

Part G— Winding up and Deregistering companies and external companies**40. Winding-up, dissolution and de-registration of companies and external companies***See s. 79 to 83*

- (1) A resolution by a solvent company to wind up must be filed with Form CoR 40.1.
- (2) If a company or external company has failed to file an annual return for two years in succession, as contemplated in section 82 (3)(a), the Commission may deliver a demand in Form CoR 40.3 to the company or external company by registered post, or other means of verified communication, requiring the company or external company to provide the satisfactory information contemplated in section 82 (3)(a)(ii).
- (3) If a company or external company responds to a demand sent to it in terms of sub-regulation (2), the Commission—
 - (a) may deregister the company or external company if the information received in response to the demand confirms that the company or external company is no longer active; or
 - (b) if the information received in response to the demand confirms that the company or external company is active—
 - (i) may require additional information if the information provided is unsatisfactory in terms of section 82 (3)(a)(ii); or
 - (ii) may issue a compliance notice requiring the company or external company to file an annual return for every year that it has failed to do so; or
 - (iii) must issue a compliance certificate, if the information is satisfactory and the company or external company has filed an annual return for every year that it had failed to do so.
- (4) If a company or external company fails to respond within 20 business days after receiving a demand under sub-regulation 2(a) or a request or, in responding, fails to provide satisfactory additional information required in terms of sub-regulation (3)(b)(i), the Commission may—
 - (a) issue a Notice of Pending Deregistration in Form CoR 40.4 to the company or external company; and
 - (b) deregister the company or external company at any time more than 20 business days after delivering the Notice of Pending Deregistration, unless during that time the company or external company has filed its annual return for every year that it had failed to file.
- (5) When any company or external company has been deregistered the books and papers of the company or external company may be disposed of in such way as the Commission may direct.

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- (6) The Commission may re-instate a deregistered company or external company only after it has filed the outstanding annual returns and paid the outstanding prescribed fee in respect thereof.
- (7) An application to re-instate a de-registered company or external company must be made in Form CoR 40.5 and must comply with such conditions as the Commission may determine.
- (8) A notice by a company to transfer its registration to a jurisdiction outside the Republic, as contemplated in section 82 (5), must be filed in Form CoR 40.2, and must be accompanied by—
 - (a) a copy of a special resolution approving the transfer of the company's registration to that jurisdiction;
 - (b) satisfactory evidence that the company satisfies the requirements to register in that jurisdiction; and
 - (c) The fee set out in Table CR 1.

41. Transitional effect of previous regulations concerning insolvent companies

Despite the repeal of the Companies Act, 1973, the regulation for the Winding-Up and Judicial Management of Companies as promulgated under Government Notice R2490 of 28 December 1973, and as subsequently amended from time to time, continues to apply to any matter to which Chapter 14 of the Companies Act, 1973 continues to apply in terms of Item 9 (1) to (3) of Schedule 5 of the Act, until the date to be determined as contemplated in Item 9 (4) of Schedule 5.

Chapter 3 - Enhanced Accountability and Transparency**42. Qualifications for members of audit committees**

See s. 94 (5)

For the purposes contemplated in section 94 (5), at least one-third of the members of a company's audit committee at any particular time must have academic qualifications, or experience, in economics, law, corporate governance, finance, accounting, commerce, industry, public affairs or human resource management.

43. Social and Ethics Committee

See s. 72 (4) to (10)

- (1) This regulation applies to—
 - (a) every state owned company;
 - (b) every listed public company; and

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- (c) any other company that has in any two of the previous five years, scored above 500 points in terms of regulation 26(2).
- (2) A company to which this regulation applies must appoint a social and ethics committee unless—
- (a) it is a subsidiary of another company that has a social and ethics committee, and the social and ethics committee of that other company will perform the functions required by this regulation on behalf of that subsidiary company; or
 - (b) it has been exempted by the Tribunal in accordance with section 72 (5) and (6).
- (3) A board of a company that is required to have a social and ethics committee, and that—
- (a) exists on the effective date, must appoint the first members of the committee ...within 12 months after—
 - (i) the effective date; or
 - (ii) the determination by the Tribunal of the company's application, if any, if the Tribunal has not granted the company an exemption;
 - (b) is incorporated on or after the effective date, must constitute a social and ethics committee and appoint its first members within one year after —
 - (i) its date of incorporation, in the case of a state owned company;
 - (ii) the date it first became a listed public company, in such a case; or
 - (iii) the date it first met the criteria set out in sub-regulation (1)(c), in any other case.
- (4) A company's social and ethics committee must comprise not less than three directors or prescribed officers of the company, at least one of whom must be a director who is not involved in the day-to-day management of the company's business, and must not have been so involved within the previous three financial years.
- (5) A social and ethics committee has the following functions:
- (a) To monitor the company's activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice, with regard to matters relating to -
 - (i) social and economic development, including the company's standing in terms of the goals and purposes of—
 - (aa) the 10 principles set out in the United Nations Global Compact Principles; and
 - (bb) the OECD recommendations regarding corruption;

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- (cc) the Employment Equity Act; and
 - (dd) the Broad-Based Black Economic Empowerment Act;
- (ii) good corporate citizenship, including the company's—
 - (aa) promotion of equality, prevention of unfair discrimination, and reduction of corruption;
 - (bb) contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and
 - (cc) record of sponsorship, donations and charitable giving;
- (iii) the environment, health and public safety, including the impact of the company's activities and of its products or services;
- (iv) consumer relationships, including the company's advertising, public relations and compliance with consumer protection laws; and
- (v) labour and employment, including—
 - (aa) the company's standing in terms of the International Labour Organization Protocol on decent work and working conditions; and
 - (bb) the company's employment relationships, and its contribution toward the educational development of its employees;
- (b) to draw matters within its mandate to the attention of the Board as occasion requires; and
- (c) to report, through one of its members, to the shareholders at the company's annual general meeting on the matters within its mandate.

44. Appointment of auditor or company secretary

- (1) A notice of appointment of auditor, or company secretary, or of person ceasing to act in such capacity, as contemplated in section 85 (3), must be in Form CoR 44.
- (2) A notice issued by the Commission to a company that has failed to appoint an auditor, company secretary, audit committee or social and ethics committee, as required by the Act must be in the form of a compliance notice.

Chapter 4 - Offerings of Company Securities**Part A— Offering Securities****45. Time periods and threshold values***See s. 96 (2)*

- (1) The minimum time required for the purposes of section 96 (1)(g)(v) is 12 months.
- (2) The threshold required in terms of section 96 (2)(a) is R 1 million.

46. Forms relating to securities offerings

- (1) Documents filed in connection with an employee share scheme, as required by section 97 (2)(c) must be accompanied by Form CoR 46.1.
- (2) A certificate required by section 97 (2)(d) must be in Form CoR 46.2.
- (3) An application to exclude categories of persons from a rights offer, as contemplated in section 99 (7) must be filed in Form CoR 46.3.
- (4) An application to register a prospectus, or file a letter of allocation, as contemplated in section 99 (9), must be in Form CoR 46.4, must be accompanied by a copy of the prospectus with any documents required by Parts B or C of this Chapter, and by the fee set out in Table CR 2B.
- (5) A certificate of registration of a prospectus, or of the filing of a letter of allocation, issued by the Commission must be in Form CoR 46.5.
- (6) An application to the commission to allow required information to be omitted from a prospectus, as contemplated in section 100 (9) and (10), must be in Form CoR 46.6.

Chapter 4 - Offerings of Company Securities : Part B— Requirements Concerning Offering of Securities

Regulation 47-r48

Part B— Requirements Concerning Offering of Securities**47. Interpretation**

For the purposes of this Part, and Part C of this Chapter, unless the context indicates otherwise—

- (a) **“King Report and Code”** means the King Report on Governance for South Africa and the King Report and Code of Governance Principles (King III), as amended or replaced from time to time;
- (b) **“property”** includes movable and immovable property, and securities, but does not include any property if its market value is not material; and
- (c) **“vendor”** includes—
 - (i) any person who sells or otherwise disposes of any property to a company; and
 - (ii) the lessor of any property hired or proposed to be leased by a company; and
- (d) **“purchase money”**, when used in respect of any property hired or proposed to be leased by a company, includes the consideration for the lease.

48. Application

- (1) A report by an auditor required by Part C of this Chapter must not be made by any person who is—
 - (a) a director, prescribed officer, or employee of the company or, in the case of a company that is part of a group of companies, of any company that is a part of that group; or
 - (b) a partner or employee of, or a person related to, any such director or prescribed officer of the company or, in the case of a company that is part of a group of companies, of any company that is a part of that group.
- (2) If a company has been carrying on business for less than 5 years, or if a business undertaking has been carried on for less than 5 years, the annual financial statements of the company or business undertaking required by this Chapter must be provided only for the number of financial years that the company has existed, or the business has been carried on.
- (3) To the extent that a person making a report required by Part C of this Chapter considers it necessary to adjust the amount of profits, losses, assets or liabilities dealt with by the report, that person may either—
 - (a) include a note setting out the adjustments the person considers ought to be made; or

- (b) make those adjustments, in which case, the person must—
 - (i) clearly indicate the adjustments that have been made; and
 - (ii) include a note explaining the adjustments that have been made.
- (4) Irrespective of whether a person chooses to set out an adjustment that ought to be made, as contemplated in sub-regulation (3)(a), or makes the adjustment, as contemplated in sub-regulation (3)(b), the person making the report must include a note—
 - (a) setting out a factual basis in support of each adjustment, or proposed adjustment, as the case may be; and
 - (b) identifying which adjustments have a continuing effect on the company, and which do not.

49. Letters of allocation in respect of unlisted securities

See s. 99 (4)

- (1) A company desiring to issue a letter of allocation in respect of unlisted securities must—
 - (a) file a copy of—
 - (i) the letter of allocation for registration; and
 - (ii) any document required in the circumstances by section 99 (4);
 - (b) file any agreement referred to in a document contemplated in paragraph (a), with a translation in an official language, if the agreement is not already in an official language; and
 - (c) pay the prescribed fee as set out in Table CR 2B.
- (2) Upon registering the documents referred to in sub-regulation (1), the Commission must deliver a certificate of the registration of the letter of allocation to the company concerned or the person who submitted them on behalf of the company.
- (3) Every letter of allocation that is issued must—
 - (a) state on the face of it that a copy of it, together with copies of all other documents referred to in sub-regulation (1), have been filed; and
 - (b) include a statement advising that copies of every document referred to in sub-regulation (1) are available, and setting out the manner by which any such copy may be obtained.
- (4) Sub-regulation (3)(b) does not apply to any letter of allocation issued in connection with a renunciation of part of the rights to subscribe in terms of the rights offer.

Chapter 4 - Offerings of Company Securities : Part B— Requirements Concerning Offering of Securities

Regulation 50-r52

50. Rights offers in respect of listed securities*See s. 96 (1)(d)*

A rights offer in respect of listed securities, and all documents issued in connection with it, must satisfy the requirements that would apply to a prospectus in terms of sections 100 and 102 and regulation 51, each read with the changes required by the context.

51. General requirements for a prospectus*See s. 100*

- (1) Every prospectus must be produced in a style that satisfies the requirements set out in section 6 (4) to (6).
- (2) As far as possible the general matter of a prospectus must be presented in narrative form, and statistical matter must be presented in tabular form.
- (3) The information required by the Act and these regulations to be stated in a prospectus must—
 - (a) be set out in print or type;
 - (b) be not less conspicuous than that in which any additional matter is printed or typed;
 - (c) be organised in accordance with the order, and use the headings, of the sub-parts and each of the regulations comprising Part C, as applicable in terms of regulation 55 or 56, as the case may be.
- (4) Every prospectus issued must—
 - (a) state on its face that it is a copy of a registered prospectus; and
 - (b) specify or refer to statements included in it specifying any documents required by the Act or this Chapter to be endorsed on or attached to or to accompany the prospectus when it is filed.

52. Signing, date and date of issue, of prospectus

- (1) A prospectus in respect of an offer for the subscription of shares of a company must be signed by every person named in it as a director of the company or by an agent authorised in writing by a director to sign on behalf of that director.
- (2) A prospectus in respect of any other offer must be signed by every person making the offer, or by an agent authorised by any such person in writing to sign on behalf of that person.
- (3) If a prospectus has been signed on behalf of a juristic person, every director of that juristic person is deemed to have authorised the issue of the prospectus irrespective of whether that director signed it, unless it is proven that it was issued without the director's knowledge, authority or consent.

- (4) Every signature to a prospectus must be dated.
- (5) The date of the prospectus is the date on which it is registered, or the later date, if any, expressly stated on the first page of the prospectus.

53. Access to supporting documents

The original, or a certified copy, of each of the following documents relating to the company, and any subsidiary of the company, must be available for inspection at the registered office of the company from the date that a prospectus is issued by or on behalf of that company, until at least 10 business days after the closing date set out in the prospectus in terms of regulation 71:

- (a) The Memorandum of Incorporation;
- (b) All material contracts referred to in regulation 63, and any other agreement referred to in this Chapter, if the agreement is written;
- (c) A memorandum giving full particulars of any unwritten agreement contemplated in paragraph (b);
- (d) The written consents required by section 102; and
- (e) The relevant power of attorney documents, or resolutions authorising the signing of the prospectus, if all the directors have not signed the prospectus.

Chapter 4 - Offerings of Company Securities : Part C— Items required to be included in a Prospectus
Regulation 54-r55

Part C— Items required to be included in a Prospectus

54. General statement of required information

- (1) Every prospectus must include—
 - (a) all material information relating to the securities being offered including, but not limited to, the information specifically required in this Part; and
 - (b) a narrative statement setting out—
 - (i) the extent to which, and manner in which, the company has applied the principles of the King Report and Code; and
 - (ii) the reasons for any instance of not applying the recommended principles in the King Report and Code.
- (2) If it is the intention to acquire a business undertaking or property with the capital raised by the offering, the prospectus must include a brief history of that business undertaking or property, including—
 - (a) particulars of each business undertaking or property purchased or acquired, or proposed to be purchased or acquired by the company or any subsidiary of the company, if any part of the purchase price of that business undertaking or property is to be defrayed out of the proceeds of the issue;
 - (b) the amount, if any, paid or payable in cash or securities for any such business undertaking or property, specifying the amount, if any, paid for goodwill;
 - (c) the name and address of the vendor of the business undertaking or property; and
 - (d) if there is more than one vendor, the amount payable in cash or securities to each vendor.
- (3) If the offer is not being underwritten, the prospectus must either—
 - (a) include a statement by the directors setting out the manner in which, and the sources from which, any shortfall in the amount proposed to be raised by means of the offer is to be financed; or
 - (b) state that the offer is conditional on the raising of the specified minimum amount.

55. Specific matters to be addressed in a prospectus for a limited offer

If a prospectus—

- (a) offers unlisted securities of a company that are in all respects uniform with previously issued securities of the same company; and

- (b) sets out an offer that is being made only to existing holders of that company's securities, irrespective of whether the offer includes a right to renounce in favour of other persons,

the prospectus must include all of the material information concerning the offer, set out in separate sections and paragraphs, in the following order:

Section 1 — Information about the company whose securities are being offered

A separate enumerated paragraph for each topic described in regulations 57 to 64, to the extent that the regulation applies to the offer, using the relevant regulation heading as the paragraph title.

Section 2 — Information about the offered securities

A separate enumerated paragraph for each topic described in regulations 70 to 72, to the extent the regulation is applicable to the offer, using the relevant regulation heading as the paragraph title.

Section 3 — Statements and Reports relating to the offer

A separate enumerated paragraph for each topic described in regulations 74 to 78, to the extent that the regulation is applicable to the offer, using the relevant regulation heading as the paragraph title.

Section 4 — Additional material information

Separate enumerated paragraphs as required to address any material information relating to the offer, not contemplated in sections 1, 2 or 3 above.

Section 5 — Inapplicable or immaterial matters

A list setting out those regulation numbers and headings contemplated in the outline for Sections 1, 2 or 3 above that are not applicable in the circumstances of the offer.

56. Specific matters to be addressed in a prospectus for a general offer

Any prospectus not contemplated in Regulation 55 must include all of the material information concerning the offer, set out in separate sections and paragraphs, in the following order:

Section 1 — Information about the company whose securities are being offered

A separate enumerated paragraph for each topic described in regulations 57 to 69 that is applicable to the offer, using the relevant regulation heading as the paragraph title.

Section 2 — Information about the offered securities

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A separate enumerated paragraph for each topic described in regulations 70 to 73 that is applicable to the offer, using the relevant regulation heading as the paragraph title

Section 3 — Statements and Reports relating to the offer

A separate enumerated paragraph for each topic described in regulations 74 to 80 that is applicable to the offer, using the relevant regulation heading as the paragraph title

Section 4 — Additional material information

Separate enumerated paragraphs as required to address any material information relating to the offer, not contemplated in sections 1, 2 or 3 above.

Section 5 — Inapplicable or immaterial matters

A list setting out those regulation numbers and headings contemplated in the outline for Sections 1, 2 or 3 above that are not applicable in the circumstances of the offer.

57. Name, address and incorporation

- (1) Section 1, Paragraph 1 of every prospectus must set out the following information with respect to the company whose securities are being offered:
 - (a) The name of the company, and its registration number;
 - (b) The address of the company's registered office, and
 - (i) the address of the company's primary place of carrying on business in the Republic, if different from its registered office; and
 - (ii) the address of the office of its transfer agent, if any; and
 - (c) The date of incorporation of the company.
- (2) If the company is a foreign company, in addition to the information required by sub-regulation (1), Section 1, Paragraph 1 of a prospectus must also set out—
 - (a) the name of the foreign jurisdiction in which it was incorporated; and
 - (b) the date—
 - (i) and registration number of the company's registration within the Republic as an external company in terms of section 23, if it carries on business within the Republic; or
 - (ii) on which the foreign company filed its Memorandum of Incorporation and list of directors, in terms of section 99 (1)(b).

- (3) In addition to the requirements set out in sub-regulation (1), and (2) if applicable, in any prospectus contemplated in regulation 56, if the company whose securities are being offered is—
- (a) a subsidiary, the first paragraph of section 1 of the prospectus must also include—
 - (i) the name of its holding company; and
 - (ii) the address of the registered office of its holding company; or
 - (b) a holding company, the first paragraph of section 1 of the prospectus must also include, the name, date and place of incorporation of each of its subsidiaries.

58. Directors, other office holders, or material third parties

- (1) In this regulation, a reference to directors, proposed directors or prescribed officers of a company includes any person holding one or more material contracts to perform any executive function for the company.
- (2) Section 1, Paragraph 2 of every prospectus must set out the following information with respect to the directors, proposed directors and prescribed officers of the company whose securities are being offered:
- (a) The names, occupations and business addresses of the directors and proposed directors of the company (specifying any who hold, or are proposed to hold, a prescribed office in the company), and prescribed officers of the company, and their nationalities, if not South African; and
 - (b) The name and business address of the company's—
 - (i) auditors;
 - (ii) attorney, banker, stockbroker, and underwriter, if any; and
 - (iii) company secretary, together with the company secretary's professional qualifications.
- (3) In addition to the requirements of sub-regulation (2), in any prospectus contemplated in regulation 56, Section (1), Paragraph 2 must also set out the following information:
- (a) the term of office for which any director, proposed director or prescribed officer has been or is to be appointed, the manner in which, and terms on which, any proposed director will be appointed, and particulars of any right held by any person relating to the appointment of any director;
 - (b) particulars of any remuneration or proposed remuneration of the directors or proposed directors in their capacity as directors, managing directors or in any other capacity, whether or not determined by the Memorandum of Incorporation or by the company or any subsidiary;

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- (c) any borrowing powers of the company, or any subsidiary, exercisable by the directors, the manner in which any such borrowing powers may be varied, and the extent to which any such borrowing powers have been exceeded or varied, or both, during the immediately preceding three years; and
- (d) if the business of the company or any subsidiary, or any part thereof is managed or is proposed to be managed by a third party under a contract—
 - (i) the name and business address (or the address of its registered office, if a juristic person) of the third party;
 - (ii) a description of the business so managed or to be managed; and
 - (iii) a summary statement of the basis on which that person will be compensated by the company for performing those services.

59. History, state of affairs and prospects of company

- (1) In this regulation, “material” has the meaning set out in section 1, having particular regard to a company’s history of profits or losses, or assets employed or to be employed.
- (2) Section 1, Paragraph 3 of every prospectus—
 - (a) contemplated in regulation 55 must set out a general description of the business carried on or to be carried on by the company and any material subsidiary and, if the company or any such subsidiary carries on or proposes to carry on more than one material business, information as to the relative importance of each such business, but only to the extent that there has been a material change in the nature of the company’s activities since it last issued an annual financial statement; or
 - (b) contemplated in regulation 56 must set out a general description of the business carried on or to be carried on by the company and any material subsidiary and, if the company or any such subsidiary carries on or proposes to carry on more than one material business, information as to the relative importance of each such business.
- (3) In addition to the requirements of sub-regulation (2)(b), Section 1, Paragraph 3 of every prospectus contemplated in regulation 56 must also set out the following information with respect to the company whose securities are being offered:
 - (a) The general history of the company and any material subsidiary stating, among other things—
 - (i) the length of time during which the business of the company, and of any such subsidiary, has been carried on; and
 - (ii) the date on which the company became a public company.
 - (b) Details of any material change in the business of the company during the past 3 years.

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- (c) The opinion of the directors, stating the grounds for that opinion, as to the prospects of the business of—
 - (i) the company;
 - (ii) any subsidiary of the company; and
 - (iii) any subsidiary or business undertaking to be acquired or intended to be acquired within one year following the date of the prospectus.
 - (d) A general description giving a fair presentation of the state of affairs of—
 - (i) the company; and
 - (ii) any material subsidiary, including—
 - (aa) its issued securities, with details of the shares held by the holding company, and the the date on which it became a subsidiary; and
 - (bb) its main business.
 - (e) The situation, area and tenure of the principal immovable property held or occupied by the company and any subsidiary including, in the case of leasehold property, the rental and unexpired term of the lease.
 - (f) A statement of the estimated commitments, if any, of the company or a material subsidiary, for the purchase, construction or installation of buildings, plant or machinery, the estimated date of completion and the commencement of the operational use thereof; and
 - (g) with respect to the company particulars for each of the preceding 3 years of—
 - (i) its turnover;
 - (ii) its profits or losses before and after tax;
 - (iii) any dividends that have been paid;
 - (iv) the amount of dividends paid in cents per share; and
 - (v) the dividend cover for each year.
 - (4) If the company is a holding company, the information required by sub-regulation (3)(g) must be presented either—
 - (a) for the company in consolidated form; or
 - (b) separately for the company and each of its subsidiaries.

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Regulation 60-r61

60. Share capital of the company

Section 1, Paragraph 4 of every prospectus must set out particulars of the company's share capital, including—

- (a) the different classes of shares, and, in respect of each such class of shares—
 - (i) the number of shares authorised, and issued;
 - (ii) a description of the respective preferential conversion and exchange rights, rights to dividends, profits or capital, including redemption rights and rights on liquidation or distribution of capital assets; and
 - (iii) the number of founders' and management or deferred shares, if any, and the special rights attaching to those shares;
- (b) brief particulars of any alteration of capital during the preceding 3 years; and
- (c) a summary of any offers of securities of the company to the public for subscription or sale during the preceding 3 years, including—
 - (i) the prices at which those securities were offered,
 - (ii) the number of securities allotted in pursuance thereof; and
 - (iii) a statement indicating whether the securities were issued to all holders of securities in proportion to their holdings and, if not, to whom issued, the reasons why the shares were not so issued and the basis of allotment.

61. Options or preferential rights in respect of shares

- (1) Section 1, Paragraph 5 of every prospectus must concisely summarize the substance of any agreement or proposed agreement, as at the date of the prospectus, whereby any option or preferential right of any kind was or is proposed to be given to any person to subscribe for any shares of the company or any subsidiary of the company, giving the number and description of any such shares, including, in regard to the option or right, particulars of—
 - (a) the period during which it is exercisable;
 - (b) the price to be paid for shares subscribed for under it;
 - (c) the consideration given or to be given for it;
 - (d) the names and addresses of the persons to whom it was given, other than to existing shareholders as such or to employees under an employee share scheme;
 - (e) if given to existing shareholders as such, material particulars thereof; and
 - (f) any other material fact or circumstance concerning the granting of such option or right.

- (2) For the purpose of this regulation, “subscribing for shares” includes acquiring them from a person to whom they were allotted, or were agreed to be allotted, with a view to that person offering them for sale.

62. Commissions paid or payable in respect of underwriting

- (1) In this regulation, “commission” includes, but is not limited to, an amount paid or payable to any sub-underwriter who is a promoter or director or officer of the company.
- (2) Section 1, Paragraph 6 of every prospectus must state—
- (a) the amount, nature and extent of the consideration, if any, paid within the preceding two years, or payable, as commission to any person for subscribing or agreeing to subscribe, or procuring or agreeing to procure, subscriptions for any securities of the company;
 - (b) the name, occupation and business address of each person to whom any commission has been paid or is payable, as contemplated in paragraph (a);
 - (c) particulars of the amounts underwritten or sub-underwritten by each person contemplated in paragraph (a);
 - (d) the rate of the commission payable in terms of any underwriting or sub-underwriting agreement with each person contemplated in paragraph (a); and
 - (e) if a person contemplated in paragraph (a) is a company—
 - (i) the names of the directors of that company; and
 - (ii) the nature and extent of any interest, direct or indirect, in that company of any promoter, director or officer of the company in respect of which the prospectus is issued.

63. Material contracts

- (1) Section 1, Paragraph 7 of every prospectus must set out—
- (a) a concise list of existing contracts or proposed contracts, either written or oral, relating to the directors' and managerial remuneration, royalties, and secretarial and technical fees payable by the company or any subsidiary of the company; and
 - (b) the date and nature of, and the parties to, every other material agreement entered into by the company, or any subsidiary of the company, within the two years immediately before the date of the prospectus, subject to sub-regulation (2).
- (2) For the purposes of sub-regulation (1)(b), an agreement is not material if it is entered into in the ordinary course of the business carried on or proposed to be carried on by the company or a subsidiary, as the case may be.

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Regulation 64-r65

64. Interest of directors and promoters

- (1) In this regulation, the expression “director or promoter” refers to a director or promoter of a company only if its securities are being offered in a prospectus contemplated in regulation 55.
- (2) Section 1, Paragraph 8 of every prospectus must set out—
 - (a) a statement of any consideration paid, or agreed to be paid, by any person within the 3 years immediately before the date of the prospectus—
 - (i) to a director or a related person, or
 - (ii) to another company—
 - (aa) in which the director is beneficially interested; or
 - (bb) of which the director is also a director; or
 - (iii) to any partnership, syndicate or other association of which the director is a memberto induce the director to become a director, or to qualify as a director, or for services rendered by the director or by a company, partnership, syndicate or other association in connection with the promotion or formation of the company; and
 - (b) full particulars of the nature and extent of any direct or indirect material interest, of any director or promoter in—
 - (i) the promotion of the company;
 - (ii) any property proposed to be acquired by the company out of the proceeds of the issue; or
 - (iii) any property acquired or proposed to be acquired by the company or any subsidiary during the 3 years immediately before the date of the prospectus; and
 - (c) if any interest of a director or promoter contemplated above consists in being a member of a partnership, company, syndicate or other association of persons—
 - (i) the nature and extent of the interest of each such partnership, company, syndicate or other association; and
 - (ii) the nature and extent of each such director's or promoter's interest in the partnership, company, syndicate or other association.

65. Loans

- (1) In this regulation, “loan” includes a debenture.

(2) Section 1, Paragraph 9 of a prospectus contemplated in regulation 56 must set out—

- (a) the details of material loans to the company, or to any subsidiary of the company, at the date of the prospectus, stating with respect to each such loan—
 - (i) whether it is secured or unsecured, and if secured, the details of the security;
 - (ii) the names of the lenders, if not debenture-holders;
 - (iii) the amount, terms and conditions of repayment; and
 - (iv) the interest rate; and
- (b) details of any material loan advanced other than in the ordinary course of business, by the company, or by any subsidiary of the company, and outstanding at the date of the prospectus, stating with respect to each such loan—
 - (i) the date it was advanced, and the period for which it was advanced;
 - (ii) the person to whom it was advanced;
 - (iii) the interest rate;
 - (iv) if the interest is in arrears, the last date on which it was paid and the extent of the arrears;
 - (v) details of any security held, including the value of that security and the method of valuation;
 - (vi) if the loan is unsecured, the reasons therefore; and
 - (vii) if the loan was advanced to another company, the names and addresses of the directors of that company.

66. Shares issued or to be issued otherwise than for cash

Section 1, Paragraph 10 of a prospectus contemplated in regulation 56 must state—

- (a) the number, if any, of securities that were issued or agreed to be issued by the company, or a subsidiary of the company, within the 3 years immediately before the prospectus date, to any person other than for cash; and
- (b) the consideration for which those securities were issued or were agreed to be issued.

67. Property acquired or to be acquired

- (1) In this regulation, “property” means immovable property or any other fixed asset that—

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- (a) is material to a company's business, and
 - (b) the purchase price of which—
 - (i) is to be defrayed in whole or in part out of the proceeds of the issue; or
 - (ii) is to be, or was within the preceding 3 years, paid in whole or in part—
 - (aa) by the issue of securities of the company or any subsidiary; or
 - (bb) out of the funds of the company or its subsidiary, whether in cash or securities; or
 - (c) the purchase or acquisition of which has not been completed at the date of the prospectus, and the nature of the title or interest therein acquired or to be acquired by the company or any subsidiary
- (2) Section 1, Paragraph 11 of a prospectus contemplated in regulation 56 must set out particulars of—
- (a) any property purchased or acquired by the company, or a subsidiary of the company, or proposed to be purchased or acquired;
 - (b) the consideration given, or to be given, for the acquisition of any such property, specifying the value payable for goodwill, if any;
 - (c) the names and addresses of the vendors and the consideration received or to be received by each;
 - (d) brief particulars of any transaction relating to the property completed within the preceding 3 years in which any vendor of the property to the company or any subsidiary or any person who is or was at the time of the transaction a promoter or a director or proposed director of the company had any interest, direct or indirect; and
 - (e) particulars of the price at which any property that is immovable, or an option over immovable property, was purchased or sold within 3 years immediately before the date of the prospectus, if any promoter or director had any interest, directly or indirectly, in a transaction, or any promoter or director was a member of a partnership, syndicate or other association of persons that had such an interest, with the dates of any such purchases and sales and the names of any such promoter or director, and the nature and extent of that interest.
- (3) In applying this regulation—
- (a) if any vendor is a partnership, each member of the partnership is not to be regarded as a separate vendor; and
 - (b) for the purposes of sub-regulation (2)(e), shares of a company, the major asset of which is immovable property, must be regarded as being immovable property.

68. Amounts paid or payable to promoters

Section 1, Paragraph 12 of a prospectus contemplated in regulation 56 must state the amount, if any, paid within the preceding 3 years, or proposed to be paid, to any promoter, or to any partnership, syndicate or other association of which that promoter is or was a member, and the consideration for that payment, and any other benefit given to the promoter, partnership, syndicate or other association within the same period or proposed to be given, and the consideration for the giving of that benefit, and the promoter's name and address.

69. Preliminary expenses and issue expenses

Section 1, Paragraph 13 of a prospectus contemplated in regulation 56 must state—

- (a) the amount or estimated amount of any preliminary expenses incurred within 3 years before the date of the prospectus;
- (b) the persons to whom any of the expenses referred to in paragraph (a) were paid or are payable;
- (c) the amount or estimated amount of the expenses of the issue; and
- (d) the persons to whom any of the expenses referred to in paragraph (c) were paid or are payable.

70. Purpose of the offer

Section 2, Paragraph 1 of every prospectus must set out—

- (a) a statement of the purpose of the offer, giving reasons why it is considered necessary for the company to raise the amount sought under the prospectus; and
- (b) if the amount sought under the prospectus is more than the amount of the minimum subscription referred to in regulation 73, the reasons for the difference between those amounts.

71. Time and date of the opening and of the closing of the offer

Section 2, Paragraph 2 of every prospectus must state a time and date of the opening and the closing of the offer.

72. Particulars of the offer

- (1) Section 2, Paragraph 3 of every prospectus must set out the particulars of the securities offered, including—
 - (a) the class of securities;
 - (b) the number of securities offered;

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- (c) the issue price;
 - (d) if any securities are secured, particulars of the security, specifying the property comprising the security and the nature of the title to the property; and
 - (e) other conditions of the offer.
- (2) If, during the 3 years immediately preceding the date of the prospectus, the company issued any securities, a prospectus must also include a statement setting out—
- (a) the dates of issue of those securities;
 - (b) the price at which they were issued; and
 - (c) the reasons for any differentiation between those prices and the issue price of the securities being offered by the prospectus.
- (3) If, during the 3 years immediately preceding the effective date, the company issued any securities for a premium, the prospectus must include a statement setting out—
- (a) the dates of issue of those securities;
 - (b) the reasons for any such premium;
 - (c) the reasons for any differentiation between the amounts of any such premium; and
 - (d) how any such premium was dealt with.

73. Minimum subscription

- (1) Section 2, Paragraph 4 of every prospectus contemplated in regulation 56 must state the minimum subscription contemplated in section 108 (2).
- (2) In respect of any offer, the minimum subscription is the lower of—
 - (a) the full amount of the offer; or
 - (b) the amount, if any, determined by the company in terms of sub-regulation (3).
- (3) The company may determine a minimum subscription value, being the amount that, in the opinion of the directors, must be raised by the issue of securities to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums required, in respect of each of the matters listed in sub-regulation (4).
- (4) If the company has determined a minimum subscription value, as contemplated in sub-regulation (3), Section 2, Paragraph 4 of the prospectus must also set out—
 - (a) the purchase price of any property purchased or to be purchased, if any part of the purchase price is to be defrayed out of the proceeds of the issue;

- (b) any preliminary expenses payable by the company, and any commission payable to any person as consideration for—
 - (i) agreeing to subscribe for any securities of the company; or
 - (ii) procuring or agreeing to procure subscriptions for any securities of the company;
- (c) the repayment of any money borrowed by the company or any subsidiary in respect of any of the foregoing matters;
- (d) the working capital, stating the specific purposes for which it is to be used and the estimated amount required for each such purpose;
- (e) any other expenditure, stating the nature and purposes thereof and the estimated amount in each case; and
- (f) the amounts, if any, to be provided in respect of the matters listed above otherwise than out of the proceeds of the issue, and the sources from which those amounts are to be provided.

74. Statement as to adequacy of capital

- (1) In this regulation, “issued capital of the company” includes the minimum amount to be raised in pursuance of the offer.
- (2) Section 3, Paragraph 1 of every prospectus must set out either—
 - (a) a statement by the directors of the company that, in their opinion, the issued capital of the company is adequate for the purposes of the business of the company, and of any subsidiary of the company, for at least 12 months after the date of the prospectus; or
 - (b) if the directors of the company are of the opinion that the issued capital of the company is inadequate for the purposes contemplated in paragraph (a), a statement by them setting out—
 - (i) the extent of the inadequacy; and
 - (ii) the manner in which, and the sources from which, the company and any subsidiary are financed, or are proposed to be financed.

75. Report by directors as to material changes

Section 3, Paragraph 2 of every prospectus must be a report by the directors of the company setting out any material change in the assets or liabilities of the company or any subsidiary that have occurred between—

- (a) the end of the financial year of the company, or any subsidiary of the company, in respect of which it's most recent annual financial statements report; and

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- (b) the date of the prospectus.

76. Statement as to listing on stock exchange

Section 3, Paragraph 3 of every prospectus must set out a statement as to whether or not an application has been made for a listing of the securities offered and, if so, the name of the relevant exchange.

77. Report by auditor where business undertaking to be acquired

If the proceeds, or any part of the proceeds, of the issue of the securities or any other funds are to be applied directly or indirectly in the purchase of any business undertaking, Section 3, Paragraph 4 of every prospectus must comprise a report made by an auditor named in the prospectus on—

- (a) the profits or losses of the business undertaking in respect of each of the 3 financial years preceding the date of the prospectus; and
- (b) the assets and liabilities of the business undertaking at the last date to which the financial statements of the business undertaking were made out.

78. Report by auditor where company will acquire a subsidiary

- (1) This regulation applies only if the proceeds or any part of the proceeds of the issue of the securities are to be applied in any manner, whether directly or indirectly, resulting in the acquisition by the company or its subsidiary of securities of any other juristic person, with the direct or indirect result that the other juristic person will become a subsidiary of the company.
- (2) In the circumstances contemplated in sub-regulation (1), Section 3, Paragraph 5 of every prospectus must comprise a report made by an auditor named in the prospectus on—
 - (a) the profits or losses of the other juristic person in respect of each of the 3 financial years preceding the date of the prospectus; and
 - (a) the assets and liabilities of the other juristic person at the last date to which the annual financial statements of the other juristic person were made out.
- (3) The auditor's report required by sub-regulation (2) must indicate—
 - (a) how the profits or losses of the other juristic person would, in respect of the shares to be acquired, have concerned shareholders of the company; and
 - (b) what allowance would have fallen to be made, in respect of assets and liabilities so dealt with, for holders of other shares,if the company had at all material times held the shares to be acquired.
- (4) In addition to satisfying the requirements of sub-regulation (2), if the other juristic person has a subsidiary or, had it been a company it would have had a subsidiary, the

auditor's report must also deal with the profits or losses and the assets and liabilities of the other juristic person and its subsidiary, or any other juristic person as would have been its subsidiary if it had been a company, in the manner provided by regulation 79 (3) in relation to the company and its subsidiary.

79. Report by auditor of company

- (1) Section 3, Paragraph 6 of a prospectus contemplated in regulation 56 must comprise a report by the auditor of the company with respect to—
 - (a) profits or losses and assets and liabilities, in accordance with sub-regulations (2) or (3), as applicable; and
 - (b) the rates of the dividends, if any, paid by the company in respect of each class of securities of the company in respect of each of the 3 financial years immediately preceding the issue of the prospectus, giving particulars of—
 - (i) each class of shares on which dividends were paid; and
 - (ii) the cases in which no dividends were paid in respect of a particular class of shares in respect of any of those years; and
 - (b) if no annual financial statements were made out by or for the company in respect of any part of the 3 years ending on a date 3 months before the issue of the prospectus, a statement of that fact.
- (2) If the company has no subsidiary, the report—
 - (a) in regard to profits or losses, must deal with the profits or losses of the company in respect of each of the 3 financial years immediately preceding the issue of the prospectus; and
 - (b) in regard to assets and liabilities, must deal with the assets and liabilities of the company at the last date to which the annual financial statements of the company were made out.
- (3) If the company is a holding company, the report—
 - (a) in regard to profits or losses, must deal separately with the company's profits or losses as provided by sub-regulation (2), and in addition, must deal—
 - (i) as a whole with the combined profits or losses of all subsidiaries, as far as they concern holders of the company's securities; or
 - (ii) individually with the profits or losses of each subsidiary, so far as they concern holders of the company's securities; or
 - (iii) as a whole with the consolidated profits or losses of the group of companies so far as concerns holders of the company's securities; and

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- (b) in regard to assets and liabilities, must deal separately with the company's assets and liabilities as provided by sub-regulation (2) and, in addition, must deal—
 - (i) as a whole with the combined assets and liabilities of all subsidiaries, indicating the interest therein of holders of the company's securities, other than the company; or
 - (ii) individually with the assets and liabilities of each subsidiary, indicating the interests therein of shareholders other than the company; or
 - (iii) as a whole with the consolidated assets and liabilities of the company and all subsidiaries, indicating the interests therein of shareholders other than the company;
- (c) if a subsidiary incurred losses, must state the amounts of those losses and the manner in which provision was made for them.
- (4) The auditor must include a statement in the report noting—
 - (a) the extent to which the auditor is satisfied that the financial statements in relation to the company and any subsidiary are correct and have been prepared on a basis consistent with the Act; and
 - (b) whether—
 - (i) the debtors and creditors include any accounts other than trade accounts;
 - (ii) the provisions for doubtful debts appear to be adequate;
 - (iii) adequate provision has been made for obsolete, damaged or defective goods, and for supplies purchased at prices in excess of current market prices;
 - (iv) intercompany profits in the group have been eliminated; or
 - (v) there have been any material changes in the assets and liabilities of the company or of any subsidiary since the date of the last annual financial statements.

80. Requirements for prospectus of mining company

- (1) This regulation applies only to a prospectus contemplated in regulation 56, and then only if the prospectus offers securities—
 - (a) issued or to be issued by a mining company; or
 - (b) to raise capital in order to directly or indirectly acquire a mining company or its securities or business.
- (2) In this regulation, “**mining company**” includes a company that carries on or proposes to carry on mining, development or prospecting for or exploitation of any

mineral resources, or that acquires or proposes to acquire any mineral rights thereto or options thereon.

- (3) Section 3 of a prospectus contemplated in sub-regulation (1) must include, or have appended to it, the following additional items:
- (a) a report by an expert containing information appropriate to the subject matter of the prospectus and including with respect to each mining company or asset, as applicable—
 - (i) a statement describing briefly the geological characteristics of the occurrence;
 - (ii) details of previous mining operations and production relevant to the workability and payability of the proposed mining operations;
 - (iii) survey, drilling and borehole results;
 - (iv) ore reserves, and reserves; and
 - (i) an interpretation of the information available with reference to the viability of the project.
 - (b) any material information not otherwise required by Part B or this Part of this Chapter relating to the mineral rights, or any other right to mine, mining title, including any Government mining lease, and immovable property available for the mine, including with respect to each mining company or asset, as applicable—
 - (i) whether the aforesaid is owned by the company, or in process of transfer or is under option or lease;
 - (ii) the name of the farm on and district in which each is situated;
 - (iii) the area of each;
 - (iv) the aggregate price or other consideration for which they were or are to be acquired;
 - (v) relevant details of any option as aforesaid; and
 - (c) a statement by the directors of the plans, with respect to each mining company or asset, for reaching the production stage or for increasing output, including information regarding—
 - (i) shaft sinking and development;
 - (ii) capital expenditure for each material stage of development.

Chapter 5 - Fundamental Transactions and Takeover Regulations**Part A— Interpretation and Application****81. Definitions**

In this Chapter, and in applying Part B and Part C of Chapter 5 of the Act, unless the context indicates otherwise—

- (a) **“acquisition”** includes any act or transaction as a result of which a person acquires or has an increased voting power in a company, irrespective of whether that person acquired any securities of the company in or as a result of that act or transaction;
- (b) **“announce”**,
 - (i) in the case of a company listed on an exchange, means disclosure in the manner required by that exchange for immediate public release after receiving Panel approval; or
 - (ii) in any other case, means disclosure in the manner determined by the Panel;
- (c) **“circular”** means a document issued by a company, to holders of its securities, for the purpose of compliance with Part B and Part C of Chapter 5 of the Act and this Chapter;
- (d) **“condition as to acceptance”** means a condition of an offer, announced in a firm intention announcement, relating to the minimum percentage of securities required to be tendered by holders of the securities of the offeree regulated company before the offeror will be obliged to accept all tendered securities, but does not include a condition relating to the ability of an offeror to meet its cash consideration commitment;
- (e) **“control”** means the holding of a beneficial interest in a regulated company equal to or exceeding the specified percentage of voting rights in that regulated company;
- (f) **“controlled company”** means a regulated company that is controlled, directly or indirectly, by its pyramid;
- (g) **“dealings”** includes acquisitions, disposals, subscriptions, grants and issues of securities, however effected;
- (h) **“fair and reasonable opinion”** means an opinion, expressed by an independent expert on the fairness and reasonableness of the consideration for an offer taking account of value and price, given to either—
 - (i) the independent board; or

- (ii) an independent board of an offeror company, if required;
- (i) **“independent”** or **“acts independently”**, when used in relation to a particular person and a particular offer, means a person who—
 - (i) has no conflict of interest in relation to that offer; and
 - (ii) is able to make impartial decisions in relation to that offer without fear or favour;
- (j) **“independent board”** means those directors of an offeree regulated company whom that company has indicated are independent directors;
- (k) **“independent board of an offeror company”** means those directors of an offeror company whom that company has indicated are independent directors;
- (l) **“independent director”** means a director who acts independently;
- (m) **“independent expert”** means an independent expert as described in Section 114(2) of the Act;
- (n) **“material”** means an amount equal to or greater than 10% of the value of any subject matter in relation to an offer;
- (o) **“offeree regulated company”** means either—
 - (i) each amalgamating or merging company that is party to an amalgamation or merger agreement; or
 - (ii) a regulated company —
 - (aa) that is itself the subject of an offer; or
 - (bb) the securities of which are entirely or partially the subject of an offer;
- (p) **“offeror”** means a person who, alone or in concert with another person, enters into or proposes any affected transaction, including, but not limited to—
 - (i) a person offering to acquire the assets or undertaking of a company, as contemplated in section 117(1)(c)(i);
 - (ii) an amalgamating or merging company or any new company to be formed by the amalgamating or merging companies that is proposed to survive as an amalgamated or merged company, in terms of an amalgamation or merger agreement contemplated in section 117(1)(c)(ii);
 - (iii) a person other than the offeree regulated company concerned who, with the co-operation of that company, proposes to acquire securities of that company in terms of a scheme of arrangement contemplated in Section 117(1)(c)(iii); and

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- (iv) a person offering to acquire securities in accordance with Sections 117(1)(c)(v),(vi) or (vii);
- (q) **“option”** includes any right similar to an option, given or granted by a regulated company, irrespective of—
 - (i) whether that right is vested or not; or
 - (ii) whether that right is granted or given in terms of any formalised—
 - (aa) share incentive scheme;
 - (bb) phantom scheme;
 - (cc) share participation rights scheme that has rights that could be equity settled; or
 - (dd) agreement with any person that has rights that could be equity settled;or otherwise;
- (r) **“other condition”** means any condition of an offer other than—
 - (i) a condition as to acceptance; or
 - (ii) a condition relating to the ability of an offeror to meet its cash consideration commitment;
- (s) **“phantom scheme”** means a company plan or scheme in terms of which employees are granted a right to receive an amount of cash at a certain time, based on the performance of the share price of the company;
- (t) **“prescribed percentage”** means the percentage contemplated in section 123 (5), and prescribed in regulation 86 (1);
- (u) **“price sensitive information”** means any information that satisfies the definition of—
 - (i) ‘price sensitive information’ as set out in the JSE Listings Requirements as amended from time to time; or
 - (ii) ‘inside information’ as set out in the Securities Services Act, 2004.
- (v) **“publish”** means announce, despite the meaning set out in regulation 1;
- (w) **“pyramid”** means the ultimate controlling juristic person, or any intermediate juristic person that, directly or indirectly, holds at least the specified percentage of a controlled company and after applying consolidation accounting principles (irrespective of whether consolidation principles should be applied or not) either—

- (i) derives more than 75% of its total attributable income from that controlled company; or
- (ii) the attributable net assets in that controlled company represent more than 75% of the total attributable net group assets of the pyramid;
- (x) **“reporting accountant”**—
 - (i) in the case of listed securities, has the meaning set out in the JSE listing requirements, as amended from time to time; or
 - (ii) in any other case, means an auditor;
- (y) **“ruling”** means a written decision issued by the Executive Director with respect to a possible affected transaction, proposed affected transaction or affected transaction;
- (z) **“SAMVAL code”** means the South African Code for Reporting of Mineral Asset Valuation; and

82. Beneficial Interests

- (1) A compliance obligation that—
 - (a) falls upon a person who would be regarded as a holder of a beneficial interest in terms of the definition of “holder” in Section 117(1)(e), read with the definition of “beneficial interest” in section 1; and
 - (b) arises in terms of Part B and Part C of Chapter 5 of the Act, or this Chapter,

applies equally to a nominee entity, asset manager or similar person who has authority, by any means, to exercise rights of disposal or rights of voting with respect to particular securities.
- (2) No compliance obligation arises from an announced intention to acquire a beneficial interest in the remaining voting securities of a regulated company, as contemplated in Section 117(1)(c)(v), until an offer is made for all of those securities.

83. Effect of interests held by non-related persons

- (1) There are no consequences in terms of the Part B and Part C of Chapter 5 of the Act or this Chapter, if a transaction involves only—
 - (a) a person with a non-controlling beneficial interest in a regulated company, acting alone; or
 - (b) two or more unrelated persons who individually own non-controlling beneficial interests in a regulated company and are not acting in concert.
- (2) If a person contemplated in sub-regulation (1) acquires control of a previously unrelated person, they become related persons.

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- (3) If two previously unrelated persons become related, as contemplated in sub-regulation (2), and their aggregated interests in the regulated company are equal to or exceed the prescribed percentage of voting rights in the regulated company—
 - (a) an affected transaction has occurred; and
 - (b) one of the related persons must make a mandatory offer, and if necessary, comparable offers, to the holders of the remaining securities of the regulated company.

84. Acting in concert

- (1) In addition to the presumption set out in section 118 (5), the following persons are presumed to be acting in concert with one another:
 - (a) a company, with:
 - (i) any of its directors;
 - (ii) any company controlled by one or more of its directors;
 - (iii) any trust of which any one or more of its directors is a beneficiary or a trustee; and
 - (b) any of the company's pension, provident or benefit funds and share incentive schemes with one another.
- (2) If the Panel is aware of persons coming into concert or coming out of concert, and those persons have not declared themselves as having come into concert or coming out of concert in accordance with this regulation, the Panel may presume those persons came into concert or came out of concert from a date determined by the Panel as being the date of coming into concert or coming out of concert.
- (3) A presumption that two or more persons are acting in concert, coming into concert or coming out of concert in terms of section 118 (5), or this regulation, is rebuttable in a hearing before the Executive Director on application by any such person.
- (4) After a hearing in terms of sub-regulation (3)—
 - (a) the Executive Director must issue a Ruling, which will be binding on all persons concerned; and
 - (b) if any person concerned does not comply with the Ruling, the Panel may re-issue it immediately as a compliance notice.
- (5) Within five business days after coming into concert, or coming out of concert, each person involved must make a declaration, in Form TRP 84, and deliver it to the regulated company concerned, and to the Executive Director.
- (6) Any compliance obligation applicable to an offeror applies equally to any person acting in concert with the offeror.

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- (7) Persons who are acting in concert are not, for that reason alone, required to make a mandatory offer, if—
- (a) at the time of coming into concert, each of them was entitled to exercise voting rights which were less than the prescribed percentage; and
 - (b) as a result of coming into concert they are entitled, in aggregate, to exercise voting rights exceeding the prescribed percentage; and
 - (c) none of them has acquired any further securities as defined in Section 117(1)(j).
- (8) A presumption that two persons have “**acted in concert**”, as a result of one of them granting an option to the other, as contemplated in Section 118 (5), even though not rebutted in terms of Section 118 (6), does not give rise to an obligation to make a mandatory offer—
- (a) for the duration of the option if—
 - (i) at the date the option was granted, each of them was entitled to exercise voting rights that were less than the prescribed percentage;
 - (ii) as a result of coming into concert they are entitled, in aggregate, to exercise voting rights equal to or exceeding the prescribed percentage; and
 - (iii) neither of them acquires any further securities as defined in Section 117(1)(j);
 - (b) for the duration of the option if, at the date of grant of the option, the grantee was already entitled to exercise voting rights that were equal to or exceeded the prescribed percentage; or
 - (c) until the grantee exercises the option, or otherwise acquires securities, that results in the grantee being able to exercise voting rights equal to or exceeding the prescribed percentage, if—
 - (i) at the date the option was granted, the grantee was not entitled to exercise voting rights that were equal to or exceeded the prescribed percentage; and
 - (ii) the grantor was entitled to exercise voting rights that were equal to or exceeded the prescribed percentage.

85. Change in control

- (1) If a change in control takes place in a pyramid or intermediate pyramid, the offeror must make an offer or offers to—
 - (a) holders of securities of the pyramid or intermediate pyramid, if any is a regulated company; and

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Regulation 86

- (b) holders of securities of the controlled company, excluding securities held by the pyramid or intermediate pyramid.
- (2) The principles governing mandatory offers and comparable offers apply to offers required by this regulation.

86. Mandatory offers

- (1) The percentage to be prescribed in terms of Section 123 (5) is 35% of the issued voting securities of the company.
- (2) The acquisition of a beneficial interest as contemplated in the definition of “affected transaction” in Section 117(1)(c)(iv) will give rise to a mandatory offer as contemplated in the definition of “affected transaction” in Section 117(1)(c)(vi) only if the acquisition falls within the circumstances contemplated in Section 123 (2).
- (3) The obligations contemplated in section 123 (3) and (4) do not arise if—
 - (a) a person, alone or in concert with other parties, becomes entitled to exercise voting rights that exceed the prescribed percentage; and
 - (b) the entitlement contemplated in paragraph (a) comprises voting rights that accrue to the person as a result of a beneficial interest in preference shares; and
 - (c) the preference shares contemplated in paragraph (b)—
 - (i) are not voting securities as defined in Section 1;
 - (ii) were acquired before the entitlement arose; and
 - (iii) give the person voting rights in accordance with the rights of the preference shares (e.g. arrear dividends)

unless the person, or any of the concert parties, acquires any further securities as defined in section 117(1)(j).

- (4) A transaction is exempt from the obligation to make a mandatory offer following publication by a regulated company of a transaction requiring the issue of securities as consideration for an acquisition, a cash subscription or a rights offer, if the independent holders of more than 50% of the general voting rights of all issued securities of the regulated company have agreed to waive the benefit of such a mandatory offer in accordance with the principles detailed in Section 125(3)(b)(ii).
- (5) Irrespective of whether an issue of securities is made conditional upon a waiver, a waiver by the independent holders of more than 50% of the general voting rights of all issued securities of the regulated company is a nullity if any acquisitions are made by an acquirer or a subscriber or underwriter, or by any of their respective concert parties, in the period between the transaction announcement and date of the waiver.
- (6) At the date of obtaining a waiver, the acquirer, the subscriber or an underwriter concerned must declare to the Panel in writing that it has not acquired any securities in the circumstances contemplated in sub-regulation (5).

- (7). A waiver requires a fair and reasonable opinion to be included in the circular in all instances other than a rights offer at a discount to the prevailing market price at the date of announcement.

87. Comparable offers

See s. 125 (2)

- (1) In addition to any other circumstances contemplated in section 125 (2), a comparable offer must be made if—
- (a) a mandatory offer has been required in terms of section 123, including a mandatory offer that is required to be made as a result of a reacquisition of securities in terms of section 48 or section 114; and
 - (b) the offeree regulated company has more than one class of security in issue, which are required to be dealt with in terms of section 125.
- (2) Comparable offers are required for all classes of issued security that have voting rights or could have voting rights in the future, including options.
- (3) All schemes that are cash settled and have no present or future voting rights associated with them, such as cash settled phantom schemes and cash settled share participation rights schemes, which for settlement purposes, are dependent on a future security price or value of securities (which are the subject of an offer), must be taken account of and treated on an equitable basis, relative to the classes of security that are subject to a comparable offer.
- (4) The offer consideration(s) in a comparable offer is to be determined by the offeror taking account of the class of security to which the comparable offer is to be made.
- (5) The fair and reasonable opinion given by the independent expert and the independent board opinion regarding the comparable offer must have the same opinions regarding fairness and reasonableness as the respective fair and reasonable opinions given by the independent expert and the independent board regarding the offer which gave rise to the comparable offer.

88. Partial Offers

See s. 117(1)(h)(i), 119 (6), 120 and 125

- (1) A partial offer is exempt from compliance with Part B and Part C of Chapter 5 of the Act and this Chapter—
- (a) if—
 - (i) when making the offer, the offeror beneficially holds securities of a class entitling the offeror to exercise less than the prescribed percentage of voting rights; and
 - (ii) the offer is limited to a number of the relevant securities; and

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- (iii) if the offer is successfully completed, the offeror will still be able to exercise less than the prescribed percentage of voting rights; or
- (b) if—
 - (i) when making the offer, the offeror holds securities entitling the offeror to exercise voting rights equal to or in excess of the prescribed percentage, but less than 100% of the voting rights; and
 - (ii) the offer is made for less than all the remaining securities of the class; and
 - (iii) if the offer is successfully completed, the offeror would still be able to exercise less than 100% of the voting rights.
- (2) In sub-regulation (3), “partial offer percentage” means the percentage of securities of a particular class, which must be less than 100 percent of those securities, that the offeror offers to acquire on a pro rata basis from all holders of that class of securities.
- (3) If, in response to a partial offer, a holder of securities tenders a number of securities—
 - (a) equal to or less than the partial offer percentage, the offeror must accept the tender in full; or
 - (b) greater than the partial offer percentage, the offeror must accept—
 - (i) that number of securities in full equal to the partial offer percentage; and
 - (ii) part or all of the excess tendered balance accepted on an equitable basis, provided that the aggregate of the acceptances shall not exceed the partial offer percentage.

89. Fundamental Transactions

See s. 112 (3), 113 (5) and 116(1)(a) and (3)

- (1) A notice of a shareholders meeting to consider a special resolution, contemplated in section 112 (3) or 113 (5), must be published to the shareholders of the company concerned, and delivered to them in accordance with regulation 7.
- (2) A notice to creditors contemplated in section 116 (1)(a) must be published to the known creditors of the company concerned, and delivered to them in accordance with regulation 7.
- (3) A Notice of Amalgamation or Merger contemplated in section 116 (3) must be in Form CoR 89.
- (4) If an amalgamation or merger, as defined in section 1, results from—
 - (a) the acquisition by one company of all or the greater part of the assets or undertaking of a second company, as contemplated in sections 112 and

117(1)(c)(i), any provision of this Chapter applicable to such an acquisition applies equally to that amalgamation or merger; or

- (b) a scheme of arrangement, as contemplated in section 114 and 117 (1)(c)(iii), any provision of this Chapter applicable to such a scheme of arrangement applies equally to that amalgamation or merger.

90. Independent Experts

See s. 112, 113, 117(1)(c)(i), (ii) and (v) and 118(3)

- (1) In any transaction contemplated in section 117(1)(c)(i), (ii), (v) or (vi), section 125 (2), or in regulation 88, the offeree regulated company must—
 - (a) request a ruling from the Panel whether an independent expert must be retained to report on the proposed transaction; and
 - (b) retain such an independent expert if the Panel so requires.
- (2) Section 114 (2) and (3), read with the changes required by the context, apply with respect to any transaction for which an independent expert is required in terms of this regulation.
- (3) In any circumstances in which an independent expert is required in terms of the Act or this Chapter—
 - (a) the independent expert must—
 - (i) be able to show that it is independent, and will reasonably be perceived to be independent, taking into account any other existing relationships and appointments; and
 - (ii) satisfy the Panel that it is competent to act in respect of the offer, which the Panel may challenge if it is not satisfied; and
 - (b) despite any prior approval given by the Panel, the Panel may at any time, either itself or in response to written representations by holders of relevant securities, require the appointment by either or both of the offeror and the offeree regulated company of a further independent expert approved by the Panel.
- (4) An independent expert's valuation of the offeree regulated company must be performed in accordance with generally accepted valuation approaches and methods in use in the market from time to time including—
 - (a) capitalisation, income or cash flow approach which relies on the 'value-in-use' principle and requires determination of the present value of future cash flows over the useful life of the asset or business;
 - (b) comparative or market approach that relies on the principle of 'willing buyer, willing seller' and requires that the amount obtainable from the sale of an asset or undertaking is determined as if in an arm's-length transaction; and

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Regulation 91

- (c) cost approach that relies on historical amounts spent on the asset or undertaking.
- (5) In respect of mineral companies, the valuation approach and methodology must comply with the SAMVAL code.
- (6) The content of the independent expert's fair and reasonable opinion in relation to an offer must, among other things, include —
 - (a) the date of the fair and reasonable opinion, and confirmation that the fair and reasonable opinion has been given to the relevant board concerned for the sole purpose of assisting the relevant board in forming and expressing an opinion for the benefit of holders of relevant securities, excluding the offeror;
 - (b) a statement that the fair and reasonable opinion may be included, in whole or in part, in any required regulatory announcement or documentation;
 - (c) a clear expression of opinion dealing with the fairness and reasonableness of the offer consideration(s) in regard to holders of relevant securities, excluding the offeror;
 - (d) a detailed list of all source documentation used and reviewed and work done in accordance with the scope of the appointment;
 - (e) a statement of the valuation approach adopted, the methods employed and all material assumptions underlying the valuation approach and methodology;
 - (f) a range of final valuation values attributable to the relevant securities or assets and a most likely value used as the core number for purposes of the expression of the opinion;
 - (g) any other valuation or pricing approaches and methodologies used in corroborating the expression of the opinion e.g. the comparative approach or cost approach;
 - (h) the fee payable or paid to the independent expert for the fair and reasonable opinion and confirmation that the fee is not contingent on or related to the outcome of the offer; and
 - (i) a declaration of the independence and competence of the independent expert, which may require evidential justification if the Panel is not satisfied with the declaration.

91. Application to Private Companies

- (1) The minimum percentage to be prescribed in terms of section 118 (2) is 10 %.
- (2) For the purposes of Part B and Part C of Chapter 5 of the Act and this Chapter—
 - (a) the percentage prescribed in sub-regulation (1) is to be applied—

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Regulation 91

- (i) at the time of each qualifying transfer, excluding any transfers between or among related or inter-related persons;
 - (ii) taking account of the number of securities transferred compared to the number of securities in issue, excluding any securities of a holding company held by subsidiaries; and
 - (iii) aggregating all such transfers immediately before effecting an affected transaction; and
- (b) a buy back of securities by a company that are cancelled is not a transfer.

Part B— General Rules Respecting Negotiations and Offers**92. Information to offerors**

- (1) If an offeree company or potential offeree company has given any information, including particulars of holders of relevant securities, to a preferred offeror or potential offeror, the offeree company must, on request, give the same information equally and as promptly to a less welcome, but *bona fide*, offeror or potential offeror.
- (2) The directors of an offeree regulated company are entitled to—
 - (a) require that a less welcome potential offeror contemplated in sub-regulation (1) demonstrate its good faith by requiring the less welcome potential offeror to give equivalent information concerning the less welcome potential offeror to the offeree company, at the same time the information is to be furnished by the offeree regulated company; and
 - (b) determine whether any approach is on a nominee basis for either an undisclosed ultimate offeror or an undisclosed ultimate indirect beneficial owner.
- (3) If an approach is on a nominee basis, as contemplated in sub-regulation (2)(b), the undisclosed ultimate offeror or indirect beneficial owner, as the case may be, is the less welcome potential offeror.

93. Solicitation campaigns

At any time after a firm intention announcement has been made, only previously published information that remains accurate may be provided to a person conducting a solicitation campaign by which holders of an offeree regulated company are contacted regarding an offer, or their acceptance or voting in respect of an offer.

94. Consensual negotiations

- (1) If a potential offeror and a regulated company are negotiating on a consensual basis—
 - (a) an offer in good faith must be regarded as being imminent; and
 - (b) section 126 applies to the regulated company from the beginning of those negotiations.
- (2) Until a firm intention announcement is published, a regulated company that is the subject of rumour, speculation or a cautionary announcement published by a potential offeror, may presume that an offer in good faith is not imminent, unless the regulated company is consensually negotiating with a potential offeror.

95. Confidentiality and Transparency

- (1) All negotiations between an independent board and an offeror must be kept confidential.
- (2) Confidentiality must be observed before a cautionary announcement, or a firm intention announcement, containing “price sensitive information” is made.
- (3) An independent board should disclose as much detailed information as soon as possible concerning an offer.
- (4) An independent board must do all things necessary to satisfy itself that an offeror is able to perform in terms of an offer.
- (5) An independent board must ensure that all material changes to previously announced specific information concerning an offer is immediately announced.
- (6) Price sensitive information may be provided to select persons on a confidential basis.
- (7) If there a leak of price sensitive information, or a reasonable suspicion that such a leak has occurred, that information must immediately be disclosed in a cautionary announcement.
- (8) In order for any incorrect statement made in relation to an offer to not become enforceable or binding, the statement must immediately be repudiated by all reasonable means by the person or persons who made it.

96. Conditional Offers

An offer must not be subject to any condition—

- (a) that depends solely on subjective judgment by the directors, or equivalent, of the offeror; or
- (b) if the directors, or equivalent, of the offeror are able to control whether or not the condition will be fulfilled.

97. Variation in offers

- (1) The offeror and its concert parties must obtain the approval of an amended offer, as a partial offer, by the independent holders of more than 50% of the general voting rights of all issued securities of the offeree regulated company if—
 - (a) the offeror’s original offer, or partial offer in terms of section 125(3) of the Act—
 - (i) was subject to any other conditions; and
 - (ii) if successfully implemented, would result in a beneficial interest entitling an offeror and its concert parties to either—

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Regulation 98

- (aa) exercise voting rights exceeding the prescribed percentage for the first time; or
 - (bb) exercise all voting rights of a particular class of security or all voting rights of all securities issued not already held, if voting rights exceeding the prescribed percentage were held before the offer; and
 - (b) the offer has been amended through any other conditions being varied by a regulatory authority, and that variation requires or permits the acquisition of a lesser beneficial interest than originally included in the offer.
- (2) If the approval required by sub-regulation (1) is not obtained—
- (a) the offeror and its concert parties must, within three months, dispose of that number of relevant securities that will reduce their beneficial interest voting rights to —
 - (i) a level less than the prescribed percentage; or
 - (ii) the beneficial interest level that existed before the original offer was made, and
 - (b) during the three month period of disposal referred to in paragraph (a), the offeror and its concert parties are entitled to exercise only the voting power that does not exceed the levels contemplated in paragraph (a).

98. Dealings disclosure and announcement

See s. 119(1)(a)(v)

- (1) In this regulation, 'allowable dealings' does not include any dealing that is in contravention of s 127 (2) or any other provision of the Act.
- (2) During an offer period, allowable dealings in securities of the offeror or the offeree regulated company by an offeror or the offeree regulated company, or by any person in concert with either the offeror or the offeree regulated company, must be disclosed to the Panel on form TRP 98 when effected —
 - (a) by a person with a beneficial interest for that person's own account, or for another person in terms of any form of mandate; or
 - (b) on an agency basis.
- (3) A person who is required to make a disclosure as contemplated in sub-regulation (2) must make an announcement at the same time, which announcement must set out the details disclosed in Form TRP 98 as filed.

Part C— Announcements and Offers**99. The approach**

- (1) An approach with a view to an offer being made, or an offer, must be made only to the board of the offeree regulated company.
- (2) If an offer, or an approach with a view to an offer being made, is made by a person other than the ultimate offeror or potential offeror, the person making the offer must disclose the identity of the ultimate offeror or potential offeror, when the offer is put forward to the board of the offeree regulated company.
- (3) The board of an offeree regulated company that has been approached with a view to an offer being made may require reasonable evidence that the offeror is, or will be, in a position to implement the offer in full.
- (4) The board of an offeree regulated company that has received an offer must be provided with evidence, acceptable to the board, that the offeror is in a position to implement the offer in full.

100. Cautionary and other announcements

See s. 119(1)(a)/(iii)

- (1) Despite the fact that an offeree regulated company may not be listed, “**cautionary announcement**” has the meaning set out in the JSE Listings Requirements, as amended from time to time, but a reference in those listing requirements to “material price sensitive information” must be regarded as referring to “price sensitive information” that would concern a possible or proposed offer that is the subject of negotiations.
- (2) The responsibility to publish a cautionary announcement rests with the offeror, or the offeree regulated company, as applicable.

101. Firm intention announcement

- (1) A firm intention announcement is an announcement that must be made when a mandatory offer is required or when an offeror has communicated a firm intention to make an offer and is ready, able and willing to proceed with the offer.
- (2) When a firm intention announcement has been made, the offeror must proceed with the offer.
- (3) A firm intention announcement must be made immediately when—
 - (a) the board of the offeree regulated company has received a formal written offer; or
 - (b) a mandatory offer is required to be made in terms of Section 122 (1), read with Section 123.
- (4) The responsibility for making a firm intention announcement under—

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Regulation 101

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- (a) sub-regulation (3)(a) rests with the independent board, failing which, with Panel approval, it rests with the offeror; or
 - (b) sub-regulation (3)(b) rests with the offeror.
 - (5) Each firm intention announcement must state—
 - (a) that the offeror, and where appropriate, the independent board, accepts responsibility for the information contained in the firm intention announcement;
 - (b) that to the best of their respective knowledge and belief, the information is true; and
 - (c) where appropriate, that the firm announcement does not omit anything likely to affect the importance of the information.
 - (6) If it is proposed that any director will be excluded from a statement required by sub-regulation (5), the omission, and the reasons for it, must be stated in the firm intention announcement.
 - (7) A firm intention announcement must contain the following information:
 - (a) the identity of the offeror and any concert parties;
 - (b) the terms of the offer, including, but not limited to,—
 - (i) the type of offer proposed and mechanics of implementation;
 - (ii) the class or classes of securities affected;
 - (iii) the consideration offered, and if the offer is for securities, the consideration offered per security, for each class;
 - (iv) pro forma earnings and asset value per offeree regulated company security, if the offer consideration consists wholly or partly in offeror securities;
 - (v) any conditions as to acceptance, or other conditions of the offer;
 - (vi) details of the cash guarantee or cash confirmation provided to the Panel in conformity with regulation 111 (4);
 - (vii) confirmation that the offeror has sufficient securities available to settle any consideration payable in securities, or has a condition as to acceptance regarding an increase of authorised share capital; and
 - (viii) estimated offeror offer circular or combined circular posting date, and where known, other pertinent dates relating to the offer;
 - (c) if known, the details of any beneficial interest in the offeree regulated company—

- (i) held or controlled, directly or indirectly—
 - (aa) by the offeror;
 - (bb) by any person(s) acting in concert with the offeror; or
 - (cc) by any other person in respect of which the offeror has received an irrevocable commitment to accept or vote in favour of the offer;
- (ii) in respect of which the offeror holds an option to purchase; or
- (iii) in respect of which any person acting in concert with the offeror holds an option to purchase.

102. General timeline of offers

See s. 119(1)(b)(ii)

- (1) In this regulation, and in regulations 103 to 106, “general offer” means an offer contemplated in section 117 (1)(c)(v).
- (2) An offeror’s offer circular, or combined offer circular, must be posted within —
 - (a) 20 business days after the date of publication of a firm intention announcement; or
 - (b) such longer period allowed by the Executive Director, on good cause shown.
- (3) The opening date of a general offer, mandatory offer or partial offer is the day after the date of posting of the offeror’s offer circular, or combined offer circular, as the case may be.
- (4) A general offer, mandatory offer or partial offer must remain open for at least 30 business days after the opening date.
- (5) Subject to sub-regulations (6) and (7), a general offer, mandatory offer or partial offer must state—
 - (a) a closing date;
 - (b) an initial closing date, with a right to extend; or
 - (c) an objective method of determining the closing date.
- (6) If the offeree regulated company is listed on an exchange, the closing date must be a Friday.
- (7) With respect to an exchange timetable regarding offers, the closing date of an offer is also the last day to trade, and holders accordingly—
 - (a) are entitled to acquire securities up to and including the closing date of an offer; and

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Regulation 103

- (b) are able to accept an offer in respect of all securities beneficially held, or acquired, up to and including the closing date of an offer.
- (8) An offer relating to a Section 117(1)(c)(i) disposal, Section 117(1)(c)(ii) amalgamation or merger or Section 117(1)(c)(iii) scheme of arrangement must state—
 - (a) an expected effective or operative date; or
 - (b) an objective method of determining the effective or operative date.
- (9) Within 20 business days after an offeror offer circular has been posted, the independent board must post the offeree response circular.
- (10) On the 45th business day after the day upon which a conditional general offer opened an announcement shall be made by no later than 16:30 as to whether the offer is unconditional as to acceptances, or has terminated.
- (11) No announcement revising an offer consideration may be posted on or after the 45th business day after an offer has opened unless the offer is unconditional as to acceptances.
- (12) The consideration must be settled within six business days after the later of—
 - (a) the offer being declared wholly unconditional; and
 - (b) acceptance thereof by a holder.
- (13) An offer may not be implemented or given effect to until—
 - (a) a request has been made to the Panel for a compliance certificate; and
 - (b) the Panel has issued a compliance certificate.

103. Extension of offers

- (1) A general offer, mandatory offer or partial offer may be extended—
 - (a) by an announcement made before the initial closing date and time of the offer; but
 - (b) only if—
 - (i) the right to do so has been specifically reserved in the offeror offer circular or combined circular and
 - (ii) that right has not subsequently been withdrawn by the offeror.
- (2) If “no extension statements” in relation to an offer are included in any announcement, circular or statement by or on behalf of an offeror, its directors or equivalent, or its advisers, and not withdrawn immediately if incorrect, then the offer may not subsequently be extended.

- (3) An offeror is not entitled to extend a general offer after the 45th business day after the opening of that general offer, irrespective of whether the offer consideration is revised, or not.
- (4) An general offer contemplated in sub-regulation (3) terminates unless—
 - (a) it has been declared unconditional as to acceptance before midnight on the 45th business day after the opening of the offer;
 - (b) the independent board has consented to an extension; or
 - (c) a firm intention of a competing offer has been announced.
- (5) If a firm intention of a competing offer has been announced, as contemplated in sub-regulation (4)(c), the original offeror will be entitled from time to time to extend the time periods of its offer to coincide with the time periods applicable to the competing offeror's offer.

104. Revision of offers

- (1) An offer consideration may be revised only by announcing—
 - (a) an increase in the original announced offer consideration; or
 - (b) an alternate consideration to the original announced offer consideration.
- (2) A revised offer consideration announcement contemplated in sub-regulation (1) must—
 - (a) comply with the content requirements of a firm intention announcement; and
 - (b) be posted to the offeree regulated company's relevant holders.
- (3) If an offer consideration is revised, the offer must remain open for at least 15 business days after the date on which the revised offer consideration is announced.
- (4) If an offer consideration is revised, all holders of relevant securities who have accepted the initial offer consideration are entitled to revise their initial acceptance and elect to receive the revised offer consideration.
- (5) An independent board must announce a response to a revised offer consideration announcement within five business days, setting out in detail its opinion, and the opinion of its independent expert, concerning the revised offer consideration and any other details the board considers to be pertinent.
- (6) If "no increase statements" in relation to an offer are included in any announcement, circular or statement by or on behalf of an offeror, its directors or equivalent, or its advisers, and not withdrawn immediately if incorrect, then the offer consideration may not subsequently be increased.
- (7) For the purpose of sub-regulation (6), "no increase statements" in relation to the offer consideration includes, but is not limited to, a statement that—

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Regulation 105-r106

- (a) “the offer consideration will not be further increased”; or
- (b) “our offer consideration remains at x cents per security and it will not be raised”.

105. Offers becoming unconditional

- (1) When an offer becomes unconditional as to acceptances, the offeror must announce that fact within one business day, and the announcement must include the total number and percentage of securities—
 - (a) for which acceptances have been received; and
 - (b) which are held by the offeror at that time.
- (2) A holder who has accepted a general offer may withdraw that acceptance, by notice in writing delivered to the offeror, if the general offer—
 - (a) has not been declared wholly unconditional by midnight on the 65th business day after it opened;
 - (b) has been declared unconditional as to acceptances; and
 - (c) still remains subject to other conditions.
- (3) Subject to sub-regulation (4), a holder who has withdrawn an acceptance, as contemplated in sub-regulation (2), may again accept the general offer in the manner provided in terms of that offer at any time before the closing date of the general offer, unless the general offer has been terminated.
- (4) A person may not withdraw acceptance and subsequently re-accept a particular offer more than once.
- (5) After a general offer, mandatory offer or partial offer has become unconditional in all respects—
 - (a) the offer must be announced as being unconditional, within one business day; and
 - (b) the now unconditional offer must remain open for at least 10 business days after the announcement required by paragraph (a).

106. Circulars

- (1) An offeror offer circular relating to a general offer, mandatory offer or partial offer is the responsibility of the offeror.
- (2) A combined offer circular relating to a general offer, mandatory offer or partial offer is the responsibility of both the offeror and the independent board.
- (3) An offer circular relating to a Section 117(1)(c)(i) disposal, Section 117(1)(c)(ii) amalgamation or merger, or section 117(1)(c)(iii) scheme of arrangement, is the—

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- (a) responsibility of the independent board, if the proposed affected transaction is for acquisition of 100% of the beneficial interest in, or 100% of the assets or undertaking of, the offeree company, by an offeror payable in cash or cash equivalents;
 - (b) responsibility of the independent board and the offeror, if the proposed affected transaction is for acquisition of 100% of the beneficial interest in, or 100% of the assets or undertaking of, the offeree company, by an offeror payable in offeror securities; or
 - (c) responsibility of the independent board and the offeror, if the proposed affected transaction is for acquisition of less than 100% of the beneficial interest in, or less than 100% of the assets or undertaking of, the offeree company, by an offeror payable in offeror securities.
- (4) An offeror offer circular must contain—
- (a) the same disclosure contents as required in—
 - (i) regulation 101 (7)(a); and
 - (ii) regulation 101 (7)(b), excluding pro forma per security disclosure;
 - (b) the reasons for the offer and the offeror's intentions regarding the continuation of the business of the offeree regulated company and the continuation in office of the directors of the offeree regulated company;
 - (c) statements of direct and indirect beneficial interests in or holdings of securities, or actions to be effected, or a negative statement if there are no such interests or holdings—
 - (i) by the offeror, including separate disclosure of concert party holdings, in the offeree regulated company;
 - (ii) by directors or equivalent of the offeror in the offeror's securities and in any of the offeree regulated company's securities;
 - (iii) in the offeror and in the offeree regulated company by any person who, before the offeror offer circular was posted, was irrevocably committed—
 - (aa) to accept or to reject the offer; or
 - (bb) to vote in favour of or against the offer,
 - (d) whether and in what manner the remuneration of the offeree regulated company's directors will be affected by the offer or by any other associated transaction, or a statement that there will be no such effect, if that is the case;

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Regulation 106

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- (e) a statement indicating whether or not any agreement exists between the offeror, or any person acting in concert with the offeror, and—
 - (i) the offeree regulated company;
 - (ii) any of the directors of the offeree regulated company, or persons who were directors within the preceding 12 months of the offeree regulated company; or
 - (iii) holders of offeree regulated company securities, or persons who were holders thereof within the preceding 12 months, if the agreement is considered to be material to a decision regarding the offer to be taken by the holders or offeror holders;and material terms of any such agreement;
 - (f) all pertinent dates and times having relevance to a full understanding of the offer;
 - (g) the fair and reasonable opinion provided in conformity with the applicable disclosure requirements in regulation 90;
 - (h) a statement to the effect that settlement of the offer consideration to which any holder is entitled under the offer will be implemented in full in accordance with the terms of the offer without regard to any lien, right of set-off, counterclaim or other analogous right to which the offeror may otherwise be, or claim to be, entitled against such holder; and
 - (i) a statement—
 - (i) that the offeror accepts responsibility for the information contained in the offeror offer circular; and
 - (ii) that to the best of the offeror's knowledge and belief, the information contained in the offeror offer circular is true; and
 - (iii) where appropriate, that the circular does not omit anything likely to affect the importance of the information.
- (5) If any director or equivalent of the offeror is excluded from the statement required by sub-regulation (4)(i), the circular must note that omission and the reasons for it.
- (6) In addition to the requirements of sub-regulations (4) and (5), a circular must also include—
- (a) the details, including volumes, dates and prices, of any dealings in the securities in question, if any party whose holdings of securities are required to be disclosed by this regulation has dealt for value in the securities in question during the period beginning six months before the offer period and ending with the latest practicable date before the posting of the offeror offer circular;