GUIDANCE LETTER: SUSPENSIONS & TRADING HALTS

Suspensions and trading halts can be very useful regulatory tools for issuers and the JSE especially during a period where there is a delay by the issuer in releasing an announcement on SENS containing price sensitive information. The JSE has thought it wise to also provide a guidance letter in respect of (i) the suspension of the listing of securities of an issuer pursuant to the provisions of the JSE Listings Requirements (the “Requirements”) and (ii) the use of trading halts.

Suspension

The suspension of listing of the securities of an applicant issuer by the JSE may be exercised pursuant to paragraphs 1.6 – 1.9 of the Requirements. A suspension can either be (i) initiated by the JSE or (ii) at the request of the issuer.

Suspension of listing of the securities of an issuer means that no trading can take place in respect of the issuer’s securities for the period whilst the issuer is suspended.

Initiated by the JSE

Pursuant to paragraphs 1.6 – 1.8 of the Requirements a suspension of securities of an issuer can be initiated by the JSE in the following two circumstances:

- it will further one or more of the objects contained in Section 2 of the Financial Markets Act No.19 of 2012 (the “FMA”), which may also include if it is in the public interest to do so; and
- if the issuer has failed to comply with the Requirements and it is in the public interest to do so.

(the “considering factors”)
When the listing of securities of an issuer is under threat of suspension, the affected issuer shall be given the opportunity of making written representations to the JSE why the suspension should not be affected prior to making any decision to suspend such listing.

The suspension provisions pursuant to the Requirements are always subject to the provisions of the FMA. The approach above mirrors the provisions of sections 12(1) and 12(2) of the FMA dealing with the suspension of trading, subject to the provision of section 12(3) which affords the JSE with certain powers to proceed with immediate suspension of trading where (i) the Requirements are not complied with or (ii) if a circumstance arises which the Requirements envisage as a circumstance justifying the immediate suspension of trading (the “FMA powers”).

The JSE can therefore only proceed with a suspension of listing of securities of an issuer on the following basis:

- the considering factors are present and the issuer has been given the opportunity of making written representations to the JSE why the suspension should not be affected; and
- the JSE exercises its FMA powers.

It should be noted that suspension initiated by the JSE is generally a timely process on the basis that an issuer is afforded time to make written representations to the JSE, before the JSE will make a decision on the threatened suspension. Issuers should therefore be mindful of the FMA powers of the JSE, subject to the provisions of section 12(3) of the FMA, which could lead to an immediate suspension of the listing of the securities of an issuer in certain circumstances.

It should be noted that the above guidance does not deal with the suspension powers of the JSE in the event of non-compliance relating to publication of financial information pursuant to the provisions of Section 3 as those provisions are very prescriptive in nature and do not require guidance.

At the request of the issuer

Pursuant to paragraph 1.9 of the Requirements the listing of securities of an issuer may be suspended by the JSE at the request of the issuer in respect of various prescribed events, of which the most relevant for purposes of this guidance letter is when it is apparent that there are two levels of information in the market and the JSE considers that the situation cannot be remedied by the immediate publication of an announcement to clarify the situation (“two levels of information event”).

It should be noted however that if a two levels of information event is present, the first recourse of the issuer must be to immediately release an announcement (i) to provide clarity on the speculation in the market or (ii) providing details of the information constituting price sensitive information. On the basis that the issuer can release such an announcement and there is any delay by the issuer in releasing an
announcement immediately on SENS to clarify the situation, the issuer must approach the JSE with a request for suspension of the listing of the securities of the issuer.

The board of the issuer or a duly authorised representative must contact the JSE immediately in respect of the request of the issuer for suspension on the following numbers: (011) 520 7217 or (011) 520 7059. Please ask to speak to any senior corporate finance officer or manager.

Although the circumstances when an issuer may approach the JSE for a suspension of the listing of securities are limited, it should be noted that the FMA powers afforded to the JSE could be utilised as a regulatory tool by the JSE as the Requirements cannot envisage all circumstances that may arise in commercial practice which may warrant a suspension.

*Caveat: The JSE strongly recommends that a request for suspension by the issuer must only be utilised in exceptional circumstances and emphasis is placed on announcing information without delay when it constitutes price sensitive information. Also, the fact that the JSE has received a request for suspension by the issuer, it does not necessarily mean that such suspension will be granted as the decision of suspension lies within the discretion of the JSE.*

**Trading Halt**

Trading halts take place pursuant to the provisions of the JSE Equity Rules under Market Regulation (Surveillance). It is not a measure prescribed by the provisions of the Requirements.

Pursuant to paragraph 6.80 of the JSE Equity Rules, the Director Market Regulation (subject to internal approvals) may declare a trading halt in the equity securities of an issuer in circumstances where the Director Market Regulation determines that the trading activity in an equity security –

- is being or could be undertaken by persons possessing unpublished price sensitive information that relates to that security;
- is being influenced by a manipulative or deceptive trading practice; or
- may otherwise give rise to an artificial price for that equity security.

In these circumstances and if not already implemented by the JSE, it is recommended that the issuer should request a trading halt. The board of the issuer or a duly authorised representative must contact the JSE immediately in respect of the request of the issuer for a trading halt on the following numbers: (011) 520 7217 or (011) 520 7059. Please ask to speak to any senior corporate finance officer or manager.

Trading halts are implemented for a very short period of time and should generally not exceed two days. The JSE does however reserve the right to rather implement a suspension of the listing of the securities of an issuer in accordance with the provisions of the Requirements.
Caveat: The JSE strongly recommends that a request for a trading halt by the issuer must only be utilised in exceptional circumstances and emphasis is placed on announcing information without delay when it constitutes price sensitive information. Also, the fact that the JSE has received a request for a trading halt by the issuer, it does not necessarily mean that such trading halt will be granted as the decision of a trading halt lies within the discretion of the JSE, through the Director Market Regulation.

We request issuers to consider the above regulatory tools as issuers should be aware of all measures available to them when dealing with price sensitive information.

Dual Listings

It is common practice in certain primary markets to either suspend the issuer or halt trading in the securities of the issuer in circumstances not envisaged in the Requirements. In the event of such a suspension or trading halt, the general approach of the JSE will be to follow the regulatory approach of the primary market and mirror the suspension or trading halt on the JSE. The timing in the suspension or trading halt is of vital importance to the JSE in order to ensure that the suspension or trading halt is implemented simultaneously on both markets in order to avoid a situation where investors can trade in one market but not the other.

Issuers and sponsors must therefore ensure that the JSE is notified sufficiently in advance of any suspension or trading halt to ensure that the JSE can accommodate the request and implement same simultaneously. Issuers and sponsors must further ensure that the advisers and regulators responsible for implementing the suspension or trading halt in the primary market is notified of the listing on the JSE and the importance of implementing the suspension or trading halt simultaneously.

The principles above apply equally to dual listings where the JSE is the primary exchange although the JSE is not obliged to implement a suspension or trading halt instituted by the other exchange.

Announcements

Suspensions or trading halts must be followed with a SENS announcement explaining the circumstances leading to the decision. It is important to note that such announcement must only be released immediately after the suspension or trading halt has been implemented. Releasing an announcement dealing with the suspension or trading halt prior to the implementation of the suspension or trading by the JSE could cause investor prejudice and must be avoided.

Please contact Alwyn Fouchee on (011) 520 7678 if you have any questions regarding the above.
Yours faithfully

[Signature]

A F VISSER: GENERAL MANAGER
ISSUER REGULATION