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GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

DEPARTMENT OF MINERALS AND ENERGY DEPARTEMENT VAN MINERALE EN ENERGIE

No. R. 612

24 April 1998

MINE HEALTH AND SAFETY ACT, 1996 (ACT No. 29 OF 1996)

Under section 97 (4) of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996), I, Penuell Mpapa Maduna, Minister of Minerals and Energy, after consulting the Mine Health and Safety Council and the Mining Qualifications Authority, add to the said Act, the Schedule.

P. M. MADUNA

Minister of Minerals and Energy

SCHEDULE 7

CONSTITUTION OF MINING QUALIFICATIONS AUTHORITY

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CONSTITUTION OF THE MINING QUALIFICATIONS AUTHORITY (MQA)

To provide for the constitution of the Mining Qualifications Authority; for the promotion of the objectives of the National Qualifications Framework in the mining industry; for advising the Minister on matters relating to education and training standards and qualifications in the mining industry; and for matters connected therewith.

Establishment of Authority and committees

An italicised word or phrase is defined in section 102 of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996) (*this Act*) and an italicised word or phrase in bold is defined in item 24 of this Constitution.

In this Constitution all references to sections are references to sections in *this Act*, unless otherwise indicated.

1(1)-(3) - Section 46(2) empowers the *Authority* to appoint permanent and ad hoc committees, and subcommittees, for any period and on any conditions.

1(3) - Ad hoc and subcommittees are distinguished in the definition of "*other committees*".

1. (1) The *Authority* is established by section 41(3).
- (2) The *Authority* may establish permanent, ad hoc and subcommittees for such periods as the *Authority* may consider necessary, to achieve the objects or perform the functions of the *Authority*.
- (3) Every permanent or ad hoc committee may, subject to such conditions as the *Authority* may determine, establish subcommittees for such periods as the committee may consider necessary to achieve the

objects or perform the functions of that committee.

- (4) In the case of permanent committees, the *chairperson* of the *Authority* must inform the *Minister* of such establishment.

Legal status

2. (1) The *Authority* is a body corporate.
- (2) All actions, suits or other proceedings at law, by or against any *committee* must be brought by or against the *Authority*.
- (3) The *Authority* may authorise any person or persons to act on behalf of the *Authority* and to sign all such documents and to take all such steps as may be necessary in connection with any proceedings at law brought by or against the *Authority*.

Objects of Authority

3(1)(a) - Section 41(3) prescribes the objects of the *Authority*.

3. (1) The objects of the *Authority* are to -

(a) advise the *Minister* on -

- (i) *qualifications* and learning achievements in the mining industry to improve *health and safety standards* through proper training and education;
- (ii) standards and competency setting, assessment, examinations, quality assurance and accreditation in the mining industry; and

- (iii) proposals for the registration of education and training standards and qualifications in the mining industry on the *National Qualifications Framework* referred to in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995); and

3(1)(b) - Section 2 of the *SAQA Act* determines the objectives of the *National Qualifications Framework*.

- (b) promote the objectives of the *National Qualifications Framework* in the mining industry, which are to -

- (i) create an integrated national framework for learning achievements;
- (ii) facilitate access to, and mobility and progression within education, training and career paths;
- (iii) enhance the quality of education and training;
- (iv) accelerate the redress of past unfair discrimination in education, training and employment opportunities; and thereby
- (v) contribute to the full personal development of each learner and the social and economic development of the nation at large.

- (2) In order to promote its objects the *Authority* must seek -

- (a) registration in terms of the *SAQA Act* as a body responsible for generating *education and training standards* and *qualifications* as contemplated in section 5(1)(a)(ii)(aa) of that

Act; and

- (b) accreditation in terms of the *SAQA Act* as a body responsible for monitoring and auditing achievements as contemplated in section 5(1)(a)(ii)(bb) of that Act;

Functions of Authority

4 - Sections 46(1)(c), (d) and (e) determine the advisory functions of the *Authority*. Section 46(5) requires that, in performing its functions, the *Authority* must comply with the policies and criteria formulated by the South African Qualifications Authority in terms of section 5(1)(a)(ii) of the *SAQA Act*.

4. (1) The *Authority* must -

- (a) generate *education and training standards* and *qualifications* in the mining industry;
- (b) propose *education and training standards* and *qualifications* to bodies registered with the South African Qualifications Authority and responsible for developing *education and training standards*;
- (c) monitor and audit achievements in terms of those standards and qualifications;
- (d) accredit providers, assessors and moderators of education and training in the mining industry;
- (e) analyse and prioritise education and training needs in the mining industry and recommend on the provision of such education and training;
- (f) promote a culture of *learning* in the mining industry;
- (g) assure the quality of education and training in the mining industry, without itself being a provider of education and training;

- (h) facilitate strategic human resources development planning in the mining industry;
 - (i) liaise with the South African Qualifications Authority, or other bodies, persons or institutions concerned with or directly affected by education and training in the mining industry;
 - (j) keep a record of learning for people in the mining industry;
 - (k) perform any other function required by the South African Qualifications Authority in terms of the *Authority's* registration or accreditation; and
 - (l) perform any other function that must be performed by the *Authority* in terms of *this Act* or any other applicable law.
- (2) The *Authority* may perform any other function that may be performed by the *Authority* in terms of *this Act* or any other applicable law.

Functions of permanent committees

5. Every permanent committee, at the relevant levels of the *National Qualifications Framework* in the mining industry, must -
- (a) make recommendations to the *Authority* on -

- (i) the generation of *education and training standards and qualifications*;
 - (ii) the assessment of *education and training standards and qualifications*; and
 - (iii) the accreditation and moderation of education and training providers and assessors;
- (b) undertake activities necessary for the development and implementation of the *National Qualifications Framework*;
 - (c) co-ordinate the activities and consider the reports of its subcommittees; and
 - (d) perform such other functions delegated or assigned to it by the *Authority*.

Functions of other committees

6. *Other committees* must perform the functions assigned or delegated to them in terms of item 11.

Composition of Authority and committees

7(1) - Section 45(1) prescribes the membership of the *Authority*.

7. (1) The *Authority* consists of -

- (a) five members representing *employers* in the mining industry;
- (b) five members representing *employees* in the mining industry;

(c) four members representing departments of State;
and

(d) the *Chief Inspector of Mines* who must chair the
Authority.

(2) Every permanent committee of the *Authority*
consists of the following members:

(a) five members representing *employers* in the
mining industry;

(b) five members representing *employees* in the
mining industry;

(c) five members representing departments of State;
and

(d) an employee of the *Authority* who must chair
the committee.

(3) Every *other committee* consists of the number of
members determined by the relevant *establishing
authority*.

(4) The *parties* are entitled to equal representation on
other committees.

Nomination and appointment of members of committees

8(1) - Regulations
18.1 to 18.7 published
by Government
Notice No. R.93 in
the Gazette of
15 January 1997.

8. (1) Members of the *Authority* are nominated and
appointed in accordance with the *regulations* and
members of any *committee* are nominated and
appointed in accordance with this item.

(2) *Members* of the relevant *establishing authority* may nominate persons as members representing their *party* on any *committee*.

(3) The relevant *establishing authority* -

(a) must appoint the members; and

(b) may appoint one of the members as chairperson.

(4) If the relevant *establishing authority* does not appoint a chairperson, the *members* of the *committee* may appoint the chairperson from among their number.

8(5) - Regulation 18.5 published by Government Notice No. R.93 in the Gazette of 15 January 1997 determines the term of office of members of the *Authority* and its permanent committees.

8(6) - Mine Health and Safety Regulation 18(6) deals with the filling of casual vacancies of the *Authority*.

(5) Members representing *employees* or *employers* on any *committee* may hold office for such period as the relevant *establishing authority* may determine, which period may not exceed three years. A member whose period of office expires, may be reappointed.

(6) If the office of a member of any *committee* is vacated before the end of the period of office of such member, a person to replace such member must, subject to the provisions of this Constitution -

(a) be nominated by the *party* that was represented by the member; and

(b) be appointed by the relevant *establishing authority* for a period not exceeding the balance of the period of office of the member in whose place the person is appointed.

(7) The appointment of any member of any *committee* is subject to any condition that the relevant *establishing authority* may determine.

(8) The chairperson of the relevant *establishing authority* must in writing notify the members of their appointment.

(9) If a member appointed in terms of this item does not accept such appointment, a person to replace such person must be appointed in accordance with this item.

(10) Every *party* must appoint an *alternate* for each of its members on the *Authority*, a permanent or ad hoc committee and must notify the chairperson of the *Authority* or the relevant permanent or ad hoc committee, as the case may be, of such appointment.

(11) The relevant *establishing authority* -

(a) may appoint *alternates* for members of subcommittees; and

(b) must notify -

(i) the *alternates* of their appointment; and

(ii) the members of their respective *alternates*.

Vacation of office

9. (1) A *member* vacates office -

- (a) on expiry of the *member's* period of office; or
- (b) if such *member* -
- (i) is absent from two consecutive meetings of the *Authority* or *committee* for which such *member* is appointed without notifying the *chairperson* before the meeting that the *member* will be absent;
 - (ii) resigns as a *member*; or
 - (iii) is required to vacate office by the *party* or the organisation which that *member* represents;
- (c) if such *member* was nominated by an organisation and that organisation no longer meets the criteria allowing it to nominate *members*; or
- (d) if the *Authority* or *committee* on which the *member* serves, is abolished.

- (2) If a member vacates office, the *alternate* appointed for such member ceases to hold office as *alternate*.

Appointment and functions of the executive officer

10. (1) The *Minister*, after consulting the *Authority*, must appoint a person with experience and expertise in matters relating to functions of the *Authority* as *executive officer* of the *Authority*.

- (2) The *executive officer* must perform such functions as may be assigned to the *executive officer* by *this Act* or by the *Authority*.
- (3) The *executive officer* must attend all meetings of the *Authority*.
- (4) If the *executive officer* is absent or for any reason is unable to perform the functions of the *executive officer* or if there is a vacancy in the office of the *executive officer*, the chairperson of the *Authority* may designate an employee of the *Authority* to act as *executive officer* until the *executive officer* is able to resume the functions of *executive officer* or until an *executive officer* is appointed in terms of subitem (1).
- (5) The *Authority* may, subject to the provisions of item 19(2)(b), appoint persons as employees of the *Authority* to assist in the performance of the functions of the *executive officer*.
- (6) The terms and conditions of service of persons appointed under subitem (5) are determined by the *Minister* after consulting the *Authority*.

Delegation and assignment of functions

11 - Sections 46(3) and (4) enable the *Authority* to delegate any of its powers or assign any of its duties by or under *this Act* in accordance with the constitution contemplated in section 97(4).

11. (1) The *Authority* may delegate any of its powers or assign any of its functions by or under *this Act* to any *committee* or the *executive officer*.
- (2) Any permanent or ad hoc committee may delegate or assign any of its functions to any of its subcommittees.

(3) The *executive officer* may delegate any power or assign the performance of any function conferred or imposed upon the *executive officer* to any employee of the *Authority*.

(4) A delegation or assignment under subitem (1), (2) or (3) -

(a) must be in writing;

(b) may be subject to such conditions and restrictions as determined by the *Authority*, a permanent or an ad hoc committee or the *executive officer*, as the case may be; and

(c) does not prevent the exercise of that power or performance of that function by the *Authority*, a permanent or an ad hoc committee or the *executive officer*, as the case may be.

Functions of the chairperson

12. (1) Every *chairperson* must, with regard to the *Authority* or *committee* which the person chairs -

(a) allow each *party* to appoint from among its members a person to act as convenor of such *party* for communication purposes. If a *party* does not appoint such convenor, the *chairperson* may appoint any member of that *party* as convenor of the *party*;

(b) cause meetings to be convened; and

- (c) ensure the orderly conduct of meetings and that all resolutions are recorded.

- (2) A *chairperson* may order any *member* to leave a meeting if in the opinion of the *chairperson* the behaviour of such *member* is disruptive to the orderly conduct of the meeting.

12(3) - If the *chairperson* of any *other committee* is unable to attend a meeting, a *member* of that committee may be elected in terms of item 17(3).

- (3) If the *chairperson* of the *Authority* is unable to attend a meeting, the *chairperson* may designate another *officer* of the Mine Health and Safety Inspectorate, to chair the meeting.

- (4) If the *chairperson* of a permanent committee is unable to attend a meeting, the *executive officer* may designate another *employee* of the *Authority* to chair the meeting.

Appointment and functions of secretary

13. (1) The *executive officer* must appoint a secretary for -

- (a) the *Authority* and every permanent and ad hoc committee; and

- (b) any subcommittee if the *establishing authority* so requires.

- (2) If a secretary is not appointed for a subcommittee, the *members* of that committee must keep a record of and report to the relevant *establishing authority* on their activities.

- (3) A secretary must, with regard to the *Authority* or *committee* for which the secretary is appointed -

- (a) prepare the agenda for every meeting;
- (b) prepare the minutes of every meeting;
- (c) record every resolution of such meeting and if so requested by a *member*, the views of that *member*;
- (d) keep general records, records of *members*, minutes, documents and files of the *Authority*, or such *committee*; and
- (e) serve every member with -
 - (i) a convening notice and the agenda of a meeting at least five *clear days* before the meeting or two *clear days* before an urgent meeting;
 - (ii) any reports or documentation to be considered at a meeting, a reasonable period before the meeting; and
 - (iii) the minutes of every meeting.

Rights and obligations of members

14. (1) Any *member* who is unable to attend a meeting of the *Authority* or any *committee* -

- (a) may designate any *alternate* of that *member's party* on the *Authority* or that committee, as the case may be, to represent the *member* at the meeting; and

(b) must before the meeting give notice of it to the *chairperson*.

(2) An *alternate* designated under subitem 1(a), has the rights and obligations of the *member* whom that *alternate* represents.

(3) Every *member* has the right to -

(a) be heard on any matter considered at the meeting;

(b) take part in the resolution of any matter before the meeting; and

(c) have their views, on any matter considered at the meeting, recorded in the minutes of the meeting and in any report or recommendation of the meeting.

Meetings

15. (1) The *Authority* must meet at least once every three months.

(2) Every permanent and ad hoc committee must meet at least once every two months.

(3) Subcommittees must meet at such intervals and frequency as determined by their activities and the dates for the completion of their tasks.

(4) An urgent meeting of the *Authority* or any *committee* may be called by the *chairperson* at the written request of at least two *members* or when the *chairperson* deems it necessary.

- (5) The *Authority* may direct any *committee* to call an urgent meeting to resolve any matter determined by the *Authority*.
- (6) A permanent or ad hoc committee may direct any of its subcommittees to call an urgent meeting to resolve any matter determined by such committee.

Quorum

16. (1) Eight *members* form a quorum for any meeting of the *Authority* or a permanent committee provided that at least two *members* of each *party* are present.
- (2) The quorum for any *other committee* must be determined by the relevant *establishing authority*.
- (3) Despite subitems (1) and (2), if the convenors of the *parties* in the *Authority* or any *committee* so agree, a smaller number may constitute a quorum for an urgent meeting of the *Authority* or that *committee*, as the case may be.
- (4) If a quorum is not present at a meeting, the meeting must be postponed to a date, time and place determined by the *chairperson*. The *members* present at the subsequent meeting form a quorum for that meeting.

Procedures at meetings

17. (1) Items may be added to the agenda of any meeting if the meeting so decides.

- (2) Any *member* who has a direct or personal financial interest in any matter before the meeting must, before the matter is discussed by the meeting, declare such interest to the meeting and the *chairperson* must determine whether such *member* may participate in the consideration of the matter.
- (3) If the designated *chairperson* is not present at a meeting the *members* may elect from among their number a *chairperson* for that meeting.

Resolution of meeting

18. (1) The *Authority* or any *committee* must endeavour to reach *consensus* on any matter that requires resolution.
- (2) If *consensus* cannot be reached on any matter after sincere endeavours to do so, a decision of the majority of *members* present and voting at a meeting constitutes the resolution on that matter by the *Authority* or any *committee*, as the case may be.
- (3) Any report or advice of the *Authority* or any *committee* which reflects a resolution that was not reached by *consensus*, must reflect -
 - (a) the different views of the *members* on the matter so resolved; and
 - (b) which *members* supported each view.
- (4) No resolution nor any act authorised by the *Authority* or any *committee* is invalid merely because of a vacancy on the *Authority* or that *committee* or because any person not entitled to sit

as a *member* sat at such meeting at the time the resolution was taken or the act was authorised if a quorum was constituted by the rest of the *members* present at the meeting and entitled to sit as *members* at the meeting.

- (5) The chairperson of a permanent committee has no voting right.

Funds of Authority

19(1) - In terms of Section 98(3)(d) the *Minister*, after consulting the Mining Qualifications Authority, by notice in the Gazette, may make regulations to provide for the funding of the Mining Qualifications Authority including the manner in which such funds may be raised.

19. (1) The funds of the *Authority* consist of -

- (a) moneys appropriated by Parliament to perform its functions;
- (b) moneys which accrue to the *Authority* in terms of regulations made under *this Act* or in terms of any other applicable law;
- (c) revenue obtained from investments;
- (d) fees obtained from services provided by the *Authority*;
- (e) donations received from any person, body, government or administration; and
- (f) any other money received from any other source.

19(2)(a) and (b) - The regulations under section 98 (3)(d) require the agreement of the Minister of Finance for the provision of funds for the administration of the *Authority* and its *committees* from public funds.

(2) Moneys appropriated by Parliament must be used for -

- (a) the payment to *members* who are not in the full-time service of the State of such remuneration and allowances as the *Minister* may determine with the agreement of the Minister of Finance;

- (b) the payment of salaries, allowances, subsidies and other benefits as approved by the *Minister* with the agreement of the Minister of Finance to the *executive officer* and other employees of the *Authority*; and
 - (c) the payment for administrative functions of the *Authority*.
- (3) Moneys referred to in subitem (1)(b), (c), (d) or (f) may be -
 - (a) used as contemplated in *this Act*;
 - (b) invested with any bank registered as such under the Banks Act, 1990 (Act No. 94 of 1990), or invested in such other manner as may be determined, by the *Minister* with the agreement of the Minister of Finance; and
 - (c) used to register or utilise any intellectual property of the *Authority*.
- (4) Moneys referred to in subitem (1)(e) must be utilised in accordance with the conditions, if any, imposed by the donor of such moneys.
- (5) The chairperson of the *Authority* must for each financial year, submit a statement of estimated income and expenditure during such financial year to the *Minister* who, with the agreement of the Minister of Finance, must approve the budget for -

- (a) the first financial year, before the first meeting of the *Authority*; and
- (b) every other financial year, before the beginning of such financial year.

Accounting

20 - Section 46(2)(b) provides that the Mining Qualifications Authority may administer and control its financial affairs.

20. (1) The *executive officer* is the accounting officer of the *Authority*.
- (2) The accounting officer is responsible for all moneys received and payments made by the *Authority*.
- (3) The financial year of the *Authority* ends on 31 March in each year.
- (4) The accounting officer must cause records to be kept in accordance with the Generally Accepted Accounting Principles that are necessary to represent fairly the state of affairs and business of the *Authority* and to explain the transactions and financial position of the *Authority*.
- (5) Annual financial statements must be prepared in respect of every financial year. The statement must consist of -
- (a) a balance sheet dealing with the state of affairs of the *Authority*;
 - (b) a return of income received and expenses incurred by the *Authority*; and

- (c) a statement of cash flow information.
- (6) The books of account, statements of account and annual financial statements of the *Authority* must be audited annually by the Auditor-General. The Auditor-General must compile a report on the audit and submit a copy of it to the *Minister* and the *chairperson* of the *Authority*.
- (7) The *executive officer* of the *Authority* must supply each member of the *Authority* with a copy of the report of the Auditor-General.
- (8) As soon as practicable after the report of the Auditor-General has been submitted to the *Minister* in terms of subitem (6), the *Minister* must table it in Parliament.

Abolition of Authority and committees

- 21. (1) The *Authority* may be abolished by an Act of Parliament.
- (2) The *Authority* may at any time abolish any *committee*.
- (3) A permanent or ad hoc committee may at any time abolish any subcommittee established by that committee.

Limitation of liability

- 22. (1) A *member* does not incur any civil liability only because of doing or failing to do something which

such *member* may do or is required to do in terms of *this Act*.

- (2) The *Authority* does not incur any civil liability only because a *member* or employee of the *Authority* took an action or failed to take an action under or in terms of *this Act*, and in taking or failing to take that action such person acted without negligence and in good faith.

Amendments to constitution

23 - Section 97(1) read with 97(4) of *this Act* authorises the *Minister* to add to, change or replace this Constitution, after consultation with the *Council* and the Mining Qualifications Authority, by publication in the Gazette.

23. (1) If the *Minister* or the *Authority* wants to amend the constitution, the *Minister* or the *Authority*, as the case may be, must serve a proposal containing such amendments to the chairperson of the *Council* who must convene a meeting to consider the proposal.
- (2) At such meeting the *Council* after consulting the *Authority* must consider the proposal and resolve either to -
- (i) support the proposal as it is; or
 - (ii) support the proposal with certain amendments; or
 - (iii) oppose the proposal.
- (3) The *Council* must submit its resolution and the comments or the proposal of the *Authority*, as the case may be, to the *Minister*.
- (4) If the *Council* resolves to support the proposal with certain amendments or to oppose the proposal, the

motivation for such resolution and the amendments, if any, must be included in the submission to the *Minister*.

(5) If the *Authority* wants the constitution to be amended -

(a) the proposal by the *Authority* is deemed to be consultation by the *Council* with the *Authority* contemplated in subitem (2); and

(b) the resolution of the *Council* on the proposal by the *Authority* is deemed to be consultation by the *Minister* with the *Council* as contemplated in section 97(1).

(6) If the *Minister* is not satisfied with the amendments or the motivation for the amendments, the *Minister* may refer the proposal back to the *Council* for further consideration.

Interpretation

24. Unless the context indicates otherwise -

“**alternate**” means any person appointed as an alternate to a member under item 8(10);

“**Authority**” means the Mining Qualifications Authority established by section 41(3);

“**chairperson**” means any person who chairs any meeting of the *Authority* or a *committee*;

“clear day” means any day of the week except Sundays and public holidays;

“committee” means any permanent committee, *ad hoc* committee or subcommittee of the *Authority*;

“consensus” means unanimous agreement;

“education and training standards” means registered statements of desired education and training outcomes and their associated assessment criteria as defined in section 1 of the *SAQA Act*;

“establishing Authority” means -

- (i) in the case of the *Authority*, Parliament by legislation;
- (ii) in the case of a permanent or *ad hoc* committee, the *Authority*; and
- (iii) in the case of a subcommittee, the *Authority* or any permanent or *ad hoc* committee that establishes the subcommittee;

“executive officer” means the executive officer appointed in terms of item 10(1) or designated in terms of item 10(4);

“learning” means a process by which a person gains skills, knowledge and values;

“member” means any member of the *Authority* or any *committee* and includes any *alternate* designated by such member to attend a meeting of the *Authority* or any *committee* on behalf of such member;

“National Qualifications Framework” means the *National Qualifications Framework* as defined in section 1 of the *SAQA Act*;

If a function of the *Authority* needs to be performed on a permanent basis by a *committee*, the *Authority* may either delegate or assign the function to a permanent committee or establish a new permanent committee to perform the function.

“other committee” means -

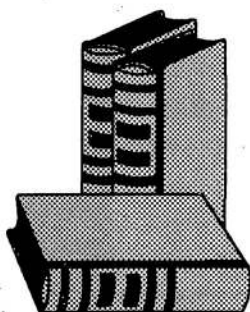
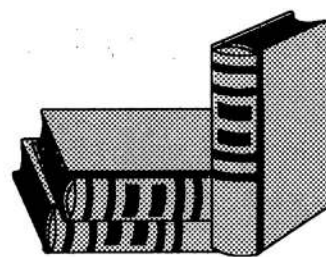
- (a) an ad hoc committee established for a limited term to perform any function of the *Authority* which is not a function of any permanent committee; and
- (b) a subcommittee established by -
 - (i) the *Authority* to perform a function which is not assigned by or under *this Act* to a permanent committee; and
 - (ii) a permanent or an ad hoc committee to perform any function of that committee;

“party” means *employers, employees, or the State*, as the case may be;

“qualification” means the formal recognition of the achievement of the required number and range of credits and such other requirements at specific levels of the *National Qualifications Framework* as may be proposed by the Mining Qualifications Authority and determined by the South African Qualifications Authority as defined in section 1 of the *SAQA Act*; and

“SAQA Act” means the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).

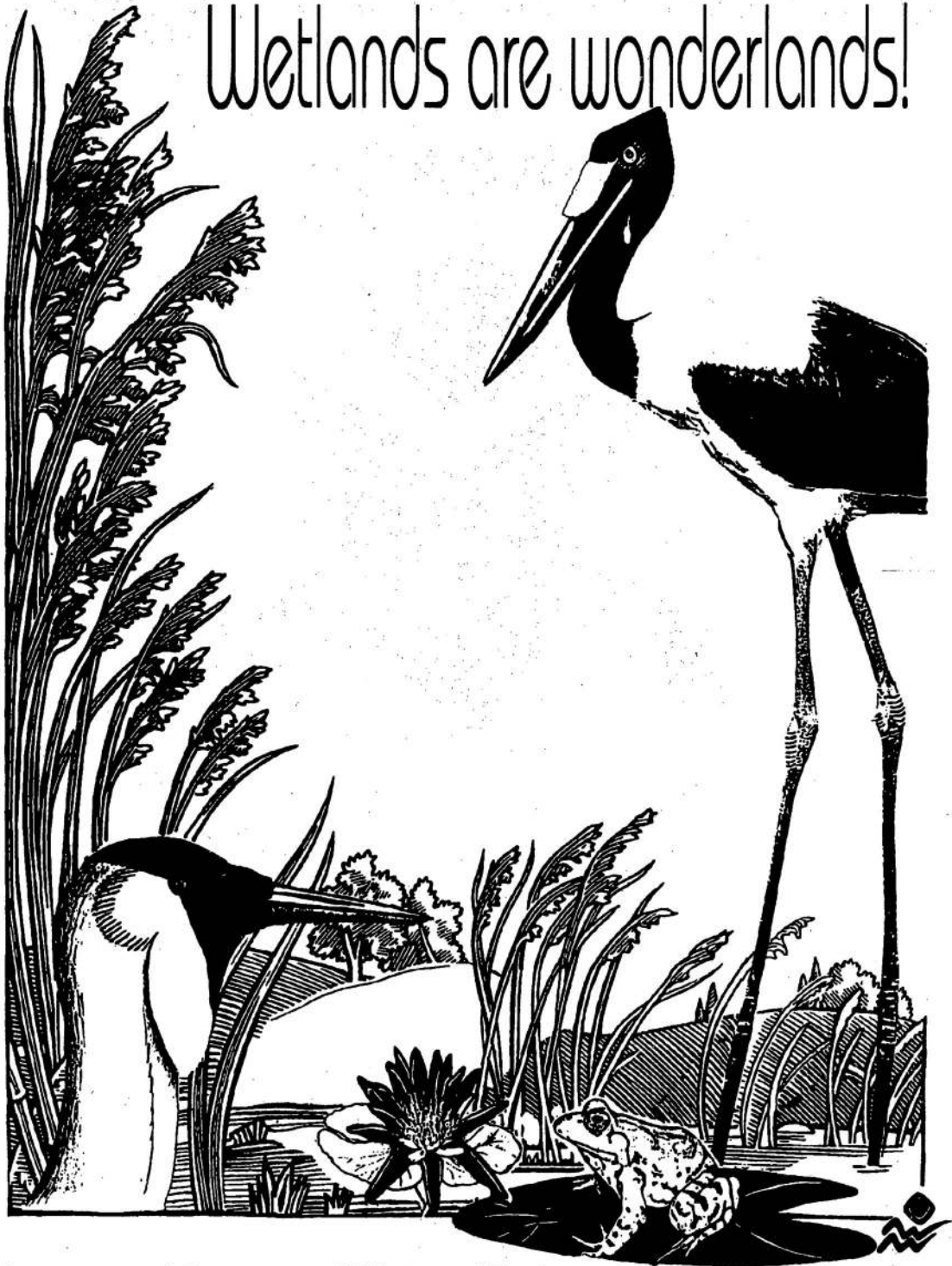
Where is the largest amount of meteorological information in the whole of South Africa available?



Waar is die meeste weerkundige inligting in die hele Suid-Afrika beskikbaar?

Department of Environmental Affairs and Tourism
Departement van Omgewingsake en Toerisme

Wetlands are wonderlands!



Department of Environmental Affairs and Tourism

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REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

VOL. 394

CAPE TOWN, 24 APRIL 1998

KAAPSTAD, 24 APRIL 1998

No. 18855

OFFICE OF THE PRESIDENT

No. 613. 24 April 1998

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 12 of 1998: Unit Trusts Control Amendment Act, 1998.

KANTOOR VAN DIE PRESIDENT

No. 613. 24 April 1998

Hierby word bekend gemaak dat die President sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 12 van 1998: Wysigingswet op Beheer van Effekte-trustskemas, 1998.

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Unit Trusts Control Act, 1981, so as to deregulate the quantum and method of calculation of charges levied by a unit trust scheme; to empower a management company to include in a unit portfolio, subject to prescribed conditions, units or any other form of participation in other unit portfolios of a unit trust scheme or other similar scheme; to empower the Minister to prescribe the kind of information that must be furnished annually by a management company to the registrar and holders of unit certificates; to empower a trustee to appoint a representative to perform specific functions when it is impracticable for the trustee to perform those functions; and to allow foreign collective investment schemes to promote their business in the Republic with the approval of and subject to the conditions determined by the registrar; and to provide for matters connected therewith.

(English text signed by the President.)
(Assented to 21 April 1998.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 54 of 1981, as amended by section 8 of Act 51 of 1988, section 29 of Act 97 of 1990, section 5 of Act 54 of 1991, section 9 of Act 41 of 1992, section 39 of Act 104 of 1993 and section 1 of Act 53 of 1996

5

1. Section 1 of the Unit Trusts Control Act, 1981 (hereinafter referred to as the principal Act), is amended—

- (a) by the deletion of the definitions of “compulsory charge”, “initial charge” and “service charge”;
- (b) by the insertion after the definition of “fixed property company” of the following definition:

“ ‘fund of funds’ means a unit portfolio that, apart from liquid assets and approved securities, consists solely of units or any other form of participation in unit portfolios of unit trust schemes or other similar schemes, other than schemes in property shares;”
- (c) by the deletion in the definition of “securities” of the word “and” at the end of paragraph (b), by the insertion of the word “and” at the end of paragraph (c) and by the addition of the following paragraph:

15

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit
bestaande verordeninge aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordeninge aan.

WET

Tot wysiging van die Wet op Beheer van Effekte-trustskemas, 1981, ten einde die bedrag en metode van berekening van vorderings wat deur 'n effekte-trustskema gevorder word, te dereguleer; 'n bestuursmaatskappy in staat te stel om, onderworpe aan voorgeskrewe voorwaardes, onderaandeel of enige ander vorm van deelname aan ander effektegroepe in 'n effekte-trustskema of ander soortgelyke skema, in 'n effektegroep op te neem; die Minister te magtig om die soort inligting voor te skryf wat jaarliks deur 'n bestuursmaatskappy aan die registrateur en besitters van onderaandeelsertifikate verstrek moet word; 'n trustee in staat te stel om 'n verteenwoordiger aan te stel om bepaalde werksaamhede te verrig wanneer dit vir die trustee ondoenlik is om daardie werksaamhede te verrig; en buitelandse kollektiewe beleggingskemas toe te laat om hulle besigheid in die Republiek te bevorder met die goedkeuring van en onderworpe aan die voorwaardes deur die registrateur bepaal; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 21 April 1998.)

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

5 **Wysiging van artikel 1 van Wet 54 van 1981, soos gewysig deur artikel 8 van Wet 51 van 1988, artikel 29 van Wet 97 van 1990, artikel 5 van Wet 54 van 1991, artikel 9 van Wet 41 van 1992, artikel 39 van Wet 104 van 1993 en artikel 1 van Wet 53 van 1996**

1. Artikel 1 van die Wet op Beheer van Effekte-trustskemas, 1981 (hieronder die Hoofwet genoem), word gewysig—

- 10 (a) deur die omskrywings van “aanvangsheffing”, “diensgeld” en “verpligte koste” te skrap;
- (b) deur die volgende omskrywing na die omskrywing van “erkende effekteurs” in te voeg:
- 15 “ ‘fonds van fondse’ ’n effektegroep wat, afgesien van likwiede bates en goedgekeurde effekte, uitsluitlik bestaan uit onderaandele in of enige ander vorm van deelname aan effektegroepe van effekte-trustskemas of ander soortgelyke skemas wat nie skemas in eiendomsaandele is nie;”;
- (c) deur in die omskrywing van “effekte” die woord “en” aan die einde van paragraaf (b) te skrap, deur die woord “en” aan die einde van paragraaf (c) in te voeg en deur die volgende paragraaf by te voeg:

Act No. 12, 1998

UNIT TRUSTS CONTROL AMENDMENT ACT, 1998

“(d) except for the purposes of section 6(1), units in a unit portfolio, other than units in a unit portfolio in property shares, managed by a management company under this Act or any other form of participation in a unit portfolio of a unit trust scheme or other similar scheme, whether called a unit or by any other name and whether listed on a recognized stock exchange or not;”. 5

Amendment of section 6 of Act 54 of 1981, as amended by section 7 of Act 54 of 1991, section 42 of Act 104 of 1993 and section 2 of Act 53 of 1996

2. Section 6 of the principal Act is amended by the addition to subsection (1) of the following paragraph: 10

“(e) shall, except in the prescribed manner and subject to the prescribed conditions, include in a unit portfolio any unit or any other form of participation in a unit portfolio of a unit trust scheme or other similar scheme, other than a unit portfolio of a unit trust scheme in property shares.”.

Substitution of section 10 of Act 54 of 1981 15

3. The following section is substituted for section 10 of the principal Act:

“Financial statements and other information to be furnished by management company

10. (1) Every management company shall not later than three months after the close of its financial year transmit to the registrar a copy of the duly audited financial statements of such company and of every unit trust scheme managed by it, and on a date prescribed, such other statements and information as may be prescribed: Provided that a management company shall within a period of 30 days after receipt of a written request from the registrar, or within such further period thereafter as the registrar may allow, lodge with the registrar such further information and explanations in connection with the financial and other statements referred to as may be specified in the request. 20 25

(2) Every management company shall, not later than three months after the close of the financial year of every unit trust scheme managed by it, transmit to every holder of a unit certificate in such scheme such information relating to the state of affairs and results of the operation of the unit trust scheme as may be prescribed. 30

(3) Copies of the financial and other statements referred to in subsection (1) shall be kept available at the registered office of the management company for inspection during ordinary office hours by any holder of unit certificates in the unit trust scheme concerned or other person *bona fide* interested in the purchase of unit certificates from the company. 35

(4) Every management company shall, in accordance with the regulations, lodge with the registrar— 40

(a) copies of all advertisements, brochures and pamphlets published or proposed to be published by the company or any of its authorized agents, and of all proposed additions thereto and variations thereof, signed and certified in the prescribed manner by or on behalf of the directors of the management company: Provided that the registrar may exempt the company to such extent and on such conditions as he or she may deem fit, from the obligation to lodge a copy of any such advertisement, brochure or pamphlet prior to its publication; 45

(b) a copy of every return or notice which the company is required to furnish to the Registrar of Companies under section 216(2) of the Companies Act, 1973 (Act No. 61 of 1973).” 50

- 5 “(d) behalwe by die toepassing van artikel 6(1), onderaandeel in ’n effekte-groep, behalwe onderaandeel in ’n effektegroep in eiendomsaandeel, wat deur ’n bestuursmaatskappy kragtens hierdie Wet bestuur word of enige ander vorm van deelname aan ’n effektegroep van ’n effekte-trustskema of ander soortgelyke skema, hetsy dit ’n onderaandeel of iets anders genoem word of hetsy dit op ’n erkende effektebeurs genoteer is of nie;”.

Wysiging van artikel 6 van Wet 54 van 1981, soos gewysig deur artikel 7 van Wet 54 van 1991, artikel 42 van Wet 104 van 1993 en artikel 2 van Wet 53 van 1996

- 10 2. Artikel 6 van die Hoofwet word gewysig deur die volgende paragraaf by subartikel (1) te voeg:

- 15 “(e) nie enige onderaandeel in of enige ander vorm van deelname aan ’n effektegroep van ’n effekte-trustskema of ander soortgelyke skema, behalwe ’n effektegroep van ’n effekte-trustskema in eiendomsaandeel, opneem nie behalwe op die voorgeskrewe wyse en onderworpe aan die voorgeskrewe voorwaardes.”.

Vervanging van artikel 10 van Wet 54 van 1981

3. Artikel 10 van die Hoofwet word deur die volgende artikel vervang:

- 20 **“Finansiële state en ander inligting wat deur bestuursmaatskappy verstrekk moet word**

- 25 **10. (1) Elke bestuursmaatskappy moet nie later nie as drie maande na die einde van sy boekjaar aan die registrateur ’n afskrif van die behoorlik geouditeerde finansiële state van sodanige maatskappy en van elke effekte-trustskema deur hom bestuur en, op ’n voorgeskrewe datum, die ander state en inligting wat voorgeskryf word, stuur: Met dien verstande dat ’n bestuursmaatskappy binne ’n tydperk van 30 dae na ontvangs van ’n skriftelike versoek van die registrateur, of binne die verdere tydperk daarna wat die registrateur toelaat, aan die registrateur die verdere inligting en verduidelikings in verband met bedoelde finansiële en ander state wat in die versoek aangedui word, moet verstrek.**

- 30 (2) Elke bestuursmaatskappy moet nie later nie as drie maande na die einde van die boekjaar van elke effekte-trustskema wat deur hom bestuur word aan elke besitter van ’n onderaandeelsertifikaat in sodanige skema die inligting aangaande die stand van die sake en die resultate van die bedryf van die effekte-trustskema stuur wat voorgeskryf word.

- 35 (3) Afskrifte van die in subartikel (1) bedoelde finansiële en ander state moet by die geregistreerde kantoor van die bestuursmaatskappy beskikbaar gehou word vir insae gedurende gewone kantoorure deur enige besitter van onderaandeelsertifikate in die betrokke effekte-trustskema of ander persoon wat *bona fide* in die aankoop van onderaandeelsertifikate van die maatskappy belang stel.

- 40 (4) Elke bestuursmaatskappy moet—

- 45 (a) eksemplare van alle advertensies, brosjures en pamflette wat deur die maatskappy of een van sy gemagtigde agente gepubliseer is of waarvan die publikasie in die vooruitsig gestel word, en van alle voorgestelde byvoegings daarby en wysigings daarvan, op die voorgeskrewe wyse onderteken en gesertifiseer deur of namens die direkteur van die bestuursmaatskappy: Met dien verstande dat die registrateur die maatskappy kan onthef, vir sover en op die voorwaardes wat hy of sy goedvind, van die verpligting om ’n eksemplaar van enige sodanige advertensie, brosjure of pamflet vóór die publikasie daarvan in te dien;

- 50 (b) ’n afskrif van elke opgawe of kennisgewing wat kragtens artikel 216(2) van die Maatskappywet, 1973 (Wet No. 61 van 1973), deur die bestuursmaatskappy aan die Registrateur van Maatskappye verstrekk moet word,

55 ooreenkomstig die regulasies by die registrateur indien.”.

Amendment of section 12 of Act 54 of 1981

4. Section 12 of the principal Act is amended by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraph, the existing paragraphs (c) and (d) becoming paragraphs (b) and (c), respectively:

“(a) the charges that may be levied by the management company, the method of calculation and the quantum of those charges and the time when they may be levied;”.

Amendment of section 18 of Act 54 of 1981

5. Section 18 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) (a) Every management company shall at the end of each calendar quarter, within 30 days after the end of such quarter, furnish to the registrar a full list of all underlying securities comprised in any unit portfolio managed by it, reflecting in respect of every unit portfolio, the total market value of each of the several securities included in that unit portfolio, and the value of each of those securities expressed—

- (i) as a percentage of the total value of assets in the unit portfolio concerned; and
- (ii) as a percentage of the total amount of securities of that class issued by the concern in which the investment is held,

and indicating which of such securities are stock exchange securities and which are not, as well as the amount of liquid assets held in the unit portfolio.

(b) The list referred to in paragraph (a) shall be kept available at the registered office of the management company and at the office of every authorized agent of the management company for inspection during ordinary office hours by any unit certificate holder or other person *bona fide* interested in the purchase of unit certificates from the company.”.

Amendment of section 21 of Act 54 of 1981

6. Section 21 of the principal Act is amended by the addition of the following subsection:

“(4) (a) When it is impracticable for a trustee under a unit trust scheme to perform the functions pertaining to the registration of securities and the safe custody of documents of title entrusted to it by the trust deed, it may appoint a representative which is independent from the management company and any of its agents, to perform such functions.

(b) A trustee under a unit trust scheme who has appointed a representative as contemplated in paragraph (a), is not divested of the functions referred to in that paragraph.”.

Amendment of section 22 of Act 54 of 1981

7. Section 22 of the principal Act is amended—

- (a) by the deletion of paragraph (h) of subsection (1);
- (b) by the substitution for paragraph (i) of subsection (2) of the following paragraph:

“(i) the charges that may be levied and the method of calculation of those charges;”;

- (c) by the insertion in subsection (2) after paragraph (i) of the following paragraph:

“(iA) that not less than three months’ written notice shall be given to every holder of unit certificates of any increase in any charge, any change in the method of calculation thereof which could result in an increase thereof and the introduction of any additional charge;”.

Insertion of section 37A in Act 54 of 1981

8. The following section is inserted after section 37 of the principal Act:

Wysiging van artikel 12 van Wet 54 van 1981

4. Artikel 12 van die Hoofwet word gewysig deur in subartikel (1) paragrafe (a) en (b) deur die volgende paragraaf te vervang, terwyl die bestaande paragrafe (c) en (d) onderskeidelik paragrafe (b) en (c) word:

- 5 “(a) die vorderings wat deur die bestuursmaatskappy gehef kan word, die metode van berekening en die bedrag van daardie vorderings en die tyd wanneer hulle gehef kan word;”.

Wysiging van artikel 18 van Wet 54 van 1981

5. Artikel 18 van die Hoofwet word gewysig deur subartikel (2) deur die volgende subartikel te vervang:

- 10 “(2) (a) Elke bestuursmaatskappy moet aan die einde van elke kalenderkwartaal, binne 30 dae na die einde van sodanige kwartaal, aan die registrateur ’n volledige lys verstrek van al die groeppvormende effekte opgeneem in ’n effektegroepe wat die maatskappy bestuur en waarin met betrekking tot elke effektegroepe aangetoon word die totale markwaarde van elk van die onderskeie effekte in daardie effektegroepe opgeneem, en die waarde van elk van daardie effekte aangedui—

- 15 (i) as ’n persentasie van die totale waarde van bates in die betrokke effektegroepe; en
 20 (ii) as ’n persentasie van die totale bedrag aan effekte van daardie kategorie uitgereik deur die onderneming waarin die belegging gehou word, en aangedui word watter van bedoelde effekte beurseffekte is en watter nie, asook die bedrag aan likwiede bates wat in die effektegroepe gehou word.

- 25 (b) Die lys bedoel in paragraaf (a) moet by die geregistreerde kantoor van die bestuursmaatskappy en by die kantoor van elke gemagtigde agent van die bestuursmaatskappy beskikbaar gehou word vir insae gedurende gewone kantoorure deur enige besitter van onderaandeelsertifikate of ander persoon wat *bona fide* belangstel in die aankoop van onderaandeelsertifikate van die maatskappy.”.

Wysiging van artikel 21 van Wet 54 van 1981

6. Artikel 21 van die Hoofwet word gewysig deur die volgende subartikel by te voeg:

- 30 “(4) (a) Wanneer dit ondoenlik is vir ’n trustee ingevolge ’n effekte-trustskema om die werksaamhede met betrekking tot die registrasie van effekte en die veilige bewaring van titeldokumente te verrig, welke werksaamhede deur die trustakte aan die trustee toevertrou word, kan die trustee ’n verteenwoordiger, wat onafhanklik van die bestuursmaatskappy of enige van sy agente is, aanstel om daardie werksaamhede te

- 35 verrig.
 (b) ’n Trustee kragtens ’n effekte-trustskema wat ’n verteenwoordiger aangestel het soos in paragraaf (a) beoog, word nie daardeur ontdoen van die werksaamhede in daardie paragraaf bedoel nie.”.

Wysiging van artikel 22 van Wet 54 van 1981

40 7. Artikel 22 van die Hoofwet word gewysig—

- (a) deur paragraaf (h) van subartikel (1) te skrap;
 (b) deur paragraaf (i) van subartikel (2) deur die volgende paragraaf te vervang:
 45 “(i) die vorderings wat gehef mag word en die metode van berekening van daardie vorderings;” en
 (c) deur die invoeging in subartikel (2) na paragraaf (i) van die volgende paragraaf:
 50 “(iA) dat minstens drie maande skriftelike kennis aan elke besitter van onderaandeelsertifikate van enige verhoging van enige vordering, van enige verandering van die metode van berekening van vorderings wat tot ’n verhoging daarvan kan lei en van die invoering van enige addisionele vordering, gegee moet word;”.

Invoeging van artikel 37A in Wet 54 van 1981

8. Die volgende artikel word na artikel 37 van die Hoofwet ingevoeg:

“Approval of foreign collective investment schemes**37A. (1) No person may—**

- | | |
|--|--|
| <p>(a) publish, cause or permit to be published any price list, advertisement, brochure or similar document; or</p> <p>(b) perform any other act,</p> <p>to promote the business of or solicit investments in a collective investment scheme carried on outside the Republic unless such scheme—</p> <p style="padding-left: 20px;">(i) has, after an application for approval accompanied by the prescribed fee, been approved by the Registrar; and</p> <p style="padding-left: 20px;">(ii) complies with the conditions that the Registrar may determine by notice in the <i>Gazette</i>.</p> <p>(2) A scheme approved in terms of subsection (1) shall, for the purposes of section 15A of the Financial Services Board Act, 1990 (Act No. 97 of 1990), be deemed to be a financial institution and the provisions of that section shall apply, with the necessary changes required by the context, to such a scheme.</p> <p>(3) A scheme approved in terms of subsection (1) shall, for the purposes of the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984), be deemed to be a financial institution as defined in that Act and the provisions of that Act shall apply, with the necessary changes required by the context, to such a scheme.”.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> |
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Short title and commencement

9. This Act is called the Unit Trusts Control Amendment Act, 1998, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

“Goedkeuring van buitelandse kollektiewe beleggingskemas**37A. (1) Niemand mag—**

- 5 (a) 'n pryslys, advertensie, brosjure of soortgelyke dokument publiseer, laat publiseer of toelaat dat dit gepubliseer word nie; of
- (b) enige ander handeling verrig nie,
- 10 ten einde die besigheid te bevorder van of beleggings te werf in 'n kollektiewe beleggingskema wat buite die Republiek bedryf word tensy sodanige skema—
- (i) na 'n aansoek om goedkeuring vergesel van die voorgeskrewe
- 15 geld deur die Registrateur goedgekeur is; en
- (ii) voldoen aan die voorwaardes wat die Registrateur by kennisgewing in die *Staatskoerant* bepaal.
- (2) 'n Skema wat ingevolge subartikel (1) goedgekeur is, word by die
- 20 toepassing van artikel 15A van die Wet op die Raad op Finansiële Dienste, 1990 (Wet No. 97 van 1990), geag 'n finansiële instelling te wees en die bepalinge van daardie artikel is met die nodige veranderings wat deur die samehang vereis word, op sodanige skema van toepassing.
- (3) 'n Skema wat ingevolge subartikel (1) goedgekeur is, word by die
- toepassing van die Wet op Inspeksie van Finansiële Instellings, 1984 (Wet No. 38 van 1984), geag 'n finansiële instelling soos in daardie Wet omskryf, te wees en die bepalinge van daardie Wet is met die nodige veranderings wat deur die samehang vereis word, van toepassing op sodanige skema.”.

Kort titel en inwerkingtreding

- 25 **9.** Hierdie Wet heet die Wysigingswet op Beheer van Effekte-trustskemas, 1998, en tree in werking op 'n datum wat die President by proklamasie in die *Staatskoerant* bepaal.



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

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VOL. 394

CAPE TOWN, 24 APRIL 1998

KAAPSTAD, 24 APRIL 1998

No. 18856

OFFICE OF THE PRESIDENT

No. 614.

24 April 1998

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 13 of 1998: Financial Markets Control Amendment Act, 1998.

KANTOOR VAN DIE PRESIDENT

No. 614.

24 April 1998

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 13 van 1998: Wysigingswet op Beheer van Finansiële Markte, 1998.

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

To amend the Financial Markets Control Act, 1989, so as to further regulate restrictions on the management of investments; to further regulate undesirable advertising or canvassing relating to financial instruments; to extend the matters which may be disclosed by a financial exchange; and to extend the limitation on the liability of certain persons to a financial exchange and clearing house; and to provide for matters connected therewith.

(English text signed by the President.)
(Assented to 21 April 1998.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 5 of Act 55 of 1989, as substituted by section 2 of Act 55 of 1995 and amended by section 3 of Act 73 of 1996

1. Section 5 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989) (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) No person [shall] may, as a regular feature of his or her business, undertake the management of investments on behalf of another person, and for such management receive any remuneration in whatever form, 10 [other than fees charged by a member for the buying and selling of financial instruments] unless he or she—

(a) **[is a member authorised in terms of the rules to manage investments on behalf of another person]** is a person who has been approved by the Registrar or is a person who falls within a category of persons approved by the Registrar;

(b) has a written mandate to do so from the other person; and

(c) complies with such conditions as the Registrar may from time to time determine by notice in the *Gazette*, which conditions may—

(i) prohibit the management of investments referred to in subparagraphs (ii) and (iv) of the definition of ‘investments’ in subsection (7), if such investments are not subject to a regulatory regime deemed adequate by the Registrar for the protection of investors; and

(ii) differ in respect of different groups or types of investment managers.”;	25
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ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorden in vet druk tussen vierkantige hake dui schrappings uit
bestaande verordeningen aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Wet op Beheer van Finansiële Markte, 1989, ten einde beperkings op die bestuur van beleggings verder te reël; ongewenste advertering of werwing met betrekking tot finansiële instrumente verder te reël; die aangeleenthede wat deur 'n finansiële beurs geopenbaar kan word, uit te brei; en die beperking van die aanspreeklikheid van sekere persone na 'n finansiële beurs en verrekeningshuis uit te brei; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 21 April 1998.)

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika,
soos volg:—

Wysiging van artikel 5 van Wet 55 van 1989, soos vervang deur artikel 2 van Wet 55 van 1995 en gewysig deur artikel 3 van Wet 73 van 1996

5 1. Artikel 5 van die Wet op Beheer van Finansiële Markte, 1989 (Wet No. 55 van 1989) (hieronder die Hoofwet genoem), word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

10 “(1) Niemand mag, as ’n staande kenmerk van sy of haar besigheid, die bestuur van beleggings namens ’n ander persoon onderneem en vir sodanige bestuur enige vorm van vergoeding ontvang nie, [behalwe gelde wat ’n lid hef vir die koop of verkoop van finansiële instrumente] tensy hy of sy—

15 (a) [’n lid is wat kragtens die reëls gemagtig is om beleggings
namens ’n ander persoon te bestuur of] ’n persoon is wat deur
die Registrateur goedgekeur is of ’n persoon is wat in ’n kategorie
persone val wat deur die Registrateur goedgekeur is;

(b) 'n skriftelike mandaat van die ander persoon het om aldus op te tree; en

20 (c) aan die voorwaardes voldoen wat die Registrateur van tyd tot tyd by kennisgewing in die *Staatskoerant* bepaal, welke voorwaardes—

(i) die bestuur van beleggings bedoel in subparagrafe (ii) en (iv) van die omskrywing van 'beleggings' in subartikel (7) kan verbied indien die beleggings nie onderworpe is nie aan 'n regulatoriese stelsel wat na die oordeel van die Registrateur toereikend is vir die beskerming van beleggers; en

(ii) kan verskil ten opsigte van verskillende groepe of tipes beleggingsbestuurders.”;

- (b) by the insertion after subsection (1) of the following subsection:
 “(1A) Subsection (1) does not apply to a member authorised in terms of the rules to manage investments on behalf of another person or a company which is registered as a management company in terms of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981).”; 5
- (c) by the substitution in subsection (6) for subparagraph (iv) of paragraph (a) of the following subparagraph:
 “(iv) of a trust as defined in section 1 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), created *inter vivos*, but not a business trust, and he or she is the trustee concerned or a person administering such trust on behalf of that trustee; or”; and 10
- (d) by the substitution for subsection (7) of the following subsection:
 “(7) For the purposes of this section—
- (a) ‘investments’ means— 15
- (i) financial instruments [or] listed on a financial exchange;
 - (ii) financial instruments listed on a foreign exchange;
 - (iii) units in a unit portfolio as defined in section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or units or any other form of participation in a collective investment scheme approved by the Registrar of Unit Trust Companies in terms of that Act; 20
 - (iv) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country;
 - (v) any other instruments declared to be [such] investments for the purposes of this section by the Registrar by notice in the *Gazette*; or
 - (vi) funds intended for the purchase of such financial instruments, units, participation or other instruments; 25
- (b) ‘management of investments’ means—
- (i) [in the case of a member means] the buying, [and] selling [of financial instruments] or otherwise dealing with investments on behalf of another person [in terms of an unlimited mandate to act on behalf of such other person; or]; 30
 - (ii) [in the case of a person who is not a member means the buying and selling of financial instruments on behalf of another person in terms of any mandate, whether limited or unlimited, to act on behalf of the other person] an offer or agreement regarding such buying, selling or dealing, irrespective of whether an investment manager is required to exercise his, her or its discretion; or 35
 - (iii) the implementation on behalf of another person of a decision to buy, sell or deal with investments, 40
- but not—
- (aa) the giving of advice on the merits of such transactions without receiving funds or assets from a client; or
 - (bb) the performance of the functions of a company or institution which is registered as a trustee under the Unit Trusts Control Act, 1981 (Act No. 54 of 1981); and 45
- (c) [‘an unlimited mandate’ means a mandate to act on behalf of another person without it being necessary to obtain further authority or consent from such other person to effect any transaction in financial instruments under such mandate] ‘business trust’ means a trust *inter vivos* created for the purpose of carrying on a business for profit-making, which purpose is achieved through the combination of capital contributed by the beneficiaries themselves and through the administration or management of the capital by trustees on behalf of and for the benefit of the beneficiaries.”. 50

(b) deur die volgende subartikel na subartikel (1) in te voeg:

“(1A) Subartikel (1) is nie van toepassing nie op ’n lid wat ingevolge die reëls gemagtig is om beleggings namens ’n ander persoon te bestuur of ’n maatskappy wat as ’n bestuursmaatskappy ingevolge die Wet op Beheer van Effekte-trustskemas, 1981 (Wet No. 54 van 1981), geregistreer is.”;

(c) deur in subartikel (6) subparagraaf (iv) van paragraaf (a) deur die volgende subparagraaf te vervang:

“(iv) van ’n trust soos in artikel 1 van die Wet op die Beheer oor Trustgoed, 1988 (Wet No. 57 van 1988), omskryf, wat *inter vivos* tot stand gebring is, maar nie ’n besigheidstrust nie, en [sodanige persoon] hy of sy die betrokke trustee is of iemand is wat namens daardie trustee sodanige trust administreer; of”;

(d) deur subartikel (7) deur die volgende subartikel te vervang:

“(7) By die toepassing van hierdie artikel beteken—

(a) ‘beleggings’—

- (i) finansiële instrumente [of] genoteer op ’n finansiële beurs;
- (ii) finansiële instrumente genoteer op ’n buitelandse beurs;
- (iii) onderaande in ’n effektegroepe soos omskryf in artikel 1 van die Wet op Beheer van Effekte-trustskemas, 1981 (Wet No. 54 van 1981), of onderaande of enige ander vorm van deelname aan ’n kollektiewe beleggingskema deur die Registrateur van Effekte-trustmaatskappye ingevolge daardie Wet goedgekeur;
- (iv) onderaande of enige ander vorm van deelname aan ’n kollektiewe beleggingskema wat in die buiteland gelisensieer of geregistreer is;
- (v) enige ander instrumente deur die Registrateur by kennisgewing in die *Staatskoerant* as [sodanig] beleggings vir die doeleindes van hierdie artikel verklaar; of
- (vi) kontant bestem om sodanige finansiële instrumente, onderaande, deelneming of ander instrumente te koop;

(b) ‘bestuur van beleggings’—

- (i) [in die geval van ’n lid] die koop, [en] verkoop [van finansiële instrumente] of enige ander handeling aangaande beleggings namens ’n ander persoon [ingevolge ’n onbeperkte mandaat om namens die ander persoon op te tree; of];
- (ii) [in die geval van ’n persoon wat nie ’n lid is nie, die koop en verkoop van finansiële instrumente namens ’n ander persoon ingevolge ’n mandaat hetsy beperk of onbeperk, om namens die ander persoon op te tree] ’n aanbod of ooreenkoms met betrekking tot sodanige koop, verkoop of handeling, ongeag of daar van ’n beleggingsbestuurder vereis word om sy of haar diskresie te gebruik; of
- (iii) die uitvoering namens ’n ander persoon van ’n besluit om beleggings te koop of te verkoop of daarmee te handel, maar nie—
 - (aa) die gee van advies nie oor die meriete van sodanige transaksies sonder om geld of bates van ’n kliënt te ontvang; of
 - (bb) die verrigting nie van die werksaamhede van ’n maatskappy of instelling wat ingevolge die Wet op Beheer van Effekte-trustskemas, 1981 (Wet No. 54 van 1981), as ’n trustee geregistreer is; en

(c) [‘onbeperkte mandaat’ ’n mandaat om namens ’n ander persoon op te tree sonder dat dit nodig is om verdere magtiging of toestemming van sodanige ander persoon te verkry om ’n transaksie in finansiële instrumente uit te voer ingevolge sodanige mandaat] ‘besigheidstrust’ ’n trust *inter vivos* wat tot stand gebring is met die doel om ’n besigheid vir winsbejag te bedryf, welke doel bereik word deur die saamvoeging van kapitaal wat deur die begunstigdes self bygedra word en deur die administrasie of bestuur van die kapitaal deur trustees namens en tot voordeel van die begunstigdes.”.

of financial exchange supervisors and **[that]** the disclosure will not be against the public interest.”.

Amendment of section 36 of Act 55 of 1989, as amended by section 28 of Act 54 of 1991, section 25 of Act 55 of 1995 and section 12 of Act 73 of 1996

5. Section 36 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: 5

“(a) contravenes a provision of section 4(1), 17B, 20, 21, 21A or 22;”.

Substitution of section 37A of Act 55 of 1989, as substituted by section 13 of Act 73 of 1996

6. The following section is hereby substituted for section 37A of the principal Act: 10

“Limitation of liability

37A. No financial exchange, clearing house, executive officer, employee or representative of a financial exchange or of a clearing house, or any member of an executive committee or subcommittee of the executive committee, or of a clearing house, shall be liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by the financial exchange, clearing house, officer, employee, representative or member in the *bona fide* or negligent, but not grossly negligent, exercise of any power or carrying out of any duty or performance of any function under or in terms of this Act or the rules.”. 15 20

Short title and commencement

7. This Act shall be called the Financial Markets Control Amendment Act, 1998, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

finansiële beurs-toesighouers en [dat] die openbaarmaking nie teen die openbare belang sal wees nie."

Wysiging van artikel 36 van Wet 55 van 1989, soos gewysig deur artikel 28 van Wet 54 van 1991, artikel 25 van Wet 55 van 1995 en artikel 12 van Wet 73 van 1996

- 5 5. Artikel 36 van die Hoofwet word hierby gewysig deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:
 “(a) ’n bepaling van artikel 4(1), 17B, 20, 21, 21A of 22 oortree;”.

Vervanging van artikel 37A van Wet 55 van 1989, soos vervang deur artikel 13 van Wet 73 van 1996

- 10 6. Artikel 37A van die Hoofwet word hierby deur die volgende artikel vervang:

“Beperking van aanspreeklikheid

- 15 37A. Geen finansiële beurs, verrekeningshuis, uitvoerende beampte, werknemer of verteenwoordiger van ’n finansiële beurs of van ’n verrekeningshuis, of ’n lid van ’n uitvoerende komitee of subkomitee van die uitvoerende komitee, of van ’n verrekeningshuis, is aanspreeklik nie vir enige verlies gely deur of skade veroorsaak aan enige persoon as gevolg van enigiets gedoen of nagelaat deur die finansiële beurs, verrekeningshuis, beampte, werknemer, verteenwoordiger of lid in die *bona fide*- of nalatige, maar nie growwe nalatige nie, uitoefening van ’n bevoegdheid of
20 uitvoering van ’n plig of verrigting van ’n werksaamheid kragtens of ingevolge hierdie Wet of die reëls.”.

Kort titel en inwerkingtreding

- 25 7. Hierdie Wet heet die Wysigingswet op Beheer van Finansiële Markte, 1998, en tree in werking op ’n datum deur die President by proklamasie in die *Staatskoerant* bepaal.



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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No. 18857

OFFICE OF THE PRESIDENT

No. 615. 24 April 1998

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 14 of 1998: Stock Exchanges Control Amendment Act, 1998.

KANTOOR VAN DIE PRESIDENT

No. 615. 24 April 1998

Hierby word bekend gemaak dat die President sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 14 van 1998: Wysigingswet op Beheer van Aandelebeurse, 1998.

Act No. 14, 1998

STOCK EXCHANGES CONTROL AMENDMENT ACT, 1998

GENERAL EXPLANATORY NOTE:

[Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Stock Exchanges Control Act, 1985, so as to amend the definition of “stock-broker”; to further regulate restrictions on the management of investments; to regulate the use of the designation “stock-broker”; to delete an obsolete reference; to further regulate undesirable advertising or canvassing relating to securities; to dispense with the requirement that the Registrar must approve the appointment of auditors; to extend the matters which may be disclosed by a stock exchange; to amend certain provisions relating to penalties; and to extend the limitation on the liability of certain persons to a stock exchange and clearing house; and to provide for matters connected therewith.

(English text signed by the President.)
(Assented to 21 April 1998.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 1 of 1985, as amended by section 14 of Act 50 of 1986, section 24 of Act 51 of 1988, section 25 of Act 54 of 1989, section 38 of Act 55 of 1989, section 13 of Act 64 of 1990, section 29 of Act 97 of 1990, section 10 of Act 54 of 1991, section 56 of Act 104 of 1993, section 1 of Act 54 of 1995 and section 1 of Act 71 of 1996 5

1. Section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985) (hereinafter referred to as the principal Act), is hereby amended by the substitution in subsection (1) for the definition of “stock-broker” of the following definition: 10

“‘stock-broker’ means any natural person who is a member or who is an officer or employee of a member, and who is authorised and qualified under the rules of the stock exchange concerned to be a stock-broker **[and to carry on the business of the member]**”.

Amendment of section 4 of Act 1 of 1985, as substituted by section 4 of Act 54 of 1995 15

2. Section 4 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 20

“(1) No person **[shall]** may, as a regular feature of his or her business, undertake the management of investments on behalf of another person, and for such management receive any remuneration in whatever form, **[other**

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordeninge aan.

Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Wet op Beheer van Aandelebeurse, 1985, ten einde die omskrywing van “aandelemakelaar” te wysig; beperkings op die bestuur van beleggings verder te reël; die gebruik van die benaming “aandelemakelaar” te reël; ’n uitgediende verwysing te skrap; ongewenste advertering of werwing met betrekking tot aandele verder te reël; weg te doen met die vereiste dat die Registrateur die aanstelling van ouditeure moet goedkeur; die aangeleenthede wat deur ’n aandelebeurs geopenbaar kan word, uit te brei; sekere strafbepalings te wysig; en die beperking van aanspreeklikheid van sekere persone na ’n aandelebeurs en verrekeningshuis uit te brei; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 21 April 1998.)

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika,
soos volg:—

Wysiging van artikel 1 van Wet 1 van 1985, soos gewysig deur artikel 14 van Wet 50 van 1986, artikel 24 van Wet 51 van 1988, artikel 25 van Wet 54 van 1989, 5 artikel 38 van Wet 55 van 1989, artikel 13 van Wet 64 van 1990, artikel 29 van Wet 97 van 1990, artikel 10 van Wet 54 van 1991, artikel 56 van Wet 104 van 1993, artikel 1 van Wet 54 van 1995 en artikel 1 van Wet 71 van 1996

1. Artikel 1 van die Wet op Beheer van Aandelebeurse, 1985 (Wet No. 1 van 1985) (hieronder die Hoofwet genoem), word hierby gewysig deur in subartikel (1) die omskrywing van “aandelemakelaar” deur die volgende omskrywing te vervang:

“‘aandelemakelaar’ ’n natuurlike persoon wat ’n lid of wat ’n beamppte of werknemer van ’n lid is, en wat kragtens die reëls van die betrokke aandelebeurs gemagtig en bevoeg is om ’n aandelemakelaar te wees [en om die besigheid van die lid te dryf];”.

15 Wysiging van artikel 4 van Wet 1 van 1985, soos vervang deur artikel 4 van Wet 54 van 1995

2. Artikel 4 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

20 “(1) Niemand mag, as ’n staande kenmerk van sy of haar besigheid, die bestuur van beleggings namens ’n ander persoon onderneem en vir sodanige

than fees charged by a member for the buying and selling of securities]
unless he or she—

- (a) **[is a member authorised in terms of the rules to manage investments on behalf of another person]** is a person who has been approved by the Registrar or is a person who falls within a category of persons approved by the Registrar; 5
 - (b) has a written mandate to do so from the other person; and
 - (c) complies with such conditions as the Registrar may from time to time determine by notice in the *Gazette*, which conditions may—
 - (i) prohibit the management of investments referred to in subparagraphs (ii) and (iv) of the definition of 'investments' in subsection (7), if such investments are not subject to a regulatory regime deemed adequate by the Registrar for the protection of investors; and 10
 - (ii) differ in respect of different groups or types of investment managers."; 15
 - (b) by the insertion after subsection (1) of the following subsection:
 "(1A) Subsection (1) does not apply to a member authorised in terms of the rules to manage investments on behalf of another person or a company which is registered as a management company in terms of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981)."; 20
 - (c) by the substitution in subsection (6) for subparagraph (iv) of paragraph (a) of the following subparagraph:
 "(iv) of a trust as defined in section 1 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), created *inter vivos*, but not a business trust, and he or she is the trustee concerned or a person administering such trust on behalf of that trustee; or"; and 25
 - (d) by the substitution for subsection (7) of the following subsection:
 "(7) For the purposes of this section— 30
 - (a) 'investments' means—
 - (i) securities **[whether listed or unlisted, or]** listed on a stock exchange; 30
 - (ii) securities listed on a foreign exchange;
 - (iii) units in a unit portfolio as defined in section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or units or any other form of participation in a collective investment scheme approved by the Registrar of Unit Trust Companies in terms of that Act; 35
 - (iv) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country;
 - (v) any other instruments declared to be **[such]** investments for the purposes of this section by the Registrar by notice in the *Gazette*; or 40
 - (vi) funds intended for the **[purpose of buying such]** purchase of such securities, units, participation or other instruments;
 - (b) 'management of investments' means—
 - (i) **[in the case of a member, means]** the buying, **[and]** selling **[of listed or unlisted securities]** or otherwise dealing with investments on behalf of another person **[in terms of an unlimited mandate to act on behalf of such other person; or];** 45
 - (ii) **[in the case of a person who is not a member, means the buying and selling of listed and unlisted securities on behalf of another person in terms of any mandate whether limited or unlimited, to act on behalf of such other person]** an offer or agreement regarding such buying, selling or dealing, irrespective of whether an investment manager is required to exercise his, her or its discretion; 50
or 55
 - (iii) the implementation on behalf of another person of a decision to buy, sell or deal with investments,
- but not—

bestuur enige vorm van vergoeding ontvang nie, **[behalwe gelde wat 'n lid hef vir die koop en verkoop van aandele]** tensy hy of sy—

- (a) **[’n lid is wat ingevolge die reëls gemagtig word om beleggings namens ’n ander persoon te bestuur]** ’n persoon is wat deur die Registrateur goedgekeur is of ’n persoon is wat in ’n kategorie van persone val wat deur die Registrateur goedgekeur is;
- (b) ’n skriftelike mandaat van die ander persoon het om aldus op te tree; en
- (c) aan die voorwaardes voldoen wat die Registrateur van tyd tot tyd by kennisgewing in die *Staatskoerant* bepaal, welke voorwaardes—
- (i) die bestuur van beleggings bedoel in subparagrafe (ii) en (iv) van die omskrywing van ’beleggings’ in subartikel (7) kan verbied indien die beleggings nie onderworpe is aan ’n regulatoriese stelsel nie wat na die oordeel van die Registrateur toereikend is vir die beskerming van beleggers; en
- (ii) kan verskil ten opsigte van verskillende groepe of tipes beleggingsbestuurders.”;
- (b) deur die volgende subartikel na subartikel (1) in te voeg:
- “(1A) Subartikel (1) is nie van toepassing nie op ’n lid wat ingevolge die reëls gemagtig is om beleggings namens ’n ander persoon te bestuur of ’n maatskappy wat as ’n bestuursmaatskappy ingevolge die Wet op Beheer van Effekte-trustskemas, 1981 (Wet No. 54 van 1981), geregistreer is.”;
- (c) deur in subartikel (6) subparagraaf (iv) van paragraaf (a) deur die volgende subparagraaf te vervang:
- “(iv) van ’n trust soos in artikel 1 van die Wet op die Beheer oor Trustgoed, 1988 (Wet No. 57 van 1988), omskryf, wat *inter vivos* tot stand gebring is, maar nie ’n besigheidstrust nie, en hy of sy die betrokke trustee is of iemand is wat namens daardie trustee sodanige trust administreer; of”;
- en
- (d) deur subartikel (7) deur die volgende subartikel te vervang:
- “(7) By die toepassing van hierdie artikel beteken—
- (a) “beleggings”—
- (i) aandele **[hetsy genoteer of ongenoteer, of]** genoteer op ’n aandelebeurs;
- (ii) aandele genoteer op ’n buitelandse beurs;
- (iii) onderaandele in ’n effektegroepe soos omskryf in artikel 1 van die Wet op Beheer van Effekte-trustskemas, 1981 (Wet No. 54 van 1981), of onderaandele of enige ander vorm van deelname aan ’n kollektiewe beleggingskema deur die Registrateur van Effekte-trustmaatskappye ingevolge daardie Wet goedgekeur;
- (iv) onderaandele of enige ander vorm van deelname aan ’n kollektiewe beleggingskema wat in die buiteland gelisensieer of geregistreer is;
- (v) enige ander instrumente deur die Registrateur by kennisgewing in die *Staatskoerant* as **[sodanig]** beleggings vir die doeleindes van hierdie artikel verklaar; of
- (vi) kontant bestem **[vir die doeleindes]** om sodanige aandele, onderaandele, deelneming of ander instrumente te koop;
- (b) ‘bestuur van beleggings’—
- (i) **[in die geval van ’n lid]** die koop, **[en]** verkoop **[van genoteerde of ongenoteerde aandele]** of enige ander handeling aangaande beleggings namens ’n ander persoon **[engevolge ’n onbeperkte mandaat om namens die ander persoon op te tree; of];**
- (ii) **[in die geval van ’n persoon wat nie ’n lid is nie, die koop en verkoop van genoteerde of ongenoteerde aandele namens ’n ander persoon ingevolge ’n mandaat, hetsy beperk of onbeperk, om namens die ander persoon op te tree]** ’n aanbod of ooreenkoms met betrekking tot sodanige koop, verkoop of handeling, ongeag of dit van ’n beleggingsbestuurder vereis word om sy of haar diskresie te gebruik; of
- (iii) die uitvoering namens ’n ander persoon van ’n besluit om beleggings te koop, te verkoop of daarmee te handel, maar nie—

- (aa) the giving of advice on the merits of such transactions without receiving funds or assets from a client; or
- (bb) the performance of the functions of a company or institution which is registered as trustee under the Unit Trusts Control Act, 1981 (Act No. 54 of 1981); and
- (c) **['an unlimited mandate' means a mandate to act on behalf of another person without it being necessary to obtain further authority or consent from such other person to effect any transaction in securities under such mandate]** **'business trust'** means a trust *inter vivos* created for the purpose of carrying on a business for profit-making, which purpose is achieved through the combination of capital contributed by the beneficiaries themselves and through the administration or management of the capital by trustees on behalf of and for the benefit of the beneficiaries.”.

Amendment of section 12 of Act 1 of 1985, as amended by section 29 of Act 51 of 1988, section 38 of Act 55 of 1989, section 12 of Act 7 of 1993, section 59 of Act 104 of 1993 and section 12 of Act 54 of 1995

3. Section 12 of the principal Act is hereby amended by the substitution in subsection (1) for subparagraph (i) of paragraph (d) of the following subparagraph:

- “(i) may carry on the business referred to in section 4 unless authorised to do so in terms of the rules **[and unless he complies with the provisions of section 4];**”.

Insertion of section 15 in Act 1 of 1985

4. The following section is hereby inserted in the principal Act after section 14:

“Use of designation ‘stock-broker’ and related designations

15. (1) A stock-broker may use the designation ‘stock-broker’, ‘stock-broker (South Africa)’ or ‘stock-broker (S.A.)’.

(2) No person who is not a stock-broker may—

- (a) hold himself or herself out as, or allow himself or herself to be held out as, a stock-broker; or
- (b) use any designation referred to in subsection (1) or any other name, title, description or symbol, or perform any act, implying or tending to induce the belief that he or she is a stock-broker.

(3) Any person to whom the rules of a foreign stock exchange recognised by the Registrar by notice in the *Gazette* apply, and whose business is substantially similar to that of a stock-broker in terms of this Act, may use any designation referred to in subsection (1), provided that the country where the designation was obtained is indicated after the designation.”.

Amendment of section 22 of Act 1 of 1985, as substituted by section 22 of Act 54 of 1995

5. Section 22 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

- “(5) In determining the amount paid or owing by any buyer to a member for the purposes of this section, the purchase price payable in respect of the listed securities sold by the member on behalf of the buyer or the purchase price payable by the member to the buyer for listed securities sold by the buyer to the member but not yet delivered to the member, **[as well as any funds or listed securities deposited with a member in terms of the rules for the purposes of a bear sale]** shall not be taken into account.”.

- (aa) die gee van advies nie oor die meriete van sodanige transaksies sonder om geld of bates van 'n kliënt te ontvang; of
- (bb) die verrigting nie van die werksaamhede van 'n maatskappy of instelling wat ingevolge die Wet op Beheer van Effekte-trustskemas, 1981 (Wet No. 54 van 1981), as 'n trustee geregistreer is; en
- (c) [**'n onbepaalde mandaat' 'n mandaat om namens 'n ander persoon op te tree sonder dat dit nodig is om verdere magtiging of toestemming van sodanige ander persoon te verkry om 'n transaksie in aandele uit te voer ingevolge sodanige mandaat'** 'besigheidstrust' 'n trust *inter vivos* wat tot stand gebring is met die doel om 'n besigheid vir winsbejag te bedryf, welke doel bereik word deur die saamvoeging van kapitaal wat deur die begunstigdes self bygedra word en deur die administrasie of bestuur van die kapitaal deur trustees namens en tot voordeel van die begunstigdes."].

Wysiging van artikel 12 van Wet 1 van 1985, soos gewysig deur artikel 29 van Wet 51 van 1988, artikel 38 van Wet 55 van 1989, artikel 12 van Wet 7 van 1993, artikel 59 van Wet 104 van 1993 en artikel 12 van Wet 54 van 1995

3. Artikel 12 van die Hoofwet word hierby gewysig deur in subartikel (1) subparagraaf (i) van paragraaf (d) deur die volgende subparagraaf te vervang:
- “(i) die besigheid bedoel in artikel 4 dryf nie tensy daartoe gemagtig ingevolge die reëls [**en tensy hy aan die bepalings van artikel 4 voldoen**];”.

Invoeging van artikel 15 in Wet 1 van 1985

4. Die volgende artikel word hierby in die Hoofwet na artikel 14 ingevoeg:

25 “Gebruik van benaming ‘aandelemakelaar’ en verwante benamings

- 15. (1) 'n Aandelemakelaar kan die benaming ‘aandelemakelaar’, ‘aandelemakelaar (Suid-Afrika)’ of ‘aandelemakelaar (S.A.)’ gebruik.**
- (2) Niemand wat nie 'n aandelemakelaar is nie, mag—
- (a) hom- of haarself as 'n aandelemakelaar uitgee of toelaat dat hy of sy as 'n aandelemakelaar uitgegee word nie; of
- (b) 'n benaming in subartikel (1) bedoel, gebruik of enige ander naam, titel, beskrywing of simbool gebruik, of enige ander handeling verrig, wat impliseer of wat neig om die indruk te wek dat hy of sy 'n aandelemakelaar is.
- (3) Enigiemand op wie die reëls van 'n buitelandse aandelebeurs wat deur die Registrateur by kennisgewing in die *Staatskoerant* erken word, van toepassing is, en wie se besigheid wesenlik dieselfde is as dié van 'n aandelemakelaar ingevolge hierdie Wet, kan enige benaming bedoel in subartikel (1) gebruik, mits die land waar die benaming verwerf is na die benaming aangedui word.”.

Wysiging van artikel 22 van Wet 1 van 1985, soos vervang deur artikel 22 van Wet 54 van 1995

5. Artikel 22 van die Hoofwet word hierby gewysig deur subartikel (5) deur die volgende subartikel te vervang:
- “(5) By die bepaling van die bedrag wat 'n koper vir die doeleindes van hierdie artikel aan 'n lid betaal het of verskuldig is, word die koopprys betaalbaar ten opsigte van die genoteerde aandele verkoop deur die lid namens die koper of die koopprys betaalbaar deur die lid aan die koper vir genoteerde aandele verkoop deur die koper aan die lid maar nog nie gelewer aan die lid nie, [**sowel as enige fondse of genoteerde aandele gedeponeer by 'n lid ingevolge die reëls vir die doeleindes van 'n daalverkoop**] buite rekening gelaat.”.

Amendment of section 39 of Act 1 of 1985, as substituted by section 36 of Act 54 of 1995 and amended by section 10 of Act 71 of 1996

6. Section 39 of the principal Act is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

“(1A) (a) No person other than a member of a foreign stock exchange recognised by the Registrar for the purposes of this section by notice in the *Gazette*, an officer or employee of such a member, such a foreign stock exchange or an employee of such a foreign stock exchange, may in any matter or by any means, either for himself, herself or for any other person, directly or indirectly advertise or canvass for any business relating to the buying and selling of securities listed on a foreign stock exchange so recognised.” 5 10

(b) by the substitution for subsection (2) of the following subsection: 15

“(2) No person other than a person approved by the Registrar in terms of section 4(1) [**shall in any matter**] or exempted from the provisions of that section by section 4(1A), may by any means [**either for himself or for any other person, directly or indirectly**] advertise or canvass for or market the business referred to in section 4(1).”; and 20

(c) by the insertion after subsection (2) of the following subsections:

“(2A) (a) No person may, without the approval of the Registrar, advertise or canvass for or market the business referred to in section 4(1), carried on outside the Republic.” 25

(b) The Registrar may grant the approval referred to in paragraph (a) subject to such conditions as may be necessary for the protection of investors.

(2B) An advertisement, marketing material or any other means of marketing contemplated in subsections (2) and (2A) shall comply with the requirements determined by the Registrar by notice in the *Gazette*.”. 30

Amendment of section 42 of Act 1 of 1985, as substituted by section 38 of Act 54 of 1995 and amended by section 11 of Act 71 of 1996

7. Section 42 of the principal Act is hereby amended—

(a) by the deletion of subsections (3) and (4); and

(b) by the substitution for subsections (5), (6) and (7) of the following subsections, respectively: 35

“(5) When [**the Registrar has in terms of subsection (4) refused to approve or has withdrawn his approval of the appointment of an auditor, or whenever for any other reason**] an auditor vacates his or her office as auditor of a member or stock exchange, the member concerned or stock exchange in question shall appoint [**some other**] another person as auditor [**but again subject to the approval of the Registrar**].” 40

(6) Where the auditor of a member or stock exchange is a partnership, such auditor shall for the purposes of subsection (5) be deemed not to have vacated [**his**] its office by reason of a change in the composition of the partnership, as long as not less than half the number of the partners in the reconstituted partnership are persons who were, as at the date when the appointment of the partnership as auditor was [**last approved by the Registrar**] made, partners therein. 45

(7) If an auditor who has been removed from office by a member or stock exchange is of the opinion that such removal was for improper reasons, such auditor shall forthwith inform the Registrar thereof by facsimile or by registered post.”. 50

Wysiging van artikel 39 van Wet 1 van 1985, soos vervang deur artikel 36 van Wet 54 van 1995 en gewysig deur artikel 10 van Wet 71 van 1996

6. Artikel 39 van die Hoofwet word hierby gewysig—

- (a) deur die volgende subartikel na subartikel (1) in te voeg:
- 5 “(1A) (a) Niemand anders as ’n lid van ’n buitelandse aandeelbeurs deur die Registrateur vir die doeleindes van hierdie artikel by kennisgewing in die *Staatskoerant* erken, ’n beampte of werknemer van so ’n lid, so ’n buitelandse aandeelbeurs of ’n werknemer van so ’n buitelandse aandeelbeurs, mag in enige aangeleentheid of op enige wyse, hetsy vir homself, haarself of vir enige ander persoon, regstreeks of onregstreeks enige besigheid met betrekking tot die koop en verkoop van aandeel genoteer op ’n aldus erkende buitelandse aandeelbeurs, werf of daarvoor adverteer nie.
- 10 (b) Niemand mag in enige aangeleentheid of op enige wyse, hetsy vir homself, haarself of vir enige ander persoon, regstreeks of onregstreeks enige besigheid in verband met die koop en verkoop van aandeel genoteer op ’n buitelandse aandeelbeurs wat nie deur die Registrateur ingevolge paragraaf (a) erken word nie, werf of daarvoor adverteer nie.”;
- 15 (b) deur subartikel (2) deur die volgende subartikel te vervang:
- 20 “(2) Niemand anders as ’n persoon goedgekeur deur die Registrateur ingevolge artikel 4(1) of wat van die bepalinge van daardie artikel vrygestel is deur artikel 4(1A), mag **[in enige aangeleentheid of]** op enige wyse **[hetsy vir homself of vir ’n ander persoon, regstreeks of onregstreeks]** die besigheid bedoel in artikel 4(1) werf, **[of]** daarvoor adverteer **of dit bemark nie.**”; en
- 25 (c) deur die volgende subartikels na subartikel (2) in te voeg:
- “**(2A) (a)** Niemand mag sonder die goedkeuring van die Registrateur, die besigheid bedoel in artikel 4(1), wat buite die Republiek bedryf word, werf, daarvoor adverteer of dit bemark nie.
- 30 (b) Die Registrateur kan die goedkeuring bedoel in paragraaf (a) verleen onderworpe aan die voorwaardes wat nodig is vir die beskerming van beleggers.
- (2B) ’n Advertensie, bemarkingsmateriaal of enige ander wyse van bemarking beoog in subartikels (2) en (2A) moet voldoen aan die vereistes wat die Registrateur by kennisgewing in die *Staatskoerant* bepaal.”.

35 Wysiging van artikel 42 van Wet 1 van 1985, soos vervang deur artikel 38 van Wet 54 van 1995 en gewysig deur artikel 11 van Wet 71 van 1996

7. Artikel 42 van die Hoofwet word hierby gewysig—

- (a) deur subartikels (3) en (4) te skrap; en
- 40 (b) deur subartikels (5), (6) en (7) deur onderskeidelik die volgende subartikels te vervang:
- “**(5)** Wanneer **[die Registrateur ingevolge subartikel (4) geweier het om die aanstelling van ’n ouditeur goed te keur of sy goedkeuring van die aanstelling van ’n ouditeur ingetrek het, of wanneer]** ’n ouditeur **[om enige ander rede]** sy of haar amp as ouditeur van ’n lid of ’n aandeelbeurs ontruim, moet die betrokke lid of aandeelbeurs ’n ander persoon as ouditeur aanstel **[maar weer eens onderworpe aan die goedkeuring van die Registrateur]**.
- 45 (6) Waar die ouditeur van ’n lid of aandeelbeurs ’n vennootskap is, word so ’n ouditeur, by die toepassing van subartikel (5), geag nie sy amp te ontruim het op grond van ’n verandering in die samestelling van die vennootskap nie solank minstens die helfte van die aantal vennote in die hersaamgestelde vennootskap persone is wat op die datum toe die vennootskap se aanstelling as ouditeur **[laas deur die Registrateur goedgekeur]** gedoen is, vennote daarin was.
- 55 (7) Indien ’n ouditeur wat deur ’n lid of aandeelbeurs uit sy of haar amp ontslaan is van oordeel is dat sodanige ontslag om onbehoorlike redes was, verwittig sodanige ouditeur die Registrateur onverwyld per faksimilee of per aangetekende pos daarvan.”.

Substitution of section 45A of Act 1 of 1985, as inserted by section 42 of Act 54 of 1995

8. The following section is hereby substituted for section 45A of the principal Act:

“Disclosure of information by stock exchange

45A. Notwithstanding the provisions of any other law, a stock exchange 5
may enter into an agreement with any other exchange or organisation of
stock exchange supervisors, whether domestic or foreign, to disclose
information relating to a security, a company whose securities are listed on
an exchange, a particular transaction, a member, an officer or employee of 10
a member or a buyer and seller of listed securities, if such information will
be of importance to the relevant **[domestic or foreign]** exchange or
organisation of stock exchange supervisors and the disclosure will not be
against the public interest.”.

Amendment of section 48 of Act 1 of 1985, as substituted by section 45 of Act 54 of 1995 and amended by section 14 of Act 71 of 1996

9. Section 48 of the principal Act is hereby amended—

(a) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) contravenes or fails to comply with a provision of section 19(3), 36, 37, 39 or 42(1), (2) **[(3), (4)]** or (5);”;

(b) by the substitution for paragraph (h) of subsection (1) of the following paragraph:

“(h) contravenes a provision of section 15(2) or (3), 40 or 41.”.

Substitution of section 52A of Act 1 of 1985, as substituted by section 15 of Act 71 of 1996

10. The following section is hereby substituted for section 52A of the principal Act:

“Limitation of liability

52A. No stock exchange, clearing house, executive officer, employee or 30
representative of a stock exchange or clearing house, or any member of a
committee or subcommittee of the committee, shall be liable for any loss
sustained by or damage caused to any person as a result of anything done or
omitted by the stock exchange, clearing house, executive officer, employee,
representative or member in the *bona fide* or negligent, but not grossly
negligent, exercise of any power or carrying out of any duty or performance 35
of any function under or in terms of this Act or the rules.”.

Short title and commencement

11. This Act shall be called the Stock Exchanges Control Amendment Act, 1998, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Vervanging van artikel 45A van Wet 1 van 1985, soos ingevoeg deur artikel 42 van Wet 54 van 1995

8. Artikel 45A van die Hoofwet word hierby deur die volgende artikel vervang:

“Openbaarmaking van inligting deur aandeelbeurs

- 5 **45A.** Ondanks die bepalings van enige ander wet kan ’n aandeelbeurs ’n ooreenkoms aangaan met enige ander beurs of organisasie van aandeelbeurstoesighouers, hetsy plaaslik of buitelandse, om inligting te openbaar met betrekking tot ’n aandeel, ’n maatskappy waarvan die aandeel op ’n beurs genoteer is, ’n besondere transaksie, ’n lid, ’n beampte of werknemer van ’n lid of ’n koper en verkoper van genoteerde aandeel indien sodanige inligting van belang sal wees vir die betrokke [plaaslike of buitelandse] beurs of organisasie van aandeelbeurstoesighouers en die openbaarmaking nie teen die openbare belang sal wees nie.”.
- 10

15 **Wysiging van artikel 48 van Wet 1 van 1985, soos vervang deur artikel 45 van Wet 54 van 1995 en gewysig deur artikel 14 van Wet 71 van 1996**

9. Artikel 48 van die Hoofwet word hierby gewysig—

- (a) deur paragraaf (d) van subartikel (1) deur die volgende paragraaf te vervang:
 “(d) ’n bepaling van artikel 19(3), 36, 37, 39 of 42(1), (2) [(3), (4)] of (5) oortree of versuim om daaraan te voldoen;” en
- 20 (b) deur paragraaf (h) van subartikel (1) deur die volgende paragraaf te vervang:
 “(h) ’n bepaling van artikel 15(2) of (3), 40 of 41 oortree.”.

Vervanging van artikel 52A van Wet 1 van 1985, soos vervang deur artikel 15 van Wet 71 van 1996

10. Artikel 52A van die Hoofwet word hierby deur die volgende artikel vervang:

25 **“Beperking van aanspreeklikheid**

- 30 **52A.** Geen aandeelbeurs, verrekeningshuis, uitvoerende beampte, werknemer of verteenwoordiger van ’n aandeelbeurs of verrekeningshuis, of ’n lid van ’n komitee of subkomitee van die komitee, is aanspreeklik nie vir enige verlies gelyk deur of skade veroorsaak aan enige persoon as gevolg van enigiets gedoen of nagelaat deur die aandeelbeurs, verrekeningshuis, uitvoerende beampte, werknemer, verteenwoordiger of lid in die *bona fide*- of nalatige, maar nie growwe nalatige nie, uitoefening van ’n bevoegdheid of uitvoering van ’n plig of verrigting van ’n werksaamheid kragtens of ingevolge hierdie Wet of die reëls.”.

35 **Kort titel en inwerkingtreding**

11. Hierdie Wet heet die Wysigingswet op Beheer van Aandeelbeurse, 1998, en tree in werking op ’n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

