



JUST SHARE

Investor power for a fairer South Africa

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CC: Mr André Visser
Director: Issuer Regulation
Issuer Regulation Division, JSE
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Dear Alwyn

Just Share's comments on the JSE's "cutting red tape" consultation paper

Just Share welcomes the opportunity to participate in the JSE's proposal "to make the application of the Listings Requirements easier and to do away with 'red tape' in the application of the Listings Requirements".

We acknowledge that this involves a difficult balancing act for the JSE, which is tasked with the dual role of securing regulatory standards, while also allowing listed companies to focus on their business and operations.

We also note that the proposals currently under consideration are aimed at reducing unnecessary red tape and are not part of the JSE's "normal regulatory process", which includes proposing amendments aimed at addressing identified weaknesses, keeping up-to-date with changing practices and removing any unintended consequences.

As an introductory comment, we would like to point out that while there may never be an "ideal" time to undertake this type of exercise, the South African investment community is currently awaiting the release of the Companies Amendment Bill. Media reports indicate that, with regard to at least one issue, that of share repurchases, the proposed amendments to the Act could have implications for the changes being proposed by the JSE in this consultation.

In addition, given the references in the consultation paper to the requirements of the London Stock Exchange, it is perhaps worth bearing in mind that the recently released report by the UK government, 'Restoring trust in audit and corporate governance',¹ could have implications for those requirements.

Just Share's brief comments on the consultation paper are set out in the required table below.

¹ <https://www.gov.uk/government/publications/restoring-trust-in-audit-and-corporate-governance>



We also note that the JSE intends to conduct further consultations later in the year in relation to other proposed amendments to the Listings Requirements, as part of its annual improvement programme.

Just Share would welcome the opportunity to engage with the JSE in relation to a number of important environmental, social and governance concerns, some of which we raised in our response to the JSE's consultation paper in 2018 (a copy of our submission can be found here: <https://justshare.org.za/wp-content/uploads/2018/10/Just-Share-NPC-response-to-JSE-Consultation-Paper.pdf>), and during the JSE's 2020 Annual General Meeting.

These matters include:

- Climate risk disclosure (we were encouraged to see Leila Fourie and others writing about the importance of this in the Business Day recently);
- Electronic / virtual only annual general meetings;
- The publication of the minutes of annual general meetings;
- The nature of the engagement that issuers must undertake with shareholders in the event that non-binding advisory resolutions on remuneration receive less than 75% of shareholder support;
- Policies relating to board race and gender diversity; and
- The filing and tabling of shareholder-proposed resolutions.

We look forward to your guidance as to the best way to engage on these crucial issues.

Yours faithfully

JUST SHARE

per: 

Tracey Davies

Executive Director

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| Proposal Number | Proposal | Supported Yes/No | Why do you say so? |
|-----------------|--|------------------|---|
| 1 | Transactions - Ordinary Course of Business Exemption | No | <p>Removing all thresholds appears to be an unnecessarily drastic amendment, giving directors unrestricted discretion. Abuse of this discretion could have significant consequences for shareholders.</p> <p>Just Share also has concerns regarding the determination of what constitutes “the ordinary course of business”, and with the proposal that it be the JSE, in consultation with the issuer, which determines whether a transaction is in the ordinary course of business. This approach is not sufficiently transparent.</p> <p>We have further concerns relating to ‘ordinary course of business’ as it relates to share repurchases. (see below)</p> |
| 2 | Intragroup Repurchases of Securities | No | <p>It is particularly difficult to evaluate this recommended change without knowing the details of the proposed amendments to the Companies Act.</p> <p>The initial amendments (Sept 2018) proposed that share repurchases ‘conducted in the ordinary course of business on a recognised exchange’ do not need shareholder approval. The JSE is now proposing to add intragroup repurchases to the category of repurchases that do not need shareholder approval. It seems prudent for the JSE to delay any action on this issue until the amendments to the Companies Act have been finalised.</p> <p>A useful amendment to the Listings Requirements would be to improve the disclosure requirements for all share repurchases, bringing them into line with those of the LSE.</p> <p>At a later stage, given the potential conflict of interest inherent in a share repurchase, the JSE should consider requiring that a company buying back its shares be deemed an insider for the purpose of the repurchase. This</p> |



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| | | | would place the company under an obligation to disclose all the relevant information at its disposal and ensure sellers were not at a disadvantage in terms of information. |
| 3 | General Authority to Issue Shares for Cash / Bookbuilds | No | Just Share is concerned that this amendment would increase the dominance of institutional shareholders on the JSE, putting smaller asset managers and retail investors, who are not part of the 'bookbuild community', at a disadvantage. |
| 4 | Pro Forma Financial Information – Disposals | N/A | Just Share has no comment on this proposal. |
| 5 | Abridged Report | Yes | This appears to be a reasonable proposal but Just Share would ask that the JSE encourage issuers to ensure that their websites are up-to-date and the information easily accessible. |
| 6 | Revised Listing Particulars & Reverse Take-Overs | N/A | Just Share has no comment on this proposal. |
| 7 | Rights Offers, Directors and Closed Periods | Yes | Just Share believes this is an appropriate proposal. |
| 8 | Category 1 Disposal and Working Capital Statement | N/A | Just Share has no comment on this proposal. |
| | Any other proposals for the JSE to consider? | | Please see comments in covering letter. |