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NOTICE 1149 OF 1999

DEPARTMENT OF TRADE AND INDUSTRY

CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, in terms of section 10(3) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), publish the report of the Business Practices Committee on the result of an investigation made by the Committee pursuant to General Notice 6 of 1999 as published in Government Gazette No. 19660 dated 8 January 1999, as set out in the Schedule.

A ERWIN
MINISTER OF TRADE AND INDUSTRY

KENNISGEWING 1149 VAN 1999

DEPARTEMENT VAN HANDEL EN NYWERHEID

WET OP VERBRUIKERSAKE (ONBILLIKE SAKEPRAKTYKE), 1988

Ek, Alexander Erwin, Minister van Handel en Nywerheid, publiseer hiermee, kragtens artikel 10(3) van die Wet op Verbruikersake (Onbillike Sakepraktyke), 1988 (Wet No. 71 van 1988), die verslag van die Sakepraktykekomitee oor die uitslag van die ondersoek deur die Komitee gedoen kragtens Algemene Kennisgewing 6 soos gepubliseer in Staatskoerant No. 19660, gedateer 8 Januarie 1999, soos in die Bylae uiteengesit.

A ERWIN
MINISTER VAN HANDEL EN NYWERHEID

SCHEDULE • BYLAE

BUSINESS PRACTICES COMMITTEE

REPORT
IN TERMS OF SECTION 10(1) OF THE HARMFUL BUSINESS PRACTICES ACT, 1988 (ACT No. 71 OF 1988)

Report No. 73

REALITEITSRISIKO BESTUURSDIENSTE (EDMS) BPK, REALITEITSNET, REALITEITSRISIKO BESTUURDERS AND NICOLAAS HERMANUS VAN DER DUSSEN

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1. THE COMPLAINTS

1.1 Dr O L Fourie

The Business Practices Committee (the Committee)[1] received a complaint from Dr O L Fourie (Fourie) against Nicolaas Hermanus van der Dussen (ID 570522 5056 083, VdDussen) and Lodewicus Johannes Coetzee (ID 701128 5168 084, Coetzee). Fourie alleged *inter alia* that:

(a) He met VdDussen during 1994 after he (Fourie) responded to an advertisement[2] about insurance. During 1996 he surrendered two Sanlam policies because VdDussen advised him that the investments of insurers were dwindling because of AIDS[3] and there was no guarantee that policy holders would receive monies owed to them. VdDussen allegedly did business with an Italian company which did not have the same AIDS risk factor as local insurers. He said that he could manage investments in such a way that the risk was minimal. He also gave personal surety ("borgstelling") that the amounts invested by Fourie would double in three years.

(b) VdDussen stated in a letter dated 24 June 1996 to Fourie that Fourie could buy shares in Metanoia (Pty) Ltd at R10 000 per "share unit" ("aandeeleenheid"). VdDussen signed an undertaking to "buy back" the "shares" should it not be worth R50 000 or more three years from the date of purchase thereof. VdDussen guaranteed to repurchase the "shares" at R20 000 per "share unit". Fourie's wife was offered employment as a "Legal coordinator" as from 1 January 1997. Fourie was offered a post as "Environmental protection coordinator". Fourie said that he was under the impression that his investment was linked to the Italian company referred to in paragraph (a) above.

(c) Fourie invested the amount *inter alia* because VdDussen said that he employed more than 100 people[4]. He later established that VdDussen employed 10 people only. VdDussen handed Fourie a

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(1) The Committee was established in terms of section 2 of the Harmful Business Practices Act, 1988 ("the Act"). The purpose of the Act is to provide for the prohibition or control of certain business practices and for matters connected therewith.

() VdDussen denied this allegation and said that Fourie told him that he was referred to him (VdDussen). Fourie, however, showed the advertisement to officials during a meeting with him.

(3) An undated flier of Reality Risk Managers contained the following (directly translated from the Afrikaans): "Does your debts grow faster than your investments? Are you sure that affirmative action, RDP and Aids will not redistribute your investments?"

() This was also denied by VdDussen. He said that the only numbers that were discussed, were the number of people that were involved in the "development process" (see section 3).

document for each 10 000 "shares" bought by him. Fourie's wife resigned to take up the post offered to her by VdDussen and also invested R120 000 of her severage package with VdDussen. Fourie himself invested R130 000 with VdDussen.

(d) Mrs Fourie allegedly started working for VdDussen at his business called Realiteitsrisikobestuursdienste (Pty) Ltd (RRB)[5], trading as Realiteitsrisikobestuurders on 1 January 1997. At that time a "great fuss" was made in the office about a company called Dia-Logos. At a meeting attended by Fourie's daughter, who also worked for VdDussen, Dia-Logos was presented to interested parties. Coetzee was also present at this meeting. Fourie alleged that VdDussen, Coetzee and another person wanted to raise R6 million for Dia-Logos, R3 million by selling shares and the remaining R3 million by issuing debentures.

(e) Fourie and his wife became suspicious about their "shares" in Metanoia. They made enquiries and established that the authorised capital of this company was 5 000 shares of R1 each. Mrs Fourie left the employ of VdDussen towards the end of July 1997 after he told her that she did not work for him but for Coetzee. The Fouries laid a charge of fraud against VdDussen with the Commercial Crime Unit of the South African Police Service.

The Fouries received a monthly "interest" on their investments until October 1998. The capital invested by them is still outstanding.

1.2 "Jay"

The Committee also received a complaint from "Jay" dated 28 August 1998. "Jay" knew VdDussen since VdDussen operated a brokerage named Omnisure (Edms) Bpk. During 1995 Jay's employer informed him that his salary would be reduced because of the declining profitability of the employer's business. He asked the advice of VdDussen who he advised him to relinquish his employment with the firm and invest his pension with VdDussen. "Jay" bought five per cent of the shares in RRB for R230 000. He later paid a further R30 000 to VdDussen and started to work for VdDussen.

On 1 July 1995 Mrs "Jay" also started to work for VdDussen after he also advised her to resign from the position she then held and to invest her pension money with him. VdDussen, in a letter dated April 1995, gave "Jay" a "...buy back guarantee". VdDussen "guaranteed" that, should Jay's shares be worth less

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(5) The directors of RRB were VdDussen, PJ du Plessis and A vd Dussen. The only shareholder now is VdDussen.

than R1 million three years from the date of the purchase thereof, he (VdDussen) would buy back the shares at R400 000. The capital invested by "Jay" is still outstanding.

2. THE MEETING WITH VDDUSSEN ON 30 SEPTEMBER 1998

Officials of the Committee met Messrs VdDussen and Deysel at the offices of RealityNet (Pty) Ltd[6] (RealityNet) on 30 September 1998. In letter to clients the name Nico van der Dussen appeared at the top of the letters. He described himself as an "Economic Risk Analyst". At the bottom of these letters were printed "In association with RealityNet" and "Intellectual capital working for financial services consumers".

VdDussen gave the officials a copy of an agreement signed on 8 March 1997 between himself and Coetzee. Coetzee signed the agreement in his personal capacity as well as in his capacity as trustee for certain Dia-Logos companies yet to be established. The essence of the agreement was that VdDussen sold a number of rights to Coetzee. These rights included VdDussen's "KEER" model, trade secrets, immaterial goods, copyright, goodwill and know-how. "KEER"[7] was an acronym for "Kontra Ekspansionele Ekonomiese Realitietsmodel". The English equivalent would be "Contra Expansionility Economic Reality Model".

This model included (translated directly from the Afrikaans) "... the reconstructuring mechanism developed by and thought out by VdDussen and which relates to the restructuring of persons' insurance portfolios with a view to low risk high return by using debt as an investment instrument and the setting up of additional expendable cash flow and matters relating thereto".[8]

The crux of this "model" was that VdDussen's clients should surrender their existing policies, use this money to pay off existing bonds and take out new life cover at a much reduced monthly premium, but with the same cover. The result

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(6) The directors of RealityNet were C Möller, TI Deysel, D van Zyl and HM van der Dussen, the wife of VdDussen. Although VdDussen did not volunteer the information, it was later established that he had a proxy from his wife to represent her "... at any meeting of RealityNet (Pty) Ltd, to act on her behalf and to participate in any discussions and voting".

(7) In a document detailing a buying transaction between Omnisure (see later) and RRB, VdDussen referred to the "KEER" model as the "KEEROM" model. The added "OM" to the acronym stood for "Risiko Ontledingsmetodiek". This could be translated as "Risk Analysis Methodology".

(8) Afrikaans: "...die herstruktureringsmeganisme wat deur die oordraggewer (VdDussen) ontwikkel en uitgedink is en wat betrekking het op die herstrukturering van persone se versekeringsportefeuljes met die oog op lae risiko hoë opbrengs deur skuld as beleggingsinstrument te gebruik en die skep van bykomende besteebare kontantvloei en aangeleenthede wat daarmee verband hou".

of this "restructuring" was allegedly that the clients then enjoyed a substantially increased cash flow and a substantially lower total debt.

VdDussen presented 10 examples of real life situations to the officials where the application of his "KEER" model dramatically increased these clients' cash flows. Among these clients were a butcher, a farmer, a dentist, a preacher, a copy writer, an ophthalmologist, a garage owner, a businessman, a teacher and a medical doctor. The combined additional cash flows achieved by VdDussen for these clients were R85 091 per month.

The agreement made provision for a restraint of trade for five years by VdDussen that he would not market or sell the "KEER" model himself. The agreement further stipulated that VdDussen would receive R25 million for these rights. The R25 million was made up as follows:

(a) Thirty percent of the shares in Metanoia (Pty) Ltd (96/04808/07). These shares were valued at R15 million.

(b) Twenty percent of the shares in Dia-Logos (Gauteng) (Pty) Ltd (96/12634/07). These shares were valued at R2 million.

(c) Twenty percent of the shares in all Dia-Logos companies to be established. These shares were valued at R3 million. The idea was that the "KEER" model would be franchised to ±160 franchisees. Each franchisee would run a Dia-Logos company, for example, Dia-Logos (Cape) Pty Ltd and Dia-Logos (PE) Pty) Ltd.

(d) R2 million in cash following the completion of the "capitalisation process" of Dia-Logos (Gauteng) (Pty) Ltd.

(e) R3 million in cash was payable "proportionally" by the "other " Dia-Logos companies that were to be established.

VdDussen told the officials that he had sold some of the shares that he was to have received from Metanoia to Fourie. The deal between VdDussen and Coetzee did not materialise and VdDussen did not receive the shares in Metanoia. He thus sold shares in Metanoia that he did not own. He did, however, pay the Fouries R4 167 per month on their investments(9). This is equal to an interest rate

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() In this report reference is made to "investments" by clients of VdDussen. Some clients of his bought "shares" in companies which he was involved with and other clients granted "loans" to these companies. VdDussen paid interest on the "shares" and the "loans". No distinction is thus made between shares and loans in this report and the term "investments" will be used for both loans and shares. The Committee does not regard these "investments" as investments in the narrow sense of the word, but for ease of reading these "investments" will not be in inverted commas.

of 20 per cent per annum on the investment of R250 000. VdDussen said that he paid interest on a monthly basis to ±20 clients because of their investments in the "development process" of the model. He faxed the Committee the names of 11 of his clients and the monthly repayments made to each of them.

An official asked VdDussen how he financed the monthly interest payments. He said "... with difficulty" ("met moeite"). When pressed for an answer to the question, he explained that he received monies from people he knew who invested in "risk consortiums" (see section 11). An official asked him whether he used the monies paid by these clients to pay the interest as set out above. He answered in the affirmative. The official said that he wanted to make sure of VdDussen's answer. He repeated the question and VdDussen again answered in the affirmative.

The "KEER" model holds great expectations for VdDussen. In a letter dated 18 March 1998 to Fourie he *inter alia* stated (directly translated from the Afrikaans):

> **"The concept of financial restructuring and recirculation is incresingly being accepted as a reality on different levels and in different forums - with regard to both the macro economic relevance thereof and seen from an increasingly attainable grassroots implementation potential. In short this means that our vision of fifteen years ago now has the potential of a billion rand industry with enormous positive potential with regard to both the family and small business economic households and through this also the macro economic environment".(10)**

VdDussen further stated:

> **"It is no secret that I am willing to go to jail for that I believe in and anyone who alleges that he/she does not know for what I stand, does not want to know it. However, I do not believe to accept personal responsibility towards those who are responsible for their own losses".(11)**

() Afrikaans: "Die konsep van finansiële herstrukturering en hersirkulering word toenemend op toenemend op verskeie valkke en in verskei forms aanvaar as 'n realiteit - beide met betrekking tot die makro-ekonomise relevansie daarvan en vanuit 'n toenemende haalbare grondvlak implementeringspotensiaal. In kort beteken dit dat ons visie van vyftien jaar gelede nou die potensiaal het van 'n biljoene rande bedryf met geweldige positiew potensiaal ten opsigte van beide die gesins- en kleinsake ekonomiese huishoudings en daardeur dan ook die makro-ekonomiese omgewing".

() Afrikaans: "Dit is geen geheim dat ek bereid is om tronk toe te gaan vir waaraan ek glo nie en enige iemand wat beweer dat hy/sy nie weet wat en waarvoor ek staan nie, wil dit nie weet nie. Ek glo egter nie daaraan om persoonlike aanspreeklikheid te aanvaar teenoor diegene wat vir hulle eie skade verantwoordelik is nie".

It was suggested to VdDussen that he should address the Committee. He did so on 8 October 1998.

3. THE MEETING WITH COETZEE ON 5 OCTOBER 1998

Officials of the Committee held discussions with Coetzee at the offices of Dia-Logos (Gauteng) Pty Ltd on 5 October 1998. Coetzee said that VdDussen was a business acquaintance of his. He advanced R2.4 million to VdDussen to further develop the "KEER" model. VdDussen had to pay this amount back within six months at an annual interest rate of 45 per cent. The reason for this "relatively" high interest rate was that Coetzee bought three "micro" lending franchises from Louhen and he was used to rates of up to 360 per cent per annum(12).

According to Coetzee, VdDussen did not pay the monthly instalments and Coetzee suggested that the agreement, signed on 8 March 1998 and discussed above, be drawn up. In terms of the agreement VdDussen would only have received R2 million in cash once the "capitalisation process" of Dia-Logos (Gauteng) (Pty) Ltd had been completed. This right was in any event ceded to Coetzee because VdDussen still owed him in excess of R2 million. Coetzee is the only shareholder and director of the dormant company, Metanoia (Pty) Ltd. The aim of Metanoia is to assist in the development of businesses with "... excellent growth prospects".

Coetzee and ±20 persons are the shareholders of Dia-Logos (Gauteng) (Pty) Ltd. Dia-Logos uses the "KEER" model to advise their clients about the restucturing of their insurance portfolios. The business practices of Dia-Logos (Gauteng) (Pty) Ltd and Metanoia (Pty) Ltd were not investigated by the Committee.

4. VdDUSSEN'S MEETING WITH THE COMMITTEE ON 8 OCTOBER 1998

During a meeting of the Committee on 8 October 1998, attended by VdDussen and his lawyer, VdDussen admitted that he took monies from "new investors" to pay interest to "previous or earlier investors". The Chairman of the Committee put it to VdDussen and his lawyer that the Committee regarded this practice as a harmful business practice in terms of section 1 of the Act.

VdDussen was requested immediately to stop the harmful business practice and come to an agreement with the Committee in terms of section 9 of the Act. The arrangement would include a commitment by VdDussen to cease the practice whereby investments are accepted from "new clients" and used partially to pay

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() The Usury Act is at present, under certain circumstances, not applicable to loans granted under R6 000. Entities that grant loans of less than R6 000 are known as "micro" lenders. Louhen is a firm that sell "micro" lender franchises.

"previous clients". Failure on his part to do so would result in a section 8(1)(a)[13] investigation by the Committee into the business practices of VdDussen and his businesses. Officials of the Committee were to come to an agreement with VdDussen which would be acceptable to the Committee.

5. THE PROPOSALS OF THE COMMITTEE AND VdDUSSEN

The proposal to VdDussen was that he should refrain from directly or indirectly inviting the public to make investments; and/or to receive investment funds from investors for management or re-investment of such funds on behalf of the investor; and/or to offer clients or investors a "buy- back guaranteee" of monies invested by them; and/or to pay interest to previous investors from monies obtained from more recent investors. These proposed unlawful business practices would not have included the selling of insurance policies and products in companies registered with the Financial Services Board or investments and other financial products in companies listed on the Johannesburg Stock Exchange.

Had VdDussen accepted the proposal, the Committee would probably have recommended to the Minister that in terms of the Act he should direct Nicolaas Hermanus van der Dussen to:

(a) refrain from applying the harmful business practice;

(b) cease to have any interest in a business or type of business which applies the harmful business practice or to derive any income therefrom;

(c) refrain from at any time applying the harmful business practice; and

(d) refrain from at any time obtaining any interest in or deriving any income from a business or type of business applying the harmful business practice.

(13 In terms of the Act the Committee could undertake a section 4(1)(c) or a section 8(1)(a) investigation into the business practices of a particular entity or individual. A section 4(1)(c) investigation enables the Committee to make such preliminary investigation as it may consider necessary into, or confer with any interested party in connection with, any harmful business practice which allegedly exists or may come into existence. Notice of section 4(1)(c) investigations is not published in the Government Gazette as opposed to section 8(1)(a) investigations. The purpose of section 4(1)(c) investigations is to enable the Committee to make a more informed decision as to whether a section 8(1)(a) investigation is called for. The Minister of Trade and Industry is not empowered to make any decisions on the strength of a section 4(1)(c) investigation. He may do so in terms of a section 8 investigation.

VdDussen put forward the following proposal (directly translated from the Afrikaans):

> **"I, Nicolaas Hermanus van der Dussen, ID no 5705225056083, hereby undertake not to accept, directly or indirectly, investments from the public to redeem existing debts. I undertake to refrain from the participation in any business that may be involved in any harmful business practice".(14)**

Officials of the Committee held discussions with VdDussen and his lawyer on 14 October 1998. An official called the lawyer on 27 October 1998 and the lawyer called the official on 29 October 1998. The proposals put forward by the officials and that of VdDussen were mutually unacceptable.

On 24 November 1998 VdDussen was advised by letter that the Committee would meet again on 26 November 1998 and consider the proposals. It was put to VdDussen that, should a proposal be accepted by the Committee, it would have to be edited by the Directorate: Legal Affairs of the Department of Trade and Industry.

On 25 November 1998 the attorneys of VdDussen informed the Committee that "... our client is not prepared to accept this draft arrangement as worded in your said letter but will be still prepared without prejudice of his rights to accept the proposed undertaking as already forwarded to yourself by Adv (called "X"). Our client has no objection in giving his full co-operation should you wish to continue with an investigation in terms of Section 8(1)(a) but believes that this draft arrangement you are now requesting our client to sign will be prejudicial to our client as none of the allegations have been in fact tested".

6. THE COMMITTEE'S LETTER TO THE ATTORNEY OF VdDUSSEN

On 30 November 1998 the Committee responded to the letter of the attorney dated 25 November 1998. The following is a copy of this letter:

> **"During a meeting of the Business Practices Committee (the Committee) on 8 October 1998, attended by your client, Mr NH van der Dussen (VdDussen) and advocate "X", VdDussen admitted that he took monies from "new investors" to pay interest to "old investors". The Chairman of the Committee put it to VdDussen and "X" that the Committee regarded this practice as a harmful business practice in terms of section 1 of the Harmful Business Practices Act, 71 of 1988 (the Act).**

() Afrikaans: "Ek, Nicolaas Hermanus van der Dussen, ID no 5705225056083, onderneem hiermee om direk of indirek, geen beleggings van die publike te neem en aan te wend vir die delging van bestaande skuld nie. Ek onderneem om te weerhou van die deelname in enige onderneming wat enige skadelike sakepraktyk beoefen of mag beoefen".

VdDussen was requested that he immediately stop the harmful business practice and come to an agreement with the Committee in terms of section 9 of the Act. The arrangement would have included a commitment by VdDussen to cease the practice whereby "investments" are accepted from "new clients" and partly used to pay "old clients". Failure to do so would result in a section 8(1)(a) investigation by the Committee into the business practices of VdDussen and his businesses.

The Committee received a note from VdDussen stating: "Ek, Nicolaas Hermanus van der Dussen, ID no 5705225056083, onderneem hiermee om direk of indirek, geen beleggings van die publiek te neem en aan te wend vir die delging van bestaande skuld nie. Ek onderneem om te weerhou van die deelname in enige onderneming wat enige skadelike sakepraktyk beoefen of mag beoefen". This "undertaking" was not specific enough and thus not acceptable to the Committee.

It is not a question that certain allegations "... have never been tested or proven". VdDussen admitted that he is involved in a harmful business practice. This statement of VdDussen could obviously be confirmed by all those present at the meeting of the Committee on 8 October 1998, including advocate "X".

At its meeting on 8 October 1998 the Committee resolved that should the parties fail to come to an agreement in terms of section 9 of the Act, the Committee would undertake a section 8(1)(a) investigation in terms of the Act into the business practices of VdDussen and his businesses. The Committee meets again on 8 December 1998 and it would then probably confirm the section 8(1)(a) investigation into the business practices of VdDussen and his businesses. The Committee noted that your client will give his full co-operation in such an investigation. Notice of the proposed investigation would probably be published in the Government Gazette of 15 January 1999"

The attorneys of VdDussen was informed by fax on 22 December 1998 that the notice of the section 8(1)(a) investigation will appear in the Government Gazette of 8 January 1999.

7. THE SECTION 8(1)(a) NOTICE

At its meeting on 9 December 1998 the Committee resolved to undertake a section 8(1)(a) investigation into the business practices of Realiteitsrisiko Bestuursdienste (Edms) Bpk, RealiteitsNet, Realiteits-Risiko-Bestuurders, Nicolaas Hermanus van der Dussen and others.

The following notice was published as Notice 6 of 1999 in Government Gazette 19660 of 8 January 1999.

"In terms of the provisions of section 8(4) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), notice is herewith given that the Business Practices Committee intends undertaking an investigation in terms of section 8(1)(a) of the said Act into the business practices of:

Realiteitsrisiko Bestuursdienste (Edms) Bpk, RealiteitsNet, Realiteits-Risiko-Bestuurders, Nicolaas Hermanus van der Dussen (ID 570522 5056 083) and any other director, member, employee, agent and/or representative of any of the aforementioned in respect of the activities of Realiteitsrisiko Bestuursdienste (Edms) Bpk, RealiteitsNet and Realiteits-Risiko Bestuurders.

Any person may within a period of fourteen (14) days from the date of this notice make written representations regarding the above-mentioned investigation to:

The Secretary, Business Practices Committee, Private Bag X84, Pretoria, 0001.Tel: 012-310-9562 Fax: 012-322-8489. Ms L vanZyl [Ref H101/20/10/47(98)]".

On 21 January 1999, during a discussion with officials of the Committee, Mr Dirk Geldenhuys(15) (Geldenhuys), questioned the inclusion of RealityNet in the notice of the investigation since VdDussen was "...not at all involved in RealtyNet". Fact of the matter was that VdDussen was involved with RealityNet (see footnote 4). Geldenhuys told the officials that he intends to come to the "rescue" of the shareholders by affording them shares in a planned new company.(16)

8. THE MEETING ON 10 FEBRUARY 1999

Officials of the Committee again met with VdDussen at the offices of RealtyNet on 10 February 1999. VdDussen explained that, to grasp fully the present situation, one should start during ±1983 with his involvement with three companies. The companies involved were Omnisure Beherend (Pty) Ltd, Omnisure (Pty) Ltd (Omnisure) and Data Inn (Pty) Ltd. Omnisure Beherend was allegedly the controlling company of both Omnisure and Data Inn (Pty) Ltd. VdDussen said, however, that Omnisure Beherend (Pty) Ltd was a dormant company.

Omnisure was a brokerage and during 1983 had approximately 11 directors, *inter alia* VdDussen himself, a Neethling, Burger, Birkenstock, Malan, Vermooten, Oosthuizen, Ferreira, Coetzer and two others. As time went by, the shares of the directors were bought out by VdDussen and Neethling or their shares were

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() Geldenhuys is the manager of RealityNet (Pty) Ltd. He also invested some funds with VDDussen.

() This company was apparently "Finlogic Network Incorporated".

transferred to VdDussen and Neethling. He could not recall exactly whether he bought the shares or if the shares were merely transferred to him. During 1987 Neethling also disappeared from the Omnisure scene.

During 1989 to 1991 other shareholders bought shares in Omnisure, for example, a Geldenhuys, Neethling, VdDussen (snr), Schoembie, de Villiers, Minnie, Eloff and Viljoen. The directors of Omnisure were VdDussen, Schoembie and Neethling.

In 1994 VdDussen "broke away" from Omnisure and also resigned as a director. He was the only shareholder of the dormant Omnisure Beherend (Pty) Ltd and changed this name by special resolution to Realiteitsrisikobestuursdienste (Pty) Ltd (RRB). He took with him (and thus to RRB) certain "obligations" from Omnisure. These "obligations" arose from the fact that, as he said:

> "I wanted to accept the obligation on the behalf of the company because I did not want to expose the shareholders to a greater risk than that I was subject to".

He said that he accepted the obligations that he took over but that was not the case with Schoombie and Viljoen. The result was that a number of issues remained outstanding and the completion of the audit of Omnisure and RRB by the auditors, RJ Theunissen and Lubbes, was not possible. He said that he had in his possession certain "Parting documentation" ("Skeidingsdokumentasie").

VdDussen explained that the "obligations" resulted from investments made by people that he appraoched or by whom he was appraoched to invest money in his businesses. These investments were either in the form of shares or loan capital to the companies. It was put to VdDussen that neither he nor Omnisure or RRB or RealityNet had a legal obligation towards any shareholders. He agreed, but argued that he had a "moral" obligation towards these investors.

At the end of the meeting VdDussen undertook to make a number of documents, including the "Parting documentation", available to the officials on 15 February 1999. The documents (the 15Feb99 documents) consisted of a covering letter and 54 A4 pages.

9. THE 15FEB99 DOCUMENTS

The 15Feb99 documents were discussed with VdDussen at meetings attended by officials of the Committee and VdDussen at the offices of RealityNet (Pty) Ltd on 16 February 1999 and again on 22 February 1999. Geldenhuys, the manager of RealiteitsNet (Pty) Ltd, attended both meetings for short periods. It was difficult to obtain direct answers to questions put to VdDussen. He had the habit of digressing and he was told that this habit of his would be mentioned in the report on the investigtion.

Vd Dussen again said at the meeting on 16 February 1999 that one should have a background about the history of Omnisure and RRB to fully understand the 15Feb99 documents. He said that his ongoing research, even before the days of Omnisure, showed that the liabilities:assets ratio of South African consumers was amongst the highest in the world. Because of various and complicted interrelated factors resulting from *inter alia* apartheid, sanctions, interest rates and the then existing legislation favouring financial institutions, South Africans found it increasingly difficult to service their liabilities.

He started to develop a model aimed at the "... re-engineering of the distribution channels of the products and services in the financial sector" and "... to manage people out of their debt".(17) . The "KEER" model (see section 2) was part of a bigger model called "FLOS". "FLOS" was the acronym for "Financial Lifestyle Operating System". "FLOS" was also a "mechanism to evaluate risk". He did not mention "FLOS" during any of the previous meetings.

The documents consisted of the the first two pages and annexures C to X. The first page reflected a list of 53 names(18). Against each name was recorded the capital invested(19) by the person, those persons that were fully refunded the monies paid by them, the date of the investors' initial involvement(20), the capital and interest already repaid and at which development phase (see below) the investors were involved. The first investor on the list was the father of VdDussen, who allegedly invested R1 006 865.52 on 31 July 1994. The 53 investors invested approximately R8.684 million during the period July 1984 to September 1998. It was established that the amounts invested at times included "services rendered". VdDussen was asked for a list of the actual amounts invested.

The "development phase" was shown as:

Omnisure (19 investors),
RRB (11 investors),
Consortium (10 investors),
Omnisure/RRB (2 investors),
Omnisure/RRB/Consortium (1 investor),
RRB/Consortium (1 investor),
RealityNet (Pty) Ltd (3 investors),
Consortium/RealityNet (Pty) Ltd (4 investors) and
Metanoia (Pty) Ltd (2 investors).

() Afrikaans "... om mense uit hulle skuld te bestuur".

(18 The names were classified according to date of "initial involvement" (see footnote 8). These dates ranged from 31 July 1984 to 10 September 1998

(19) No distincion was made between shareholders and lenders

(20) VdDussen said that the initial involvement could either mean the date on which the person invested or the date that he first made contact with the person.

The Omnisure/RRB/Consortium linked to the name of the one investor, meant that the investor invested monies with VdDussen on three occasions, namely when VdDussen was involved with Omnisure, RRB and a "consortium" respectively. VdDussen said that he managed two "consortiums", namely "Finansnet" and "Finweb". The purpose of these two consortiums was the "... development of the system and people".

VdDussen thus took investments from "acquintances" since the days that he was involved with Omnisure to "develop" the "KEER"model. Part of this money was used to service and repay the loans of earlier investors. This pattern was continued when VdDussen was with RRB and also later during the consortiums "phase".

The second page of the document contained the names of investors who were invited to a meeting held on 23 January 1999 (see section 12). According to VdDussen annexure C contained the "Parting Documents". In a letter, apparently to a CT Neethling, VdDussen wrote:

> **"After the allocation Omnisure was placed in a position where 70 per cent of its overheads were covered by generated income. It is thus necessary to only generate 30 per cent of its overhead costs monthly with newly created funds. In the case of RRB 95 per cent of its overhead costs have to be generated with newly created funds ...".(21)**

This is a clear indication that the investments by the clients of VdDussen were applied to finance the running costs of his businesses.

Annexures D to X were copies of various agreements with shareholders and/or lenders in Omnisure and RRB. An analysis of these agreements would seem to indicate that VdDussen started on 14 October 1994(22) to give personal surety that the amounts invested would increase in value over a certain number of years

10. THE MEETING ON 22 FEBRUARY 1999

Officials of the Committee again met with VdDussen on 22 February 1999. During this short meeting the attention was focussed on the "syndicates" named Finansweb and Finweb. He explained that he received monies from people he was acquainted with and who invested in these "risk consortiums" which were managed by him. He said that he used part or all of these monies to pay the interest to previous investors. VdDussen explained that the investors were aware

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() Afrikaans: "Na die verdeling is Omnisure in 'n situasie geplaas waar rium 70% van sy oorhoofse kostes deur reeds gegenereerde inkomste gedek word en derhalwe hoef slegs 30% van oorhoofse kostes elke maand nuut gegenereer te word - in RBB se geval moet ongeveer 95% elke maand nuut gegenereer word ...".

() The agreement was with a Mr Herbst, see section 13.

that it was "risk capital". The capital that was not paid to previous investors was employed in ".. . the process of development and finalisation of the model and a company that will provide financial services". VdDussen stressed that "... people invested in me and in the concepts I developed".

The amounts paid by investors were allegedly either paid into the trust account of an attorney or into an account held by RealityNet. On one occasion a certain amount was paid directly into the account of Mrs Herbst, a previous investor. VdDussen said that the funds paid into the RealityNet account were at a later stage transferred to a RRB account. When asked why the amounts were not paid into the RRB account in the first place, he said it was for practical reasons. He was told that it would have been more practical to have immediately paid the amounts into the RRB account rather than following the detour via RealityNet.

The officials learnt that a private meeting of investors took place on 23 January 1999. During the meeting on 22 February 1999 VdDussen undertook to furnish the Committee with documents about this meeting as well as documents relating to the consortiums. These documents were received on 23 February 1999 (the 23Feb99 documents).

11. THE 23FEB99 DOCUMENTS

The first of the 23Feb99 documents contained four annexures. The first annexure was a copy of a letter inviting investors to a meeting of "interested parties" on 23 January 1999. The agenda for the meeting was: "Opening and background, discussion of future options and general and conclusion". Atached to the agenda was a page long "declaration" by VdDussen. In this declaration he *inter alia* stated that he:

(a) was not informed by the Committee who the complainants were,

(b) always gave his cooperation to the Committee because he had nothing to hide and, lastly,

(c) would carry on doing what he did for the past two decades knowing that the truth will triumph before an "Eternal Judge".

VdDussen was informed about the identity of one of the complainants at the first meeting with officials on 30 September 1998. He did give his cooperation during the investigtion in the sense that documents promised by him always arrived on time. It was, however, extremely difficult to obtain information from him during discussions. It had already been stated that he tended to digress. He was also tedious. This is evident from the quotes in these notes.

The second annexure was a copy of the invitation to participate in the consortiums. The purpose of the consortium was (quoted and translated from the Afrikaans):

"Because their is much interest, domestic and from abroad, in the utilisation of the concepts that have been developed, there is now an opportunity to an independent posisitioning re the utilisation of these concepts".

A stated advantage of the consortiums was that capital invested would be repaid before or on 31 March 1999 with a return of 50 per cent. However, it was also stated that the consortium was a "risk capital" consortium and that no guarantees could be given.

The third annexure contained a list of the "actual" amounts invested. It now appeared that the investors invested R7 968 526.21. This amount was not verified by the officials. The fourth annexure contained the names and addresses of the investors.

The second of the 23Feb99 documents was submitted by VdDussen in response to a request from an official that the Committee be supplied with particulars of the model/processes/concepts/system, whether it was available on hard copy or electronically. In the covering letter to this document VdDussen inter alia wrote (directly translated from the Afrikaans):

"With regard to the information that you require from me it would seem that you want to reduce the expression and exposition thereof to "a little software" on a "stiffy". The definition and implementation of that which had been developed over the years was, and is, indissolubly linked to myself until such time a structured transfer of knowlegde/skill have taken place and this was never presented as something else. It is a dynamic and not a static process and any marketing name or model name that was used from time to time, or that will be used, do not represent an alternative to the whole process".(23)

The document contained a number of annexures, but the model/process/concepts/system was not formulated as such. Annexure "A" of this document had as heading "Finlogic Network (Pty) Ltd. The shareholders were given as "Development funders shareblock, Directors/Key personai (sic) shareblock and strategic partnership shareblock". The opening paragraph read:

"To create, operate and own a niche bank and other financial product

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() Afrikaans: "Mbt die inligting wat u van my verlang wil dit voorkom of u die uitdrukking en uiteensetting daarvan wil reduseer tot "n bietjie sagteware" op 'n 'stiffy'. Dit wat deur die jare ontwikkel is, se definering en implementering was en is onlosmaaklik aan myself gekoppel tot tyd en wyl gestruktureerde kundigheidsoordrag plaasgevind het en is nooit anders voorgehou nie. Dit is 'n dinamiese en nie 'n statiese proses nie en enige bemarking- of modelnaam wat van tyd tot tyd gebruik is of sal word stel nie 'n alternatief tot die gehele proses daar nie."

providers through the utilisation of a business opportunity to re-engineer the distribution channel for financial services and products to a selected low risk middle income financial services group of consumers".

The funding schedule mentioned a JSE listing and a "... final banking formation with foreign banking group (R300 million) by 1 June 2000". The "Projected Pro Forma Financial Statements" reflected an interest income of R143 315 000 in 2002 and a retained income of R34 278 000.

12. THE MEETING BETWEEN VdDUSSEN AND INVESTORS ON 23 JANUARY 1999

Officials obtained a copy of the tape recording of the proceedings at the meeting from an investor. VdDussen asked the chairman of the meeting for a turn to speak. Before he could do so, an investor said that he knew that VdDussen subscribed to Christian beliefs. He therefor requested VdDussen to put his hand on a Bible and promise that he would tell the truth.

VdDussen *inter alia* said the following:

> "Things went wrong, but I will try to honour my obligations. I have a debt of honour, irrespective of the persons involved. I will defend myself against processes which were set in motion and which want to hold me responsible for the actions of others. I want to go ahead with that which I developed over years so that no one will suffer loss. Act in terms of your conscience and interest. Do not let others take you in tow. I have an obligation towrds everyone that is here and will try to honour it. I ask God's forgiveness. Without the advantage of hindsight I did what I thought was right. I neither ask your forgivesness or mercy nor your sympathy because we are experiencing hard times".

Next to speak was Geldenhuys. He *inter alia* said that: no minutes would be taken down, no rights of any person would be affected by the meeting, he himself was an investor and he was convinced that the scheme would succeed, there was no money available, domestic and international negotiations were under way to establish a financial services group, and if "they" did not succeed within the next six months "they" would never do so. The "they" referred to envisaged "strategic" domestic and international "partners".

The quality of the recording was poor and it was difficult to follow the questions and answers session that followed after Geldenhuys addressed the meeting.

13. OMNISURE - SOME ASPECTS

During the investigation into the business practices of VdDussen a number of documents concerning Omnisure came to the attention of the Committee. One

of these documents was a copy of the minutes of a meeting held on 27 January 1996 at which the auditors reported on the financial position of the company.

The auditor quoted a number of figures to those present, who included VdDussen. The loss of the company increased from R378 000 on 28 February 1993 to an amount of more than R2 million on 30 June 1995. On 28 February 1993 the total remuneration of the directors of the company and its employees as a percentage of its turnover was 89 per cent. On June 1994 this percentage was 116 per cent. The auditor was of the opinion that a substantial irregularity ("wesenlike onreëlmatigheid") existed.

The auditor quoted from a shareholders agreement in which it was *inter alia* stated that VdDussen and onother director of Omnisure guaranteed a 50 per cent preference dividend to the shareholder. This guarantee, in the opinion of the auditor, was an unacceptable offer and aslo possibly misled the shareholder. It was also unacceptable because it did not apply to all shareholders. The auditors also expressed their concerns about the "buy back of shares guarantees" given to potential and existing shareholders.

On 29 September 1993 the auditors suggested that any loan to Omnisure should be approved by the directors at a board meeting. Nevertheless, only VdDussen signed loan agreements on the behalf of Omnisure. He did not have a proxy from the board to do so. This happened whilst Omnisure was allegedly technically insolvent. On 21 October 1993 VdDussen accepted loans to Omnisure to the value of R540 000. No loan agreements could be made available by VdDussen. It also seemed that some loans were accepted after verbal agreements. At an annual general meeting of Omnisure shareholders on 9 March 1996 VdDussen said that the other directors of Omnisure knew about the verbal loan agreements and that had a general proxy from other directors to do so. VdDussen maintained that this proxy was minuted. He did, however, not know where the minutes were. VdDussen resigned as director of Omnisure on 30 August 1994.

It is clear from this brief overview of some Omnisure activities that VdDussen was involved in "buy back of shares guarantees" during his involvement with Omnisure and at least since 1993.(24)

14. MEETINGS WITH SOME INVESTORS

On 23 February 1999 officials of the Committee met with Dr Eloff (Eloff), a retired dentist. Eloff said that he knew VdDussen since 1992 or 1993. He and VdDussen were neighbours and members of the same congregation. Eloff said that there was a relationship of trust between VdDussen and himself.

() See foornote 20.

Eloff underwent major surgery on his spine and after the operation he was completely unable to carry on his work as dentist. He seeked the advice of VdDussen who recommended that he surrender all his policies and invest it with him (VdDussen). Eloff and his wife each paid R200 000 for 800 shares of R1 each in Omnisure during May 1993. At about the same time Eloff sold his house to Mrs VdDussen. Eloff held the first mortgage over the property. VdDussen regularly paid the interest on his investment but these payments stopped towards the end of 1998.

On 25 February 1999 an official of the Committee met with Mr LM Herbst (Herbst), another VdDussen investor. Herbst and VdDussen's father were colleages and Herbst said that he knew VdDussen since he (VdDussen) was about two years old. Herbst invested R200 000 in RRB on 14 October 1994 and his wife invested R100 000 in Omnisure on 24 February 1994. She received a monthly income of R1 666.67 on this investment which was eventually refunded to her.

VdDussen gave Herbst a written "... buy back guarantee". This guarantee stated that, should "... your shares not be worth R1 million or more in three years time, I will buy back the shares at R400 000". Herbst, aged 62 and retired, was emotional when he said that he now experienced major financial problems because of VdDussen's actions. He also felt that he was deceived ("bedrieg") and humiliated ("verneder") by VdDussen. Over the years he did not want to upset the apple cart because VdDussen told him that the matter was "... highly sensitive, we are negotiating with foreign firms and should our competitors hear of this they will thwart our efforts". VdDussen did not furnish any evidence of "... negotiations with foreign firms".

15. CONCLUSION

VdDussen's undertaking to "buy back" the shares of his clients, whether the shares bought were in Omnisure or RRB, was misleading. Statements such as "... should they (the shares) not be worth R50 000 or more three years from the date of purchase thereof" and "... should the shares be worth less than R1 million three years from the date of the purchase thereof, I will buy back the shares at R400 000" was a designed move to mislead his clients. The moneys invested by his clients at times became available because he advised the clients to surrender their policies.

As an "Economic Risk Analyst" VdDussen should and must have known that the "guarantees" were not worth the paper it was written on. No "analyst" in his right mind would dream to give a written guarantee that a particular share would be worth Rx in three year's time. These guarantees gave the investors, who were apparently financial illiterates, a sense of security. This sense of security was further supported by the fact that VdDussen in some cases offered the investors, and their wives, job opportunities. His long-winded use of Afrikaans and at times non-sensical economic jargon contributed to his clients' confusion.

By his own admission VdDussen sold "some of his" Metanoia shares to at least two shareholders. The deal between himself and Coetzee did not materialise and VdDussen did not have the Metanoia shares to sell. It is not a crime to sell something that one does not own. The question, however, is whether VdDussen knew at the time that he sold the shares that he stood little or no chance to obtain ownership thereof.

On 8 March 1997 he sold the "KEER" model to Coetzee. Coetzee used this "model" in Dia-Logos to advise their clients about the restructuring of their insurance portfolios. The model or concept was thus already put to use and the crux thereof was certainly not a close guarded secret. Yet, VdDussen still kept on accepting investment from clients under the pretext that the model or system or process or concept was being futher developed.

In March 1998 he wrote to a shareholder that the concept "... has the potential of a billion rand industry" and that he was "... willing to go to jail for that I believe in and anyone who alleges that he/she does not know for what I stand, does not want to know it". After discussions with some investors it was clear that they had no idea what the concept was all about, notwithstanding VdDussen's contention that "... anyone who alleges that he/she does not know for what I stand, does not want to know it". It is also not clear why VdDussen is "... willing to go to jail" for that he believes in. Unless of course, he harbours feelings of guilt.

By his own admission and verified through the documents mentioned in this report, VdDussen accepted funds from new investors to pay interest to previous investors and in some cases, to redeem their investments. This business practice was applied during VdDussen's involvement with Omnisure, RRB, RealityNet and the consortiums During the meeting with the Committee on 8 October 1998 VdDussen was requested to immediately stop this practice. Investors ceased to receive the "interest" on their investments and on 22 January 1999 they were told at a meeting that there was "... no more money. It is likely that, had the Committee not intervened, VdDussen would have continued his "investment" practices.

VdDussen's "development" of his process/concept/model and his vision of its application in a billion Rand industry led to him to accept funds from clients. These funds were used partly to finance his businesses and to roll over monies to his clients.
The clients were promised huge returns. Now no money is available and the intangible asset, the concept, does not seem to have any commercial value to the investors

VdDussen has a history of accepting "investments" from his clients and partly utilising these funds to finance his businesses, the "development" of his concept and to pay previous investors. He should be stopped from doing so. Should his concept have the "... potential of a billion rand industry", financiers would bent over backwards to finance him.

16. RECOMMENDATION

Whether the business practices of Nicolaas Hermanus van der Dussen (ID 570522 5056 08 3) were devised or whether it came about by accident, they constitute harmful business practices. There are no grounds justifying the practices in the public interest. It is accordingly recommended that the Minister:

(a) in terms of section 12(1)(b) of the Act declares unlawful the business practice whereby Nicolaas Hermanus van der Dussen, directly or indirectly,

(i) invites any persons to advance loans or take up shares in any business in which he has a direct or indirect interest, and/or

(ii) receives investment funds from any persons for management or re-investment of such funds on behalf of the investor; and/or

(iii) offers clients or investors a "buy-back guaranteee" of monies invested by them; and/or

(iv) pays interest to previous investors from monies obtained from more recent investors.

However, it will not be unlawful should VdDussen issue shares in a company or accept loans for the company, when duly authorised to do so, for which a prospectus had been registered with the Registrar of Companies in terms of the Companies Act. These unlawful business practices excludes the selling of insurance policies and products in companies registered with the Financial Services Board or investments and other financial products in companies listed on the Johannesburg Stock Exchange.

(b) in terms of section 12(1)(c) of the Act directs Nicolaas Hermanus van der Dussen to refrain from applying the harmful business practice.

LOUISE A TAGER
CHAIRMAN : BUSINESS PRACTICES COMMITTEE
23 March 1999

NOTICE 1150 OF 1999

DEPARTMENT OF TRADE AND INDUSTRY

CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, after having considered a report by the Business Practices Committee in relation to an investigation of which notice was given in Notice 6 of 1999 published in Government Gazette No. 19660 of 8 January 1999, which report was published in Notice 1149 in Government Gazette No. 20187 of 10 June 1999, and being of the opinion that a harmful business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12(1)(b) and (c) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), as set out in the Schedule.

A ERWIN
MINISTER OF TRADE AND INDUSTRY

SCHEDULE

In this notice, unless the context indicates otherwise -

"harmful business practice" means the business practice whereby the party, directly or indirectly -

(i) invites any persons to advance loans or take up shares in any business in which the party has a direct or indirect interest, and/or

(ii) receives investment funds from any persons for management or re-investment of such funds on behalf of the investor; and/or

(iii) offers clients or investors a "buy- back guarantee" of monies invested by them; and/or

(iv) pays interest to previous investors from monies obtained from more recent investors.

"the party" means Nicolaas Hermanus van der Dussen

1. The harmful business practice is hereby declared unlawful in respect of the party.

2. The party is hereby directed to -

(a) refrain from applying the harmful business practice;

(b) cease to have any interest in a business or type of business which applies the harmful business practice or to derive any income there from;

(c) refrain from at any time applying the harmful business practice; and

(d) refrain from at any time obtaining any interest in or deriving any income from a business or type of business applying the harmful business practice.

3. This notice shall come into operation upon the date of publication hereof.

KENNISGEWING 1150 VAN 1999

DEPARTEMENT VAN HANDEL EN NYWERHEID

WET OP VERBRUIKERSAKE (ONBILLIKE SAKEPRAKTYKE), 1988

Ek, Alexander Erwin, Minister van Handel en Nywerheid, na oorweging van 'n verslag deur die Sakepraktykekomitee met betrekking tot 'n ondersoek waarvan in Kennisgewing No. 6 in Staatskoerant No. 19660 van 8 Januarie 1999 kennis gegee is, welke verslag gepubliseer is by Kennisgewing 1149 in Staatskoerant No. 20187 van 10 Junie 1999, is van oordeel dat 'n skadelike sakepraktyk bestaan wat nie in die openbare belang geregverdig is nie, en oefen hiermee my bevoegdheid uit kragtens artikel 12(1)(b) en (c) van die Wet op Verbruikersake (Onbillike Sakepraktyke), 1988 (Wet No. 71 van 1988), soos in die Bylae uiteengesit.

A ERWIN
MINISTER VAN HANDEL EN NYWERHEID

BYLAE

In hierdie kennisgewing, tensy uit die samehang anders blyk, beteken -

"die party" Nicolaas Hermanus van der Dussen

"skadelike sakepraktyk" die praktyk waardeur die party, direk of indirek -

(i) **enige persone uitnooi om lenings toe te staan aan of aandele op te neem in enige besigheid waarin die party 'n direkte of indirekte belang het; en/of**

(ii) **beleggingsfondse van enige persone ontvang vir die bestuur of herinvestering van sodanige fondse namens die belegger; en/of**

(iii) **"terugkoopwaarborge" bied aan kliënte of beleggers van geld wat deur hulle belê is; en/of**

(iv) **rente betaal aan vorige beleggers uit gelde wat van meer resente beleggers ontvang is.**

1. **Die skadelike sakepraktyk word hiermee ten opsigte van die party onwettig verklaar.**

2. Die party word hiermee gelas om -

(a) af te sien van die toepassing van die skadelike sakepraktyk;

(b) op te hou om enige belang in 'n besigheid of tipe besigheid te hê wat die skadelike sakepraktyk bedryf, of om enige inkomste daaruit te verkry;

(c) te gener tyd die skadelike sakepraktyk te bedryf nie; en

(d) te gener tyd enige belang in 'n besigheid of tipe besigheid wat die skadelike sakepraktyk bedryf te bekom nie, of om enige inkomste daaruit te verkry nie.

3. Die kennisgewing tree in werking op die datum van publikasie hiervan.


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