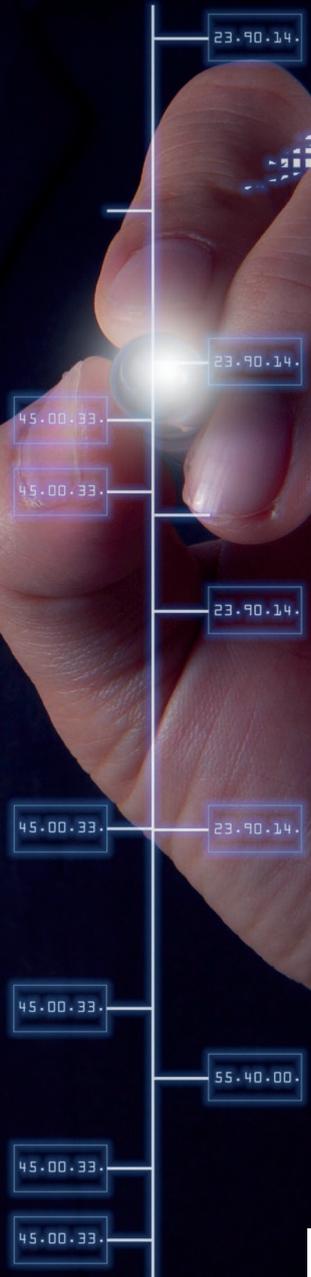
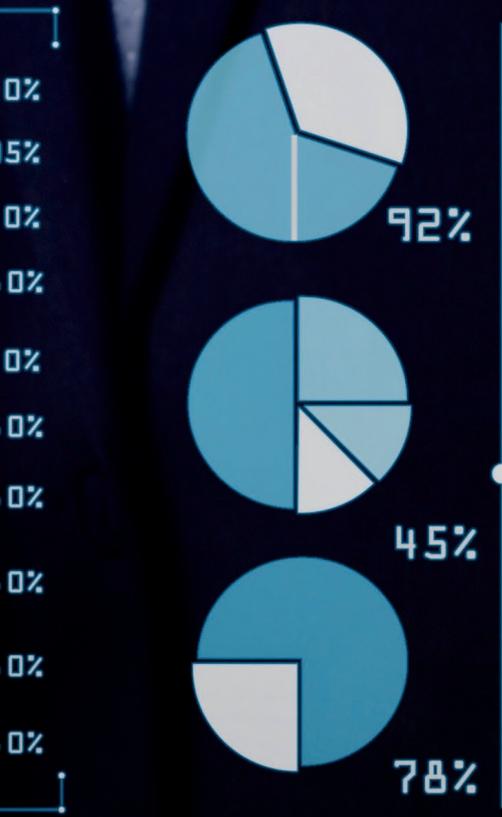




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SALES per COUNTRIES



Response Paper

JSE Listings Review August 2022



The JSE Limited (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 served as an innovation platform to promote capital market activity and competitiveness.

The Consultation Paper was subjected to public comments from 12 May 2022 to 20 June 2022.

The JSE undertook to inform market participants and stakeholders of the outcomes of the Consultation Paper, through the issue of a Response Paper on or before 22 July 2022. Due to the volume of comments received, certain instances of extensions being requested to submit comments to the JSE and internal discussions on the way forward, the JSE is now able to issue the Response Paper.

It should be noted that the public comments received on the Consultation Paper, may affect specific areas of the JSE Listings Requirements (the “Listings Requirements”). Where the JSE has decided to proceed with amendments to the Listings Requirements, such amendments will be undertaken using the standard process, which includes separate public consultation processes, pursuant to the provisions of the Listings Requirements and the Financial Markets Act No. 19 of 2012 (the “FMA”). Any amendments to the Listings Requirements further require the approval of the Financial Sector Conduct Authority (the “FSCA”).

In conclusion, the JSE, its subsidiaries, employees and officers have endeavoured to ensure the accuracy and reliability of the information provided in this Response Paper, and accept no liability whatsoever for any loss or damage arising from any inaccuracy or omission or from any decision, action or non-action based on or in reliance upon information contained in the Response Paper.

Andre Visser
Director: Issuer Regulation

Valdene Reddy
Director: Capital Markets

Date: 22 August 2022

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1125.09

Vol : 232.66 M

High

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01

Introduction

Introduction

JSE Issuer Regulation Consultation paper

The JSE, through the Consultation Paper, aimed to propose various initiatives to remain relevant and competitive in the ever-changing landscape of the financial markets. The JSE wished to actively engage with market participants on proposals, read with its current work in progress, on how it can better address market needs and expectations.

The bourse is very pleased with the level of views, opinions and comments received through this inclusive and transparent approach, to advance the relevance and attractiveness of South African financial markets. Commentators comprised a diverse group of private individuals, institutional investors, audit firms, listing sponsors, issuers and regulatory bodies.

Although the requests for guidance and proposals put forward by the JSE in the Consultation Paper received favourable support from an overwhelming majority of commentators in all instances, the JSE continues to be very mindful of the fact that there are several legislative or regulatory issues outside of its control as a Listings Authority, that reduce the incentives for companies to come to market to raise capital on an exchange, or to remain listed on an exchange. These issues range from outdated legislation, the current economic climate (locally and abroad), the South African investor landscape, unequal application of legislative or regulatory requirements to administratively burdensome disclosure and reporting requirements.

The JSE wishes to again emphasise that it is actively involved in several initiatives for change around these issues. In the meantime, the JSE will continue to play its part in stimulating the attractiveness, trustworthiness and competitiveness of South African financial markets.

For ease of reference the Consultation Paper that can be viewed here:

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

The Response Paper will not repeat all the details in relation to the requests for guidance and proposals raised by the JSE. The Response Paper aims to provide readers with a view on the outcome of the public comments received, especially where focus areas have been highlighted to the JSE.

It further aims to provide a roadmap of which items will be prioritised by the JSE, including broad timelines. Any requests for further information and/or direct engagement may be directed to:

Alwyn Fouchee
Head: Regulatory Compliance
Issuer Regulation Division
Email: alwynf@jse.co.za

02

Work in Progress

Work in Progress

The JSE continues to monitor developments in financial markets across the world to ensure that it remains competitive and aligned with global market developments.

The twelve work in progress items as presented in the Consultation Paper are at various stages of development. The market will be able to monitor progress on the various workstreams through the public consultation processes to amend the Listings Requirements.

As part of the various initiatives being undertaken by the JSE, the JSE raised two specific items in the Consultation Paper where it sought guidance from the market. These items related to the (i) Auditor Accreditation Model and (ii) Secondary Listings Framework Review.



2.1 Auditor Accreditation

The JSE proposed to remove the Auditor Accreditation Model, which includes the accreditation of audit firms, IFRS advisers and reporting accountant specialists, based on the Financial Reporting Improvements (as define below).

During the period since the introduction of the Auditor Accreditation Model, significant changes and improvements have occurred within areas of governance, auditing standards, the Companies Act, regulatory oversight by audit regulators, improvements in audit quality and the Listings Requirements which play a significant role in enhancing the credibility of financial reporting. A non-exhaustive list of certain key contributors to credible financial reporting include the following:

- Introduction of quality management standard, International Standard on Quality Control 1 in 2009 by the International Auditing and Assurance Standards Board and adoption of the same in South Africa by the IRBA;
- Revision of the quality management standard through the introduction of International Standard on Quality Management 1,2 and International Standard on Auditing (ISA 220 Revised) effective 2022;
- Significant improvements made to areas affecting financial reporting and assurance in the Companies

Act and Companies Regulations in 2011 through the adoption of the Companies Act;

- Various improvements and initiatives undertaken by audit regulators to improve audit quality, transparency, revise ethical and training requirements and codes applicable to registered auditors. The JSE participates in the IRBA processes through a membership position on the Committee for Auditing Standards and Inspections Committee of the IRBA;
- Introduction of the proactive monitoring of financial statements by the JSE in 2010 with various improvements to this process since introduction;
- Introduction of additional specific responsibilities, over and above those contained within the Companies Act for audit committees through the amendment of the Listings Requirements in 2017; and
- Introduction and monitoring of a specific management responsibility for the internal financial control environment and related accountability for the preparation of financial statements through a CEO and FD sign off effective in 2020.

(the “**Financial Reporting Improvements**”)

The Auditor Accreditation Model is a gatekeeping function which does not address key objectives relevant to audit quality or the promotion and enhancement of the credibility of financial reporting. Considering the Financial Reporting Improvements, a multifaceted approach by various role players within the capital markets environment is required to ensure that investor and stakeholder needs for credible financial (and to an extent non-financial) reporting are appropriately advanced.

Request for Guidance 1: Auditor Accreditation Model



Considering the Financial Reporting Improvements and the JSE's involvement in various initiatives that enhance financial reporting, is there support for removal of the Auditor Accreditation Model?

Outcome

75% of commentators were in support of the removal of the Auditor Accreditation Model

The following notable comments were made to the JSE where there was not favourable support for the proposal raised:

- The Financial Reporting Improvements have not changed the landscape to such an extent that auditor accreditation is no longer a requirement.
- Only once the detailed amendments have been presented, will an informed view be able to be expressed as part of the public consultation process to amend the Listings Requirements.
- It is believed that a regulatory body, such as the JSE, alternatively SAICA or IRBA, should be responsible for the accreditation of an audit firm etc. Auditor accreditation should be standard across all issuers and not only subject to judgement of an issuer's audit committee.
- Suggest the retention of some measures currently in Section 22 (Accreditation) to continue to promote confidence in the financial reporting process.
- Supplementary measures (in the place of the Auditor Accreditation Model) for audit committees should be mandatory as part of the Listings Requirements and not in the form of guidance.
- The Auditor Accreditation Model should be retained. The model is not onerous for issuers to comply with.
- The Auditor Accreditation Model does not only serve a gatekeeping function, but it is also relevant to audit quality and credible financial reporting. If the Auditor Accreditation Model is removed in its entirety, and not replaced or substituted with alternative new controls, the view is that it will likely negatively impact audit quality and the credibility of financial reporting.
- Audit committees are not considered to be competent or proficient to "replace" the JSE.

- There is a belief that the provision of auditor accreditation by the JSE allows for the exchange to have a level of oversight surrounding the appointment of external auditors. The risk of removing this auditor accreditation is that this level of oversight is lost and given the recent corporate failures, and some of the challenges external audit firms have faced, there is a question on whether this enhanced governance surrounding external auditors is needed at this point of time and should not be removed. Additionally, this change may hamper the smaller audit firms as the JSE accreditation provides these firms with additional support when participating in proposals for providing external audit services to JSE listed clients.

Based on the level of support, the JSE aims to proceed with this workstream and will further aim to engage with these commentators as part of its journey to amend the Listings Requirements. The JSE has engaged with IRBA on auditor accreditation proposal and will continue to do so as part of the public consultation process.

Once the proposed amendment to the Listings Requirements have been formulated, the JSE will be guided by the public consultation process pursuant to the provisions of the Listings Requirements and the FMA.

2.2 Secondary Listings Framework Review

A company seeking a listing on the JSE may do so via a primary or secondary listing.

- A primary listing means that the JSE is the primary regulator and the listed company is subject to the Listings Requirements in all respects; and
- A secondary listing means that a listed company will only be required to comply with the Listings Requirements of the exchange where it has its primary listing, unless otherwise specifically stated in the Listings Requirements e.g., a company that is primary listed on the LSE with the LSE being the primary regulator that then seeks a further secondary listing on the JSE.

On 25 November 2021 the JSE announced the expansion of its secondary listings framework, to include companies with a primary listing on the Singapore Stock Exchange ("SGX") to seek a secondary listing on the JSE, additionally qualifying for the fast-track listing secondary route. This resulted in the expansion of the approved list of exchanges to twelve and the accredited list of exchanges to five.

In order to significantly enhance the JSE's attractiveness as a secondary listings jurisdiction, the JSE is working on two initiatives to reach its objectives.

- Upgrading all the approved exchanges to accredited exchanges which will then allow fast-track secondary listings from all its approved exchanges, and not only from the five accredited exchanges which is currently the case; and
- Adding further exchanges to the current list of approved exchanges.

For ease of reference, kindly refer to Annexure A for a complete list of approved and accredited exchanges.

The Listings Requirements afford the JSE the discretion to expand on its list of accredited and approved exchanges for secondary listing purposes, and as such, no amendments to the Listings Requirements are needed to pursue these initiatives.

Request for Guidance 2: International Exchanges



Given the present list of recognised foreign exchanges, are there any recommendations as to which other international exchanges the JSE should target to make its secondary listings offering more appealing and accessible?

Thank you for the various proposals, the stock exchanges for consideration include various African, European and Asian exchanges. The JSE will take these proposals under consideration as part of the current workstream to support and enhance its secondary listing offering.

This workstream will significantly enhance the JSE's attractiveness as a secondary listings jurisdiction.



2.3 Delisting Process – Secondary Listings

It has been argued that the delisting process for secondary listed companies makes the JSE's secondary listing offering unattractive. The reason is that obtaining a secondary listing on the JSE is very flexible and efficient, however should the company's secondary

listing on the JSE not achieve the desired objectives of liquidity and capital raising, it is then difficult for the company to delist from the JSE. This concern has been raised by several sponsors and secondary listed issuers/applicants.

Currently, the same delisting process is applied to both primary and secondary listings on the JSE, which does not seem to align with the status of secondary listing on the bourse.

The concerns raised are important, because if the JSE is trying to attract more secondary listings as proposed above but does not address concerns raised in relation to them, the attractiveness as a secondary listing's destination may be diminished or even lost.

Request for Guidance 2.1: International Exchanges



Considering the concerns raised on the attractiveness of the JSE's secondary listings offering, is there support to reconsider the delisting regime for secondary listed companies?

Outcome

100% of commentators were in support of the JSE reconsider the delisting regime for secondary listed companies

Based on the level of support the JSE aims to proceed with this workstream to amend the Listings Requirements. In doing so, the JSE will have due regard for (i) the statutory provisions dealing with delistings pursuant to the FMA, (ii) peer exchange benchmarking and (iii) striking the right balance between the interests of investors and the objectives of secondary listed issuers.

Once the proposed amendment to the Listings Requirements have been formulated, the JSE will be guided by the public consultation process pursuant to the provisions of the Listings Requirements and the FMA.

¹IRBA is the Independent Regulatory Board for Auditors, the statutory body controlling part of the accountancy profession involved with public accountancy in South Africa. Their strategic focus is to protect the financial interests of the public by ensuring that only suitably qualified individuals are admitted to the auditing profession and that registered auditors deliver services of the highest quality and adhere to the highest ethics standards

The background features a blue-toned world map with a grid overlay. Various financial terms and numbers are scattered across the map, including 'FINANCE', 'MARKET', 'RISK', 'GROWTH', 'INVESTMENT', 'ANALYSIS', 'STRATEGY', 'PORTFOLIO', 'DIVERSIFICATION', 'LIQUIDITY', 'VOLATILITY', 'CORRELATION', 'BETA', 'ALPHA', 'RISK-ADJUSTED RETURN', 'CREDIT RISK', 'OPERATIONAL RISK', 'MARKET RISK', 'SYSTEMIC RISK', 'COUNTERPARTY RISK', 'Liquidity Risk', 'Interest Rate Risk', 'Currency Risk', 'Commodity Risk', 'Climate Risk', 'ESG Risk', 'Reputational Risk', 'Legal Risk', 'Regulatory Risk', 'Technology Risk', 'Data Risk', 'Cybersecurity Risk', 'Supply Chain Risk', 'Geopolitical Risk', 'Macroeconomic Risk', 'Inflation Risk', 'Interest Rate Risk', 'Currency Risk', 'Commodity Risk', 'Climate Risk', 'ESG Risk', 'Reputational Risk', 'Legal Risk', 'Regulatory Risk', 'Technology Risk', 'Data Risk', 'Cybersecurity Risk', 'Supply Chain Risk', 'Geopolitical Risk', 'Macroeconomic Risk', 'Inflation Risk'.

03

JSE Proposals

JSE Proposals

The JSE needs to take all necessary measures to encourage inbound investment and increase confidence for local and international investors. In order to achieve this, the JSE needs to consider the best initiatives from other leading markets and/or competitors and combine them with its own initiatives.

These initiatives have been captured under the following proposals:

3.1 Market Segmentation

The JSE has two markets, namely the Main Board and AltX.

Well-established companies who want to raise equity to grow their business list on the Main Board of the JSE, which is subject to the highest level of regulation for listed companies pursuant to the provisions of the Listings Requirements.

The Alternative Exchange ("AltX") is focused on small- and medium-sized companies. The AltX provides smaller companies with a springboard onto the Main Board with a clear growth path and access to capital. Recognising the recent spate in delistings and steady decline of the total number of listed companies on the JSE, it may be time for the JSE to reform both the Main Board and AltX - more so, when considering the role that SMEs play in the national economy.

When the JSE undertook a review of other markets, it became apparent to the JSE that in certain markets there are three distinct segments:

1. **High cap premium segment with high-level regulation**
2. **Mid/Low cap segment with standard regulation**
3. **Growth segment with light regulation, in order to promote growth**

Proposed Blueprint Model:

On this basis the JSE is proposing a similar market segmentation model. The proposal conceptually means that the Main Board would be divided into two segments, being a high-cap and mid/low-cap segment.

These segments then need to provide for a level of regulation appropriate for the market cap and liquidity of those issuers. The higher the market cap/liquidity the higher the level of regulation and vice versa.

This proposition may afford a substantial number of mid/low-cap companies with much needed flexibility to focus more on business operations and growth, based on the standard regulation model. The key consideration would not be to diminish the status of the existing listed Main Board companies in any way. On the London Stock Exchange (the "LSE"), both the Premium Segment and Standard Segment form part of the Official List. Access by institutional investors to current Main Board companies remains vital and must be preserved. It is merely the level of regulation for the two Main Board segments that will bring a level of appropriate regulation to mid/low cap issuers.

The proposal is to have the highest market-cap companies with high levels of liquidity subject to the current Listings Requirements ("Main Board Plus") and then have bespoke Main Board Listings Requirements applicable to the mid and lower cap companies with lower liquidity ("Main Board"). The Main Board Plus and Main Board segments will then collectively constitute the Main Board on the JSE. The naming conventions of "Main Board Plus" and "Main Board" are purely illustrative.

In conjunction with the new proposed segmentation of the Main Board, the AltX could also be repositioned as a truly growth board in line with the above markets. These markets place special emphasis on growth companies, in our case SMEs. The growth board will be designed to encourage small-cap and growth-oriented companies with good corporate governance standards to list. It will aim to encourage companies with high growth potential to seize the opportunity of raising long term capital and promote liquidity. Here the focus aims to be purely be disclosure based, with an appropriate and effective level of regulation aimed at growth.

Proposal for Consideration 1: Market Segmentation



Considering the recent spate of delistings, the steady decline in the number of listed companies over the last 15 years and calls for the JSE to cut red tape, is there appetite in the market to consider the above market segmentation to provide the necessary regulatory relief for mid/low cap and growth companies?

Outcome

94% of commentators were in support for the JSE to consider the above market segmentation proposal to provide the necessary regulatory relief for mid/low cap and growth companies

The following notable comment was made to the JSE where there was not favourable support for the proposal raised:

- Unconvinced if there would be sufficient appetite for the proposed segmentation. It could be argued that our market is too small to segment. Rather address the valid pain points relevant to all issuers versus creating a two-tier market structure.

Based on the positive level of support, the JSE aims to proceed with this proposal and will aim to engage with the commentator as part of its journey to amend the Listings Requirements.

Once the proposed amendment to the Listings Requirements have been formulated, the JSE will be guided by the public consultation process pursuant to the provisions of the Listings Requirements and the FMA.



3.2 Dual Class Shares (“DCS”)

Currently, the Listings Requirements expressly prohibit the listing of a company with low or high voting shares and the JSE will not allow an existing listed company to issue low or high voting shares. It is however recognised, that where a company is currently listed with low or high voting shares, the JSE will grant a listing of additional shares of that class. The Listings Requirements further stipulate that securities in each class for which listing is applied must rank *pari passu* in respect of all rights. Every holder of an ordinary share must have one vote in respect of each share.

Dual class shares allow a shareholder (or group of shareholders) to retain voting control over a company disproportionate to their economic interest in the company. A typical DCS structure involves a company having two classes of shares identical in all respects except for voting rights. One class of shares is a “low vote” share, carrying one vote per share (typically Class A Shares) and another class of shares is a “high vote” share, typically carrying 10 or 20 votes per share (typically Class B Shares).

The use of DCS structures for public companies is varied across different countries:

- The NYSE, Nasdaq, TSX and Nasdaq OMX Stockholm permit listed companies to adopt DCS structures;
- Europe does not yet have a universal application for DCS 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;
- The Australia Securities Exchange does not typically permit companies with DCS structures to list;
- In 2018 both the Hong Kong Stock Exchange (“HKEX”) and 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 DCS structures;
- The UK listing rules for the premium segment have long supported the proportionality principle (i.e., voting power should be broadly proportionate to economic interest) and DCS structure companies could only list on the Standard Segment of the LSE. However, following the publication of the UK Listings Review Report and the EU Report, both the UK and EU have turned favourably to the listing of DCS structures.

Following a similar approach undertaken by the HXSE, the SGX has introduced a number of safeguards intended to mitigate the risk of DCS structures.

These include –

- Requiring an enhanced voting process where all shares carry one vote each regardless of class for the appointment and removal of independent directors and/or auditors, variation of rights attached to any class of shares, a reverse takeover, winding-up or delisting.
- Requiring the majority of the audit committee, the nominating committee and the remuneration committee, and each of their respective chairmen, to be independent directors.
- Capping each multiple voting (MV) share at 10 votes a share and limiting the holders of MV shares to named individuals or permitted holder groups whose scope must be specified at the IPO.

- Requiring sunset clauses where MV shares will auto-convert to ordinary voting shares under circumstances the company must stipulate at the time of the IPO.

The LSE announced the application of the DCS structure rules for the Premium Segment with effect from 3 December 2021, to encourage innovative, often founder-led companies, onto public markets. In line with the recommendations by Lord Hill, dual class shares 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 DCS structures.

The following notable comments were made to the JSE where there was not favourable support for the proposal raised:

- DCS structures are a temporary trend.
- DCS structures cause significant prejudice to shareholder rights. Enabling DCS structures going forward would be a significant step backward in shareholder rights and again create room for abusive practices (despite the best intentions of putting safeguards in place aimed at enhancing corporate governance).
- The JSE should not encourage these kind of shareholding structures, as what may happen is that the controls that are intended to be in place to provide fairness to all shareholders fail, and one category of shareholders are prejudiced in favour of the other shareholder.

Based on the positive level of support, the JSE aims to proceed with this proposal and will aim to engage with these commentators as part of its journey to amend the Listings Requirements. It will be paramount for the JSE to ensure due safeguards are incorporated, specifically a sunset-clause for DCS, to promote governance and transparency in respect of DCS companies.

Once the proposed amendment to the Listings Requirements have been formulated, the JSE will be guided by the public consultation process pursuant to the provisions of the Listings Requirements and the FMA.



3.3 Free Float & New Listings

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

The EU is also reconsidering its free float requirements through the EU Report. 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 may be time for the JSE to reconsider the appropriateness of its free float requirements for Main Board listed companies, taking into account that this percentage of free float has remained largely unchanged for more than 20 years.

Proposal for Consideration 2: Dual Class Share Structures



There appears to be a general acceptance globally for the listing of DCS structures, provided there are suitable safeguards in place to promote corporate governance. In order for the JSE to remain competitive and relevant, the question is whether there is investment appetite for companies with DCS structures to list on the JSE, provided due safeguards to enhance governance are in place similar to those imposed by the SGX and LSE?

Outcome

73% of commentators were in support for the JSE to consider the introduction of DCS structures on the JSE

² <https://www.sgx.com/media-centre/20180626-sgx-launches-rules-listing-dual-class-shares-companies>

³ <https://www.lsegissuerservices.com/spark/new-rules-for-the-lse-main-market>

A real concern is if the JSE does not reconsider its free float requirements, it may significantly impact its competitiveness as a primary and secondary listings jurisdiction, and result in a bizarre scenario where companies qualify for a listing on premier international exchanges but then fail to qualify for a secondary listing on the JSE based on its free float requirement of 20%.

Proposal for Consideration 3: Free Float & New Listings



Considering the developments in the UK and EU on the reassessment of free float, the questions the JSE poses are the following:

- Is free float a good measure to ensure liquidity?
- Could a minimum free float requirement be a barrier to listing?
- Is the recommended threshold for a Main Board listing set at 20% appropriate?

Outcome

70% of commentators were in support for the JSE to reconsider the existing free float requirement for new listings

The following notable comments were made to the JSE where there was not favourable support for the proposal raised:

- Free float is vital to ensure liquidity and is not a barrier to listing. In fact, the free float should be higher, 25%.
- The 20% free float requirement is acceptable but it is important how one classifies public/non-public.
- We are concerned that while lower free float requirements may make listing more attractive for the companies themselves, due to fewer shares being publicly available it will make it less attractive for institutional investors. A more balanced proposal would be supported such as reducing the free float requirement for new listings (for example to 10%) but keeping the currently listed companies' requirement at 20% and assessing how things progress.
- We do not think the 20% is inappropriate, but there is

room for this to be lower in certain circumstances. Consider leaving the 20% free float requirement in place, whilst allowing for lower free floats provided certain conditions/circumstance are met/exist. More of a "buyer beware" approach.

Based on the positive level of support, the JSE aims to proceed with this proposal and will aim to engage with these commentators as part of its journey to amend the Listings Requirements.

Once the proposed amendment to the Listings Requirements have been formulated, the JSE will be guided by the public consultation process pursuant to the provisions of the Listings Requirements and the FMA.



3.4 Institutional Investors & Free Float Assessment

Free float is determined by the securities in the hands of public investors as opposed to company officers, directors, or shareholders that hold controlling interests, as public holdings are aimed to promote liquidity.

Research shows that approximately 90% of monthly trades on the JSE are driven by institutional investors and the remaining 10% of monthly trades come from retail investors. Our market is by its nature institutional investor heavy.

Paragraph 4.25 of the Listings 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. It is very common for fund managers/institutional investors to hold more than 10% in an applicant issuer on listing, which will then exclude them from the free float assessment.

However, under certain circumstances such fund managers/institutional investors 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. This exemption for the interests of 10% or more held by a fund manager/institutional investor to qualify for free float is rather limited and complex.

Considering the entrenched and established presence of institutional investors in our market, a proposal that may better assist applicants meeting the free float requirement on listing, is not to automatically exclude fund managers/institutional investors holding more than 10% in an applicant issuer from the free float assessment on listing

⁴ Paragraph 4.25(f) of the JSE Listings Requirements.

⁵ Paragraph 4.26(a) of the JSE Listings Requirements.

- the caveat being only where the applicant issuer and the fund managers/institutional investors can show the JSE that the funds used to acquire the interest in the applicant issuer represent those of underlying clients/policyholders and not that of the institutional investor itself and/or its shareholders. The interest is effectively held on behalf of clients/policyholders by the fund manager/institutional investor.

This may be an avenue to assist applicant issuers meeting free float on listing with a more flexible and easier approach compared to the current requirements, considering the investor demographics of our market. The liquidity afforded by fund managers/institutional investors in the South African market should be recognised. The automatic exclusion of interests held of 10% or more seem limiting especially where such holdings represent underlying clients/policyholders.



Proposal for Consideration 4: Free Float Assessment



Considering the liquidity fund managers/institutional investors offer, should holdings of 10% or more in an applicant issuer on listing qualify for free float, provided the funds used to acquire the interest in the applicant issuer represents those of underlying clients/policyholders and not that of the institutional investor itself and/or its shareholders?

Outcome

88% of commentators were in support for the JSE to reconsider the free float assessment in respect of fund managers/ institutional investors offer

The following notable comments were made to the JSE where there was not favourable support for the proposal raised:

- Total disagreement with the proposal. Many of the underlying clients/policyholders are managed in the same model or constructed portfolios with a single team of portfolio managers operating collectively.
- If not, they are likely all subject to the same house view anyway. It cannot be suggested that these are independent actors. Free float should be by asset manager, not underlying beneficial owner.
- This is a difficult one, since not all institutional investors show the same trading activity. To avoid gaming of the rule, perhaps keeping the rule as-is would be more prudent. Otherwise, a placement with three large institutional investors could, in theory, be viewed as sufficient free float.

Based on the positive level of support, the JSE aims to proceed with this proposal. The JSE recognises that participation by retail investors contributes to robust markets and will aim to engage with these commentators as part of its journey to amend the Listings Requirements.

Once the proposed amendment to the Listings Requirements have been formulated, the JSE will be guided by the public consultation process pursuant to the provisions of the Listings Requirements and the FMA.



3.5 Depository Receipts & Africa

A depository receipt (“DR”) is a financial instrument representing a foreign listed security, where the instrument confers rights in respect of such securities. Investors transact with a major financial institution within their home country, which typically reduces fees and is far more convenient than purchasing securities directly in foreign markets. DRs provide investors with the benefits and rights of the underlying foreign securities which may include voting rights and dividends and affords investors access to markets they would not normally have access to.

DRs are a good option for investors who want to diversify their portfolios globally and gain exposure to foreign equity markets via the JSE. For issuers, depository receipts have become a globally accepted, flexible instrument that enables them to reach investors located outside their home markets while reducing the risk associated with cross-border investments, including foreign legislation, transaction costs and delays, currency fluctuations and complicated settlement transaction processes.

An issuer of a sponsored DR must further meet the requirements for a secondary listing on the JSE, thus being from an approved exchange (which currently includes no African exchanges). With an unsponsored DR, there must be sufficient liquidity and the issuer must be listed on an exchange which is a member of the World Federation of Exchanges (“WFE”). If the exchange is not a member of the WFE, the issuer must have a subscribed capital of a least R500 million.

DRs are largely unattractive because applicants need to comply with almost the identical provisions applicable to a secondary listing. Because DRs are negotiable financial instruments and not equity securities in the ordinary sense, there is more scope for the JSE to expand on the DRs offering to make it more attractive.

There is a window of opportunity for the JSE as a key player in the continent’s most sophisticated market to gain traction in its own back yard. Slow economic growth in South Africa suggests that the JSE, like its clients, may have to look at the wider African region for growth prospects. The rest of Africa is a region of mostly high growth rates, economic and political reform, and a key destination for investment from the JSE’s own listed companies.

⁴ Paragraph 4.25(f) of the JSE Listings Requirements.

⁵ Paragraph 4.26(a) of the JSE Listings Requirements.



Proposal for Consideration 5: Depository Receipts & Africa

Considering the growth potential in the wider Africa region and the nature of a DR, is there support for the proposal to afford investors access to Africa listings and beyond through DRs on the JSE?

Outcome

94% of commentators were in support for the JSE to consider the proposal to afford investors access to Africa listings and beyond through DRs on the JSE

The following notable comment was made to the JSE where there was not favourable support for the proposal raised:

- This initiative is highly unlikely to succeed. SA banks and stockbrokers are not generally active in other African stock exchanges, and the companies on those stock exchanges are generally highly illiquid. It would be nice to have but may prove to be a misallocation of the JSE’s resources if prioritised as an initiative.

Based on the positive level of support, the JSE aims to proceed with this proposal and will aim to engage with these commentators as part of its journey to amend the Listings Requirements.

Once the proposed amendment to the Listings Requirements have been formulated, the JSE will be guided by the public consultation process pursuant to the provisions of the Listings Requirements and the FMA.





3.6 JSE Technology Board

A tech start-up is a company whose purpose is to bring technology products or services to market. These companies deliver new technology products or services or deliver existing technology products and services in new ways and are generally characterised by a distinct phase of development and research during which time the product or service is in development and revenues are either minimal or non-existent.

In 2019 China officially launched Shanghai's Nasdaq-style tech board which is largely seen as a government-backed move to become self-sufficient in core technologies such as chips, IT and biotech. The STAR Market (Shanghai Stock Exchange Science and Technology Innovation Board) is one of China's boldest moves at reforming its capital markets to make it easier for tech start-ups to raise funds at home and to ensure that the next Alibaba or Baidu do not flock to exchanges in the US or elsewhere. It is also a part of Beijing's desire to become technologically self-reliant at a time when Chinese tech firms such as Huawei have been targeted by the US, allegedly to extract trade concessions.

Several start-up companies that may not currently meet the JSE listing entry criteria as set out in the Listings Requirements have been identified as disruptors in the SA technology space in 2020 and 2021 and are classified as "small to medium enterprises" or companies in a growth phase with substantial capital needs.

Considering the proposal on DCS structures above, the establishment of a JSE Technology Board may be a good addition to further lure tech companies to the JSE through more inclusive and adaptable listing rules to support technology and innovation enterprises.



Proposal for Consideration 6: JSE Technology Board

There are many high-tech and innovation companies incorporating DCS structures globally. Often companies in the technology sector are considered to be high growth companies. As a result, the JSE seeks to establish a Technology Board with clearly identified regulatory flexibilities to guarantee that it caters to their unique nature.

Recognising that South Africa may not be the leader or even well known for fintech start-ups, a platform to enhance and support fintech innovation may be worth considering given the success of such platforms in other markets. Depending on the acceptability of DCS structures for the South African financial markets as proposed above, international fintech companies may consider the JSE as a secondary listings destination of choice to raise capital.

The JSE is posing the question: Is there investment appetite for a Technology Board on the exchange, with more regulation flexibilities in order to promote growth?

Outcome

66% of commentators were in support for the JSE to consider the proposal to introduce a Technology Board



The following notable comments were made to the JSE where there was not favourable support for the proposal raised:

- It is doubted that such a board would be a success absent a significant increase in retail participation on the JSE, or without tax or other incentives. Start-up companies are necessarily small in the beginning, and most funds under management in SA are managed by large institutions with no interest in anything small. The same would apply to start-ups on a Junior Mining & Exploration Board, a Developing Agriculture Board, an Infrastructure & Energy Board, a Tourism & Hospitality Board or a Food & Beverage Board. It was suggested rather prioritising other initiatives - despite the public relations appeal of this proposal.
- The market would be better served if the JSE were to apply its mind to initiatives to increase the attractiveness of listings of South African and other African companies on the JSE. Instead of considering a Technology Board, the JSE could, as regards other African companies, for example, consider establishing an African Board.
- There is doubt if there is sufficient interest (from both investors and issuers) for a tiered structure, especially one so sector-specific. Does SA really have a flourishing tech sector, outside of the listed space? It does not seem that way. Maybe a general approach to pool liquidity/interest in one strong market is better than fragmentation/segmentation.

- Doubtful, given the fact that SA is not historically a tech hub. There is not a belief that this offering would be a destination of choice for secondary inward listings, given the myriad of international exchanges which have well established technology sectors.
- It is unclear how the JSE Technology Board will fit in the market segmentation proposal mentioned in point 3 above. Will the Technology Board be a 4th segment? Furthermore, the regulation flexibilities may be very difficult for the JSE to enforce, and it is not clear how many new companies would come to market in SA when the investor capital is primarily offshore and competing vigorously for opportunities in SA.
- We are not aware of a great demand for a technology board. Fintech start ups typically can't afford the costs associated with being a listed entity. The only benefit to listing would be an enhanced ability to raise capital. The JSE should be making itself as attractive as possible for all new entrants and their existing clients, not just technology companies.

Although there is general support for this proposal, it is recognised that there are synergies with the market segmentation proposal whereby more flexibilities are aimed to be afforded to small and mid-cap companies. It may therefore be more prudent for the JSE to focus its immediate efforts on the market segmentation proposal and revisit the proposal on the Technology Board at a later stage.





3.7 Simplification Project: The JSE Listings Requirements

The Listings Requirements in its current form and in its familiar red binder, has been in place for more than 20 years and comprises 22 sections and 18 schedules. The complexity of the financial markets has significantly changed since early 2000 and more provisions have been added to the Listings Requirements over the years. These provisions relate not only to more regulation being imposed by the JSE, but also to the introduction of more products to the List, new listing segments being introduced (such as the BEE Segment and AltX) and corporate governance being enhanced through the various King Reports, to name a few.

Certain commentators have been increasingly vocal on the JSE's perceived overregulation and red tape. Although the JSE has made active advancements since 2013 to simplify the application of the Listings Requirements and on cutting red tape during 2021, there may still be provisions of the Listings Requirements that may be redundant, not fit for purpose or purely administrative in nature.

The Listings Requirements also include various administrative matters and processes which may strictly not be deemed necessary to be addressed in the Listings Requirements.

An argument can be made that the Listings Requirements should be limited to the core provisions speaking purely to regulatory principles and objectives. The JSE is therefore considering an exercise to simplify the Listings Requirements, using plain language to record concise regulatory principles and objectives with the ultimate aim of significantly cutting the volume of the Listings Requirements.

However, the JSE recognises that market participants may have become very used to and too familiar with the current look and feel of the Listings Requirements, and that a complete rewrite and repackaging may potentially cause more disruptions and frustrations. Of course, should there be support to rewrite and repackage the Listings Requirements, this will be a gradual process over time involving various public consultations in the normal course pursuant to the provisions of the Listings Requirements and the FMA, and be subject to the approval of the FSCA.



Proposal for Consideration 7: Simplification Project

Is there a demand from market participants for the JSE to commence with a project to rewrite and repackage the Listings Requirements in their entirety? The aim is to simplify the application and significantly reduce the volume of the Listings Requirements.

Outcome

95% of commentators were in support for the JSE to consider the proposal of simplifying the Listings Requirements

The following notable comments were made to the JSE where there was not favourable support for the proposal raised:

- The "principle-based approach" adopted by other exchanges merely leads to confusion and uncertainty. The Listings Requirements generally operate as a sound and well-understood framework within which issuers can operate, acknowledging that occasional updates and amendments can and should be implemented as market/investor trends develop.
- Frustrations with the JSE and red tape, do not necessarily lie in the Listings Requirements themselves, but in the generally inconsistent manner in which the Listings Requirements are applied and interpreted by the JSE.

Based on the positive level of support, the JSE aims to proceed with this proposal and will aim to engage with these commentators as part of its journey to amend the Listings Requirements.

Once the proposed amendment to the Listings Requirements have been formulated, the JSE will be guided by the public consultation process pursuant to the provisions of the Listings Requirements and the FMA.





04

General

General



4.1 Capital Raisings

The comments submitted to the JSE as part of this consultation process were very insightful and meaningful. The following general comments were raised by commentators.

- "...the problem is not about attracting new listings by cutting "red tape" or by cutting the burden of compliance, as admirable as those initiatives are in their own right - but it should rather be about what in the listings requirements, and other JSE rules, impact positively or negatively, on primary capital raising... Attracting illiquid inward dual listings, exchange traded products, listing ADRs or various other kinds of "product" is not the answer to the crisis. Or what will sustain the JSE's social licence to operate. Primary capital raising has been very much neglected by the JSE in favour of secondary trade for decades..."
- "Removing the 300/100 spread requirement was a fatal blow to the JSE's status as a public market, and it was a mistake. It was the only rule in the listings requirements that protected the participation of the ordinary public in primary capital raising."

The JSE recognises its role to provide a public benefit and play an essential role in the raising of capital and facilitating secondary market trading, by providing liquidity for the trading of financial instruments and efficient price discovery. The Listings Requirements provide companies with various listing mechanisms such as introductions, private placings, preferential offers, offers for sale and offers for subscription. Companies therefore have very flexible capital raising mechanisms available to them to attract investors, both retail and institutional. The JSE will carefully consider if there are any aspects in the Listings Requirements that may positively or negatively impact on capital raising and if appropriate, consider further amendments.

After careful consideration and public consultation, the JSE did remove the number of public shareholders required on listing, taking into account two vital considerations at the time (i) it did not align with certain peer exchanges and (ii) it did not meaningfully contribute to public spread and liquidity.

It should also be noted that the specified number of shareholders to achieve free float was only a requirement on listing and no enforceable continuing obligation could be imposed on the issuer regarding the number of public shareholders after listing, as the issuer has no direct control over free float in secondary market trading.

The JSE appreciates all comments to strengthen our markets. In addition to existing JSE efforts to further grow retail participation in our markets, the JSE will undertake a separate workstream to see if any amendments can be made to the Listings Requirements to support this.



4.2 Effective and Appropriate Level of Regulation

As stated before, the JSE remains committed to cutting red tape and ensuring that the Listings Requirements is positioned at a level of effective and appropriate regulation.

The JSE wishes to advise the market that it has identified two further items that it wishes to explore in support of the above objectives. It would appear that the JSE is not totally aligned with certain peer exchanges on the following:

- **Fairness Opinions:** The requirement for fairness opinions for related party transactions. This matter requires further research and engagement, but initial indications are that requirements applicable to companies listed on the LSE do not require a fairness opinion where there is a shareholders' meeting and independent shareholders have a right to vote on a related party transaction with full and detailed disclosure of the transaction and terms.
- **Restrictive Matters:** Most international markets adopt the principle of regulation by disclosure. This applies to instances where certain activities of an issuer can only be undertaken if key identified shareholders agree. These reserved matters are usually entrenched in the MOI of issuers. Reserved matters are regulated by disclosure in certain international markets and the JSE will do further research to determine if such a control measure should be adopted in our market.

The JSE has always been a proponent of regulation through disclosure. The JSE has a responsibility to ensure that its regulation regime remains international competitive and relevant. The JSE is busy with active research on these matters and will approach the market in due course should any concrete proposals arise from the international benchmarking of fairness opinions for related party transactions and reserved matters on listing.

Should amendments be proposed to the Listings Requirements, it will be subject to the public consultation processes pursuant to the provisions of the Listings Requirements and the FMA.



05

Way Forward

Way Forward

As highlighted in the Consultation Paper, some of the proposals allows the JSE to take immediate steps while others may need to be placed on a medium to longer-term trajectory.

As such, there will be a mix of both immediate and medium to long-term objectives, none of which are less important. Some proposals may, however require further co-creation with market participants through research and broader market engagement. To this end, the task of enhancing South Africa's competitiveness and strengthening its financial markets is seen by the JSE as a continuing journey.

As mentioned above, the work in progress items are at various levels of development and the JSE will continue to proceed with these items at their current pace. The market will be able to monitor progress on the various

workstreams through the public consultation processes to amend the Listings Requirements.

The JSE would like to give the market some indication on what the way forward will look like on the requests for guidance and proposals. When considering the table below it must be emphasised that where amendments to the Listings Requirements are necessary, the JSE must be guided by and have due regard to the public consultation processes.

No firm timelines can be provided and any amendments to the Listings Requirements are further subject to the approval of the FSCA. The fact that the JSE is proceeding with a proposal does not necessarily mean that the proposal will come into being. Also, some items may be subject to further research and engagements with interested parties and regulators, where required.

The JSE has prioritised its workstreams and has the following roadmap in mind,

Proposal		Road Map
1	Market Segmentation	<p>The JSE will commence this process in Q4 of 2022.</p> <p>The proposal will be subject to internal discussions in the JSE relating to technology requirements and proper positioning of the proposed segments, as well as exchange benchmarking.</p>
2	DCS Structures	The JSE will commence this process in Q4 of 2022, taking into account established listings requirements of peer exchanges and exchange benchmarking.
3	Free Float: New listings	The JSE will commence this process in Q3 of 2022, taking into account recent developments in the UK and EU, and exchange benchmarking and retail investor participation.
4	Free Float: Institutional Investors and Free Float Assessment	The JSE will commence this process in Q3 of 2022, subject to further research, exchange benchmarking and retail investor participation.
5	Simplification Project: The JSE Listings Requirements	<p>The JSE will commence this process in Q3 of 2022.</p> <p>Although steps have already been taken in this regard, the magnitude of this project must be recognised, on the basis that the Listings Requirements comprise 22 Sections, 18 Schedules and 4 Practice Notes. This exercise will also entail removing and reducing the volume of guidance letters significantly.</p>
6	Auditor Accreditation	<p>The JSE will commence this process in Q3 of 2022, recognising that significant research and consultation has already taken place on this item.</p> <p>The JSE will now take further regard to the items raised for consideration in this Response Paper with the respective commentators.</p>
7	Secondary Listings Framework Review	<p>The JSE will commence this process in Q4 of 2022.</p> <p>As a reminder this workstream has two components:</p> <ul style="list-style-type: none"> • Upgrading: The JSE is actively reviewing its list of approved exchanges for potential upgrading to accredited exchange status. • Expansion: The JSE already has an Asian stock exchange in mind to expand its secondary listings offering, which was also mentioned as a potential exchange as part of the request for guidance. The JSE will in the meantime also review and consider the various proposals on exchanges suggested to the JSE.
8	Delisting Process – Secondary Listings	The JSE will commence this process in 2023, taking into account the delisting provisions in the FMA, interest of investors and exchange benchmarking.
9	Depositary Receipts and Africa	The JSE will commence this process in Q1 of 2023, subject to further research and consultation, as well as proper consideration of potential exchange control implications.
10	JSE Technology Board	Based on the outcome of the market segmentation proposal, the JSE will reapply its mind to this proposal at the appropriate time.



06

Conclusion

Conclusion

The JSE acknowledges that self-assessment and improvement is critical for capital markets reform, provided it is undertaken in a responsible, thorough and engaging manner. Engaging with the market on these proposals is vital to ensure that the JSE remains a premier listing destination for the benefit of local and foreign investors.

We look forward to this journey of reforming our listings framework for the benefit of the market as a whole.

The JSE wishes to express its appreciation and gratitude to all those parties that have taken the time and effort to be part of this market consultation process.

We encourage market participants, commentators, stakeholders and the general public to participate in all the public consultation processes to amend the Listings Requirements to ensure an effective and appropriate level of regulation.

Annexure A

Accredited Exchanges

Main Board and AltX	
1	Australian Stock Exchange
2	London Stock Exchange
3	New York Stock Exchange
4	Toronto Stock Exchange
5	Singapore Stock Exchange

Approved Exchanges

Main Board	
1	Australian Stock Exchange
2	London Stock Exchange
3	New York Stock Exchange
4	Toronto Stock Exchange
5	Singapore Stock Exchange
6	The Nasdaq Stock Market
7	Euronext Amsterdam
8	Euronext Brussels
9	Frankfurt Stock Exchange
10	Luxembourg Stock Exchange
11	SIX Swiss Exchange

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