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Accommodations by the JSE in meeting obligations under the JSE Limited listing and debt listing requirements

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The Covid 19 outbreak, and the subsequent inevitable lock-down and other measures taken by the government to curb the spread of the virus has caused substantial unforeseen operational and public disruptions. These measures have, or may in the near future, hamper the ability of an issuer to meet its obligations under the JSE Limited Listing Requirements ("**Requirements**").

Financial Obligations under the Requirements

The Johannesburg Stock Exchange ("**JSE**"), being fully aware of this, issued a letter on 25 March 2020, urging all issuers, in consultation with advisors or sponsors, to assess the impact of the Covid 19 outbreak on its financial reporting and audit processes. The letter sets out a framework to be followed by issuers in applying for variations in its reporting obligations if it is unable to meet such obligations, either timeously or completely, as a consequence of the Covid 19 outbreak.

Issuers may be at risk of not fulfilling the following paragraphs pertaining to its financial obligations in the Requirements:

(a) paragraph 3.15 which requires issuers to publish interim reports (it also deals with issuers who report to shareholders on a quarterly basis);

(b) paragraph 3.16(a) which deals with requirements relating to the publishing provisional reports;

(c) paragraph 3.19 to 3.22 dealing with the requirements pertaining to the publishing of annual financial statements;

(d) paragraph 8.57 – 8.61 which sets out the requirements for the minimum contents of the interim reports, preliminary reports, provisional annual financial statements and abridged annual financial statements (including further information specifically dealing with supplementary information to be included therein, change of financial year end, audited/reviewed interim, provisional and abridged annual reports and the basis of presentation);

(e) paragraph 8.62 and 8.63 which deals with the minimum contents of annual financial statements, it specifically lists certain information that issuers are required to disclose in their annual report and annual financial statements;

(f) paragraph 3.18 which deals with the requirements for review by auditors and reports issued by auditors; and

(g) paragraph 8.62(c) which states that annual financial statements must be audited in accordance with International Standards on Auditing or, in the case of overseas companies, in accordance with national auditing standards acceptable to the JSE or International Standards on Auditing.

If such an issuer foresees that it will be unable to meet any of the above mentioned financial reporting obligations, either timeously or completely, as a consequence of the outbreak, it can engage with the JSE and apply for a Reporting Variation as defined below. The JSE will take the appropriate action, on a case by case basis, which may include, *inter alia*:

(a) an extension to the periods to publish any interim, preliminary or provisional reports or annual financial statements;
(b) a variation of the content of the financial information as it relates to minimum content and disclosure required as set out in d and e;
(c) a variation on the timing and nature of the assurance report, as identified under f and g above,

each action being referred to as a "**Reporting Variation**".

The JSE may also take other measures and actions if the above mentioned Reporting Variations are not appropriate for the circumstances. These Reporting Variations will only need to be applied for where the general blanket extension of compliance periods granted by the Financial Sector Conduct Authority ("**FSCA**") discussed below, do not assist the issuer in meeting its obligations.

Process for Requesting a Reporting Variation

Issuers must submit certain information under the event type "Ruling Continuing Obligations" via its sponsor on WEBSTIR system. Thereafter, notification of the submission must be sent to Annalie de Bruyn on annalie@jse.co.za to expedite the process. These submissions will be dealt with on an urgent basis.

The following information must be included in the submission for a Reporting Variation:

(a) specification regarding which reporting obligation you need to request a variation for (i.e. extension to publish financial audit report);

(b) the reason as to why the issuer is unable to meet the specific requirement, which must appear under one or more of the following headings,

- "The ability of the issuer to generate financial information";
- "The need for the issuer to reconsider the IFRS impact of the pandemic";
- "The need for the issuer to seek external advice on (b)";
- "The ability of the issuer to provide sufficient appropriate evidence or information to the auditor";
- "The ability of the auditor to complete or perform their assurance engagement"; and/or
- any other practical impediment relevant to the financial reporting Requirements;

(c) the manner in which the issuer intends to address the issue;

(d) the expected timing in which it will publish the relevant financial information together with an explanation of the factors which were taken into consideration in determining the date estimated for publishing;

(e) details of the financial information that can be published in order to provide investors with insights to the financial performance and position of the issuer; and

(f) any other information the issuer wishes to bring to the attention of the JSE.

In addition to the information set out above, the request must be accompanied by a statement signed by the chairperson of the audit committee indicating that he/she is in agreement that the request for a variation will assist the issuer in ensuring that the general principles of the Requirements are fulfilled.

It should be noted that issuers must be responsible in their Reporting Variation requests at all times. One cannot request a variation merely because it does not want to include certain information in its financial statements for example, the inability must have been caused by circumstances relating to Covid 19.

Successful Variation Requests

If the JSE agrees to allow the request for a variation, the issuer must publish a SENS announcement containing the following information:

- the nature of the Reporting Variation that has been agreed, identifying the matter and the variation granted;

- a summary of the reasons provided to the JSE underpinning the request for the Reporting Variation; and
- the expected timing of the normalisation for the issuer's reporting obligations as agreed with the JSE.

The JSE may request to see a draft of the SENS announcement that will be released to the market should the Reporting Variation be granted.

General Obligations Still Applicable

Issuers must still comply with the general obligations of disclosure contained in paragraphs 3.4(a) and 3.4(b) of the Requirements. These trading statements will serve as an important tool to provide investors with insight into the financial performance and financial position of an issuer where a Reporting Variation has been applied for and granted. A granted Reporting Variation will not disqualify one from complying with these general obligations or any other obligations contained in any applicable legislation.

Financial Sector Conduct Authority ("FSCA") – General Blanket Extensions

The JSE has also been engaging with the FSCA in order to determine whether a blanket authority regarding the extension of compliance periods relating to publication of financial results, which the JSE is not authorised to issue, could nonetheless be granted by the FSCA.

On 3 April 2020, the FSCA decided to issue such a market notice having the effect of granting this blanket dispensation as set out below.

Section 90 of the Financial Markets Act 19 of 2012 ("FMA")

The submission periods contained in Section 90 of the FMA (Accounting Records And Audit) read with paragraph 8 of the board notice 96 of 2013, relating to the auditing of accounting records and annual financial statements referred to therein, have now been extended. All regulated persons that must have its accounting records and annual financial statements audited between 31 March 2020 and 30 April 2020, will have a further 2 months to do so. For example, if an issuer's financial year end is 31 January 2020, the date for compliance would ordinarily be 30 April 2020, but has now been extended by a further 2 months to 30 June 2020.

Timeframes in the Requirements

The FSCA has also extended the timeframe, by a further 2 months, to comply with the following Requirements:

(a) publishing of provisional annual financial statements in terms of paragraph 3.16;
(b) distribution of a notice of annual general meeting and financial statements to holders of securities in terms of paragraph 3.19;
(c) publishing annual financial statements on websites in terms of 19.20; and
(d) submission of audited financial statements to the JSE.

The 2 month extension in relation to the above requirements will apply to issuers with any of the following financial year ends: 31 December 2019, 31 January 2020, 29 February 2020 and 31 March 2020.

Updating the Market

Issuers who have relied on the market notice must, however, ensure that the market is updated through SENS and must notify the JSE in writing of its reliance on such notice for the publication of any financial results. Notifications in this regard can be sent to taniaw@jse.co.za with the subject line "Financial Results Notification of Reliance on the Market Notice [Issuer name]".

Reporting Variation vs Reliance on Market Notice

The above extensions that have been granted in accordance with the FSCA's market notice of 3 April 2020 will apply irrespective of any extensions that may already have been granted to issuers by the JSE.

The framework for applying for a Reporting Variations in terms of the letter issued by the JSE on 25 March 2020, and as set out above, still stand. Therefore, if an issuer's inability to meet any of its financial reporting obligations in terms of the Requirements will not be solved by the blanket extension granted by the FSCA, a Reporting Variation can still be applied for.

Variations to Dividends under the JSE Limited Listing Requirements

The JSE also issued a letter on 30 March 2020 in response to the many requests it has received regarding Dividend Variations in the form of either cancellation of payments, postponements or amendments to the value of dividends which have been previously declared pursuant to the JSE corporate actions timetable.

Therein, the JSE states that an issuer can only cancel a dividend and the resultant payment before the finalisation date ("**FD**"). Any changes made to the pertinent details after the FD but before last day to trade ("**LTD**"), not including the cancellation of the dividend or resultant payment by the issuer, will result in a cancellation of the corporate action timetable and therefore the issuer must start the time table afresh, allowing investors sufficient time and information to make informed decisions insofar as their investments are concerned. It should be noted that a change to the pertinent details results in a cancellation of the corporate action but it does not lead to the cancellation of the dividend declared by the issuer.

If an issuer decides to make a Dividend Variation, it is required to release a SENS announcement stating the reasons for the variation to pay the dividend as per the declaration announcement. Where the dividend variation relates to a postponement and change to the value of the dividend, the issuer is required to announce the new declaration data on SENS in accordance with the corporate actions timetable.

Continued Compliance with the Companies Act

One must at all times have due regard to the provisions of the Companies Act and any other applicable legislation. It is not permissible for issuers to cancel dividends, change pertinent details to declared dividends or postpone dividend declarations without complying with the relevant provisions in the Companies Act.

Conclusion

The JSE has evidently been understanding and accommodating in these unprecedented times. If issuers still foresee being unable to comply or fully comply with any of its obligations in terms of the Requirements, despite the new extended measures and frameworks available to it, it is encouraged to engage with the JSE to find suitable solutions where possible.

Please note that this letter is up to date with the position as at 9 April 2020.

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