

Amendments to the JSE Listings Requirements (the “Requirements”)

JSE Consultation Paper

April 2019

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Considerations for strengthening the regulation of Secondary Listings		
Item	Proposed Amendment	Nature of amendment and rationale
	<p><b>General:</b></p> <p>In reviewing the public comments on the considerations for strengthening the regulation of secondary listings on the JSE, a clear theme came through in favour of creating regulatory certainty for issuers seeking a secondary listing on the JSE. Typically, as is the case with certain peer exchanges that have secondary listing regimes, reliance is primarily placed on the regulation afforded by the primary foreign exchange. Issuers are familiar with the regulations and disclosures applied by their primary exchanges, and would want to avoid a scenario where unfamiliar foreign regulation (from their point of view) is applicable to them, especially from a continuing obligations perspective.</p> <p>In placing regulatory reliance on the primary exchanges, the right balance must be achieved between the interests of secondary listed issuers and the protection of South African investors.</p> <p>In order for the JSE to apply this customary regulatory approach whereby reliance is placed on the regulation of the primary foreign exchange, the JSE would have to ensure that primary listing stock exchanges are of a certain regulatory quality. The JSE would in this regard need to obtain a basic understanding of the provisions dealing with,</p>	

	<p>including but not limited to, the following:</p> <ul style="list-style-type: none"> <li>• Financial reporting requirements and publication periods;</li> <li>• Disclosures of the sale or acquisition of a beneficial interest in the issuer;</li> <li>• Disclosure of major shareholdings;</li> <li>• Disclosure of dealings in securities by directors;</li> <li>• Treatment of price sensitive information;</li> <li>• Treatment and disclosure of transactions;</li> <li>• Authorities required for dilution in shareholding; and</li> <li>• Corporate governance regime.</li> </ul> <p>The approach of the JSE would therefore be aimed to strengthen the quality of foreign stock exchanges permitted to qualify as secondary listings on the JSE. The model of the pre-approval of exchanges is followed by (i) the Australian Securities Exchange and (ii) the Toronto Stock Exchange.</p> <p>In being more selective on the quality of stock exchanges, the JSE will aim to cure other concerns raised in the proposals by the JSE, taking into account considerations for both issuers and investors.</p> <p>Once the amendments below have been considered, please refer to <b>Annexure A</b> for a brief summary of the proposed secondary listings regime of the JSE.</p>	
1	<p><b>Selection Equivalent Exchanges</b></p> <p><b>Section 18 - Dual listings and listings by external companies</b></p> <ul style="list-style-type: none"> <li>• <b>Definitions</b></li> <li>• <b>Paragraphs 18.3 and Schedule 2</b></li> </ul> <p>Currently, the JSE accepts secondary listings from</p>	<p>The JSE wishes to create certainty as to the applied regulation regime in respect of secondary listings from approved exchanges.</p> <p>The JSE will be satisfied with the regulation and disclosure regimes of approved exchanges, supported by co-operative and information sharing arrangements to strengthen the regulatory oversight over secondary listed issuers for the benefit of investors and the South African market as a whole.</p>

<p>companies that have primary listings on exchanges that are members of the World Federation of Exchanges or from companies that have a subscribed capital of R500 million or more (irrespective of country of primary listing).</p> <p>The JSE was considering becoming more selective on the jurisdictions it accepts for secondary listings. This approach would require the JSE to undertake a focused review of the regulation regime of any foreign primary exchange, before such an exchange will be accepted as a primary exchange and regulator for purposes of a secondary listing on the JSE.</p> <p>In order to provide the market with certainty as to the secondary listing regime of the JSE, the intention would be for the JSE to create a pre-approved list of foreign exchanges with regulatory and disclosure regimes the JSE deems acceptable.</p> <p>Based on the principle for fast-track listings pursuant to paragraph 18.42 of the JSE Listings Requirements (the “<b>Requirements</b>”), the JSE intends to amend the Requirements to commence with approved exchanges for purposes of secondary listings in the normal course, being:</p> <ul style="list-style-type: none"> <li>• The Australian Securities Exchange;</li> <li>• The London Stock Exchange;</li> <li>• The NYSE;</li> <li>• The Toronto Stock Exchange;</li> <li>• The Nasdaq Stock Market;</li> <li>• Euronext Amsterdam;</li> <li>• Euronext Brussels</li> <li>• Frankfurt Stock Exchange;</li> <li>• Luxembourg Stock Exchange; and</li> <li>• SIX Swiss Exchange.</li> </ul> <p>The above stock exchanges are known to the JSE as all the exchanges above have current secondary listed issuers on the JSE. It will further be the intention of the JSE to formalise co-operative and information sharing</p>	<p>Current secondary listings from unapproved exchanges will be grandfathered so the existing (and expanded) requirements will continue to apply so that their listing status on the JSE remain unaffected. In this regard it should be noted that the deemed primary regulation provision of the JSE will continue to apply based on both the volume and value of securities traded pursuant to paragraph 18.21 of the Requirements.</p>
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arrangements with these exchanges in due course to strengthen the regulatory oversight over secondary listed issuers for the benefit of investors and the South African market as a whole.

The JSE Consultation Paper only addressed measures to strengthen the regulation of Main Board listings, although many of the provisions apply equally with or without modification to AltX issuers. In order to create a platform for secondary listings on AltX, which is aimed small to medium companies that are in growth phase, it will be the intention of the JSE to also create an approved list of exchanges that is measures against (i) the World Federation of Exchanges and (ii) the approved exchanges. Thus applying a current and familiar benchmark for secondary listings to AltX listings.

In summary, the following is proposed as the measure to determine approved exchanges for purposes of secondary listings:

- Main Board: Applicant issuers with a primary listing on an approved exchange; and
- AltX: Applicant issuers with a primary listing on (i) an exchange which is a member of the World Federation of Exchanges or (ii) an approved exchange .

The JSE may, in its discretion, add additional exchanges to its list as may be published from time to time on its website. The JSE will aim to expand on the approved exchanges list, provided that (i) there is real and regular demand and (ii) the JSE is satisfied with the regulatory and disclosure regime of such exchanges.

Issuers primary listed on the approved exchanges will only be required to comply with the listings requirements of the exchange where it has a primary listing, save as otherwise stated in the Requirements (refer to paragraph 18.19 of the

Requirements).

The consequence of this approach is that –

- applicant issuers from approved exchanges seeking a secondary listing on the JSE will have absolute certainty as the regulation regime and continuing obligations applied by the JSE;
- for the benefit of shareholders and investors, the JSE will be satisfied with the regulation and disclosure regime of such exchanges, supported by co-operative and information sharing arrangements;
- the reference to the “World Federation of Exchanges” will be removed for purposes of a Main Board secondary listing exchange; and
- the R500 million subscribed capital as entry criteria for secondary listings pursuant to paragraph 18.3(b) of the Requirements will be removed in totality as the basis must be the regulation and disclosure regime of the primary exchange and not the size of the applicant issuer.

#### Existing Secondary Listings: Unapproved Exchanges

Existing secondary listings currently listed on the JSE from unapproved exchanges will continue to remain listed on the JSE and the current requirements (and as proposed to be amended) in respect of these secondary listings will continue to apply in the normal course. However any new applications for secondary listings on the JSE from unapproved exchanges would need to be reviewed and approved by the JSE. If not approved by the JSE, the only option for such issuers would be to seek a primary or dual primary listing on the JSE.

<p><b>2</b></p>	<p><b>Proactive Monitoring</b></p> <ul style="list-style-type: none"> <li>• <b>Paragraph 18.19</b></li> </ul> <p>Since 2011, the JSE has pro-actively monitored and reviewed annual financial statements ("<b>AFS</b>") and interim reports of primary listed issuers in order to review the application and treatment of International Financial Reporting Standards in the preparation of AFS and interim reports. This is done in conjunction with the University of Johannesburg and the pro-active monitoring is a critical regulation tool for the JSE. The JSE does not presently have a pro-active monitoring process in place for secondary listed issuers.</p> <p>It was proposed, based on the regulation benefits of pro-active monitoring, that the JSE could consider to introduce a pro-active monitoring process for secondary listed issuers. The approach would however be to establish whether a primary exchange has a pro-active monitoring in its market.</p> <p>In the research conducted by the JSE, some of the above approved exchanges do apply a pro-active monitoring process in respect of compliance with the relevant accounting framework by issuers. There may be variances in the selection model applied as issuers may be excluded because of the country of incorporation not being with the local market or not falling into the top index of the relevant exchange. For this reason, the JSE will undertake a process to determine which secondary listed issuers from approved exchanges are subject to a pro-active monitoring process in their own market. To the extent that there is a pro-active monitoring process in that market, it will not be the intention of the JSE to apply a JSE pro-active monitoring process to such secondary listed issuer. Duplication of pro-active monitoring process from both markets would not be beneficial.</p>	<p>The aim would be, as part of the regulatory and oversight function of the Issuer Regulation Division of the JSE, to improve financial scrutiny and interrogation of AFS and interim reports prepared and published by secondary listed issuers for the benefit of shareholders and investors, provided a pro-active monitoring process is not applied by the primary exchange.</p>
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	<p>The JSE intends to amend the Requirements to include a continuing obligation that the issuer must be in compliance with the accounting framework of its primary exchange to enable a JSE pro-active monitoring process only to the extent not already performed by the primary exchange. This approach will provide shareholders and investors with a level of comfort that either at (i) primary exchange level or (ii) JSE level, there will be a pro-active monitoring process on published AFS and interim reports.</p> <p>Currently pro-active monitoring is an internal regulation measure applied by the Issuer Regulation division and is not defined or prescribed in the Requirements. However, by creating a continuing obligation that issuers must be in compliance with the accounting framework of their primary exchange, the JSE will have the ability to enforce this requirement through means of pro-active monitoring. If pro-active monitoring is not performed by the primary market the secondary listed issuer will be subject to the JSE pro-active monitoring process.</p>	
<p><b>3</b></p>	<p><b>Expanded powers for ensuring ongoing compliance</b></p> <p>The Requirements stipulate that 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.</p> <p>The JSE considered amending the Requirements to include a general enabling power for the JSE to prescribe additional continuing obligations for secondary listed issuers with which they must comply.</p> <p>Referring to item 1 above, the JSE is proposing to strengthen its secondary listings jurisdictions by creating a list of approved exchanges, with regulation and disclosure regimes acceptable to the JSE.</p>	<p>The JSE wishes to create certainty as to the applied regulation regime in respect of secondary listings from approved exchanges.</p> <p>The JSE will be satisfied with the regulation and disclosure regimes of approved exchanges, supported by co-operative and information sharing arrangements to strengthen the regulatory oversight over secondary listed issuers for the benefit of investors and the South African market as a whole.</p> <p>The JSE is of the view that the publication of information regarding (i) changes in beneficial ownership in the shareholding of the issuer and (ii) dealings in securities by directors and those closely related is very important to shareholders and investors, as it relates to the overall ownership structure of the issuer. The disclosure should be mirrored to the extent possible.</p>

The JSE has therefore decided not to proceed with this proposal placing further discretionary continuing obligations on secondary listed issuers from approved exchanges, based on the following:

- for the benefit of shareholders and investors, the JSE will be satisfied with the regulation and disclosure regime of such exchanges, supported by co-operative and information sharing arrangements;
- to afford secondary listed issuers with certainty to the regulation applied on them by the JSE; and
- referring to item 4 below, to the extent that a secondary listed issuer wishes to move its primary listing from the JSE it will only be permitted to do if the primary exchange is an approved exchange. In this regard shareholder will be able to vote on the proposed move of primary regulation supported by a regulatory comparison between the regulation and disclosure regime applied by the JSE and that of the new primary exchange.

**Change in Beneficial Ownership / Dealings in Securities by Directors**

Although not specifically addressed in the JSE Consultation Paper, the JSE is of the view that the publication of information regarding changes in beneficial ownership in the shareholding of the issuer as prescribed in paragraph 3.83(b) of the Requirements is very important to shareholders and investors, as it relates to the overall ownership structure of the issuer. The same applies to dealings in securities by directors and their associates as prescribed in paragraph 3.63 of the Requirements

On this basis, the JSE intends to expand the continuing obligations of secondary listed issuers. To the extent that there are any notifications dealing with (i) changes in beneficial ownership or (ii) dealings in securities by directors and those closely related to the directors pursuant



	<p>to either local legislation, the primary exchange regulation or otherwise, such information must be published on SENS immediately.</p>	
<p><b>4</b></p>	<p><b>Move of Primary Listing</b></p> <ul style="list-style-type: none"> <li>• <b>Paragraphs 18.20, 18.21 and 18.24</b></li> </ul> <p>Secondary listed issuers have the ability to move their primary listing on the JSE to another exchange/jurisdiction, whilst retaining a secondary listing on the JSE. This would result in the issuer falling outside of the primary regulation scope of the JSE.</p> <p>The JSE has two safeguards in place for such an event:</p> <ul style="list-style-type: none"> <li>• Shareholders' approval: the Requirements afford primary listed issuers the ability to move their primary listing from the JSE to another stock exchange, provided they keep their secondary listing on the JSE and the transfer of primary listing is supported with a majority shareholders' vote (excluding the votes of any controlling shareholder, its associates and any party acting in concert); and</li> <li>• Deemed primary regulation: Post the transfer of primary listing to another exchange, the JSE may still deem the secondary listing to be a primary listing on the JSE, should both the volume and value of the securities traded on the JSE exceed 50% of all securities traded (measured over a 12-month period).</li> </ul> <p>The safeguards above have however caused practical challenges for the JSE, the issuers in question, shareholders and investors:</p> <ul style="list-style-type: none"> <li>• Shareholders' approval: This safeguard places the JSE in a position to accept another primary regulator proposed by the board of the issuer to its</li> </ul>	<p>The JSE wishes to create certainty as to the applied regulation regime in respect of secondary listings from approved exchanges.</p> <p>Current secondary listings from unapproved exchanges will be grandfathered so the existing requirements will continue to apply so that their listing status on the JSE remain unaffected. In this regard it should be noted that deemed primary regulation provision of the JSE will continue to apply based on both the volume and value of securities traded pursuant to paragraph 18.21 of the Requirements.</p>

shareholders, despite the fact that the majority of the trading or share register is held in South Africa; and

- Deemed primary regulation: This safeguard results in the JSE becoming a dual primary regulator which in turn leads to certain practical issues arising, such as conflicts in the application of the listings requirements of both primary exchanges. The election further leads to regulatory issues on the basis that the corporate laws of the jurisdiction of incorporation of such issuer may be totally unfamiliar to the JSE and could be contrary to certain provisions of the Requirements.

It was proposed that the safeguards could be strengthened in the following ways:

- Proposal 1: Shareholders' approval: The JSE considered whether it should be more selective on the primary listing jurisdictions it accepts when an issuer moves its primary listing, at its instance, from the JSE and retains only a secondary listing on the JSE. The JSE could consider introducing further safeguards to permit the transfer of a primary listing only if the new primary exchange is an exchange of equivalent regulation to the JSE.

The JSE intends to amend the Requirements in line with the proposal to only allow the transfer of primary listing regulation from the JSE to another exchange provided the other exchange is an approved exchange.

Further, when proposing a vote to shareholders on the transfer of a primary listing to an approved exchange, the issuer must present shareholders with a regulatory comparison on the key differences in the regulation and disclosure regime applied by the JSE and the new primary exchange. Shareholders should be provided with sufficient information to compare the key regulatory and disclosure differences in regulation afforded between the JSE and the

new primary exchange.

Further, the composition of the share register of the issuer will not impact such issuer's ability to move its primary listing, provided (i) the issuer is moving its primary listing to an approved exchange and (ii) shareholders have the ability to vote thereon (based on the regulatory comparison provided).

- Proposal 2: Deemed primary regulation: In order to avoid regulatory issues with a forced primary regulation, the JSE considered introducing a model where the JSE would not become the primary regulator in the full sense. The approach would be to ensure that the JSE did not become the primary regulator, but to rather apply an enhanced regulation approach to such secondary listed issuers in order to protect the interests of the shareholders on the South African register.

This proposal will now conflict with the approach suggested above in Item 1 where it will be the aim to provide secondary listing on the JSE with certainty as the regulation and disclosure regime applied by the JSE, provided the primary listing being sought is on an approved exchange. The JSE will therefore not allow a transfer of primary listing to an unapproved exchange (notwithstanding a shareholder's vote on the matter) and as such the issuer will have to maintain a primary listing on the JSE should it wish to remain listed on the JSE. In these circumstances a dual primary listing will have to be a consideration for the issuer.

#### Value and Volume: Period of Assessment

Due to the practical issues arising from deemed primary regulation or enhanced secondary listing regulation by the JSE (as proposed), the JSE intends to amend the

	<p>Requirements to increase the period of assessment under the value and volume provisions pursuant to paragraph 18.21 from 12 months to 24 months. Issuers have argued that volume and value in the trading of an issuer's securities may differ from one year to the next, and in order to avoid deemed primary regulation or enhanced primary regulation from one year to the next on a secondary listing, it is being proposed by the JSE to increase the period of assessment from 12 months to 24 months. The JSE is of the view that the longer period of assessment of 24 months will show a stronger trend as to the movement in value and volume of trading. Once again the JSE wishes to create certainty in respect of the regulation applied to secondary listings.</p> <p>As a reminder, the deemed primary regulation provisions will only be applied to current secondary listings on the JSE with primary listings on unapproved exchanges.</p> <p><u>Composition of Share Registers</u></p> <p>Referring to item 1 above, the JSE is proposing to strengthen its secondary listings jurisdictions by creating a list of approved exchanges, with regulation and disclosure regimes acceptable to the JSE. This approach will strengthen the regulatory oversight and disclosure in respect of such secondary listed companies. On this basis, the JSE has decided not consider the composition of the share register, and specifically the level of South African shareholders, in considering deemed primary regulation.</p> <p>As a reminder, the deemed primary regulation provisions will only be applied to current secondary listings on the JSE with primary listings on unapproved exchanges.</p>	
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<p><b>5</b></p>	<p><b>Avoidance of Primary Regulation</b></p> <p>Currently, the JSE has the ability to deem a secondary listing to be a primary listing on the JSE should both the volume and value of the securities traded on the JSE exceed 50% of all securities traded (measured over a 12-month period).</p> <p>The JSE currently allows issuers to maintain a primary listing on another exchange notwithstanding the fact that both the volume and value of securities traded on the JSE exceed 50% of all securities traded, provided shareholders are afforded to vote thereon and shareholders are provided with a detailed summary of the differences in the regulatory regimes between the JSE and the primary exchange retained.</p> <p>The JSE was considering removing the ability of shareholders to vote to retain a certain primary listing when both the volume and value of securities traded on the JSE exceed 50% of all securities traded.</p> <p>The JSE intends to amend the Requirements to remove the volume and value test on issuers listed on approved exchange in order to provide these issuers with certainty in respect of the regulation applied by the JSE. As a reminder, the deemed primary regulation provisions will only be applied to current secondary listings on the JSE with primary listings on unapproved exchanges.</p> <p>Note: This item has already been addressed under item 4 of the Amendment Schedule.</p>	<p>The JSE wishes to create certainty as to the applied regulation regime in respect of secondary listings from approved exchanges.</p> <p>The JSE will be satisfied with the regulation and disclosure regimes of approved exchanges, supported by co-operative and information sharing arrangements to strengthen the regulatory oversight over secondary listed issuers for the benefit of investors and the South African market as a whole.</p>
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<p><b>6</b></p>	<p><b>Country of Incorporation</b></p> <p>Secondary listings may in many instances have a primary listing on a foreign exchange, but are not incorporated in the jurisdiction of that exchange. Although a company may be primary listed on the London Stock Exchange (which has a regulation regime with which the JSE is accustomed with), the company may be incorporated in Malta, Germany or say the Netherlands.</p> <p>The company laws regulate various items that are not necessarily governed by the listings requirements of an exchange, especially matters relating to amendments to MOI, the appointment of directors, the calling of meetings by shareholders, expropriation events, disclosures in respect of change in beneficial shareholding and general corporate governance measures (director's interests in transaction and the like).</p> <p>It will therefore be imperative for the JSE to get an understanding of the company laws applicable to an issuer seeking a secondary listing on the JSE, where the issuer is not incorporated in the country of the approved exchange. This will apply irrespective of the fact whether the issuer in question has a primary listing on an accredited exchange.</p> <p>Although not specifically addressed in the JSE Consultation Paper, the JSE intends to amend the Requirements to require issuers seeking a secondary listing on the JSE to approach the JSE in advance if the country of incorporation is in a country other than the jurisdiction of the approved exchange.</p>	<p>This approach will enable to the JSE to have a view on the company laws applicable to a secondary listed issuer, irrespective of the fact the issuer is listed on an approved exchange.</p>
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**Proposed Secondary Listings Regime of the JSE**

## Key Features:

- The JSE aims introduce a list of approved exchanges for purpose of secondary listings on the JSE. The JSE wishes to create certainty as to the applied regulation regime in respect of secondary listings from approved exchanges. Issuers primary listed on the approved exchanges will only be required to comply with the listings requirements of the exchange where it has a primary listing, save as otherwise stated in the Requirements (refer to paragraph 18.19 of the Requirements).
- The JSE will be satisfied with the regulation and disclosure regimes of approved exchanges, supported by co-operative and information sharing arrangements to strengthen the regulatory oversight over secondary listed issuers for the benefit of investors and the South African market as a whole.
- Current secondary listings from unapproved exchanges will be grandfathered so the existing (and expanded) requirements will continue to apply so that their listing status on the JSE remain unaffected. In this regard it should be noted that the deemed primary regulation provision of the JSE will continue to apply based on both the volume and value of securities traded pursuant to paragraph 18.21 of the Requirements. However any new applications for secondary listings on the JSE from unapproved exchanges would need to be reviewed and approved by the JSE. If not approved by the JSE, the only option for such issuers would be to seek a primary or dual primary listing on the JSE.
- The JSE has decided not to proceed with this proposal placing further discretionary continuing obligations on secondary listed issuers from approved exchanges. The JSE added two additional continuing obligations;
  - That the issuer must be in compliance with the accounting framework of its primary exchange to enable a JSE pro-active monitoring process only to the extent not already performed by the primary exchange; and
  - To the extent that there are any notifications dealing with (i) changes in beneficial ownership or (ii) dealings in securities by directors and those closely related to the directors pursuant to either local legislation, the primary exchange regulation or otherwise, such information must be published on SENS immediately.
- The JSE will only allow the transfer of primary listing regulation from the JSE to another exchange provided the other exchange is an approved exchange.
  - When proposing a vote to shareholders on the transfer of a primary listing to an approved exchange, the issuer must present shareholders with a regulatory comparison on the key differences in the regulation and disclosure regime applied by the JSE and

the new primary exchange. Shareholders should be provided with sufficient information to compare the key regulatory and disclosure differences in regulation afforded between the JSE and the new primary exchange.

- In respect of approved exchanges, the JSE will not consider the composition of the share register, and specifically the level of South African shareholders, in considering deemed primary regulation.
- The JSE will remove the volume and value test on issuers listed on approved exchange in order to provide these issuers with certainty in respect of the regulation applied by the JSE. As a reminder, the deemed primary regulation provisions will only be applied to current secondary listings on the JSE with primary listings on unapproved exchanges. The proposed enhanced secondary regulation will not apply to secondary listed issuers from approved exchanges.
- Issuers seeking a secondary listing on the JSE to approach the JSE in advance if the country of incorporation is in a country other than the jurisdiction of the approved exchange.