

# **Proposed Amendments to the JSE Listings Requirements**

***Cutting Red Tape Aimed at Effective and Appropriate Regulation:***

***JSE Public Consultation***

**November 2021**

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## Introduction

The JSE issued a Market Notice on 5 March 2021 providing details on a JSE Consultation Paper – *“Cutting Red Tape aimed at Effective and Appropriate Regulation”*. Comments officially closed on 9 April 2021, however the JSE allowed extensions on request to encourage more comments. The consultation paper was aimed at obtaining input on proposals for cutting red tape aimed at achieving a level of effective and appropriate regulation, for existing listings on the Main Board and the Alternative Exchange.

The market consultation was very well received and commentators comprised a diverse group, which comprised of private individuals, institutional investors, public interest groups, listing sponsors, issuers and fellow regulatory bodies. Taking into account the market comments received, the JSE formulated amendments to the Listings Requirements, which will now be subject to further public consultation processes pursuant to the provisions of the Listings Requirements and the Financial Markets Act No. 19 of 2012.

As a listings authority the JSE advocates for the enhancement of corporate governance and the quality of disclosures (i) in general and (ii) in financial reporting by issuers on the JSE. However, as the custodian on the interpretation and application of the Listings Requirements, the JSE does recognise with capital markets regulation and legislation evolving significantly over the last few years that there may still be provisions of the Listings Requirements that may appear to be redundant and/or not fit for purpose. The JSE has been very active since 2014 in reviewing the Listings Requirements on a regular basis to allow for a more effective application of the Listings Requirements, such as:

- Removing pro forma financial information in Category 1 transaction announcements;
- Removing the working capital sign-off requirement by sponsors, save for new listings;
- Removing the forecast sign-off requirement by sponsors;
- Removing the requirement for a PLS on a rights offer;
- Increasing the Category 1 transaction threshold for Main Board issuers from 25% to 30%;
- Allowing written resolutions, limited for Main Board issuers but unlimited for AltX issuers;
- Removing publications in the press requirement for AltX issuers;
- Introducing short form press announcement for Main Board issuers;
- Simplifying mandatory corporate governance provisions for AltX issuers;
- Simplifying summary circular for AltX issuers;
- Allowing sponsor approval only for circulars dealing with capitalisation issues, scrip dividend and cash dividend elections, change of name, subdivision/consolidation, general issue for cash and increase in authorised share capital;
- Advocating incorporation by reference in circulars for all issuers;
- Introducing an accelerated issue of shares for cash mechanism (48 hour approval process);
- Increasing the general issue of shares for cash threshold from 15% to 30%;
- Reducing the rights offer timetable and introduced non-renounceable rights offers;
- Removing pro forma financial information for basic *“in and out”* issue of shares for cash and repurchase corporate actions;
- Removing the requirement for audits on all subsidiaries;
- Removing JSE approval for the MOIs of subsidiaries;
- Simplifying MOI approval for secondary listed issuers; and
- Introducing fast-track secondary listings.

In undertaking this project the JSE made it clear from the outset that it would not compromise on its regulation standards aimed at the protection of investors, however the JSE recognised that a real balance must be achieved between the regulatory objectives to be achieved by the JSE on the one hand and the obligations/responsibilities placed on listed companies by the JSE on the other. It is important for the stability and integrity of the South African financial markets that the Listings Requirements adopted by the JSE provides for an effective and appropriate level of regulation to ensure a fair, efficient and transparent financial market and that listings regulation is carried out with due regard to the public interest.

Although many comments and suggestions were provided on the JSE proposals, the JSE is pleased to confirm that it will proceed with seven of its eight proposals, and that an additional two items were added as more fully set out below. Where additional proposals from commentators were not considered as appropriate *“cutting red tape”* measures by the JSE, the following factors (to name a few) had an impact:

- the proposal would compromise entrenched regulation principles, as an example more flexibility on related party transaction thresholds;
- the proposal would require broader consideration, research and consultation, such as matters dealing with auditor accreditation, REIT distributions and simplifying business rescue as it applies to the Listings Requirements (items which are already under consideration by the JSE under separate work streams and will follow a separate public consultation process to the extent required); and
- the proposals were items requiring more clarity on the application of the Listings Requirements rather than true *“cutting red tape items”* (which we may address separately with these commentators).

After due and careful consideration of all comments and proposals received the JSE is proposing the following amendments to the Listings Requirements with the key focus area for the proposed amendments being -

***“effective and appropriate level of regulation”***

## 1 Transactions - Ordinary Course of Business Exemption

Section 9 of the Listings Requirements deals with the regulation of transactions, principally acquisitions and disposals, by issuers and their subsidiaries. It describes how transactions are to be categorised, what the requirements are for announcements and circulars, and whether or not shareholders' approval will be required.

Transactions under the provisions of Section 9 of the Listings Requirements currently exclude transactions in the ordinary course of business, where such ordinary course of business transaction consideration measured against the market capitalisation of the issuer in question is equal or less than 10%. This means that if (i) a transaction is classified as in the ordinary course of business and (ii) provided the transaction categorisation is equal or less than 10% (measured against the market capitalisation of the issuer at the time), it will not trigger the application of Section 9 of the Listings Requirements.

Both transactions and related party transactions pursuant to the Listings Requirements are subject to the ordinary course of business exemption.

Although the JSE, probably as a cautious approach at the time, imposed a 10% limitation on the ordinary course of business exemption it is interesting to note that the London Stock Exchange ("LSE") also allows the ordinary course of business exclusion for purposes of Classifying Transactions, however without the 10% limitation.

<https://www.handbook.fca.org.uk/handbook/LR/10/?view=chapter>

### Proposed Amendment

The JSE intends to amend the Listings Requirements by increasing the existing 10% limitation to 30%, making it akin to the Category 1 transaction threshold requiring shareholders' approval. This will afford issuers far more flexibility when conducting their business, but with a shareholders' oversight limitation depending on the size.

The JSE is further proposing that ordinary course of business transactions with related parties be announced through SENS where the categorisation is equal to 5% or more (akin to Category 2 transactions), dealing with the pertinent details of the ordinary course of business transaction/s. These details may not necessarily include pricing information as the JSE recognises that such information could be commercially sensitive to the issuer and vendor in the ordinary course of business, but the announcement must speak to (i) the broader nature of the ordinary course of business transaction and (ii) the corporate governance processes that were followed to approve and conclude the ordinary course of business transactions, and (iii) include an opinion from the independent members of the board of directors of the issuer that the transaction is in fact in the ordinary course of business and that the transaction was concluded on an arm's length basis.

In order to contribute to the integrity of ordinary course of business and to afford issuers more clarity on what constitutes ordinary course of business, the JSE is proposing to exclude any transactions with directors and/or their associates from the ordinary course of business exemption. One of the key considerations being proposed to better formulate ordinary course of business is that ordinary course of business must be applied to both the issuer and the counter party to evidence "*this is what we do*". In the JSE's view, it would be very difficult to argue that doing

business with the issuer is in the ordinary course for a director or its associates. The consequence of this approach is that transactions with directors and their associates will continue to be subject to the normal related party protections pursuant to the provisions of the Listings Requirements and will not be subject to the new broader ordinary course of business exemption as proposed.

### **Protection Measures**

As is currently the case, issuers will continue to discuss transaction/s with the JSE at an early stage in order for the JSE to determine whether it will classify such a transaction as being in the ordinary course of business.

In order to facilitate the process, further provisions have been proposed to facilitate the JSE in its assessment of ordinary course of business.

The board of directors of an issuer will therefore not be able to make the assessment on what constitutes ordinary course of business for purposes of the ordinary course of business exclusion, which will continue to require JSE participation.

Further, as a standing measure an assessment by the board of directors whether the ordinary course of business transaction constitutes price sensitive information pursuant to the provisions of the Listings Requirements will continue to apply. If indeed price sensitive, the release of an announcement through SENS will be required.

**Rationale:** The JSE believes it must be cognisant of an issuer's activities in the ordinary course of business, especially when time sensitive and where a third party vendor does not necessarily appreciate/understand JSE regulation on transactions. The proposed amendments will afford issuers more flexibility to pursue transactions in the ordinary course of business whilst providing investors with an appropriate level of protections against abuse.

## Proposed Amendments: Ordinary course of business

### General

9.1 References in this section to a transaction by a listed company:

- (a) ...
- (d) excludes transactions in the ordinary course of business and where either:
  - (i) both of the percentage ratios referred to in paragraph 9.6 are ~~equal to or~~ less than ~~13~~30%; or
  - (ii) the issuer or its subsidiary concluding the transaction is a financial institution (as defined in the Financial Services Board Act, No. 97 of 1990) dealing in funds (such as policyholders funds or trust property) which are not held primarily for the benefit of its shareholders and the counter party to the transaction is not a related party of the issuer.
- ~~(e) Subject to paragraph 10.8, the issuer must discuss the transaction with the JSE at an early stage in order for the JSE to determine whether it will classify such a transaction as being in the ordinary course of business. In assessing whether a transaction is in the ordinary course of business, the JSE will have regard to the -~~
  - ~~(i) the nature of business of the transacting parties; and~~
  - ~~(ii) the incidence of similar transactions which have been concluded;~~
  - ~~(iii) the size measured against similar transactions which have been concluded;~~
  - ~~(iv) whether the transaction contributes to the issuer's existing revenue stream, meaning income arising in the course of the issuer's ordinary activities;~~
  - ~~(v) whether the transaction contributes to costs that relate directly to the revenue contemplated in paragraph (iv) above; and~~
  - ~~(vi) whether the transaction constitutes ordinary course of business for both the issuer and the other transacting party.~~
- ~~(ef) a transaction must be referred to the JSE at an early stage if the transaction involves treasury shares.~~

### New paragraph 10.8

#### Ordinary course of business transactions

~~10.8 Transactions with a director and/or any associate of a director will not be classified by the JSE as ordinary course of business for an issuer pursuant to paragraphs 9.1(d) and (e).~~

~~10.9 All transactions classified by the JSE as ordinary course of business pursuant to paragraph 9.1(d) and (e), must be announced through SENS immediately after the terms have been agreed and where any percentage ratio referred to in paragraph 9.6 is 5% or more. The JSE will not require the preparation of a fairness opinion, where related parties are involved (excluding the parties as contemplated in paragraph 10.8). The announcement must include the following -~~

- ~~(a) salient terms of the ordinary course of business transaction/s, accepting that price may be excluded; and~~

(b) details of the corporate governance processes that were followed by the board of directors of the issuer to approve and conclude the transaction, including an opinion from the independent members of the board of directors of the issuer that the transaction is in fact in the ordinary course of business and that the transaction was concluded on an arm's length basis.

***The remainder of Section 10 will be renumbered.***



## 2 Intragroup Repurchases of Securities

A *pro rata* repurchase by a listed company of its securities from all its shareholders will not require shareholder approval, save to the extent required in terms of the Companies Act No.71 of 2008 (the “**Companies Act**”). In all other instances an acquisition by an issuer of its own securities or a purchase by a subsidiary of securities in its holding company (in accordance with Section 48 of the Companies Act or in accordance with repurchase laws of a foreign incorporated issuer), will be regarded as a repurchase of securities in terms of the Listings Requirements.

A repurchase of securities pursuant to Section 48 of the Companies Act therefore constitutes a repurchase of securities under the Listings Requirements, which requires shareholders’ approval through either a general or specific authority to repurchase securities.

A consequence of a repurchase is that company cash resources are being utilised to acquire shares from shareholders which is a vital consideration. This is an important reason underpinning the requirement that a repurchase resolution must be approved by achieving 75% majority of the votes cast by shareholders, excluding from voting any shareholder/s participating in the repurchase where there has been prior engagement or agreements concluded.

A common feature seen by the JSE in the repurchase of shares is that a listed holding company often acquires treasury shares held by its subsidiary or share incentive scheme (such as at end of life) for share consolidation purposes which are then either cancelled or held for future use for other share incentive schemes. In these circumstances, the listed holding company effectively controls both ends of the corporate action and are regarded as intragroup transactions on the basis that there is no money leakage from the group. There is no impact on the earnings per share, headline earnings per share and net asset value per share as these shares have been treated as treasury shares and will continue to be treated as such if not cancelled. The repurchased shares do not create a benefit for one shareholder over another as the shares are merely cancelled or remain consolidated in the issuer’s group as treasury shares.

The issue is that the Listings Requirements currently does not differentiate between intragroup share repurchases as illustrated above.

Noteworthy to mention is that transactions pursuant to Section 9 of the Listings Requirements recognise the exclusion of intragroup transactions through wholly-owned subsidiaries. Once again, the issuer controlling both ends of the transaction.

### **Proposal**

The JSE intends to amend the Listings Requirements to remove the application of the Listings Requirements and shareholders’ approval on intragroup share repurchases, provided the share repurchases transpire (i) between the issuer and wholly-owned subsidiaries of the issuer, (ii) between the issuer and Schedule 14 share incentive schemes (shares schemes controlled by the issuer to incentivise employees and approved by the JSE) and (iii) non-dilutive share incentive schemes (shares schemes controlled by the issuer to incentivise employees), and such shares are then cancelled by the issuer. These measures are intended to afford issuers more flexibility with intragroup repurchases.

### **Protection Measures**

Any repurchase of securities must comply with Section 46 and Section 48 of the Companies Act, which includes the passing of the solvency and liquidity test by the board of directors of the issuer.

All intra-group repurchased equity securities must be announced through SENS.

**Rationale:** The repurchase of securities is primarily regulated by the Companies Act and with intragroup repurchases of shares there is –

- no money leakage from the issuer's group;
- no impact on the earnings per share, headline earnings per share and net asset value per share;
- no creation of a benefit for one shareholder over another.

Based on the above, the JSE has no active regulatory role to play other than through disclosure which will be maintained.

## Proposed Amendments: Repurchase of Securities

5.67

(B) Repurchase of securities not requiring shareholder's approval:

(a) A pro rata repurchase by the issuer of its securities from all its shareholders will not require shareholder approval, save to the extent required in terms of the Act; and

(b) Intra-group repurchases by the issuer of its securities from wholly-owned subsidiaries, share incentive schemes pursuant to Schedule 14 and/or non-dilutive share incentive schemes controlled by the issuer, where such repurchased securities are to be cancelled,

save to the extent required in terms of the Act.

Repurchases pursuant to paragraph 5.67(B)(b) must be announced in accordance with paragraph 3.95.

(C) In all other instances an acquisition by an issuer of its own securities or a purchase by a subsidiary of securities in its holding company (in accordance with Section 48 of the Act or in accordance with repurchase laws of a foreign incorporated issuer), will be regarded as a repurchase of securities in terms of the Listing Requirements, in which case the holding company must comply with paragraphs 5.67(B) to 5.84:

(a) on terms that are approved by securities holders in a general meeting in respect of that particular repurchase ("a specific repurchase of securities"), which shall be valid until such time as the approval is amended or revoked by a special resolution; or

(b) generally approved by securities holders by the giving of a renewable mandate, which shall be valid until the company's next annual general meeting or for 15 months from the date of the resolution, whichever period is shorter, to the directors of the company to repurchase its securities subject to the requirements of the JSE and to any other restrictions set out in the mandate ("a general repurchase of securities").

### New paragraph 3.95

#### Announcement of intra-group repurchases

3.95 An issuer must release an announcement on SENS, immediately after terms have been agreed, with the details of any intra-group repurchases concluded pursuant to paragraph 5.67(B)(b), which must include the following:

(a) the date/s and total number of equity securities repurchased;

(b) whether the equity securities are repurchased from either a wholly-owned subsidiary/ies, share incentive scheme/s pursuant to Schedule 14 and/or and/or non-dilutive share incentive schemes controlled by the issuer;

(c) confirmation that the repurchased equity securities have reverted to authorised but unissued equity securities of the issuer in accordance with section 35(5) of the Act;

(c) the price paid for the repurchased equity securities; and

(e) the balance of the number of treasury shares held.

### 3 General Authority to Issue Shares for Cash / Bookbuilds

Various capital raising options for issuers require JSE imposed shareholders' approval in accordance with the provisions of the Listings Requirements.

One of the most effective capital raising measures for an issuer is to issue shares for cash and an issuer may do so either in terms of a general or specific authority or as a vendor consideration placing. An unavoidable consequence of an issue for cash is the dilution of the rights of existing shareholders and, depending on the issue price, the value attached to their shares. This is one of the important reasons underpinning the requirement that an issue of shares for cash resolution must be approved by achieving 75% majority of the votes cast by shareholders, excluding from voting any shareholder/s participating in the issue of shares for cash where there has been prior engagement or agreements concluded.

The brief parameters of the two instances where an issuer may issue shares for cash are set out below:

- **Specific issue for cash:**
  - May be issued to related parties;
  - No limit to discount applied on issue price, subject to a fairness opinion prepared by independent professional expert; and
  - No limit to number of shares to be issued.
  
- **General issue for cash:**
  - May not be issued to related parties;
  - Issue price limitation: The maximum discount at which equity securities may be issued is 10% of the weighted average traded price of such equity securities measured over the 30 business days prior to the date that the price of the issue is agreed between the issuer and the party subscribing for the securities; and
  - Dilution limitation: The specific number of shares representing the number up to 30% of the applicant's listed equity securities as at the date of the notice of general/annual general meeting.

As can be seen from the above, one of the prominent distinguishable features between the specific and general authority to issue shares for cash, is that under a specific authority shares may be issued to related parties and under a general authority the issue of shares to a related party is totally prohibited. The benefit of excluding related parties under the general issue of shares for cash authority is that it empowers the board of the issuer, through a pre-approved authority from shareholders, to be able to raise capital at any point and expediently during a financial year without the need of considering whether shareholders' approval at the time of issue of the shares will be required. It further removes any possibility of undue influence by related parties on the board of the issuer regarding the issue price of the shares issued under the general authority.

#### General issue for Cash Authority & Bookbuild Process

It must be recognised that the general issue for cash authority provisions as contained in the Listings Requirements have remained largely unchanged for many years and have become entrenched in the South African capital markets. Shareholders take dilution events through an issue of shares for cash rather seriously and often vote down proposed authorities. General issue of shares for cash authorities rarely seek the maximum permitted threshold of 30% of the Issuer's issued share capital, and 5-10%

authorities are more the accustomed ranges in order to pass a general issue of shares for cash authority.

It must further be recognised that the mechanisms to raise capital have evolved over the years and it may therefore be prudent to consider some of these mechanisms against the entrenched principles of a general issue of shares for cash authority.

One of the most prominent capital raising measures being applied currently in the market is the Bookbuild process, often undertaken on an accelerated basis, i.e. within a short time frame.

A Bookbuild is a process through which investor-demand from select participants is generated and captured as a book of demand is built which is then the basis for raising capital through an issue of shares for cash. The objective of this mechanism is to achieve the best price through a bidding process by selected participants leading to active price formation. An accelerated Bookbuild uses this method within a very short period of time where the offering is completed quickly, often within eight hours or less. Issuers use the accelerated Bookbuild method as an expedient capital raising mechanism.

The Listings Requirements expressly prohibit related parties participating under a general issue for cash authority which can severely limit the benefits of a Bookbuild by eliminating potential participants interested in providing capital to the issuer. For example, anchor investors, often holders of more than 10% of the share capital (and therefore defined as related parties), are in many cases obvious sources of capital for an issuer but are excluded from participating in a Bookbuild capital raising process.

Effecting a placing under the general issue of shares for cash authority places an onus on the issuer not to include related parties in the placement, so a Bookbuild for a placement under a general authority is limited.

#### **Proposal**

The JSE intends to amend the Listings Requirements to allow related parties to participate in the issue of shares for cash pursuant a general authority through a Bookbuild subject to the protection measure below.

#### **Continued Protection Measures**

Raising capital by Bookbuild allows the issuer to achieve the best price at which to issue shares to shareholders and/or investors, as the book closes at a bid price where the weight of investor demand equals or exceeds the quantum of capital sought, thereby being a price which the shareholders and/or investors see as the highest value of the shares on offer at that point in time. However, related parties of the issuer could possibly influence the price at which shares may be issued during the bidding process, more so when they hold a material interest in the issuer. For that reason, the JSE proposes that related parties may only participate in a Bookbuild capital raising process by putting in a bid in (i) at a maximum price which they are prepared to take-up shares or (ii) at book close price. In the event of electing to place a bid at a maximum price and the book closes at a higher price the relevant related party will be *“out of the book”* and not be allocated shares. In the event of electing to place a bid at the book close price, the related party will only be a price taker however ensuring participation in the bookbuild. This will result in related parties being permitted to take up shares under a general issue of shares for cash authority through a

Bookbuild process, but only on the basis that any related parties taking up shares are afforded the ability to put in a bid at a maximum price or book close price. In such a manner, the influence that a related party could exercise on the issue price through the bidding process are minimised or eliminated.

It has been argued that increased demand in permitting the participation of related parties in the book is likely to result in an improved issue price of shares to the economic benefit of the Issuer and those shareholders who do not participate in the placement at all.

Very important is that the pricing parameters applicable to a general issue of shares for cash pursuant to paragraph 5.52(d) of the Listings Requirements will continue to apply, being a maximum discount of 10% of the weighted average traded price of such shares measured over the 30 business day period. This pricing limitation will also apply to the maximum price which the related party is prepared to subscribe at.

This proposed Bookbuild capital raising measure will require shareholders' approval under the general issue for cash authority, clearly stating the fact that if a Bookbuild capital raising measure is used under a general authority to issue shares for cash, related parties will be able to participate.

As a final point, all allocations in the Bookbuild process must take place on an equitable basis.

**Rationale:** The JSE has a role to play in ensuring that capital raising measures on the JSE stay current with established market capital raising measures. The proposal above recognises the benefits and popularity of Bookbuilds as capital raising measures and the inclusion of related parties, where the ability of related parties to influence pricing are minimised or eliminated.

This approach may also allow for better demand in capital raisings of this type on the basis that related parties can participate in a Bookbuild process, under a general issue of shares for cash authority.

## Proposed Amendments: Requirements for General Issues for Cash

5.52 An applicant may only undertake a general issue for cash subject to satisfactory compliance with the following requirements:

- (a) the equity securities which are the subject of the issue for cash must be of a class already in issue or, where this is not the case, must be limited to such securities or rights that are convertible into a class already in issue;
- (b) the equity securities must be issued to public shareholders, as defined in paragraph 4.25 to 4.27, and subject to paragraph (f) not to related parties;
- (c) securities which are the subject of a general issue for cash must be less than 30% of the applicant's listed equity securities as at the date of the notice of general/annual general meeting seeking the general issue for cash authority, provided that:
  - (i) the authority shall be valid for the period contemplated in paragraph 5.50(b);
  - (ii) the calculation of the applicant's listed equity securities must be a factual assessment of the applicant's listed equity securities as at the date of the notice of general/annual general meeting, excluding treasury shares;
  - (iii) the specific number of shares representing the number up to 30% of the applicant's listed equity securities as at the date of the notice of general/annual general meeting must be included as a number in the resolution seeking the general issue for cash authority;
  - (iv) any equity securities issued under the authority during the period contemplated in paragraph 5.50(b) must be deducted from such number in (iii) above; and
  - (v) in the event of a sub-division or consolidation of issued equity securities during the period contemplated in paragraph 5.50(b), the existing authority must be adjusted accordingly to represent the same allocation ratio;
- (d) the maximum discount at which equity securities may be issued is 10% of the weighted average traded price of such equity securities measured over the 30 business days prior to the date that the price of the issue is agreed between the issuer and the party subscribing for the securities. The JSE should be consulted for a ruling if the applicant's securities have not traded in such 30 business-day period;
- (e) approval of the general issue for cash ordinary resolution, by achieving a 75% majority of the votes cast. The resolution must be worded in such a way as to include the issue of any options/convertible securities that are convertible into an existing class of equity securities, where applicable.

~~(f) related parties may participate in a general issue for cash through a bookbuild process provided –~~

~~(i) the approval by shareholders contemplated in paragraph 5.52(e) expressly affords the ability to the issuer to allow related parties to participate in a general issue for cash through a bookbuild process;~~

~~(ii) related parties may only participate with a maximum bid price at which they are prepared to take-up shares or at book close price. In the event of a maximum bid price and the book closes at a higher price the relevant related party will be "out of the book" and not be allocated shares; and~~

~~(iii) equity securities must be allocated there must be disclosure on the equitable allocation of equity securities "in the book" through the bookbuild~~

~~process and the measures to be applied must be disclosed in the SENS announcement launching the bookbuild, which must be based on the proportional value contributed by all participants within the book at close.~~



#### 4 Pro Forma Financial Information - Disposals

The objective of pro forma financial information is to provide investors with information about the impact of the corporate action (the subject of the prospectus/pre-listing statement/circular) by illustrating how that corporate action might affect the previous reported financial information, had the corporate action been undertaken at the commencement of the period being reported on, or in the case of a pro forma statement of financial position, at the date reported on.

Pursuant to paragraph 8.29(c)(iii) of the Listings Requirements, in the case of a circular to shareholders where the circular either includes unpublished management accounts and/or uses them for the purposes of pro forma financial effects, a reporting accountant's review or audit opinion (whichever is applicable) must be obtained on those management accounts.

##### **Proposal**

The JSE intend to amend the Listings Requirements to remove the provision requiring an assurance report (prepared by the reporting accountant) on the adjustment column in the pro forma financial effects, in the case of a disposal by the issuer.

##### **Continued Protection Measures**

The source information is part of the historical financial information of the issuer. For purposes of the disposal, as reflected in the pro forma financial effects, the issuer will merely be removing the disposal it has already included in its historical financial information. Assurance on the underlying source information does not change what was already included in the historical financial information.

Importantly, the approach will be maintained in respect of an acquisition by the issuer where a new asset is being brought into the issuer's group, as the assurance must then be obtained on the source information.

**Rationale:** The JSE is of the view that there is no meaningful regulatory value to be obtained in obtaining assurance on the adjustment column for purposes of pro forma effects which merely reflects the removal of the disposal, from historical financial information prepared in compliance with the Listings Requirements.

## Proposed Amendments: Pro Forma Information

- 8.29 The unadjusted information of the subject matter of the acquisition or disposal is to be derived from the:
- (a) most recent published audited annual financial statements, published interim report, preliminary report or provisional report;
  - (b) profit forecast which has been issued and reported on in terms of Section 8 or Section 13 for the statement of comprehensive income purposes and paragraphs 8.29(a) or (c) for the statement of financial position purposes;
  - (c) unpublished management accounts provided that:
    - (i) the issuer is satisfied with the quality of those management accounts and a statement is included in the announcement confirming this;
    - (ii) shareholders are warned about the source of the information; and
    - (iii) in the case of a circular to shareholders for an acquisition where the circular either includes those management accounts and/or uses them for the purposes of the pro forma financial effects, a reporting accountant's review or audit opinion (whichever is applicable) must be obtained on those management accounts.

## 5 Abridged Report

Paragraph 3.21(b) of the Listings Requirements places an obligation on an issuer to publish an abridged version of their results on SENS simultaneously with the publication of their audited annual financial statements. The AFS are published on the issuer's website. The abridged version of the results follows an IAS 34 format.

The short form announcement approach (pursuant to paragraph 3.46A of the Listings Requirements) was introduced when the JSE modified the publication in the press provisions in 2014. This short form announcement flags certain key indicators and states that the full financial results have been published on SENS and are available on the issuer's website

On 6 February 2019 the JSE made a decision that only the short form financial results need be published on SENS and that the PDF of the abridged results can rather be made available through a weblink. Given that the full detailed AFS are available, and that the abridged results no longer need to be published directly on SENS, the JSE is not convinced of the regulatory benefit of forcing issuers to produce a separate IAS 34 compliant summary of their annual results.

The abridged report concept was written to be applied in the context of the full annual financial statements not being available. The preparation of IAS 34 results is not necessarily a simple cut and paste exercise. IAS 34 has its own disclosures obligations, which must be assessed against a specific criteria of materiality. It adds additional management time to prepare its full suite of financial results. It also increases costs (not only in terms of internal resources) but external costs in terms of typesetting of the results and, to the extent that the issuer decides to get the auditors to review those results, adds auditors' costs as well.

### **Proposal**

The JSE is proposing to remove the obligation to produce an abridged report when the issuer has published its audited annual financial statements.

### **Status Update**

The consultation process identified certain unintended consequences that requires further consideration. In addition, the proposal affords the JSE with an opportunity to clarify and simplify the terminology applying to various formats of financial information in Section 3 of the Listings Requirements. This will also afford the JSE with an opportunity to reconsider certain guidance letters that have direct bearing on the subject matter as well as consider certain practical aspects of making financial results available to the market.

The JSE will proceed with the above exercise and undertake further engagements, internally and externally, as may be deemed necessary. This item will therefore be undertaken separately in order to avoid delaying the proposed benefits to issuers as contemplated in this consultation paper.

## 6 Revised Listing Particulars & Reverse Take-Overs

As mentioned above, Section 9 of the Listings Requirements deals with the regulation of transactions, principally acquisitions and disposals, by issuers and their subsidiaries. It describes how transactions are to be categorised, what the requirements are for announcements and circulars, and whether or not shareholders' approval will be required.

Paragraph 9.5(c) of the Listings Requirements places an obligation on an issuer to prepare a revised listing document, along with a transaction circular, where the percentage ratio in relation to the acquisition transaction is:

- 100% or more; or
- results in a fundamental change in the business; or
- results in a change in board of directors or voting control of the issuer.

### **Proposal**

The JSE intends to amend the Listings Requirements to remove the obligation to prepare revised listing particulars in the event of an acquisition transaction, although exceeding the percentage ratio by 100% or more, but where it does not result in a fundamental change in the business of the issuer, change in board of directors or voting control\* of the issuer.

\*Control – change in the 35% voting threshold of any shareholder.

### **Continued Protection Measures**

As a reminder the acquisition will constitute a Category 1 transaction. A Category 1 circular is arguably one of the most significant corporate actions for a listed company, which can only proceed with shareholders' approval and JSE approval. The Category 1 circular requires various disclosures on the issuer, including details of the acquisition/target, group prospects, pro forma financial information and historical financial information to name a few.

The only consideration in respect of this proposal is merely the removal of the need for revised listing particulars where a certain set of prescribed circumstances are present.

The JSE will require that issuers must discuss acquisition transaction with the JSE at an early stage in order for the JSE to determine whether the acquisition results in a fundamental change in the business of the issuer, change in board of directors or voting control of the issuer.

The board of directors of an issuer will therefore not be able to make the assessment on whether revised listing particulars will be required at their discretion.

### **Change of Board**

The JSE intends to amend the Listings Requirements to clarify what change is meant with "*change in board of directors*", which will mean a change of 35% or more of the board of directors. This is an aspect that has caused confusion in the past which will now be remedied.

**Rationale:** The obligations to prepare revised listing particulars must not be based on the size of the acquisition transaction alone but must take into account whether there would be any fundamental change in the business of the issuer, change in board of directors or voting control of the issuer.

## Proposed Amendments: Revised Listing Particulars

- 9.3 Any issuer considering a transaction must, at an early stage, consider the categorisation of the transaction.
- 9.4 A transaction is categorised by assessing its size relative to that of the issuer proposing to make it and the listed holding company of such issuer, if applicable.
- 9.5 The comparison of size is made by the use of the percentage ratios set out in paragraph 9.6. The different categories of transactions are:
- (a) Category 2 – a transaction where any percentage ratio is 5% or more but each is less than 30%;
  - (b) Category 1 – a transaction where any percentage ratio is 30% or more or if the total consideration is not subject to any maximum; and
  - (c) Reverse take-over – an acquisition by a listed company of a business, an unlisted company or assets where any percentage ratio is 100% or more ~~and willer which would~~ result in a fundamental change in the business, ~~or in~~ a change in board of directors (being a change of 35% or more on the composition of the board of directors) and/or voting control (refer to definitions of “control” and “controlling shareholder”) of the listed company, in which case this will be considered a new listing. The JSE must be consulted at an early stage in order to discuss the details of the acquisition transaction and, where necessary, obtain a ruling from the JSE.
-

## 7 Rights Offers, Directors and Closed Periods

A rights offer is an effective capital raising measure used by issuers.

A rights offer is an offer by an issuer to existing holders of securities to subscribe for further securities in the issuer in proportion to their existing holdings, usually at a discount to market price, by means of the issue of (i) a renounceable right that is traded as either “fully paid” or “nil paid” rights for the period before payment for the securities is due or (ii) a non-renounceable right (no renounceable right is traded).

Pursuant to paragraph 3.67 of the Listings Requirements a director must not be given clearance to deal in any securities relating to the issuer during a prohibited period.

A “prohibited period” means:

- a closed period (a timeframe from a financial period end until the date on which the relevant financials of the issuer are published or any period where the issuer is trading under a cautionary announcement); and
- any period when there exists any matter which constitutes price sensitive information in relation to the issuer’s securities (whether or not the director has knowledge of such matter).

The prominent features that make rights offers an attractive measure of raising capital is that (i) all shareholders are being treated the same and (ii) that no shareholders’ approval is required.

Throughout 2020 various capital raising measures were being considered by issuers to counter the impact of the covid-19 pandemic, and where rights offers were selected as the preferred capital raising measure the JSE was approached various times with proposals to enable directors, prescribed officers and/or company secretaries (the “**excluded parties**”) to participate in the rights offer during a closed period. After due consideration, the JSE was not able to accommodate any of these requests on the basis that the Listings Requirements do not afford the excluded parties an ability to exercise an election based on rights offer entitlements during a closed period.

The result is that where a rights offer runs into, or is launched, in a closed period the excluded parties (who hold shares in an issuer) cannot make any elections in respect of their rights offer entitlements. Typically what transpires and where possible, is that the excluded parties make their elections in respect of their entitlements known in the rights offer offering circular, well prior to entering in a closed period to avoid being excluded participation by the application of paragraph 3.67 of the Listings Requirements. However this is not always possible, as pricing and final terms of the rights offer are not always available/known prior to the closed period commencing.

Not allowing the excluded parties to participate could negatively impact the issuer’s ability to raise cash on the basis that the excluded parties are often considered to be natural contributors of cash to the issuer.

In light of the various approaches received by the JSE during 2020, the JSE noted that the JSE’s approach is far stricter than that applied by the LSE:

<https://www.handbook.fca.org.uk/handbook/LR/9/Annex1.html?date=2016-07-02#D593>

## **Proposal**

The JSE intends amending the Listings Requirements to remove the limitation on the excluded parties following entitlements pursuant to a rights offer during a closed period, taking into account the LSE approach.

The proposal will afford excluded parties the ability to participate in a rights offer during a closed period through the following actions:

- exercising undertakings or elections to take up entitlements under a rights offer, including excess applications; and
- taking up securities under a rights offer.

The JSE is of the view that it would be sensible to extend the proposal to capitalisation issues (bonus issue), scrip dividends and dividend reinvestments, which corporate actions afford the same treatment to all shareholders.

## **Continued Protection Measures**

This approach will only apply to the excluded parties where the same entitlements are afforded to all shareholders.

The JSE will require disclosure of any excluded parties following their entitlements in circulars, if known, and the outcome announced on SENS.

**Rationale:** This proposal will align the Listings Requirements with international practice and contribute to more successful capital raisings by issuers.



## Proposed Amendments: Dealings

3.64 Transaction includes:

- (a) any sale, purchase or subscription of securities in the issuer (including in terms of a rights offer, capitalisation award or scrip dividend) of securities relating to the issuer;
- (b) any agreement to sell, purchase or subscribe for securities relating to the issuer (irrespective of whether shares or cash flows);
- (c) any donations of securities relating to the issuer;
- (d) any dealing in warrants, single stock futures, contracts for difference or any other derivatives issued in respect of the issuer's securities. It should be noted that, if shares are sold and the equivalent exposure is purchased through a single stock future or any other derivative, both legs will be deemed to be transactions. The closing out of a single stock future or other derivative is also a transaction. The rolling-over of a single stock future that is merely an extension of an existing position is not a transaction;
- (e) the acceptance, acquisition, disposal, or exercise of any option (including but not limited to options in terms of a share incentive/option scheme) to acquire or dispose of securities;
- (f) any purchase or sale of nil or fully paid letters, however excluding following full or partial entitlements as a shareholder through means of a renounceable rights offer (excess applications permitted), capitalisation issues, scrip dividends and dividend reinvestment, and receiving the subsequent allocation of such securities pursuant to such entitlements\*;

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*\*Please note the disclosure obligations pursuant to paragraphs 7.C.15 and 7.C 16, and announcement obligation pursuant to the applicable corporate actions timetable;*

- (g) *the acceptance*, acquisition or disposal of any right or obligation, present or future, conditional or unconditional, to acquire or dispose of securities;
- (h) using securities of the issuer as security, guarantee, collateral or otherwise granting a charge, *lien* or other encumbrance over the securities of the issuer. A transaction will be deemed to be present at each of the following trigger events –
  - (i) at the time of agreement of such arrangement;
  - (ii) at the time when a right or discretion afforded to a lender is being exercised; and
  - (iii) at the time an existing arrangement is being amended or terminated; or
- (i) any other transaction that will provide direct or indirect exposure to the share price of the issuer. It must be noted that this does not include cash settled share appreciation rights granted to directors by the issuer in the ordinary course of business.

## Rights offers, capitalisation issues and scrip dividends

7.C.15 Where the securities for which application is being made are being issued and allotted, by way of capitalisation of reserves (including current year distributable income) or the application of share premium, to securities holders of an existing listed security, the following information must be given in respect of such issue:

- (a) the reason for the capitalisation issue or scrip dividend;
- (b) the class and the par value (if any) of the securities involved;
- (c) if applicable, that the shareholder may elect to receive cash in substitution for the whole or part of his capitalisation issue or scrip dividend entitlement and vice versa;
- ~~(d) whether any directors, prescribed officers and/or company secretary of the issuer will receive securities from the capitalisation issue or scrip dividend;~~
- ~~(de)~~ if applicable, the last day on which shareholders must make their election;
- ~~(ef)~~ a statement pointing out any tax implications of the issue for all securities holders , both resident and non-resident;
- ~~(fg)~~ in the case of a scrip dividend, a statement should appear, in bold and upper case, on the front page, drawing shareholders' attention to the type of election to be made (i.e. whether shareholders will receive either cash or scrip if they fail to make the election);
- ~~(gh)~~ the amount to be capitalised from the share premium or reserves of the applicant in order to be able to issue the capitalisation securities as fully paid up;
- ~~(hi)~~ the ratio in which the capitalisation securities will be issued and allotted to shareholders of the applicant;
- ~~(ij)~~ the important events and dates, contained in the relevant corporate action timetable, applicable to the issue; and
- ~~(jk)~~ whether or not the rights (if any) are renounceable.

7.C.16 In the case of a rights offer, the following information must be disclosed in the circular:

- (a) purpose of the rights offer;
- (b) the amount to be raised by means of the rights offer and the number of securities that are proposed to be issued;
- (c) the terms of the offer;
- ~~(d) whether any directors, prescribed officers and/or company secretary of the issuer will follow their rights in relation to the rights offer;~~
- ~~(de)~~ if underwritten, details of the underwriter and the statement referred to in paragraph 5.29. The underwriting commission must be clearly stated;
- ~~(ef)~~ where the underwriter is a company, the following information must be furnished:
  - (i) the place and date of incorporation and registered number of the company;
  - (ii) the names of the directors of the company;
  - (iii) the name of the company secretary;
  - (iv) the bankers to the company; and

- (v) the authorised and issued share capital of the company;
- (fg) details regarding the proposed listing of the LAs, the subsequent listing of the new securities and the amount payable in respect of listing fees;
- (gh) details regarding the LAs such as:
  - (i) acceptance;
  - (ii) renunciation; and
  - (iii) payment (payment must be made in South African currency); and
- (hi) a statement regarding exchange controls as agreed to by the South African Reserve Bank.

## Schedule 2 Form H – Corporate Action Timetable

### (e) Cash dividends, REIT, special dividends and interest payments

**Definition:** Cash dividends, interest and REIT payments are payments made by an issuer to its shareholders normally out of the issuer’s current or accumulated earnings in proportion to their holdings. A special dividend is a cash payment that is separate from the typical recurring dividend cycle. An issuer needs to state whether a special dividend should be treated as capital or income payment. SARB approval is required for a special dividend pursuant to 16.26 (i) of the Listing Requirements. Dividend Reinvestment Plan (DRIP).

Day	Event
<b>D – 13</b> Declaration date	Publication of declaration data
<b>D – 8</b> Finalisation date	Publication of finalisation information
<b>D – 3</b> Last day to trade	Last day to trade
<b>D – 2</b> List date	Securities start trading ex date
<b>“Friday” D + 0</b> Record date	Record date to determine who receives the payment
<b>D + 1</b> Pay date	Electronic transfer of funds or cheques posted/CSDPs and brokers credited <a href="#"><u>In relation to a DRIP, publication of results announcement with details of securities issued to directors, prescribed officers and/or company secretary.</u></a>
<b>D +</b>	Closing date for DRIP elections

### (d) Capitalisation issue

**Definition:** An issue of fully paid securities capitalised from a company’s share premium, capital redemption reserve fund or reserves (or combination thereof) to existing holders of securities in proportion to their holdings at a specific date.

<b>Day</b>	<b>Event</b>
<b>D – 13</b> Declaration date	Publication of declaration data
<b>D – 8</b> Finalisation date	Publication of finalisation information
<b>D – 3</b> Last day to trade	Last day to trade
<b>D – 2</b> List date	Listing of new shares. Entitled to trade new shares
<b>"Friday" D + 0</b> Record date	Record date to determine who participates in the capitalisation issue
<b>D + 1</b> Pay date	Accounts with CSDP or broker credited or issuing of new share certificates effected <a href="#">Publication of results announcement with details of securities issued to directors, prescribed officers and/or company secretary.</a>

(r) **Scrip dividend**

**Defintion:** When a company offers its shareholders a scrip dividend, it offers them the choice to receive dividends in the form of more share or in cash.

<b>Day</b>	<b>Event</b>
<b>D – 13</b> Declaration date	Declaration data published and Circular must be made available All documentation described in paragraph 16.16 of Section 16 of the Listing Requirement must have been submitted to and approved by the JSE
<b>D – 8</b> Finalisation date	Publication of finalisation information
<b>D – 3</b> Last day to trade	Last day to trade
<b>D – 2</b> List day	Securities start trading ex-dividend Maximum number of shares are listed Entitled to trade new shares
<b>"Friday" D + 0</b> Record date	Record date Offer closes
<b>D + 1</b>	Payment of cash/issue new securities Publication of results announcement <a href="#">including details of securities issued to directors, prescribed officers and/or company secretary.</a>
<b>D + 2</b>	Adjustment of number of new securities listed

(o) **Renounceable Rights offer/claw-back offer**

**Definition:** An offer of renounceable rights to an issuer's securities holders, pro rata to their holdings in the issuer, to subscribe for securities in the issuer by means of the issue of renounceable LAs. (10 day offer period)

<b>Day</b>	<b>Event</b>
<b>D – 8</b>	Publication of declaration data

Declaration date	Publication, through SENS and in the press, must include information regarding action to be taken by shareholders to exercise their rights and in particular holders of certificated shares as well as contain details of the applicable timelines to ensure that shareholders exercise their rights timeously with respect to the proposed rights offer/claw back offer.
<b>D – 7</b>	All documentation described in paragraph 16.15 of Section 16 of the Listing Requirements must have been submitted to and approved by the JSE
<b>D – 6</b> Finalisation date	Publication of finalisation information
<b>D-4</b>	Publication of circular on the website of the issuer
<b>D – 3</b> Last day to trade	Last day to trade cum rights
<b>D – 2</b> List date	List and trade letters of allotment (LAs) Mother shares trade 'ex' the rights/claw back entitlement
<b>D – 1</b>	Circular and pre-listing statement (if applicable) emailed/posted to certificated shareholders
<b>"Friday" D + 0</b> Record date	Record date
<b>D + 1</b>	Rights offer opens LA's issued and credited to shareholders accounts Circular and pre-listing statement (if applicable) emailed/posted to dematerialised shareholders
<b>D + 7</b>	Last day to trade LAs Certificated Shareholders wanting to sell all or some of their LAs, to lodge Form of instruction with the Transfer Secretaries by 12:00
<b>D + 8</b>	List new shares and trading therein on the JSE commences
<b>D + 10</b>	Record date for LAs. Rights offer closes Certificated Shareholders wishing to exercise all or some of their Rights to lodge payment and Forms of Instruction with the Transfer Secretaries by 12:00
<b>D + 11</b>	Issue of securities and credited to shareholders accounts. Publication of results announcement, publication must include <a href="#">(i)</a> information regarding the method/ratio/formula applied to the allocation of the excess rights application process (if applicable) <a href="#">and (ii) details of securities issued to directors, prescribed officers and/or company secretary.</a>
<b>D + 13</b>	Refund cheques posted to certificated shareholders Excess shares issued (if applicable)

## 8 Category 1 Disposal and Working Capital Statement

Where an issuer enters into a Category 1 transaction (acquisition or disposal), the JSE requires that the circular to shareholders seeking shareholders' approval include a statement as to working capital.

*A statement by the directors of the issuer that, in their opinion, the working capital available to the issuer and its subsidiaries, if any, is sufficient for the group's present requirements, that is, for at least the next 12 months. The working capital statement should be prepared on the group, as enlarged by the acquisition of any assets. Issuers and sponsors (to the extent applicable) must comply with the requirements of Schedule 12 of the Listings Requirements.*

This type of transaction can only be enhancing from a working capital perspective and therefore the need for a working capital statement is unnecessary for the board of the issuer to go through pursuant to the provisions of Section 7 and Schedule 12 of the Listings Requirements.

### **Proposal**

The JSE is proposing to remove the need for the board of the issuer to provide confirmation of a working capital statement for a Category 1 disposal where the consideration to be received is cash.

### **Status Update**

Based on comments received, the JSE will not be proceeding with this proposal on the basis that if the disposal in question contributes to the issuer's working capital requirements, it provides the issuer with a guaranteed income stream. The sale of the asset, even if for cash, may very well have an impact on the issuer's working capital (especially if the cash proceeds from the disposal is being earmarked for purposes other than working capital).

## 9 Sponsors

Paragraph 2.2 of the Listings Requirements requires the appointment of an independent sponsor at all times, whereas Practice Note 1/2003 provides that issuers may utilise the service of a non-independent sponsor, as contemplated in paragraph 2.3 of the Listings Requirements for certain routine administrative issues provided that a lead independent sponsor is appointed for all other transactions/corporate actions.

The Practice Note and paragraph 2.2 of the Listings Requirements appear to contradict each other on the appointment of an independent sponsor. This has afforded the JSE an opportunity to reconsider the role of the independent sponsor and to afford issuers more flexibility to utilise the service of the non-independent sponsor.

The JSE intends to amend the Requirements to align Section 2 with Practice Note 1/2003 resulting in issuers not being required to appoint an independent sponsor at all times.

### **Proposal**

The JSE is intends to amend the Listings Requirements to align the provisions of Practice Note 1/2003 with Section 2 and to clarify the events that require the appointment of an independent sponsor.

As a result, issuers will not be required to have an appointed independent sponsor at all times and will afford more scope for non-independent sponsors to attend to events as contemplated in the Listings Requirements.

### **Continued Protection Measures**

The independent sponsor must be appointed for -

- any event requiring shareholders' approval pursuant to the Listings Requirements, save for the Excluded Items (as defined below);
- unbundlings not requiring shareholders' approval;
- related party transactions;
- removal of listings; and
- rulings in relation to any items above.

**Rationale:** This proposal will align the Listings Requirements with Practice Note 1/2003 and clarify when the appointment of an independent sponsor is indeed required.

## Proposed Amendments: Sponsors

### Appointment

~~2.2 An applicant issuer is required to have an appointed sponsor at all times which, subject to paragraph 2.4, may attend to all events contemplated in the Listings Requirements.~~

~~2.3 An independent sponsor must be appointed where:~~

- ~~(a) the sponsor is also the applicant issuer;~~
- ~~(b) the sponsor is a subsidiary, associate or division of the applicant issuer;~~
- ~~(c) the JSE, in respect of any transaction or corporate action, deems it necessary to appoint a joint sponsor; or~~
- ~~(d) the sponsor is not independent pursuant to Schedule 16.~~

~~2.4 To the extent that an applicant issuer is required to have an independent sponsor pursuant to paragraph 2.3, the independent sponsor must attend to the following events and corporate actions: An applicant issuer is required to have an appointed independent sponsor at all times. A non-independent sponsor may only attend to the routine administrative items pursuant to Practice Note 1/2003.:~~

- ~~(a) any events requiring shareholders' approval pursuant to the Listings Requirements, save for the Excluded Items\*;~~
- ~~(b) unbundlings not requiring shareholders' approval;~~
- ~~(c) related party transactions;~~
- ~~(d) removal of listings; and~~
- ~~(e) rulings in relation to any items above.~~

~~\*Excluded Items: Although shareholders' approval is required, the following items are excluded, being approvals in relation to MOIs, Schedule 14 share incentive schemes, general issue of shares for cash, general repurchases, increase in share capital and change of name.~~

~~2.3 A joint independent sponsor must be appointed where:~~

- ~~(a) the sponsor is also the applicant issuer;~~
- ~~(b) the sponsor is a subsidiary, associate or division of the applicant issuer;~~
- ~~(c) the JSE, in respect of any transaction or corporate action, deems it necessary to appoint a joint sponsor; or~~
- ~~(d) the sponsor is not independent pursuant to Schedule 16.~~

~~2.54 Where a joint independent sponsor is required to be appointed in terms of paragraph 2.34, such appointed joint independent sponsor shall be the lead sponsor of the applicant issuer. Where an applicant issuer has appointed more than one sponsor, the applicant issuer must appoint one of the sponsors as the lead sponsor. The lead sponsor must be identified as~~



such in all communication with holders of securities and to the public.

2.65 Where a sponsor, other than an applicant issuer's appointed sponsor, initiates a specific transaction for the applicant issuer, such sponsor may be appointed as joint sponsor for that transaction. In such a case, one of the joint sponsors must be appointed as lead sponsor.

2.76 ...

**[Note: The remainder of Section 2 will be renumbered]**

### **Practice Note 1/2003**

#### **Sponsors**

~~Applicant issuers are required to have an appointed sponsor at all times with effect from 1 January 2004. Applicant issuers may utilise the services of a non-independent sponsor, as contemplated in paragraph 2.3, for certain routine administrative issues provided that a lead independent sponsor is appointed for all other transactions/corporate actions. The routine administrative issues that the JSE will accept are as follows:~~

- ~~(a) — submission of periodic financial information in terms of paragraphs 3.11 to 3.25;~~
- ~~(b) — notification of changes to the board of directors in terms of paragraph 3.59;~~
- ~~(c) — disclosure of directors dealings in terms of paragraphs 3.63 to 3.74;~~
- ~~(d) — additional listings in terms of an approved share incentive/option scheme;~~
- ~~(e) — capitalisation issues and scrip dividends/cash dividend elections;~~
- ~~(f) — general issues for cash;~~
- ~~(g) — general repurchases;~~
- ~~(h) — general payments;~~
- ~~(i) — name changes;~~
- ~~(j) — MOI/amendments; and~~
- ~~(k) — category 2 transactions.~~

~~The JSE reserves the right in its sole discretion to require the appointment of an independent sponsor for the above routine administrative issues. Applicant issuers must ensure that an independent sponsor is appointed as soon as it becomes aware of a potential transaction/corporate action not included in the above.~~

### **Schedule 16**

This Schedule contains certain Listings Requirements applicable to sponsors (Part I) and VCC advisers (Part II) and should be read with Section 2.

(d) **Independence**

- (i) a sponsor must provide an undertaking, in respect of matters mentioned in paragraph 2.4, that it will not act as a sponsor to any issuer to the extent that it is not independent of which it is not independent. A non-independent sponsor may only attend to the routine administrative items pursuant to Practice Note 1/2003;
- (ii) a sponsor must, in respect of the matters mentioned in paragraph 2.4, provide confirmation of its independence as sponsor for each corporate action in which it acts as sponsor by completing Schedule 17 and submitting same to the JSE. A sponsor must also ensure that it is independent of any issuer to whom it provides sponsor services/advice but which will not necessarily become the subject of a corporate action and will not require the completion of Schedule 17;
- (iii) the question of a sponsor's independence in respect of the matters mentioned in paragraph 2.3 and 2.4 must be determined in respect of each corporate action or other instance according to the following requirements:
  - (1) a sponsor may not control, be controlled by, or be under the same control as an applicant issuer. For this purpose, control is as defined in the definitions section of the Listings Requirements;
  - (2) the above will not apply to investment entities where the sponsor's interest arises by virtue of the holdings of its non-managed discretionary clients;
  - (3) a normal business relationship between an applicant issuer and any company which is part of the sponsor's group will not usually prohibit a potential sponsor from acting. However, relationships that would give the sponsor's group an interest in the success of a listing, or other corporate action may result in the sponsor not being independent, and, in such instances, the JSE must be consulted;
  - (4) a sponsor may be the auditor and/or tax adviser and/or the reporting accountant to the applicant issuer, provided the JSE is satisfied that there is an adequate segregation of roles within the sponsor's group;
  - (5) any director or employee of the sponsor that has a significant interest in an issuer, being 3% or more for purposes of this requirement, or is material to the director or employee, must not be involved in advisory activities of the sponsor in relation to such applicant issuer;
  - (6) an investment in an issuer that is material to the sponsor will result in such sponsor not being regarded as independent of such issuer unless the JSE decides otherwise; and
  - (7) in any case of doubt, the JSE must be consulted;

Notwithstanding the above requirements the JSE recognises that it is impossible to anticipate all circumstances under which a sponsor would be deemed not to be independent and accordingly reserves the right to determine the independence of a sponsor after having reviewed the declaration made by the sponsor in Schedule 17.

## 10 Financial Results

The JSE received representations from issuers regarding the complexity and effort involved in releasing certain SENS announcements relating to financial results in both (i) Text and (ii) PDF format. The JSE has also received complaints from end users about formatting errors in the Text versions of these SENS announcements.

In light of the above concerns, during February 2019 the JSE made a decision that only the short form financial results in compliance with paragraph 3.46 of the Listings Requirements will be published on SENS through the normal channels. In addition to this, the PDF long form financial results will be made available through a web link in the short form announcement. Through this process, issuers are no longer required to attend to the manual conversion of the long form financial results into Text.

### Proposal

The JSE intends to amend the Requirements to amend the notes to Appendix 1 to Section 11 to align with current practice.

The amendments are aimed –

- to reflect that the JSE has moved away from the full financial results being published on SENS, so the need for the IFRS 7 exemption is no longer applicable and therefore note 6 can be removed in its entirety; and
- to also include preliminary reports to be made available on the issuer's website (previous note 7 and now new note 6).

**Rationale:** This proposal will align the Listings Requirements with current practice.

## Proposed Amendment: Appendix 1 to Section 11

### Notes:

1. Alternatively, an abridged version of the pre-listing statement/prospectus can be published through SENS and in the press.
  2. 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.
  3. If an applicant issuer makes a voluntary publication in the press, there is no minimum information required but the applicant issuer must ensure that the information is not misleading.
  4. Announcements published voluntarily in the press need only be published in one official language.
  5. Announcements requiring publication in the press may be short-form announcements published in accordance with paragraphs 3.46 and 3.46(A).
  - ~~6. The information required pursuant to paragraph 16A(j) of IAS 34 does not need to be published through SENS, provided the full results complying with paragraph 8.57 are available on the issuer's website, at the issuer's registered offices and upon request. For a SENS announcement which excludes the disclosures required by paragraph 16A(j) of IAS 34, a separate auditors' report does not need to be obtained on the SENS announcement itself. The SENS announcement must include the following statements in addition to the required disclosures for interim, preliminary, provisional and abridged reports:~~
    - ~~(i) "This announcement does not include the information required pursuant to paragraph 16A(j) of IAS 34. The full (interim, preliminary, provisional or abridged) report is available on the issuer's website, at the issuer's registered offices and upon request"; and~~
    - ~~(ii) When a review/audit has been performed on the full (interim, preliminary, provisional, abridged or annual financial) report/statements: "This announcement is itself not reviewed or audited but is extracted from the underling (reviewed/audited) information".~~
  76. Interim reports, preliminary reports and provisional reports, and annual financial statements, must be made available on the issuer's website.
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