

Ref #695147

29 October 2018

The Johannesburg Stock Exchange Limited (JSE)

Email: [consultation@jse.co.za](mailto:consultation@jse.co.za)

Dear Sir

**SAICA SUBMISSION ON THE JSE's CONSULTATION PAPER, ON POSSIBLE REGULATORY RESPONSES TO RECENT EVENTS SURROUNDING LISTED ISSUERS AND TRADING IN THEIR SHARES**

In response to your request for comments on the *JSE's Consultation Paper, on possible regulatory responses to recent events surrounding listed issuers and trading in their shares*, attached is the comment letter prepared by The South African Institute of Chartered Accountants (SAICA).

We thank you for the opportunity to provide comments on this document.

Please do not hesitate to contact us should you wish to discuss any of our comments.

Yours sincerely,

**Juanita Steenekamp (CA (SA))**

**Project Director – Governance and Non-IFRS Reporting**

## RESPONSE TO REQUEST FOR SPECIFIC COMMENTS

### 3. Considerations for strengthening the regulation of primary listings

#### *Section 3.3 Compliance with applicable laws*

##### POSSIBILITIES FOR CONSIDERATION

The JSE is considering whether it would be appropriate to emphasize this requirement by:

- First, requiring disclosure in the pre-listing statement of the relevant laws that apply to the applicant issuer's
  - (i) establishment (Companies Act) and
  - (ii) main industry of operation (i.e. mining issuer complying with relevant mining laws); and
- Second, requiring the Board of the applicant issuer to include and take responsibility for a positive statement regarding compliance with the above applicable legislation in the pre-listing statement. This would need to be accompanied by specific reference to the steps and measures undertaken to enable the directors to make the required positive statement.

This measure could be extended as a disclosure item in the annual report of the issuer on an annual basis to ensure focused attention to the above applicable laws applying to the issuer.

#### **Response:**

SAICA is of the view that it is impractical to list all relevant laws and legislation in the pre-listing statement that apply to the applicant issuer's establishment and main industry of operation. A list of laws and regulations will not add any value to the listing.

We support the fact that the Board of the applicant issuer should take responsibility for a positive statement regarding compliance with the above applicable legislation in the pre-listing statement. The responsibility of the board to issue a positive statement on compliance to applicable legislation will ensure more focus to perform their duties with due care.

#### ***Section 3.4 Mandatory training for members of the Audit Committee and Company Secretaries***

##### POSSIBILITIES FOR CONSIDERATION

#### **Audit Committee**

The JSE is considering introducing an amendment to the Listings Requirements, requiring all the members of the audit committee to undergo formal training on their responsibilities pursuant to the provisions of the Companies Act and the Listings Requirements:

- Prior to listing and as a continuing obligation post listing (for new members);
- On a continuing basis should there be material amendments to the Listings Requirements.

### **Company Secretary**

The JSE is further considering introducing an amendment to the Listings Requirements, requiring all company secretaries to undergo formal training on the Listings Requirements:

- Prior to listing and as a continuing obligation post listing (for new appointments); and
- On a continuing basis should there be material amendments to the Listings Requirements.

### **Response:**

1. SAICA agrees that members of the audit committee should be required to undergo training in respect of their responsibilities, especially with the increased responsibility of the audit committee in respect of auditor accreditation.
2. It is suggested that a company should provide an induction programme for new audit committee members, which should cover the role of the audit committee, its terms of reference and the expected time commitment of members.
3. Training should also be provided to members of the audit committee on an ongoing basis and should include an understanding of financial statements, applicable accounting standards and recommended practice.
4. The legal and regulatory framework for the company's business, the role of internal and external audits and risk management should also be understood by the audit committee members.
5. The audit committee should therefore be able to consider all their duties as required from a combined assurance model.

### Company Secretary

6. SAICA agrees that the company secretary should be up to date with the Listings Requirements and other legislation affecting the company. The company secretary should undergo ongoing training to ensure that he/she can fulfil the following responsibilities:
  - Ensure that board procedures are complied with.
  - Advise the board on all governance matters.
  - Under the direction of the chair, ensure good information flows within the board and its committees and between senior management and non-executive directors, as well as facilitating induction, arranging board training and assisting with professional development as required.
  - Arrange for the company to provide the necessary resources for developing and updating its directors' knowledge and capabilities.

#### Other committees

We do believe that there should be more focus on the duties and responsibilities of other committees as well. The Audit Committee and Company Secretary's duties are set out in other legislation, such as the Companies Act, 71 of 2008 in detail, but the other committees does not have their duties set out.

#### ***Section 3.5 Non-binding advisory vote on corporate governance.***

##### **POSSIBILITIES FOR CONSIDERATION**

The JSE is of the view, that there is a need for enhanced focus and accountability in respect of corporate governance. Currently, the JSE requires issuers to adopt and apply King IV (apply and explain basis) and further imposes certain mandatory corporate governance provisions on issuers. The JSE is considering, as is the case with a mandatory non-binding advisory vote on remuneration, implementing a mandatory non-binding advisory vote on the issuer's corporate governance report. In a similar fashion, as with the mandatory non-binding advisory vote on remuneration, the JSE would require engagement by the issuer if the governance report is voted down by shareholders exercising 25% or more of the voting rights. The JSE appreciates that practical issues have been raised on the manner of engagement with the mandatory non-binding advisory vote on remuneration and the JSE would appreciate any suggestions on improving the effectiveness of engagement where a non-binding advisory vote receives significant negative votes."

#### **Response:**

While SAICA is supportive of the JSE's efforts to improve the quality of corporate governance, SAICA is **not supportive** of a mandatory non-binding advisory vote on corporate governance.

#### **5 Composition of the Board of directors**

##### ***Section 5.1 Selection of equivalent exchanges***

##### **POSSIBILITIES FOR CONSIDERATION**

In addition to the current requirement for mandatory policies on the promotion of race and gender diversity at Board level as required by the Listings Requirements, the JSE is considering requiring that more emphasis should be placed on overall Board diversity (in age, gender, race, qualifications and the like) so as to enhance the diversity of views expressed and oversight at Board level, something that becomes critical when a company has dominant and charismatic directors.

Creating a Board composed of directors with a broad range of perspectives needs to be a conscious choice by the nominations committee. The natural tendency to turn to existing or well-known relationships/connections when looking to identify candidates impedes diversity.

The JSE is therefore considering introducing a requirement that Boards have and publish a mandatory policy regarding diversity (in its broad sense) at Board level and that they publish performance against that policy on an annual basis.

A further consideration for the JSE is to add a separate mandatory non-binding advisory vote on Board diversity.

**Response:**

SAICA supports the requirement for mandatory policies on the promotion of race and gender diversity at Board level as required by the Listings Requirements as:

- The King IV Report on Corporate Governance for South Africa 2016 (King IV) emphasises the need for the board to comprise the appropriate balance of knowledge, skill, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively.
- Independent directors bring a balanced perspective to the boardroom as they assess matters in a more objective fashion.
- Each individual would bring a wide range of perspectives to the boardroom table.
- Diversity can have a positive effect on the quality of decision-making by reducing the risk of group think.
- Improving diversity at each level of the company will increase the levels of diversity at senior and executive levels.
- The nominations committee should work closely with the human resources department and take an active role in setting and meeting diversity objectives and strategies for the company as a whole, and in monitoring the impact of diversity initiatives.
- Another aspect of diversity that should be considered is that of personal attributes required from the board members.