

Ref: 775666

20 May 2024

Johannesburg Stock Exchange (JSE)
By email: alwynf@jse.co.za.

To Whom It May Concern

**SAICA COMMENT LETTER ON THE AMENDMENTS TO THE JSE LISTING REQUIREMENTS:
MARKET SEGMENTATION**

We refer to your invitation of 18 April 2024 for written comments on the proposed amendments to the JSE Listings Requirements: Market Segmentation Project, which proposes to reposition the JSE's Main Board into two segments, being the Prime and General Segments.

We wish to extend our appreciation for your willingness to engage with us throughout the JSE Simplification Project and for providing us with an opportunity to convey further comments prepared by The South African Institute of Chartered Accountants (SAICA).

Our submission pivots around the expectation to continue to meaningfully converse and engage with the JSE. We are appreciative of the opportunity to discuss potential pitfalls and to unpack the way in which the profession can constructively assist in this very important project. We are confident that we can find workable solutions through continued engagement on our mutual objective to promote the ease of doing business.

We are available to further discuss and engage with you on our comments and questions. You can reach out to us via email: walterb@saica.co.za.

Yours sincerely



Walter Bhengu
Project Director: Legislation and Governance

COMMENTS ON NAMING CONVENTION:

1. The segmentation naming convention may not adequately describe the distinguishing characteristics of each segment. Essentially the distinction is based on market capitalisation size (with reference to the FTSE/JSE All Share Index) with the top 99% forming the Main Board Prime tier and the balance by market cap forming the Main Board General segment. Initially, the default will be that all issuers are classified into the Main Board Prime segment, so it is assumed that those issuers not forming part of FTSE/JSE All share index could still elect to remain within the Main Board Prime segment, in order to preserve their status as forming part of the 'elite' Primary segment and avoiding the inevitable connotation that may be associated with not forming part of a Primary segment.
2. Main Board General segment also does not adequately describe the market cap size distinction, and may suggest an alternative segment classification.
3. There is also a possibility of confusion with the generally accepted naming convention associated with Primary vs Secondary markets. It is perhaps reasonable to conclude that current secondary listing issuers on the JSE had elected to apply for secondary market listing on the JSE to facilitate trading in their securities. Due to the liquidity and free float requirement for remaining in the FTSE/JSE All Share Index, it could be anticipated that current secondary listing companies may not elect to apply for Main Board General segment re-classification.
4. Perhaps a naming convention more accurately describing the characteristics of the different components is preferable. The distinction is essentially: an Index Based Segment and a Reduced/(Minimum) Disclosure Segment and this may avoid some of the negative connotation that could develop from not forming part of the Main Board Prime Segment.

DETAILED COMMENTS

Proposal	Agree/Disagree	Provide additional comments
<p>1. The obligation to announce results dealing with condensed financial statements or annual financial statements/summary financial statements do not apply, and will be limited to the release of the annual report within 4 months from financial year-end;</p>	<p>Clarity</p>	<ol style="list-style-type: none"> 1. Clarity is sought on the intention of moving from financial statements to an annual report. 2. This change does allow for more time, but if this does not apply, would the normal Companies Act requirements apply? 3. In addition, is the 4 months period sufficient time for shareholders to get access to year end results since condensed financial statements bridges gap in lapse of period?
<p>4. Removal of fairness opinions for a specific issue of shares for cash, general authority (issue of options/convertibles), specific repurchase, related party transactions and small related party transactions provided the related party corporate action agreement is open for inspection and the corporate action is accompanied by a statement by the independent members of the board dealing with:</p> <p>(a) the corporate governance processes that were followed to approve the corporate action;</p>	<p>Suggestion</p>	<ol style="list-style-type: none"> 1. The benefits of these opinions may be to provide shareholders with some assurance and should be retained irrespective of the segment of the JSE that is being traded on 2. Section 4.59(b)(iii) requires a statement by the independent members of the board, as to whether the related party corporate action was conducted on an arm's length basis....and is fair to shareholders. It is suggested that this requirement is equivalent to the existing fairness opinion with the difference being that it is now only required from the independent directors so

<p>(b) if applicable, that the related party and their associates will be excluded from voting; and (c) whether the related party corporate action was concluded on an arm's length basis (including key assumptions and factors taken into account in reaching the conclusion) and is fair to shareholders;</p>		<p>perhaps the word "statement" could be replaced with "opinion", Significant judgement is required in concluding that a transaction was concluded on an arm's length basis and is fair to shareholders. The independent directors may decide to engage with professional experts to assist with forming such an opinion to shareholders. The current wording further implies that possibly all the independent members of the board will have to issue this statement. The MOI may have to be amended to provide for either a simple majority or unanimous consent of independent directors required to approve the issue of this statement</p>
<p>5. 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;</p>	<p>Disagree</p>	<p>There are instances where shareholder approval would be required in terms of the Companies Act, such as where shares are being issued to director or related party (see section 41). The Listings Requirements must not contradict the Companies Act. It must be stated that this requirement is subject to the relevant provisions in the Companies Act.</p>
<p>6. In respect of a specific authority to repurchase securities from parties</p>	<p>Agree</p>	<p>This aligns with the principles of the simplification project.</p>

<p>other than related parties, shareholders' approval in terms of 5.69(b) is not required provided it does not exceed 20% of the issuer's share capital in any one financial year;</p>		
<p>7. In respect of general authority to repurchase securities, shareholders' approval in terms of 5.72(c) is not required;</p>	Agree	This aligns with the principles of the simplification project.
<p>8. A pre-listing statement is only triggered for share issuances exceeding 100% (increase by 100 % currently 50%) over a three-month period;</p>	Agree	This aligns with the principles of the simplification project.
<p>9. Only one year audited historical financial information (which includes comparative results) is required for the subject of a category 1 transaction (currently three years of audited historical information);</p>	Clarity	It would be easier to refer to two years of audited historical financial information as opposed to including comparative results. The current wording complicates the process and may be open to different interpretation.
<p>10. The preparation of pro forma financial information is not required but rather a detailed narrative must be provided on the impact of the transaction/corporate action on the financial statements;</p>	Clarity	<ol style="list-style-type: none"> 1. What would constitute detailed narrative versus what is contained in pro forma information? 2. The proposed changes to 8.15 seeks to replace the preparation of pro-forma information with a detailed narrative of the impact of the transaction on the financial statements. This narrative should require disclosure of the effect of the transaction/corporate action on key stakeholder

		information such as liquidity, solvency, capital structure, turnover, employment, related party transactions, debt costs, cash flows and profitability (HEPS and EPS).
11. In respect of 9.20 and 9.21 shareholders' approval and a circular is not required for transactions by a subsidiary that is listed on the JSE;	Agree	This aligns with the principles of the simplification project.
12. The category 1 percentage ratio is 50% or more (increase by 20%, currently 30%);	Clarity	9.15(b) requires ratio to be 50%, but section 9.15 deals with category 2. Is this perhaps an incorrect reference?
13. The material shareholder definition percentage ratio is 20% (increase from 10% to 20%);	Agree	This aligns with the principles of the simplification project.
14. The small-related party transaction percentage ratio is less than or equal to 10%, but exceeds 3% (increase by 5% and 2.75% respectively, currently 5% and 0.25%); and	Clarity	This should be in reference to 10.7 and not 10.9 in relation to the percentages
15. In relation to a new listing, an applicant issuer is not required to comply with 8.2(d), being historical financial information of any category 1 acquisition or disposal effected in the current or preceding financial year.	Clarity	This section has been repealed. It is therefore unclear what this amendment means. For new listings, the historical financial information is crucial information.

<p>16. The main board is segmented through the classification of main board primary issuers in either the prime or general segment.</p>	<p>Suggestion</p>	<p>As a term defined in the JSE listings requirements, "Main Board" should be capitalised.</p>
<p>17. The general segment affords issuers with a main board primary listing with different application of certain provisions of the Requirements.</p>	<p>Suggestion</p>	<p>It is understood that the objective of the proposal is to allow segmentation only for issuers who are either listed solely on the JSE or who have their primary listing on the JSE.</p> <p>"primary listing" is currently defined with reference only to a security listed on "more than" one exchange. For issuers listed only on one exchange, i.e., the JSE, this enabling provision may not apply.</p> <p>Suggestion: "...issuers with a primary main board listing with different...".</p>
<p>18. 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 and the FTSE/JSE All Share Index exclusion rules.</p>	<p>Clarity</p>	<p>It is understood that the general segment is only available to issuers with a primary listing on the JSE. We question whether it is appropriate to use "published market capitalisation on a licensed exchange" as a test for an issuers likelihood of being granted the status of general segment issuer? "Published market capitalisation on a licensed exchange" may lend itself more to an issuer already being listed, and possibly listed on another exchange, in which case the "general" segment, as well as "new listing" may not be applicable.</p>

		<p>Additionally, "free float" may also lend itself more to an issuer that is already listed, not a new listing.</p>
<p>19. An issuer in the general segment can at any time, on application to the JSE, seek re-classification to the prime segment. The effective date of re-classification must be stated in the application to the JSE</p>	<p>Clarity</p>	<ol style="list-style-type: none"> 1. 4.57 does not specify the criteria that will be considered by the JSE in an application to re-classify to the Main Board Prime segment. The implication is that applications will be considered from issuers even if the issuer does not meet the mandatory re-classification criteria contained in paragraph 4.58. There may be a need to clarify criteria for reclassification. 2. In the alternative is the wording crafted as such because: since classification in the general segment is a voluntary process (subject to the JSE's discretion), they want to give the issuers the option to go back to the primary segment if they prefer. The primary segment does not have any classification criteria; by being an issuer on "the list", an issuer is by default classified in the primary segment. Put differently, all general segment issuers meet the primary segment requirements, but not all primary segment issuers

		meet the general segment requirements.
20. If an issuer in the general segment is included in the FTSE/JSE All Share Index for a period of twelve months, such issuer will no longer be eligible for the general segment and will revert to prime segment, subject to a six month notice period. The 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.	Suggestion	The index gets reviewed quarterly, it could therefore, theoretically, be possible for an issuer to be included in the index in one quarter and excluded two quarters later. SAICA recommends that the requirement rather be “for a period of 12 consecutive months”. This would ameliorate the possibility of an issuer falling in or out of a specific segment within a given financial year, which would complicate reporting and disclosures?