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BOARD NOTICE

BOARD NOTICE 104 OF 1994

FINANCIAL SERVICES BOARD

FINANCIAL MARKETS CONTROL ACT, 1989

EXEMPTION FROM APPLICATION OF FINANCIAL MARKETS CONTROL ACT, 1989

I, Andre Swanepoel, Acting Registrar of Financial Markets, hereby under section 40 (2) of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), exempt, with effect from 1 November 1994, subject to the conditions set out in the Schedule, until 31 October 1995, the persons defined as "exempted persons" in the Schedule below, from all the provisions of the Financial Markets Control Act, 1989, excluding section 36 (1) (d) and (2).

A. SWANEPOEL,

Acting Registrar of Financial Markets.

SCHEDULE

CONDITIONS OF EXEMPTION IMPOSED UNDER SECTION 40 (2) OF THE FINANCIAL MARKETS CONTROL ACT, 1989 (ACT NO. 55 OF 1989)

1. In this Schedule, unless the context otherwise indicates—

"**Act**" means the Financial Markets Control Act, 1989 (Act No. 55 of 1989);

"**BMA**" means the Bond Market Association 1 Kerk Street, Johannesburg;

"**client**" means any person on whose behalf an exempted person administers, or holds in safe custody, instruments;

"**executive committee**" means the executive committee referred to in rule 1.2 of the Rules;

RAADSKENNISGEWING

RAADSKENNISGEWING 104 VAN 1994

RAAD OP FINANSIËLE DIENSTE

WET OP BEHEER VAN FINANSIËLE MARKTE

VRYSTELLING VAN TOEPASSING VAN WET OP BEHEER VAN FINANSIËLE MARKTE, 1989

Ek, Andre Swanepoel, waarnemende Registrateur van Finansiële Markte, stel hierby kragtens artikel 40 (2) van die Wet op Beheer van Finansiële Markte, 1989 (Wet No. 55 van 1989), onderworpe aan die voorwaardes uiteengesit in die Bylae, tot 31 Oktober 1995, die persone omskryf as "vrygestelde persone" in die Bylae hieronder, met ingang 1 November 1994 vry van alle bepalings van die Wet op Beheer van Finansiële Markte, 1989, uitgesonderd artikel 36 (1) (d) en (2).

A. SWANEPOEL,

Waarnemende Registrateur van Finansiële Markte.

BYLAE

VOORWAARDES VAN VRYSTELLING OPGELE KRAGTENS ARTIKEL 40 (2) VAN DIE WET OP BEHEER VAN FINANSIËLE MARKTE, 1989 (WET NO. 55 VAN 1989)

1. In hierdie Bylae, tensy uit die samehang anders blyk, beteken—

"**EMV**" die Effektemarkvereniging van Kerkstraat 1, Johannesburg;

"**genoteerde finansiële instrumente**" genoteerde finansiële instrumente soos omskryf in reël 1.2 van die Reëls;

"**instrument**" enige belegging in 'n genoteerde finansiële instrument of enige belegging waarvan 'n genoteerde finansiële instrument 'n deel vorm;

"**kliënt**" enige persoon namens wie 'n vrygestelde persoon instrumente administreer, of in veilige bewaring hou;

"exempted persons" means the BMA and all its members from time to time;

"instruments" means any investment in listed financial instruments or any investment of which listed financial instruments form part;

"listed financial instruments" means listed financial instruments as defined in rule 1.2 of the Rules;

"recognised clearing house" means the recognised clearing house as defined in rule 1.2 of the Rules;

"Registrar" means the Registrar as defined in section 1 of the Act;

"Rules" means the Rules referred to in condition 4 (1) of these Conditions of Exemption.

2. (1) The conditions contained in Government Notice No. R. 1884 of 10 August 1990, excluding conditions 2 (2), 7 (4), 8, 12 and 13, shall *mutatis mutandis* apply to any exempted person who undertakes as a regular feature of his business the administration or holding in safe custody, of instruments on behalf of any client.

(2) It shall be deemed that the administration, or the holding in safe custody, of instruments on behalf of any client by an exempted person is—

(a) a regular feature of the business of any such person, if he—

- (i) either for himself or for any other person, directly or indirectly, canvasses or advertises for any work being the administration or holding in safe custody of such financial instruments; or
- (ii) receives any valuable consideration (other than fees normally charged by an attorney or an accountant or auditor for services rendered) for the administration or holding in safe custody of such financial instruments; or

(b) not a regular feature of the business of any such person if such instruments form part of the assets—

- (i) in any deceased or insolvent estate, and he is the executor, administrator or trustee concerned or a person administering or holding in safe custody such financial instruments on behalf of that executor, administrator or trustee;
- (ii) of any person under curatorship, and he is the curator concerned or a person administering or holding in safe custody such financial instruments on behalf of that curator;
- (iii) of a juristic person in liquidation or under judicial management, and he is the liquidator or judicial manager concerned or a person administering or holding in safe custody such financial instruments on behalf of that liquidator or judicial manager;
- (iv) of a trust *inter vivos*, and he is the trustee concerned or a person administering or holding in safe custody such financial instruments on behalf of that trustee; or

"Reëls" die Reëls bedoel in voorwaarde 4 (1) van hierdie Voorwaardes van Vrystelling;

"Registrateur" die Registrateur soos omskryf in artikel 1 van die Wet;

"uitvoerende komitee" die uitvoerende komitee bedoel in reël 1.2 van die Reëls;

"vrygestelde persone" die EMV en al sy lede van tyd tot tyd;

"Wet" die Wet op Beheer van Finansiële Markte, 1989 (Wet No. 55 van 1989).

2. (1) Die Voorwaardes vervat in Goewermments-kennisgewing No. R. 1884 van 10 Augustus 1990, uitgesonderd voorwaardes 2 (2), 7 (4), 8, 12 en 13, is *mutatis mutandis* van toepassing op 'n vrygestelde persoon wat as 'n staande kenmerk van sy besigheid die administrasie of hou in veilige bewaring van instrumente namens 'n kliënt onderneem.

(2) Daar word geag dat die administrasie, of hou in veilige bewaring, van instrumente namens enige kliënt deur 'n vrygestelde persoon—

(a) 'n staande kenmerk van die besigheid van so 'n persoon is, indien hy—

- (i) vir homself of iemand anders, regstreeks of onregstreeks, werk werf wat die administrasie of veilige bewaring van sodanige finansiële instrumente uitmaak, of daarvoor adverteer; of
- (ii) 'n geldwaardige teenprestasie (behalwe gelde wat 'n prokureur of 'n rekenmeester of 'n ouditeur normaalweg vir gelewerde dienste vra) ontvang vir die administrasie of veilige bewaring van sodanige finansiële instrumente; of

(b) nie 'n staande kenmerk van die besigheid van so 'n persoon is nie indien sodanige instrumente deel uitmaak van bates—

- (i) in 'n bestorwe of insolvente boedel, en hy die betrokke eksekuteur, administrateur of kurator is of iemand is wat namens daardie eksekuteur, administrateur of kurator sodanige finansiële instrumente administreer of in veilige bewaring hou;
- (ii) van iemand wat onder kuratorskap is, en hy die betrokke kurator is of namens daardie kurator sodanige finansiële instrumente administreer of in veilige bewaring hou;
- (iii) van 'n regspersoon wat in likwidasie of onder geregtelike bestuur is, en hy die betrokke likwidateur of geregtelike bestuurder is of namens daardie likwidateur of geregtelike bestuurder sodanige finansiële instrumente administreer of in veilige bewaring hou;
- (iv) van 'n trust *inter vivos*, en hy die betrokke trustee is of namens daardie trustee sodanige finansiële instrumente administreer of in veilige bewaring hou; of

- (v) of a minor, and he is the guardian concerned or a person administering or holding in safe custody such financial instruments on behalf of that guardian.

3. The exempted persons shall—

- (a) permit the Registrar or a person nominated by him to attend any meeting of the executive committee or a subcommittee of such committee and to take part in any proceedings at such meeting;
- (b) transmit to or furnish the Registrar within the period determined by him with any particulars, information or documents at their disposal and relating to their affairs as regards the BMA or its activities;
- (c) take any steps in accordance with directions issued by the Registrar to terminate or obviate any undesirable practice indicated by the Registrar, or to discontinue the publication or issue of any advertisement, brochure, prospectus or other document specified by the Registrar as containing material which is incorrect or not in the public interest, or to effect the adjustments thereto specified by the Registrar.

4. (1) The members of the BMA shall comply with the Rules of the BMA, including any amendment or addition thereto, or substitution thereof, as approved by the Registrar.

(2) No amendment or addition to, or substitution of the Rules shall be of any force or effect before it has been approved by the Registrar in writing.

(3) Whenever the Registrar deems it desirable in the public interest, he may, after consultation with the executive committee, amend, add to, substitute or rescind the Rules.

(4) A copy of the Rules shall be available for inspection by any person at the head office of the BMA and the Office of the Registrar.

5. The BMA shall take such necessary steps in accordance with directions issued by the Registrar in order to become a financial exchange in terms of the Act within the period determined by the Registrar after consultation with the executive committee of the BMA and shall at the request of the Registrar inform him of the progress so made.

6. Anything done under, in terms of or by virtue of any provision of the Conditions of Exemption contained in Board Notice No. 60 of 18 June 1993, and Board Notice No. 42 of 29 April 1994, shall be deemed to have been done under, in terms of or by virtue of the corresponding provision of these Conditions of Exemption.

- (v) van 'n minderjarige, en hy die betrokke voog is of namens daardie voog sodanige finansiële instrumente administreer of in veilige bewaring hou.

3. Die vrygestelde persone moet—

- (a) toelaat dat die Registrateur of iemand deur hom genomineer enige vergadering van die uitvoerende komitee of van 'n subkomitee van sodanige komitee bywoon en deel neem aan enige verrigtinge by so 'n vergadering;
- (b) aan die Registrateur binne die tydperk deur hom bepaal enige besonderhede, inligting of dokumente wat tot hul beskikking is en betrekking het op hul sake betreffende die EMV of sy werksaamhede, stuur of verstrek;
- (c) die stappe doen ooreenkomstig lasgewings uitgereik deur die Registrateur om enige onwenslike praktyk uitgewys deur die Registrateur te beëindig of te vermy, of om die publikasie of uitgifte van enige advertensie, brosjure, prospektus of ander dokument gespesifiseer deur die Registrateur as bevattende materiaal wat foutief is of nie in die openbare belang is nie, te staak, of die veranderinge daaraan aan te bring wat die Registrateur spesifiseer.

4. (1) Die lede van die EMV moet voldoen aan die Reëls van die EMV, met inbegrip van enige wysiging of aanvulling daarvan, of enige vervanging daarvan, soos deur die Registrateur goedgekeur.

(2) Geen wysiging of aanvulling van, of vervanging van die Reëls, is van krag of effek nie alvorens dit skriftelik deur die Registrateur goedgekeur is.

(3) Wanneer die Registrateur dit in die openbare belang nodig ag, kan hy, na oorleg met die uitvoerende komitee, die Reëls wysig, aanvul, vervang of intrek.

(4) 'n Afskrif van die Reëls moet by die hoofkantoor van die EMV beskikbaar wees vir insae deur enige persoon.

5. Die EMV moet die nodige stappe doen ooreenkomstig lasgewings uitgereik deur die Registrateur om 'n finansiële beurs ingevolge die Wet te word binne die tydperk bepaal deur die Registrateur na oorleg met die uitvoerende komitee van die EMV, en moet op versoek van die Registrateur hom inlig oor vordering wat aldus gemaak is.

6. Enigiets gedoen kragtens, ingevolge of uit hoofde van enige bepaling van die Voorwaardes van Vrystelling vervat in Raadskennisgewing No. 60 van 18 Junie 1993, en Raadskennisgewing No. 42 van 29 April 1994, word geag gedoen te wees kragtens, ingevolge of uit hoofde van die ooreenstemmende bepaling van hierdie Voorwaardes van Vrystelling.

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