

Censures and Penalties



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JSE

1. GENERAL OVERVIEW

The JSE is the listing authority for companies listed on the exchange and its powers are derived from statute through the Financial Markets Act No. 19 of 2012 (“FMA”). The JSE, as licensed exchange, is obliged to make and enforce its listings requirements and to supervise compliance thereof in accordance with the provisions of the FMA. Enforcement and disciplinary actions are important tools used by the JSE to meet its regulatory objectives. In 2016, the JSE published a document titled *Understanding JSE Censures and Imposition of Censures* which sets out the JSE’s approach to enforcement and regulatory action. As and when an investigation is completed and to the extent that a public censure is appropriate, the JSE will publish details of its findings. Other censures, such as private censures, are not necessarily known to the investing public and other stakeholders. A regulatory framework with a robust enforcement programme may be diminished if industry participants are unaware of it, its processes or the consequences of non-compliance with the Listings Requirements. In light of this the JSE is aiming at creating more transparency around its enforcement actions and this document along with future publications will support this objective.

2. POWERS

The provisions of the FMA are clear that the listings requirements are binding on the issuer itself, its board, officers and employees. If a breach of the listings requirements is identified, the JSE may take action against an issuer, its directors, officers and employees (“**regulated parties**”) after following due process which must be observed at all times. The JSE’s regulatory duties and responsibilities are therefore limited to the express duties and responsibilities set out in the FMA and the JSE Listings Requirements and Debt Listings Requirements (“**Listings Requirements**” or “**Debt Listings Requirements**”). The JSE may not act outside of the ambit of these responsibilities and any action that does not fall within these responsibilities will be ultra vires and void.

The JSE is, in terms of the peremptory provisions of the FMA, obliged to adopt and enforce its Listings Requirements. The Investigations Unit (within the Issuer Regulation Division) is responsible for the enforcement of the Listings Requirements by way of conducting investigations and ultimately taking disciplinary action in appropriate cases, including against listed issuers and directors.

The Issuer Regulation Guide available on the JSE’s website provides an overview of the regulatory environment applicable to issuers that have a listing on the JSE. It also gives a background on the oversight role of the JSE and other regulatory bodies in the governance eco-system and the interplay between the various regulators in the governance framework applicable to JSE listed companies.

3. CENSURES & PENALTIES

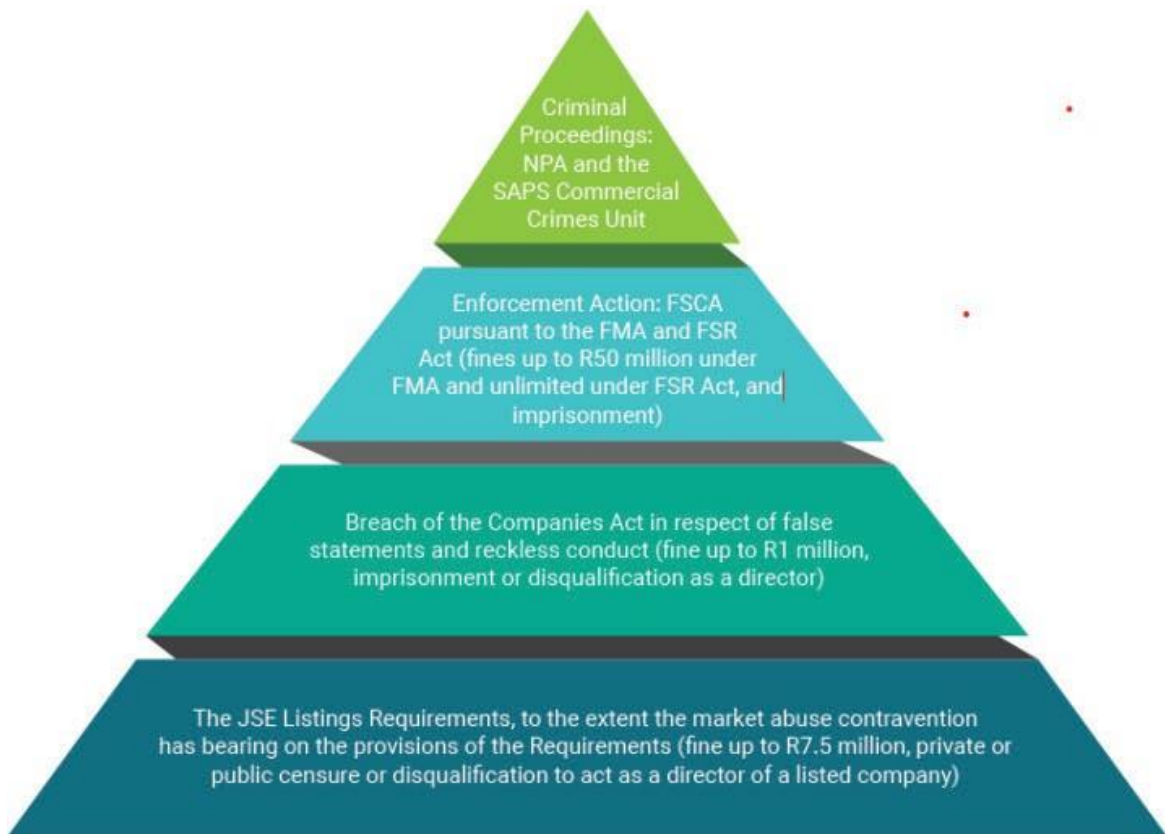
In terms of paragraph 1.21 of the Listings Requirements and 1.20 of the Debt Listings Requirements, where the JSE finds that an issuer or its director(s) have contravened or failed to adhere to the provisions of the requirements, the JSE may, in accordance with the provisions of the FMA and without derogating from its powers of suspension and/or removal:

- censure the issuer and/or the issuer's director(s)/officer(s), individually or jointly, by means of private censure;
- censure the issuer and/or the issuer's director(s)/officer(s), individually or jointly, by means of public censure;
- impose a fine not exceeding such amount as stipulated by the FMA, on the issuer and/or the issuer's director(s)/officer(s), individually or jointly;
- disqualify an issuer's director(s)/officer(s) from holding the office of a director or officer of a listed company for any period of time; or
- issue any other penalty that is appropriate in the circumstances.

The JSE's powers to censure are derived from and is limited to what is prescribed in the FMA. These powers must be understood within the broader regulatory governance eco-system so that there is a proper understanding of the regulatory hierarchy and the role of various other regulators. Of particular importance in this regard is the following:

- The FMA stipulates that the maximum financial penalty that may be imposed by the JSE is capped at R7.5 million.
- In line with several other international markets, there are several other statutes and agencies that have additional power of censure, administrative, civil and criminal, that will be applicable in cases of false or misleading statements and other serious offences.
- The National Prosecuting Authority ("NPA") can take criminal action against offenders.
- The Financial Sector Conduct Authority ("FSCA") is established in terms of the Financial Sector Regulation Act, No.19 of 2017 and has the power to, amongst other things, impose unlimited fines and imprisonment.
- The Companies Act, No.71 of 2008 ("**Companies Act**") is the primary legislative framework governing companies incorporated and/or registered under South African Law. Additional action pursuant to the Companies Act includes the disqualification of directors.

The sanctions that may be imposed by the JSE are in addition to any sanctions, fines or prosecution that may be sought or imposed by the FSCA or NPA.



4. ENFORCEMENT ACTION

Each year, the JSE investigates conduct which may give rise to breaches of the Listings Requirements where identified. Potential breaches are brought to the JSE's attention through monitoring compliance with the Listing Requirements, referrals from other regulatory or law enforcement bodies, or complaints from the public. Enforcement action by the JSE through public and private censures and through means of financial penalties serves to ensure compliance by issuers, directors and officers with the Listings Requirements, protect investors, stakeholders and the integrity of the South African financial markets. The supervision and enforcement of the Listings Requirements are fundamental cornerstones of protecting the public interest and advancing the objects and purpose of the FMA.

Through its enforcement actions, the JSE seeks to promote continued compliance with the Listings Requirements and to deter transgressions of the Listings Requirements by issuers and other regulated persons. It also contributes to educate the market, influence compliance culture and attitude, and enhance corporate governance.

Where the conduct justifies it, the JSE has a duty to take appropriate action against the relevant regulated parties, including those responsible for the conduct. Depending on the conduct involved and the facts and circumstances, a variety of regulatory responses to the conduct may be appropriate. Regulatory responses include taking public action against issuers and their directors/officers for serious breaches, or imposing private censures where, for example, breaches are less severe and warning letters where the conduct involved may not meet the markets expectations.

The decision as to the level of regulatory response and whether disciplinary action is appropriate will be guided by the non-exhaustive factors outlined in the document *Understanding JSE Censures and Imposition of Censures* published on the JSE's website.

In support of the JSE's commitment to promote understanding and transparency of its objectives, procedures and outcomes and to encourage credible deterrence of wrongdoing, the censures and penalties imposed by the Investigations Unit of the JSE will be published on the JSE's website bi-annually each year. This is in addition to the publication of the censures on the JSE's SENS platform.

a. PUBLIC CENSURES

We set out below a list of the public censures disseminated from 2014 to date. The JSE took disciplinary action and imposed public censures against 38 regulated parties including issuers, directors, sponsors/designated advisors and company secretaries. During 2019 and 2020, the public censures imposed by the JSE related mainly to one or more of the themes identified below:

- Incorrect, false or misleading financial statements and/or financial statements that contained material errors upon which investors made economic decisions
- Incorrect, misleading or no disclosures to the JSE and the market
- Late, misleading or no SENS announcements in terms of the Listings Requirements
- Failure by sponsors/designated advisors to fulfil their responsibilities to issuers in terms of the Listings Requirements
- Failure to comply with the Listings Requirements dealing with repurchases and obtaining JSE and sponsor approval in terms of the Listings Requirements and Debt Listings Requirements

Where a public censure is imposed, its outcome is published on SENS and in all other circumstances, a private censure or other decision letter is issued as explained in the further sections below:

Date imposed	Regulated party	Censure	Summary of conduct	Copy of censure
14/04/2021	Insimbi Industrial Holdings Limited and Mr Fred Botha	Public censure	For giving investment instructions to the third-party broker whose investment decisions should be independent of the company; and for influencing the repurchase of the company's securities during a closed period in breach of paragraph 5.72(h) of the Listings Requirements	PDF copy
02/02/2021	Nedbank Corporate and Investment Banking	Public censure	Failure to discharge its responsibilities in section 2 of the Listings Requirements as sponsor to Rebosis Property Fund Limited by ensuring that the dissemination of the Company's 2019 preliminary results complied with the Listings Requirements and for its failure to discharge its responsibilities with due care and skill which contributed to Rebosis' failure to comply with the Listings Requirements	PDF copy
02/02/2021	Rebosis Property Fund Limited	Public censure	Failure to publish annual financial statements that were not at a minimum reviewed, in contravention of paragraph 3.22(b) of the Listings Requirements	PDF copy
20/10/2020	Steinhoff International Holdings N.V.	Public censure with fines of R13.5 million	Previously published financial information did not comply with IFRS and the Listings Requirements and was incorrect, false and misleading in material aspects; and it failed to comply with the Listings Requirements in respect of two separate disposals of assets	PDF copy
27/08/2020	AYO Technology Solutions Limited	Public censure with a fine of R6.5 million	Previously published financial information did not comply with IFRS and the Listings Requirements and was incorrect, false and misleading in material aspects	PDF copy

Date imposed	Regulated party	Censure	Summary of conduct	Copy of censure
27/08/2020	ENX Corporation Limited	Public censure	Failing to seek the JSE's formal approval of amendments to its notes in terms of paragraph 7.26 of the Debt Listings Requirements and for failing to involve their debt sponsor in the amendment process of the notes	PDF copy
29/07/2020	EOH Holdings Limited	Public censure with a fine of R7.5 million	Previously published financial information did not comply with IFRS and the Listings Requirements and was incorrect, false and misleading in material aspects	PDF copy
01/07/2020	Tongaat Hulett Limited	Public censure with a fine of R7.5 million	Previously published financial information did not comply with IFRS and the Listings Requirements and was incorrect, false and misleading in material aspects	PDF copy
16/03/2020	Jasco Electronics Holdings Limited	Public censure	Restatement of previously published results due to prior period errors in terms of IFRS and the Listings Requirements and other breaches of the Listings Requirements and General Principles relating to non-disclosure of information and failure in observing the highest standards of care	PDF copy
20/02/2020	Orion Real Estate Limited	Public Censure	Restatement of previously published results due to a prior period error in terms of IFRS and the Listings Requirements and failure in observing the highest standards of care	PDF copy
12/11/2019	Rolfes Holdings Limited	Public censure	Restatement of previously published results due to a prior period error in terms of IFRS and the Listings Requirements	PDF copy
05/11/2019	Calgro M3 Holdings Limited	Public censure	Failure to disseminate a directors' dealings announcement timeously; failure to comply with the Listings Requirements in respect of a specific repurchase of shares	PDF copy

Date imposed	Regulated party	Censure	Summary of conduct	Copy of censure
30/10/2019	Bridge Capital Advisors (Pty) Limited	Public censure with a fine of R200 000	Failure to discharge its responsibilities as sponsor to PBT Group Limited with due care and skill in terms of section 2 of the Listings Requirements which directly resulted in PBT's failure to comply with the Listings Requirements	PDF copy
22/10/2019	Accentuate Limited	Public censure	Restatement of previously published results due to a prior period error in terms of IFRS and the Listings Requirements	PDF copy
03/09/2019	Ms Bianca Pieters – Company Secretary of PBT Group Limited	Public censure	Failure to ensure that the resolutions for a repurchase of shares complied with the Listings Requirements and for failing to procure directors resolutions and solvency and liquidity tests for every repurchase conducted from 2014 to 2018	PDF copy
19/06/2019	Imbalie Beauty Limited	Public censure	Publication of a misleading announcement in respect of the Imbalie Beauty rights offer	PDF copy
31/05/2019	DRDGold Limited	Public censure	Late announcement of a category 2 disposal by the Company	PDF copy
12/04/2019	Gold Brands Investments Limited	Termination of listing	Due to several breaches of important provisions of the Listings Requirements	PDF copy
26/11/2018	Pepkor Holdings Limited	Public censure with a fine of R5 million	Failure to make certain disclosures in accordance with IFRS and the Listings Requirements in the pre-listing statement and annual financial statements	PDF copy
21/08/2018	Steinhoff Investment Holdings Limited	Public censure with a fine of R1 million	Failure to announce a rating downgrade and failure to announce a subsequent rating downgrade timeously. The issuer had a secondary listed on the JSE	PDF copy
01/09/2017	Mr Bhekokuhle Sibiya of Alviva Holdings Limited	Public censure	Failure to comply with the Listings Requirements in respect of the dealings in the company's securities	PDF copy

Date imposed	Regulated party	Censure	Summary of conduct	Copy of censure
20/07/2017	African Dawn Capital Limited	Public censure	Restatement of previously published results due to prior period errors in terms of IFRS and the Listings Requirements	PDF copy
31/03/2017	Eastern Platinum Limited	Public censure	Failure to release SENS announcements simultaneously with the release of the primary exchange announcements. The issuer had a secondary listing on the JSE	PDF copy
17/03/2017	Micromega Holdings Limited (now Sebata Holdings Limited)	Public censure with a fine of R1 million	Repurchase of shares from two counter parties without the required specific authority to do so and during a closed period	PDF copy
25/10/2016	Invicta Holdings Limited	Public censure	Failure to comply with the Listings Requirements in respect of a specific repurchase of shares	PDF copy
14/09/2016	Dr Matthews Phosa of Value Group Limited	Public censure	Failure to comply with the Listings Requirements in respect of the dealings in the company's securities	PDF copy
19/05/2016	Mr Mike Ruttell of Redefine Properties Limited	Public censure	Failure to comply with the Listings Requirements in respect of the dealings in the company's securities	PDF copy
10/02/2016	Mr David Deetlefs of Huge Group Limited	Public censure	Failure to comply with the Listings Requirements in respect of the dealings in the company's securities	PDF copy
05/02/2016	Mr Thierry Guibert of Steinhoff International Holdings N.V.	Public censure	Failure to comply with the Listings Requirements in respect of the dealings in the company's securities	PDF copy
09/11/2015	Total Client Services Limited	Public censure	Failure to publish a trading statement prior to the release of its financial results	PDF copy
16/10/2015	Sable Metals and Minerals Limited (now Middle East Diamond Resources Limited)	Public censure	Failure to publish a trading statement prior to the release of its financial results	PDF copy

Date imposed	Regulated party	Censure	Summary of conduct	Copy of censure
31/05/2016	Messrs James Herbst and Anton Potgieter of Huge Group Limited	Public censure with a fine of R300 000 each	The actions of Messrs Potgieter and Herbst as directors of Huge Group and caused the company to breach paragraph 5.69 of the Listings Requirements	PDF copy
24/07/2015	Arbor Capital Sponsors Proprietary Limited (now Acasia Capital Advisors)	Public censure with a fine of R500 000	Failure to discharge its duties and responsibilities in terms of section 2 of the Listings Requirements as sponsor and designated advisor to various companies between the period of 2008 and 2012	PDF copy
30/03/2015	Mr Nicki Vontas of Bonatla Property Holdings Limited	Public censure with a fine of R500 000	Directly and intentionally misleading the JSE and failing to inform the JSE of material events which formed the basis of the JSE's decision to lift the suspension of Bonatla at the time	PDF copy
30/03/2015	Bonatla Property Holdings Limited	Public censure	Misleading the JSE and failing to inform the JSE of material events which formed the basis of the JSE's decision to lift the suspension of Bonatla at the time	PDF copy
23/01/2015	Total Client Services Limited	Public censure	Failure to adhere to the General Principles for disclosure of an inappropriate going concern disclosure in the annual report	PDF copy
3/12/2014	Exchange Sponsors (2008) (Pty) Limited	Public censure	Failure to discharge its responsibilities in terms of section 2 of the Listings Requirements as sponsor to Brikor with due care and skill in respect of a proposed liquidation and for failing to advise the JSE of such in terms of the Listings Requirements	PDF copy
30/06/2014	Mr MB Mathabathe of Esor Limited	Public censure with a fine of R150 000	Mr Mathabathe traded in the securities of the company of which he was a director without the required clearance from the company and he failed to disclose the trades timeously;	PDF copy

b. PRIVATE CENSURES

The JSE might elect to issue a private censure rather than take more serious action where the matter giving cause for concern is minor in nature or degree, or where the regulated parties have taken full and immediate remedial action. It should be noted that there can be no exhaustive list of the conduct or the circumstances which are likely to lead to a private censure. Many of the criteria identified in the *Understanding JSE Censures and Imposition of Censures* booklet for determining whether the JSE should take action in the form of a public censure or financial penalty will also be relevant to a decision about whether to give a private censure. The JSE will take into account all the circumstances of the case before deciding whether a private censure is appropriate. Although private censures are not published, it still serves as an important regulatory tool as it does put on record that regulated parties have breached the Listings Requirement and may be taken into account in future enforcement action for such parties. In some instances these private censures may also result in further consequences for the regulated parties through other regulatory bodies.

The private censures imposed by the JSE related mainly to one or more of the themes identified below.

Themes relating to the late announcement on SENS and/or late notification to the JSE:

- Acquisition and disposal transactions in terms of Section 9 of the Listings Requirements including the granting of options
- Transactions with related parties in terms of Section 10 of the Listings Requirements
- Dealings by directors and share incentive schemes including obtaining clearance and dealings by associates of directors in terms of paragraphs 3.63 to 3.72 of the Listings Requirements
- General repurchase of securities when the 3% threshold is reached or exceeded in terms of paragraph 5.79; repurchases conducted during a closed period without a repurchase programme in place in terms of paragraph 5.72 of the Listings Requirements
- Changes to credit ratings of an issuer in terms of paragraphs 6.8 and 6.9 of the Debt Listings Requirements
- Delays in the publication of the SENS announcement informing investors of the availability of the annual financial statements in terms of paragraphs 6.15 and 6.16 of the Debt Listings Requirements
- Changes to directors and Company Secretary in terms of paragraph 3.59 and where applicable, sponsors/designated advisors in terms of Section 2 and Section 21; and auditors in terms of paragraph 3.75 of the Listings Requirements

- Changes to directors, company secretary or debt officer in terms of paragraph 6.39 of the Debt Listings Requirements and where applicable, debt sponsor or debt officer in terms of Section 2 and auditors in terms of paragraphs 6.25 and 6.28

Other general themes

- The assessment of price sensitive information in terms of paragraph 3.4(a) and litigation on the company's financial position in terms of paragraph 7.D.11 as well as General Principle (iii) of the Listings Requirements
- Non-disclosure and/or incomplete disclosure in the annual financial statements and/or the annual report either in terms of IFRS and/or the Listings Requirements
- Failure to exercise the highest standards of care when disseminating information into the market place in terms of the General Principles of the Listings Requirements
- Failure by sponsors/designated advisors to discharge their duties and responsibilities to issuers in terms of Section 2 of the Listings Requirements
- Restatement of previously published financial information in terms of Section 8 of the Listings Requirements and paragraph 5.2 of the Debt Listings Requirements and General Principle (v).

Each case is assessed and decided on its merits however in most cases, the following non-exhaustive factors were considered by the JSE in deciding to impose a private censure:

- First time offence
- The nature and seriousness of the breach
- The circumstances and manner in which the conduct giving rise to the breach was committed
- The market impact and risk of prejudice to investors as a result of the possible breach
- The nature, duration and severity of the act/omission
- Share price reaction or shareholder dilution
- General compliance history of the offender
- Whether the breach may likely have impacted an investor's economic decision or decision to trade in the issuer's securities
- Whether the offender has shown remorse, co-operated with the JSE and put procedures in place to avoid a repeat of the transgression
- The lapse of time between the act/omission and the notification, disclosure or correction thereof
- What the most effective deterrent for the particular breach would be in the circumstances
- any other mitigating or aggravating factors prevalent at the time of the conduct giving rise to the breach

The JSE urges issuers to be mindful of their obligations in terms of the Listings Requirements at all times in respect of events or corporate actions that require timely or immediate disclosure on SENS or to the JSE. The JSE has found that issuers are not involving their sponsors/designated advisors in decisions, discussions and/or transactions early enough, or at all, and therefore issuers are not able to identify and apply the relevant Listings Requirements applicable to an event or corporate action at the time, which results in a breach of the Listings Requirements. In many cases, the sponsor/designated advisor does not have a sufficient degree of prior knowledge to immediately draft and release an announcement. In other instances issuers together with their sponsors/designated advisors only commence drafting of the announcement post the signing of the agreement. The JSE suggests that templates be drafted as early as possible to avoid an unnecessary delay in the announcement and that sponsors/designated advisors are always kept informed of the developments as the event or corporate action progresses.

Late announcements cannot be condoned by the JSE, since, in the absence of a fully informed market, the risk of insider trading increases, there is the possibility of creating a false market and the lack of knowledge of a transaction can be detrimental to shareholders and investors. It should be noted that where it is not possible to include all of the required details, issuers must include a cautionary/further cautionary in the announcement, together with the stated intent to announce the missing details at a later stage once these have been finalised.

Notwithstanding the above, the JSE is aware that issuers may face certain unique challenges and unforeseen circumstances at any given time, which may influence their ability to comply with the Listings Requirements. In these situations, we urge issuers and their sponsors/designated advisors to approach the JSE at an early stage to discuss the circumstances and determine the way forward.

Finally, the JSE will monitor its investigations closely in future to ensure that all issuers and regulated parties comply with the Listings Requirements. We thus urge issuers, directors and sponsors/designated advisors to put systems and lines of communication in place to ensure that they comply, in all aspects, with the relevant provisions of the Listings Requirements.

c. ACTION AGAINST DIRECTORS/FORMER DIRECTORS

Enforcement of important provisions of the Listings Requirements in general and those dealing with the integrity of published financial information is a crucial component of effective regulation and it must send a clear message to issuers, boards, shareholders, investors, stakeholders, fellow regulators and the broader financial market that impermissible conduct such as a failure to comply with the provisions of the Listings Requirements, carries real consequences.

The JSE accepts that an issuer can only act through its board and boards change from time to time. However unlike boards, it is the issuer that is listed and it is the issuer as a juristic person that exists continuously and, subject to the provisions of the Companies Act, has the legal powers and capacity of an individual. The actions of the board are therefore the actions of the issuer and the provisions of the Listings Requirements and the FMA are clear that the Listings Requirements are binding on the issuer itself, its board, officers and employees. The JSE is therefore, by virtue of the peremptory provisions of the FMA, obliged to properly investigate all potential breaches of its Listings Requirements and to take the necessary and appropriate disciplinary action where regulated parties failed to comply with the provisions of the Listings Requirements.

Where it is evident that former or current directors and senior management of the issuer acted contrary to their duties, responsibilities or obligations as set out in the Listings Requirements, the JSE will take disciplinary action against those individuals and hold them accountable if they in any way failed to comply with the Listings Requirements. In this regard, if the investigation is concluded and findings are made that individuals were responsible for the breaches then the JSE can impose financial penalties on such parties. The JSE also has the power to declare individuals unfit to act as a director/officer of a listed company in very serious cases. This process, generally speaking, takes far longer and is more challenging, but where a finding of breach is made in respect of the issuer, it could strengthen our case in respect of the individual.

d. INQUIRY, WARNING AND NO ACTION LETTERS

If the JSE has questions on the conduct of an issuer or individual based on a complaint, it may engage in a manner that is known as an 'inquiry letter'. This is a request for specific information on certain transactions or dealings or accounting practices etc. to determine whether a breach of the Listings Requirements has occurred. It may result in an investigation but does not necessarily end in findings of breach. The answers to the inquiry letter may be enough to satisfy the JSE and a warning letter may be issued where the regulated parties' conduct does not meet the expectations of the JSE or the market, or no further action is taken. There may be several rounds of inquiry letters and responses until the issues are resolved—or findings of breach are made.

'No action' letters may be issued by the JSE indicating that no type of enforcement action against a person or issuer will be imposed if that person or issuer has engaged in a particular action that came under scrutiny.

e. REFERRAL TO OTHER REGULATORS OR ENFORCEMENT AGENCIES

The JSE is the listing authority of all companies listed on the exchange. It has a statutory duty to ensure, as far as reasonably possible, an orderly, informed and fair securities market. Investigations involving suspected breaches of the Listings Requirements by listed issuers and directors/officers may sometimes involve potential breaches of the laws or other regulations.

In line with several international markets, there are various other statutes and agencies that have additional power of censure, administrative, civil and criminal, that will be applicable in cases where false statements are made as has been the case recently. The NPA can take criminal action; the FSCA can impose unlimited fines, additional fines may be applicable pursuant to the Companies Act (including disqualification of directors).

In discharging this statutory duty, the Investigations Unit co-operates with other regulatory bodies and law enforcement agencies, such as:

- The Financial Sector Conduct Authority (FSCA)
- The Companies and Intellectual Properties Commission (CIPC)
- The South African Reserve Bank (SARB)
- The Prudential Authority (PA)
- The Takeover Regulation Panel (TRP)
- The Independent Regulatory Body for Auditors (IRBA)
- The South African Institute for Chartered Accountants (SAICA)
- The South African Police Services Commercial Crimes Unit (SAPS Commercial Crimes) and The Directorate for Priority Crime Investigation (HAWKS)
- The National Prosecuting Authority (NPA)

Please refer to *The Issuer Regulation Guide* for more information.

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