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CORPORATE & COMMERCIAL ALERT

IN THIS ISSUE

COVID-19: Compliance with the JSE Listings Requirements amidst the Pandemic

The Johannesburg Stock Exchange (JSE) has issued a statement addressed to companies listed on the JSE, their sponsors and designated advisors to remind issuers of their continuing disclosure obligations amidst the disruption in the global economy emanating from the spread of COVID-19 (or the Coronavirus). Issuers, assisted by their sponsors and other advisors, are advised to properly investigate the actual and potential impact of the Coronavirus on their business and/or industry on an ongoing basis, to ensure that they are in a position to comply with their disclosure obligations under the JSE Listings Requirements.

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Should the impact of COVID-19 on businesses be announced, as price sensitive information?



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. Price sensitive information is defined in the JSE Listings Requirements as: *"unpublished information that is specific or precise, which if it were made public, would have a material effect on the price of the issuer's securities"*.

In the JSE's Practice Note 2/2015, guidance is provided on what may constitute *"specific or precise"* information, and on how a *"material effect"* should be assessed. It further provides that directors of issuers are required to apply their own discretion in determining what will constitute price sensitive information, and 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.

Are issuers required to publish trading statements, amidst the spread of COVID-19?



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 period to be reported upon next will differ by at least 20% (or 15% for certain property entities which meet the criteria in paragraph 3.4(b)(vii) of the JSE Listings Requirements) from the most recent of the financial results for the previous corresponding period or a profit forecast previously provided to the market in relation to such period.

Issuers may publish a trading statement if the differences are less than 20% (or 15% for certain property entities which meet the criteria in paragraph 3.4(b)(vii) of the JSE Listings Requirements), but which are viewed by the issuer as being important enough to be made the subject of a trading statement.

Issuers are to ensure that they comply with the detailed requirements of paragraph 3.4(b)(i) to (viii) of the JSE Listings Requirements. Issuers who have a policy of publishing quarterly results will be exempt from these requirements, 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.

Should the impact of COVID-19 on businesses be disclosed in their annual report, as a material risk?



For some issuers, the spread of the Coronavirus may constitute a material risk to the issuer's business and/or industry. Issuers are required to disclose a description of all material risks which are specific to the issuer, its industry and/or its securities in the annual report of the issuer, which may be incorporated via a weblink to the website of the issuer.

Proper consideration must be given to the material risks that face the 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.

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What to do should the spread of COVID-19 prevent issuers from publishing its financial results, in accordance with the JSE Listings Requirements?

Issuers must, within four months after its financial year end, and at least fifteen business days before the date of its annual general meeting, distribute to shareholders and submit to the JSE a notice of the annual general meeting and the issuer's audited annual financial statements.

If an issuer has not distributed annual financial statements to all shareholders within three months of its financial year end, it must publish provisional annual financial statements within the three months as specified, even if the financial information is unaudited at that time.

In the JSE's statement, the JSE pointed out that due to the relevant national restrictions imposed on the country in which the issuer is domiciled, there may be an impact on an issuer's ability to comply with the JSE Listings Requirements, regarding inter alia the timeous publication and completeness of its financial results. The JSE does have discretion in this regard and have provided the guideline set out below to issuers who believe that they may not be able to comply with their financial reporting obligations.

Request for a Reporting Variation

The JSE have advised that considering the measures implemented in South Africa and globally to deal with the spread of the Coronavirus, where issuers believe they may not be able to meet their financial reporting obligations, issuers may request a variation of its financial reporting requirements (Reporting Variation) and the JSE shall consider such request on a case by case basis, in respect of:

- (i) the timing of publication of interim, preliminary, provisional, annual financial statements and notices of annual general meetings, pursuant to paragraphs 3.15, 3.16(a) and 3.19 to 3.22 of the JSE Listings Requirements, respectively;
- (ii) the completeness of interim, preliminary, provisional, and annual financial information pursuant to paragraphs 8.57 to 8.61 of the JSE Listings Requirements;
- (iii) the completeness of the annual financial statements pursuant to paragraphs 8.62 and 8.63 of the JSE Listings Requirements; and
- (iv) assurance reports by the independent auditor on the abovementioned information pursuant to paragraph 3.18 and 8.62(c) of the JSE Listings Requirements.

In the case of issuers that report to shareholders on a quarterly basis, where an issuer is no longer able to continue reporting on a quarterly basis, issuers must give due consideration to the obligations of paragraph 3.4(b)(i) to (viii) of the JSE Listings Requirements as the exemption from these provisions will no longer apply, to such issuer.

Notably, the JSE have warned that in requesting a Reporting Variation, issuers are urged to be responsible in their request so as to safeguard the principle of ensuring that sufficient, timely and reliable financial information is disseminated into the market to enable investors to make informed decisions. Where issuers are capable of providing certain financial information which will provide insights to investors in respect of financial position and performance such information should be provided in accordance with the JSE Listings Requirements.

The process of submitting a Reporting Variation request

The JSE advised that issuers are required to submit the following information under the event type "Ruling - Continuing Obligations" (for which no fee is payable) via its sponsor on the web based submission system WEBSTIR. Notwithstanding the period referred to in paragraph 16.3 of the JSE Listings Requirements, the JSE undertakes to deal with such requests on an urgent basis.

The Reporting Variation request is to include the following information:

1. the appropriate matter set out under points (i) to (iv) above;
2. the reasons why the issuer cannot comply with the JSE Listings Requirements, to be detailed under one or more of the following headings:
 - a. the ability of the issuer to generate financial information;
 - b. the need for the issuer to reconsider the IFRS impact of the pandemic;
 - c. the need for the issuer to seek external advice on (b);

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- d. the ability of the issuer to provide sufficient appropriate evidence or information to the auditor;
 - e. the ability of the auditor to complete or perform their assurance engagement; and
 - f. any other practical impediment relevant to the financial reporting requirements of the issuer;
3. for each of the items identified in (2) above:
 - a. the manner in which the issuer intends to address each of these items; and
 - b. the expected timing of publication of the relevant financial information together with an explanation of the factors considered in determining the estimated date of reporting;
 4. details of the financial information that can be published to provide insights to investors of the financial performance and position as discussed in 2 above; and

5. any other information the issuer wishes to bring to the attention of the JSE.

The request must be accompanied by a statement signed by the chair of the audit committee that he or she is in agreement that the request will assist the issuer in ensuring that the General Principles of the JSE Listings Requirements are upheld.

Disclosure of the Reporting Variation

Should the JSE agree to an issuer's request, a SENS announcement containing the following minimum information is required to be published by the issuer:

- 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.

2019 THE LEGAL DEALMAKER OF THE DECADE BY DEAL FLOW

2019

M&A Legal DealMakers of the Decade by Deal Flow: 2010-2019.
 1st by BEE M&A Deal Flow.
 1st by General Corporate Finance Deal Flow.
 2nd by M&A Deal Value.
 2nd by M&A Deal Flow.

2018

1st by M&A Deal Flow.
 1st by M&A Deal Value.
 2nd by General Corporate Finance Deal Flow.
 1st by BEE M&A Deal Value.
 2nd by BEE M&A Deal Flow.
 Lead legal advisers on the Private Equity Deal of the Year.

2017

2nd by M&A Deal Value.
 1st by General Corporate Finance Deal Flow for the 6th time in 7 years.
 1st by General Corporate Finance Deal Value.
 2nd by M&A Deal Flow and Deal Value (Africa, excluding South Africa).
 2nd by BEE Deal Flow and Deal Value.

DealMakers

2016

1st by M&A Deal Flow.
 1st by General Corporate Finance Deal Flow.
 2nd by M&A Deal Value.
 3rd by General Corporate Finance Deal Value.

2015

1st by M&A Deal Flow.
 1st by General Corporate Finance Deal Flow.

CDH is a Level 1 BEE contributor – our clients will benefit by virtue of the recognition of 135% of their legal services spend with our firm for purposes of their own BEE scorecards.

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 1 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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