



**JSE Limited  
Listings Requirements**





# Introduction

The definitions contained in the “Definitions” section of these Listings Requirements apply to this Introduction.

## Objectives

It is an integral function of the JSE to provide facilities for the listing of securities (including securities issued by companies, domestic or foreign), to provide the JSE’s users with an orderly market place for trading in such securities and to regulate the market accordingly.

The Listings Requirements set out in this document apply to companies seeking a listing for the first time, presently listed companies, all other securities that applicants may wish to list and those presently listed and, where applicable, to directors (as defined in each relevant section) of applicant issuers, sponsors, designated advisers and VCC advisers. The Listings Requirements contain the rules and procedures governing new applications, all corporate actions and continuing obligations applicable to issuers and issuers of specialist securities. They are furthermore aimed at ensuring that the business of the JSE is carried on with due regard to the public interest.

## General Principles

It is impracticable and undesirable for the JSE’s requirements and procedures to attempt to govern all circumstances that may arise in commercial practice. Accordingly, the Listings Requirements fall into two categories as follows:

- (a) general principles (“the General Principles”) which are set out below and which must be observed in all corporate actions and also in all submissions pertaining to securities listed and to be listed; and
- (b) the main body of the Listings Requirements (“the main body”) which consists of the sections, schedules and practice notes. The main body is derived from the application and interpretation of the General Principles by the JSE.

Moreover, the spirit of the General Principles and the main body may be applied by the JSE in areas or circumstances not expressly covered in the Listings Requirements.

The JSE has discretion to modify the application of a requirement contained in the main body in exceptional circumstances, for example when the JSE considers that the strict application of the requirement would conflict with the General Principles.

Accordingly, users of the Listings Requirements must at all times observe the spirit as well as the precise wording of the General Principles and main body.

If there is any doubt as to the interpretation or application of the Listings Requirements, users must consult the JSE.

The General Principles are as follows:

- (i) to ensure the existence of a market for the raising of primary capital, an efficient mechanism for the trading of securities in the secondary market, and to protect investors;
- (ii) to ensure that securities will be admitted to the List only if the JSE is satisfied that it is appropriate for those securities to be listed;
- (iii) 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;
- (iv) to ensure that holders of relevant securities are given full information and are afforded adequate opportunity to consider in advance and vote upon any of the following:
  - (1) substantial changes in an issuer’s business operations; and

- (2) other matters affecting a listed company's constitution or the rights of holders of securities;
- (v) to ensure that all parties involved in the dissemination of information into the market place, whether directly to holders of relevant securities or to the public, observe the highest standards of care in doing so, which would include adherence to Section 81 of the FMA;
- (vi) to ensure that all holders of the same class of securities of an issuer are accorded fair and equal treatment in respect of their securities; and
- (vii) to ensure that the Listings Requirements, and in particular the continuing obligations, promote investor confidence in standards of disclosure and corporate governance in the conduct of applicant issuers' affairs and in the market as a whole.

### **Competent authority**

The JSE is the holder of an exchange licence in terms of the provisions of the FMA. A company wishing to have its securities dealt on the JSE must apply for a listing and must be in compliance with the requirements of the JSE before being granted such listing. The Board of the JSE is the competent authority responsible for:

- the list of the securities which may be dealt on the JSE;
- applications by applicant issuers for the listing of securities on the JSE; and
- the annual revision of the List.

The Board of the JSE has delegated its authority in relation to the Listings Requirements, excluding removal of listings initiated at the instance of the JSE (which authority has been delegated to the JSE's executive committee), to the management of the Issuer Regulation Division. When a listings matter is considered by the JSE, representatives of the issuer and other advisers may accompany the relevant sponsor, any of whom may, subject to the JSE's consent, address the meeting. The JSE reserves the right to limit the number of persons attending such meetings.

## Definitions

Throughout these Listings Requirements, unless otherwise stated or the context requires otherwise, an expression which denotes any gender includes other genders and the following terms will have the meanings set out below:

Term	Meaning
acquisition issue	an issue of securities in consideration for an acquisition of assets or net assets or an issue of securities for an acquisition of, or an amalgamation/merger with, another company in consideration for the securities of that other company and specifically excluding issues for cash
the Act or the Companies Act	the Companies Act, 2008 (Act No. 71 of 2008), as amended, or any law that may replace it wholly or in part, from time to time
acting in concert	co-operation for a common purpose by two or more persons pursuant to an agreement, arrangement or understanding, whether formal or informal, between them; and associates shall be deemed to be so co-operating unless proven otherwise
admission or admission to listing	admission of securities to listing on the JSE, and "admitted" shall be construed accordingly
amalgamation/merger	shall bear the meaning ascribed thereto in the Act
amalgamation/merger issue	refer to the definition of "acquisition issue"
announce or announcement	an announcement of information through SENS in accordance with SENS Procedural Requirements as contained in Schedule 9 and in the media, if required in terms of the Appendix 1 to Section 11
annual financial statements	audited financial statements complying with paragraphs 8.60 and 8.61;
annual general meeting	shall bear the meaning ascribed thereto in the Act
annual reports	annual financial statement and the disclosures complying with paragraph 8.62, which do not need to be presented in a single document;
applicant or applicant issuer	an issuer, or an issuer of specialist securities, or a new applicant
approved exchange	means a foreign exchange approved by the JSE or such other exchange acceptable to the JSE, in its discretion, for purposes of secondary listings on the JSE (Main Board and AltX) as published on its website ( <a href="http://www.jse.co.za">www.jse.co.za</a> )
associate	<p>"associate" in relation to an individual means:</p> <ol style="list-style-type: none"> <li>1 that individual's immediate family; and/or</li> <li>2 the trustees, acting as such, of any trust of which the individual or any of the individual's immediate family is a beneficiary or discretionary subject, including trustees of a trust without nominated beneficiaries, but who have been provided with a letter of wishes or similar document or other instruction, including a verbal instruction, naming desired beneficiaries (other than a trust that is either an occupational pension scheme, or an employees' share scheme that does not, in either case, have the effect of conferring benefits on the individual or the individual's family); and/or</li> <li>3 any trust, in which the individual and/or his family referred to in 1 above, individually or taken together have the ability to control 35 % of the votes of the trustees or to appoint 35% the trustees, or to appoint or change 35 % of the beneficiaries of the trust. Without derogating from the above, and for the purposes of this definition, the term trust may also be replaced with any other vehicle or arrangement set up for similar purposes to that of a trust; and/or</li> <li>4 any company in whose equity securities the individual or any person or trust contemplated in 1 or 2 above, taken together, are directly or indirectly beneficially interested, or have a conditional, contingent or future entitlement to become beneficially interested, and that the individual or</li> </ol>

any person or trust contemplated in 1 or 2 above are, or would on the fulfilment of the condition or the occurrence of the contingency be, able:

- (a) to exercise or control the exercise of 35% or more of the votes able to be cast at general meetings on all, or substantially all, matters; or
  - (b) to appoint or remove directors holding 35% or more of the voting rights at board of directors' meetings on all, or substantially all, matters; or
  - (c) to exercise or control the exercise of 35% or more of the votes able to be cast at a board of directors' meeting on all, or substantially all, matters; and/or
- 5 any close corporation in which the individual and/or any member(s), taken together, of the individual's family are beneficially interested in 35% or more of the members' interest and/or are able to exercise or control the exercise of 35% or more of the votes able to be cast at members' meetings on all, or substantially all, matters; and/or
- 6 any associate as defined below with reference to a company of the company referred to in 4 above. For the purpose of 4(a), (b) and (c) above, where more than one director of the same listed company is directly or indirectly beneficially interested in the equity securities of another company, then the interests of those directors and their associates will be aggregated when determining whether such a company is an associate of any one director of such listed company.

"associate" in relation to a company ("company") means:

- 1 any other company that is its subsidiary, holding company or subsidiary of its holding company; and/or
- 2 any company whose directors are accustomed to act in accordance with the company's directions or instructions; and/or
- 3 any company in the capital of which the company, and any other company under 1 or 2 taken together, is, or would on the fulfilment of a condition or the occurrence of a contingency be, interested in the manner described in 4 above; and/or
- 4 any trust that the company and any other company under 1 and 2 above, individually or taken together, have the ability to control 35 % of the votes of the trustees or to appoint 35% of the trustees, or to appoint or change 35 % of the beneficiaries of the trust. Without derogating from the above, and for the purposes of this definition, the term trust may also be replaced with any other vehicle or arrangement set up for similar purposes to that of a trust.

Auditing Profession Act  
audit firm

Auditing Profession Act, 2005 (Act No. 26 of 2005)  
the partnership or incorporated company registered with the IRBA, a member of the International Forum of Independent Audit Regulators or a similar regulatory or professional body for auditors in another jurisdiction

auditor

includes the audit firm and the individual auditor assigned and/or appointed to perform a statutory audit (or a review as required by paragraph 3.18) of an applicant issuer

BEE Act

means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)

BEE Codes

means the Broad-Based Black Economic Empowerment Codes of Good Practice gazetted from time to time under the BEE Act in terms of Code 100 – the Measurement of the Ownership Element of Broad-Based Black Economic Empowerment

BEE compliant person

means as interpreted by the courts, from time to time –

- (a) as regards a natural person, one who falls within the ambit of the definition of "black people" in the relevant

BEE ownership scheme;

- (b) as regards a juristic person having a shareholding or similar member's interests, one who falls within the ambit of the definitions of BEE controlled company or BEE owned company, using the principles for determining control or ownership as contemplated in the BEE ownership scheme;
- (c) as regards any other entity, any entity similar to a BEE controlled company or BEE owned company using the principles for determining control or ownership as contemplated in the BEE ownership scheme which would enable the issuer of securities owned or controlled by such entity to claim points or obtain similar BEE recognition attributable to the entity's ownership of the securities pursuant to the BEE Codes or applicable legislation which imposes a BEE obligation

BEE contract

the prescribed contract, comprising generic terms applicable to all applicant issuers, which the proposed beneficial owner of BEE securities and, if the beneficial owner is not to be the registered owner, the proposed registered owner of BEE securities, must conclude, in terms of which, inter alia:

- (a) the beneficial owner, and the proposed registered owner, if applicable, warrants that he is a BEE compliant person;
- (b) the necessary restrictions, limitations and requirements are imposed by the applicant issuer on the proposed beneficial owner, and on the proposed registered owner, if applicable, in order to achieve the continued ownership of BEE securities by BEE compliant persons;
- (c) additional specific terms relevant to a particular applicant issuer's BEE securities, and contained in the applicant issuer's constitution, are reflected; and
- (d) the beneficial owner indemnifies the registered owner against any claim made against the registered owner in the event that, in terms of the BEE contract:
  - (i) the registered owner is obliged to dispose of the BEE securities; or
  - (ii) the issuer of the BEE securities exercises its right to repurchase or its right to nominate its nominee to purchase the BEE securities from the registered owner thereof

BEE controlled company

means a juristic person, having shareholding or similar members interest, in which black participants enjoy a right to exercisable voting rights of an amount specified in the rules of the BEE ownership scheme

BEE owned company

means a juristic person, having shareholding or similar members interest, that is BEE controlled, in which black participants enjoy a right to economic interest in an amount specified in the rules of the BEE ownership scheme

BEE ownership scheme

means an issuer ownership scheme that (i) complies with the rules prescribed for broad-based ownership schemes as set out in Annexe 100 B of the BEE Codes and specifies the means of verification to be adopted in determining the eligibility of beneficial owners in respect of BEE securities or (ii) is governed by its own BEE scheme documents in accordance with applicable legislation which imposes a BEE obligation, to the satisfaction of the JSE

BEE verification

means the verification of a BEE compliant person in respect of the applicant issuer, which verification must conclude, inter alia, that:

- (a) the beneficial owner, and the proposed registered owner (if applicable) of securities is a BEE compliant person pursuant to a BEE ownership scheme of the applicant issuer;
- (b) the BEE compliant person has been advised on the necessary restrictions, limitations and requirements that are imposed by the applicant issuer on the proposed beneficial owner, and on the proposed registered owner

	(if applicable) in order to achieve the continued ownership of BEE securities by BEE compliant person, and
	(c) that the BEE compliant person has accepted the prevailing terms and conditions of the BEE ownership scheme
BEE SPV	Means a special purpose vehicle created with the specific objective of facilitating a black economic empowerment transaction;
BEE verification agent	an agent appointed by an applicant issuer, or in the alternative the applicant issuer itself, to conduct the BEE verification
beneficial	in relation to: <ol style="list-style-type: none"> <li>1 any interest in a security, means the de facto right or entitlement to directly receive the income payable in respect of that security and/or to exercise or cause to be exercised, in the ordinary course of events, any or all of the voting, conversion, redemption or other rights attaching to that security;</li> <li>2 any other interest, means the obtaining of any benefit or advantage, whether in money, in kind or otherwise, as a result of the holding of that interest; and/or</li> <li>3 in respect of the interests described in 1 and 2 above, means the de facto right or entitlement to dispose or cause the disposal of the company's securities, or any part of a distribution in respect of the securities</li> </ol>
beneficial owner	in relation to a security, means the person or entity holding any one or more of the following: <ol style="list-style-type: none"> <li>1 the de facto right or entitlement to receive any dividend, interest or other income payable in respect of that security; and/or</li> <li>2 the de facto right or entitlement to exercise or cause to be exercised, in the ordinary course of events, any or all of the voting, conversion, redemption or other rights attached to such security; and/or</li> <li>3 the de facto right or entitlement to dispose or cause the disposal of the company's securities or any part of a distribution in respect of the securities</li> </ol>
business day	any day other than a Saturday, Sunday or any other day on which the JSE is closed
business rescue proceedings	any proceedings or steps taken in terms of Chapter 6 of the Act
capitalisation issue or bonus issue	an issue of fully paid shares capitalised from a company's share premium, capital redemption reserve fund or reserves, or from a combination thereof, to existing shareholders of the company in proportion to their existing shareholdings at a specific date
cash company	a listed company, other than an investment entity as defined in Section 15, whose asset(s), to the satisfaction of the JSE, consist(s) wholly or mainly of cash due to it having disposed of all or most of its business(es), or having otherwise ceased to have a business of sufficient substance to support its market capitalisation (generally the company will be expected to have cash of at least R5 million)
category 1 or 2 transaction	a transaction, principally an acquisition or disposal by a listed company as described in Section 9
the CEO	the Chief Executive Officer, for the time-being, of the JSE
children	includes any step child, adopted child or illegitimate child, who has not yet attained the age of 18 years, and any person under the guardianship of the individual
circular	any document issued to holders of listed securities by an issuer of securities, including notices of meetings, but excluding results, proxy forms and dividend or interest notices;
claw back offer	a pre-placed rights offer where placees, acting in lieu of an underwriter, are issued securities, or the rights thereto, for cash by an applicant, which securities or rights are then offered to the applicant's shareholders, in proportion to their existing holdings, in the form of a right to enable such shareholders to



	"claw back" their right to subscribe for such securities
closed period	<p>(a) the date from the financial year end up to the date of earliest publication of the condensed financial statements, summary financial statements or annual financial statements;</p> <p>(b) the date from the expiration of the first six month period of a financial year up to the date of publication of the interim results;</p> <p>(c) the date from the expiration of the second six month period of a financial year up to the date of publication of the second interim results, in cases where the financial period covers more than 12 months (refer to paragraph 3.17);</p> <p>(d) in the case of reporting on a quarterly basis, the date from the end of the quarter up to the date of the publication of the quarterly results; and</p> <p>(e) any period when an issuer is trading under a cautionary announcement</p>
closing price	the price determined and disseminated by the JSE, in the first instance, on the uncrossing price of the closing auction or, failing this, on the volume weighted average price of the last 10 minutes of trade prior to the closing auction or, failing this, on the last automated trade price
Commission	the Companies and Intellectual Property Commission established in terms of Section 185 of the Act
company	a juristic person, wherever incorporated or established, including any undertaking, association of persons or entities and any trust or similar device, wherever established, that issues securities
company secretary	as provided for in Chapter 3, Part B of the Act and including any official of a company, by whatever name he may be designated, or a company which performs the duties normally performed by a company secretary
condensed financial statements	reviewed financial statements for an issuer's annual reporting period complying with paragraphs 8.57(a) and 8.58, prepared on the basis that the annual financial statements are not available;
control	refer to the definition of "controlling shareholder"
controlling shareholder	<p>any shareholder that, together with:</p> <ol style="list-style-type: none"> <li>1 his, or its, associates; or</li> <li>2 any other party with whom such shareholder has an agreement or arrangement or understanding, whether formal or informal, relating to any voting rights attaching to securities of the relevant company.</li> </ol> <p>can exercise, or cause to be exercised the specified percentage, as defined in the Takeover Regulations, or more of the voting rights at general/annual general meetings of the relevant company, or can appoint or remove, or cause to be appointed or removed, directors exercising the specified percentage or more of the voting rights at directors' meetings of the relevant company</p>
convertible securities	securities that are convertible into, or exchangeable for other securities or warrants or options to subscribe for or purchase other securities, and "conversion" and "convertible" shall be construed accordingly
corporate action or event	an action taken by an issuer or any other entity or third party which affects the holders of securities in terms of entitlements or notifications
corporate action timetable	the corporate action timetable of the JSE, (as amended) which is available on the JSE website pursuant to Schedule 2 Form H1
CSDP	Central Securities Depository Participant
day(s)	any day of the week (i.e. calendar days)
declaration date or DD	the date on which the corporate action and the declaration data, including any conditions precedent to which the corporate action is subject, are announced and released through SENS

declaration data	<p>the minimum information to be announced on the declaration date, if applicable, as follows:</p> <p>mother share name</p> <p>mother share code</p> <p>mother share ISIN</p> <p>event type</p> <p>last day to trade</p> <p>election date</p> <p>record date</p> <p>pay date</p> <p>ex date</p> <p>conditions precedent</p>
default for election	the option that will be applied to the CSDPs, broking members' or investors' holdings if no election is made
depository	means a bank or entity acceptable to the JSE, that issues DRs representing the securities of an issuer or underlying reference entity that are held in trust or other acceptable vehicle, by the depository, in the issuer or underlying reference entity's local market. The depository may also act as a registrar, transfer agent and corporate actions agent and may cancel or issue the DRs for withdrawal or for deposit of the securities, all in accordance with a deposit agreement with the issuer for a sponsored program, or in accordance with unsponsored terms and conditions for an unsponsored program;
depository receipt or DR	means an instrument representing an underlying entity's securities, where the instrument confers rights in respect of such securities;
director	as defined in Section 1 of the Act and, in relation to an entity that is not a company, a person with corresponding powers and duties
distribute	the delivery of notices as provided for in terms of Section 6(10) of the Act and/or delivery and/or notification of documentation in terms of Section 6(11) of the Act
DSS Requirements	the JSE Debt and Specialist Securities Listings Requirements, as amended
dual listing	a primary or secondary listing on the JSE in addition to a listing on another exchange
election date	the date by which the CSDPs must have received election instructions from their clients, including JSE members, fund managers and global custodians
election deadline	the time on the last day on which a CSDP will accept an election (11h00 on the election date)
entitled share	long name for the share on which the entitlement is awarded
entitled share code	the share code for the share on which an entitlement is awarded
entitled share ISIN	ISIN for the share on which the entitlement is awarded
equity instruments	securities with restricted voting rights but which participate in the distribution of profits in a manner directly linked to the profitability of the company
equity securities	equity shares, securities convertible into equity shares and equity instruments
equity share capital	a company's issued share capital, excluding any convertible securities, equity instruments and any other securities which are regarded as debt instruments in terms of IFRS or the Act
equity shares	shares that comprise a company's equity share capital and which carry votes
event	refer to the definition of "corporate action or event"
ex date	the first trading day after LDT. All trades from this day will exclude the right to receive entitlements
extended family	an individual's extended family determined by applying the family cross holdings test to the director and spouse (if applicable)

external company	a company incorporated outside the Republic of South Africa and registered as an external company in the Republic of South Africa
external property	property situated outside the Republic of South Africa
family cross holdings test	the parents, siblings (including step and half siblings) and major children of the individual together with each such party's spouse (if applicable). Major child means a child of at least 18 years old
finalisation date or FD	the date on which an event and its terms become unconditional in all respects and irrevocable i.e. no further finalisation changes to any of the finalisation information can be made by the issuer and the event can only be cancelled
finalisation information	finalisation information on the corporate action to be included in the announcement on the finalisation date, if applicable, as follows: mother share name mother share code mother share ISIN entitled share name entitled share code entitled share ISIN event type last day to trade election date record date pay date ex date price ratio default for election first date to trade entitlement
first day to trade or FDT	statement that all conditions precedent have been fulfilled the first business day on which newly issued securities may be traded
"FMA"	the Financial Markets Act (Act No. 19 of 2012), as amended or replaced from time to time
FRIP	The Financial Reporting Investigations Panel
fully covered	means in relation to DRs, that the DRs must at all times represent the issuer's underlying securities held by the depositary or its custodian, or any collateral held in terms of any pre-release arrangement;
group	a holding company, not itself being a wholly owned subsidiary, together with all companies which are its subsidiaries, if any
headline earnings	as defined and calculated in accordance with the circular titled Headline Earnings issued by SAICA, as amended from time to time
holding company	a company that has one or more subsidiaries
hours	hours during the course of a business day
immediate family	an individual's spouse and children
individual auditor	an individual registered with the IRBA or similar regulatory or professional body for auditors in another jurisdiction, who is a director or partner of an audit firm
intangible assets	non-monetary assets without physical substance including but not limited to goodwill, patents, trademarks, brand names, copyrights, franchises, licenses, know-how and publication titles
interim results	financial statements for the periods referred to in paragraph 3.17, complying with paragraphs 8.57(b) and 8.58;
International Financial Reporting Standards or	the International Financial Reporting Standards formulated by the International Accounting Standards Board

IFRS	
International Standards on Auditing or ISA	the International Standards on Auditing formulated by the International Auditing and Assurance Standards Board
introduction	a method of bringing securities to listing not involving an issue of new securities or any marketing of existing issued securities because the spread of shareholders already complies with the conditions for listing
investment entities	investment companies, investment trusts and unit trusts whose principal activity is investment in securities
IRBA	the Independent Regulatory Board for Auditors, a body established in terms of the Auditing Profession Act, responsible for the registration and regulation of registered auditors in the Republic of South Africa
ISIN	the unique International Security Identification Number of each listed security
issuer	in relation to – <ul style="list-style-type: none"> <li>(i) sponsored DRs, means a company that has been admitted to listing, or which is the subject of an application for admission to listing, on an exchange as contemplated in paragraph 18.3(b); and</li> <li>(ii) unsponsored DRs means the depositary;</li> </ul>
issuer of specialist securities	any applicant issuer who has issued and has had admitted to listing on the JSE any of the specialist securities detailed in Sections 19 and 20
Issuer Regulation Division	the division of the JSE which is tasked with the listings function of the JSE
issuer's weblink	the exact URL where the information is available on the issuer's website, which URL must be included in the results announcement.
JSE Board	the board of the JSE as constituted from time to time in terms of the JSE's constitution
JSE cloudlink	the specified URL designated by the JSE where the results are uploaded on the JSE cloud, which URL must be included in the results announcement;
JSE equity rules and directives	the rules and directives pertaining to the JSE's equity market, created in accordance with the FMA, as amended from time to time by the JSE
JSE Limited, JSE or the JSE	a company duly registered and incorporated with limited liability under the company laws of the Republic of South Africa under registration number 2005/022939/06, licensed as an exchange under the FMA
King Code	the King Code on Corporate Governance for South Africa, as amended or replaced from time to time
LAs	forms of instruction in respect of letters of allocation
last day to trade or LDT	the last business day to trade in a security in order to settle by record date to be able to qualify for entitlements or to participate in an event. All trades done from commencement of trade on LDT + 1 will be excluding entitlements
the List	the list maintained by the JSE of securities admitted to listing
list date or LD	the date on which new shares are listed
listed company	a company, any class of whose securities is listed
listing	the admission of securities to the List and "listed" shall be construed accordingly
listing particulars	refer to the definition of "pre-listing statement"
Listings Requirements	the listing requirements of the JSE pursuant to the provisions of the FMA, as amended from time to time, including the "Introduction", "Definitions", "Sections" and "Schedules", save that the section headings, paragraph headings and the introductory text to each section headed "Scope of Section" do not form part of the listing requirements and are for guidance and ease of reference only and are not to be construed as affecting the substance or interpretation of the listing requirements

Main Board	all securities listed on the Main Board of the List, classified as either in the prime or general segment;
major subsidiary	a subsidiary that represents 25% or more of total assets or revenue of the consolidated group based on the latest published interim or year-end financial results
market value	in relation to a listed security, the traded or trading price
material	information that, if omitted or misstated, could influence the economic decisions of users and includes a change in, or constituent of, a particular factor that may be regarded in the circumstances as being material and that, as a rule of thumb, would normally be equal to or exceed 10%
material investment	a company (listed or unlisted) in which the issuer holds at least a 10% interest of any class of its securities
material shareholder	any person who is, or within the 12 months preceding the date of the transaction was, entitled to exercise or control the exercise of 10% or more of the votes able to be cast on all or substantially all matters at general/annual general meetings of the listed company, or any other company that is its holding company
Memorandum of Incorporation or MOI	shall bear the meaning ascribed thereto in the Act or equivalent document constituting or defining the constitution of a company
modified auditor's report	an auditor's report that contains a modified opinion or conclusion (as defined or contemplated by the relevant standard issued by the International Auditing and Assurance Standards Board), a paragraph on material uncertainty relating to going concern, an emphasis of matter paragraph or a paragraph regarding a reportable irregularity as defined in the Auditing Profession Act
mother share ISIN	ISIN for the share on which the event has been declared
mother share name	long name for the security in respect of which the event has been declared
new applicant	an applicant, no class of whose securities is already listed
offer for sale	an invitation to the public by, or on behalf of, a third party to purchase securities of the issuer already in issue, or to be issued, and may be in the form of an invitation to tender at or above a stated price
offer for subscription	an invitation to the public by, or on behalf of, an issuer to subscribe for securities of the issuer not yet in issue or allotted, and may be in the form of an invitation to tender at or above a stated price
open market	dealings on the JSE trading system without any prior agreement
the Panel	the Takeover Regulation Panel established in terms of Section 196 of the Act
pay date or PD	the date on which entitlements will be paid or posted
per share	in the context of earnings/headline earnings/net asset value and net tangible asset value per share required in terms of the Listings Requirements for the listed security, (other than the requirement for earnings per share in terms of IFRS) per share means per listed security, except in the case where the listing is for two securities which trade as a linked unit in which case per share means per linked unit. In such an instance the applicant issuer must expressly use the words "per linked unit"
placing	a marketing of securities already in issue but not listed, or not yet in issue, to specified persons or to any securities house assisting in the placing, that does not involve an offer to the public or to existing holders of the applicant's securities generally and that takes place immediately before the applicant is listed. A placing includes a preferential placing
practice notes	practice notes issued from time to time by the JSE to amend, add to, clarify or expand upon the Listings Requirements
preferential offer	an offer by an applicant to directors, employees, pensioners and direct business associates, including customers with whom there exists a direct and enduring contractual relationship, of the applicant by means of a non transferable application form

	bearing the name of a specific party and stating a maximum number of securities that may be subscribed for in that application
pre-issued securities	entitlements to securities the listing of which on the JSE has been approved but where the listing becomes effective only after a number of conditions have been fulfilled on or before the commencement date of official trading
pre-issued trading	transactions effected in pre-issued securities
pre-listing statement	the statement required to be issued by companies in terms of Section 6
prescribed officer	as defined in the Companies Act or a person with a similar designation as a prescribed officer if the applicant issuer is not incorporated in South Africa
press announcement	an announcement in the press in accordance with paragraphs 3.46 to 3.48
price	the basis of the cash entitlement (for the purposes of corporate actions)
price sensitive information	unpublished information that is specific or precise, which if it were made public, would have a material effect on the price of the issuer's securities
	Apply Practice Note 2/2015;
primary listing	in relation to a security listed on more than one stock exchange, a listing by virtue of which the issuer is, in respect of that security, subject to the full requirements applicable to listing on that exchange
promoter	the party(ies) responsible for the formation of a company to be listed, or acquired by an existing issuer, and who earn(s) a fee therefrom, in cash or otherwise.
prospectus	a prospectus issued in accordance with the Act and in compliance with Section 6 if issued by an issuer or new applicant
publish/ed or publication	refer to the definition of "announce or announcement"
pyramid companies	companies classified by the JSE as pyramid companies in accordance with the criteria set out in paragraph 14.4
ratio	basis of share entitlement reflected as a ratio
record date or RD	the date on which the holdings, upon which the event entitlement is based are ascertained. Record date is one settlement period after LDT (currently 3 business days). Record date must be on a Friday or, if Friday is a public holiday, the last trading day of the week
reference price	the last auction or automated trade price, whichever is the most recent, or in the absence of an auction or last trade price, a price as determined by the JSE
related party	a related party as defined in paragraph 10.1
renounceable offer	an offer by a listed company to its shareholders to subscribe by way of rights for securities in the applicant, usually the listed company's subsidiary, where the listed company has received the right to subscribe for those securities in the applicant but renounces all or part of that right to its shareholders pro rata to their shareholdings
reporting accountant specialist	an individual, registered with the IRBA or similar regulatory or professional body for auditors in another jurisdiction, who is an employee, director or partner of the audit firm appointed to the issuer, and has the experience described in paragraph 3.90 of the Listings Requirements
Republic of South Africa	the Republic of South Africa as constituted on 27 April 1994 under the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)
restrictive funding arrangements	any funding arrangement by way of a loan or otherwise in terms of which the applicant issuer and/or any of its subsidiaries– <ul style="list-style-type: none"> <li>(a) have to obtain the prior consent from the funding provider in order to undertake certain specified events; and</li> <li>(b) do not have the ability to settle the relevant funding</li> </ul>

	arrangement in full, at any time, at the election of the applicant issuer and/or any of its subsidiaries, as the case may be
results	condensed financial statements, summary financial statements, annual financial statements, annual reports, interim results, quarterly results;
results announcement	publication of results through SENS in terms of paragraph 3.22;
rights offer	an offer by an issuer to existing holders of securities to subscribe for further securities in the issuer in proportion to their existing holdings by means of the issue of (i) a renounceable right that is traded as either "fully paid" or "nil paid" rights for the period before payment for the securities is due as detailed in the "Renounceable Rights offer/Claw back offer" corporate action timetable or (ii) a non-renounceable right as detailed in the "Non-Renounceable Rights offer" corporate action timetable
the ruling price	refer to the definition of "reference price"
SAICA	the South African Institute of Chartered Accountants
SA financial reporting requirements	Financial Pronouncements as issued by the Financial Reporting Standards Council and SAICA Financial Reporting Guides as issued by the Accounting Practices Committee;
SAMREC	the South African Mineral Resources Committee
the SAMREC Code	the South African Code for Reporting of Mineral Resources and Mineral Reserves including the guidelines contained therein
scrip dividend	a cash dividend incorporating an election on the part of shareholders to receive either capitalisation shares or cash, with the default election being either shares or cash
secondary listing	a listing that is not a primary listing
securities	as defined in the FMA
SENS	the Stock Exchange News Service
SENS Procedural Requirements	the SENS Procedural Requirements contained in Schedule 9
settlement period	the period between the day on which the trade takes place and the date on which that trade is due for settlement, currently 3 business days
short-form announcement	a press announcement containing the information in paragraph 3.46A;
significant	any matter or element that is significant for the purpose of making an informed assessment of any transaction or listed security. As a rule of thumb significant should be interpreted as being less than material.
solvency and liquidity test	the test set out in Section 4 of the Act
South African company	a company incorporated in terms of the Companies Act;
special resolution	a resolution as contemplated in Section 65(9) of the Act or in terms of the relevant company's MOI, which special resolution may, for purposes of the Listings Requirements, be passed only with the support of at least 75 percent of the votes cast by all equity securities holders present in person, or represented by proxy, at the general meeting/annual general meeting convened to approve such resolution
sponsor	as described in Section 2 of the Listings Requirements
sponsored DR	that the DR is established at the direction of the issuer and in accordance with a deposit agreement between the issuer and the depositary.
spouse	a person who is in a marital relationship (recognised as a marriage in terms of the matrimonial laws of any country) with the individual at the time of the relevant transaction, including but not limited to, the individual's spouse in terms of a same sex, hetero-sexual or customary union or any marital union acknowledged by any religion or custom.
the State	the government of the Republic of South Africa
statement of	as described in IFRS



comprehensive income statement of financial position	as described in IFRS
Strate	Strate Proprietary Limited, a company duly registered and incorporated with limited liability under the company laws of the Republic of South Africa under registration number 1998/02224/07, licensed as a central securities depository under the FMA licensed as a central securities depository under the FMA
subscribed capital or issued shares or issued capital or share capital	the portion of the capital of a company that has been subscribed for by shareholders
subsidiary	a subsidiary as defined in section 1 of the Act as read with Section 3 of the Act; or a juristic person or other undertaking which would have been a subsidiary company as defined in Section 1 of the Act had the juristic person or other undertaking been a company; or a juristic person or other undertaking that would have been a subsidiary as defined in Section 1 of the Act but for the fact that it is incorporated outside of the Republic of South Africa
substantial	a change in or a constituent of a particular factor that may be regarded in the circumstances as being substantial and that, as a rule of thumb, would normally be equal to or exceed 30%
summary circular	a circular, revised listing particulars or pre-listing statement dispatched, in a summary format, pursuant to the Listings Requirements, including a prospectus provided any prescribed requirements pursuant to the Act have been satisfied
summary financial statements	a summary version of the annual financial statements, which summary must comply with paragraphs 8.57(a) and 8.58;
Takeover Regulations	the Takeover Regulations established in terms of Section 120 of the Act
temporary documents of title	allotment letters, split receipts, letters of acceptance, letters of rights, scrip certificates and any other temporary documents of title
traded or trading price	refer to the definitions of "reference price" or "closing price", as the case may be
treasury shares	equity shares of an applicant issuer held <ul style="list-style-type: none"> <li>(i) by a subsidiary and/or</li> <li>(ii) by a trust, through a scheme and/or other entity, where the equity shares in the applicant issuer are controlled by the applicant issuer from a voting perspective,</li> </ul> the votes of which will not be taken into account for purposes of resolutions proposed pursuant to the provisions of the Listings Requirements
unbundling transaction	shall bear the meaning ascribed thereto in the Income Tax Act, 1962 (Act No. 58 of 1962)
unsponsored DR	means that the DR is established solely by the depository (without the involvement of the issuer) in accordance with unsponsored terms and conditions;
VCC adviser	as described in section 21 of the Listings Requirements;
VCC status	a venture capital company pursuant to Section 12J of the Income Tax Act No. 58 of 1962 and registered with the Financial Sector Conduct Authority;
vendor consideration placing	listed or to be listed securities that are to be issued for an acquisition to parties for cash: <ul style="list-style-type: none"> <li>(a) as marketing on behalf of vendors; or</li> <li>(b) to settle a vendor cash consideration</li> </ul>
warrant	an instrument that gives the warrant holder the right to buy the relevant assets from the issuer (in the case of a call warrant) or to sell the relevant assets to the issuer (in the case of a put warrant) at a pre-determined price and in a pre-determined ratio either, at any time from the date of issue of the warrant until a pre-determined future date, or on a pre determined future date



weighted average traded  
price

the total value of the securities traded divided by the total  
number of securities traded over a particular period of time

# Section 1

## Authority of the JSE

### Scope of section

This section sets out the authority of the JSE regarding its powers to list, suspend and terminate listings, and its powers to enforce the Listings Requirements.

The main headings of this section are:

- 1.1 General powers of the JSE
- 1.6 Suspension of securities
- 1.12 Removal of securities
- 1.20 Annual revision of the List
- 1.21 Censure and penalties
- 1.26 Power to require information
- 1.28 Publication
- 1.31 Amendments to the Listings Requirements

### General powers of the JSE

- 1.1 Subject to the provisions of the FMA, the JSE has the power:
  - (a) to grant, defer, refuse, suspend or remove a listing of securities in accordance with the Listings Requirements;
  - (b) to prescribe, from time to time, the Listings Requirements with which a new applicant must comply before securities issued by such new applicant are granted a listing;
  - (c) to prescribe, from time to time, the Listings Requirements with which applicant issuers must comply;
  - (d) to prescribe, from time to time, the Listings Requirements with which an applicant issuer's directors, officers and agents must comply while securities issued by such applicant issuer remain listed;
  - (e) to alter or rescind a Listings Requirement prescribed before or after a listing has been granted and to prescribe additional Listings Requirements from time to time;
  - (f) to prescribe the circumstances under which a listing of securities shall or may be suspended or removed; and
  - (g) to prescribe, from time to time, the Listings Requirements with which sponsors, designated advisers and depositories must comply.
- 1.2 Listings are granted subject to compliance with the Listings Requirements and new applicants and their directors must comply with the Listings Requirements. In addition, the JSE may grant a listing subject to any additional condition(s) that it considers appropriate, in which event the new applicant will be informed of, and will be required to comply with, any such condition(s).
- 1.3 Nothing contained in this section shall limit the powers of the JSE or its officers to those contained herein, and the JSE or its officers may, at any time, exercise any further powers granted to the JSE or its officers in terms of the FMA. Where the JSE exercises discretion in terms of these Listings Requirements, it shall use its sole discretion and, subject to the provisions of paragraphs 1.4 and 1.5 below, judicial review and the appeal provisions in the FMA, its rulings shall be final.
- 1.4 If an applicant issuer, director, sponsor, designated adviser and/or depository, in respect of whom a decision (other than a decision in respect of which a specific appeal or review procedure is prescribed in these Listings

Requirements, the Rules of the JSE and the FMA or any replacement legislation) is taken under these Listings Requirements, objects to such decision, such person must notify the JSE in writing within 48 hours of the decision, giving reasons for such objection. In such event the JSE shall consider the objection and shall be entitled, in its sole discretion, to consult with not less than three independent members of the Issuer Regulation Advisory Committee. After taking into account the views of those independent members, the JSE shall be entitled to reconsider and change its decision. A decision of the JSE made after following this procedure will be final.

- 1.5 Subject to the provisions of the FMA, if the JSE decides, at its instance, to remove a listing, and the issuer concerned objects to this decision, then the issuer may appeal to the Issuer Regulation Appeal Committee in writing within 48 hours of the decision, giving reasons for such objection. In such event, the JSE will constitute the Issuer Regulation Appeal Committee in accordance with the mandate issued by the JSE Board for this purpose.

## **Suspension of securities**

### **Suspension initiated by the JSE**

- 1.6 The JSE may, subject to the suspension provisions of the FMA, and if either of the following applies:
- (a) if it will further one or more of the objects contained in Section 2 of the FMA, which may also include if it is in the public interest to do so; or
  - (b) if the applicant issuer has failed to comply with the Listings Requirements and it is in the public interest to do so,
- suspend the listing of securities of an applicant issuer and impose such conditions as it may, in the circumstances, deem appropriate for the lifting of such suspension.
- 1.7 When the listing of securities of an applicant issuer is under threat of suspension, the affected applicant issuer shall be given the opportunity of making written representations to the JSE why the suspension should not be affected prior to the JSE making any decision to suspend such listing.
- 1.8 If a listing is suspended and the affected applicant issuer fails to take adequate action to enable the JSE to reinstate the listing within a reasonable period of time, the JSE may remove the listing in accordance with the procedure set out below.
- 1.9 Notwithstanding the provisions of paragraphs 1.6 and 1.7 above, the JSE may suspend the listing of securities of an applicant issuer when, in the opinion of the JSE, there are two levels of information in the market and the situation has not been remedied by the directors of the applicant issuer in a timely manner.

### **Suspension at the request of the issuer**

- 1.10 The JSE may suspend a listing of securities in the following circumstances:
- (a)
    - (i) where an issuer is placed under provisional liquidation;
    - (ii) where an issuer has adopted a special resolution to be wound up voluntarily; or
    - (iii) where an issuer is placed under business rescue proceedings in terms of Chapter 6 of the Act;
  - (b) where a written request is made by a/the director(s) of an issuer and it is apparent that there are two levels of information in the market and the JSE considers that this situation cannot be remedied by the immediate publication of an announcement to clarify the situation;

- (c) where the issuer has ceased to do business;
- (d) where the Commission issues a notice to an issuer in terms of Sections 22 and/or 23(6) of the Act. The issuer must immediately inform the JSE of any such notice issued to the issuer by the Commission; and/or
- (e) the Commission deregisters an issuer in terms of Section 82(3) of the Act.

### **Continuing obligations of issuers in relation to suspensions**

- 1.11 If an issuer's securities are suspended, it must, unless the JSE decides otherwise:
- (a) continue to comply with all the Listings Requirements applicable to it;
  - (b) submit to the JSE a monthly progress report pertaining to the current state of affairs of the issuer and any action proposed to be taken by the issuer in order to have the listing reinstated; and
  - (c) advise the holders of securities, on a quarterly basis, concerning the current state of affairs of the issuer and any action proposed by the issuer in order to have the listing reinstated, including the date on which the suspension is expected to be lifted.

### **Removal of securities**

#### **Removal initiated by the JSE**

- 1.12 The JSE may, subject to the removal provisions of the FMA, and if one of the following applies:
- (a) if it will further one or more of the objects contained in Section 2 of the FMA, which may also include if it is in the public interest to do so; or
  - (b) if the issuer has failed to comply with the Listings Requirements and it is in the public interest to do so,
- remove from the List any securities previously included therein; provided that the listing of such securities shall first have been suspended in accordance with the above provisions.
- 1.13 When a listing of securities is under threat of removal, the affected issuer shall be given the opportunity of making representations, in writing, to the JSE why the removal should not be affected, prior to the JSE making any decision to remove such listing.

#### **Removal at the request of the issuer**

- 1.14 An issuer may make written application to the JSE for a removal of any of its securities from the List, stating from which time and date it wishes the removal to be effective. The JSE may grant the request for removal, 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 removal of the listing prior to the issuer making written application for such removal;
  - (b) the reasons for removal 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), at least 75% of the votes of all shareholders present or represented by proxy at the general meeting, excluding any offeror, their associates and any party acting in concert, must be cast in favour of such resolution.
- 1.17 Shareholder approval for the removal of the listing need not be sought, and a circular need not be sent to the holders of securities where the listing of such securities is intended to be removed:
  - (a) following a take-over offer, the securities have become subject to Section 124 of the Act and notice has been given by the offeror of its intention to cancel the listing of the securities (in these circumstances) in the initial offer document or in any subsequent circular sent to holders of securities; or
  - (b) following the completion of a scheme of arrangement with shareholders, in terms of Sections 114 and 115 of the Act, as a result of which either all the shares have been acquired or the JSE is satisfied that the issuer no longer qualifies for listing (the JSE must be consulted for a ruling in this regard).

#### **Redemption either wholly or in part and removal from the List of redeemable preference shares or debentures**

- 1.18 Written application for the removal of redeemable preference shares or debentures, or the corresponding portion thereof, from the List, as and from the appropriate date, must be made to the JSE at least 30 days before the date of redemption and in accordance with the relevant corporate action timetable.
- 1.19 The application must be accompanied by a copy of the proposed announcement and/or circular to be published and/or sent to the redeemable preference shareholders or debenture holders, notifying them of the redemption.

#### **Annual revision of the List**

- 1.20 All listings shall be revised by the JSE annually after receipt by the JSE of a certificate from each applicant issuer complying with Schedule 2 Form D1 ("the certificate"), which must be submitted to the JSE together with the applicant issuer's annual report in terms of paragraphs 3.16. If the certificate is not received by the JSE, the procedure below shall apply:
  - (a) 14 days after failure to provide the JSE with the certificate,
    - (i) the listing will be annotated on the JSE trading system with a "R" to indicate that it has failed to comply; and
    - (ii) the JSE will release an announcement on SENS, advising that the issuer has not provided the JSE with the certificate and cautioning holders of securities of the consequences referred to in (b) below.
  - (b) the JSE will consider the possible suspension of the issuer in terms of Section 1, if the certificate is not submitted to the JSE.

#### **Censure and penalties**

- 1.21 Where the JSE finds that an applicant issuer or any of an applicant issuer's director(s), officer(s) and/or depository, as defined, has contravened or failed to adhere to the provisions of the Listings Requirements, the JSE may, in accordance with the provisions of the FMA and without derogating from its powers of suspension and/or removal:
- (a) censure the applicant issuer and/or the applicant issuer's director(s)/officer(s), individually or jointly, by means of private censure;
  - (b) censure the applicant issuer and or the applicant issuer's director(s)/officer(s), individually or jointly, and/or the applicant issuer's officer(s) by means of public censure;
  - (c) in the instance of either paragraph 1.21(a) or (b), impose a fine not exceeding such amount as stipulated by the FMA on the applicant issuer and/or the applicant issuer's director(s)/officer(s), individually or jointly;
  - (d) disqualify an applicant issuer's director(s)/officer(s) from holding the office of a director or officer of a listed company for any period of time; and/or
  - (e) issue any other penalty that is appropriate in the circumstances.
- 1.22 In the event that an applicant issuer or any of an applicant issuer's director(s) contravenes or fails to adhere to the provisions of the Listings Requirements, the JSE may elect in its discretion, that:
- (a) full particulars regarding the imposition of a penalty may be published in the *Gazette*, national newspapers, the website of the JSE or through SENS; and/or
  - (b) an investigation or hearing be convened and the applicant issuer or any of the applicant issuer's director(s) pay the costs incurred in relation to such investigation or hearing.
- 1.23 If any of the parties fails to pay a fine as referred to in paragraph 1.21, the JSE may, in terms of the provisions of the FMA, file with the clerk or registrar of any competent court a statement certified by it as correct, stating the amount of the fine imposed, and such statement thereupon shall have all the effects of a civil judgement lawfully given in that court against that applicant issuer or any of an applicant issuer's director(s) in favour of the JSE for a liquid debt in the amount specified in that statement.
- 1.24 Unless the JSE considers that the maintenance of the smooth operation of the market or the protection of investors otherwise requires, the JSE will give advance notice to the parties involved of any action that it proposes to take under paragraphs 1.21 and 1.22, and will provide them with an opportunity to make written representations to the JSE.
- 1.25 The whole or any part of the fines issued in terms of paragraph 1.21 will be appropriated as follows:
- (a) External costs incurred by the JSE at its specific instance and request, in enforcing the provisions of the Listings Requirements, including but not limited to, attorney fees, senior counsel fees, forensic investigation fees and any fees that relate (direct or indirectly) to any investigative services or in support of any investigation initiated by the JSE;
  - (b) External costs incurred by the JSE to create an observance and awareness as to the interpretation and application of the Listings Requirements in furtherance of the general principles of the Listings Requirements and the objects of the FMA; and
  - (c) Project costs initiated by the JSE, which are directly associated with the Listings Requirements and falls within the sphere of research and/or analysis in financial markets regulation.

## **Power to require information**

- 1.26 The JSE may, in accordance with the FMA, require an applicant issuer to disclose to it, within a period specified by it, such information at the applicant issuer's disposal as the JSE may determine, save to the extent that the issuer has obtained a court order excusing it from such disclosure. The JSE may request that a copy of such court order be delivered to it. If the JSE is satisfied, after such applicant issuer has had an opportunity of making representations to it, that the disclosure of that information to the registered holders of the securities in question will be in the public interest, it may, by notice in writing, require such applicant issuer to publicly disclose that information within the period specified in the notice.
- 1.27 The JSE may require an applicant issuer to provide for the publication or dissemination of any further information not specified in the Listings Requirements, in such form and within such time limits, as it considers appropriate. The applicant issuer must comply with such requirement and, if it fails to do so, the JSE may publish the information after having heard representations from the applicant issuer or after having granted the applicant issuer the opportunity to make such representations.

## **Publication**

- 1.28 Without derogating from any other powers of publication referred to in these Listings Requirements, the JSE may, in its absolute discretion and in such manner as it may deem fit, state or announce that it has:
- (a) investigated dealings in a listed security;
  - (b) censured an applicant issuer;
  - (c) censured an applicant issuer's director(s);
  - (d) suspended the listing of any security;
  - (e) removed the listing of any security;
  - (f) imposed a fine on an applicant issuer;
  - (g) imposed a fine on an applicant issuer's director(s); and/or
  - (h) advised that, in its opinion, the retention of office as a director of any applicant issuer's director(s), who shall be named, is prejudicial to the interests of investors.
- 1.29 In a statement or announcement referred to in paragraph 1.28, the JSE may give the reasons for such investigation, censure, suspension, removal or fine as the case may be and, in the case of an investigation, so much of the JSE's conclusion or findings as it may, in its absolute discretion, deem necessary.
- 1.30 No applicant issuer or its directors, officers or holders of securities, including nominees and/or depository shall have any cause of action against the JSE, or against any person employed by the JSE, for damages arising out of any statement or announcement made in terms of paragraph 1.28, unless such publication was made either grossly negligently or with wilful intent.

## **Amendments to the Listings Requirements**

- 1.31 Subject to the provisions of the FMA, the JSE may amend the Listings Requirements through a public consultation process. The proposed amendments to the Listings Requirements will be published through SENS inviting comments from affected parties for a period of one month.
- 1.32 Once the public consultation process has been completed, the JSE will submit the proposed amendments to the Listings Requirements, together with an explanation of the reasons for the proposed amendments, and any concerns or objections raised during the public consultation process, to the registrar for

approval.



## Section 2

### Sponsors

#### Scope of section

This section sets out the requirements relating to sponsors.

Sponsors will normally be corporate brokers, banks and other professional advisers. Such sponsors must undertake to the JSE that they accept certain responsibilities. These responsibilities are detailed in Section 2 and Schedule 16 of the Listings Requirements. The responsibilities of a sponsor appointed by an applicant issuer are twofold, namely:

- (a) to assist applicant issuers with applications for listing which require the production of listing particulars and/or other relevant documentation; and
- (b) to provide advice, on a continuing basis, regarding the application of the Listings Requirements, including the application of the spirit of the Listings Requirements and upholding the integrity of the JSE, and in particular, the continuing obligations set out in Section 3.

Only sponsors recorded on the JSE's Register of Sponsors may act as sponsors.

The main headings of this section are:

- 2.1 Qualifications
- 2.2 Appointment
- 2.7A Termination
- 2.8 Responsibilities of a sponsor
- 2.13 Direct access
- 2.17 Disciplinary action

#### Qualifications

- 2.1 In order for an applicant to become a sponsor and to perform its responsibilities in accordance with the Listings Requirements, it must:
  - (a) submit written application as set out in Schedule 16 of the Listings Requirements or in such other form as the JSE may from time to time approve;
  - (b) be entered on the JSE's Register of Sponsors, having successfully completed all necessary application forms prescribed by the JSE; and
  - (c) have paid the necessary fees.

The authority to act as a sponsor will be reviewed on an annual basis in accordance with the provisions of Schedule 16.

#### Appointment

- 2.2 An applicant issuer is required to have an appointed sponsor at all times which, subject to paragraph 2.4, may attend to all events contemplated in the Listings Requirements.
- 2.3 An independent sponsor must be appointed where:
  - (a) the sponsor is also the applicant issuer;
  - (b) the sponsor is a subsidiary, associate or division of the applicant issuer;
  - (c) the JSE, in respect of any transaction or corporate action, deems it necessary to appoint a joint sponsor; or
  - (d) the sponsor is not independent pursuant to Schedule 16.

- 2.4 To the extent that an applicant issuer is required to have an independent sponsor pursuant to paragraph 2.3, the independent sponsor must attend to the following events and corporate actions:
- (a) any events requiring shareholders' approval pursuant to the Listings Requirements, save for the Excluded Items\*;
  - (b) unbundlings not requiring shareholders' approval;
  - (c) related party transactions;
  - (d) removal of listings; and
  - (e) rulings in relation to any items above.
- \* Excluded Items: Although shareholders' approval is required, the following items are excluded, being approvals in relation to MOIs, Schedule 14 share incentive schemes, general issue of shares for cash, general repurchases, increase in share capital and change of name.
- 2.5 Where a joint independent sponsor is required to be appointed in terms of paragraph 2.4, such appointed joint independent sponsor shall be the lead sponsor of the applicant issuer. Where an applicant issuer has appointed more than one sponsor, the applicant issuer must appoint one of the sponsors as the lead sponsor. The lead sponsor must be identified as such in all communication with holders of securities and to the public.
- 2.6 Where a sponsor, other than an applicant issuer's appointed sponsor, initiates a specific transaction for the applicant issuer, such sponsor may be appointed as joint sponsor for that transaction. In such a case, one of the joint sponsors must be appointed as lead sponsor.
- 2.7 An applicant issuer must advise the JSE in writing (providing a copy to the sponsor) of the appointment or resignation of any sponsor. Where a sponsor resigns, the applicant issuer and the sponsor must immediately inform the JSE separately in writing of the reason for the resignation. In such a situation, the applicant issuer has 30 business days to appoint a new sponsor from the date of resignation of the sponsor, unless the JSE decides otherwise. The replacement sponsor must ensure that, before accepting an appointment, it has requested the written reasons for the resignation as submitted to the JSE from the outgoing sponsor. The outgoing sponsor must supply the reasons to the replacement sponsor within five business days of such request and the replacement sponsor must take account of the reasons for the resignation before accepting the appointment. Failure to comply with this requirement may result in disciplinary action being taken in terms of the Listings Requirements.

## **Termination**

- 2.7A (a) In the event that the appointment of the sponsor is terminated by the issuer, for whatever reason, such termination must be approved by the board of directors of the issuer. Once the termination of the sponsor has been approved by the board of directors, the issuer and the sponsor must submit a report to the JSE stipulating the reasons for the termination, within 48 hours of such termination.
- (b) In the circumstances set out in paragraph 2.7A(a), an issuer must immediately publish an announcement confirming the termination of the services of the sponsor. The issuer must make immediate arrangements to appoint a replacement sponsor, within 30 business days of the date on which the former sponsor ceased to act, and must inform the JSE and publish a further announcement immediately after the appointment has been made.
- (c) The replacement sponsor must ensure, before accepting the appointment, that it has requested the report referred to in paragraph 2.7A(a) from the outgoing sponsor. The outgoing sponsor must supply

this report to the replacement sponsor within five business days of such request and the replacement sponsor must take account of the reasons for the termination before accepting the appointment.

- (d) Failure to comply with this requirement may result in disciplinary action being taken in terms of the Listings Requirements.

## **Responsibilities of a sponsor**

### **Nature of responsibilities**

2.8 The responsibilities of a sponsor are contained in Schedule 16 and in paragraphs 2.9 to 2.12. Failure to carry out these responsibilities may result in the JSE taking one or more of the steps referred to in paragraph 2.17.

2.9 A sponsor, or in the case of more than one sponsor, the lead sponsor (as contemplated in paragraphs 2.5 and 2.6) must:

- (a) at the date of first submission of any documentation, submit a confirmation in the form set out in Schedule 17 to the JSE;
- (b) provide to the JSE any information or explanation known to it, in such form and within such time limit as the JSE may reasonably require, for the purpose of verifying whether the Listings Requirements are being and have been complied with by it or by an applicant issuer;
- (c) submit all documentation required in terms of paragraph 16.2 to the JSE, ensuring that such announcements and documents, in both principle and content, are in compliance with the Listings Requirements. The JSE does not pre-approve announcements and any listing applications (in respect of class of securities already listed) and it is the sponsor's responsibility (this may only be done by an approved executive) to ensure that announcements and listing applications (in respect of class of securities already listed) comply with the requirements before they are published (in the case of announcements) or submitted to the JSE (in the case of listing applications). The sponsor must obtain confirmation, preferably in writing, from applicant issuers in respect of periodic financial announcements and annual financial statements that such announcements and documents have been prepared in compliance with the Listings Requirements. In respect of annual reports, sponsors must submit the relevant questionnaire (available on the JSE website) together with the annual report. All first submissions, together with the required checklist as contained in Schedule 2 Form F, must be signed by at least one of the approved executives of the sponsor. The sponsor must also complete the relevant checklist (available on the JSE website) before submission;
- (d) ensure that the applicant issuer is guided and advised as to the application of the Listings Requirements, including the application of the spirit of the Listings Requirements and upholding the integrity of the JSE;
- (e) manage the submission of all documentation to the JSE and ensure its completeness and correctness before submission;
- (f) satisfy itself as to the credentials of the reporting accountant specialist, auditors, competent persons, valuers, providers of fairness opinions, and any other party deemed necessary by the JSE;
- (g) carry out any activities so requested by the JSE;
- (h) discharge its responsibilities with due care and skill;
- (i) prior to the submission of any documentation that requires approval by the JSE, satisfy itself, to the best of its knowledge and belief, having made due and careful enquiry of the applicant issuer and its advisers:

- (i) about the matters described in paragraphs 2.9 to 2.12, and
  - (ii) that there are no material matters, other than those disclosed in writing to the JSE, that should be taken into account by the JSE in considering the submission;
- (j) advise the JSE immediately if they are aware, or have reason to suspect, that any of their clients have or may have breached the Listings Requirements;
- (k) adhere to the Sponsor Code of Ethics and Standards of Professional Conduct as contained in the appendix to Schedule 16; and
- (l) implement and act in conformity with its written procedures manual as mandated pursuant to paragraph 16.23 of Schedule 16;
- (m) provide to the JSE written confirmation pursuant to paragraph 11.58(i) that the information contained in the summary circular in accordance with Appendix 2 to Section 11 has been reviewed and approved by the sponsor before it is dispatched.

### **Directors**

- 2.10 The sponsor must be satisfied that the directors of new applicants and newly appointed directors of issuers:
- (a) have completed and submitted the directors' declaration as set out in Schedule 13;
  - (b) have had explained to them by the sponsor the nature of their responsibilities and obligations arising from the Listings Requirements; and
  - (c) in particular, understand what is required of them to enable holders of securities and the public to be able to appraise the position of an applicant issuer on an ongoing basis and to avoid the creation of a false market in the applicant issuer's securities once they are listed.

### **Financial reporting procedures**

- 2.11 Before the application for a new listing is made, or in the event of a sponsor accepting appointment to act as such to an issuer, the sponsor must report to the JSE in writing that it has obtained written confirmation from the applicant issuer that the directors have established suitable information communication procedures, providing for a flow of information that provides a reasonable basis for the directors to make proper judgements as to the financial position and prospects of the issuer and its group.

### **Working capital statement**

- 2.12 Where an applicant issuer prepares listing particulars in respect of a new listing, the sponsor must report to the JSE, in writing, that it has discharged all of its responsibilities in terms of Schedule 12.

### **Direct access**

- 2.13 A sponsor must be present at all formal discussions held between the JSE and an applicant issuer.
- 2.14 Notwithstanding the provisions of this section, the JSE may, in appropriate circumstances, communicate directly with the applicant issuer or with an adviser of the applicant issuer, in addition to its sponsor, to discuss matters of principle and/or the interpretation of the Listings Requirements.
- 2.15 Where discussions take place without the sponsor being involved, the applicant issuer or adviser concerned must ensure that the sponsor is informed (preferably in writing) of the matters discussed as soon as

practicable.

- 2.16 Any information to be released through SENS will not be released until consent has been received from the sponsor.

### **Disciplinary action**

- 2.17 If the JSE determines, after taking account of written representations, that a sponsor or designated adviser, as the case may be, has breached any of its responsibilities under the Listings Requirements, the JSE is entitled to take any one or more of the following actions:
- (a) censure the sponsor/designated adviser;
  - (b) remove the sponsor/designated adviser from the Register of Sponsors/Designated Advisers maintained by the JSE;
  - (c) impose a penalty not exceeding R1 million;
  - (d) publish details of the action it has taken and the reasons for that action.
- 2.18 Where the JSE has decided to take any action described –
- (a) in paragraphs 2.17(a), (c) and/or (d), the sponsor or designated adviser shall be entitled to object to such decision in accordance with the provisions of paragraph 1.4; and
  - (b) in paragraph 2.17(b), the sponsor or designated adviser shall be entitled to request that the decision be taken on appeal in accordance with the provisions of paragraph 1.5.

## Section 3

### Continuing Obligations

#### Scope of section

This section sets out certain of the continuing obligations that an issuer is required to observe once any of its securities have been admitted to listing.

Additional continuing obligations are set out in the following sections:

Section 8	Financial Information
Section 9	Transactions
Section 10	Transactions with Related Parties
Section 11	Circulars and Announcements
Section 16	Documents to be submitted to the JSE
Section 18	Dual Listings and Listings by Overseas Companies

Additional and/or alternative continuing obligations applicable to special classes of issuers are set out in Section 12 (Mineral Companies), Section 13 (Property Companies), Section 14 (Pyramid Companies) and Section 15 (Investment Entities), respectively. Observance of continuing obligations is essential for the maintenance of an orderly market in securities and to ensure that all users of the market have simultaneous access to the same information. Failure by an issuer to comply with any applicable continuing obligation may result in the JSE taking any or all of the steps described in Section 1.

The main headings of this section are:

- 3.1 Compliance with the Listings Requirements
- 3.4 General obligation of disclosure
- 3.11 Disclosure of periodic financial information
- 3.26 Cash company
- 3.27 Rights between holders of securities
- 3.34 Profit warranties
- 3.35 Issues by subsidiaries other than on listing
- 3.37 Shareholder spread
- 3.44 Communication with holders of securities
- 3.59 Directors
- 3.75 Notifications in respect of the auditor
- 3.80 Miscellaneous obligations
- 3.86 Appointment of auditors and reporting accountant specialists
- 3.99 Announcement of intra-group repurchases

#### Compliance with the Listings Requirements

- 3.1 Every issuer whose securities are listed shall comply with the Listings Requirements.
- 3.2
  - (a) Where there is an overlap of application between the Listings Requirements and any other requirements or dispensations that may be required by or granted in terms of any law, by any statutory body or organ (such as the Panel or the Commission), an issuer must, notwithstanding such other requirements or dispensations, nonetheless comply with the Listings Requirements.
  - (b) The provisions of paragraph 4.28(d) must be complied with on an ongoing basis.
- 3.3 An issuer is required to have an appointed sponsor at all times and all necessary

correspondence between an issuer and the JSE must be communicated through the sponsor of the issuer.

## **General obligation of disclosure**

- 3.4 (a) The following provisions apply in respect of price sensitive information:

With the exception of trading statements, an issuer must, without delay, unless the information is kept confidential for a limited period of time, release an announcement providing details relating, directly or indirectly, to such issuer that constitutes price sensitive information.

Save where otherwise expressly provided, the requirements of this paragraph are in addition to any specific requirements regarding obligations of disclosure contained in the Listings Requirements.

Note: Apply Practice Note 2/2015 and consider the application of the JSE Guidance Letter – Cautionary Announcements.

- (b) Trading statements

All issuers, other than those who publish quarterly results, must comply with the detailed requirements of paragraph 3.4(b)(i) to (viii). Issuers with a policy of publishing quarterly results must comply with the general principles contained in paragraph 3.4(b)(ix), but may also elect to comply with paragraph 3.4(b)(i) to (viii) on a voluntary basis.

- (i) Issuers must publish a trading statement as soon as they are satisfied that a reasonable degree of certainty exists (refer to 3.4(b)(ii)) that the financial results (refer to 3.4(b)(vi)) for the period to be reported upon next will differ by at least 20% (or 15% if paragraph 3.4(b)(vii) is applicable) from the most recent of the following (collectively referred to as the “base information”):

- (1) the financial results for the previous corresponding period; or
- (2) a profit forecast (in terms of paragraphs 8.35 to 8.44) previously provided to the market in relation to such period.

Issuers may publish a trading statement if the differences referred to in 3.4(b)(i) are less than 20% (or 15% if paragraph 3.4(b)(vii) is applicable), but which are viewed by the issuer as being important enough to be made the subject of a trading statement.

- (ii) The determination of a reasonable degree of certainty in terms of 3.4(b)(i) is a judgmental decision which has to be taken by the issuer and its directors and is one in which the JSE does not involve itself. This determination may differ from issuer to issuer depending on the nature of business and the factors to which they are exposed.
- (iii) Trading statements must provide specific guidance by the inclusion of the period to which it relates and include the comparative numbers for the previous corresponding published\* period, and:
- (1) a specific percentage and number to describe the differences; or
  - (2) a range (i.e. XYZ is expecting an increase of between 15% and 25%) and numbers to describe the differences. Where an issuer elects to use a range, the range may not exceed 20% (e.g. 20% to 40%, 25% to 45% etc.); or

- (3) a minimum percentage difference and number difference, together with any other relevant information that the issuer has at its disposal at the time. This will only be applicable in instances where the issuer has reasonable certainty in respect of paragraph 3.4(b)(i) above, but it does not have the reasonable certainty to provide guidance in accordance with paragraph 3.4(b)(iii)(1) or (2). Once the issuer obtains this reasonable certainty, it must provide the guidance referred to in paragraph 3.4(b)(iii)(1) or (2).

The specific percentage as referred to in (1) to (3) above, need only be provided if less than 100%.

\* In respect of a new listing the provision will apply to the previous corresponding period notwithstanding that the financial results were not published.

- (iv) If, after publication of a trading statement but before publication of the relevant periodic financial results, an issuer becomes reasonably certain that its previously published number, percentage or range in the trading statement is no longer correct, then the issuer must publish another trading statement providing the revised number, percentage or range in accordance with paragraph 3.4(b).
- (v) In light of the existing Listings Requirements' definitions of "significant", "material" and "substantial", these words may not be used in trading statements because to do so would imply a range differing from that permitted in terms of 3.4(b)(i) (i.e. more than 20%).
- (vi) Financial results in terms of 3.4(b)(i) are relevant criteria that are of a price sensitive nature which, in the first instance, comprise headline earnings per share ("heps") and earnings per share ("eps"), and, in the second instance, and only if more relevant (because of the nature of the issuer's business) net asset value per share ("navps"). If an issuer wishes to adopt navps, it must announce on SENS, in advance of the first period ending which uses such navps, that it will be adopting navps for trading statement purposes. Thereafter, such policy adoption must be confirmed annually in the annual financial statements.
- (vii) Property entities may elect to adopt distribution per listed security as their relevant measure of financial results in terms of 3.4(b)(vi) provided that they:
- (1) follow the procedures set out in 3.4(b)(vi) for adopting a different relevant measure for financial results; and
  - (2) issue a trading statement if the financial results for the period to be reported on will differ by at least 15% from the base information, as opposed to the 20% referred to in 3.4(b)(i).
- (viii) In the event of an issuer publishing a trading statement, such issuer must either:
- (1) produce and submit to the JSE a profit forecast or estimate, and accountants report thereon in accordance with:
    - (aa) ISAE 3400 – The Examination of Prospective Financial Information, in respect of profit forecasts; or



(bb) ISAE 3000 – Assurance Engagements other than Audits or Reviews of Historical Financial Information, in respect of the estimate;

in compliance with paragraphs 8.35 to 8.44 and 8.48(c); or

- (2) include a statement (which is not deemed to be a cautionary statement and which does not give rise to the commencement of a closed period) in the trading statement advising securities holders that the forecast financial information has not been reviewed and reported on by the issuer's auditor either in accordance with 3.4(b)(viii)(1)(aa) or 3.4(b)(viii)(1)(bb).
- (ix) Issuers who have a policy of publishing quarterly results will be exempt from the provisions of 3.4(b)(i) to (viii), but must instead include a general commentary in each quarterly results announcement to ensure that shareholders are guided on the expected performance of the issuer for the next quarter (which may be as detailed or broad as the issuer chooses). Such guidance is exempt from compliance with paragraphs 8.35 to 8.44 of the Listings Requirements.

### **Confidentiality**

3.5 Information that is required to be announced in terms of paragraph 3.4 or any other Listings Requirement, including price sensitive information, may not, subject to paragraphs 3.6 to 3.8, be released (even subject to a time embargo):

- (a) during JSE trading hours (as defined in Schedule 9), until such time as such information has been published in accordance with paragraph 7 of Schedule 9; or
- (b) outside of JSE trading hours until such time as such information has been approved, if necessary (in accordance with paragraphs 6 of Schedule 9), and arrangements have been made for such information to be published before the opening of JSE trading hours on the next business day.

3.6 Issuers that deem it necessary to provide information, prior to releasing same on SENS must ensure that in doing so they do not commit an offence in terms of the FMA and in particular Section 78(4).

Section 78(4) of the FMA states the following:

- (a) An insider who knows that he or she has inside information and who discloses the inside information to another person commits an offence.
- (b) An insider is, despite paragraph (a), not guilty of the offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she disclosed the inside information because it was necessary to do so for the purpose of the proper performance of the functions of his or her employment, office or profession in circumstances unrelated to dealing in any security listed on a regulated market and that he or she at the same time disclosed that the information was inside information.

3.7 Issuers that elect to provide information in accordance with paragraph 3.6 and become aware 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, the issuer must immediately:

- (i) inform the JSE; and
- (ii) ensure that such information is announced accordingly.

3.8 When an issuer intends to release any information as contemplated in paragraph

3.5 at any meeting or forum, arrangements must be made for the publication of such information to ensure that the announcement of such information at the meeting or forum is made simultaneously with the publication through SENS in accordance with Schedule 9. If any such information is disclosed in an unplanned manner during the course of a meeting or forum, the issuer must immediately:

- (i) inform the JSE; and
- (ii) ensure that such information is announced accordingly.

### **Cautionary announcements**

- 3.9 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 (complying with paragraph 11.40). An issuer that has published a cautionary announcement must provide updates thereon in the required manner and within the time limits prescribed in paragraph 11.41.

Note: Apply Practice Note 2/2015 and consider the application of the JSE Guidance Letter – Cautionary Announcements.

### **Exception**

- 3.10 If the directors of an issuer consider that disclosure to the public of information in accordance with paragraph 3.4 will, or probably will, prejudice the issuer's legitimate interests, the JSE may grant a dispensation from the requirement to make such information public.

## **Disclosure of periodic financial information**

### ***Dividends and interest***

- 3.11 The declaration of dividends, interest and other similar payments ("distribution payments") by an applicant issuer should be announced immediately as per paragraph 11.17(a)(i) to (x).
- 3.12 If an applicant issuer decides not to declare distribution payments, and such decision is deemed to be price sensitive, the decision must be announced immediately after it is taken.
- 3.13 The announcement required in terms of paragraph 3.11 must be in accordance with the corporate action timetable.

### ***Restatement of previously published results***

- 3.14 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 pursuant to the provisions of Practice Note 3/2017.

### ***Annual results***

- 3.15 Every issuer must within three months after the end of each financial year end, release a results announcement dealing with either:
- (a) condensed financial statements; or
  - (b) annual financial statements / summary financial statements.
- 3.16 Every issuer must within four months after the end of each financial year and at

least fifteen business days before the date of the annual general meeting:

- (a) release the annual report through a results announcement; and
- (b) distribute to all holders of securities the notice of annual general meeting, together with a weblink to the annual report.

### ***Interim and quarterly reports***

3.17 Every issuer must within three months after the end of:

- (a) the first six-month period of a financial year; and
- (b) the twelve-month period commencing on the first day of a financial year if the issuer has changed its year end and therefore has a financial year of longer than twelve months,

release its interim results through a results announcement.

3.18 Reporting on a quarterly basis is voluntary and there is no prescribed format. Should an issuer elect to report on a quarterly basis, such results must be released through a results announcement as soon as possible after each quarter. Reporting on a quarterly basis does not replace the interim results obligations of paragraph 3.17.

### ***Auditors report***

3.19 The issuer's auditor must perform an audit in accordance with International Standards on Auditing (or in the case of overseas companies, in accordance with national auditing standards acceptable to the JSE) on:

- (a) the annual financial statements; and
- (b) the separate annual financial statements of the issuer, where the issuer is a South African company.

3.20 The issuer's auditor must perform a review in accordance with the International Standard on Review Engagements (or in the case of overseas companies, in accordance with national standards acceptable to the JSE) on the:

- (a) the condensed financial statements; and
- (b) paragraph 3.17(b) interim results.

3.21 The information in the auditor's report must be disclosed as follows:

- (a) the auditor's report must accompany the relevant results on which their report is issued; and
- (b) where additional information accompanies the results, the demarcation between which information is audited/reviewed and which is not must be clear;
- (c) summary financial statements must be accompanied by the following:
  - (i) a statement that it is extracted from audited information but is not itself audited and the directors are responsible for the accuracy of the extraction;
  - (ii) the name of the audit firm;
  - (iii) the type of audit opinion that was issued on the annual financial statements, i.e. unmodified, qualified, disclaimer or adverse; and in the instance of a modified opinion an extract of the exact modification paragraph from the auditor's report; and
  - (iv) details of any of the following paragraphs contained in the auditor's report on the annual financial statements:

- (1) material uncertainty relating to going concern;
- (2) emphasis of matter;
- (3) a reportable irregularity (as defined in the Auditing Profession Act); and
- (4) a material inconsistency in information included in a document that contains the annual financial statements; and
- (v) a statement that the annual financial statements are available on request from the issuer, including details of the contact person.

### ***Results announcement***

3.22 Results must be released by way of a SENS announcement and JSE cloudlink. The SENS announcement must contain the following information:

- (a) A statement that:
  - (i) the results are available through the following JSE cloudlink and issuer's weblink; and
  - (ii) any investment decisions should be based on the results as the information in the announcement does not provide all of the details;
- (b) In respect of annual reports, details of the date, time and venue for the annual general meeting and a statement that, whilst the annual financial statement are available through the JSE cloudlink, the additional information in terms of paragraph 8.62 is only available through the issuer's weblink;
- (c) The information in paragraphs 3.46A(d), if the information has not been released previously on SENS. This provision does not apply to quarterly results;
- (d) If annual reports are announced, following the release of condensed financial statements:
  - (i) a statement that there are no changes to any of the information in those previous results or a statement that there are changes; and
  - (ii) in the event of changes, a statement that the details are available through the JSE cloudlink. Those details must include a description of the changes and the circumstances that led to the changes. The details must be provided for each line item in the financial statements and/or notes impacted by the change and the quantum involved. If there is more than one change, each item must be dealt with separately and the cumulative impact of the change should also be included; and
- (e) If annual reports are announced following the release of annual financial statements or summary financial statements:
  - (i) in the event of changes to the previous results paragraph 3.22(d)(ii) applies; and
  - (ii) if the auditor issued a new audit report, a statement to this effect highlighting any changes to the previous issued report.

### ***Procedure for non-compliance***

3.23 The release of results without the required auditor's reports referred to in paragraphs 3.19 and 3.20 is not permitted. The procedure below shall apply to an issuer that fails to comply with paragraphs 3.15, 3.16 and 3.17:

- (a) 14 days after failure to comply with paragraphs 3.15 and 3.17 and the first day after failure to comply with paragraph 3.16 –
  - (i) the listing will be annotated on the trading system with a “RE” to indicate that it has failed to comply; and
  - (ii) the JSE will release an announcement on SENS, advising that the issuer has not submitted its results and cautioning holders of securities of the consequences referred to in (b) below.
- (b) the listing of the issuer will be suspended, in terms of Section 1, if the issuer has not complied with –
  - (i) paragraph 3.15 or 3.17 by the end of the fourth month after the end of the period; and
  - (ii) paragraph 3.16 by the end of the fifth month after the financial year end.

### ***Modified auditors report***

3.24 Where a modified auditors’ report has been issued on results released through a results announcement.

- (a) The issuer’s listing on the JSE trading system will be annotated with:
  - (i) an “E” when the auditors’ report contains an emphasis of matter paragraph;
  - (ii) a “G” when the auditors’ report contains paragraph on material uncertainty relating to going concern;
  - (iii) a “Q” when the auditors’ report is qualified;
  - (iv) an “A” when the auditor’s report contains an adverse opinion; and
  - (v) a “D” when the auditors’ report contains a disclaimer of opinion.
- (b) In the instance of paragraph 3.24 (a)(iv) and (a)(v), the JSE will consider the suspension and possible subsequent removal of the issuer’s listing in terms of Section 1.

3.25 [Repealed]

### **Cash company**

3.26 The following requirements apply to a cash company:

- (a) Should the cash company, within six months after classification as a cash company, fail to enter into an agreement and make an announcement relating to the acquisition of viable assets that satisfy the conditions for listing set out in Section 4, its listing will be suspended pursuant to the provisions of Section 1.
- (b) If a cash company fails, within 3 months of suspension, to obtain approval from the JSE for a circular relating to the acquisition of viable assets that satisfy the conditions for listing set out in Section 4, its listing will be removed pursuant to the provisions of Section 1.
- (c) Where a cash company is to be utilised for the reversal of assets into it:
  - (i) such cash company must comply with the Listings Requirements for bringing a company to listing; and
  - (ii) the reconstituted cash company must meet the conditions for listing as set out in Section 4.

## **Rights between holders of securities**

### **Equality of treatment**

- 3.27 An issuer must ensure that all holders of any class of its securities that are in the same position, receive fair and equal treatment.

### **Voting rights**

- 3.28 An issuer shall not issue any securities with voting rights differing from other securities of the same class.

### **Pre-emptive rights**

- 3.29 Securities in each class for which listing is applied must rank pari passu in respect of all rights. It should be noted that a statement that “securities in each class rank pari passu” is understood to mean that:

- (a) they are in all respects identical;
- (b) they are of the same nominal value, and that the same amount per share has been paid up;
- (c) they carry the same rights as to unrestricted transfer, attendance and voting at general/annual general meetings and in all other respects; and
- (d) they are entitled to dividends at the same rate and for the same period, so that at the next ensuing distribution the dividend payable on each share will be the same amount.

- 3.30 Subject to paragraphs 3.32 and 3.33, an issuer proposing to issue equity securities for cash must first offer those securities (unless the issue is an acquisition issue) effected by way of rights offer, to existing holders of equity securities in proportion to their existing holdings. Only to the extent that such securities are not taken up by holders of equity securities under the offer may they then be issued for cash to other persons or otherwise than in the proportion mentioned above.

- 3.31 To the extent permitted by the Commission and subject to the prior approval of the JSE, an issuer need not comply with paragraph 3.30 with respect to securities that the directors of the issuer consider necessary or expedient to be excluded from the offer because of legal impediments or compliance with the requirements of any regulatory body of any territory recognised as having import on the offer.

### **Waiver of pre-emptive rights**

- 3.32 To the extent that holders of securities of an issuer provide their authorisation by way of ordinary resolution (determined in accordance with paragraphs 5.51(g) or 5.52(e)), the issue by an issuer of equity securities for cash, made otherwise than to existing holders of securities in proportion to their existing holdings, will be permitted in respect of a specific issue of equity securities for cash for such equity securities issue, and in respect of a general issue of equity securities for cash, for a fixed period of time thereafter in accordance with such general authority.
- 3.33 The JSE may waive some or all of the requirements contained in paragraph 3.32 if it is satisfied that the conditions as stipulated in Schedule 11 exist.

### **Profit warranties**

- 3.34 Where securities are the subject of a profit warranty, such securities may only be

allotted and issued once the profit required has been achieved in terms of the profit warranty agreements and the issuer's auditor have confirmed in writing to the JSE that the conditions required have been met for the securities to be allotted and issued.

### **Issues by subsidiaries other than on listing**

- 3.35 An issue of shares for cash in a subsidiary (whether listed or unlisted) of an issuer must be categorised in accordance with the provisions of Section 9 and not in terms of paragraphs 5.50 to 5.57.
- 3.36 When a subsidiary effects an offer for subscription by way of a rights offer, the rights offer must be categorised in accordance with the provisions of Section 9 and not in terms of paragraphs 5.50 to 5.57. Any shares that are renounced by the listed holding company in favour of its shareholders pro rata to their holdings need not be taken into account for categorisation purposes in terms of Section 9.

### **Shareholder spread**

- 3.37 Issuers must use their best endeavours to ensure that a minimum percentage of each class of securities is held by the public as described in paragraph 4.28(e) ("the minimum spread requirements").
- 3.38 [Repealed]
- 3.39 [Repealed]
- 3.40 [Repealed]
- 3.41 [Repealed]

### **Notification**

- 3.42 [Repealed]
- 3.43 An issuer must disclose in its annual financial statements the following concerning its securities held by the public (as defined in paragraphs 4.25 to 4.27, however excluding paragraph 4.25(d)):
- (a) the number of public securities holders for every class of listed securities;
  - (b) the percentages of each class of securities held by public and non-public shareholders; and
  - (c) the disclosure for non-public shareholders must be analysed in accordance with the categories set out in paragraphs 4.25 to 4.27, however excluding paragraph 4.25(d).

### **Communication with holders of securities**

#### **Prescribed information to holders of securities**

- 3.44 An issuer must ensure that all the necessary facilities and information are available to enable holders of securities to exercise their rights. In particular it must:
- (a) inform holders of securities of the holding of meetings that they are entitled to attend;
  - (b) enable them to exercise their right to vote, where applicable; and
  - (c) release announcements and distribute circulars in terms of the Listings Requirements.



### ***Announcements through SENS***

- 3.45 All announcements that are to be made through SENS in accordance with the Appendix 1 to Section 11 must be in English.

### ***Press announcements***

- 3.46 Announcements requiring publication in the press in accordance with the Appendix 1 to Section 11 must be published in a widely circulated daily newspaper taking into account the specific composition and demographics of the issuer's stakeholders, in the reasonable opinion of the issuer, in any official language. Announcements may be made available on the issuer's website only after the announcement has been released through SENS. Short-form announcements may be published in the press, subject to paragraph 3.46A and on the basis that the issuer has its own operational website.

- 3.46A The following details must be included in the short-form announcement:

- (a) In a prominent position at the top of the short-form announcement, all headlines as may be appropriate as to the nature of the matter;
- (b) The short-form announcement is the responsibility of the directors;
- (c) The full announcement has been released on SENS and is available on the issuer's website and that any investment decision must be based on that information;
- (d) A short-form announcement dealing with results must also include the following:
  - (i) Increases/decreases in revenue/profit compared to the financial results for the previous corresponding period;
  - (ii) Increases/decreases in headline earnings per share compared to the financial results for the previous corresponding period;
  - (iii) Increases/decreases in earnings per share compared to the financial results for the previous corresponding period;
  - (iv) Increases/decreases in the dividend/distribution compared to the financial results for the previous corresponding period; and
  - (v) Increases/decreases in net asset value compared to the financial results for the previous corresponding period (only if more relevant because of the nature of the issuers business).
  - (vi) where the auditor issued a report on the results, the name of the audit firm, a statement on the type of audit opinion/review conclusion that was reached (i.e. unmodified, qualified, disclaimer or adverse) and a statement to that effect if any of the matters referred to in paragraph 3.21(c)(iv) exist.

To the extent that any of the above indicators in paragraphs (i)-(v) are not considered to be a true measure to reflect the performance of an issuer in the banking and property industries, the JSE may grant dispensation from the requirement to publish such information or agree to a relevant alternative indicator/s.

- 3.47 Where the registered office of an issuer is situated outside the Republic of South Africa, the requirements of Section 18 on Dual Listings and Listings by External Companies apply.
- 3.48 Announcements relating to pre-listing statements or circulars must state in which other official languages, if any, they are printed and where copies of such documents may be obtained.



### ***Circulars and pre-listing statements***

- 3.49 Circulars and pre-listing statements must be printed in English and be distributed to all certificated holders, and to those dematerialised beneficial holders of its securities who have elected to receive such documents, at the cost of the issuer.
- 3.50 Provision must be made for the translation of circulars and pre-listing statements into other official languages where deemed necessary by the JSE or the issuer.

### **Transfer office or a receiving and certification office and Strate relationship**

- 3.51 All issuers are required to:
- (a) with respect to the certificated environment, maintain a transfer office or a receiving and certification office. All certifications must be completed within 24 hours of lodgement; and
  - (b) with respect to the dematerialised environment, be approved by Strate and comply with the Central Securities Depository Rules.

### **Proxy forms**

- 3.52 (a) A proxy form must be sent, together with the notice convening a meeting of holders of securities, to each person entitled to vote at such meeting and who has elected to receive such documents.
- (b) For the purpose of resolutions proposed in terms of the Listings Requirements wherein any votes are to be excluded from that resolution, any proxy given by a holder of securities to the holder of such an excluded vote shall be excluded from voting for the purposes of that resolution.

### **Documents of title**

- 3.53 Securities certificates and all other documents of title that need to be posted by issuers must be sent by registered post.

### **Temporary documents of title**

- 3.54 Issuers may introduce “temporary documents of title” in South Africa provided that they are in accordance with the terms prescribed by the transfer secretary.
- 3.55 Issuers that have received such approval shall not place a time limit on the acceptance by them of any “temporary documents of title” for the purpose of issuing definitive securities certificates.
- 3.56 Issuers that have received such approval shall:
- (a) cancel any securities certificates lodged with or being issued by them, and against which a “temporary document of title” has been issued, as soon as they are able to do so; and
  - (b) issue definitive securities certificates within 21 days after presentation to them of any “temporary document of title” duly signed and completed by the transferee.
- 3.57 No issuer may charge a fee for the registration and/or transfer of its securities in the Republic of South Africa.

### **Receipts**

- 3.58 Only on request will receipts be issued for securities lodged with an issuer, whether for registration or otherwise.

## Directors

3.59 An issuer, through its sponsor, must notify the JSE of any change to the board of directors or company secretary including:

- (a) the appointment of a new director (including the director's capacity in terms of paragraph 3.84(e)) or company secretary;
- (b) the resignation, removal, retirement or death of a director or of the company secretary; and/or
- (c) changes to any important functions or executive responsibilities of a director;

without delay and no later than by the end of the business day following the decision or receipt of notice detailing the change. Such changes must be announced as soon as practically possible and also included in the issuer's next publication of listing particulars. Where a director retires and is re-appointed at an annual or other general meeting, no notification is required as this does not result in a change to the board of directors.

3.60 An issuer must submit to the JSE and its sponsor, the relevant director's declaration in respect of each of its appointed directors within 14 days of their appointment in the form specified in Schedule 13. Directors are required to disclose to the issuer all information that the issuer requires in order to comply with this paragraph 3.60. The issuer must also advise each of its directors of their obligations to disclose to it all information that the issuer requires in order to comply with this paragraph 3.60. Any director who is aware of any change in the statements contained in paragraphs 13 and 15 to 23 of Schedule 13 is required to disclose such information to the issuer without delay and, in any event, by no later than three business days after becoming aware of such change. Any such amendments to the statements contained in paragraphs 13 and 15 to 23 must be announced by the issuer through SENS, within one business day after it has been received from the director. An issuer must further submit to the JSE via its sponsor an updated Schedule 13, if any change has occurred to the information as contained in paragraphs 13 and 15 to 23 of Schedule 13 in respect of any director within seven business days of such change coming to its attention. In the case of an appointment of a new company secretary the information as contained in Schedule 2 Form D2 must be submitted to the JSE within 14 days. The issuer must ensure that each of the appointed directors is free of any conflict of interest between the duties he owes to the company and his private interest.

3.61 The notifications required by paragraph 3.59 must state the effective date of the relevant appointment. If the effective date is not yet known or has not yet been determined, the notification should state this fact and the issuer must notify the JSE once the effective date has been determined.

3.62 All directors of issuers are bound by and must comply with the Listings Requirements, as amended from time to time, in their capacities as directors and in their personal capacities.

## Dealing in Securities

3.63 An issuer, via its sponsor, must announce the following information:

- (a) details of all transactions (including off market transactions) in securities relating to the issuer by or on behalf of:
  - (i) a director, company secretary and a prescribed officer (held beneficially, whether directly or indirectly) of the issuer;
  - (ii) a director and company secretary (held beneficially whether directly

- or indirectly) of a major subsidiary company of the issuer; or
- (iii) any associate of 3.63(a)(i) or (ii) above (collectively referred to for purposes of paragraphs 3.63 to 3.70 as “directors”).
- (b) such announcement shall contain the following information:
  - (i) the name of the director;
  - (ii) the name of the company of which he is a director;
  - (iii) the date on which the transaction was effected;
  - (iv) the price, number, total value and class of securities concerned. A deemed value based on the prevailing market price must be included in situations where there is no price attributable to the transaction (e.g. donations). Aggregation and averaging of prices is not allowed and therefore, in instances where there have been various trades at various prices during the course of a day, the volume weighted average price must be shown together with the highest and lowest trading prices for the day;
  - (v) in the case of options or any other similar right or obligation, the option strike price, strike dates and periods of exercise and/or vesting;
  - (vi) the nature of the transaction;
  - (vii) the nature and the extent of the director’s interest in the transaction. In the case of dealings by associates, the announcement must disclose the name of the associate and the relationship with the director;
  - (viii) confirmation as to whether the trades were done on-market or off-market;
  - (ix) in respect of a transaction pursuant to paragraph 3.64(h), the announcement must disclose the nature, term and amount of the financial obligation as well the number, value and class of securities offered as security, guarantee, collateral or otherwise; and
  - (x) whether clearance has been given in terms of paragraph 3.66. In the case of dealings by associates, this requirement does not apply.

3.64 Transaction includes:

- (a) any sale, purchase or subscription of securities in the issuer (including in terms of a rights offer, capitalisation award or scrip dividend);
- (b) any agreement to sell, purchase or subscribe for securities relating to the issuer (irrespective of whether shares or cash flows);
- (c) any donations of securities relating to the issuer;
- (d) any dealing in warrants, single stock futures, contracts for difference or any other derivatives issued in respect of the issuer’s securities. It should be noted that, if shares are sold and the equivalent exposure is purchased through a single stock future or any other derivative, both legs will be deemed to be transactions. The closing out of a single stock future or other derivative is also a transaction. The rolling-over of a single stock future that is merely an extension of an existing position is not a transaction;
- (e) the acceptance, acquisition, disposal, or exercise of any option (including but not limited to options in terms of a share incentive/option scheme) to acquire or dispose of securities;

- (f) any purchase or sale of nil or fully paid letters, however excluding following full or partial entitlements as a shareholder through means of a renounceable rights offer (excess applications permitted), capitalisation issues, scrip dividends and dividend reinvestment, and receiving the subsequent allocation of such securities pursuant to such entitlements\*;
- \* Please note the disclosure obligations pursuant to paragraphs 7.C.15 and 7.C 16, and announcement obligation pursuant to the applicable corporate actions timetable.
- (g) the acceptance, acquisition or disposal of any right or obligation, present or future, conditional or unconditional, to acquire or dispose of securities;
- (h) using securities of the issuer as security, guarantee, collateral or otherwise granting a charge, *lien* or other encumbrance over the securities of the issuer. A transaction will be deemed to be present at each of the following trigger events –
  - (i) at the time of agreement of such arrangement;
  - (ii) at the time when a right or discretion afforded to a lender is being exercised; and
  - (iii) at the time an existing arrangement is being amended or terminated; or
- (i) any other transaction that will provide direct or indirect exposure to the share price of the issuer. It must be noted that this does not include cash settled share appreciation rights granted to directors by the issuer in the ordinary course of business.

3.65 Directors are required to disclose to the issuer all information that the issuer needs in order to comply with paragraph 3.63. The issuer shall also advise each of its directors of their obligations to disclose to it all information that the issuer needs in order to comply with paragraph 3.63. Any director who deals in securities relating to the issuer is required to disclose the information required by paragraph 3.63 to the issuer without delay and, in any event, by no later than three business days after dealing. The issuer must in turn announce such information without delay and, in any event, by no later than 24 hours after receipt of such information from the director concerned.

### **Clearance to deal**

3.66 A director (excluding any of his associates) may not deal in any securities relating to the issuer without first advising the chairman (or one or more other appropriate directors designated for this purpose) in advance and receiving clearance from the chairman or other designated director. In his own case, the chairman, or other designated director, must advise the board of directors in advance, or advise another designated director, and receive clearance from the board of directors or designated director, as appropriate. The JSE may waive this requirement in situations where the director has no discretion in the transaction. The JSE must be consulted for a ruling in these cases and if a waiver is granted the announcement must clearly explain the reasons why the director had no discretion to deal.

### **Circumstances for refusal**

3.67 A director must not be given clearance (as required by paragraph 3.66) to deal in any securities relating to the issuer during a prohibited period. A “prohibited period” means:

- (a) a closed period;

- (b) any period when there exists any matter which constitutes price sensitive information in relation to the issuer's securities (whether or not the director has knowledge of such matter).

3.68 A written record must be maintained by the issuer of the receipt of any advice received from a director pursuant to paragraph 3.66 and of any clearance given. Written confirmation from the issuer that such advice and clearance, if any, have been recorded must be given to the director concerned.

### **Dealing in prohibited periods**

3.69 A director may not deal in any securities relating to the issuer:

- (a) during a closed period as defined; and
- (b) at any time when he is in possession of price sensitive information in relation to those securities or otherwise where clearance to deal is not given in terms of paragraph 3.66.

3.70 The JSE may waive compliance with paragraph 3.69 in situations where the director has no discretion in the transaction. The JSE must be consulted for a ruling in these cases and if a waiver is granted the announcement must clearly explain the reasons why the director had no discretion to deal.

### **Dealings by associates of directors and investment managers**

3.71 A director must advise the following parties of the name(s) of the issuer(s) of which he is a director:

- (a) any associate of his; and/or
- (b) any investment manager dealing on his/her behalf or on behalf of any person associated with him where either he/she or any person associated with him has funds under management with that investment manager, whether on a discretionary basis or not.

3.72 A director must advise all of his associates in writing that they must notify him immediately after they have dealt in securities relating to the issuer(s) in order for him to comply with paragraph 3.65.

3.73 A director must advise his investment manager in writing that they may not deal in any securities relating to issuer(s) of which he is a director unless it obtains his express consent in writing.

3.74 Paragraphs 3.63 to 3.73 do not override the provisions of the FMA and should not be construed as additional defences or exclusions from having to comply with the FMA. Issuers may impose more rigorous restrictions upon dealings by directors if they so wish or if it is appropriate in certain circumstances.

### **Notifications in respect of the auditor**

3.75 An issuer must notify the JSE of:

- (a) the appointment of the auditor;
- (b) the termination, non-reappointment or resignation of the auditor; and/or
- (c) any change of the individual auditor,

by no later than two business days following the date of such event. The notification must state the effective date and confirm to the JSE that the appointment complies with paragraphs 3.86 and 3.87.

3.76 [Repealed]

- 3.77 The notification required by paragraph 3.77(b) must be accompanied by a letter from the auditor which includes:
- (a) the reason/s; and
  - (b) confirmation of any matters of non-compliance with laws and regulations regarding the issuer that were reported by the auditor to an appropriate authority in the last 12 months. This includes any reportable irregularities regarding the issuer reported by the auditor to its regulator in the past 12 months.
- 3.78 On notification to the JSE pursuant to paragraph 3.75, the issuer must publish an announcement on the change in audit firm, addressing at least the following:
- (a) whether the change of was initiated by the issuer or the audit firm;
  - (b) the reason(s) for the change;
  - (c) the effective date of the change; and
  - (d) the name of the newly appointed audit firm (if a decision has not yet been made on the appointment of a new audit firm this fact must be disclosed).
- 3.79 The annual financial statements for the year end in which the termination or resignation took place must state that the auditor appointment was terminated or that the auditor resigned and the reason(s) therefore.

## **Miscellaneous obligations**

### **Listing and other fees**

- 3.80 An issuer must pay the listing and other fees, including its annual listing fee, as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17, as soon as such payment becomes due. Failure to pay any fees due may result in the censure of the issuer in terms of Section 1.

### **Companies listed on another exchange**

- 3.81 An issuer whose securities are listed on any other exchange must ensure that equivalent information is made available at the same time to the market of each exchange on which the issuer's securities are listed, unless prohibited by or in terms of the rules or requirements of any other stock exchange. Refer to paragraph 10 of Schedule 9 and Section 18.

### **Information to be processed by the JSE**

- 3.82 Issuers must ensure that information that is provided to the JSE for processing is the same as that provided to other parties such as transfer secretaries.

### **Disclosure of beneficial interests in securities**

- 3.83
- (a) Issuers must establish and maintain a register of the disclosures made in terms of Section 56 of the Act. Furthermore, the issuer is to publish the beneficial interests of directors and major shareholders in its annual financial statements as required by paragraphs 8.61(d) and (e).
  - (b) An issuer that has received a notice regarding certain share transactions, in terms of Section 122(1) and (3) of the Act, must, within 48 hours after receipt of such notice, publish the information contained in the notice on SENS. No such announcement shall be required in respect of notices received by the issuer and which relate to a disposal of less than 1% of the relevant class of securities, per Section 122(3) of the Act.



## Corporate Governance

3.84 In addition to complying with paragraph 8.62(a), issuers must implement the following specific corporate governance practices and must disclose compliance therewith in their annual reports. (The effect of incorporating certain practices from the King Code in the Listings Requirements is to make their implementation mandatory, this is notwithstanding the fact that application of the corporate governance practices in the King Code is generally voluntary):

- (a) there must be a policy evidencing a clear balance of power and authority at board of directors' level, to ensure that no one director has unfettered powers of decision-making;
- (b) the issuer must have an appointed chief executive officer and a chairman and these positions must not be held by the same person. The chairman must either be an independent non-executive director, or the issuer must appoint a lead independent director, in accordance with the King Code;
- (c) all issuers must, in accordance with the King Code appoint an (i) audit committee, (ii) a committee responsible for remuneration and (iii) a social and ethics committee. The composition of such committees must comply with the Companies Act (as applicable) and should be considered in accordance with the recommended practices in the King Code on an apply and explain basis, provided that each committee must comprise of at least three members. A brief description of the committee mandates, the number of meetings held and other relevant information must be disclosed in the annual report;
- (d) a brief CV of each director must be provided in respect of a new listing. It should further be noted that a brief CV for each director standing for election or re-election at a general meeting or the annual general meeting (in relation to Main Board issuers, such election or re-election may not take place at a meeting contemplated in Section 60 of the Act) should accompany the notice of the general meeting or annual general meeting;
- (e) the capacity of each director must be categorised as executive, non-executive or independent, using the following as guidelines to determine which category is most applicable to each director:
  - (i) executive directors:

are directors that are involved in the management of the company and/or in full-time salaried employment of the company and/or any of its subsidiaries;
  - (ii) non-executive directors are directors that are not:
    - (1) involved in the day to day management of the business, or
    - (2) full-time salaried employees of the company and/or any of its subsidiaries;
  - (iii) independent directors should be determined holistically, and on a substance over form basis in accordance with the indicators provided in Section 94(4)(a) and (b) of the Companies Act and the King Code. In addition, it must be noted that any director that participates in a share incentive/option scheme, will not be regarded as independent;
- (f) all issuers must have an executive financial director. The JSE may, at its discretion, when requested to do so by the issuer and due to the existence of special circumstances, allow the financial director to be employed on a part time basis or not at all. This request must be accompanied by a

detailed motivation by the issuer and the audit committee; and

- (g) the audit committee must, notwithstanding its duties pursuant to Section 94 of the Companies Act:
  - (i) consider, on an annual basis, and satisfy itself of the appropriateness of the expertise and experience of the financial director;
  - (ii) ensure that the issuer has established appropriate financial reporting procedures and that those procedures are operating, which should include consideration of all entities included in the consolidated group IFRS financial statements, to ensure that it has access to all the financial information of the issuer to allow the issuer to effectively prepare and report on the financial statements of the issuer; consider, the following information provided by the audit firm and individual auditor, in the assessment of the suitability of appointment or reappointment of the auditor:
    - (aa) the latest inspection results (including related remedial action plan) of an inspection performed by its regulator. The audit committee may accept reports with the identity of specific entities redacted provided that such redaction does not limit the understanding of their content;
    - (bb) any new inspection result of an inspection performed by its regulator, between the date of appointment of the auditor and the date of signature of the audit report on the annual financial statements;
    - (cc) a summary, of the ongoing communication related to monitoring and remediation referred to in paragraph 46 of International Standard on Quality Management 1 (ISQM 1); and
    - (dd) a summary of any legal or disciplinary proceedings completed or pending, as determined by the audit firm's head of risk (or a similar senior person within the firm tasked with the responsibility of risk management) within the past five years. Legal or disciplinary proceedings include those instituted through any legislation or by any regulatory/professional body; and

v notwithstanding the provisions of Section 90(6) of the Companies Act, ensure that the appointment of the auditor is presented and included as a resolution at the annual general meeting of the issuer pursuant to Section 61(8) of the Companies Act;

The issuer must confirm, by reporting to shareholders in its annual report, that the audit committee has executed the responsibilities set out in 3.84(g) above.

- (h) all issuers must appoint a company secretary in accordance with the Companies Act and should apply the recommended practices in the King Code. The board of directors must consider and satisfy itself on the competence, qualifications and experience of the company secretary. The issuer must confirm this by reporting to shareholders in its annual report that the board of directors has executed this responsibility;
- (i) the board of directors or the nomination committee, as the case may be, must have a policy on the promotion of broader diversity at board level, specifically focusing on the promotion of the diversity attributes of gender, race, culture, age, field of knowledge, skills and experience. The issuer must confirm this by reporting to shareholders in its annual report on how



the board of directors or the nomination committee, as the case may be, have considered and applied the policy of broad diversity in the nomination and appointment of directors. If applicable, the board of directors or the nomination committee must explain why any of the above diversity indicators have not been applied and further report progress in respect thereof on agreed voluntary targets;

- (j) the remuneration policy and the implementation report must be tabled every year for separate non-binding advisory votes by shareholders of the issuer at the annual general meeting. The remuneration policy must record the measures that the board of directors of the issuer commits to take in the event that either the remuneration policy or the implementation report, or both, are voted against by 25% or more of the votes exercised. In order to give effect to the minimum measures referred to in the King Code, in the event that either the remuneration policy or the implementation report, or both are voted against by shareholders exercising 25% or more of the voting rights exercised, the issuer must in its voting results announcement pursuant to paragraph 3.91 provide for the following:
  - (a) An invitation to dissenting shareholders to engage with the issuer; and
  - (b) The manner and timing of such engagement; and
- (k) the CEO and the financial director responsibility statement must be made by them after due, careful and proper consideration of same as follows:
  - (i) “Each of the directors, whose names are stated below, hereby confirm that—
    - (a) the annual financial statements set out on pages [...] to [...], fairly present in all material respects the financial position, financial performance and cash flows of the issuer in terms of IFRS;
    - (b) to the best of our knowledge and belief, no facts have been omitted or untrue statements made that would make the annual financial statements false or misleading;
    - (c) internal financial controls have been put in place to ensure that material information relating to the issuer and its consolidated subsidiaries have been provided to effectively prepare the financial statements of the issuer;
    - (d) the internal financial controls are adequate and effective and can be relied upon in compiling the annual financial statements, having fulfilled our role and function as executive directors with primary responsibility for implementation and execution of controls;
    - (e) where we are not satisfied, we have disclosed to the audit committee and the auditors any deficiencies in design and operational effectiveness of the internal financial controls, and have\* remediated the deficiencies / taken steps to remedy the deficiencies”; and

\*Delete as applicable.
  - (f) Any fraud that involves directors was reported to the audit committee/We are not aware of any fraud involving directors.

\*Delete as applicable.

Signed by the CEO and the financial director

- (l) the appointment of all directors must be subject to shareholders' approval at any general/annual general meeting pursuant to paragraph 10.16(b) of Schedule 10 (in relation to Main Board issuers, the meeting may not be conducted in terms of Section 60 of the Act). The appointment of a director, to fill a casual vacancy or as an addition to the board, must be confirmed by shareholders at the next annual general meeting.

#### **Liquidation, business rescue proceedings and court applications in terms of Section 163 of the Act**

- 3.85
- (i) In the event of an applicant issuer being placed, or making application to be placed, into liquidation, whether voluntary or compulsory, provisional or final, the applicant issuer must immediately notify the JSE of this fact.
  - (ii) In the event that the board of directors of the issuer adopts a resolution to place the issuer under business rescue proceedings, or application is made to a court to place the issuer under business rescue proceedings, in terms of Chapter 6 of the Act or the board of directors issues a notice in terms of Section 129(7) of the Act, the issuer must notify the JSE thereof on the date of the first signature of the board resolution, on the date of the service of the application, or on the date of issue of the Section 129(7) notice, as the case may be. Furthermore, in the event that the business rescue proceedings are terminated and the issuer does not proceed with liquidation proceedings and wishes to:
    - (a) delist, the issuer will remain subject to the delisting procedures set out in Section 1 of the Listings Requirements; or
    - (b) remain listed, the issuer must consult the JSE in order to discuss the suitability of the issuer for continued listing on the JSE.
  - (iii) Issuers must immediately notify the JSE of any application in terms of Section 163 of the Act.

#### **Appointment of auditors and reporting accountant specialists**

- 3.86 An applicant issuer must appoint an auditor and must ensure that the terms of the engagement include the following:
- (a) a requirement for the auditor to notify the issuer within 24 hours where the auditor has been prohibited from signing the audit report or is no longer registered with its regulator; and
  - (b) that the auditor is obliged to inform the JSE and the audit committee of the applicant issuer, where the applicant issuer misrepresents the content of the auditor's report as it relates to that applicant issuer (for example by indicating that the auditor's opinion is unqualified when there is a modification of the auditor's opinion or by indicating that there are no issues when in fact there is a modified auditor's report) or by indicating that the financial information has been audited or reviewed when this is not the case. Such notification must be made by the auditor by no later than 24 hours of the date the auditor became aware of the matter.
- 3.87 The following applies to the appointment of the auditor:
- (a) the applicant issuer must appoint an auditor who is registered with its regulator in the country of incorporation of the applicant issuer, such appointment must be made in accordance with the laws of incorporation/company laws of the applicant issuer;
  - (b) the audit firm must at all times have at least three individual auditors who are registered as assurance individual registered auditors with their

regulator;

- (c) the audit firm must have had a firm-wide independent quality management inspection on the audit firm by its regulator either in its regulator's current inspection cycle or a prior inspection cycle;
- (d) the auditor must have demonstrated to the issuer that it has the necessary resources to carry out the relevant engagement, as required in the "auditing pronouncements" defined in Section 1 of the Auditing Profession Act, which includes paragraph 30 of ISQM 1; and
- (e) the auditor must not be prohibited by its regulator from performing the relevant assurance engagement.

3.88 The individual auditor appointed to sign the assurance engagement report/s in paragraph 8.45, must have the experience described in paragraph 3.90. If not, the issuer must also appoint a reporting accountant specialist.

3.89 The role of the auditor and/or the reporting accountant specialist with respect to the assurance engagement report includes ensuring that the following functions are fulfilled (to the extent applicable):

- (a) appropriate advice was provided to the applicant issuer and, if applicable, to the auditor on the application of the financial information requirements detailed in the Listings Requirements:
  - (i) before any circular was submitted to the JSE for informal comment, ensuring that such advice was been applied in the circular submitted and to confirm this in writing to the JSE;
  - (ii) when the applicant issuer includes pro forma financial information in any of the periodic financial information referred to in section 3; and
- (b) in the instances of a circular to perform a quality review function on the work performed to support the auditor's report, to ensure compliance with the Listings Requirements (in which case it must submit a letter to the JSE confirming that it has fulfilled this role).

3.90 The minimum experience required by either the auditor or reporting accountant specialist to fulfil the functions described in paragraph 3.88 above are as follows:

- (a) the individual must have completed an assurance engagement described in paragraph 8.45 of the Listings Requirements within the last 12 months of the date of the current assurance engagement; or
- (b) the individual must have attended the JSE approved training for reporting accountant specialists, as approved by the JSE from time to time (and passed an examination evidencing this), within the last 12 months of the date of the current assurance engagement.

3.91 Where an auditor has been appointed but is subsequently prohibited from signing the audit report, or is no longer registered with its regulator, the auditor must be replaced within the period specified in the Companies Act (or equivalent legislation applicable to the issuer) or before the next audit report is signed, whichever is earlier.

3.92 Subject to the provisions of the Act and the MOI of the applicant issuer and its subsidiaries, subsidiaries of an applicant issuer are not required to be audited.

3.93 The requirements in paragraphs 3.86 to 3.92 apply equally to those foreign registered entities with a primary listing on the JSE.

#### **Announcement of annual/general meeting details**

- 3.94 An issuer must release an announcement on SENS with details concerning the date, time and venue of its annual/general meeting within 24 hours after the notices of annual/general meeting have been distributed to shareholders. In the case of written resolutions, the issuer must release an announcement on SENS with details of the written resolutions being proposed within 24 hours after the written resolutions have been distributed to shareholders.

#### **Disclosure of voting results of annual/general meetings**

- 3.95 (a) An issuer must release an announcement on SENS within 48 hours after each annual/general meeting providing details of the voting results in respect of the resolution/s proposed at such meeting and/or passed by written resolution. The announcement must include the following:
- (i) the resolution/s proposed at the meeting;
  - (ii) the shares voted in person or by proxy disclosed as a number and a percentage (in relation to the total issued share capital of that class of the applicant issuer);
  - (iii) the shares abstained disclosed as a percentage (in relation to the total issued share capital of that class of the applicant issuer); and
  - (iv) the votes carried for and against each resolution, disclosed as a percentage (in relation to the total number of shares voted at the meeting in respect of (ii) above).

To the extent that the number of shares in (ii) and (iii) differ for each resolution, details must be provided per resolution.

- (b) The announcement pursuant to paragraph 3.95(a) above, must include details of any resolutions added or amended in respect of the annual/general meeting.

#### **Dealings by share incentive schemes**

- 3.96 The provisions of paragraphs 3.63 to 3.74 apply mutatis mutandis to any dealings by the issuer or a scheme (including a non-dilutive scheme) involving securities relating to the scheme, save for the following circumstances being present:
- (i) the instruction to deal was given by a participant of the scheme (other than a director as contemplated in paragraph 3.63(a)(i) and (ii)), where shares in the issuer have vested in favour of the participant pursuant to the provisions of the scheme;
  - (ii) the scheme is merely facilitating the dealing on behalf of the participant;
  - (iii) the participant takes the risk of any profit or loss in respect of the dealing; and
  - (iv) the trustees of the scheme, any other party responsible and the issuer do not exercise any election/decision in respect of such dealing, other than following and acting on the specific instructions of the participant.

A non-dilutive scheme means any share incentive scheme not involving the issue of equity securities by the issuer.

#### **Demand to call a shareholders meeting**

- 3.97 In the event that an issuer and/or board of directors of the issuer received a valid demand to call a shareholders meeting pursuant to the provisions of Section 61(3) of the Companies Act (or in respect of a foreign applicant issuer with a primary listing on the JSE pursuant to similar legislation) or paragraph 4.45(d),

the issuer must immediately:

- (i) inform the JSE in writing; and
- (ii) release an announcement through SENS to that effect.

3.98 Subject to the provisions of the Companies Act or in respect of a foreign applicant issuer with a primary listing on the JSE pursuant to similar legislation, the issuer must:

- (i) issue a notice of meeting within ten business days from the date of receipt of the request to call a shareholders meeting, unless the JSE decides otherwise;
- (ii) the date of the meeting should be specified as a date not exceeding 25 business days from when the notice of meeting is issued; and
- (iii) the meeting of shareholders must be announced pursuant to the provisions of paragraph 3.95.

#### **Announcement of intra-group repurchases**

3.99 An issuer must release an announcement on SENS, immediately after terms have been agreed, with the details of any intra-group repurchases concluded pursuant to paragraph 5.67(B)(b), which must include the following:

- (a) the date/s and total number of equity securities repurchased;
- (b) whether the equity securities are repurchased from either a wholly-owned subsidiary/ies, share incentive scheme/s pursuant to Schedule 14 and/or and/or non-dilutive share incentive schemes controlled by the issuer;
- (c) confirmation that the repurchased equity securities have reverted to authorised but unissued equity securities of the issuer in accordance with section 35(5) of the Act;
- (d) the price paid for the repurchased equity securities; and
- (e) the balance of the number of treasury shares held.

## Section 4

# Conditions for Listing

### Scope of section

This section sets out the conditions for listing. The main headings of this section are:

- 4.1 Introduction
- 4.6 Conditions applicable to all markets
- 4.25 Public shareholders
- 4.28 Main Board listing criteria
- 4.29 The Venture Capital Market ("VCM")
- 4.30 The Development Capital Market ("DCM")
- 4.31 African Classification
- 4.32 . . .
- 4.32A . . .
- 4.32B . . .
- 4.33 Special Purpose Acquisition Company
- 4.34 SPAC admission criteria
- 4.35 Acquisition of Viable Assets
- 4.36 Capital
- 4.37 Failure to acquire Viable Assets
- 4.38 Memorandum of Incorporation
- 4.39 Continuing obligations
- 4.40 Post acquisition of Viable Assets
- 4.50 Market Segmentation

Additional and alternative requirements relating to conditions for listing are set out in Section 12 (Mineral Companies), Section 13 (Property Companies), Section 14 (Pyramid Companies), Section 15 (Investment Entities) and Section 18 (Dual Listings and Listings by External Companies), respectively.

### Introduction

- 4.1 Listings and/or additional listings are granted subject to compliance with the Listings Requirements and approval by the JSE.
- 4.2 All applications for listing are to be submitted to the JSE through a sponsor.

### Discretion of the JSE

- 4.3 It must be emphasised that, notwithstanding these requirements, the JSE may, in its overriding discretion, grant a listing to an applicant that does not meet the requirements set out below or refuse a listing to an applicant that does comply with these Listings Requirements, on the grounds that, in the JSE's opinion, the grant or refusal of the listing is in the interests of the investing public. Applicants that wish to apply for a listing, but which do not meet all of the objective criteria prescribed by these Listings Requirements for the grant of a listing are therefore invited to discuss their intended applications with the JSE.
- 4.4 Where unusual features exist with regard to the applicant itself, the JSE must be consulted by the sponsor to discuss such features at the earliest possible date, as well as any rulings required from the JSE.
- 4.5 Applicants are required to submit to the JSE, at an early date, any matter or unusual feature pertaining to the listing, or listing application/documentation, not specifically provided for in, or in conflict with, the Listings Requirements.

### Conditions applicable to all markets

#### Applicant to be duly incorporated

- 4.6 The applicant must be duly incorporated or otherwise validly established under the law of the country of incorporation or establishment, and must be operating in conformity with its MOI or relevant constitutional documents, if not South African, and all laws of its country of incorporation or establishment.
- 4.7 An applicant seeking a listing on the JSE must contractually undertake to the JSE, by completing Schedule 2 Form A2, that from the date of admission to listing of any of its securities it will comply fully with all the Listings Requirements of the JSE, irrespective of the jurisdiction in which the applicant is incorporated.

### **Directors and Company Secretary**

- 4.8 (a) The directors and senior management of an applicant must collectively have appropriate expertise and experience for the governance and management of the applicant and the group's business. Details of such expertise and experience must be disclosed in any listing particulars prepared by the applicant (refer to paragraphs 7.B.1, 7.B.2 and 7.B.3); and
- (b) All applicants (excluding an issuer of specialist securities) must have appointed an executive financial director (refer to paragraphs 7.F.9 and 3.84(f) and (g)(i)).
- (c) All applicants (excluding an issuer of specialist securities) must appoint a company secretary in accordance with the Companies Act and recommended practices in the King Code. The board of directors must consider and satisfy itself on the competence, qualifications and experience of the company secretary.
- 4.9 An applicant must submit to the JSE and its sponsor at the date of application for listing, the directors' declaration forms contained in Schedule 13 in respect of each of the directors of the applicant. The applicant must ensure that each of the directors is free of any conflict of interest between the director's duties to the company and his private interests
- 4.10 The issuer must have an appointed chief executive officer and a chairman and these positions must not be held by the same person. The chairman must either be an independent non-executive director, or the issuer must appoint a lead independent director in accordance with the King Code.

### **Listing of subsidiary companies or assets**

- 4.11 When, in connection with the listing of a subsidiary company, a listed holding company intends making an offer of securities in such subsidiary; or the subsidiary intends issuing shares for cash to persons other than wholly owned entities within the listed holding company's group; or the subsidiary has an offer for subscription by way of a rights offer, the offer/issue/rights offer must be categorised in accordance with the provisions of Section 9. Any shares that are renounced by the listed holding company to its shareholders need not be categorised in accordance with Section 9.
- 4.12 The JSE must be consulted in order to provide a ruling in principle, before any listed company intends to list a subsidiary company, or any of its group assets, or when it is aware that another party intends to list certain of the listed company's assets subsequent to a disposal of such assets by the listed company.

### **Financial information**

- 4.13 The following requirements relate to the preparation and disclosure of financial information:
- (a) the applicant must comply with Section 8 where applicable and its financial statements must have been reported on by the auditor without qualification, disclaimer, adverse audit opinion, the inclusion of a



- paragraph on material uncertainty relating to going concern or reference to an emphasis of matter;
- (b) an issuer must publish audited annual financial statements for its financial year, as specified in the prospectus/pre-listing statement, irrespective of the fact that the company may have subsequently changed its year-end; and
  - (c) the applicant must appoint an auditor in terms of the requirements in paragraphs 3.84 and 3.86 to 3.90.

### **Status of securities**

- 4.14 Securities for which a listing is sought must be issued in conformity with the law of the applicant's country of incorporation or establishment and in conformity with the applicant's MOI or other relevant constitutional documents, if not South African, and all authorisations needed for their creation and issue under such law must have been duly given. No application will be considered until the MOI, or other relevant constitutional documents of the applicant and/or, if applicable, the debenture trust deed, has been approved by the JSE.
- 4.15 Where a new applicant already has securities listed on another stock exchange and is applying for admission of such securities to listing on the JSE, it must be in compliance with the requirements of that other exchange and the relevant laws of that country (see also Section 18).
- 4.16 Securities in each class for which listing is applied must rank *pari passu* in respect of all rights. It should be noted that a statement that "securities in each class rank *pari passu*" is understood to have the meaning as ascribed thereto in paragraph 3.29.

### **Transferability of securities**

- 4.17 As provided for in Schedule 10 paragraph 2 the securities for which listing is sought must be fully paid up and, unless otherwise required by statute or at the discretion of the JSE (taking into account the objects of the FMA), be freely transferable. Notwithstanding the provisions of Section 40(5) of the Act, the JSE will not list shares that are not fully paid for upon listing. An applicant issuer that is proposing any form of restricted transferability must consult the JSE at an early stage in order to discuss the details of the restriction and must further obtain a ruling from the JSE whether it will apply its discretion.

### **Low and high voting securities**

- 4.18 Subject to paragraph 4.47, the JSE will not allow a listed company to issue low or high voting securities.
- 4.19 Where a company currently has listed low or high voting securities prior to the incorporation of weighted voting shares in the Listings Requirements, the JSE will grant a listing of additional securities of that class.
- 4.20 [Repealed]

### **Convertible securities**

- 4.21 In addition to any other Listings Requirements affecting convertible securities, the JSE will not grant a listing to convertible securities unless there are sufficient unissued securities in the applicant's authorised capital, into which the convertible securities could/will convert, at the time that such convertible securities are issued and listed. The applicant must also undertake to the JSE that it will, at all times, maintain a sufficient number of unissued securities in its authorised share capital to be able to effect the eventual conversion, or until such convertible securities are no longer in issue.



### **Whole class to be listed**

4.22 An application for listing of securities of any class must:

- (a) if no securities of that class are already listed, relate to all securities of that class, issued or proposed to be issued; or
- (b) if securities of that class are already listed, relate to all further securities of that class, issued or proposed to be issued.

### **Unlisted securities**

4.23 In the event of an applicant issuing securities and not being granted a listing for such securities or if, for any reason, certain securities are delisted:

- (a) the share certificates of such securities must be held in trust and stamped with the words "unlisted securities" and may only be released with written permission from the JSE, which permission shall provide further instruction concerning the stamping and transferability of such securities;
- (b) the share register must show that the securities are unlisted and a statement detailing the number and status of the unlisted securities must appear in the applicant's annual financial statements; and
- (c) subject to JSE discretion, any additional securities issued of the same class or status will also be subject to paragraphs 4.23(a) and (b).

4.24 Where shareholders are required to vote in terms of the Listings Requirements, the votes of shareholders of unlisted securities will not be taken into account in determining either a quorum or for approval of any resolution considered at any general/annual general meeting.

### **Public shareholders**

4.25 For the purposes of paragraph 4.28(e), securities will not be regarded as being held by the public if they are beneficially held, whether directly or indirectly, by:

- (a) the directors of the applicant issuer or of any of its major subsidiaries;
- (b) an associate of the applicant issuer and/or of any of its major subsidiary/ies;
- (c) an associate of a director of the applicant issuer or of any of its major subsidiaries;
- (d) the extended family of a director of the applicant issuer, as applied to the best of his/her knowledge;
- (e) the trustees of any employees' share scheme or pension fund established for the benefit of any directors or employees of the applicant or any of its subsidiaries;
- (f) a prescribed officer of the applicant issuer;
- (g) the controlling shareholder/s; or
- (h) any person where restrictions on trading in the issuer's listed securities, in any manner or form, are imposed by the applicant issuer. For purposes of this provision restrictions on trading in the applicant issuer's listed securities must be for a period exceeding six months from the listing date.

4.26 [Repealed]

4.27 The JSE may, in its sole discretion, require the listed company to provide it with a declaration that, to the best of the knowledge and belief of the directors, any beneficial shareholders of the company, whose shares are

registered in the names of one or more nominees, do not include any person that may be acting in concert with any other person insofar as it may affect their classification as public shareholders.

### **Main Board listing criteria**

4.28 An applicant seeking a listing on the Main Board must satisfy the following criteria:

- (a) it must have an existing subscribed capital, including reserves but excluding minority interests and revaluations of assets; and excluding intangible assets that are not supported by a valuation by an independent professional expert acceptable to the JSE prepared within the last six months, of at least R50 million;
- (b) it must have not less than 25 million equity shares in issue;
- (c) (i) it must have audited financial statements for the preceding three financial years and:
  - (a) the last of which reported an audited profit of at least R15 million before taxation and after taking account of the headline earnings adjustment on a pre-tax basis; or
  - (b) it must have an existing subscribed capital, including reserves but excluding minority interests and revaluations of assets; and excluding intangible assets that are not supported by a valuation by an independent professional expert acceptable to the JSE prepared within the last six months, of at least R500 million; or
- (ii) the JSE may, in its absolute discretion, list a company which is in its development stage (other than a mineral company) and which does not have the required profit history. In such instances, the applicant must have, prior to listing, existing subscribed capital as determined in terms of paragraph 4.28(a) above of at least R500 million and must have been in existence for at least twelve months;
- (d) (i) it must be carrying on as its main activity, either by itself or through one or more of its subsidiaries, an independent business which is supported by its historic revenue earning history and which gives it control (which for the purposes of this section is defined as at least 50% +1 of the voting shares) over the majority of its assets and must have done so for the period covered by paragraph 4.28(c)(i); or
- (ii) it must have a reasonable spread of direct interests in the majority of its assets and the right to actively participate in the management of such assets, whether by voting or through other rights which give it influence in the decisions relating to the assets and must have done so for the period covered by paragraph 4.28(c)(i) or, where applicable, 4.28(c)(ii).
- (iii) in respect of (d)(i) and (ii) above, the JSE may in its absolute discretion list a company which has only controlled the majority of its assets or had a direct interest in the majority of its assets for twelve months provided that:
  - (1) it has produced audited financial statements with the required profits referred to in paragraph 4.28(c)(i)(a) for the period during which it has exercised control;
  - (2) it can illustrate that the underlying assets/companies /subsidiaries are in a similar line of business and are dependent on one another or are complementary for the production of the company's products; and

- (3) at least one of the underlying assets/companies/subsidiaries would qualify for a listing on the Main Board on its own.

In deciding whether to exercise its discretion, the JSE will have regard to, inter alia, whether the majority of the underlying assets/companies/subsidiaries have been in existence for the period referred to in paragraph 4.28(c)(i); and

- (e) it must have 10% of each class of equity securities held by the public to promote reasonable liquidity, representing at least 100 shareholders.

### **The Venture Capital Market ("VCM")**

4.29 The following general requirements apply to securities of an applicant on the VCM:

#### **Acquisitions and disposals**

- (a) the requirements relating to transactions and related party transactions (see Sections 9 and 10) will apply to companies listed on the VCM subject to the concessions that:
  - (i) the requirements for a Category 2 transaction will apply where any percentage ratio is 5% or more but each is less than 40%; and
  - (ii) the requirements for a Category 1 transaction will apply where any percentage ratio is 40% or more;

#### **General**

- (b) the following are the general requirements for companies listed on the VCM:
  - (i) when applying for a listing of securities on the VCM it is mandatory for the company to appoint a sponsor. In addition, other advisers such as auditors, attorneys and merchant bankers may, at the sole discretion of the JSE, be considered necessary and if so, will also have to be appointed; and
  - (ii) share certificates shall be endorsed to the effect that the securities are listed on the VCM.

### **The Development Capital Market ("DCM")**

4.30 The following general requirements apply to the securities of an applicant on the DCM:

#### **Acquisitions and disposals**

- (a) the requirements relating to transactions and related party transactions (refer to Sections 9 and 10) will apply to companies listed on the DCM subject to the concessions that:
  - (i) the requirements for a Category 2 transaction will apply where any percentage ratio is 5% or more but each is less than 40%; and
  - (ii) the requirements for a Category 1 transaction will apply where any percentage ratio is 40% or more;

#### **General**

- (b) the following are the general requirements for companies listed on the DCM:

- (i) when applying for a listing of securities on the DCM it is mandatory for the company to appoint a sponsor. In addition, other advisers such as auditors, attorneys and merchant bankers may, at the sole discretion of the JSE, be considered necessary and if so, will also have to be appointed; and
- (ii) share certificates shall be endorsed to the effect that the securities are listed on the DCM.

### **African Classification**

4.31 An applicant seeking a primary or secondary listing on the JSE will be classified as African if it satisfies the following criteria:

- (a) it is domiciled in Africa, outside of South Africa or has the majority of its activities geographically located in Africa outside of South Africa; and
- (b) it meets the Main Board listing criteria as set out in paragraph 4.28 or the AltX listing criteria as set out in paragraph 21.3, in conjunction with Section 18 dealing with primary and secondary listings.

### **BEE Segment**

...

### **BEE Contract**

...

### **Verification Agent**

...

### **Special Purpose Acquisition Company**

4.33 In these Listings Requirements pertaining to the listing of a SPAC, unless the contrary intention appears, the following terms shall have the meanings assigned to them below:

"completed" means, with reference to the acquisition of Viable Assets by a SPAC, that an acquisition has become unconditional and that the assets have been transferred into the name of the SPAC;

"escrow" means escrow or similar custodial arrangement to the satisfaction of the JSE, to safeguard the capital of the SPAC for the protection of investors as prescribed by the JSE;

"redemption right" a right afforded only to the shareholder/s who voted against the proposed acquisition of viable assets, to elect to redeem securities and receive a *pro rata* portion of the amount in cash held in the investment account of the SPAC, provided the acquisition of Viable Assets is approved within the period set out in paragraph 4.35(a);

"SPAC" means a special purpose acquisition company, being a special purpose vehicle established for the purpose of facilitating the primary capital raising process to enable the acquisition of Viable Assets in pursuit of a listing on the Main Board or the Alternative Exchange ("AltX");

"Viable Assets" means the acquisition of assets by the applicant that will on its own enable the special purpose vehicle to qualify for a listing pursuant to the listing criteria of the Main Board or AltX.

### **SPAC admission criteria**

4.34 An applicant seeking a listing as a SPAC must satisfy the following criteria:

- (a) it must not carry on any commercial and/or business operations at the time of application to the JSE. An applicant may consider an acquisition of Viable Assets provided that the applicant has not entered into any formal and binding acquisition agreement/s. A statement to this effect must be included in the prospectus/pre-listing statement of the applicant;
- (b) it must disclose the acquisition criteria, including details of the operating industry/ies, for Viable Assets to allow the board of the applicant to consider and assess the potential acquisition of Viable Assets. The acquisition criteria may not be changed unless a resolution is passed at a meeting of security holders by achieving a 75% majority of the votes cast to that effect;
- (c) it must disclose the estimated operating expenses in the prospectus/pre-listing statement of the applicant in respect of the operational costs which will be incurred by the applicant during the acquisition window (as defined in paragraph 4.35(a)). The applicant may not exceed the estimated operating expenses as disclosed in the prospectus/pre-listing statement unless a resolution is passed at a meeting of security holders by achieving a 75% majority of the votes cast to that effect;
- (d) the board of directors may receive remuneration prior to the acquisition of Viable Assets. Details of such remuneration must be disclosed in the prospectus/pre-listing statement of the applicant;
- (e) the board of directors must have subscribed for shares or units in the applicant representing at least a 5% interest, on a collective basis, in the applicant on the date of listing. If the subscription is at a nominal value, the interest held by the board of directors must not exceed 20% of the applicant's issued share capital on listing. The subscription shares or units of the board of directors must be held in trust by the applicant's attorneys or other party providing custodial services and must not be sold for a period of at least six months from the date the acquisition of Viable Assets have been completed by the applicant. The terms of the subscription by the board of directors and the terms of the custodial arrangements must be disclosed in the prospectus/pre-listing statement of the applicant;
- (f) the applicant must satisfy the JSE that its board of directors has appropriate experience and track record, and demonstrate that it will be capable of identifying and evaluating Viable Assets and completing the acquisition of Viable Assets based on the acquisition criteria as disclosed in the prospectus/pre-listing statement. The applicant must demonstrate that the board of directors has the requisite collective experience and track record, which includes having:
  - (i) sufficient and relevant technical and commercial experience and expertise;
  - (ii) established track record in relevant operating industry and business activities including –
    - (a) specific contribution to business growth and performance;
    - (b) ability to manage relevant business operations risks; and
    - (c) ability to identify and develop acquisition opportunities; and
  - (iii) established corporate governance and regulatory compliance history;
- (g) it must have raised a minimum of R500 million through the issue of shares and/or units for listing on the Main Board and R50 million for listing on Alt<sup>x</sup>; and
- (h) all capital raised must be paid directly into an account managed by an

escrow agent pursuant to paragraph 4.36. A statement to this effect and details of the escrow arrangements must be included in the prospectus/pre-listing statement of the applicant.

- (i) in relation to conflicts of interest, the applicant must disclose –
  - (i) notwithstanding the disclosure of remuneration above, details of all incentives (whether in cash and/or securities in the applicant, or otherwise) payable to directors of the applicant, including their associates, in the identification and pursuit of the acquisition of Viable Assets;
  - (ii) details of any service agreement/s in the identification and pursuit of the acquisition of Viable Assets, between the applicant and director/s of the applicant, including their associates;
  - (iii) details of any other fiduciary or contractual obligations by the board of directors of the applicant to other companies or entities that relate to the identification and pursuit of Viable Assets;
  - (iv) details of any other potential conflicts of interests between the applicant and the board of directors (including their associates); and
  - (v) the proposed governance measures to identify, avoid and/or manage potential conflicts of interests as identified in (i)-(iv) above where the applicant pursues a Viable Assets;
- (j) investors in a SPAC must be afforded a redemption right subject to the following:
  - (i) the board of directors and their associates may not exercise redemption rights;
  - (ii) the redemption price must be the initial listing subscription price, after applying the *pro rata* operating expenses and interest earned on the capital under escrow, up to the redemption right exercise date;
  - (iii) an applicant may establish a limit as to the maximum number of securities with respect to which each eligible shareholder may exercise a redemption right, provided that such total limit may not be less than 10% of the issued share capital of the applicant on listing. Any redemption limit established by the applicant must apply equally to all shareholders entitled to a redemption right; and
  - (iv) the redemption right mechanism and timing must be clearly explained in the prospectus/pre-listing statement of the applicant.
- (k) a SPAC may not adopt a weighted voting share structure on listing.

#### **Acquisition of Viable Assets**

4.35 Once an applicant has been admitted as a SPAC, the following must be complied with:

- (a) The SPAC must have completed an acquisition of Viable Assets within 36 months from the date of listing as a SPAC (the “acquisition window”).
- (b) The acquisition of Viable Assets must be approved by a majority of disinterested directors and the majority of security holders of the SPAC at a general meeting.
- (c) The notice of meeting as contemplated in paragraph 4.35(b) above must also include a resolution on the proposed use of the residual capital not allocated for the proposed acquisition of Viable Assets for which the

approval is being sought. Should security holders not approve a proposed resolution dealing with the further use and retention of the balance of the capital after the acquisition has been approved, then such residual capital must be returned to security holders within 60 calendar days after the date of the general meeting.

- (d) In the event that a SPAC has not completed an acquisition of Viable Assets within the acquisition window, the JSE will suspend the SPAC's listing on the first business day following the expiry of the acquisition window and proceed to remove the SPAC pursuant to the provisions of Section 1 once the capital raised has been distributed to security holders pursuant to paragraph 4.37.

## **Capital**

4.36 The SPAC must comply with the following in respect of the capital raised:

- (a) Capital raised by the SPAC must be held in escrow with an escrow agent.
- (b) The escrow agent must invest the capital in escrow in (i) investment grade bonds (being debt securities with a rating of "BBB" or above as rated by Standard and Poor's Corporation or an equivalent rating by any similar institution) or (ii) bank deposits with a recognised bank. The interest earned on the capital under escrow shall accrue in favour of the SPAC and accumulate in escrow.
- (c) The escrow agreement governing the capital in escrow must provide for the following and the agreement must be submitted to the JSE for prior approval:
  - (i) release of such amount that will be used to cover the operating expenses pursuant to paragraphs 4.34(c) and (d), and redemption rights, at the request of the board of directors;
  - (ii) release of the balance or portion of the capital to the SPAC once it receives approval for the acquisition of Viable Assets pursuant to paragraph 4.35(b) within the acquisition window; and
  - (iii) the termination of the escrow agreement and the distribution of the capital in escrow to security holders pursuant to paragraphs 4.35(c) and 4.37.
- (d) Prior to an acquisition of Viable Assets being completed within the acquisition window, the JSE may permit a SPAC to raise additional capital for the acquisition of further assets by issuing further shares or units provided that:
  - (i) it is part of a rights offer; and/or
  - (ii) security holders have granted approval of the further issue in accordance with the JSE Listings Requirements.

All additional capital raised must be paid and placed directly into escrow pursuant to the provisions of paragraph 4.34(h).

## **Failure to acquire Viable Assets**

4.37 In the event that a SPAC has not completed an acquisition of Viable Assets within the acquisition window, it must:

- (a) complete a distribution within 60 calendar days after the expiry of the acquisition window to all security holders pro rata to their holdings. The distribution must be the maximum amount while still complying with the solvency and liquidity test as required pursuant to the Act. All interest earned in escrow will form part of the distribution, excluding any taxes and expenses relating to the distribution and anticipated voluntary

- liquidation; and
- (b) propose a special resolution to security holders for the voluntary liquidation of the SPAC.

### **Memorandum of Incorporation**

- 4.38 A SPAC must have the following provisions included in its Memorandum of Incorporation:
- (a) it must require security holders to vote on any proposed acquisition; and
  - (b) redemption rights; and
  - (c) a distribution requirement, pursuant to which security holders must, if an acquisition of Viable Assets is not completed within the acquisition window, be entitled to receive an amount equal to the aggregate amount then in escrow (net of any applicable taxes and expenses related to the distribution and voluntary liquidation), plus the interest earned, divided by the aggregate number of securities.

### **Continuing obligations**

- 4.39 The following provisions apply to a SPAC:
- (a) it will be subject to the continuing obligations of Section 3, with the exception of paragraphs 3.84(a) and (b); and
  - (b) it shall not be permitted to obtain any form of debt financing (excluding those of short term trade or accounts payable used in the ordinary course of business to settle any operating expenses pursuant to paragraphs 4.34(c) and (d)), except to facilitate the acquisition of Viable Assets. A statement to this effect must be included in the prospectus/pre-listing statement of the applicant.

### **Post acquisition of Viable Assets**

- 4.40
- (a) Once a SPAC has completed an acquisition of Viable Assets it must meet the criteria for listing as set out in paragraph 4.28 (excluding the period referred to in paragraph 4.28(d)(i)) or paragraph 21.2, as the case may be. Subject to paragraph 4.37(a), failure to meet these requirements once the acquisition of Viable Assets has been completed will result in the delisting of the SPAC by the JSE.
  - (b) Once an acquisition of Viable Assets has been completed, the SPAC will be admitted to the List and will be subject to the JSE Listings Requirements as an issuer in all respects.

### **Acquisition Circular to Shareholders**

- 4.41 The circular is not a pre-listing statement but the equivalent of a category 1 acquisition circular.
- 4.42 The circular must also address:
- (a) the listing entry criteria for the Main Board or AltX, considering the type of industry;
  - (b) the required subscribed capital and profit (if applicable) must reflect in the pro forma financial information prepared pursuant to Section 8,
  - (c) if applicable, any forecast information prepared to reflect the new combined issuer must adhere to Section 8;
  - (d) the experience and expertise of the directors and senior management



- pursuant paragraph 4.8(b);
- (e) working capital statement pursuant to paragraph 2.12;
  - (f) corporate governance as applied to Main Board or AltX pursuant to paragraphs 3.84 and 21.5;
  - (g) the current balance of proceeds raised on listing, including interest and any additional financing obtained by the applicant pursuant to paragraph 4.36(d), if applicable, as held in escrow as at the time of the conclusion of the acquisition agreement;
  - (h) the balance of operating expenses, as at the time of the conclusion of the acquisition agreement;
  - (i) details on the governance process in respect of how the acquisition of Viable Assets was identified, evaluated and approved by the board of directors;
  - (j) a statement on whether the acquisition criteria of Viable Assets are in line with the disclosures in the prospectus/pre-listing statement of the applicant and whether there are any variations from such acquisition criteria, if any;
  - (k) subject to paragraph 4.34(j), the redemption right mechanism;
  - (l) details of all incentives (whether in cash and/or securities in the applicant, or otherwise) received or to be received by the board of directors and their associates arising from the identification and acquisition of Viable Assets; and
  - (m) the details of potential conflicts of interests between the applicant and the board of directors (and their associates) as identified in paragraph 4.34(i)(i)-(iv), as it relates to the identification and acquisition of Viable Assets.

### **Weighted Voting Share Structures**

- 4.43 In these Listings Requirements pertaining to the listing of applicants with a weighted voting share structure unless the contrary intention appears, the following terms shall have the meanings assigned to them below:

“weighted voting share structure” means a share structure that gives certain shareholders voting rights disproportionate to their shareholding or any other structure that achieves a similar outcome. Typically, shares in one class carry one vote, while shares in another class carry weighted votes;

“enhanced voting process” means a voting process in a general meeting of the applicant, where votes are cast on the basis that one weighted voting share is limited to one vote;

“ordinary voting share” means in relation to a weighted voting share structure, a share that carries one vote; and

“weighted voting share” means in relation to a weighted voting share structure, a share that carries weighted votes but that otherwise has the same rights as an ordinary voting share.

### **Admission criteria**

- 4.44 An applicant seeking a listing with a weighted voting share structure must satisfy the following criteria:
- (a) it must meet the Main Board listing criteria;
  - (b) the weighted voting shares will not be listed or traded on the JSE;
  - (c) each weighted voting share shall not carry more than 20 votes per share

- and the ratio cannot be increased;
- (d) adhere to the governance arrangements in paragraph 4.45; and
- (e) the admission criteria in paragraphs 4.44(c) and (d) must be incorporated in the MOI of the applicant or constitutional documents if a foreign applicant.

### **Governance Arrangements**

4.45 The applicant must apply to the following governance arrangements:

- (a) the weighted voting share must have automatic conversion provisions which provide that a weighted voting share will be converted into an ordinary voting share in the event that:
  - (i) the weighted voting share is sold or transferred to any person; or
  - (ii) on the expiry of a period of ten years from the listing date of the applicant issuer;
- (b) notwithstanding the provisions of paragraph 4.45(a)(ii), holders of ordinary voting shares may agree at a general meeting to allow an extension to the time sunset provision provided the holder/s of weighted voting shares (in respect of their entire shareholdings in respect of the applicant, both weighted voting shares and ordinary shares) may not participate in such vote;
- (c) holder/s of weighted voting shares must hold at least 10% of the economic interest in the applicant on listing;
- (d) holder/s of ordinary voting shares holding at least 10% of the total voting rights, as measured against the total issued ordinary shares, must have the ability to convene a general meeting;
- (e) the holder/s of weighted voting shares must provide an undertaking that their entire shareholdings in respect of the applicant, both weighted voting share and ordinary shares on listing, may not be disposed or transferred for a period of 12 months from the listing date; and
- (f) the following matters must be voted on through the enhanced voting process:
  - (i) variation of rights attaching to securities;
  - (ii) appointment and removal of auditors;
  - (iii) appointment, re-election or removal of independent non-executive directors;
  - (iv) remuneration policy and implementation report pursuant to paragraph 3.84(j);
  - (v) reverse takeover; and
  - (vi) removal of listing.

### **Prospects/Pre-Listing Statement**

4.46 The prospectus/pre-listing statement must include the following additional information:

- (a) a statement on the cover page that the applicant has a weighted voting share structure;
- (b) details of the weighted voting share structure and its associated risks;
- (c) the rationale for adopting a weighted voting share structure;

- (d) the matters that are subject to the enhanced voting process;
- (e) a summary of the key provisions of the weighted voting share structures as incorporated in the MOI of the applicant or constitutional documents if a foreign applicant;
- (f) the following details of each holder of weighted voting share:
  - (i) name of beneficial shareholder/s with weighted voting shares;
  - (ii) number of weighted voting shares;
  - (iii) total voting rights of weighted voting shares;
  - (iv) number of ordinary voting shares;
  - (v) total voting rights of ordinary voting shares; and
  - (vi) total voting rights of weighted voting shares compared to ordinary voting shares.

### **Changes in capital**

- 4.47 No further weighted voting shares can be issued, save in the event of a rights issue, bonus issue, capitalisation issue, scrip dividend, consolidation or sub-division of securities, in each case offered in the same ratios in conjunction with ordinary voting shares.

### **Circulars, annual reports and SENS**

- 4.48 An applicant with a weighted voting share structure must prominently include a statement on the cover page of its circulars, annual reports and announcements that the applicant is an issuer with a weighted voting share structure.
- 4.49 The events in paragraphs 4.45(a) and (b) must be announced on SENS immediately.

### **Market Segmentation**

#### **General**

- 4.50 The Main Board is segmented through the classification of Main Board primary issuers in either the prime or general segment.
- 4.51 The general segment affords issuers with a Main Board primary listing with different application of certain provisions of the Requirements.
- 4.52 The default position for all Main Board issuers is classification in the prime segment. Only issuers not included in the FTSE/JSE All Share Index are eligible for inclusion in the general segment.

#### **General segment classification: new listing**

- 4.53 An applicant issuer may apply for a listing on the general segment.
- 4.54 The JSE will, in its discretion, and in consultation with the JSE Indices Department, determine the likelihood of the applicant being included in FTSE/JSE All Share Index in the near future. The determination will be based on various indicators, such as expected market capitalisation, including any published market capitalisation on a licensed exchange, free float, expected split of shares on the domestic share register and the FTSE/JSE All Share Index exclusion rules.

#### **General segment classification: existing issuers**

- 4.55 An application for inclusion in the general segment must be approved by the JSE.
- 4.56 Once approved, an issuer will be included in the general segment from the date of approval of the application.
- 4.57 The issuer must release an announcement once classified to the general segment, which must include the following:
- (a) the effective date; and
  - (b) a summary of the market segmentation applications in terms of 4.62.

### **Reclassification**

- 4.58 An issuer in the general segment may at any time, on application to the JSE, seek re-classification to the prime segment. The proposed effective date of re-classification must be included in the application.
- 4.59 If an issuer in the general segment is included in the FTSE/JSE All Share Index for a period of twelve months in accordance with the FTSE/JSE All Share Index bi-annual reviews, such issuer will no longer be eligible for the general segment. The JSE will reclassify the issuer to the prime segment with a specified effective date, subject to a six month notice period. An issuer may request an earlier effective date.
- 4.60 The issuer must release an announcement once reclassified, including the effective date. The provisions in 4.62 cease to apply on the effective date of reclassification to the prime segment.
- 4.61 An issuer will only be eligible to reapply for the general segment, once it falls outside of the FTSE/JSE All Share Index for a period of at least 12 months in accordance with the FTSE/JSE All Share Index bi-annual reviews.

### **General Segment**

- 4.62 Subject to the MOI of an applicant issuer and the Companies Act, the following provisions apply to the general segment:
- (a) 3.15: The obligations to release a results announcement dealing with condensed financial statements or annual financial statements/summary financial statements within three months do not apply;
  - (b) 5.51(f), 5.53(b), 5.69(e)(ii), 10.4(f) and 10.7: No fairness opinion is required provided the related party corporate action agreement must be open for inspection for a period of 14 days and the corporate action must be accompanied by a statement by the independent members of the board dealing with:
    - (i) the corporate governance processes that were followed to approve the corporate action;
    - (ii) if applicable, that the related party and associates will be excluded from voting; and
    - (iii) whether the related party corporate action was concluded on an arm's length basis (including key assumptions, factors taken into account in reaching the conclusion) and is fair to shareholders;
  - (c) 5.52(c)(iii) and (e): A general authority to issue shares for cash does not require shareholders' approval, provided it does not exceed 10% of the issuer's issued share capital, as at the date of each annual general meeting.

The following provisions apply to this authority:

- (i) the validity of any existing general authority provided under the prime segment must be extinguished before this provision can be

applied; and

- (ii) the issuer must disclose in each notice of annual general meeting:
  - (aa) the nature and extent of the rolling general authority; and
  - (bb) the number of shares issued under this authority during the previous 12 months, if applicable;
- (d) 5.67(C)(a) and 5.69: In respect of a specific authority to repurchase securities from parties other than related parties, no shareholders' approval in terms of 5.69(b) is required provided it does not exceed 20% of the issuer's share capital in any one financial year;
- (e) 5.67(C)(b) and 5.72: In respect of a general authority to repurchase securities, no shareholders' approval in terms of 5.72(c) is required. The validity of any existing authority provided under the prime segment must be extinguished before this provision can be applied;
- (f) 6.19(h): A pre-listing statement is only triggered for share issuances exceeding 100% over a three-month period;
- (g) 8.4: Two years historical financial information is required for the subject of a category 1 transaction;
- (h) 8.15: The preparation of pro forma financial information is not required for transactions and corporate actions, but rather a detailed narrative must be provided on the impact of the transaction/corporate action on the financial statements, which must at least include:
  - (i) an explanation of how the transaction/corporate action will be treated from an IFRS perspective;
  - (ii) impact on debt and cash levels; and
  - (iii) anticipated changes to number of shares in issue.
- (i) Section 9: In respect of 9.20 and 9.21 shareholders' approval and a circular are not required for transactions by a subsidiary that is listed on the of the JSE;
- (j) 9.5(b): The category 1 percentage ratio is 50% or more, which increases the category 2 threshold accordingly;
- (k) Definitions: The material shareholder definition percentage ratio is 20%;
- (l) 10.7: The small-related party transaction percentage ratio is less than or equal to 10%, but exceeds 3%; and
- (m) 8.2(f): In relation to a new listing, an applicant issuer is not required to prepare and disclose historical financial information of any category 1 acquisition or disposal effected in the current or preceding financial year.

The provisions above have the specified different application to the general segment as stated and the remainder of the provisions of the paragraph/section continue to apply.

## Section 5

# Methods and Procedures of Bringing Securities to Listing

### Scope of section

This section describes the different methods and procedures by which securities may be brought to listing.

Additional and alternative requirements relating to methods of bringing securities to listing are set out in Section 12 (Mineral Companies), Section 13 (Property Companies), Section 15 (Investment Companies) and Section 18 (Dual Listings and Listings by External Companies), respectively. The corporate action timetable details the timetable requirements for corporate actions in a dematerialised environment.

The main headings of this section are:

- 5.1 Methods open to applicants for bringing securities to listing
- 5.4 Introductions
- 5.9 Placings
- 5.13 Offers for sale or subscription
- 5.22 Renounceable rights offer or Non-Renounceable rights offers
- 5.28 Renounceable rights offers
- 5.38 Claw-back offers
- 5.39 Capitalisation issues
- 5.44 Scrip dividend and cash dividend elections
- 5.50 Issues for cash
- 5.58 Acquisition or amalgamation/merger issues
- 5.62 Vendor consideration placings
- 5.63 Exercise of options to subscribe for securities (including options in terms of executive and staff share schemes)
- 5.66 Issues with participating or conversion rights
- 5.67 Repurchase of securities
- 5.85 Payments to securities holders
- 5.93 Exchange control approval
- 5.94 Share certificates
- 5.95 Securities registered in the name of nominee companies
- 5.97 Pre-issued trading
- 5.99 Price stabilisation
- 5.123 Odd lot offers
- 5.127 Shares issued to sponsors and advisers in lieu of fees
- 5.128 Restrictive funding arrangements

### Methods open to applicants for bringing securities to listing

#### Without securities already listed

- 5.1 New applicants may bring securities to listing by way of:
  - (a) an introduction, being a listing where the applicant complies fully with all Listings Requirements and is not effecting any offer or marketing of securities at or immediately prior to listing; or
  - (b) by the methods referred to in paragraph 5.2 below.

#### With or without securities already listed

- 5.2 New applicants, or those with securities already listed, may bring securities to listing by way of:
  - (a) an offer for sale (including a placing);
  - (b) an offer for subscription (including a placing);

- (c) an issue with participating or conversion rights; or
- (d) a renounceable offer.

### **With securities already listed**

- 5.3 Applicants with securities already listed may bring securities, whether or not of a class already listed, to listing by way of:
- (a) a rights offer;
  - (b) a claw-back offer;
  - (c) a capitalisation issue;
  - (d) an issue for cash;
  - (e) an acquisition or amalgamation/merger issue;
  - (f) a vendor consideration placing;
  - (g) an exercise of options to subscribe for securities (including options in terms of executive and staff share schemes);
  - (h) a conversion of securities of one class into securities of another class; and
  - (i) such other method as may be approved by the JSE, either generally or in any particular case.

### **Introductions**

#### **Specific requirements**

- 5.4 With regard to a listing by way of introduction:
- (a) the JSE will require a certified copy of the share register of the applicant; and
  - (b) the applicant must comply with the conditions for listing set out in Section 4.
- 5.5 An applicant may not bring securities to listing by way of an introduction if there are any pre-existing intentions by any holder(s) (other than public shareholders) to dispose of a material number of their securities at or immediately after listing. The applicant must satisfy the JSE in respect hereof in so far as it has knowledge of any such intention(s).
- 5.6 In the case of an applicant whose listing has been suspended or removed:
- (a) because it was a cash company (refer to paragraph 3.26); or
  - (b) in connection with a reverse take-over (refer paragraphs 9.23 and 9.24);
- and is seeking re-admittance to listing, the JSE may require some form of marketing of the applicant's securities in order to improve or ensure compliance with the "Shareholder spread" requirements set out in Section 4, before approving the listing.

#### **Documents to be submitted to the JSE**

- 5.7 The Part I and II documents described in paragraphs 16.10 to 16.13 must be submitted to and approved by the JSE in accordance with Section 16.

#### **Documents to be published**

- 5.8 The documents that require publication with regard to a listing by way of an

introduction are set out in paragraphs 11.3 to 11.5.

## **Placings**

### **Specific requirements**

- 5.9 The applicant must comply with all relevant conditions for listing set out in Section 4.

### **Documents to be submitted to the JSE**

- 5.10 In the case of a new applicant, the Part I and II documents described in paragraphs 16.10 to 16.13 must be submitted to and approved by the JSE in accordance with Section 16.
- 5.11 In the case of an applicant with securities already listed, the documentation requiring submission to and approval by the JSE will be determined by the listing method applicable in terms of paragraph 5.3.

### **Documents to be published**

- 5.12 The documents that require publication with regard to a placing are set out in paragraph 11.6 and must be actioned in accordance with the relevant corporate action timetable.

## **Offers for sale or subscription**

### **Specific requirements**

- 5.13 An offer for subscription by a new applicant must comply with the requirements detailed under "Placings" in this section. An offer for subscription by an issuer with securities already listed on the JSE is regarded as being an issue for cash and must comply with the requirements of paragraphs 5.50 to 5.57.
- 5.14 An offer for sale by a listed company of securities in the listed company's subsidiary must be done in compliance with paragraphs 4.11 and 4.12 (Listing of subsidiary companies or assets).

## **Underwriting**

- 5.15 An offer for sale or subscription need not be underwritten. However, with respect to new applicants, if an offer for subscription is not underwritten, the offer must be conditional upon the minimum subscription being received that will fulfil the purpose of the offer. A statement to this effect, in bold, must be made in the "Salient details" section of the pre-listing statement or prospectus, and repeated again, in bold, in the section dealing with and detailing the minimum subscription required. With respect to existing issuers, if the offer is not underwritten, it must not be conditional on a minimum subscription being received.
- 5.16 The following must be complied with if the offer is underwritten:
- (a) the underwriter must submit sworn affidavits by at least two of its directors confirming that it has the financial resources to meet its commitments in terms of the underwriting; and
  - (b) the prospectus/pre-listing statement/circular must include a statement by the directors that they have made due and careful enquiry to confirm that the underwriter can meet its commitments in terms of the offer.
- 5.17 Any underwriting commission paid to a securities holder of the company should not be greater than the current market rate payable to independent underwriters. The applicant must present evidence to the JSE proving the reasonableness of such underwriting commission.



## **Over-subscriptions**

- 5.18 In the event of an over-subscription, the formula for the basis of allotment must be calculated in such a way that a person will not, in respect of his application, receive an allocation of a lesser number of securities than any other subscriber applying for the same number or a lesser number of securities. Random allocations are allowed only where prior approval has been granted by the JSE. Where a listing is over-subscribed or cancelled and persons are owed subscription refunds in terms of applications made, the sponsor must ensure that the subscription monies are refunded to such persons on the day of listing or on the day following the decision to cancel the listing, together with all interest earned on such monies calculated from the date of receipt of such monies by the company concerned.

## **Documents to be submitted to the JSE**

- 5.19 In the case of a new applicant, the Part I and II documents described in paragraphs 16.10 to 16.13 must be submitted to and approved by the JSE in accordance with Section 16.
- 5.20 In the case of an applicant with securities already listed, the documents detailed in paragraph 16.14 must be submitted to the JSE in accordance with the relevant corporate action.

## **Documents to be published**

- 5.21 The documents that require publication regarding an offer for sale or subscription are set out in paragraphs 11.7 to 11.9, and must be actioned in accordance with the relevant corporate action timetable.

## **Renounceable rights offer or non-renounceable rights offers**

### **Specific requirements**

- 5.22 The applicant must comply with all relevant conditions for listing set out in Section 4.

### **Ability to trade**

- 5.23 The enforcement of the right of securities holders of the applicant issuer to subscribe for securities in the applicant must be done by means of:
- (a) a renounceable rights offer to such securities holders, through the issue of a renounceable LA or other negotiable document, traded as "nil paid" rights for a period in accordance with the relevant corporate action timetable; or
  - (b) a non- renounceable rights offer to such securities holders for a period in accordance with the relevant corporate action timetable, provided the maximum discount at which the shares are to be offered does not exceed 10% of the weighted average traded price of such equity securities measured over the 30 business days prior to the date that the price of the issue was determined by the issuer.

The JSE should be consulted for a ruling if the applicant's securities have not traded in such 30 business-day period.

- 5.24 [Repealed]

- 5.25 [Repealed]

## **Documents to be submitted to the JSE**

- 5.26 The documents detailed in paragraph 16.15 in respect of a renounceable rights offer must be submitted to the JSE in accordance with the relevant timetable set out in the relevant corporate action timetable. The documents

detailed in paragraph 16.16 in respect of a non-renounceable rights offer must be submitted to the JSE in accordance with the relevant corporate action timetable.

### **Documents to be published**

- 5.27 The documents that require publication regarding a renounceable rights offer and non-renounceable rights offer are referred to in paragraphs 11.11 to 11.15 and the relevant corporate action timetable and must be actioned in accordance with the relevant corporate action timetable.

### **Renounceable rights offers**

#### **Specific requirements**

- 5.28 LAs are to be issued in dematerialised form for the rights offer and must be renounceable. The JSE may, in exceptional circumstances, waive this requirement.

#### ***Underwriting***

- 5.29 A rights offer need not be underwritten; however, if it is underwritten, the following must be complied with:
- (a) the underwriter must submit sworn affidavits by at least two of its directors confirming that it has the financial resources to meet its commitments in terms of the underwriting; and
  - (b) the prospectus/pre-listing statement/circular must include a statement by the directors that they have made due and careful enquiry to confirm that the underwriter can meet its commitments in terms of the offer.
- 5.30 If the rights offer is not underwritten, it must not be conditional on a minimum subscription being received.
- 5.31 Any underwriting commission payable to a securities holder of the company effecting the rights offer must not be greater than the current market rate payable to independent underwriters. The applicant must present evidence to the JSE proving the reasonableness of the underwriting commission payable.

#### ***Excess security applications***

- 5.32 A rights offer may include the right to apply for excess securities, subject to such right being transferable upon renunciation of the LAs.
- 5.33 In the event of a rights offer including the right to apply for excess securities, applications having been received for such excess securities and there being an excess of securities available for allocation, the pool of such excess securities should be allocated equitably, taking cognisance of the number of securities held by the securities holder just prior to such allocation, including securities taken up as a result of the rights offer, and the number of excess securities applied for by such securities holder. Non-equitable allocations of excess securities will only be allowed in instances where they are used to round holdings up to the nearest multiple of 100 securities.

#### ***General***

- 5.34 Unless circumstances are such as to warrant a concession being granted, the JSE will require the LAs to be listed.
- 5.35 Forms of instruction in respect of LAs must be sent to certificated holders, in terms of which: Form A (Instruction to Sell) and Form B (Form of Renunciation) must require the signature of the offeree(s); Form C (Registration Application Form) must require the signature of the renouncee(s); and Form D (Documents of Title) must not require a signature.

5.36 [Repealed]

5.37 [Repealed]

### **Claw-back offers**

#### **Specific requirements**

5.38 The requirements of paragraphs 5.28 to 5.37 in respect of rights offers apply equally to claw-back offers.

### **Capitalisation issues**

#### **Specific requirements**

5.39 The issuer may not publish any announcement, advertisement or circular in which a capitalisation issue is proposed to be effected in lieu of the declaration of a dividend and where holders of securities are not entitled to elect to receive a cash payment.

5.40 Capitalisation issues must comply with Section 47 of the Act. Schedule 10 paragraph 6 provides for the basis on which a capitalisation issue may be done.

#### **Documents to be submitted to the JSE**

5.41 The documents detailed in paragraph 16.16 must be submitted to the JSE in accordance with the relevant corporate action timetable.

#### **Documents to be published**

5.42 The documents that require publication regarding a capitalisation issue are set out in paragraphs 11.16 and 11.17, and must be actioned in accordance with the relevant corporate action timetable.

#### **Submission of letter of application**

5.43 The capitalisation issue will not be allowed to proceed if the JSE has not received the letter of application by the finalisation date.

#### **Scrip dividend and cash dividend elections**

5.44 The grant of the right of election must not be prohibited by the MOI.

5.45 The issuer may not publish an announcement or circular in which a capitalisation issue is in any way described or presented as a dividend if holders of securities are not entitled to elect to receive a cash dividend.

5.46 A form of election must be dispatched with the circular containing the following:

(a) a statement that the election may be made in respect of all or part of the securities held at the close of business on the record date, failing which capitalisation shares or cash will be distributed at the option of the issuer; and

(b) the ratio of the entitlement and full details of the cash dividend.

5.47 [Repealed]

#### **Documents to be submitted to the JSE**

5.48 Scrip dividend and cash dividend elections must comply with paragraph 16.17 and with the relevant corporate action timetable.

## **Documents to be published**

- 5.49 The documents that require publication regarding a scrip dividend are set out in paragraphs 11.16 and 11.17, and must be actioned in accordance with the relevant corporate action timetable.

## **Issues for cash**

### **Description**

- 5.50 An issue for cash is an issue of equity securities for cash (or the extinction of a liability, obligation or commitment, restraint, or settlement of expenses) in compliance with paragraphs 5.50 to 5.57:
- (a) on terms that are specifically approved by equity securities holders in general meeting (if applicable in terms of paragraph 5.51(g)) in respect of that particular issue ("a specific issue for cash"); or
  - (b) on terms generally approved by equity securities holders in general/annual general meeting by granting the board of directors of the issuer the authority to issue a specified number of securities for cash pursuant to paragraph 5.52(c), which authority will be valid until the issuer's next annual general meeting or for 15 months from the date on which the general issue for cash ordinary resolution was passed, whichever period is shorter, subject to the requirements of the JSE and to any other restrictions set out in the authority ("a general issue for cash").

### **Requirements for specific issues for cash**

- 5.51 An applicant may only undertake a specific issue for cash subject to satisfactory compliance with the following requirements:
- (a) the equity securities which are the subject of the issue for cash must be of a class already in issue or, where this is not the case, must be limited to such securities or rights that are convertible into a class already in issue;
  - (b) if any of the equity securities are to be issued to non-public shareholders, as defined in paragraph 4.25 to 4.27, this fact must be disclosed;
  - (c) the number or maximum number of equity securities to be issued must be disclosed;
  - (d) if the discount at which the equity securities are to be issued is not limited, this fact must be disclosed;
  - (e) if the discount at which the securities are to be issued is limited, such limit must be disclosed;
  - (f) if the issue is:
    - (i) to a related party/ies as described in paragraphs 10.1 to 10.3, and
    - (ii) the price at which the equity securities are issued is at a discount to the weighted average traded price of such equity securities measured over the 30 business days prior to the date that the price of the issue is agreed in writing between the issuer and the party subscribing for the securities (the JSE should be consulted for a ruling if the applicant's securities have not traded in such 30 business-day period)

then such issue shall be subject to the inclusion of a statement by the board of directors confirming whether the issue is fair insofar as the shareholders (excluding the 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 prepared in accordance with Schedule 5 before making this statement; and

- (g) approval of the specific issue for cash ordinary resolution, by achieving a 75% majority of the votes cast in favour of such resolution by all equity securities holders present in person or represented by proxy at the general meeting convened to approve such resolution, on which any parties and their associates participating in the specific issue for cash have not voted or whose votes have not been counted. If the dilution, as a result of a once-off issue (calculated by taking the number of equity securities to be issued and dividing it by the number of listed equity securities, excluding treasury shares) is equal to or less than 0.25% and the price at which the equity securities are issued is equal to or at a premium to the weighted average traded price of such equity securities measured over the 30 business days prior to the date that the price of the issue is agreed in writing between the issuer and the party subscribing for the securities (the JSE should be consulted for a ruling if the applicant's securities have not traded in such 30 business day period) then shareholder approval is not required.

### **Requirements for general issues for cash**

5.52 An applicant may only undertake a general issue for cash subject to satisfactory compliance with the following requirements:

- (a) the equity securities which are the subject of the issue for cash must be of a class already in issue or, where this is not the case, must be limited to such securities or rights that are convertible into a class already in issue;
- (b) the equity securities must be issued to public shareholders, as defined in paragraph 4.25 to 4.27, and subject to paragraph (f) not to related parties;
- (c) securities which are the subject of a general issue for cash must be less than 30% of the applicant's listed equity securities as at the date of the notice of general/annual general meeting seeking the general issue for cash authority, provided that:
  - (i) the authority shall be valid for the period contemplated in paragraph 5.50(b);
  - (ii) the calculation of the applicant's listed equity securities must be a factual assessment of the applicant's listed equity securities as at the date of the notice of general/annual general meeting, excluding treasury shares;
  - (iii) the specific number of shares representing the number up to 30% of the applicant's listed equity securities as at the date of the notice of general/annual general meeting must be included as a number in the resolution seeking the general issue for cash authority;
  - (iv) any equity securities issued under the authority during the period contemplated in paragraph 5.50(b) must be deducted from such number in (iii) above; and
  - (v) in the event of a sub-division or consolidation of issued equity securities during the period contemplated in paragraph 5.50(b), the existing authority must be adjusted accordingly to represent the same allocation ratio;
- (d) the maximum discount at which equity securities may be issued is 10% of the weighted average traded price of such equity securities measured over the 30 business days prior to the date that the price of the issue is agreed between the issuer and the party subscribing for the securities. The JSE should be consulted for a ruling if the applicant's securities have

- not traded in such 30 business-day period;
- (e) approval of the general issue for cash ordinary resolution, by achieving a 75% majority of the votes cast. The resolution must be worded in such a way as to include the issue of any options/convertible securities that are convertible into an existing class of equity securities, where applicable.
  - (f) related parties may participate in a general issue for cash through a bookbuild process provided –
    - (i) the approval by shareholders contemplated in paragraph 5.52(e) expressly affords the ability to the issuer to allow related parties to participate in a general issue for cash through a bookbuild process;
    - (ii) related parties may only participate with a maximum bid price at which they are prepared to take-up shares or at book close price. In the event of a maximum bid price and the book closes at a higher price the relevant related party will be “*out of the book*” and not be allocated shares; and
    - (iii) equity securities must be allocated equitably “*in the book*” through the bookbuild process and the measures to be applied must be disclosed in the SENS announcement launching the bookbuild.

#### **Options and convertible securities granted/issued for cash**

5.53 In respect of options and convertible securities granted/issued for cash:

- (a) Where options or convertible securities, excluding executive and staff share schemes, are granted/issued for cash (or for the extinction or payment of any liability, obligation or commitment, restraint(s), or settlement of expense), such options/convertible securities, issued otherwise than to existing holders of equity securities in proportion to their existing holdings, will be permitted in respect of:
  - (i) a specific issue of such options/convertible securities, provided specific approval is obtained for such grant/issue in terms of paragraph 5.51; and
  - (ii) a general issue of options/convertible securities, provided approval for such grant/issue is obtained in terms of paragraph 5.52 (and in respect thereof, refer to the second sentence in paragraph 5.52(e)).
- (b) The grant/issue will be subject to the inclusion of a statement by the board of directors (the board of directors must obtain a fairness opinion prepared in accordance with Schedule 5 before making this statement) confirming whether the issue is fair insofar as the shareholders (excluding the 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 if:
  - (i) in respect of 5.53(a)(i), the issue is to a related party as defined in paragraphs 10.1 to 10.3; or
  - (ii) in respect of 5.53(a)(ii), the strike or conversion price of the options/convertible securities are at a discount that exceeds the maximum discount contemplated in paragraph 5.52(d) above. In this instance, the grant/issue may only proceed if the independent expert confirms that it is fair.

#### **JSE discretion**

5.54 The JSE may waive some or all of the requirements contained in paragraphs 5.51 to 5.53 if it is satisfied that the conditions as stipulated in

Schedule 11 exist.

### **Affected transactions**

- 5.55 Where any issue for cash constitutes an “affected transaction” as defined in the Takeover Regulations and the Act such affected transaction must be referred to the Panel by the issuer.

### **Documents to be submitted to the JSE**

- 5.56 The documents detailed in paragraph 16.17 must be submitted to the JSE.

### **Documents to be published**

- 5.57 The documents that require publication regarding issues for cash are set out in paragraphs 11.19 to 11.22.

### **Acquisition or amalgamation/merger issues**

#### **Specific requirements**

- 5.58 Admission to listing will only be granted to securities issued as consideration for a bona fide acquisition or amalgamation/merger and not in support of a circumvention of securities holders’ rights of pre-emption.
- 5.59 Accordingly, the JSE must be consulted when a listed company proposes to issue securities as consideration for an acquisition or amalgamation/merger.

### **Documents to be submitted to the JSE**

- 5.60 The documents detailed in paragraph 16.18 must be submitted to the JSE.

### **Documents to be published**

- 5.61 The documents to be published with regard to an acquisition or amalgamation/merger issue are set out under the various categories in Section 9.

### **Vendor consideration placings**

#### **Specific requirements**

- 5.62 In a vendor consideration placing:
- the minimum placing price is the lower of:
- (i) a 10% discount to the 30 business day weighted average traded price prior to the date that the placing is authorised by the directors; or
  - (ii) a 10% discount to the 3 business day weighted average traded price prior to the date of the placing:
- provided that these limits may be exceeded if securities holders give their specific approval of such necessary ordinary resolution, voted on by 75% of all equity securities holders present or represented by proxy at the general meeting convened to approve such resolution, excluding any vendor and its associates or other party participating in the placing.

### **Exercise of options to subscribe for securities (including options in terms of executive and staff share schemes)**

- 5.63 Applications for listings of securities issued in terms of options must be made in terms of Section 16.

- 5.64 Application for listing of shares in terms of executive and staff share schemes may either be for block listings or for specific allotments.
- 5.65 The JSE will grant a block listing only in multiples of R5 million for securities issued in terms of approved schemes. Subsequent issues of securities in terms of the scheme will be subtracted from the initial block until such time as that block is exhausted, at which time an application for a further block listing will be necessary.

### **Issues with participating or conversion rights**

- 5.66 Classes of securities that have participating rights to profits or have equity conversion rights must be offered to equity securities holders of a company by means of a rights offer, unless issued:
- (a) by way of a claw-back offer;
  - (b) by way of an issue for cash;
  - (c) for the acquisition of assets or for an amalgamation/merger; or
  - (d) in circumstances that the JSE considers to be exceptional and warranting special approval.

### **Repurchase of securities**

#### **Description**

- 5.67 (A) In the event that a shareholder of an issuer exercises its rights in terms of Section 164 of the Act and the issuer, in terms thereof, purchases its shares from the shareholder, the purchase of such shares will not be regarded as a repurchase of securities in terms of the Listings Requirements. The issuer must, however, within 48 hours of repurchasing the shares from the shareholder:
- (a) apply to the JSE for the removal of such shares in terms of Schedule 2 Form A5 of the Listings Requirements. The application need only comply with paragraphs 1.1(a) to (e) and 1.3–1.5, however, and must state the reason for the application to delist the shares; and
  - (b) on the same day that the issuer applies to the JSE for the delisting of the shares, the issuer must announce on SENS the following details concerning the delisting of the shares:
    - (i) the effective date of the delisting of the shares;
    - (ii) the number of shares that will be delisted (expressed in a number and a percentage of the issued share capital of the issuer):
      - a. the price paid by the issuer for the shares;
      - b. the identity of the shareholders from whom the shares were repurchased; and
      - c. in respect of which resolution the shareholder exercised its rights in terms of Section 164(2) of the Act.
- (B) Repurchase of securities not requiring shareholder's approval:
- (a) A pro rata repurchase by the issuer or through its subsidiary of its securities from all its shareholders; and
  - (b) Intra-group repurchases by the issuer of its securities from wholly-owned subsidiaries, share incentive schemes pursuant to



Schedule 14 and/or non-dilutive share incentive schemes controlled by the issuer, where such repurchased securities are to be cancelled,

save to the extent required in terms of the Act.

Repurchases pursuant to paragraph 5.67(B)(b) must be announced in accordance with paragraph 3.99.

- (C) In all other instances an acquisition by an issuer of its own securities or a purchase by a subsidiary of securities in its holding company (in accordance with Section 48 of the Act or in accordance with repurchase laws of a foreign incorporated issuer), will be regarded as a repurchase of securities in terms of the Listing Requirements, in which case the holding company must comply with paragraphs 5.67(B) to 5.84:
- (a) on terms that are approved by securities holders in a general meeting in respect of that particular repurchase ("a specific repurchase of securities"), which shall be valid until such time as the approval is amended or revoked by a special resolution; or
  - (b) generally approved by securities holders by the giving of a renewable mandate, which shall be valid until the company's next annual general meeting or for 15 months from the date of the resolution, whichever period is shorter, to the directors of the company to repurchase its securities subject to the requirements of the JSE and to any other restrictions set out in the mandate ("a general repurchase of securities").

5.68 The general repurchase by a company of its own securities shall not, in the aggregate in any one financial year exceed 20% of that company's issued share capital of that class in any one financial year.

***Requirements for specific authority to repurchase securities ("specific repurchase")***

- 5.69 In respect of specific repurchases (which includes the grant of an option in terms of which an issuer may or will be required to repurchase its securities in future) and a specific offer (being an offer from securities holders specifically named) an applicant may only make a specific repurchase subject to the following:
- (a) authorisation thereto being given by its MOI;
  - (b) approval being given in terms of a special resolution excluding, in the case of a specific offer, the votes of any shareholder and its associates that are participating in the repurchase;
  - (c) a statement by the directors that, after considering the effect of such repurchase, the provisions of Section 4 and Section 48 of the Act have been complied with and that the:
    - (i) company and the group will be able in the ordinary course of business to pay their debts for a period of 12 months after the date of approval of the circular; and
    - (ii) assets of the company and the group will be in excess of the liabilities of the company and the group for a period of 12 months after the date of the approval of the circular. For this purpose, the assets and liabilities should be recognised and measured in accordance with the accounting policies used in the latest audited consolidated annual financial statements which comply with the Act; and
    - (iii) share capital and reserves of the company and the group will be adequate for ordinary business purposes for a period of 12 months after the date of the circular (refer to paragraph 7.E.7); and

- (iv) working capital of the company and the group will be adequate for ordinary business purposes for a period of 12 months after the date of approval of the circular (refer to paragraph 7.E.7);
- (d) a resolution by the board of directors of the issuer that it has authorised the repurchase, that the company and its subsidiary/ies have passed the solvency and liquidity test and that, since the test was performed, there have been no material changes to the financial position of any company of the group;
- (e) if the repurchase is:
  - (i) from a related party/ies as described in paragraphs 10.1 to 10.3, and
  - (ii) the price at which the securities are purchased is at a premium to the weighted average traded price of such equity securities measured over the 30 business days prior to the date that the price of the repurchase is agreed in writing between the issuer and the party selling the securities (the JSE should be consulted for a ruling if the applicant's securities have not traded in such 30 business day period)

then such repurchase shall be subject to the inclusion of a statement by the board of directors stating whether the repurchase is fair insofar as the shareholders (excluding the 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;

- (f) this requirement has been repealed;
- (g) if a company has announced that it will make a specific repurchase, it must pursue the proposal, unless the JSE permits the company not to do so; and
- (h) a company or its subsidiary may not repurchase securities (including the convening of a general meeting to obtain the required shareholders' approval) during a prohibited period as defined in paragraph 3.67 unless they have in place a repurchase programme or involves the execution of an existing authority obtained from shareholders as contemplated above. The issuer must instruct only one independent third party, which makes its investment decisions in relation to the issuer's securities independently of, and uninfluenced by, the issuer, prior to the commencement of the prohibited period to execute the repurchase programme. The repurchase programme must be submitted to the JSE in writing prior to the commencement of the prohibited period and must include the following details:
  - (i) the name of the independent agent;
  - (ii) the date the independent agent was appointed;
  - (iii) the commencement and termination date of the repurchase programme; and
  - (iv) the quantities of securities to be traded during the relevant period which must be fixed (not subject to any variation).

#### **Documents to be submitted to the JSE**

5.70 The documents detailed in paragraph 16.32 must be submitted to the JSE in accordance with the relevant corporate action timetable.

#### **Documents to be published**

- 5.71 The documents that require publication regarding a repurchase of securities are set out in paragraphs 11.23 to 11.25, and must be actioned in accordance with the relevant corporate action timetable.

**Requirements for general authority to repurchase securities (“general repurchase”)**

- 5.72 A company may only make a general repurchase of securities subject to the following:
- (a) the repurchase of securities being effected through the order book operated by the JSE trading system and done without any prior understanding or arrangement between the company and the counter party (reported trades are prohibited);
  - (b) authorisation thereto being given by its MOI;
  - (c) approval by shareholders in terms of a special resolution of the company, in annual general/general meeting, which shall be valid only until the next annual general meeting or for 15 months from the date of the resolution, whichever period is shorter;
  - (d) repurchases may not be made at a price greater than 10% above the weighted average of the market value for the securities for the five business days immediately preceding the date on which the transaction is effected. The JSE should be consulted for a ruling if the applicants securities have not traded in such five business day period;
  - (e) at any point in time, a company may only appoint one agent to effect any repurchase(s) on the company’s behalf;
  - (f) [Repealed]
  - (g) a resolution by the board of directors that it has authorised the repurchase, that the company and its subsidiary/ies have passed the solvency and liquidity test and that, since the test was performed, there have been no material changes to the financial position of the group; and
  - (h) an issuer or its subsidiary may not repurchase securities during a prohibited period as defined in paragraph 3.67 unless they have in place a repurchase programme. The issuer must instruct only one independent third party, which makes its investment decisions in relation to the issuer’s securities independently of, and uninfluenced by, the issuer, prior to the commencement of the prohibited period to execute the repurchase programme. The repurchase programme must be submitted to the JSE in writing prior to the commencement of the prohibited period and must include the following details:
    - (i) the name of the independent agent;
    - (ii) the date the independent agent was appointed by the issuer
    - (iii) the commencement and termination date of the repurchase programme; and
    - (iv) where the quantities of securities to be traded during the relevant period are fixed (not subject to any variation).

**Documents to be submitted to the JSE**

- 5.73 The documents detailed in paragraph 16.32 must be submitted to the JSE in accordance with the relevant corporate action timetable.

***Documents to be published***

- 5.74 The documents that require publication regarding a repurchase of securities are set out in paragraphs 11.26 to 11.27, and must be actioned in accordance

with the relevant corporate action timetable.

### **General**

- 5.75 Whenever an issuer wishes to use treasury shares, such use must comply with the Listings Requirements as if such use was a fresh issue of securities.
- 5.76 The requirements of paragraphs 5.67 to 5.81 do not apply in respect of the following:
- (a) transactions entered into on behalf of *bona fide* third parties, either by the company or any other member of its group on arm's length terms; or
  - (b) any acquisition by an issuer which is a financial services company (for the purposes hereof a company that is an authorised user as defined in the FMA, a long-term insurer as defined in the Long-term Insurance Act 1998, as amended, a short-term insurer as defined in the Short-term Insurance Act 1998, as amended and/or a bank as defined in the Banks Act 1990, as amended) of its own securities or a purchase by a subsidiary (which is a financial services company) of an issuer of the issuer's securities on an arm's length basis and held by such financial services company for the benefit of or to hedge the financial services company's obligations to third parties and/or as a component of a financial services product made available to clients of that financial services company in the normal course of business. Such securities purchased will not be treated as treasury shares for purposes of the Listings Requirements.
- 5.77 Where there are securities in issue that are high/low voting shares or are convertible into, exchangeable for, or carry a right to subscribe for securities of the class proposed to be repurchased, a separate meeting of the holders of such convertible securities or high/low voting shares must be held and their approval by special resolution obtained before the company enters into any contract to repurchase securities of the relevant class unless the trust deed or terms of issue of the convertible securities provides for the company purchasing its own equity securities. A circular and notice of meeting must also be sent to them as stipulated in paragraphs 11.23 (in terms of a specific repurchase) and 11.26 (in terms of a general repurchase).

### **Purchase of securities other than equity securities**

#### ***Notification of decision to repurchase***

- 5.78 Where a company intends to make an offer, which is to be open to all holders in respect of all or part of their holdings, to repurchase any of its securities other than equity securities, it must:
- (a) while the offer is being actively considered, ensure that no dealings in the relevant securities are carried out by or on behalf of the company or another member of its group, associate or subsidiary, until the proposal has either been submitted to the JSE or abandoned; and
  - (b) notify the JSE of its decision to proceed with the offer to repurchase.

### **Announcement of repurchases, early redemptions and cancellations**

- 5.79 Any repurchases, early redemptions or cancellations of the issuer's securities, other than equity securities, must be announced when an aggregate of 3% of the initial number of the relevant class of securities has been purchased, redeemed or cancelled and for each 3% in aggregate of the initial number of that class acquired thereafter. Such announcement must be made as soon as possible and, in any event, by not later than 08h30 on the business day following the day on which the relevant threshold is reached or exceeded. The announcement must state the number of securities purchased, redeemed or cancelled since the most recent announcement, the number of the class of securities that remain outstanding, and when the securities repurchased are to be cancelled and the listing removed, if applicable.

***Period between repurchase and notification***

- 5.80 In circumstances where the repurchase is not being made pursuant to an offer announced in accordance with paragraph 5.78 and the repurchase results in the company reaching or exceeding a relevant threshold as specified in paragraph 5.79, no further repurchases may be effected until after notification in compliance with paragraph 5.79 has been made.

**Convertible securities**

- 5.81 In the case of securities that are convertible into, exchangeable for, or carry a right to subscribe for equity securities, unless a partial offer is made to all holders of that class of securities on the same terms, repurchases must not be made at a price more than 10% above the 5 business day weighted average price of the securities immediately preceding the date of repurchase.

***Derivative transactions relating to the repurchase of securities (general authority)***

- 5.82 [Repealed]
- 5.83 [Repealed]
- 5.84 [Repealed]

**Payments to securities holders**

- 5.85 (a) Companies wishing to make payments to their securities holders must comply with all relevant provisions of the Act and specifically with Section 46 of the Act.
- (b) Subject to paragraph 5.85(c), a pro rata payment to all shareholders will not require shareholder approval. Any payment to shareholders which is not pro rata to all shareholders will be regarded as a specific payment and the company must obtain the approval of its securities holders in a general meeting, which approval is not required in respect of cash dividends, scrip dividends or capitalisation issues ("specific payment").
- (c) Where the underlying securities are unlisted when the company effects a distribution in specie by way of an unbundling (either by way of pro rata or specific payment) or where such securities become unlisted as a result of the unbundling, shareholder approval is required.
- 5.86 [Repealed]

**Requirements for specific payments**

- 5.87 An applicant may only make a specific payment subject to authorisation being given in terms of an ordinary resolution approved by shareholders of the company in general meeting. Such ordinary resolution must be contained in a notice of general meeting that forms part of a circular sent to securities holders of the applicant.

**Documents to be submitted to the JSE**

- 5.88 The documents detailed in paragraph 16.33 must be submitted to the JSE in accordance with the relevant corporate action timetable.

**Documents to be published**

- 5.89 The documents that require publication regarding specific payments are set out in paragraphs 11.28 and 11.29, and must be actioned in accordance with the relevant corporate action timetable.

## **Requirements for general payments**

5.90 [Repealed]

## **Documents to be submitted to the JSE**

5.91 [Repealed]

## **Alteration of share capital, authorised shares and rights attaching to a class/es of shares**

- 5.92 (A) Any alteration to the share capital of the applicant and/or to its authorised shares and/or any amendments to the rights attaching to any class of securities in the applicant, whether in issue or not, must be subject to the passing in general/annual general meeting of a special resolution of securities holders in respect of and including, but not limited to:
- (a) any action under Section 36 of the Act; and
  - (b) the conversion of securities of any class into securities of any other class, whether issued or not.

## **Documents to be submitted to the JSE**

- (B) The documents detailed in paragraph 16.34 must be submitted to the JSE in accordance with the relevant corporate action timetable.

## **Documents to be published**

- (C) The documents that require publication regarding alterations to share capital are set out in paragraph 11.37 and must be actioned in accordance with the relevant corporate action timetable.

## **Exchange control approval**

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- 5.93 Where approval for an issue and listing of securities is required from the Financial Surveillance Department of the South African Reserve Bank ("SARB"), JSE approval of an issue and listing of such securities will not be given until such time as copies of the requisite authority from SARB, giving a ruling regarding the use of funds introduced through normal banking channels from abroad or from a non-resident account or from an emigrant's blocked Rand account relating to such issue, is received (refer to paragraph 16.25).

## **Share certificates**

- 5.94 With respect to the certificated environment:
- (a) the normal requirement of the JSE is that all share certificates must be issued on the date of commencement of the listing of new securities or within seven days from the date of lodging of the certificates for transfer or splitting.
  - (b) applicants that have not yet adopted Certified Transfer Deed Procedures must effect registration of scrip within 24 hours of receipt.
  - (c) the JSE will not normally grant a listing for an issue of securities until the relevant share certificates, or other documents of title, have been made available, except where the relevant securities arise out of an entitlement derived from a holding in a listed security. Deals entered into between the date of commencement of the listing and the date the document of title is made available shall be for settlement during the week following the date the document of title is made available.
  - (d) Where it is proposed to issue share certificates, which of necessity are

required to be distinguishable from existing listed securities, a copy of the proposed certificate and a copy of the existing certificates are to be submitted to the JSE. The procedures to be adopted thereafter are to be agreed at this stage.

### **Securities registered in the name of nominee companies**

- 5.95 Where an issuer intends entering into a transaction or scheme that may, in its effect, discriminate between shareholders holding securities in dematerialised form through a CSDP or broker nominee company ("the nominee company") and shareholders holding securities directly in certificated form in such issuer, the issuer is to ensure that Strate provides it with a list of dematerialised beneficial shareholders on the relevant record date, in order to ensure that all shareholders in the issuer are treated fairly.
- 5.96 The requirement of paragraph 5.95 shall be applied in respect of all corporate actions and the issuer must ensure that the ratio of entitlement is applied to the beneficial securities holders within a nominee company.

### **Pre-issued trading**

- 5.97 A broking member (equities) may only execute transactions in pre-issued securities after such trading has been permitted by the JSE.
- 5.98 The JSE may permit trading in pre-issued securities, subject to the following conditions:
- (a) the sponsor, with the consent of the issuer, must apply, at the time of informal comment submission, and receive approval for pre-issued trading from the JSE;
  - (b) the JSE must have approved the listing particulars in respect of the issue;
  - (c) the issue for which pre-issued trading is requested must be an initial public offer and must be of such a size that, in the opinion of the JSE, it is appropriate to permit pre-issued trading;
  - (d) pre-issued trading will commence and end on such dates as the JSE specifies in the JSE Gazette, provided that the pre-issued trading must end on the commencement date of official trading in the securities; and
  - (e) if the listing in respect of which the pre-issued trading has been approved becomes effective, all transactions effected during the period of the pre-issued trading will settle on the same terms as all other transactions in JSE listed securities. If the listing is still ineffective on the commencement date of official trading, every transaction effected under this rule will be void ab initio and neither the broking member nor any client will have recourse against the JSE or a broking member, as the case may be, in respect of such transactions.

### **Price stabilisation**

- 5.99 Description:
- (a) The purpose of this section is to define the circumstances and manner in which price stabilisation will be permitted by the JSE, in accordance with the provisions of the FMA, and as a defence against prohibited trading practices, as stipulated in the FMA. Price stabilisation may be effected through an over-allotment, with or without a greenshoe. Over-allotment is a pre-cursor to a price stabilisation mechanism, aimed at supporting and maintaining the price of newly listed securities or securities the subject of a substantial offer, for a limited period after the listing or offer. The main purpose is to establish an orderly market for securities in the immediate secondary market after an offer.



- (b) The process of price stabilisation usually involves the stabilising manager, on behalf of the Bookrunners, allotting a greater number of securities than will be issued or sold, resulting in a net "short" position for the stabilising manager. Should the price of the securities drop below or remain at the issue price when securities begin to trade in the secondary market, the stabilising manager may purchase the securities to cover its "short" position and counteract the selling pressure. The "Greenshoe" from the issuer or substantial holder of relevant securities allows the stabilising manager to obtain the same number of securities that have been over-allotted, by exercising the option at the issue price. The stabilising manager may also allot more securities than the greenshoe, which is known as a naked short, or fewer securities. The stabilising manager may either close the net "short" position by exercising all or part of the greenshoe or by purchasing the securities in the market.

## Definitions

5.100 For the purposes of this section, the following definitions apply:

Term	Meaning
ancillary stabilising action	action permitted under paragraph 5.103 enabling the stabilising manager to over allot securities in order to facilitate the subsequent purchase of the securities;
greenshoe	an option or other right, granted for a specified period of time, exercisable by the stabilising manager, to acquire up to a specified number of securities in addition to the initial issue number, to enable it to honour the commitments made during the stabilisation period;
introductory period	the shorter of (i) the period starting at the time of the first public announcement of the offer and (ii) the period starting 45 days before the commencement of the stabilisation period, and ending at the beginning of the stabilising period;
issue price	the price at which securities are issued or sold in the relevant offer;
over-allotment	the allotment of shares in excess of the number of securities to be issued or sold in the offer;
stabilising manager	the entity responsible for stabilising action under these requirements and referred to in paragraphs 5.102(a), 5.103(a), 5.112 and 5.113;
stabilising action	any action contemplated by paragraphs 5.102 and 5.103;
stabilising price	the initial price, at or below the issue price, up to which the stabilising manager has determined that it may wish to intervene in the market by way of stabilising action; and
relevant exchange	the JSE or any exchange approved by the JSE, for the purpose of price stabilisation.

## Specific Requirements

5.101 Price stabilisation may only be effected in respect of an offer of securities, and must comply with the following criteria:

- (a) the offer must be an offering or issue of securities for cash, made at a specified price;
- (b) the offer must be for securities which are already listed or are to be listed;
- (c) the offer must be of sufficient size to satisfy the JSE that price stabilisation is warranted. Such size is to be determined in consultation with the JSE.

## Permitted stabilising action



5.102 The stabilising manager may, subject to compliance with paragraph 5.104 undertake:

- (a) to purchase, agree to purchase, or offer to purchase any relevant securities with the aim of stabilising the market price of the relevant securities; and
- (b) to take certain ancillary action with the aim of stabilising the market price of the relevant securities or liquidating any positions taken as a result of the stabilising process.

#### **Permitted ancillary stabilising action**

5.103 The stabilising manager may, subject to compliance with paragraph 5.104:

- (a) with a view to stabilising action in relevant securities:
  - (i) make allotments of a greater number of the relevant securities than will be offered;
  - (ii) sell, offer to sell, or agree to sell relevant securities in order to establish a short position in them;
  - (iii) achieve a result equivalent to that in paragraph 5.103(a)(ii), by the use of derivatives;
- (b) purchase, offer to purchase, or agree to purchase relevant securities in order to close out or liquidate any position established under the process of stabilising action;
- (c) sell, offer to sell, or agree to sell relevant securities in order to close out or liquidate any position that has been established by stabilising action; or
- (d) achieve a result equivalent to that in paragraph 5.103(c), by the use of derivatives.

#### **Conditions to be fulfilled**

5.104 The following are conditions which the stabilising manager must reasonably believe have been fulfilled before any stabilising action is taken:

- (a) from the beginning of the introductory period, adequate disclosure has been made in all communications issued by or on behalf of the issuer or the stabilising manager to prospective investors in the securities, of the fact that stabilisation may take place in relation to the relevant offer, as stipulated in paragraphs 5.110 and 5.111;
- (b) the relevant exchange on which the securities are or will be traded has been informed in writing that stabilising action in such securities may take place during the stabilising period;
- (c) that the price is not already artificial at the start of the stabilising period;
- (d) the terms on which the securities may be issued, sold, exchanged for, or converted into, or the rights of the holders of the securities to subscribe for, or to acquire other securities, have been finally settled and publicly announced;
- (e) the stabilising manager has established a register to record, in relation to each stabilising transaction effected in the securities, the matters required to be recorded in terms of paragraphs 5.112 to 5.115; and
- (f) stabilisation may only take place during the stabilisation period.

#### **Stabilisation period**

- 5.105 If the JSE permits trading in the securities prior to listing, the stabilisation period will commence on the date such trading commences. Otherwise, the stabilisation period will commence on the date of the listing of the securities, or the date of their sale if already listed. The stabilisation period will end 30 calendar days after the relevant listing or sale date.
- 5.106 The stabilising manager is under no obligation to stabilise securities.

### **Pricing**

- 5.107 The initial stabilising price (Price X) cannot exceed the offer price (or starting price) (Price Y), and subsequent stabilising action must equally be at or below the level of Price X. If there are no sales and purchases which are independent of the stabilising manager on both sides on the relevant exchange above Price X, the stabilising manager can operate at a price or at prices below Price X, moving up or down in that area as he wishes. But if an independent buyer and seller do a deal on the relevant exchange, at a price (Price Z) between Price X and Price Y, then the stabilising manager has a new maximum price (Price Z) instead of Price X.
- 5.108 The provisions of paragraph 5.107 will not prevent the stabilising manager from purchasing, offering to purchase or agreeing to purchase securities in order to close out a short position that is not covered by a greenshoe.

### **Over-allotment size**

- 5.109 The over-allotment may not be more than 15% of the issue size.

### **Disclosures**

- 5.110 Disclosure of the fact that stabilisation may take place should be provided in all communications issued by or on behalf of the issuer or stabilising manager to prospective investors in the securities in respect of the relevant offer.
- 5.111 For the preliminary offering circular (or prospectus) and/or final offering circular (or prospectus) the disclosure should contain:
- (a) the following text "In connection with this offer [name of stabilising manager] may over-allot or effect transactions which may support the market price of [description of securities] at a level higher than that which might otherwise prevail for a limited period after the listing date. However, there is no obligation on [name of stabilising manager] to do so. Such stabilising action may under no circumstances continue beyond the 30th calendar day after the listing date"; and
  - (b) where the stabilising manager has an option or other right to purchase relevant securities from the issuer or an existing securities holder for the purposes of stabilisation; and that option or right may be exercised or relied on after the start of the introductory period and during or after the remainder of the stabilising period, the existence and terms of such an option or right must be disclosed in the relevant prospectus or offering document.

### **Register**

- 5.112 No bid may be made or transaction effected in the course of stabilising action unless:
- (a) the stabilising manager concerned has established the relevant register in compliance with 5.113 and 5.114; and
  - (b) the stabilising manager is in compliance with the registration requirements in 5.113 and 5.114 in respect of all earlier transactions effected by it in the course of stabilising action in connection with the relevant offer in question.
- 5.113 The person responsible for the register must ensure that it contains, either in

real time or updated overnight (from business day to business day), information on:

- (a) the name of the stabilising manager appointed as such;
- (b) the general parameters, including the initial stabilising price, laid down by the stabilising manager and the date and time of their communication, variation or revocation;
- (c) each transaction effected in the course of stabilising action including:
  - (i) the type of security;
  - (ii) the unit price;
  - (iii) the size;
  - (iv) the date and time; and
  - (v) details of the counter-party, if known;
- (d) details of the original allotment of securities (allottee and amount allotted); and
- (e) details so far as are known to the person responsible for the register of any deal which counts as a deal at a price above the then stabilising price.

5.114 The register must be kept in South Africa, or else be capable of being brought to or reconstituted inside South Africa within 48 hours of a request for access from the JSE or Financial Services Board, and, it must be retained for a period of at least twelve months from the date of the end of the stabilising period.

5.115 Disclosures by stabilising managers to issuers must comply with:

- (a) subject to the issuer agreeing to keep such information confidential, the stabilising manager shall permit the issuer of the securities to inspect the register kept under this section during the stabilising period, and for three months thereafter, on any business day;
- (b) the stabilising manager must inform the issuer that the information specified in paragraph 5.113(c)(i) to (iv) will be available to be shown to the issuer, if so requested, within 14 calendar days after the close of the stabilising period;
- (c) In addition to the above requirements, it is recommended that the issuer obtains an undertaking from the stabilising manager to disclose the following:
  - (i) the date, time, number and value of all transactions effected with a view to supporting the market price of the relevant securities;
  - (ii) the number and value of all transactions entered into by way of permitted ancillary action under paragraph 5.103;
  - (iii) the profit or loss accruing to the stabilising manager, as a result of any transactions effected in terms of paragraph 5.115(c)(i) and (ii); and
  - (iv) the remuneration earned by the stabilising manager by way of commission or otherwise in relation to any transactions effected in terms of paragraph 5.115(c)(i) and (ii);
- (d) the recommendation in paragraph 5.115(e) applies, where:
  - (i) a stabilising manager, or its associate, has an option or other right to purchase relevant securities from the issuer; and
  - (ii) that option or right may be exercised or relied on after the date of the offer and during or after the remainder of the stabilising

period, and applies whether or not the exercise or reliance counts as permitted ancillary action under paragraph 5.103;

- (e) upon exercise of the right to acquire securities during the stabilising period, it is recommended that the issuer should require the stabilising manager to inform it, in writing, of the reason for the exercise of the right at that time, specifying in particular, to what proportionate extent the exercise is attributable to:
  - (i) a need to deliver relevant securities to persons unconnected with the stabilising manager;
  - (ii) an opportunity for profit taking for the benefit of the stabilising manager or its associate in the course of the stabilising period;
  - (iii) a need to make good any failures to deliver by any other counterparty; and
  - (iv) any other circumstance, if so what; and if the exercise has led to any profit for the stabilising manager or its associate, whether or not paragraph 5.115(e)(ii) is specified, the stabilising manager must also specify the amount of profit taken by it or its associate as a result of the exercise; and
- (f) the stabilising manager is not under any obligation to disclose the names of the individual clients to the issuer.

#### **Criteria for stabilising managers**

- 5.116 The issuer must appoint a stabilising manager to take the responsibility for stabilisation.
- 5.117 The overall responsibility for stabilisation must be allocated to one entity (the stabilising manager), for:
  - (a) each issue (an issue with two or more tranches shall be treated as one issue); and
  - (b) in each jurisdiction.
- 5.118 If the stabilisation is in South Africa, the stabilising manager must satisfy the following criteria, or appoint an agent that satisfies the following criteria, to act on its behalf in South Africa:
  - (a) it must be a member of the JSE, Life Offices' Association of South Africa, Council of South African Banks, Merchant Bankers' Association, Banking Association of South Africa or any other person in South Africa or elsewhere (whether natural or juristic), in good standing and acceptable to the JSE;
  - (b) it must prove to the JSE that it has the relevant expertise to undertake stabilisation action or has access to such expertise;
  - (c) it must disclose to the JSE any material dealings (including those of a corporate finance nature), other than in the ordinary course of business, by it or its associates in the securities in respect of which stabilisation is to be undertaken during the six-week period prior to the date of formal application for listing of the securities; and
  - (d) it must satisfy the JSE that it has net tangible assets of not less than R2 billion in jurisdictions acceptable to the JSE and undertake that, throughout the stabilisation period, it will maintain at least R2 billion of its assets in the above-mentioned jurisdictions.

#### **Documents to be submitted to the JSE**

- 5.119 The following information in respect of the stabilising manager must be submitted to the JSE by the sponsor:

- (a) its full name;
- (b) its date and place of incorporation;
- (c) the full names and addresses of its directors;
- (d) its audited consolidated annual financial statements for the last two completed financial years. Where more than nine months have elapsed since the end of the financial year to which the last audited annual financial statements relate, an interim report, covering at least the first six months following the end of that financial year, must be included in the documentation. If such an interim report is unaudited, that fact must be stated;
- (e) a description of any material changes in the financial or trading position of the issuer since the end of the last financial period for which annual financial statements have been published, or an appropriate negative statement;
- (f) information on any legal or arbitration proceedings (including any such proceedings that are pending or threatened of which the issuer is aware) that may have, or have had, a material effect on its financial position, or an appropriate negative statement; and
- (g) any other details that the JSE may deem appropriate.

5.120 The stabilising manager is required to have a scrip lending agreement with a CSDP, a copy of which must be submitted to the JSE for approval.

#### **Documents to be published**

5.121 A SENS announcement in accordance with paragraph 5.110 and 5.111 must be published and a further announcement that the greenshoe has been exercised and the extent to which it has been exercised.

#### **Stabilisation jurisdiction requirements**

5.122 Where the issuer's primary listing is in another country/ies, there must be compliance with the relevant requirements of the overseas country/ies in which stabilisation transactions are effected or which may otherwise be affected by stabilisation activity, and compliance with such requirements will be deemed to be compliance with the requirements of the JSE.

#### **Odd lot offers**

5.123 An "odd-lot" offer is an offer where the listed company intends reducing administrative costs resulting from a large number of "odd-lot" holders. The JSE interprets an "odd-lot" as a total holding of:

- (a) less than 100 securities; or
- (b) 100 or more securities, provided that it can be illustrated to the JSE that the cost associated with a holder disposing of such number of shares is equal to or exceeds the total value of such number of securities.

5.124 When a listed company proposes to make an odd lot offer, the following criteria will apply:

- (a) in all instances a two-way election must be provided for in terms of which securities holders may:
  - (i) elect to retain their odd-lot holding; or
  - (ii) elect to sell their odd-lot holding;
- (b) this requirement has been repealed;
- (c) this requirement has been repealed; and

- (d) expropriation resulting from 5.124(a)(ii), being the default action applicable if securities holders do not make any election in terms of 5.124, will only be allowed where the issuer's MOI is amended to make provision for expropriation of odd-lots and where the specific odd-lot offer has been approved by shareholders in general meeting.

#### **Documents to be submitted to the JSE**

- 5.125 The documents detailed in paragraph 16.35 must be submitted to the JSE.

#### **Documents to be published**

- 5.126 The document that requires publication regarding odd lot offers is set out in paragraph 11.53.

#### **Shares issued to sponsors and advisers in lieu of fees**

- 5.127 For existing companies, where shares are issued to the sponsor or to the adviser(s) of the issuer in lieu of fees, such shares must be issued in compliance with paragraph 5.50. For new listings, such shares of the issuer must be held in trust by the issuer's auditors or attorneys and may not be disposed of within 2 years from the date of listing.

#### **Restrictive funding arrangements**

- 5.128 Any restrictive funding arrangements undertaken by an issuer and/or any of its subsidiaries must comply with paragraph 11.60.

## Section 6

# Pre-Listing Statements

### Scope of section

This section sets out the requirements relating to pre-listing statements and prospectuses that are issued in lieu of pre-listing statements. When a new applicant or issuer issues a prospectus, the presumption is made that, apart from compliance with the Act, such prospectus will also comply with and contain all necessary disclosures as if it were a pre-listing statement subject to compliance with the Listings Requirements. For the purposes of this section any reference to a pre-listing statement includes reference to a prospectus.

The main headings of this section are:

- 6.1 Requirement for pre-listing statements
- 6.2 Responsibility
- 6.6 Form and content
- 6.11 Formal approval
- 6.13 Supplementary pre-listing statements
- 6.15 Omission of information
- 6.18 Omission of material contracts from disclosure
- 6.19 Issues not requiring pre-listing statements
- 6.21 Acquisition issues
- 6.23 Publication/circulation of pre-listing statements
- 6.24 Revised take-over offers

Additional and alternative requirements relating to pre-listing statements are set out in Section 12 (Mineral Companies), Section 13 (Property Companies), Section 14 (Pyramid Companies), Section 15 (Investment Entities) and Section 18 (Dual Listings and Listings by External Companies), respectively.

### Requirement for pre-listing statements

- 6.1 When a new applicant or an issuer applies for a listing of securities that requires the publication of a pre-listing statement, such pre-listing statement must contain the particulars referred to in this section.

### Responsibility

- 6.2 The pre-listing statement must include a statement, in the form set out in paragraph 7.B.22 (responsibility statement), modified as required pursuant to paragraph 6.3 or 6.4 or in such other form as may be required by the JSE.
- 6.3 If the pre-listing statement relates to securities issued in connection with a recommended take-over of an issuer (offeree) and the directors of the issuer (offeree) accept responsibility for the information given on that company (offeree) in the pre-listing statement, then the directors of the applicant (offeror) may accept responsibility only for the rest of the information in the pre-listing statement (refer to paragraph 7.B.22) and the responsibility statement must be adapted accordingly.
- 6.4 The JSE may require responsibility to be extended to additional persons that have made specific statements in, or have made contributions to, the pre-listing statement; in which case the responsibility statement must be amended accordingly.
- 6.5 The pre-listing statement must be signed by every director of the applicant or issuer, 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 pre-listing statement has been extended to or accepted by any other person in accordance with paragraph 6.3 or 6.4, such other person, or his agent or attorney, shall also sign the pre-listing statement and it shall be clearly stated for which part or parts of the pre-

listing statement each signatory bears responsibility.

## Form and content

6.6 Pre-listing statements must contain:

- (a) the information set out in Section 7 according to the nature and circumstances of the applicant and the type of securities concerned as specified in this section; and
- (b) such additional information as the JSE may consider investors reasonably require for the purpose of making an informed assessment of the prospects and status of the applicant. If the JSE requires additional disclosure, it will inform the applicant of such additional information required at the earliest possible date.

6.7 Pre-listing statements must provide factual information in words and figures, in as easily analysable and comprehensible a form as possible.

6.8 There is no prescribed format for pre-listing statements, except that:

- (a) the JSE may require that prominence be given in the pre-listing statement to important information in such manner as it considers appropriate;
- (b) in the case of pre-listing statements to be published by a new applicant, the following information must appear on the cover page, together with the names of, where applicable, the issuer, sponsor, investment/merchant bank, auditors, financial advisers, attorneys and any other specialist adviser:

Paragraph	Nature of statement
7.A.4 or 5	Share capital of the company
7.B.22	Responsibility
7.C.2 or 3	Particulars of the issue
7.C.9	The Commission

- (c) pre-listing statements must not contain pictures, charts, graphs or other illustrations unless the JSE is satisfied that this is the best and/or only way in which the information can be clearly presented or is necessary in the interests of being succinct or comprehensible and does not present the information unfairly.

6.9 New applicants and issuers issuing a pre-listing statement are required to provide all the information contained in paragraphs 7.A to 7.H in such document and in respect thereof:

- (a) where the information required by a particular paragraph is inappropriate to the applicant's sphere of activity or legal form, the information must be appropriately adapted so that equivalent information is given;
- (b) negative statements are required in all instances except where the JSE agrees otherwise;
- (c) unless specified, all references to disclosure are at the date the pre-listing statement is issued or as near to such date as practicable;
- (d) where another company is to become part of an applicant's group, that other company and its subsidiaries must be treated as part of the applicant's group for the purpose of the information required by this paragraph;
- (e) the JSE will not require an indebtedness statement (refer to paragraphs 7.A.12 to 7.A.19) to be included in a pre-listing statement published in connection with an issue of securities where the issuer's business is



entirely or mainly that of banking, insurance or the provision of similar financial services, provided that the JSE is satisfied that:

- (i) the inclusion of such a statement would not provide significant information for investors; and
- (ii) the applicant's solvency and capital adequacy are suitably regulated by another regulatory body.

### **Shareholder approval**

- 6.10 If the issue of securities in respect of which the pre-listing statement is to be issued is made conditional upon shareholder approval, the following statement must appear on the first page of the pre-listing statement:

"This pre-listing statement has been prepared on the assumption that the ordinary and special resolutions proposed in the Notice of General Meeting forming part of the circular to which this pre-listing statement is attached will be passed at the General Meeting of shareholders to be held on . . . and registered (if applicable)."

### **Formal approval**

- 6.11 Pre-listing statements must be formally approved by the JSE before publication. Such approval will only be given if the JSE considers that the information in the pre-listing statement is complete.
- 6.12 Pre-listing statements submitted to the JSE for formal approval must be in the form of a typed document, but the JSE may permit neat manuscript information relating to the number of securities, the offer/issue price and any figures derived therefrom if such information is unable to be finalised and included in the pre-listing statement in typed print due to time pressures.

### **Supplementary pre-listing statements**

- 6.13 The JSE must be advised immediately and supplementary pre-listing statements published if, at any time after pre-listing statements have been published and before dealings in the relevant securities commences, the applicant becomes aware that:
- (a) there has been a material change affecting any matter contained in the pre-listing statement; or
  - (b) a material new matter(s) has/have arisen, the inclusion of information on which new matter would have been required to be disclosed in the original pre-listing statement had such information been known at that time.
- 6.14 Supplementary pre-listing statements must:
- (a) provide full details of the change or new matter;
  - (b) contain the responsibility statement required by paragraph 6.2;
  - (c) contain a statement that, save as disclosed, there has been no material change and no material new matter that has arisen since publication of the previous pre-listing statement.

### **Omission of information**

- 6.15 If any information required by paragraph 6.6(a) is not applicable and no equivalent information is available, it need not be included in the pre-listing statement provided that the JSE is informed in writing of same and approves such omission.
- 6.16 The JSE may authorise the omission of information that is applicable if it considers that:

- (a) the information is of minor importance and will not influence any assessment of the financial position, changes in equity, results of operations or cash flows; or
- (b) disclosure would be contrary to the public interest and omission thereof is not likely to mislead investors with regard to any important/material facts and/or circumstances; or
- (c) disclosure would be seriously detrimental to the applicant or would constitute an invasion of the applicant's rights to privacy and omission is not likely to mislead investors with regard to any important/material facts and/or circumstances.

6.17 Requests to the JSE to authorise any omission of information must:

- (a) be in writing from the applicant or sponsor;
- (b) identify the information concerned and the reasons for the omission; and
- (c) state why, in the opinion of the applicant, one or more of the grounds in paragraph 6.16 apply.

#### **Omission of material contracts from disclosure**

6.18 The JSE, in its sole discretion, may allow all or part of a material contract to be withheld from public inspection (refer to paragraph 7.F.1) in the event that it receives such request from an applicant, which request must:

- (a) be in writing from the applicant or sponsor;
- (b) state why, in the opinion of the applicant, one or more of the grounds in paragraph 6.16 apply;
- (c) enclose a copy of the contract in question or, if the contract is not reduced to writing, a memorandum giving full particulars of its terms; and
- (d) include confirmation by the applicant that the contract is a material contract not in the ordinary course of business.

#### **Issues not requiring pre-listing statements**

6.19 Pre-listing statements are not required for issues of securities by applicants whose securities are already listed, and which fall into the following categories:

- (a) securities issued for cash or as a result of the conversion of convertible securities;
- (b) securities issued as a result of the exercise of rights under options;
- (c) securities issued in place of securities already listed;
- (d) securities issued/allotted to employees, if securities of the same class are already listed;
- (e) securities issued relating to the extension of a business contemplated by, and previously described in, a pre-listing statement;
- (f) securities issued as a result of a capitalisation/bonus issue;
- (g) securities issued as a result of a rights offer; or
- (h) an issue of securities that, together with any securities of the same class issued in the previous three months, would increase the securities issued by less than 50% (for this purpose a series of issues in connection with a single transaction, or series of transactions that is

regarded by the JSE as a single transaction, will be aggregated and deemed to be a single issue for purposes of measurement against the 50% level).

- 6.20 When a pre-listing statement is not required in terms of paragraph 6.19, further information, which the JSE considers investors may reasonably require for the purposes of making an informed assessment of the prospects and status of the applicant, may be required to be announced and, in certain instances, a circular may also be required to be sent to shareholders (refer to Sections 9, 10 and 11). In regard hereto, applicants must consult with the JSE at an early stage to determine the JSE's requirements, if any.

### **Acquisition issues**

- 6.21 In terms of an acquisition issue (where the consideration for a purchase of assets, regulated by Section 9, or for an offer to shareholders, regulated by the Panel, consists of securities for which a listing will be sought) a pre-listing statement may be required as described in paragraph 6.1 and 9.22. When a pre-listing statement has already been published and the consideration for the acquisition or offer is revised, resulting in the issue of a greater number of shares for which application for listing will be made, a supplementary pre-listing statement may be required (refer to paragraphs 6.13 and 6.14).

### **Contents of pre-listing statements**

- 6.22 A pre-listing statement required in terms of paragraph 6.21 must comply with the relevant requirements of this section, subject to the following:
- (a) references in Section 7 to the applicant's group must also include the offeree company and its subsidiaries;
  - (b) the information regarding major shareholders (refer to paragraph 7.A.27) and directors' interests in securities (refer to paragraph 7.B.20) must be given in relation to the applicant's share capital both as existing and the share capital as enlarged by the securities for which listing is sought; and
  - (c) if the transaction is an offer to shareholders:
    - (i) and is recommended by the board of directors of the offeree company at the time of the publication of the offer document, the applicant must include a working capital adequacy statement in respect of the proposed enlarged group (refer to paragraph 7.E.7) and details of material loans (refer to paragraph 7.A.15) on the basis that the offer has been completed 100% successfully ("the combined basis");
    - (ii) which has not been recommended by the board of directors of the offeree company at the time of publication of the offer document, the applicant must include a working capital adequacy statement (refer to paragraph 7.E.7) and details of material loans (refer to paragraph 7.A.15) in respect of its own group only. The JSE will allow the statement on the combined basis to be provided in a later announcement, circular or supplementary pre-listing statement, within 28 days after the offer is declared unconditional.

### **Publication/circulation of pre-listing statements**

- 6.23 Pre-listing statements or supplementary pre-listing statements must be published, either in full or in an abridged form in compliance with Section 11. In either case, the full pre-listing statement must be distributed to all shareholders in accordance with paragraphs 3.49 and 3.50. Where pre-listing statements are revised or supplementary pre-listing statements are prepared, they will normally be required to be published and circulated to shareholders at the time of despatch of the revised offer document. The JSE may, in

properly justified cases, be prepared to allow pre-listing statements to be published and circulated subsequent to the despatch of revised offer documents but before listing is granted.

#### **Revised take-over offers**

- 6.24 When a pre-listing statement has been published and circulated in connection with an offer that involves the exchange of securities for securities of another company, and the offer consideration is revised to include a new class of security for which an application for listing is to be made, it will be unnecessary to repeat the information contained in the original pre-listing statement, but any additional information applicable to the issue of the new class of securities must be contained in a supplementary pre-listing statement.

## Section 7

### Listing Particulars

#### Scope of section

This section sets out items of information that may be required to be included in pre-listing statements and circulars relating to rights offers, capitalisation issues and Category 1 transactions.

The requirements vary according to the nature and circumstances of the applicant, as set out in:

Section 6	Pre-listing statements
Appendix to Section 9	Transactions
Section 11	Circulars, pre-listing statements/prospectuses and announcements
Section 12	Mineral entities
Section 13	Property companies
Section 15	Investment Entities
Section 18	Dual listings and listings by external companies

Where the disclosure of information required in terms of this section cannot be obtained or is considered to be harmful to the applicant, application may be made to the JSE for non-disclosure or reduced disclosure. The JSE's decision will be final.

The information in this section is set out under the following paragraph headings:

- 7.A The applicant and its capital
- 7.B Directors, managers and advisers
- 7.C Securities for which application is being made
- 7.D Group activities
- 7.E Financial information
- 7.F General information
- 7.G Documents and consents to be available for inspection
- 7.H Vendors

#### 7.A The applicant and its capital

The following paragraphs detail the disclosure requirements relating to the applicant and its capital.

##### Name, address and incorporation

- 7.A.1 The name, address of the registered office and of the transfer office, the date of incorporation of the applicant and the place of incorporation or, if the applicant is an external company, the country in which it is incorporated and the date of registration as an external company in the Republic of South Africa.
- 7.A.2 If the applicant is a subsidiary, the name and address of the registered office of its holding company or of any body corporate that, had it been registered under the Act, would have been its holding company.
- 7.A.3 If the applicant has changed its name within the last year the old name must be printed in bold type under the existing name on the cover and first page.

##### Share capital of the company

- 7.A.4 If the applicant's share capital consists of shares of par value, the following information must be disclosed:
  - (a) the authorised and issued, or agreed to be issued, share capital, detailing:

- (i) the different classes of shares;
- (ii) the number of shares in each class;
- (iii) the nominal value of each share in each class;
- (iv) the number of treasury shares held;
- (v) the total value of each class; and

(b) the share premium account.

7.A.5 If the applicant's share capital consists of shares of no par value, the following information must be disclosed regarding the authorised and issued (stated capital), or agreed to be issued stated capital, detailing:

- (a) the different classes of shares;
- (b) the number of shares in each class;
- (c) the number of treasury shares held; and
- (d) the total value of the stated capital account for each class.

7.A.6 A description of the respective:

- (a) preferential conversion and/or exchange rights of any securities;
- (b) voting rights of securities; and
- (c) rights to dividends, profits or capital or any other rights of each class, including redemption rights and rights on liquidation or distribution of capital assets.

7.A.7 Information regarding the consents necessary for the variation of rights attaching to securities.

7.A.8 A summary of any issues or offers of securities of the applicant and/or its major subsidiaries, and by any subsidiary where such issues or offers were material to the applicant during the preceding three years, including:

- (a) the prices and terms at which such securities were issued or offered;
- (b) by whom any offers were made;
- (c) the number of securities allotted in pursuance of any issues or offers;
- (d) whether the securities were issued to all securities holders in proportion to their holdings or, if not, to whom they were issued, the reasons why the securities were so issued and the basis of allotment of the securities;
- (e) the dates of the issues or offers;
- (f) the reasons for any premium or discount on the issue or offer, how any premium or discount was dealt with and, where some securities were issued or offered at par and others at varying premiums or discounts, the reasons for the differential;
- (g) the value of the asset, if any, acquired or to be acquired out of the proceeds of the issue or offer; and
- (h) the details of any share repurchases.

7.A.9 A summary of any consolidations or sub-divisions of securities during the preceding three years.

7.A.10 A statement advising who controls the issue or disposal of the authorised but unissued securities, i.e. the directors or shareholders in general meeting.

- 7.A.11 A statement as to what other classes of securities are listed and on which stock exchange(s).

### **Borrowings**

- 7.A.12 The borrowing powers of the applicant, its major subsidiaries and any subsidiary where such borrowing powers are material to the applicant exercisable by the directors and the manner in which such borrowing powers may be varied.
- 7.A.13 A description of the circumstances, if applicable, in which the borrowing powers have been exceeded during the previous three years. Disclosure of any exchange control or other restrictions on the borrowing powers of the applicant or any of its major subsidiaries.
- 7.A.14 The number and value of debentures created in terms of a trust deed and the number and value to be issued or agreed to be issued.
- 7.A.15 Details of material loans, including issued debentures, made to the applicant and/or to any of its subsidiaries, stating:
- (a) how each loan arose, particularly whether it arose from the acquisition of assets by the issuer or any of its subsidiaries;
  - (b) whether such loans are secured or unsecured;
  - (c) the names of the lenders and/or debenture holders;
  - (d) the amount, terms and conditions of repayment or renewal;
  - (e) the rates of interest on each loan;
  - (f) details of the security provided, if any;
  - (g) details of any conversion or redemption rights; and
  - (h) where the applicant or any of its subsidiaries has debts that are repayable within 12 months, state how the payments are to be financed.
- 7.A.16 Particulars relating to debentures or debenture stock ("debentures"), issued by way of conversion or replacement of debentures previously issued, stating all material differences between the security for the old debentures and the security for the new debentures or that the security for the new debentures is identical to the security for the old debentures.
- 7.A.17 Details of all material commitments, lease payments and contingent liabilities stating:
- (a) the dates on which the obligations arose;
  - (b) to whom obligations are owed, particularly how they arose whether by the issuer or any of its subsidiaries;
  - (c) the interest and payment terms;
  - (d) if the interest payments are in arrears, the last date on which payment was made and the extent of the arrears;
  - (e) the period of the obligations;
  - (f) the nature of any/all security held for any/all of the obligations;
  - (g) the current fair value of such security and the method of valuation;
  - (h) if the obligation is unsecured, the reasons therefore; and
  - (i) if any obligation is owed to another company, the names and addresses of the directors of such company.

7.A.18 Disclose how the borrowings required to be disclosed by paragraphs 7.A.12 to 7.A.17 arose, stating whether they arose from the purchase of assets by the applicant or any of its subsidiaries.

7.A.19 If no loan capital is outstanding, this fact must be stated.

#### **Loans receivable**

7.A.20 Details of material loans made by the applicant, its major subsidiaries and any subsidiary where such loans are material to the applicant, stating:

- (a) the dates on which the loans were made;
- (b) to whom each loan was made, particularly whether it arose from the disposal of assets by the issuer or any of its subsidiaries;
- (c) the interest and repayment terms of each loan;
- (d) if the interest and/or capital redemption payments are in arrears, the last date on which payment was made and the extent of the arrears;
- (e) the periods of the loans;
- (f) the nature of any/all security held for any/all loans;
- (g) the current fair value of such security and the method of valuation;
- (h) if a loan is unsecured, the reasons therefore; and
- (i) if any loan was made to another company, the names and addresses of the directors of such company.

7.A.21 Details (as described in paragraph 7.A.20) of loans made or security furnished by the applicant or by any of its subsidiaries to or for the benefit of any director or manager or any associate of any director or manager of the applicant.

7.A.22 Disclose how and why each loan receivable was made.

#### **Options or preferential rights in respect of securities**

7.A.23 Full disclosure of the substance of any contract or arrangement or proposed contract or arrangement, whereby any option or preferential right of any kind was or is proposed to be given to any person(s) to subscribe for any securities of the applicant or any securities of its major subsidiaries, or any subsidiary where such subscriptions are material to the applicant, including:

- (a) the number and description of securities subject to such option or right;
- (b) the exercise period of such option or right;
- (c) the exercise date of such option or right and a statement as to whether such option or right is American or European in nature;
- (d) the exercise price to be paid for securities subscribed for in terms of such option or right;
- (e) the option premium or consideration given or to be given for receipt of such option or right;
- (f) the names and addresses of the persons to whom such option or right was or is to be given, excluding any options or rights given to participants of a bona fide share incentive or option scheme;
- (g) if such option or right was given to existing shareholders, material particulars of such grant; and
- (h) any other significant facts or circumstances concerning the granting of



such option or right.

- 7.A.24 Subscribing for securities shall, for the purposes of paragraph 7.A.23, include acquiring them from a person to whom they were allotted or were agreed to be allotted, with a view to his offering them for sale.

### **Controlling shareholder(s)**

- 7.A.25 The name(s) of the controlling shareholder(s) so far as it is/they are known to the directors of the applicant, or an appropriate negative statement.
- 7.A.26 Details of any change in controlling shareholder(s) as a result of the issue.

### **Major shareholders**

- 7.A.27 Insofar as is known to the applicant, the name of any shareholder, other than a director, that, directly or indirectly, is beneficially interested in 5% or more of a class of securities issued by the applicant, together with the amount of each such shareholder's interest or, if there are no such shareholders, an appropriate negative statement.

### **Statement on public shareholders**

- 7.A.28 In the case of a listing through means of an introduction, a positive statement by the board of directors of the applicant issuer confirming that the level of public shareholders pursuant to paragraph 4.25 have been achieved.

## **7.B Directors, managers and advisers**

The following paragraphs detail the disclosure requirements relating to directors, managers and advisers:

### **Directors and management**

- 7.B.1 The full name and, if relevant, any former name, business address and function in the group of each of the following persons and an indication of the principal activities performed by them, including any activities performed outside the group where these are significant with respect to the group:
- (a) directors of the issuer and its major subsidiaries;
  - (b) partners with unlimited liability, in the case of a limited partnership with share capital;
  - (c) founders, if the issuer has been established for fewer than five years; and
  - (d) in the case of the applicant and its major subsidiaries, any manager who is relevant to establishing that the requirements of paragraph 4.8 (directors) have been met. Typically, this will include any members of management forming part of the applicant's, or applicant's major subsidiaries', executive and/or management committees responsible for the day to day running of the applicant group's business.
- 7.B.2 In the case of each person described in paragraph 7.B.1(a) and (d), details of that person's relevant management expertise and experience (see paragraph 4.8) and the following information:
- (a) full names;
  - (b) occupation and/or function, including whether in an executive or non executive capacity, for example; non executive chairman, executive chairman, chief executive officer, managing director, financial director, other relevant executive and non executive director functions/status

and the executive functions of all managers specified;

- (c) business address;
- (d) nationality;
- (e) the names of all companies and partnerships of which such person has been a director or partner at any time in the previous five years, indicating whether or not the individual is still a director or partner. It is not necessary to list all the subsidiaries of a company of which the person is also director;
- (f) details of any bankruptcies, insolvencies or individual voluntary compromise arrangements of such person;
- (g) details of any business rescue plans and/or resolution proposed by any entity to commence business rescue proceedings, application having been made for any entity to begin business rescue proceedings, notices having been delivered in terms of Section 129(7) of the Act, receiverships, compulsory liquidations, creditors' voluntary liquidations, administrations, company voluntary arrangements or any compromise or arrangement with creditors generally or any class of creditors of any company; where such person is or was a director, with an executive function within such company at the time of, or within the 12 months preceding, any such event(s);
- (h) details of any compulsory liquidations, administrations or partnership voluntary arrangements of any partnerships where such person is or was a partner at the time of or within the 12 months preceding such event(s);
- (i) details of receiverships of any asset(s) of such person or of a partnership of which the person is or was a partner at the time of, or within the 12 months preceding, such event;
- (j) details of any public criticisms of such person by statutory or regulatory authorities, including recognised professional bodies, and whether such person has ever been disqualified by a court from acting as a director of a company or from acting in the management or conduct of the affairs of any company;
- (k) details of any offence involving dishonesty committed by such person;
- (l) details regarding such person's removal from an office of trust, on the grounds of misconduct and involving dishonesty; and
- (m) details of any court order declaring such person delinquent or placing him under probation in terms of Section 162 of the Act and/or Section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984) or disqualifying him to act as a director in terms of Section 219 of the Companies Act, 1973 (Act No. 61 of 1973).

7.B.3 Details of the information contained in the director's declaration as set out in Schedule 13 of the Listings Requirements.

7.B.4 In the case of a foreign applicant, information, similar to that described in paragraph 7.B.2, relative to the local (South African) executive management committee, if any. Where the JSE considers that the parent company is not adequately represented on the directorate of its South African or foreign subsidiaries, an appropriate explanation is required.

7.B.5 The term of office for which any director has been or is to be appointed, the manner in and terms on which any proposed director will be appointed and particulars of any right held by any person (usually a contractual right given to a shareholder, provider of capital or other person/entity in terms of an agreement between such person/entity and the company) relating to the appointment of any particular director or number of directors.

- 7.B.6 The provisions, or a sufficient summary of the provisions, of the MOI or other constitutional documents of the applicant and each of its major subsidiaries with regard to:
- (a) qualification of directors;
  - (b) remuneration of directors; and
  - (c) any power enabling the directors to vote remuneration to themselves or any member of the board.
- 7.B.7 An analysis in aggregate and by director or proposed director, of remuneration and benefits paid or accrued as payable during the last financial period by the company, or group of which the company is a member, directly or indirectly, or proposed to be paid by the company, in their capacity as directors, or in any other capacity, whether determined by the MOI or not, distinguishing separately between executive and non-executive directors, of the following:
- (a) fees for services as a director;
  - (b) management, consulting, technical or other fees paid for such services rendered, directly or indirectly, including payments to management companies, a part of which is then paid to a director of the company;
  - (c) basic salary;
  - (d) bonuses and performance-related payments;
  - (e) sums paid by way of expense allowance;
  - (f) any other material benefits received;
  - (g) contributions paid under any pension scheme;
  - (h) any commission, gain or profit-sharing arrangements; and
  - (i) in respect of share options or any other right given which has had the same or a similar effect in respect of providing a right to subscribe for shares ("share options"):
    - (i) the opening balance of share options, including the number of share options at each different strike price;
    - (ii) the number of share options awarded and their strike prices;
    - (iii) the strike dates of differing lots of options awarded;
    - (iv) the number of share options exercised and at what prices;
    - (v) the closing balance of share options, including the number of share options at each different strike price;
  - (i) to (v) above may be presented in tabular form;
  - (j) any shares issued and allotted in terms of a share purchase/option scheme for employees (or other scheme/structure effected outside of the issuer which achieves substantially the same objectives as a share purchase/option scheme), usually held as a pledge against an outstanding loan to an employee in a share purchase scheme trust, which have not been fully paid for, including the number so issued and allotted, the price of issue and allotment, the release periods applicable to such shares and any other relevant information;
  - (k) without derogating from the generality of 7.B.7(a) to (j) above, the directors remuneration and benefits disclosed in accordance with 7.B.7(a) to (j) above must include disclosure of all remuneration and benefits received or receivable from the following entities:

- (i) the issuer' holding company;
- (ii) the issuer's subsidiaries and fellow subsidiaries;
- (iii) associates of 7.B.7(k)(i) and (ii) above;
- (iv) joint ventures of the issuer or of 7.B.7(k)(i) to (iii) above; and
- (v) entities that provide management or advisory services to the company or any of 7.B.7(k)(i) to (iv) above.

7.B.8 Fees paid or accrued as payable to a third party in lieu of directors' fees are to be disclosed in a similar manner as that detailed in paragraph 7.B.7.

7.B.9 If the remuneration receivable by any of the directors of the applicant will be varied in consequence of the/any transaction, full particulars of the aggregate variation in the remuneration of the directors shall be stated; if there will be no variation, a statement must be made to that effect.

7.B.10 If the business of the applicant or any of its subsidiaries, or any part thereof, is managed, or is proposed to be managed, by a third party under a contract or arrangement; the name and address, or the address of its registered office, if a company, of such third party and a description of the business so managed, or to be managed, and the consideration paid in terms of the contract or arrangement and any other pertinent details relevant to such contract or arrangement.

7.B.11 A summary of the provisions of the MOI of the issuer with regard to:

- (a) borrowing powers exercisable by the directors and how such borrowing powers can be varied; and
- (b) retirement or non-retirement of directors under an age limit.

#### **Company Secretary**

7.B.12 The full name, street and postal address and professional qualifications, if any, of the company secretary of the applicant.

#### **Auditor, attorney, banker, sponsor, trustee, underwriter and expert**

7.B.13 The names and street and postal addresses of the auditor, attorney, banker, and sponsor to the applicant and, if applicable, the trustee, underwriter, adviser and any expert referred to in the pre-listing statement and any holding of securities in, options on securities in, or agreed to be acquired in the company, by such persons.

#### **Amounts paid or payable to promoter**

7.B.14 Any amount paid, or accrued as payable, within the preceding three years, or proposed to be paid to any promoter, disclosing his name and address or to any partnership, syndicate or other association of which he is or was a member and the consideration for such payment and any other benefit given to such promoter, partnership, syndicate or other association within the said period, or proposed to be given, and the consideration for the giving of such benefit.

#### **Commissions paid or payable in respect of underwriting**

7.B.15 The following must be disclosed in relation to commissions paid or payable in respect of underwriting:

- (a) the amount, if any, or the nature and extent of any consideration, paid, or accrued as payable, within the preceding three years, as commission to any person, including commission so paid or payable to any sub-underwriter that is the holding company or a promoter or director or

officer of the applicant, for subscribing or agreeing to subscribe, or procuring, or agreeing to procure, subscriptions for any securities of the applicant;

- (b) the name, occupation and address of each such person and, if such person is a company, the names of the directors of such company and the nature and extent of any beneficial interest, direct or indirect, in such company of any promoter, director or officer of the applicant in respect of which the pre-listing statement is issued; and
- (c) particulars of the amounts underwritten or sub-underwritten by each such person and the rate of the commission payable for each such underwriting or sub-underwriting contract with such person.

7.B.16 Particulars of any commissions, discounts, brokerages or other special terms granted during the three years preceding the date of the pre-listing statement in connection with the issue or sale of any securities, stock or debentures in the capital of the applicant, where this has not been disclosed in any audited annual financial statements.

7.B.17 The following disclosure is required with respect to preliminary expenses and issue expenses:

- (a) the total amount, or estimated total amount, of preliminary expenses incurred by the applicant within the three years preceding the date of the pre-listing statement and separate disclosure of who the individual persons are/were and the individual amounts paid or payable to each such person of such total preliminary expenses; and
- (b) the total amount, or estimated total amount, of the expenses of the issue, and separate disclosure of who the individual persons paid or payable are, including separate disclosure of each sponsor, financial adviser, corporate adviser, attorney, legal adviser, commercial banker, investment banker, accountant, auditor, underwriter, sub underwriter and any other adviser involved, where there are two or more of each such advisers per advisory category, and the individual amounts paid or payable to each such individual person/adviser by the applicant.

### **Interest of directors and promoter**

7.B.18 Full particulars of the nature and extent of any material beneficial interest, direct or indirect, of every director or promoter, in the promotion of the applicant and in any property referred to in paragraph 7.D.9 acquired or proposed to be acquired by the applicant out of the proceeds of the issue or during the three years preceding the date of the listing statement and, where the interest of such director or promoter consists of being a member in a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association and the nature and extent of such director's or promoter's interest in the partnership, company, syndicate or other association.

7.B.19 A statement of all sums paid, or agreed to be paid, within the three years preceding the date of the pre-listing statement, to any director or to any company in which he is beneficially interested, directly or indirectly, or of which he is a director ("the associate company") or to any partnership, syndicate or other association of which he is a member ("the associate entity"), in cash, securities or otherwise, by any person, either to induce him to become, or to qualify him as a director or otherwise for services rendered by him or by the associate company or the associate entity in connection with the promotion or formation of the applicant.

### **Directors' interests in securities**

7.B.20 A statement showing the direct and indirect beneficial interests of the directors' (and his associates), including a director who has resigned during the last 18 months, holdings in the share capital of the applicant. The

statement should include, by way of a note, any change in those interests occurring between the end of the preceding financial year and the date of the pre-listing statement or, if there has been no such change, disclosure of that fact.

### **Directors' interests in transactions**

- 7.B.21 All relevant particulars regarding the nature and extent of any material beneficial interests, whether direct or indirect, of directors of the group, including a director who has resigned during the last 18 months, in transactions that were effected by the applicant:
- (a) during the current or immediately preceding financial year; or
  - (b) during an earlier financial year and remain in any respect outstanding or unperformed; or
  - (c) an appropriate negative statement.

### **Responsibility statement**

- 7.B.22 A directors' responsibility statement must be made by the directors after due, careful and proper consideration of same as follows:

"The directors, whose names are given in paragraph . . . on page . . . of this document collectively and individually accept full responsibility for the accuracy of the information given and certify that to the best of their knowledge and belief there are no facts that have been omitted which would make any statement false or misleading, and that all reasonable enquiries to ascertain such facts have been made and that the prospectus<sup>A</sup>/pre-listing statement<sup>B</sup>/circular<sup>B</sup> contains all information required by law and the JSE Listings Requirements<sup>X</sup>/the JSE Listings Requirements<sup>Y</sup>".

NB! <sup>A</sup> requires <sup>X</sup> and <sup>B</sup> requires <sup>Y</sup>

### **Responsibility of directors, managers and advisers**

- 7.B.23 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.

## **7.C Securities for which application is being made**

The following paragraphs detail the disclosure requirements relating to securities for which application is being made.

### **Purpose of the issue/offer**

- 7.C.1 A statement of the purpose of the issue/offer giving reasons why it is considered necessary for the applicant to raise the capital in terms of the issue or, if it is an offer, the reasons therefore and, if the proposed capital to be raised is more than the amount of the minimum subscription referred to in paragraph 7.C.8, the reasons for the difference between the proposed capital to be raised and the said minimum subscription.

### **Particulars of the issue/offer**

- 7.C.2 Particulars in respect of securities issued/offered must be disclosed, including:
- (a) the class of securities issued/offered;

- (b) the nominal value of the securities issued/offered, if applicable;
- (c) the number of securities issued/offered;
- (d) the issue/offer price of the securities issued/offered;
- (e) how the securities issued/offered rank for dividend;
- (f) whether the securities issued/offered rank pari passu with existing securities of the same class;
- (g) any convertibility or redemption provisions relating to the securities issued/offered;
- (h) the nature of the documents of title of the securities issued/offered;
- (i) the treatment of any fractions of the securities issued/offered; and
- (j) other terms and conditions of the issue/offer.

**7.C.3 Particulars in respect of debentures issued/offered, including:**

- (a) the class of debentures;
- (b) the terms and conditions of the debentures;
- (c) if the debentures are secured, particulars of the security, specifying the asset(s) comprising the security and the nature of the title to such asset(s); and
- (d) any other important terms and conditions of the debenture issue/offer.

**Timing**

- 7.C.4 If applicable, the times and dates of the opening and of the closing of the subscription lists or of the issue/offer.
- 7.C.5 If known, the dates on which the securities will be admitted to listing and on which dealings will commence.

**Issue price**

- 7.C.6 The reasons for any premium or discount on the issue or offer, how any premium or discount was dealt with and, where some securities were issued or offered at par and others at varying premiums or discounts, the reasons for the differential;
- 7.C.7 Where no par value shares are to be issued, the price at which they are to be issued and, where shares are to be issued at different prices, the reasons for any such differentiation.

**Minimum subscription**

- 7.C.8 The minimum amount that, in the opinion of the directors, must be raised by the issue/offer of securities in order to provide the amounts required for, or, if any part thereof is to be defrayed in any other manner, the balance of the amounts required for:
  - (a) the purchase price of any property, referred to in paragraph 7.D.9, purchased or to be purchased, that is to be defrayed in whole or in part out of the proceeds of the issue;
  - (b) any preliminary expenses payable, commission payable to any person in consideration for his agreeing to subscribe for, or for procuring or agreeing to procure subscriptions for, or underwriting commission(s) payable by the applicant;
  - (c) the repayment of any moneys borrowed or other loans in respect of any



of the foregoing matters;

- (d) working capital, stating the specific purposes for which it is to be used and the estimated amount required for each such purpose;
- (e) any other material expenditure, stating the nature and purposes thereof and the estimated amount in each case; and
- (f) any amounts to be provided in respect of the matters aforesaid, otherwise than out of the proceeds of the issue, and the sources from which those amounts are to be provided.

### **The Commission**

- 7.C.9 If the document issued and published is a prospectus, it must contain a statement on the front cover confirming that a copy of the prospectus has been registered by the Commission in terms of the Act and noting the date of such registration.

### **Authorisations**

- 7.C.10 A statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.

### **Dividends**

- 7.C.11 The time limit (if any) after which entitlement to dividends lapses and an indication of the person in whose favour the lapse operates.
- 7.C.12 The fixed date(s) (if any) on which entitlement to dividends arises.
- 7.C.13 Particulars of any arrangement under which future dividends are waived or agreed to be waived.

### **Market value of securities**

- 7.C.14 Where the securities for which application is being made are of a class that is already listed, a table of the aggregate volumes and values traded and the highest and lowest prices traded in those securities for each month over the twelve months prior to the date of issue of the prospectus/pre-listing statement/circular and for each day over the 30 days preceding the last practicable date prior to the date of issue of the prospectus/pre-listing statement/circular.

### **Rights offers, capitalisation issues and scrip dividends**

- 7.C.15 Where the securities for which application is being made are being issued and allotted, by way of capitalisation of reserves (including current year distributable income) or the application of share premium, to securities holders of an existing listed security, the following information must be given in respect of such issue:
- (a) the reason for the capitalisation issue or scrip dividend;
  - (b) the class and the par value (if any) of the securities involved;
  - (c) if applicable, that the shareholder may elect to receive cash in substitution for the whole or part of his capitalisation issue or scrip dividend entitlement and vice versa;
  - (d) whether any directors, prescribed officers and/or company secretary of the issuer will receive securities from the capitalisation issue or scrip dividend;
  - (e) if applicable, the last day on which shareholders must make their election;



- (f) a statement pointing out any tax implications of the issue for all securities holders , both resident and non-resident;
- (g) in the case of a scrip dividend, a statement should appear, in bold and upper case, on the front page, drawing shareholders' attention to the type of election to be made (i.e. whether shareholders will receive either cash or scrip if they fail to make the election);
- (h) the amount to be capitalised from the share premium or reserves of the applicant in order to be able to issue the capitalisation securities as fully paid up;
- (i) the ratio in which the capitalisation securities will be issued and allotted to shareholders of the applicant;
- (j) the important events and dates, contained in the relevant corporate action timetable, applicable to the issue;
- (k) whether or not the rights (if any) are renounceable;
- (l) in the case of a capitalisation issue disclosure whether the issue is distributed from capital or income reserves (if applicable); and
- (m) in the case of a dividend (including in specie dividend), as defined in the Income Tax Act, disclosure complying with paragraphs 11.17(a)(i) to (ix) and also indicate whether the distribution is made from capital or income reserves (if applicable).

7.C.16 In the case of a rights offer, the following information must be disclosed in the circular:

- (a) purpose of the rights offer;
- (b) the amount to be raised by means of the rights offer and the number of securities that are proposed to be issued;
- (c) the terms of the offer;
- (d) whether any directors, prescribed officers and/or company secretary of the issuer will follow their rights in relation to the rights offer;
- (e) if underwritten, details of the underwriter and the statement referred to in paragraph 5.29. The underwriting commission must be clearly stated;
- (f) where the underwriter is a company, the following information must be furnished:
  - (i) the place and date of incorporation and registered number of the company;
  - (ii) the names of the directors of the company;
  - (iii) the name of the company secretary;
  - (iv) the bankers to the company; and
  - (v) the authorised and issued share capital of the company;
- (g) details regarding the proposed listing of the LAs, the subsequent listing of the new securities and the amount payable in respect of listing fees;
- (h) details regarding the LAs such as:
  - (i) acceptance;
  - (ii) renunciation; and
  - (iii) payment (payment must be made in South African currency);

and

- (i) a statement regarding exchange controls as agreed to by the South African Reserve Bank.

### **Simultaneous issues**

- 7.C.17 If, simultaneously or almost simultaneously with the issue of securities for which application is being made, securities of the same class are issued, or to be issued, details must be given of the nature of such issues and of the number of securities concerned.

### **Over subscriptions**

- 7.C.18 State the relevant facts where it is the intention in the event of over subscription to extend a preference on allotment to any particular company or group, such as employees and pension funds.

## **7.D Group activities**

The following paragraphs detail the disclosure requirements relating to the group's activities:

### **General**

- 7.D.1 The general history of the applicant and its major subsidiaries must be detailed including, inter alia:
- (a) the length of time during which the business of the applicant and of any major subsidiary has been carried on;
  - (b) the name, date, place of incorporation and registration number and the issued or stated capital of its major subsidiaries, together with details of the securities held therein by the holding company. Indicate whether each major subsidiary is listed, or not, on the JSE, the main businesses of each major subsidiary and the date on which each became a major subsidiary;
  - (c) brief particulars of any alteration of the applicant's capital during the past three years; and
  - (d) the date of conversion of the applicant into a public company.
- 7.D.2 A general description of the business carried on, or to be carried on, by the applicant and its major subsidiaries and, where the applicant or its major subsidiaries carries on, or proposes to carry on, two or more businesses that are material, having regard to profits or losses, assets employed, or to be employed, or any other factor or information as to the relative importance of each such business.
- 7.D.3 For the business(es) described in paragraph 7.D.2, detail the degree of any government protection and of any investment encouragement law affecting the business(es).
- 7.D.4 Details of any material changes in the business(es) of the applicant, during the past five years.
- 7.D.5 The opinion of the directors, stating the grounds therefore, as to the prospects of the business of the applicant and of its major subsidiaries and of any subsidiary/ies or business undertaking to be acquired, together with any material information that may be relevant thereto.
- 7.D.6 The situation, area and tenure, including in the case of leasehold property the rental and unexpired term of the lease, of the principal immovable property held or occupied by the applicant and any of its major subsidiaries.

- 7.D.7 Full details and terms of all material inter-company financial and other transactions, with specific disclosure of all inter-company balances before elimination on consolidation.
- 7.D.8 The history of any change in controlling shareholder(s) and trading objects of the applicant and its major subsidiaries during the previous five years. A statement of the new trading objects and the manner in which the new objects will be implemented. If the applicant or, as the case may be, the group carries on widely differing operations, a segmental statement showing the contributions of such respective differing operations to its sales, trading results and profits/losses before and after taxation. The proposed new name, if any, the reasons for the change and whether or not consent to the change has been obtained from the Commission.

#### **Property acquired or to be acquired**

- 7.D.9 The following information regarding any material acquisition(s), within the last three years as at the date of the circular, or proposed acquisition by the applicant or any of its major subsidiaries, or any subsidiary where the acquisition or proposed acquisition is material to the applicant, of any securities in, or the business undertaking(s) of, any other company/ies, or business enterprise(s) or any immovable property/ies or other property/ies in the nature of a fixed asset (collectively "the property") or any option to acquire such property/ies:
- (a) the date of any such acquisition or proposed acquisition;
  - (b) the consideration, detailing the portion(s) settled by the issue of securities, the payment of cash or other means and how any outstanding consideration is to be settled;
  - (c) details of the valuation of the property;
  - (d) any goodwill paid and how such goodwill was or is to be accounted for;
  - (e) any loans incurred, or to be incurred, to finance the acquisition, or proposed acquisition;
  - (f) the nature of title or interest acquired, or to be acquired; and
  - (g) the details regarding the vendors as described in paragraph 7.H.

#### **Disposal of property**

- 7.D.10 The following details regarding any material property (as described in paragraph 7.D.9) disposed of during the past three years as at the date of the circular, or to be disposed of, by the applicant, its major subsidiaries or any subsidiary where such disposal is material to the applicant:
- (a) the dates of any such disposal or proposed disposal;
  - (b) the consideration received, detailing the portion(s) settled by the receipt of securities, cash or other means and how any outstanding consideration is to be settled;
  - (c) details of the valuation of the property; and
  - (d) the names and addresses of the purchaser(s) of material assets sold. If any purchaser was a company, other than a public company, the names and addresses of the beneficial shareholder(s) of the company. If a public company, the names and addresses of the controlling shareholder(s) of the company. If any promoter or director had any interest, directly or indirectly, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons that had such an interest, the names of any such promoter or director, and the nature and extent of his interest.

## **Litigation**

- 7.D.11 Information on any legal or arbitration proceedings, including any proceedings that are pending or threatened, of which the issuer is aware, that may have or have had in the recent past, being at least the previous 12 months, a material effect on the group's financial position or an appropriate negative statement.

## **7.E Financial information**

The following paragraphs detail the disclosure requirements relating to financial information:

### **Accountant's reports**

- 7.E.1 The relevant auditor's report, as described in paragraph 8.45, on the applicant.
- 7.E.2 If applicable, an auditor's report, as described in paragraph 8.45, on the asset the subject of the transaction.

### **Report of historical financial information**

- 7.E.3 The requirements set out in paragraphs 8.1 to 8.14 are to be complied with and included in the pre-listing statement.

### **Acquisitions made from proceeds**

- 7.E.4 If the application for listing coincides, directly or indirectly, with the acquisition by the applicant, or any of its subsidiaries, of securities in, or of the business undertaking of, any other company in consequence of which that company or business undertaking will become a subsidiary of or part of the business of the applicant, in respect of each of the preceding three years, the same particulars must be provided relating to such company or business undertaking acquired or being acquired as are required mutatis mutandis by paragraph 7.E.1 and a general history of such company or the business undertaking acquired or being acquired as required by paragraphs 7.D.1 to 7.D.3.
- 7.E.5 If the application for listing coincides, directly or indirectly, with the acquisition by the applicant or any of its subsidiaries of securities in, or the business undertaking of, any other company, then cognisance of such proposed acquisition must be taken in arriving at the particulars described in paragraph 7.E.2 above.
- 7.E.6 If the application for listing coincides, directly or indirectly, with the acquisition by the applicant or its subsidiaries of securities in or the business undertaking of, any other company in respect of each of the preceding three years, the following particulars must be provided relating to such company or business undertaking being acquired in accordance with paragraph 7.D.1:
- (a) the profits before and after tax; and
  - (b) its general history.

### **Statement as to working capital**

- 7.E.7 A statement by the directors of the applicant issuer that, in their opinion, the working capital available to the applicant and its subsidiaries, if any, is sufficient for the group's present requirements, that is, for at least the next 12 months from the date of issue of the listing particulars, or, if not and the issuer has securities already listed, how it is proposed to provide the additional working capital thought by the issuer to be necessary.

The JSE will not require a working capital statement to be made by an issuer

whose business is entirely or substantially that of banking, insurance or the provision of similar financial services, provided that the JSE is satisfied that:

- (a) the inclusion of such a statement would not provide significant information for investors; and
- (b) the issuer's solvency and capital adequacy are suitably regulated by another regulatory body.

7.E.8 The working capital statement should be prepared on the group, as enlarged by the acquisition of any assets.

7.E.9 Applicant issuers and sponsors (to the extent applicable) must comply with the requirements of Schedule 12 with regard to paragraphs 7.E.7 and 7.E.8.

### **Material change**

7.E.10 A description of any material change in the financial or trading position of the applicant and its subsidiaries that has occurred since the end of the last financial period for which either audited annual financial statements or unaudited interim reports have been published, or an appropriate negative statement.

### **Profit forecasts**

7.E.11 Profit forecasts must comply with paragraphs 8.35 to 8.44.

### **Pro-forma statements**

7.E.12 Pro-forma statements must comply with paragraphs 8.15 to 8.33. In the event of a new listing, pro forma statements must be prepared for all post balance sheet events.

## **7.F General information**

### **Material contracts**

The following paragraphs detail the disclosure requirements relating to general information:

7.F.1 Subject to paragraph 6.17, the dates, nature of and the parties to every material contract entered into either verbally or in writing by the applicant, any of its major subsidiaries or by any subsidiary where it is material to the applicant, being restrictive funding arrangements and/or a contract entered into otherwise than in the ordinary course of the business carried on, or proposed to be carried on, by the applicant or any of its subsidiaries, and:

- (a) entered into within the two years prior to the date of the pre-listing statement or circular; or
- (b) entered into at any time and containing an obligation or settlement that is material to the issuer or its subsidiaries at the date of the pre-listing statement or circular.

7.F.2 If any contract referred to in paragraph 7.F.1 relates to the acquisition of securities in an unlisted subsidiary, or associated company, where all securities in the company have not been acquired, state the reason why 100% of the holding was not acquired and whether anyone associated with the controlling shareholder(s) of the applicant, or associated companies, or its subsidiaries is interested and to what extent.

7.F.3 A brief summary of existing contracts or proposed contracts, either written or oral, relating to the directors' and managerial remuneration, secretarial and technical fees and restraint payments payable by the applicant and any of its major subsidiaries, provided that details of the directors and managerial

remuneration need only be disclosed in accordance with paragraph 7.B.7.

- 7.F.4 Particulars of royalties payable or items of a similar nature in respect of the applicant and any of its major subsidiaries.

### **Social mandate, laws of incorporation and MOI**

- 7.F.5 A statement must be made by the social and ethics committee of the applicant issuer that it has fulfilled its mandate as prescribed by the Companies Regulations to the Companies Act and that there are no instances of material non-compliance to disclose. If instances of material non-compliance exist, these items must be disclosed. A foreign applicant issuer is required to make a similar statement in respect of compliance with its corporation laws (to the extent that similar obligations apply to the board of directors or board committee).
- 7.F.6 A positive statement must be made by the directors of the applicant issuer that the applicant issuer is –
- (a) in compliance with the provisions of the Companies Act or relevant laws of establishment, specifically relating to its incorporation. For a foreign applicant issuer, the positive statement must be made in respect of its relevant laws of establishment; and
  - (b) operating in conformity with its MOI and/or relevant constitutional documents.

### **Material risks**

- 7.F.7 A description of all material risks which are specific to the issuer, its industry and/or its securities. Proper consideration must be given to the material risks that face the applicant issuer and generic disclosures must be avoided. Material risks should be grouped together in a coherent manner and material risks considered to be of the most immediate significance should be prominent at the beginning within the material risks disclosure.

### **King Code**

- 7.F.8 An applicant issuer must implement the King Code through the application of the King Code disclosure and application regime.
- 7.F.9 Applicant issuers must comply with the requirements pursuant to paragraph 3.84 concerning corporate governance and must disclose their compliance therewith in their pre-listing statement. Any reference in paragraph 3.84 to disclosure in the annual report shall apply accordingly to the pre-listing statement.

### **Expert's consents**

- 7.F.10 Where a pre-listing statement includes a report purporting to be made by an expert, a statement that the expert has given and has not withdrawn his written consent to the issue of the prospectus/pre-listing statement/circular, with the report in the form and context in which it is included.

### **7.G Documents and consents to be available for inspection**

The following paragraphs detail the disclosure requirements relating to documents and consents to be available for inspection:

- 7.G.1 The following documents (or copies thereof), where applicable, relating to the applicant and its major subsidiaries, if any, must be able to be inspected at a place where the applicant has its registered office, and in Johannesburg, and/or through a secure electronic manner at the election of the person requesting inspection for a reasonable period of time (being not less than 14 days):

- (a) the MOI;
- (b) any trust deed or agreement affecting the governance of the applicant or the interests of shareholders;
- (c) copies of any special or notarial contract bearing on the trust deed or MOI entered into within the last three years;
- (d) all material contracts (including patent rights, and franchise agreements);
- (e) in the case of a material contract not reduced to writing, a memorandum giving full particulars thereof;
- (f) the latest competent person's report, in the case of a mineral company;
- (g) the latest sworn appraisals or valuations relative to movable and immovable property and items of a similar nature, if applicable;
- (h) copies of service agreements with directors (or a summary of such agreements), managers or secretary/ies; underwriters, vendors and promoters entered into during the last three years;
- (i) all reports, letters, financial statements, valuations and statements by an expert, any part of which is extracted or referred to in the prospectus/pre-listing statement/circular; and
- (j) the audited annual financial statements since the incorporation of the applicant or for the preceding three years, whichever is the lesser, together with all notes, certificates, or information required by the Act.

## **7.H Vendors**

The following paragraphs detail the disclosure requirements relating to vendors of material assets to the applicant, its subsidiaries or to any subsidiary where it is material to the applicant (or the target in the case of a circular relating to an acquisition):

- 7.H.1 State the names and addresses of the vendors of any material assets purchased or acquired by the applicant, or by any subsidiaries of the applicant, during the three years preceding the publication of the prospectus/pre-listing statement/circular or proposed to be purchased or acquired, and the amount paid or payable in cash or securities to the vendor and, where there is more than one separate vendor, the amount so paid or payable to each vendor and the amount (if any) payable for goodwill or items of a similar nature. The cost of assets to the vendors and dates of purchase by them, if purchased within the preceding three years. Where the vendor is a company, the names and addresses of the beneficial shareholders, direct and indirect, of that company if required by the JSE. Where any of the above information is unobtainable, the reasons are to be stated. Transactions between the applicant and a vendor, where the vendor is a related party, will be regulated in terms of the requirements of this paragraph and Section 10 of the Listings Requirements.
- 7.H.2 State whether or not the vendors have guaranteed the book debts or other assets and whether or not "normal" warranties have been given.
- 7.H.3 State whether the vendors' agreements preclude the vendors from carrying on business in competition with the applicant or any of its subsidiaries; or impose any other restriction(s) on the vendor(s), also details of any cash or other payment regarding restraint(s) of trade and the nature of such restraint(s) of trade.
- 7.H.4 State how any liability for accrued taxation, or any apportionment thereof to the date of acquisition, will be settled in terms of the vendors' agreements.
- 7.H.5 Where securities are purchased in a company that will become a subsidiary of

the applicant, a reconciliation must be provided showing the difference between the amounts paid for the securities and the proportionate value of the net assets of that company attributable to such securities acquired. Where securities are purchased in companies that will not be accounted for as subsidiaries, a statement must be provided detailing how the value of the securities was determined.

- 7.H.6 Where any promoter or director had any beneficial interest, direct or indirect, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons that had such an interest, the names of any such promoter or director, and the nature and extent of his interest must be disclosed. Where the vendors or any of them are a partnership, the members of the partnership shall not be treated as separate vendors.
- 7.H.7 State the amount of any cash or securities paid or benefit given within the three preceding years or proposed to be paid or given, to any promoter, not being a director, and the consideration for such payment or benefit received or receivable.
- 7.H.8 State whether the assets acquired have been transferred into the name of the applicant or any of its subsidiaries and whether or not the assets have been ceded or pledged.



## Section 8

### Financial Information

#### Scope of section

This section sets out financial information that will be required to be included in a prospectus/pre-listing statement/circular. It also sets out continuing obligations relating to matters of a financial nature. When a new applicant or existing issuer issues a prospectus, the presumption is made that, apart from compliance with the Act, such prospectus will also comply with and contain all necessary disclosures as if it were a pre-listing statement subject to compliance with the Listings Requirements.

The main headings of this section are:

- 8.1 Report of historical financial information
- 8.15 Pro forma financial information
- 8.35 Profit forecasts and estimates
- 8.45 Reporting accountant's report
- 8.57 Minimum contents of condensed financial statements, summary financial statements and interim results
- 8.60 Minimum contents of annual financial statements
- 8.62 Additional content for annual reports

Where an applicant is producing a prospectus, additional financial information is required as set out in Section 6.

Additional and alternative requirements are set out in Section 12 (Mineral companies), Section 13 (Property entities), Section 14 (Pyramid companies), Section 15 (Investment entities) and Section 18 (Dual listings and listings by external companies).

#### Report of historical financial information

- 8.1 The report of historical financial information is the responsibility of the directors of the new applicant/issuer, and this fact is to be stated in the report.

#### Circumstances when a report of historical financial information is required

- 8.2 A report of historical financial information is required:
  - (a) on a new applicant (including an issuer making application in terms of a reverse take-over) making an application for listing and issuing a prospectus/pre-listing statement;
  - (b) on the subject of any substantial acquisition or disposal (measured against the anticipated market capitalisation of the new applicant at the date of listing) that has been made by a new applicant in the current or preceding financial year;
  - (c) [Repealed]
  - (d) [Repealed]
  - (e) on the subject of a Category 1 transaction ("Category 1 subject");
  - (f) on the subject of any substantial acquisition or disposal (measured against the value of the Category 1 subject) that has been effected by a Category 1 subject in the current or preceding financial year.

For the purposes of this paragraph and with reference to the definition of substantial, the JSE will regard substantial as equal to or exceeding 50%.

#### Financial information to be presented

- 8.3 The report of historical financial information must be prepared in accordance with IFRS and the SAICA Financial Reporting Guides as issued by the Accounting Practices Committee and Financial Pronouncements as issued by Financial Reporting Standards Council.
- 8.4 The historical financial information required under paragraph 8.3, is to be presented in consolidated form in respect of a period of at least three years up to and including the financial year immediately preceding the issue of the prospectus/pre-listing statement/circular. Where the historical financial information is not available for the prior three-year period, the JSE must be consulted for a ruling regarding disclosure and approval of the transaction. If the historical financial information required under paragraph 8.3 was not historically prepared in terms of IFRS, only the latest two financial years need to be converted to IFRS and the third year may be presented in accordance with the original (national) accounting framework. In these instances, shareholders must be warned about the potential lack of comparability of the information and must be advised to review the IFRS conversion notes in order to obtain a full understanding of any potential differences. The same historical financial information is also to be presented for the holding company, where this provides significant additional information to that presented in consolidated form.
- 8.5 When a report of historical financial information is required in terms of paragraph 8.2(b), (e) or (f), it must be prepared in accordance with, and by applying, the accounting policies of the new applicant/issuer.
- 8.6 [Repealed]
- 8.7 In addition to the historical financial information required to be presented in accordance with paragraph 8.2, if, at the date of the prospectus/pre-listing statement/circular, more than nine months have elapsed since the end of the last financial year, reviewed interim financial information is to be prepared in accordance with IFRS on Interim Financial Reporting, and is to be presented for the first six months ended, subsequent to the relevant subject matter's latest financial year ended. Notwithstanding the requirements of IFRS, if reviewed interim financial information is being prepared for the purposes of this requirement, no comparative results need to be shown, if that interim financial information has been prepared using accounting policies that are identical to those contained in the historical financial information.
- 8.8 With respect to 8.2, only if more than 15 months have passed since the period for which audited annual financial statements were prepared and issued, then audited annual financial statements shall be prepared for the latest financial year ended and included in the pre-listing statement. As it relates to 8.2(a), if the pre-listing statement does not include the latest annual financial results these must be published pursuant to Appendix 1 to Section 11, irrespective of the listing date or whether they have been previously distributed or the date of listing.
- 8.9 Where other historical financial information has been made available to the issuer's holders of securities subsequent to the issuer's latest financial year-end, such other historical financial information is also to be presented.

#### **Non-compliance with IFRS and the Companies Act**

- 8.10 In the case of a company domiciled outside the Republic of South Africa, where the historical financial information required by paragraphs 8.2 to 8.9 has not been prepared in compliance with IFRS and the Act, there is to be disclosure of the following:
- (a) the reasons for such non-compliance;
  - (b) the accounting standards and legislation under which the historical financial information has been prepared; and
  - (c) a comprehensive reconciliation to IFRS of the effect of such non-compliance on the information required to be presented in accordance

with paragraph 8.3.

### **Additional information**

- 8.11 In respect of a report of historical financial information prepared pursuant to paragraph 8.2(a), earnings, diluted earnings, headline earnings, diluted headline earnings, net asset value and tangible net asset value per share and dividends per share in respect of each class of share, expressed in cents must be provided for the last financial year, and where paragraph 8.7 is applicable, for the interim period.

### **Commentary**

- 8.12 The report of historical financial information is to include commentary on the historical financial information incorporating a general review of the business and operations of the applicant issuer/undertaking the subject of the transaction during the period and the results thereof and is to deal with every fact or circumstance material to an appreciation of the state of affairs, financial position, changes in equity, results of operations and cash flows of the applicant issuer.

### **Periods**

- 8.13 Where the financial year-end of the issuer changed at any time during the reporting periods, the historical financial information for the full periods in question is to be provided. Annualised historical financial information is not to be presented in the report of historical financial information.

### **Adjustments**

- 8.14 [Repealed]

### **Pro forma financial information**

#### **General**

- 8.15 If the issuer publishes pro forma financial information, including but not limited to financial effects, in any document requiring submission to the JSE, that information must comply with paragraphs 8.16 to 8.34 and a report in terms of paragraph 8.48(b) must be included in the relevant document. This report is not required to be prepared for an announcement (other than an announcement in respect of annual financial results) or where pro forma financial information is presented as part of or accompanying interim results. In all instances, the pro forma financial information must be compiled in terms of the Listings Requirements and The Guide on Pro forma Financial Information, issued by SAICA, and if applicable reported on, in terms of the International Standard on Assurance Engagements ("ISAE") 3420 – Assurance Engagements to Report on the Compilation of Pro forma Financial Information included in a Prospectus and any relevant guidance issued by the IRBA.
- 8.16 Pro forma financial information is the responsibility of the directors of the issuer and this fact is to be stated with the pro forma financial information.

#### **Nature of information**

- 8.17 Pro forma financial information is to provide investors with information about the impact of the corporate action the subject of the prospectus/pre-listing statement/circular, by illustrating how that corporate action might affect the reported financial information, had the corporate action been undertaken at the commencement of the period being reported on, or in the case of a pro forma statement of financial position, at the date reported on. The pro forma financial information presented is not to be misleading, is to assist investors

in analysing future prospects of the issuer and is to include all appropriate adjustments permitted by paragraph 8.30, of which the issuer is aware, and which are considered necessary to give effect to the corporate action as if the corporate action had been undertaken at the commencement of the period being reported on or, in the case of the pro forma statement of financial position, at the date reported on. In certain limited circumstances, permission will be granted to calculate a statement of comprehensive income effect at a date other than at the beginning of the financial period. These exceptions are detailed in The Guide on Pro forma Financial Information, issued by SAICA.

### **Presentation of information**

- 8.18 The pro forma financial information is to state clearly:
- (a) the purpose for which it has been prepared;
  - (b) that it is prepared for illustrative purposes only; and
  - (c) that because of its nature, it may not fairly present the issuer's financial position, changes in equity, results of operations or cash flows.
- 8.19 The pro forma financial information is to be presented in columnar form showing separately the unadjusted financial information, the pro forma adjustments and the pro forma financial information. The pro forma financial information is to identify:
- (a) the basis upon which it is prepared; and
  - (b) the source of each item of information and adjustment.
- 8.20 Pro forma figures must be given no greater prominence in the document than unadjusted financial figures.

### **Accounting policies**

- 8.21 Pro forma financial information is to be presented in a manner consistent with both the format and accounting policies adopted by the issuer in its report of historical financial information.
- 8.22 In quantifying pro forma adjustments, the issuer is to apply accounting policies on the same basis as the issuer would normally adopt in preparing its annual financial statements.
- 8.23 The requirement to apply the issuer's accounting policies in preparing pro forma financial information applies to adjustments made in respect of a material acquisition.
- 8.24 Pro forma financial information is to be prepared in accordance with the policies adopted in presenting the unadjusted financial information of the issuer at the relevant date or for the relevant period, even where new accounting standards will apply subsequently.

### **Selection of periods**

- 8.25 Pro forma financial information may be published only in respect of:
- (a) the most recent completed financial period;
  - (b) the most recent interim period for which unadjusted information has been published or is being published in the report of historical financial information;
  - (c) both 8.25(a) and (b);
  - (d) in the case of a pro forma statement of financial position, as at the date on which such periods end or ended; and

- (e) a profit forecast (provided the forecast has been published and reported on in terms of Section 8 or Section 13) for statement of comprehensive income purposes and paragraphs 8.25(a) to (d) for statement of financial position purposes.

### **Subsequent events**

- 8.26 No adjustments may be made to pro forma financial information in respect of post statement of financial position events except:
- (a) as provided for in IFRS on Events After the Reporting Period; or
  - (b) in respect of the particular corporate action for which the pro forma financial information is being presented;
  - (c) in respect of any previously published financial effects; or
  - (d) in respect of any post statement of financial position corporate action of the issuer or the target, where it would be misleading not to make an adjustment, and in such instance, in addition to providing full details of the adjustment, details must be provided as to why the issuer believes it would be misleading not to make an adjustment.

### **Accounting periods**

- 8.27 Where a pro forma statement of comprehensive income or cash flow statement is presented for two or more entities or business undertakings, such as may be the case in a material acquisition, the unadjusted information about the issuer and the adjustments in respect of the other entity or entities are to cover similar periods of the same length.

### **Unadjusted information**

- 8.28 The unadjusted information of the issuer is to be derived from the most recent:
- (a) published audited annual financial statements, published interim results, condensed financial statements or summary financial statements;
  - (b) previously published report of historical financial information;
  - (c) previously published pro forma financial information reported on in accordance with paragraph 8.48(b);
  - (d) profit forecast which has been published and reported on in terms of Section 8 or Section 13, for statement of comprehensive income purposes, and paragraphs 8.28(a) to (c), for statement of financial position purposes.
- 8.29 The unadjusted information of the subject matter of the acquisition or disposal is to be derived from the:
- (a) most recent published audited annual financial statements, published interim results, condensed financial statements or summary financial statements;
  - (b) profit forecast which has been issued and reported on in terms of Section 8 or Section 13 for the statement of comprehensive income purposes and paragraphs 8.29(a) or (c) for the statement of financial position purposes;
  - (c) unpublished management accounts provided that:
    - (i) the issuer is satisfied with the quality of those management accounts and a statement is included in the announcement confirming this;

- (ii) shareholders are warned about the source of the information; and
- (iii) in the case of a circular to shareholders for an acquisition where the circular either includes those management accounts and/or uses them for the purposes of the pro forma financial effects, the auditor's review or audit opinion (whichever is applicable) must be obtained on those management accounts.

### **Adjustments**

- 8.30 Any adjustments that are made to the information referred to in paragraphs 8.28 and 8.29 above in relation to any pro forma statement are to be:
- (a) clearly shown and explained;
  - (b) directly attributable to the transaction concerned and not relating to future events or decisions;
  - (c) factually supportable; and
  - (d) in respect of a pro forma statement of comprehensive income or cash flow statement, clearly identified as those adjustments that are expected to have a continuing effect on the issuer and those that are not.
- 8.31 In order to comply fully with paragraph 8.30, issuers must include notes to the pro forma financial information providing the explanations required in terms of paragraph 8.30 as well as:
- (a) any assumptions on which the adjustments are based;
  - (b) the range of possible outcomes where there is significant uncertainty;
  - (c) the sources of the amounts concerned; and
  - (d) where relevant, how adjustments have been aggregated or allocated to financial statement captions.

### **Continuing effects**

- 8.32 In respect of pro forma income or cash flow statements, issuers are to identify clearly those adjustments that are expected to have a continuing effect on the issuer and those that are not. An issuer is not permitted either:
- (a) to omit adjustments that are directly attributable to a corporate action and are factually supportable, on the grounds that they do not have a continuing effect; or
  - (b) to make adjustments to eliminate items solely on the grounds that they are considered not to have a continuing effect.
- 8.33 Issuers are to interpret paragraphs 8.28 and 8.29 in line with the requirements of IFRS and the SAICA Financial Reporting Guides as issued by the Accounting Practices Committee and Financial Pronouncements as issued by Financial Reporting Standards Council.

### **Earnings and headline earnings per share**

- 8.34 Where pro forma earnings and headline earnings per share information is given for a transaction, it must be provided in compliance with IFRS and the definition of headline earnings as set out in these Listings Requirements, except that, where the transaction includes the issue of securities, the calculation is to be based on the weighted average number of issued securities adjusted as if that issue had taken place at the beginning of the period.

## **Profit forecasts and estimates**

- 8.35 The following requirements apply equally to forecasts or estimates of profits or losses, cash flows or net asset values (collectively defined as "profits or losses") of an applicant issuer or an undertaking that is or will become a material part of an applicant issuer's group.
- 8.36 Any statement or information relating to the future prospects of an applicant issuer, or an undertaking that is or will become a material part of an applicant issuer's group, must be clear and unambiguous. The applicant issuer must determine in advance with its sponsor, whether such a statement of information will constitute a profit forecast or an estimate. Any profit forecast or estimate must be compiled using accounting policies applied by the applicant issuer.
- 8.37
- (a) A specific profit forecast is a form of words which expressly states a figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for profits or losses may be made. A specific profit forecast is usually made when an applicant issuer includes a number, percentage, range or refers to "real" or any other term that has a recognised value. This list is not exhaustive and applicant issuers must consult with their sponsors to ascertain whether a statement constitutes a specific forecast.
  - (b) A general profit forecast is a form of words which, by implication, indicates a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which such calculation may be made, even if no particular figure is mentioned and the word "profit" is not used. A general profit forecast is usually made when an applicant issuer uses the following words or terms: improvement, increase, growth, decline, decrease, similar or in line with. The use of these words or terms must not result in the statement becoming a specific profit forecast. This list is not exhaustive and applicant issuers must consult with their sponsors to ascertain whether a statement is a general forecast.
  - (c) A profit estimate bears the same meaning as a general or specific forecast, with the exception that it relates to a financial period ended but for which no financial information has yet been published.
  - (d) When an applicant issuer clearly states in an announcement that it has certain future targets or objectives that it would like to achieve, such will not be interpreted as a profit forecast or estimate as referred to above, provided that the targets or objectives do not specifically relate to the current or next reporting period.
- 8.38 A specific or general profit forecast or estimate of an applicant issuer or an undertaking that is or will become a material part of the applicant issuer's group which is included in any communication with shareholders is the sole responsibility of the directors and must:
- (a) include the key assumptions and/or bases that have been used in arriving at the forecast or estimate; and
  - (b) make reference to the relevant previously published information (line item/s in the statement of comprehensive income, statement of financial position or the statement of cash flows ) to which it relates.
- 8.39 A dividend forecast must be treated as a profit forecast where the issuer has a known policy of relating dividends to earnings, or has an insufficient level of retained earnings, or the forecast otherwise implies a forecast of profit. In the event of uncertainty the JSE must be consulted.
- 8.40 In the event of an applicant issuer publishing a specific or general profit forecast or estimate in an announcement, it must either:



- (a) produce and submit to the JSE a profit forecast or estimate and auditor's report thereon in accordance with:
    - (i) ISAE 3400 – The Examination of Prospective Financial Information, in respect of profit forecasts; or
    - (ii) ISAE 3000 – Assurance Engagements other than Audits or Reviews of Historical Financial Information, in respect of the estimate;
  - (b) include a statement (which is not deemed to be a cautionary statement and which does not give rise to the commencement of a closed period) in the announcement advising securities holders that the forecast financial information has not been reviewed and reported on by the applicant issuer's auditor in accordance with 8.40(a).
- 8.41 The JSE reserves the right to insist on sign-off by the auditor in accordance with paragraph 8.40(a), where it believes that it would be in the interests of securities holders.
- 8.42 The period of the forecast or estimate should normally be to the end of the financial period. If it is not, then the period of the forecast or estimate must be in respect of a period for which the results will be published.
- 8.43 A profit forecast or estimate included in a prospectus/pre-listing statement or circular to shareholders must be prepared in accordance with IFRS for that forecast period, must be reported on by the auditor in accordance with paragraph 8.40(a)(i) or (ii) and must include a statement of the principal assumptions for each factor that would have a material effect on the achievement of the forecast or estimate. These assumptions must:
- (a) be clearly segregated between assumptions about factors that the directors can influence and assumptions about factors that are exclusively outside the influence of the directors;
  - (b) be readily understandable by investors;
  - (c) be specific about the particular aspect of the estimate/forecast to which they refer and about the uncertainty attaching to that aspect; and
  - (d) not relate to the general accuracy of the estimates (e.g. sales estimates, expense estimates, etc.) underlying the forecasts.
- 8.44 With regards to a profit estimate, the estimate may only be subject to assumptions in exceptional circumstances and such exceptional circumstances should be explained.

#### **Other engagement reports required by the JSE from time to time**

- 8.45 An auditor's report, signed off by the auditor appointed in terms of paragraph 3.88, is required when:
- (a) a report of historical financial information is required in terms of paragraph 8.2;
  - (b) a report of historical financial information is prepared and presented on a voluntary basis (except when it relates to previously published information of the applicant issuer);
  - (c) pro forma financial effects or pro forma financial statements are prepared (except when that pro forma information only appears in an announcement);
  - (d) profit forecasts/estimates are prepared (except where these are prepared in terms of paragraph 8.40 and the JSE has not exercised its powers as set out in paragraph 8.41); and



- (e) it is required by paragraph 13.15.

### **The auditor**

- 8.46 This section has been repealed.
- 8.47 The auditor shall conduct the engagement in accordance with the relevant standards issued by the International Auditing and Assurance Standards Board (IAASB) and relevant guidance issued by the IRBA. The IAASB standards include: International Standards on Auditing (ISAs), International Standards on Review Engagements (ISREs), International Standards on Assurance Engagements (ISAEs) and International Standards on Related Services (ISRSs).
- 8.48 The auditor is to provide assurance on the following reports:
- (a) a report of historical information by way of:
    - (i) an audit opinion on financial information relating to the financial year immediately preceding the issue of the prospectus/pre-listing statement/circular; and/or
    - (ii) either an audit opinion or a review conclusion on financial information relating to the financial years prior to the financial year immediately preceding the issue of the prospectus or circular; and/or
    - (iii) a review conclusion on interim financial information;
  - (b) the pro forma financial information as to whether the pro forma financial information has been compiled, on the basis required by the Listings Requirements;
  - (c) a profit forecast as to:
    - (i) whether the assumptions, barring unforeseen circumstances, are not an unreasonable basis for the preparation of the forecast;
    - (ii) whether the forecast has been properly compiled on the basis stated; and
    - (iii) whether the forecast has been properly presented and all material assumptions are adequately disclosed; and
    - (iv) whether the profit forecast is presented on a basis consistent with the accounting policies of the company or group in question.
  - (d) a profit estimate as to:
    - (i) whether the estimate has been properly compiled on the basis stated;
    - (ii) whether the estimate has been properly presented and all material matters are adequately disclosed; and
    - (iii) whether the estimate is presented on a basis consistent with the accounting policies of the company or group in question.
- 8.49 This section has been repealed.
- 8.50 This section has been repealed.

### **Contents of the auditor's report**

- 8.51 An auditor's report as set out in paragraph 8.48, based on work performed in accordance with the relevant standards issued by the IAASB, as set out in paragraph 8.47, should be addressed to the directors of the applicant, in the case of an application for listing of new securities, or the listed company, in

the case of an acquisition or disposal, and each report must include the following basic elements, ordinarily in the following layout:

- (a) title;
- (b) addressee;
- (c) opening or introductory paragraph with:
  - (i) the purpose for which the report has been prepared; and
  - (ii) identification of the components of the financial information audited or reviewed, or for which assurance is provided;
- (d) the directors' responsibilities;
- (e) the auditor's responsibilities;
- (f) scope paragraphs, describing the nature of the work undertaken, with:
  - (i) a reference that the audit has been conducted in accordance with International Standards on Auditing (ISAs) (in the case of an audit); and/or
  - (ii) the relevant International Standard on Review Engagements (ISREs) (in the case of a review); and/or
  - (iii) the International Standards on Related Services (ISRS) 4400 Engagements to Perform Agreed-Upon Procedures Regarding Financial Information (in the case of agreed-upon procedures); and/or
  - (iv) the International Standard on Assurance Engagements (ISAE) 3000 Assurance Engagements other than Audits or Reviews of Historical Financial Information (in the case of assurance engagement and estimate); and/or
  - (v) the International Standard on Assurance Engagements (ISAE) 3400 – The Examination of Prospective Financial Information in respect of profit forecasts; and/or
  - (vi) the International Standard on Assurance Engagements (ISAE) 3420 – Assurance Engagements to Report on the Compilation of Pro forma Financial Information Included in a Prospectus (in the case of assurance on pro forma financial information); and
  - (vii) a description of the work the auditor has performed;
- (g) an opinion paragraph containing an expression of opinion (in the case of an audit or assurance engagement), or a conclusion paragraph containing an expression of the auditor's conclusion (in the case of other assurance engagements conducted in accordance with ISAEs);
- (h) the auditor's name (both the audit firm and the partner signing the opinion), address and signature; and
- (i) the date on which the auditor's report is signed.

### **Date of reports**

- 8.52 The auditor's report(s) should be dated on the same day that the directors authorise the issue of the prospectus/pre-listing statement/circular/announcement for formal submission to the JSE.

### **Review of prospectus/pre-listing statement/circular**

- 8.53 The auditor should review the prospectus/pre-listing statement/circular to ensure that the contents thereof are not contradictory with the information

contained in the report of historical financial information. The auditor must inform the JSE, in writing, of its consent for inclusion and of any such contradictions. The consent letter should be dated on the same day that the directors authorise the issue of the prospectus/pre-listing statement/circular for formal submission to the JSE.

### **Consent letters**

- 8.54 The auditor should submit a letter to the directors giving his consent to the inclusion of:
- (a) the auditor's report(s) in the prospectus/pre-listing statement/circular; and
  - (b) references to, or extracts from, the auditor's report(s) included in the prospectus/pre-listing statement/circular.
- 8.55 A statement is to be included in the prospectus/pre-listing statement/circular that the auditor has given and has not withdrawn its written consent to the issue of the prospectus/pre-listing statement/circular, containing the auditor's report in the form and context in which it appears.

### **Confirmations by the auditor or reporting accountant specialist**

- 8.56 The auditor or reporting accountant specialist (whichever is applicable) must as referred to in paragraph 3.89 provide the following confirmations to the JSE in writing:
- (a) the confirmation described in paragraph 3.89(a)(i); and
  - (b) the confirmation (dated the same date as the auditor's report) described in paragraph 3.89(b).

### **Minimum contents of condensed financial statements, summary financial statements and interim results**

- 8.57 (a) Condensed financial statements and summary financial statements must be prepared in accordance with the framework concepts and the measurement and recognition requirements of International Financial Reporting Standards, and for a South African company, the SA financial reporting requirements (as applicable), and must also, contain the information required by IAS 34: Interim Financial Reporting, and a statement confirming that it has been so prepared.
- (b) Interim results must:
- (i) be prepared in accordance with and containing the information required by IAS 34: Interim Financial Reporting and for a South African company, the SA financial reporting requirements (as applicable) and a statement confirming that it has been so prepared;
  - (ii) disclose where there is a material change to the initial estimates of a contingent consideration payable or receivable in terms of an acquisition or disposal, as used in the pro forma financial effects calculations; and
  - (iii) in respect of Mineral Companies, include summary information of any material changes to the information disclosed in compliance with 8.62(g) for the prior year/period ended, or an appropriate negative statement where there have been no material changes; and
  - (iv) in respect of a property entity include the information referred to in paragraph 13.36.

- 8.58 The condensed financial statements, summary financial statements and interim results must include:
- (a) a statement confirming that the accounting policies are consistent with those of the previous annual financial statements, or include details of the changes; and
  - (b) headline earnings and diluted headline earnings per share in respect of the current reporting period and the immediately preceding comparable period, together with an itemised reconciliation between headline earnings and the earnings used in the calculation of earnings per share.

#### **Change of financial year**

- 8.59 If a change in the financial year is proposed, the JSE must be notified in writing by the applicant issuer and consulted as to the period or periods to be covered by the interim report.

#### **Minimum contents of annual financial statements**

- 8.60 The annual financial statements must:
- (a) be drawn up in accordance with the national law applicable to a listed company;
  - (b) be prepared in accordance with International Financial Reporting Standards and for a South African company the SA financial reporting requirements (as applicable) (but see Section 18 in respect of dual listings and listings by overseas companies);
  - (c) fairly present the financial position, changes in equity, results of operations and cash flows of the group; and
  - (d) be the consolidated annual financial statements.
- 8.61 Issuers are required to disclose the following in their annual financial statements:
- (a) the statement referred to in 3.84(k);
  - (b) the information on unlisted securities set out in paragraph 4.23(b);
  - (c) headline earnings per share:  
  
in respect of each current financial year and the immediately preceding financial year, a headline earnings per share and a diluted headline earnings per share figure must be disclosed, together with an itemised reconciliation between headline earnings and the earnings used in the calculation of earnings per share;
  - (d) disclosure of directors' interests, including a director who has resigned during the reporting period:
    - (i) the aggregate of the direct and indirect beneficial interests of the directors (and his/her associates) in, and the direct and indirect interest of each director's holding in the share capital of the listed company, including the director's holdings which are subject to security, guarantee, collateral or otherwise pursuant to paragraph 3.63(b)(ix). The statement should include by way of a note any change in those interests occurring between the end of the financial year and the date of approval of the annual financial statements or, if there has been no such change, disclosure of that fact; and
    - (ii) comparative figures for the previous year must be presented
  - (e) major shareholders:

the interest of any shareholder, other than a director, who, in so far as it is known to the company, is directly or indirectly beneficially interested in 5% or more of any class of the listed company's capital, together with the amount of each such shareholder's interest or, if there are no such shareholders, an appropriate negative statement;

(f) the information on public shareholders set out in paragraphs 3.43;

(g) share incentive schemes:

the listed company must, in respect of its or its subsidiary companies' share incentive schemes, summarise the details and terms of options in issue at the beginning of the financial period, cancelled or issued during the financial period and in issue at the end of the financial period, the number of securities that may be utilised for purposes of the scheme at the beginning of the financial period, changes in such number during the financial period and the number of securities available for utilisation for purposes of the scheme at the end of the financial period;

(h) disclosure of individual directors' remuneration and benefits, including those of any director who has resigned during the reporting period, as itemised in paragraph 7.B.7 in respect of each current financial year and the immediately preceding financial year;

(i) transactions

disclosure of the fact where there is a material change to the initial estimates of a contingent consideration payable or receivable, in terms of an acquisition or disposal, as used in any previously disclosed pro forma financial effects calculations;

(j) issues for cash:

details must be given of all issues of securities for cash during the period under review, distinguishing between general and specific issues and including, at least, the number of securities issued, the price at which they were issued and, in the event of a specific issue to non-public shareholders as defined in paragraph 4.25, to whom they were issued;

(k) repurchased equity securities:

details must be disclosed in respect of the repurchase by an issuer of its own equity securities or a purchase by a subsidiary of equity securities in its holding company (in accordance with section 48 of the Act) during the period under review.

In respect of the above repurchase of equity securities by the issuer and/or subsidiary, the following should be disclosed:

(1) the total number of equity securities repurchased;

(2) in relation to the total number, the number of equity securities:

(i) which were repurchased by a subsidiary of the issuer;

(ii) which have reverted to authorised but unissued equity securities of the issuer in accordance with section 35(5) of the Act; and

(iii) which have reverted to authorised but unissued equity securities of the issuer in accordance with section 35(5) of the Act where the repurchased equity securities were acquired by the issuer from treasury shares;

(3) the average price paid for the repurchased equity securities, calculated by dividing the total amount paid by the total number of repurchased equity securities;

- (l) for a property entity, the information set out in paragraph 13.37;
- (m) for an investment trust entity, the information set out in paragraph 15.6;
- (n) any restrictive funding arrangements undertaken by an issuer and/or any of its subsidiaries must be disclosed. The disclosure must include the following details:
  - (a) the restriction(s) on specified events attaching to the funding arrangement;
  - (b) the funding provider(s); and
  - (c) the amount of the funding;

The information in paragraphs 8.61(a), (e), (f) and (l) can be presented outside of the information on which the auditor issues their audit opinion.

### **Additional content for annual reports**

8.62 Issuers are required to provide disclosure of the following supplementary information:

- (a) in respect of their application of the King Code:
  - (i) the implementation of the King Code through the application of the King Code disclosure and application regime, which may be incorporated via a weblink; and
  - (ii) a narrative on the non-binding advisory votes pursuant to paragraph 3.84(j), dealing specifically with (1) who the issuer engaged with and the manner and form of engagement and (2) the nature and steps taken to address objections;
- (b) the information regarding trading statements set out in paragraph 3.4(b)(vi);
- (c) the corporate governance information set out in paragraphs 3.84(a) to (j);
- (d) a narrative on compliance with paragraph 7.F.6. dealing with compliance with the laws of establishment and the MOI of the issuer;
- (e) the disclosure of material risks as described in paragraph 7.F.7, which may be incorporated via a weblink.
- (f) profit forecasts:
 

if the results for the period differ by 10% or more from any forecast or estimate previously published by the issuer for its own results or in the case of a property entity results published in terms of paragraph 13.12, an explanation of the difference must be provided;
- (g) Mineral Resources and Mineral Reserves:
 

the information set out in paragraph 12.13;
- (h) for a property entity, the disclosure referred to in paragraphs 13.39 and 13.46(h)(ii); and
- (i) the separate financial statements of the listed company for a South African company.
- (j) Disclosure on the weighted voting share structure in terms of paragraph 4.46(b) – (f), if applicable.

8.63 The JSE and SAICA have formed a panel to be known as the Financial

Reporting Investigations Panel (the "FRIP") to consider complaints and to advise the JSE in relation to compliance by issuers with IFRS and the JSE's required accounting practices (in terms of the Listings Requirements). The JSE may receive advice from the FRIP, as required by the JSE from time to time.

- 8.64 Where the JSE finds that an issuer has not complied with IFRS and/or the JSE's required accounting practices (in terms of the Listings Requirements), the JSE will be able, in its sole discretion:
- (a) to censure such issuer in accordance with the provisions contained in Section 1 of the Listings Requirements;
  - (b) instruct such issuer to publish or re-issue any information the JSE deems appropriate; and/or
  - (c) refer any such non-compliance to SAICA, the IRBA or any other relevant professional body.

## Section 9

# Transactions

### Scope of section

This section deals with transactions, principally acquisitions and disposals, by issuers and their subsidiaries. It describes how they are categorised, what the requirements are for announcements and circulars and whether or not shareholder approval is required.

Requirements for reverse takeovers and for take-overs in terms of the Takeover Regulations and the Act are also detailed. This section should be read with Section 10 for transactions involving related parties.

The JSE endorses the Takeover Regulations, but they do not form part of the Listings Requirements.

The Appendix to this section sets out, in tabular form, certain requirements for the contents of Category 1 circulars.

The main headings of this section are:

Section 9.1	General
Section 9.3	Categorisation and explanation of terms
Section 9.20	Category 1 requirements
Section 9.23	Reverse take-over requirements
Section 9.25	Contents of circulars
Section 9.30	Take-overs
Section 9.34	Rescue operations
Section 9.35	Restrictive funding arrangements
Appendix to Section 9	

Additional and alternative requirements relating to transactions are set out in Section 4 (with regard to companies listed on the VCM and DCM), Section 12 (Mineral companies), Section 13 (Property entities), Section 14 (Pyramid companies) and Section 15 (Investment entities), respectively.

### General

9.1 References in this section to a transaction by a listed company:

- (a) include a transaction by any subsidiary of the listed company;
- (b) include the grant or acquisition of an option to acquire or dispose of assets as if the option had been exercised except that, where the right to exercise is solely at the issuer's discretion, the transaction will only be categorised on exercise of the option and only the premium/consideration (if any) for the grant will be used for categorisation purposes at the date of such grant. However, in such instance, the categorisation upon exercise will be required to be no less onerous than the classification determined at the date of grant;
- (c) excludes:
  - (i) an issue of securities (other than an issue in terms of paragraph 3.35, 3.36 or 4.11); or
  - (ii) a transaction to raise finance that does not –
    - (aa) in either case involve the acquisition or disposal of any asset of the listed company or of its subsidiaries; and
    - (bb) involve a related party pursuant to paragraph 10.1(b);
  - (iii) a transaction between a wholly-owned subsidiary of the listed company and the listed company; or between or among:



- (a) two or more wholly-owned subsidiaries of the same listed company; or
  - (b) a wholly-owned subsidiary of a listed company on the one hand, and that listed company and one or more wholly-owned subsidiaries of that listed company, on the other hand; and
- (d) excludes transactions in the ordinary course of business and where either:
  - (i) both of the percentage ratios referred to in paragraph 9.6 are less than 30%; or
  - (ii) the issuer or its subsidiary concluding the transaction is a financial institution (as defined in the Financial Services Board Act, No. 97 of 1990) dealing in funds (such as policyholders funds or trust property) which are not held primarily for the benefit of its shareholders and the counter party to the transaction is not a related party of the issuer.
- (e) subject to paragraph 10.8, the issuer must discuss the transaction with the JSE at an early stage in order for the JSE to determine whether it will classify such a transaction as being in the ordinary course of business. In assessing whether a transaction is in the ordinary course of business, the JSE will have regard to –
  - (i) the nature of business of the transacting parties;
  - (ii) the incidence of similar transactions which have been concluded;
  - (iii) the size measured against similar transactions which have been concluded;
  - (iv) whether the transaction contributes to the issuer's existing revenue stream, meaning income arising in the course of the issuer's ordinary activities;
  - (v) whether the transaction contributes to costs that relate directly to the revenue contemplated in paragraph (iv) above; and
  - (vi) whether the transaction constitutes ordinary course of business for both the issuer and the other transacting party.
- (f) a transaction must be referred to the JSE at an early stage if the transaction involves treasury shares.

9.2 An issuer that is in any doubt as to the application of the Listings Requirements contained in this section must consult the JSE at an early stage in order to discuss the details of the transaction and, where necessary, to obtain a ruling from the JSE.

### **Categorisation and explanation of terms**

- 9.3 Any issuer considering a transaction must, at an early stage, consider the categorisation of the transaction.
- 9.4 A transaction is categorised by assessing its size relative to that of the issuer proposing to make it and the listed holding company of such issuer, if applicable.
- 9.5 The comparison of size is made by the use of the percentage ratios set out in paragraph 9.6. The different categories of transactions are:
  - (a) Category 2 – a transaction where any percentage ratio is 5% or more but each is less than 30%;
  - (b) Category 1 – a transaction where any percentage ratio is 30% or more

- or if the total consideration is not subject to any maximum; and
- (c) Reverse take-over – an acquisition by a listed company of a business, an unlisted company or assets where any percentage ratio is 100% or more and will result in a fundamental change in the business, a change in board of directors (being a change of 35% or more on the composition of the board of directors) and/or voting control (refer to definitions of “control” and “controlling shareholder”) of the listed company, in which case this will be considered a new listing. The JSE must be consulted at an early stage in order to discuss the details of the acquisition transaction and, where necessary, obtain a ruling from the JSE.

### **Percentage ratios**

9.6 The percentage ratios are the figures, expressed as a percentage, resulting from each of the following calculations:

- (a) consideration to market capitalisation, being:  
the consideration divided by the aggregate market value of all the listed equity securities, excluding treasury shares\* of the listed company; or
- (b) dilution, being:  
the number of listed equity securities issued by a listed company as consideration for an acquisition compared to those in issue, excluding treasury shares prior to the transaction; or
- (c) transactions to be settled partly in cash and partly in shares:  
the category size for such transaction is to be calculated by first assessing the cash to market capitalisation percentage and then adding this percentage to the dilution percentage.

9.7 In circumstances where:

- (a) either of the above calculations produces an anomalous result; and/or
- (b) the JSE believes that any of the transaction components are not included at fair value (taking account of the particular circumstances of the transaction); and/or
- (c) the categorisation calculations are inappropriate to the sphere of activity of the issuer;

the JSE reserves the right to request a fairness opinion on transaction values, take into account other ratios or use any other relevant indicators of size to determine the categorisation.

### **Consideration**

9.8 When calculating the consideration:

- (a) where all or part of the consideration is in the form of securities to be listed, the consideration attributable to those securities means the aggregate market value of those securities at the time the terms of the transaction are announced;
- (b) the consideration is the amount paid to the vendors, but the JSE may require the inclusion of further amounts (for instance where the purchaser agrees to discharge any liabilities, whether actual or contingent, of the vendors as part of the terms of the transaction);
- (c) if deferred consideration is or may be payable in the future, the consideration is the maximum possible total consideration. If the total consideration is not subject to any maximum the transaction will be treated as a Category 1; and

- (d) in respect of a new class of securities for which an application for listing will be made, the consideration will be the issue price of such securities or, if no price is attributable thereto, the expected aggregate market value of all those securities, determined by the JSE in the absence of evidence of same provided by the listed company.

### **Figures used for categorisation**

- 9.9 Figures used for categorisation purposes must be the aggregate market value of all those listed equity securities before the announcement of the terms, or such announcement determined by the JSE to contain sufficient information to be used for the purposes of categorisation.

### **Indemnities and similar arrangements**

- 9.10 Any agreement or arrangement with a party, not being a member of the listed company's group:
- (a) under which a listed company agrees to discharge any liabilities, costs, expenses, commissions or losses incurred by that party, whether or not on a contingent basis;
  - (b) which would be exceptional; and
  - (c) under which the maximum liability is unlimited:

will be treated as a Category 1 transaction. For the purpose of this paragraph, indemnities such as those customarily given in connection with sale and purchase agreements and indemnities given to advisers against liabilities to third parties arising out of providing advisory services, are not "exceptional". In cases of doubt, the JSE must be consulted at an early stage in order to discuss the details of the transaction and, where necessary, to obtain a ruling from the JSE.

### **Aggregation of transactions**

- 9.11 The JSE will require transactions (other than transactions in terms of paragraph 9.1(d)) entered into during the 12 months prior to the date of the latest transaction to be aggregated with the latest transaction for the purpose of determining the categorisation to apply to the latest transaction. Aggregation must be applied by adding the categorisation percentage/s at the time of the previous transaction/s with the categorisation percentage of the latest transaction. Category 1 transactions that have been entered into during this period will not be taken into account for purposes of the aggregation unless it will result in a reverse take-over when taken into account, in which case the reverse take-over requirements will be applicable. In cases of doubt, the JSE must be consulted at an early stage in order to discuss the details of the transaction and, where necessary, to obtain a ruling from the JSE.
- 9.12 Where acquisitions are entered into during a period of 12 months that cumulatively exceed 100% of either of the percentage ratios, the provisions relating to a reverse take-over will apply.
- 9.13 Without prejudice to the generality of paragraphs 9.11 and 9.12, transactions will normally only be aggregated in accordance with those paragraphs if they:
- (a) are entered into by the company with the same party or associates thereof;
  - (b) involve the acquisition or disposal of securities or an interest in one particular company or asset; or
  - (c) together lead to substantial involvement in a business activity that did not previously form a part of the company's/group's principal activities.
- 9.14 Where the aggregation performed under paragraph 9.11 results in a Category 1 transaction, then the requirement for shareholder approval is in respect of

the last transaction only. The JSE is to be consulted regarding the necessary approval from shareholders.

## **Category 2 requirements**

9.15 In the case of a Category 2 transaction, the issuer must publish an announcement containing the following details of such transaction immediately after the terms have been agreed. Notwithstanding the fact that it may not be possible to include all the details required (such as the financial effects) and that there may be outstanding conditions precedent, this should not prevent issuers from immediately publishing the announcement as required:

- (a) particulars of the transaction, including the names or details of:
  - (i) any company or business the subject of the transaction;
  - (ii) if an acquisition, the vendors including details of beneficial owners;
  - (iii) if a disposal, the purchasers including details of beneficial owners;
  - (iv) the effective date;
  - (v) the conditions precedent; and
  - (vi) any other significant terms of the agreement;
- (b) a description of the business carried on by the subject of the transaction;
- (c) the consideration, and how it was/is to be satisfied, including the terms of any arrangements for deferred consideration;
- (d) the value of the net assets that are the subject of the transaction;
- (e) the profits attributable to the net assets that are the subject of the transaction;
- (f) [Repealed]
- (g) the rationale for the transaction;
- (h) in the case of a disposal, the application of the sale proceeds;
- (i) in the case of a disposal, if the securities formed part of the consideration received, a statement as to whether such securities are to be sold or retained; and
- (j) in the case of a property entity, the information required by paragraph 13.11.

Where it is not possible to include all of the above details, issuers must include a cautionary/further cautionary in the announcement, together with the stated intention to announce these missing details at a later stage once they have been established.

9.16 In addition, if securities have been acquired in a company that, as a result, becomes a subsidiary company as defined in the Act, the applicant must adhere to the provisions of paragraph 10.21 of Schedule 10. Such confirmation must be included in the announcement in terms of paragraph 9.15.

## **Supplementary notification**

9.17 The JSE must be advised immediately and a supplementary announcement made without delay if, at any time after the announcement referred to in paragraphs 9.15, 9.20(a) or 10.4(a) has been made and before the relevant

shareholders meeting, the issuer becomes aware that:

- (a) there has been a significant change affecting any matter contained in the earlier announcement; or
- (b) a significant new matter has arisen, the inclusion of information on which new matter would have been required to be disclosed in the earlier announcement had such information been known at that time;
- (c) "significant" means:
  - (i) a change of 10% or more from the original announced pro forma financial effects of the transaction; or
  - (ii) any other matter or element that could influence an investor's assessment of the matter under consideration.

9.18 The supplementary announcement must:

- (a) provide details of the change or new matter; and
- (b) contain a statement that, save as disclosed, there has been no significant change and no significant new matter that has arisen since publication of the previous announcement.

- 9.19
- (a) If at any time there is a change to the terms of the transaction such that the percentage ratios are affected and the transaction requires re-categorisation into a higher category, and therefore requires shareholders' approval or additional regulation, a supplementary announcement must be made without delay and the necessary shareholder approval must be obtained or additional regulation complied with;
  - (b) Other than as dealt with in paragraph 9.19(a) above, if the matter referred to in paragraph 9.17 is identified after the relevant shareholders' meeting, a supplementary announcement would not be required unless such information falls into the ambit of paragraph 3.4(a) of the Listings Requirements.

### **Category 1 requirements**

9.20 Upon the terms of a Category 1 transaction being agreed, the issuer must:

- (a) immediately comply with the requirements for a Category 2 transaction and state within the announcement that the transaction is subject to shareholders' approval and that a circular to shareholders will be issued in compliance with 9.20 (b); and
- (b) within 60 days, dispatch a circular to shareholders containing a notice of general meeting to obtain their approval and any agreement effecting the transaction must be conditional upon such approval being obtained. The JSE may, in its sole discretion, extend this period provided that there is sufficient justification to do so.

9.21 The Category 1 circular must comply with the general requirements relating to circulars as set out in Section 11 and, in addition, must include:

- (a) the information required under a Category 2 transaction (refer to paragraph 9.15);
- (b) details of any service contracts of proposed directors of the listed company;
- (c) where goodwill is involved, a statement regarding the issuer's accounting policy towards goodwill, as well as the reasons for such goodwill payment;
- (d) a statement giving the directors' opinion on the transaction;

- (e) the information required by the Appendix to this section in relation to Category 1 circulars (refer to paragraph 9.25);
- (f) pro forma effects on:
  - (i) the statement of financial position and the net assets and net tangible assets per share of the issuer; and
  - (ii) the statement of comprehensive income and earnings and headline earnings per share of the issuer, including, if applicable, diluted earnings and headline earnings per share;
- (g) in the case of a transaction involving immovable freehold or leasehold property, the applicable information required by Section 13; and
- (h) a statement giving the directors' recommendation as to how shareholders should vote at the general meeting to approve the transaction and an indication as to how the directors intend to vote their shares, if applicable, at the general meeting.

9.22 In addition, if the Category 1 transaction results in an issue of securities that, together with any other securities of the same class issued during the previous 3 months, would increase the securities issued by more than 50%, then the issuer must include in the Category 1 circular the information required to be disclosed for a pre-listing statement.

#### **Reverse take-over requirements**

- 9.23 The issuer, as enlarged by the acquisition, must be suitable for listing as if it was a new applicant and must satisfy the conditions for listing as set out in Section 4.
- 9.24 The announcement of a reverse take-over must contain adequate warning as to the uncertainty of whether or not the JSE will allow the listing to continue following the acquisition. The issuer must prepare a Category 1 circular and listing particulars as though the issuer were a new applicant. If such Category 1 circular and listing particulars are not provided to shareholders within 60 days of the announcement, the JSE may suspend the listing of the issuer's securities pursuant to the provisions of Section 1. The Category 1 circular must clearly advise shareholders whether or not the JSE will continue to grant a listing to the issuer if shareholders approve the acquisition.

#### **Contents of circulars**

- 9.25 In addition to the requirements of paragraphs 9.20 to 9.24, a Category 1 circular must include the information required by the table set out in the Appendix to this section. Where the circular is accompanied by, or forms part of, a pre-listing statement that itself contains the information required, such information need not be repeated.
- 9.26 The working capital statement and, where relevant, information on group prospects and any profit forecast, must be prepared on the basis of the enlarged group in the case of an acquisition and on the basis that the disposal has taken place in the case of a disposal.
- 9.27 Where the issuer is issuing securities for which listing is sought, the information regarding major interests in securities and directors' interests in securities must be given in relation to the share capital both as existing and the share capital as enlarged by the securities for which listing is sought.
- 9.28 Where a circular is required by this section, and a pre-listing statement is required by Section 6, a single document may be issued that includes listing particulars, except when it is a reverse listing; in which case the circular and pre-listing statement must be two distinct parts of the document.
- 9.29 If securities are being issued as consideration for an acquisition and a Category 1 circular is required, then listing will not be granted for those

securities until shareholders' approval has been obtained and any required registration of a special resolution(s) has been effected.

### Take-overs

- 9.30 Any announcement concerning a possible take-over must be approved by the Panel prior to its release on SENS.
- 9.31 A copy of all draft documentation that is sent to the Panel for approval must be submitted to the JSE, together with a letter confirming that the relevant documentation has been submitted to the Panel.
- 9.32 The JSE must receive written notification immediately upon approval being granted by the Panel in respect of any documentation that is to be circulated to shareholders.
- 9.33 A copy of the actual approved documentation must be sent to the JSE together with the letter referred to in paragraph 9.32 above.

### Rescue operations

- 9.34 Issuers that are in severe financial difficulty must refer to Schedule 11 dealing with rescue operations.

### Restrictive funding arrangements

- 9.35 Any restrictive funding arrangements undertaken by an issuer and/or any of its subsidiaries must comply with paragraph 11.60.

### Appendix to Section 9

The following table identifies the information required to be included in a Category 1 circular (in addition to that required by paragraph 9.20 to 9.33) in respect of the issuer and the undertaking, the subject of the transaction, by reference to certain paragraphs of Sections 7 and 8. Information denoted by a \* is required.

Paragraph	Description	Issuer	Undertaking the subject of the transaction
7.A.1	Name, address and incorporation	*	*
7.A.15	Details of material loans	*	*
7.A.27	Major shareholders	*	
7.B.7	Directors' remuneration and benefits	*#	
7.B.17(b)	Preliminary expenses and issue expenses	*	*
7.B.20	Directors' interests in securities	*	
7.B.21	Directors' interests in transactions	*#	
7.B.22	Responsibility statement	*	
7.B.23	Responsibility of directors, managers and advisers	*	
7.D.5	Group prospects	*	*
7.D.11	Litigation		*
7.E.2	Reporting accountant's report		*
7.E.3	Report of historical financial information		*
7.E.7 to 7.E.9	Statement as to working capital	*	
7.E.10	Material change		*
7.E.12	Pro forma financial information pursuant to paragraph 9.21(f)	*	
7.F.1	Material contracts		*
7.F.10	Experts' consents	*	
7.G.1	Documents and consents to be available for inspection		*
	All agreements associated with the transaction of which the applicant issuer and/or its subsidiaries are a party	*	

7.H	Vendors		*
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## Section 10

### Transactions with Related Parties

#### Scope of section

This section provides certain safeguards against those shareholders, directors and/or other persons related to an issuer taking advantage of their position. Transactions with parties related to an issuer are known as related party transactions. Reference should also be made to the Listings Requirements regarding transactions, set out in Section 9.

Where any transaction is proposed between an issuer, or any of its subsidiaries, and a related party, a circular to shareholders and the approval of shareholders of the issuer in general meeting will normally be required.

Any circular sent to shareholders in connection with a related party transaction must provide sufficient information to enable any recipient of the circular to evaluate the effects of the transaction on the listed company.

The main headings of this section are:

- 10.1 Definitions
- 10.2 Consultation with the JSE
- 10.4 Usual requirements for a related party transaction
- 10.6 Items not regarded as related party transactions
- 10.7 Small related party transactions
- 10.10 Aggregation
- 10.11 Contents of circular

#### Definitions

10.1 For the purposes of this section, the following definitions apply:

- (a) a “related party transaction” means a transaction as contemplated in Section 9 or other agreement, or any variation or novation of an existing agreement, between an issuer, or any of its subsidiaries, and a related party (subject to the exclusions in paragraphs 9.1(c) and (d));
- (b) “related party” means:
  - (i) a material shareholder;
  - (ii) any person that is, or within the 12 months preceding the date of the transaction was, a director of the issuer or its holding company. For the purpose of this definition, a director includes a person that is, or within the 12 months preceding the date of the transaction was, not a director, but in accordance with whose directions or instructions the directors are or were accustomed to act;
  - (iii) any person that falls within the definition of “family cross holdings test” of a director of the issuer;
  - (iv) any adviser to the issuer that has, or within the 12 months preceding the date of the transaction had, a beneficial interest, whether direct or indirect, in the listed company or any of its associates;
  - (v) any person that is, or within the 12 months preceding the date of the transaction was, a principal executive officer of the issuer, by whatever position he may be, or may have been, designated and whether or not he is, or was, a director;
  - (vi) the asset manager or management company of a property entity, including anyone whose assets they manage or administer;
  - (vii) the controlling shareholder of the persons in paragraph

10.1(b)(vi); and

- (viii) an associate of the persons in paragraph 10.1(b)(i) to (vii) above.

Notwithstanding the above definitions, the JSE may, in its sole discretion, determine that a transaction is a related party transaction if extraordinary conditions exist.

### **Consultation with the JSE**

- 10.2 When an issuer is contemplating a transaction which will result in any unusual, vested or other interest(s) or rights being created for any of the parties in paragraph 10.1(b)(i) to (viii) above, the issuer must discuss the transaction with the JSE at an early stage in order for the JSE to determine whether it will exercise its discretion and classify the transaction as a related party transaction and any parties as related parties in terms of the transaction concerned.
- 10.3 The JSE may, in its sole discretion, require the listed company to provide it with a declaration that, to the best of the knowledge and belief of the directors, any nominee shareholders do not include any person who may be acting in concert with any other person in relation to the related party transaction.

### **Usual requirements for a related party transaction**

- 10.4 If an issuer, or any of its subsidiaries, proposes to enter into a related party transaction or, if the JSE determines that a transaction is a related party transaction, the issuer must:
  - (a) make an announcement containing:
    - (i) the information specified in paragraph 9.15;
    - (ii) the name of the related party concerned; and
    - (iii) details of the nature and extent of the interest of the related party in the transaction;
  - (b) furnish the agreement to the JSE;
  - (c) send a circular to its shareholders containing the information required by paragraph 10.11;
  - (d) obtain the approval, by resolution, of its shareholders either prior to the transaction being entered into or, if it is expressed to be conditional on such approval, prior to completion of the transaction;
  - (e) include in the ordinary resolution to approve or give effect to the transaction, a condition that the validity, for the purposes of the Listings Requirements, of the resolution will be subject to a simple majority of the votes of shareholders, other than the related party and its associates, being cast in favour of the resolution; and
  - (f) include a statement by the board of directors confirming whether the transaction is fair insofar as the shareholders 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 unless the subject matter of a related party transaction is one of the following in which case the consideration should be compared to the valuation:
    - (i) property and a valuation report has been prepared in accordance

with paragraphs 13.20 to 13.31; or

- (ii) mineral assets and a competent person's report has been prepared in accordance with Section 12 by an independent competent person and such report contains a valuation.

10.5 Where a general/annual general meeting of the issuer has been called to approve a transaction and, after the date of the notice of meeting but prior to the meeting itself, the transaction becomes a related party transaction, the JSE may require that the issuer either:

- (a) takes immediate steps to amend the relevant resolution by including the condition referred to in paragraph 10.4(e) and give notice of the amendment to shareholders by way of a circular. Such circular must also contain any information required by paragraph 10.11 that was not contained in the original circular accompanying the notice of general/annual general meeting; or
- (b) withdraws the notice of the general/annual general meeting and convenes a fresh general/annual general meeting complying with paragraph 10.4.

### **Items not regarded as related party transactions**

10.6 The related party transaction provisions will not apply in the following situations:

- (a) the issuer does not have any equity securities listed;
- (b) the transaction is one where both of the percentage ratios referred to in paragraph 9.6 are equal to or less than 0.25%.
- (c) in respect of other agreements:
  - (i) the grant of credit (including the lending of money or a guarantee of a loan) by a related party to the issuer on normal commercial terms and on an unsecured basis;
  - (ii) a benefit arising to a director from an employment agreement with the issuer;
  - (iii) a benefit arising to a director from an employee share option scheme and/or share incentive scheme of the issuer;
  - (iv) indemnification and directors' insurance pursuant to Section 78 of the Companies Act;
  - (v) financial assistance to related parties for subscription of securities pursuant to Section 44 of the Companies Act;
  - (vi) loans and other financial assistance to directors pursuant to Section 45 of the Companies Act; and
  - (vii) an underwriting agreement with a related party in respect of an issue of shares by the issuer where the fees are not greater than the current market related rates as confirmed by the independent non-executive directors of the issuer.

### **Small related party transactions**

10.7 In the case of a transaction with a related party where one or both of the percentage ratios referred to in paragraph 9.6 are less than or equal to 5%, but exceed 0.25%, the usual requirements for a transaction with a related party set out in paragraph 10.4 do not apply and, instead, the issuer must, prior to completing the transaction:

- (a) inform the JSE in writing of the details of the proposed transaction;

- (b) provide the JSE with written confirmation from an independent professional expert acceptable to the JSE that the terms of the proposed transaction with the related party are fair as far as the shareholders of the issuer are concerned;
- (c) publish details of the proposed transaction in accordance with paragraph 10.4(a), including a statement that paragraph 10.7(b) has been complied with, that the transaction has been declared to be fair and that the fairness opinion can be inspected at the issuer's registered office and/or through a secure electronic manner at the election of the person requesting inspection for a period of 28 days from the date of announcement; and
- (d) comply with the usual requirements regarding transactions with related parties as per paragraph 10.4, if the independent professional expert states that the transaction is not fair.

### **Ordinary course of business transactions**

- 10.8 Transactions with a director and/or any associate of a director will not be classified by the JSE as ordinary course of business for an issuer pursuant to paragraphs 9.1(d) and (e).
- 10.9 All transactions with related parties classified by the JSE as ordinary course of business pursuant to paragraph 9.1(d) and (e), must be announced through SENS immediately after the terms have been agreed and where any percentage ratio referred to in paragraph 9.6(e) is 5% or more. The JSE will not require the preparation of a fairness opinion, where related parties are involved (excluding the parties as contemplated in paragraph 10.8). The announcement must include the following –
- (a) salient terms of the ordinary course of business transaction/s, accepting that price may be excluded; and
  - (b) details of the corporate governance processes that were followed by the board of directors of the issuer to approve and conclude the transaction, including an opinion from the independent members of the board of directors of the issuer that the transaction is in fact in the ordinary course of business and that the transaction was concluded on an arm's length basis.

### **Aggregation**

- 10.10 The JSE will require all transactions to be aggregated that are entered into by the issuer, or any of its subsidiaries, with the same related party, and/or any of its associates, in any twelve month period and which have not been approved by shareholders or announced in terms of paragraph 10.7.

### **Contents of circular**

- 10.11 A circular in respect of a related party transaction must be issued within 60 days of the publication of the terms announcement, must comply with the general requirements relating to circulars set out in Section 11 and must also include:
- (a) a responsibility statement in accordance with paragraph 7.B.22;
  - (b) in all cases, the information required by the following paragraphs in relation to the issuer:

<b>Paragraph</b>	<b>Nature of statement</b>
7.A.1	Name, address and incorporation
7.A.27	Major shareholders
7.B.17(b)	Preliminary expenses and issue expenses

7.E.10	Material change
7.F.10	Experts' consents
7.G.1	Documents and consents to be available for inspection
9.21(f)	Pro forma financial information

- (c) in the case of a transaction where the related party is a director, or an associate of a director, of the company (or its holding company) the information specified by the following paragraphs:

Paragraph	Nature of statement
7.B.20	Directors' interests in securities
7.B.21	Directors' interests in transactions

- (d) full particulars of the transaction, including the name of the related party concerned, a description of the relationship between the issuer and the related party, the nature and extent of the interest of such party in the transaction and all details required in terms of paragraph 9.15;
- (e) the fairness statement by the board of directors and the fairness opinion or valuation upon which the directors' statement is based, as required in terms of paragraph 10.4(f);
- (f) a statement that the related party and its associates will be taken into account in determining a quorum at the general/annual general meeting, but that their votes will not be taken into account in determining the results of the voting at such meeting in relation to any resolution in connection with the related party transaction;
- (g) if the transaction also falls within Category 1, the information required to be included in a Category 1 (refer to Section 9) circular;
- (h) in the case of a transaction involving immovable freehold or leasehold property, the applicable information required by Section 13; and
- (i) in the case of a related party transaction as a result of other agreement/s, details of the date, parties, nature/type of agreement/s along with relevant terms.

## Section 11

# Circulars, Pre-listing Statements/Prospectuses and Announcements

### Scope of section

This section sets out the requirements that apply to all circulars, pre-listing statements and announcements published by issuers.

Where the circular, pre-listing statement or announcement, or the transaction or matter to which it relates, has unusual features or where it is not possible to comply with the relevant requirements set out in this section, the JSE must be consulted at an early stage in order to discuss the details of the transaction and, where necessary, to obtain a ruling from the JSE.

When a new applicant or existing issuer issues a prospectus, the presumption is made that, apart from compliance with the Act, such prospectus will also comply with and contain all necessary disclosures as if it were a pre-listing statement subject to compliance with the Listings Requirements. For the purposes of this section and its appendix, any reference to a pre-listing statement includes reference to a prospectus and vice versa.

Sections 9 and 10 detail the information to be included in announcements and circulars relating to transactions and related party transactions.

The main headings of this section are:

- 11.1 Contents of all circulars and pre-listing statements
- 11.2 Approval
- 11.3 Introductions
- 11.6 Placings
- 11.7 Offers for sale or subscription
- 11.10 Renounceable rights offers and non-renounceable rights offers
- 11.11 Rights offers and claw-back offers
- 11.14 Renounceable Rights Offers – LAs
- 11.16 Capitalisation issues, cash disbursements and dividends
- 11.18 Transactions (acquisitions and disposals)
- 11.19 Issues for cash
- 11.23 Repurchase of securities
- 11.28 Payments to securities holders
- 11.32 Voluntary liquidation
- 11.36 Change of name
- 11.37 Alteration of share capital, authorised shares and rights attaching to a class/es of shares
- 11.38 Redemption of listed redeemable securities
- 11.39 Change of transfer office
- 11.40 Cautionary announcements
- 11.43 Embargo placed on company announcements/circulars
- 11.44 Name and logo of a sponsor
- 11.45 Other classes of security
- 11.46 Communication with holders of bearer securities
- 11.47 Dissemination of information
- 11.48 Transfer from one sub-section of the List to another
- 11.53 Odd lot offers
- 11.54 Transactions and corporate actions regulated by the Panel
- 11.56 Supplementary circulars
- 11.58 Summary circulars, revised listing particulars and pre-listing statements/prospectuses
- 11.60 Restrictive funding arrangements
- 11.61 Incorporation by reference
- 11.64 Material objections
- Appendix 1 to Section 11
- Appendix 2 to Section 11

## **Contents of all circulars and pre-listing statements**

### **11.1 Circulars and pre-listing statements must:**

- (a) provide a clear and adequate explanation of the subject matter;
- (b) if voting or other action is required:
  - (i) contain all information necessary to allow the holders of the securities to make a properly informed decision; and
  - (ii) contain a heading drawing attention to the importance of the document and advising holders of securities that are in any doubt as to what action to take, to consult appropriate independent advisers;
- (c) state in which other official languages, if any, the circular or pre-listing statement is also available and where copies of such circular or pre-listing statement and translations thereof may be obtained;
- (d) include all the information published, or to be published, simultaneously with the circular or pre-listing statement, in any announcement issued in connection with the transaction to which the circular or pre-listing statement relates;
- (e) where new securities are being issued in substitution for existing securities, explain what will happen to existing documents of title;
- (f) provide clear guidance in respect of any event requiring action by certificated and dematerialised shareholders, as follows:
  - (i) wherever reference is made to shareholders or members of a company the procedures for certificated, dematerialised own name and dematerialised shareholders must be separately detailed;
  - (ii) the surrender of share certificates will only apply to certificated shareholders and the surrender forms must state this;
  - (iii) in the case of dematerialised shareholders, the CSDP or broker will automatically action the surrender of ownership title in accordance with the corporate action or after having received an election instruction;
  - (iv) election forms only apply to certificated shareholders and the election forms must state this. The document concerned must state that dematerialised shareholders' elections should be provided to their appointed CSDP or broker in the form stipulated in the custody agreement entered into between the shareholder and the CSDP or broker;
  - (v) the form of proxy included in the circular should state that it is for completion by certificated shareholders and own name dematerialised shareholders only. The circular must state that dematerialised shareholders must inform their CSDP or broker of their intention to attend any general meeting in order for such CSDP or broker to be able to issue them with the necessary authorisation to enable them to attend such meeting, or, alternately, should they not wish to attend the meeting, they should provide their CSDP or broker with their voting instruction;
  - (vi) the salient dates should include all the dates in the declaration data and finalisation information. The definitions for these dates should be included in the "Definitions" section of the document; and
  - (vii) if new securities are to be issued, shareholders or members should be given the option to receive such new securities in

certificated or dematerialised form.

- 11.1A Certain information which must be disclosed in a circular and/or pre-listing statement may be incorporated by reference pursuant to paragraphs 11.58 and 11.59.

## **Approval**

- 11.2 (a) All announcements that are required to be made in terms of the Listings Requirements must be approved by the issuer's sponsor before they are released over SENS and published in the press. The JSE will only approve those sections of an announcement which contain a corporate action timetable as required in terms of the relevant corporate action timetable. The JSE may review announcements after they have been published to ensure that the minimum information (as required in terms of the Listings Requirements) has been disclosed. The JSE may require the publication of additional information if it determines that the required minimum information has not been disclosed.
- (b) Circulars, pre-listing statements/prospectuses and notices of general/annual general meetings relating to paragraph 16.2(a) to (cc) may not be distributed to shareholders or placed on any website unless they have been approved by the JSE.
- (c) Circulars and notices of general/annual general meetings relating to paragraph 16.2(gg) to (jj) may not be distributed to shareholders or placed on any website until they have been approved by the issuer's sponsor. The JSE may review circulars and notices of general/annual general meetings after they have been distributed to shareholders to ensure that the minimum information (as required in terms of the Listings Requirements) has been disclosed. The JSE may require the publication/distribution of additional information if it determines that the required minimum information has not been disclosed.

## **Introductions**

- 11.3 Applicants seeking a listing by way of an introduction are required to publish an announcement complying with paragraph 11.4 and prepare a pre-listing statement complying with paragraph 11.5 in accordance with the relevant corporate action timetable.
- 11.4 The announcement referred to in paragraph 11.3 must either contain the full pre-listing statement, as set out in paragraph 11.5, or an abridged pre-listing statement containing the following information:
- (a) the number and description of the securities concerned;
  - (b) the name, date of registration and registration number of the applicant;
  - (c) the general nature of the main business or proposed main business actually carried on or to be carried on by the applicant and its subsidiaries;
  - (d) the names and addresses of the directors of the applicant;
  - (e) the places at and times during which copies of the pre-listing statement may be obtained and, if the press announcement is not a full pre-listing statement, a statement of such fact;
  - (f) a positive statement by the board of directors of the applicant issuer confirming that the level of public shareholders pursuant to paragraph 4.25 have been achieved; and
  - (g) the address at which the pre-listing statement is available.

- 11.5 The pre-listing statement must:



- (a) in addition to the requirements of paragraph 6.8(b), state on the front page the following:

“This pre-listing statement is not an invitation to the public to subscribe for securities, but is issued in compliance with the Listings Requirements of the JSE Limited, for the purpose of providing information to the public with regard to the company.”; and
- (b) [Repealed]
- (c) contain the information described in Section 6.

## **Placings**

- 11.6 Applicants seeking a listing by way of a placing are required to publish an announcement complying with paragraphs 11.4 or 11.8A and distribute a pre-listing statement complying with paragraph 11.5(a) and (c) or a prospectus complying with paragraph 11.9 in accordance with the relevant corporate action timetable.

## **Offers for sale or subscription**

- 11.7 Applicants seeking a listing by way of an offer for sale or subscription are required to publish an announcement complying with paragraph 11.8A and a pre-listing statement/prospectus complying with paragraph 11.9 in accordance with the relevant corporate action timetable.
- 11.8A The announcement referred to in paragraph 11.7 must either contain the full pre-listing statement/prospectus, as set out in paragraph 11.9, or an abridged pre-listing statement/prospectus containing the following information:
  - (a) the number and description of the securities concerned;
  - (b) the name and date of registration of the applicant;
  - (c) the general nature of the main business or proposed main business actually carried on or to be carried on by the applicant and its subsidiaries;
  - (d) the names and addresses of the directors of the applicant;
  - (e) the places at, and times during which, copies of the prospectus may be obtained;
  - (f) where all the securities that are the subject of an offer are intended to be offered only to the members of a company or to debenture holders, as the case may be, with or without the right to renounce in favour of other persons:
    - (i) the issue price of such securities;
    - (ii) the ratio in which such securities will be offered to the members or debenture holders entitled to accept the offer; and
    - (iii) the last day to trade to ensure registration on the record date; and
  - (g) the last day for subscribing.
- 11.8B The announcement dealing with the outcome of the offer or subscription before the date of listing must include a positive statement by the board of directors of the applicant issuer that the level of public shareholders pursuant to paragraph 4.25 have been achieved.
- 11.9 An offer for sale or subscription must take the form of a pre-listing statement/prospectus and, apart from complying with the Act, must also comply with Section 6.

## **Renounceable rights offers and non-renounceable rights offers**

- 11.10 (a) The applicant and the issuer in a renounceable rights offer are required to comply with the actions in the relevant corporate action timetable, including the production and publication of all announcements and documents detailed therein. All documents must be submitted to and approved by the JSE.
- (b) The applicant and the issuer in a non-renounceable rights offer are required to comply with the actions in the relevant corporate action timetable, including the production and publication of all announcements and documents detailed therein. All documents must be submitted to and approved by the JSE.

## **Rights offers and claw-back offers**

- 11.11 Issuers seeking a listing for securities issued by way of a rights offer/claw-back offer or a non-renounceable rights offer are required to comply with the actions in the relevant corporate action timetable.
- 11.12 [Repealed]
- 11.13 If a pre-listing statement is not required in terms of Section 6, a circular should be sent to shareholders containing the information required by the following paragraphs of Section 7:

<b>Paragraph</b>	<b>Nature of statement</b>
7.A.1	Name, address and incorporation
7.A.4 or 7.A.5	Share capital of the company
7.B.1	Directors and management
7.B.9	Directors remuneration#
7.B.17(b)	Preliminary expenses and issue expenses
7.B.20	Directors' interests in securities
7.B.22	Responsibility statement
7.B.23	Responsibility of directors, managers and advisers
7.C.14	Market value of securities
7.C.16	Rights offers
7.D.2	Description of business
7.D.5	Prospects
Stand alone	An explanation, including supporting information (if any), of the intended use of the funds
7.G.1	Documents and consents to be available for inspection

## **Renounceable Rights Offers – LAs**

- 11.14 the following information must be included, inter alia, on the LA:
- (a) the salient details of the corporate action must be printed on the front page of the LA;
  - (b) the instructions in respect of acceptance and payment, sale and renunciation and registration; and
  - (c) where excess securities are made available, the application form must be printed in a different colour to the LA.
- 11.15 In addition, the circular should contain details of all Category 2 transactions, as described in paragraph 9.15, not previously notified to shareholders by way of a circular.

## **Capitalisation issues, cash disbursements and dividends**

11.16 Issuers seeking a listing for securities issued by way of a capitalisation issue are required to comply with the actions in the relevant corporate action timetable.

11.17 (a) In the case of a scrip dividend a circular should be sent to shareholders containing the information set out in paragraph 7.C.15 and complying with the requirements of paragraphs 5.44 to 5.49.

Any announcement released for cash disbursements to shareholders must indicate whether the issue amount is distributed by way of a reduction of CTC (Contributed Tax Capital as defined in the Income Tax Act) or a Dividend (as defined in the Income Tax Act). Announcements released for any cash disbursements to shareholders must include the following where applicable:

- (i) Local dividend tax rate represented as a percentage;
  - (ii) Gross local dividend amount represented as cents per share;
  - (iii) Net local dividend amount represented as cents per share;
  - (iv) Non-reclaimable foreign withholding dividend tax rate represented as a percentage;
  - (v) Dividend reclaimable tax rate applicable overseas represented as a percentage;
  - (vi) Issued share capital as at declaration date;
  - (vii) Closing market price of the distribution in specie as at deemed payment date which shall be no later than the close of business on record date;
  - (viii) Company registration number; and
  - (ix) Company tax reference number.
- (b) In the case of a capitalisation issue an announcement must be published complying with paragraphs 5.39 to 5.43 which must indicate whether the issue is distributed from capital or income reserves.
- (c) In the case of a dividend (including in specie dividend), as defined in the Income Tax Act, an announcement must be published complying with paragraphs 11.17(a)(i) to (ix) and also indicate whether the distribution is made from capital or income reserves.

## **Transactions (acquisitions and disposals)**

11.18 The requirements for the contents of announcements and circulars relating to Category 1 and 2 transactions are detailed in Section 9.

## **Issues for cash**

### **Specific issue for cash**

11.19A Issuers seeking a listing for securities issued in terms of a specific issue of shares for cash that requires shareholders approval must send shareholders a circular within 60 days of publication of the announcement containing the following:

- (a) the notice of general meeting;
- (b) subject to (f) below, full disclosure of the detailed effects of the proposed issue including the effects on the statement of financial position, net asset value per share, net tangible asset value per share,

- the statement of comprehensive income, earnings per share, headline earnings per share and, if applicable, diluted earnings and headline earnings per share;
- (c) the disclosure referred to in paragraph 5.51(b) to (g);
  - (d) if paragraph 5.51(f) or 5.53(b) is applicable, include a statement by the board of directors confirming whether the issue is fair insofar as the shareholders 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; and
  - (e) the paragraphs of Section 7 described in paragraph 11.13 above other than paragraph 7.C.16, except where a pre-listing statement is required in terms of Section 6, in which case the pre-listing statement should contain the information set out in that section;
  - (f) if the specific issue relates to a class of securities already in issue and is for cash without any other impact on the financial statements, an explanation, including supporting information (if any), of the intended use of the funds.

## **Accelerated Specific issue for cash**

- 11.19B (a) Issuers seeking a listing for securities issued pursuant to an accelerated specific issue of shares for cash that requires shareholders' approval must send shareholders a circular containing the following:
- (i) the notice of general meeting; and
  - (ii) the term sheet in Appendix 2 Form G1.
- (b) In the event of an accelerated specific issue for cash to a related party, the price at which the equity securities are issued may not be at a discount as contemplated by paragraph 5.51(f)(ii). The accelerated specific issue route will not be available where the intention is to issue equity securities to a related party at a discount. In such event the provisions of paragraph 5.51 and paragraph 11.19A must be applied.
- (c) The accelerated specific issue for cash to a related party/ies will only be allowed by the JSE where an issuer has the necessary liquidity in order to calculate a weighted average traded price of such equity securities measured over the 30 business day period.
- 11.20 In the case of a specific issue for cash, the issuer, after it has agreed the terms, must immediately publish an announcement containing full details of the issue, including:
- (a) the number and price of the securities issued;
  - (b) if applicable, the average discount to the weighted average traded price of the equity securities over the 30 business days prior to the date that the issue is agreed in writing between the issuer and the party subscribing for the securities;
  - (c) the name of the party/ies subscribing for the securities; and
  - (d) the effects of the issue on net asset value per share, net tangible asset value per share, earnings per share, headline earnings per share and, if applicable, diluted earnings and headline earnings per share or the explanation of the issue as contemplated in paragraph 11.19A(f).

## **General issue for cash**

- 11.21 If an issuer is seeking a general authority for issues for cash, a circular must

be sent to securities holders including the following:

- (a) the notice of general/annual general meeting; and
- (b) the disclosure referred to in paragraph 5.52(b) to (e).

11.22 After an issuer has issued equity securities in terms of an approved general issue for cash representing, on a cumulative basis within the period contemplated in paragraph 5.50(b), 5% or more of the number of equity securities in issue prior to that issue, the company shall publish an announcement containing full details of the issue, including:

- (a) the number of securities issued;
- (b) the average discount to the weighted average traded price of the equity securities over the 30 business days prior to the date that the issue is agreed in writing between the issuer and the party/ies subscribing for the securities; and
- (c) in respect of the issue of options and convertible securities pursuant to paragraph 5.53, the effects of the issue on the statement of financial position, net asset value per share, net tangible asset value per share, the statement of comprehensive income, earnings per share, headline earnings per share and, if applicable, diluted earnings and headline earnings per share; or
- (d) in respect of an issue of shares pursuant to paragraph 5.52, an explanation, including supporting information (if any), of the intended use of the funds.

## **Repurchase of securities**

### **Specific repurchases**

11.23 The circular must be sent to shareholders within 60 days of publication of the announcement and must comply with and/or contain the following information:

- (a) contents of all circulars (refer to paragraph 11.1);
- (b) general information including:
  - (i) Major shareholders (7.A.27);
  - (ii) Material change (7.E.10);
  - (iii) Directors' interests in securities (7.B.20);
  - (iv) Share capital of the company (7.A.4 or 7.A.5);
  - (v) Preliminary expenses and issue expenses (7.B.17); and
  - (vi) Responsibility (7.B.22 and 7.B.23);
- (c) the reason for, and method by which a company intends to repurchase its securities, including the number of securities to be repurchased and the price to be paid;
- (d) in the case of a repurchase from a specific shareholder or shareholders, the name of such shareholder(s) and the current shareholding(s) of such shareholder(s) and the names and details of the parties excluded from voting in terms of paragraph 5.69(b);
- (e) subject to (f) below, the effect on earnings per share, headline earnings per share, net asset value per share, net tangible asset value per share and, if applicable, diluted earnings and headline earnings per share;
- (f) if the specific repurchase is for cash only, an explanation, including

supporting information (if any), of the impact of the repurchase on the financial information;

(g) a statement by the directors that, after considering the effect of such repurchase, the:

(i) company and the group will be able in the ordinary course of business to pay its debts for a period of 12 months after the date of the approval of the circular;

(ii) assets of the company and the group will be in excess of the liabilities of the company and the group for a period of 12 months after the date of the approval of the circular. For this purpose, the assets and liabilities should be recognised and measured in accordance with the accounting policies used in the latest audited consolidated annual financial statements;

(iii) share capital and reserves of the company and the group will be adequate for ordinary business purposes for a period of 12 months after the date of the approval of the circular (refer to paragraph 7.E.7);

(iv) working capital of the company and the group will be adequate for ordinary business purposes for a period of 12 months after the date of the approval of the circular (refer to paragraph 7.E.7); and

(v) a resolution by the board of directors that it has authorised the repurchase, that the company and its subsidiary/ies have passed the solvency and liquidity test and that, since the test was performed, there have been no material changes to the financial position of the group;

(h) a statement as to the source of funds to be utilised; and

(i) if applicable in terms of paragraph 5.69, a statement by the board of directors confirming whether the repurchase is fair insofar as the shareholders 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.

11.24 In the case of a pro rata offer, announcements must be made in accordance with the relevant corporate action timetable.

11.25 In the case of a specific repurchase, the issuer, after it has agreed the terms, must immediately publish an announcement containing full details, including:

(a) the terms of the repurchase;

(b) the date of the general meeting at which the specific authority will be sought;

(c) from whom the specific repurchase is to be made. If paragraph 5.69(e) is applicable, a statement must be included that the repurchase shall be subject to the inclusion of a statement by the board of directors in the circular confirming whether the repurchase is fair insofar as the shareholders (excluding the 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 prepared in accordance with Schedule 5 before making this statement;

(d) the date on which the repurchase is to be made and the date on which the securities will be cancelled and the listing terminated, if applicable;

(e) the effect on earnings per share, headline earnings per share, net asset value per share, net tangible asset value per share and, if applicable, diluted earnings and headline earnings per share or the explanation as

- contemplated in paragraph 11.23(f);
- (f) the number of treasury shares held after the repurchase; and
  - (g) a statement that a circular containing details of the above will be dispatched to shareholders.

### **General repurchases**

- 11.26 If a company is seeking a general authority to purchase its own securities, a circular must be sent to securities holders, including a notice of annual general/general meeting, including the following:
- (a) contents of all circulars (refer to paragraph 11.1);
  - (b) general information including:
    - (i) Major shareholders (7.A.27);
    - (ii) Material change (7.E.10);
    - (iii) Share capital of the company (7.A.4 or 7.A.5); and
    - (iv) Responsibility statement (7.B.22);
  - (c) a statement of the board of directors' intention regarding the utilisation of the authority sought;
  - (d) a statement by the directors that after considering the effect of such maximum repurchase the:
    - (i) company and the group will be able in the ordinary course of business to pay its debts for a period of 12 months after the date of the notice of the annual general/general meeting;
    - (ii) assets of the company and the group will be in excess of the liabilities of the company and the group for a period of 12 months after the date of the notice of the annual general/general meeting. For this purpose, the assets and liabilities should be recognised and measured in accordance with the accounting policies used in the latest audited annual group financial statements;
    - (iii) share capital and reserves of the company and the group will be adequate for ordinary business purposes for a period of 12 months after the date of the notice of the annual general/general meeting (7.E.7);
    - (iv) working capital of the company and the group will be adequate for ordinary business purposes for a period of 12 months after the date of the notice of the annual general/general meeting (refer to paragraph 7.E.7); and
    - (v) a resolution by the board of directors that it has authorised the repurchase, that the company and its subsidiary/ies have passed the solvency and liquidity test and that, since the test was performed, there have been no material changes to the financial position of the group; and
  - (e) a statement in the resolution that such authority is limited to paragraph 5.72(a), (c), (d) and 5.68.
- 11.27 When a company has cumulatively repurchased 3% of the initial number (the number of that class of shares in issue at the time that the general authority from shareholders is granted) of the relevant class of securities, and for each 3% in aggregate of the initial number of that class acquired thereafter, an announcement must be made. Such announcement must be made as soon as possible and, in any event, by not later than 08h30 on the second business day following the day on which the relevant threshold is reached or exceeded,

and must contain the following information:

- (a) the date(s) of repurchase(s) of securities;
- (b) the highest and lowest prices paid for securities so repurchased;
- (c) the number and value of securities repurchased;
- (d) the extent of the authority outstanding, by number and percentage (calculated by using the number of shares in issue before any repurchases were effected);
- (e) a statement as to the source of funds utilised;
- (f) a statement by the directors that, after considering the effect of such repurchase, the:
  - (i) company and the group will be able in the ordinary course of business to pay its debts for a period of 12 months after the date of the announcement;
  - (ii) assets of the company and the group will be in excess of the liabilities of the company and the group for a period of 12 months after the date of the announcement. For this purpose, the assets and liabilities should be recognised and measured in accordance with the accounting policies used in the latest audited group annual financial statements;
  - (iii) share capital and reserves of the company and the group will be adequate for ordinary business purposes for a period of 12 months after the date of the announcement (refer to paragraph 7.E.7);
  - (iv) working capital of the company and the group will be adequate for ordinary business purposes for a period of 12 months after the date of the announcement (refer to paragraph 7.E.7);
- (g) a statement confirming that paragraph 5.72 (a) has been complied with;
- (h) an explanation, including supporting information (if any), of the impact of the repurchase on the financial information;
- (i) the number of treasury shares held after the repurchase;
- (j) the date on which the securities will be cancelled and the listing removed, if applicable; and
- (k) in the event that the repurchase/purchase was made during a prohibited period through a repurchase programme pursuant to paragraphs 5.72 and/or 14.9(e) of Schedule 14, a statement confirming that the repurchase was put in place pursuant to a repurchase programme prior to prohibited period in accordance with the Listings Requirements.

## **Payments to securities holders**

### **Specific payments (as defined in Section 5)**

- 11.28 The circular must be sent to shareholders within 60 days of publication of the announcement and must contain the following information:
- (a) contents of all circulars (refer to paragraph 11.1);
  - (b) general information including:
    - (i) major shareholders (7.A.27);
    - (ii) material change (7.E.10);
    - (iii) directors' interests in securities (7.B.20);



- (iv) share capital of the company (7.A.4 or 7.A.5);
- (v) preliminary expenses and issue expenses (7.B.17); and
- (vi) responsibility (7.B.22 and 7.B.23);
- (c) source of payment (ie capital or income payment), the reason for and method by which the company intends to make the payment;
- (d) an explanation, including supporting information (if any), of the impact of the repurchase on the financial information;
- (e) a statement by the directors that after considering the effect of such payment the:
  - (i) company and the group will be able in the ordinary course of business to pay its debts for a period of 12 months after the date of the approval of the circular;
  - (ii) assets of the company and the group will be in excess of the liabilities of the company and the group for a period of 12 months after the date of the approval of the circular. For this purpose, the assets and liabilities should be recognised and measured in accordance with the accounting policies used in the latest audited annual group financial statements;
  - (iii) share capital and reserves of the company and the group will be adequate for ordinary business purposes for a period of 12 months after the date of the approval of the circular (refer to paragraph 7.E.7);
  - (iv) working capital of the company and the group will be adequate for ordinary business purposes for a period of 12 months after the date of the approval of the circular (refer to paragraph 7.E.7); and
  - (v) that the board of directors has authorised the payment, that the company and its subsidiary/ies have passed the solvency and liquidity test and that, since the test was performed, there have been no material changes to the financial position of the group;
- (f) the detailed terms of the payment; and
- (g) the circular should include a statement giving the directors' opinions on the payment, a recommendation as to how securities holders should vote and an indication as to how the directors intend to vote their shares.

11.29 In the case of a specific payment, an announcement must be published in accordance with the relevant corporate action timetable and, in addition, it must contain the following information:

- (a) the terms of the payment;
- (b) the date of the general meeting at which the specific authority will be sought;
- (c) the date on which the payment is to be made;
- (d) an explanation, including supporting information (if any), of the impact of the repurchase on the financial information; and
- (e) that a circular containing details of the above will be sent to securities holders.

#### **General payments (as defined in paragraph 5.85(b))**

11.30 [Repealed]

11.31 [Repealed]

### **Voluntary liquidation**

11.32 An issuer proposing to enter into voluntary liquidation must comply with the relevant corporate action timetable and distribute a circular to shareholders, including a notice of general meeting, containing the following:

- (a) a summary of the mechanics of the liquidation distribution and the payment procedure to be adopted;
- (b) any exchange control rulings/procedural guidelines;
- (c) the taxation implications of the distribution;
- (d) a pro forma statement of financial position (refer to paragraphs 8.15 to 8.33), if the issuer intends making more than one distribution of securities;
- (e) the effect on net asset value, net tangible asset value, earnings and headline earnings per share; and
- (f) the information required by paragraph 7.C.14.

11.33 Should shareholders approve the voluntary liquidation, a written application must be submitted for the removal of the listing on a stated date.

### **Redemption of securities other than listed redeemable securities**

11.34 [Repealed]

11.35 [Repealed]

### **Change of name**

11.36 An issuer proposing to change its name must comply with the relevant corporate action timetable and distribute a circular to shareholders, and a notice of general meeting, including details of the special resolution shareholders will be asked to approve in order to effect the proposed change of name. The special resolution must be registered with the Commission and the proof of registration submitted to the JSE.

### **Alteration of share capital, authorised shares and rights attaching to a class/es of shares**

11.37 An applicant proposing such an alteration to its share capital and rights attaching to a class/es of shares, in terms of paragraph 5.92, must distribute a circular to all shareholders, including a notice of general meeting, containing the following in respect of the alteration of share capital:

- (a) details of the special resolution shareholders will be asked to approve in order to effect the proposal. The special resolution must be registered with the Commission and the proof of registration submitted to the JSE;
- (b) the rationale for the alteration;
- (c) the applicable ratio;
- (d) a statement that the JSE has granted approval for the amendment of the issuer's listing, if relevant;
- (e) the before and after share capital structure of the listed company; and
- (f) the procedure to be adopted by certificated and dematerialised shareholders with respect to their documents of title.

Documentation to be submitted to the JSE for approval is set out in paragraph 16.35.

### **Redemption of listed redeemable securities**

11.38 The following must be complied with in regard to the redemption of listed securities:

- (a) the redemption must be effected in compliance with any Listings Requirements applicable, such as the relevant corporate action timetable, as well as any other regulatory requirements, and must be authorised and effected in accordance with the listed company's MOI;
- (b) a circular must be sent to holders of the redeemable securities containing the following information, unless waived by the JSE where such redemption does not contain any options, and must be redeemed on specific terms and at specific times:
  - (i) a summary of the salient features, dates, rationale and action required;
  - (ii) details as to compliance with any applicable Reserve Bank approval required;
  - (iii) the taxation implications of the redemption;
  - (iv) the effect on net asset value, net tangible asset value, earnings and headline earnings per share; and
  - (v) the information required by paragraph 7.C.14; and
- (c) written application for removal of the securities to be redeemed from the List, from a specified time and date, must be submitted to the JSE for approval.

### **Change of transfer office**

11.39 The following procedures are required when there is a change in the transfer office of an issuer:

- (a) a notice advising beneficial owners of the issuer's change of transfer office, together with the relevant details, must be sent to all registered holders;
- (b) an announcement detailing the changes must be published at least two weeks before the due date of change; and
- (c) the issuer must advise the JSE, in writing, of the change and must include details in respect of the issuer's new transfer office.

### **Cautionary announcements**

11.40 Cautionary announcements must contain disclosure of all available details regarding the information that is the subject of the cautionary announcement and contain a warning to shareholders that they are advised to exercise caution when dealing in their securities, until full details regarding such information has been announced. However, when a company is unable to provide details on the subject of the cautionary announcement, such announcement should be substantially in the form of paragraph 15.1 of Schedule 15 ("First cautionary announcement").

11.41 After an issuer has issued a cautionary announcement, it must issue a progress report by way of a further cautionary announcement at least every 30 business days thereafter, unless the JSE allows otherwise, until full details on the subject of the cautionary announcement have been announced. Such announcement must contain all available details on the matter. However,

where a company is unable to provide such details, the announcement should be substantially in the form of paragraph 15.2 of Schedule 15 ("Renewal of existing cautionary announcement").

- 11.42 Where a company decides to withdraw a cautionary announcement, it must make an announcement to this effect, which announcement should be substantially in the form of paragraph 15.3 of Schedule 15 ("Withdrawal of cautionary announcement").

#### **Embargo placed on company announcements/circulars**

- 11.43 A draft announcement of price sensitive information may not be released to any third party under a time embargo before it is released in terms of paragraph 3.5 and circulars may not be released to a third party under a time embargo prior to it being approved by the JSE and sent to shareholders.

#### **Name and logo of a sponsor**

- 11.44 The name of the sponsor must appear in any announcement or document issued by or on behalf of any issuer.

#### **Other classes of security**

- 11.45 If a circular, pre-listing statement/listing particulars or press announcement is dispatched to the beneficial owners of any particular class of security, the issuer must dispatch a copy or summary of such document to the beneficial owners of all other classes of securities in such issuer, unless the contents of such document are irrelevant to them.

#### **Communication with holders of bearer securities**

- 11.46 If there is a need to communicate with beneficial owners of listed bearer securities, the issuer must release an announcement referring to the communication and giving an address or addresses from which copies of such communication can be obtained by beneficial owners of bearer securities.

#### **Dissemination of information**

- 11.47 Where copies of annual financial statements, abridged annual financial statements, pre-listing statements/listing particulars, circulars, proxy forms and dividend or interest notices are required to be distributed to shareholders, it is the responsibility of the issuer to ensure that such distribution is made to all certificated holders and to those dematerialised beneficial holders of its securities who have elected to receive such documents at the cost of the issuer.

#### **Transfer from one sub-section of the List to another**

- 11.48 The Global Classification System ("ICB") allocates each issuer to the sub sector whose definition most closely describes the nature of its business. The basic information used for the classification of an issuer is the segmental turnover arising from each area of business as disclosed in the audited annual financial statements. An issuer will be allocated to the sub sector whose definition most closely fits the issuer's source of turnover or where such sub sector describes the source of the majority of the issuer's turnover.
- 11.49 Where a significant change takes place in an issuer's structure as a result of a corporate event, its classification may be reassessed on the basis of financial data formally published by the issuer. However, no changes will be made on the basis of promises of action, assertions or aspirations of directors, unless they are substantiated by audited annual financial statements or equivalent audited information.

- 11.50 An issuer, through the issuer's sponsor, may request the JSE to review the issuer's classification at any time. A suitably motivated application containing the supportive audited segmental information must be presented to the JSE as per the timetable set out in the relevant corporate action timetable. The JSE will submit the application to FTSE if it is satisfied with such application.
- 11.51 Any changes agreed to and announced by the JSE and FTSE to an issuer's classification will normally be implemented on the next trading day following the third Friday of each quarter ending March, June, September and December.
- 11.52 The ICB System is available on the FTSE/JSE website, "www.ftserussell.com".

### **Odd lot offers**

- 11.53 An issuer making an odd lot offer to securities holders must comply with the relevant corporate action timetable and distribute a circular to securities holders, including a notice of general meeting, containing the following:
- (a) details of the resolutions shareholders will be asked to approve in order to effect the odd lot offer;
  - (b) the reasons for the odd lot offer;
  - (c) the election alternatives referred to in paragraph 5.124(a); and
  - (d) the procedure to be adopted by certificated and dematerialised shareholders with respect to their documents of title.

### **Transactions and corporate actions regulated by the Panel**

- 11.54 Any transaction or corporate action regulated by the Panel, which does not contain or involve any other corporate action referred to in paragraph 16.2, must only comply with:
- (a) the relevant corporate action timetable, unless otherwise agreed by the JSE; and
  - (b) Section 8 in respect of pro forma financial information, to the extent that such information is included in the documentation distributed to shareholders.
- 11.55 The JSE will review the relevant documentation to ascertain whether it has any other Listings Requirements implications, but will only approve those matters referred to in paragraph 11.54.

### **Supplementary circulars**

- 11.56 The JSE must be advised immediately and a supplementary circular published if, at any time after a circular has been published and before the relevant shareholders meeting, the applicant becomes aware that:
- (a) there has been a significant change affecting any matter contained in the circular; or
  - (b) a significant new matter has arisen, the inclusion of information on which new matter would have been required to be disclosed in the original circular had such information been known at that time;
  - (c) "significant" means:
    - (i) a change of 10% or more from the original pro forma financial effects included in the circular;
    - (ii) a change in the terms of the transaction such that the percentage ratios are affected and the transaction requires re-categorisation

into a higher category; or

- (iii) any other matter or element that could influence an investor's assessment of the matter under consideration.

11.57 Supplementary circulars must:

- (a) provide full details of the change or new matter;
- (b) contain the responsibility statement required by paragraph 7.B.22; and
- (c) contain a statement that, save as disclosed, there has been no significant change and no significant new matter that has arisen since publication of the previous circular.

### **Summary circulars, revised listing particulars and pre-listing statements/prospectuses**

11.58 An issuer may dispatch a summary circular with respect to any corporate action pursuant to the Listings Requirements provided it has an operational website. The summary circular must be prepared on the circular approved by the JSE and must not be misleading or inaccurate. The sponsor must provide written confirmation to the JSE before the summary circular is dispatched which must:

- (i) include a statement from the sponsor that it has reviewed and approved the summary circular and that it complies with Appendix 2 to Section 11 of the Listings Requirements;
- (ii) include a statement by a director of the applicant issuer that he/she is satisfied that the summary circular includes accurate information from the circular approved by the JSE;
- (iii) be signed by the company secretary, a director of the applicant issuer and the sponsor; and
- (iv) include the summary circular to be dispatched.

11.59 The summary circular must contain a notice of availability on where the full contents of the full circular can be viewed or accessed. The cover page of the summary circular must include a statement in bold and in capital letters stating clearly:

- (a) that the summary circular is only a summary of the information in the full circular and does not contain full or complete details; and
- (b) the details of the full website address of the issuer where the full circular can be viewed or accessed.

### **Restrictive funding arrangements**

11.60 Any restrictive funding arrangements undertaken by an issuer and/or any of its subsidiaries must comply with the following:

- (a) Disclose the restrictive funding arrangement as a material contract in circulars, pre-listings statements and prospectuses published by issuers in accordance with 7.F.1;
- (b) If a related party participates in the restrictive funding arrangement shareholder approval will be required and the requirements of paragraph 10.11 will apply with the exception of paragraph 10.11(e); and
- (c) Disclosure of the terms of the restrictive funding arrangement in the annual report in accordance with paragraph 8.61(n).

### **Incorporation by reference**

- 11.61 Information which has been prepared pursuant to the provisions of the Listings Requirements may be incorporated in circulars and pre-listing statements by reference, provided that any information incorporated by reference:
- (a) must be the most recent available to the applicant issuer. Any information that has changed since publication and the last practicable date of the circular and/or pre-listing statement may be incorporated by reference, provided any changes are appropriately disclosed in the circular and/or pre-listing statement;
  - (b) must be disclosed under a separate heading in a cross reference table to enable shareholders and prospective investors to identify easily specific items of information incorporated by reference:
    - (i) the cross reference table must contain a statement that:
      - (aa) the information can be accessed on the applicant issuer's website (also specifying the route to same);
      - (bb) the information is available for inspection at the registered office or other designated office of the applicant issuer and the offices of the sponsor/DA and/or through a secure electronic manner at the election of the person requesting inspection, that such inspection is available to shareholders and/or prospective investors at no charge, during business hours for a reasonable period (being not less than 14 days).
- 11.62 Subject to paragraph 11.63, documents that may be incorporated by reference may include, but is not limited to, financial information of the applicant issuer (annual and interim reports), financial information on the subject of a substantial acquisition or disposal, pro forma financial information, competent person's report, valuation reports and/or the memorandum of incorporation of the applicant issuer.
- 11.63 Historical financial information in respect of a new applicant, may not be incorporated by reference in a prospectus or new-listing statement and must be included in the body of the prospectus or pre-listing statement.

#### **Circulars and notices of annual general meetings**

- 11.64 In instances where the Listings Requirements require an applicant issuer to send a circular to its securities holders (including but not limited to general issues of shares for cash, general repurchases and general payments), the JSE will allow the circular to be substituted by the required disclosure being made in the applicant issuer's annual report/annual financial statements provided all the required information is either:
- (a) included in the notice of annual general meeting; or
  - (b) clear cross references are included in the notice of annual general meeting indicating where in the annual report/annual financial statements the information can be obtained.

#### **Material objections**

- 11.65 The sponsor and the applicant issuer must immediately inform the JSE in writing of any material objections which have been reported/notified to the sponsor or applicant issuer, regarding the listing of the applicant issuer during the period from the release date of the announcement pursuant to paragraphs 11.3, 11.6 or 11.7 above and up to the submission of the Part II documents pursuant to paragraph 16.12.

#### **Appendix 1 to Section 11**

## Guidelines on the publication of information

The following table provides a summary of the requirements for publication of information relating to listed companies:

Reference (section paragraph unless otherwise stated)	Information	Electronic submission to the JSE	Distribute to share- holders	Publish in press in compliance with paragraph s 3.46 to 3.48 Note 3	Publish through SENS
3.4(b)	Trading statement	No	No	No	Yes
3.11	Dividend announcement	No	No	No	Yes
3.15	Condensed financial statements	No	No	Yes Note 3	Yes, available through the JSE cloudlink
3.15	Annual financial statements	Yes	No Note 4	No	Yes, available through the JSE cloudlink
3.15	Summary financial statements	No	No	No	Yes available through the JSE cloudlink
3.16	Annual reports	Yes	No	No	Yes, available through the JSE cloudlink
3.17	Interim Results	No	No	Yes	Yes, available through the JSE cloudlink
3.18	Quarterly Results	No	No	No	Yes, available through the JSE cloudlink
3.16(a)	Notices regarding annual general meetings	Yes	Yes	No	Yes, in compliance with paragraph 3.92
3.46–3.48	All announcements except those specifically detailed in this appendix	No	No	Yes Note 3	Yes
3.49	Circulars	Yes	Yes	No	No
3.49	Pre-listing statements and prospectuses	Yes	Yes	Yes Notes 1 and 3	Yes Note 1
3.78	Change of auditors	Yes	No	No	Yes
3.59	Changes to the boards of directors	Yes	No	No	Yes

*continued*



<b>Reference (section paragraph unless otherwise stated)</b>	<b>Information</b>	<b>Electronic submission to the JSE</b>	<b>Distribute to share- holders</b>	<b>Publish in press in compliance with paragraph s 3.46 to 3.48 Note 3</b>	<b>Publish through SENS</b>
3.63	Directors dealings in securities	No	No	No	Yes
11.2	Voluntary price sensitive announcement s	No	No	No	Yes
16.21(g)	Annual compliance report prepared pursuant to section 13G(2) of the BEE Act.	Yes	No	No	Yes (only a notice of availability referring to the website of the issuer)

#### **Notes:**

1. Alternatively, an abridged version of the pre-listing statement/prospectus can be published through SENS and in the press.
2. If an applicant issuer makes a voluntary publication in the press, there is no minimum information required but the applicant issuer must ensure that the information is not misleading.
3. Announcements requiring publication in the press may be short-form announcements published in accordance with paragraphs 3.46 and 3.46(A).
4. A South African company must consider its statutory obligations to distribute its annual financial statements under the Companies Act.

## **Appendix 2 to Section 11**

### **Information to be included in summary circulars**

The following information must be contained in the summary circular in respect of circulars dispatched pursuant to the Listings Requirements:

1. The statement in accordance with paragraph 11.59.
2. Details of the corporate action:
  - description of the corporate action;
  - parties involved;
  - rationale;
  - purchase consideration/price receivable or to be paid;
  - timetable and effective date;
  - guidance in respect of any event requiring action by certificated and dematerialised shareholders, including voting and other actions required.
3. Details of any conditions precedent and disclosure of any outstanding conditions precedent.
4. In the event of a fairness opinion being included, a copy of the fairness

opinion and a statement by the board of directors confirming whether the corporate action is fair or not insofar as the shareholders of the issuer are concerned and that the board of directors has been advised by an independent expert acceptable to the JSE.

5. Details of the name of any related party and a description of the relationship between the issuer and the related party and the extent of the interest of such party in the corporate action.
6. Details on whether any parties are excluded from voting on the corporate action and the reasons therefore.
7. The report of historical financial information, profit forecast and pro forma financial information, including the auditor's report thereon.
8. If required, the Competent Person's Report pursuant to Section 12.
9. If required, the valuation report pursuant to Section 13, the additional property information pursuant to paragraphs 13.17–13.19 and the REIT disclosure requirements.
10. Details of the financial effects of the corporate action in terms of:
  - Net Asset Value per share.
  - Net Tangible Asset Value per share.
  - Earnings per share.
  - Headline Earnings per share.
11. In the event of shares being issued or repurchased, disclosure of the number and price at which the shares are to be issued or repurchased and details of any discount/premium (if any).
12. Working capital statement pursuant to paragraphs 7.E.7–7.E.8 (if applicable).
13. Details of irrevocable undertakings received.
14. Details of any name change.
15. Details of any changes to the board of directors as a result of the corporate action.
16. A recommendation given by the board of directors as to how shareholders should vote and an indication as to how the directors intend to vote their shares.
17. Any other relevant information.

Additional information to be included in summary circulars in relation to revised listing particulars and pre-listing statement/prospectuses:

1. The reason for the revised listing particulars.
2. Description of business pursuant to paragraph 7.D.2.
3. Directors' information pursuant to paragraphs 7.B.1 and 7.B.9.
4. Share capital of the issuer pursuant to paragraphs 7.A.4 or 7.A.5.
5. In respect of property companies, the value pursuant to the valuation report/s.
6. In respect of mineral companies, the mineral resource and reserve statement and valuation statement.
7. In respect of an investment entity, the information required pursuant to paragraphs 15.5 and 15.7.

8. Disclosure of directors' interests pursuant to paragraphs 7.B.20 and 7.B.21.

Additional information required in summary circulars in respect of sale or subscription of shares, rights offers and claw back offers:

1. Details on any underwriting and commission payable.
2. Details of any minimum subscription.
3. Details on the treatment of over-subscription.
4. Details on the treatment of excess applications.

The summary circulars must be accompanied by the notice of meeting, proxy and voting forms in full form complying with the Listings Requirements.

## Section 12

# Mineral Companies

### Scope of section

This section sets out the criteria for the listing of, and the additional disclosure requirements for Mineral Companies, with mineral assets comprising of (i) Solid Minerals and/or (ii) Oil and Gas, and, in certain circumstances, substantial

oil mineral assets and/or oil and gas assets of non-Mineral Companies. The main headings of this section are:

#### Part 1: Solid Minerals

- 12.1 Definitions
- 12.2 Guiding principles
- 12.3 General
- 12.4 Solid Minerals Readers Panel
- 12.5 Criteria for listing
- 12.9 Contents of pre-listing statements, listing particulars, prospectuses and circulars prepared by Mineral Companies, and non-Mineral Companies in respect of substantial mineral assets
- 12.10 Competent Person's Report
- 12.11 Confirmation by Competent Person
- 12.12 Announcements
- 12.13 Minimum contents of annual report

#### Part 2: Oil and Gas

- 12.14 Definitions
- 12.15 Guiding principles
- 12.16 General
- 12.17 Oil and Gas Readers Panel
- 12.18 Criteria for listing
- 12.21 Contents of pre-listing statements, listing particulars, prospectuses and circulars prepared by Oil and Gas Companies and non-Oil and Gas Companies in respect of substantial Oil and Gas assets
- 12.22 Qualified Reserve Evaluator Report
- 12.23 Announcements

### Part 1: Solid Minerals

#### Definitions

- 12.1 The definitions set out in the SAMREC Code shall, unless the context otherwise indicates, apply in relation to this section.

For the purposes of this section, unless otherwise stated or the context otherwise requires, terms signifying the singular shall include the plural and vice versa and the following terms shall have the meanings set out below:

Term	Meaning
Competent Person's Report	the public report prepared on mineral assets and projects, and signed by the lead Competent Person, which complies with this section, the SAMREC code and the SAMVAL code.
Day	business day.
Exploration	the intentional searching or prospecting for any mineral, excluding Oil and Gas Activities and mining.
Material	the JSE's definition of material (as contained in the definition section), together with that contained in the SAMREC Code, must be considered when evaluating materiality.
Mineral Company	a company whose principle activity is that of mining and/or exploration.

Mining	any excavation of the earth, including the portion under the sea or under water or in any tailings, as well as any borehole, made for the purpose of winning a mineral or the exploitation of any mineral deposit in any other manner, excluding Oil and Gas Activities.
Readers Panel	a Panel of experts established by the JSE to advise the JSE in relation to compliance with SAMREC, SAMVAL and this Section 12.
the SAMREC Code	the South African Code for Reporting of Exploration Results, Mineral Resources and Mineral Reserves including the guidelines contained therein, as amended from time to time. The current version is on the website <a href="http://www.samcode.co.za">www.samcode.co.za</a> .
the SAMVAL Code	the South African Code for reporting of Mineral Asset Valuation including the guidelines contained therein as amended from time to time. The current version is on the website <a href="http://www.samcode.co.za">www.samcode.co.za</a> .
Substantial Mineral Assets	mineral assets of a non-Mineral Company which represent, or will represent, 25% or more of the total assets or revenue or profits of a non-Mineral Company.
SSC	the SAMREC/SAMVAL Committee.

## Guiding principles

- 12.2 The JSE has adopted the SAMREC Code and the SAMVAL Code. All references in this section to the SAMREC Code and the SAMVAL Code will be deemed to include any other relevant code(s) which the JSE has approved.

## General

- 12.3 The Listings Requirements apply to Mineral Companies and, in certain circumstances, to non-Mineral Companies with substantial mineral assets. If information required to be disclosed under this section is confidential, for legal and/or other reasons and the directors of the applicant issuer can prove, to the satisfaction of the JSE that the applicant issuer's legitimate interests might be prejudiced if the information were to be disclosed, then the JSE may grant a dispensation from the requirement to make the information public.

## Solid Minerals Readers Panel

- 12.4 (a) The JSE will refer all Competent Person's Reports to the Readers Panel for approval.
- (b) Any material unresolved complaints concerning a Competent Person or Competent Valuator in respect of a Competent Person's Report will be referred by the JSE to the SSC who will, in turn, refer the complaint to the appropriate body under which the individual or individuals is/are registered as professionals. The JSE may provide the SSC with all correspondence and documentation involved with the approval process of the Competent Person's Report (which is the subject of the complaint) with the Readers Panel.
- (c) Competent Person's Reports must be submitted to the JSE for approval in accordance with the following timetable:

Day (D) Action required

- D Notify the JSE that a Competent Person's Report will be submitted for approval. The notification must include the name of the applicant issuer, the type of commodity that is involved, the name of the Competent Person and/or Competent Valuator, the date on which the report will be submitted and a short description of the transaction/reason for the report.

- D+5 The signed Competent Person's Report must be submitted to the JSE before 10h00 and this must be accompanied by a compliance

checklist, cross referencing every paragraph in this section, together with the applicable sections in the SAMREC and SAMVAL codes to the relevant part of the Competent Person's Report. All changes made to the Competent Person's Report must be marked-up in all subsequent submissions for review by the Readers Panel.

D+15 JSE will make available the Readers Panel comments.

Comments on second and third submissions of the Competent Person's Report will be made available within five days of submission to the JSE.

(d) [Repealed]

### **Criteria for listing**

12.5 The JSE may admit the securities of an applicant to listing on the Main Board provided that the applicant issuer can demonstrate, notwithstanding that the requirements of paragraph 4.28(c) are not satisfied, that:

- (a) the requirements of paragraph 4.28(d) are satisfied; or
- (b) it has a reasonable spread of direct interests in mineral assets and has rights to actively participate in the management of those assets, whether by voting or through other rights which give it influence in decisions relating to the assets,

provided, it or its group (including companies in which the Mineral Company has investments) is in possession of the necessary legal title or ownership rights to explore or mine or explore and mine the relevant minerals.

The directors and senior management of an applicant must collectively have appropriate expertise and experience for the governance and management of the applicant and the group's business. Details of such expertise and experience must be disclosed in any listing particulars prepared by the applicant.

12.6 The JSE may admit to listing on ALT<sup>x</sup> the securities of an applicant issuer, notwithstanding that the requirements of paragraph 21.3(j) are not satisfied, provided that it can demonstrate that it, or its group (including companies in which the Mineral Company has investments), is in possession of the necessary legal title or ownership rights to explore, mine or explore and mine the relevant minerals.

12.7 Applicant issuers with substantial mineral assets must demonstrate that they, or their group (including companies in which they have investments), are in possession of the necessary legal title or ownership rights to explore, mine or explore and mine the relevant minerals.

### **Criteria for listing**

12.8 In the event that an issuer is required to issue revised listing particulars pursuant to the provisions of the Requirements, the issuer will not be required to prepare a Competent Person's Report pursuant to this Section provided the issuer has complied with the minimum contents of the annual report pursuant to paragraph 12.13 as confirmed by the Readers Panel.

### **Contents of pre-listing statements, listings particulars, prospectuses and circulars prepared by Mineral Companies, and non-Mineral Companies in respect of substantial mineral assets**

12.9 In addition to the relevant Listings Requirements applicable to pre-listing statements/listings particulars/prospectuses (as per Section 6) or Category 1 circulars (as per Section 9), the following information must be included in such documents where they are required to be prepared by Mineral Companies, and by non-Mineral Companies in respect of substantial mineral

assets (i) measured against the purchase or disposal consideration, as the case may be, of the asset in respect of a transaction and (ii) measured against the market capitalisation of the applicant issuer in respect of a new listing:

- (a) a Competent Person's Report, complying with:
  - (i) the SAMREC and SAMVAL Codes, (which, for purposes of this requirement, includes the guidelines in italics and Appendices and Tables of the SAMREC and SAMVAL Codes); and
  - (ii) paragraph 12.10 of this section;
- (b) details of any direct or indirect beneficial interest, which each director (and his associates), Competent Person, Competent Valuator and, where applicable, related party (as defined in Section 10), has or, within two years of the date of the pre-listing statement, had:
  - (i) in any asset (including any right to explore for minerals):
    - (1) of the applicant issuer;
    - (2) which has been acquired or disposed of by, or leased to or by, the applicant issuer, including any interest in the consideration passing to or from the applicant issuer; and
  - (ii) in the share capital of the applicant issuer;
- (c) financial information in terms of Section 8 of the Listing Requirements to the extent that the applicant issuer has a financial history;
- (d) a statement by the directors regarding any legal proceedings that may have an influence on the rights to explore or mine, or an appropriate negative statement; and
- (e) confirmation that the applicant issuer, or its group (including companies in which it has investments), is in possession of the necessary legal title or ownership rights to explore, mine or explore and mine the relevant minerals.

### **Competent Person's Report**

12.10 A Competent Person's Report must comply with the SAMREC and SAMVAL Codes and must:

- (a) have an effective date (being the date at which the contents of the Competent Person's Report are valid) less than six months prior to the date of publication of the pre-listing statement, listing particulars, prospectus or Category 1 circular;
- (b) be updated prior to publication of the pre-listing statement, listing particulars, prospectus or Category 1 circular if further material data becomes available after the effective date;
- (c) if the Competent Person is not independent of the issuer, clearly disclose the nature of the relationship or interest;
- (d) show the particular paragraph of this section, the SAMREC Code (including Table 1) and SAMVAL Code (including Appendices and Tables) complied with in the margin of Competent Person's Report;
- (e) contain a paragraph stating that all requirements of this section, the SAMREC Code (including Table 1) and SAMVAL Code (including Appendices and Tables) have been complied with, or state that certain clauses in the SAMVAL code were not applicable and provide a list of such clauses; and

include a statement detailing:

- (i) exploration expenditure incurred to date by the applicant issuer and by other parties, where available;
  - (ii) planned exploration expenditure that has been committed, but not yet incurred, by the applicant issuer concerned; and
  - (iii) planned exploration expenditure that has not been committed to by the applicant issuer but which is expected to be incurred sometime in the future, in sufficient detail to fairly present future expectations;
- (f) contain a valuation section which must be completed and signed off by a Competent Valuator in terms of and in compliance with the SAMVAL Code (including Appendices and Tables);
- (g) be published in full on the applicant issuer's website;
- (h) be included in the relevant JSE document either in full (which includes incorporation by reference pursuant to paragraph 11.61) or as an executive summary. The executive summary must be approved by the JSE (after approval by the Readers Panel) at the same time as the Competent Person's Report is approved by the JSE and the Readers Panel. The executive summary should be a concise summary of the Competent Person's Report and must cover, at a minimum, where applicable:
  - (i) purpose;
  - (ii) project outline;
  - (iii) location map indicating area of interest;
  - (iv) legal aspects and tenure, including any disputes, risks or impediments;
  - (v) geological setting description;
  - (vi) exploration programme and budget;
  - (vii) brief description of individual key modifying factors;
  - (viii) brief description of key environmental issues;
  - (ix) Mineral Resource and Mineral Reserve Statement;
  - (x) reference to risk paragraph in the full Competent Person's Report;
  - (xi) statement by the Competent Person that the summary is a true reflection of the full Competent Person's Report; and
  - (xii) summary valuation table. Where the cash flow approach has been employed, the valuation summary must include the discount rate(s) applied to calculate the NPV(s) (net present value(s)) per share with reference to the specific paragraph in the Competent Person's Report. If inferred resources are used, show the summary valuation with and without inclusion of such inferred resources.

### **Confirmation by Competent Person**

- 12.11 If an issuer prepares a circular containing resource and reserve information, the Competent Person must confirm to the JSE in writing that the circular contains no contradictions with the Competent Person's Report, prior to the JSE granting approval of the circular pursuant to the provisions of Section 16.

### **Announcements**

- 12.12 (a) In addition to the other requirements under the Listings Requirements,



announcements by Mineral Companies and by non-Mineral Companies in respect of substantial mineral assets must comply with the SAMREC Code insofar as they relate or refer to exploration results, Mineral Resources and Mineral Reserves and comply with the SAMVAL Code insofar as it relates to a valuation of mineral assets and announcements must state the name of the Competent Person/Competent Valuator and that the Competent Person/Competent Valuator:

- (i) has approved the information, in writing, in advance of publication; and
  - (ii) if the Competent Person/Valuator is not independent of the issuer, clearly disclose the nature of the relationship or interest.
- (b) The JSE reserves the right to request the detailed information supporting the announced information and submit the same for review by the Readers Panel, at the cost of the applicant issuer concerned, to assess compliance with the SAMREC and SAMVAL Codes. The approval mechanism in this instance is as per paragraph 12.4 above. Any non-compliance with the SAMREC and SAMVAL Codes may result in a restatement and consequent re-publication of the information concerned.

### **Minimum contents of annual report**

12.13 In addition to complying with IFRS, Section 30 of the Act and paragraph 3.84 of the Listings Requirements, issuers are required to disclose the following information in the annual report:

Mineral Resources and Mineral Reserves:

- (i) Scope:
  - (1) The JSE may require non-mineral companies with substantial mineral assets to comply with these requirements.
  - (2) Mineral Companies (which for purposes of this listings requirement, includes subsidiaries, joint ventures, associates and investments) are required to disclose the details contained in these paragraphs on an attributable beneficial interest basis (i.e. beneficial “see through” basis).
  - (3) Mineral Companies may report on an aggregated attributable beneficial interest basis (“total basis”) where the required disclosure details in these paragraphs have been previously disclosed and published by separately listed Mineral Companies in compliance with this listing requirement. If disclosure is made on a total basis, then the attributable beneficial interest percentage must also be clearly stated.
  - (4) Mineral Companies’ disclosure in accordance with 8.62(g) must be compliant with the SAMREC Code and parts of Table 1 and Section 12. The applicable relevant SAMREC Code Table 1 (Checklist and guidelines of reporting and assessment criteria) paragraphs are referred to throughout this requirement as follows: [refer to Tx.x(x)]. Where the disclosure is not in accordance with a Section 12 or Table 1 paragraph, or incorporates a number of such paragraphs, it will be referred to as follows [stand alone].
  - (5) Mineral Companies must disclose the full name, address, professional qualifications and relevant experience (including the name and address of the body recognised by SAMREC of which the Competent Person is a member) of the Lead Competent Person authorising publication of the

information disclosed in terms of these paragraphs [refer to T9.1].

- (6) Mineral Companies must include a statement that they have written confirmation from the Lead Competent Person that the information disclosed in terms of these paragraphs are compliant with the SAMREC Code and, where applicable, the relevant Section 12 and Table 1 requirements and that it may be published in the form and context in which it was intended [stand-alone].

(ii) Disclosure compliance:

- (1) Where individual operations, projects or exploration activities are material to:
  - (aa) Mining Companies, then 12.13(iii) and 12.13(iv) must be complied with in full (if any sub-paragraph or paragraphs is/are not applicable, an appropriate statement(s) must be made); or
  - (bb) Exploration Companies, then 12.13(iv) must be complied with in full (if any sub-paragraph or paragraphs is/are not applicable, an appropriate statement or statements must be made).
- (2) Where individual operations, projects or exploration activities are not material to Mineral Companies, then only 12.13(iii)(6) and 12.13(iii)(8) require compliance disclosure.

(iii) Mining Companies annual disclosure requirements:

Mining Companies must disclose the following information, where applicable, for the financial year/period under review, as part of their annual reports:

- (1) a brief description of any exploration activities, exploration expenditures, exploration results and feasibility studies undertaken [stand-alone but refer to T4 and T5, section 12.10 (e) (ii), (iii) for guidance];
- (2) a brief description of the geological setting and geological model [refer to T2.1, T4.1];
- (3) a brief description of the type of mining and mining activities, including a brief history of the workings or operations [refer to T1.4];
- (4) production figures, including a comparison with the previous financial year/period [stand-alone];
- (5) a statement that the company has the legal entitlement to the minerals being reported upon [refer to T1.5] together with any known impediments [stand-alone];
- (6) the estimated Mineral Resources and Mineral Reserves ("Mineral Resource and Reserve Statement") [refer to T4];
- (7) a description of the methods and the key assumptions and parameters by which the Mineral Resources and Mineral Reserves [refer to T4, T6] were calculated and classified;
- (8) a comparison of the Mineral Reserve and Mineral Resource estimates with the previous financial year/period's estimates together with explanations of material differences [stand-alone];

- (9) whether or not the Inferred Mineral Resource category has been included in feasibility studies and, if so, the impact of such inclusion [refer to SAMREC Code paragraph 26];
- (10) any material risk factors that could impact on the Mineral Resource and Reserve Statement [refer to T5.7];
- (11) a statement by the directors on any legal proceedings or other material conditions that may impact on the company's ability to continue mining or exploration activities, or an appropriate negative statement [refer to T1.5];
- (12) appropriate locality maps and plans [refer to T 1]; and
- (13) a summary of environmental management and funding [refer to T5.5].

(iv) Exploration Companies – annual disclosure requirements

In addition to the disclosure requirements in 12.13(iii), Exploration Companies must disclose the following information as a part of their annual report, where applicable:

- (1) summary information of previous exploration work done by other parties on the property [refer to T1.4,5, T5];
- (2) summary information on the data density and distribution [refer to T2.1(iv)];
- (3) exploration results not incorporated in the Mineral Resource and Reserve Statement including the following, where applicable, or a qualified negative statement:
  - (aa) the relationship between mineralisation true widths and intercept lengths [T3.1(viii)];
  - (bb) data and grade compositing methods and the basis for mineral equivalent calculations [stand-alone but refer to T4.2(ii) and T5.2(iv)];
  - (cc) for poly-metallic mineralisation or multi-commodity projects, separate identification of the individual components [stand-alone];
  - (dd) the representivity of reported results [refer to T4.5(i)];
  - (ee) other substantive exploration data and results [refer to T3.1(iii)];
  - (ff) comment on future exploration work [stand-alone but refer to Section 12.10(e)(ii) and (iii)];
  - (gg) the basic tonnage/volume, grade/quality and economic parameters for the exploration target [refer to SAMREC Code paragraphs 21 and 22)]; and
  - (hh) sample and assay laboratory quality assurance and quality control procedures [refer to T3.4, 3.5 and 3.6(i)].

## Part 2: Oil and Gas

### Definitions

12.14

**Term**

**Meaning**

Form A Report	the public report prepared on oil and gas assets and projects, and signed by the lead Qualified Reserve Evaluator which complies with this Section 12 and the SAMOG Code. The current version is on the website <a href="http://www.samcode.co.za">www.samcode.co.za</a> .
Oil and Gas Activities	<p>Includes any of the following:</p> <p>(a) the search for Product Types in their natural locations;</p> <p>(b) the acquisition of property rights or properties for the purpose of exploring for or removing Product Types from their natural locations on those properties;</p> <p>(c) the activities necessary to remove product type from their natural locations including construction, drilling, mining, production, and the acquisition, construction, installation and maintenance of field gathering and storage systems, including product treatment, field processing and field storage; and</p> <p>(d) the extraction of synthetic crude oil and synthetic gas, but does not include:</p> <p>(a) activities that occur after the first point of sale;</p> <p>(b) activities relating to the extraction of natural resources other than Product Types and their by-products; or</p> <p>(c) the extraction of hydrocarbons as a consequence of the extraction of geothermal steam.</p>
Oil and Gas Company	a company undertaking Oil and Gas Activities.
Product Types	<p>Includes, but is not limited to any of the following:</p> <p>(a) in respect of liquid hydrocarbons, any of the following:</p> <p>(i) light crude oil;</p> <p>(ii) medium crude oil;</p> <p>(iii) heavy crude oil;</p> <p>(iv) bitumen;</p> <p>(v) natural gas liquids; and</p> <p>(vi) synthetic crude oil, or</p> <p>(vii) any other unconventional oil,</p> <p>(b) in respect of gaseous hydrocarbons, any of the following:</p> <p>(i) conventional natural gas;</p> <p>(ii) unconventional natural gas;</p> <p>(iii) gas hydrates; and</p> <p>(iv) synthetic gas.</p>
Qualified Reserves Evaluator	an individual who qualifies as a Reserve Evaluator in terms of the SAMOG Code.
the SAMOG Code	South African Oil and Gas Code.
Substantial Oil and Gas Assets	Oil and gas assets of a non-Oil and Gas Company which represent, or will represent, 25% or more of the total assets or revenue or profits of a non-Oil and Gas Company.

## Guiding principles

- 12.15 The JSE has adopted the SAMOG Code but limits its mandatory application for applicant issuers as per section 12.21 below.

## General

- 12.16 The Listings Requirements apply to Oil and Gas Companies and, in certain circumstances, to non-Oil and Gas companies with Substantial Oil and Gas Assets. If information required to be disclosed under this section is confidential, for legal and/or other reasons and the directors of the applicant issuer can prove, to the satisfaction of the JSE that the applicant issuer's

legitimate interests might be prejudiced if the information were to be disclosed, then the JSE may grant a dispensation from the requirement to make the information public.

### **Oil and Gas Readers Panel**

- 12.17 (a) The JSE will refer all Form A Reports to the Oil and Gas Readers Panel for approval.
- (b) Any material unresolved complaints concerning Qualified Reserves Evaluators in respect of a Form A Report will be referred by the JSE to the appropriate body under which the individual or individuals is/are registered as professionals.
- (c) Form A Reports must be submitted to the JSE for approval in accordance with the timetable as set out in paragraph 12.4(c).

### **Criteria for listing**

- 12.18 The JSE may admit the securities of an applicant to listing on the Main Board provided that the applicant issuer can demonstrate, notwithstanding that the requirements of paragraph 4.28(c) are not satisfied, that:

- (a) the requirements of paragraph 4.28(d) are satisfied; or
- (b) it has a reasonable spread of direct interests in oil and gas assets and has rights to actively participate in the management of those assets, whether by voting or through other rights which give it influence in decisions relating to the assets,

provided, it or its group (including companies in which the Oil and Gas Company has investments) is in possession of the necessary legal title or ownership rights to undertake Oil and Gas Activities.

The directors and senior management of an applicant must collectively have appropriate expertise and experience for the governance and management of the applicant and the group's business. Details of such expertise and experience must be disclosed in any listing particulars prepared by the applicant.

- 12.19 The JSE may admit to listing on ALT<sup>x</sup> the securities of an applicant issuer, notwithstanding that the requirements of paragraph 21.3(j) are not satisfied, provided that it can demonstrate that it, or its group (including companies in which the Oil and Gas Company has investments), is in possession of the necessary legal title or ownership rights to undertake Oil and Gas Activities.
- 12.20 Applicant issuers with Substantial Oil and Gas Assets must demonstrate that they, or their group (including companies in which they have investments), are in possession of the necessary legal title or ownership rights to undertake Oil and Gas Activities.

### **Contents of pre-listing statements, listings particulars, prospectuses and circulars prepared by Oil and Gas Companies, and non-Oil and Gas Companies in respect of substantial oil and gas assets**

- 12.21 In addition to the relevant Listings Requirements applicable to pre-listing statements/listings particulars/prospectuses (as per Section 6) or Category 1 circulars (as per Section 9), the following information must be included in such documents where they are required to be prepared by Oil and Gas Companies, and by non-Oil and Gas Companies in respect of Substantial Oil and Gas Assets:

- (a) a Qualified Reserve Evaluator Report, complying with:
- (i) the SAMOG Code, (which, for purposes of this requirement, includes Form 1); and

- (ii) paragraph 12.22 of this section;
- (b) details of any direct or indirect beneficial interest, which each director (and his associates), Qualified Reserve Evaluator and, where applicable, related party (as defined in Section 10), has or, within two years of the date of the pre-listing statement, had:
  - (i) in any asset (including any right to explore for oil and gas):
    - (1) of the applicant issuer;
    - (2) which has been acquired or disposed of by, or leased to or by, the applicant issuer, including any interest in the consideration passing to or from the applicant issuer; and
  - (ii) in the share capital of the applicant issuer;
- (c) financial information in terms of Section 8 of the Listing Requirements to the extent that the applicant issuer has a financial history;
- (d) a statement by the directors regarding any legal proceedings that may have an influence on the rights to undertake Oil and Gas Activities, or an appropriate negative statement; and
- (e) confirmation that the applicant issuer, or its group (including companies in which it has investments), is in possession of the necessary legal title or ownership rights to undertake Oil and Gas Activities.

### **Qualified Reserve Evaluator Report**

12.22 A Qualified Reserve Evaluator Report must comply with the SAMOG Code and must:

- (a) have an effective date (being the date at which the contents of the Qualified Reserve Evaluator Report are valid) less than six months prior to the date of publication of the pre-listing statement, listing particulars, prospectus or Category 1 circular;
- (b) be updated prior to publication of the pre-listing statement, listing particulars, prospectus or Category 1 circular if further material data becomes available after the effective date;
- (c) if the Qualified Reserve Evaluator is not independent of the issuer, clearly disclose the nature of the relationship or interest;
- (d) show the particular paragraph of this section, the SAMOG Code (including Form 1) complied with in the margin of the Qualified Reserve Evaluator Report;
- (e) contain a paragraph stating that all requirements of this section, the SAMOG Code (including Form 1) have been complied with, or state that certain clauses were not applicable and provide a list of such clauses;
- (f) be published in full on the applicant issuer's website; and
- (g) be included in the relevant JSE document in full.

### **Announcements**

12.23 (a) In addition to the other requirements under the Listings Requirements, announcements by Oil and Gas Companies and by non-Oil and Gas Companies in respect of Substantial Oil and Gas Assets must comply with the SAMOG Code insofar as they relate or refer to exploration results, Oil and Gas resources and reserves and announcements must state the name of the Qualified Reserve Evaluator and that the Qualified Reserve Evaluator:

- (i) has approved the information, in writing, in advance of

publication; and

- (ii) if the Qualified Reserve Evaluator is not independent of the issuer, clearly disclose the nature of the relationship or interest.
- (b) The JSE reserves the right to request the detailed information supporting the announced information and submit the same for review by the Oil and Gas Readers Panel, at the cost of the applicant issuer concerned, to assess compliance with the SAMOG Code. The approval mechanism in this instance is as per paragraph 12.17 above. Any non-compliance with the SAMOG Code may result in a restatement and consequent re-publication of the information concerned.

## **Section 13**

### **Property Entities**

#### **Scope of section**

Listed companies that carry out property related transactions are subject to additional requirements, principally relating to valuations. Property entities are subject to additional requirements (principally relating to valuations and disclosure of their property portfolio) and different requirements with respect to financial information.

The main headings of this section are:

- 13.1 Definitions
- 13.2 Introduction
- 13.3 Criteria for listing
- 13.4 Listing particulars and transactions
- 13.12 Financial information
- 13.17 Additional information
- 13.20 Valuation reports
- 13.32 Collective investment schemes in property
- 13.35 Continuing obligations
- 13.40 Other matters
- 13.46 REITs

#### **Definitions**

13.1 For the purposes of Section 13, the following definitions apply:

- (a) "adjusted GAV" means GAV adjusted for the following events occurring after the reporting period of the latest published results:
  - (i) the addition of any increase in value of any existing properties, but only where any increase in value is supported by a valuation report prepared in terms of paragraph 13.20;
  - (ii) the addition of the nominal value of any new debt to the extent that the intended utilisation of that new debt is such that it results in an increase in GAV;
  - (iii) the addition of any amount of any capital raised through the issue of new securities to the extent that the intended utilisation of the capital raised is such that it results in an increase in GAV;
  - (iv) the deduction of any capital repayments that have been made on the liabilities; and
  - (v) the deduction of any amount of any capital returned to security holders through a repurchase of securities in terms of paragraphs 5.67 to 5.80 or through a payment to security holders in terms of paragraph 5.85;
- (b) "Asset manager" or "management company" is the entity or individual who provides strategic management services. They are responsible for making recommendations and/or taking decisions regarding the strategy of the property entity including, inter alia, the structure of the property entity, further acquisitions and disposals and new property developments. They may also provide ancillary services relating to investment opportunities;
- (c) "CIS Registrar" means the Registrar of Collective Investment Schemes;
- (d) "CISCA" is the Collective Investment Schemes Control Act, No. 45 of 2002;
- (e) "CISIP" is a collective investment scheme in property;



- (f) "CISIP investor" is the holder of a participatory interest in a CISIP;
- (g) "CISIP manager" is the person authorised in terms of the CISCA to administer the CISIP;
- (h) "external property" is a property situated outside of the Republic of South Africa;
- (i) "failed the REIT tax test" means that the applicant issuer was granted REIT status by the JSE, but on assessment by the South African Revenue Service did not qualify for a tax deduction of distributions under section 25BB(2) of the Income Tax Act;
- (j) "GAV" is the consolidated gross asset value as reflected in the applicant issuer's latest published results which are prepared in terms of IFRS;
- (k) "Income Tax Act" means the South African Income Tax Act, 1962, Act 58 of 1962, as amended from time to time;
- (l) "independent registered valuer" is an independent registered valuer, whose independence is to be justified in accordance with the disclosure to the JSE in terms of Schedule 2 Form C1;
- (m) "market value" is the amount, as determined by the external valuer, that a property would realise if sold on the date of valuation in the open market by a willing seller to a willing buyer;
- (n) "material expenditure item" is a category of expenditure included in the statement of comprehensive income that accounts for 10% or more of the total expenditure;
- (o) "new borrowings" means
  - (i) the amount borrowed measured as the nominal value of the amount borrowed from a lender in respect of the new borrowing;
  - (ii) less, if applicable, the original nominal value of the borrowings which are being repaid or replaced by this new debt;
  - (iii) plus, any capital repayments that have been made on those original borrowings;
- (p) "nominal value of the new debt" means the nominal value of new borrowings including derivative liabilities entered into;
- (q) "operational net income" is the annual rental income less any expenses directly attributable to that building (including property management fees) but before interest, head office costs, any general management fees or taxation;
- (r) "promoter" means any person who is:
  - (i) involved in the facilitation and/or formation of a property portfolio to be listed or acquired by an existing issuer and who earns a fee therefrom, in cash or otherwise, other than a person acting in an advisory capacity; or
  - (ii) a material shareholder in the property entity prior to the listing date; or
  - (iii) about to, or has already, acquired securities in the property entity to be listed, at a discount of 10% or more to the price at which the property entity has issued securities to any other party; or
  - (iv) deemed to be a promoter by the JSE;
- (s) "property" includes immovable freehold or leasehold property;
- (t) "property entity" is a company or CISIP who is primarily engaged, directly or indirectly, in property activities including:

- (i) the holding of properties and development of properties for letting and retention as investments; or
- (iii) the purchase of land for development of properties for retention as investments;
- (u) "property manager" is the party responsible for the administration of individual properties, which duties include, inter alia, ensuring the properties are well maintained, collecting of rentals and filling of vacancies;
- (v) "property yield" is the operational net income divided by the purchase/disposal price of the property, for the 12 months commencing on the acquisition/listing date or prior to the disposal;
- (w) "registered valuer" is a property valuer, registered as a professional valuer or a professional associated valuer in terms of the Property Valuers Profession Act, No. 47 of 2000 and who practices as such;
- (x) "REIT" means Real Estate Investment Trust and is defined as an applicant issuer which receives a REIT status in terms of the Listings Requirements;
- (y) "rentable area" is the rentable area as determined in accordance with the guidelines set out by the South Africa Property Owners Association;
- (z) "rental revenue" means group revenue that is derived from the owning or leasing of immovable property which is let or sub-let to tenants plus dividends received from another REIT where the investment in that REIT is not consolidated in the group accounts;
- (aa) "revenue" is the revenue (determined in accordance with IFRS) disclosed in the forecast or historical statement of comprehensive income, depending on which statement of comprehensive income the property entity is obliged to present in terms of this Section 13; and
- (ab) "substantial property asset" means property assets held (whether by way of leasehold or freehold title) of an applicant issuer that is not a property entity which asset/s represent, or will (post acquisition) represent, 25% or more of the total assets or generate 25% or more of the revenue or profits of that group as measured against the latest consolidated financial information of the applicant issuer.
- (ac) "contracted rental revenue" means rental revenue that is derived, or to be derived, from a legally binding agreement for the lease of property for the period specified, including rental derived from lease agreements that are subject to automatic renewal (unless notice of termination was provided) and rental revenue from lease guarantees provided by a vendor. This figure will exclude rental revenue for legally binding agreements that have expired and includes short-term rental revenue;
- (ad) "un-contracted rental revenue" means rental revenue other than contracted and near-contracted rental revenue;
- (ae) "near-contracted rental revenue" means rental revenue relating to legally binding agreements that have expired and that are reasonably expected to be renewed, which expectation takes into consideration the location of the property, the historical occupancy by that tenant and the tenant's profile (in terms of paragraph 13.18(c)); and
- (af) "short-term rental revenue" means contracted rental revenue where the period specified in the legally binding agreement, excluding automatic renewals, is for a period of less than 18 months.

## Introduction

- 13.2 (a) A listed property entity, or a property entity seeking a listing, must comply with the requirements contained in this section, in addition to all

other applicable Listings Requirements.

- (b) Other issuers who own property or who conclude property transactions must comply with the valuation requirements set out in paragraphs 13.20 to 13.31. If a valuation report must be prepared, an issuer will not be required to obtain a Schedule 5 fairness opinion on a related party transaction involving property.

### **Criteria for listing**

- 13.3 A property entity seeking a listing, must comply with all applicable Listings Requirements in order to qualify for a listing and must satisfy the JSE that the asset manager/management company and/or the executive directors responsible for managing the property portfolio have adequate, appropriate and satisfactory experience in the management of investments of the type in which the property entity proposes to invest. A new applicant that is a property entity that holds and develops properties for letting and retention as investments can either comply with the provisions of paragraph 4.28(c)(i) or with the following:
- (a) subject to (b) below, the profit forecast, prepared in terms of paragraphs 13.12 to 13.14, as supported by the special property forecast auditor's report (prepared in terms of paragraph 13.15), must indicate that there will be a forecast profit before taxation of R15 million, based on contracted rental revenue only, after taking account of headline earnings adjustments on a pre-tax basis and before any distributions to securities holders/CISIP investors;
  - (b) for short-term rental revenue, the board of directors must confirm that the properties have generated rental revenue for the immediately preceding two years, the last of which is sufficient to have generated at least R15 million profit before taxation, after taking account of headline earnings adjustments on a pre-tax basis and before any distributions to securities holders. This confirmation must be based on audited financial information and also take into consideration any pro forma adjustments arising from the listing; and
  - (c) at least 75% of rental revenue for each of the forecast periods must be derived from contracted and near-contracted rental revenue.

Given the potential complexity of property listings, depending on the nature and structure of the applicant issuer, the requirements set out above may be modified or additional requirements may apply.

### **Listing particulars and transactions**

#### **Pre-listing statement/prospectus/listing particulars**

- 13.4 A property entity's pre-listing statement/prospectus/listing particulars must include the information required by Section 6, other than the requirements regarding historical and pro forma financial information, which requirements are replaced with those set out below:
- (a) in the case of a new listing:
    - (i) a forecast statement of comprehensive income, prepared in accordance with paragraphs 13.12 to 13.15;
    - (ii) an aggregated pro forma statement of financial position, prepared in accordance with paragraph 13.16, showing the effects of any acquisitions and/or capital raising;
    - (iii) in respect of the property entity to be listed, the audited historical financial information prepared in accordance with paragraphs 8.2(a) and 8.3, but to the extent that there are no historical operations only a statement of financial position, accounting policies

and notes thereto are required, for the most recent financial period ended. This historical financial information must comply with paragraphs 8.4 to 8.8 and paragraphs 8.11 to 8.13. The statement of financial position must also be prepared in accordance with paragraph 8.3; and

- (iv) in the case of the applicant issue, qualifying for a listing in terms of paragraph 4.28(c), paragraph 13.4(c)(iii) will not apply and instead the information in terms of paragraphs 8.2 to 8.13 is required;
  - (b) in the case of revised listing particulars for a reverse takeover:
    - (i) a forecast statement of comprehensive income prepared in accordance with paragraphs 13.12 to 13.15; and
    - (ii) an aggregated pro forma statement of financial position, prepared in accordance with paragraph 13.16, showing the effects of any acquisition(s) and/or capital raising;
  - (c) in the case of revised listing particulars for an existing issuer an aggregated pro forma statement of financial position, prepared in accordance with paragraph 13.16, showing the effects of any acquisition(s) and/or capital raising; and
  - (d) the historical and/or forecast financial information is the responsibility of the directors or the CISIP manager of the new applicant/issuer, and this fact is to be stated in the document.
- 13.5 A property entity's pre-listing statement/prospectus/listing particulars must include the following additional information:
- (a) the relationship information required in terms of paragraph 13.17;
  - (b) the property portfolio information required in terms of paragraph 13.18, which must be based on the forecast statement of comprehensive income information;
  - (c) the property specific information required in terms of paragraph 13.19; and
  - (d) a valuation report prepared in accordance with paragraphs 13.20 to 13.31, on the entire property portfolio, in the case of a new listing or reverse takeover.

### **Category 1 transactions**

- 13.6 A property entity's circular issued as a result of a Category 1 transaction must include all of the information required by Section 9 other than in the case of an acquisition, where the requirements regarding historical and pro forma financial information are replaced with those set out in 13.7 below.
- 13.7 A Category 1 acquisition circular must include:
- (a) a forecast statement of comprehensive income on the subject matter of the acquisition, prepared in accordance with paragraphs 13.12 to 13.15; and
  - (b) a pro forma statement of financial position of the issuer, prepared in accordance with paragraph 13.16, showing the effects of the acquisition.
- 13.8 A property entity's circular issued as a result of a Category 1 transaction must include the following additional information:
- (a) the relationship information required in terms of paragraph 13.17;
  - (b) the property portfolio information required in terms of paragraph 13.18 on the subject matter of the transaction;

- (c) the property specific information required in terms of paragraph 13.19 on the subject matter of the transaction; and
- (d) a valuation report prepared in accordance with paragraphs 13.20 to 13.31 on the subject matter of the transaction.

### **Related party transactions**

- 13.9 A property entity's circular issued as a result of a related party transaction must include all of the information required by Section 10 and must include the additional information set out in 13.8 above.
- 13.10 An issuer is exempt from providing a fairness opinion where a related party transaction involves property the subject of a valuation report prepared in accordance with paragraphs 13.20 to 13.31.

### **Transaction announcements**

- 13.11 In addition to complying with the requirements set out in Sections 9 and 10, the announcement of a transaction by a property entity must comply with the following:
  - (a) The property specific information required in terms of paragraph 13.19 must be prepared on the subject matter of an acquisition or disposal, for inclusion in any announcement of a transaction required in terms of Section 9 or 10 of the Listings Requirements. As a forecast might not be available at announcement stage, the information may be based on the subject matter's historical statement of comprehensive income; and
  - (b) A property entity is exempt from the requirements (in terms of Sections 9 or 10) of paragraph 9.15(e), provided that it has prepared a forecast statement of comprehensive income in compliance with paragraphs 13.12 to 13.15. In the relevant announcement, the property entity must:
    - (i) disclose the forecast revenue, operational net income, net profit after tax and earnings available for distribution, calculated in accordance with the specific property entities trust deed;
    - (ii) comply with the disclosure requirements relating to assumptions made in respect of the rental revenue, as set out in paragraphs 13.14(d) and (e); and
    - (iii) include a statement that the forecast financial information has not been reviewed or reported on by the auditor in terms of Section 8 of the Listings Requirements.

### **Financial information**

#### **Forecasts**

- 13.12 A forecast statement of comprehensive income is required on:
  - (a) a property entity the subject of a new listing or reverse takeover; and
  - (b) the subject matter of a Category 1 acquisition.
- 13.13 The forecast financial information is the responsibility of the directors or the CISIP manager of the new applicant/issuer, and this fact is to be stated in the circular.
- 13.14 The forecast statement of comprehensive income must:
  - (a) be prepared in full compliance with the issuer's future IFRS accounting policies;
  - (b) be prepared for the current financial year and for a period of 12 months

after the current financial year;

- (c) be prepared on an aggregated basis for the property portfolio;
- (d) with respect to uncontracted rental revenue, provide disclosure of the assumptions made regarding renewals and new leases;
- (e) include separate disclosure of contracted, near-contracted and uncontracted rental revenue for each period, and separate disclosure of contracted revenue linked to a rental guarantee provided by a vendor;
- (f) disclose separately each material expenditure item;
- (g) contain full details and an explanation (or contain a negative statement) for any change of 15% or more between the historical and forecast expenditure for each material expenditure item;
- (h) include the amount of forecast distribution, with a reconciliation to attributable earnings; and
- (i) include separate disclosure of rental and non-rental revenue for each period.

13.15 A special property forecast auditor's report on the forecast statement of comprehensive income detailed in paragraphs 13.12 to 13.14:

- (a) must be prepared by the auditor appointed in terms of paragraph 3.87(c) other than;
  - (i) when seeking a listing pursuant to paragraph 13.3 complying with paragraph 4.28(c);
  - (ii) when seeking to receive REIT status pursuant to paragraphs 13.46(d) or paragraph 21.3(h) based on historical financial information.
- (b) this auditor must, inter alia, perform the procedures below in preparing such report, inter alia:
  - (i) conduct an inspection of the signed legally binding agreements accounting for at least 70% of the contracted rental revenue and recoveries and determine that the rental revenue and recoveries to be derived therefrom are accurately reflected as contracted rental revenue;
  - (ii) agree the information presented in terms of paragraphs 13.18(c),(d) and (e) to the forecast information prepared in terms of paragraph 13.12 to 13.14 and recalculate the arithmetic accuracy thereof; and
  - (iii) as it relates to near-contracted rental revenue, if directed to do so by the JSE, conduct an inspection of the original legally binding agreements for a certain percentage of the near-contracted rental revenue, as advised by the JSE, and determine that the revenue to be derived therefrom is accurately reflected as near-contracted rental revenue from the date of expiry of the original legally binding agreement. The JSE may make such a request when the issuer has non-rental revenue and the near-contracted rental revenue portion is a large part of rental revenue.
  - (iv) [Repealed];
- (c) must be performed in accordance with the International Standard on Assurance Engagements relating to the Examination of Prospective Financial Information (ISAE 3400) and the IRBA guide entitled *Reporting Responsibilities of the Reporting Accountant Relating to Property Entities in terms of the Listings Requirements*; and
- (d) must comply with paragraphs 8.51 to 8.56.

## **Pro forma statement of financial position**

13.16 Pro forma financial information prepared in terms of paragraphs 13.4 and 13.7, must be prepared on the following basis:

- (a) the adjustment column of the pro forma statement of financial position must be extracted from the underlying results of the subject matter (which must be audited, if the subject matter is a company or a business) read in conjunction with the acquisition agreement and the figures must then be adjusted to their fair values in terms of IFRS;
- (b) properties acquired from the same vendor may be aggregated;
- (c) if applicable, the notes to the pro forma statement of financial position must provide details of the auditors of the underlying entities' financial statements together with the details of any modifications contained in their audit report/s of those entities;
- (d) the pro forma financial information must:
  - (i) comply with the requirements of paragraphs 8.15 to 8.33; and
  - (ii) as it relates to the adjustment column include disclosure as required by IFRS as it relates to the specific line items, including but not limited to IAS 1 and IFRS 13.
- (e) the auditor must issue a review conclusion regarding the assets and/or liabilities being acquired, as reflected in the adjustment column of the pro forma statement of financial position. The review engagement must be performed in terms of the IRBA guide entitled *Reporting Responsibilities of the Reporting Accountant relating to Property Entities in terms of the JSE Listings Requirements* and the review conclusion must indicate that the auditor has no reason to believe the assets and liabilities are not prepared, in all material respects in accordance with the accounting policies adopted by the issuer and the recognition and measurement criteria of IFRS and includes the relevant IFRS disclosures; and
- (f) the auditor's report on the historical financial information and pro forma financial information, must be prepared in compliance with the requirements of paragraphs 8.48 to 8.56.

## **Additional information**

### **Relationship information**

13.17 A property entity's pre-listing statement/prospectus/listing particulars/transaction circular must include the following additional information:

- (a) the following details in respect of each of the promoters, asset managers, CISIP manager, trustees/custodians and directors of the applicant, management company, or its subsidiary or holding company:
  - (i) any beneficial interest, whether direct or indirect, of those persons, in relation to any property held by the applicant or to be acquired by the applicant issuer, including, but not limited to, where any of those persons is, or has contracted to become, a tenant of any part of the property; and
  - (ii) any relationship between any of those persons and another person, where a duty in relation to that other person conflicts or may conflict, with a duty to the applicant (this often relates to relationships between those parties at a level above the issuer);
- (b) in the case of any property or property portfolio managed by an asset manager, details of their name, legal form, shareholders, directors,



- business address, terms of contract and remuneration, relevant experience, appointments to other listed property entities and professional qualifications;
- (c) details of any property manager, including its directors and shareholders, a brief description of the function they perform and, even though the contract may be in the ordinary course of business, a statement that their contract will be open for inspection in terms of paragraph 7G1;
  - (d) the total number of securities/participatory interests to be issued, the issue price per security/participatory interest, the number to be subscribed for in order to finance the property portfolio and other relevant details regarding, inter alia, the number of securities/participatory interests to:
    - (i) be acquired by the asset manager/management company; and
    - (ii) be issued to the vendors of any property acquired, or to be acquired;
  - (e) in cases where directors of the issuer or the directors of the asset manager/management company or CISIP manager (in the case of CISIPs) or the promoters have been beneficially interested, whether directly or indirectly, in any acquisition or disposal of any of the properties during the two years preceding the date of the valuation, details of the nature and extent of such interests, the date of the transactions and the prices paid or received or other salient terms on which the transactions were effected; and
  - (f) If required in terms of Sections 6 or 9, an issuer must provide the information as required in terms of paragraphs 7.B.18 to 7.B.21 in respect of any entity and its directors that performs the function of the asset manager of the property portfolio and/or the activities of the issuer.

### **Property portfolio information**

13.18 A property entity's pre-listing statement/prospectus/listing particulars/transaction circular must include the following additional information on the property portfolio as a whole:

- (a) a geographical profile, by rentable area and by revenue;
- (b) a sectoral profile (showing existing use), by rentable area and by revenue. This sector profile should at a minimum distinguish between the following sectors: industrial, office, retail, residential, hotels and specialised sectors such as healthcare facilities, timber properties and auto dealerships;
- (c) a tenant profile, based on existing leases, graded as:
  - "A": large national tenants, large listed tenants, government and major franchisees;
  - "B": national tenants, listed tenants, franchisees, medium to large professional firms; and
  - "C": other;

and should include a definition of: what the issuer regards as large and major for category A; medium to large in category B; and should quantify the number of tenants included in category C;
- (d) a vacancy profile, by sector by rentable area;
- (e) a lease expiry profile, based on existing leases, by revenue and by rentable area per sector;



- (f) the weighted average rental per square metre by rentable area per sector;
- (g) a weighted average rental escalation profile, based on existing leases, by rentable area and by sector; and
- (h) the average annualised property yield.

### **Property specific information**

13.19 A property entity's pre-listing statement/prospectus/listing particulars/transaction circular/announcement must include the following additional information for each specific property in the portfolio:

- (a) its location;
- (b) the rentable area of the property, by sector;
- (c) the weighted average rental per square metre for the rentable area. In the case of single-tenant buildings, the issuer may present this figure as the weighted average rental per square metre for the total rentable area, for all of the single tenant buildings;
- (d) the purchase price (unless it is not possible to determine the price paid for each property, in which case the total purchase price for an acquisition may be shown) and any other expenditure incurred by the company in connection with the acquisition thereof, such as agent's commission and transfer costs;
- (e) the effective date of the acquisition; and
- (f) the value attributed to that property by a valuer, the effective date of the valuation, the name of the valuer and,
  - (i) in the instance of a valuation report prepared in terms of paragraph 13.20, a statement that the valuer is an external valuer as defined by Section 13; or
  - (ii) in any other instance, a statement as to whether or not the valuer is independent and whether or not he/she is registered as a professional valuer, or professional associate valuer, in terms of the Property Valuers Profession Act, No. 47 of 2000.

### **Valuation reports**

13.20 A valuation report prepared by an independent registered valuer must be obtained by:

- (a) a new applicant, if it is a property entity;
- (b) an issuer that is the subject of a reverse listing into the property sector;
- (c) an issuer, on the subject of any property transaction that is a Category 1 transaction, as defined in Section 9;
- (d) an issuer, on the subject of any related party transaction involving property, which transaction requires a circular to be prepared in terms of Section 10; or
- (e) an applicant issuer with a substantial property asset preparing a pre-listing statement or revised listing particulars.

13.21 An analysis should be provided between the value included in the valuer's report and the purchase/disposal consideration. This analysis should include a brief explanation for the reconciling amounts.

13.22 Where a valuation report has been prepared, any related pre-listing statement/prospectus or circular must contain a summary of the valuation

report in accordance with paragraph 13.23.

13.23 The summary of the valuation report to be included in the pre-listing statement/prospectus or circular must:

- (a) state the following details (or include an appropriate negative statement) in respect of each property:
  - (i) the market valuation, as determined by the independent registered valuer;
  - (ii) the address and registered description;
  - (iii) the date of the independent registered valuer's physical inspection, which must not be more than 6 months prior to signature of the valuation report;
  - (iv) a description (e.g. land or buildings, site and floor areas);
  - (v) the existing use (e.g. shops, offices, factories, residential);
  - (vi) the relevant town planning restrictions and conditions;
  - (vii) any material contravention of statutory requirements, including town planning and title deed conditions and conditions of establishment;
  - (viii) the tenure (i.e. freehold or leasehold, giving the term);
  - (ix) a high level summary of actual tenants' leases or sub leases;
  - (x) the approximate age of the buildings;
  - (xi) the terms of any intra-group lease on property occupied by the group (identifying the property);
  - (xii) any other matters that could materially affect the value (including any assumptions and any information on contamination, if any); and
  - (xiii) the sources of information and verification thereof;
- (b) state the name and address of the independent registered valuer and, in respect of their registration in terms of the Property Valuers Profession Act, No. 47 of 2000, the registration category, the registration number and the applicable restrictions, if any;
- (c) be dated the day on which the circular is submitted for formal approval and state the effective date at which each property was valued. The latter must not, unless otherwise agreed by the JSE, be more than 6 months prior to the date of publication of the pre-listing statement/prospectus or circular and must contain a statement confirming that there have been no material changes in circumstances, since the effective date, that would affect the valuation. If this statement cannot be made, the valuation must be updated;
- (d) state the method of valuation used in its preparation and the reason for adopting the particular valuation methodology, which valuation methodology must be one of the following: a comparable sales approach, discounted cash flow or capitalisation of net income, provided that, in the case of a property in the course of development, a suitable alternative approach may be adopted and the reason for such adoption must be fully substantiated;
- (e) where it is necessary to qualify the valuation, state the reasons for any such qualification;
- (f) state any assumptions underlying the valuation including, inter alia:
  - (i) vacancy levels;

- (ii) income lost due to time delays to complete refurbishments for existing or new tenants; and
- (iii) a summary of the adjustments made to future rental streams where the current rentals are materially different to the market rentals of that area as published in "Rode's Retail Report" or the South African Property Owner Associations' "South African Property Index" (including full disclosure of what that differential is), or a negative statement, where there is no differential;
- (g) where the directors have required a valuation of the benefit or detriment of contractual arrangements in respect of property, or where there is thought to be a benefit in any options held, show such valuations separately and include a reconciliation of the costs and values; and
- (h) indicate whether or not there is any option for any party to purchase the property and, if so, how any pricing included in such an option has been taken into account by the independent registered valuer.

### **Valuations of property in the process of development**

13.24 Where the valuation is in respect of land currently being developed, the following additional information should be given in the summary valuation report:

- (a) whether planning consent has been obtained and, if so, the date of such consent and whether there are any material or onerous conditions attached to such consent;
- (b) the date on which the development is expected to be completed and any estimate of letting or occupation dates;
- (c) the estimated total cost of carrying out the development including, without limitation, the cost of financial carrying charges, letting commissions or, where part of the development has already been carried out, the estimated cost of completing the development similarly;
- (d) the market value of the land and buildings in their existing state, at the date of valuation; and
- (e) the estimated values, at current prices and on the basis of current market conditions:
  - (i) after development has been completed; and
  - (ii) after completion and letting of the property.

13.25 Where property in the course of development is being developed in phases over a period of time by the erection of a number of buildings, each of which is intended to be sold soon after completion of construction, the requirements of paragraph 13.24(c) and (e) may be satisfied by the provision of information for each phase or for groups of phases. For this purpose, property in the course of development includes any phase where, at the date of valuation, work is in progress and any other phase where construction is imminent, all appropriate consents have been obtained and a building contract has been entered into. Later phases, where construction at the date of valuation has not yet started, or where all appropriate consents have not been obtained or a building contract has not been entered into, may be treated as properties held for development (see paragraph 13.26).

### **Properties held for development**

13.26 Where property is held for future development, the summary valuation report must contain the following additional information, so far as it is known and relevant at the valuation date:

- (a) whether or not planning permission has been applied for, whether such application has been granted or refused and the date of such grant or

- refusal;
- (b) the nature, and a brief description, of the proposed development;
  - (c) an indication of when it is reasonable to expect development to commence;
  - (d) the expected development duration; and
  - (e) the estimated total costs of the development, including, without limitation, the cost of financial carrying charges, letting commissions and other ancillary costs.

### **Alternative use for a property**

- 13.27 A property, other than a property occupied by the property entity for its own use, should be valued at its existing use (for example, as an industry property). Where the market value for an alternative use (for example, conversion to a retail shopping complex) significantly exceeds this basis, the alternative use value must also be stated in the valuation report, together with the directors' estimate of the costs of cessation and removal of the business. Where the alternative use value is significantly lower than the existing use value and the existing use value is no longer appropriate, the alternative use valuation must also be stated in the valuation report.

### **External property**

- 13.28 Where a valuation report is required in terms of paragraph 13.20 and any of the properties in respect of which it is to be prepared are external properties, then that property must be addressed separately, and its basis of valuation must be clearly identified.

### **Rentals used in valuations**

- 13.29 In respect of each property that is rented out by the property entity, the current annual rental and the estimated future annual rental/s at a specified date/s and for a specified period/s (where this differs materially) must be included in the detailed valuation report and a statement to that effect must be included in the summary of the valuation report.

### **Other general matters**

- 13.30 Where a valuation is referred to in a pre-listing statement/prospectus, a Category 1 or 2 circular or a circular relating to a transaction with a related party, a copy of the full valuation report must be made available for inspection in terms of paragraph 7.G.1.

### **Summary of valuations**

- 13.31 The valuation report must include a summary of the number of properties and the aggregate of their values and must be split to show separate totals for the aggregate freehold and leasehold properties. Negative values must be shown separately and not aggregated with the other valuations. Separate totals should be given for any external properties.

### **Collective investment schemes in property**

- 13.32 Collective investment schemes in property are regulated by the CISCA and notices issued thereunder, a Deed (including any supplemental deeds) approved by the Registrar of Collective Investment Schemes) and must comply with the Listings Requirements.
- 13.33 A CISIP is restricted to investment in property shares (as defined in the CISCA), directly in immovable property or in such other assets as determined by the CIS Registrar from time to time. After its initial issue of participatory

interests, a CISIP may only issue further participatory interests by way of a rights issue to existing CISIP investors, as an issue of participatory interests for cash (in terms of Section 5) or in consideration for the acquisition of a property investment, subject to the Listings Requirements.

### **Additional information on listing**

13.34 In its pre-listing statement/prospectus, a CISIP must also include:

- (a) evidence of registration from the CIS Registrar; and
- (b) salient provisions of the deed.

### **Continuing obligations**

#### **Dealings in securities**

13.35 The requirements of paragraphs 3.63 to 3.71 apply equally to any entity, or its directors, that performs the function of the asset manager of the property portfolio and/or the activities of the issuer.

### **Results**

13.36 In any results announcement for which a forecast has been published on the issuer or an acquisition in terms of paragraphs 13.12 to 13.15, the issuer must:

- (a) confirm that the forecast has been materially achieved; or
- (b) provide details of, and an explanation for, any material deviation; and
- (c) include details of how the issuer has calculated the pro-rata forecast for an interim reporting period.

### **Annual financial statements**

13.37 The information required in terms of paragraphs 13.18 and 13.19(a) to (c) must be prepared on the entire property portfolio, for inclusion in the annual financial statements. The issuer's auditor shall modify the audit report as considered appropriate in cases of non-compliance with the disclosure requirements of this paragraph.

### **Annual valuation for financial reporting purposes**

13.38 Even if a property entity has not adopted the fair value model for its property in terms of IFRS, it must obtain a valuation from a registered valuer (in terms of this Section 13) for its property portfolio.

13.39 Any valuation report prepared for the purposes of IFRS or paragraph 13.38 must be prepared:

- (a) by a registered valuer;
- (b) on the entire portfolio on a rolling basis every 3 years and the directors must confirm in the annual report that there have been no material changes to the information used and assumptions applied by the registered valuer; or
- (c) annually, if the information used and assumptions applied by the registered valuer has changed materially.

### **Other matters**

#### **Asset manager/management company**

- 13.40 Whenever a property entity (which is listed or intends applying for a listing), or any of its subsidiaries, other than a CISIP, enters into, or is renewing the terms of a contract/arrangement in terms of which a party performs the function of being the asset manager of the property portfolio, the issuer and/or its directors cannot so enter into, or renew, such a contract:
- (a) without a majority of the votes cast by securities holders (excluding any parties or their associates who are party to, or have an interest in, the contract); and
  - (b) without providing therein for the right for security holders, in a general meeting called by them or held by the property entity, to cancel the contract at any time before its expiry date, subject to a majority of the votes cast by securities holders (excluding any parties or their associates who are party to or have an interest in the contract) in favour thereof.

#### **Acceptability of the independent registered valuer**

- 13.41 The JSE wishes to provide sponsors and issuers with certainty, at an early stage of the process, as to the acceptability or otherwise to the JSE of a nominated independent registered valuer who will issue a valuation report. As the issue of independence will be unique to every transaction, the information in Schedule 2 Forms C1 and C2 provide guidance rather than specific rules.

Where more than 20% of the gross fees of the registered valuer received from the issuer, the asset manager or management company of the issuer or the issuer's related parties or any other party by the registered valuer for the last financial year, the registered valuer will not be deemed by the JSE as independent.

- 13.42 A valuation report must:
- (a) be prepared by an independent registered valuer, acceptable to the JSE, who has no material interest either in the transaction or in the success or failure of the transaction;
  - (b) make appropriate disclosure where the independent registered valuer has any existing or continuing relationship with the issuer and/or any other parties involved in the transaction; and
  - (c) comply fully with the requirements of Section 13.
- 13.43 At an early stage in a contemplated transaction and preferably before engaging a party to prepare a valuation report, the sponsor, on behalf of the issuer, must submit to the JSE:
- (a) a declaration of independence completed by the nominated independent registered valuer, in accordance with Appendix 2 Form C1; and
  - (b) a declaration by the issuer, in accordance with Appendix 2 Form C2.

The above declarations must be submitted for every transaction.

- 13.44 The JSE may, unless the issuer is able to provide additional information to satisfy the JSE, require the issuer to appoint a different independent registered valuer to prepare the valuation report if (based on the information received in terms of paragraph 13.43 above and the JSE's investigation thereof) the JSE is not satisfied as to:
- (a) the independence of the nominated independent registered valuer; and/or
  - (b) any reasons given by the issuer for the appointment of the nominated independent registered valuer.
- 13.45 The JSE undertakes to give the sponsor its approval, or disapproval, of the appointment of the independent registered valuer within 72 hours of receipt

of the duly completed declarations required in paragraph 13.43 above. No documentation will be accepted for review by the JSE until approval for the appointment has been given.

## **REITs**

### **REIT status listing criteria for property entities other than CISIPs**

13.46 An applicant issuer seeking to receive a REIT status from the JSE must satisfy the following criteria:

- (a) the directors of the applicant issuer must provide an undertaking and must ensure that the applicant issuer complies with the distribution provisions set out in paragraph 13.47;
- (b) the applicant issuer must have gross assets of at least R300 million, as reflected in either:
  - (i) its audited or reviewed consolidated financial statements; or
  - (ii) a pro forma consolidated statement of financial position complied in terms of paragraph 13.16;whichever reflects the more recent financial position;
- (c) the applicant issuer must be a property entity;
- (d) at least 75% of the revenue as reflected in the statement of comprehensive income of the applicant issuer's group must be derived from rental revenue;
- (e) the applicant issuer must qualify for a listing in terms of paragraphs 4.28 (for a listing on the Main Board) or paragraph 21.3 (for a listing on AltX) read together with paragraph 13.3, however the provisions of paragraphs 4.28(d)(ii) and 21.3(j)(ii) will not be available for purposes of this paragraph;
- (f) the directors must each confirm that the applicant issuer will, to the best of their knowledge (after making all reasonable enquiries to ascertain such facts), qualify for a tax deduction of distributions under section 25BB(2) of the Income Tax Act for the current or future financial year end;
- (g) the directors of the applicant issuer must:
  - (i) provide an undertaking to the JSE and ensure that at the time that they authorise any new borrowings that:
    - (1) the total consolidated liabilities as reflected in the latest published interim or annual consolidated IFRS financial statements;
    - (2) less, any capital repayments made on those liabilities after the statement of financial position date;
    - (3) plus, the nominal value of the new debt,divided by the greater of GAV or adjusted GAV will not be more than 60%; and
  - (ii) confirm that the total consolidated liabilities, is not more than 60% of the total consolidated assets as reflected in either its:
    - (1) latest audited or reviewed consolidated IFRS financial statements; or
    - (2) pro forma consolidated statement of financial position which has been compiled in terms of paragraph 13.16, provided that the valuations attributable to the properties are

supported by valuation reports prepared in terms of paragraph 13.20,

whichever reflects the more recent financial position;

- (h) the applicant issuer must ensure that the audit committee or a separate risk committee of the board is, as a minimum, responsible for:
  - (i) adopting and implementing an appropriate risk management policy, which policy must as a minimum:
    - (1) be in accordance with industry practice; and
    - (2) specifically prohibit the applicant issuer from entering into any derivative transactions that are not in the normal course of the applicant issuer's business;
  - (ii) reporting in the annual report each year that they have monitored compliance with the policy and that the applicant issuer has, in all material respects, complied with the policy during the year concerned;
  - (iii) reporting to the JSE, in the annual compliance declaration referred to in paragraph 13.49(d), that they have monitored compliance with the policy and that the applicant issuer has, in all material respects, complied with the policy during the year concerned; and
  - (iv) at the time of listing, confirming to the JSE and disclosing in the pre-listing statement that it has adopted the policy referred to in paragraph 13.46(h)(i) above.

13.47 A property entity, other than a CISIP, wishing to receive a REIT status must ensure that it complies with the following distribution provisions:

- (a) the company must distribute at least 75% of its total distributable profits as a distribution to the holders of its listed securities (which includes shares and linked units) by no later than four months after its financial year end, subject to the relevant solvency and liquidity test as defined in the Act and applied in section 46 of the Act;
- (b) interim distributions may occur before the end of a financial year end;
- (c) the company will procure that, subject to the solvency and liquidity test and section 46 of the Act, those of its subsidiaries that are property entities incorporated in the Republic of South Africa will distribute at least 75% of their total distributable profits as a distribution by no later than four months after their financial year ends;
- (d) distributable profit in respect of a financial year is defined as:
  - (i) gross income, as defined in terms of the Income Tax Act;
  - (ii) less deductions and allowances that are permitted to be deducted by a REIT in terms of the Income Tax Act, other than the qualifying distribution, (as defined in terms of section 25BB of the Income Tax Act because qualifying distributions form part of distributable profit).

#### **Application for an existing issuer to receive REIT status**

13.48 An issuer wishing to make application to receive a REIT status must:

- (a) comply with the provisions of paragraph 13.46; and
- (b) not have failed the REIT tax test for the last 2 consecutive financial years; and
- (c) not have been in breach of the distribution provisions, set out in paragraph 13.47, in the last 24 months provided that it was classified as



- a REIT during that period; or
- (d) be a CISIP, in which case it must only comply with the provisions of paragraphs 13.55 to 13.57.

**Continuing obligations for REIT's (other than CISIP's)**

- 13.49 In order to retain their REIT status, applicant issuer's must, on an ongoing basis, meet the following criteria:
- (a) comply with the distribution provisions set out in paragraph 13.47;
  - (b) the applicant issuer must:
    - (i) qualify for a tax deduction of an amount equal to its distributions under section 25BB(2) of the Income Tax Act for the immediately preceding financial year end; or
    - (ii) must not have failed the REIT tax test for the last 2 consecutive financial year ends;
  - (c) the directors of the REIT must ensure that:
    - (i) the total consolidated liabilities of the issuer (as reflected in the IFRS results) will not be more than 60% of the total consolidated assets (as reflected in the IFRS results); or
    - (ii) if the issuer is not in compliance with paragraph 13.49(c)(i) the directors did comply with their undertaking provided in terms of paragraph 13.46(g)(i);
  - (d) the directors of the REIT must submit a compliance declaration to the JSE within four months of the issuer's financial year end, which declaration must:
    - (i) confirm that the directors of the issuer have ensured that the applicant issuer's group complied with paragraphs 13.46(a), (f), (g), (i) and (h) above; or
    - (ii) where the applicant issuer did not comply with paragraph 13.46(g)(i) above, the directors must confirm that despite the non-compliance, the total consolidated liabilities of the issuer are not more than 60% of the total consolidated assets, where the liability and asset amounts are those reflected in the group annual financial statements for that financial year end;
    - (iii) be signed by each of the directors, the company secretary and the sponsor or designated advisor of the issuer; and
    - (iv) be submitted at the time of submission of the applicant issuer's annual report.
- 13.50 The following procedure shall apply to an issuer that fails to comply with paragraph 13.49(d):
- (a) on the day following the due date as contemplated in paragraph 13.49(d) above, a letter of reminder will be sent by the JSE to the issuer requesting that the issuer rectify the situation and advising that it has been granted a period of 1 month, from the date of such reminder, in which to submit the compliance declaration, failing which the issuer's REIT status will be removed by the JSE;
  - (b) failing compliance within 14 days of dispatch of the reminder to the issuer, the JSE will release an announcement informing holders of securities that the issuer has not submitted its compliance declaration and cautioning holders of securities that the issuer's REIT status is under threat of removal; and
  - (c) the issuer's REIT status will be removed by the JSE if it fails to submit

the compliance declaration within the 1 month period referred to in (a) above and the JSE will release an announcement confirming this fact.

13.51 In every announcement issued by a REIT:

- (a) it must make reference to the fact that it has a REIT status with the JSE; and
- (b) for announcements that deal with distributions it must specify:
  - (i) that this distribution is regarded as taxable dividend for income tax purposes in the hands of local tax residents and a taxable dividend for dividends tax purposes for foreign tax residents from 1 January 2014 (distributions to foreign tax residents before that date are exempt from dividends tax); and
  - (ii) for which financial period the distribution relates to.

13.52 An issuer with a REIT status must keep the market informed regarding its tax status. In this regard the issuer must release an announcement containing full details of the implications thereof for the issuer and its security holders, without delay, if it:

- (a) fails the REIT tax test or believes that it will not qualify for a tax deduction of distributions under section 25BB(2) of the Income Tax Act; or
- (b) has breached the distribution provisions as set out in paragraph 13.47; or
- (c) has breached the gearing provisions of paragraph 13.49(c).

13.53 Where at any time, an applicant issuer, fails to comply with any of the REIT Listings Requirements as set out in paragraph 13.49 (after taking into account paragraph 13.50):

- (a) the JSE will remove its REIT status;
- (b) the issuer must make an announcement advising the market of this fact; and
- (c) the issuer may make application at any time to reapply to the JSE to receive a REIT status in terms of paragraph 13.48.

#### **Application for removal of the REIT status**

13.54 An issuer who has received a REIT status may at any time make application to the JSE to have this status removed. An announcement must be made, advising the market of this fact, as soon as:

- (a) the board of directors has taken the decision to make such an application, stating the reasons for this decision; and
- (b) once the application has been processed by the JSE.

#### **Applicability of the REIT provisions to CISIP's**

13.55 A CISIP is eligible to receive a REIT status. To receive a REIT status, a CISIP must make application to the JSE, which application must be signed by the trustees of the CISIP, the directors of the management company and the sponsor/designated advisor and must:

- (a) provide evidence of compliance with paragraphs 13.46(b) to (e) and (h) above, where any reference to the directors of the applicant issuer must be read as being the directors of the management company appointed as such in terms of the CISCA;
- (b) provide evidence of registration as a CISIP from the CIS Registrar; and

- (c) confirm that the CISIP Deed has been approved by the CIS Registrar.

### **Continuing obligations for CISIP's**

- 13.56 A CISIP must submit a compliance declaration to the JSE within four months of the issuer's financial year end, which declaration must:
- (a) confirm that the CISIP has complied with paragraph 13.46(h) above, where any references to the directors of the applicant issuer must be read as being the directors of the management company which is appointed as such in terms of the CISCA; and
  - (b) be signed by the trustees of the CISIP and the directors of the management company.
- 13.57 In every announcement issued by a CISIP with a REIT status:
- (a) it must make reference to the fact that it has a REIT status with the JSE;
  - (b) for announcements that deal with distributions it must specify:
    - (i) that this distribution is regarded as taxable dividend for income tax purposes in the hands of local tax residents and a taxable dividend for dividends tax purposes for foreign tax residents from 1 January 2014 (distributions to foreign tax residents before that date are exempt from dividends tax); and
    - (ii) for which financial period the distribution relates to.
- 13.58 An issuer that is a CISIP with a REIT status must keep the market informed regarding its REIT status. In this regard the issuer must release an announcement containing full details of the implications thereof for the issuer and its holders of securities, without delay, if it:
- (a) fails the REIT tax test or believes that it will not qualify for a tax deduction of distributions under section 25BB(2) of the Income Tax Act;
  - (b) has breached the provisions of its Deed; or
  - (c) has breached the provisions of the CISCA.

### **Dual listings**

- 13.59 Any applicant issuer wanting to apply to receive a REIT status must, despite the provisions of Section 18, make application for a primary listing on the JSE.

### **Transitional provisions**

- 13.60 The following transitional provisions are applicable to property entities other than CISIP:
- (a) the following issuers are eligible to make application to receive a REIT status under these transitional provisions:
    - (i) property entities that were listed on the Main Board of the JSE in the financials-real estate sector prior to 30 November 2012; and
    - (ii) at that time the listed securities of the property entity comprised of an ordinary share linked to a debenture, and traded as a linked or combined unit;
  - (b) all issuers referred to in paragraph 13.60(a) above must make application to the JSE, by no later than 1 July 2013, to receive a REIT status under these transitional provisions;
  - (c) the application letter must be signed by the company secretary and

each of the directors of the issuer as well as the sponsor/designated advisor and must contain:

- (i) an undertaking that the company will comply with the provisions of paragraph 13.47;
  - (ii) a statement of confirmation by each of the directors that the issuer will, to the best of their knowledge (after making all reasonable enquiries to ascertain such facts), qualify for a tax deduction of distributions under section 25BB(2) of the Income Tax Act for its first financial year commencing on or after 1 April 2013;
  - (iii) confirmation and evidence of compliance with paragraph 13.46(d) and (g);
  - (iv) confirmation that the applicant issuer will comply with paragraph 13.46(h) by no later than the end of its first financial year commencing on or after 1 April 2013;
  - (v) details of the applicant issuer's year end and the proposed date of the first distribution which is likely to be made by the issuer as a REIT; and
  - (vi) an extract from the applicant issuer's latest published results showing the sector profile (showing existing use) of the revenue as reflected in those results. The sector profile should at a minimum distinguish between the following sectors: industrial, office, retail, residential, hotels and specialised sectors such as healthcare facilities, timber properties and auto dealerships;
- (d) an applicant issuer that makes application to the JSE and meets the transitional Listings Requirements set out in this paragraph will receive a REIT status even though it may not necessarily meet all the criteria set out in paragraph 13.46;
- (e) applicant issuers who make the necessary application to the JSE and comply with the transitional provisions will, receive a REIT status from the commencement of their first financial year commencing on or after 1 April 2013; and
- (f) any other property entity listed on the JSE to which the transitional provisions do not apply may make application to the JSE in terms of paragraph 13.46 to receive a REIT status.

13.61 The following transitional provisions are applicable to property entities that are CISIP:

- (a) CISIP that were listed on the JSE prior to 30 November 2012 are eligible to make application to receive a REIT status under these transitional provisions;
- (b) all applicant issuers referred to in paragraph 13.61(a) above must make application to the JSE, by no later than 1 July 2013, to receive a REIT status under these transitional provisions;
- (c) the application letter must be signed by trustees of the CISIP, the directors of the management company and the sponsor/designated advisor and must contain:
  - (i) confirmation that they are in good standing with the CIS Registrar;
  - (ii) confirmation that the issuer will comply with paragraph 13.46(h) by no later than the end of its first financial year commencing on or after 1 April 2013;
  - (iii) details of the issuer's year end and the proposed date of the first distribution which is likely to be made by the issuer as a REIT; and
  - (iv) an extract from the issuer's latest published results showing the

sector profile (showing existing use) of the revenue as reflected in those results. The sector profile should at a minimum distinguish between the following sectors: industrial, office, retail, residential, hotels and specialised sectors such as healthcare facilities, timber properties and auto dealerships;

- (d) an applicant issuer that makes application to the JSE and meets the transitional Listings Requirements set out in this paragraph will receive a REIT status even though it may not necessarily meet all the criteria set out in paragraph 13.55;
- (e) applicant issuers who make the necessary application to the JSE and comply with the transitional provisions will, receive a REIT status from the commencement of their first financial year commencing on or after 1 April 2013; and
- (f) any other CISIP listed on the JSE to which the transitional provisions do not apply may make application to the JSE in terms of paragraph 13.55 to receive a REIT status.

## Section 14

### Pyramid Companies

#### Scope of section

This section contains additional Listings Requirements pertaining to Pyramid Companies.

- 14.1 General
- 14.2 Pyramid companies

#### General

- 14.1 The requirements contained within the Listings Requirements apply to pyramid companies, except where specifically overruled by the requirements of this section.

#### Pyramid companies

- 14.2 The JSE considers that any situation involving a proliferation into more than one listed company of the same basic assets requires its careful control. Accordingly, the following guidelines and requirements should be considered in pyramid company situations.

#### Classification as pyramid companies

- 14.3 Any new applicant must make full disclosure to the JSE of any factors that could render it a pyramid company and any existing listed company shall consult the JSE before entering into any commitment, arrangement or agreement that could render it a pyramid company in relation to another listed company.
- 14.4 The JSE will classify a listed company as a pyramid company where it:
  - (a) may exercise, or cause the exercise, of 50% or more of the total voting rights of the equity securities of a listed company ("listed controlled company"); and
  - (b) derives 75% or more of its total attributable income before tax from such listed controlled company, **or** the value of its shareholding in the listed controlled company represents 50% or more of its gross assets, with both measured, as far as possible, at fair value.
- 14.5 The JSE may declassify a company as a pyramid company when it no longer meets the thresholds upon which its classification as a pyramid company was based.

#### Listing of pyramid companies

- 14.6 The listing of pyramid companies is prohibited by the JSE, unless such pyramid company is the result of an unbundling or partial unbundling transaction. Where the listing of a pyramid company is the result of a partial unbundling, such pyramid company will be given 6 months from the date of the unbundling to introduce alternative assets that satisfy the criteria for listing in Section 4. Failure to meet this requirement may result in the suspension and ultimate removal of the listing of such pyramid company pursuant to the provisions of Section 1. Furthermore, the JSE will not grant a listing to a pyramid company forming part of an unbundling transaction nor maintain the listing of a company that is to become a pyramid company as a result of an unbundling transaction:
  - (a) which is or will become a second-stage pyramid company, being the pyramid company of another listed pyramid company. In such event, the second stage pyramid company will be given 6 months from the

date of unbundling to introduce alternative assets which satisfy the criteria for listing in Section 4. Failure to meet this requirement may result in the suspension and ultimate removal of the listing of the second stage pyramid company pursuant to the provisions of Section 1

- (b) unless, either:
  - (i) the minority holders of equity securities in the listed controlled company are offered equity securities on the same terms as applicable to the controlling shareholders, as described in the Takeover Regulations and the Act, of such listed controlled company, in proportion to their holdings in the listed controlled company; or
  - (ii) the controlling shareholders of the pyramid company give irrevocable written undertakings to the JSE that they will not enter into any affected transaction, as described by the Takeover Regulations and the Act in relation to the pyramid company, unless the other party to such affected transaction undertakes to the JSE to make a comparable offer to the holders, excluding the pyramid company, of the equity securities in the listed controlled company in accordance with the provisions of the Takeover Regulations and the Act;
- (c) unless the listed controlled company has either been listed for more than two years or it satisfies each of the following criteria:
  - (i) 50% or more of the listed controlled company's gross assets or 50% or more of its total attributable income before tax is derived from operations that have been listed for at least 12 months;
  - (ii) the listed controlled company is not classified by the JSE as a pyramid company;
  - (iii) the body of management that manages the listed controlled company has held such position, with only non material changes to such body of management, for a continuous period of at least 12 months prior to the listing of the pyramid company;
  - (iv) the management of both the listed controlled company and the proposed pyramid company must have been predominantly the same for the period referred to in paragraph 14.6(c)(iii); and
  - (v) the listed controlled company has issued audited financial statements covering the period referred to in paragraph 14.6(c)(iii), that have not been qualified by the listed controlled company's auditor;
- (d) in respect of a listed controlled company that is listed on the DCM or VCM; and
- (e) unless the cover of the circular relating to the creation of a pyramid company contains a warning that it will reduce the effective voting influence of shareholders in the listed controlled company.

14.7 The JSE may delist a listed pyramid company that ceases to meet the percentages referred to in paragraph 14.4.

## Section 15

# Investment Entities

### Scope of section

An investment entity is defined as including investment companies, private equity companies, active private equity funds, investment trusts and unit trusts whose principal activity is the investment in securities that, for the purpose of this section, include private companies.

This section sets out the Listings Requirements for investment entities.

The main headings of this section are:

- 15.1 General
- 15.3 Criteria for listing
- 15.5 Contents of pre-listing statements/prospectuses
- 15.6 Annual financial statements
- 15.7 Investment policy
- 15.8 Transactions

### General

- 15.1 The Listings Requirements apply to investment entities except as modified by paragraphs 15.2 to 15.7.
- 15.2 In evaluating a listing of an investment entity, the JSE will have regard to the following fundamental principles:
  - (a) the persons responsible for managing the investments must have adequate experience;
  - (b) there must be an adequate spread of portfolio risk; and
  - (c) the applicant must not, to a significant extent, speculate in securities.

### Criteria for listing

- 15.3 The JSE may admit to listing the securities of an applicant as an investment entity notwithstanding that such entities do not comply with the Main Board listings criteria in Section 4, subject to them having a subscribed permanent capital of at least R500 million and being classified in the "Investment Companies" sub-sector of the FTSE Global Classification System.
- 15.4 If paragraph 15.3 applies, the applicant must satisfy the following criteria:
  - (a) the applicant must comply with the criteria set out in paragraph 4.28 except that, if it is not able to satisfy fully the criteria set out in paragraph 4.28(c) (three years' audited profit history), it must satisfy the JSE that its managers have sufficient and satisfactory experience in the management of the types of investment in which the investment entity proposes to invest;
  - (b) the applicant must express an intention that its income will be derived wholly or mainly from shares or other securities and neither the investment entity, nor any of its subsidiaries, may conduct any trading activity that is material to the group as a whole;
  - (c) if the investment entity invests in other companies or funds, which in turn invest in a portfolio of investments, it must ensure that the policies and objectives of the investee conform to the principal objective(s) of the investment entity;
  - (d) the applicant may seek a listing with an existing investment portfolio or with cash only;



- (e) the board of directors, or any equivalent body, of the investment entity must be able to demonstrate that it will act independently of any investment managers of the investment entity, and a majority must not be employees of or professional advisers to the investment managers or any other company in the same group as the investment entity;
- (f) the management company must, at all times, have an investment in the capital of the applicant equal to at least 10%, unless the JSE in its sole discretion, after taking account of the relevant experience of the management company, otherwise decides; and
- (g) the applicant must disclose its portfolio to shareholders on a quarterly basis until such time as at least 50% of the portfolio has been established in investments other than cash or short dated securities.

#### **Contents of pre-listing statements/prospectuses**

15.5 The requirements of Section 6 apply and, in addition, the following information must be provided, if applicable:

- (a) a description of the investment policy to be followed;
- (b) if it is intended to invest in less than 10 investments, a statement of that fact;
- (c) an analysis of the investment portfolio, or proposed investment portfolio, by:
  - (i) broad industrial or commercial sector; and
  - (ii) listed and unlisted investments;
- (d) an analysis of funds not invested in shares or securities;
- (e) an analysis of income between dividends, interest and other forms of income;
- (f) a list of all investments with a value of greater than 5% of the fund, and at least the 10 largest investments stating:
  - (i) a brief description of the business;
  - (ii) whether the securities held by the investment entity are listed and, if so, the name of the stock exchange;
  - (iii) the proportion of share capital owned;
  - (iv) the cost of the investment;
  - (v) the market value of the investment or, if the investment is not listed, a valuation by the directors of the investment entity stating the date of such valuation together with the disclosure that would have been provided pursuant to IFRS 13 had this valuation been presented in the IFRS compliant financial statements;
  - (vi) the income received during the year (highlighting any abnormal income);
  - (vii) any extraordinary items; and
  - (viii) the proportionate underlying net assets attributable to the investment;
- (g) an analysis of any provision for diminution in value of investments, naming the investments against which provision has been made and stating for each such investment:
  - (i) its cost;

- (ii) its book value;
  - (iii) the provision made; and
  - (iv) the reason for the provision;
- (h) an analysis of any unrealised profits stating separately those between listed and unlisted investments;
- (i) details must be given of the name of the group or company which manages the investments, together with an indication of the terms and duration of their appointment, the basis for their remuneration and details of their investment experience; and
- (j) the net asset value per share and tangible net asset value per share. The guide on pro forma financial information, issued by SAICA, defines net asset value and net tangible asset value. Net asset value and net tangible asset value are based on the values set out in the statement of financial position of the IFRS compliant financial statements.

### **Annual financial statements**

- 15.6 In addition to the information specified in Section 8, an investment entity must report the information required in paragraph 15.5 in its annual financial statements.

### **Investment policy**

- 15.7 The investment policy must be stated in the pre-listing statement/prospectus and thereafter all material changes to such policy or new policy must be approved by shareholders in general meeting.

### **Transactions**

- 15.8 Section 9 will not apply to investment entities provided transactions are concluded in the ordinary course of business pursuant to the investment policy. All transactions by investment entities must be categorised and any transaction exceeding 10% must be announced pursuant to the provisions of Section 9. In respect of transactions less than 10% issuers must consider the application of the general obligation of disclosure pursuant to paragraph 3.4(a) in the event that any transaction constitutes price sensitive information (applied individually or on a cumulative basis).
- 15.9 The exclusion provided in paragraph 15.8 above will not apply to related party transactions irrespective whether the transaction/s are in the ordinary course of business; and
- 15.10 In the event that an investment entity wishes to conclude a transaction outside the scope of the investment policy, the investment policy must be amended pursuant to paragraph 15.7 in order to allow the transaction.

## Section 16

### Documents to be Submitted to the JSE

#### Scope of section

This section details the documents required to be submitted to the JSE when corporate actions are undertaken.

In addition, the schedules to the Listings Requirements set out the prescribed contents of documents that are referred to in this section.

The main headings of this section are:

- 16.1 General
- 16.2 Documents to be submitted through a sponsor
- 16.3 Procedure for approval
- 16.5 Documents requiring approval
- 16.9 Documents to be submitted by new applicants
- 16.14 Offers for sale and subscription
- 16.15 Rights offers, claw-back offers and renounceable offers
- 16.17 Capitalisation issues and scrip dividends
- 16.18 Issues for cash
- 16.19 Acquisitions and disposals
- 16.20 Periodical returns
- 16.23 Extensions of listed options
- 16.24 Expiry of listed options or other conversion rights
- 16.26 Exchange control approval
- 16.28 Change of name of a listed company
- 16.32 Share incentive schemes
- 16.33 Repurchase of securities
- 16.34 Payments to securities holders
- 16.35 Alteration in the share capital, authorised shares and rights attaching to a class/es of shares
- 16.36 Odd lot offers
- 16.37 Transactions and corporate actions regulated by the Panel

#### General

- 16.1 For the guidance and information of applicant issuers, it should be noted that:
  - (a) all documents submitted by applicant issuers to the JSE will become the property of the JSE and are not returnable;
  - (b) any documentation, including proposed amendments to documentation, by applicant issuers must be submitted to the JSE for approval before being published;
  - (c) if an application for listing is not made within nine months of the examination of the MOI, the MOI will then have to be re-submitted for examination for which a further fee will be payable;
  - (d) drafts of documents to be sent to shareholders that have been approved by the JSE will not be regarded as final documents until notification is received by the JSE that a document dispatched to shareholders was identical, other than in minor respects, to the draft approved by the JSE; and
  - (e) several of the schedules referred to in Section 16 require the signature of both the company secretary and a director. In the instance where the company secretary is also a director the JSE will not accept that schedule if signed by the same person in both capacities. Therefore a director, other than the company secretary must always sign the letter.

#### Documents to be submitted through a sponsor

- 16.2 All documentation relating to the following must be submitted to the JSE through the medium of a sponsor:
- (a) new listings and/or reverse take-overs;
  - (b) liquidation and judicial management;
  - (c) renounceable rights/claw-back offers and non-renounceable rights offers;
  - (d) capitalisation issues;
  - (e) scrip dividend and cash dividend elections;
  - (f) specific issues for cash;
  - (g) options and convertible securities granted/issued for cash;
  - (h) vendor consideration placing;
  - (i) specific repurchase of securities;
  - (j) specific payments to securities holders;
  - (k) pre-issue trading;
  - (l) price stabilisation;
  - (m) odd-lot offers;
  - (n) transactions as contemplated in terms of Sections 9 and 10;
  - (o) voluntary liquidations;
  - (p) delistings;
  - (q) redemption of securities;
  - (r) change of name;
  - (s) subdivision/consolidation of securities;
  - (t) transfer of sector or board;
  - (u) conversion of securities;
  - (v) unbundling;
  - (w) all offers regulated in terms of the Panel;
  - (x) voluntary offers;
  - (y) explanatory statements;
  - (z) MOI/amendments;
  - (aa) share incentive/option schemes/amendments;
  - (bb) any other corporate action requiring shareholder approval pursuant to the Listings Requirements;
  - (cc) all announcements required in terms of the Listings Requirements;
  - (dd) annual financial statements and annual reports;
  - (ee) general mandate to issue shares for cash;
  - (ff) general mandate to repurchase securities;
  - (gg) general mandate to make payments to securities holders;
  - (hh) increase in authorised share capital;

Announcements relating to the above will not be released through SENS until confirmation has been received from the sponsor confirming that the sponsor has approved such announcement. All announcements must follow the procedural requirements of SENS as detailed in Schedule 9.

### **Procedure for approval**

- 16.3 The procedure for approval of documentation is as follows, save for an accelerated specific issue of shares for cash pursuant to paragraph 11.19B where formal approval will be provided by the JSE within 48 hours:

### **Informal comment**

- (a) a copy of the documentation required to be approved in terms of the Listings Requirements ("documents") should be submitted to the JSE as early as possible for informal comment, together with the signed checklist provided in Schedule 2 Form F ("the first submission");
- (b) if documents are received by the JSE on or before 10h00 on a business day, they will be deemed to have been lodged at 10h00 on such business day; and if they are received after 10h00 on a business day, they will be deemed to have been lodged at 10h00 on the following business day ("the deemed lodgement time");
- (c) within 120 hours of the deemed lodgement time of the first submission, the JSE will provide the relevant sponsor with informal comment. The JSE may insist on a further informal comment submission where additional corporate actions or transactions are inserted after the initial lodgement of the documentation;

### **Informal approval**

- (d) once the informal comment amendments have been incorporated into the documents by the applicant issuer, such amended documents may be submitted to the JSE for informal approval;
- (e) within 72 hours of the deemed lodgement time for informal approval, the JSE may:
  - (i) grant informal approval, if the documents are found to be in accordance with the Listings Requirements; or
  - (ii) refuse informal approval and return the documents to the relevant sponsor with comments (if they are found not to be in accordance with the Listings Requirements) or without comments (if an incomplete set of documents was submitted or the inspection fee was not paid) ("omission");
- (f) in the event of paragraph 16.3(e) (ii), the sponsor may re-submit the documents after incorporating the JSE's comments or rectifying the omission, whereupon paragraph 16.3(d) and (e) will again apply;
- (g) the procedures under paragraph 16.3(d) to (f) will apply until the JSE grants informal approval, provided that, if the documents are returned to the sponsor after a third submission, the JSE will charge an additional Inspection fee equal to 100% of the original inspection fee for every subsequent submission;

### **Formal approval**

- (h) once informal approval has been granted by the JSE, the final documents must be submitted to the JSE for formal approval;
- (i) upon submission for formal approval, the JSE may:
  - (i) within 48 hours of the deemed lodgement time for formal

approval, grant formal approval (if necessary, subject to conditions); or

- (ii) within 48 hours of the deemed lodgement time for formal approval, refuse formal approval (with comment, if the documents are capable of repair);
- (j) in the event of 16.3(i)(ii), the sponsor may re-submit the documents after incorporating the JSE's comments or after repairing the documents, whereupon 16.3(h) and (i) will again apply; and
- (k) the procedures under 16.3(h) to (j) will apply until the JSE grants formal approval, provided that if the documents are returned to the sponsor after a third submission, the JSE will charge an additional inspection fee equal to 100% of the original inspection fee for every subsequent submission.

It is the responsibility of sponsors and applicant issuers to ensure that the above procedure regarding the approval of documents can be accommodated within the timetables set out in the Listings Requirements. In addition, sponsors and applicant issuers are advised to structure their timetables relating to extremely complex or voluminous submissions, in order to allow the JSE, upon notification to the sponsor and applicant issuer, an additional 48 hours, per submission (informal or formal submissions), to consider the relevant documents.

Applicant issuers and sponsors must not assume approval of any aspect of a transaction, including documentation relating thereto, until formal approval has been verbally or formally granted by the JSE.

## Checklists

- 16.4 All submissions must be accompanied by the relevant corporate actions checklist (available on the JSE website) duly completed by the sponsor indicating clearly where the specific paragraph numbers of the Listings Requirements have been complied with. Any checklist dealing with Section 8 must be completed by the auditor appointed in terms of paragraph 3.88 and be reviewed by the sponsor. All submissions subsequent to the first submission must be marked up to reflect changes from the previous submission. Documentation must be submitted electronically and directly to the information database maintained by the Issuer Regulation Division.

## Documents requiring approval

- 16.5 (a) All announcements that are required to be made in terms of the Listings Requirements must be approved by the issuer's sponsor before they are released over SENS and published in the press. The JSE will only approve those sections of an announcement which contain a corporate action timetable as required in terms of the relevant corporate action timetable (announcements which contain corporate action timetables may therefore not be released until they are approved by the JSE). The JSE may review announcements after they have been published to ensure that the minimum information (as required in terms of the Listings Requirements) has been disclosed. The JSE may require the publication of additional information if it determines that the required minimum information has not been disclosed.
- (b) Circulars, pre-listing statements/prospectuses and notices of general/annual general meetings relating to paragraph 16.2(a) to (bb) may not be distributed to shareholders or placed on any website unless they have been approved by the JSE.
- (c) Circulars and notices of general/annual general meetings relating to paragraph 16.2(d), (e), (r), (s) (gg) to (jj) may not be distributed to shareholders or placed on any website until they have been approved by the issuer's sponsor. The JSE may review circulars and notices of general/annual general meetings after they have been distributed to

shareholders, in order to ensure that the minimum information (as required in terms of the Listings Requirements) has been disclosed. The JSE may require the publication/distribution of additional information if it determines that the required minimum information has not been disclosed.

- 16.6 The documents referred to in paragraph 16.2(a) to (bb) will be scrutinised by the JSE in order to ensure that, by the informal approval submission stage, as far as possible in the circumstances, all relevant and material facts are adequately disclosed in the clearest manner possible.
- 16.7 Unless otherwise specified, the documents referred to in paragraph 16.2(a) to (bb), together with a copy of the applicable exchange control approval (see paragraph 16.26), must be submitted for formal approval by the JSE.
- 16.8 Approval of documents by the JSE will not in any way reflect the JSE's views as to whether the underlying transactions, that are the subject of such documents, are fair. Neither does such approval constitute a guarantee by the JSE or its officials of the accuracy of the contents of such documents.

### **Documents to be submitted by new applicants**

- 16.9 New applicants are required to submit the documents described in paragraphs 16.10 to 16.12 for review by the JSE, according to the relevant corporate action timetable.

### **Part I documents**

- 16.10 The following documents are classified as Part I documents and must be submitted to the JSE before formal approval will be granted:
- (a) the formal application for listing complying with Schedule 1;
  - (b) an explanation of how the required spread of shareholders (refer to paragraph 4.28(e)) is to be achieved;
  - (c) the proposed pre-listing statement/prospectus dated and signed by the directors of the company, including their respective alternates, or under power of attorney, together with a statement of the proposed date and details relating to its publication, in full or abridged form, in the press and/or on SENS;
  - (d) if the document is a prospectus, complying with Section 6, a certificate from the company's attorneys stating that the requirements of Chapter 4 of the Regulations of the Act have been complied with;
  - (e) if the pre-listing statement/prospectus contains an auditor's report(s), a statement from the auditor that the contents of the pre-listing statement/prospectus are not contradictory to the information contained in the auditor's report(s);
  - (f) the following information must be submitted in respect of public shareholders, irrespective of whether the listing has been sought through a placing, introduction, offer for sale or subscription:
    - (i) a list of shareholders, clearly distinguishing between public shareholders and non-public shareholders;
    - (ii) the number and issue/listing price per share; and
    - (iii) a positive confirmation from the sponsor and the board of directors of the applicant issuer confirming that the required spread of public shareholders (refer to paragraph 4.28(e)) has been achieved. The positive confirmation must be supported by an analysis of shareholders, distinguishing between public shareholders and non-public shareholders pursuant to paragraph 4.25, with a detailed explanation on how the public shareholders

provisions were applied

- (g) where applicable, the underwriting agreement, the sworn declaration in terms of Section 100(6) and (7) of the Act and a statement containing the following:
  - (i) that the underwriting agreement will become irrevocable not later than 16h30 on the day prior to FD as determined from the relevant corporate action timetable;
  - (ii) that the underwriter is in a position at the date of signing the underwriting agreement, to meet its commitments in terms of the underwriting agreement in conjunction with any other underwriting or similar agreements running concurrently with the present commitment;
  - (iii) the number of securities offered to the public and the number of securities offered other than to the public;
  - (iv) the number of securities offered as a preferential right to any other persons. A brief summary of such offer must be given;
  - (v) the minimum subscription (if any) in terms of the pre-listing statement/prospectus; and
  - (vi) confirmation that the underwriting agreement provides that the underwriting consideration will not be paid until the underwriting commitments have been met;
- (h) the debenture trust deed, if debentures are to be listed;
- (i) confirmation in writing from Strate that the applicant has been approved in terms of the Central Securities Depository Rules and Directives;
- (j) a statement as to whether the company's securities are listed on any exchange outside the Republic of South Africa and particulars of that listing. In the event of any application for listing on any stock exchange having been refused or deferred, relevant details are to be furnished;
- (k) a list of other companies of which the applicant issuer's directors are also directors or have been directors during the past five years, and the nature of business conducted by such companies;
- (l) all details concerning any planned price stabilisation exercise;
- (m) a certified copy of the applicant's MOI or other constitutional documents if not a South African entity, embodying any amendments required by the JSE;
- (n) a certified copy of the registration certificate, if the company was registered within the last two years. Where a company is registered outside of the Republic of South Africa, it must furnish a notarial copy of the certificate of registration as an external company;
- (o) for certification purposes, a specimen (cancelled by mutilation) of the share or debenture certificates or other security in which it is proposed to deal. The share certificate should comply with Schedule 6;
- (p) the general undertaking by the company in the form of a resolution of the board of directors, certified by the chairman and complying with Schedule 3;
- (q) certified copies of relevant experts' consents (refer to paragraph 7.F.10);
- (r) a statement by the applicant issuer's company secretary stating:
  - (i) the registered address and post office box number;



- (ii) the address and post office box number of the transfer office;
- (iii) the name of the official authorised to deal with all matters relating to the company's listing;
- (iv) the date on which the financial year ends and confirmation of whether the applicant will be reporting on a quarterly basis;
- (v) the approximate date on which the annual financial statements will be issued;
- (vi) the approximate date on which the annual general meeting will be held;
- (vii) the approximate date on which notices of the annual general meeting will be issued;
- (viii) regarding dividends, the approximate date of declarations and the date of payment;
- (ix) its next financial reporting period; and
- (x) the names of the Chief Executive Officer, Financial Director and Chairman;
- (s) details relating to payment of the documentation and listing fee as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17;
- (t) [Repealed]
- (u) a letter signed by the chairman of the board of directors and by the chairman of the audit committee stating that:
  - (i) the financial information contained within the JSE circular has been considered by the audit committee and as part of that consideration it has inter alia:
    - (aa) specifically considered the accounting policies applied by the issuer as disclosed in the JSE circular and believes that they are appropriate;
    - (bb) evaluated the significant judgements and reporting decisions made by management affecting the information and believes that they are appropriate;
    - (cc) evaluated the clarity and completeness of the financial disclosures and believes that the disclosure is appropriate;
    - (dd) obtained explanations from management on the accounting for significant or unusual transactions and considered the views of the external auditors in these instances;
    - (ee) understands how materiality has been evaluated for reporting purposes and believes that the materiality levels are appropriate;
    - (ff) considered the effectiveness of internal financial controls and is satisfied with such controls;
  - (ii) the audit committee has recommended that the financial information be approved by the board of directors;
  - (iii) the board of directors has approved the financial information including the specific matters set out in paragraph 16.10(u)(i) above;
  - (iv) the board of directors to the best of their knowledge believes that

the accounting policies disclosed in the circular will be applied in the next reporting period;

(v) the board of directors considers the internal controls of the issuer to be effective; and

(vi) the audit committee has complied with paragraph 3.84(g).

16.11 Should amendments be required by the JSE, the amended document must be submitted and approved, prior to issue.

## **Part II documents**

16.12 The following documents are classified as Part II documents and must be received by the JSE no later than 48 hours before the date of listing, unless the listing timetable, which has been approved by the JSE, precludes such submission, in which case the relevant Part II documents must be submitted to the JSE at such time that is acceptable to the JSE:

- (a) a certificate by the company's sponsor certifying that the information published in the pre-listing statement/prospectus (in full or abridged form) was materially the same as that contained in the signed pre-listing statement/prospectus approved by the JSE or, if not, then in what material respects it differed;
- (b) a certified copy of any prospectus or pre-listing statement to be published in connection with the issue, dated and signed by the directors of the company or, in their absence, by their respective alternates or by person(s) making the offer;
- (c) the following information must be submitted in respect of public shareholders, irrespective of whether the listing has been sought through a placing, introduction, offer for sale or subscription:
  - (i) a list of shareholders, clearly distinguishing between public shareholders and non-public shareholders;
  - (ii) the number and issue/listing price per share; and
  - (iii) a positive confirmation from the sponsor and the board of directors of the applicant issuer confirming that the required spread of public shareholders (refer to paragraph 4.28(e)) has been achieved. The positive confirmation must be supported by an analysis of shareholders, distinguishing between public shareholders and non-public shareholders pursuant to paragraph 4.25, with a detailed explanation on how the public shareholders provisions were applied;
- (d) the published pre-listing statement/prospectus or circular, which is required for circulation to members, must be submitted electronically and directly to the information database maintained by Issuer Regulation Division for publication on the JSE website, together with one hard copy, signed by the directors;
- (e) the statutory declaration complying with Schedule 4; and
- (f) written confirmation by the sponsor and the board of directors of the applicant issuer that no material objections were reported/notified to the sponsor or applicant issuer in respect of the listing of the applicant issuer from the release date of the announcement pursuant to the provisions of paragraph 11.3, 11.6 or 11.7; and
- (g) notwithstanding the provisions of paragraph 16.12 above, a letter provided by the sponsor to the JSE by 15h30, on the business day before the date of listing confirming that –
  - the funds raised pursuant to the granting of allocations of shares in respect of the listing have been earmarked for settlement on the

listing date and have been matched, in favour of the applicant;  
and

- that the required spread of shareholders (refer to paragraph 4.28(e)) has been achieved

16.13 Where any of the documents listed in Part II are available at the date of submission of the Part I documents, they should be submitted to the JSE together with the Part I documents.

#### **Offers for sale and subscription**

16.14 The following information is required to be submitted to and approved by the JSE before listing/transaction approval will be granted:

- (a) the circular or pre-listing statement/prospectus;
- (b) a certified copy of the signed auditor's report(s) and relevant consent letters;
- (c) the information with respect to any underwriting described in paragraph 16.10(g);
- (d) the application for listing complying with Schedule 1;
- (e) copies of any exchange control (refer to paragraph 16.26) approvals required;
- (f) certified copies of any experts' consents (refer to paragraph 7.F.10) appearing in the circular or pre-listing statement;
- (g) the appropriate documentation and listing fee as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17;
- (h) the director's declaration for each director of the applicant as set out in Schedule 13;
- (i) all details concerning any planned price stabilisation exercise; and
- (j) the detailed valuation reports prepared in terms of Section 13.

#### **Renounceable rights offers, claw-back offers and renounceable offers**

16.15 The following information is required to be submitted to and approved by the JSE before listing/transaction approval will be granted:

- (a) the circular or pre-listing statement;
- (b) the information with respect to any underwriting described in paragraph 16.10(g);
- (c) the application for listing complying with Schedule 2 Form A1- (a);
- (d) the provisional LAs;
- (e) copies of any exchange control (refer to paragraph 16.26) approvals required;
- (f) certified copies of any experts' consents (refer to paragraph 7.F.10) appearing in the circular or pre-listing statement; and
- (g) the appropriate documentation and listing fee as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17.

#### **Non-renounceable rights offers**

16.16 The following information is required to be submitted to and approved by the JSE before listing/transaction approval will be granted:

- (a) the circular;
- (b) the application for listing complying with Schedule 2 Form A1- (b);
- (c) copies of any exchange control (refer to paragraph 16.26) approvals required; and
- (e) the appropriate documentation and listing fee as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17.

### **Capitalisation issues and scrip dividends**

16.17 The following information is required:

- (a) the circular;
- (b) the application for listing complying with Schedule 2 Form A2;
- (c) the form of election, which must contain at least:
  - (i) a statement that the election may be made in respect of all or part of the shares held, or deemed to be held, at the close of business on the record date; and
  - (ii) the ratio of application;
- (d) confirmation of any exchange control (refer to paragraph 16.26) approvals required;
- (e) the appropriate listing fee as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17;
- (f) in the event that the default position or election is cash, a resolution by the board of directors that the company and its subsidiary/ies have passed the solvency and liquidity test and that, since the test was performed, there have been no material changes to the financial position of the group; and
- (g) board resolution authorising the capitalisation issue.

In respect of capitalisation issues and scrip dividends no documents are required to be submitted to the JSE nor is JSE approval required. These items will be dealt with through the sponsor pursuant to paragraph 16.5(c).

### **Issues for cash**

16.18 The following information is required to be submitted to and approved by the JSE before approval (where applicable) will be granted for an issue for cash, as contemplated in paragraphs 5.50 to 5.57:

- (a) the circular;
- (b) the application for listing complying with Schedule 2 Form A4;
- (c) a statement detailing all issues of securities in the previous three years;
- (d) copies of any exchange control (refer to paragraph 16.26) approvals required;
- (e) certified copies of any experts' consents (refer to paragraph 7.F.10) appearing in the circular; and
- (f) the appropriate documentation and listing fee as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17.

### **Acquisitions and disposals**

16.19 The following information is required to be submitted to, and approved by,

the JSE before listing/transaction approval will be granted:

- (a) the circular or pre-listing statement;
- (b) the acquisition or disposal agreement;
- (c) any vendor placing document;
- (d) the application for listing, if applicable, complying with Schedule 2 Form A3;
- (e) copies of any exchange control (refer to paragraph 16.26) approvals required;
- (f) certified copies of any experts' consents (refer to paragraph 7.F.10) appearing in the circular or pre-listing statement;
- (g) the appropriate documentation and listing fee as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17; and
- (h) the detailed valuation reports prepared in terms of Section 13.

### **Periodical returns**

16.20 Company secretaries are requested to diarise all periodical information and documents required by the JSE as set out in paragraphs 16.21 and 16.22. It is essential, in the interests of registered, unregistered and future shareholders, that the information and documents be sent to the JSE by the sponsor in order that accurate information concerning the company can be promptly disseminated.

16.21 The JSE must be advised in writing of:

- (a) all corporate actions and that the applicant issuer is proceeding therewith in accordance with the relevant corporate action timetable;
- (b) changes in directorate;
- (c) change of company secretary;
- (d) change of address of registered or transfer offices;
- (e) "stops" placed against the transfer of securities;
- (f) any change in sponsor; and
- (g) the publication of the annual compliance report prepared pursuant to section 13G(2) of the BEE Act, unless an exemption can be provided to the JSE.

16.22 The following must be submitted electronically and directly to the information database maintained by Issuer Regulation Division:

- (a)
  - (i) notices of annual general meetings;
  - (ii) the annual financial statements and annual report;
  - (iii) notices of general meetings;
  - (iv) all notices, pre-listing statements and circulars issued to shareholders or debenture holders;
  - (v) in the event that Note 7 to the Appendix 1 to Section 11 has been applied, the interim and provisional reports; and
  - (vi) quarterly reports, where applicable;
- (b) a copy of the minutes of general/annual general meetings must be furnished to the JSE within 72 hours of request therefore;

- (c) evidence that the Commission, has registered special resolutions where special resolutions have been approved by shareholders; and
- (d) notifications of any announcements required by any other stock exchange on which the listed company or any of its subsidiaries are listed.

### **Extensions of listed options**

16.23 With respect to listed options and their extension, the company must submit for approval to the JSE:

- (a) a draft of the announcement detailing the extension of the exercise date and listing of listed options and the results of the shareholders' meeting approving same. The announcement detailing such extension must be published at least six weeks prior to the option's original expiry date;
- (b) a draft of the circular to registered option holders and to shareholders. The circular should be in the form of a notice to shareholders to obtain their sanction or, if the power of extension has been delegated to the directors, a notification of the extension of the options and the authority under which the extension was made. The circular must also state the procedure for recording the extension on the option certificates;
- (c) a copy of the proposed alteration and/or endorsement to be used on the option certificate; and
- (d) a written application to the JSE for the extension of the listing, stating:
  - (i) the number of options to which the extension applies;
  - (ii) the period of the extension;
  - (iii) the amounts of the nominal and issued capital and the number of the securities issued;
  - (iv) that all options issued have been included in the application for listing;
  - (v) a certified copy of the resolution extending the options;
  - (vi) a certified copy of the relevant resolution of shareholders, or if extended by the directors, a copy of the resolution empowering the directors to extend the option;
  - (vii) a copy of the circular, approved by the JSE and issued to registered option holders and shareholders; and
  - (viii) once issued, a copy of the circular must be submitted electronically and directly to the information database maintained by Issuer Regulation Division for publication on the JSE website, together with one hard copy, signed by the directors.

### **Expiry of listed options or other conversion rights**

16.24 Notice must be given to the JSE at least 30 days before the expiry date of the option or conversion rights stating:

- (a) the date on which the options or conversion rights expire and requesting the removal of the options from the List as and from the close of business on the date of expiry; and
- (b) that all registered option holders, or registered holders of the securities with conversion rights, have been notified of the date on which the option or conversion rights expire and that, after that date, the option or conversion rights will have no value. This notification should be published at least six weeks prior to the expiry date.

- 16.25 Application must be made for the listing of securities issued on the exercise of options and conversion rights.

### **Exchange control approval**

- 16.26 The Financial Surveillance Department of the South African Reserve Bank has furnished the following instances where copies of the requisite exchange control authority must be given to the JSE prior to approving the following transactions:

- (a) the listing of a bank and/or bank holding company;
- (b) the issue of bearer securities;
- (c) restructures, mergers and changes in control where non-residents are involved;
- (d) the listing of a quoted South African company on a foreign stock exchange;
- (e) the listing of an external company on the JSE;
- (f) the listing of warrants;
- (g) the issue of hedge securities;
- (h) the delisting of a company listed on the JSE;
- (i) the declaration of a dividend in specie or special dividend, for any purpose;
- (j) the elimination of "odd lot" minority shareholders through the mechanism of consolidations and/or subdivisions of share capital; and
- (k)
  - (i) the listing of the following debt securities require prior Exchange Control approval:
    - (1) Zero Coupon Bonds;
    - (2) Stripped Treasury Certificates;
    - (3) Foreign Currency or Index Linked Debt Instruments; and
    - (4) Asset Backed Securities;
  - (ii) the listing of the following debt securities do not require prior Exchange Control approval:
    - (1) Government, Municipal and Public Utility Stocks;
    - (2) Treasury Bills, Parastatal Project Bills, Bankers Acceptances, Promissory Notes and Negotiable Certificates of Deposit; and
    - (3) any other debt instrument not mentioned above, provided that the coupon or interest rate does not exceed the local prime rate plus 3 percent per annum where the instrument is also available to non-residents and emigrants of the Republic.

The above list is not exhaustive and may be amended from time to time.

- 16.27 In addition to the above, the JSE may advise the exchange control authorities of all other transactions that are not specifically mentioned in paragraph 16.26 above.

### **Change of name of a listed company**

- 16.28 Preliminary approval must be obtained from the JSE for the proposed new name and the proposed new abbreviated name to be used on the JSE trading system (the abbreviated name must not be more than nine letters in length).
- 16.29 An application must then be submitted to the JSE together with the circular (refer to paragraph 11.36) and a specimen of the proposed new share certificate, for approval of:
- (a) the new name; and
  - (b) the consequent amendment of the listing.
- 16.30 The application is to embody an undertaking that, for a period of not less than one year, the former name of the company will be shown on the new share certificate in brackets under the new name of the company.
- 16.31 The company must submit the registration certificate, issued by the Commission, to the JSE by no later than the FD.

### **Share incentive schemes**

- 16.32 The following documents pertaining to executive and staff share schemes ("schemes") must be submitted to the JSE for approval:
- (a) a draft copy of the scheme, which must comply with Schedule 14;
  - (b) the trust deed, if applicable; and
  - (c) a draft of the circular or notice relating to the adoption of or amendment(s) to the scheme.

### **Repurchase of securities**

- 16.33 The following information is required to be submitted to and approved by the JSE before approval (where applicable) will be granted for a repurchase of securities, as contemplated in paragraphs 5.67 to 5.81:
- (a) the circular;
  - (b) the application for removal complying with Schedule 2 Form A5;
  - (c) copies of any exchange control (refer to paragraph 16.26) approvals required;
  - (d) certified copies of any experts' consents (refer to paragraph 7.F.10) appearing in the circular;
  - (e) the board of directors' resolution approving the repurchase and confirming that the company and its subsidiary/ies have passed the solvency and liquidity test and that, since the test was performed, there have been no material changes to the financial position of the group; and
  - (f) the appropriate documentation and listing fee as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17.

### **Payments to securities holders**

- 16.34 The following information is required to be submitted to and approved by the JSE before approval (where applicable) will be granted for a payment to securities holders, as contemplated in paragraphs 5.85 to 5.92:
- (a) the circular;
  - (b) any application for listing, complying with Schedule 2 Form A2, if applicable;
  - (c) copies of any exchange control (refer to paragraph 16.26) approvals



- required;
- (d) certified copies of any experts' consents (refer to paragraph 7.F.10) appearing in the circular;
  - (e) the board of directors' resolution approving the specific payment and confirming that the company and its subsidiary/ies have passed the solvency and liquidity test and that, since the test was performed, there have been no material changes to the financial position of the group; and
  - (f) the appropriate documentation and listing fee as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17.

**Alteration in the share capital, authorised shares and rights attaching to a class/es of shares**

- 16.35 (A) Subject to (C) below, the following information is required to be submitted to and approved by the JSE before preliminary approval will be granted for an alteration in the share capital of the company and/or the rights attaching to a class/es of shares in terms of paragraph 11.34:
- (a) the circular;
  - (b) the application for listing, complying with Schedule 2 Form A6, detailing the amendments to the listing including, the new number of securities;
  - (c) the effective date required for the alteration to the share capital, number of authorised shares and/or the rights attaching to a class/es of shares;
  - (d) confirmation of any exchange control (refer to paragraph 16.26) approvals required; and
  - (e) the appropriate documentation and listing fee as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17.
- (B) Notwithstanding the effective date, the JSE shall only grant final approval for the alteration of the share capital and/or the rights attaching to a class/es of shares, upon receipt of a certified copy of the special resolution.
- (C) In respect of an increase of share capital or subdivision/consolidation of securities no documents are required to be submitted to the JSE nor is JSE approval required. These items will be dealt with through the sponsor pursuant to paragraph 16.5(c).

**Odd lot offers**

- 16.36 The following information is required to be submitted to and approved by the JSE before approval will be granted for an odd lot offer to securities holders, as contemplated in paragraphs 5.123 to 5.126:
- (a) the circular;
  - (b) the application for removal, complying with Schedule 2 Form A5, if applicable;
  - (c) copies of any exchange control (refer to paragraph 16.26) approvals required; and
  - (d) the board of directors' resolution approving the odd lot offer and confirming that the company and its subsidiary/ies have passed the solvency and liquidity test (in respect of the maximum payment that will be made to shareholders as a result of the odd lot offer) and that, since

the test was performed, there have been no material changes to the financial position of the group; and

- (e) the appropriate documentation fee as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17.

#### **Transactions and corporate actions regulated by the Panel**

16.37 The following information is required to be submitted to and approved by the JSE before approval will be granted for transactions and corporate actions as contemplated in paragraphs 11.54 to 11.55:

- (a) the circular, scheme document or offer document;
- (b) a copy of the Panel's approval;
- (c) copies of any exchange control (refer to paragraph 16.26) approvals required; and
- (d) the appropriate documentation and listing fee as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17.

## Section 17

### **Listing and other Fees**

#### **Scope of section**

This section sets out the listing and other fees that are to be paid by listed companies, applicants applying for a listing of securities, sponsors, auditors and the auditors' advisers.

17.1 The JSE charges certain fees relating to the following:

- (a) listing fees;
- (b) annual listing fees;
- (c) documentation fees;
- (d) ruling fees; and
- (e) sponsor fees.

Details of these fees, the bases for calculating them and when they are payable are published on the JSE's website "[www.jse.co.za](http://www.jse.co.za)".

## Section 18

### Secondary Listings and Depositary Receipts

#### Scope of section

The main headings are:

- 18.1 General
- 18.2 Primary listings
- 18.3 Secondary listings
- 18.25 Dual listings
- 18.28 External companies
- 18.29 Dual listed companies structure
- 18.44 Fast-track Listing Process
- 18.45 Conditions of Listing
- 18.46 Pre-Listing Announcement
- 18.47 Depositary Receipts
- Appendix to Section 18

#### General

- 18.1 (a) An applicant issuer seeking a dual listing on the JSE may decide (subject to being classified in terms of the Listings Requirements as a primary or secondary listing) where it intends to have its primary or secondary listing or listings.
- (b) Where appropriate, an applicant must be registered as an external company in terms of Section 23 of the Act before making application for a listing on the JSE. An applicant issuer must obtain a legal opinion as to whether it is required to register as an external company. A copy of this legal opinion must be furnished to the JSE on application for listing.

#### Primary listings

- 18.2 An applicant issuer seeking a primary listing on the JSE must comply in full with all the Listings Requirements.

#### Secondary listings

##### Conditions for listing

- 18.3 An applicant issuer seeking a secondary listing on the JSE must:
  - (a) comply with the conditions for listing as set out in Section 4 or Section 21, unless otherwise stated in the Listings Requirements or agreed to by the JSE (full details must be disclosed in the pre-listing statement). The conditions for listing in Section 4 must be read with regard being had to the jurisdiction in which the applicant issuer is incorporated and the listing conditions of the primary exchange;
  - (b) confirm that it has a primary listing on an approved exchange;
  - (c) confirm that the primary listing referred to in paragraph 18.3(b) above is at least on an equivalent board/exchange to that for which application is being made on the JSE. The JSE will therefore not grant a secondary listing on the JSE Main Board for an applicant issuer that has a primary listing on a junior/secondary market of an exchange; and
  - (d) not have traded in its securities on the JSE in respect of which a secondary listing is sought of more than 50% of both the total volume and value traded in those securities on all markets in which it is listed over 12 months.
- 18.4 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

#### Listings Requirements.

- 18.5 The applicant issuer must upon application to the JSE confirm that it is in full compliance with all the requirements of the exchange/competent authority on which it has its primary listing. The JSE may request that this confirmation be supported by a letter from the relevant exchange/ competent authority.
- 18.6 The JSE will not grant a listing or list securities which are not listed in the country of incorporation unless the applicant issuer can demonstrate that the absence of such a listing is not due to any negative or problematic circumstances, events or regulatory issues.
- 18.7 In the event that the applicant issuer is not incorporated in the country of an approved exchange, the applicant issuer must discuss the proposed secondary listing on the JSE at an early stage in order for the JSE to familiarise itself with the laws of incorporation/company law of the applicant issuer. The JSE may elect to require additional and prominent disclosure regarding the laws of incorporation/company law applicable to the applicant issuer.
- 18.8 Compliance with paragraph 21.3(a) is not required, provided that the applicant issuer appoints and maintains a sponsor in accordance with Section 2.
- 18.9 Compliance with paragraph 21.3(d) and (g) is not required.
- 18.10 An applicant issuer must either:
- (a) have the required spread in accordance with paragraph 4.28(e) (in the case of a Main Board listing) or 21.3(c) (in the case of an ALT<sup>x</sup> listing) on the South African share register; or
  - (b) make arrangements, to the satisfaction of the JSE's clearing and settlement division, to ensure that sufficient scrip is available on the South African share register.
- 18.11 An applicant issuer must appoint and maintain a sponsor.

#### **Pre-listing statements**

- 18.12 An applicant issuer must produce a pre-listing statement in compliance with the relevant Listings Requirements save as otherwise specifically stated in the Listings Requirements. Where the disclosure requirements of Section 7 relate to 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. The procedure for approval as contained in Section 16 will be applicable.
- 18.13 The applicant issuer must disclose in the pre-listing statement headline earnings per share and diluted headline earnings per share together with an itemised reconciliation between headline earnings and the earnings used in the calculation.
- 18.14 The JSE will, for purposes of the pre-listing statement, accept financial information prepared in accordance with the following accounting frameworks:
- (a) IFRS;
  - (b) IFRS as adopted by the European Union;
  - (c) United Kingdom GAAP;
  - (d) United States GAAP;
  - (e) Australian GAAP; and
  - (f) Canadian GAAP.

- 18.15 For purposes of the pre-listing statement, the JSE may accept extracts of financial information which have been prepared in accordance with paragraph 18.14 provided that:
- (a) the information was published subsequent to the applicant issuer being granted a listing on the exchange where it has its primary listing and in accordance with that exchange's Listings Requirements;
  - (b) the extracts are in compliance with IAS 34; and
  - (c) the pre-listing statement contains full details of the applicant issuer's accounting policies.
- 18.16 Notwithstanding paragraphs 18.14 and 18.15 above, the applicant issuer must, via its sponsor, obtain a formal ruling from the JSE on the exact presentation of the financial information in the pre-listing statement.
- 18.17 For purposes of the pre-listing statement, the JSE will accept a competent person's report (as required by Section 12) which has been prepared within the 12 months prior to listing on the JSE, provided that it has been prepared in accordance with SAMREC, Joint Ore Reserves Committee Code or National Instrument 43-101 and that there have either been no changes since that date or that any changes are reported on by the competent person. Applicant issuers who do not comply with the aforementioned must produce a new competent person's report in compliance with one of the aforementioned reporting codes and this report must be approved by the JSE's Readers Panel.
- 18.18 Applicant issuers must obtain a legal opinion as to whether it is required to register as an external company. This opinion must be submitted to the JSE.
- 18.19 The JSE may allow applicant issuers to modify the relevant Part I and II documents required in Section 16 where full compliance would be in conflict with the requirements of this section or the exchange where it has its primary listing.

#### **Pre-listing statements**

- 18.20 The applicant issuer must disclose on the pre-listing statement the following differences between the applicable provisions of the Listings Requirements and the regulatory/legislative framework of the exchange where it has its primary listing:
- (a) pre-emptive rights, ranking of securities in the same class, and expropriation rights in respect of securities;
  - (b) transferability of securities and transfer of securities;
  - (c) preferences, rights, limitations and other share terms;
  - (d) special voting rights in respect of securities;
  - (e) process dealing with amendment/s to the constitutional document of the issuer;
  - (f) appointment and removal of directors;
  - (g) authority to issue shares or other securities (general and specific);
  - (h) disclosure of changes in beneficial ownership of securities;
  - (i) regulation in respect of director's interests in transactions;
  - (j) regulation in respect of transactions (acquisitions and disposals) and related party transactions;
  - (k) mandatory corporate governance provisions and the corporate governance code applied;
  - (l) the pro-active monitoring process (if any) dealing with the review of

financial statements of the issuer by the listing authority or any other relevant regulatory body. Further, confirmation will be required whether the applicant issuer has been subject to such review or not;

- (m) takeover laws applicable to the issuer; and
- (n) special disclosure requirements dealing with mining companies, such as the preparation of special reports dealing with reserves, life of mine and valuation of mining activities.

It should be noted that additional disclosure may be required where matters not covered in above are significant to providing an understanding of the differences between the regulatory and legislative frameworks applicable to an applicant issuer.

### **Continuing obligations**

18.21 The JSE will allow the requirements of the primary exchange to take precedence in relation to applicant issuers with a secondary listing on the JSE, with the following exceptions:

- (a) the annual financial statements and any other communication with shareholders must state where the primary and secondary listings of the applicant issuer's securities are;
- (b) when an applicant issuer wishes to release any information on another exchange, it must ensure that such information is also released on SENS and that such release takes place no later than the equivalent release on any other exchange provided that, if the JSE is not open for business, it must ensure that such information is released through SENS at the commencement of business on the next business day. The announcement must be submitted via the applicant issuer's sponsor, albeit that the announcement does not require the approval of the sponsor;
- (c) it must publish, in its interim and year-end results, headline earnings per share and diluted headline earnings per share together with an itemised reconciliation between headline earnings and the earnings used in the calculation;
- (d) its interim and year-end results must be prepared and published in compliance with the acceptable accounting frameworks of the exchange where it has its primary listing;
- (e) where there are any notifications dealing with (i) changes of beneficial ownership in the issuer or (ii) dealings in securities in the issuer by directors and those closely related to the directors as may be prescribed by local legislation, the listings requirements of the exchange where it has its primary listing or otherwise, such changes and dealings must be announced within 48 hours after receipt of such notice or such notice being made available, through SENS; and
- (f) issuers must advise, and obtain approval from, the JSE with regard to the timetables for corporate actions stipulated in the relevant corporate action timetable. 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.

18.22 In respect of an applicant issuer with a primary listing on an exchange not approved by the JSE, the applicant issuer must submit to the JSE, together with the applicant issuer's annual financial statements pursuant to Appendix 1 to Section 11 or by no later than four months from the financial year-end of the applicant issuer, details of the volume and value of securities traded (over the previous 24 months), on all exchanges where it has a listing, in order for the JSE to consider the applicant issuer's continued secondary listing status.

18.23 In respect of an applicant issuer with a primary listing on an exchange not

approved by the JSE, if both the volume and value of securities traded on the JSE exceeded 50% of the total volume and total value of those securities (over the previous 24 months) traded on all exchanges where the applicant issuer has a listing, then the applicant issuer's listing status on the JSE in respect of those securities may be converted to a primary listing. The converse would apply when both the volume and value of securities traded on the JSE was 50% or below.

- 18.24 The applicant issuer must advise the JSE in writing each time that its listing status changes and must also inform its shareholders by releasing an announcement over SENS.

### **Dual listings**

- 18.25 A company with a dual listing must immediately notify the JSE, in writing, of any suspension or removal of listing on any other exchange on which it has securities listed.
- 18.26 An applicant issuer may only move its primary listing from the JSE to another exchange and maintain a secondary listing on the JSE provided the following has been complied with:
- (a) the other exchange must be an approved exchange; and
  - (b) It must comply fully with the relevant provisions of this section and obtain the approval of its shareholders. A 50% + 1 majority 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, must be cast in favour of such a resolution. The resolution must be accompanied by a comparison explaining to shareholders the key regulatory and disclosure differences applied by the JSE and the new primary exchange.

A secondary listing onto another exchange only requires the approval of the issuer's directors.

- 18.27 If an applicant issuer has applied and been granted permission for its JSE-listed securities to be listed on another exchange, it is required to ensure that the securities will be accepted for transfer, without delay, if presented in any of the centres in which the securities are listed.

### **External companies**

- 18.28 An external company with a listing on the JSE must appoint and maintain, whilst it remains listed on the JSE, a person authorised to accept service of due process and notices on its behalf in the Republic of South Africa and must notify the JSE of such appointment (or termination, providing that, in the event of termination, another person must immediately be appointed and their details provided in accordance with this paragraph), including:
- (a) the name of the person appointed ("person") and the person's address for services of due process and notices;
  - (b) if different, the person's business and residential address;
  - (c) the person's business and residential telephone number;
  - (d) the person's e-mail address; and
  - (e) any change in the above particulars.

### **Dual listed companies structure**

- 18.29 A Dual Listed Companies ("DLC") structure applies to an aggregated group, with combined businesses, accounted for under two separately listed companies, one housing the South African ("SA") based businesses ("the SA



listed company”), with its primary listing on the JSE, and the second company housing the offshore business entities (“the overseas listed company”) with its primary listing on the LSE or on another exchange acceptable to the JSE. If the primary listing of the overseas listed company is not on the JSE, then it must have a secondary listing on the JSE. The SA listed company and the overseas listed company together comprise the DLC structure.

- 18.30 All the conditions for listing, set out in Section 4 of the Listings Requirements, must be complied with in respect of each company comprising the DLC structure to be listed on the JSE.
- 18.31 The proportion of the combined business that each company comprising the DLC structure represents, should be discussed with the JSE well in advance of implementing the DLC structure in order to obtain the necessary in principle consents and/or rulings.
- 18.32 The companies in the DLC structure must be able to demonstrate that they participate in the control of the combined business. This must be evidenced through a formal agreement and/or veto rights, and/or such other mechanisms acceptable to the JSE.
- 18.33 Every company comprising the DLC structure will be required to comply with all continuing obligations provided that, in the event of a conflict in the requirements of the relevant exchanges, the most stringent requirements must be complied with. This includes the Code of Corporate Practices and Conduct, which will apply to directors of any board or committee and relevant employees of the DLC structure, as well as the directors of every company comprising the DLC structure. Companies are encouraged, at an early stage, to discuss with the JSE how compliance with continuing obligations will be achieved.
- 18.34 The related party transaction provisions set out in Section 10 of the Listings Requirements will apply to the companies comprising the DLC structure but not in respect of transactions necessary to constitute the DLC structure or transactions between the companies comprising the DLC structure and/or their respective groups.
- 18.35 Variations to any agreement governing the relationship between the companies comprising the DLC structure will be considered to fall within Section 10 of the Listings Requirements.
- 18.36 Transactions undertaken by the companies comprising the DLC structure will be subject to the transaction requirements set out in Section 9. The categorisation tests will be calculated by comparing the whole of the target with the whole of the DLC structure.
- 18.37 Controlling shareholder provisions will apply to any controlling shareholder of either company comprising the DLC structure.
- 18.38 Common accounting policies should be used for the companies comprising the DLC structure.
- 18.39 Aggregated annual financial statements must be published in accordance with IFRS for the merged DLC structure. In the event that the annual financial statements published for the merged DLC structure are not in accordance with IFRS, a comprehensive reconciliation to IFRS must be published and presented in Rands. Annual financial Statements for the companies comprising the DLC structure may be published as supplementary information to the aggregated accounts of the DLC structure.
- 18.40 Interim financial information, on an equivalent basis to paragraph 18.39, on the merged DLC structure, and for the separate companies, respectively, must be published.
- 18.41 Where an announcement is required, it must be released in accordance with the relevant exchange’s requirements and simultaneously on both the JSE and the overseas listed company’s exchange(s).

- 18.42 With respect to any calculations/categorisations/measurements in terms of the Listings Requirements applicable to either company comprising the DLC structure, the DLC will be regarded as one combined entity.
- 18.43 Where there is a conflict between the requirements of the relevant exchanges, the most stringent requirements must be complied with.

### **Fast-track Listing Process**

- 18.44 In these Listings Requirements pertaining to the fast-track listing process, unless the contrary intention appears, the following terms shall have the meanings assigned to them below:

**"accredited exchange"** means an exchange accredited by the JSE for purposes of the fast-track listing process, such exchanges being the:

- (a) Australian Securities Exchange;
- (b) London Stock Exchange,
- (c) NYSE and NYSE Euronext; and
- (d) Toronto Stock Exchange,

or such other exchange acceptable to the JSE, in its discretion;

**"accredited applicant"** means an issuer which had its securities primary listed and traded on an accredited exchange and equivalent board of the JSE for at least 18 months prior to applying to have its securities admitted on the Main Board or AltX, as the case may be, and which seeks to take advantage of its status in applying for a secondary listing of its securities on the JSE.

### **Conditions of Listing**

- 18.45 The accredited applicant must comply with Section 18, save for paragraphs 18.12–18.19. An accredited applicant may make application for a secondary listing on the Main Board or AltX by publishing a pre-listing announcement. In the event that capital will be raised in conjunction with the fast-track listing process, the JSE must be consulted and the accredited applicant must confirm that such capital raising will comply with the requirements of the accredited exchange.

- (a) An accredited applicant must submit to the JSE, via its sponsor:
  - (i) the signed application for listing pursuant to Schedule 18;
  - (ii) in respect of a listing application on AltX:
    - a. the latest audited financial statements prepared within the accounting frameworks of paragraph 18.14 (if more than nine months have elapsed since the last financial year-end, interim results must be submitted);
  - (iii) in respect of a listing application on the Main Board:
    - a. the latest audited financial statements prepared within the accounting frameworks of paragraph 18.14 for the preceding three years (if more than nine months have elapsed since the last financial year-end, interim results must be submitted);
- (b) The submission process pursuant to paragraph 16.3 will apply.

### **Pre-Listing Announcement**

- 18.46 The accredited applicant must publish a pre-listing announcement with the information specified in the Appendix to Section 18, on SENS five business

days before the date of listing. If there are any changes to such information prior to the date of listing, the applicant must inform the JSE immediately by supplying details of such changes. Where, in the opinion of the JSE, such changes result in the information being significantly different from that provided in the pre-listing announcement, the JSE may delay the listing. In the event that the listing is delayed by the JSE, the Issuer must immediately release an announcement on SENS.

### **Depository Receipts**

- 18.47 This section sets out the requirements for the listing of sponsored DRs and unsponsored DRs as defined.

### **General**

- 18.48 An issuer of DRs is subject to the provisions of Section 1.
- 18.49 Subject to Section 1, DRs may be suspended if the issuer of the DRs fails to comply with the Listings Requirements.

### **Sponsor**

- 18.50 The issuer of both sponsored and unsponsored DRs must comply with the provisions of Section 2 regarding the appointment of a sponsor. In relation to unsponsored DRs, the depository will carry out limited duties and responsibilities, in accordance with the provisions set out below in paragraphs 18.64 and 18.65.

### **Criteria for Issuer**

- 18.51 An issuer of sponsored DRs must demonstrate to the JSE that it meets paragraphs 18.1 to 18.11, applicable to a secondary listing.
- 18.52 An issuer of unsponsored DRs must meet the following criteria:
- (a) it must be regulated under the Banks Act of 1990 or the equivalent foreign legislation in the case of foreign issuers;
  - (b) relevant expertise to issue securities or has the access to such expertise;
  - (c) generally acceptable to the JSE, having regard primarily, but not only, to the interests of investors and the objects of the FMA; and
  - (d) the issuer must be in conformity with the applicable laws of its jurisdiction of incorporation, having obtained all necessary statutory, or other, consents required to apply for and maintain a listing of securities.

### **Criteria for DRs**

- 18.53 An issuer or depository seeking a listing of DRs must satisfy the following criteria:
- (a) the DRs must be issued by a depository which must be independent of the issuer or underlying entity;
  - (b) the depository must maintain adequate arrangements to safeguard DR holders' rights to the securities to which the DRs relate, and to all rights relating to the securities and all money and benefits that it may receive in respect of them, subject only to payment of the remuneration and proper expenses of the issuer of the depository;
  - (c) the entity referred to in (b) above must hold in trust or custody, for the sole benefit of the holders of DRs, the securities to which the DRs relate, all rights relating to the securities and all the money and benefits that it may receive in respect of them, subject only to payment of

remuneration and proper expenses of the entity;

- (d) the DRs must be fully covered at all times;
- (e) the DRs must be fully paid up and freely transferable;
- (f) the securities which the DRs represent must be free from all liens and any restrictions on the right of transfer to the depositary;
- (g) there must be a duly signed deposit agreement in accordance with paragraph 18.57 in place between the issuer, the depositary and the custodian (if applicable), for sponsored DRs;
- (h) there must be a duly signed unsponsored terms and conditions in accordance with paragraph 18.57 for unsponsored DRs; and
- (i) the entity referred to in (b) above must be independent from the issuer or underlying entity, unless otherwise agreed to by the JSE, and such entity must be insolvency remote.

18.54 For unsponsored DRs, the underlying entity must:

- (a) be sufficiently liquid to ensure efficient price formation in the secondary market; and
- (b) have its primary listing on another exchange and it must:
  - (i) be listed on an exchange that is a member of the World Federation of Exchanges, and such primary listing must be at least on an equivalent board/exchange to the JSE Main Board; or
  - (ii) have a subscribed capital, as defined in section 4.28(a) of at least R500 million.

18.55 The depositary must satisfy the JSE that it has the relevant expertise to arrange an issue of DRs or has access to such expertise.

18.56 Arrangements must be made to the satisfaction of the JSE's Clearing and Settlement Division, to ensure that sufficient DRs are available on the South African DR register.

### **The Deposit agreement or unsponsored terms and conditions**

18.57 The deposit agreement for sponsored DRs, or unsponsored terms and conditions for unsponsored DRs, must provide without limitation for the following:

- (a) In the case of sponsored DRs, the appointment of the depositary by the issuer with authorisation to act on behalf of the issuer in accordance with the deposit agreement;
- (b) the status of DRs as instruments, representing ownership interests in securities of an issuer or underlying entity, that have been deposited via the depositary;
- (c) the status of beneficial holders of DRs as the legal owners of those DRs;
- (d) the role of the depositary to issue DRs, the role of the depositary to issue DRs as agent of the issuer in the case of sponsored DRs, and to arrange for the deposit of the securities which the DRs represent;
- (e) the duties of the depositary, which must include the duty to keep in South Africa and make available for inspection a register of holders of DRs and the transfers of the DRs, as well as the duty to keep a record of the deposits of securities which the DRs represent, the issue of DRs, the cancellation of DRs and the withdrawal of securities;
- (f) the role and duties of the custodian, if applicable, appointed by the depositary to hold the deposited securities for the account of the

- depository on behalf of the holders of the DRs, segregated from all other property of the custodian;
- (g) the mechanism for the issue and registration of DRs by the depository upon receipt of securities in the issuer or underlying entity and the form of the DR;
  - (h) the right of DR holders to surrender DRs to be cancelled in exchange for the delivery of the shares which the DRs represent, subject to payment of any applicable charges and taxes and any legal or regulatory restrictions;
  - (i) the right of DR holders to corporate action entitlements. The deposit agreement or unsponsored terms and conditions should address the rights (if any) and procedures applying to cash distributions, distributions of shares, rights issues or any other distribution accruing to the securities which the DRs represent, as per Form H1 or in such other manner acceptable to the JSE;
  - (j) to the extent applicable, the right of DR holders to exercise the voting rights attached to the securities represented by the DRs and the procedures by which DR holders will be notified of shareholder meetings or solicitations of proxy votes and their entitlement to issue instructions to the depository as to how to exercise their voting rights;
  - (k) the manner in which any corporate action, or other reclassification of the issuer or underlying entity's securities, will be represented by and accrue to the DRs, in accordance with the principle that holders of DRs are to be treated as having generally equivalent rights to holders of the securities which the DRs represent;
  - (l) the conditions and process for the issue of new DRs if any DR instrument is lost, destroyed, stolen or mutilated (if applicable);
  - (m) the obligations of holders of DRs, including any liabilities for taxes and other charges and the obligation to disclose the beneficial ownership of the DRs on request of the issuer (for sponsored DRs), the depository or the JSE;
  - (n) a clear statement of the fees and charges payable by holders of DRs, including fees and charges payable to the depository and the custodian (if applicable);
  - (o) procedures for the replacement or removal of the depository and/or the custodian, by or with the consent of the issuer in the case of sponsored DRs, including an obligation to inform DR holders by advance announcement, of any prospective resignation, removal and replacement of the depository and/or the custodian;
  - (p) procedures for the amendment of the deposit agreement or unsponsored terms and conditions;
  - (q) the governing law of the deposit agreement or unsponsored terms and conditions should be that of South Africa or, if another jurisdiction is chosen, one that is generally used in accordance with international practice and that is acceptable to the JSE;
  - (r) for sponsored DRs:
    - (i) the procedures by which the depository and/or the custodian, at the direction of the depository, will, in consultation with the issuer for sponsored DRs, fix corporate action dates in accordance with Form H1;
    - (ii) the procedures by which the depository will, at the direction of the issuer, dispatch to holders of DRs copies of all notices, reports, voting forms or other communications sent by the issuer to its shareholders; and

- (iii) an obligation to provide sponsored DR holders with a minimum of 30 days notice period prior to any material changes to the depositary agreement being effected;
- (s) For unsponsored DRs:
  - (i) an obligation to provide unsponsored DR holders with a minimum of 30 days notice period prior to any material changes to the unsponsored terms and conditions being effected; and
  - (ii) the procedures by which the depositary will notify holders of DRs as to where copies of all notices, reports, voting forms or other communications published by the underlying entity to its shareholders can be obtained.

#### **Listing documents in respect of sponsored DRs**

18.58 An issuer must address the following in the pre-listing statement in addition to the requirements in paragraph 18.12–18.19 above:

- (a) in respect of a depositary:
  - (i) its full name;
  - (ii) its place and date of incorporation;
  - (iii) the full names and addresses of its directors (or in the event that the depositary is not a company, the persons with corresponding duties and powers in relation to the depositary);
- (b) a statement to the effect that investors must seek their own independent tax advice;
- (c) every pre-listing statement must contain the following statement on the front of the document:
 

“Prospective purchasers of any DRs must ensure that they understand fully the nature of the product and the extent of their exposure to risks, and that they consider the suitability of DRs as an investment in light of their own circumstances and financial position”; and
- (d) full details of the deposit agreement must be included as per paragraph 18.57.

#### **Listing documents in respect of unsponsored DRs**

18.59 The depositary must produce a listing document and include the following in such document:

- (a) In respect of the depositary:
  - (i) its full name;
  - (ii) its place and date of incorporation; and
  - (iii) full names and addresses of its directors; or in the case that the depositary is not a company, the persons with corresponding duties and powers in relation to the depositary;
- (b) in respect of the underlying entity to the extent available through public filings, as well as the depositary:
  - (i) its full name;
  - (ii) its place and date of incorporation;
  - (iii) the description of business of the underlying entity; and
  - (iv) the alpha code, ISIN number, and a description of where information on the underlying entity can be obtained;

- (c) a statement that the JSE's approval of the listing of the DR is not to be taken in any way as an indication of the merits of the issuer of the DR, and that the JSE has not verified the accuracy and truth of the contents of the documentation and that to the extent permitted by law, the JSE will not be liable for any claim of whatsoever kind;
- (d) the names and addresses of the advisors and transfer secretaries to the issuer, if any;
- (e) a statement to the effect that investors must seek their own independent tax advice; and
- (f) every listing document must contain the following statement on the front of the document:  
 "Prospective purchasers of any DRs must ensure that they understand fully the nature of the product and the extent of their exposure to risks, and that they consider the suitability of DRs as an investment in light of their own circumstances and financial position. It must be noted that it is the investors' responsibility to seek and obtain the information pertinent to the underlying entity."
- (g) full details of the unsponsored terms and conditions must be included as per paragraph 18.57; and
- (h) any other details that the JSE may deem appropriate.

### **Continuing obligations**

18.60 The issuer, or depositary in the case of unsponsored DRs, must ensure the following:

- (a) the continued suitability of the depositary for listing in the case of sponsored DRs;
- (b) that at least 30 day notice is given to holders of DRs of any material change to the depositary agreement or unsponsored terms and conditions;
- (c) application is made for the additional listing or withdrawal of listings of DRs in compliance with the listings requirements. Arrangements can be made with the JSE which will allow the creation of uncovered DR inventory pending transfer of underlying securities. Such arrangement must be made by the issuer in writing and is subject to the approval of the JSE;
- (d) the listing document, pre-listing statement and the deposit agreement or unsponsored terms and conditions, must be made available on the issuer's and depositary's websites, for sponsored DRs, and must be available on the depositary's website for unsponsored DRs for the duration of the listing of the DR's;
- (e) that a semi-annual submission is made to the JSE, providing a reconciliation of the amount of DRs outstanding at that time, the amount of underlying securities that such DRs represent and confirmation that the amount of DRs in issue did not exceed the authorised amount at any point in time, in terms of the DR listing documentation; and
- (f) compliance with the provisions as set out in paragraph 18.20 for sponsored DRs.

18.61 The provisions relating to the responsibilities of the depositary for unsponsored DRs set out in paragraph 18.64 and 18.65 apply to unsponsored DRs.

### **Documents to be submitted to the JSE on application for listing**

18.62 The following documentation must be submitted to the JSE for approval via a



sponsor or depositary in the case of unsponsored DRs:

- (a) the listing document or pre-listing statement;
- (b) exchange control approval;
- (c) the deposit agreement or unsponsored terms and conditions, depositary agent agreement, and custody agreement;
- (d) the formal application for listing complying with Schedule 1;
- (e) confirmation in writing from the Central Securities Depository that the applicant has been approved in terms of the Central Securities Depository Rules and Directives; and
- (f) such other information as may be requested by the JSE.

### **Announcements**

18.63 The issuer, or depositary in the case of unsponsored DRs, must publish the following via SENS:

- (a) after the JSE has approved an application for listing of the DRs, an announcement must be made five business days prior to listing, containing the following:
  - (i) the information referred to in paragraphs 18.56 and 18.57 in respect of the issuer of the DRs; and
  - (ii) places where copies of the DR offering circular and deposit agreement or unsponsored terms and conditions can be obtained.

### **Responsibilities of the depositary for unsponsored DRs**

18.64 The responsibilities of the depositary in the case of unsponsored DRs are provided below and must be complied with at all times. Failure to carry out these responsibilities may result in the JSE taking one or more steps referred to in Section 1.

18.65 In addition to the depositary's responsibilities set out in the unsponsored terms and conditions as well as 18.60 relating to continuing obligations above, the depositary must:

- (a) at all times remain independent of the underlying entity and must provide an undertaking that it will not act as depositary for any entity from which it is not independent upon application to the JSE to act as a depositary;
- (b) complete a Schedule 1 application prior to the listing;
- (c) ensure that the underlying entity is sufficiently liquid to ensure reasonable and transparent price formation;
- (d) manage the submission of the relevant documentation to the JSE and ensure its completeness and correctness before submission;
- (e) discharge its responsibilities with due care and skill;
- (f) apply the Listings Requirements, including the application of the spirit of the Listings Requirements and upholding the integrity of the JSE;
- (g) must make any documentation or public information on the underlying entity available via a SENS announcement, specifying the web link where such information can be obtained, by no later than one business day from the date that the depositary has had receipt of a publication in its capacity as shareholder, provided that if the JSE is not open for business, the depositary must ensure that such information is available at the commencement of business on the following business day;



- (h) must announce on SENS and within 10 business days of publication of the financial information make available on the website all financial information on the underlying entity. The SENS announcement must include the link to the website where such information can be obtained;
- (i) when the underlying entity releases any price-sensitive information on another exchange that impacts the DR instrument, the depositary must ensure that such information is also released on SENS specifying the web link where such information can be obtained. Such SENS announcement must take place no later than one business day after the publication on any other exchange provided that, if the JSE is not open for business, the depositary must ensure that such information is published on SENS at the commencement of business on the following business day. The announcement must be submitted via the depositary, and such announcements must also be available on the depositary's website. The JSE must be consulted in the event that the aforementioned requirement cannot be complied with; and
- (j) the depositary must advise, and obtain approval from the JSE with regard to the timetables for corporate actions stipulated in Form H1. The depositary 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 DR holders on the South African share register.

## **Appendix to Section 18**

An accredited applicant seeking a fast-track listing must disclose the following in the pre-listing announcement:

- (a) name and address of the registered office (also in the Republic of South Africa if an external company);
- (b) the transfer office in the Republic of South Africa;
- (c) date and country of incorporation;
- (d) the accredited exchange, equivalent board and date of admittance, as well as details on which other exchanges the securities of the accredited applicant is listed;
- (e) confirmation whether a listing is sought on Alt<sup>x</sup> or the Main Board and the reasons for seeking a secondary listing on the JSE;
- (f) listing date and timetable;
- (g) the number and class of securities in respect of which the accredited applicants seeks a listing and disclosure of the number of treasury shares held, including details of any restriction as to the transfer of the securities;
- (h) the market capitalisation on date of application;
- (i) the full names and functions of the board of directors;
- (j) a brief description of its business (including its main country of operation);
- (k) details of the prospects of the applicant following the date of listing;
- (l) insofar as is known to the accredited applicant, the name of any shareholder other than a director, that directly or indirectly, is beneficially interested in 5% or more of a class of securities issued by the accredited applicant, together with the amount of such shareholder's interest;
- (m) a statement by the board of directors of the accredited applicant, that to the best of their knowledge and belief, the accredited applicant has adhered to all legal and regulatory requirements of the accredited exchange;
- (n) the website address of the accredited applicant where any documents (such as financial information, competent person's report, valuations reports and the like)

or announcements which the accredited applicant has made public over the last two years (in consequence of having its securities listed on an accredited exchange), including its constitutional documents, are available;

- (o) disclosure of headline earnings per share and diluted headline earnings per share together with an itemised reconciliation between headline earnings and the earnings used in the calculation;
- (p) a description of any significant change in the financial or trading position of the accredited applicant which has occurred since the end of the last financial period for which audited financial statements have been published;
- (q) a statement from the directors of the accredited applicant that they have no reason to believe that the working capital available to the accredited applicant or its group will be insufficient for at least twelve months from the date of listing;
- (r) the financial year-end; and
- (s) disclosure of the differences between the regulatory and legislative frameworks applicable to the applicant issuer pursuant to paragraph 18.20 above.

Section 19  
**Specialist Securities**

## Section 20

### Hybrid Financial Instruments

- 20.1 Scope of section
- 20.2 Definitions
- 20.3 General
- 20.6 Compliance with the Listings Requirements
- 20.7 Sponsor
- 20.8 Criteria for listing HFI
- 20.9 Continuing obligations
- 20.10 Conditions for listing
- 20.11 Methods and procedures of bringing securities to listing
- 20.12 Pre-listing statements
- 20.13 Documents to be submitted to the JSE
- 20.14 Announcements
- 20.18 The appointment of market makers
- 20.19 Initial and annual listings fees

#### Scope of section

- 20.1 This section sets out the requirements for the listing of Hybrid Financial Instruments.

#### Definitions

- 20.2 In these Listings Requirements pertaining to the listing of Hybrid Financial Instruments, unless the contrary intention appears, the following terms shall have the meanings assigned to them below:

“debt securities” as defined in the definitions section of the Debt Listings Requirements;

“equity securities” as defined in the definitions section of the Listings Requirements; and

“hybrid financial instrument/s” or “HFI” refers to securities that portray characteristics of both debt securities and equity securities.

#### General

- 20.3 Due to the complex nature of HFI, the JSE must be consulted at an early stage before application for the listing is made. Depending on the nature and the structure of any particular issue, the JSE may grant dispensation from certain paragraphs of these requirements.
- 20.4 Should the applicant issuer wish to delist the HFI, such delisting will be subject to the delisting provisions pursuant to Section 1.
- 20.5 HFI must be freely transferable and each HFI holder shall be required to appoint a CSDP or broker who will maintain an electronic record of ownership of the respective HFI.

#### Compliance with the Listings Requirements

- 20.6 An existing applicant issuer or an applicant issuer seeking a listing of HFI on the JSE is required to comply and satisfy all applicable Listings Requirements in addition to the provisions set out in this section.

#### Sponsor

- 20.7 An applicant issuer of HFI must comply with the provisions of Section 2 regarding the appointment of a sponsor.

#### Criteria for listing HFI

- 20.8 An issue of HFI by an applicant issuer must comply with the following:
- (a) the JSE must be satisfied with the structure of the HFI;
  - (b) the pricing of the HFI must be clearly determinable; and
  - (c) 20% of the HFI for which application for listing will be made must be held by the public and the number of public HFI holders must be at least 50 (the JSE may accept a lower percentage or number if it is satisfied that the market will be sufficiently liquid with such percentage or number), unless a market maker has been appointed pursuant to paragraph 20.18.

### **Continuing obligations**

- 20.9 The applicant issuer is required to comply with Section 3, subject to the following exclusions and additions:

(a) Exclusions

Applicant issuers need not comply with the following continuing obligations:

Paragraphs

- |               |  |
|---------------|--|
| 3.28          | Voting rights                                |
| 3.29 to 3.31  | Pre-emptive rights                           |
| 3.32 and 3.33 | Waiver of pre-emptive rights                 |
| 3.35 and 3.36 | Issues by subsidiaries other than on listing |

(b) Additions

Applicant issuers must comply with the following continuing obligations:

- (i) all additional listings applications must comply with Form A4 Application for a listing of securities resulting from an issue for cash – Schedule 2, where applicable; and
- (ii) in the event that the applicant issuer makes any changes that affect the terms and conditions of the HFI or the guarantee (if applicable), other than changes which are of a formal, minor or technical nature or are made to correct a manifest error or to comply with mandatory provisions of the law of South Africa, the applicant issuer must obtain approval from the HFI holders holding not less than 66.67% of the value of a specific class of HFI.

### **Conditions for listing**

- 20.10 An applicant issuer must comply with the following provisions of Section 4 with respect to conditions for listing:

Paragraphs:

- |              |                                   |
|--------------|-----------------------------------|
| 4.1 and 4.2  | Introduction                      |
| 4.3 to 4.5   | Discretion of the JSE             |
| 4.6 and 4.7  | Applicant to be duly incorporated |
| 4.8 to 4.10  | Directors and company secretary   |
| 4.13         | Financial information             |
| 4.14 to 4.16 | Status of securities              |
| 4.17         | Transferability of securities     |
| 4.21         | Convertible securities            |

### **Methods and procedures of bringing securities to listing**

- 20.11 An applicant issuer of HFI need not comply with the provisions of Section 5 regarding the methods and procedures of bringing securities to listing. However, on conversion of the HFI into listed equity securities of the issuer (if the HFI is convertible for a period of time), Section 5 will in fact apply to such equity securities.

### **Pre-listing statements**

- 20.12 An applicant issuer of HFI must include the following in a pre-listing statement/prospectus:

- (a) the following paragraphs of Section 6:

Paragraphs:

- |               |  |
|---------------|--|
| 6.1           | Requirements for pre-listings statements         |
| 6.2 to 6.5    | Responsibility                                   |
| 6.6 to 6.9    | Form and content                                 |
| 6.11 and 6.12 | Formal approval                                  |
| 6.13 and 6.14 | Supplementary pre-listing statements             |
| 6.15 to 6.17  | Omission of information                          |
| 6.18          | Omission of material contracts from disclosure   |
| 6.23          | Publication/circulation of pre-listing statement |

- (b) additional disclosure as follows:

- (i) in respect of the applicant issuer:

- (1) the risks associated with the applicant issuer's business and market place for the purposes of a comprehensive analysis of the applicant issuer's ability to service and redeem the debt portion of the HFI. It must also contain details of the HFI in relation to other debt, either listed or not, of the applicant issuer including but not limited to details of seniority, security, covenants, warranties or pledges. The pre-listing statement/prospectus must contain such minimum disclosure which an investor would reasonably require in order to be in a position to make an informed assessment of the nature and state of the applicant issuer's business and most particularly its ability to effect agreed scheduled payments and repayments of the HFI; and
- (2) a description of the material risk factors associated with the HFI, and the sensitivity of the HFI to such risk factors must be provided;

- (ii) a statement that the JSE's approval of the listing is not to be taken in any way as an indication of the merits of the applicant issuer or of the HFI, that the JSE has not verified the accuracy and truth of the contents of the HFI documentation and that, to the extent permitted by law, the JSE will not be liable for any claim of whatever kind;

- (iii) an explanation of the tax implications on the HFI holder;

- (iv) every document issued by the applicant issuer must contain a risk statement on the front of the document, substantially as follows:

“Prospective purchasers of any hybrid financial instrument should ensure that they understand fully the nature of the hybrid financial instrument and the extent of their exposure to risks, and that they consider the suitability of the hybrid financial instrument as an investment in the light of their own circumstances and financial position”;

- (v) details of all parties involved in the HFI structure and the manner in which pricing is to be determined in respect of the HFI; and
- (vi) an explanation of the impact on pre-emptive rights and dilution on the HFI holder;
- (c) an applicant issuer of the HFI must comply with the provisions of Section 7 regarding listing particulars;
- (d) in relation to the information required under Section 7.E, the financial statements of an applicant issuer relating to a period shorter than three years may be accepted if the JSE is satisfied that the acceptance of financial statements of the applicant issuer for such shorter period will not prejudice the interests of investors and the investors have sufficient information available to arrive at an informed assessment concerning the financial position and affairs of the applicant issuer and the HFI for which the listing is sought; and
- (e) any other details that the JSE may deem appropriate.

#### **Documents to be submitted to the JSE**

20.13 The following documentation must be submitted to the JSE via a sponsor:

- (a) the approval of the Financial Surveillance Department of the South African Reserve Bank;
- (b) the HFI pre-listing statement (if applicable);
- (c) a copy of the resolution of the board of directors of the applicant issuer authorising the issue and listing of the HFI;
- (d) a copy of the Memorandum of Incorporation of the applicant issuer;
- (e) confirmation from Strate that the applicant issuer has been admitted in terms of the central securities depository rules and directives;
- (f) application letter complying with Schedule 1;
- (g) confirmation by the applicant issuer:
  - (i) that all applicable regulatory disclosures have been made; and
  - (ii) that there are no material matters, other than disclosed in the pre-listing statement/prospectus or otherwise in writing to the JSE, that should be taken into account by the JSE in considering suitability for the listing of the HFI;
- (h) the annual financial statements of the applicant issuer in respect of the period of three years prior to the date of such issue or for such shorter period as agreed to by the JSE in terms of paragraph 20.12(d);
- (i) the auditor’s consent letter;
- (j) letter from the legal advisor that all relevant agreements have been signed; and
- (k) such other information as may be requested by the JSE.

#### **Announcements**

20.14 The applicant issuer must publish an announcement on SENS immediately

after the JSE has approved an application for listing, containing the following (where applicable):

- (a) the information referred to in paragraph 7.A.1 in respect of the applicant issuer;
- (b) the period of marketing (if applicable) and the expected listing date;
- (c) a statement that JSE approval for the listing has been granted;
- (d) where copies of the HFI issue documentation can be obtained;
- (e) the long name, short name, alpha code and ISIN code under which the HFI will trade;
- (f) the issue price, coupon rate and any reference rate;
- (g) the date from which interest accrues and the interest calculation methodology (if applicable);
- (h) the interest or dividend payment dates (if applicable); and
- (i) any other relevant information.

20.15 The applicant issuer will also be required to make an announcement in terms of any expiry of listed HFI or other conversion rights. In such instances, the applicant issuer must comply with the principles set out in the relevant corporate action timetable as well as the following:

- (a) a notice must be provided to the JSE and announced on SENS at least six weeks prior to the expiry date of the HFI or conversion rights; and
- (b) the notice must state the date on which the HFI or conversion rights expire and request the removal of the HFI from the List as and from the close of business on the date of expiry, after which the HFI will have no value.

20.16 The applicant issuer will also be required to make an announcement for transactions that fall within the scope of Section 9. The announcement must be released immediately after the terms of the transaction are agreed. The announcement must contain all the relevant information required in terms of paragraph 9.15.

20.17 Such announcement must be made through SENS and posted on the applicant issuer's website.

### **The appointment of market makers**

20.18 An applicant issuer may appoint a market maker and such duly appointed market maker must undertake that it will always, under normal market circumstances, maintain a reasonable bid and offer in the HFI.

### **Initial and annual listings fees**

20.19 The initial fees payable, as determined by the JSE from time to time, are as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17.

20.20 The annual fees payable, as determined by the JSE from time to time, are as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17.



## Section 21

### Alternative Exchange

#### Scope of section

This section contains the requirements that must be satisfied by issuers wishing to apply for, or which have a listing on, the Alternative Exchange. ("ALT<sup>x</sup>")

The main headings of the section are:

- 21.1 General
  - 21.2 Conditions for listing
  - 21.13 Designated Adviser ("DA")
  - 21.38 Documents to be submitted and published
  - 21.44 Fees
- Appendix to Section 21

#### General

- 21.1 Issuers wishing to apply for, and those with a listing, on ALT<sup>x</sup> must comply with the Listings Requirements, unless otherwise indicated in this section.

#### Conditions for listing

##### Suitability

- 21.2 (a) ALT<sup>x</sup> is a market for small to medium companies that are in a growth phase and applicants that meet the criteria for listing on the Main Board or any other sector of the List will not ordinarily be granted a listing on ALT<sup>x</sup> and the JSE reserves the right to request such applicants to route their applications to those other sectors of the List; and
- (b) when issuers with a listing on ALT<sup>x</sup> reach the stage that they comply with the criteria specified in paragraph 4.28, the JSE may transfer their listing to the Main Board. Issuers that comply with the criteria specified in paragraph 4.28 may also make application to the JSE to transfer their listings to the Main Board.
- 21.3 In addition to the requirements of paragraphs 4.1 to 4.27, an issuer wishing to apply for a listing on ALT<sup>x</sup> must comply (and other than in respect of paragraphs (f), (h) and (i) after the listing has been granted must comply on a continuing basis) with the following requirements:
  - (a) The applicant issuer must appoint a DA and the terms of the appointment must be in accordance with paragraph 21.13. If the applicant issuer is a VCC, the applicant issuer may either appoint a DA or VCC adviser and the VCC adviser terms of appointment must be in accordance with paragraph 21.26;
  - (b) The applicant issuer must have share capital of at least R2 million (including reserves but excluding minority interests and revaluations of assets; and excluding intangible assets that are not supported by a valuation by an independent professional expert acceptable to the JSE and prepared within the previous six months);
  - (c) The public must hold a minimum of 10% of each class of equity securities to ensure reasonable liquidity;
  - (d) The directors must have completed the ALT<sup>x</sup> Directors Induction Programme ("DIP") or must make arrangements to the satisfaction of the JSE to complete it;
  - (e) The applicant issuer must appoint an executive financial director and the audit committee of the applicant issuer must be satisfied (and submit confirmation in writing to the JSE) that the financial director has the appropriate expertise and experience to fulfil his role. The JSE may, at

- its discretion, when requested to do so by the issuer and due to the existence of special circumstances, allow the financial director to be employed on a part time basis or not at all. This request must be accompanied by a detailed motivation by the issuer and the audit committee;
- (f) The applicant issuer must produce a profit forecast for the remainder of the financial year during which it will list and for one full financial year thereafter, unless:
    - (i) the applicant provides historical financial information for three years as provided in paragraph 8.4; or
    - (ii) the applicant issuer is governed by listings requirements that the JSE has found acceptable and those requirements do not require or allow forecast financial information to be presented. The JSE must be consulted at an early stage as to which listings requirements it deems acceptable;
  - (g) The applicant issuer's auditor, attorneys or CSDP must hold in trust 50% of the shareholding of each director and the DA ("the relevant securities") in the applicant issuer in such a manner that they are not transferable from the date of listing and a certificate to that effect must be lodged with the JSE by the issuer's auditor, attorneys or CSDP. The relevant securities, whether new or existing, are to be held in trust until the publication of the audited results for the periods referred to in paragraph 21.3(f), after which 50% may be released and the balance one year thereafter. The relevant securities may only be released after notifying the JSE of the intention to so release;
  - (h) With regard to compliance with the provisions of Section 13 in order for an ALT<sup>x</sup> issuer to obtain REIT status, paragraphs 13.3(a) and (b) apply but should be read with the amount of R8 million replacing the amount of R15 million.
  - (i) With regard to compliance with the provisions of Section 13, an ALT<sup>x</sup> issuer does not need to meet the profit forecast criteria as set out in paragraph 13.3(a); and
  - (j) The applicant must have control (which for the purposes of this section is defined as at least 50% + 1 of the voting shares) over the majority of its assets unless it is in compliance with Section 15 (other than the capital requirement set out in paragraphs 15.3 and 15.4).
    - (i) control (which for the purposes of this section is defined as at least 50% + 1 of the voting shares) over the majority of its assets unless it is in compliance with Section 15 (other than the capital requirement set out in paragraphs 15.3); or
    - (ii) it must have a reasonable spread of direct interests in the majority of its assets and the right to actively participate in the management of such assets, whether by voting or through other rights which give it influence in the decisions relating to the assets.

## **Publication**

21.4 Announcements must be published on SENS only.

## **Corporate governance**

21.5 The following provisions regarding corporate governance apply:

- (i) Application of the King Code disclosure and application regime to the principles set out in Part 5.3, Governing Structures and Delegation of the King Code;
- (ii) Paragraphs 3.84(g), (h), (i), (j) and (k); and;

(iii) The DA must be invited to, and must attend, all audit committee meetings and must advise the audit committee on the Listings Requirements for a period equal to:

- (a) the first anniversary of listing of the applicant issuer; or
- (b) the date of the publication of the applicant issuer's annual financial statements, whichever is the longer.

Notwithstanding the above provisions, the DA must be allowed to attend any audit committee meeting of the applicant issuer should it wish to attend same. The DA is to be an observer at these meetings and not a member.

### **Public shareholders**

21.6 In addition to the provisions of paragraph 4.25, any shareholding held beneficially by the DA (whether directly or indirectly), in trust for the period contemplated in paragraph 21.3(g) will not be regarded as being held by the public.

### **Issues for cash**

21.7 Issuers must comply with all the provisions of the Listings Requirements relating to general issues of shares for cash, with the following exceptions:

- (a) the percentage in paragraph 5.52(c) may not exceed 50%; and
- (b) the approval, as required in paragraph 5.52(e), is subject to achieving a 75% majority of the votes cast in favour of such resolution by all equity securities holders present or represented by proxy at the general meeting.

### **Pre-listing statements**

21.8 Issuers must comply with all the provisions of Section 6 of the Listings Requirements, with the exception that the percentage in paragraphs 6.19(h) and 9.22 is 100%.

### **Investment Entities**

21.9 Issuers must comply with all the provisions of Section 15 of the Listings Requirements, with the exception that the permanent capital amount required in paragraph 15.3 is at least R50 million.

### **Financial information**

21.10 All the provisions of Section 8 are applicable, with the exception that the period referred to in paragraph 8.4 is only one year. Applicant issuers must consider the provisions of International Accounting Standard 1, which deals with comparative information.

### **Transactions**

21.11 Issuers must comply with all the provisions of Section 9 of the Listings Requirements. Notwithstanding the provisions of paragraph 9.5, a transaction will be categorised as a Category 1 transaction where any percentage ratio defined in paragraph 9.6 is 50% or more and, where the percentage ratio is less than 50% but equal to or more than 5%, the transaction will be categorised as a Category 2 transaction. Transaction circulars issued pursuant to the Listings Requirements must only address the information for summary circulars pursuant to Appendix 2 to Section 11. The provisions of paragraphs 11.58 and 11.59 will not apply and the summary circular will follow the submission and approval process pursuant to Section 16.

### **Related party transactions**

- 21.12 Issuers must comply with all the provisions of Section 10 of the Listings Requirements, with the following exceptions:
- (a) subject to paragraph 21.12(c), the percentage in paragraph 10.6(c) is equal to or less than 10%;
  - (b) in the case of a transaction with a related party where one or both of the percentage ratios referred to in paragraph 9.6 are less than or equal to 50% but exceeds 10% the requirements of paragraph 10.7 must be applied;
  - (c) all transactions with related parties must be announced (containing the information required by paragraph 9.15) irrespective of the size of the transaction;
  - (d) the fairness opinion in respect of transactions which are greater than 10%, but less than 50%, may be obtained from the DA, provided that the DA is not a party to the transaction and does not have any other vested interest in the transaction, other than being a shareholder; and
  - (e) related party transactions are subject to the Listings Requirements, where both the percentage ratios referred to in paragraph 9.6 are greater than 50%.

### **Designated Adviser ("DA")**

#### **Appointment**

- 21.13 A new applicant seeking a listing of securities on ALT<sup>x</sup> must appoint a DA in terms of a written contract and must ensure that it has a DA at all times.
- 21.14 The DA must comply with, and is subject to, all the provisions of the Listings Requirements as though they were a sponsor.
- 21.15 All references in the Listings Requirements to sponsors apply mutatis mutandis to DAs and VCC advisers.

#### **Eligibility criteria**

- 21.16 A DA must meet the requirements for a sponsor at the time of applying for and on being admitted to the list of DAs. Existing sponsors must apply to become a DA and must meet the eligibility criteria in terms of Schedule 16 and Section 2 at the time of applying to become a DA.

#### **Responsibilities**

- 21.17 The DA's role is of particular importance to the successful operation of ALT<sup>x</sup>, since it is the requirement of the JSE that each issuer must, with the guidance and assistance of the DA, comply with and discharge its responsibilities under the Listings Requirements. In this regard, the DA is expected to advise the issuer on all of the issuer's responsibilities in a competent, professional and impartial manner.
- 21.18 The DA must ensure, at all times, that neither its conduct nor its judgement impair the integrity and reputation of ALT<sup>x</sup> or the JSE.
- 21.19 The DA must immediately inform the JSE, in writing, if the issuer does not comply with the applicable regulation as defined in paragraph 21.20(f).
- 21.20 The DA must, prior to listing, confirm in writing to the JSE that:
- (a) all the documents required by the Listings Requirements have been so submitted;
  - (b) it considers the new applicant to be suitable for listing on ALT<sup>x</sup>;
  - (c) the new applicant complies with all of the conditions for listing set out in

the Listings Requirements;

- (d) the pre-listing statement is in compliance with the Listings Requirements and that:
  - (i) the information contained in the pre-listing statement is accurate and complete in all material respects and not false or misleading;
  - (ii) there are no other matters, the omission of which would make any statement in the pre-listing statement false or misleading;
  - (iii) statements of fact and opinion expressed by the directors in the pre-listing statement have been arrived at after due and careful consideration on the part of the directors and are founded on bases and assumptions that are fair; and
  - (iv) the directors of the new applicant have made sufficient enquiries so as to enable them to give the confirmations set out in the "responsibility statement" contained in the pre-listing statement;
- (e) there are no matters, other than those disclosed in the pre-listing statement or otherwise in writing to the JSE, which should have been disclosed for the JSE to be able to consider the application for listing of the relevant securities; and
- (f) the DA (or other adviser(s) acceptable to the DA) has explained to the directors of the new applicant the nature of their responsibilities under the Listings Requirements, the Act, the Takeover Regulations and IFRS ("applicable regulation") and the DA (or other adviser(s)) has satisfied itself to the best of its knowledge and belief, having made due and careful enquiries that:
  - (i) the directors have the requisite expertise and experience;
  - (ii) they understand the nature of those responsibilities and can be expected to honour their obligations under the Listings Requirements and other applicable regulation;
  - (iii) they can be expected to prepare and publish all information necessary for an informed market to take place in the applicant issuer's securities; and
  - (iv) the information supplied on the director's declaration has been verified and confirmed as true.

21.21 The DA must take all reasonable steps to brief all new appointees to the board of directors of the issuer as to the nature of their responsibilities under the Listings Requirements, other applicable regulations and the general nature of their obligations in relation to shareholders. The DA must also ensure that:

- (a) the directors of the new applicant have completed the DIP prior to listing or that appropriate arrangements have been made with the JSE in accordance with paragraph 21.3(d); and
- (b) all new appointees complete the DIP within two months of appointment as directors.

21.22 The directors of the issuer must be informed by the DA (or other advisers acceptable to the DA), on a timely basis, of any amendment or supplement to the Listings Requirements, or other applicable regulation.

21.23 The DA shall, prior to publication, review with the issuer all periodic financial information announcements and other documentation detailed in Section 11 with a view to ensuring that the directors of the issuer, after due and careful consideration, understand the importance of accurately disclosing all material information to shareholders and the market.

21.24 The DA must regularly review the issuer's actual trading performance and financial condition in order to ensure that appropriate disclosure is made in

terms of paragraph 3.4.

- 21.25 The DA must ensure that at least one of its approved executives attends all board of directors meetings of the issuer, in an advisory capacity, to ensure that all Listings Requirements and applicable regulations are complied with.

## **VCC Adviser**

### **Appointment**

- 21.26 A new VCC applicant issuer seeking a listing of securities on ALTX which elects to appoint a VCC adviser must appoint a VCC adviser in terms of a written contract and must ensure that it has a VCC adviser at all times.
- 21.27 The VCC adviser must comply with, and is subject to, all the provisions of the Listings Requirements as though they were a DA.
- 21.28 All references in the Listings Requirements to DAs apply mutatis mutandis to VCC advisers and the responsibilities of the VCC adviser are equivalent to that of a DA.
- 21.29 In order to be admitted to the list of eligible VCC advisers, a VCC adviser must meet the requirements for a VCC adviser pursuant to the provisions of Schedule 16.

### **Shares held by DAs**

- 21.30 A DA, subject to paragraph 21.33, may hold shares or other securities in an applicant issuer for which that DA acts.
- 21.31 The DA's holding of such securities, as well as the contractual basis upon which that holding arose, must be published in the pre-listing statement issued at the time of listing of the securities in question.
- 21.32 All and any dealings by the DA (including its employees and directors) in the securities of the issuer, must be disclosed and published, mutatis mutandis, in the same manner as is applicable to directors of the issuer in accordance with paragraphs 3.63 to 3.74.
- 21.33 Securities held by the DA are subject to the provisions of paragraph 21.3(g).

### **Termination**

- 21.34 An applicant issuer must advise the JSE in writing (providing a copy to the DA) of the appointment or resignation of any DA. Where a DA resigns, the applicant issuer and the DA must immediately inform the JSE separately in writing of the reason for the resignation. In such a situation, the applicant issuer has 10 business days to appoint a new DA from the date of resignation of the DA, unless the JSE decides otherwise. The replacement DA must ensure that, before accepting an appointment, it has requested the written reasons for the resignation as submitted to the JSE from the outgoing DA. The outgoing DA must supply the reasons to the replacement DA within two business days of such request and the replacement DA must take account of the reasons for the resignation before accepting the appointment. Failure to comply with this requirement may result in action being taken in pursuant to paragraph 21.37.
- 21.35 In the event that the appointment of the DA is terminated by the issuer, for whatever reason, such termination must be approved by the board of directors of the issuer. Once the termination of the DA has been approved by the board of directors, the issuer and the DA must submit a report to the JSE stipulating the reasons for the termination, within 48 hours of such termination. In the circumstances set out in this paragraph 21.35, an issuer must immediately publish an announcement, stating the reasons for the termination and that the issuer's listing is under threat of suspension and possible termination in accordance with paragraph 21.37. The issuer must

make immediate arrangements to appoint a replacement DA, within 10 business days of the date on which the former DA ceased to act, and must inform the JSE and publish a further announcement immediately after the appointment has been made.

- 21.36 The replacement DA must ensure, before accepting the appointment, that it has requested the report referred to in paragraph 21.34 from the outgoing DA. The outgoing DA must supply this report to the replacement DA within two business days of such request and the replacement DA must take account of the reasons for the termination before accepting the appointment.
- 21.37 If an issuer fails to appoint a DA within the period referred to in paragraphs 21.34 or 21.35, the JSE may suspend trading in the issuer's securities pursuant to the provisions of Section 1. If, after a further month from the date of expiry of the period referred to in paragraphs 21.34 or 21.35, the issuer has failed to appoint a replacement DA, the issuer's listing may be removed by the JSE pursuant to the provisions of Section 1.

## **Documents to be submitted and published**

### **Application for transfer**

- 21.38 An issuer that wishes to apply for a transfer to ALT<sup>X</sup> from another sector must complete and submit the following to the JSE for approval (and for presentation to the ALT<sup>X</sup> Advisory Committee):
- (a) the application letter contained in the appendix to this section;
  - (b) a memorandum containing all the information required in terms of paragraph 21.3, with the relevant supporting documentation (unless otherwise determined by the JSE);
  - (c) the issuer's latest results;
  - (d) a draft announcement containing the information as required by paragraph 11.4. This announcement must contain a statement that the applicant has been granted approval by the JSE to transfer its listing from a particular date;
  - (e) documentation evidencing compliance with paragraph 16.10(f) and (p); and
  - (f) Schedule 13 declarations from each of the directors of the applicant.
- 21.39 If the JSE grants approval, the issuer must publish on SENS and in the press, in accordance with paragraphs 3.46 to 3.48, the announcement referred to in paragraph 21.38(d) on the business day prior to the transfer date.

### **New applicants**

- 21.40 Applicants wishing to apply for a listing on ALT<sup>X</sup> must comply with all the Listings Requirements as stipulated in this section. Applicants must submit all the documents as required by Section 16 and, in addition, all the necessary documentation evidencing compliance with this section.
- 21.41 The directors of the issuer, as well as the DA, must present, in person, a detailed business plan (including but not limited to historic and forecast financial information) to the ALT<sup>X</sup> Advisory Committee prior to being granted a listing. Subsequently, the ALT<sup>X</sup> Advisory Committee shall advise the JSE as to the eligibility of the issuer. The JSE shall consider the Committee's advice and exercise its discretion as to whether or not to grant the issuer a listing.

### **VCC Status**

- 21.42 The eligibility of a VCC pursuant to the provisions of the Income Tax Act is paramount. In the event that any circumstance or event impacting the tax status of the VCC, the issuer must immediately –



- (a) notify the JSE in writing; and
- (b) announce such circumstance or event on SENS.

21.43 The VCC tax status of the issuer and the details of the VCC adviser must be provided in all announcements, circulars, pre-listing statements prospectuses, the annual report of the issuer and any document issued by the VCC pursuant to the provisions of the Listings Requirements.

## **Fees**

### **Issuers**

21.44 The relevant fees payable by issuers and DA's, as determined by the JSE from time to time, are as published and available on the JSE website, [www.jse.co.za](http://www.jse.co.za), per Section 17.

## **Appendix to Section 21**

### **Application for transfer to ALT<sup>x</sup> from another sector**

1.1 The application must contain the following:

- (a) a statement that:

"It is understood that, once approved by the JSE, this application shall constitute a contract between this issuer and the JSE Limited ("JSE") and also between the directors\*/description of office equivalent to directors\*, on a continuing basis, of the issuer and the JSE, and that in giving the General Undertaking referred to in paragraph 16.10(s) of the Listings Requirements of the JSE ("the Listings Requirements"), the issuer and its directors\*/description of office equivalent to directors\* undertake to comply with the Listings Requirements as they may exist from time to time."

\* delete whichever is not applicable;

- (b) full name of the applicant;
- (c) the addresses of the registered and transfer offices of the applicant in the Republic of South Africa;
- (d) regarding the applicant's share capital:
  - (i) the amount of the authorised share capital of each class of share, and the nominal value and number of securities in each class;
  - (ii) the number and amount of the share capital issued and to be issued with respect to each class of share, and the number of securities in each class for which a listing is applied for; and
  - (iii) the number of treasury shares held;
- (e) the nominal amount and number of securities of each class:
  - (i) offered to the public for subscription, either by the applicant or otherwise ("the offer"), and the date the offer opened;
  - (ii) applied for in terms of the offer, and the date the offer closed (where this information is available at the date of application); and
  - (iii) issued and/or allotted, and the date of issue and/or allotment (where this information is available at the date of application) pursuant to the offer;
- (f) the abbreviated name of the applicant. Such abbreviated name must not



exceed 9 characters, inclusive of spaces;

- 1.2 The application must be signed by the company secretary and a director, or equivalent, of the applicant and by the DA.
- 1.3 The application must be accompanied by a resolution of the directors of the applicant authorising the application for the transfer of listing.

## **Section 22**

### **BEE Segment**

#### **Scope of section**

This section sets out the Listings Requirements relating to a listing on the BEE Segment. The aim of the section is to set out the listing criteria for the different types of securities and entities that may be listed, the continuing obligations and general requirements that apply to securities and entities that list on the BEE Segment. This Section should be read with the JSE DSS requirements where applicable.

The main headings of the section are:

- 22.1 Conditions of Listing
- 22.2 BEE Contract
- 22.3 Verification Agent
- 22.4 General
- 22.6 Criteria for listing of a BEE SPV
- 22.8 Requirements for a pre-listing statement
- 22.9 Financial information
- 22.10 Ancillary documents
- 22.11 Continuing obligations
- 22.12 Application for additional listing
- 22.13 Circulars
- 22.14 Announcements

#### **Conditions of Listing**

- 22.1 An applicant issuer seeking a listing of its BEE securities on the BEE Segment must adhere to the following:
  - (a) it must meet the basic listing criteria as set out in either the DSS Requirements or Section 4, 12, 13, 15, 20 or 21 of the Listings Requirements and comply with all other relevant sections applicable thereto or list as a BEE SPV pursuant to this Section;
  - (b) trading in the BEE securities must be restricted to a BEE compliant person pursuant to the use of (i) a BEE contract or (ii) a BEE verification agent. The market must be informed which method will be used; and
  - (c) the applicant issuer must provide the JSE with the details of the BEE verification agent, if applicable.

#### **BEE Contract**

- 22.2 An applicant issuer seeking a listing of its BEE securities on the BEE Segment pursuant to a BEE contract must satisfy the following criteria:
  - (a) it must indemnify the JSE against all and any legal costs incurred (including attorney and own client costs) to the extent that, as a result of a BEE contract not having been signed as required in terms of the JSE Equities Rules and Directives, the JSE takes any legal action and is not able to recover its costs from the parties to the legal action pursuant to a costs order awarded in the legal action;
  - (b)
    - (i) if the applicant issuer elects, by reason of a breach in terms of a particular BEE contract, to enforce the BEE contract against the beneficial owner of BEE securities and, if applicable, other parties

to the BEE contract, by either repurchasing the BEE securities or nominating a third party to so purchase and such third party purchases the BEE securities; and

- (ii) the relevant CSDP, or its nominee, is then instructed to effect the necessary entries relating to such repurchase or purchase of the BEE securities:

and, as a consequence, litigation ensues and the registered holder and/or the CSDP or its nominee and/or any JSE member (“joined parties”) is/are joined in such litigation, the applicant issuer indemnifies such joined parties and their directors, employees, servants, agents or contractors or other persons for whom, in law, they may be liable (*stipulatio alteri*) against all and any costs (including attorney and own client costs) which may be awarded against any of them as a consequence of the litigation provided that:

- (1) the joined parties shall (unless they were joined by the applicant issuer) notify the applicant issuer, in writing, of such joinder within a reasonable time of becoming aware thereof, to enable the applicant issuer to take steps to act on their behalf as contemplated in paragraph (2) below;
  - (2) subject to paragraph (3) below, the applicant issuer shall be entitled to contest (which shall include an appeal to a court of law) the litigation in the name of the joined parties and shall be entitled to control the proceedings in regard thereto and the joined parties shall take no steps in the litigation which are not approved in writing by the applicant issuer; and
  - (3) if the applicant issuer joined the joined parties, they shall merely abide by the decision of the court.
- (c) paragraph 22.2(b) constitutes a right in favour of the joined parties and their directors, employees, servants, agents or contractors, or other persons for whom in law they may be liable (*stipulatio alteri*), which they will be entitled to invoke, at any time, by notifying the applicant issuer in writing thereof;
  - (d) the indemnities contained in (a), (b) and (c) above must be contained in the application letter to the JSE and in any other relevant listing documents;
  - (e) it must agree to become a party to and be bound by the provisions of the Issuers-Participants Contract, a copy of which is available on the JSE website, with effect from the date on which the applicant issuer’s BEE securities are listed on the BEE Segment. The first applicant issuer whose BEE securities are listed on the BEE Segment will sign the Issuers-Participant Contract and every subsequent applicant issuer whose BEE securities are listed on the BEE Segment will become a party to the Issuers-Participants Contract by signing an Issuer Deed of Adherence, the form of which is attached to the Issuers-Participants Contract. The Issuer Deed of Adherence, duly signed, must be included with the application letter to the JSE; and
  - (f) the salient terms of the BEE securities must be contained in the MOI, or relevant constitutional documents, under the heading “Additional Terms of the BEE Contract”.

## **Verification Agent**

- 22.3 An applicant issuer seeking a listing of its BEE securities on the BEE Segment pursuant to the use of a BEE verification agent must satisfy the following criteria:

- (a) it must indemnify the JSE against all and any legal costs incurred (including attorney and own client costs) to the extent that, as a result of the member not complying with the BEE verification process as required in terms of the JSE Equities Rules and Directives, the JSE takes any legal action and is not able to recover its costs from the parties to the legal action pursuant to a costs order awarded in the legal action;
- (b)
  - (i) if the applicant issuer, or such other person as is entitled to do so pursuant to the relevant BEE scheme documents (“the designated person”) elects, by reason of a breach in the terms and conditions of the relevant BEE scheme documents or the BEE verification process not having been correctly executed by the BEE verification agent, to enforce the terms and conditions of the relevant BEE scheme documents against the beneficial owner of BEE securities and, if applicable, other parties, by either repurchasing the BEE securities or nominating a third party to so purchase and such third party purchases, the BEE securities; and
  - (ii) the relevant CSDP, or its nominee, is then instructed to effect the necessary entries relating to such repurchase or purchase of the BEE securities,

and, as a consequence, litigation ensues and the registered holder and/or the CSDP or its nominee and/or any JSE member (“joined parties”) is/are joined in such litigation, the applicant issuer indemnifies such joined parties and their directors, employees, servants, agents or contractors or other persons for whom, in law, they may be liable (*stipulatio alteri*) against all and any costs (including attorney and own client costs) which may be awarded against any of them as a consequence of such litigation provided that:

- (1) the joined parties shall (unless they were joined by the applicant issuer or designated person) notify the applicant issuer, in writing, of such joinder within a reasonable time of becoming aware thereof, to enable the applicant issuer or designated person to take steps to act on their behalf as contemplated in paragraph 2) below;
- (2) subject to paragraph 3) below, the applicant issuer or designated person, as applicable, shall be entitled to contest (which shall include an appeal to a court of law) the litigation in the name of the joined parties and shall be entitled to control the proceedings in regard thereto and the joined parties shall take no steps in the litigation which are not approved in writing by the applicant issuer or designated person;
- (3) if the applicant issuer or designated person joined the joined parties, they shall merely abide by the decision of the court;
- (4) the indemnity in this paragraph 22.3(b)(4) shall not apply to such joined party in circumstances where the litigation arises from:
  - (i) a breach by such joined party of any of its obligations under the JSE equity rules and directives or Strate rules and directives, as applicable, or
  - (ii) any breach of an applicable contract between such joined party, the applicant issuer and/or any designated person, and
- (5) paragraph 22.3(b) constitutes a right in favour of the joined parties and their directors, employees, servants, agents or contractors, or other persons for whom in law they may be liable (*stipulatio alteri*), which they will be entitled to invoke, at any time, by notifying the applicant issuer in writing thereof;

- (c) the indemnities contained in a) and b) above must be contained in the application letter to the JSE and in any other relevant listing documents; and
- (d) the salient terms and conditions of the BEE securities must be contained in the MOI, or relevant BEE ownership scheme documents.

## **BEE SPV**

### **General**

- 22.4 A BEE SPV must either appoint a sponsor pursuant to Section 2 of the Listings Requirements, or the DSS Listings Requirements. The sponsor must therefore execute its obligations under the Listings Requirements or the DSS Requirements, as the case may be.
- 22.5 The JSE may consider suspending the listing of a BEE SPV in accordance with Section 1 of the Listings Requirements or the DSS Listings Requirements, if the underlying applicant issuer which the BEE SPV references is suspended.

### **Criteria for listing of a BEE SPV**

- 22.6 An applicant seeking a listing as a BEE SPV must satisfy the following criteria:
  - (a) it must have committed capital (to be received from the issue) or subscribed capital of at least R10 million prior to listing;
  - (b) it must have assets that are held by a trust, a ringfenced entity or through an applicant issuer that has the quality of insolvency remoteness from the arranger or applicant issuer of the underlying assets, subject to JSE approval, which must be administered by trustees or board of directors representing the interests of the security holders of the BEE SPV. A separate trust, company or entity may be required for each class of asset with respect to the issuance of BEE SPV relating to a different composition of assets. If the assets are held via a vehicle other than a trust the JSE must be satisfied that such vehicle provides similar protections to safeguard the assets and, in particular, the powers and duties of the directors (or, in the event that the vehicle is not a company, the persons with corresponding duties and powers in relation to that vehicle) must be limited as though the director is a trustee. Thus, the provisions of this paragraph that apply to trustees and trusts must apply mutatis mutandis to the directors and the vehicle used to hold the assets;
  - (c) the applicant issuer of the underlying assets must be listed on an exchange acceptable to the JSE. If not listed, the JSE must be consulted at an early stage to consider the suitability of the applicant issuer; and
  - (d) it must have 10% of each class of equity securities held by the public pursuant to paragraphs 4.25–4.27 to ensure reasonable liquidity.
- 22.7 Where the underlying assets are equity in nature the BEE SPV must:
  - (a) have underlying assets that are listed on the JSE. If the underlying assets are not listed or listed on another exchange, the financial information of the underlying assets must be published in accordance with paragraphs 3.16 to 3.22. The procedure for non-compliance will apply to the listed BEE SPV as set out in paragraph 3.23 if the financial information on the underlying assets is not published.
  - (b) have underlying assets which are minority interests and must not confer legal or management control of the listed companies.

## **Requirements for a pre-listing statement**

22.8 The pre-listing statement must be prepared in accordance with Section 6 and must also include the following:

- (a) in respect of the applicant issuer:
  - (i) a description of the rights of the holders of securities in the event of the liquidation and/or business rescue proceedings of the applicant issuer and the applicant issuer of the underlying asset; and
  - (ii) a description of how the proceeds generated from the issuing of the securities will be used by the applicant issuer, if applicable;
- (b) details of the underlying asset/s in respect of which the securities will be issued, including any relevant recently published information relating to the underlying asset/s;
- (c) a statement that the pre-listing statement is available on the applicant issuer's website along with a web-link;
- (d) a statement detailing the risks of investing in securities and all possible material risks and uncertainties facing the applicant issuer and the industry in which it operates or is invested in. Proper consideration must be given to the material risks that face the applicant issuer and generic disclosures must be avoided. Material risks should be grouped together in a coherent manner and material risks considered to be of the most immediate significance should be prominent at the beginning within the material risks disclosure. This should include details of the trading risk as well as the risk of the applicant issuer not being able to fulfill its obligations, notwithstanding the fact that the applicant issuer will have been obliged to comply with the Listings Requirements. The statement must also detail the following:
  - (i) the restrictive nature of ownership of the BEE SPV;
  - (ii) including the potential punitive measures and forced sales if ineligible participants acquire securities or become ineligible post the acquisition of securities and do not remedy the situation within the prescribed timeframes, and
  - (iii) risks associated with the funding structure; and
- (e) disclosure of how the day to day management of the BEE SPV and key administrative functions that are normally run by executive directors are managed.

## **Financial information**

22.9 An applicant issuer making application for listing as a BEE SPV must comply with the following:

- (a) the financial information shall either be included in the pre-listing statement or incorporated by reference in the pre-listing statement at the time of the listing of the security. Where information is incorporated by reference it must be made available to the public on the applicant issuer's website;
- (b) in the case of a newly incorporated BEE SPV without assets or historical financial information, the latest audited balance sheet must be included in the pre-listing statement. This audited balance sheet must have been prepared in terms of IFRS;
- (c) if the BEE SPV does have a financial history, same should be disclosed for

- a maximum of two years;
- (d) the financial information in (b) and (c) must have been prepared in terms of paragraph 8.3–8.13, if applicable; and
  - (e) if the underlying asset is unlisted, the applicant issuer must publish the following financial information on the underlying asset:
    - (i) which have been prepared in respect of at least the last two financial years and the latest audited financial statements of such underlying asset must be in respect of a period not ending more than 12 months before the date of the pre-listing statement; or
    - (ii) which have been prepared for the interim financial period where the audited financial statements of such underlying asset are older than 9 months. No audit or review opinion is required on the interim financial information.

### **Ancillary documents**

22.10 The pre-listing statement to be submitted to the JSE must include the following:

- (a) the annual financial report of the applicant issuer and guarantor (if applicable) in respect of the periods referred to in paragraphs (22.9(b) and (29.9(c) above;
- (b) exchange control approval (if applicable);
- (c) where regulatory approval for the issue and/or listing of securities is required from other regulators, the JSE will not grant approval for the issue and/or listing until such time as it receives a copy of the related approval/ruling;
- (d) a draft abridged prelisting statement;
- (e) Part I and Part II documents pursuant to paragraphs 16.10–16.12; and
- (f) agreements that relate to the terms and conditions or relationship between the BEE SPV and the applicant issuer of the underlying asset.

### **Continuing obligations**

22.11 A BEE SPV is required to comply with the following continuing obligations:

- (a) in the event that the applicant issuer makes any changes to the agreements that govern the applicant issuer or terms and conditions of the securities or any changes to the applicant issuer that the JSE deems material, other than as set out in the memorandum of incorporation and changes which are of a formal, minor or technical nature or are made to correct a manifest error or to comply with mandatory provisions of the law, the applicant issuer must obtain approval from the majority of the holders of securities in a general meeting. The applicant issuer must engage the JSE regarding any proposed changes at an early stage in order for the JSE to determine whether the changes require approval from the holders of securities in a general meeting;
- (b) publish on SENS, without delay, details of any new issue of securities (and, if applicable, guarantees, security or credit enhancements relating thereto), as well as any amendments and proposed amendments to the terms and conditions attaching to existing listed securities, unless agreed otherwise by the JSE;
- (c) publish its annual financial statements in accordance with paragraph 3.16. The procedure for non-compliance as set out in paragraph 3.23 will apply



- to a BEE SPV that fails to comply with paragraph 3.16. In addition, the requirements of paragraph 3.25 will also apply where a modified auditors' report has been issued on a BEE SPV's annual financial statements;
- (d) publish its interim financial statements in accordance with paragraph 3.17. The procedure for non-compliance as set out in paragraph 3.23 will apply to a BEE SPV that fails to comply with paragraph 3.17 in relation to interim financial statements;
  - (e) release an announcement on SENS confirming that the information pursuant to paragraphs 22.11(c) and d) above is available on its website;
  - (f) inform the JSE of any change in the BEE verification agent; and
  - (g) an applicant issuer is required to comply with Section 3, subject to the following exclusions:
 

Paragraphs

    - 3.16 and 3.20 Results;
    - 3.26 Cash Companies;
    - 3.29 to 3.31 Pre-emptive rights;
    - 3.32 and 3.33 Waiver of pre-emptive rights;
    - 3.34 Profit warranties;
    - 3.35 and 3.36 Issues by subsidiaries other than on listing;
    - 3.46 Press announcements. Announcement must be made on SENS only; and
    - 3.84 subject to (h) below.
  - (h) Corporate governance, 3.84 (a), (g) and (h), along with a narrative on the application of the King Code disclosure and application regime to the principles set out in Part 5.3.

### **Application for additional listing**

- 22.12 All applications for the listing of additional securities shall be made in compliance with the following:
- (a) in the case of a subsequent issue of securities be done in accordance with the Listings Requirements and the memorandum of incorporation of the applicant issuer;
  - (b) the application to the JSE must be supported by a duly executed resolution of the board, or legal authority, specifically authorising the subsequent issue and further issue and listing; and
  - (c) announced on SENS prior to the issue date of securities.

### **Circulars**

- 22.13 An applicant issuer must comply with the following provisions of Section 11 with regards to circulars:

#### **Paragraphs**

- 11.1 Contents of all circulars and pre-listing statements;
- 11.2 Approval;
- 11.43 Embargo placed on company announcements/circulars; and
- 11.44 Name and logo of a sponsor.



## **Announcements**

- 22.14 An applicant issuer must publish the following with respect of the BEE SPV:
- (a) a SENS announcement, which is to be made immediately after the JSE has approved an application for listing, containing:
    - (i) the full name and place and date of incorporation in respect of the applicant issuer and if applicable any guarantor;
    - (ii) the period of marketing (if applicable) and the expected listing date;
    - (iii) the salient terms of the issue;
    - (iv) a statement that JSE approval for the listing has been granted;
    - (v) the code under which the securities will trade and the ISIN;
    - (vi) confirmation of the underlying authority to issue additional securities;
  - (b) Any declaration of dividends (as defined in terms of the Income Tax Act), interest and other similar payments (distribution payments and cash disbursements to shareholders) by an applicant issuer should immediately be announced as per paragraphs 11.17(a)(i) to x).
- 22.15 The applicant 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 applicant issuer's website.
- 22.16 An applicant issuer must announce any corporate action or restructuring in the underlying asset/s, provided it affects the listed security. The announcement is to be made at least ten business days prior to the record date of the relevant corporate action or such other date acceptable to the JSE. The final terms of the amendment must be announced by no later than 10am on the business day prior to the effective date of such amendment.
- 22.17 Any corporate action proposed by an applicant issuer is to be undertaken in accordance with the Listings Requirements, read with the corporate action timetables unless otherwise agreed to by the JSE.

## Schedules

Throughout these schedules the definitions in the "Definitions" section of the Listings Requirements are applicable, unless otherwise stated or the context requires otherwise, and an expression, which denotes any gender, includes other genders.

The following schedules form part of the Listings Requirements:

- |    |   |
|----|---|
| 1  | Application for listing by new applicants                         |
| 2  | Listing applications & other                                      |
| 3  | General undertaking   |
| 4  | Statutory declaration   |
| 5  | Independent fairness opinions                                     |
| 6  | Requirements for certificates of title                            |
| 7  | Requirements for option certificates in respect of listed options |
| 8  | Reserved for future use   |
| 9  | Procedural requirements of the Stock Exchange News Service        |
| 10 | Requirements for the MOI  |
| 11 | Rescue operations   |
| 12 | Working capital   |
| 13 | Directors declaration   |
| 14 | Requirements for share incentive schemes                          |
| 15 | Standard wording for cautionary announcements                     |
| 16 | Sponsors  |
| 17 | Declaration by sponsor  |
| 18 | Application for listing by accredited applicants                  |

### **Schedule 1** **Application for listing by new applicants**

1.1 The application for listing by new applicants must contain the following:

(a) a statement that:

"It is understood that the granting of a listing pursuant to this application shall constitute a contract between this company\*/or description of entity applying for listing if not a company\* and the JSE Limited ("JSE") and also between the directors\*/description of office equivalent to directors\*, on a continuing basis, of the company\*/or description of entity applying for listing if not a company\* and the JSE and that, in giving the General Undertaking referred to in paragraph 16.10(p) of the Listings Requirements of the JSE ("the Listings Requirements"), the company\*/or description of entity applying for listing if not a company\* and its directors\*/description of office equivalent to directors\* undertake to comply with the Listings Requirements as they may exist from time to time."

\* delete whichever is not applicable;

(b) full name of the applicant;

(c) the addresses of the registered and transfer offices of the applicant in the Republic of South Africa;

(d) regarding the applicant's share capital:

(i) the amount of the authorised share capital of each class of share, and the nominal value and number of securities in each class;

(ii) the number and amount of the share capital issued and to be issued with respect to each class of share, and the number of securities in each class for which a listing is applied for; and

(iii) the number of treasury shares held.

(e) the nominal amount and number of securities of each class:

(i) offered to the public for subscription, either by the applicant or

otherwise ("the offer"), and the date the offer opened;

(ii) applied for in terms of the offer, and the date the offer closed (where this information is available at the date of application); and

(iii) issued and/or allotted, and the date of issue and/or allotment (where this information is available at the date of application) pursuant to the offer;

(f) that monies in respect of excess applications will be refunded within 7 days of the closing of the offer;

(g) a statement whether or not it is desired to deal in any other documents prior to the issue and allotment of the securities;

(h) a statement detailing the sub section of the List in which listing is applied for, and the abbreviated name of the applicant. Such abbreviated name must not exceed 9 characters, inclusive of spaces;

(i) an undertaking by the applicant, in the form of a directors', or equivalent, resolution, that the documents referred to in paragraphs 16.19 to 16.21 will be submitted within the periods specified therein; and

(j) an undertaking by the applicant that it will adhere to the corporate actions timetables of the JSE as published on its website from time to time; and

(k) where the applicant is a bank or a bank controlling company, a statement that the primary Act under which the company will be regulated is the Banks Act (Act 94 of 1990).

1.2 The application must be signed by the company secretary and a director, or equivalent, of the applicant and by the sponsor.

1.3 The application must be accompanied by a resolution of the directors, or equivalent, of the applicant authorising the application for listing together with the relevant listing fee.

## **Schedule 2**

### **Listing applications & other**

The listing applications and other documents are available on the JSE website at [www.jse.co.za](http://www.jse.co.za).

#### Listing Applications: Form A

Form A1 – (a)	Application for a listing of securities resulting from rights offers, claw-back offers and renounceable offers
Form A1 – (b)	Application for a listing of securities resulting from non-renounceable rights offers
Form A2	Application for a listing of securities resulting from capitalisation issues or scrip dividends
Form A3	Application for a listing of securities resulting from acquisitions, amalgamations/mergers, take-overs, share incentive schemes and convertible securities
Form A4	Application for a listing of securities resulting from an issue for cash
Form A5	Application for the de-listing of shares arising out of a repurchase of shares
Form A6	Application for an increase in authorised share capital

#### Independent Professional Expert: Form B

Form B1	Expert's confirmation of independence
Form B2	Expert's confirmation of competency
Form B3	Declaration by the issuer

Independent Registered Valuer: Form C

Form C1	Appendix 13A
Form C2	Appendix 13B

Annual Compliance Certificates, Company Secretary Information & Sponsor Information: Form D

Form D1	Annual compliance certificate
Form D2	Company secretary information
Form D3	Sponsor annual compliance certificate
Form D4	Sponsor Application Form

Form E [Repealed]

Checklist for First Submission: Form F

Form F1	Checklist for First Submission
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Terms Sheets: Form G

Form G1	Accelerated specific issue for cash term sheet
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Corporate Actions Timetables: Form H

Form H	Corporate Action Timetable
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Approved Exchanges: Form I

Form I1	Approved Exchanges
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Publication of iRPV or iNAV: Form J

Form J	Publication of iRPV or iNAV
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AMC Fact Sheet: Form K

Form K	AMC Fact Sheet
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AMETF Fact Sheet: Form L

Form L	AMETF Fact Sheet
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JSE Cloudlink: Form M

Form M	Standard format of the cloudlink for results
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**Schedule 3**  
**General undertaking**

The following provisions must be contained in the general undertaking by the applicant issuer, which must be in the form of a resolution of directors certified by the Chairman:

- 3.1 That the applicant issuer will not apply for the loan, or return, of any document submitted in support of the application for listing and that all such documents will become the property of the JSE.
- 3.2 That the applicant will make no charge in the Republic of South Africa for a transfer of securities or for the splitting of certificates of title.
- 3.3 That the applicant will make no charge in the Republic of South Africa for the registration of any powers of attorney or letters of administration.
- 3.4 That the MOI of the applicant issuer comply with the Listings Requirements that are now or hereafter may be in force.

- 3.5 That the MOI of any subsidiary of the applicant issuer shall not frustrate the applicant issuer in any way from compliance with its obligations in terms of the Listings Requirements and that nothing contained in the MOI of a subsidiary of an applicant issuer shall relieve the applicant issuer from compliance with the Listings Requirements.
- 3.6 That the minutes of all shareholders' meetings, either general or annual general, will be read at the next succeeding meeting of shareholders at the request of any shareholders at the meeting, if the proceedings of such meeting have not been made available.
- 3.7 That:
- (a) all the said securities, or in the case of these being more than one class of share, all the securities of each respective class, are, and will remain, identical in all respects, viz.:
    - (i) they are of the same nominal value and are all fully paid;
    - (ii) they carry the same rights as to unrestricted transfer, attendance and voting at general/annual general meetings and in all other respects; and
    - (iii) they are entitled to dividends at the same rate and for the same period so that, on the next ensuing distribution the dividend payable on each share will be the same amount;
  - (b) before taking any action which, for statutory or other reasons would require the reinstatement of distinguishing numbers of the said securities or would or might cause difficulty or doubts in distinguishing between securities for which a listing has been granted and between other securities in the capital of the applicant issuer, formal notice will be given to the JSE of the intended action with full particulars of all relevant facts; and
  - (c) the applicant issuer will accept for registration transfer deeds and certificates.

#### **Schedule 4 Statutory declaration**

A sworn declaration must be made by the chairman and company secretary stating, to the best of their knowledge, judgement and belief, arrived at after due and careful enquiry, where applicable, the following particulars:

- 4.1 That all documents required by the Act have been duly filed with the Commission, and that all legal requirements have been fulfilled.
- 4.2 That the minimum subscription has been received, if the issue was not fully underwritten.
- 4.3 The number of securities, or amount of stock or debentures applied for by the public.
- 4.4 The number of securities, or amount of stock or debentures issued for cash to the public, stating the price of issue and the actual amount per share paid thereon in cash.
- 4.5 The number of securities, or amount of stock or debentures allotted for a consideration other than cash.
- 4.6 That the certificates, or debentures or other documents in which it is desired to deal have been, or are ready, to be delivered, and that they are identical to the specimen approved by the JSE.
- 4.7 That, where applicable, the purchase of any assets has been completed, their transfer registered into the name of the applicant issuer and the purchase consideration paid subsequent to registration of transfer. Where any such

purchase has not been completed or registered, an undertaking that completion will be conditional upon registration.

- 4.8 That, where applicable, a debenture trust deed has been executed and completed, the effect of such trust deed, and the nature of the security created thereby in favour of the debenture holders or debenture stockholders.
- 4.9 That all monies refundable, in respect of any application or where no allotment has been made, have been refunded to applicants.
- 4.10 That external companies will open and maintain a transfer office in the Republic of South Africa while the securities are listed on the JSE.
- 4.11 That all documents specified in paragraph 7.G.1 have been, or are lying, open for inspection in the manner prescribed.
- 4.12 That there are no other circumstances arising from the application that should be disclosed to the JSE.

## **Schedule 5**

### **Independent fairness opinions**

#### **Scope of this schedule**

The objectives of this schedule are as follows:

- (a) to provide sponsors and issuers with certainty, at an early stage of the process, as to the acceptability or otherwise to the JSE of a nominated independent professional expert who will issue a fairness opinion;
- (b) to provide guidelines regarding the required quality of independent fairness opinions generally; and
- (c) to ensure consistent and detailed reporting practices with regard to fairness opinions.

As the issues of independence and competence will be unique to every transaction, this schedule provides guidance rather than specific rules. The overriding objective is to ensure that the board of directors receives competent and adequate advice from an acceptable independent and competent third party regarding a transaction. The board of directors must ensure that any director who is party to the transaction (being the subject matter of the fairness opinion) is excluded from the process of mandating the expert and providing the necessary recommendations to shareholders. The issuer must confirm this in terms of Schedule 2 Form B3.

5.1 A fairness opinion must:

- (a) be prepared by an independent professional expert, acceptable to the JSE, who has no material interest either in the transaction or in the success or failure of the transaction;
- (b) make appropriate disclosure where the independent professional expert has any existing or continuing relationship with the issuer and/or any other parties involved in the transaction; and
- (c) set out all of the material factors and assumptions taken into account in the preparation of the statement (as set out in paragraph 5.8 below).

5.2 At an early stage in a contemplated transaction and preferably before engaging a party to prepare a fairness opinion, the sponsor on behalf of the issuer, must submit to the JSE:

- (a) a declaration of independence completed by the nominated independent professional expert, in the form set out in Schedule 2 Form B1;
- (b) a declaration of competence completed by the nominated independent professional expert, in the form set out in Schedule 2 Form B2; and
- (c) a declaration by the issuer, in the form set out in Schedule 2 Form B3.

The above declarations must be submitted for every transaction.

- 5.3 The JSE may, unless the issuer is able to provide additional information to satisfy the JSE, require the issuer to appoint a different independent professional expert to prepare the fairness opinion if (based on the information received in terms of paragraph 5.2 above and the JSE's investigation thereof) the JSE is not satisfied as to:
- (a) the independence of the nominated independent professional expert; and/or
  - (b) the competence of the nominated independent professional expert with regard to the particular transaction; and/or
  - (c) any reasons given by the issuer for the appointment of the nominated independent professional expert.
- 5.4 The JSE undertakes to give the sponsor its approval, pre-approval or disapproval for the appointment of the independent professional expert within 120 hours of receipt of the duly completed declarations required in paragraph 5.2 above. The JSE may pre-approve an independent professional expert for a period of up to five years, on application, provided the (i) expert's team, (ii) their roles within the team and (iii) area of expertise/industry remain unchanged from the date of initial application. In the event that any of the above information changes, the independent professional expert will have to follow the normal submission and approval process pursuant to paragraph 5.2 above. No documentation will be accepted for review by the JSE until approval for the appointment has been given.
- 5.5 Before issuing a fairness opinion, the independent professional expert must perform a valuation of the issuer and/or the subject of the transaction. Where a valuation has been prepared by a competent third party (in respect of assets such as property or mineral reserves and rights, for example), the independent professional expert should set out the manner in which he has satisfied himself that he can rely upon the valuation. In relation to related party agreements (other than disposals and acquisitions) pursuant to Section 9 and 10 of the Listings Requirements, the JSE may waive the requirement for a valuation on the basis that the subject matter of the related party agreement cannot be valued. The issuer must discuss the basis of the fairness opinion, as it applies to the related party agreement/s, with the JSE at an early stage for the JSE to determine whether a valuation is indeed required (the "**related party agreement exemption**").
- 5.6 The JSE's request for the opinion of an independent professional expert may result in a statement that the transaction is fair. Where this is not the case and the fairness is impaired, the independent professional expert should give full reasons for his opinion in this regard. Even if the opinion is that the transaction is fair, the independent professional expert must, where appropriate, emphasise critical matters upon which it has relied in arriving at the opinion.
- 5.7 The JSE only requires that the expert opine on the fairness of a transaction although it would allow the expert to opine on the reasonableness, provided detailed disclosure is made in this regard. Fairness is based on quantitative issues and reasonableness on qualitative issues. For illustrative purposes, in the case of a disposal to a related party, the transaction may be said to be fair if the consideration payable by the related party is equal to or greater than the value of the business that is the subject of the transaction. In other instances, even though the consideration may be lower than the value of the business, the transaction may be said to be reasonable in certain circumstances, after considering other significant qualitative factors.
- 5.8 The content of the fairness opinion is at the discretion of the independent professional expert, but must include at least the following basic elements:
- (a) title;
  - (b) addressee;

- (c) date of statement;
- (d) opening or introductory paragraph with the purpose for which the report has been prepared;
- (e) reference to the relevant JSE Listings Requirement(s) or Panel rule(s) in terms of which the opinion is being issued;
- (f) headings identifying the major sections including, but not limited to, introduction, procedures and the opinion;
- (g) an explanation as to how the terms "fair" and, if so mandated by the board of directors "reasonable", as indicated in paragraph 5.6 above, apply in the context of the specific transaction;
- (h) details of the information and sources of information;
- (i) identification and discussion of both the external and internal key value drivers, sensitivities performed and assumptions used;
- (j) if applicable, a summary of the manner in which the independent professional expert has satisfied itself as to the appropriateness and reasonableness of the underlying information and assumptions;
- (k) a full explanation of the significant factors that led to the opinion given;
- (l) any limiting conditions;
- (m) the relationships between the issuer (and any other parties involved in the transaction) and the independent professional expert, as required by paragraph 5.1(b) above and as identified in the declaration completed in terms of paragraph 5.2(a) above and disclosure of the number and value of shares acquired, if the expert's fees were paid for in shares;
- (n) confirmation that a valuation has been performed and identification of the valuation methodologies applied and, where there has been reliance upon a third party valuation, confirmation that the independent expert is satisfied with this valuation, save where the related party agreement exemption has been granted by the JSE in which case alternative disclosures must be provided as agreed with the JSE;
- (o) a summary of other factors taken into account or procedures carried out in reaching the opinion;
- (p) a statement that an individual shareholder's decision may be influenced by such shareholder's particular circumstances and, accordingly, that a shareholder should consult an independent adviser if in any doubt as to the merits or otherwise of the transaction;
- (q) the opinion;
- (r) the independent professional expert's name, address and authorised signature; and
- (s) any other information that the independent professional expert feels is appropriate.

5.9 The date on which the opinion is issued must be the same as the date that the directors authorise the submission of the relevant circular to the JSE for formal approval.

5.10 The independent professional expert has a duty to evaluate all the information provided in a critical manner, as required in paragraph 5.8(j) above. This in no way implies that the information must be audited or that the accuracy of all information must be checked. There must be a statement as to how the information has been evaluated and whether or not the expert believes that such information is reasonable, particularly where the information contains forecasts prepared by the management and/or directors of the issuer. Any statement indicating that there has been no independent verification or any



other similar statement would only be permissible subject to the following:

- (a) the experts stating clearly what is meant by “no independent verification”; and
- (b) such statement not invalidating any work that has been done in terms of this paragraph.

5.11 The JSE has the right, but not the obligation, to request the independent professional expert to;

- (a) clarify any aspect of the statement; and/or
- (b) expand the statement so as to address any issues of concern to the JSE.

5.12 **Independence of professional experts:**

(a) Subject to paragraph 5.12(b), an independent professional expert deemed to be independent by the JSE for purposes of paragraph 5.1 above are:

- (i) the auditor of the issuer;
- (ii) in respect of mineral companies, the competent person of the issuer; and
- (iii) the sponsor of the issuer,

provided the expert,

- (i) for the past 18 months, has had no shareholding in the applicant issuer;
  - (ii) for the past 18 months, has had no board representation on the applicant issuer;
  - (iii) is not employed by the applicant issuer;
  - (iv) has had no relationship with any party to the corporate action, other than the applicant issuer, (in a capacity as set out in paragraph 5.12(a) above); and
  - (v) has no interest in the success of the corporate action other than its reasonable professional fee (with no success fee element) for acting as independent professional expert;
- (b) For purposes of a delisting pursuant to paragraph 1.15(d), the independent professional expert (including its staff) must not:
- (i) have any relationship with the applicant issuer or with any party involved in the delisting;
  - (ii) have had any relationship with the applicant issuer or with any party to the delisting within the immediate preceding two years; and
  - (iii) be related to any person who has or has had a relationship contemplated in (i) and (ii) above,

unless otherwise agreed by the JSE.

5.13 Professional experts which are deemed by the JSE not to be independent for purposes of paragraph 5.1 above are:

- (a) any financial institution involved in the transaction, which has a direct or indirect interest in the corporate action;
- (b) any adviser to the applicant issuer in relation to the corporate action; and

- (c) the auditor of the target in respect of an acquisition undertaken by the applicant issuer.

## **Schedule 6**

### **Requirements for certificates of title**

With respect to the certificated environment, the following are the requirements for certificates of title:

#### **Size**

- 6.1 Minimum and maximum sizes of certificates of title:
  - (a) the breadth permitted is a minimum of 250 mm and a maximum of 300 mm; and
  - (b) the depth permitted is a minimum of 200 mm and a maximum of 275 mm.

#### **Name**

- 6.2 (a) The name of the company must be clearly printed in bold type. The name must agree in every respect with that under which the company was registered. Abbreviations of words should not be used unless the name of the company is so registered, e.g. the word "AND"/"and" should be printed and not the abbreviation "&" and the word "LIMITED"/"Limited" should be printed and not the abbreviation "LTD"/"Ltd". Should the company be registered with either of these words abbreviated, a note should be printed at the foot of the certificate of title to the effect that certificates of title accompanied by transfer deeds having the name of the company abbreviated "&" or the word "and" written in full will be accepted for transfer. A similar procedure should be adopted for any other abbreviations.
- (b) A name of a company may not be a registration number.

#### **Change of name**

- 6.3 The former name of the company must be shown in brackets under the new name of the company for a period of at least one year after such change of name.

#### **Country of registration**

- 6.4 The country of registration must be printed under the name of the company.

#### **Translation of name**

- 6.5 Should it be desired to show the translation of the name in another official language, this may be shown under the name, provided a statement is made on the certificate that the company will accept either name on transfer deeds.

#### **Certificate number**

- 6.6 The certificate of title number must be shown on the top left-hand corner.

#### **Number of securities**

- 6.7 The number of securities represented by the certificate must be shown on the top right-hand corner. In the case of units of stock, the number of units and the nominal value must be shown.

#### **JSE alpha code**

- 6.8 All certificates of title must bear the JSE alpha code. This alpha code should be clearly printed in block capital letters on the top right-hand corner of the certificate of title. Any additional identification codes that may be introduced by the JSE in accordance with international standards must be similarly

printed on certificates of title. Whenever share certificates are recalled, the ISIN will change.

### **Preference share certificates**

- 6.9 Certificates in respect of a first issue of preference shares must be printed in red, including the border, if any. Certificates in respect of shares, other than a first issue of preference shares, may be printed in any other approved colour. Where preference shares of a new class are issued, second and subsequent issues of preference shares should be described as "Second Preference Shares", "Third Preference Shares" and so on.

### **Description of securities**

- 6.10 A full description of the class of securities must be printed in the body of the certificate; the description to be in accordance with that prescribed in the MOI. Where special rights and obligations pertain to the securities (e.g. for preference shares and/or debentures), salient details of these rights and conditions must be printed on the back of the certificate.

### **Class of securities**

- 6.11 A description of the class of securities must be printed in bold type above the name of the company.

### **Low and high voting equity shares**

- 6.12 Certificates in respect of low or high voting equity shares that have been issued should indicate clearly that the shares are low or high voting equity shares, such as "A" or "N" ordinary shares.

### **Certificates of title to indicate reconstruction**

- 6.13 Where securities have been split, reduced, and/or consolidated, a summary of this information must be clearly shown at the top of the certificate. This information must be perpetuated on such certificates of title for a period of one year. These securities must be clearly distinguishable from other securities of the company in circulation. As an additional safeguard, companies must use a different colour and series of numbers.

### **Address of registered office and transfer office**

- 6.14 The physical and postal addresses in the Republic of South Africa of the registered office and transfer office of the company must be shown.

### **Signatures on certificates of title**

- 6.15 The provisions of Section 51 of the Act shall constitute the JSE's requirements for the signatures on certificates of title.
- 6.16 The date and place of issue of the certificate must be stated.

### **Certificates cancelled by mutilation**

- 6.17 Specimens submitted must be cancelled by mutilation (a rubber stamp, or statement in ink to the effect that the certificate has been cancelled, is not sufficient).

### **Specimens retained**

- 6.18 Specimen certificates of title submitted will be retained by the JSE and will not be returned to the applicant.

## **Schedule 7**

### **Requirements for option certificates in respect of listed options**

The conditions of issue of listed options must be printed on option certificates and must make provision for the following:

- 7.1 The option exercise period:
- (a) the minimum period during which an option may be exercised shall be not less than one calendar month ("option exercise period"). The company must advise option holders at least six weeks prior to the option exercise period of the dates of the option exercise period; and
  - (b) in cases where the options may be exercised at any time, the company shall undertake to send a reminder to registered option holders, not less than six weeks or more than two months, prior to the final date for the exercise of the options.
- 7.2 Upon exercise of the option, the securities to be issued and allotted by the company in satisfaction of the option shall rank *pari passu* with existing issued securities of the same class in the capital of the company and certificates of title in satisfaction of such rights will be issued in accordance with the relevant corporate action timetable.
- 7.3 New option certificates shall be issued upon transfer to a transferee.
- 7.4 In cases where the exercise of the option is restricted to an option exercise period, the company shall undertake not to fix a DD or LDT for a dividend, rights offer, capitalisation issue, capital reconstruction or take over offer to be settled by an issue of ordinary shares, that will fall within the exercise period. Where the options may be exercised at any time, holders of the options shall be precluded from exercising their options between the DD and LDT of any corporate event.
- 7.5 The number, description and nominal value of the securities over which the option is granted.
- 7.6 The price at which the option may be exercised.
- 7.7 That the option over a specified number of securities will be exercisable either in whole or in part.
- 7.8 Additional issues of options or of securities with conversion rights or any amendment of the conditions attached to the options will require the separate sanction of the holders of the options and the holders of each class of equity security.
- 7.9 The holders of the options shall be advised, simultaneously with the holders of equity shares or stock, of any contemplated rights, claw-back or renounceable offer, capitalisation/bonus issue and of all relevant dates affecting entitlement ratios and participation in such offer or issue, in accordance with the relevant corporate action timetable.
- 7.10 In a capital reconstruction, the ratio of:
- (a) the total number of securities that may be issued on the exercise of the option compared to the total number of securities issued; and
  - (b) the issue price per ordinary share or stock compared to the nominal value per share or stock;
- shall be adjusted to correspond proportionately to the total number of securities or stock issued and the nominal value per share or stock in the reconstructed capital.
- 7.11 Ordinary share capital shall not be repaid during the period of the option.

**Schedule 8**  
**[Reserved for future use]**

**Schedule 9**  
**Procedural requirements of the Stock Exchange News Service**

- 9.1 In this schedule, unless otherwise stated or the context requires otherwise, an expression which denotes any gender includes other genders and the following terms will have the meanings set out below:

<b>Term</b>	<b>Meaning</b>
company announcements	announcements as defined in paragraph 11.2 of Section 11
JSE approval	approval by the JSE
JSE trading hours	from 09h00 to 17h00 on business days
price sensitive company releases	releases, other than company announcements, by applicant issuers that contain price sensitive information
price sensitive information	as defined in the definitions section
registered submitter	an organisation that has been approved and registered by SENS to submit announcements on behalf of applicant issuers
relevant company information	company announcements and price sensitive company releases
SENS operational hours	from 07h00 to 18h00 on business days

## **Introduction**

- 9.2 As a result of a need to disseminate relevant company information to the market on a real time basis, the JSE has established a system called the Stock Exchange News Service ("SENS"). All relevant company information received by SENS will be electronically transmitted to the SENS subscribers which include the major wire services, who will immediately disseminate such information to their customers. SENS will facilitate early, equal and wide dissemination of relevant company information, and will improve communication between applicant issuers and the market.

## **Timely submission and release of relevant company information**

- 9.3 (a) All relevant company information must be released by the applicant issuer on the SENS system as soon as possible after authorisation by the applicant issuer. To promote the equal release of such information and confidentiality prior thereto, in terms of paragraph 3.5 of Section 3, price sensitive information may not, subject to paragraph 3.6 to 3.8, be released (even subject to a time embargo):
- (i) during JSE trading hours, until such time as such information has been published through SENS in terms of paragraph 9.7 below; or
  - (ii) outside JSE trading hours, until such time as such information has been authorised by the applicant issuer and, if required, approved (in terms of paragraph 9.6 below), and arrangements have been made for such information to be published through SENS prior to the commencement of trading on the JSE on the next business day.

## **Registration of submitters**

- 9.4 (a) The JSE will register the first user, called the Super User, for every sponsor, designated adviser, debt sponsor and issuer. These Super Users will be informed by email of their sign-on and password. A registered Super User is required to fill in the external registration form on the Issuer Regulation System for every additional user it wants to register on the system. On approval the new user will be notified by email.
- (b) Only sponsors and designated advisers are allowed to submit SENS announcements on behalf of equity applicant issuers. ETF issuers, debt issuers, interest rate issuers and warrant issuers are allowed to submit their own announcements or they can submit through their sponsor. Regulatory bodies are allowed to submit their own announcements.

### **Method and form of submission**

- 9.5
- (a) Relevant company information must be submitted to SENS through the JSE website.
  - (b) As indicated in paragraph 3.45 of Section 3, the relevant company information must be in English and must conform to the specifications set out in this schedule, to prevent any delay in publication through SENS.
  - (c) A maximum of 400 characters per line is allowed.
  - (d) File names should not include any of the following characters #, %, &, \*, <, >, ?, |, { or }.
  - (e) The pdf file must not exceed 3.5 megabyte.
  - (f) Tab spacing must not be used. If columns with figures are necessary, they must be aligned using the space bar and not with tab spacing.

### **Approval of certain submissions**

- 9.6
- (a) Company announcements requiring JSE approval will, be forwarded to the relevant JSE staff for approval. The relevant JSE staff will scrutinise the announcement as soon as reasonably possible. If the relevant JSE staff approve the announcement without any comments thereon, the relevant JSE staff will immediately communicate their approval to SENS. However, if the relevant JSE staff approve the announcement subject to certain required amendments, the relevant JSE staff will communicate such amendments to the sponsor or submitter and the announcement will be required to be resubmitted. This procedure will continue until the announcement is approved by the JSE and SENS has been notified by the JSE of such approval. After receiving approval from the JSE staff, SENS will release the announcement on the date and time as stipulated by the submitter on the activity tab.
  - (b) If a company announcement requires the approval of another regulatory authority, e.g. the South African Reserve Bank, Panel or the Competition Board, the sponsor of the company, as indicated in paragraph 9.3 above, must state on the activity tab whether or not such regulatory approval has been obtained.

### **Publication through SENS**

- 9.7
- (a) All company information will be published through SENS as soon as practically possible after such information has been approved (if necessary) in terms of paragraph 9.6 above.
  - (b) Publication through SENS will take place by the SENS system electronically transmitting the company information to SENS subscribers, which include the major wire services, who will immediately disseminate such information to their customers.

### **SENS Processing**

- 9.8
- (a) Submission of documents will be processed on a "first-in-first-out" basis.
  - (b) Only documents submitted in PDF and TXT file formats will be accepted.

### **Publication on other markets**

- 9.9
- (a) After relevant company information relating to an applicant issuer with a primary listing on the JSE has been approved by the JSE (if necessary) in terms of paragraph 9.6 above, such applicant issuer must, as indicated in paragraph 3.81 of Section 3, ensure that the same information is made available to each other exchange on which its securities are listed, and, as far as possible, ensure that such information is released simultaneously on the respective markets. If, however, such information is published through SENS at any time when

it cannot be released on another market or exchange, it must be published as soon as possible thereafter on the other relevant market(s)/exchange(s) in accordance with such market(s)/exchange(s) disclosure requirements. Relevant company information relating to an applicant issuer with a primary listing on the JSE may not be released on any other market/exchange, unless it is released in terms of paragraph 9.3(a) above.

- (b) Applicant issuers with a secondary listing on the JSE should, as far as possible, ensure that the same relevant company information is published, through SENS, at the same time that it is released on any other market/exchange on which its securities are listed. If, however, such information cannot simultaneously be published through SENS because it is released on the other market/exchange outside of SENS operational hours, the company should ensure that such information is published through SENS as soon as possible but no later than the next time that trading on JSE commences.
- (c) Sponsors of applicant issuers with dual listings, should liaise with SENS and the other exchanges with a view to achieving the above objectives.

### **Confirmation of publication through SENS**

- 9.10 Confirmation of publication through SENS will be sent electronically to the submitter in its preferred communication method as per the registration form. If additional confirmation is required, the additional notifications tab in the SENS submission must be completed.

### **Procedural requirements of SENS**

- 9.11 Notwithstanding prior publication through SENS, relevant company information may be published in the press (in accordance with paragraphs 3.46 and 3.47 of Section 3) as soon as possible after it has been approved by the JSE (if necessary) in terms of paragraph 9.6 above.

### **Indemnity**

- 9.12 (a) The JSE will endeavour to ensure that relevant company information submitted to SENS is published in the form submitted to SENS. The JSE, however, makes no undertaking, representation or warranty, either in this regard or as to the accuracy or completeness of the information published through SENS.
- (b) The JSE shall, in particular, save in the event of the JSE's own wilful default or gross negligence, not be liable either to the person submitting the relevant company information or to any other person for (or in respect of) any direct, indirect or consequential liability, loss, damage or cost of any kind or nature, howsoever arising and whether or not as a result of incorrect, inaccurate or defective information published through SENS, or the failure of any software or hardware, the destruction of data, system malfunction, interruption of communication links or eventuation of any form of force majeure.
- (c) Each applicant issuer indemnifies the JSE and holds the JSE harmless against all and any loss (direct, indirect or consequential), liability, action, suit, proceeding, cost, demand and damage of all and every kind or nature, directly or indirectly arising from reliance on or receipt or use of the service or from the provision of the service (or its failure) as well as, but not limited to, the circumstances set out above, save when such loss, liability, action, suit, proceeding, cost, demand or damage is directly attributable to the JSE's own wilful default or gross negligence.

### **Copyright**

- 9.13 Any person that submits relevant company information to SENS for publication is deemed to warrant to the JSE that it is the owner of the copyright and other intellectual property rights in such information ("the rights") or, if it is not the owner of such rights, that it has submitted such



information with the owner's consent. The owner shall, in submitting or causing such information to be submitted to SENS, be deemed to have licensed the JSE to disseminate such information through SENS and the JSE shall, accordingly, not infringe any of the owner's rights by so doing.

#### **Address and contact numbers**

9.14      Address:                Stock Exchange News Service (SENS)  
   8th Floor  
   JSE Limited  
   One Exchange Square  
   2 Gwen Lane  
   Sandown  
Telephone no.:                (011) 520 7155  
Facsimile no.:                (011) 520 8595  
Website:                        www.jse.co.za

### **Schedule 10 Requirements for the MOI**

No application for listing will be considered until the MOI of the applicant issuer has been approved by the JSE.

All amendments to the MOI of the applicant issuer must be submitted to the JSE for approval before such amendments are submitted to shareholders for approval.

The MOI must be in English and must comply with the requirements in this Schedule 10 in respect of the applicant issuer.

The requirements set out in this Schedule 10 are not exhaustive. The JSE will not allow the MOI to contain any provisions that are unlawful, will in any way restrict free dealings in securities (unless otherwise required by statute) or may, in the JSE's opinion, be unreasonable.

There must be no provision in the applicant issuer's and/or its subsidiary company/ies' MOI that is in conflict with any provision in the Listings Requirements or that prevents the enforcement of any provision in the Listings Requirements. In the event that the MOI contains such a provision, the applicant issuer must amend the MOI of the applicant issuer and/or its subsidiary company/ies accordingly.

This does not prevent the JSE from taking action against the relevant parties in terms of Section 1 of the Listings Requirements.

#### ***Contents of MOI for applicant issuers***

The following provisions must be included in the MOI of applicant issuers, unless otherwise indicated below:

##### **10.1      Unissued securities**

Unissued equity securities shall be offered to existing shareholders, pro rata to their shareholdings, unless such securities are to be issued for an acquisition of assets. However, the MOI must provide that shareholders in general meeting may authorise the directors to issue unissued securities, and/or grant options to subscribe for unissued securities, as the directors in their discretion deem fit, provided that such corporate action(s) has/have been approved by the JSE and are subject to the Listings Requirements.

##### **10.2      Transferability of securities and transfer of securities**

- (a) Securities for which listing is sought must be fully paid up and, unless otherwise required by statute or at the discretion of the JSE be freely transferable. Notwithstanding the provisions of Section 40(5) of the Act, the JSE will not list shares that are not fully paid for upon listing.



- (b) All authorities to sign transfer deeds granted by holders of securities for the purpose of transferring securities that may be lodged, produced or exhibited with or to the company at any of its transfer offices shall, as between the company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at the company's transfer offices at which the authority was lodged, produced or exhibited. Even after the giving and lodging of such notices, the company shall be entitled to give effect to any instruments signed under the authority to sign, and certified by any officer of the company, as being in order before the giving and lodging of such notice.

### 10.3 **Ratification of ultra vires acts**

The proposal of any resolution to shareholders in terms of Sections 20(2) and 20(6) of the Act must be prohibited in the event that such a resolution would lead to the ratification of an act that is contrary to the Listings Requirements; unless otherwise agreed with the JSE.

### 10.4 **Rules**

The directors' power to make, amend or appeal rules as contemplated in Section 15(3) of the Act must be prohibited.

### 10.5 **Preferences, rights, limitations and other share terms**

- (a) Securities in each class for which listing is applied must rank pari passu in respect of all rights. It must be noted that a statement that "securities in each class rank pari passu" shall be understood to have the meaning attributed thereto in paragraph 3.29 of the Listings Requirements.
- (b) Every holder of an ordinary share must have one vote in respect of each share that he holds and must be entitled to vote at every general/annual general meeting, whether in person or by proxy.
- (c) The holders of securities, other than ordinary shares and any special shares created for the purposes of black economic empowerment in terms of the BEE Act and BEE Codes, shall not be entitled to vote on any resolution taken by the company, save for as permitted by paragraph 10.5(h) below. In instances that such shareholders are permitted to vote at general/annual general meetings, their votes may not carry any special rights or privileges and they shall be entitled to one vote for each share that they hold, provided that their total voting right at such a general/annual general meeting may not exceed 24.99% of the total voting rights of all shareholders at such meeting.
- (d) Any amendment to the MOI must be approved by a special resolution of ordinary shareholders, save where such an amendment is ordered by a court in terms of Sections 16(1)(a) and 16(4) of the Act. Amendment, for the avoidance of doubt, shall include, but shall not be limited to:
  - (i) the creation of any class of shares;
  - (ii) the variation of any preferences, rights, limitations and other terms attaching to any class of shares;
  - (iii) the conversion of one class of shares into one or more other classes;
  - (iv) an increase in the number of securities of a class;
  - (v) a consolidation of securities;
  - (vi) a sub-division of securities; and/or
  - (vii) the change of the name of the company;

- (e) If any amendment relates to the variation of any preferences, rights, limitations and other terms attaching to any other class of shares already in issue, that amendment must not be implemented without a special resolution, taken by the holders of shares in that class at a separate meeting. In such instances, the holders of such shares may be allowed to vote at the meeting of ordinary shareholders subject to paragraph 10.5(c) above. No resolution of shareholders of the company shall be proposed or passed, unless a special resolution, of the holders of the shares in that class, have approved the amendment.
- (f) In addition to the above and for the avoidance of doubt, if there are listed cumulative and/or listed non-cumulative preference shares in the capital of the company, the following right must attach to such shares:  
  
 "No further securities ranking in priority to, or pari passu with, existing preference shares, of any class, shall be created without a special resolution passed at a separate general meeting of such preference shareholders."
- (g) Preferences, rights, limitations or other terms of any class of shares of a listed company must not be varied and no resolution may be proposed to shareholders for rights to include such variation in response to any objectively ascertainable external fact or facts as provided for in Sections 37(6) and 37(7) of the Act.
- (h) Subject to the provisions of paragraph 10.5(c) above, the MOI may provide that holders of preference shares shall have the right to vote at any general/annual general meeting of the listed company–
  - (i) during any special period, as provided for in (iii) below, during which any dividend, any part of any dividend on such preference shares or any redemption payment thereon remains in arrears and unpaid; and/or
  - (ii) in regard to any resolution proposed for the winding-up of the company or the reduction of its capital;
  - (iii) the period referred to in paragraph (i) above shall be the period commencing on a day specified in the MOI, not being more than six months after the due date of the dividend or redemption payment in question or, where no due date is specified, after the end of the financial year of the company in respect of which such dividend accrued or such redemption payment became due.

#### 10.6 **Capitalisation issues**

Any capitalisation issue by an applicant issuer must at least be subject to the fulfilment of the requirements set out in Section 47 of the Act. The applicant issuer's MOI may not call for any less stringent requirements.

#### 10.7 **Scrip dividend and cash dividend elections**

The grant of the right of election must not be prohibited by the MOI.

#### 10.8 **Payments to securities holders**

Payments to securities holders must be provided for in accordance with the Listings Requirements and must not provide that capital shall be repaid upon the basis that it may be called up again.

#### 10.9 **Other corporate actions**

The following corporate actions must be provided for in the MOI, in accordance with the Listings Requirements:

- (a) Issue of shares for cash and options and convertible securities granted/issued for cash;
- (b) Repurchase of securities;

- (c) Alteration of share capital, authorised shares and rights attaching to a class/es of shares.

#### 10.10 **Debt instruments**

The granting of special privileges to holders of debt instruments, such as attending and voting at general meetings and the appointment of directors, must be prohibited.

#### 10.11 **Resolutions and meetings**

- (a) The notice periods referred to in this paragraph 10.11(a) and paragraph 10.11(b) below are not applicable where the company adheres to Section 62(2A) of the Act. The passing of a special resolution is to be subject to the approval of at least 75% of the votes cast by all equity securities holders present in person, or represented by proxy, at the general meeting/annual general meeting convened to approve such resolution and must be subject to a minimum notice period of 15 business days.
- (b) An ordinary resolution is to be subject to a minimum notice period of 15 business days.
- (c) Subject to paragraph 10.11(h) below, all shareholder meetings convened in terms of the Listings Requirements must be held "in person" and may not be held by means of a written resolution as is contemplated in Section 60 of the Act.
- (d) There must be no prohibition or restriction on the applicant issuer from calling any meeting for the purposes of adhering to the Listings Requirements.
- (e) Notices of general/annual general meetings are to be delivered to each ~~shareholder entitled to vote at such meeting and who~~ has elected to receive such documents.
- (f) Provision must be made for delivering notices of meetings to the JSE at the same time as notices are sent to shareholders. A provision must be included in the MOI that such notice must also be announced through SENS.
- (g) The quorum at a general meeting must be at least three shareholders entitled to attend and vote thereat. In addition, the quorum requirements provided for in Section 64(1) of the Act may not be lower than 25% in respect of the meeting. Once a quorum has been established, all the shareholders of the quorum must be present at the meeting to hear any matter that must be considered at the meeting.
- (h) Written resolutions:
  - (i) Main Board: Subject to the provisions of the MOI of the applicant issuer and the Act, the following resolutions may be proposed as written resolutions in accordance with Section 60 of the Act:
    1. change of name;
    2. odd lot offers;
    3. increase in authorised share capital; and
    4. approval of amendments to the MOI.
  - (ii) Alt<sup>X</sup>: Subject to the provisions of the MOI of the applicant issuer and the Act, all resolutions pursuant to the Listings Requirements may be proposed as written resolutions in accordance with Section 60 of the Act.

#### 10.12 **Lien upon securities**

Any power by the company to claim a lien on securities must be prohibited.

**10.13 Transmission clause**

A provision to the effect that securities registered in the name of a deceased or insolvent holder shall be forfeited if the executor fails to register them in his own name or in the name of the heir(s) or legatees, when called upon by the directors to do so, will not be permitted.

**10.14 Commission**

The company may not pay commission exceeding 10% to any person in consideration for their subscribing or agreeing to subscribe, whether absolutely or conditionally, for any securities of the company.

**10.15 Record date**

The record date for all transactions must be as set out in the Listings Requirements.

**10.16 Directors**

- (a) The minimum number of directors shall be four.
- (b) The MOI may provide for the nomination of one or more directors by any person who is named in the MOI or determined in terms of the MOI provided that any shareholder will have the right to nominate directors. Such a person must not be entitled to appoint or remove any director/s. The appointment of all directors shall be subject to shareholder approval at any general/annual general meeting (in relation to Main Board issuers, the meeting may not be conducted in terms of Section 60 of the Act). The MOI may provide for the appointment of alternate directors in terms of the Act.
- (c) The appointment of a director, to fill a casual vacancy or as an addition to the board, must be confirmed by shareholders at the next annual general meeting.
- (d) Should the number of directors fall below the minimum provided in the MOI, the remaining directors must, as soon as possible, and, in any event, not later than three months from the date that the number of directors falls below the minimum, fill the vacancies or call a general meeting for the purpose of filling the vacancies. A failure by the listed company to have the minimum number of directors during the three-month period does not limit or negate the authority of the board of directors or invalidate anything done by the board of directors or the company. After the expiry of the three-month period, the remaining directors shall only be permitted to act for the purpose of filling vacancies or calling general meetings of shareholders.
- (e) A director may be employed in any other capacity in the company or as a director or employee of a company controlled by, or itself a major subsidiary of, the company and, in such event, his appointment and remuneration in respect of such other office must be determined by a disinterested quorum of directors.
- (f) The directors may be paid all their travelling and other expenses, properly and necessarily incurred by them in and about the business of the company, and in attending meetings of the directors or of committees thereof; and, if any director is required to perform extra services, to reside abroad or be specifically occupied about the company's business, he may be entitled to receive such remuneration as is determined by a disinterested quorum of directors, which may be either in addition to or in substitution for any other remuneration payable.
- (g) In a new company, all the directors are to retire at the first annual general meeting. Thereafter, at least one-third of non-executive

directors must retire at the company's annual general meeting (or other general meeting held on an annual basis), provided the meeting is not conducted in terms of Section 60 of the Act in respect of Main Board issuers. These retiring members of the board of directors may be re-elected, provided they are eligible. The board of directors, through the nomination committee, should recommend eligibility, taking into account past performance and contribution made.

- (h) [Repealed]
- (i) The directors shall be entitled to elect a chairman, deputy chairman and/or any vice chairman and to determine the period for which they, respectively, shall hold office.
- (j) A decision that could be voted on at a meeting of the board of directors of a company may, instead, be adopted by written consent of a majority of the directors, given in person or by electronic communication, provided that each director has received notice of the matter to be decided. Such resolution, inserted in the minute book, shall be as valid and effective as if it had been passed at a meeting of directors. Any such resolution may consist of several documents and shall be deemed to have been passed on the date on which it was signed by the last director who signed it (unless a statement to the contrary is made in that resolution).
- (k) Life directorships and directorships for an indefinite period are not permissible.

#### **10.17 Dividends**

- (a) Dividends are declared by the directors in accordance with the Act.
- (b) It should be noted that dividends are to be payable to shareholders registered as at a date subsequent to the date of declaration or date of confirmation of the dividend, whichever is the later.
- (c) The company must hold all monies due to shareholders in trust but subject to the laws of prescription.

#### **10.18 Members registered address**

A provision in the MOI to the effect that members shall register an address in the Republic of South Africa or in some other country, will be permitted.

#### **10.19 Annual financial statements**

A copy of the annual financial statements must be distributed to shareholders at least 15 business days before the date of the annual general meeting at which they will be considered.

#### **10.20 Additional provisions applying only to external companies**

- (a) Provision must be made for depositing proxy forms at the branch office in the Republic of South Africa.
- (b) Where a non-electronic notice of general/annual general meeting, or annual financial statements, is to be distributed from the registered office of the company, at least 20 business days' notice of such meeting must be given to all shareholders entitled thereto. Where such notice, or annual financial statements, is distributed electronically, by airmail or otherwise from a branch office in the Republic of South Africa, at least 15 business days' notice of such meeting must be given to all shareholders entitled thereto.
- (c) Neither the directors nor the company are to be given power over the issue of securities to create any differences in rights between the holders of the same class of share in respect of the amount of calls to be paid and the time of payment of such calls, or in any other respect whatsoever.

- (d) Any amount paid up in advance of calls on any share shall carry interest only and shall not entitle the holder of the share to participate, in respect thereof, in a dividend subsequently declared.
- (e) Provision must be made for the payment of calls at the branch office in the Republic of South Africa.
- (f) The directors may retain any dividend or bonus upon which the company has a lien and may deduct from dividends or bonuses all claims or sums of money that may be due on account of calls.
- (g) A provision that compels members to register an address in the foreign country of the external company is prohibited.

#### **MOI for subsidiary companies of applicant issuers**

The following provisions apply to the MOI of subsidiary companies of applicant issuers:

- 10.21
- (a) The applicant issuer must ensure that the provisions of the MOIs of its subsidiaries do not frustrate the applicant issuer in any way from compliance with its obligations in terms of the Listings Requirements.
  - (b) Nothing contained in the MOI of a subsidiary of an applicant issuer shall relieve the applicant issuer from compliance with the Listings Requirements.

#### **10.22 Provisions applicable to secondary listed issuers**

The following provisions in Schedule 10 must be brought to the attention of the JSE as applied to the constitution of a secondary listed applicant issuer:

- (a) Paragraph 10.1;
- (b) Paragraph 10.2(a);
- (c) Paragraph 10.5(a);
- (d) Paragraph 10.5(c);
- (e) Paragraph 10.5(d);
- (f) Paragraph 10.15;
- (g) Paragraph 10.16(b).

The JSE will require additional disclosure(s) in the listing document regarding the applicable provisions in the constitution of the applicant issuer as applied to the above Schedule 10 provisions (i) in the event of material differences or (ii) if dealt with outside the scope of the constitution of the applicant issuer (e.g. local legislation).

Additional items:

The JSE must be informed of any expropriation rights in respect of securities; and

A positive written confirmation must be provided to the JSE by the issuer, that it has arrangements in place with its transfer secretary to (i) mandate a compulsory one day Removal Process\* and (ii) introduce appropriate penalty measures where the Removal Process is not adopted and implemented by the transfer secretary.

\*The process for the movement of shares between the South African share register and foreign share register (the "**Removal Process**").

### **Schedule 11 Rescue operations**

- 11.1 A listed company in severe financial difficulty may find itself with no

alternative but to dispose of a substantial part of its business or issue shares for cash within a short time frame to meet its ongoing working capital requirements or to reduce its liabilities. Due to time constraints, it may not be able to prepare a circular and convene a general meeting to obtain prior shareholder approval.

- 11.2 The JSE may modify the requirements in paragraphs 9.20 to 9.29 and 5.51 to 5.53 regarding the preparation of a circular and the obtaining of shareholder approval, if the company:
- (a) can demonstrate that it is in severe financial difficulty; and
  - (b) satisfies the conditions in this Schedule 11.
- 11.3 An application for dispensation should be made to the JSE at the earliest available opportunity and at least ten business days before the terms of the disposal or issue of shares for cash are agreed.
- 11.4 The issuer should be able to demonstrate to the JSE that it could not reasonably have entered into negotiations earlier to enable shareholder approval to be sought.
- 11.5 The following documents should be provided to the JSE:
- (a) confirmation from the board of directors of the issuer that:
    - (i) negotiation does not allow time for shareholder approval;
    - (ii) all alternative methods of financing have been exhausted and the only option remaining is to dispose of a substantial part of its business or to issue shares for cash;
    - (iii) by taking the decision to dispose of a substantial part of the business or to issue shares to raise cash, the directors are acting in the best interests of the company and shareholders as a whole and that, unless the disposal or issue of shares for cash is completed business rescue practitioners or liquidators are likely to be appointed; and
    - (iv) if the disposal or issue of shares for cash is to a related party, that it is the only available option in the current circumstances;
  - (b) confirmation from the issuer's sponsor that, in its opinion and on the basis of information available to it, the issuer is in severe financial difficulty and that it will not be in a position to meet its obligations as they fall due unless the disposal or issue of shares for cash takes place according to the proposed timetable;
  - (c) confirmation from the persons providing finance that further finance or facilities will not be made available and that unless the disposal or issue of shares for cash is effected immediately, current facilities will be withdrawn;
  - (d) confirmation that the Panel has been consulted; and
  - (e) an announcement that complies with paragraph 11.6 below.
- 11.6 An announcement, requiring JSE approval, must be released over SENS by no later than the date the terms of the disposal or issue of shares for cash are agreed and this announcement should contain:
- (a) all relevant information required in terms of paragraphs 9.15 or 11.22;
  - (b) the name of the acquirer and the expected date of completion of the disposal or the name of the party subscribing for the shares;
  - (c) full disclosure about the group's continuing prospects for at least the current financial year;



- (d) a statement that the directors not only believe that the disposal or issue of share for cash is in the best interests of the company and shareholders as a whole but that if it is not completed the company may be unable to meet its financial commitments as they fall due and consequently will be unable to continue to trade resulting in the appointment of business rescue practitioners or liquidators;
- (e) a statement incorporating the details of all the confirmations provided to the JSE in terms of 11.5 above;
- (f) details of any financing arrangements (either current or future) if they are contingent upon the disposal being effected;
- (g) if the disposal or issue for cash is to a related party, then a statement by the board of directors as to whether the transaction is fair insofar as shareholders are concerned and confirmation that they have been so advised by an independent expert; and
- (h) a statement by the issuer that in its opinion the working capital available to the group is sufficient for the group's present requirements, that is, for at least 12 months from the date of the announcement, or, if not, how it is proposed to provide the additional working capital thought by the company to be necessary.

## **Schedule 12**

### **Working capital**

#### **Introduction**

- 12.1 The JSE wishes to advise that it has received numerous requests from sponsors for guidance on their responsibility and that of the listed company in terms of the letter that the JSE requires from sponsors on working capital statements in terms of paragraph 2.12 of Section 2.

The JSE has decided to issue guidance on this matter in order to dispel some of the uncertainty prevailing within the industry regarding this issue. It should be noted that the following are minimum requirements and does not absolve sponsors from their duty to carry out additional procedures that might be appropriate or warranted in a particular case.

Compliance with paragraph 2.12 of Section 2 will remain the responsibility of the sponsor, but the board of directors of the issuer will be responsible for undertaking the necessary procedures to provide sponsors with the comfort necessary to issue the required letter.

#### **Directors' responsibilities**

- 12.2 Directors are required to perform the following as a minimum:
- (a) the financial director must prepare a working capital pack (as defined in 12.5) and a qualifying quorum of the board of directors, including the chairman of the audit committee ("the directors") must approve the working capital pack;
  - (b) the financial director must obtain written confirmation from facility providers addressed directly to the sponsor(s) confirming that all facilities are currently in place and that facility providers are not in the process of reviewing the facilities with a view to withdrawing them;
  - (c) if there are renewable clauses underlying the provision of the facilities, then the financial director must obtain confirmation from the providers (addressed to the sponsors) that there is no reason why the facilities would not be renewed subject to any reasonable obligation being satisfied;
  - (d) a resolution must be passed by the directors stating that the working capital available to the group is sufficient for its present requirements,



that is, for at least the next twelve months from the date of issue of the relevant document. This resolution must be passed after due and careful enquiry has been made by the directors on the working capital requirements of the group for the next twelve months; and

if the company decides to use the services of their accountants/auditors to perform any of the above-mentioned, then the sponsor must be informed. In such instance the directors must confirm to the sponsor that they have reviewed the auditor's work and that they are satisfied with it.

### **Sponsors' responsibilities**

12.3 Sponsors are required to perform the following as a minimum:

- (a) a meeting must be held with the directors in order to explain the implications of the working capital statement;
- (b) the sponsor must advise the directors of their obligation to exercise reasonable care in performing their duties in relation to the working capital statement;
- (c) the sponsor must obtain the written confirmation referred to in 12.2(b) and (c) above;
- (d) the sponsor must obtain a working capital pack (as defined in 12.5 below) from the directors and should, as a minimum:
  - (i) obtain a letter of representation from the directors confirming that they have carefully considered all matters relating to the working capital statement, have brought all material matters to the attention of the sponsor and that the working capital available to the group is sufficient for at least twelve months from the date of issue of the relevant document;
  - (ii) be satisfied that, prima facie, the working capital pack supports the directors' statement on the working capital.

### **Working capital pack**

12.4 The working capital pack must include the following:

- (a) a working capital forecast for at least the next 12 months (in compiling such working capital forecast it is a requirement that any other forecasts, such as income, expenditure, cash flows, statement of financial position and other items, are made that are necessary in preparing the working capital forecast);
- (b) a reconciliation of working capital projections to the company's current net cash/indebtedness position;
- (c) a review of cash flow projections and future commitments;
- (d) a review of contingent liabilities;
- (e) a review of off-the statement of financial position borrowings;
- (f) a review of, and commentary on, facility agreements;
- (g) an analysis of all key drivers impacting on the adequacy of the issuers working capital ("assumptions") and a discussion of all assumptions (historical and future) and their impact/potential impact on cash retained from/utilized by operating activities, cash generated by/utilised in investing activities and the cash effects of financing activities;
- (h) if the company uses the auditors to produce the working capital pack then this must be stated in the working capital pack; and
- (i) if the company used the auditors to produce the working capital pack it should include details of the work performed by the directors to evaluate

the work of the audit.

### **Schedule 13**

#### **Directors declaration**

This director's declaration must be provided in letter format addressed to the JSE in accordance with the JSE's Listings Requirements.

#### **Personal details**

1. Applicant issuer and effective date of appointment: .....
2. Surname of Director: .....
3. Any former surname: .....
4. First name: .....
5. Identity number: .....
6. Director function and capacity in terms of paragraph 3.82(e): .....
7. Physical address: .....
8. Postal address: .....
9. Telephone number (business): .....
10. E-mail address: .....

#### **Qualifications and experience**

11. Are you a director, or alternate director of any other company that is publicly listed or traded, or a partner in any partnership? If so, state the name of any such company or partnership, the nature of business where this is not indicated in the title, and the date you became a director or partner.  
.....  
.....
12. Provide details of your qualifications and relevant experience as required in terms of Section 7.B of the Listings Requirements.  
Qualifications: .....  
.....  
Experience: .....  
.....
13. Have you ever been disqualified by a court from acting as a director of a company, or from acting in the management or conduct of the affairs of any company as described in Section 7.B of the Listings Requirements? If so, give full particulars.  
.....  
.....
14. Are you being appointed as a director of an ALT<sup>x</sup> company? If yes please confirm whether you have attended the ALT<sup>x</sup> Directors Induction Programme?  
.....  
.....

#### **Integrity**

15. Have you ever been convicted of any offence resulting from dishonesty, fraud, theft, forgery, perjury, misrepresentation or embezzlement? If yes, provide details.  
.....  
.....
16. Has any company been put into liquidation or been placed under business rescue proceedings or had an administrator or other executor appointed during the period when you were (or within the preceding 12 months had been) one of its directors, or alternate

directors or equivalent position? If yes, provide details.

.....  
.....

17. Have you ever been adjudged bankrupt or sequestrated in any jurisdiction? If yes, provide details.

.....  
.....

18. Have you at any time been a party to a scheme of arrangement or made any other form of compromise with your creditors? If yes, provide details.

.....  
.....

19. Have you ever been found guilty in disciplinary or other proceedings or a judgement made against you, by an employer, regulatory body or court of law? If yes, provide details.

.....  
.....

20. Have you ever been barred from entry into any profession or occupation? If yes, provide details.

.....  
.....

21. Have you at any time or has a company of which you were a director or alternate director or officer at the time of the offence, been convicted in any jurisdiction of any criminal offence, or an offence under legislation relating to the Companies Act. All such convictions must be disclosed even though they may now be "spent convictions".

.....  
.....

22. Have you ever been removed from an office of trust, on the grounds of misconduct, involving dishonesty? If so, give full particulars.

.....  
.....

23. Has any court granted an order declaring you to be delinquent or placing you under probation in terms of Section 162 of the Act and/or Section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984)? If so, give full particulars.

.....  
.....

I ..... director of (name of company) .....

..... ("the issuer") declare that, to the best of my knowledge and belief (having taken all reasonable care to ensure that such is the case), the answers to all the above questions are true and I hereby give my authority to the JSE to disclose any of the foregoing particulars as the JSE may, in its absolute discretion think fit.

I also acknowledge that ..... of which I am a director has agreed to be bound by and to comply with the JSE's Listings Requirements, as amended from time to time, and, in my capacity as a director, I undertake and agree to discharge my duties in ensuring such compliance whilst I am a director. The delegation of any of my duties to any sub-committee or anyone else will not absolve me of my duties and responsibilities in terms of the Listings Requirements.

I further acknowledge that certain requirements contained in the JSE's Listings Requirements, as amended from time to time, affect me directly as a director and, in my personal capacity, as well as in my capacity as a director, I undertake to be bound by and to comply with all such requirements whilst I am a director.

.....  
Signature

.....  
Date

## **Schedule 14**

### **Requirements for share incentive schemes**

Share option schemes and share incentive schemes ("schemes") are to be used to incentivise staff and may not be used for trading purposes. The following provisions apply to all schemes involving the issue of equity securities (including options) by issuers (or trusts or special purpose vehicles formed for this purpose) to, or for the benefit of, employees and other persons involved in the business of the group and which result in a dilution of the shareholding of equity securities holders in the issuer or applicant. This includes the issue of equity securities from the authorised but unissued share capital, as well as the use of equity securities held as treasury shares. The rules set out below apply to schemes as contemplated for companies at listed company level and also to schemes of all subsidiaries of issuers which provide for the issue of equity securities in the listed holding company.

The JSE must be consulted on the application of these provisions to schemes intended to apply to employees of associates.

- 14.1 The scheme must be approved by equity securities holders passing an ordinary resolution (requiring a 75% majority of the votes cast in favour of such resolution by all equity securities holders present or represented by proxy at the general meeting to approve such resolution) and must contain provisions relating to:
- (a) the category of persons to whom, or for the benefit of whom securities may be purchased or issued under the scheme ("participants");
  - (b) the number of equity securities which may be utilised for purposes of the scheme must be stated and this number may not be exceeded without equity securities holders' approval as required above. Use of the wording "from time to time" or a percentage is prohibited;
  - (c) a fixed maximum number of equity securities for any one participant;
  - (d)
    - (i) the amount, if any, payable on application or acceptance, subscription or exercise, as the case may be;
    - (ii) the basis for determining the price (if any and regardless of the form that it takes) payable by participants and the period after or during which such payment must be made. This must be a fixed mechanism for all participants. Repricing of options is prohibited; and
    - (iii) the period in which payments, or loans to provide the same, may be paid;
  - (e) the voting, dividend, transfer and other rights, including those arising on a liquidation of the issuer, attaching to the securities and to any options (if appropriate);
  - (f) the basis upon which awards are made;
  - (g) the treatment of options (vested and unvested) in instances of mergers, takeovers or corporate actions; and
  - (h) the rights of participants who leave the employment of the issuer whether by termination, resignation, retirement or death insofar as their early departure from the scheme is concerned.
- 14.2 The provisions relating to the matters contained in paragraph 14.1 above cannot be altered without the prior approval of equity securities holders in accordance with paragraph 14.1 above, excluding all the votes attaching to all equities securities owned or controlled by persons who are existing participants in the scheme. Only the equity securities which have been acquired in terms of the relevant scheme and may be impacted by the changes will be excluded from the said vote.
- 14.3 (a) The scheme must provide, in the event of a sub-division or consolidation of securities, for an adjustment to the number of equity securities that

may be utilised in terms of paragraph 14.1(b) above and the amount payable in terms of paragraph 14.1(d) above. Such adjustment should give a participant entitlement to the same proportion of the equity capital as that to which he was previously entitled.

- (b) The scheme may provide, in the event of a capitalisation issue, a special dividend, a rights issue or reduction of capital for adjustment to the fixed maximum number in paragraph 14.1(c) above and the amount in terms of paragraph 14.1(d) above. Such adjustment should give a participant entitlement to the same proportion of equity capital as that to which he was previously entitled.
- (c) The issue of equity securities as consideration for an acquisition, the issue of securities for cash and the issue of equity securities for a vendor consideration placing will not be regarded as a circumstance requiring adjustment.
- (d) The company's auditor, or other independent advisers acceptable to the JSE must confirm to the JSE, in writing, that any adjustments made in terms of paragraph 14.3 are in accordance with the provisions of the scheme. Such written confirmation must be provided to the JSE at the time that any such adjustment is finalised.
- (e) Any adjustment made in accordance with paragraph 14.3 above must be reported on in the issuer's annual financial statements in the year during which the adjustment is made.
- (f) Allocated equity securities which are not subsequently issued to the identified participant/s, for example as a result of forfeiture, must revert back to the scheme.

14.4 Executive directors may not be appointed as trustees of schemes. Non-executive directors, subject to any restriction as contained in the Act, may be appointed as trustees of the scheme, provided that they do not benefit from the scheme.

14.5 The trustees may not be participants under the scheme.

14.6 The resolution to approve a scheme must make specific reference to the scheme and be accompanied by either the full scheme or a summary of the principal terms as set out in paragraphs 14.1 and 14.3 above and must be circulated to equity securities holders.

14.7 The scheme document, if not circulated to the equity securities holders, must be available for inspection by equity securities holders during normal business hours at the issuer's registered office and in Johannesburg. The full scheme must be open for inspection for a reasonable period of time (being not less than 14 days).

14.8 The issuer must summarise in its annual financial statements the number of securities that may be utilised for purposes of the scheme at the beginning of the financial year, changes in such number during the accounting period and the balance of securities available for utilisation for the purposes of the scheme at the end of the financial year.

14.9 With regards to the trading of shares on behalf of schemes, the following requirements apply:

- (a) equity securities may only be issued or purchased by a scheme once a participant or group of participants to whom they will be allocated, has been formally identified (e.g. applicants to whom options over securities have been issued);
- (b) equity securities held in trust may only be sold:
  - (i) once the employment of a participant has been terminated or a participant is deceased; or
  - (ii) on behalf of the participant, once the rights of ownership have

vested;

- (c) unless a scheme explicitly provides for the purchase of securities through the market, in order to satisfy obligations in terms of the scheme, no purchases through the market will be permitted. Any shares purchased through the market will not be taken into account when calculating the number of shares utilised by the scheme;
- (d) the provisions of paragraphs 3.63 to 3.74 apply mutatis mutandis to any dealings by the issuer or a scheme involving securities relating to the scheme, save for the circumstances pursuant to paragraph 3.92 being present;
- (e) a scheme may not purchase securities during a prohibited period as defined in paragraph 3.67 unless it has in place a purchase programme. The issuer must instruct only one independent third party, which makes its investment decisions in relation to the issuer's securities independently of, and uninfluenced by, the issuer, prior to the commencement of the prohibited period to execute the repurchase programme. The repurchase programme must be submitted to the JSE in writing prior to the commencement of the prohibited period and must include the following details:
  - (i) the name of the independent agent;
  - (ii) the date the independent agent was appointed;
  - (iii) the commencement and termination date of the repurchase programme; and
  - (iv) where the quantities of securities to be traded during the relevant period are fixed (not subject to any variation).
- (f) in the event that the purchase was made during a prohibited period through a purchase programme pursuant to paragraph 14.9(e), an announcement must be made pursuant to paragraph 14.9(d) which must include a statement confirming that the purchase was put in place pursuant to a purchase programme prior to prohibited period in accordance with the Listings Requirements.

14.10 Equity securities held by a share trust or scheme will not have their votes at general/annual general meetings taken into account for the purposes of resolutions proposed in terms of the Listings Requirements. Such equity securities will also not be taken into account for purposes of determining categorisations as detailed in Section 9.

#### **General**

- 14.11 Any issue of equity securities to employees, which do not fall within the rules of an issuer's scheme, will be treated as a specific issue of shares for cash as contemplated in paragraph 5.51.
- 14.12 Rolling over (including the arrangement assuming that equity securities which have already vested and been issued in terms of the scheme, and which usually revert back to the number referred to in paragraph 14.1(b) after a 10-year period) is prohibited.
- 14.13 Back-dating of options i.e. the practise of issuing options retrospectively is not permitted. The date upon which the decision to issue options is determined must be the date upon which all the components relating to the scheme i.e. the strike price, etc., are determined.

#### **Schedule 15** **Standard wording for cautionary announcements**

The following three announcements comprise what is generally accepted to be the standard cautionary announcements acceptable to the JSE. They should be drafted

from the alternatives presented in this schedule to read sensibly and meaningfully given the circumstances that have given rise to their necessity. However, applicant issuers should be aware that these announcements contain the minimum disclosure requirements acceptable to the JSE and wherever possible should publish cautionary announcements containing more detailed information.

### **First cautionary announcement**

#### **15.1 "Cautionary announcement**

Shareholders are advised that [the company has entered into negotiations, which if successfully concluded] [there has been an event/there are circumstances/there are new developments relating to the company, the full impact of which is/are currently being determined and which] may have a material effect on the price of the company's securities. Accordingly, shareholders are advised to exercise caution when dealing in the company's securities until a full announcement is made."

### **Renewal of existing cautionary**

#### **15.2 "Further cautionary announcement**

Further to the cautionary announcement(s) dated .....,

shareholders are advised that [negotiations are still in progress which, if successfully concluded], [the full impact of the event/circumstances/new developments is/are still being determined, and that this event/these circumstances/these new developments] may have a material effect on the price of the company's securities. Accordingly, shareholders are advised to continue exercising caution when dealing in the company's securities until a full announcement is made."

### **Withdrawal of cautionary**

#### **15.3 "Withdrawal of cautionary announcement:**

Shareholders are referred to the cautionary announcement(s) dated .....,

and are advised that as [negotiations have been terminated] [the contents referred to therein have ceased to have any relevance or effect on the company], caution is no longer required to be exercised by shareholders when dealing in their securities."

## **Schedule 16**

This Schedule contains certain Listings Requirements applicable to sponsors (Part I) and VCC advisers (Part II) and should be read with Section 2.

### **Part I – Sponsors**

This schedule contains certain Listings Requirements applicable to sponsors and should be read with Section 2.

#### **Introduction**

16.1 This schedule sets out the Listings Requirements of the JSE pertaining to the eligibility criteria of sponsors.

16.2 A sponsor may be a company, partnership or sole proprietor with sufficient executive staff to execute all sponsor requirements and responsibilities in accordance with the Listings Requirements.

16.3 The responsibilities of a sponsor are set out in Section 2.

#### **Qualifications for approval**

16.4 A sponsor must satisfy the JSE:

- (a) that it is competent to discharge the responsibilities of a sponsor; and
- (b) that it accepts the responsibilities of a sponsor and agrees to discharge those responsibilities at all times to the satisfaction of the JSE.

### **Eligibility criteria**

16.5 The following criteria must be met by a sponsor in order to satisfy the JSE that it is competent to fulfil the role of sponsor:

**(a) Employment of staff with relevant experience**

- (i) a sponsor will be expected to have staff who have considerable relevant corporate finance experience;
- (ii) a sponsor must be able to demonstrate to the JSE's satisfaction, that at least three of its executive staff:
  - (1) were registered as Approved Executives by the JSE as at 15 August 2008 and will continue to be so classified subject to paragraphs 16.5(a)(iv) and 16.14; or
  - (2) have passed an examination as approved by the JSE from time to time ("the examination");

and each have relevant practical experience in advising on the general application of the Listings Requirements under the supervision of an Approved Executive in accordance with schedule 16.5(a)(iii).

Such executive staff will be classified as Approved Executives and recorded as such by the JSE.

- (iii) An Approved Executive who is providing the supervision referred to in paragraph 16.5(a)(ii) above must:
  - (1) notify the JSE in writing at the commencement of the relevant period, providing full details of the candidate; and
  - (2) declare to the JSE at the end of the relevant period, that the candidate is suitable to be an Approved Executive who will be able to properly fulfil all the responsibilities of a sponsor.

If a candidate moves from one employer to another and wishes to continue with his programme of practical experience, then arrangements must be made in order that an Approved Executive with the new employer continues with the necessary supervision. Before embarking on this exercise, the Approved Executive must obtain full details of the candidate's previous experience.

- (iv) From time to time, the JSE will arrange courses relating to the Listings Requirements and all Approved Executives must attend these, within the time periods prescribed by the JSE, in order to remain registered.
- (v) the sponsor's Approved Executives must not have been:
  - (1) convicted of an offence resulting from dishonesty, fraud or embezzlement;
  - (2) censured or fined by a self regulatory organisation or recognised professional body;
  - (3) barred from entry into any profession or occupation; or
  - (4) convicted in any jurisdiction of any criminal offence or an offence under legislation relating to the Act and/or the FMA, have been a director or alternate director or officer of a



company at the time such company was convicted of any similar offence;

- (vi) if the relevant criteria detailed in 16.5(a)(i) to (iv) above are not satisfied, the JSE may still accept the applicant as a sponsor but not as a DA, provided that such sponsor has demonstrated to the JSE's satisfaction that it has the necessary expertise and adequacy of staff to properly discharge the responsibilities of a sponsor. In such instance such sponsor must have at least one executive approved as an Approved Executive by the JSE. In this instance the JSE will record whichever executive staff members have qualified for Approved Executive classification as well as the details of the other sponsor staff employed ("employment status"). The JSE reserves the right to review such sponsor's status if and when there is any change to such sponsor's employment status, which must be notified to the JSE within 48 hours of such change.

**(b) Adequate supervision of staff**

- (i) a sponsor must ensure that all staff who do not qualify for classification are supervised and managed by Approved Executives whenever they are involved in sponsor activities; and
- (ii) a sponsor must have appropriate controls and procedures to ensure that staff involved in sponsor activities do not act beyond their authority.

**(c) Sufficiency of staff**

- (i) arrangements must be in place to ensure that a sufficient number of Approved Executives are always available to ensure that the sponsor's responsibilities are properly discharged at all times.

**(d) Independence**

- (i) a sponsor must provide an undertaking, in respect of matters mentioned in paragraph 2.4, that it will not act as a sponsor to any issuer to the extent that it is not independent;
- (ii) a sponsor must, in respect of the matters mentioned in paragraph 2.4, provide confirmation of its independence as sponsor by completing Schedule 17 and submitting same to the JSE.;
- (iii) the question of a sponsor's independence in respect of the matters mentioned in paragraph 2.3 and 2.4 must be determined according to the following requirements:
  - (1) a sponsor may not control, be controlled by, or be under the same control as an applicant issuer. For this purpose, control is as defined in the definitions section of the Listings Requirements;
  - (2) the above will not apply to investment entities where the sponsor's interest arises by virtue of the holdings of its non-managed discretionary clients;
  - (3) a normal business relationship between an applicant issuer and any company which is part of the sponsor's group will not usually prohibit a potential sponsor from acting. However, relationships that would give the sponsor's group an interest in the success of a listing, or other corporate action may result in the sponsor not being independent, and, in such instances, the JSE must be consulted;
  - (4) a sponsor may be the auditor and/or tax adviser to the applicant issuer, provided the JSE is satisfied that there is an adequate segregation of roles within the sponsor's group;

- (5) any director or employee of the sponsor that has a significant interest in an issuer, being 3% or more for purposes of this requirement, or is material to the director or employee, must not be involved in advisory activities of the sponsor in relation to such applicant issuer;
- (6) an investment in an issuer that is material to the sponsor will result in such sponsor not being regarded as independent of such issuer unless the JSE decides otherwise; and
- (7) in any case of doubt, the JSE must be consulted;

Notwithstanding the above requirements the JSE recognises that it is impossible to anticipate all circumstances under which a sponsor would be deemed not to be independent and accordingly reserves the right to determine the independence of a sponsor after having reviewed the declaration made by the sponsor in Schedule 17.

### **The application process**

- 16.6 Applications to become a sponsor must be made to the JSE by submitting the sponsor application form as set out in Schedule 2 Form D4.
- 16.7 An applicant will be required to nominate a person to act as the primary contact with the JSE concerning the application.
- 16.8 The JSE will advise the applicant of the result of the application in writing.

### **Fees**

- 16.9 The relevant fees, as determined by the JSE from time to time, are published and available on the JSE's website, [www.jse.co.za](http://www.jse.co.za), per Section 17.
- 16.10 If annual subscription fees payable by a sponsor are not paid by 31 January of any year, no document from such sponsor will be accepted for submission to the JSE until the fees have been paid in full.

### **Register**

- 16.11 A register of sponsors will be published by the JSE.

### **Designations**

- 16.12 A sponsor will be able, but not required, to state on its business documentation that it is a sponsor registered with the JSE and may similarly disclose its Approved Executives.

### **Continuing requirements**

#### **Annual confirmation**

- 16.13 Each time the annual subscription is paid, sponsors are required to submit a sponsor annual compliance certificate to the JSE complying with Schedule 2 Form D3 and confirm to the JSE whether or not it still meets the eligibility criteria, and specifically, whether or not it continues to have a minimum of three Approved Executives in its employ.
- 16.14 Individuals who wish to remain as registered Approved Executives must submit a sworn affidavit to the JSE by no later than 31 January of each year confirming that they were actively involved in providing advice on the application of the Listings Requirements during the previous twelve months and that they will continue to do so in the next twelve months. Failure to make this submission will result in the removal of the individual from the register.

### **Issues affecting approved executive status**

- 16.15 Whenever an Approved Executive of a sponsor resigns and moves employment to another sponsor, such person must notify the JSE.

## **Issues affecting sponsor status**

- 16.16 A sponsor, excluding sponsors appointed in terms of paragraph 16.5(a)(vi) above, must inform the JSE within 48 hours, in writing, if any of its Approved Executives leave its employment (including the situation where an Approved Executive is no longer physically present in the sponsors offices and providing advice to issuers) and, if such departure causes the sponsor to have less than three Approved Executives in its employ it will have a period of three months in which to re-satisfy the eligibility criteria detailed in paragraph 16.5 above, failing which (unless the JSE provides dispensation in terms of paragraph 16.5(a)(vi)) the sponsor's status will be suspended until such criteria are satisfied. The JSE will publish such details of the suspension of sponsors.
- 16.17 A sponsor may resign as a sponsor by giving written notice to the JSE and the relevant applicant issuer.
- 16.18 If the departure of Approved Executives results in a sponsor no longer having any Approved Executives, the JSE will suspend the sponsor's status, announcing same through SENS, until the sponsor re-qualifies in accordance with paragraph 16.5.
- 16.19 If, at any time, the JSE considers that a sponsor or Approved Executive is no longer competent, the JSE may suspend the sponsor or Approved Executive on reasonable notice to the sponsor. If the sponsor or Approved Executive is dissatisfied with the JSE's decision in this regard they should notify the JSE in accordance with paragraph 1.4 of Section 1.
- 16.20 Notwithstanding acceptance by the JSE of a sponsor's resignation, or withdrawal by the JSE of a sponsor's status, the sponsor shall continue to be subject to the jurisdiction of the JSE for a period of one year following the resignation or withdrawal of status.
- 16.21 A sponsor must immediately notify the JSE by e-mail and letter if any of the events below occur (failure to make full and timely disclosure to the JSE may result in disciplinary action against the sponsor):
- (a) any of the sponsor's Approved Executives are:
    - (i) convicted of an offence resulting from dishonesty, fraud or embezzlement;
    - (ii) censured or fined by a self regulatory organisation, or recognised professional body;
    - (iii) barred from entry into any profession or occupation; or
    - (iv) convicted in any jurisdiction of any criminal offence, or an offence under legislation relating to the Act and/or the FMA, or was a director or alternate director or officer of a company at the time such company was convicted of any similar offence; or
  - (b) an approved executive ceases to meet the criteria for approved executive classification.

## **Sponsor application form**

- 16.22 Details of the sponsor application form to be submitted by the applying sponsor to the JSE are as set out in Schedule 2 Form D4.

## **Sponsor procedures manual**

- 16.23 A sponsor must have a formal and written procedures manual in dealing with the following:
- (a) ensuring that SENS announcements in respect of applicant issuers comply with the Listings Requirements;
  - (b) ensuring that the annual reports of applicant issuers submitted to the JSE comply with the Listings Requirements;

- (c) how notification should be made to the sponsor by the applicant issuer when the applicant issuer is entering into negotiations in respect of a transaction/s;
- (d) ensuring that sponsor staff are equipped to give advice to applicant issuers in relation to the provisions of the Listings Requirements;
- (e) obtaining periodic confirmation from applicant issuers that financial announcements and documentation required by the Listings Requirements were prepared pursuant to the provisions of the Listings Requirements;
- (f) ensuring that applicant issuers are guided and advised as to the application of the Listings Requirements;
- (g) ensuring completeness and correctness of documentation pursuant to the provisions of the Requirements before it is submitted to the JSE;
- (h) satisfying itself on the credentials of the reporting accountant specialist, auditors, competent person, valuer and expert of applicant issuers;
- (i) ensuring that sponsor staff comply with the Code of Ethics and Standards of Professional Conduct pursuant to the Appendix to Schedule 16 of the Listings Requirements;
- (j) ensuring that sponsor staff are trained on the treatment of price sensitive information in respect of applicant issuers pursuant to the provisions of the Listings Requirements;
- (k) ensuring that sponsor staff keep abreast of all developments in applicable laws, rules, regulation and codes of any government, licencing agency or professional association governing their professional activities;
- (l) trading by sponsor staff and price sensitive information pursuant to the provisions of the FMA; and
- (m) ensuring independence of the sponsor in respect of transactions and corporate actions, and identifying and managing conflicts of interest in relation to the sponsor and its approved executives which could be expected to impair their independence and objectivity in relation to an applicant issuer for a transaction or corporate action.

16.24 The JSE may request the sponsor, at any time, to make an electronic version of the procedures manual available for inspection by the JSE.

16.25 The JSE may request the sponsor, at any time, for a written explanation on how any or all of the procedures were implemented in relation to any matter.

## **Part II - VCC Adviser**

This Part II of Schedule 16 contains certain Listings Requirements applicable to VCC advisers and should be read with Section 2 and 21 of the Listings Requirements to which this Schedule is attached.

### **Introduction**

16.26 This schedule sets out the Listings Requirements of the JSE pertaining to the appointment and eligibility criteria of VCC advisers.

16.27 Only a VCC issuer is permitted to appoint a VCC adviser provided it seeks a listing on Alt<sup>X</sup>.

16.28 A VCC adviser must execute all DA requirements and responsibilities in accordance with the Listings Requirements. If a listing is being sought on the Main Board, a sponsor must be appointed and not a VCC adviser.

16.29 The responsibilities of a DA are set out in Section 2 and 21 respectively.

### Qualifications for appointment as a VCC adviser

- 16.30 A VCC adviser must have at least three staff members with VCC experience of which one must be a Key Individual with a Category 1.8 licence (shares) registered with the Financial Sector Conduct Authority. The other two staff members must have the minimum RE5 qualifications with FSCA.
- 16.31 Applications to become a VCC adviser must be made to the JSE by submitting:
- (a) an application letter detailing the following:
    - (i) the name of the applicant issuer that the VCC adviser wishes to represent;
    - (ii) the name of the VCC adviser, directors and shareholders;
    - (iii) the VCC adviser will be acting as agent of the applicant issuer;
    - (iv) the contact details of the VCC adviser;
    - (v) the VCC adviser general expertise and capabilities, with specific reference to the staff members referred to in paragraph 16.30 above; and
    - (vi) a statement confirming that the staff members referred to in paragraph 16.30 above have undergone the prescribed training; and
  - (b) a letter signed by an authorised signatory of the applicant issuer and by the VCC adviser confirming the following:
    - (i) that an agreement has been signed between the applicant issuer and the VCC adviser;
    - (ii) that the applicant issuer is satisfied with the expertise and capabilities of the VCC adviser and has appointed the VCC adviser in the capacity of VCC adviser to act as agent and on its behalf in relation to the execution of the applicant issuer's responsibilities pursuant to the provisions of the Listings Requirements; and
    - (iii) that the VCC adviser accepts the appointment as VCC adviser and agent of the applicant issuer and agrees to act on behalf of the applicant issuer in relation to the execution of the applicant issuer's responsibilities pursuant to the provisions of the Listings Requirements and agrees to the requirements placed on a VCC adviser pursuant to the Listings Requirements.

For the purposes of this paragraph 16.31, the following definition shall apply:

**"prescribed training"** means training on the Listings Requirements as further detailed on the JSE's website.

- 16.32 From time to time, the JSE will arrange courses relating to the Listings Requirements and all the designated representatives of the VCC adviser must attend these, within the time periods prescribed by the JSE, in order to remain registered.
- 16.33 Any representatives of the VCC adviser must not have been:
- (a) convicted of an offence resulting from dishonesty, fraud or embezzlement;
  - (b) censured or fined by a self-regulatory organisation or recognised professional body;
  - (c) barred from entry into any profession or occupation; or
  - (d) convicted in any jurisdiction of any criminal offence or an offence under legislation relating to the Act and/or the FMA, have been a director or

alternate director or officer of a company at the time such company was convicted of any similar offence;

### **Limitations**

16.34 A VCC adviser may not act as a VCC adviser for more than [5] VCC issuers.

### **Fees**

16.35 The relevant fees, as determined by the JSE from time to time, are published and available on the JSE's website, [www.jse.co.za](http://www.jse.co.za), per Section 17.

16.36 If annual subscription fees payable by a VCC adviser are not paid by 31 January of any year, no document from such VCC adviser will be accepted for submission to the JSE until the fees have been paid in full.

### **Register**

16.37 A register of VCC advisers will be published by the JSE.

### **Designations**

16.38 A VCC adviser shall be entitled to, but not required, to state on its business documentation that it is a VCC adviser registered with the JSE.

## **Appendix to Schedule 16**

### **Code of ethics and standards of professional conduct applicable to sponsors, designated advisers, VCC advisers and debt sponsors**

#### **Preamble**

The JSE Code of Ethics and Standards of Professional Conduct ("Code and Standards") is essential for the maintenance of exceptional regulation in the listed environment. All sponsors, designated advisers, VCC advisers and debt sponsors and their approved executives ("Sponsors and Executives") (if applicable) must adhere to the Code and Standards.

#### **Code of ethics**

Sponsors and Executives should, in the context of the JSE sponsor function, exercise the utmost integrity, competence, diligence, and confidentiality in their dealings with the JSE, their clients and prospective clients, employers and colleagues. The following fundamental principles should be applied:

- A Integrity and Objectivity.** Sponsors and Executives should remain transparent and honest in all professional and business relationships and should not allow bias, conflict of interest or undue influence of others to override their professional judgement.
- B Professional Competence and Due Care.** Sponsors and Executives have an ongoing duty to maintain their professional knowledge and skill at such a level as to ensure that their clients receive competent and professional service in line with up-to-date developments in professional and best practice, legislation and the Listings Requirements. Sponsors and Executives should act diligently and in accordance with applicable technical and professional standards when rendering professional services.
- C Confidentiality.** Sponsors and Executives should respect the confidential nature of information acquired in the context of professional and business relationships. Such confidential information may not be used by Sponsors and Executives for personal gain and should not be disclosed to third parties without due authority or unless there exists a legal obligation of disclosure.

#### **Standards of professional conduct**

Sponsors and Executives must comply with the following Standards of Professional Conduct:

## **I Professionalism**

- A Knowledge of the Law.** Sponsors and Executives must know and comply with all applicable laws, rules, regulations and codes (including the Listings Requirements and the Code and Standards) of any government, regulatory organisation, licensing agency or professional association governing their professional activities. In the event where there is any conflict of these laws and/or rules, regulations or codes, Sponsors and Executives must comply with the more onerous of the law, rule, regulation or code.
- B Independence and Objectivity.** Sponsors and Executives must exercise reasonable care and judgment in order to achieve and maintain independence and objectivity in their professional dealings. Sponsors and Executives must not offer, solicit, or accept any gift, benefit, compensation or consideration that may reasonably be seen to compromise their independence or objectivity.
- C Faithful Representation.** Sponsors and Executives must not knowingly make any misrepresentations or omissions of fact in relation to the provisions of the Listings Requirements. Sponsors and Executives must, without delay, inform the JSE in the event that they become aware of any such misrepresentations or omissions of fact by, or on behalf of, their clients (whether existing, former or prospective).
- D Misconduct.** Sponsors and Executives must not engage in any conduct involving dishonesty, fraud, deceit or the commission of any act that may reflect adversely on the JSE or on the professional reputation, integrity, or competence of the Sponsor or Executive.

## **II Integrity of capital markets**

- A Price Sensitive Information.** Sponsors and Executives in possession of price-sensitive, information must not trade on or disclose this information to third parties (unless a legal obligation of disclosure exists).
- B False Markets.** In order to protect the integrity of the capital markets, Sponsors and Executives must refrain from prohibited market practices and false statements, as stipulated in the FMA, and take steps to make their clients aware of their responsibility in this regard.

## **III Duties to clients**

- A Prudence and Care.** Sponsors and Executives should act with reasonable care.
- B Fair Dealing.** Sponsors and Executives must deal fairly and objectively with all clients when furnishing advice on the Listings Requirements or engaging in other professional practices relating to their duties as sponsors.
- C Preservation of Confidentiality.** Sponsors and Executives must keep confidential all information pertaining to existing, former and prospective clients, unless:
  - 1 The information relates to illegal activity on the part of the existing or former client;
  - 2 Disclosure of the information is required by law or in terms of the Listings Requirements; or
  - 3 The existing, former or prospective client consents to the disclosure of the information.

## **IV Conflicts of interest**



- A Disclosure of Conflict.** Sponsors and Executives (excluding debt sponsors) must make full and fair disclosure to their clients, the JSE (in a Schedule 17) and the shareholders of the applicant issuer of all matters that might reasonably be expected to impair their independence and objectivity in their professional dealings with the applicant issuer or in relation to the corporate action. Details of any such conflicts of interest must also be included in any prospectus/pre-listing statement or circular of the applicant issuer. Sponsors and Executives must ensure that such disclosure is presented prominently under a separate heading, is worded in plain language and that it communicates effectively the nature and extent of the conflicts as well as the procedures that are in place to manage/mitigate such conflicts.

### **Schedule 17 Declaration by sponsor**

The following declaration format must be used by sponsors when submitting the declaration on their letterhead to the JSE:

"The Issuer Regulation Division  
JSE Limited  
One Exchange Square  
Gwen Lane  
Sandown

.....20.....

Dear Sirs

(Full name of sponsor) – sponsor declaration

The attached application by (full name of applicant issuer) in respect of (brief description of the corporate action) is the subject of this sponsor declaration.

I, (full name of approved executive), an approved executive of the above sponsor:

- (a) hereby confirm that I have satisfied myself to the best of my knowledge and belief, having made due and careful enquiry of the applicant issuer (and its advisers),\* that all the documents required by the Listings Requirements to be included in the application have been supplied to the JSE; that all other relevant requirements of the Listings Requirements have been complied with; and that there are no material matters other than those disclosed in writing to the JSE that should be taken into account by the JSE in considering the suitability of the application. Should any further information come to my notice before the approval of the application, I will immediately inform the JSE;

\* adjust where necessary

- (b) hereby confirm that I will review each submission for full compliance with the Listings Requirements before submitting it to the JSE;
- (c) confirm that, as sponsor, we are independent after due consideration of all the items referred to in paragraphs 16.5(d)(iii) above; and
- (d) [if applicable] notwithstanding the independence provisions referred to in paragraphs 16.5(d)(iii) above, the following specific information is brought to the attention of the JSE, which must be considered by the JSE as they may impact our independence as sponsor:

This declaration is furnished to you in accordance with the Listings Requirements of the JSE and may not be relied upon for any other purpose or by any other person.

Yours faithfully

.....



(signature of approved executive)

.....

(initials and surname of approved executive)''

**Schedule 18**  
**Application for listing by accredited applicants**

18.1 The application for listing by accredited applicants must contain the following:

(a) a statement that:

"It is understood that the granting of a listing pursuant to this application shall constitute a contract between this company\*/or description of entity applying for listing if not a company\* and the JSE Limited ("JSE") and also between the directors\*/description of office equivalent to directors\*, on a continuing basis, of the company\*/or description of entity applying for listing if not a company\* and the JSE and that, in giving the General Undertaking referred to in paragraph 16.10(p) of the Listings Requirements of the JSE ("the Listings Requirements"), the company\*/or description of entity applying for listing if not a company\* and its directors\*/description of office equivalent to directors\* undertake to comply with the Listings Requirements as they may exist from time to time."

\* delete whichever is not applicable;

(b) full name and registered address (also in the Republic of South Africa if an external company) of the accredited applicant;

(c) the transfer offices of the accredited applicant, including the Republic of South Africa;

(d) regarding the applicant's share capital:

- (i) the amount of the authorised share capital of each class of share, and the nominal value and number of securities in each class;
- (ii) the number and amount of the share capital issued and to be issued with respect to each class of share, and the number of securities in each class for which a listing is applied for; and
- (iii) the number of treasury shares held.

(e) the nominal amount and number of securities of each class:

- (i) offered for subscription, either by the accredited applicant or otherwise ("the offer for subscription"), and the date the offer opened;
- (ii) applied for in terms of the offer for subscription, and the date the offer closed (where this information is available at the date of application); and
- (iii) issued and/or allotted, and the date of issue and/or allotment (where this information is available at the date of application) pursuant to the offer for subscription;

(f) confirmation from the accredited applicant that:

- (i) the accredited issuer is, to the best of its knowledge and belief, in full compliance with all the requirements of the accredited exchange;
- (ii) the accredited applicant has had its securities primary listed on

an accredited exchange and equivalent board of the JSE for at least 18 months;

- (iii) the accredited applicant complies with the conditions of listing as set out in Section 4 or Section 21, as the case may be;
- (iv) the accredited applicant will comply with paragraphs 18.21–18.24 in respect of continuing obligations; and
- (v) approval has been granted by the Corporate Actions and Clearing and Settlement Departments of the JSE with regard to any procedural and timetable issues;

- (g) a statement whether or not it is desired to deal in any other documents prior to the issue and allotment of the securities;
- (h) a statement detailing the sub-section of the List in which listing is applied for, and the abbreviated name of the applicant. Such abbreviated name must not exceed 9 characters, inclusive of spaces;
- (i) an undertaking by the accredited applicant, in the form of a directors', or equivalent, resolution, that the documents referred to in paragraphs 16.19 to 16.21 will be submitted within the periods specified therein; and

18.2 The application must be signed by the company secretary and a director, or equivalent, of the accredited applicant and by the sponsor.

18.3 The application must be accompanied by a resolution of the directors, or equivalent, of the accredited applicant authorising the application for listing together with the relevant listing fee.

# Practice Notes

## Contents

Practice Note: 2/2015

Practice Note 3/2017

## Practice Note: 2/2015

### Price Sensitive Information

Directors of issuers are currently required, and will continue, to apply their own discretion in determining what will constitute price sensitive information and in doing so directors must apply quantitative and qualitative measures to their assessment. If there is any uncertainty as to what constitutes price sensitive information, then the issuer's sponsor must be consulted. If doubt remains, the issuer must assume that the information is price sensitive in order to avoid selective disclosure which could lead to confusion in the market. If in doubt, publish.

The definition of price sensitive information contains two key principles that require further guidance.

#### (i) Specific and Precise

The Requirements do not define what constitutes specific or precise information. What may constitute specific or precise information in one situation may possibly not do so in another, depending on the surrounding circumstances. The European Court of Justice has accepted a definition of "Precise" to be where:

- The information indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so; and
- The information is specific enough to enable conclusions to be drawn as to the possible effect of that set of circumstances or event on the price of a share.

Specific should have a similar meaning and the grammatical meaning should also be considered.

Taking into account the above statements, it would be fair to say that a reasonable degree of certainty is required to conclude that information is specific or precise.

#### (ii) Material Effect

After confirming that the information may be specific or precise, issuers must assess whether such information may have a material effect on the price of the issuer's securities. Materiality must be assessed both quantitatively and qualitatively. Issuers should be mindful that there is no firm figure (percentage change or otherwise) that can be set for any issuer as this will surely vary from issuer to issuer taking into account the variety of factors.

The JSE suggest that issuers also consider the following in making the assessment whether the information would have a material effect on the price of the issuer's securities.

*"Under the securities laws of the United States, information is material if a reasonable investor is likely to consider it significant in making an investment decision..."*

From a Listings Requirements perspective consideration must be given whether the information could influence the economic decisions of investors in respect of the issuer's securities. This assessment should take into consideration the anticipated impact of the information in light of (i) the whole of the issuer's activities, (ii) the reliability of the source of the information and (iii) other market variables likely to affect the relevant listed securities in the circumstances. Information which is considered to be relevant to a reasonable investor's decision includes information which affects:

- The assets and liabilities of the issuer;
- The performance, or the expectation of the performance of the issuer's business;
- The financial condition of the issuer;
- The course of the issuer's business, including the consideration of material risks;
- Major new developments in the business of the issuer; and
- Information previously disclosed to the market.

(iii) Board Policy

The JSE acknowledges and appreciates that various subjective tests must be applied by the directors of issuers and their sponsor in order to determine whether information is price sensitive information for purposes of the Requirements. On this basis, the JSE has spent a considerable amount of time and has consulted widely in the formulation of the above practice note which should be used as a tool by directors and sponsors to apply the correct interpretation to the meaning of price sensitive information.

The JSE therefore strongly advises issuers to have a policy in place to assist the directors in applying the provisions of this practice note on whether any details, directly or indirectly, relating to the issuer constitutes price sensitive information.

### **Practice Note 3/2017**

#### **Introduction**

Pursuant to paragraph 3.14 of the Listings Requirements, issuers have a responsibility to report restatements to the JSE. The JSE wishes to provide more application guidance on restatements.

1) When to report a restatement

For clarity purposes, the JSE wishes to confirm that previously published results cover (i) interim results (ii) summary financial statements (iii) condensed financial statements and (iv) annual financial statements whether published separately or as part of another document which are restated and republished.

2) Which restatements

Restatements (also sometimes referred to as 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) the application of paragraph 34 to 36 of IFRS 5 – *Non-current Assets Held for Sale and Discontinued Operations* and/or paragraph 28 of IAS 33–*Earnings per Share* and/or paragraph 29 of IFRS 8 – *Operating Segments* and/ or paragraph 45 of *IFRS 3*;
- (iii) a voluntary change of accounting policy or change in the application of IFRS;
- (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.

The JSE does not wish to be advised of any restatements in respect of (i) and (ii) above. Furthermore, the JSE only requires notification of restatements that impact earning per share, headline earnings per share, and/or the amounts presented in –

- the statement of financial position;
- the statement of profit or loss and other comprehensive income;

- the statement of changes in equity; and/or
- the statement of cash flows.

The same restatement will often appear in the interim results, condensed financial statements, summary financial statements or annual financial statements. Notification of restatements need only occur once for each change.

### 3) How to report a restatement

Instead of communicating the restatement notification to the JSE via e-mail, the notification must be produced to the JSE when submitting the annual financial statements and annual compliance certificate through WEBSTIR. The notification must:

- (i) contain sufficient information through a detailed narrative for the JSE to understand the nature and circumstances that led to each specific restatement;
- (ii) details regarding how and when the need for restatement was identified;
- (iii) the impact of the restatement on previously published results;
- (iv) other than in the instance of 2(iii) above, include a letter from the chairman of the audit committee confirming that the board has considered the circumstances that lead to the restatement and has implemented steps to prevent the reoccurrence of such a restatement;
- (v) in the instance where another restatement occurs after the audit committee letter has been issued, the notification should highlight this fact; and
- (vi) where the further restatement referred to in 3(v) above is a related matter, explain how the audit committee has addressed the fact that the preventative measures it implemented in terms of its initial notification to the JSE did not succeed.

## A

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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: 17 September 2019

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 is necessary as to standardise and improve the business plan presentations to ensure a fair and equitable process based on the information presented. This guidance letter has been updated in paragraph 4 only to take account of certain practical concerns that have been raised by some Designated Advisors and also make the process more cost efficient for applicants. This letter replaces the letter dated 25 August 2015.

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

In terms of paragraph 21.41 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 decide 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.

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.

## **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 competitiveness 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 feasibility 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 historical financial statements in accordance with IFRS or IFRS for SME's for the preceding three years (or a lesser period since incorporation) (the "**HFI**"), including a summarised overview of the financial highlights for each year;



- A statement as to whether or not the HFI have been assured by an auditor registered with the Independent Regulatory Body for Auditors and inclusion of the assurance opinion for each of the relevant HFI periods. Where the auditor's report is modified, an explanation of the reasons for the modification together with a description of the manner in which the modification will be resolved in order to ensure compliance with paragraph 4.13(a) of the Requirements;
- A statement from the board of directors of the issuer that save for changes arising from new or revised standards of the relevant reporting framework; the accounting policies used in the preparation of the HFI have been consistently applied for each of the financial periods;
- Where a change in accounting policy is applicable to any of the financial periods presented, an explanation of the reasons for such change and impact on the HFI (where not already disclosed in the HFI);
- Where the issuer or DA is aware of any significant changes to the HFI as a result of the translation from IFRS for SME's to IFRS, these changes must be clearly disclosed together with a description of the potential impact on the HFI with particular relevance to paragraph 21.3 of the Requirements;
- A statement from the board of directors of the issuer that the HFI is free from material misstatement and fairly presents in accordance with the relevant reporting framework;
- A year on year comparison of the statement of profit and loss and comprehensive income, statement of financial position and statement of cash flows for HFI periods to identify and discuss anomalies that may be noted in the comparison;
- The medium and long term forecast statement of profit and loss and comprehensive income, statement of financial position and statement of cash flows of the issuer which must address the remainder of the current financial period and at a minimum three full financial periods thereafter. The forecasts financial information must include clearly documented assumptions and forecast drivers. The manner in which the assumptions tie in with the issuer's strategy must be addressed. The forecast financial information must incorporate the adjustments necessary to reflect the impact of any capital raising and/or acquisitions/disposals; and
- Details of current and near future funding requirements of the issuer.

The submission of the listing documents must include financial information prepared in terms of IFRS as contemplated in section 8 of the Requirements. Where significant changes between the financial information (HFI and forecasts) presented in the business plan to the Committee and listing documents are noted the issuer and DA are required to provide explanations for such changes with the submission of the listing documents. Where such changes are deemed significant to the recommendation of the Committee, the JSE may direct the issuer to seek a further recommendation from the Committee based on the IFRS compliant financial information.

## 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;
- The DA will then be permitted to make the formal submission of the business plan for consideration by the Committee.
- 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.

#### **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 Documents*" 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 fletters 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 fall 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 clearly observe the provisions of paragraph 3.71 and 3.72.

### **Prohibited periods**

Prohibited periods are clearly 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 JSE'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 3.82(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 3.82(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 utilised as a regulatory tool by the JSE as the Requirements cannot envisage all circumstances that may arise in commercial practice which may warrant a suspension.

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

## **Trading Halt**

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

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

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

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

Trading halts are implemented for a very short period of time and should generally not exceed two days. The JSE does however reserve the right to rather implement a suspension of the listing of the securities of an issuer in accordance with the provisions of the Requirements.

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

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

## **Dual Listings**

It is common practice in certain primary markets to either suspend the issuer or halt trading in the securities of the issuer in circumstances not envisaged in the Requirements. In the event of such a suspension or trading halt, the general approach of the JSE will be to follow the regulatory approach of the primary market and mirror the suspension or trading halt on the JSE. The timing in the suspension or trading halt is of vital importance to the JSE in order to ensure that the suspension or trading halt is implemented simultaneously on both markets in order to avoid a situation where investors can trade in 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 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 signing 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 all 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 no longer accept any submissions that are not properly signed-off as explained 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 it 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.

### **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.

### **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: 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 weakened 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.

### The Requirements

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.

