



18 June 2009

Dear Sirs,

POSSIBLE RELAXATION OF OR AMENDMENT TO RULES 2.3.2(b) AND 21.7 OF THE RULES OF THE SECURITIES REGULATION CODE ON TAKEOVERS AND MERGERS (“THE CODE”)

1. A result of the present world financial crisis is that providers of finance, particularly banks, are now becoming increasingly reticent to provide Cash Confirmations for takeovers and mergers. This is particularly so where, as a result of long periods for fulfilment of conditions precedent to an offer (frequently for regulatory approvals), such Cash Confirmation is required for a protracted period.

The Panel has been approached and requested to consider either relaxing or amending the current pertinent rules of the Code relating to the Cash Confirmations, for cash settled offers. It has been argued that strict adherence by the Panel to these rules is stifling takeover and merger activity in South Africa.

These rules read:

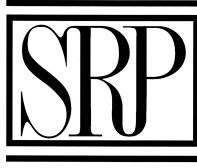
Rule 2.3.2(b)

The announcement of a firm intention to make an offer containing a wholly or partial cash consideration shall include confirmation by the financial adviser or by another appropriate third party that resources are available to the offeror sufficient to satisfy full acceptance of the offer. Except with the consent of the Panel, the confirming party shall be expected to produce the cash itself if, in giving the confirmation, it acted irresponsibly or failed to take all reasonable steps to assure itself that the cash was available.

Rule 21.7 Cash confirmation

Unless otherwise permitted by the Panel when the offer is for cash or includes an element of cash, the offer document shall include a statement that an irrevocable guarantee or other proof by an appropriate third party (eg the offeror’s bank or financial adviser) has been furnished in favour of the holders of the relevant securities that resources will be available to the offeror sufficient to satisfy full acceptance of the offer. The party confirming that resources will be available will not be expected to produce the cash itself if, in giving the confirmation, it acts responsibly and has taken all reasonable steps to assure itself that the cash will be available.

.../2



- 2 -

2. The practice of the Panel to date has been that an irrevocable unconditional guarantee or proof that cash resources will be available to an offeror to satisfy full acceptance of the offer (“Cash Confirmation”) must be furnished to the Panel concomitantly with the submission to the Panel for approval of an announcement of a firm intention to make a cash offer, and that such Cash Confirmation must endure until payment is made against acceptances into the offer.
3. It has been suggested, inter alia, that the provider of a Cash Confirmation should be permitted to withdraw such confirmation at any time prior to the offeror declaring the offer to be fully unconditional, provided that the conditions for doing so shall be on clearly stated objective bases, and shall be fully disclosed in both the firm intention announcement and the offer document.
4. At present, the Panel will permit the submission of a conditional Cash Confirmation only if the cash offer is underpinned by a share offer, and where the ratio of the shares to be settled is to be determined at the time of settlement, such that the market value of such share settlement is at least equal to the cash offer price.
5. In considering this matter it is important that the Panel takes careful consideration of the impact such a relaxation or amendment to the rules may have on all parties affected by an offer.

These include:

- Facilitating greater takeover and merger activity;
- Uncertainty for shareholders of the offeree company;
- The possibility of accepting shareholders being locked out of the market, only to have the offer ultimately fail through lack of funding;
- The integrity of the market;
- The possibility of the offeror delaying the implementation of the transaction so as to give itself a lengthy free option over the offeree company’s securities;
- The adverse effect on the offeree company due to disruption of its operations;
- Additional costs that will have to be incurred by an offeree company, such as legal and financial advisers and the appointment of an appropriate external adviser;

.../3



- 3 -

- The inability of an offeree company board from entering into certain transactions without prior shareholder approval.
- 6. The Panel wishes to invite interested parties to comment in writing on the advantages and disadvantages of relaxing or amending the above rules before any decision is taken.
- 7. Written submissions must be sent to The Executive Director, Securities Regulation Panel at:
P O Box 91833
Auckland Park 2006, or
Fax No. 011 482 5635, or
richardc@srpanel.co.za
to be received by no later than 10 July 2009.

Yours faithfully

R J CONNELLAN
EXECUTIVE DIRECTOR