Implications of S-K1300 regulations & disclosures for dual-listed companies

SAIMM online webinar

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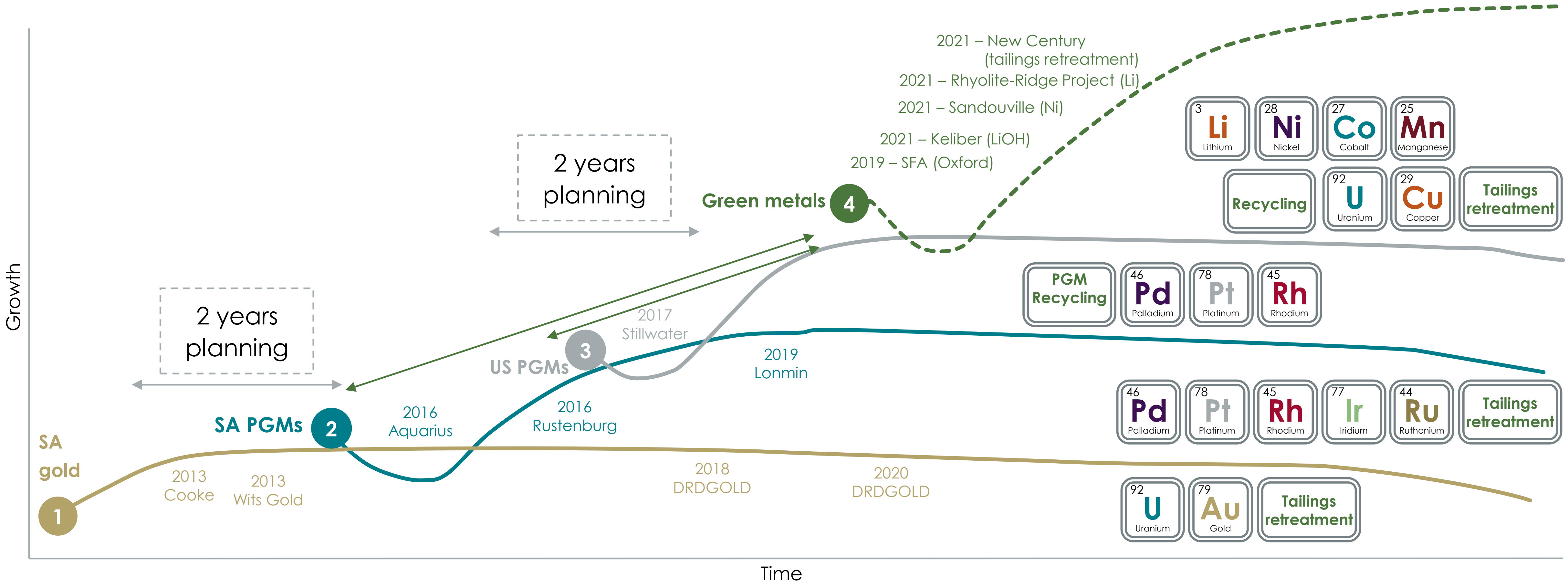
Sibanye-Stillwater listing history

- Established as Sibanye Gold Limited in February 2013, the company was created through the unbundling of Gold Fields Limited's 100% owned subsidiary GFI Mining South Africa Proprietary Limited which owned the Kloof, Driefontein and Beatrix gold mines. Upon completion of that transaction, our common shares and American depository receipts were listed on the Johannesburg Stock Exchange (JSE) and the New York Stock Exchange (NYSE), respectively
- On conclusion of an internal restructuring process in February 2020 which changed the group holding company from Sibanye Gold Limited to Sibanye Stillwater Limited (Sibanye-Stillwater), Sibanye-Stillwater began trading under both the JSE and NYSE. The relisting incorporated all acquired entities - Aquarius & Rustenburg (2016), Stillwater (2017) and Lonmin (2019) - as subsidiaries of the holding company
- Sibanye-Stillwater is required to comply with both Section 12 of the JSE listing requirements and the requirements of the Unites States Securities and Exchange Commission (SEC) regulation S-K subpart 1300

Tickers JSE: SSW and NYSE: SBSW

From a gold-only company to a multi-commodity mining Group

- Positioning Sibanye-Stillwater as provider of strategic metals for tomorrow's green technologies
- Battery metals and PGMs essential future components of the global auto market and a green future

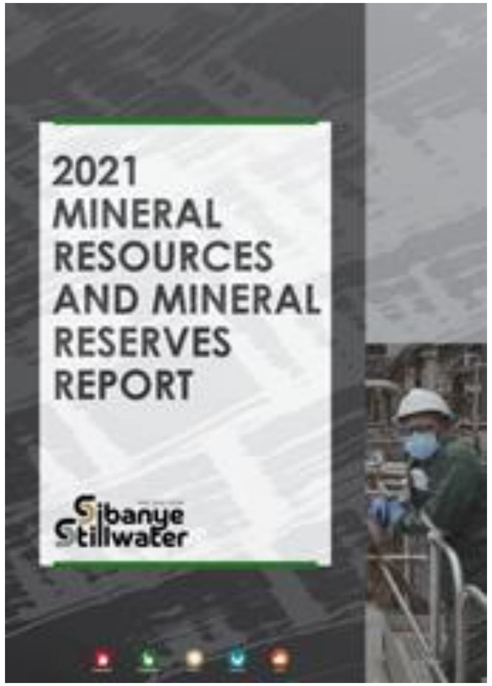


Our value creation benefits all stakeholders in multiple jurisdictions

Source: Company information

S-K1300 vs Section 12 requirements

- Form 20F - Item 4 requires company to disclose information on the company, the content of which is guided by Regulation S-K1300
- S-K1300
  - Summary Disclosure – overview, aggregated
  - Individual Material Property Disclosure – more detailed information than JSE required
  - Technical Report Summary (TRS) – similar to tech reports for NI-43 101/CPR, but simpler language
  - TRS triggered by new material property disclosure or material changes
- JSE
  - disclosure must be compliant with the SAMREC Code and Section 12 of listing requirements
  - Competent Person's Report (CPR) required by material acquisition or divestment, or a new listing
  - CPR content guided by Table 1
- Annual Report (AR) – both codes require attributable disclosure, may report aggregated figures.



- For S-K1300 Mineral Resources are to be exclusive of Mineral Reserves, can disclose both. SAMREC states inclusive required.
- Sibanye-Stillwater's approach in our Dec 2021 declaration, was to generate an AR that would satisfy the requirements of both the SEC Regulation S-K 1300 and JSE/SAMCODES rules:
  - Summary disclosure and Individual Material Property requirements were met, as well as being JSE Section 12 and SAMREC compliant
  - Mineral Resources were reported both inclusive and exclusive of Mineral Reserves

Stock exchange vs Industry code

- Disclosures regulated by different bodies i.e JSE by stock exchange and industry code, SEC by stock exchange only
- S-K1300 rules main goals - **efficiency, competition, capital formation and protection of investors** (stock exchange). Tried to align with the CRIRSCO standards
- The SAMREC code purpose - minimum standard for Public Reporting, guidelines of **materiality, transparency and competence, for the purpose of making of a reasoned and balanced judgment**
- Investors in different jurisdictions potentially have access to different documents and level of detail. JSE does not have a document repository like EDGAR, SA investors may be compromised
- Does filing on EDGAR trigger a requirement to file with the JSE – materiality?
- Do we need to get permission from the JSE (and Readers Panel) before filing on EDGAR – how do these two coexist?
- How do we minimise the amount of documentation but still remain compliant?
- Both acknowledge the possibility of multiple regulatory jurisdictions, but still insist on their own disclosures

Materiality

- Under **S-K 1300** – Individual Material property disclosure and a TRS are required if a property is considered material:
  - *quantitative and qualitative factors, in context of the overall business and financial condition*
  - *summary reporting required if the mineral properties, in the aggregate, are material to the company*
- **JSE -** information that, if omitted or misstated, could influence the economic decisions of users (<=> 10%)
- **SAMREC -** all the relevant information that investors and advisors would require, and expect to find, for the purpose of making a reasoned and balanced judgement
- What does the investor see as material? This is crucial
- Challenges experienced
  - more assets, more you need to disclose BUT the bigger the company, some of the individual assets might become less material
  - company strategy could impact the view on materiality (For e.g battery metals, a small new acquisition could be considered material), so where does a IMP stop being material – is it a good view of what you have and what you are trying to do
  - for example you might have a challenge where an asset has a minor change in its reported R&R ~ 3/6% change – so not material? But due to a material change in the production profile and hence the valuation, the impact could be considered material and a TRS update would be required

Qualified person’s liability

- SEC require that disclosures be prepared by a “qualified person” (QP)
  - QP carries Section 11 liability
  - QP not be subject to Section 11 for certain aspects outside their expertise
  - may use multiple QPs
  - QP employees must provide individual written consent
  - minimum education level not required, rely on the Registered Professional Organization (RPO)
  - QPs not required to be independent, a third-party firm may sign the TRS and will incur Section 11 liability rather than the unnamed individual
- SAMREC states that a report must be prepared by a Competent Person (CP)
  - public R&R Report responsibility of the company acting through its Board of Directors
  - disclose the CPs name, qualifications, professional affiliations and experience
  - CPs written approval required

Disclosure of Mineral Resources and Mineral Reserves

- Adopted the CRIRSCO classification of **Mineral Resources**, aligned with SAMREC
- RPEEE is an important consideration for both
- Mineral Resource disclosures require an **Initial assessment** and as a minimum
  - cut-off grade estimation
  - assessments of technical, economic and relevant operational factors
  - optional Economic (Cash Flow) Analysis
- SAMREC **requires assessment**
  - relevant modifying factors
  - discussed at the level appropriate
  - reasonable and justifiable under the guidelines of precision, accuracy, degree of confidence and variability
- **Mineral Reserves** disclosures under the new rules
  - either a PFS or FS (Industry Guide 7 - final FS), consistent with SAMREC code
  - revised accuracy ranges on capital/operating costs for different study levels, consistent with SAMREC code
- The Group complies with both the JSE and the SEC guidelines on commodity prices used. Both accept forward looking prices, subject to it being justified. TRS requires a market study
- S-K1300, naming or signature of the individual audit partner not required. SAMREC requires the type of review/audit , area , date and name of the reviewer(s) together with their recognized professional qualifications are given

Key learnings

- ✓ A materiality assessment and review of reporting procedures is critical as a starting point
- ✓ Understand the intention of the reports and ensure that the legal requirements are covered, the finer details will not become onerous. Documents have so much detail to review, small errors or admissions will most likely not be picked up. Materiality of the specific disclosure to investors, in the context of the company, will most likely play a role here
- ✓ For most of conflicts there are work arounds
- ✓ "If not, why not" should be applied in both cases
- ✓ While transparency, materiality and competence is a common theme, protection of the investor is the SEC's core focus – by ensuring specific minimum reporting criteria and information
- ✓ What about the public disclosure of information in a TRS that is proprietary and competitively sensitive? i.e processing information, recoveries etc.

Questions?

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Disclaimer

FORWARD LOOKING STATEMENTS

The information in this announcement may contain forward-looking statements within the meaning of the “safe harbour” provisions of the United States Private Securities Litigation Reform Act of 1995. These forward-looking statements, including, among others, those relating to Sibanye Stillwater Limited’s (“Sibanye-Stillwater” or the “Group”) financial positions, business strategies, plans and objectives of management for future operations, are necessarily estimates reflecting the best judgment of the senior management and directors of Sibanye-Stillwater.

All statements other than statements of historical facts included in this announcement may be forward-looking statements. Forward-looking statements also often use words such as “will”, “forecast”, “potential”, “estimate”, “expect” and words of similar meaning. By their nature, forward-looking statements involve risk and uncertainty because they relate to future events and circumstances and should be considered in light of various important factors, including those set forth in this disclaimer. Readers are cautioned not to place undue reliance on such statements.

The important factors that could cause Sibanye-Stillwater’s actual results, performance or achievements to differ materially from those in the forward-looking statements include, among others, our future business prospects; financial positions; debt position and our ability to reduce debt leverage; business, political and social conditions in the United States, South Africa, Zimbabwe and elsewhere; plans and objectives of management for future operations; our ability to obtain the benefits of any streaming arrangements or pipeline financing; our ability to service our bond instruments; changes in assumptions underlying Sibanye-Stillwater’s estimation of their current mineral reserves and resources; the ability to achieve anticipated efficiencies and other cost savings in connection with past, ongoing and future acquisitions, as well as at existing operations; our ability to achieve steady state production at the Blitz project; the success of Sibanye-Stillwater’s business strategy; exploration and development activities; the ability of Sibanye-Stillwater to comply with requirements that they operate in a sustainable manner; changes in the market price of gold, PGMs and/or uranium; the occurrence of hazards associated with underground and surface gold, PGMs and uranium mining; the occurrence of labour disruptions and industrial action; the availability, terms and deployment of capital or credit; changes in relevant government regulations, particularly environmental, tax, health and safety regulations and new legislation affecting water, mining, mineral rights and business ownership, including any interpretations thereof which may be subject to dispute; the outcome and consequence of any potential or pending litigation or regulatory proceedings or other environmental, health and safety issues; power disruptions, constraints and cost increases; supply chain shortages and increases in the price of production inputs; fluctuations in exchange rates, currency devaluations, inflation and other macro-economic monetary policies; the occurrence of temporary stoppages of mines for safety incidents and unplanned maintenance; the ability to hire and retain senior management or sufficient technically skilled employees, as well as their ability to achieve sufficient representation of historically disadvantaged South Africans in management positions; failure of information technology and communications systems; the adequacy of insurance coverage; any social unrest, sickness or natural or man-made disaster at informal settlements in the vicinity of some of Sibanye-Stillwater’s operations; and the impact of HIV, tuberculosis and the spread of other contagious diseases, such as coronavirus (“COVID-19”). Further details of potential risks and uncertainties affecting Sibanye-Stillwater are described in Sibanye-Stillwater’s filings with the Johannesburg Stock Exchange and the United States Securities and Exchange Commission, including the Integrated Annual Report and the Annual Report on Form 20-F.

These forward-looking statements speak only as of the date of the content. Sibanye-Stillwater expressly disclaims any obligation or undertaking to update or revise any forward-looking statement (except to the extent legally required).

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The information contained in this announcement may contain certain non-IFRS measures, including adjusted EBITDA, AISC and AIC. These measures may not be comparable to similarly-titled measures used by other companies and are not measures of Sibanye-Stillwater’s financial performance under IFRS. These measures should not be considered in isolation or as a substitute for measures of performance prepared in accordance with IFRS. Sibanye-Stillwater is not providing a reconciliation of the forecast non-IFRS financial information presented in this report because it is unable to provide this reconciliation without unreasonable effort.

WEBSITES

References in this announcement to information on websites (and/or social media sites) are included as an aid to their location and such information is not incorporated in, and does not form part of, this announcement.