

Letter issued by the Johannesburg Stock Exchange on 17 April 2020 on Capital Raising Measures and Other (“JSE Letter”)

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by Kyra South, Associate

Reviewed by Natalie Scott, Director

1. Background

1.1 Since the outbreak of Covid-19, and the subsequent national lockdown declared in terms of the Disaster Management Act,^[1] (“**National Lockdown**”), a number of companies are facing a liquidity squeeze and need to raise capital in order to meet their financial obligations in the shortest possible time.

1.2 The purpose of the JSE Letter is two-fold:

- to remind companies of the capital raising methods available to them in compliance with the amended JSE Listing Requirements^[2] (“**Requirements**”); and
- to explain a number of changes to the Requirements in light of the Covid-19 pandemic, which are interim measures that are only applicable for the duration of the National Lockdown.

2. Types of Capital Raising Measures

In terms of the Requirements, capital can be raised in one of the following ways:

- general capital raising measures;
- non-renounceable rights offers;
- accelerated specific issue of shares for cash; and
- vendor consideration placings,

(collectively, the “**Capital Raising Measures**”).

Below is a brief description of what each of the Capital Raising Measures entail.

General Capital Raising Measures

- The JSE considers rights offers^[3], claw-back offers^[4]; and issuing shares for cash (both general and specific)^[5] to be “**General Capital Raising Measures**”. In addition, ‘rights offers’ and ‘claw-back offers’ (depending on the relevant pricing parameters that may be stipulated in the relevant sections of the Requirements) do not require the approval of the company’s shareholders in order to be implemented.^[6]
- The above-mentioned methods are widely used in the market, and ‘rights offers’ and ‘claw-back offers’ can be undertaken in 21 days.

Non-Renounceable Rights Offers

- Non-Renounceable Rights Offers^[7] are an expedited way in which capital can be raised. It is important to ensure that *"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"*^[8].
- Non-Renounceable Rights Offers can be issued in 14 days, and also (depending on the relevant pricing parameters that may be stipulated in the relevant sections of the Requirements) does not require the approval of the company's shareholders in order to be implemented.^[9]

Accelerated Specific Issue of Shares for Cash

- The Accelerated Specific Issue for Cash^[10] permits the issue of shares for cash on an expedited basis in circumstances where capital needs to be raised quickly.
- Should the Accelerated Specific Issue for Cash method of raising capital be used, then it is possible to obtain formal approval from the JSE within 48 hours of submission. The JSE may also waive the issue of shares for cash requirements^[11] *"if it is satisfied that the conditions as stipulated in Schedule 11 of the Requirements exist"*.^[12]

Vendor Consideration Placings

- Vendor consideration placings has the following requirements –

"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".^[13]

In addition, related party considerations are not applicable if capital is raised using the Vendor Consideration Placings method, which (depending on the relevant pricing parameters that may be stipulated in the relevant sections of the Requirements) does not need the approval of the company's shareholders in order to be implemented.^[14]

3. Relief Measures

Severe Financial Difficulty

- Due to the Covid-19 pandemic, some companies will be facing severe financial difficulties and will have to either dispose of a large portion of its business or issue shares for cash in order to meet its working capital requirements or reduce its liabilities.
- When such a situation arises, the company will have to act expeditiously. As a result, and in light of restrictions imposed during the National Lockdown, it will be difficult to prepare a circular and convene an annual general meeting of the shareholders as prescribed by the Requirements.

The JSE has agreed to relax the usual requirements regarding the preparation of a circular, and the way in which shareholder approval is obtained to a certain extent, in order for a company to issue shares for cash^[15] expeditiously. This, however, is subject to the provisos that the company can prove that it is in severe financial difficulties, and that it has complied with schedule 11 of the Requirements. If, however, a circular is still required for a company to issue shares for cash, the JSE has undertaken to review the circular on an expedited basis, provided that urgency of the pending issue can be demonstrated by the company.

Rights Offer Circular

- For rights offer circulars^[16] which are disclosure based (and do not require the approval of the shareholders of the company), the JSE (subject to its usual procedures^[17]) has undertaken to review these circulars on an expedited basis.
- Providing that the rights offer circular referred to in the point above complies with the usual requirements for a first submission of a rights circular, the JSE has stipulated the following timelines for the review and approval of the circular during the National Lockdown:
 - 48 hours for informal comments on the first submission of the rights circular;
 - 48 hours for informal comments on the second submission of the rights circular, and possible informal approval; and
 - 24 hours for a formal approval of the rights circular.

Documents and Consents Available for Inspection

- In the event that the JSE approves a rights circular during the National Lockdown, the JSE will not require the documents (referred to in the rights circular) to be made available at the registered office of the company^[18] for the period of the National Lockdown.
- Instead, the JSE will require the company to make the documents available on the company's website. It is important that these documents are clearly marked and easy to find on the Company's website.

[1] Act 57 of 2002.

[2] JSE Listing Requirements Service Issue 27.

[3] Section 5.28 of the Requirements.

[4] Section 5.38 of the Requirements.

[5] Sections 5.50 – 5.57 of the Requirements.

[6] Page 2 JSE Letter.

[7] Section 5.22 of the Requirements.

[8] Section 5.23(b) of the Requirements.

[9] Page 2 JSE Letter.

[10] Section 11.19B of the Requirements.

[11] See sections 3.33 and 5.54 of the Requirements.

[12] Page 2 of the JSE Letter.

[13] Section 5.62 of the Requirements.

[14] Page 2 JSE Letter.

[15] Sections 5.51 – 5.53, and 9.20 – 9.29 of the Requirements.

[16] Note: rights offer circulars only apply to renounceable rights offers, non-renounceable rights offers and claw-back offers. If a company requires any other capital raising circular to be subject to an expedited review and approval procedure, the company must contact the JSE.

[17] Section 16.3 of the Requirements.

[18] Section 7G of the Requirements.



Natalie Scott

Head of Sustainability

[View Profile](#)



Kyra South

Director

[View Profile](#)