**Proposed Amendments to the JSE Listings Requirements**

**JSE Consultation Paper Proposals**

**October 2022**

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**Introduction**

Following the JSE Response Paper issued in August 2022, there was overwhelming support for the JSE to proceed with (i) the introduction of dual class share structures, (ii) the reduction of the free float for new listings and (iii) the inclusion of fund managers and portfolio managers, holding 10% or more in the applicant issuer on listing, in the free float assessment.

The JSE is therefore proposing to amend the free float assessment in the JSE Listings Requirements (the “**Requirements**”).

If you may have missed the motivation for the introduction of inclusion of fund managers and portfolio managers in the free float assessment, please review the JSE Consultation Paper:

<https://www.jse.co.za/sites/default/files/media/documents//JSE%20Consultation%20Paper%20May%202022.pdf>

**Part A: Weighted Voting Share Structures**

The JSE will introduce its dual class shares offering as “*weighted voting shares*”.

The JSE is proposing to amend the JSE Listings Requirements (the “**Requirements**”) to allow companies with weighted voting shares structures, that meet existing Main Board entry criteria, to list on the JSE.

In brief, the use of dual class share structures is varied across different countries:

* The New York Stock Exchange, the Nasdaq Stock Market, Toronto Stock Exchange and Nasdaq OMX Stockholm permit listed companies to adopt dual class share structures;
* Europe does not yet have a universal application for dual class share structures. They are however allowed under company laws in Denmark, Finland, France, Italy, Ireland and Sweden but are not allowed in Germany, Portugal and Spain;
* In 2018 both the Hong Kong Stock Exchange (“**HKEX**”) and Singapore Stock Exchange (“**SGX**”) revised their listing rules within months of each other to permit the listing of companies with dual class or weighted voting right shares and in 2019 the Shanghai Exchange launched a new board that permitted dual class share structures; and
* The UK listing rules for the premium segment have for long supported the proportionality principle (i.e., voting power should be broadly proportionate to economic interest) and dual class share structures could only list on the Standard Segment of the London Stock Exchange (“**LSE**”). However, following the recent publication of the UK Listings Review Report and the EU Report, both the UK and EU have turned favourably to the listing of dual class share structures.

The LSE announced the application of the rules for the Premium Segment with effect from 3 December 2021[[1]](#footnote-2), to encourage innovative, often founder-led companies, onto public markets sooner. In line with the recommendations by Lord Hill, dual class shares structures will only be permitted where the weighted voting rights meet the following conditions:

* A maximum weighted voting ratio of 20:1;
* May only be held by directors of the company or beneficiaries of such director’s estate; and
* Conversion to ordinary premium listed shares upon transfer to anyone other than a beneficiary of such director.

The new rules adopted by the HKEX, SGX and LSE attempt to reach a middle ground, permitting listing flexibility for high-growth companies while mitigating the governance risks associated with dual class share structures.

JSE Safeguards

The various governance concerns in respect of weighted voting shares must be acknowledged and because of that, high/low voting shares have been precluded from the JSE for many years.

In order to address these governance concerns, the JSE is proposing key governance arrangements as a listing entry criteria. The safeguards that have been proposed follow markets such as the SGX, HKEX and LSE. These measures are very current and date from 2018, thus in touch with international current thinking on weighted voting shares.

As a starting point, the JSE will propose a bespoke enhanced voting process on certain items where all shares, including the weighted voting shares, carry one vote per share. These items are -

* variation of rights attaching to securities.
* appointment and removal of auditors;
* appointment or removal of independent non-executive directors;
* remuneration policy and implementation report pursuant to paragraph 3.84(j);
* reverse takeover; and
* removal of listing.

The result is that all shares will vote on a one-for-one basis, notwithstanding the presence of weighted voting shares.

Furthermore -

* the weighted voting shares must have automatic conversion provisions which provide that a weighted voting share will be converted into an ordinary voting share in the event that:
	+ the weighted voting shares is sold or transferred to any person; and
	+ on the expiry of a period of ten years from the listing date of the applicant.
* notwithstanding the provisions above, holders of ordinary voting shares may agree at a general meeting to allow an extension to the time sunset provision (ten years) provided the holders of weighted voting shares (in respect of their entire shareholdings in respect of the applicant, both weighted voting shares and ordinary shares) may not participate in such vote;
* holders of weighted voting shares must hold at least 10% of the economic interest in the applicant on listing;
* holders of ordinary voting shares holding at least 10% of the total voting rights must have the ability to convene a general meeting; and
* the holders of weighted voting shares must provide an undertaking that their entire shareholdings in respect of the applicant, both weighted voting shares and ordinary shares on listing, may not be disposed or transferred for a period of 12 months from the listing date.

The JSE is of the view that the one-share-one-vote structure will most probably continue to be the default structure for applicant issuers. Weighted voting shares structures may not be for all companies, nor all investors. The JSE recognises (like other markets) that there are associated risks when entrenching higher voting powers, however the JSE believes that the proposed specific safeguards to mitigate these risks will strike the right balance between the interest of these type of issuers and investors/shareholders. It remains vital that investors must be informed of the risks associated with weighted voting shares structures if they choose to invest in them, and therefore the JSE will mandate prominent disclosure from the outset on listing and on a continuing basis.

In order to ensure the continued attractiveness and competitiveness of the JSE compared to other leading markets, the JSE is of the view that the introduction of weighted voting shares structures to the Main Board of the JSE is appropriate and necessary, provided there are balanced safeguards for the protection of investors.

**Part B: Free Float – New Listings**

The JSE issued a Consultation Paper in May 2022 with the aim of obtaining public input on various proposals regarding its listings framework, considering recent international developments and JSE initiatives. The Consultation Paper also forms part of the JSE’s ongoing approach of engaging the market in its efforts to promote capital market activity, competitiveness and providing innovative solutions for the market.

The JSE is pleased to proceed with the proposal to reduce the free float requirement, as a condition of listing, for Main Board issuers. The proposal to reduce the free float requirement received overwhelming support from the market. Kindly refer to the JSE Response Paper.[[2]](#footnote-3)

Free float refers to the portion of a company’s issued share capital that is in the hands of public investors, as opposed to directors, or shareholders that hold interests of 10% or more.

There has been a renewed focus on free float emanating from the UK and EU Listings Reviews, where there is a focused drive to reduce free float requirements for new listings.

The UK Listings Review Report made interesting observations on free float:

*“Existing FCA rules on free float levels are seen as one of strongest deterrents to companies when they consider where to list, particularly for high growth and private equity backed companies. Making available a quarter of a company’s equity can be a daunting prospect, particularly if the company is already of significant size, or if there aren’t enough willing sellers.*

*Different listing venues around the world approach setting the level of shares in public hands – i.e. those that are freely tradeable – at and following IPOs in various ways. Other markets use a combination of metrics to ascertain how much stock a company needs to float. Very few use one single metric to do so and there is evidence that the existing metric in the Listing Rules of an absolute threshold set at 25% of a company’s issued share capital does not act as a reliable measure for liquidity over time. Analysis conducted by the London Stock Exchange, included in Annex B, shows that in the US, where a significant number of companies have a lower free float than currently allowed under FCA rules, there is no significant drop in secondary market liquidity until below a 10% free float.”[[3]](#footnote-4)*

The EU has not yet finalised its position, but made the following remarks in the EU Report:

*“We propose to change the free float required under our premium and standard Listing Rules from 25% to 10% both at listing and as a continuing obligation. Data suggests that a significant number of main global IPOs take place at a free float of below 25% but very few at free float of below 10%. If we reduced our requirements to 10%, we would therefore allow most issuers flexibility to structure their IPOs in the way that suits them.”*

On 2 December 2021, the FCA has confirmed a series of rule changes to ensure that the UK’s public markets remain a trusted and attractive place to list successful companies, providing opportunities for companies to grow from which investors will benefit. One of which, is the reduction in the amount of shares an issuer is required to have in public hands (free float) from 25% to 10%, reducing potential barriers for issuers created by current requirements.

The new rules come into force on 3 December 2021.[[4]](#footnote-5)

The EU is also reconsidering its free float requirements through the EU Report.[[5]](#footnote-6) This targeted consultation is part of the EU Commission’s initiative aiming to make listing of both equity and non-equity securities on EU public markets more attractive for companies, in particular small and medium-sized enterprises. This would make it easier for EU issuers to finance their activity and to grow, innovate and create jobs, while preserving a high level of investor protection and market integrity.

Currently Member States have discretion in setting the percentage of the shares that would be needed to be floated at the time of listing. Accordingly, these percentages in the EU-27 vary from 5% to 45%.

The JSE currently requires Main Board listed companies to have a free float of 20%.

Considering the renewed focus from leading markets on free float it will be prudent for the JSE to reconsider the appropriateness of its free float requirements for Main Board listed companies, considering that this percentage of free float has remained largely unchanged for more than 20 years.

It is vital that the JSE reconsiders its free float requirements in order to remain competitive as a primary and secondary listings jurisdiction.

**Part C: Free Float Assessment**

Paragraph 4.25 of the Requirements deals with the holdings that will qualify as free float. One type of holdings of securities which does not qualify as free float is any holdings of 10% or more in the securities of an issuer.[[6]](#footnote-7) It is very common for shareholders to hold more than 10% in an applicant issuer on listing, which will then automatically exclude them from the free float assessment purely based on the size of the holdings.

However, under certain circumstances fund managers or portfolio managers holding 10% or more can qualify for free float provided the interest is held in more than one fund, and the separate funds hold less than 10% of the securities in the applicant issuer.[[7]](#footnote-8) This exemption for the interests of 10% or more held by a fund manager and portfolio manager to qualify for free float is rather limited and complex to apply.

Considering the entrenched and established presence of institutional investors in our market, the proposed amendments aim to better assist applicant issuers meeting the free float requirement on listing by not automatically excluding interests held by fund managers and portfolio managers holding more than 10% from free float.

Research

The JSE has undertaken research on the matter and have found that the Financial Conduct Authority (UK) has a similar provision to the JSE whereby investment managers are not recognised for purposes of free float:

“*When calculating the number of*[*shares*](https://www.handbook.fca.org.uk/handbook/glossary/G1078.html)*for the purposes of*[*LR 6.14.3R(1)€*](https://www.handbook.fca.org.uk/handbook/LR/6/14.html#D13020)*, holdings of*[*investment managers*](https://www.handbook.fca.org.uk/handbook/glossary/G599.html)*in the same*[*group*](https://www.handbook.fca.org.uk/handbook/glossary/G486.html)*where investment decisions are made independently by the individual in control of the relevant fund and those decisions are unfettered by the*[*group*](https://www.handbook.fca.org.uk/handbook/glossary/G486.html)*to which the*[*investment manager*](https://www.handbook.fca.org.uk/handbook/glossary/G599.html)*belongs will be disregarded.”[[8]](#footnote-9)*

However, the Singapore Stock Exchange (“**SGX**”), the Hong Kong Stock Exchange (“**HKEX**”) and the Australian Stock Exchange (“**ASX**”) have no such limitation. It appears that the focus is more aimed at the shareholder’s proximity/association to the board of directors of the applicant issuer and their associates, rather than the general blanket exclusion linked to size of the holdings.

Herewith a summary on the researched free float assessments:

**1 SGX**

An issuer must ensure that at least 10% of the total number of issued shares (excluding preference shares, convertible equity securities and treasury shares) in a class that is listed is at all times held by the public.[[9]](#footnote-10)

The “*public*” is defined as persons other than -

* directors, chief executive officer, substantial shareholders, or controlling shareholders of the issuer or its subsidiary companies;
* associates of the persons above; and
* founding shareholders and management team of the SPAC, and their associates. [[10]](#footnote-11)

**2 HKEX**

At least 25% of the issuer’s total number of issued shares must at all times be held by the public.[[11]](#footnote-12)

The Exchange will not regard any core connected person of the issuer as a member of “the public” or shares held by him as being “in public hands”. In addition, the Exchange will not recognise as a member of “the public” –

* any person whose acquisition of securities has been financed directly or indirectly by a core connected person;
* any person who is accustomed to take instructions from a core connected person in relation to the acquisition, disposal, voting or other disposition of securities of the issuer registered in his name or otherwise held by him.[[12]](#footnote-13)

“A "connected person at the issuer level" includes -

* a director, chief executive or substantial shareholder of a listed issuer;
* a supervisor of a PRC issuer (People’s Republic of China);
* a person who was a director of the listed issuer in the last 12 months; and
* an associate of any of the above persons.[[13]](#footnote-14)

**3 ASX**

The entity must have free float at the time of admission to the official list of not less than 20%. There must be at least 300 non-affiliated security holders, each of whom hold a parcel of the main class of securities that are not restricted securities or subject to voluntary escrow.[[14]](#footnote-15)

Non-affiliated security holders are holders who are not –

* a related party of the entity[[15]](#footnote-16);
* an associate of a related party of the entity; or
* a person whose relationship to the entity or person referred to in (a) or (b) above is such that, the ASX’s opinion, they should be treated as affiliated.[[16]](#footnote-17)

Although our initial focus was on the treatment of fund managers and portfolio managers in the free float assessment, we came to the realisation that all three markets above do not exclude holdings of 10% or more from free float. Interestingly, the SGX, HKEX and ASX do impose a minimum number of shareholders, ranging from between 300 to 500 shareholders.

The 10% Exclusion Challenged

The JSE is very mindful to strike the right balance between the interest of issuers and that of investors. A shareholder’s proximity/association to the board of directors of the applicant issuer and their associates, seem to be a far more realistic test for exclusion from free float and aligns with the JSE’s current related party exclusions pertaining to directors, their associates and extended family (through the family cross holdings test). The mere exclusion of shareholders based on the size of holdings alone, where they are unaffiliated to the directors, associates and family of the applicant issuer should be reconsidered and challenged. It should further be noted than this particular provision has remained untouched for the past 20 years, and as part of the reforms being proposed by the JSE, it may be time to reconsider the regulatory relevance of the exclusion.

Although the initial aim of the JSE was to consider avenues to allow the participation of fund managers and portfolio managers, with holdings of 10% or more, to qualify as free float, its scope has now widened. After considering the free float assessments of the ASX, SGX and HKEX, the JSE is considering the removal of the 10% exclusion altogether, provided there is a minimum number of shareholders. The JSE recognises that it removed the minimum number of shareholders a few years back, however the reintroduction of a minimum number of shareholders will counter the scenario where the percentage of free float (now being proposed at 10%) is achieved with only one shareholder. Furthermore, a minimum number of shareholders may further positively impact price formation and secondary market trade.

The JSE is further of the view that where a shareholder exercises control (>35%), such shareholder should be excluded from free float and this approach aligns with the ASX. However, there is still a lot of scope between the current 10% exclusion and 35%, to allow shareholders with no relations whatsoever with the board, its associates and family to qualify as free float.

It should be noted that the proposed amendments will have direct bearing on public shareholders for purposes of a general issue for cash authority pursuant to paragraph 5.52 of the Requirements. The pool of public shareholders will now include holdings of 10% or more, provided it meets the remainder of the free float provisions pursuant to paragraph 4.25 of the Requirements.

The proposed amendments impact the assessment of free float, and will therefore have no impact on material shareholders for purposes of related party transaction pursuant to Section 9 and 10 of the Requirements.

As a closing remark, as an emerging market, the JSE appears to have the most detailed and prescriptive provisions dealing with free float exclusions compared to the exchanges above, which may impact its attractiveness and competitiveness.

**Part D: Special Purpose Acquisition Companies**

**Introduction**

SPACs were introduced by the JSE back in 2013. A SPAC is a special purpose acquisition company established for the purpose of facilitating the primary capital raising process to enable the acquisition of viable assets in pursuit of a listing on the Main Board or the Alternative Exchange. Viable assets are assets that will qualify for a listing on the respective boards.

The listing of SPACs is currently permitted on several international stock exchanges, including, but not limited to the New York Stock Exchange, the Nasdaq Stock Market, the London Stock Exchange, the Toronto Stock Exchange, Euronext Amsterdam, Euronext Brussels, Hong Kong Stock Exchange, Singapore Stock Exchange and Bursa Malaysia.

During 2020 and 2021 the pandemic raised volatility levels, making traditional listings riskier. This resulted in a SPAC boom, especially in the US. SPACs continue to be attractive investment vehicles, although interest may have tapered recently.

Although the JSE believes that its SPAC offering is accessible and flexible, there is a need to update some areas to be more in line with the international markets where SPACs have flourished.

Through these proposed amendments the JSE aims to ensure that its SPAC offering remains current and relevant and aligns with leading international markets. It is important to ensure that when demand for SPACs increase that our listing framework is competitive.

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| **Item**  | **Section** | **Proposed Amendment** | **Nature of amendments and rationale** |
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| **1**  | **Section 4: Conditions of Listing** | **Industry of viable assets****New expanded paragraph 4.34(b)**The JSE intends to amend the JSE Listings Requirements (the “**Requirements**”) to afford more clarity on the acquisition criteria of viable assets, by requiring a SPAC to include details of the operating industry in which it will seek viable assets. | The amendment aims to afford more detail for investors on the type of viable assets a SPAC may pursue. Investors may have an informed view on a particular industry/ies and will then know from the outset whether they wish to invest or not.  |
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| **2** | **Section 4: Conditions of Listing** | **Experience and Expertise of the Board of Directors****New expanded paragraph 4.34(f)**A SPAC is generally established and initially financed by experienced founding shareholders, which then often have board representation on the SPAC. Investors invest in SPACs, mostly in reliance on the (i) expertise and proven track-record of the founding shareholders/directors of the SPAC and (ii) their standing in the market. The attractiveness of a SPAC is therefore primarily based on the expertise and experience of the directors of the SPAC, and for that reason more focus and disclosures are required in order for the JSE and potential investors to make an effective assessment on the expertise and experience of the directors of the SPAC. The JSE intends to amend the Requirements to afford more detail on the expertise and experience of the directors of the SPAC. | The expertise and experience of the directors of the SPAC are vital considerations contributing to the potential success of a SPAC.The JSE and potential investors should be better enabled to consider the suitability of the directors of a SPAC for the protection of investors.  |
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| **3** | **Section 4: Conditions of Listing** | **Equity Participation of the Board of Directors (“Board Equity Participation”)** **New expanded paragraph 4.34(e)**Currently, the board of directors must have subscribed for shares or units in the applicant representing at least a 5% interest, on a collective basis, in the applicant on the date of listing. The current Requirements are not prescriptive that the board of directors must subscribe at the subscription price of the offer.The JSE intends to amend the Requirements to make it clear that the subscription by the board of directors as part of the Board Equity Participation may take place at nominal value, provided a safeguard is included for the benefit of investors that such nominal subscription may not exceed 20% of the applicant’s issued share capital on listing.  | There are different approaches to the Board Equity Participation in the various SPAC jurisdictions, where some allow subscription (i) at nominal value and other (ii) at value on a sliding scale depending on market capitalisation on listing.Board Equity Participation serves as a manner to incentivise the board to pursue the success and completion of the acquisition of a viable asset/s and to have “*skin in the game*”.It has also been argued that there should not be undue hardships placed on quality boards in complying with the Board Equity Participation when seeking the listing of a SPAC, however any subscriptions at nominal value should be limited to afford a necessary safeguard for investors.The New York Stock Exchange, the Nasdaq Stock Market and Singapore Stock Exchange afford the subscription of Board Equity Participation at nominal value. However, the Singapore Stock Exchange imposes a limit of 20% on such nominal subscriptions, which is a sensible safeguard.  |
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| **4** | **Section 4: Conditions of Listing**  | **Conflicts of Interests****New paragraph 4.34(i)**In general terms, a SPAC is a company with no operations that offers securities for cash and places substantially all the offering proceeds into escrow for the acquisition of viable assets. Following listing, the SPAC will identify acquisition targets and attempt to complete the acquisition of one or more viable assets after which the SPAC will continue the operations of the acquired viable assets as a new listed company. The economic interests of the directors and their associates (“**Management’s Interest**”) may often differ from the economic interests of shareholders which may lead to conflicts of interests as they evaluate and decide whether to recommend the acquisition of viable assets to shareholders. Clear disclosure regarding these potential conflicts of interest and the nature of the Management’s Interest in the SPAC is particularly important because these parties are primarily responsible for negotiating the acquisition of viable assets on behalf of the SPAC.  A SPAC preparing for listing on the JSE should carefully consider its disclosure of its Management’s Interest as they relate to differing economic interests measured against the interests the issuer.  In the SPAC environment, it may be common for the directors to –* receive incentives (whether cash and/or securities) on the acquisition of Viable Assets;
* as related parties, enter into investment advisory agreements or similar with the SPAC; or
* not work exclusively for the SPAC to identify potential viable assets and may have fiduciary or contractual obligations to other companies and/or entities.

The JSE intends to amend the Requirements to afford specific disclosure on conflicts of interests as it relates to any commercial interests (other than remuneration) of the board of directors and their associates on the one part and the interests of the issuer on the other. | The disclosure and managements of conflicts is an important corporate governance tool. Conflicts disclosure is becoming more paramount in SPAC jurisdictions, including the USA, Belgium and Singapore. It will be in the interest of investors and shareholders to be aware and fully appraised of such conflicts of interest as well as the governance arrangements on how they are identified, avoided and/or managed. |
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| **5** | **Section 4: Conditions of Listing** | **Redemption Rights****Definitions****New paragraph 4.34(j)****Paragraph 4.36****Paragraph 4.38**On the listing of a SPAC, the proceeds raised are held in escrow until the SPAC identifies the acquisition of a viable asset, within 36 months from listing (as currently being proposed). Because the SPAC itself has no business operations and the acquisition target is not known at the time of listing, some markets afford certain shareholders the opportunity to redeem their securities in the SPAC prior to the acquisition of viable assets for *a pro rata* share of the funds held in escrow. These redemption rights help incentivise up take in SPACs through a predetermined exit mechanism/formula.However, the concern with redemption rights is that if a large percentage of shareholders choose to exercise their redemption rights this can drastically reduce the available cash proceeds that the SPAC will have available for its operating expenditures and to secure the acquisition of a viable asset/s. Considering the concern, the JSE intends to amend the Requirements to introduce a new definition of “*redemption rights*” and only afford certain shareholders in a SPAC a redemption right subject to the following:* only shareholders voting against the acquisition of viable assets may elect to redeem securities and receive a *pro rata* portion of the amount in escrow in cash, provided the acquisition of viable assets is approved within the prescribed period of 36 months;
* directors of the SPAC and their associates may not exercise redemption rights;
* the redemption price must be the initial listing subscription price, after applying the *pro rata* operating expenses and interest earned on the capital under escrow, up to the redemption right exercise date;
* an issuer may establish a limit as to the maximum number of securities with respect to which each eligible shareholder may exercise a redemption right, provided that such total limit may not be less than 10% of the issued share capital on listing. Any redemption limit established by the issuer must apply equally to all shareholders entitled to a redemption right; and
* the redemption right mechanism and timing must be clearly explained the prospectus/pre-listing statement of the applicant.
 | In the interest of investor protection, one of the important safeguards is a redemption right. However a redemption right should still strike the right balance to afford the issuer with a level of certainty as to which shareholders are afforded redemption rights in order to make an informed assessment on its capabilities to secure the acquisition of viable assets.  |
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| **6** | **Section 4: Conditions of Listing** | **Item: SPAC & Dual Class Shares** **New paragraph 4.34(i)**The JSE intends to amend the Requirements to introduce the listing of dual class share structures on the JSE, however a SPAC will not be permitted to list with a dual class share structure (“**DCS structure**”).  | The SPAC does not have established business operations nor financial track-record, as such it can be argued that there is no purpose to adopting a DCS structure on the listing of a SPAC. DCS structures are generally preserved to afford the founders the flexibility and freedom to strategically steer the established company they created post listing, to ensure continuity in its operations.It is however accepted that a SPAC should be allowed to adopt a dual class share structure upon the completion of the acquisition of viable assets and subsequent listing. The founders/owners of the target company may be involved in industry sectors (new technology and the like) where it is preferred that a DCS structure be adopted in order to retain strategic control of the business.  |
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| **7** | **Section 4: Conditions of Listing** | **Initial period to complete acquisition of viable assets****New expanded paragraph 4.35(a)**A SPAC must have completed the acquisition of viable assets within 24 months from the date of listing. Currently, the JSE may extend this date on application from the SPAC only on the basis that the SPAC can illustrate to the JSE that an acquisition of viable assets is imminent.The JSE intends to amend the Requirements to afford SPACs with more flexibility on the period to complete the acquisition of a viable assets, to make it clear from the outset that a SPAC has a firm and maximum period of 36 months to complete the acquisition of viable assets. The JSE discretion will be removed, and no extensions can be granted beyond the 36 month period.  | The maximum time frame of 36 months to complete an acquisition is consistent with the requirements of exchanges in the U.S., Toronto and Malaysia, and it is considered to be a reasonable duration for a SPAC to take the necessary steps in completing the acquisition of viable assets, including the completion of due diligence, the process for preparation of the circular to shareholders and calling for the general meeting to vote on the acquisition, and obtaining regulatory approvals (where applicable). |
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| **8** | **Section 4: Conditions of Listing** | **Escrow Arrangements****Paragraph 4.33****New Definition**All capital raised by a SPAC must be paid directly into an account managed by an escrow agent. The intention with the current provisions, being the creation of an escrow account and appointment of escrow agent, is to ensure the safe custody and preservation of the capital raised by the SPAC on listing. Escrow is a legal concept describing a financial agreement whereby an asset or money is held by a third party on behalf of two other parties that are in the process of completing a transaction. The JSE intends to amend the Requirements to expand the meaning of “*escrow*” to afford more flexibility to SPAC issuers, to allow them to (in addition to the current escrow arrangements) keep capital raised in another manner, to the satisfaction of the JSE, that provides sufficient safeguards for the protection of investors  | Escrow is not a very familiar concept in South Africa and often used on a temporary basis pending the conclusion of a transaction, the most common being property transactions. The safe keeping of capital for a period of up to three years can be arranged through a custodial process other than “*escrow*”, provided there are sufficient safeguards for the protection of investors.This amendment will allow a SPAC to undertake a far more cost-effective approach to safeguarding the capital raised by the SPAC. |
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| **9** | **Section 4: Conditions of Listing** | **Acquisition Circular to Shareholders****New paragraphs 4.41 and 4.42**In support of the proposed amendments on disclosure and transparency in relation to conflicts of interests, the JSE intends to amend the Requirements to afford more bespoke disclosure in the circular to shareholders on the acquisition of viable assets. The amendments also incorporate the relevant matters in the JSE Guidance Letter on SPACs, dated 13 June 2017 dealing with the nature and scope of the acquisition circular. The Guidance Letter is hereby withdrawn. | The amendments aim to address two objectives:* Incorporation of the relevant matters in the guidance letter; and
* provide more transparency on the thought process and procedures of the board of directors of the SPAC to pursue and conclude the acquisition of the viable assets.
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**~ END ~**

1. <https://www.lsegissuerservices.com/spark/new-rules-for-the-lse-main-market>. [↑](#footnote-ref-2)
2. <https://www.jse.co.za/sites/default/files/media/documents//JSE%20Response%20Paper%20Aug%202022.pdf> at 11 and 12. [↑](#footnote-ref-3)
3. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/966133/UK_Listing_Review_3_March.pdf> at 24 and 25. [↑](#footnote-ref-4)
4. <https://www.fca.org.uk/news/press-releases/fca-confirms-new-listing-rules-boost-growth-and-innovation> [↑](#footnote-ref-5)
5. <https://finance.ec.europa.eu/regulation-and-supervision/consultations/finance-2021-listing-act-targeted_en> [↑](#footnote-ref-6)
6. Paragraph 4.25(f) of the JSE Listings Requirements. [↑](#footnote-ref-7)
7. Paragraph 4.26(a) of the JSE Listings Requirements. [↑](#footnote-ref-8)
8. FCA Handbook LR.6.14.4 <https://www.handbook.fca.org.uk/handbook/LR/6/14.html> [↑](#footnote-ref-9)
9. Rule 723 <https://rulebook.sgx.com/rulebook/723-2> [↑](#footnote-ref-10)
10. Definitions: <https://rulebook.sgx.com/rulebook/definitions-and-interpretation-0> [↑](#footnote-ref-11)
11. Rule 8.08 <https://en-rules.hkex.com.hk/sites/default/files/net_file_store/HKEX4476_2301_VER18359.pdf> [↑](#footnote-ref-12)
12. Rule 8.24 <https://en-rules.hkex.com.hk/sites/default/files/net_file_store/HKEX4476_2301_VER18359.pdf> [↑](#footnote-ref-13)
13. Definitions: <https://en-rules.hkex.com.hk/sites/default/files/net_file_store/HKEX4476_1934_VER22605.pdf> [↑](#footnote-ref-14)
14. Condition 7 & 8 [file:///C:/Users/AlwynF/Downloads/Chapter01.pdf](file:///C%3A/Users/AlwynF/Downloads/Chapter01.pdf) [↑](#footnote-ref-15)
15. A related party in respect of a company is one that can exercise control, thus the capacity to control the outcomes of decisions on financial and operating policies which would appear to us to be above 50%. <https://www.asx.com.au/documents/rules/Chapter19.pdf> [↑](#footnote-ref-16)
16. Definitions: [file:///C:/Users/AlwynF/Downloads/Chapter19.pdf](file:///C%3A/Users/AlwynF/Downloads/Chapter19.pdf) [↑](#footnote-ref-17)