



## GUIDELINE 2/2011

### WAIVER OF A MANDATORY OFFER

#### 1. INTRODUCTION

- 1.1 In terms of section 201(2)(b) of the Act, the Panel may issue, amend or withdraw information on current policy to serve as Guidelines for the benefit of persons concerned with those transactions regulated by the Panel. Regulation 4 of the Companies Regulation 2011 (the Regulations) provides that a senior officer of a regulatory agency (as defined in the Regulation) may issue a Guideline at any time by publishing a notice of the Guideline to the general public in the Gazette, any generally circulated newspaper on the regulatory agency's website, or by any similar means of providing information to the public generally.
- 1.2 The TRP hereby publishes Guideline 2/2011 which is intended to provide guidance to practitioners and regulated companies falling within the regulatory authority of the TRP.
- 1.3 Regulation 86(4) provides that 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).
- 1.4 The TRP recommends that waivers of mandatory offers should conform to the following procedural guidelines attached as **Guideline 2/2011**.

## GUIDELINE 2/2011

### WAIVER OF A MANDATORY OFFER

- 1 The circular to shareholders should comply with the requirements of Regulation 106 of the Companies Regulations 2011.



- 2 In order to comply with the provisions of The Promotion of Administrative Justice Act of 2000, the circular should contain the following wording:

***“Waiver of a mandatory offer to shareholders***

*The cash subscription /issue of securities as a consideration/rights offer may result in xxxxxxx controlling of the issued share capital of xxxxxxx Limited. In terms of section 123 of the Act xxxxxxx is obliged to make a mandatory offer to the shareholders of xxxxxxx at the same price unless the mandatory offer is waived in accordance with regulation 86 (4) of the Companies Act Regulations.*

*The TRP has advised that it is willing to consider the application to grant an exemption from the obligation to make a mandatory offer if the majority of independent shareholders of xxxxxxx Limited waive their entitlement to receive the mandatory of offer from xxxxxxx Limited, in accordance with this regulation 86(4).*

*Any shareholder of xxxxxxx Limited who wishes to make representations relating to the exemption shall have 10 business days from the date of the posting of this circular to make such representations to the TRP before the ruling is considered. Representations should be made in writing and delivered by hand, posted or faxed to:*

<i>If delivered by hand or courier:</i>	<i>If posted:</i>	<i>If faxed:</i>
<i>The Executive Director</i>	<i>The Executive Director</i>	<i>The Executive Director</i>
<i>Takeover Regulation Panel</i>	<i>Takeover Regulation Panel</i>	<i>Takeover Regulation Panel</i>
<i>1st Floor , Building B</i>	<i>PO Box 91833</i>	<i>Panel</i>
<i>Sunnyside Office Park</i>	<i>Auckland Park</i>	<i>+27 11 642 9284</i>
<i>32 Princess of Wales Terrace</i>	<i>2006</i>	
<i>Parktown</i>		
<i>2193</i>		

*and should reach the TRP by no later than the close of business on xx., xxxxxx 20xx in order to be considered.*

*If any representations are made to the TRP within the permitted timeframe, the TRP will consider the merits thereof before making a ruling.*



*Included in the circular is the notice of general meeting and the resolution for the waiver of the mandatory offer for shareholders to consider, and if deemed fit, to approve at the general meeting.”*

3. After the shareholders’ meeting is held and the required resolution has been passed, an application can be submitted to the TRP together with supporting documents indicating that the requisite resolution has been passed in terms of Regulation 86(4).
4. The TRP will then consider the application for the waiver and make a Ruling, which incorporates the reasons.
5. The Regulated Company should then make an Announcement of the ruling and inform shareholders that they may request the Takeover Special Committee to review the ruling within 5 business days of the Announcement. The Announcement must be approved by the TRP before it is released.
- 6 After expiry of the 5 business days notice period, the TRP waiver proceedings should be regarded as completed.

**DATED 19 MAY 2011**

**NA Matlala**

**Chairperson**