuring that all trades have matched at least by 1pm the business date before listing. This will result in cash only flowing to the issuer on listing.	3. The sponsor sends the details of the allocations to the issuer's transfer secretaries. 4. The transfer secretaries will contact each investors broker/CSDP to confirm the allocation, that the CSDP/broker has received instruction to execute the trade and settlement details are correct (i.e. that there is enough cash in the investors brokerage/CSDP account allocated to execute the trade and that settlement will be to the correct accounts on the intended date). 5. Once all trades match, the transfer secretaries notify the sponsor by way of email. 6. The sponsor then provides the JSE with this e-mail confirmation of the trades matching and the amount of equity capital raised the day prior to the listing of shares.
18: Dual Listings and Listings by External Companies	10	**Secondary Listings – Conditions of Listing** Paragraph 18.3(b)(i) In order to qualify as a secondary listing, the issuer must (i) have a primary listing on another exchange and such exchange is a member of the World Federation of Exchanges ("**WFE**") <u>or</u> (ii) have a subscribe capital of at least R500 million.	**Nature of amendment and rationale** The London Stock Exchange ("**LSE**") has recently ceased to be a member of the WFE and as such excludes companies from the LSE to pursue a secondary listing on the JSE (if they do not have the R500 million subscribed capital). This was an unintended and unfortunate consequence. This is also contradictory on the basis that the LSE is an accredited exchange for purposes of a fast-track listing pursuant to Section 18 of

			the Requirements. The JSE proposes to amend paragraph 18.3(b)(i), dealing with membership to the WFE. The amendment will incorporate the fast-track listing accredited exchanges as entry exchange for purposes of a secondary listing and remove the reference to membership to the WFE. It should be noted that this approach will impact the current secondary listed companies on the JSE as follows: Secondary listed companies from exchanges other than an accredited exchange will maintain their secondary listed status on the JSE as they were granted a secondary listing pursuant to the applicable Requirements at the time. However, should the primary regulation of a secondary listed company revert to the JSE (where the volume and value ("**V&V**") of securities traded on the JSE exceeded 50% of the V&V of those securities traded on all other exchanges) and such issuer later wishes to revert back to its secondary listing status on the JSE (due to changes in the V&V of the securities traded on the JSE), such issuer would have to comply with the accredited exchange requirements in order to be eligible for a secondary listing or have a subscribed capital of at least R500 million. Although such circumstances may be remote, it is important to consider the effects.
Schedule 8: Accreditation of auditors, reporting accountants and IFRS advisers	11	**Accreditation of auditors, reporting accountants and IFRS advisors** Paragraph 8.3(c)(i)(2) As part of the general review of the Requirements which was published in September 2014 certain amendments were made to update Schedule 8 for a new process for	**Nature of amendment and rationale** The amendment reinstates the wording of Schedule 8 as it relates to ongoing auditor accreditation now that the transitional period for the new process has lapsed.

		partner engagement inspections implemented by IRBA ("**new process**"). The amendments to Schedule 8 paragraph 8.3(c)(i)(2) were aimed to address the transitional period in respect of the new process effective 31 March 2015 from Sep 2014 to March 2015. The amendment remove the reference to the transitional period and ensures that paragraph 8.3(c)(i)(2) continues to be applicable for the ongoing accreditation of all auditors irrespective of date of accreditation.	