



FSCA FM Notice 3 of 2020

FINANCIAL MARKETS ACT, 2012

FINANCIAL SECTOR REGULATION ACT, 2017

**EXEMPTION OF CERTAIN PROVISIONS IN THE LISTING REQUIREMENTS REGARDING
PHYSICAL SHAREHOLDER MEETINGS**

The Financial Sector Conduct Authority hereby, under section 6(3)(m) of the Financial Markets Act, 2012 (Act No. 19 of 2012), read with section 281(3) of the Financial Sector Regulation Act, 2012 (Act No. 19 of 2012), exempts certain listed companies of certain provisions in the Listing Requirements made under section 11 of the Financial Markets Act as set out in the Schedule.

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For THE FINANCIAL SECTOR CONDUCT AUTHORITY

Date of publication: 28 May 2020

SCHEDULE

1. Definitions

In this Schedule, “**the Act**” means the Financial Markets Act, 2012 (Act No. 19 of 2012), any word or expression to which a meaning is assigned in the Act shall have that meaning, and unless the context otherwise indicates -

“**Authority**” means the Financial Sector Conduct Authority as defined in section 1 of the Financial Sector Regulation Act;

“**Financial Sector Regulation Act**” means Financial Sector Regulation Act, 2017 (Act No. 9 of 2017)

“**JSE**” means the JSE Limited, a licensed exchange under the Act;

“**listed companies**” has the meaning ascribed to it in the Listing Requirements;

“**Listing Requirements**” means the Listing Requirements of the JSE made under section 11 of the Act; and

“**Main Board**” has the meaning assigned to it in the Listing Requirements.

2. Background and reason for exemption

(1) The spread of COVID-19 and the State of National Disaster declared as a result thereof is having an increasingly significant impact on the local economy. The South African financial markets have not escaped this impact and have been put under immense strain.

(2) Listed companies’ ability to embark on capital raising measures is critical in ensuring the continued viability of the company as a listed entity and going concern. One of the most effective capital raising measures for a listed company is to issue shares for cash, and a company may do so either in terms of a general or specific authority. An investable consequence of an issue for cash is the dilution of the rights of existing shareholders and the value attached to their shares. This is one of the important reasons underpinning the requirement that an issue of shares for cash resolution must be approved by achieving 75% majority of the votes cast by shareholders, subject to certain exclusions.

(3) The typical measure used by listed companies to obtain shareholders’ approval for JSE imposed shareholders’ resolutions is by calling a general meeting of shareholders as provided for in the Companies Act. However with the closing of the SA Post Office since 27 March 2020 with the announcement of the national lockdown and the mandatory imposed social distancing regulations, convening general meetings in the ordinary course is no longer viable.

(4) Section 60 of the Companies Act allows companies to propose a resolution that could have been voted on at a shareholders' meeting to be voted on in writing by shareholders. Paragraph 10.11(c) of Schedule 10 to the Listings Requirements limits the use of written resolutions, pursuant to section 60 of the Companies Act, to four instances in respect of Main Board listed companies, namely change of name, odd lot offers; increase in authorised share capital; and approval of amendments to the memorandum of incorporation. As such, companies listed on the Main Board may not propose an issue shares for cash resolution through means of a written resolution and are obliged to call and hold a general meeting of shareholders in person.

(5) In these circumstances, the unprecedented and unforeseeable events and consequences of the Covid-19 pandemic and the critical importance of taking the necessary and appropriate steps to avoid an economic catastrophe, the Authority is of the view that it would not be contrary to the public interest to, for a limited time, include an issue of shares for cash resolution as one of the matters that may be passed by written resolution as contemplated in section 60 of the Companies Act. This will enable companies listed on the Main Board to raise capital quickly, effectively and with due regard to the rights of all affected.

(6) The Authority has therefore decided to grant an exemption to companies listed on the Main Board of the JSE from the provisions of paragraph 10.11(c) of Schedule 10 read with paragraph 10.11(h) of the Listing Requirements. This will enable these listed companies to, for a limited time, to propose an issue of shares for cash resolution as one of the matters that may be passed by written resolution as contemplated in section 60 of the Companies Act and paragraph 10.11(h) of the Listing Requirements.

(7) The Authority is of the view that the application of these Listing Requirements will cause the listed companies, and their shareholders undue financial or other hardship. The Authority is satisfied that such an exemption is not conflict with the public interest. The Authority is furthermore satisfied that the critical prerequisite for passing such a resolution namely that 75% of shareholders approved the resolution will still be achieved. The exemption will therefore not frustrate the objects of the Act as the interests of clients and investors remain protected.

3. Exemption, conditions of, and extent of exemption

(1) A company listed on the Main Board of the JSE is hereby exempted from the provisions of paragraph 10.11(c), read with paragraph 10.11(h), of Schedule 10 of the Listing Requirements, so that shareholder meetings do not have to be held "in person" and that issue for cash resolutions, being proposed as either a general or specific authority, pursuant to the Listings Requirements may be proposed as written resolutions in accordance with section 60 of the Act.

(2) The written resolutions must comply with the statutory provisions imposed by section 60 of the Companies Act.

(3) The exemption will be effective until 31 December 2020.

4, Amendment and withdrawal of Exemption

This exemption is subject to-

- (a) amendment thereof published by the Authority by notice on the website of the Authority; and
- (b) withdrawal in a similar manner.

5. Commencement

This Notice is called Exemption of Certain Provisions in the Listing Requirements regarding Physical Shareholder Meetings, 2020 and comes into operation on the date of publication thereof on the website of the Authority.