JSE guidance on effective communication with investors

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The JSE has identified focus areas for listed companies to consider when raising capital to weather the Covid-19 crisis, including the amount of information they need to disclose.

Image: JSE

Over the last few months, many issuers have approached investors to raise capital to weather the Covid-19 storm or are in the process of doing so.

In its latest letter dated 10 September 2020, the JSE, informed by input from several investors and from monitoring developments in the market, has emphasised to issuers and their sponsors the importance of timeous, detailed and transparent communication with investors to maximise the success of capital raisings during these uncertain times.

The JSE gives issuers guidance (and in some instances mandatory directives) on how better to assist the investing universe when deciding whether or not to support further capital investment and in price formation when doing so.

In providing this guidance, the JSE also identifies various focus areas for issuers to consider addressing when raising capital. We provide a summary of these key focus areas below.

Detailed business insights

More than ever, investors want a forward-looking assessment of various factors that affect an issuer's business and operations to make their investment decisions. Investors are also particularly interested in insights into uncertainties. Providing information that will assist investors to assess the potential impact of the Covid-19 crisis on the issuer's products and services, supply chains/deliverables and other business impacts is key, including insight into the future cashflow position. Information about debt covenant triggers, how close the issuer is to breaching them and the board's view of debt levels are also specifically highlighted.

These disclosures are further requested to be made when issuers fulfil their continuing obligations under section 3 of the JSE Listings Requirements, as well as when embarking on a specific capital raising.

The JSE also highlights the need for careful attention to compliance with IAS 7 when presenting statements of cashflows, observing that this should be presented with a great deal of detail and that excessive aggregation reduces the usefulness of the information.

Specific disclosures in circulars relating to capital raising

When issuing a circular to investors in relation to a new capital raising, issuers should ensure that they provide a detailed (not an abbreviated or generic) account of the past impact of the Covid-19 pandemic on the business, as well as their future business prospects.

A circular relating to a rights issue or claw-back offer must also contain sufficient detail about the use of the funds to allow investors to effectively consider and assess what the capital raising is meant to achieve. A vague and generic statement (such as "capital restricting" or "pursuing growth opportunities") is not sufficient

Frequency of reporting during the Covid-19 crisis

Although it does not require all issuers to report quarterly, the JSE encourages issuers to increase the frequency of their communications to the market to ensure that investors are kept up to date with the ongoing impact of the Covid-19 crisis on their businesses and operations, which will also help in price formation. These updates should ideally be provided ahead of the time when a trading statement is required and must be provided when a trading statement is issued.

Updates to information released in trading statements

In terms of the JSE Listings Requirements, issuers are required to publish a trading statement as soon as they are satisfied that a reasonable degree of certainty exists that the financial results for the next period to be reported upon will differ by at least 20% from the most recent of (i) the financial results for the previous corresponding period, or (ii) a profit forecast previously provided to the market for that period.

The JSE reminds issuers that the 20% referred to above is the trigger for a trading statement. However, as soon as it obtains more certainty, an issuer must update the market and disclose the actual minimum change in earnings and headline earnings that they anticipate, and not simply reference the 20% threshold.

Additional disclosures for capital raising

The JSE has requested that, for the foreseeable future (at least the next 12 months), the following additional disclosure requirements be included in any capital raising documents:

- details of material loans made to the issuer or any of its subsidiaries;
- a description of the material risks, in particular those impacting cashflows; and
- the business insights referred to above.

Notices of general meetings seeking shareholders' approval to issue shares must now include the various disclosures required in paragraph 11.13 of the JSE Listings Requirements (which are usually only required for a specific method of capital raising, namely rights offers).

Rights offer disclosures and timing

The timetable of a rights issue is critical to reach price certainty and to the success of the capital raising. The success of a rights issue can be prejudiced by issuers making an intention announcement too early in the process, and with insufficient information. Issuers should be wary of announcing their intention to the market before they have finalised the key terms of the offer. The JSE encourages keeping the period between the intention announcement and the formal announcement of the rights offer as short as possible, and all known key terms should be announced as soon as possible, even if not all of the key terms have been finalised. In addition, the identity of any intended underwriters and the business insights (referred to above) should be disclosed as soon as possible.

Enhanced transparency regarding underwriting fees

Issuers are currently required to ensure that the underwriting commission paid to shareholders is market-related. To ensure transparency, issuers are now required to include a narrative in their circulars explaining why they believe the underwriters' fee is market-related, based on the nature of the service provided. The disclosures on underwriting arrangements must also include the following:

- details of whether the fee is payable on the entire rights offer or the portion for which irrevocable undertakings were provided;
- the amount payable to each party, expressed both as a rand amount and a percentage of the amount being underwritten; and
- details of any shareholdings held by the underwriter/ sub-underwriter (or related parties) in the issuer.

Where a commitment fee is payable for providing an irrevocable undertaking to support a rights offer, this must also be disclosed. Importantly, the JSE has also extended the application of the abovementioned disclosure requirements to include independent underwriters, not only where the underwriter is a shareholder.

The JSE said it is in general reasonable to expect that the fee payable to a significant shareholder (or one looking to take a long-term significant stake) should be lower than that payable to an independent merchant bank. A narrative statement must be included, explaining why the fee is believed to be market-related, and additional disclosures are required where the recipient of the fee is a related-party to the issuer.

Good corporate governance

The JSE reminds issuers of the importance of applying the highest levels of corporate governance, both generally and specifically in the context of capital raisings. It states that capital raisings can be prejudiced when issuers fail to ensure the necessary governance over the flow of information both internally and externally. Among other things, related parties should not have an advantage in the quality of the information provided to make investment decisions or negotiations regarding fees payable.

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