JSE Limited Listings Requirements Guidance Letters

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General: Administrative Issues

Guidance Letter: Rulings

Date: 21 June 2012

Background

With effect from 1 April 2006 the JSE Limited ("JSE") introduced its revised documentation inspection fee structure. As part of that structure we introduced a fee for formal rulings. That fee was initially R3 000 (excluding VAT) and taking into account the annual inflationary increases currently sits at R3 930.

We remind you that the principle behind the introduction of this fee was that the staff of the Issuer Regulation Division ("Division") spend a substantial amount of time considering these rulings which are then binding on the JSE.

The Division continues, as in the past, to provide general telephonic guidance and advice but such advice is not binding on the JSE. The Division deals with a high volume of calls during any given day and the information provided to us during telephonic discussions is, more often than not, incomplete.

Reminder of ruling request process

The following instances require payment of the ruling fee:

- Requests for dispensation from the Listings Requirements ("LR");
- Requests for interpretation of the LR;
- Requests for guidance on the application of the LR; and
- Requests for confirmation that the LR have been correctly interpreted.

Furthermore we remind you that every ruling request must be accompanied by a letter from an approved executive of the Sponsor / Designated Adviser, which letter must contain their detailed consideration of the matter the subject of the ruling request. A standalone letter from a listed company will not be considered as a valid ruling request.

The JSE is committed to comply with the standard turnaround times of 5 business days for these ruling requests. It is likely however that in the instances of an incomplete submission or a highly complex matter that the turnaround times may become longer. We undertake to keep you informed about such potential delays.

Revised approach to billing for ruling request

The JSE has decided to revise the current billing model for ruling requests as in many instances:

- the ruling is highly complex or contains several different requests covering various sections of the LR; and
- complex interpretation matters or dispensation requests are not identified before the submission of a document and are left to be resolved as part of the documentation review process. (This practice in itself is undesirable as it can cause unnecessary delays to the standard documentation submission process).

In light of the above we wish to advise the following:

- the standard fee per ruling request (which is currently R3 930) can be charged multiple times despite the fact that there may be only one ruling request letter;
- a ruling fee may be charged, in addition to the standard documentation inspection fee, if during the course of the review process there are any complex dispensation or ruling requests.

Multiple charges can be made, inter alia, when the ruling request:

- cuts across more than one section of the LR. For example an additional fee would be charged in instances of a ruling request dealing with a categorisation (section 9) and a related party (section 10) matter; or
- is of a highly technical or complex nature, which requires extensive debate and consideration (for example for a complex multiple events transaction or a BEE deal).

As it relates to charging ruling fees during the documentation process, this will be done where the matter needs to be taken to the JSE's technical committee for consideration. The additional billing will only be made if the second reader on the document believes that the additional charge is warranted. The JSE undertakes to be reasonable in this approach and will ensure that the Sponsor/ Designated Adviser are advised if we believe additional fees should be charged.

This revised approach will be effective for all rulings and documents submitted on or after 1 July 2012.

Guidance Letter: Submission of Agreements to the JSE

Date: 14 August 2012

There has been some confusion on the point on how and when agreements should be submitted to the JSE in the submission, review and approval process (the "Submission Process"). Issuers are required to send out certain circulars to their shareholders within a fixed period of time pursuant to the JSE Listings Requirements and as such the status of the signed agreement/s become vital in the Submission Process.

We appreciate the commercial realities of transactions and that in certain cases agreements are in the process of being negotiated between the lawyers and/or other external parties by the time the first submission is contemplated or has reached the JSE. On this basis, the JSE has considered the matter internally and has come to the following suggested approach for the submission of agreements to the JSE in order to facilitate the Submission Process:

- The rule in principle: It is preferred that signed agreements are submitted to the JSE at the first submission.
- The compromise approach: If it is not possible (due to whatever reason) to submit signed agreements at first submission, the JSE is willing to facilitate the Submission Process and will accept draft agreements for review at first submission. Final signed versions of any agreements should however reach the JSE prior to informal approval being granted with copies duly marked-up reflecting clearly any and all changes to the agreements against the previous draft agreements submitted to the JSE. Should the compromise approach be elected, there are certain considerations that should be taking into account:
- Should the marked-up changes to the draft agreements be substantial, taking into account the complexities of the changes, the volume and number of agreements involved (the "considering factors"), the JSE will inform the sponsor

that it will require more time to review and consider the additional changes to the agreements.

- The JSE will charge additional fees pro rata to the documentation fees, should the JSE be of the view that, based on the considering factors, more time and allocation of resources will be required to finalise the Submission Process. As a result the above compromise approach may have an impact on the timetable and fees of the transaction and as such this approach should be carefully considered prior or at an early stage of the Submission Process. It should be noted that minor marked-up changes to agreements would not trigger additional time or fees from a JSE perspective.

It is in the interest of all parties that the JSE review any documents (along with agreements) in the Submission Process in a swift and efficient manner. Where agreements are involved it would be beneficial to all parties to have the final signed agreements as soon as possible in order to avoid potential delays, confusion or extra fees.

Guidance Letter: Information to be included in SENS announcements

Date: 2 October 2013

The Issuer Regulation Division (**"the Division"**) wish to inform Sponsors and Designated Advisors that the following information is required to be included in the relevant SENS announcements issued on behalf of issuers. This information is used by various stakeholders and it is important that same is included.

- The source of the distribution with regards to payment of dividends, cash disbursements and capitalisation issues (i.e. whether it is capital or revenue in nature) must be disclosed in the declaration announcement.
- The ISIN for a Letter of Allocation with regard to a Rights Offer/Claw-back Offer must be included in the declaration announcement.
- With regard to schemes, if part elections (i.e. a combination of cash or shares) are possible, this fact together with what the default will be must be disclosed in the declaration announcement.
- The restrictions that exist in certain countries must be disclosed in the declaration announcement, specifically with regard to rights offers. Additionally, disclosure must be made on how non-residents are dealt with in a particular corporate action including whether they may participate or not.

Kindly note that dual-listed issuers must advise and obtain approval from the JSE with regard to the timetables for corporate actions stipulated in Schedule 24. Issuers must ensure that the JSE is notified in advance in order to ensure that the JSE can accommodate the processing of these corporate actions for shareholders on the South African share register. Please refer to the further information in the guidance letter dated 10 March 2010.

Guidance Letter: Presentation of an AltX Business Plan

Date: 25 August 2015

In order to ensure that companies applying for a listing on AltX are able to present a comprehensive business plan to the AltX Advisory Committee (**"the Committee"**), we have prepared this guidance letter. This process has become necessary as to standardise and improve the business plan presentations to ensure a fair and equitable process based on the information presented.

Set out below is the process to be followed prior to being granted an opportunity to present to the Committee.

In terms of paragraph 21.37 of the JSE Listings Requirements (**the "Requirements**") the directors of the issuer, as well as the Designated Advisor (**"DA"**), must present, in person, a detailed business plan (including but not limited to historic and forecast financial information) to the Committee prior to being granted a listing. The Committee shall then advise the JSE as to the eligibility of the issuer. The JSE shall consider the advice of the Committee and exercise its discretion whether or not to

grant the issuer a listing.

The JSE will only allow a first submission in respect of an AltX listing if the Committee has confirmed the eligibility of the applicant issuer in writing.

Various issues have recently arisen in respect of the presentation of the business plan and the JSE has therefore decided to issue a guidance letter in this regard.

The aim of this guidance letter is to prescribe the minimum content and process for a business plan to be submitted and presented to ensure that the Committee has all the relevant information to make an informed decision which in turn will avoid delays in the approval process.

It's important to note that the Issuer Regulation Division (the **"Division"**) will assume full responsibility for this process with immediate effect. Members of the Capital Markets Division will still attend Committee meetings but will no longer be responsible for this process.

Business Plan: Minimum Content

1. General Overview of the Issuer

   The aim of the general overview is to provide general introductory information in respect of the issuer to the Committee, which must as a minimum address the following:

   - Full name and registration number of the issuer and major subsidiaries;
   - Place and date of incorporation of the issuer and major subsidiaries;
   - Details of the DA;
   - Full names, addresses and CV's of the board of directors of the issuer and major subsidiaries, including dates of appointment;
   - Details of the business of the issuer, including a diagram of the group structure;
   - Details of the primary exchange (if applicable);
   - Full details of any capital that will be raised and in which jurisdictions; and
   - Full details of any acquisitions and disposals in the last 12 months and in which jurisdiction.

2. Industry

   The aim of the industry disclosures is to focus on the industry in which the issuer intends to operate as a listed company, which must as a minimum address the following:

   - General overview of the industry with reference to current market conditions;
   - Basic entry criteria to enter the industry (required licenses or other);
   - Experience of directors and senior management of the issuer with specific reference to the industry; and
   - Customer profile.

3. Strategy of the Issuer

   The aim of the strategy disclosures is to explain the competiveness of the issuer in the industry, which must as a minimum address the following.

   - Reason for listing on AltX;

- If the issuer qualifies for a main board listing this fact must be disclosed and a motivation provided for pursuing a listing on AltX;
- The vision and mission of the issuer;
- Feasibility of current business approach, including a SWOT analysis (strength, weaknesses, opportunities and threats);
- BEE status and developments; and
- Marketing plan, including details of feasibilities studies and research undertaken.

4. Financial Position and Performance

The aim of the financial disclosures is to provide details of the financial status of the issuer, which must as a minimum address the following:

- The issuer's audited historical financial statements in accordance with IFRS for the preceding three years (or a lesser period since incorporation), including a summarised overview of the financial highlights for each year;
- The medium and long term forecasts with clearly documented assumptions. The manner in which the assumptions tie in with the issuer's strategy must be addressed;
- A pro forma balance sheet, taking into account any capital raising and/or acquisitions/disposals, with clearly documented assumptions showing the status of the issuer as at the anticipated date of listing; and
- Details of current and near future funding requirements of the issuer.

5. Regulatory Environment

The aim of the regulatory disclosure is to confirm and illustrate compliance with the basic listing entry criteria, which must as a minimum address the following:

- Method of listing;
- Compliance with paragraph 21.3 of the Requirements;
- Mineral and property companies must illustrate compliance with paragraphs 12.5–12.7 and 13.3 respectively;
- Details of the legal and policy frameworks of the issuer in order to comply with industry and regulatory obligations of the issuer; and
- Any matter that the DA and/or the directors of the issuer, feel should be brought to the attention of the JSE which may have a regulatory or business impact on the issuer.

6. AltX Business Plan Process

- The submission must be made by the DA using the "Webstir" system of the Division;
- The Webstir submission must be made to the Division before 10h00 and the event type of "Business Plan" must be selected;
- This Webstir submission will then be allocated to a Corporate Finance Officer (**"the CFO"**) who will conduct a review of the business plan to ascertain whether it contains the required disclosures pursuant to the provisions of this guidance letter;
- The CFO will provide feedback to the DA within 72 hours of the Webstir submission. The feedback will either be (i) confirmation that the business plan contains the required disclosures or (ii) comments on the business

plan that must be addressed by the issuer and DA;

- In the event of comments on the business plan, the review process will continue in the ordinary course for submissions to Corporate Finance (with 48 hours turnaround) until the CFO confirms that the business plan contains the required disclosures;

- Only once the above confirmation has been provided by the CFO will the DA be permitted to make the formal submission of the business plan for consideration by the Committee. No dates for presentation to the Committee can be reserved before such confirmation has been granted;

- The submission of the business plan to the Committee must be made in the usual manner through Webstir by 10h00;

    - The Division will convene a Committee meeting at the JSE as soon as is convenient for all parties. The DA will be notified of the time, date and location of the Committee meeting and the presence of both the DA and the directors of the issuer will be required; and

    - The DA will be notified in writing within 48 hours from the conclusion of the Committee meeting regarding the outcome.

    - It should be noted that if the Committee advises the JSE on the eligibility of the issuer, with conditions, such conditions must be met before listing documentation can be submitted to Corporate Finance. If the conditions have not been met or the DA/issuer advises the JSE on an alternative approach, the issuer will be required to present to the Committee afresh.

    - In the event that the Committee advises the JSE that the issuer is eligible for listing on AltX, the approval letter from the Committee will be based on the information as presented to the Committee. If there are any changes to the business plan and the information in the listing documents as submitted to Corporate Finance, this fact/s must be disclosed by the DA to Corporate Finance.

Special Purpose Acquisition Company ("SPAC")

Please note the business plan for a SPAC only needs to follow the AltX Business Plan Process once a SPAC has entered into agreement to acquire Viable Assets. The business plan for the SPAC must include all the relevant information about the Viable Asset in order for the Committee to make an informed decision.

Guidance Letter: Procedure for approval of documentation

Date: 8 April 2014

Paragraphs 16.3 and 16.4 of the JSE Listings Requirements (the **"Requirements"**) address the procedure for approval by the JSE of documents submitted through a sponsor pursuant to paragraph 16.2 of the Requirements.

The above paragraphs address the three step approval process, being (i) informal comments, (ii) informal approval and (iii) formal approval, as well as the JSE's turnaround times for comments/approval. Based on our experience, documents submitted to the JSE from first submission to formal approval generally take up to four submissions over a period of approximately four to six weeks. This can of course be sooner or later depending on the complexity of the document and/or issues raised.

It has come to our attention that on several occasions the number of submissions made have exceeded five and/or it has taken a period of between five and eight months to obtain formal approval from the JSE, notwithstanding the strict turnaround times imposed on the JSE for comments/approval.

A prolonged submission process (both in number of submissions and the period of time in respect of submissions) is not a favourable situation for the JSE, sponsor or the issuer for various reasons and has been identified as an area of risk for the JSE. A

submission to the JSE must be well prepared by the sponsor and the issuer to ensure that an objective and focused review can be applied by the JSE within (i) a reasonable number of submissions and (ii) a reasonable period of time. Taking into account the high volume of submissions dealt with by a Corporate Finance Officer (**"CFO"**) at any point in time, it is imperative that the submission process remains current and active to ensure objective consideration of the document as a whole (without piecemeal considerations over a substantial period of time).

Timing in respect of Procedure for Approval

In order to minimise the risk and encourage an active review process, the JSE hereby wishes to draw your attention to the revised approach in respect of the procedure for the approval of documentation.

The procedure for approval must not exceed five submissions and a period of three months. In the event that (i) the number of submissions and/or (ii) the period is exceeded, the JSE may elect to reject the submission as a whole. The sponsor will be allowed to resubmit, however, this submission will be treated as a first submission and will be allocated to a new CFO and second reader for consideration and review. The reason for this approach is that CFOs are required to undertake an objective and focussed review on the document as a whole within a reasonable period of time. Several submissions, as well as submissions over a lengthy period of time, (i) will inevitably have a negative impact on the review process and (ii) may impact the time a CFO has allocated to other complete and timely submissions.

We do accept that there may be valid reasons for a delay in the submission process, however, we would encourage issuers and sponsors to discuss any matters which may cause a delay in the submission and review process with the JSE or motivate the reason/s for the delay adequately during the submission process. In these circumstances the provisions above may not be applied by the JSE.

We further believe that this revised approach will improve the quality of first submissions, as there have been instances where first submissions have been made without certain material information being included, merely for the sake of getting the document into the JSE review process.

Guidance Letter: Procedure for approval of documents (Part 2)

Date: 15 March 2018

The JSE wishes to address certain issues that have arisen of late in respect of the procedure for approval of prospectuses, pre-listings statements and circulars (collectively referred to as "**Circular/s**") submitted to the JSE pursuant to Section 16 of the JSE Listings Requirements (the "**Requirements**"). The JSE has always been very accommodating during the approval process but the issues that have arisen is now introducing significant risk to (i) the overall approval process and (ii) the regulatory duties of the JSE.

Pursuant to paragraph 2.8(c) of the Requirements, it should be noted that at the time of first submission to the JSE the Circular must be in full compliance with the Requirements to facilitate an effective and meaningful review process by the JSE in accordance with the turn-around timetables as prescribed in the Requirements.

It has come to the attention of the JSE that the following events frustrate the review process of Circulars, which impact the effectiveness of the JSE approval process:

- The submission of rulings simultaneously with the draft Circular on first submission or during the review process of a Circular;
- The submission of a Circular with material information outstanding such as financial information or otherwise, which specifically includes the omission of the confirmation required by the accounting specialist (the "**paragraph 8.56 letter**") or the submission of a qualified paragraph 8.56 letter (on the basis that the preparation of the financial information is still a work in progress);
- Material amendments and re-formatting of Circulars from one submission to the next; and
- The submission of draft agreements.

In order to ensure the effectiveness of the review and approval process of the JSE as it relates to Circulars, the JSE will from the date hereof not accept any submission that –

- is accompanied by a ruling request;
- is not accompanied by a paragraph 8.56 letter; is accompanied by a qualified paragraph 8.56 letter; or
- is incomplete in any other respect.

In the event that any of the above events is unavoidable, the JSE must be consulted in advance for special arrangements.

Sponsors and designated advisers are required to identify in-principle issues requiring a ruling before the first submission of Circulars to the JSE in order to ensure an effective and meaningful review process.

Sponsors and designated advisers are reminded of the guidance letters –

- "*Submission of Agreements to the JSE*" dated 14 August 2012. The rule in principle is that it is preferred that signed agreements are submitted to the JSE at first submission. In the event that draft agreements are submitted to the JSE, delays in the approval of the JSE may occur and additional fees could be charged; and
- "*Procedure for Approval of Docume*nts" dated 8 April 2014. If the procedure of approval exceeds five submissions and/or a period of three months, the JSE may elect to reject the submission as a whole.

In light of the above, it should be noted that the following, which have unfortunately become regular practises, are unacceptable and must be avoided:

- **Formal Approval**: CFOs have at times been placed under undue pressure to grant informal approval on Circulars in order for a sponsor to proceed with formal approval, although the CFO in question has not granted informal approval. Pursuant to paragraph 16.3(d)-(g) of the Requirements, the rule is that informal approval must be granted by the CFO first before a formal submission can be considered. The reason for this is that the CFO in question presents the Circulars to the Overnight Committee on the basis that it is in full compliance with the Requirements. The Overnight Committee places reliance on the review undertaken by the CFO and as such the JSE cannot entertain requests to proceed with formal approval unless the CFO has in fact granted informal approval. In the event that the above is unavoidable, the JSE must be consulted in advance for special arrangements.
- **Rejections of Documents**: As mentioned above, at the time of first submission to the JSE the Circular must be in full compliance with the Requirements. The JSE is entitled to reject any incomplete submission of a Circular. The informal comment process allows the JSE five days to complete the first submission review. Depending on a CFO's work load, it could be that the CFO only attends to the review of the Circular on day three or four (of five days). Sponsors and designated advisers therefore run the risk that their incomplete submission will be rejected by the JSE (even during the later part of the five day review process). The lapse of time during a submission process will therefore not impair the JSE's ability to reject the submission of Circulars.
- **Planning Various Submissions**: It would appear that a practise has developed with certain sponsors to build in various submissions to the JSE as part of the review process, in order to obtain high-level comments from the JSE or to appease an issuer to say that the Circular has been submitted to the JSE (although not in full compliance with the Requirements). This practise is unacceptable and sponsors are once again reminded of the above guidance letter which stipulates that if the procedure of approval exceeds five submissions and/or a period of three months, the JSE may elect to reject the submission as a whole.

It is not in the interest of an issuer to have unnecessary delays, which the JSE believes can be avoided or managed effectively. We kindly request the commitment of sponsors and designated advisers to give effect to this letter for the benefit of all issuers.

SECTION 1

Guidance Letter: Fairness opinions on delisting

Date: 5 March 2012

We refer to the practice letter that we issued in May 2010 relating to the above. In that letter we indicated that we would not allow the application of a minority discount in order to determine whether an offer is fair in the case of a delisting. Since that communication we have engaged extensively with several parties on this topic. Specific concern has been raised as to the extent to which the JSE becomes involved in valuation methodologies being applied by an independent expert. This letter serves to replace the practice letter dated 13 May 2010.

When issuing an opinion on a delisting in terms of paragraph 1.15 of the Listings Requirements ("LR") as read with Schedule 5 and the Securities Services Act, 2004:

- The expert must perform a valuation of the entity as whole.
- The expert is not prohibited from applying any discounts or premiums to such valuation which they believe impact their valuation in order to opine whether the offer is fair or not.
- The expert's opinion must include full disclosure of the valuation number both including and excluding any discount or premium applied. There must be separate disclosure of the details and value attributed to each of the different types of discounts or premiums the expert has applied to the valuation in reaching their opinion.
- The expert must explain why they believe each of the discounts or premiums is relevant in the circumstances.
- The inclusion of a valuation range (for both the entity valuation and the discounts/premiums) as opposed to an absolute figure is acceptable, but that range should not be so wide as to render it meaningless and the opinion must include justification for the size of the range. The JSE may ask the expert to narrow that range.

The above request to include additional disclosure in the fairness opinion issued by an expert in the case of a delisting is within the ambits of paragraph 5.11 of Schedule 5 of the LR. We will therefore not be making a separate amendment to the LR at this stage.

SECTION 3

Guidance Letter: Cautionary Announcements

Date: 23 October 2015

This letter supersedes the previous guidance letter dated 18 May 2012.

The JSE is aware that certain issuers are releasing bland cautionary announcements which in many instances may not be required and as a result causes unnecessary speculation in the market. It is further important to note that a bland cautionary announcement is merely an early warning announcement to the market and does not provide sufficient information to assist shareholders or the market in understanding the purpose of the cautionary announcement.

The JSE has therefore decided to issue guidance on the requirement to release cautionary announcements pursuant to the provisions of paragraph 3.9 of the JSE Listings Requirements (the "Requirements").

In this guidance letter three aspects of the Requirements will be addressed in the aim to provide clarity on the (i) necessity and (ii) timing of a cautionary announcement pursuant to the provisions of the Requirements.

General: Obligation of disclosure

Issuers must publish an announcement in respect of the following:

- Without delay, details relating, directly or indirectly, to the issuer that constitutes price sensitive information pursuant to paragraph 3.4(a) of the Requirements; and/or

- Immediately, after terms have been agreed, verbally or in writing, in respect of any transaction or corporate action pursuant to the provisions of the Requirements ("agreement of terms").

Price Sensitive Information

Paragraph 3.4(a) of the Requirements refers to the obligation of an announcement in respect of price sensitive information unless the information is kept confidential for a limited period of time.

The reference to a "limited period of time" refers to a period where the information of an issuer does constitute price sensitive information, however the issuer does not have certainty in respect of the information and a period of time is then afforded to the issuer to obtain that certainty provided the information is kept confidential during that period (the "PSI window period"). Once certainty is achieved, Issuers must publish an announcement pursuant to paragraph 3.4(a) of the Requirements.

Caveat: The JSE strongly recommends that the "limited period of time" provision in paragraph 3.4(a) of the Requirements must only be utilised in exceptional circumstances and emphasis is placed on announcing *information without delay when it constitutes price sensitive information.*

Cautionary Announcements

A cautionary announcement is required in the following circumstances pursuant to paragraph 3.9 of the Requirements:

Immediately after an issuer knows of any price sensitive information and the necessary degree of confidentiality of such information cannot be maintained or if the issuer suspects that confidentiality has or may have been breached, an issuer must publish a cautionary announcement. An issuer that has published a cautionary announcement must provide updates thereon in the required manner and within the time limits as prescribed in the Requirements. *See paragraph 3.9 of the Requirements for the full text.*

A cautionary announcement pursuant to the provisions of paragraph 3.9 will only be necessary during two periods, being –

- during the PSI window period pursuant to the provisions of paragraph 3.4(a) of the Requirements; and
- during a period of negotiations prior to the agreement of terms in respect of transactions or corporate actions where the information constitutes price sensitive information,

and only to the extent that the necessary degree of confidentiality of such information cannot be maintained or if the issuer suspects that confidentiality has or may have been breached.

Cautionary announcements have a limited lifespan and must be followed up with an announcement without delay pursuant to paragraph 3.4(a) of the Requirements once the issuer has obtained certainty or immediately after the agreement of terms.

Recommendations on Cautionary Announcements

We recommend that the following be taken into account in relation to the release of cautionary announcements:

1. Issuers must ensure that they have sufficient internal controls and policies in place to ensure that all price sensitive information is kept confidential.

2. The timing involved when issuing an announcement, being "without delay" and "immediately" is of vital importance to the JSE and the market. Issuers must therefore also ensure that they have policies in place to deal with the required internal approvals within the Issuer to approve an announcement, in prescribed timely manner, before release on SENS. Should there for any reason whatsoever be a delay (i) in obtaining the necessary approvals or (ii) releasing the announcement on SENS, the JSE must be notified immediately.

3. Issuers should refrain from releasing bland cautionary announcements to avoid unnecessary speculation in the market. Additional details that can be made available should rather be included to give investors and market participants an indication of the nature of the price sensitive information.

4. In deciding whether to release a cautionary announcement, issuers must carefully consider section 81 of the Financial Markets Act dealing with "False, misleading or deceptive statements, promises and forecasts".

Guidance letter: Directors' dealings

Date: 6 October 2008

Background

The JSE Limited ("JSE'') has not only received numerous requests for interpretations on the Listings Requirements relating to certain types of directors' dealings but we have also noticed that the disclosures in certain announcements have not been in full compliance with paragraph 3.63(b). The JSE has therefore decided to issue guidance in order to provide more clarity.

Definition of director

Paragraph 3.63 (a) stipulates very clearly which parties need to disclose their dealings and we do not believe that any further guidance on this particular requirement is necessary other than to confirm that it primarily includes directors (as defined in the Companies Act and including alternate directors) and company secretaries of both the listed company and any of its major subsidiaries as well as any associate of these parties. The Listings Requirements contains a clear definition of "associate."

Definition of transaction or dealing

The one area where we feel that additional guidance may be appropriate relates to the definition of "transaction" as referred to in paragraph 3.64.

The requirement refers to "securities relating to the issuer". The definition of securities in the Listings Requirements refers to the definition as contained in the Securities Services Act ("SSA") 36 of 2004, and for ease of reference, we have included that definition in Annexure 1 In determining whether dealing in a security must be disclosed one must first take account of the definition as contained in the SSA and secondly whether the security in question could provide direct or indirect exposure to the share price of the listed company. In addition, paragraph 3.64 also provides specific examples including warrants, single stock futures and other derivatives issued in respect of an issuer's securities.

In order to provide further guidance on this definition we feel that it may be useful to deal with particular categories of transactions which we have encountered in the past and which must be disclosed.

- Ordinary shares – this will be a normal sale or purchase of shares in the listed company. It will also include a purchase or sale of nil paid fetters in terms of a rights offer.
- Subscription of securities – this includes a subscription by a director of new shares in terms of an issue of shares for cash, rights offer or any other means.
- Agreements to sell/purchase or subscribe for securities – this must be announced when the agreement is signed irrespective of whether any shares are issued or cash flows at that time.
- Options – this will normally relate to a formal share option scheme but can also be any other option. It should be noted that each stage of an option must be announced including the acceptance, acquisition, disposal and exercise.
- Single stock futures – the purchase or sale of a single stock future must be announced. It should be noted that if shares are sold and the equivalent exposure is purchased through a single stock future, then both legs of the transaction (the sale of the shares and the purchase of the single stock future) must be announced even if it is believed that the director's exposure has not

changed. The closing out of a single stock future is also a transaction as defined and is therefore subject to the Listings Requirements, The JSE accepts that the rolling of a single stock future is merely an extension of an existing position and is therefore not subject to the Listings Requirements.

- Contracts for difference – the approach to single stock futures applies equally to these contracts.
- Donations – donations made or received fell within the ambit of the Requirements and must be announced.

Clearance to deal

This particular aspect of the Requirements is generally well understood with a couple of exceptions. Certain transactions, as described above (e.g. options and single stock futures) have many legs to them and the general rule is that every leg of a transaction requires clearance to deal. An aspect which has been misinterpreted in the past is that all associates of directors require clearance. The JSE is mindful of the fact that it is not possible in all cases for a director to prevent an associate from dealing and it therefore follows that it would serve no purpose for that director to request permission prior to such a trade by the associate. The general test which must be applied in these cases is whether the director can prevent the associate from trading and an example of this would be the case of a minor child (being an associate of *a* director) where the director can legally prevent the trade from taking place. Another example could be where a spouse or a company in which a director has a 35% interest (defined as an associate) enters into a transaction but the director does not have the legal ability to stop the trade from happening. In these cases, directors must dearly observe the provisions of paragraph 3.71 and 3.72.

Prohibited periods

Prohibited periods are dearly defined within the Listings Requirements but the JSE is often approached for an interpretation where a director is obligated to take delivery of shares without having a choice in the matter. An example of this could be where he/she has an option which was purchased or obtained and which can only be exercised on a specific date that happens to fall within a prohibited period. This could also be the case with a single stock future where delivery of the shares has to take place in a prohibited period. The JSE is generally amenable to allowing these trades to take place in these periods but a ruling on the specifics must be sought from the JSE. The JSIE's decision in this regard will be separate from any potential implications relating to the insider trading provisions of the SSA.

Guidance on disclosures required

Name of director: John Davies (this is the name of the director/company secretary who traded).

Name of company: ABC Limited (this is the name of the listed company).

Date of transaction: 1 March 2008 (this is the date upon which the transaction is entered into).

Number of shares: 100 000.

Note: 100 cents (there will be no price in the case of a donation).

Total value: R 100 000.00 (this will generally be the number of securities multiplied by the price – a deemed value based on the prevailing market price must be included in the case of a donation. In the case of options the value will be the number of options multiplied by the strike/exercise price. The existing requirements do not stipulate that profits/losses made on options must be disclosed in the announcement and it is therefore not required at the moment).

Class of securities: ordinary shares (this is the actual security which has been traded – examples are ordinary shares. options, warrants. single stock futures. contracts for difference, etc.

Options: (strike/exercise price, strike/exercise date, periods of exercise/vesting)

Nature of transaction: Sale of shares (this is a description of the transaction – examples are sale/purchase of shares, acquisition/disposal of single stock futures, acceptance/exercise of options, etc.).

Nature of directors interest in transaction: Direct/Indirect Beneficial. This is a description of the director's interest. In the case of transactions by associates, this will include a description of the relationship e.g. sale of shares by director's wife/minor child. Some examples of different interests are:

- direct beneficial – the security is registered in the name of the director and the director has voting rights over the security or the right to receive the dividends in respect thereof;
- indirect beneficial – the security is not registered in the name of the director but rather through a trust or an investment holding company in which the director holds any or all of the voting rights and/or is a beneficiary of the trust.

Clearance to deal: Yes (this is a factual statement). If clearance was not obtained for whatever reason, a statement must be included together with the reasons.

Annexure 1

"Securities –

(a) means –

(i) shares, stocks and depository receipts in public companies and other equivalent equities, other than shares in a share block company as defined in the Share Blocks Control Act, 1980 (Act 59 of 1980);

(ii) notes;

(iii) derivative instruments;

(iv) bonds;

(v) debentures;

(vi) participatory interests in a collective investment scheme as defined in the Collective Investment Schemes Control Act, 2002 (Act 45 of 2002), and units or any other form of participation in a foreign collective investment scheme approved by the Registrar of Collective Investment Schemes in terms of section 65 of that Act;

(vii) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country;

(viii) instruments based on an index;

(ix) the securities contemplated in subparagraphs (i) to (viii) that are listed on an external exchange;

(x) instrument similar to one or more of the securities contemplated in subparagraphs (i) to (ix) declared by the registrar by notice in the Gazette to be .a security for the purposes of this Act;

(xi) rights in the securities referred to in subparagraphs (i) to (x);

(b) excludes –

(i) money market instruments except for the purposes of Chapter IV; and

(ii) any security contemplated in paragraph (a) specified by the registrar by notice in the Gazette;"

Guidance Letter: Participation by directors in share incentive/option schemes

Date: 29 July 2010

The JSE Limited ("JSE") amended the Listings Requirements earlier this year with an effective date of 1 April 2010. Included amongst the amendments was paragraph 3.84(f)(iii) which stipulates that directors who participate in a share incentive/option scheme will not be regarded as independent in terms of the Listings Requirements.

The JSE has received a number of enquiries on this matter and in particular the implications on shares/options that were issued prior to 1 April 2010. It is not the intention of the JSE to apply this requirement retrospectively and we therefore wish to advise that any shares or options that were issued under a scheme prior to 1 April 2010 will not be regarded as affecting a director's independence in terms of paragraph 3.84(f)(iii). However, any shares or options issued to a non-executive director on or after 1 April 2010 will result in that director no longer being classified as independent in terms of the Listings Requirements.

We trust that this clarifies the position, but please feel free to contact us if you have any further questions.

Guidance Letter: Procedural requirements of the Stock Exchange News Service ("SENS")

Date: 5 May 2014

As a result of the need to disseminate relevant company information to the market on a real time basis, the JSE established SENS. The purpose of SENS falls within the sphere of the general principles of the JSE Listings Requirements (the **"Requirements"**) to ensure that full, equal and timeous public disclosure is made to all holders of securities and the general public at large regarding the activities of an issuer that are price sensitive.

Paragraph 19.2 of Schedule 9 (Procedural requirements of SENS), which is a schedule to the Requirements, addresses the requirement to disseminate relevant company information to the market. Certain issues have come to our attention in respect of the use of SENS by issuers for the dissemination of relevant company information and the JSE wishes to issue the following guidance.

Relevant Company Information

Relevant company information is defined in Schedule 9 of the Requirements, which means company announcements and price sensitive company releases.

Thus, announcements must be released on SENS if a positive obligation is placed on the issuer pursuant to the provisions of the Requirements to release certain information on SENS or when such information is required to be released because it constitutes price sensitive information. See the definition of price sensitive information in the Requirement for further guidance.

Relevant company information must be factually supportable and must relate directly to the issuer. As a rule, the JSE will not consider the following information as relevant company information:

- Any information which constitutes marketing information of the issuer or the issuer's sphere of activity. Marketing information for the purposes of the guidance letter would be any information that would in the normal course be considered as an advertisement of the products of the issuer or the issuer itself; and
- Any information that is not factually supportable or contains features of human emotion, such as derogatory or malicious statements.

Secondary Listed Issuers

Issuers with a secondary listing on the JSE are reminded that any information required to be released on its primary exchange must also be released on SENS pursuant to the provisions of Section 18 of the Requirements.

Exceptions

Notwithstanding the above provisions, the JSE will allow for the following to be

released on SENS:

- We understand that some issuers are accustomed to release details of presentations on SENS in relation to the issuer's sphere of activity. Although such presentations may be meaningful to a selected audience, these presentations are normally not considered to be relevant company information or price sensitive information (the eligibility criteria for SENS). We do however understand that issuers would like to use SENS as a platform to make such presentations public and in this regard the JSE will continue to accept the publication of presentations linked to the issuer's sphere of activity on SENS, however, the JSE will only allow a notice of availability via a website link to be published on SENS and not the full presentation;
- Issuers may release company related information through SENS:
  - such as operational updates, provided such information is relevant to (i) the issuer's sphere of activities and (ii) to investors; and
  - which is required to be published under Statute.

General

In considering whether an announcement should be released, issuers must always take account of the rationale and purpose of SENS being a mechanism for the dissemination of relevant company information. Issuers must therefore guard against releasing unnecessary information that may overwhelm investors and dilute the importance and relevance of SENS announcements. Issuers should consult with their sponsors or designated advisers to ensure compliance with this guidance letter and the Requirements.

Guidance Letter: Discussions with Journalists & Investment Analysts

Date: 23 October 2015

The JSE has decided to issue guidance to issuers and their directors when having discussions with journalists and investment analysts ("analysts") and the treatment of price sensitive information. Although this letter is focused on discussions with analysts it should have equal application to discussions with journalists.

The general principles that underpin the JSE Listings Requirements (the "Requirements") ensure, amongst others, that full, equal and timeous public disclosure is made to all holders of securities and the general public at large regarding the activities of an issuer that are price sensitive.

It is therefore imperative that discussions with analysts are managed firmly and responsibly by issuers and their directors.

The general rule is that price sensitive information must be released publicly through SENS before being disclosed to analysts or any other parties.

General

This guidance letter, as per the heading above, merely serves as a guide to issuers and their directors when having discussions with analysts and the treatment of price sensitive information. In the event of any breach whatsoever of the provisions of the Financial Markets Act No 19 of 2012 (the "FMA") and/or the Requirements, compliance or reliance on this guidance letter will not necessarily absolve an issuer and/or their directors from any liability.

It should further be noted that the contents of this guidance letter may be familiar or known to some directors and we kindly request that you indulge us for the benefit of (i) the broader group of directors, (ii) newly appointed directors and (iii) company secretaries.

Price Sensitive Information

For purposes of this guidance letter, price sensitive information will not be discussed in detail. Please refer to the definition of price sensitive information in the Requirements

read together with Practice Note 2/2015 providing guidance on price sensitive information.

The Financial Markets Act

In applying this guidance letter, issuers and their directors must familiarise themselves with the market abuse provisions in the FMA dealing with market abuse and inside information. Refer to Sections 78 to 82 of the FMA. Issuers should be aware that price sensitive information pursuant to the provisions of Requirements may also qualify as inside information pursuant to the FMA and vice versa.

Analysts

Analysts are employed to produce detailed reports on the prospects and performance of issuers and have an important role to play in assisting the market in understanding the valuation of issuers. They compile and research their information via a number of methods including interviewing executives, clients, customers and company advisers. Investment analysis is a competitive industry and analysts are rated and remunerated on the quality and accuracy of their information, and the conclusions they draw.

The JSE understand that as a consequence of being listed, issuers are exposed to discussions with analysts. Issuers should therefore take a firm view when answering questions from analysts during discussions.

In dealing with analysts, issuers should note the following event types:

1. Questions from analysts

   During discussions with analysts, issuers are allowed to expand on information already in the public domain or discuss the markets/industry in which they operate, provided that such expanded disclosure does not qualify as price sensitive information. Therefore, issuers must decline to answer questions from analysts where the answer would lead to divulging price sensitive information. In responding to certain comments or views from analysts which appear to be inaccurate, issuers should respond with information drawn from information released publicly to the market through SENS.

2. Draft reports from analysts

   Issuers must not correct draft reports from analysts which are sent to them with a view to commenting on financial figures and/or assumptions. The issuer may consider the financial figures and/or assumptions and discuss them with the analyst, in broad terms and without providing any price sensitive information. Issuers can of course correct information in relation to financial figures and/or assumptions that do not constitute price sensitive information and drawn from information released publicly to the market through SENS.

3. Conduct of discussions with analysts

   Issuers are sometimes concerned that they may be misinterpreted or mistakenly accused of providing price sensitive information following meetings with analysts. In this case, issuers must consider establishing internal procedures which reduce these risks.

   In this regard the following recommendations could be considered:

   - Issuers must have internal written policies for handling confidential and price sensitive information;
   - Issuers must ensure that their directors and senior management are trained and understand the provisions of the Requirements dealing with price sensitive information and the provisions of the FMA dealing with market abuse and insider information;
   - Issuers must make sure that more than one representative of the issuer is present during discussions with analysts and that accurate records of all discussions are kept in safekeeping for future reference;

- Authorising a spokesperson/spokespersons: Issuers must keep to a minimum the number of directors and senior staff authorised to speak on the issuer's behalf. Issuers must make sure that these persons are informed about the issuer's activities and are familiar with all the information that the issuer has previously released publicly through SENS, but they must avoid commenting on price sensitive information. A director or other person responsible for disclosure could further outline the issuer's disclosure history to analysts before entering into discussions. This will safeguard against inadvertent disclosure of price sensitive information;

- Body language: Spokespersons must be mindful of body language when answering questions. =As an example, the shake of a person's head in a "yes" or "no" gesture or showing thumbs up or down in a "positive" or "negative" gesture, does constitute communication when answering questions although not in a verbal format;

- Reviewing discussions: Issuers must have a procedure for reviewing briefings and discussions with analysts afterwards to check whether any price sensitive information has inadvertently been disclosed. If so, shareholders and the market must have access to it by the issuer announcing it immediately through SENS;

- Handling unanticipated questions: Issuers must be particularly careful when dealing with questions from analysts that raise issues outside the intended scope of discussion/s. Some useful ground rules are:

  – only discuss information that has been publicly released through SENS or is in the public domain;

  – if a question can only be answered by disclosing price sensitive information, decline to answer; and

- Responding to financial projections and reports: Issuers must confine comments on financial projections by analysts to errors in factual information and underlying assumptions that do not constitute price sensitive information. Avoid any response which may suggest that the current projections of an analyst are incorrect. The way to manage earnings expectations is by using the continuing obligations trading statement disclosure to establish a range within which earnings are likely to fall or improve. Announce through SENS any change in expectations before commenting to any party outside the issuer.

The above recommendations should not be considered to be an exhaustive list of measures to deal with discussions with analysts and the treatment of price sensitive information, however, the intention is to give issuers practical guidance on how to manage discussions with analysts.

Guidance Letter: Trading Statements

Date: 19 April 2016

Pursuant to paragraph 3.4(b) of the JSE Listings Requirements (the "**Requirements**"), issuers must publish a trading statement as soon as they are satisfied that a reasonable degree of certainty exists that the financial results for the next period to be reported upon will differ by at least 20% from the most recent of the following:

- the financial results for the previous corresponding period; or

- a profit forecast previously provided to the market in relation to such period.

(the "**base information**")

During 2014 the JSE made certain amendments to paragraph 3.4(b) of the Requirements dealing with trading statements. Historically, trading statements only indicated the percentage change to the base information. Concern was raised at the

time that the percentage figure alone in the announcement did not provide sufficient information to make an informed assessment of the expected financial results compared to the base information. The 2014 amendments aimed to address this concern by requiring the following additional disclosure in trading statements:

- comparative figures (base information); and
- a number to describe the difference (in addition to the percentage).

The additional information now enables a more detailed comparative analysis on the expected financial results to readers based on the review of the announcement alone.

A concern has been brought to the attention of the JSE regarding trading statement announcements where the inclusion of the percentage to describe the difference (when more than 100%) in certain instances could be misleading and/or confusing. The relevance instances are present when –

- the base information of the issuer is very low, or
- the issuer has moved from a profit to a loss position or vice versa.

To address this concern, the JSE has decided to accept a reference in the trading statement announcement to the number only and not the percentage in order to describe the difference to the base information, where the percentage difference is more than 100%. It should be noted that the requirement for comparative numbers remain unchanged.

The JSE will be attending to amendments to the Requirements in due course to give effect to the above approach.

Guidance Letter: Suspensions & Trading Halts

Date: 13 June 2017

Suspension 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 – 1.10 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 – 1.9 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 1.10 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 utlised 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 on 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 halt by the JSE could cause investor prejudice and must be avoided.

Guidance Letter: Trading Statements: Range Unknown

Date: 20 September 2018

The JSE wishes to remind issuers, sponsors and designated advisers on the application of paragraph 3.4(iii)(3) of the JSE Listings Requirements (the "**Requirements**").

In applying paragraph 3.4 of the Requirements, there are two main elements to consider:

- Paragraph 3.4(b)(i) deals with the 20% trigger for a trading statement; and
- Paragraph 3.4(iii) deals with the contents of a trading statement.

The aim of paragraph 3.4(iii)(3) of the Requirements, is to deal with the scenario where the issuer does not have reasonable certainty to provide the required guidance in terms of 3.4(b)(iii) (1) or (2). When applying paragraph 3.4(iii)(3) of the Requirements , issuers must avoid the practice to use the 20% benchmark number as the default disclosure level in order to comply with paragraph 3.4(iii)(3) of the Requirements.

The issuer is required to disclose the actual minimum percentage and number difference for which they have reasonable certainty and not merely refer to a 20% benchmark number. In addition the issuer must disclose any other relevant information at its disposal at the time. Failure to do so could result in the publication of misleading information (as an example, if an issuer expects the earnings to be down by at least 300% it would be misleading to merely refer the market to a 20% benchmark number).

The fact that an additional trading statement will be published pursuant to paragraph 3.4(b)(iii)(3) of the Requirements, as the issuer obtains reasonable certainty, does not excuse an issuer for incorrectly only disclosing a 20% benchmark level. It would be highly unlikely for issuers to be unable to quantify a minimum when applying paragraph 3.4(iii)(3) of the Requirements.

SECTION 4

Guidance Letter: Control – par 4.28 of the Listings Requirements

Date: 25 March 2004

The JSE Securities Exchange South Africa ("JSE") has received various enquiries relating to the interpretation and application of paragraph 4.28(d)(i) of the Listings Requirements. In light of this, the JSE has decided to issue a letter setting out the interpretation and the applicability of the requirement.

Background

The Listings Requirements afford shareholders of the listed company the right to vote and have their wishes implemented on certain transactions (including but not limited to category 1 transactions and issues of shares for cash) and any structure/agreement that could dilute that right in any way would be in contravention of this requirement. The JSE has enforced the principle behind this requirement for a number of years under the general principles, without it being included in the main body of the Listings Requirements. During the re-write of the Listings Requirements last year, it was decided to introduce paragraph 4.28(d)(i). We believe this requirement is in line with international best practice. The JSE also believes that it is important for a listed company to have control over the majority of its assets to ensure that the shareholders of the company are not merely passive investors. In other words, shareholders of the listed company must have the ability to decide what is done with the underlying assets. The requirements do make provision for certain exemptions as contained in paragraph 4.28(d)(ii).

Interpretation

The requirement refers to control and this could be interpreted as meaning 35 % as defined in the Listing Requirements. The intention however, as stipulated above, is for

the listed company to have full control (i.e. 50% + 1) over the assets to ensure that it can effectively influence and control those assets. This interpretation implies that the JSE would not allow the creation of structures which would effectively result in the issuer "forfeiting" full control over certain matters by the creation of high voting shares, golden shares or shares that confer "negative control" to a specific shareholder in any of the companies within the group.

Applicability

This requirement is contained in section four which deals primarily with new listings. The requirement is therefore applicable to new listings in the first instance. It is important to note that it was not our intention, nor would it make any sense, to only make this requirement applicable to new listings. It should therefore be noted that this requirement is also applicable from a continuing obligations perspective and issuers must ensure that they comply with this requirement at all times.

General

The JSE would strongly recommend that issuers contact their sponsors whenever a structure or transaction is contemplated that could give rise to a possible contravention of this requirement in order for the sponsor to obtain ruling from the JSE in this regard.

Guidance Letter: Special Purpose Acquisition Company ("SPAC")

Date: 13 June 2017

The JSE has noted increased interest in the use of SPACs and in light of our original intention of making it an efficient vehicle for raising capital we wish to clarify the approach on the preparation of the circular dealing with the acquisition of viable assets pursuant to paragraph 4.35 of the JSE Listings Requirements (the "**Requirements**").

General

The acquisition of a viable asset must be approved by the majority of security holders of the SPAC at a general meeting. The circular will therefore by treated by the JSE as a category 1 transaction and not as a new listing requiring a pre-listing statement. Therefore a category 1 checklist must be completed and not a new listing checklist. The acquisition of a viable asset will further not be treated as a reverse listing by the JSE requiring the SPAC to prepare revised listing particulars.

New Listings Considerations

On the basis that a viable acquisition must on its own enable the SPAC to qualify for listing there are certain considerations in respect of a new listing that must be addressed and disclosed in the circular, notwithstanding the fact that the acquisition will be treated as a category 1 circular. These new listings considerations are the following:

- The listing entry criteria, whether Main Board or AltX, taking into account the specific disclosure requirements relating to the industry such as (i) mining, (ii) investment entity or (iii) property entity. In this regard intended Main Board issuers must further show that the required minimum capital and profit is achieved and reflected in the pro forma financial information.
- The directors and senior management of the issuer must collectively have appropriate expertise and experience for the governance and management of the issuer and the business pursuant to paragraph 4.8(a) of the Requirements.
- The working capital statement pursuant to paragraph 2.12 of the Requirements.
- The corporate governance items pursuant to paragraph 3.84 (Main Board) or paragraph 21.5 (AltX) of the Requirements, as the case may be. In this regard, issuers are reminded that the information can be incorporated by reference to the extent that the corporate governance requirements have already been met and disclosed in the annual report of the issuer.

Category 2 Acquisition/s

It has come to the attention of the JSE that a SPAC may wish to proceed with smaller acquisitions in the same category 1 circular on the basis that (i) these acquisitions compliment the viable asset or (ii) the board of the SPAC wishes to show a complete position of the issuer post all the acquisitions. In this regard SPACs are reminded to obtain shareholders' approval for the use of the residual capital pursuant to paragraph 4.35(c) of the Requirements.

To the extent that such acquisitions are classified as category 2 acquisitions, the historical financial information to be included in the pro forma financial information in the circular can either be –

- audited by a JSE accredited auditor (which is a preferred option for the JSE); or
- reviewed by a JSE accredited auditor.

It should be noted that any category 2 acquisition presented to shareholders can only become unconditional on the basis that the viable acquisition has been approved by shareholders.

Forecasts

It has come to the JSE's attention that some issuers believe that the acquisitions coming into the SPAC combined with residual cash (if applicable), even on a pro forma basis, does not always reflect the intended position of the new combined issuer going forward. In this regard issuers are reminded that a forecast may be prepared and included in the circular provided the forecast is prepared pursuant to the provisions of the Requirements. We ask that you discuss this option with SPAC issuers going forward.

SECTION 5

Guidance Letter: Guidance in fairness opinions relating to an issue of shares for cash in terms of the JSE Listings Requirements

Date: 11 November 2010

The JSE Limited ("JSE") amended paragraph 5.51(f) of the Listings Requirements ("LR") in October 2007 (regarding a specific issue of shares for cash) in order to remove the need for a fairness opinion under certain circumstances. The main intention behind the amendment was to remove the need for a fairness opinion in instances where shares are issued to a related party at a market related price (as determined in terms of paragraph 5.51(f)(ii) and the full cash payment is received at the same time.

The JSE has noticed in some instances shares are issued to related parties for cash, and although the issue is at a market related price, the issue is also directly or indirectly funded by the company i.e. in accordance with Section 38 of the Companies Act (No. 61 of 1973). This was not what was intended when the JSE relaxed the LR and the JSE therefore wishes to confirm that it will insist on a fairness opinion where shares are issued for cash to related parties and the issuer provides direct or indirect financial assistance in the funding of the issue. This may include, but is not limited to, the following:

- a company providing all or some of the funding themselves;
- a company providing a third party guarantee; or
- the payment for the transaction being deferred to a later stage.

It must be noted that the fairness opinion in these instances must cover the entire deal including the fact that the issuer is funding the purchase of the shares. Consideration must also be given to the substance of the transaction as in most of these instances the commercial reality of the deal is that the party has been given an option and this must be factored into the opinion.

SECTION 6

Guidance Letter: Simultaneous secondary listings

Date: 26 January 2018

It has come to the attention of the JSE that guidance is required on the preparation of a pre-listing statement ("**PLS**") where the applicant issuer is seeking a simultaneous listing (same day listing) on the London Stock Exchange ("**LSE**") and the JSE, and where the listing on the JSE will be the secondary listing. This is different from the approach where an applicant issuer is already listed on another exchange when seeking a secondary listing on the JSE.

The approach outlined in this letter with a simultaneous listing will be limited to the LSE based on recent discussions and rulings provided. The JSE should be approached for a separate ruling should a simultaneous listing on another exchange be considered and where such exchange will be the primary exchange.

General

The JSE Listings Requirements ("**the Requirements**") have comprehensive provisions dealing with primary and secondary listings. Secondary listing status means that once an applicant issuer is listed, it will only be required to comply with the listings requirements of the exchange where it has a primary listing, save as otherwise specifically stated in the Requirements.

Paragraph 18.11 of the Requirements includes the following:

> *"Where the disclosure requirements of Section 7 relate to the continuing obligations, the JSE may allow the applicant issuer to address this in the context of the requirements of the exchange where it has its primary listing."*

Based on the above the JSE wishes to clarify the following in respect of the PLS for a company applying for a simultaneous secondary listing on the JSE with the primary listing on the LSE.

1. PLS

On the basis that the Requirements and the UKLA listing rules are substantially similar, the JSE has no objection to the use of a single PLS document for the purposes of listing on the LSE and the JSE. The PLS must be accompanied by a completed new listing checklist clearly demonstrating compliance with the Requirements. There may be instances where application of the UKLA listing rules would lead to only partial compliance with the Requirements. These items should be clearly referenced in the new listing checklist and will be assessed by the JSE during the first submission review process. Should the JSE believe that there is a material departure from the Requirements on any particular disclosure item, additional disclosure may be required.

2. Historical Financial Information

The JSE will accept, subject to the exceptions detailed below, the inclusion of the historical financial information of the applicant issuer prepared in accordance with the UKLA listing rules in order to meet the disclosure requirements pursuant to paragraph 7.E. read with 8.2 and 8.45 of the Requirements. This will result in no additional assurance report being required by a reporting accountant or JSE accredited auditor.

The exceptions to the above approach are the following:

(i) Headline earnings must still be prepared and disclosed pursuant to paragraph 8.11 of the Requirements (noting that no separate reporting accountant sign off is required); and

(ii) Where the applicant issuer is newly incorporated, the JSE understand that a standard waiver may be granted by the UKLA to dispense with the need for historical financial information on such newly incorporated applicant issuer. Irrespective of such waiver, the JSE will insist on the required application of paragraph 8.2 and paragraph 8.45 of the Requirements on the historical information in respect of the newly incorporated applicant issuer.

3. Pro forma Financial Information

The JSE may accept the application of the UKLA listing rules as it relates to the preparation of the pro forma financial information and the auditors' report thereon. However, applicant issuers should approach the JSE for a formal ruling in this regard. The JSE may request additional pro forma financial information prepared pursuant to the Requirements if that information is necessary for the JSE to assess the listing entry criteria.

4. Corporate Governance

Applicant issuers are not required to comply with the new listing corporate governance requirements pursuant to the provisions of the Requirements for the purposes of the PLS, provided that there is a positive confirmation in the PLS that the applicant issuer complies with the UK Corporate Governance Code.

SECTION 7

Guidance Letter: Guidance on 7.B.23 on the JSE Listings Requirements

Date: 14 December 2011

The JSE has decided to issue further guidance on paragraph 7.B.23 states:

> The prospectus/pre-listing statement/circular must be signed by every director of the applicant (or by his agent or attorney, with a copy of the authority of any such agent or attorney); provided that where responsibility for any information contained in different parts of the prospectus/pre-listing statement/circular has been extended to or accepted by any other person(s), such other person(s) (or his/their agent or attorney) shall also sign the prospectus/pre-listing statement/circular and it shall be stated clearly for which part or parts of the prospectus/pre-listing statement/circular each signatory bears responsibility.

Introduction

It has come to the attention of the JSE that some confusion exists in respect of the signing of the prospectus, pre-listing statement and circular (the **"document"**) by every director as envisaged by 7.B.23. It should be noted that the signing of the document is personal and attached to each director. Therefore, the document must be signed by the director or by (i) his agent or (ii) attorney.

It should be noted that that the action required by each director pursuant to 7.B.23 (i.e. the signing of the document) should not be confused with the approval of a transaction by the board of directors as a whole and the subsequent authorisation of any one of them (or other) to execute the transaction documents (or any other document incidental thereto) on behalf of the Issuer.

The object of 7.B.23 is that each director approve and sign the document, which is additional to and separate from the approval of the transaction by the board of directors as a whole.

We have also been made aware of the logistical difficulties in obtaining these signatures from directors due to scheduling difficulties of directors and transaction timetables.

On this basis, the JSE issues further guidance on the interpretation of 7.B.23.

Prospectus, pre-listing statement and circular

The JSE will accept, in respect of each director, the following as it relates to the signing of the document, as the case may be:

- the original signature of the director on the document;
- a duly executed power of attorney authorising any director or another to sign the document on the director's behalf;

- a round robin resolution of the board of the Issuer signed by each and every director authorising one of them or another to sign the document on their behalf; or
- minutes of a fully constituted board meeting of the Issuer duly signed by the chairman of the meeting authorising one of them or another to sign the document on their behalf.

Guidance on execution: Power of attorney

Save for any director(s) which will be signing the document in his/her personal capacity, every other director of the Issuer may sign and provide a power of attorney to authorise another to sign the document on the director's behalf, which must contain the following provisions as a minimum:

- the full name(s), title and capacity of the director giving the power of attorney;
- a specific reference to the document including a summary of all the provisions covered (the purpose of the summary is to link the power of attorney to the relevant corporate action.);
- a statement that the said director has read and understood the contents of the document;
- confirmation that the said director has given his/her consent to the party signing the document on his/her behalf;
- signature by the director;
- signature by at least one witness;
- signature date.

Guidance on execution: Round robin resolution or minutes of a fully constituted board meeting

The directors may elect to pass a round robin resolution signed by each and every director authorising one of them or another to sign the document on their behalf or in the alternative provide board minutes duly signed by the chairman of a fully constituted board meeting authorising one of them or another to sign the document on their behalf. It should be noted that if this route is chosen, either all the directors must sign the round robin resolution or all directors need to be present at the board meeting.

The round robin resolution must contain the following provisions as a minimum:

- the full name(s), title and capacity of the director singing the round robin resolution
- a specific reference to the document including a summary of all the provisions covered (the purpose of the summary is to link the authorisation to the relevant corporate action.)
- a resolution covering the following:
    - a statement that the said director(s) have read and understood the contents of the document;
    - confirmation that the said director(s) has given his/her consent to the party signing the document on his/her behalf;
    - signature by each director;
    - signature date;
    - signature in counterpart will be acceptable;

the board minutes must contain the following provisions as a minimum:

- confirmation that all the directors were in attendance at the meeting;
- a specific reference to the document including a summary of ail the provisions covered (the purpose of the summary is to link the matters to be discussed to the relevant corporate action);
- a resolution covering the following:

  - that all the directors have read and understood the contents of the document;
  - that all the directors have given their consent to the party signing the document on their behalf;
- the minutes signed by the chairman of the meeting;
- signature date.

On the basis that the signing of the document is personal to the director as envisaged in 7.B.23, the round robin resolution or minutes of a fully constituted board meeting will be acceptable to the JSE on the basis that each director will be authorising a mutual other to sign the document on his/her behalf. This should be distinguished from a duly constituted board meeting where a quorum can be achieved without the presence of all the directors.

For the avoidance of doubt –

- board minutes will not be accepted where all the board members are not present; and
- authorisation for the purposes of this guidance note may be given to another director or a duly authorised third party (e.g. the company secretary).

General note

A power of attorney, round robin resolution or minutes of a fully constituted board meeting (the **"authorisations"**) may be an original document or a photocopy and must be delivered to the JSE by the Sponsor or Designated Adviser of the Issuer, either in person, or sent via email in the form of a scanned document. Please note that *the* Sponsor or Designated Adviser thereby takes responsibility for verifying the authenticity of the authorisations.

If a Sponsor or Designated Adviser, as the case may be, elects to send the authorisations via e-mail, it must be sent to the JSE from an official company e-mail address of the Sponsor or Designated Adviser and not from a personal e-mail address.

SECTION 8

Guidance Letter: New listing: Key audit matters in auditor's reports

Date: 1 September 2017

International Auditing Standard ISA 701 deals with situations when the auditor is required to address Key Audit Matters ("**KAMs"**) in their auditor's report.

IAS 701 is effective for audits of financial statements for periods ending on or after 15 December 2016 and states that it applies to:

- audits of complete sets of general purpose financial statements of listed entities;
- when the auditor otherwise decides to communicate KAMs in the auditor's report; and
- when the auditor is required by law or regulation to communicate KAMs in the auditor's report.

A listed entity is defined as an entity whose:

- shares, stock or debt are -
  - quoted or listed on a recognised stock exchange; or
  - marketed under the regulations of a recognised stock exchange or other equivalent body.

The JSE wishes to remind sponsors, designated advisors and reporting accountant specialists to ensure that KAMs are included in audit report that accompanies the

audited historical information of an applicant issuer in the pre-listing statement.

It should further be noted that in some instances, the operating entity ("**OpCo**") is not listed itself but a holding company is created for purposes of listing. Although OpCo is not seeking a listing, the JSE will view the substance of the listing as the listing of OpCo. In these circumstances, the JSE will expect to see KAMs included in the auditor's report of OpCo.

In the event of a reverse listing, please engage with the JSE at an early stage to determine the application of KAMs.

Please contact the JSE should you –

- have any queries as to the application of this letter, or
- if the first submission of a pre-listing statement is imminent from the date of this letter and there are concerns from a timing perspective.

SECTION 9

Guidance Letter: Amending transaction terms as approved by shareholders

Date: 8 May 2012

Background

The JSE has recently received several requests to consider amendments to transactions as previously approved by shareholders in general meeting (**"approved transaction"**) on the basis that the proposed amendments are not material to shareholders and therefore do not require shareholder approval.

It has been the JSE's firm position that it cannot and will not make an assessment on materially on behalf of shareholders as far as it relates to a proposed amendment to an approved transaction. It has been the JSE's approach to refer any amendments to an approved transaction (irrespective of materiality) back to shareholders for their due consideration in order that they may exercise their vote in respect thereof.

Review of approach

The JSE endeavors to be pragmatic in its approach and in recent cases compelling arguments have been provided to the JSE that certain proposed amendments to approved transactions were (i) not material and (ii) not in conflict with the approved transaction (the **"considering factors"**), and therefore did not require the further approval of shareholders in general meeting.

The JSE wishes to advise that the general rule still applies that amendments to approved transactions must be approved by shareholders in general meeting. However, the JSE is willing to consider amendments to approved transactions, on application, where the considering factors can be clearly evidenced and supported. The JSE will seek confirmation on the considering factors from (i) the board of the issuer, (ii) the auditors of the issuer, (iii) the legal advisers of the issuer and (iv) such expert/s as the JSE may deem appropriate in its discretion (the **"confirming parties"**).

The JSE is aware that the general rule of referring matters back to shareholders on the mere fact that it is an amendment to an approved transaction may have timing and cost implications (in certain cases to the detriment of shareholders) and has therefore revised its approach from the general rule.

Each and every amendment to an approved transaction will be considered on its own merit and no general precedent will be created in respect of the JSE's approach. Once the JSE is satisfied with the various representations made by the relevant parties as regards the considering factors, the JSE may issue a letter of no objection in respect of the amendments to the approved transaction not being referred back to shareholders. The JSE will require that an announcement be released on SENS addressing each of the considering factors as reported by the confirming parties and stating clearly that

the amendments to the approved transaction will not be referred back to shareholders for approval.

In order for the JSE to take a view on the considering factors in respect of a proposed amendment to an approved transaction, the JSE will require and rely on the following

- A letter signed by a director of the Issuer clearly explaining the nature of the amendments to the approved transaction and the rationale for such amendments, also stating clearly why, in the board's opinion (as supported by the necessary board minutes), the proposed amendments to the approved transaction are not material and not in conflict with the approved transaction;
- A letter signed by the appointed auditors showing the pro forma financial effects of the proposed amendments on the approved transaction; and
- A letter signed by the legal advisers of the Issuer clearly explaining the nature of the amendments to the approved transaction and the rationale for such amendments, also stating clearly why, in the lawyer's opinion, the proposed amendments to the approved transaction are not material and not in conflict with the approved transaction.

The JSE may request the submission of irrevocable undertakings, signed by shareholders of the issuer, (i) supporting each of the considering factors, (ii) specifying the proposed amendments to the approved transaction and (iii) stating clearly that should those amendments be proposed at a general meeting of shareholders of the issuer, that such shareholders would vote in favour of such proposed amendments. Such irrevocable undertakings should exceed the threshold required for the passing of the said resolutions as regards the approved transaction.

The above is not an exhaustive list and the JSE may consider any external factors that may have bearing on the considering factors.

Guidance Letter: Related party issues – Schemes of arrangement and offers

Date: 2 April 2012

The JSE recently consulted with various stakeholders and market participants regarding the application of the related party provisions of the JSE Listings Requirements (the **"Requirements"**) as it relates to (i) schemes of arrangement for the purpose of a recommended take-over (**"Scheme"**) and (ii) offers to shareholders of a target company (**"Offers"**).

The purpose of the letter is to provide guidance on the related party implications for a listed offeror company in Offers and Schemes, which Offers and Schemes are primarily regulated by the Takeover Regulations Panel (**"TRP"**) created by the Companies Act No. 71 of 2008.

For purposes of this guidance note, it should be noted that focus is placed on the offeror in the context that it is a listed company on the JSE. The regulation involved in respect of the target company and its shareholders are undertaken by the TRP subject to paragraph 11.54 of the Requirements.

Schemes

A Scheme is one of the methods used in effecting a take-over. A Scheme by definition is an arrangement proposed by the offeror between a company and its members and accordingly requires the target company's board to approve the Scheme documentation submitted to shareholders for their consideration and approval.

Although a Scheme is primarily regulated by the TRP, the JSE's jurisdiction in relation to a Scheme is over the listed offeror company as it would be a transaction (an acquisition) for such listed offeror company pursuant to Section 9 of the Requirements. The JSE will therefore also assess the relationship between the listed offeror company and the target company in accordance with the provisions of section 10 of the Requirements.

Offers

An Offer involves an offer by an offeror to shareholders of a target company and there may be no involvement by the target company's board

As in the case with a Scheme, the JSE's jurisdiction in relation to an Offer is over the listed offeror company as it would be a transaction (an acquisition) for such listed offeror company pursuant to Section 9 of the Requirements.

Taking into account the nature of such an Offer and the number of shareholders of the target company that may be involved, the JSE will normally only enact the related party provisions of Section 10 of the Requirements where there is a common controlling shareholder present in both the listed offeror company and the target company. The JSE is of the view that such common controlling shareholder would be in a position to influence the board's decision of the listed offeror company as it relates to the determination of the Offer price and may even control the boards of both the listed offeror company and target company. On this basis, the normal provisions of a related party transaction would apply for the listed offeror company (including the preparation of a fairness opinion as it relates to the Offer price).

The JSE reserves the right to assess the relationship between the listed offeror company and the shareholders of the target company in accordance with the provisions of section 10 of the Requirements.

In cases where any of the shareholders in the target company have board representation in the listed offeror company, the JSE will require appropriate corporate governance measures to be applied by the listed offeror company. Thus, such representative on the board of the listed offeror company may not participate in any way whatsoever as it relates to the determination whether an Offer will be made and the subsequent quantum of the Offer price to be offered by the listed offeror company.

Guidance letter: Approved executive sign-off on submissions to the JSE

Date: 18 May 2012

The JSE Limited ("JSE") has noticed in certain cases that the first submission checklist and /or schedule 17 declaration is not submitted for "smaller" documents such as articles of association, share schemes, and specific payments.

In light of this we felt that it would be appropriate to remind approved executives of their responsibilities in terms of the Listings Requirements ("LR") in order to avoid any delays in the approval process.

Paragraph 16.2 of the LR details the types of documents that must be submitted through a sponsor and you will note that the "smaller" documents referred to above is specifically covered in this paragraph. Paragraph 16.3 deals with the procedures for documents requiring JSE approval and 16.3(a) states that all submissions must be accompanied by, inter alia, the first submission checklist signed by an approved executive. The first submission checklist is contained in Schedule 2 Form F and calls for, inter alia, a signed sponsor declaration as contained in Schedule 17.

Schedule 17 deals with three aspects and must be signed by the responsible approved executive. First and foremost there is confirmation that the submission complies with the LR. Secondly, there is confirmation that the approved executive will review each submission before it is submitted to the JSE and it finally deals with independence.

Based on the above we wish to advise that we will longer accept any submissions that are not properly signed-off as explained to above. Please ensure that this is adhered to avoid delays in the approval process.

SECTION 10

Guidance Letter: Fairness opinion: related party transactions in respect of property and mineral assets

Date: 25 October 2012

Fairness opinion: related party transactions in respect of property and mineral assets

Typically for a related party transaction the directors of the issuer must make a statement indicating whether or not the related party transaction is fair insofar as shareholders of the issuer are concerned and that the board of directors has been advised by an independent expert acceptable to the JSE. The board of directors must obtain a fairness opinion prepared in accordance with Schedule 5 of the JSE Listings Requirements (the "**Requirements**"). Before issuing a fairness opinion, the independent professional expert must perform a valuation of the issuer and/or the subject of the transaction.

In 2007, with the introduction of the amendments to paragraph 10.4(f) of the Requirements, the JSE adopted a pragmatic approach to fairness opinions prepared pursuant to certain related party transactions. The provisions of paragraph 10.4(f) allow for a fairness opinion, resulting from a related party transaction, to be dispensed with in the event that (i) property or (ii) mineral assets form the subject matter of the related party transaction and where the value thereof is supported by the necessary valuations. The rationale for the approach being that a valuation is performed on the asset, which is then compared against the consideration paid or received in respect of that asset. The only basis under which such a comparison can take place on a like for like basis is if the consideration paid or received in respect of the asset is clearly ascertainable and determinable in the form of cash, without any consideration whatsoever of outside variables. The fairness opinion becomes superfluous where the value of the asset can be weighed outright against the cash consideration received or paid for the asset.

It should therefore be noted that the exemption on a fairness opinion as envisaged above does not apply where the consideration received or paid for the asset is in the form other than cash, such as the issue of shares in the issuer.

Therefore, only in the event that a related party transaction involves –

- property and/or mineral assets, as the subject matter of the acquisition or disposal pursuant to a related party transaction;
- the value of which has been determined and supported by a valuation –
    - For property assets it would be a valuation report prepared in accordance with paragraphs 13.20 and 13.31 of the Requirements; and
    - For mineral assets it would be a valuation included in a competent person's report prepared in accordance with Section 12 of the Requirements by an independent competent person.
- the consideration received or paid is settled in cash,

the requirement for a fairness opinion may be dispensed with.

For the avoidance of doubt, the above principle applies equally to paragraph 13.10 of the Requirements which provides that an issuer is exempt from providing a fairness opinion where a related party transaction involves property, the subject of the valuation report prepared in accordance with paragraphs 13.20 to 13.31. It should be noted however, that property is specifically defined and described in section 13 as being immovable property consisting of land and buildings.

The exemption from obtaining a fairness opinion set out in paragraphs 10.4(f) in respect of (i) property or (ii) mineral assets is subject to the following two factors being present:

- The transaction involves an asset only, not a business, shares in a company, or a stake in a joint venture or partnership; and
- The consideration received or paid is settled in cash.

It should be noted that once a transaction involves more than an asset as envisaged above other factors may come into play which could impact the valuation as:

- There could be other assets and liabilities within the entity that may need to be considered; and

- There are other valuation considerations that need to be taken into account when the related party transaction involves a business or a group of assets.

SECTION 13

Restructuring of capital structure

Date: 28 March 2014

We refer to the introduction of the REIT requirements in March 2013 which allowed issuers to make application for REIT status. Those issuers that had linked units in issue and made application were granted REIT status but our approval letters imposed the following condition:

> "In your application letter you have excluded the existing debentures issued as part of your listed linked units and the related premium from liabilities for the purposes of the gearing test. We hereby agree that you can make such an adjustment for the purposes of the gearing test but only until 1 July 2015. After that date the gearing must be based on the total consolidated liabilities as reflected in the IFRS financial statements and no separate adjustment may be made for any debentures, even if they are part of an historic linked unit structure."

As a result of the above, we are aware that several issuers are intending to propose a capital restructuring (**"the restructuring"**). This letter serves to guide you on the administrative process around the restructuring and the process to be followed.

Whilst the restructuring proposals that we have seen to date have varied between issuers, they had the following common elements:

- There is a delinking of the linked units;
- The linked units are replaced with a new share certificate and a new ISIN;
- The debentures are effectively redeemed (albeit for no additional consideration);
- There is a debenture holders meeting; and
- The value of the debentures is capitalised to equity.

Taking all of the above into account we believe that the appropriate Listings Requirements (**"the Requirements"**) applicable to the restructuring is a combination of parts of the following sections:

(i) Capitalisation issues (paragraphs 5.39–5.43 of the Requirements);

(ii) Redemption of listed redeemable securities (paragraph 11.38 of the Requirements read together with paragraph 11.34);

(iii) Alternations of share capital (paragraph 11.37);

(iv) Amendment to the MOI; and

(v) Schedule 24(i) or (p).

The checklist combining the above Requirements is attached to this letter as Annexure "A" and we expect to see compliance therewith. Please note that should a specific issuers' restructuring deviate dramatically from the types of examples we have seen in the past we may ask for compliance with other aspects of the Requirements.

As it relates the practicalities of the above we wish to advise that:

- In respect of paragraph 13.34(d), if the effect of the restructuring on the per linked unit indicators is insignificant, such effect need not be included. Instead, the issuer must include a statement to that effect and describe what

the impact will be on both the statement of financial position (including the gearing), the statement of comprehensive income and the per share/linked unit indicators; and

- The information required by paragraph 13.34(c) is critical and details must be included. It is inappropriate for the issuer to merely advise linked unitholders to seek their own advice.

In order to facilitate the administrative process we have created a new event type in Webstir called "REIT restructuring" that must be used for your submissions. This event type will be invoiced at an amount of R11 154.94 (inclusive of VAT) which has been derived from the sum of event types (i) to (iv) set out above. Should the restructuring be implemented via a scheme of arrangement, that event type must be included separately in Webstir, but the JSE will not invoice separately for it. Furthermore, even if the restructuring is implemented through a scheme, the JSE will impose the above requirements and will not follow its usual approach for a document under the jurisdiction of the Panel.

SECTION 18

Guidance Letter: Termination at the request of the issuer: Secondary listed issuers

Date: 20 June 2012

An issue was recently raised whether an issuer had to comply with the termination provisions (at the request of the issuer) pursuant to paragraph 1.14 of the JSE Listings Requirements (the "Requirements") in instances where the issuer was secondary listed on the JSE.

The factors for consideration presented to the JSE were the following:

On the basis that the primary exchange of the issuer did not require (i) shareholder approval or (ii) an offer to be made to shareholders in order to affect the termination of securities –

- the JSE (as the secondary exchange) should follow suit as the securities would be terminated in accordance with the requirements of the primary exchange; and
- the provisions of paragraph 18.19 of the Requirements dealing with the continuing obligations of secondary listed issuers did to specifically address adherence to the termination provisions as set out in paragraph 1.14 of the Requirements.

Paragraph 1.13: Termination of securities at the request of the issuer

The relevant provision relating to termination of securities at the request of the issuer has been extracted below from the Requirements for ease of reference:

> 1.14 An issuer may make written application to the JSE for a deletion of any of its securities from the List, stating from which time and date it wishes the deletion to be effective. The JSE may grant the request for termination, provided paragraphs 1.15 and 1.16 are properly complied with and perfected.
>
> 1.15 Prior to being able to effect paragraph 1.14, an issuer must send a circular to the holders of its securities complying not only with the requirements of paragraph 11.1 (contents of all circulars) but also with the following:
>
> (a) where the issuer is a listed company, approval must be obtained from shareholders in general meeting for the termination of the listing prior to the issuer making written application for such removal;
>
> (b) the reasons for termination must be clearly stated;
>
> (c) an offer (which must be fair in terms of paragraph 1.15(d)) must be made to all holders of listed securities with terms and conditions provided in full; and
>
> (d) a statement must be included by the board of directors confirming that the offer is fair insofar as the shareholders (excluding any related party/ies if it/they are equity securities holders) of the issuer are concerned and that the board of directors has been so advised by an independent expert acceptable to the JSE. The board of directors must obtain a fairness opinion (which must be included in the circular),

prepared in accordance with Schedule 5, before making this statement.

1.16 Where approval is required in terms of paragraph 1.15(a), more than 50% of the votes of all shareholders present or represented by proxy at the general meeting, excluding any controlling shareholder, its associates and any party acting in concert, and any other party which the JSE deems appropriate, must be cast in favour of such resolution, unless the JSE otherwise decides.

Dual Listings: Section 18 of the Requirements

In order to address this issue the meaning of secondary listing status should be understood. Secondary listing status means that once an applicant issuer is listed, it will only be required to comply with the listings requirements of the exchange where it has its primary listing, save as otherwise specifically stated in the Requirements.

Authority of the JSE

The section in the Requirements dealing with the termination provisions is contained in Section 1 of the Requirements. The scope of the section states clearly in the preamble that the section sets out the authority of the JSE regarding its powers to list, suspend and terminate listings, and its powers to enforce the Requirements.

These powers are general enabling powers applicable to all issuers, including issuers with secondary listings on the JSE.

The continuing obligations provisions: Paragraph 18.19 of the Requirements

It was argued that the termination provisions did not apply to the issuer on the basis that the Continuing Obligations Provisions did not include adherence to the termination provisions as set out in Section 1 of the Requirements.

It should be appreciated that the Continuing Obligations Provisions deal with continued disclosure as long as the issuer remains secondary listed on the JSE and it would therefore be out of place to deal with provisions dealing with the termination of securities.

This position is confirmed in the above definition of secondary listing status. Once an applicant issuer is listed, it will only be required to comply with the listings requirements of the exchange where it has its primary listing, save as otherwise specifically stated in the Requirements. Thus, as long as the secondary listed issuer is listed on the JSE it would need to comply with the Continuing Obligations Provisions of the JSE despite any contrary requirements of the primary exchange.

Conclusion

It should be noted that one of the objectives of the JSE is aimed at ensuring that its activities are carried out with due regard to the public interest. On the basis that secondary listed companies actively market and pursue investments from the South African public and others, there is no reason to believe that the Requirements, as they pertain to the termination of securities at the request of the issuer, do not apply to secondary listed companies which have securities listed on the JSE.

Secondary Listed Companies

Guidance Letter: Corporate actions and certain other events undertaken by secondary listed companies on the JSE

Date: 10 March 2010

The JSE Limited ("JSE") has received numerous requests from sponsors regarding the approval by the JSE of corporate actions or events specified in terms of paragraph 16.2 of the JSE Listings Requirements ("LR") undertaken by companies with a secondary listing on the JSE. In light of this and given some of the difficulties experienced by some companies we have decided to clarify our approach in relation to the above. In future, sponsors must submit to the JSE at least 5 working days prior to the date of the circular, a letter confirming the following:

- that all relevant approvals have been granted. These approvals will, amongst others, include approval from the listings or other competent authority of the exchange where the company has its primary listing and if applicable, approval from the South African Reserve Bank;
- that the circular as submitted is in compliance with Section 18 of the LR to the extent required;
- that approval has been granted by the Corporate Actions and Clearing and Settlement Departments of the JSE with regard to any procedural and timetable issues;
- that they are satisfied that there is nothing in the document that is in conflict with the LR (if there is a conflict, this must be brought to the attention of Issuer Services Division); and
- the contents of the documents will not lead to a reverse listing (as contemplated in Section 9 of the LR). The JSE will, subject to compliance with the above, peruse the document and provide formal approval within 48 hours of the submission.

Certain corporate actions can be extremely complex and it should therefore be noted that for approval to be granted from the departments (as mentioned above) within at least 5 working days prior to the date of the document, they must have been consulted as far in advance of the process as possible. As this is a new approach, we may have to change it if we experience any problems in the future. Please communicate this new approach to your clients with secondary listings on the JSE.

SECTION 19

Guidance Letter: Acceptable index providers

Date: 27 November 2008

Introduction

The JSE Limited ("JSE") Listings Requirements, specifically section 19, make provision for the listing of certain instruments with an index as their underlying basis. In order to promote investor protection, the JSE requires that the index meets certain minimum requirements. In this regard, the JSE has established certain principles which will be used to determine whether the index and the party responsible for its calculation are acceptable. The principles, together with supporting guidelines, are set out in paragraphs 2 to 6 below.

Experience

The index provider must satisfy the JSE that its has adequate experience in calculating indices. The JSE will have regard to the following guidelines in considering whether an index provider has the required experiences:

- The index provider will be expected to have staff with considerable relevant experience. Experience could include the calculation of in-house benchmarks, custom indices or having worked with or been employed by a reputable index provider for a considerable period.
- The index provider must provide evidence that it has sufficient knowledge and experience in dealing with the impact of corporate actions on indices. This could be achieved by displaying a satisfactory track record of applying corporate actions correctly to an index.

Transparency

The construction of the index, including the treatment of corporate actions, must be clearly stated in the Ground Rules Document and its document must be publicly available to ensure full transparency. The JSE will have regard to the following guidelines in considering whether the Ground Rule Document is acceptable:

- It must contain the basic constitution of the index and the treatment of all known corporate actions must be clearly set out to ensure that they are dealt with timeously, objectively and consistently.

- Details of index reviews and the intervals at which such reviews are conducted must be clearly disclosed.
- It must include details of the process followed when there are changes to the index and how these changes will be communicated to investors.

Independence

An index provider must calculate the index objectively without undue influence from the organisation or fund which is issuing the instrument based on the index. Consequently, an index provider may not act as an index provider to any organisation or fund issuing the relevant instrument from which it is not independent except with the specific approval of the JSE. The JSE will have regard to the following guidelines in considering whether to allow an index provider to act for an organisation or fund issuing the instrument from which it is not deemed to be independent:

- The department or business unit that is responsible for calculating the index must operate separately from the issuer of the instrument and this must be evidenced by clear "Chinese walls".
- The department or business unit responsible for calculation the index must not have any reporting lines into the department or business unit responsible for issuing the instrument.
- The compliance officer of the organisation must confirm in writing that the two areas are sufficiently independent and separated to ensure that the one is not influenced at all by the other.
- A policy must be in place stipulating how matters will be dealt with that are not covered in the Ground Rules Document and this policy must ensure that decisions are taken in order that the interests of the issuer of the instrument may not be in conflict with the best interest of investors.
- Disclosure regarding the relationship between the index provider and the issuer of the instrument must be included in the listing documentation together with details on the index provider's ability to act independently.

Continuity

Arrangements must be in place to ensure that a sufficient number of experienced staff are available to properly discharge the index provider's responsibilities at all times. If the index provider does not have the necessary staff to fulfil this obligation, it must have alternative arrangements in place to ensure continuity at all times. The JSE will have regard to the following guidelines in considering whether the alternative arrangements are acceptable:

- The index provider must have an agreement in place with another index provider that will take over its responsibilities in the event of the index provider not being able to discharge its responsibilities for whatever reason.
- The other index provider referred to in (a) above must meet the criteria in considering was set out in this document and be approved by the JSE.

Technology

The index provider must demonstrate to the JSE that it has a robust index calculation system in place. The JSE will have regard to the following guidelines in considering whether the system is acceptable:

- The system must not be subject to manipulation. Confirmation of this must be provided to the JSE and the issuer of the instrument must confirm that it is satisfied with the controls implemented to avoid manipulation.
- The system must be designed to ensure continuity in the event of a system failure.

The JSE would encourage potential index providers to submit all the relevant documentation evidencing compliance with the above principles and guidelines early in the process in order to ensure that there are no unnecessary delays in the approval of a new listing.

Guidance Note: Announcement - Paragraph 19.28 (Specialist Securities)

Date: 24 April 2017

Introduction

The JSE wishes to advise that it has received a number of enquiries relating to the application of paragraph 19.28 of the JSE Listings Requirements (the "**Requirements**") and in particular (i) the timing of the announcement and (ii) its applicability to ETFs and ETNs. The JSE has therefore decided to issue guidance on the applicability of the requirement.

Paragraph 19.28 is a general requirement that is applicable to all securities listed pursuant to Section 19 (Specialist Securities) and states the following:

> "The issuer will also be required to make an announcement should there be any changes in the constituents of the asset pool relating to a corporate action or otherwise (if applicable). Such announcement must be made through SENS and posted on the issuer's website."

The requirement refers to an underlying pool of assets which means that the requirement only pertains to instruments that are backed by underlying assets.

Warrants, Structured Products and ETNs ("investment products")

In relation to investment products that are issued over and index, the issuer is obliged to pay the investor the performance of an index at a point in time and generally the issuer does not hold the constituents in the index for the benefit of the investor. An index license agreement may not always be in place between the issuer of the investment product and the index sponsor of the index being referenced in the product. Issuers therefore do not always have a legal basis to republish index constituent information. The JSE therefore wishes to advise that index constituent disclosure announcements are not compulsory where a physical underlying pool of assets is not being referenced.

ETFs

Pursuant to paragraph 19.66 of the Requirements, ETFs must be fully covered by the underlying assets that the ETF references at all times. It is therefore clear that there is an underlying pool of assets as referred to in paragraph 19.28 of the Requirements. The announcement pursuant to paragraph 19.28 is therefore applicable to any change in the underlying pool of assets including:

- changes to the index at the scheduled periodic index review that result in a change in the underlying portfolio holdings; and
- intra-periodic changes to the index as a result of corporate actions or otherwise that result in a change in either the underlying portfolio constituent holdings or weightings.

The changes referred to above must be announced via SENS no later than the day after the effective date of the change.

It should be noted that the changes to constituents and their respective weightings must be disclosed in relation to the underlying portfolio of assets. A simple republication of the index market notice produced by the index sponsor will not fulfil the issuer's obligations in terms of paragraph 19.28 of the Requirements. In light of this, a republication of the aforementioned index market notice including a reference to the portfolio constituents and weightings on the issuer's website via a web URL will be required in the announcement. This will ensure that investors have a clear indication as to the index changes as well as the related impact on the underlying portfolio of assets.

Guidance Letter: Indices referenced by ETFs and other specialist securities

Date: 17 August 2017

The JSE has for some time been monitoring the application of the JSE Listings Requirements (the "**Requirements**") in relation to indices disclosures in order to align the application with best market practice. The JSE has thought it wise to provide

guidance on the application of certain of the index related requirements pursuant to the provisions of Section 19 (Specialist Securities), with the intention of assisting the market with their respective business processes.

Exchange Traded Funds

Daily Publication – Paragraph 19.70

Pursuant to the provisions of paragraph 19.70(e) an issuer must publish details on its website each day of the index constituents (if applicable).

In respect of disclosure of the index constituents pursuant to paragraph 19.70(e), given that the index value is made publically available through data vendors the JSE is of the view that the requirements dealing with the daily publication of index constituents are no longer relevant.

The JSE will therefore no longer require the publication of the index constituents from the date hereof.

Feeder Fund Placing Documents

The JSE has experienced a recent influx in listing applications for feeder funds in the ETF market. Although the listings of feeder funds are permitted, the requirements do not specifically deal with the disclosure requirements relating to feeder funds. Guidance is therefore provided as to the required disclosure for index and portfolio constituents in the placing documents of feeder funds:

- General information on the underlying fund, being –
  - the name of the fund;
  - fact sheets; and
  - prospectus/listing documents

  A URL link must be included as to where the abovementioned information on the fund can be obtained.
- A URL link as to where the underlying feeder fund's portfolio constituents are published (this information may be incorporated by reference into the placing document);
- The units/instruments being purchased to track the index by means referencing the underlying fund; and
- The full list of constituents in the listing document is not required for either the portfolio or the index. A URL link must again be included as to the underlying fund portfolio constituents.

Transparency

Paragraph 19.35

Issuers are reminded that pursuant to paragraph 19.35 the ground rule summary document must be publically available on the issuer's website and the comprehensive ground rules document must comply with the provisions of paragraph 19.35 in order for the JSE to assess whether same is acceptable.

Financial Matters

Financial and audit related – Continuing obligations

Guidance Letter: Proactive monitoring of financial statements

Date: 16 February 2011

The JSE has released an announcement on SENS today regarding pro active

monitoring of financial statements. As a reminder, compliance with SA GAAP was made a JSE Listings Requirement in 2000. In 2005 this was changed to compliance with International Financial Reporting Standards ("IFRS"). The obligation to comply with IFRS is therefore not new. What has changed, however, is the JSE's approach to regulating this matter. It is important to note that our change is in line with international best practice.

From a practical process perspective, the pro-active review will begin shortly. All financial statements published on or after 1 January 2011 will be eligible for review. You will not receive any notification that your results have been selected. We shall contact you if the review process has identified issues which in our opinion warrant further investigation. In line with King III and the new Companies Act, No. 71 of 2008, audit committees must receive and deal appropriately with any concerns or complaints relating to accounting matters. We would therefore expect to see the input of the audit committee on any correspondence which flows from the company in response to issues of an accounting nature raised by the JSE.

A well regulated securities market is fundamental for listed companies to be able enjoy the benefits of being listed. We hope that you will embrace this new process and trust that together we will enhance South Africa's standing in the international market.

Guidance Letter: Summary of financial statements

Date: 25 July 2011

The Companies Act, No. 71 of 2008 ("the Act") makes provision for a summary of financial statements to be sent to shareholders, the summary must however comply with the prescribed requirements in the Act or Regulations. Unfortunately neither the Act nor the Regulations have provided for the prescribed requirements for a summary of financial statements.

Listed companies must thus obtain the necessary advice in order to determine whether it is legal to distribute a summary of financial statements to their shareholders. If they do send such a summary, whether voluntary or in terms of the Act, the JSE, without condoning that it is correct to send a summary, shall at the very least require of the company in relation to annual financial statements to have a summary that follows the approach of the Listings Requirements as they relate to preliminary, provisional and abridged reports. In this regard the summary must:

- be prepared in accordance with the framework concepts and measurement and recognition requirements of IFRS and the AC 500 standards as issued by the Accounting Practices Board or its successor; and
- must also as a minimum contain –
    - the information required by IAS 34: Interim Financial Reporting (in other words the disclosure requirements); and
    - a statement confirming that it has been so prepared.

These requirements apply equally to the situation where a company voluntarily sends financial information in a summarised format for example in advance of the notice of annual general meeting.

In the event that a company wishes to provide a summary of their interim financial reports, preliminary reports, provisional reports and abridged reports, such a summary must fully comply with paragraph 8.57 of the Listings Requirements.

Guidance Letter: Presentation of financial results

Date: 14 September 2007

The JSE Limited ("JSE") wishes to remind issuers that in terms of paragraph 8.57 of the JSE Listings Requirements, interim, preliminary, provisional and abridged reports (period results reports) must be prepared in accordance with, and containing the information required by, International Financial Reporting Standards ("IFRS") on Interim Financial Reporting (i.e. IAS 34).

In order to confirm compliance with this Listing Requirement, we ask issuers to include a statement confirming that the period results reports have been prepared in terms of IAS 34. This statement would be in addition to the normal wording which confirms that the accounting policies are in terms of IFRS and are consistent with those of the previous annual financial statements.

The GAAP Monitoring Panel ("GMP"), in recent cases referred to it has identified serious deficiencies with respect to compliance with IAS 34, as well as issues relating to accounting for business combinations. These matters are detailed in the Annexure to this letter. We would urge all issuers to carefully consider the content to their period results reports in light of paragraph 8.57 of the Listings Requirements and these GMP findings in order to avoid contravening the Listings Requirements.

Finally, in the context of period results reports which have been reviewed or audited we refer you to the 2004 SAICA guide. Although the references in this guide are out of date, the principle remains the same, namely the period results report should actually have an auditor's report separate from the underlying detailed annual financial statements.

Annexure

This annexure does not deal with all the requirements of the applicable standards. Its purpose is to set out deficiencies in financial reporting identifies by the GMP in recent cases referred to it.

IAS 34: Interim financial reporting

1.1 It should be noted that IAS 34 applies to half-yearly reports AND any preliminary, provisional or abridged reports issued by a company.

1.2 The minimum disclosure required includes specific disclosures relating to segment reporting and business combinations.

1.3 IAS 34, paragraph 16, requires, inter alia, the following minimum disclosure requirements:

Segment information, including:

1.3.1 Revenues from external customers.

1.3.2 Inter-segment revenues.

1.3.3 Segment profit or loss.

Business combinations, including:

1.3.4 The effective changes in the composition of the group during the period, including business combinations, acquisition or disposal of subsidiaries and long-term investments, restructurings and discontinued operations.

1.3.5 Acquisition date of business combinations.

1.3.6 Percentage of voting equity instruments acquired.

1.3.7 Cost of acquisitions.

1.3.8 If equity is issued (or issuable) in payment for an acquisition, disclosure is required of the number of equity instruments issued or issuable and the fair value of those instruments/basis for determining fair value.

1.3.9 The amount of the acquiree's profit or loss since acquisition date included within group profit for the period.

1.3.10 The revenue and results of the group for the period as if the acquisition dates had been at the beginning of the period.

1.3.11 Any gain/loss recognised in reporting period relating to the business combinations effected in the period.

Basic and diluted earnings per share

1.4 Diluted earnings per share data must include the effects of all dilutive potential ordinary shares. Contingently issuable shares should be included in the calculation of diluted earnings per share. This includes share issues which are subject to the fulfilment of conditions which had not yet been fulfilled at the reporting date. If there is a dispute regarding whether there are further shares to be issued (e.g. a dispute whether an earn-out target triggering share issue has been met), that fact should be disclosed and appropriate treatment and disclosure in terms of IAS 37 and Schedule 4 to the Companies Act, No. 61 of 1973 is required. Contingently issuable shares are only treated as dilutive their issue would have a negative effect on EPS.

IFRS 3: Business combinations/IAS 27: consolidated financial statements

2.1 The income and expenses of a subsidiary are to be included in the consolidated financial statements from the "acquisition date" as defined in IFRS 3. Income and expenses of a subsidiary are to be excluded from the consolidated financial statements from the date upon which the holding company ceases to control the subsidiary.

2.2 In terms of IFRS 3, the acquisition date is the date upon which the company "effectively obtains control of the acquiree" and control is the "power to govern the financial and operating policies . . .".

2.3 The date upon which the company effectively obtains control must be considered, having regard to the financial substance and economic reality, not the legal form in the acquisition agreement.

2.4 The effective date set in an agreement does not determine the acquisition (or sale) date for accounting purposes.

2.5 Some acquisition agreements reflect effective dates which are many months before the agreement date and/or the date upon which the acquirer effectively obtained control of the acquiree.

2.6 In those circumstances, the financial substance and economic reality is that the profits earned up to the acquisition date are included within the purchase price (and represented by increased net asset value as at the acquisition date). Such a transaction should be accounted for based on the acquisition date as defined in IFRS 3 and not the contractual effective date. Appropriate accounting adjustments are required in order to eliminate from the group profits the profits of the acquiree between the contractual effective date and the acquisition date.

2.7 The acquirer must account for the results of an acquired business or subsidiary based on the date upon which the power to govern was obtained in substance and reality (and not legal form). This principle applies equally to the seller, which should account for the results up to the date that such control was transferred to the buyer, in substance and reality, i.e. when seller "ceases to control" as referred to in IAS 27.

2.8 The consideration as to whether, in substance and reality, the power to govern had been obtained (or given up) would include, inter alia, an assessment of the de facto ability to make policy decisions in relation to the acquiree.

2.9 A measure of this power is to consider the date from which the acquirer had actual management control of the acquiree.

2.10 It follows that the allocation of the purchase price to the identified assets of the acquire should not be based on the fair values as at the legal effective date in the contract, but on the acquisition date, which must be determined in compliance with IFRS 3.

2.11 In circumstances where a take-over cannot legally be implemented until regulatory approvals have been obtained, it would be unlikely that control in substance and reality, could have been obtained by the acquirer prior to this approval.

2.12 The following counter arguments put forward were considered and rejected by the GMP:

1. the fact that the acquirer would be in control of the target at the end of its next reporting period is entirely irrelevant to the assessment;

2. the fact that the acquirer would control the accounting policies of target for the historic reporting period is irrelevant to the assessment. The selection of accounting policies to utilise in reporting the historic period, has no bearing on the date upon which the acquirer effectively obtained control of the target;

3. a reference was made to "guidance on implementation and illustrative examples". The only matter of relevance is the application supplement, being Appendix "B" to IFRS 3. This does not provide any indication that control for accounting purposes is based on an analysis of contractual rights and legal form. The question of effective control contemplated by IFRS 3 requires an analysis of the substance and financial reality which prevails over the legal form;

4. although contractually, certain rights may have passed to the acquirer on the effective date set in the agreement, this is clearly not the date from which the acquirer effectively obtains control of the target for the purposes of IFRS 3; and

5. the fact that there may have been no significant changes in the policies of the target during the reporting period, that the core management would remain the same and that the businesses were principally the same, are all entirely irrelevant considerations in assessing the acquisition date for the purposes of IFRS 3.

Guidance Letter: Presentation of pro forma financial information

Date: 4 March 2010

The Johannesburg Stock Exchange ("JSE") has received a number of enquiries relating to the presentation of certain pro forma financial information ("pro formas") and we deemed it appropriate to communicate our position on this to all issuers to avoid any uncertainty.

Paragraph 8.15 of the JSE Listings Requirements ("LR") is clear that it relates to pro formas in any information requiring submission to the JSE. Such information includes results announcements and annual financial reports. Some issuers have adopted a practice of including additional information in their results to show the impact of for example:

- the acquisition of an asset as if it had been acquired at the beginning of the period;
- the application or non application of a specific IFRS; or
- the results for a longer or shorter period than the previously reported results; for example, retailers adjust past results to show a comparable 53 – week period.

These examples are all pro formas for JSE purposes and the disclosure thereof must accordingly be done in full compliance with Section 8 of the LR. This is the case even if the issuer only discloses for example a pro forma profit or revenue figure without showing the entire income statement.

Guidance Letter: Presentation of constant currency information

Date: 16 August 2012

We refer to our guidance letter dated 4 March 2010 which addressed certain items which the JSE regarded as pro forma financial information (**"pro forma information"**). The guidance letter further stipulated that the items would be regarded as pro forma information for JSE purposes and the disclosure thereof must therefore be provided in full compliance with section 8 of the Listings Requirements

(the **"Requirements"**). One of the items mentioned was the application or non-application of a specific International Financial Reporting Standard (**"IFRS"**).

The JSE has recently noted that the presentation of financial information on a "constant currency" basis is increasing and in light of discussions held with certain issuers, the JSE decided to issue specific guidance thereon in order to ensure consistency in (i) the presentation of financial information and (ii) the involvement of auditors. IFRS has specific requirements dealing with currency conversions and the presentation of a "constant currency" figure essentially ignores the IFRS requirements. The presentation of financial information on a "constant currency" basis therefore falls into the category of non-application of a specific IFRS requirement and can therefore be regarded as pro forma information.

The JSE acknowledges that where management information is reviewed by the Chief Operating Decision Maker (as defined in terms of IFRS 8 – *Operating Segments*) in a currency other than the presented currency of the financial statements, an issuer is obliged to present such information in terms of IFRS 8 – Operating Segments. Where the issuer is obliged to present this information in compliance with IFRS 8 the JSE will not impose its pro forma requirements on such issuer. Similarly the JSE is not concerned if an issuer explains, as a matter of fact, how an underlying currency strengthened or weekend during a specified period. Such commentary is common with other line items within the income statement, for example where an issuer explains changes in volumes of units sold.

In all other instances, when an issuer presents financial information on a "constant currency" basis they must:

(i) Comply with paragraphs 8.16 and 8.18 of the Requirements;

(ii) Explain clearly what the base information is, i.e. whether it is the current or the comparative period that has been adjusted for the application of a constant currency;

(iii) Explain clearly how that base information has been adjusted for the exchange rate changes. Where there is more than one foreign currency involved this explanation must:

  (a) provide details of each of the material currencies of the issuer for both periods; and

  (b) indicate how the average exchange rate was calculated;

(iv) For constant currency information presented as part of or accompanying interim results of the issuer represented in terms of paragraph 3.15(a) of the Requirements, there must be a statement advising investors that this information has not been reviewed and reported on by the issuers' auditors; and

(v) For constant currency information presented as part of or accompanying any other results the issuer must obtain a limited assurance report, prepared in terms of IASE 3000, from their auditor on such information, and the auditors' report must be available for inspection. In issuing their report, the auditor must consider the accuracy and the appropriateness of the basis of presentation of the constant current financial information.

Guidance Letter: Integrated reporting

Date: 27 June 2013

This letter aims to clarify the continued misunderstanding within the market as to the obligations of listed companies (**"Issuers"**) pursuant to the JSE Listings Requirements (**"the Requirements"**) and Integrated Reporting.

<u>The Requirements</u>

On 31 January 2013 the JSE issued a guidance letter on corporate governance pursuant to the provisions of the Requirements. The JSE's general approach to corporate governance in relation to the King Code on Corporate Governance for South

Africa (the **"King Code"**) is that certain principles are mandatory with the balance being adopted on an "apply or explain" basis. Chapter 9 of the King Code which deals with Integrated Reporting and disclosure is not a mandatory principle pursuant to our recent guidance and can therefore be applied on an "apply or explain basis".

The Consultation Draft of the International IR Framework (**"Draft Framework"**)

The JSE applauds the work of the International Integrated Reporting Council (**"IIRC"**) and for the publication of the Draft Framework. We believe that this document is an improvement on the Discussion Paper issued by IIRC in September 2011. Nevertheless, we would therefore encourage Issuers to provide their comments on the Draft Framework to the IIRC.

In conclusion, the JSE wishes to advise Issuers that the production of an Integrated Report is not a mandatory principle from a Requirements perspective and neither is the application and compliance with the Draft Framework.

Guidance Letter: Application of IFRS 2 to share incentive schemes containing a cash settlement option

Date: 10 September 2013

The JSE wishes to bring to your attention a recent matter arising from its pro-active monitoring activities dealing with the treatment of cash settled options. The matter was also referred to the Financial Reporting Investigation Panel (**"FRIP"**) for their advice.

Fact pattern

The terms of an equity settled share based payment scheme permitted settlement in cash at the option of the Issuer. In the first year of vesting the Issuer settled certain of the employees share appreciation rights (**"SARS"**) in cash when requested to do so by the employees. In the subsequent years, further SARS were settled in cash, even in instances when no request was made by the employee.

The Issuer continued to treat the SARS as equity settled on the basis that the decision to settle in cash was made at settlement date based on an assessment of the commercial and economic factors, and what would be most beneficial to the Issuer. The Issuer had no stated policy with regards to cash settlement and contended that it thus did not have a present obligation of cash settlement, and continued to treat the scheme as equity settled.

Application of IFRS 2

Given the above fact pattern the SARS should have been treated as cash settled in terms of paragraphs 41 to 43 of IFRS 2. In considering this matter the FRIP noted that:

- Past behaviour and patterns of generally settling in cash shed light on the assessment of the likely conduct in the future indicating a rebuttable presumption of likely conduct;
- In circumstances where the Issuer cash settles the majority of SARS, this would be an indicator that a practice has been developed of settling SARS in cash (irrespective of its stated policy in this regard);
- Settlement in cash, even when not requested to do so by the holder of the right, would point to conduct of generally settling in cash, and establishes a business behaviour in relation thereto;
- The settling in cash in those circumstances (without the request from the holder of the right), would in fact be a stronger indication of an obligation to settle in cash than the circumstance in IFRS 2 paragraph 41 which contemplates that the counter-party specifically requests cash settlement;
- Even if the original intention was to settle in shares, in the Issuers case, the settlements in cash indicated a practice of cash settlement, which would drive the accounting thereafter; and

- For completeness, the assessment of whether the SARS were cash or equity settled would be a significant judgment that should be disclosed in terms of IAS 1.

Conclusion

The JSE urges Issuers to pay careful attention to their accounting treatment for share incentive shares where the scheme allows for cash settlement and this option is being utilised.

Guidance Letter: Reporting of restatements

Date: 8 October 2014

From 2009 accredited auditors were responsible for reporting restatements of results to the JSE. These notifications would then trigger correspondence between the JSE and the issuer. This reporting responsibility will shift to the issuer with effect from the implementation of the 2014 revision of the JSE Listings Requirements (**"the Requirements"**). This letter aims to provide guidance to issuers as to how to fulfil this new responsibility. It also incorporates the information previously set out in our letter of June 2013 which dealt with certain aspects of the reporting responsibility and as such that 2013 letter has been withdrawn.

When to report a restatement

New paragraph 3.14 of the Requirements states the following:

> "In the instance where an applicant issuer restates previously published results, for whatever reason, they must submit a restatement notification to the JSE containing details of the restatement and the reasons therefor. Such notification must be submitted within 24 hours from the restated results being published on SENS."

For the sake of clarity we wish to confirm that previously published results cover interim results, preliminary results, provisional results, abridged results and annual financial statements whether published separately or as part of another document which are restated and republished.

How to report a restatement

The restatement notification must be sent via email to the following e-mail address: restatements@jse.co.za. The notification should contain sufficient information through a detailed narrative for the JSE to understand the nature and circumstances that led to each specific restatement, as well as details regarding how and when the need for restatement was identified. The impact of the restatement on previously published results should also be included.

Which restatements

Restatements (also sometimes called re-presentations) of previous published results can occur in the following instances:

(i) a new accounting standard or interpretation is issued by the IASB, which requires retrospective application;

(ii) a voluntary change of accounting policy or change in the application of IFRS;

(iii) the application of IFRS 5 – Non-current Assets Held for Sale and Discontinued Operations and/or paragraph 28 of IAS 33-Earnings per Share;

(iv) a reclassification of amounts disclosed in the prior period financials;

(v) the correction of a material prior period error; and/or

(vi) for some other reason.

Historically the JSE required to be advised of any restatement. Going forward the JSE does not wish to be advised of any restatements under points (i) and (iii).

Furthermore, the same restatement will often appear in the interim results,

preliminary or provisional results and the annual results. Notification of restatements resulting from category (ii) above need only occur once for each change.

Guidance letter: Application of IFRS for antecedent interest on linked units

Date: 9 October 2014

The JSE wishes to bring to your attention a recent matter arising from its pro-active monitoring activities dealing with the treatment of antecedent interest payable by property entities with linked units. This matter was also referred to the Financial Reporting Investigation Panel (**"FRIP"**) for their advice.

Fact pattern

In this specific instance a property entity (**"the issuer"**) with a debenture linked to an ordinary share (**"linked unit"**) issued new linked units between two debenture distribution dates.

The issuer:

(i) Determined the amount of interest attributable to the newly issued linked units from the last distribution date to the issue date (**"antecedent interest"**) and accounted for this as income;

(ii) Did not correctly apply their own accounting policy to measure the debenture at fair value plus transaction costs at initial recognition; and

(iii) Thereafter incorrectly fair valued the debenture, instead of measuring it applying amortised cost using the effective interest rate method.

Application of IFRS

The treatment of antecedent interest in terms of the above fact pattern is not in accordance with International Financial Reporting Standards ("IFRS"). It is neither revenue in terms of IAS 18 – Revenue standard nor income in terms of the Framework. The FRIP advised that this antecedent interest forms part of the cash inflow on the issue of the linked units and should be recognised as part of the debenture liability's initial carrying amount using the effective interest rate method (IAS 18.30 and IAS 39.09).

IAS 39.43 states that when a financial asset or financial liability is recognised initially, an entity shall measure it at its fair value plus, in the case of a financial asset or financial liability not at fair value through profit or loss, transaction costs that are directly attributable to the acquisition or issue of the financial asset or financial liability. Thus the fair value of the debenture liability as determined initially should include the antecedent interest portion, since it is a component of the debenture portion's future contractual cash flows.

Furthermore the debenture liability is then amortised using the effective interest rate in accordance with IAS 39 - Financial Instruments: Recognition and Measurement for every separate issue of debentures (linked units).

Conclusion

The JSE urges issuers to pay careful attention to their accounting treatment for both antecedent interest and the measurement of debentures. Whilst we understand that the linked unit structures are in the process of being collapsed, we wish to highlight these principles to ensure that issuers do not take the same approach as it relates to dividends that they may believe accrue on the shares issued in place of the linked unit structures.

Financial and audit related – Circulars

Guidance Letter: Letter to sponsors/designated advisers

Date: 4 March 2010

Presentation of financial information: role of the reporting accountant specialist, sponsor and designated adviser

The Johannesburg Stock Exchange ("JSE") Listings Requirements ("LR") as they relate to Reporting Accountant Specialists ("RA Specialist") have been in force for more than a year now. In light of this the JSE felt that it would be appropriate to clarify the responsibilities of RA Specialists, Sponsors and Designated Advisers ("DA's") in terms of the LR.

Sponsors and DA's ("collectively referred to as Sponsors")

(1) The Sponsor must assist the RA Specialist, on a timely basis, by providing it with the draft circular full details of the transaction and any changes as and when they occur.

(2) On first submission of a circular, the Sponsor must submit to the JSE the signed letter required from the RA Specialist in terms of paragraph 8.56(a) of the LR ("the 8.56(a) letter"). Submission of the circular without the 8.56(a) letter will delay the approval process and may even result in a rejection of the entire submission. The JSE will also not review the pro forma financial information ("pro formas") or historical financial information. It must be noted that if we accept the submission without the 8.56(a) letter, the next submission we will in all likelihood be treated as a first submission again for turnaround purposes.

(3) The Sponsor must ensure that the JSE comments are provided to the RA Specialist, and as far as reasonably possible should ensure that the comments have been addressed before making subsequent submissions.

(4) On formal submission the Sponsor must ensure that paragraph 8.56(b) is complied with.

(5) The Sponsor must approve all announcements and if the RA Specialist is not involved in the announcement then it will take full responsibility for ensuring compliance with the LR including the financial effects. Whilst we do not expect the Sponsor to ensure compliance with complex International Financial Reporting Standards ("IFRS") matters they must ensure compliance with the remainder of Section 8 of the LR as they relate to pro formas and should ensure that the issuer has sought the necessary advice on any complex IFRS matters.

(6) As it relates to circulars, the directors of the issuer are responsible for the content thereof. The RA Specialist takes responsibility to sign-off on the information prepared by the issuer. The Sponsors responsibility in terms of paragraph 2.8(d) of the LR still applies (which advice extends to financial information). They should therefore still be involved in advising on the Section 8 requirements and at the very least should perform a reasonableness check and should ensure compliance with the remainder of Section 8 as explained in point 5 above.

The role of the RA specialist

A separate letter has been sent to RA Specialists confirming their roles and responsibilities in the submission process. In that letter we also provided a list of common and/or serious problems that we encountered in circulars over the past year. Sponsors are advised to review that letter in order to understand the RA Specialist role. The list of common problems should also be considered by Sponsors as they fulfill their responsibilities as it relates to approval of announcements and their involved in circulars.

Pro forma information

We also refer you to a separate letter sent to issuers regarding pro forma information. Sponsors are responsible for all submissions to the JSE and must therefore carefully consider that information and ensure that all pro forma is dealt with appropriately.

Guidance Letter: Letter to reporting accountant specialists

Date: 5 March 2010

Presentation of financial information: Role of the reporting accountant specialist, sponsor and designated adviser

The Johannesburg Stock Exchange ("JSE") Listings Requirements ("LR") as they relate to Reporting Accountant Specialists ("RA Specialist") have been in force for more than a year now. In light of this the JSE felt that it would be appropriate to clarify the responsibilities of RA Specialists, Sponsors and Designated Advisers ("DA's") in terms of the LR.

Sponsors and DA's ("collectively referred to as Sponsors")

- The Sponsor must assist the RA Specialist, on a timely basis, by providing it with the draft circular and details of the transaction and any changes as they occur.
- On first submission of a circular, the Sponsor must submit to the JSE the signed letter required from the RA Specialist in terms of paragraph 8.56(a) of the LR ("the 8.56(a) letter"). Submission of the circular without the 8.56(a) letter will delay the approval process.
- The Sponsor must ensure that the JSE comments are provided to the RA Specialist.
- The Sponsor handles the flow of documents and submission process between the JSE and the RA Specialist.

RA Specialist:

Submission process

- The RA Specialist must on the first submission of a document submit a signed 8.56(a) letter confirming that they have:
  - provided the necessary advice on the applicable IFRS and the LR; and
  - reviewed the first submission document to confirm that their advice was followed.
- In order to comply with the above, the RA Specialist must have performed a detailed review of the historical information and pro formas that are to be submitted to the JSE. The JSE acknowledges that this letter is not a guarantee that the figures are final as some may change, but the intention is that all the principle issues must have been addressed and we would not expect the final pro formas to be materially different. The RA Specialist must not sign their letter if their comments have not been addressed or if they have not had sight of the document that is to be submitted to the JSE.
- In order to provide the necessary advice and ensure compliance with the LR, the RA Specialist must have considered the content of the circular and any supporting agreements, and not just their part of the circular. It is only after such a consideration that they will be able to identify any other corporate actions that need to be included in the pro formas and to be able to confirm that everything is correctly reflected.
- The RA Specialist must consider any comments received from the JSE and ensure that any changes made to the transaction are correctly reflected in the financial information sections.
- The RA Specialist must consider the need to consult with their IFRS specialist if there is any uncertainty.
- On formal submission the RA Specialist must either sign off on the reporting accountants report or must submit a signed confirmation in accordance with paragraph 8.56(b) of the LR that they have reviewed the final pro formas and confirm that all JSE comments have been addressed and the pro formas fully comply with IFRS and the LR.

Expectations of RA Specialist

- When the JSE introduced the RA Specialist role, we acknowledged that many parties required some time to find their feet with the new process. We have therefore in the past been relatively lenient with the quality of work performed by certain RA Specialists and provided more detailed comments than we would have expected.

- Now that the process and roles have been established, the JSE expects the RA Specialist to ensure that the information is at the required standard to eliminate any problems. We will be placing more reliance on their work in the submission process and are moving away from the practice of the past year of having every set of pro forma figures reviewed by our own internal specialists as well as the corporate finance officer responsible for the document.

- In future, it will only be the corporate finance officers that will be reviewing certain disclosures and any areas of non-compliance by the RA Specialists will be dealt with in terms of Section 1 of the LR.

Common problems

Annexure A sets out a list of common or serious problems we have encountered in circulars over the past year. This list must be used by RA Specialist to eliminate potential areas of non-compliance in circulars and announcements.

Annexure A:

Listings Requirement- Pro forma matters

1. Periods covered (LR paragraph 8.17):

    (a) the disposal of the investment is not dealt with from the beginning of the period for income statement purposes; and

    (b) tried to have retained income from the income statement flow through directly to the balance sheet despite the fact that you have to assume different effective dates for balance sheet and income statement purposes (see comment 8(a) below too).

2. Periods used (LR paragraph 8.25):

    (a) Not using latest published results.

3. Adjustments that must be made (LR paragraph 8.26):

    (a) pro formas don't deal with all the transactions the subject of the circular (LR paragraph 8.26(b));

    (b) not dealing correctly with previously published pro forma effects (LR paragraph 8.26(c)); and

    (c) ignoring material post balance sheet events (LR paragraph 8.26(d)).

4. Source of unadjusted information (LR paragraph 8.29):

    (a) source of underlying historical information is not from an audited source;

    (b) source of underlying historical information is not based on an audit (or review if applicable) done by a JSE accredited auditor; and

    (c) Adjustment column does not agree to underlying audited/reviewed information.

5. Explanation of adjustments (LR paragraphs 8.30 & 8.31):

    (a) notes don't explain the figures or and in some cases even contradict them;

(b) notes are not detailed enough to explain adjustments;

(c) notes are incomplete;

(d) notes are not detailed enough to disaggregate information;

(e) use of proceeds on a disposal don't tie into the stated rationale of the deal as set out in the document;

(f) figures don't make sense or tie back to the underlying historical information;

(g) figures don't make sense or tie into the facts of the deal as set out in the circular;

(h) incorrect assumption that for rights offer there is never an income statement effect;

(i) don't deal with interest savings when it is factually supportable that debt was repaid; and

(j) not dealing with a range of assumptions e.g. if there are numerous scenarios of a transaction.

6. Continuing impact (LR paragraph 8.32):

(a) Notes don't indicate which income statement effects have an ongoing impact.

7. Per share figures:

(a) Not including the number of shares and per share effect under the detailed table.

8. Issues also spelt out in detail in the SAICA guide:

(a) balance sheet impacts incorrectly brought in assuming the deal was done at the beginning of the period i.e. ignoring paragraph 23 & 24 of the SAICA guide and trying to get articulation; and

(b) incorrectly ignoring transaction costs (paragraph 64 of SAICA guide).

9. Reporting accountants report:

(a) not including name of audit partner involved in the report on the first submission document;

(b) 8.56(a) letter not submitted on first submission;

(c) did not comply with the Listings Requirements as it relates to auditors reports on "carve-out" financial information;

(d) didn't issue correct report in terms of paragraph 13.16(e) of the LR.

IFRS /accounting specific matters

1. Share issues records at issue price instead of at actual value as required by IFRS 3.

2. Ignored purchase price allocation exercise of IFRS 3.

3. Incorrectly did not consolidate a subsidiary.

4. Incorrectly ignored the deferred consideration for an acquisition.

5. Earnings and Headline earnings per share incorrectly shown as the same figure.

6. No reconciliation to headline earnings.

7. IFRS 2 not correctly dealt with.