

Amendments to the regulation of primary and secondary listings on the JSE



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□ On 5 November, the JSE Limited (JSE) announced amendments to its Listings Requirements to strengthen the regulation of primary listings and secondary listings. The amendments follow an extensive consultation process with the market and the public that kicked off in September 2018 after the JSE released a consultation paper (Paper) on *“possible regulatory responses to recent events surrounding listed issuers and trading in their shares”* ([click here](#) to read the e-alert on the Paper). Following the consultations, the JSE published draft amendments in April 2019 for formal comment ([click here](#) for the e-alert on the draft amendments).

Effective date

The amendments will become effective on **2 December 2019**. The JSE will, however, allow for a transitional period for certain provisions and will provide listed companies with guidance on the implementation of certain amendments before the effective date, to afford them enough time to adhere to the amendments.

Key amendments to the regulation of

primary listings

Stricter conditions for listing on the Main Board

The JSE introduces stricter listing criteria for entry on the Main Board, including the following:

- *subscribed capital requirement*: companies seeking a listing on the Main Board must meet the subscribed capital requirements (of at least ZAR50 million generally or ZAR500 million for companies without a profit history) before listing and not through listing;
- *shareholder spread requirement*: the definition of “public shareholders” has been narrowed down. Shares held by a director’s extended family or by prescribed officers or which are held by any person subject to a six-month or longer restricted trading period imposed by the issuer, are no longer regarded as being held by the public. Prior to listing, the board of directors and the sponsor will be required to make a positive statement to the JSE that the public shareholder requirement has been achieved and evidence the basis for this conclusion. Where the listing is by way of introduction, the board of directors will additionally be required to make the positive statement confirming this requirement in the pre-listing statement (PLS);
- *new listing announcement*: companies applying for a listing on the JSE through a placing or an introduction will need to publish an announcement on the Stock Exchange News Service (SENS) 10 business days (increased from 5 business days) prior to the date of listing to give investors sufficient time to assess the listing. Sponsors and boards of directors will also be required to confirm in writing to the JSE on listing that no material objection was reported to either of them in respect of the listing during that period (and to immediately notify the JSE should any such objection be

notified or reported); and

- *appointment of sponsor*: issuers must appoint an independent sponsor (as was the case prior to September 2014).

Enhanced disclosure requirements

- *dealings in securities*: the disclosure requirements applicable to transactions in an issuer's securities are enhanced. All dealings by prescribed officers or their associates in securities of the issuer must now be disclosed (in addition to disclosure by directors, the company secretary or their associates). Dealings in securities are extended to include agreements giving rise to security interests over the issuers' securities. These types of agreements trigger an announcement obligation: at the time the agreement is concluded; at the time of any exercise of the lender's rights thereunder; and at the time of any amendment or termination of the agreement. The number, value and class of securities offered as security, guarantee, collateral or otherwise must be disclosed, together with the nature, terms and amount of the financial obligation secured by the issuer's securities. In addition, issuers must disclose in their annual report and annual financial statements their directors' (and associates') holdings in securities which are subject to such security arrangements;
- *disclosure of compliance with applicable laws*: the social and ethics committee (SEC) of the issuer must make a positive statement in the PLS that it has complied with its mandate set out in the Companies Act 2008 (Act), read with the Companies Regulations 2011. The SEC must also either state that there is no material non-compliance to disclose, or disclose any such material non-compliance. This disclosure obligation places significant responsibility on the SEC. The board

of directors is also required to make a positive statement in the PLS that the issuer complies with the provisions of the Act (or other relevant laws of its establishment) in relation to its incorporation and that it operates in conformity with its constitutional documents, and must provide a narrative statement on compliance with this provision in its AFS; and

- *material risks disclosure*: all issuers must disclose in their PLS and their annual financial statements (AFS) all material risks which are specific to the issuer, its industry and/or its securities. The disclosure may be via a weblink.

Corporate governance

- *board diversity*: issuers are required to adopt a policy on the promotion of broader diversity on the board, focusing not only on gender and race (as is the present case) but also on the promotion of other diversity attributes such as culture, age, field of knowledge, skills and experience, and the company must publish its performance against the policy annually;
- *appointment of auditor*: the appointment of the auditors of listed companies must be approved by shareholders at each annual general meeting. Accordingly, auditors may no longer be reappointed automatically without a shareholders' resolution to that effect;
- *CEO and FD responsibility statements*: the chief executive officer (CEO) and financial director (FD) are required annually to give substantive responsibility statements, including in respect of the accuracy and completeness of the company's annual financial statements and the adequacy and efficacy of the company's internal financial controls.

Short form announcements dealing with the annual

financial statements

Additional requirements now apply to short form announcements dealing with the AFS requiring, among others: specific disclosure of the presence of key audit matters through inclusion of the full auditors' report and the annual financial statements via a link to the issuer's website: details of the type of review conclusion/audit opinion that was reached (i.e. unqualified, qualified, disclaimer or adverse) and details of any increases/decreases in certain specified financial metrics.

Changes from the draft proposals

The amendments adopted by the JSE are largely in line with the draft amendments published in April 2019 for formal comment, with the incremental changes largely reflecting drafting and conceptual refinements rather than substantive changes or additional provisions. One notable proposed amendment which was not adopted, however, was the proposal to lower from 10% to 5% the threshold at which a shareholder would be classified as 'non-public', and to aggregate associate holdings for this purpose. Given the significant number of institutional and other holdings which lie between 5% and 10%, this will no doubt come as a relief to the market.

Key amendments to the regulation of secondary listings

The key changes in respect of secondary listings on the JSE are:

- *pre-approved list of foreign exchanges*: prospectively, the JSE will only accept secondary listings on the Main Board of the JSE from issuers with a primary listing on an approved exchange. The approved exchanges for secondary listings on the Main Board are presently the Australian Securities Exchange, the London Stock Exchange, the NYSE, the Toronto Stock Exchange, the Nasdaq Stock

Market, Euronext Amsterdam, Euronext Brussels, the Frankfurt Stock Exchange, the Luxemburg Stock Exchange and SIX Swiss Exchange;

- *required announcements*: if the issuer issues notifications in relation to changes to beneficial ownership in a secondary listed issuer or dealings in such issuer by directors or those closely related to directors, as require by local legislation or exchange requirements, such changes or dealings must also be announced on SENS within 48 hours of such notification; and
- *change in the primary listing from the JSE to another exchange*: the JSE will only allow an issuer to electively move its primary listing from the JSE to another exchange while retaining secondary listing on the JSE if the primary exchange it intends to move to is an approved exchange and if the issuer's shareholders have approved such move (the shareholder resolution must set out the key regulatory and disclosure differences between the JSE and the new primary exchange). The provisions which allow the JSE to re-classify a secondary listing on the JSE to a primary listing (and vice versa) if the value and volume of the issuer's shares traded on the JSE exceeded 50% over a 12 month period have also been revised. These provisions now apply to a 24 month period, and only if the primary listing is on an exchange which is not an approved exchange.

As with the changes to the Listings Requirements for primary listings, the amendments adopted by the JSE are in line with those published in April 2019 for formal comment.

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Kind Regards,

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