



The JSE Limited Listings Requirements

BULLETIN 1 of 2014

13 January 2014

Dear Subscriber

Incorporation of the provisions of the Financial Markets Act No. 19 of 2012

The Financial Markets Act No. 19 of 2012 (the “**FMA**”) came into force on 3 June 2013. The FMA repeals the Securities Services Act No. 36 of 2004.

As a consequence and in line with the transitional arrangements of the FMA, the JSE must amend the Listings Requirements to align same with the provisions of the FMA. The affected sections to the Listings Requirements are:

- Definitions
- Introduction
- Section 1 – Authority of the JSE
- Section 3 – Continuing Obligations
- Section 5 – Methods and Procedures of Bringing Securities to Listing
- Section 22 – Accreditation of Auditor, Reporting Accountants and IFRS Advisers.
- Schedules – Schedule 16

Pursuant to Board Notice 259 of 2013 as published in *Government Gazette* No. 37162, the effective date of Bulletin 1 of 2014 is 15 January 2014.

Definitions

“FMA”	the Financial Markets Act (Act No. 19 of 2012), as amended or replaced from time to time
JSE equity rules and directives	the rules and directives pertaining to the JSE’s equity market, created in accordance with the FMA, as amended from time to time by the JSE
JSE Limited, JSE or the JSE	a company duly registered and incorporated with limited liability under the company laws of the Republic of South Africa under registration number 2005/022939/06, licensed as an exchange under the FMA
Listings Requirements	the listing requirements of the JSE pursuant to the provisions of the FMA, as amended from time to time, including the “Introduction”, “Definitions”, “Sections” and “Schedules”, save that the section headings, paragraph headings and the introductory text to each section headed “Scope of Section” do not form part of the listing requirements and are for guidance and ease of reference only and are not to be construed as affecting the substance or interpretation of the listing requirements
securities	as defined in the FMA

SSA	Repealed
Strate	Strate Limited, a company duly registered and incorporated with limited liability under the company laws of the Republic of South Africa under registration number 1998/02224/06, licensed as a central securities depository under the FMA

Introduction

Competent authority

The JSE is the holder of an exchange licence in terms of the provisions of the FMA.

Section 1 – Authority of the JSE

General powers of the JSE

- 1.1 Subject to the provisions of the FMA, the JSE has the power:
- (a) to grant, defer, refuse, suspend or remove a listing of securities in accordance with the Listings Requirements;
 - (b) ... (unchanged)
 - (c) ... (unchanged)
 - (d) to prescribe, from time to time, the Listings Requirements with which an applicant issuer's directors, officers and agents must comply while securities issued by such applicant issuer remain listed;
 - (e) to alter or rescind a Listings Requirement prescribed before or after a listing has been granted and to prescribe additional Listings Requirements from time to time;
 - (f) to prescribe the circumstances under which a listing of securities shall or may be suspended or removed; and
 - (g) ... (unchanged)
- 1.3 Nothing contained in this section shall limit the powers of the JSE or its officers to those contained herein, and the JSE or its officers may, at any time, exercise any further powers granted to the JSE or its officers in terms of the FMA. Where the JSE exercises discretion in terms of these Listings Requirements, it shall use its sole discretion and, subject to the provisions of paragraphs 1.4 and 1.5 below, judicial review and the appeal provisions in the FMA, its rulings shall be final.
- 1.4 If an applicant issuer, director, auditor, IFRS adviser, reporting accountant and/or reporting accountant specialist, in respect of whom a decision (other than a decision in respect of which a specific appeal or review procedure is prescribed in these Listings Requirements, the Rules of the JSE and the FMA or any replacement legislation) is taken under these Listings Requirements, objects to such decision, such person must notify the JSE in writing within 48 hours of the decision, giving reasons for such objection. In such event the JSE shall consider the objection and

shall be entitled, in its sole discretion, to consult with not less than three independent members of the Issuer Regulation Advisory Committee. After taking into account the views of those independent members, the JSE shall be entitled to reconsider and change its decision. A decision of the JSE made after following this procedure will be final.

- 1.5 Subject to the provisions of the FMA, if the JSE decides, at its instance, to remove a listing, and the issuer concerned objects to this decision, then the issuer may appeal to the Issuer Regulation Appeal Committee in writing within 48 hours of the decision, giving reasons for such objection. In such event, the JSE will constitute the Issuer Regulation Appeal Committee in accordance with the mandate issued by the JSE Board for this purpose.

Suspension of securities

Suspension initiated by the JSE

- 1.6 The JSE may, subject to the suspension provisions of the FMA, and if either of the following applies:
- (a) if it will further one or more of the objects contained in Section 2 of the FMA, which may also include if it is in the public interest to do so; or
 - (b) ... (unchanged)
- 1.7 When the listing of securities of an issuer is under threat of suspension, the affected issuer shall be given the opportunity of making written representations to the JSE why the suspension should not be affected prior to the JSE making any decision to suspend such listing.
- 1.8 If a listing is suspended and the affected issuer fails to take adequate action to enable the JSE to reinstate the listing within a reasonable period of time, the JSE may remove the listing in accordance with the procedure set out below.

Removal of securities

Removal initiated by the JSE

- 1.11 The JSE may, subject to the removal provisions of the FMA, and if one of the following applies:
- (a) if it will further one or more of the objects contained in Section 2 of the FMA, which may also include if it is in the public interest to do so; or
 - (b) ... (unchanged)
- 1.12 When a listing of securities is under threat of removal, the affected issuer shall be given the opportunity of making representations, in writing, to the JSE why the removal should not be affected, prior to the JSE making any decision to remove such listing.

Removal at the request of the issuer

- 1.13 An issuer may make written application to the JSE for a removal of any of its securities from the List, stating from which time and date it wishes the removal to be effective. The JSE may grant the request for removal, provided paragraphs 1.14 and 1.15 are properly complied with and perfected.
- 1.14 Prior to being able to effect paragraph 1.13, an issuer must send a circular to the holders of its securities complying not only with the requirements of paragraph 11.1 (contents of all circulars) but also with the following:
- (a) where the issuer is a listed company, approval must be obtained from shareholders in general meeting for the removal of the listing prior to the issuer making written application for such removal;
 - (b) the reasons for removal must be clearly stated;
 - (c) ... (unchanged)
 - (d) ... (unchanged)
- 1.16 Shareholder approval for the removal of the listing need not be sought, and a circular need not be sent to the holders of securities where the listing of such securities is intended to be removed:
- (a) ... (unchanged)
 - (b) ... (unchanged)

Annual revision of the List

- 1.19 All listings shall be revised by the JSE annually after receipt by the JSE of a certificate from each applicant issuer complying with Schedule 18 ("the certificate"), by not later than 31 January in each year ("the due date"). If the certificate is not received by the JSE on or before the due date:
- (a) on the day following the due date, a letter of reminder will be sent by registered post or facsimile to the applicant issuer requesting that it rectify the situation and advising that it has been granted a period of 14 days, from the date of such reminder, in which to provide the JSE with the certificate, failing which the applicant issuer must make written representations to the JSE, within 7 days thereafter, as to why the securities should not be suspended and subsequently removed (in terms of paragraph 1.11);
 - (b) failing compliance within 14 days of despatch of the reminder to the issuer, the JSE will release an announcement through SENS, informing holders of securities that the issuer has not provided the JSE with the certificate and cautioning holders that the listing of the securities concerned are under threat of suspension and possible removal;
 - (c) ... (unchanged)
 - (d) ... (unchanged)

Censure and penalties

- 1.20 Where the JSE finds that an applicant issuer or any of an applicant issuer's director(s) or an auditor, IFRS adviser, reporting accountant and/or reporting accountant specialist, as defined, has contravened or failed to adhere to the provisions of the Listings Requirements, the JSE may, in accordance with the provisions of the FMA and without derogating from its powers of suspension and/or removal:
- (a) ... (unchanged)
 - (b) ... (unchanged)
 - (c) in the instance of either paragraph 1.20(a) or (b), impose a fine not exceeding such amount as stipulated by the FMA on the applicant issuer and/or the applicant issuer's director(s), individually or jointly;
 - (d) ... (unchanged)
 - (e) terminate the accreditation of and remove an auditor, IFRS adviser, reporting accountant and/or reporting accountant specialist from the JSE list of Auditors and their advisers and/or
 - (f) issue any other penalty that is appropriate in the circumstances.
- 1.21 In the event that an applicant issuer or any of an applicant issuer's director(s) contravenes or fails to adhere to the provisions of the Listings Requirements, the JSE may elect in its discretion, that:
- (a) full particulars regarding the imposition of a penalty may be published in the Gazette, national newspapers, the website of the JSE or through SENS; and/or
 - (b) ... (unchanged)
- 1.22 If any of the parties fails to pay a fine as referred to in paragraph 1.20, the JSE may, in terms of the provisions of the FMA, file with the clerk or registrar of any competent court a statement certified by it as correct, stating the amount of the fine imposed, and such statement thereupon shall have all the effects of a civil judgement lawfully given in that court against that applicant issuer or any of an applicant issuer's director(s) in favour of the JSE for a liquid debt in the amount specified in that statement.
- 1.24 The whole or any part of the fines issued in terms of paragraph 1.20 will be appropriated as follows:
- (a) ... (unchanged)
 - (b) the settlement of any future costs which may arise through the enforcement of the provisions of the Listings Requirements.

Power to require information

- 1.25 The JSE may, in accordance with the FMA, require an applicant issuer to disclose to it, within a period specified by it, such information at the applicant issuer's disposal as the JSE may determine, save to the extent that the issuer has obtained a court order excusing it from such disclosure. The JSE may request that a copy of such court order be delivered to it. If the JSE is satisfied, after such applicant issuer has had an opportunity of making representations to it, that the disclosure of that information to the registered holders of the securities in question will be in the public interest, it may, by notice in writing, require such applicant issuer to publicly disclose that information within the period specified in the notice.

Publication

- 1.27 Without derogating from any other powers of publication referred to in these Listings Requirements, the JSE may, in its absolute discretion and in such manner as it may deem fit, state or announce that it has:
- (a) ... (unchanged)
 - (b) ... (unchanged)
 - (c) ... (unchanged)
 - (d) ... (unchanged)
 - (e) removed the listing of any security;
 - (f) ... (unchanged)
 - (g) ... (unchanged)
 - (h) ... (unchanged)
 - (i) ... (unchanged)
- 1.28 In a statement or announcement referred to in paragraph 1.27, the JSE may give the reasons for such investigation, censure, suspension, removal or fine as the case may be and, in the case of an investigation, so much of the JSE's conclusion or findings as it may, in its absolute discretion, deem necessary.

Amendments to the Listings Requirements

- 1.30 Subject to the provisions of the FMA, the JSE may amend the Listings Requirements through a public consultation process. The proposed amendments to the Listings Requirements will be published through SENS inviting comments from affected parties for a period of one month.
- 1.31 Once the public consultation process has been completed, the JSE will submit the proposed amendments to the Listings Requirements, together with an explanation of the reasons for the proposed amendments, and any concerns or objections raised during the public consultation process, to the registrar¹ for approval.
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Section 3 – Continuing Obligations

- 3.6 Issuers that deem it necessary to provide information, prior to releasing same on SENS must ensure that in doing so they do not commit an offence in terms of the FMA and in particular Section 78(4).

Section 78(4)[#] of the FMA states the following:

- (a) ... (unchanged)
- (b) An insider is, despite paragraph (a), not guilty of the offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she disclosed the inside information because it was necessary to do so for the purpose of the proper performance of the functions of his or her employment, office or profession in circumstances unrelated to dealing in any security listed

¹ Means the person referred to in Section 6 of the FMA.

[#] JSE extraction of section 78(4) of the SSA.

on a regulated market and that he or she at the same time disclosed that the information was inside information.

- 3.74 Paragraphs 3.63 to 3.73 do not override the provisions of the FMA and should not be construed as additional defences or exclusions from having to comply with the FMA. Issuers may impose more rigorous restrictions upon dealings by directors if they so wish or if it is appropriate in certain circumstances.
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Section 5 – Methods and Procedures of Bringing Securities to Listing

Price stabilisation

5.99 Description

- (a) The purpose of this section is to define the circumstances and manner in which price stabilisation will be permitted by the JSE, in accordance with the provisions of the FMA, and as a defence against prohibited trading practices, as stipulated in the FMA. Price stabilisation may be effected through an over-allotment, with or without a greenshoe. Over-allotment is a pre-cursor to a price stabilisation mechanism, aimed at supporting and maintaining the price of newly listed securities or securities the subject of a substantial offer, for a limited period after the listing or offer. The main purpose is to establish an orderly market for securities in the immediate secondary market after an offer.

5.118 If the stabilisation is in South Africa, the stabilising manager must satisfy the following criteria, or appoint an agent that satisfies the following criteria, to act on its behalf in South Africa:

- (a) it must be a member of the JSE, Life Offices' Association of South Africa, Council of South African Banks, Merchant Bankers' Association, Banking Association of South Africa or any other person in South Africa or elsewhere (whether natural or juristic), in good standing and acceptable to the JSE;
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Section 22 – Accreditation of Auditors, Reporting Accountants and IFRS Advisers

Termination of accreditation

22.10 Where the JSE finds that an auditor, IFRS adviser, reporting accountant and/or reporting accountant specialist:

- (a) ... (unchanged)
(b) ... (unchanged)
(c) was investigated and/or found guilty of and/or paid a fine and/or was sanctioned in any manner for a breach of the FMA; or
(d) ... (unchanged)
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SCHEDULES

Appendix to Schedule 16

II INTEGRITY OF CAPITAL MARKETS

A ... (unchanged)

B False Markets. In order to protect the integrity of the capital markets, Sponsors and Executives must refrain from prohibited market practices and false statements, as stipulated in the FMA, and take steps to make their clients aware of their responsibility in this regard.

Please take note of the following global amendment:

In order to align the Listings Requirements with the FMA, a global amendment will be made throughout the Listings Requirements in the next service issue, whereby all references to “termination” or “terminated” (in relation to listed securities or an issuer), will be amended to “removal” or “removed” as used in the FMA.

Regards,

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